

19982

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2011-CP-10-1739

David M. Graham, Jr.,

Appellant,

v.

Welch, Roberts and Amburn,
LLP and Russell Patrick Welch,

Respondents.

RECORD ON APPEAL

RECEIVED
SEP 28 2012
SC Court of Appeals

C. Cantzon Foster, II
Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, South Carolina 29205
(803) 400-1921
(803) 400-1951 Facsimile
COUNSEL FOR THE APPELLANT

Eric S. Bland, Esquire
Ronald L. Richter, Jr., Esquire
Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401
(843) 573-9900
COUNSEL FOR THE RESPONDENTS

INDEX

<u>ITEM</u>	<u>PAGE NUMBER</u>
Index.....	i
Order Granting Summary Judgment.....	1
Summons and Complaint (and attached exhibits).....	3
Answer and Counterclaim.....	35
Reply.....	49
Motion for Summary Judgment.....	52
Affidavit of R. Patrick Welch (and attached exhibits).....	56
Affidavit of David Graham (and attached exhibits).....	65
Transcript of Hearing.....	75
Certificate of Counsel.....	87

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2011-CP-10-1739

David M. Graham, Jr.,
Plaintiff,

vs.

Welch, Roberts and Amburn, LLP and
Russell Patrick Welch,
Defendants.

ORDER GRANTING
SUMMARY JUDGMENT

FILED
2012 JAN 20 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before me on Defendants' Motion for Summary Judgment based upon the expiration of the statute of limitations. Having reviewed the pleadings and affidavits submitted by the parties, and having heard the argument of counsel, I HEREBY FIND AND ORDER AS FOLLOWS:

1. The uncontroverted facts before the court demonstrate that:
 - a. The Defendants were the tax advisors for the Plaintiff during the times relevant to the lawsuit;
 - b. The Plaintiff incurred a tax liability in the State of New York in the amount of \$4,296.49;
 - c. On October 13, 2005, the Plaintiff issued a check made payable to Welch, Roberts & Amburn in the amount of \$4,296.49, which check included the notation "Please Post to Account: DM Graham." The Plaintiff sent the check to the Defendants with the belief that the check would be used by the Defendants to satisfy the New York tax liability;
 - d. On November 28, 2005, the Defendants invoiced the Plaintiff for services rendered in the total amount of \$6,656.00. The invoice reflected credit for the application of a payment in the amount of \$4,296.49, thus leaving a balance due of \$2,359.51.

e. On December 30, 2005, the Plaintiff remitted payment to the Defendants via a check made payable to Welch, Roberts & Amburn in the amount of \$2,359.51, which check included the notation "Please Post to Account: DM Graham."

f. The Plaintiff received notice from his bank on April 29, 2008 that the State of New York had placed a levy on his account for unpaid taxes.

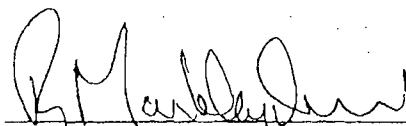
2. The Plaintiff contends that he did not know and could not have known prior to April 29, 2008 or later that his check in the amount of \$4,296.49 had not been used to pay the New York tax liability as he had intended.

3. I find the Plaintiff's argument unpersuasive. There is no dispute of fact not only that the Plaintiff received an invoice on or around November 28, 2005 reflecting the application of the contested payment of \$4,296.49 toward services rendered, but also that after having received the invoice, the Plaintiff remitted payment to the Defendants for the precise balance due of \$2,359.51 on December 30, 2005.

4. The Plaintiff knew or should have known as early as November 28, 2005, but not later than December 30, 2005, that his payment in the amount of \$4,296.49 was not used to pay the New York tax liability as he allegedly intended.

5. I find that more than three years have passed since the Plaintiff first knew or should have known that his payment in the amount of \$4,296.49 was not used to pay the New York tax liability as he allegedly intended, as a result of which his claims are barred by the expiration of the statute of limitations.

IT IS SO ORDERED!



The Honorable R. Markley Dennis, Jr.
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina
January 17, 2012

COUNTY OF CHARLESTON

ORIGINAL

David M. Graham, Jr.,

Plaintiff(s)

CIVIL ACTION COVERSHEET

11 -CP- 10- 1739

vs.

Welch, Roberts, and Amburn, LLP; and,
Russell Patrick Welch,

Defendant(s)

(Please Print)

Submitted By: C. Cantzon Foster, II

Bryan D. Caskey

Address: 3100 Devine Street

Columbia, SC 29205

SC Bar #: 69501; 75754

Telephone #: (803) 400-1921

Fax #: (803) 400-1951

Other:

E-mail: cantzon@fosterlawoffice.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Construction (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP- , Notice/ File Med Mal (230), Other (299) Professional Negligence-CPA
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: February 28, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous-Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

David M. Graham, Jr.,)
)
Plaintiff,)

vs.)

Welch, Roberts, and Amburn, LLP; and,)
Russell Patrick Welch,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 11-CP-10-1739

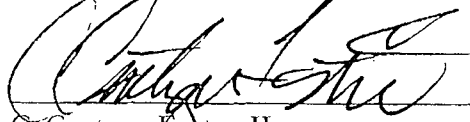
SUMMONS

FILED
2011 MAR -9 AM 10:32
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE DEFENDANTS, NAMED ABOVE:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served on you, and to serve a copy of your answer to the same upon the subscriber at 3100 Devine Street, Columbia, SC within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer the Complaint within the thirty (30) day period, Plaintiff will apply to the court for the relief demanded therein and judgment will be taken against you by default.

FOSTER LAW OFFICE, LLC



C. Cantzon Foster, II
Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, South Carolina 29205
(803) 400-1921
(803) 400-1951 Facsimile
COUNSEL FOR PLAINTIFF

February 28, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 David M. Graham, Jr.,)
 Plaintiff,)
 vs.)
 Welch, Roberts, and Amburn, LLP; and,)
 Russell Patrick Welch,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 11-CP-10-1739

COMPLAINT
 (JURY TRIAL DEMANDED)
 2011 MAR -9 AM 10:32
 JULIE B. ARMSTRONG
 CLERK OF COURT
 FILED

COMES NOW, Plaintiff, complaining of the Defendants, by and through his undersigned counsel, who would hereby show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the State of Florida
2. Defendant, Russell Patrick Welch (hereinafter referred to as "Defendant Welch"), is a citizen and resident of Charleston County, South Carolina; a Certified Public Accountant; and a principal partner of Welch Roberts and Amburn, LLP (hereinafter referred to as "Defendant WRA").
3. At all times relevant to this action, Plaintiff was a client of Defendant Welch and Defendant WRA.
4. Defendant WRA is a limited liability partnership formed and existing pursuant to the laws of the State of South Carolina with its primary place of business in Charleston County, State of South Carolina.
5. Defendant WRA is engaged in the business of tax preparation and accounting services.
6. This Court has subject matter jurisdiction over the issues raised herein, personal jurisdiction over the parties hereto, and venue is proper in Charleston County, South Carolina.

GENERAL ALLEGATIONS

7. The preceding paragraphs are incorporated by reference as if stated herein verbatim.
8. At all times relevant to this action, Defendant Welch and Defendant WRA were employed as financial and tax advisors to Plaintiff and did in fact render tax preparation and financial services to Plaintiff, including, but not limited to rendering tax advice, preparing tax returns, and paying taxes owed by Plaintiff with Plaintiff's funds.
9. Plaintiff reposed special confidence in Defendant Welch and Defendant WRA to act in good faith and regards to Plaintiff's interests.
10. On or about October, 2005, Defendants informed Plaintiff that Defendant owed \$4,296.49 (hereinafter also referred to as the "Tax Payment") to the New York Tax Commission. Defendants then requested that Plaintiff provide Defendants with this amount so that they could in turn make the Tax Payment on Plaintiff's behalf.
11. On or about October 13, 2005, Plaintiff caused a check to be issued and delivered to Defendant WRA in the amount of \$4,296.49 for the specific purpose of having Defendants in turn make the Tax Payment on Plaintiff's behalf. (See Exhibit 1).
12. The Defendants subsequently received the above-referenced check and accepted it.
13. Defendants then caused Plaintiff to believe that they had timely paid the Tax Payment on Plaintiff's behalf.
14. On or about April 29, 2008, Plaintiff received correspondence from Wachovia Bank, N.A. informing him that a tax levy had been directed against him from the Commissioner of Taxation and Finance of New York in the amount of \$5434.88. (See Exhibit 2).
15. Upon receipt of this tax levy, Plaintiff realized that the Defendants had not paid the Tax Payment on his behalf.

16. On April 29, 2008, the total amount of \$5,534.88 was debited from Plaintiff's Wachovia bank account in satisfaction of the tax levy, which included a \$100 non-refundable processing fee. (See Exhibit 3).
17. Defendants have not provided Plaintiff with an accounting of the original \$4,296.49 paid to the Defendants.
18. Defendants have not returned the original \$4,296.49 to Plaintiff.

FOR FIRST CAUSE OF ACTION
(PROFESSIONAL NEGLIGENCE)

19. The preceding paragraphs are incorporated by reference as if stated herein verbatim.
20. Defendant Welch is a Certified Public Accountant, licensed by the South Carolina Board of Accountancy.
21. Defendant WRA is an accounting firm licensed the South Carolina Board of Accountancy.
22. Defendant Welch and Defendant WRA had an accountant-client relationship due to the fact that they performed accounting services for Plaintiff.
23. Defendant Welch and Defendant WRA owed a certain standard of care in dealing with Plaintiff as their client.
24. Defendant Welch and Defendant WRA breached this standard of care towards Plaintiff in a willful, reckless, and grossly negligent manner based upon the allegations as set forth herein.
25. Plaintiff was directly and proximately harmed by the willful, reckless, and grossly negligent conduct of Defendant Welch and Defendant WRA in the amount of \$4,296.49 along with additional fees, penalties, and interest in the amount of \$1,238.39, totaling actual damages to Plaintiff in the amount of \$5,534.88.
26. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, in the sum of \$5,534.88 as actual damages with pre-judgment and post-judgment interest thereon.

27. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR SECOND CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

28. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

29. Upon information and belief, Plaintiff reposed a special confidence and trust in Defendants and Defendants owed Plaintiff a fiduciary duty to act in Plaintiff's best interests.

30. Upon information and belief, Defendants breached their fiduciary duty to Plaintiff by, among other things, failing to safeguard Plaintiff's funds, failing to pay the Tax Payment, misleading Plaintiff to believe the Tax Payment was made, keeping the Tax Payment for their own benefit, failing to reimburse Plaintiff for the Tax Payment, interest and penalties accrued due to Defendants' breach.

31. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, in the sum of \$5,534.88 as actual damages with pre-judgment and post-judgment interest thereon.

32. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A THIRD CAUSE OF ACTION
(FRAUD)

33. The preceding paragraphs are incorporated by reference as if stated herein verbatim.
34. The Defendants made a false representation to the Plaintiff that they had made the Tax Payment on his behalf.
35. The false representation made to Plaintiff was a significant and material representation, leading to Plaintiff's damages.
36. The Defendants had either knowledge of the falsity of the statement or acted with a reckless disregard for the truth or falsity of the statement.
37. The Defendants made the representation to Plaintiff with the intent that Plaintiff would act upon the statement by considering the Tax Payment to be made; Plaintiff was ignorant of the statement's falsity; Plaintiff relied on the truth of the statement; Plaintiff had a right to rely on the statement; and Plaintiff was subsequently injured by the statement in the actual amount of \$5,534.88.
38. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, in the sum of \$5,534.88 as actual damages with pre-judgment and post-judgment interest thereon.
39. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A FOURTH CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION)

40. The preceding paragraphs are incorporated by reference as if stated herein verbatim.
41. The Defendants made a false representation to the Plaintiff that they had made the Tax Payment on his behalf.
42. The Defendants had a pecuniary interest in making the false representation to the Plaintiff that they had made the Tax Payment on his behalf.
43. The Defendants owed a duty of care to the Plaintiff to see that truthful information was communicated to the Plaintiff regarding the status of the Tax Payment.
44. The Defendants breached their duty of care to the Plaintiff by failing to exercise due care, and additionally willfully, recklessly, and intentionally misrepresented the status of the Tax Payment to the Plaintiff.
45. The Plaintiff was justified in relying on the Defendants' misrepresentation as to the status of the Tax Payment.
46. The Plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the misrepresentation.
47. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, in the sum of \$5,534.88 as actual damages with pre-judgment and post-judgment interest thereon.
48. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A FIFTH CAUSE OF ACTION
(CONVERSION)

49. The preceding paragraphs are incorporated by reference as if stated herein verbatim.
50. Upon information and belief, Defendants converted Plaintiff's funds to their own use without Plaintiff's permission.
51. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, in the sum of \$5,534.88 as actual damages with pre-judgment and post-judgment interest thereon.
52. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A SIXTH CAUSE OF ACTION
(ALTERNATIVELY; UNJUST ENRICHMENT)

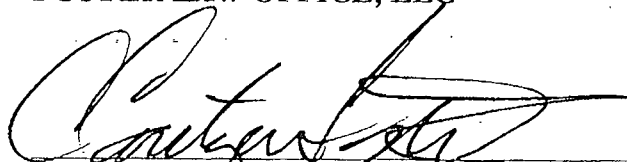
53. The preceding paragraphs are incorporated by reference as if stated herein verbatim.
54. Plaintiff provided \$4,296.49 to the Defendants for the express and single purpose of having Defendants pay the Tax Payment on Plaintiff's behalf.
55. The Defendants did not make the Tax Payment and have failed to return the funds to Plaintiff.
56. Alternatively, based upon the foregoing, Plaintiff is informed and believes that he is entitled to a judgment for actual damages against the Defendants, jointly and severally, in the amount of \$4,296.49 with pre-judgment and post-judgment interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. For the first five causes of action, award judgment against Defendants, jointly and severally, in the sum of \$5,534.88 as actual damages with pre-judgment and post-judgment interest thereon;
- B. Award judgment against the Defendants, jointly and severally, for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon; and,
- C. Alternatively, for the sixth cause of action, award judgment for actual damages against the Defendants, jointly and severally, in the amount of \$4,296.49 with pre-judgment and post-judgment interest thereon.

FOSTER LAW OFFICE, LLC



C. Cantzon Foster, II
Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, South Carolina 29205
(803) 400-1921
(803) 400-1951 Facsimile
COUNSEL FOR PLAINTIFF

February 28, 2011
Columbia, South Carolina

EXHIBIT 1

EXHIBIT 2

Wachovia Bank NA
Legal Order Processing
PO Box 8667 PA4418
Philadelphia, PA 19101-8667

Apr 29, 2008

david m. graham jr
APT 1208
1621 BAY ROAD
MIAMI BEACH, FL 33139

RE:

ACCOUNT TYPE	ACCOUNT NUMBER	HOLDING AMOUNT
DDA	1010183329448	\$5,534.88

Dear: david m graham jr

We regret to inform you that Wachovia Bank NA has been served with a Tax Levy directed against you from the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK in the amount of \$5,434.88.

Unless the Tax Levy is released within 14/21 days, on 5/23/2008, we will be required by the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK to pay the amount that has been debited from your account(s) as referenced above. A ~~\$100.00 non-refundable processing fee~~ will be charged against the account(s) referenced above.

If you have any questions concerning this matter, you may contact the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK as indicated on the bank levy copy attached.

Any questions concerning this legal document should be directed to the Plaintiff's attorney or Agent whose name and address appears on the enclosed copy. Please note that certain funds are exempt from attachment pursuant to federal and/or state law. If your account contains funds that are exempt from attachment, you must contact the Plaintiff's attorney or government agency that is requesting the funds. It is your responsibility to take the steps necessary to protect your interest in this matter.

Sincerely,

Servicenter Associate

Enclosures:

EXHIBIT 3



New York State Department of Taxation and Finance

NYS AR LEVY RECEIVABLES
P O BOX 4137
BINGHAMTON, NY 13902-4137

Levy ID: E-000721439-L007-3

Taxpayer ID: 247-72-0261

Tax Compliance Levy

First and Final Demand

WACHOVIA BANK NA
3709 RIVERDALE AVE
BRONX NY 10463

Garnishee

If you have any questions, please call: (800) 872-7400

Under authority of the Tax Law of the State of New York and Section 5232(a) of the Civil Practice Laws and Rules in the matter of the Commissioner of Taxation and Finance of the State of New York, Judgment Creditor -

against: DAVID M GRAHAM JR
156 SEA MARSH DRIVE
JOHNS ISLAND SC 29455-5505

Judgment Debtor(s)

Accounts listed herein and any others which exist:

Table with 5 columns: Warrant ID, County, Date Docketed, Original Warranted Amount, Current Balance Due. Includes a total row at the bottom.

It appears that you are indebted to the above named judgment debtor(s) or that you are in possession or custody of property not capable of delivery which you know or have reason to believe that the judgment debtor(s) has(have) an interest.

You are required by Section 5232(a) of the Civil Practice Laws and Rules to immediately transfer to the undersigned all personal property not capable of delivery in which the judgment debtor(s), not deceased, is(are) known or believed to have an interest now in or hereafter coming into your possession or custody as may be necessary to satisfy the total amount due as set forth herein including all debts now or coming due from you to the judgment debtor(s) together with any other lawful additions including fees, costs and expenses of this levy, if any, to execute any documents necessary to affect such transfer or payment; and to comply with any and all further provisions of such section.

Dated: 4/28/08

Name: K ARKISON

Signature:

Handwritten signature of Karen L. Arkison

Title: Deputy Tax Commissioner

- Account closed, No account balance, No account ever existed, Other (attach explanation), Payment enclosed \$

(Make check or money order payable to the Commissioner of Taxation and Finance. Enter the Levy ID indicated above on the payment.)

Acknowledgment of Service

Signature

Date

Time

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

David M. Graham, Jr.,)
)
Plaintiff,)

Civil Action No.: _____

vs.)

Welch, Roberts, and Amburn, LLP; and,)
Russell Patrick Welch,)
)
Defendants.)

EXPERT AFFIDAVIT
(PER S.C. CODE § 15-36-100)

EXPERT AFFIDAVIT OF B. Michael Goldson

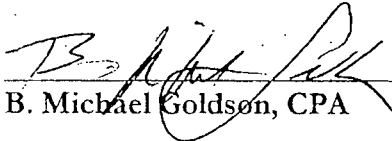
I, the undersigned B. Michael Goldson, being duly sworn, depose and state as follows:

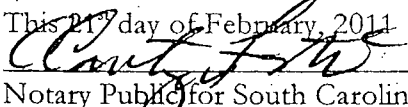
1. I am a resident of Charleston, South Carolina.
2. I am currently a certified public accountant with Goldson & Company in Charleston, South Carolina.
3. I received my BS in Business Administration/Accounting from the University of South Carolina in December of 1978 and my CPA license in 1981. I am in good standing and licensed as a Certified Public Accountant in the State of South Carolina.
4. My *curriculum vitae* is attached hereto and incorporated herein by reference.
5. My subjects of expertise include accounting, auditing, tax preparation, and tax advice.
6. I have been asked to offer my opinion as an expert in accounting, tax preparation, and tax advising, including and specifically as to whether the Defendants breached the applicable standard of care owed to its client, David Graham, in connection with their representation related to a certain tax payment to the New York State Department of Taxation and Finance.
7. In connection with reaching my professional opinion, I have reviewed at least the following documents, which are attached hereto:

- a. Check payable to Welch Roberts & Amburn (dated 10/13/05);
 - b. Collection Notice (dated 3/17/08);
 - c. Tax Compliance Levy (dated 4/28/08);
 - d. Corresponding banking records for 4/16/08 through 5/14/08; and,
8. Additionally, I have reviewed and am familiar with the Code of Professional Conduct of the American Institute of Certified Public Accountants (as adopted January 12, 1988, as amended).
9. These are among the documents I would usually review and consider as an expert in reviewing a matter for possible accountant malpractice and to determine the duties and standard of care which should be exhibited by an accountant in connection one or more of the parties therein and to form an opinion as to where duties existed and whether a breach of duty has occurred. My review of these materials varied in degree, depending upon my perception of necessity.
10. In submitting this affidavit, I have assumed the accuracy and completeness of the materials listed above.
11. Based on my review of the documents listed above, and more than Thirty years of experience, I have concluded that Defendants committed multiple breaches of the standard of care that certified public accountants in the field of tax preparation, tax advice, and tax payments owe to their clients in the following ways, among others:
- a. Failing to pay taxes on behalf of David Graham in a timely manner after collecting such funds for this purpose;
 - b. Failing to disclose to David Graham that they failed to make the tax payment;
 - c. Failing to refund the money David Graham provided Defendants to pay his tax payment; and
 - d. Failing to provide an accounting to the client of the client's funds.

12. It is therefore my opinion that the acts set forth above, in context of the facts and circumstances of this matter as I understand them constitute a failure to comply with established professional standards, including standards set forth by federal or state law, and additionally constitute a violation of the code of professional ethics adopted by the board or of the AICPA Professional Standards: Code of Professional Conduct.
13. It is therefore my opinion that the acts set forth above, in context of the facts and circumstances of this matter as I understand them, constitute a breach of the standard of care for a certified public accountant who collects taxes on behalf of a client in South Carolina. It is also my opinion that the aforesaid breaches, either singly or in their entirety, proximately caused damages to David Graham.
14. I have been retained as an expert witness by counsel for David Graham. My expert opinions are based upon the evidence available to me at this time and are subject to expansion and modification as further evidence or issues develop.

FURTHER AFFIANT SAYETH NOT.


B. Michael Goldson, CPA

Sworn and subscribed to before me
This 21st day of February, 2011

Notary Public for South Carolina
My Commission Expires: 06-10-2012

B. Michael Goldson
198 East Bay Street; Suite 300
Charleston, South Carolina

Certified Public Accountant since 1981; Managing member of Goldson & Company, LLC., CPA's, Charleston, South Carolina

Previous professional affiliation with Clarkson, Harden, and Gantt, CPA's (later merged with Ernst & Young, CPA's), Columbia, South Carolina; Previous positions: Controller of regional real estate development and construction company; Vice-President, Finance of an independent mortgage banking company.

Education: University of South Carolina School of Business Administration (B.S. Business Administration - Accounting, 1978).

Member of the American Institute of CPA's and South Carolina Association of CPA's since 1981.

Past member of board of directors: Charleston Area Arts Council - Lowcountry Arts & Cultural Council

THE BACK OF THIS CHECK CONTAINS SECURITY MARKS. DO NOT ACCEPT WITHOUT HOLDING AT AN ANGLE TO VERIFY SECURITY MARKS.

Please Post to Account: D M GRAHAM
DAVID GRAHAM
1621 BAY RD APT 1208
MIAMI BEACH, FL 33139

Metavante Corporation
P O Box 7238
Bloom Field, SD 57117-7238
payee: mta@metavante.com
1-877-346-5272

Payable through
Metavante Bank, ANTIAGO, WI

70-148
756 9110179021
October 13, 2005

PAY Four Thousand Two Hundred Ninety Six and 49/100 Dollars

\$*****4,296.49

TO THE ORDER OF: WELCH ROBERTS & AMBURN
157 E BAY ST
CHARLESTON, SC 29401-2124

VOID 60 DAYS AFTER ISSUE.

Michael D. Hayford

FUN 0007481220
10804110
Notes



THIS IS A BILL PAYMENT DRAFT WHICH IS DRAWN BY METAVANTE CORPORATION WITHOUT RECOURSE

⑈9810179021⑈ ⑆075901480⑆ 987900269⑈43950⑈ ⑆0000429649⑆

004941120

⑆031200730⑆
WACHOVIA NA SVC011 9510T
PHILA, PA 19213015 133X
3715464562

PAY TO THE ORDER OF
FIRST UNION BANK
FOR DEPOSIT ONLY
WELCH, ROBERTS & AMBURN, LLP
4009927911

Item Amount	Item Serial	Item R/T	Item Account	Item Sequence	Date	Item Type
\$4,296.49	000009110179021	007590148	000091790026943950	0005715464562	10-20-2005	Transit

Wachovia certifies that the above image is a true and exact copy of the original item issued by the named customer, and was produced from original data stored in the archives of Wachovia, its predecessors or successors.



Crown Classic Banking

WACHOVIA

01 1010183329448 036 30 0 9

Electronic Delivery



DAVID M GRAHAM
MELORA ZOFFOLI
1621 BAY ROAD
APT 1208
MIAMI BEACH FL 33139

PB

Crown Classic Banking

4/16/2008 thru 5/14/2008

Account number: 1010183329448
Account owner(s): DAVID M GRAHAM
MELORA ZOFFOLI

Account Summary

Opening balance 4/16	\$788,431.88
Deposits and other credits	26,025.81 +
Interest paid	16.86 +
Checks	204,525.75 -
Other withdrawals and service fees	525,592.51 -
Closing balance 5/14	\$84,356.29

Deposits and Other Credits

Date	Amount	Description
4/23	195.48	DEPOSIT
4/29	805.33	DEPOSIT
4/29	25,000.00	FUNDS TRANSFER (ADVICE 2008042900031331) RCVD FROM HSBC BANK USA /BANK OF BERMUDA ORG=1/TODD JAMES JASON RFB=TT HLN137395MNY OBI=DAVID GRAHAM BOAT REF=120417922 04/29/08 12:08PM ET
5/01	25.00	SERVICE FEE REFUND
5/14	16.86	INTEREST FROM 04/16/2008 THROUGH 05/14/2008
Total	\$26,042.67	

Interest

Number of days this statement period	29
Annual percentage yield earned	0.08%
Interest earned this statement period	\$16.86
Interest paid this statement period	\$16.86
Interest paid this year	\$33.81



Crown Classic Banking

WACHOVIA

02 1010183329448 036 30 0 9

Checks

Number	Amount	Date	Number	Amount	Date	Number	Amount	Date
1453	58.81	4/17	5368*	568.26	5/05	5385	1,610.00	4/21
2501*	300.00	5/02	5380*	76,702.00	4/17	5388*	67,363.90	4/23
2502	1,000.00	5/01	5381	50,000.00	5/09	Total	\$204,525.75	
2503	240.00	5/08	5382	160.00	4/21			
5364*	6,250.00	4/28	5384*	272.78	4/22			

* Indicates a break in check number sequence

Other Withdrawals and Service Fees

Date	Amount	Description
4/17	39.00	AUTOMATED DEBIT ATLANTIC PEST ONLINE PMT CO. ID. 9500000000 080417 WEB MISC CKF181807036POS
4/18	865.76	AUTOMATED DEBIT AMERICAN EXPRESS ONLINE PMT CO. ID. 9500000000 080418 WEB MISC CKF181807036POS
4/22	64.33	AUTOMATED DEBIT AT&T(BELLSOUTH) ONLINE PMT CO. ID. 9500000000 080422 WEB MISC CKF181807036POS
4/22	600.00	WITHDRAWAL FRESHFIELD VILLAGE 04/22 100 VILLAGE GREEN JOHNS ISLAND SC.0022W008339
4/23	510,000.00	AUTOMATED DEBIT ING DIRECT WITHDRAWAL CO. ID. 1510394779 080423 PPD
4/24	52.93	AUTOMATED DEBIT TOTAL CALL INTER TOTAL CALL CO. ID. W911718107 080424 WEB MISC M1810639689
4/29	5,534.88	TAX LEVY RECEIVED FROM: NYS TAX LEVY LLG#1389648
4/30	25.00	MISCELLANEOUS FEE DOMESTIC OUTGOING WIRETRANSFER
4/30	6,250.00	FUNDS TRANSFER (ADVICE 2008043000059998) SENT TO CAROLINA FIRST BA BNF=BROAD STREET VENTURES LLC OBI=DAVID GRAHAM RFB=080430150742 04/30/08 02:29PM ET
5/02	69.65	AUTOMATED DEBIT FPL DIRECT DEBIT ELEC PYMT CO. ID. 3590247775 080502 PPD
5/05	132.01	AUTOMATED DEBIT TIME WARNER ONLINE PMT CO. ID. 9500000000 080505 WEB MISC CKF181807036POS
5/05	327.41	XFER TO WACHOVIA CARD SERVICES # 1631 05/05 ONLINE TRNSFR CONFIRMATION # R7000098009582
5/07	139.26	AUTOMATED DEBIT DIRECTV DIRECTV CO. ID. 0000035774 080507 TEL MISC 8532394

Other Withdrawals and Service Fees continued on next page.



WACHOVIA

Crown Classic Banking

03 1010183329448 036 30 0 9

Other Withdrawals and Service Fees *continued*

Date	Amount	Description
5/12	56.91	AUTOMATED DEBIT AT&T(BELLSOUTH) ONLINE PMT CO. ID. 9500000000 080512 WEB MISC CKF181807036POS
5/12	650.44	AUTOMATED DEBIT W. THOMAS VERNON ONLINE PMT CO. ID. 9500000000 080512 WEB MISC CKF181807036POS
5/14	171.53	AUTOMATED DEBIT BERKELEY ELEC ONLINE PMT CO. ID. 9500000000 080514 WEB MISC CKF181807036POS
5/14	613.40	AUTOMATED DEBIT EAST RIVER RENTAL PAY CO. ID. 0135605354 080514 PPD
Total	\$525,592.51	

Great Mortgages plus outstanding service add up to satisfied customers. J.D. Power and Associates ranked Wachovia "Highest in Customer Satisfaction with Primary Mortgage Sales" for 2007. Find out why! Call 866-416-6076 and let a Wachovia Mortgage Specialist help you buy or refinance. Loans subject to credit approval and originated by Wachovia Mortgage, FSB, an Equal Housing Lender. Visit www.jdpower.com for award information.

Reduce Paper Clutter with free Wachovia Online Statements. Sign up today to view, print and save your bank statements online. To sign up for Online Statements, log into Online Banking at Wachovia.com. On the right side of the My Accounts page, select the Account Services link and then click the Change Statement Option. Not an Online Banking Customer? Enroll in Online Banking today at Wachovia.com/enroll or by calling 800-950-2296.



Crown Classic Banking

WACHOVIA

04 1010183329448 036 30 0 9

Customer Service Information

	Phone number	Address
Checking & Savings Accounts, Check Card & ATM Card	800-WACHOVIA 800-922-4684	WACHOVIA BANK, NATIONAL ASSOCIATION NC8502 P O BOX 563966 CHARLOTTE NC 28256-3966
TDD (For the Hearing Impaired) En español para cuentas corrientes y de ahorros	800-388-2234 800-326-8977	
Bank By Mail (Deposits Only)		WACHOVIA BANK, NATIONAL ASSOCIATION FL8044 P O BOX 522817 MIAMI FL 33152-2817
Consumer Loan Accounts	800-347-1131	WACHOVIA BANK, NATIONAL ASSOCIATION VA0343 P O BOX 13327 ROANOKE VA 24040-0343

To Balance Your Account

<ol style="list-style-type: none"> Compare your account register to your account statement for unrecorded transactions (such as ATM, Check Card, Interest earned, fees, etc.) Your new account register total should match the adjusted balance in line 6 below. Write in the closing balance shown on the front of account statement. _____ Write in any deposits you have made since the date of this statement. _____ _____ _____ Add together amounts listed above in steps 2 and 3. _____ In the section to the right, list and total all checks and withdrawals that you have made that are not reported on your account statement. Write in the total here. _____ Subtract the amount in line 5 from the amount in line 4. This is your adjusted balance and should match the balance in Step 1 above. _____ 	List Outstanding Checks and Withdrawals			
	Ck. No.	Amount	Ck. No.	Amount
			Total	

In Case of Errors or Questions About Your Electronic Transfers: Telephone us at 800-WACHOVIA, 800-922-4684, or write to us at WACHOVIA BANK, NATIONAL ASSOCIATION, NC8502, P O BOX 563966, CHARLOTTE NC 28256-3966, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

- Tell us your name and account number (if any).
 - Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.
 - Tell us the dollar amount of the suspected error.
- We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error. You will have use of the money during the time it takes us to complete our investigation.

WACHOVIA BANK, N.A. IS MEMBER FDIC



New York State Department of Taxation and Finance

Tax Compliance Central Office
W.A. Harriman Campus
Albany, NY 12227

Date: 3/17/08

Taxpayer ID: P-24-7720261-2

Collection case ID: E-000721439-CL04-9

Collection Notice

Current Balance Due: \$5,390.25
See Section A of the Consolidated Statement for details

E-000721439-8
GRAHAM-DAVID M JR
156 SEA MARSH DRIVE
JOHNS ISLAND, SC 29455-5505

The filing of a tax warrant is a matter of public record on file at your County Clerk's office and the Department of State, and it may be included in New York State government listings accessible via the Internet.

A recent examination of your account shows that you still have outstanding tax liabilities as shown in Section A of the enclosed Consolidated Statement of Tax Liabilities.

To avoid collection enforcement actions, YOU MUST IMMEDIATELY:

- Pay the current balance due, including penalty and/or interest, as shown in Section A of the Consolidated Statement.
• Complete the Payment Application Section on the enclosed Payment Document.
• Refer to the Instructions on the Payment Document for returning that form.

If you do not respond to this notice:

- Enforcement actions will be taken against you for the total tax assessed, plus penalty and/or interest due.
• You may be charged with a misdemeanor under the New York State Tax Law for failure to pay taxes due.

If you have sent full payment within the last ten days, please disregard this notice. If you sent payment more than ten days ago, provide proof of payment as required on the enclosed Payment Document. Return the completed Payment Document in the envelope provided.

NOTICE TO JUDGMENT DEBTOR

This will serve as notification, required annually by law, that warrant(s) previously filed with the County Clerk's Office is/are still outstanding.

Money or property belonging to you may have been taken or held in order to satisfy a judgment which has been entered against you. Read this carefully.

YOU MAY BE ABLE TO GET YOUR MONEY BACK

State and Federal laws prevent certain money or property from being taken to satisfy judgments. Such money or property is said to be "exempt". The following is a partial list of money which may be exempt:

- 1. Supplemental security income (SSI)
2. Social Security
3. Public Assistance (welfare)
4. Alimony or child support
5. Unemployment benefits
6. Disability benefits
7. Worker's Compensation benefits
8. Public or private pensions
9. Veteran's benefits

If you think that any of your money that has been taken or held is exempt, you must act promptly because

(CONTINUED ON BACK)



IMPORTANT - READ CAREFULLY

**The Procedures that the Department of Taxation and Finance May Use to
Enforce Payment of Outstanding Tax Liabilities**

If you do not respond to this notice, enforcement actions, as described below, may be taken against you for the total tax assessed, plus penalty and/or interest due:

- A tax warrant may be filed against you. A warrant filed with the appropriate county clerk and Department of State constitutes a legal judgment against you, as well as a lien in favor of the New York State Tax Department against your real and personal property. It will be a matter of public record; will negatively affect your credit rating; and it will make it difficult for you to obtain credit or loans, or buy or sell property.
- Your real and personal property may be seized and could be sold at a tax auction to satisfy a filed tax warrant.
- The Department may seize many of your assets by levy, including any monies owed to you and any monies in your bank account. Your bank would be required to take money out of your account and send it to the Department.
- An income execution may be issued against your wages, requiring your employer to withhold up to 10% of your gross earnings from your paycheck.
- Any money or payments owed you by a State agency may be withheld and applied against the taxes you owe.
- If you owe sales and compensating use taxes or withholding taxes, you may be required to set up a special bank trust account and deposit such taxes into the account. Also, failure to pay a sales and use tax liability may result in the forfeiture of your certificate of authority to collect sales and use taxes which, in most instances, will make it illegal to continue the operation of your business.
- Failure to pay certain taxes may result in the forfeiture of pledged bonds or other collateral and/or the revocation of licenses.
- Depending on circumstances, you may be subject to criminal prosecution under Article 37 of the New York State Tax Law.

For additional information on any of the materials covered in this correspondence, consult Publication Number 125, The Collection Process.



Consolidated Statement of Tax Liabilities

If you have any questions, please call 1 800 835-3554. From areas outside the U.S. and Canada, call (518) 485-6800.

P-24-7720261-2 E-000721439-8 GRAHAM-DAVID M JR

This is a statement of your tax liabilities, including the liability(ies) referred to in the enclosed COLLECTION NOTICE.

Each liability listed below is identified by an Assessment ID. Use the enclosed Payment Document to make payment on these liabilities.

Recent adjustments, credits or payments may not be included on this Statement. Also, a payment may have been applied to multiple assessments.

This Consolidated Statement summarizes your Tax liabilities with New York State under the taxpayer identification number(s) shown above. If you have ever used another taxpayer identification number for tax reporting purposes, you may owe additional New York State tax liabilities.

NOTE: To view the current balance of this or any other outstanding liabilities, access our web site at www.nystax.gov and select the Online Tax Center option.

SECTION A. THE FOLLOWING LIABILITIES ARE SUBJECT TO COLLECTION ACTION AND THE ACCRUAL OF ADDITIONAL PENALTY AND/OR INTEREST. To avoid such collection action and additional accruals, they must be paid immediately.

Table with 8 columns: Tax Type, Assessment ID, Tax Period Ended, Tax Amount Assessed, (+) Interest Amount Assessed, (+) Penalty Amount Assessed, (-) Assessment Payments/Credits, (=) Current Balance Due. Includes a TOTAL row.

SECTION B. THE FOLLOWING LIABILITIES HAVE BEEN DETERMINED TO BE DUE. Although not yet subject to collection action they should be paid promptly in order to avoid the accrual of additional penalty and/or interest charges.

Table with 8 columns: Tax Type, Assessment ID, Tax Period Ended, Tax Amount Due, (+) Interest Amount Due, (+) Penalty Amount Due, (-) Assessment Payments/Credits, (=) Current Balance Due. Includes a TOTAL row.

SECTION C. Not Applicable.

SECTION D. Not Applicable.



New York State Department of Taxation and Finance

NYS AR LEVY RECEIVABLES
P O BOX 4137
BINGHAMTON, NY 13902-4137

Levy ID: E-000721439-L007-3

Taxpayer ID: 247-72-0261

Tax Compliance Levy

First and Final Demand

WACHOVIA BANK NA
3709 RIVERDALE AVE
BRONX NY 10463

Garnishee

If you have any questions, please call: (800) 872-7400

Under authority of the Tax Law of the State of New York and Section 5232(a) of the Civil Practice Laws and Rules in the matter of the Commissioner of Taxation and Finance of the State of New York, Judgment Creditor -

against: DAVID M GRAHAM JR
156 SEA MARSH DRIVE
JOHNS ISLAND SC 29455-5505

Judgment Debtor(s)

Accounts listed herein and any others which exist: -

Table with 5 columns: Warrant ID, County, Date Docketed, Original Warranted Amount, Current Balance Due. Includes a total row at the bottom.

It appears that you are indebted to the above named judgment debtor(s) or that you are in possession or custody of property not capable of delivery which you know or have reason to believe that the judgment debtor(s) has(have) an interest.

You are required by Section 5232(a) of the Civil Practice Laws and Rules to immediately transfer to the undersigned all personal property not capable of delivery in which the judgment debtor(s), not deceased, is(are) known or believed to have an interest now in or hereafter coming into your possession or custody as may be necessary to satisfy the total amount due as set forth herein including all debts now or coming due from you to the judgment debtor(s) together with any other lawful additions including fees, costs and expenses of this levy, if any, to execute any documents necessary to affect such transfer or payment; and to comply with any and all further provisions of such section.

Dated: 4/28/08

Name: K ARKISON

Signature:

Handwritten signature of Karen L. Arkison

Title: Deputy Tax Commissioner

- Account closed
No account balance
No account ever existed
Other (attach explanation)
Payment enclosed \$

(Make check or money order payable to the Commissioner of Taxation and Finance. Enter the Levy ID indicated above on the payment.)

Acknowledgment of Service

Signature

Date

Time

Please refer to the back of this form for additional information and mailing instructions.

Wachovia Bank NA
Legal Order Processing
PO Box 8667 PA4418
Philadelphia, PA 19101-8667

Apr 29, 2008

david m graham jr
APT 1208
1621 BAY ROAD
MIAMI BEACH, FL 33139

RE:

ACCOUNT TYPE	ACCOUNT NUMBER	HOLDING AMOUNT
DDA	1010183329448	\$5,534.88

Dear: david m graham jr

We regret to inform you that Wachovia Bank NA has been served with a Tax Levy directed against you from the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK in the amount of \$5,434.88.

Unless the Tax Levy is released within 14/21 days, on 5/23/2008, we will be required by the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK to pay the amount that has been debited from your account(s) as referenced above. A \$100.00 non-refundable processing fee will be charged against the account(s) referenced above.

If you have any questions concerning this matter, you may contact the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK as indicated on the bank levy copy attached.

Any questions concerning this legal document should be directed to the Plaintiff's attorney or Agent whose name and address appears on the enclosed copy. Please note that certain funds are exempt from attachment pursuant to federal and/or state law. If your account contains funds that are exempt from attachment, you must contact the Plaintiff's attorney or government agency that is requesting the funds. It is your responsibility to take the steps necessary to protect your interest in this matter.

Sincerely,

Servicenter Associate

Enclosures:

**Tax Compliance Levy
Additional Information**

Pursuant to the provisions of the Tax Law, the warrant(s) listed on the front constitute(s) a judgment in favor of the Commissioner of Taxation and Finance against the judgment debtor(s) named (whose last known address is also indicated) and the officer or employee of the Department of Taxation and Finance, whose signature appears on the front of this form, has all the rights and powers of a sheriff.

The Commissioner of Taxation and Finance **commands** any duly authorized officer or employee of the Department of Taxation and Finance to satisfy the warrant(s) out of the real and personal property in which the judgment debtor(s), not deceased, has(have) an interest or any debts owed to said judgment debtor(s). A notice to this(these) judgment debtor(s) substantially in the form set forth in CPLR 5222(e) was served upon the judgment debtor(s) within a year prior to the service of this levy.

Warrants filed pursuant to the Tax Law constitute perfected liens against real and personal property of the judgment debtor(s) against whom the warrants are issued. This levy serves as notice of the existence of such liens. No extension of levy is required to maintain the effectiveness of these liens.

Please be sure that:

- You check the applicable box on the front and indicate the payment amount enclosed, if any.
- You sign the Acknowledgment of Service section and indicate the date and time.

Return one copy of this form to the address below.

**NYS AR LEVY RECEIVABLES
P O BOX 4137
BINGHAMTON, NY 13902-4137**



Eric S. Bland*
Ronald L. Richter, Jr.

*Also admitted in PA. & FL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

**RE: David M. Graham, Jr. v. Welch, Roberts and AMburn, LLP and
Russell Patrick Welch
Civil Action No.: 2011-CP-10-1739**

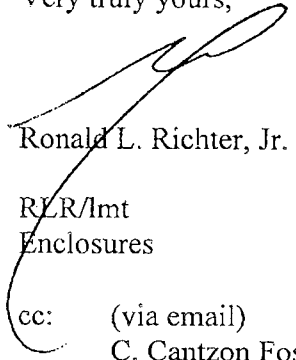
Dear Hon. Armstrong:

Enclosed for filing is an original and one (1) copy of the Defendants' Answer in the above-referenced matter. Please file the original, clock the copy and return the clocked copy to me in the self-addressed, stamped envelope provided.

By copy of this letter to opposing counsel, I am hereby serving the same upon them this date under separate cover.

Thanking you for your assistance with this matter, I am

Very truly yours,


Ronald L. Richter, Jr.

RLR/Imt
Enclosures

cc: (via email)
C. Cantzon Foster, II, Esquire
Bryan D. Caskey, Esquire
Mr. R. Patrick Welch
Eric S. Bland, Esquire

Graham Welch 10136
S. Reading

Reply to:
Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401
Phone: 843.573.9900
Fax: 843.573.0200
ronnie@blandrichter.com

Offices also at:
1500 Calhoun Street
Columbia, SC 29201
Mail: P.O. Box 72
Columbia, SC 29202
Phone: 803.256.9664
Fax: 803.256.3056
ericbland@blandrichter.com

May 20, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2011-CP-10-1739

David M. Graham, Jr.,)
)
Plaintiff,)

vs.)

ANSWER

Welch, Roberts and Amburn, LLP and)
Russell Patrick Welch,)
)
Defendants.)

Defendants, answering the allegations of Plaintiff's Complaint, allege as follows:

1. Each and every allegation of Plaintiff's Complaint not expressly admitted herein is specifically denied and strict proof thereof is demanded.

2. Defendants admit Paragraph 1 of the Complaint on information and belief.

3. Defendants admit Paragraph 2 of the Complaint.

4. In responding to the allegations of Paragraph 3 of the Complaint, Defendants admit that the Plaintiff was a past client for certain agreed upon services.

5. Defendants admit the allegations of Paragraph 4, 5 and 6 of the Complaint.

6. In responding to Paragraph 7 of the Complaint, the Defendants incorporate the above paragraphs as if realleged and restated in full verbatim.

7. In responding to the allegations of Paragraph 8 of the Complaint, Defendants admit that Defendant WRA provided certain tax and/or accounting services to the Plaintiff pursuant to certain engagement letters specifically defining the scope of said services.

Defendants further admit that Defendant Welch, acting in his capacity as an employee and/or agent of Defendant WRA, performed services for the Plaintiff consistent with the aforementioned engagement letters.

8. In responding to the allegations of Paragraph 9 of the Complaint, Defendants lack information and belief as to Plaintiff's state of mind.

9. Paragraph 10 of the Complaint is denied. By way of further response, Defendants allege that simple reference to the Plaintiff's own exhibits to the Complaint reveals that the Plaintiff did not owe the New York Tax Commission the sum of \$4,296.49, but instead that he owed the Commission \$4,497.12.

10. Paragraph 11 of the Complaint is denied. By way of further response, Defendants allege that while Plaintiff issued a check to WRA in the amount of \$4,296.49, simple reference to the check itself which is attached as an exhibit to the Complaint reveals that the payment was to be "Post[ed] to Account: D M Graham."

11. Defendants admit Paragraph 12 of the Complaint.

12. Paragraph 13 of the Complaint is denied. By way of further response to the baseless and frivolous allegations of Paragraph 13, not only did the Defendants not cause the Plaintiff to believe that his unrelated tax liability had been paid, the Defendants applied the Defendant's check in the amount of \$4,296.49 to the account of DM Graham as instructed and that after having applied said amount, the Plaintiff's balance payable to WRA for services rendered was reduced by the exact same amount, thus leaving an outstanding balance owed as of that time in the amount of \$2,359.51. By way of further response, WRA thereafter invoiced the Plaintiff for the balance due in the amount of \$2,359.51, which invoice reflected that credit had been applied against his account in the amount of \$4,296.49. By way of further response, the Plaintiff thereafter paid the balance on his account in the exact amount of \$2,359.51.

13. Defendants lack information and belief to admit or deny the allegations of Paragraph 14 of the Complaint. Upon information and belief, however, and by way of further response, the Defendants believe that the Plaintiff would have received multiple prior notices

from the New York Tax Commission advising him of his still outstanding tax obligation and threatening legal action, to include levy of accounts, if the Plaintiff continued to refuse to pay his taxes.

14. Paragraph 15 of the Complaint is denied.

15. Defendants lack information to admit or deny the allegations of Paragraph 16 of the Complaint.

16. Paragraph 17 of the Complaint is denied.

17. In response to the allegations of Paragraph 18 of the Complaint, Defendants admit that the sum of \$4,296.49 has not been returned to the Plaintiff as the sum is not owed to the Plaintiff.

18. In responding to Paragraph 19 of the Complaint, the Defendants incorporate the above paragraphs as if realleged and restated in full verbatim.

19. Defendants admit the allegations of Paragraphs 20 and 21 of the Complaint.

20. In responding to the allegations of Paragraph 22 of the Complaint, Defendants admit that Defendant WRA provided certain tax and/or accounting services to the Plaintiff pursuant to certain engagement letters specifically defining the scope of said services.

21. In responding to the allegations of Paragraph 23 of the Complaint, Defendants admit that they owed a standard of care consistent with the tax and/or accounting services provided to the Plaintiff pursuant to certain engagement letters specifically defining the scope of said services.

22. Defendants deny the allegations of Paragraphs 24, 25, 26 and 27 of the Complaint.

23. In responding to Paragraph 28 of the Complaint, the Defendants incorporate the above paragraphs as if realleged and restated in full verbatim.

24. In responding to the allegations of Paragraph 29 of the Complaint, the Defendants lack information as to the state of mind of the Plaintiff and admit only that they owed such duties as were imposed by law in light of the tax and/or accounting services provided to the Plaintiff pursuant to certain engagement letters specifically defining the scope of said services.

25. Defendants deny the allegations of Paragraphs 30, 31 and 32 of the Complaint.

26. In responding to Paragraph 33 of the Complaint, the Defendants incorporate the above paragraphs as if realleged and restated in full verbatim.

27. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38 and 39 of the Complaint.

28. In responding to Paragraph 40 of the Complaint, the Defendants incorporate the above paragraphs as if realleged and restated in full verbatim.

29. Defendants deny the allegations of Paragraphs 41, 42, 43, 44, 45, 46, 47 and 48 of the Complaint.

30. In responding to Paragraph 49 of the Complaint, the Defendants incorporate the above paragraphs as if realleged and restated in full verbatim.

31. Defendants deny the allegations of Paragraphs 50, 51 and 52 of the Complaint.

32. In responding to Paragraph 53 of the Complaint, the Defendants incorporate the above paragraphs as if realleged and restated in full verbatim.

33. Defendants deny the allegations of Paragraphs 54, 55 and 56 of the Complaint.

**For a First Additional Defense
Statute of Limitations**

34. The Plaintiff's claims are barred by the applicable statutes of limitations. As of October, 2005, Plaintiff owed the Defendants \$6,656.00 for services rendered. On or about October 13, 2005, the Plaintiff issued his check in the amount of \$4,296.49 made payable to WRA with the specific instruction that it be "post[ed] to the account of DM Graham." The check was posted against the account as instructed. On November 28, 2005, an invoice issued to the Plaintiff from WRA. A copy of the invoice is attached hereto as **Exhibit A**. The invoice reflects that against the bill for services in the total amount of \$6,656.00, the Plaintiff's check in the amount of \$4,296.49 was applied, thus leaving a balance due of \$2,359.51. On December 30, 2005, the Plaintiff issued a check in the amount of \$2,359.51 with the same instruction that it be "post[ed] to the account of DM Graham." A copy of the check in the amount of \$2,359.51 is attached hereto as **Exhibit B**. The check was applied to the account, thus resolving the balance owed. The Plaintiff knew not later than November 28, 2005, that his check in the amount of \$4,296.49 was applied against his outstanding balance with WRA and acknowledged his understanding of that fact through the subsequent payment of the balance owed in the amount of \$2,359.51. Upon further information and belief, the Plaintiff would have also received numerous notices from the New York Tax Commission after October, 2005, notifying him that he had not paid his tax obligation and even warning him of the eventual levy of his account.

**For a Second Additional Defense
Laches**

35. To the extent the Plaintiff sets forth a claim in equity, any and all such claims are barred by the doctrine of laches.

**For a Third Additional Defense
Unclean Hands**

36. The Plaintiff's claims are barred by the doctrine of unclean hands. The evidence in the case will demonstrate that the Plaintiff does not come into equity with clean hands, but rather for improper ulterior purposes.

**For a Fourth Additional Defense
Comparative Negligence**

37. To the extent that the Plaintiff suffered harm, which is denied, any such harm is the direct result of the Plaintiff's simple failure to pay his taxes. The Plaintiff's claims are therefore barred by his own negligent failure and refusal to pay his taxes.

**For a Fifth Additional Defense
Offset**

38. The Defendants provided good and valuable services to the Plaintiff. The Defendant accepted the Plaintiff's payments for said services. If the Plaintiff's check in the amount of \$4,296.49 was not intended to be applied against the Plaintiff's outstanding bill for services, which is expressly denied, then the Plaintiff still owes the Defendants \$4,296.49, together with accrued interest since October, 2005, and such further relief as may be available under the contract for services, all of which the Defendants plead as an offset against any sums allegedly owed to the Plaintiff.

**For a Sixth Additional Defense
No Right to Rely**

39. The Plaintiff knew not later than November 28, 2005 that his check in the amount of \$4,296.49 had been applied against the balance he owed for services rendered by WRA. As a result, it is impossible that the Plaintiff relied on any alleged belief that the check had been applied against a New York tax liability. Minimally, the Plaintiff had no right to rely upon any such alleged belief.

**For a Seventh Additional Defense
Rule 11 Sanctions**

40. The Plaintiff's claims are clearly barred by the applicable statutes of limitations and otherwise lack merit. The claims are not brought for the purpose of seeking a proper adjudication of contested and meritorious claims, but rather they are brought for the purpose of harassment, oppression and/or other improper motives. The Plaintiff is entitled to a dismissal of the Plaintiff's claims, together with an award of sanctions to include but not be limited to the costs and fees incurred in defending this action.

**For an Eighth Additional Defense
South Carolina Frivolous Proceedings Act, 15-36-10**

41. By initiating this action, the Plaintiff has taken part in the procurement, initiation, and continuation of a civil proceeding is primarily for a purpose other than that of securing the proper adjudication of the claim. Upon the termination of these proceedings in favor of the Defendants, the Defendants seek an assessment of the fees and costs.

WHEREFORE, having fully answered the allegations of Plaintiff's Complaint, the Defendants pray for a dismissal of this action, together with an award of sanctions, fees and costs all as provided for either under Rule 11 of the South Carolina Rules of Civil Procedure and/or the South Carolina Frivolous Proceedings Act.

Charleston, South Carolina

May 20, 2011

[SIGNATURE PAGE TO FOLLOW]

BLAND RICHTER, LLP
Attorneys for Defendants



Ronald L. Richter, Jr.
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
843.573.9900 (telephone)
843.573.0200 (facsimile)
ronnie@blandrichter.com (e-mail)

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
803.256.9664 (telephone)
803.256.3056 (facsimile)
ericbland@blandrichter.com (e-mail)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CIVIL ACTION NO.: 2011-CP-10-1739
David M. Graham, Jr.,)	
)	
Plaintiff,)	
)	
vs.)	CERTIFICATE OF SERVICE
)	
Welch, Roberts and Amburn, LLP and)	
Russell Patrick Welch,)	
)	
Defendants.)	

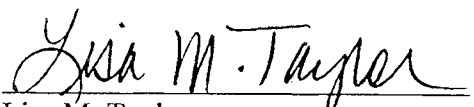
I, Lisa M. Taylor, the undersigned paralegal to Ronald L. Richter, Jr., attorney for the Plaintiffs, do hereby certify that I have served upon the Defendants in the above referenced matter, by forwarding a copy of the same, via email and/or first class mail postage prepaid, unless otherwise stated below, to the following counsel listed below:

Documents:

ANSWER

Counsel:

C. Cantzon Foster, II, Esquire
 Bryan D. Caskey, Esquire
 Foster Law Office, LLC
Attorneys for Plaintiff
 3100 Devine Street
 Columbia, SC 29205


 Lisa M. Taylor
 Paralegal to Ronald L. Richter, Jr.

Charleston, South Carolina
 May 20, 2011

EXHIBIT A

November 28, 2005

DAVID GRAHAM
5410 LAGORCE DRIVE
MIAMI BEACH, FL 33140

For Service Rendered Through October 31, 2005
Client # 02540 001 Invoice #MAIN01080

Preparation of Federal, Georgia and South Carolina
Individual income tax returns, and extensions for the year
ended December 31, 2004.

Research penalty notices from South Carolina and New
York regarding prior year balance due.

Research and assistance regarding contribution of boat to
charitable organization.

Projection of 2005 income tax liability.

Total Due \$6,656.00

Beginning Balance-\$4,296.49

Current Activity:

Billings 6,656.00

Net Due \$2,359.51

(2359.51)

φ

EXHIBIT B

REMOVE DOCUMENT ALONG THIS PERFORATION

THE BACK OF THIS CHECK CONTAINS A SECURITY MARK - DO NOT ACCEPT WITHOUT HOLDING AT AN ANGLE TO VERIFY SECURITY MARK.

Please Post to Account: D M GRAHAM
DAVID GRAHAM
1621 BAY RD APT 1208
MIAMI BEACH, FL 33139

Metavante Corporation
P.O. Box 7206
Buckley, MO 64711-7206
Payable through
MAIL BANK- ANTIGO, WI
Payable to: metavante@metavante.com
1-877-348-3272

Payable through
MAIL BANK- ANTIGO, WI

7-114
7-2

9121297888

December 30, 2005

PAY Two Thousand Three Hundred Fifty Nine and 51/100 Dollars

\$*****2,359.51

TO THE ORDER OF: WELCH ROBERTS & AMBURN
157 E BAY ST
CHARLESTON, SC 29401-2124

VOID 60 DAYS AFTER ISSUE

Michael D. Hartford

FU01 6007481223
10864118
Notes:



Security Features Details on Back

THIS IS A BILL PAYMENT DRAFT WHICH IS DRAWN BY METAVANTE CORPORATION WITHOUT RECOURSE



⑈9121297888⑈ ⑆075901480⑆ 917900269⑈43950⑈

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

David Graham,) Civil Action No. ~~10~~-CP-10-1739
)
Plaintiff,) ll

vs.)

Welch, Roberts and Amburn, L.L.P.;)
R. Patrick Welch;)
)
Defendants.)
)
)
)
)
)

REPLY

Plaintiff replying to Defendant's Answer alleges:

FILED
2011 JUN 23 PM 3:48
JULIE J. ARMSTRONG
CLERK OF COURT

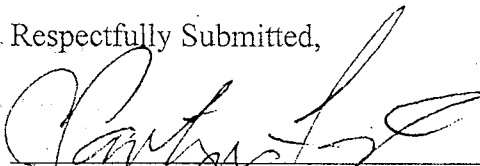
1. Plaintiff denies each and every allegation of Defendant's Answer not specifically admitted herein and demands strict proof thereof.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that this Court:

- (1) That Defendant's Counterclaims be dismissed;
- (2) That the relief requested in Plaintiff's Complaint be granted;
- (3) For such other relief as this Court deems just and proper.

Respectfully Submitted,



C. Cantzon Foster, II, Esquire
Foster Law Office, LLC
3100 Devine Street
Columbia, SC 29205
(803) 400-1921
(803) 400-1951 facsimile
ATTORNEY FOR PLAINTIFF

June 20, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

David M. Graham, Jr.)

Plaintiff)

v.)

Welch, Roberts and Amburn, LLP and)

Russell Patrick Welch)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-10-1739

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
C. Canton Foster, II, Esquire
Bryan D. Caskey, Esquire
Foster Law Office, LLC
3100 Devine Street
Columbia, SC 29205
e-mail: cantzon@fosterlawoffice.net

Defendant's Attorney:
Ronald L. Richter, Jr., Bar No. 66377
Address: 18 Broad Street, Mezzanine Level
Charleston, SC 29401
phone: 843.573.9900 fax: 843.573.0200
e-mail: ronnie@blandrichter.com
other: lisa@blandrichter.com

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

6/10/11
Date submitted

SECTION III: Motion Fee

- PAID – AMOUNT: \$25.00
- EXEMPT: Rule to Show Cause in Child or Spousal Support
(check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other: _____

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- MOTION FEE COLLECTED: _____
- CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2011-CP-10-1739

David M. Graham, Jr.,)
)
Plaintiff,)

vs.)

Welch, Roberts and Amburn, LLP and)
Russell Patrick Welch,)
)
Defendants.)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

Defendants, Welch, Roberts and Amburn, LLP and Russell Patrick Welch, will move before the Presiding Judge of the Charleston County Court of Common Pleas, Ninth Judicial Circuit, 100 Broad Street, Charleston, South Carolina, ten (10) days after notice hereof or as soon thereafter as is convenient to the Court, for an order granting summary judgment on the grounds that the Statute of Limitations has expired. In support of the motion Defendants rely on the Affidavit of R. Patrick Welch previously filed with the Court, as well as such additional authority and argument as may be offered at the time of the hearing.

PLEASE BE PRESENT IF SO MINDED.

Charleston, South Carolina

June 10, 2011

BLAND RICHTER, LLP
Attorneys for Defendants



Ronald L. Richter, Jr.
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
843.573.9900 (telephone)
843.573.0200 (facsimile)
ronnie@blandrichter.com (e-mail)

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT

2011 JUN 13 AM 11:36

FILED

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
803.256.9664 (telephone)
803.256.3056 (facsimile)
ericbland@blandrichter.com (e-mail)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2011-CP-10-1739

David M. Graham, Jr.,)
)
Plaintiff,)

vs.)

Welch, Roberts and Amburn, LLP and)
Russell Patrick Welch,)
)
Defendants.)

CERTIFICATE OF SERVICE

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2011 JUN 13 AM 11:36

FILED

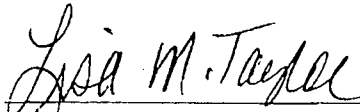
I, Lisa M. Taylor, the undersigned paralegal to Ronald L. Richter, Jr., attorney for the Plaintiffs, do hereby certify that I have served upon the Defendants in the above referenced matter, by forwarding a copy of the same, via email and/or first class mail postage prepaid, unless otherwise stated below, to the following counsel listed below:

Documents:

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

Counsel:

C. Cantzon Foster, II, Esquire
Bryan D. Caskey, Esquire
Foster Law Office, LLC
Attorneys for Plaintiff
3100 Devine Street
Columbia, SC 29205



Lisa M. Taylor
Paralegal to Ronald L. Richter, Jr.

Charleston, South Carolina

June 10, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2011-CP-10-1739

David M. Graham, Jr.,)
Plaintiff,)

vs.)

Welch, Roberts and Amburn, LLP and)
Russell Patrick Welch,)
Defendants.)

AFFIDAVIT OF R. PATRICK WELCH

1. My name is R. Patrick Welch and I am a partner in Welch, Roberts and Amburn, LLP ("WRA").
2. In 2005, WRA performed certain accounting and/or tax services for David Graham.
3. By October, 2005, the balance for services rendered accrued to \$6,656.00.
4. On October 13, 2005, the plaintiff issued a check in the amount of \$4,296.49 with instructions that it be applied to his account. A copy of the check is attached as Exhibit A.
5. Upon receipt, the check was applied to the Plaintiff's outstanding account balance. After applying the check, the remaining unpaid balance for services rendered was \$2,359.51.
6. On November 28, 2005, WRA issued an invoice to the Plaintiff. The invoice reflected the original outstanding balance of \$6,656.00, reflected that the Plaintiff's check in the amount of \$4,296.49 had been applied against his account and reflected that the balance after application of his payment was \$2,359.51. A copy of the invoice is attached as Exhibit B.
7. Upon receipt of the invoice, the Plaintiff then remitted payment for the balance due in the amount of \$2,359.51. A copy of his check in the amount of \$2,359.51 is attached hereto as Exhibit C.

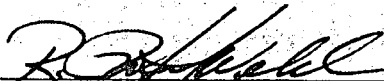
8. It is impossible that the Plaintiff could have operated under the belief that his check in the amount of \$4,296.49 had been used for the payment of a tax which he owed to the State of New York as:

a. The tax liability to which he refers was for an amount which differed from the check which he had instructed WRA to apply against his account (see NY Tax Commission statement attached hereto as Exhibit D);

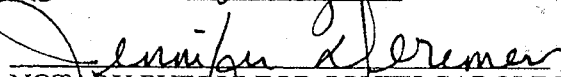
b. His check in the amount of \$4,296.49 carried clear instructions that it be applied to his account and no instruction that it be used for any other purpose;

c. His check in the amount of \$4,296.49 was in fact applied against his outstanding account balance and this was made known to him and reflected clearly on this November, 2005 invoice;

d. He acknowledged his understanding that his check in the amount of \$4,296.49 had been applied against his outstanding account balance as directed through the subsequent payment of the remaining balance due after application of said payment.


R. Patrick Welch

SWORN TO AND SUBSCRIBED before me this
26th day of May, 2011.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 11/7/2015

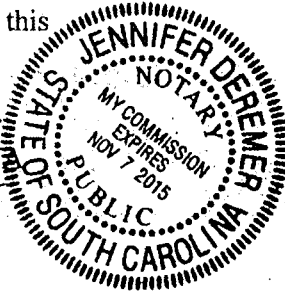


EXHIBIT A

THE BACK OF THIS CHECK CONTAINS A SECURITY MARK - DO NOT ACCEPT WITHOUT HOLDING AT AN ANGLE TO VERIFY SECURITY MARK

Please Post to Account: D M GRAHAM
DAVID GRAHAM
1621 BAY RD APT 1208
MIAMI BEACH, FL 33139

Metavante Corporation
P.O. Box 7228
Bloom, PA 15017-7228
www.metavante.com
1-877-346-5772

Payable through
Met Bank AMTCCO, WI

75-144
758 9110179021

October 13, 2005

PAY Four Thousand Two Hundred Ninety Six and 49/100 Dollars

\$*****4,296.49

TO THE
ORDER OF.

WELCH ROBERTS & AMBURN
157 E BAY ST
CHARLESTON, SC 29401-2124

VOID 60 DAYS AFTER ISSUE

Michael D. Hartford

FD-01 0000461220
10254118
Notes



THIS IS A BILL PAYMENT OF AFT WHICH IS DRAWN
BY METAVANTE CORPORATION WITHOUT RELEASE

⑈9110179021⑈ ⑆07590148⑆ 917900269⑈43950⑈ ⑆0000429649⑆

004941120

⑆0312007304⑆
WACHOVIA NA SVC011 516T
PHILA, PA 19202015 1934

370546502

PAY TO THE ORDER OF
FIRST UNION BANK
FOR DEPOSIT ONLY
WELCH, ROBERTS & AMBURN, LLP
4009927911

Item Amount	Item Serial	Item R/T	Item Account	Item Sequence	Date	Item Type
\$4,296.49	000009110179021	007590148	000091790026943950	0005715464562	10-20-2005	Transit

Wachovia certifies that the above image is a true and exact copy of the original item issued by the named customer, and was produced from original data stored in the archives of Wachovia, its predecessors or successors.

EXHIBIT B

November 28, 2005

DAVID GRAHAM
5410 LAGORCE DRIVE
MIAMI BEACH, FL 33140

For Service Rendered Through October 31, 2005
Client # 02540 001 Invoice #MAIN01080

Preparation of Federal, Georgia and South Carolina
Individual income tax returns, and extensions for the year
ended December 31, 2004.

Research penalty notices from South Carolina and New
York regarding prior year balance due.

Research and assistance regarding contribution of boat to
charitable organization.

Projection of 2005 income tax liability.

Total Due \$6,656.00

Beginning Balance-\$4,296.49

Current Activity:

Billings 6,656.00

Net Due \$2,359.51

(2359.51)

φ

EXHIBIT C

REMOVE DOCUMENT ALONG THIS PERFORATION

THE BACK OF THIS CHECK CONTAINS A SECURITY MARK. DO NOT ACCEPT WITHOUT HOLDING AT AN ANGLE TO VERIFY SECURITY MARK.

Please Post to Account: D M GRAHAM
DAVID GRAHAM
1621 BAY RD APT 1208
MIAMI BEACH, FL 33139

Metavante Corporation
P.O. Box 7226
South Falls, MO 67111-7226
payee.870@metavante.com
1-877-346-4232

Payable through
MSB BANK-ANTIGO, WI

78-108
758 9121297888

December 30, 2005

PAY Two Thousand Three Hundred Fifty Nine and 51/100 Dollars

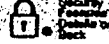
\$*****2,359.51

TO THE ORDER OF: WELCH ROBERTS & AMBURN
157 E BAY ST
CHARLESTON, SC 29401-2124

VOID 60 DAYS AFTER ISSUE

Michael D. Hayford

FD01 0807481222
20854118
Notes:



THIS IS A BILL PAYMENT DRAFT WHICH IS DRAWN BY METAVANTE CORPORATION WITHOUT RECOURSE
MET AVANT E CORP ANTIGO WI 53009

⑈9121297888⑈ ⑆075901480⑆ 917900269⑆ 43950⑆



New York State Department of Taxation and Finance

NYS AR LEVY RECEIVABLES
P O BOX 4137
BINGHAMTON, NY 13902-4137

Levy ID: E-000721439-L007-3

Taxpayer ID: 247-72-0261

D

Tax Compliance Levy

First and Final Demand

WACHOVIA BANK NA
3709 RIVERDALE AVE
BRONX NY 10463

Garnishee

If you have any questions, please call: (800) 872-7400

Under authority of the Tax Law of the State of New York and Section 5232(a) of the Civil Practice Laws and Rules In the matter of the Commissioner of Taxation and Finance of the State of New York, Judgment Creditor -

against: DAVID M GRAHAM JR
156 SEA MARSH DRIVE
JOHNS ISLAND SC 29455-5505

Judgment Debtor(s)

Accounts listed herein and any others which exist:

Table with 5 columns: Warrant ID, County, Date Docketed, Original Warranted Amount, Current Balance Due. Includes a total amount due of 5,434.88.

It appears that you are indebted to the above named judgment debtor(s) or that you are in possession or custody of property not capable of delivery which you know or have reason to believe that the judgment debtor(s) has(have) an interest.

You are required by Section 5232(a) of the Civil Practice Laws and Rules to immediately transfer to the undersigned all personal property not capable of delivery in which the judgment debtor(s), not deceased, is(are) known or believed to have an interest now in or hereafter coming into your possession or custody as may be necessary to satisfy the total amount due as set forth herein including all debts now or coming due from you to the judgment debtor(s) together with any other lawful additions including fees, costs and expenses of this levy, if any, to execute any documents necessary to affect such transfer or payment; and to comply with any and all further provisions of such section.

Dated: 4/28/08

Name: K ARKISON

Signature:

Handwritten signature of Karen L. Arkison

Title: Deputy Tax Commissioner

- Account closed, No account balance, No account ever existed, Other (attach explanation), Payment enclosed \$

(Make check or money order payable to the Commissioner of Taxation and Finance. Enter the Levy ID indicated above on the payment.)

Acknowledgment of Service

Signature

Date

Time

DTF-981 (10/06)

AJO0002220 1091700

E000721439L0073

Please refer to the back of this form for additional information and mailing instructions.

10136
Graham
Welch
SAC

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)

AFFIDAVIT OF DAVID GRAHAM
Civil Action No: 2011-CP-10-1739

FILED
2011 OCT 28 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PERSONALLY APPEARED BEFORE ME, David Graham, who first being duly sworn
deposes and states that:

- I am the Plaintiff in this action and I make this affidavit on personal knowledge except where stated to be on information and belief, and as to those matters, I believe them to be true. I incorporate by reference the allegations set forth in my Complaint, previously filed.
- Russell Patrick Welch and his accounting firm Welch, Roberts and Amburn, LLP served as my accountant and handled all tax related work for me for many years and served in this capacity during the calendar year 2005.
- Mr. Welch contacted me in October of 2005 and informed me he had received, as my accountant, a tax notice for penalties related to the sale of my New York co-op (hereinafter referred to as the "Tax Penalty"). The tax notice was subsequently sent to my assistant, Melora Zoffoli, and is attached hereto. The penalty was \$4,123.19 plus an additional \$665.78 in late interest, less a credit of \$429.48 for a total of \$4,296.49 I agreed to send \$4,296.49 to Mr. Welch and for Mr. Welch to pay the Tax Penalty on my behalf. At the time it was not uncommon for Mr. Welch to pay expenses on my behalf with funds I provided him.
- An e-mail communication between my assistant, Melora and Mr. Welch is attached wherein he was notified that the funds for the penalty were

being sent to him to pay and he acknowledged the e-mail. See Exhibit B.

The penalty payment was sent to Mr. Welch on October 13, 2005 and subsequently deposited into Mr. Welch's firm's First Union account # 4009927911 See Exhibit C.

- The funds I sent Mr. Welch were exactly the same amount as the Tax Penalty owed to the State of New York and there is no question that the funds were to be paid by Mr. Welch to the State of New York to satisfy this obligation.
- On or about April 29, 2008, Wachovia Bank mailed a notice to me informing me that the State of New York had served a tax levy against my account in the amount of \$5,434.88. (See Exhibit D). Upon information and belief the difference between the levied amount and the tax penalty, was additional interest and penalties applied to the original tax penalty.
- At the time, I believed the tax penalty had been paid. I instructed my new accountant, Mike Goldson, to investigate and verify with the NY Tax Commission and with Mr. Welch whether or not there was a valid tax penalty owed. Mr. Goldson was unable to verify that Mr. Welch paid the tax penalty on my behalf. Mr. Goldson contacted Pat Welch to confirm that the Tax Penalty was paid. I am informed and believe that Pat Welch refused to acknowledge that he had received the funds from me to pay the tax penalty and refused to provide any information related to the payment of the tax penalty.
- On or about April 20, 2010, after considerable effort, I was able to get Wachovia Bank to verify that Mr. Welch did in fact receive and deposit the

funds to pay the Tax Penalty into his firm's account. This was the first time I
knew that a cause of action related to the failure to pay the Tax Penalty might
exist against Mr. Welch.

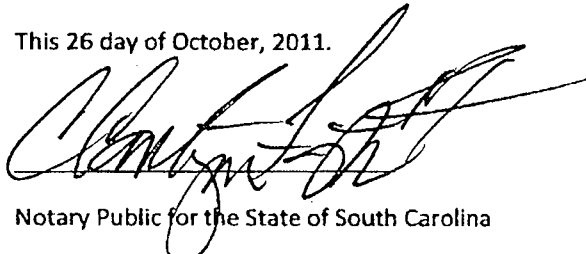
FURTHER AFFIANT SAYETH NOT.



David M. Graham

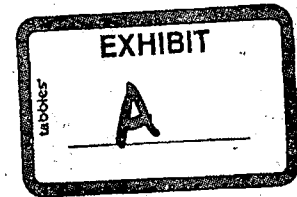
Sworn and subscribed to before me

This 26 day of October, 2011.



Notary Public for the State of South Carolina

My Commission Expires: 06-10-2012



Attachment to: RESPONSE TO TAXPAYER INQUIRY

DATE: 7/05/05

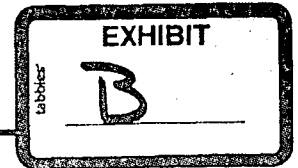
TAXPAYER ID: P-24-772026

ASSESSMENT ID: L-024784834

COMPUTATION SUMMARY SECTION

ASSESSMENT ID: L-024784834-3

Tax Period ended	Tax Amount Assessed	(+) Interest Amount Assessed	(+) Penalty Amount Assessed	(-) Assessment Payments/ Credits	(=) Current Balance Due
12/31/03	0.00	665.78	4,123.19	492.48	4,296.49
TOTALS	0.00	665.78	4,123.19	492.48	4,296.49



From: Pat Welch [pwelch@wracpa.com]
Sent: Wednesday, October 12, 2005 10:05 AM
To: 'Melora'
Subject: RE:

Categories: Red Category

Thanks.....have fun !!

-----Original Message-----

From: Melora [mailto:Melora1@Yahoo.com]
Sent: Wednesday, October 12, 2005 9:08 AM
To: Pat Welch
Subject: RE:

Hi Pat,
Just thought I'd let you know. I'll be sending the funds to you!! Can't do it right now as I'm literally walking out to head to the airport. I'll do the transfer when I get to Italy later today
Regards
Melora

From: Pat Welch [mailto:pwelch@wracpa.com]
Sent: Wednesday, October 12, 2005 1:22 PM
To: 'Melora'
Subject: RE:

Hi Melora,

Sounds like you are on the move, be careful and enjoy the trips.

David doesn't have any choice regarding the taxes, they must be paid.

Sincerely,

Pat

-----Original Message-----

From: Melora [mailto:Melora1@Yahoo.com]
Sent: Wednesday, October 12, 2005 1:50 AM
To: Pat Welch
Subject: RE:

Good morning Pat,
I'll talk to David about it and let you know. Not that I hold much hope if he's not listening to your advice...

I am fine thank you, hope you are too! Returned from Luxembourg yesterday and am flying to Italy today. Will return to London Saturday.

Have a good day.
Melora

From: Pat Welch [mailto:pwelch@wracpa.com]
Sent: Tuesday, October 11, 2005 7:18 PM
To: Melora Zoffoli
Subject:

Melora,

The attached notice is from the state of New York. It is a penalty that resulted from the taxes due on sale of David's NY condo. NY is penalizing him for not paying estimated income taxes upon the sale. I have talked to them and written an appeal letter on his behalf but they will not back off. I suggest this bill be paid ASAP. I have told David about it yesterday but he doesn't want to pay them. Someone other than me needs to convince him otherwise. They will NOT go away. He had problems with NY years ago when he came to me and it took two years to get rid of them. I would not advise going down that road again.

Hope all is well with you and you are enjoying good weather.

Best regards,

Pat

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.519 / Virus Database: 269.22.11/1368 - Release Date: 4/9/2008 4:20 PM

THE BACK OF THIS CHECK CONTAINS A SECURITY MARK - DO NOT ACCEPT WITHOUT HOLDING AT AN ANGLE TO VERIFY SECURITY MARK

Please Post to Account: D M GRAHAM
DAVID GRAHAM
1821 BAY RD APT 1208
MIAMI BEACH, FL 33139

Metavante Corporation
P O Box 7230
Blount Falls, NC 27717-7230
payee.metavante.com
1-877-346-5272

Payable through
Metavante Corporation, WI

70-144
750 9110179021

October 13, 2005

PAY Four Thousand Two Hundred Ninety Six and 49/100 Dollars

\$*****4,296.49

TO THE ORDER OF: WELCH ROBERTS & AMBURN
157 E BAY ST
CHARLESTON, SC 29401-2124

VOID 60 DAYS AFTER ISSUE

Michael D. Harford

FD-01 0027481223
40064118
Notes



THIS IS A BILL PAYMENT OF A TIME WITHDRAWAL
BY METAVANTE CORPORATION WITHOUT RECEIPT



⑈9110179021⑈ ⑆07590148⑆ 917900269⑈43950⑈ ⑈0000429649⑈

004941120

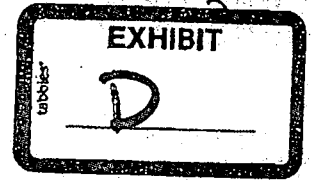
⑈0312007304⑈
WACHOVIA NA SVC011 510T
PHILA, PA 19220995 190K

PAY TO THE ORDER OF
FIRST UNION BANK
FOR DEPOSIT ONLY
WELCH, ROBERTS & AMBURN, LLP
4009927011



Item Amount	Item Serial	Item R/T	Item Account	Item Sequence	Date	Item Type
\$4,296.49	000009110179021	007590148	000091790026943950	0005715464562	10-20-2005	Transit

Wachovia certifies that the above image is a true and exact copy of the original item issued by the named customer, and was produced from original data stored in the archives of Wachovia, its predecessors or successors.



Wachovia Bank NA
Legal Order Processing

PO Box 8667 PA 4418
Philadelphia, PA 19101-8667

Apr 29, 2008

david m graham jr
APT 1208
1621 BAY ROAD
MIAMI BEACH, FL 33139

RE:

ACCOUNT TYPE	ACCOUNT NUMBER	HOLDING AMOUNT
DDA	1010183329448	\$5,534.88

Dear: david m graham jr

We regret to inform you that Wachovia Bank NA has been served with a Tax Levy directed against you from the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK in the amount of \$5,434.88.

Unless the Tax Levy is released within 14/21 days, on 5/23/2008, we will be required by the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK to pay the amount that has been debited from your account(s) as referenced above. A \$100.00 non-refundable processing fee will be charged against the account(s) referenced above.

If you have any questions concerning this matter, you may contact the COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK as indicated on the bank levy copy attached.

Any questions concerning this legal document should be directed to the Plaintiff's attorney or Agent whose name and address appears on the enclosed copy. Please note that certain funds are exempt from attachment pursuant to federal and/or state law. If your account contains funds that are exempt from attachment, you must contact the Plaintiff's attorney or government agency that is requesting the funds. It is your responsibility to take the steps necessary to protect your interest in this matter.

Sincerely,

Servicenter Associate

Enclosures:



New York State Department of Taxation and Finance

NYS AR LEVY RECEIVABLES
P O BOX 4137
BINGHAMTON, NY 13902-4137

Levy ID: E-000721439-L007-3

Taxpayer ID: 247-72-0261

Tax Compliance Levy

First and Final Demand

WACHOVIA BANK NA
3709 RIVERDALE AVE
BRONX NY 10463

Garnishee

If you have any questions, please call: (800) 872-7400

Under authority of the Tax Law of the State of New York and Section 5232(a) of the Civil Practice Laws and Rules in the matter of the Commissioner of Taxation and Finance of the State of New York, Judgment Creditor -

against: DAVID M GRAHAM JR
156 SEA MARSH DRIVE
JOHNS ISLAND SC 29455-5505

Judgment Debtor(s)

Accounts listed herein and any others which exist:

Table with 5 columns: Warrant ID, County, Date Docketed, Original Warranted Amount, Current Balance Due. Includes a total row at the bottom.

It appears that you are indebted to the above named judgment debtor(s) or that you are in possession or custody of property not capable of delivery which you know or have reason to believe that the judgment debtor(s) has(have) an interest.

You are required by Section 5232(a) of the Civil Practice Laws and Rules to immediately transfer to the undersigned all personal property not capable of delivery in which the judgment debtor(s), not deceased, is(are) known or believed to have an interest now in or hereafter coming into your possession or custody as may be necessary to satisfy the total amount due as set forth herein including all debts now or coming due from you to the judgment debtor(s) together with any other lawful additions including fees, costs and expenses of this levy, if any, to execute any documents necessary to affect such transfer or payment; and to comply with any and all further provisions of such section.

Dated: 4/28/08

Signature:

Handwritten signature of Karen L. Arkison

Name: K ARKISON

Title: Deputy Tax Commissioner

- Account closed, No account balance, No account ever existed, Other (attach explanation), Payment enclosed \$

(Make check or money order payable to the Commissioner of Taxation and Finance. Enter the Levy ID indicated above on the payment.)

Acknowledgment of Service

Signature

Date

Time

DTF-981 (10/06)

AJ0002220 1091700

E000721439L0073

Please refer to the back of this form for additional information and mailing instructions.

**Tax Compliance Levy
Additional Information**

Pursuant to the provisions of the Tax Law, the warrant(s) listed on the front constitute(s) a judgment in favor of the Commissioner of Taxation and Finance against the judgment debtor(s) named (whose last known address is also indicated) and the officer or employee of the Department of Taxation and Finance, whose signature appears on the front of this form, has all the rights and powers of a sheriff.

The Commissioner of Taxation and Finance **commands** any duly authorized officer or employee of the Department of Taxation and Finance to satisfy the warrant(s) out of the real and personal property in which the judgment debtor(s), not deceased, has(have) an interest or any debts owed to said judgment debtor(s). A notice to this(these) judgment debtor(s) substantially in the form set forth in CPLR 5222(e) was served upon the judgment debtor(s) within a year prior to the service of this levy.

Warrants filed pursuant to the Tax Law constitute perfected liens against real and personal property of the judgment debtor(s) against whom the warrants are issued. This levy serves as notice of the existence of such liens. No extension of levy is required to maintain the effectiveness of these liens.

Please be sure that:

- You check the applicable box on the front and indicate the payment amount enclosed, if any.
- You sign the Acknowledgment of Service section and indicate the date and time.

Return one copy of this form to the address below.

NYS AR LEVY RECEIVABLES
P O BOX 4137
BINGHAMTON, NY 13902-4137

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
David M. Graham,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 11-CP-10-01739
)	
Welch Roberts & Amburn, LLP)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned action was held on October 28, 2011, before The Honorable R. Markley Dennis, Jr. in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

C. Cantson Foster, II, Esq.
 FOSTER LAW OFFICE
 3100 Devine Street
 Columbia, SC 29205
 Appearing for Plaintiff

Ronald L. Ritcher, Jr.
 BLAND RITCHER, LLP
 18 Broad Street
 Charleston, SC 29401
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 THE COURT: Let me state while you're
2 coming forward, everyone. We're trying some-
3 thing this week to find out how many cases that
4 we can have where all we need is the mic
5 recording rather than a court reporter in
6 addition to the sound; because, as you know, we
7 have a shortage of court reporters. Many of
8 these Motions do not need a record to the extent
9 of the arguments. Rather it is based on the
10 submissions, and that forms the record. You're
11 welcome to have it. Just if you'll let me know,
12 whoever filed the Motion. If you need a court
13 reporter, that's fine. If you don't, that's
14 fine. Just tell me.

15 MR. FOSTER: Your Honor, we served the
16 affidavits on Wednesday. I'm handing up a copy,
17 a clocked copy.

18 THE COURT: Appreciate that. Thank
19 you.

20 COURT REPORTER: Your name, sir?

21 THE COURT: Identify yourself and the
22 parties that you are representing, please.

23 MR. FOSTER: Your Honor, my name is
24 Cantson Foster. I represent the Plaintiff,
25 David Graham.

1 THE COURT: Okay.

2 MR. FOSTER: I am Ronnie Ritcher, for
3 the Defendants.

4 THE COURT: All right. And it
5 appears to be, Mr. Ritcher, your Motion?

6 MR. RITCHER: Yes, sir.

7 THE COURT: Okay.

8 MR. RITCHER: Your Honor, this
9 is our Motion for summary judgment based on
10 the expiration of the statute of limitations.

11 For purposes of my argument, I have
12 three exhibits that are attached to our
13 affidavit in support.

14 THE COURT: Okay.

15 MR. RITCHER: I just highlighted
16 them for the court's convenience.

17 THE COURT: Thank you.

18 MR. RITCHER: Your Honor, for
19 purposes of this argument, obviously we accept
20 as true everything that they said in their
21 Complaint and in the affidavit in opposition.

22 THE COURT: All right.

23 MR. RITCHER: It is still our
24 belief, accepting those matters to be true, that
25 the Plaintiff cannot prevail. That is true

1 because the statute of limitations expired more
2 than three years ago and not -- and I can
3 explain why.

4 THE COURT: Okay.

5 MR. RITCHER: The central
6 contention of the Plaintiff is that in 2005 he
7 suffered a tax liability to the State of New
8 York in the amount of \$4,296.49. Mr. Welch and
9 his firm are his tax advisors. He claims that
10 he sent a check for the express purpose and that
11 Mr. Welch and his firm then paid that tax
12 liability in the State of New York. This was in
13 October of 2005.

14 So my Exhibit A is the check that Mr.
15 Graham sent. You'll see that it says on the
16 check that it is to be posted to the account of
17 D.M. Graham. It is dated October 13th, 2005.
18 It is for the amount of \$4,296.49.

19 Our Exhibit B shows that on November
20 28th, 2005, Mr. Welch's firm invoiced Mr. Graham
21 for services rendered in the total amount of
22 \$6,656. Clearly shown on the invoice is the
23 application of a payment in the amount of
24 \$4,296.49, leaving a balance due for services
25 rendered in the amount of \$2,359.51.

1 Our Exhibit C will show you that on
2 December 30th, 2005, that Mr. Graham, having
3 received that invoice, remitted payment exactly
4 for \$2,359.71, the balance due on the account.

5 THE COURT: Okay.

6 MR. RITCHER: So it is impossible
7 for him to contend that he did not know and
8 could not have known, as early as December 30th,
9 2005, that in fact his check in the amount of
10 \$4,296.49 was not sent to the State of New York
11 but instead was applied against services
12 rendered.

13 On that basis, it is our position that
14 the statute has expired.

15 THE COURT: Thank you, sir. Mr.
16 Foster, response?

17 MR. FOSTER: Yes, Your Honor. Your
18 Honor, we contend that the statute of
19 limitations did not expire when that invoice was
20 sent, or alleged to have been sent. I don't
21 believe that it's been proven, through discovery
22 or otherwise, that the invoice actually sent to
23 Mr. Graham.

24 We contend that, based on the exhibits
25 and Mr. Graham's affidavit, that Mr. Welch was

1 his CPA, that he had a course of dealing with
2 Mr. Welch with Mr. Graham where he would, on a
3 frequent basis, pay taxes on Mr. Graham's behalf
4 and then request funds from Mr. Graham. That
5 happened in October of 2005. Mr. Welch notified
6 Mr. Graham -- and then also in an e-mail he
7 notified Mr. Graham's assistants that a tax
8 penalty had been created in the amount of \$4,200
9 (sic). He sent the notice which is attached as
10 Exhibit A to Mr. Graham's affidavit, that this
11 tax penalty existed and requested that Mr.
12 Graham send him the funds to pay it.

13 The next exhibit is -- Exhibit B is an
14 e-mail correspondence between Mr. Welch and Mr.
15 Graham's assistant, Milora (phonetic) -- I can't
16 pronounce her last name, it's Italian, Sefafalee
17 (phonetic) I think. Anyway, in that e-mail
18 correspondence he notified Mr. Graham's
19 assistant that the tax penalty was due and that
20 Mr. Graham needed to pay it. Then Milora
21 notified Mr. Welch that she was sending Mr.
22 Welch the money for the payment. He
23 acknowledged receipt of that, said "Thanks, have
24 fun." You know, the specific words of the e-
25 mail, (reading): "Just thought to let you know

1 I'll be sending the funds to you. Can't do it
2 right now as I am literally walking out to head
3 out to the airport, but I will transfer it when
4 I get in later today." Then the check was sent
5 the next day, October 13th. Mr. Welch's response
6 was "thanks," he understood that this payment
7 was coming to him and that he was going to pay
8 it in the normal course of business as he had
9 done frequently for Mr. Graham. And the payment
10 was in fact sent to Mr. Welch, deposited into
11 his account.

12 But the interesting thing is, as you'll
13 see on our Exhibit D, Mr. Graham didn't actually
14 realize that the tax payment hadn't been paid
15 until he re-received a notice from Wachovia that
16 a levy had been put on his account. That notice
17 -- he didn't receive that notice until after
18 April 29th, 2008. There's an Exhibit D to Mr.
19 Graham's affidavit.

20 Upon receipt of that notice, he
21 retained another CPA, Mike Goldsen (phonetic),
22 who also has an affidavit in the file, Your
23 Honor, which we also include in opposition to
24 this Motion. Mike Goldsen contacted Mr. Welch
25 or someone in Mr. Welch's office, tried to find

1 out what happened to the payment that Mr. Graham
2 provided Mr. Welch. Mr. Welch provided no
3 information whatsoever. He refused to
4 acknowledge whether or not he received the
5 payment, whether or not he made the payment or
6 not, and it wasn't until after an investigation
7 was placed with Wachovia that we were able to
8 obtain the canceled check going into Mr. Welch's
9 account. That was April 20th, 2010, was the
10 first time that we or Mr. Graham was able to
11 confirm that Mr. Welch did in fact receive the
12 check that he sent him, had deposited it into
13 his account.

14 We believe that the absolutely earliest
15 the statute of limitations, uh, -- would not
16 have begun to run until the -- until the, uh,
17 (reviewing file), sorry, I'm looking for the
18 date -- April 20th, 2008 notice that Mr. Graham
19 received that an levy had been placed on his
20 account for the failure to pay this tax.

21 Quite frankly, we believe that the
22 statute of limitations actually began to run
23 April 20th, 2010, when Mr. Graham was finally
24 able to verify that Mr. Welch did in fact
25 receive the payment for the taxes.

1 And if you look at the exhibits to Mr.
2 Graham's affidavit, it is very clear that Mr.
3 Welch put him on notice of the payment, that
4 the payment was sent to him with the express
5 understanding that he was going to make the
6 payment, and that he didn't. We believe that
7 the first time that Mr. Graham knew or should
8 have known that he had a cause of action against
9 Mr. Welch was when he was able to finally get
10 the check produced from Wachovia Bank, which was
11 April 20th, 2010.

12 THE COURT: Just a matter of
13 coincidence that he just happened to send a
14 check for \$2,359.51 after this invoice was
15 mailed? Was that just coincidental?

16 MR. FOSTER: No, Your Honor. I
17 believe that the invoice that was sent to him,
18 I believe that it was Mr. Graham's understanding
19 that the original payment was applied to the
20 request of Mr. Graham for the \$4,200 (sic) tax
21 penalty.

22 THE COURT: If he was going to send
23 the net due, why would he send that if that was
24 -- if that was the case? I mean, it is not very
25 -- it is not rocket science, it's not difficult

1 to ascertain or to interpret this. It's clear.
2 Why would he send only that amount, \$2,359. The
3 bill is obviously for the total amount due.

4 MR. FOSTER: The bill was sent to Mr.
5 Graham after he sent the -- after he had sent
6 the payment.

7 THE COURT: I -- after he sent
8 \$4,296.49, which is credited towards the
9 bill/invoice and then there is a balance due,
10 and he mails a payment for the balance due.

11 MR. FOSTER: If you look at the
12 invoice, it's actually for the tax bill.
13 The invoice is for the tax penalty.

14 THE COURT: I'm looking at it.
15 Thank you very much. Is there anything else,
16 Mr. Ritcher?

17 MR. RITCHER: Just very briefly,
18 Your Honor. One matter that is not contested
19 before you -- nowhere in Mr. Graham's affidavit
20 does he ever say 'I did not get that invoice.'

21 THE COURT: Okay.

22 MR. RITCHER: So it is not a
23 contested matter that he got it.

24 THE COURT: I just think -- I just
25 think, taking everything logically, there's no

1 reason for somebody to send a check for
2 \$2,359.51 just out of the blue. I mean, that
3 just doesn't make any sense. So your Motion for
4 summary judgment is granted. Thank you, sir.

5 MR. RITCHER: Thank you, Judge.

6 THE COURT: If you would prepare an
7 Order, please.

8 MR. RITCHER: Yes, sir.

9 THE COURT: Based on the subpoenas?

10 MR. RITCHER: Yes, sir.

11 THE COURT: All memoranda filed in
12 conjunction with this Motion are incorporated
13 for purposes of review.

14 MR. RITCHER: Thank you.

15 (HEARING CONCLUDED)

16

17

18

19

20

21

22

23

24

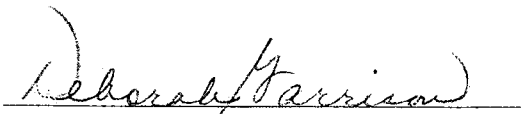
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable R. Markley Dennis,
Jr., on October 28, 2011;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

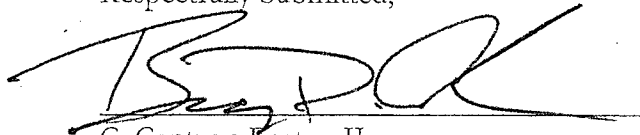
Charleston, South Carolina

January 20, 2012

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,



C. Cantzon Foster, II
Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, South Carolina 29205
(803) 400-1921
(803) 400-1951 Facsimile
COUNSEL FOR THE APPELLANT

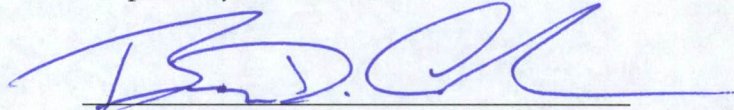
September 26, 2012
Columbia, South Carolina

Other Counsel of Record:
Ronald L. Richter, Jr., Esquire
Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401
(843) 573-9900
COUNSEL FOR THE RESPONDENTS

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,



C. Cantzon Foster, II
Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, South Carolina 29205
(803) 400-1921
(803) 400-1951 Facsimile
COUNSEL FOR THE APPELLANT

September 26, 2012
Columbia, South Carolina

Other Counsel of Record:
Ronald L. Richter, Jr., Esquire
Eric S. Bland, Esquire
Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401
(843) 573-9900
COUNSEL FOR THE RESPONDENTS

RECEIVED
OCT 11 2012
SC Court of Appeals



RECEIVED
OCT 10 2012
SC Court of Appeals