

ORIGINAL

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

EFFIE SANDRA L. TURPIN, C.E. LOWTHER, JR.,
CLAYTON CLARK LOWTHER, and MITCHELL
SAXON LOWTHER, INDIVIDUALLY AND REPRESENTING
AS A CLASS OF BENEFICIARIES OF THE ESTATE OF C.E.
LOWTHER, SR.,

Respondents,

v.

E. LEGRAND LOWTHER, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR., and MARK ALLEN LOWTHER, AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR.

OF WHOM E. LEGRAND LOWTHER IS

Appellant.

RECORD ON APPEAL
VOLUME I

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

2012 MAR 21 PM 4:44
JEROME J. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Effie Sandra L. Turpin, C. E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell Saxon
Lowther, individually and representing as a
class of beneficiaries of the Estate of C.E.
Lowther, Sr., ... Appellants – Respondents,

v.

E. LeGrand Lowther, individually and as
Personal Representative of the Estate of C.E.
Lowther, Sr., and Mark Allen Lowther, as
Personal Representative of the Estate of C.E.
Lowther, Sr, of whom E. LeGrand Lowther
is Respondent - Appellant.

ORDER ~~DISMISSING~~ MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT

Denying

This matter came before the Court at a hearing on March 13, 2012 on a Motion to
Reconsider, Alter or Amend Judgment of this Court, filed by Respondent – Appellant, E.
LeGrand Lowther. Present at the hearing were H. Fred Kuhn, Jr., Esq., counsel for Respondent –
Appellant, Harley D. Ruff, Esq. and R. Thayer Rivers, Jr., Esq., counsel for Appellants –
Respondents.

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At the hearing, Mr. Kuhn argued just the first item in his Motion (Paragraph 1), that the Court erred in reversing the Probate Court's judgment which reduced the damages against LeGrand by an amount equal to distributions that LeGrand made to his siblings from proceeds received from the sale of the Echo Tango lots.

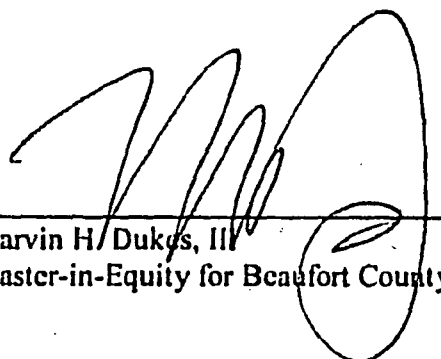
Having considered the arguments by both sides, this Court remains in Agreement with its previous Judgment and finds no reason to reconsider, alter or amend the previous Judgment.

Therefore, Respondent-Appellant's Motion to Reconsider, Alter or Amend Judgment is hereby ~~DISMISSED~~.

Denied

AND IT IS SO ORDERED.

March 21, 2012
Beaufort, South Carolina



Marvin H. Dukys, III
Master-in-Equity for Beaufort County

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THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

2011 NOV 22 PM 4:10
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Effie Sandra L. Turpin, C. E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell Saxon
Lowther, individually and representing as a
class of beneficiaries of the Estate of C.E.

Lowther, Sr., ... Appellants – Respondents,

v.

E. LeGrand Lowther, individually and as
Personal Representative of the Estate of C.E.
Lowther, Sr., and Mark Allen Lowther, as
Personal Representative of the Estate of C.E.
Lowther, Sr, of whom E. LeGrand Lowther

is Respondent - Appellant.

ORDER ON APPEAL:
AFFIRMED IN PART, REVERSED IN PART

The Beneficiaries and E. LeGrand Lowther both appeal from the Order of the Beaufort County Probate Court dated December 21, 2010 in this case. For the reasons set forth below, I affirm in part, reverse in part, and substitute a judgment amount in favor of the Appellants – Respondents against E. LeGrand Lowther of \$289,923.65.

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I. PROCEDURAL/FACTUAL BACKGROUND

Appellants-Respondents (hereinafter, "Beneficiaries") sued E. LeGrand Lowther, Jr. (hereinafter "LeGrand") for breach of fiduciary duty and other causes of actions. The Beneficiaries alleged that LeGrand violated his fiduciary duties to them by selling a 40.81 acre parcel of unimproved real property in Jasper County belonging to the Estate (hereinafter the "40-acre parcel") for \$810,000, and then soliciting a purchase of the 40-acre parcel from the Beneficiaries for \$511,000 without disclosing the pending third party sale, and then ultimately selling the 40-acre parcel for \$810,000.

LeGrand was appointed as Co-Personal Representative of the Estate of C. E. Lowther by the Jasper County Probate Court on June 17, 2004. LeGrand is still to this day a Co-Personal Representative of the Estate. All of the transactions complained of by the Beneficiaries occurred during this process of estate administration.

A key estate asset was the 40-acre parcel. On October 12, 2005, LeGrand entered into a contract to sell the 40-acre parcel to International Society of Investors ("ISI") for \$810,000.00¹. This contract was originally made out as the "Seller" being "Lagrande Lowther, Mitchell Lowther, et al.", but LeGrand changed "Seller" to just himself. At the time of this contract the 40-acre parcel belonged to the Estate.

After entering into this ISI contract, LeGrand approached the Beneficiaries to solicit their sale to LeGrand of their interest in the 40-acre parcel. LeGrand never disclosed to any of them that he had "pre-sold" the 40-acre parcel to ISI for \$810,000.00. All of the Beneficiaries did agree to sell their interests in the 40-acre parcel to LeGrand, and on December 28, 2005 LeGrand closed on the purchase of the 40-acre parcel from the Beneficiaries for \$511,000.00².

¹ A copy of the cover page of this Contract is attached as Exhibit 1.

² A copy of the cover sheet of the HUD-1 from the closing is attached as Exhibit 2.

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Within two months of that closing, on February 14, 2006, LeGrand closed on his sale of the 40-acre parcel to Amberwinds, LLC ("Amberwinds") for \$810,000.00. As revealed at trial in the testimony of Mike Jones, a principal in the transaction, ISI and Amberwinds were virtually the same entity, with the same individual owners, and the closing proceeded exactly as scheduled under contract with LeGrand.

As part of the overall transactions, LeGrand convinced the Beneficiaries to "quitclaim" all of their interests in certain lots at "Echo Tango" to LeGrand, for no additional consideration. The Beneficiaries signed contracts agreeing to that transfer, with the caveat (agreed upon by LeGrand) that if LeGrand defaulted on their notes, then the Beneficiaries would be entitled to 50% of the proceeds from the future sale of Echo Tango lots. LeGrand ultimately did default on those notes.

The Echo Tango lots were long owned by the Decedent. Legal title to these properties changed over the years for various reasons. At the time of Decedent's death, legal title to these properties was in LeGrand's name. However, it has been repeatedly admitted and conceded by LeGrand himself that LeGrand equitably owned only a 50% interest in these properties, with the other 50% interest owned by the Decedent. LeGrand admitted that the Decedent owned a 50% interest in deposition testimony, trial testimony and even in a written agreement³. Decedent's Will, signed on the date of his death, left this 50% interest to the Beneficiaries, not to LeGrand.

This matter was tried before The Honorable Kenneth E. Fulp, Jr., Associate Beaufort County Probate Judge, without a jury, on June 23 and 26, 2009. On December 21, 2010, Judge Fulp issued an Order of Judgment (hereinafter "Probate Court Order") against LeGrand for breach of fiduciary duty, and awarding damages of \$ 69,051.15. In coming up with this amount, Judge Fulp started with the sales price on the sale to Amberwinds - \$810,000 – and reduced it for

³ Copies of testimony and the Agreement are attached collectively as Exhibit 4.

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(1) the entire actual mortgage payoff amount due SCB&T of \$593,872.50; (2) seller's attorney's fee of \$1,250.00; (3) a judgment against Clark Lowther in the amount of \$6,575.98; (4) and a South Carolina Electric & Gas Company creditor's claim against the Decedent's Estate in the amount of \$1,256.61; (5) distributions made to the Beneficiaries on profits made from the sale of "Echo Tango" lots in the amount of \$138,000. A small credit of \$6.24 was added for prorated real estate tax. These appeals followed.

II. STANDARD OF REVIEW

"Appeal from the probate court is governed by the provisions of the Probate Code." In re Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993). The Probate Code requires appeals from the probate court be to the circuit court. S.C. Code Ann. § 62-1-308. The Probate Code further instructs the circuit court to "hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(d). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." In re Howard, 315 S.C. at 360, 434 S.E.2d at 257. "[I]f there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that [the appellate court] would apply were the appeal taken directly to either [the supreme court or court of appeals]." Id. at 361, 434 S.E.2d at 257.

The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity. In re Estate of Hyman, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004); In re Thames, 344 S.C. 564, 568, 544 S.E.2d 854, 856 (Ct. App. 2001). An issue regarding statutory interpretation is a question of law. Wimberly v. Barr, 359 S.C. 414, 597 S.E.2d 853 (Ct. App. 2004). Thus, "the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to

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support them.” In re Howard, 315 S.C. at 361, 434 S.E.2d at 257; see also In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (2005) (“If the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court’s findings of fact unless a review of the record discloses there is no evidence to support them.”). The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury. In re Howard, 315 S.C. at 361, 434 S.E.2d at 257.

III. LAW/ANALYSIS.

A. Appeals of the Beneficiaries

1. Measurement of Damages Based on “Clearance” versus Profits

The Beneficiaries argue that the Probate Court erred in measuring damages based on what LeGrand “cleared” from his sale of the 40-acre tract, rather than the profit he made on the sale. I agree.

The proper way to measure damages for breach of fiduciary duty is to determine the profit the fiduciary made by reason of the breach, or stated differently, what the fiduciary entity and/or beneficiaries would have earned but for the breach. See Restatement (Third) of Trusts §227 (1992), S.C. Code Ann. §62-7-1002(a).

In this case, LeGrand purchased the 40-acre tract from the Beneficiaries for \$511,000. But rather than paying \$511,000 in cash, LeGrand closed on the purchase by placing a first mortgage of \$585,000 (\$74,000 more than was needed to pay the purchase price) against the 40-acre tract⁴. This was LeGrand’s voluntary decision. None of the excess mortgage borrowings went to the Beneficiaries.

⁴ A copy of the Mortgage showing LeGrand’s borrowing of \$585,000 is attached as Exhibit 3. The HUD-1 from the closing shows a borrowing of \$511,000; however, LeGrand really borrowed \$585,000. Beneficiaries have asserted that the HUD-1 entry was intentionally deceptive on the part of LeGrand and his counsel, to keep the Estate’s beneficiaries from knowing that LeGrand had borrowed much more than the \$511,000 needed to close.

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The excess mortgage borrowings by LeGrand do not affect the true profit that LeGrand ultimately made by selling the 40-acre tract to Amberwinds. The simple facts are that LeGrand purchased the 40-acre tract from the Beneficiaries for \$511,000, and that he had presold the 40-acre tract and did in fact close on the sale of it to Amberwinds for \$810,000. The profit, then – which is equal to the extra amount that the Beneficiaries would have earned but for LeGrand's actions – was \$299,000.

The Probate Court erred by giving LeGrand credit or reduction for the \$74,000 excess mortgage, which is both irrelevant to the case and misleading. By focusing on what LeGrand later "cleared" versus the correct measurement of damages – his profit – the Probate Court would have allowed him to keep the \$74,000 excess mortgage borrowings. What borrowings LeGrand may have made, and what LeGrand may have done with the excess funds that he voluntarily borrowed, are irrelevant to the profit that he realized in this transaction.

I affirm the Probate Court's reduction in damages for (1) seller's attorney's fee of \$1,250.00; (2) a judgment against Clark Lowther in the amount of \$6,575.98; (3) and a South Carolina Electric & Gas Company creditor's claim against the Decedent's Estate in the amount of \$1,256.61 since these amounts directly affected LeGrand's profit made on the sale. Similarly, I also affirm the grant of the "credit" of \$6.24.

Therefore, I reverse the Probate Court's method of measuring damages. In light of my reversal also on the "Echo Tango" proceeds discussed below, I substitute a judgment amount in favor of the Beneficiaries against LeGrand of \$289,923.65.

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2. Reduction in Damages for Echo Tango Proceeds

The Beneficiaries also argue that the Probate Court erred by reducing the damages against LeGrand by an amount equal to distributions that LeGrand made to his siblings from profits on the sale of two "Echo Tango" lots. I agree.

Presumably, the Probate Court misunderstood the Echo Tango distributions as some type of "windfall" to the Beneficiaries that should offset their loss on the 40-acre tract dollar for dollar. The truth however is that there was no windfall at all, but instead just the receipt of what the Beneficiaries were entitled to at that time and at the time of the Decedent's death, and accordingly the reduction makes no sense and it is not appropriate.

As stated above, the Echo Tango lots were long owned by the Decedent. Legal title to these properties changed over the years for various reasons. At the time of Decedent's death, legal title to these properties was in LeGrand's name. However, LeGrand has repeatedly admitted and conceded he equitably owned only a 50% interest in these properties, with the other 50% interest owned by the Decedent. Decedent's Will, signed on the date of his death, left this 50% interest to the Beneficiaries, not to LeGrand.

There was no windfall at all to the Beneficiaries from LeGrand's default. All LeGrand's default did was to prevent a situation where – knowingly or not – the Beneficiaries gave away giant values⁵ to LeGrand for free. The Beneficiaries have not received – and they will not receive – one penny more than that to which they were entitled, by LeGrand's own admissions, at the time of the Decedent's death. There is no windfall and nothing that should legally or equitably reduce the damages to the Beneficiaries.

⁵ Echo Tango basically consists of five lots. LeGrand has sold one of the lots for \$700,000. The other four lots, while perhaps not as valuable as the first, are similar and have been on the market for sale.

Similarly, the distribution of future Echo Tango profits does not and should not reduce the damages to the Beneficiaries in this case. The Probate Court, by stating that LeGrand "should be allowed" such a credit in the future, compounds its clear error in believing that Echo Tango is relevant at all to the damages suffered in this case, and sets up a situation where LeGrand in effect could get off completely free for his conduct.

Therefore, I reverse the Probate Court's reduction of damages attributable to the Echo Tango profits. In light of my reversal also on the measurement of damages discussed above, I substitute a judgment amount in favor of the Beneficiaries against LeGrand of \$289,923.65.

3. Punitive Damages

The Beneficiaries argue that the Probate Court erred by not imposing punitive damages against LeGrand. I disagree.

A decision on punitive damages is very fact-specific, and I decline to reverse the Probate Court, as the finder of fact, regarding punitive damages. Accordingly, I affirm the denial of punitive damages.

B. Appeals of LeGrand

1. Breach of Fiduciary Duty – Not Acting in Capacity as Fiduciary

LeGrand argued that the Probate Court erred by finding that LeGrand had breached his fiduciary duty to the Beneficiaries while not acting as fiduciary in connection with the challenged transaction. I disagree.

I affirm the Probate Court's decision on this issue, and fully adopt the rulings from the Probate Court Order on this issue.

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2. Breach of Fiduciary Duty – LeGrand did not Profit from Challenged Transaction

LeGrand argued that the Probate Court erred by finding that LeGrand had breached his fiduciary duty to the Beneficiaries because he did not profit from the challenged transaction. I disagree.

I affirm the Probate Court's decision on this issue, and fully adopt the rulings from the Probate Court Order on this issue.

3. Breach of Fiduciary Duty – Where there was not a Breach of any Fiduciary Duty

LeGrand argued that the Probate Court erred by finding that LeGrand had breached his fiduciary duty to the Beneficiaries where there was no such breach of fiduciary duty. I disagree.

I affirm the Probate Court's decision on this issue, and fully adopt the rulings from the Probate Court Order on this issue.

C. Motion to Dismiss LeGrand's Appeal

The Beneficiaries moved to dismiss LeGrand's appeal to this Court, due to his failure to file a "Grounds for Appeal" with the Probate Court as required by S.C. Code Ann. §62-1-308(a).

LeGrand concedes that he failed to file a "Grounds for Appeal" with the Beaufort County Probate Court, as required by S.C. Code Ann. §62-1-308(a). Instead, LeGrand filed his Grounds for Appeal with the Circuit Court on January 24, 2011. Although LeGrand did not comply with the statute, he offers an affidavit explaining the misfiling. The Beneficiaries argue that the case of Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (S.C. 1994), stands for the proposition that this appeals statute requires strict compliance.

Still, I deny this motion to dismiss. While admittedly LeGrand did not comply with the above-cited statute, an attempt was made and, additionally, I find that there was no prejudice to

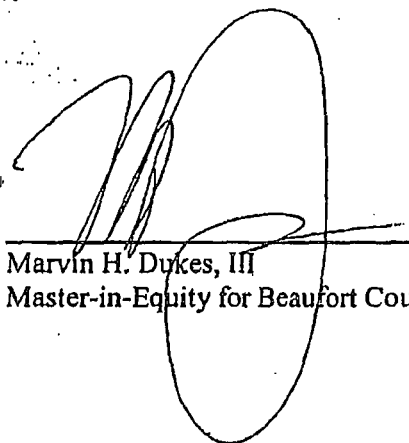
the Beneficiaries because they were aware of LeGrand's filing of the Grounds for Appeal with the Circuit Court.

IV. CONCLUSION

While the Probate Court properly held that LeGrand breached his fiduciary duty to the Beneficiaries, the Probate Court committed clear errors by using an improper measurement of damages and by giving unwarranted credits to LeGrand's benefit. The Probate Court Order is hereby affirmed in part and reversed in part, as described above, and the judgment amount against LeGrand is hereby modified to \$289,923.65.

AFFIRMED IN PART, REVERSED IN PART.

November 7, 2011
Beaufort, South Carolina



Marvin H. Dukes, III
Master-in-Equity for Beaufort County

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CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT FOR SALE AND PURCHASE made and entered into this 12th day of October, 2005, by and between Lagrande Lowther, Mitchell Lowther, et al, hereinafter referred to as ("Seller"), and International Society of Investors, a North Carolina Limited Liability Company, or its designee or assigns hereinafter referred to as ("Purchaser").

WITNESSETH:

Subject to the terms and conditions of this Agreement, and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. PREMISES, IMPROVEMENTS AND CHATTELS. Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the land specifically described as Lowther Property, approximately 40 acres fronting Bee's Creek Road, being in the County of Jasper, South Carolina (the "Property").

2. PURCHASE PRICE. Purchaser hereby agrees to pay to Seller as the purchase price for the Premises the sum of Eight Hundred Ten Thousand Dollars (\$810,000.00) subject to adjustments, credits, and pro-rations as set forth herein below (the "Purchase Price"), to be paid as follows:

- 2.1. Within Forty Eight (48) hours after the execution of this Agreement (Effective Date), Purchaser shall deposit into the Russell Law Firm Trust Account, the Escrow Agent, the sum of Five Thousand Dollars (\$5,000) as a good faith deposit to be held pursuant to the terms of this Contract.
- 2.2. The balance of the Purchase Price (including a credit for the amount of the Deposits of \$ 5,000), shall be due at closing.

3. CONDITIONS PRECEDENT. This Contract For Sale and Purchase is subject to and conditional upon:

- 3.1. The Purchaser obtaining horizontal construction financing.
- 3.2. The land being permitted for no less than 55 units.
- 3.3. The Purchaser receiving confirmation that all utilities (including electrical, water, and telephone services) are available to the property and are adequate for Buyers intended use.
- 3.4. The Purchaser receiving all permits, licenses, approvals or consent from any and all governmental authorities and agencies having jurisdiction over the property and which are necessary to allow development, construction of the Property, such permits, licenses, approvals and consents to include, without limitation, building permits, storm water management permits, concurrence

A. Settlement Statement

U.S. Department of Housing
and Urban Development

EXHIBIT 2

HUD-1 (3-88) OMB No. 2802-0288

B. Type of Loan

1 FHA 2. FMHA 3. Conv. Unit. 4. VA 5. Conv. Ins. 6. Other Number 7. Loan Number 8. Mortgage Insurance Case Number

1. VA 2. Conv. Ins. 3. Lowther-Heim 4. 40 acres

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower E. Name and Address of Seller F. Name and Address of Lender

R. Lowther, Lowther

Vivian Gene L. Tilkerson,
Rita Elizabeth L. Rogers,
Mark Allen Lowther, et al

G. Property Location

40.81 acres,
Jasper County, SC,
US 3, 19 1/4 010

H. Settlement Agent

Moss & Kuhn, P.A.

I. Place of Settlement

Moss, Kuhn & Fleming, P.A.
1301 North St
Brentford, SC 29902

J. Settlement Date

12/21/19

K. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower

101. Contract sales price

911,000.00

102. Personal property

103. Settlement charges to borrower (line 1400)

3,409.70

104.

105.

Adjustments for items paid by seller in advance

106. City/town taxes

to

107. County taxes

to

108. Assessments

to

109.

110.

111.

112.

120. Gross Amount Due From Borrower

914,409.70

L. Summary of Seller's Transaction

400. Gross Amount Due To Seller

401. Contract sales price

911,000.00

402. Personal property

403.

404.

405.

Adjustments for items paid by seller in advance

406. City/town taxes

to

407. County taxes

to

408. Assessments

to

409.

410.

411.

412.

420. Gross Amount Due To Seller

911,900.00

200. Amounts Paid By Or In Behalf Of Borrower

201. Deposit or earnest money

202. Principal amount of new loan(s)

203. Existing loan(s) taken subject to

204.

205.

206.

207. Paid per closing 12/8/19 w/SCRA

911,000.00

208.

209.

Adjustments for items unpaid by seller

210. City/town taxes

to

211. County taxes

to

212. Assessments

to

213.

214.

215.

216.

217.

218.

219.

220. Total Paid By/For Borrower

911,000.00

500. Reductions in Amount Due To Seller

501. Excess deposit (see instructions)

502. Settlement charges to seller (line 1400)

503. Existing loan(s) taken subject to

504. Payoff of first mortgage loan

505. Payoff of second mortgage loan

506.

507. Paid per closing 12/8/19 w/SCRA

911,000.00

508.

509.

Adjustments for items unpaid by seller

510. City/town taxes

to

511. County taxes

to

512. Assessments

to

513.

514.

515.

516.

517.

518.

519.

520. Total Reduction Amount Due To Seller

911,000.00

300. Cash At Settlement From/To Borrower

301. Gross amount due from borrower (line 120)

911,409.70

302. Less amounts paid by/for borrower (line 220)

911,000.00

303. Cash

From

To Borrower

3,409.70

600. Cash At Settlement To/From Seller

601. Gross amount due to seller (line 420)

911,900.00

602. Less reductions in amt due seller (line 520)

911,000.00

603. Cash

To

From Seller

0.00

000014

9
\$15.00
Mortgage

200500005093
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
13-28-2005 At 09:29
MORTGAGE 13.
Volume 394 Page 24

EXHIBIT 3

This document was prepared by (name, address, phone):
SOUTH CAROLINA BANK AND TRUST, N.A.
850 JOHN C. CALHOUN DRIVE
ORANGEBURG, SC 29118
(803) 634-2175

State of South Carolina Space Above This Line For Recording Date

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 12-08-2005 and the parties and their addresses are as follows:

MORTGAGOR: E. LEONARD LOWTHER

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: SOUTH CAROLINA BANK AND TRUST, N.A.
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
850 JOHN C. CALHOUN DRIVE
PO BOX 8007 ORANGEBURG, SC 29118

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
SEE ATTACHMENT FOR FULL LEGAL DESCRIPTION

The property is located in BEAUFORT Jasper at 40 ACRES ON HIGHWAY 13
(County)
(Address) BEE CREEK (City) South Carolina (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT NOT FOR FILING FROM FMA OR VA USE, AND NOT FOR CONSUMER PURPOSES
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3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 1,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorney's fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgages shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date);

NOTE DATED 12-08-2005 IN THE AMOUNT OF \$585,000.00 IN THE NAME OF E. LEGRAND LOWMYER

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.

E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

ETA

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EXHIBIT 4

er v. Lowther
Lowther taken March 27, 2009

PAGE 123

1 A Yes.

2 Q What does that say?

3 A In consideration for the price paid herein,
4 Seller additionally agrees to release any right which
5 Seller may have in that property and lots in the Echo Tango
6 area, Beaufort County, and will execute a Quitclaim deed to
7 said property at closing.

8 Q Who are the sellers?

9 A This was the sellers that were selling --

10 Q Your siblings, right?

11 A Yeah, my siblings, yeah.

12 Q So doesn't that say exactly a hundred and eighty
13 degrees the opposite of what you just said, that a
14 mandatory condition of this is they say that Echo Tango is
15 yours, and they Quitclaim it back to you?

16 A It was a legal thing to do, because when my
17 father died, Echo Tango was in my name.

18 Q So do you think this language here, of them
19 legally signing a written contract quit claiming Echo Tango
20 back to you is consistent with your prior testimony of they
21 know Echo Tango is half their's?

22 A Yes. I was buying them out of Echo Tango, also
23 any interest they may try to have in Echo Tango that they
24 thought they had. I was buying everything from them. There
25 never was any question that they were going to get fifty

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1 percent of the proceeds out of Echo Tango. I made it clear
2 to them. I made it clear to the attorneys.

3 Q So you made it clear that notwithstanding your
4 title ownership to Echo Tango --

5 A Yes.

6 Q -- and notwithstanding your going to the effort
7 of, I assume, telling your lawyer to write this in the
8 contract that they give up anything they have in Echo
9 Tango, your testimony is you, still, out of the goodness of
10 your heart, going to give them fifty percent of the closing
11 proceeds?

12 A They were getting it. It was entitled to them.
13 Okay? In my opinion.

14 Q You admit it is entitled to them now, since you
15 defaulted on the Note.

16 A It was entitled to them before. I was going to
17 give it to them. I felt like I owed it to them. I think I
18 verified that with Mr. Rivers this morning, didn't I Mr.
19 Rivers?

20 MR. RIVERS: You haven't seen that, but we
21 verified that that was legally binding.

22 MR. RUFF: Well, that's not part of my case.

23
24 BY MR. RUFF:

25 Q Let's get back, then, to your role as fiduciary.

which is exhibit 5, and I asked you was that your original operating agreement. And what was your answer?

A Yes.

Q It was?

A Yes.

MR. KUHN: Which is what he just said.

COURT: You're saying the unmarked document is something else?

MR. KUHN: It's marked. He's identified exhibit

BY MR. RIVERS:

Q Now, let me ask you this. This is a copy of exhibit 5, I'd like to put that in here.

MR. KUHN: So this makes sense to me later, what we've been referring to as exhibit 3 is exhibit 5 out of the deposition which is now marked as exhibit 7 to this.

MR. RIVERS: Correct.

(WHEREUPON, a document was marked as Plaintiff's Exhibit Number 7 for the purposes of identification).

MR. RIVERS: Correct.

COURT: And I still haven't seen Number 5, which as I understand it, is a disputed document. Okay.

BY MR. RIVERS:

Q Now, while the title to Echotango was in your

Bettye Anderson & Associates.
Beaufort, South Carolina
(843)523-0791 (800)543-3506

Direct by Mr. Rivers

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name, it's undisputed that you and your dad owned it together 50/50; is that right?

A Yes. Uh-huh.

Q Okay. And in the exhibit number 7, it recites that he is to be reimbursed for his original investment of four acres in Grahamville, that being what y'all gave Nancy Horry Garbade Jenkins, whatever, for the property which was valued at \$20,000; is that right?

A Yes. That was in the original agreement.

Q And at some point, y'all got straight on that \$20,000?

A Yes, we did.

Q Was that by you writing him a check, or him being given credit for certain development costs, or how?

A Him being given money.

Q So you wrote him a check for \$20,000?

A No. I gave him money in different ways. In cash, bought an automobile for him, borrowed money and gave him cash on a building.

Q Okay. Now when y'all were doing this work, when did you get this property from Nancy?

A 1986, if I'm not mistaken.

Q Okay. And at the time that y'all got this property, how did you divide up the initial expenses?

A The initial expenses?

Bettye Anderson & Associates
Beaufort, South Carolina
(843)525-0791 (800)543-5506

Directed by Mr. Rivers

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STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

AGREEMENT

This is to acknowledge that the following individuals are the equitable and true owners of the below-described interest in Echo Tango property located in the Chachesssee Community in Beaufort County. Acknowledging this ownership interest, title, however, shall be in the name of B. LeGrand Lowther for business purposes.

B. LeGrand Lowther	50% ownership
C. E. Lowther	50% ownership

All net proceeds from any sales shall be divided according to the above interests. Expenses are to be reimbursed before net proceeds are divided. C.E. Lowther is to be reimbursed for his original investment of 4 acres in Grahamville, total value \$20,000.00, which were traded as part of the original purchase of the Echo Tango property. LeGrand Lowther is to be reimbursed for all other expenses, which include, but are not limited to: legal fees, governmental fees, development costs, maintenance costs, taxes, engineering fees, utility fees, permit and license fees and any other associated costs.

Agreed to this the _____ day of _____, 2002.

Sam E. Lowther
WITNESS

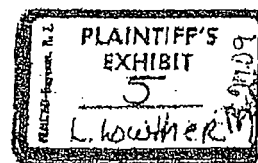
E. LeGrand Lowther
E. LEGRAND LOWTHER

WITNESS

C. E. LOWTHER

PLAINTIFF'S
EXHIBIT

7 5-11-09



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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE PROBATE COURT
CASE NO. 2007ES0700655

IN THE MATTER OF ESTATE OF)
CHARLES E. LOWTHER, A/K/A)
CHARLES EUGENE LOWTHER:)
)
EFFIE SANDRA L. TURPIN, C. E.)
LOWTHER, JR., MITCHELL SAXON)
LOWTHER, INDIVIDUALLY AND)
REPRESENTING AS A CLASS THE)
BENEFICIARIES OF THE ESTATE OF)
C. E. LOWTHER, SR.,)

Plaintiffs,)

vs.)

E. LEGRAND LOWTHER,)
INDIVIDUALLY AND AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF C. E. LOWTHER, SR., AND MARK)
ALLEN LOWTHER, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF C. E. LOWTHER, SR.,)

Defendants.)

ORDER OF JUDGMENT

2010 DEC 21 PM 12:41
PROBATE COURT
BEAUFORT COUNTY, SC

FILED

This action came before the Court for trial on the merits, without a jury, on June 23 and 26, 2009. The Plaintiffs were represented by Harley D. Ruff, Esquire, and R. Thayer Rivers, Jr., Esquire, and the Defendants were represented H. Fred Kuhn, Jr., Esquire.

I. Procedural Background

The action was commenced by Summons and Complaint of the Plaintiffs, filed in this Court on February 15, 2008. The Complaint alleges that the Defendants, as Personal Representatives of the Estate of Charles Eugene Lowther, violated their fiduciary duties

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W

to the beneficiaries of the Estate by: (1) converting and defrauding the beneficiaries out of \$299,000, in connection with Defendant E. LeGrand Lowther purchasing Estate land from the beneficiaries for \$511,000 and selling the land to a third party for \$810,000; and (2) converting and misappropriating Estate income from timber sales. The Complaint asserts causes of action for constructive trust, breach of fiduciary duty, fraud, constructive fraud, fraud in the inducement, negligent misrepresentation, conversion, unjust enrichment, accounting, and removal of Personal Representatives.

The Defendants' Answer to the Complaint consists of a qualified general denial and asserts the affirmative defenses of statute of limitations and laches.

Following the conclusion of trial, this Court withheld rendering judgment, in order for the parties to make a final effort to settle the matter. Settlement efforts apparently were delayed until the resolution of related litigation in the Circuit Court.

By letter of March 30, 2010, counsel for the Plaintiffs (Mr. Ruff) informed this Court that the Circuit Court actions had been concluded,¹ and that further mediation would be attempted. By letter of May 12, 2010, Mr. Ruff advised the Court of his opinion that further efforts at mediation would not be worthwhile.

At a status conference held on June 18, 2010, there appearing to be real prospect of a settlement -- and counsel for the respective parties declining any further opportunity to be heard -- this Court determined to proceed to final judgment and directed counsel to submit proposed judgment orders. After receiving and reviewing the proposed orders, the Court requested briefs on the issue of punitive damages, which were duly submitted.

After careful consideration of the testimony and other admissible evidence presented at trial, the arguments of counsel, the record, and the applicable law, the following are this Court's findings of fact and conclusions of law:

¹ Neither counsel submitted to this Court the final judgments in the Circuit Court actions, or argued that the outcomes of those actions affected the case before the Probate Court, so the resolution of the Circuit Court actions is deemed irrelevant to the determination of the case instant.

II. Findings of Fact

Charles Eugene Lowther ("Mr. Lowther" and "Decedent"), died on June 11, 2004, domiciled in Jasper County, South Carolina. Mr. Lowther, a widower, was survived by his eight children, to-wit: Vivian Gene L. Tillotson ("Gene"); Effie Sandra L. Turpin ("Sandra"); Charles Eugene Lowther, Jr. ("Bube"); Rita Elizabeth L. Rogers ("Rita"); Clayton Clark Lowther ("Clark"); Mitchell Saxon Lowther ("Mitchell"); Mark Allen Lowther ("Mark"); and Edward LeGrand Lowther ("LeGrand").

On June 17, 2004, Mr. Lowther's Last Will and Testament, executed on the day he died, was admitted to probate, and LeGrand and Mark were appointed as Personal Representatives of the Estate, in Case No. 2004ES2700068 in the Jasper County Probate Court.

At the time of his death, Mr. Lowther owned a 40.81-acre parcel of unimproved real property on Bees Creek Road in Jasper County ("40-acre parcel") and an undivided one-fourth interest in an unimproved 226.35-acre tract of land in the Wellington Plantation area of Jasper County ("Wellington tract"). The other owners of the Wellington tract were LeGrand, as to an undivided one-half interest, and Mitchell, as to an undivided one-fourth interest.

In his Will, Mr. Lowther devised the 40-acre parcel and his undivided one-fourth interest in the Wellington tract to Gene, Sandra, Bube, Rita, Clark, Mitchell, and Mark in equal shares.²

Article V of the Will includes the following directions to the Personal Representatives:

I desire my estate to be placed in a company or corporation, my property sold *at market value* as expediently as possible. The net proceeds should then be divided among my heirs equally and as timely as possible. Should any of my heirs desire to receive property in lieu of cash, my personal representatives shall consider what is in the best interest of my heirs,

² The Will devised to LeGrand, "my son and partner in business partner . . . the sum of \$1.00," stating that "[t]his fulfills his desire to be excluded from any further inheritance."

collectively, and act in accordance.

(Emphasis added.)

As Personal Representatives, LeGrand and Mark filed their Inventory and Appraisement of the estate on December 17, 2004, and a Supplemental ("Amended Original"). Inventory and Appraisement on June 6, 2006 -- the latter substantially increasing the purported date-of-death valuations of the 40-acre parcel (from \$163,100 to \$400,000) and the decedent's interest in the Wellington tract (from \$185,675 to \$994,00). However, after more than two and one-half years of estate administration, they failed to file an accounting as required by law. On March 8, 2007, the Honorable Joseph N. Malphrus, Jr., Probate Judge for Jasper County, struck the estate case from the Court's active files, under Rule 4, South Carolina Rules of Probate Court.

Following a request by R. Thayer Rivers, Esquire, that the estate case be reopened, Judge Malphrus recused himself, and the Honorable Francis M. Simon, Probate Judge for Beaufort County, was appointed Special Probate Judge for the matter, by Order of the Chief Justice of the Supreme Court of South Carolina, dated September 7, 2007. After a hearing held on October 15, 2007, this Court provisionally appointed LeGrand and Mark as Personal Representatives of the estate, for the sole purpose of accounting to this Court for their handling of estate assets.

The Order of appointment, entered October 16, 2007, prohibited the Personal Representatives from making "any sale, disbursement, transfer, assignment, hypothecation, distribution, or other disposition of any estate assets, or the proceeds of any estate assets, without specific written authorization by this Court." Under the Order, the only authority given to the Personal Representatives to act, aside from accounting to the Court and paying statutory probate fees, is the direction to "protect from waste any estate assets in their possession or under their control, including without limitation funds on deposit with any financial institution."

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On December 3, 2007, the Personal Representatives filed with this Court, through counsel, their Supplemental #2 Inventory and Appraisement and Interim #1 Accounting, covering the period from June 11, 2004 through November 29, 2007. As noted above, the instant civil action was commenced on February 15, 2008.

After their father died, there appears to have been a consensus among the beneficiaries of the Estate that the land inherited by them from their father should be sold as expeditiously as possible. Some of the beneficiaries were in financial need and made their needs known, at least to LeGrand.

Early in 2005, Clark approached a local developer, John Tilton, about buying the 40-acre parcel. Mr. Tilton submitted an offer to buy the parcel for \$240,000. Some of the beneficiaries were in favor of accepting this offer, but others believed it was too low, and it was eventually refused. LeGrand testified at trial that he advised Mr. Tilton of the refusal, telling him that Clark did not have authority to negotiate a deal for the other beneficiaries.

In February or March of 2005, a developer, International Society of Investors, LLC ("ISI") contacted LeGrand about purchasing the Wellington tract. After the initial negotiations, and before making any firm offer to purchase, ISI began performing "due diligence" inquiries regarding the availability of utility services to the property.

During the process of negotiating with ISI, LeGrand advised the ISI representatives that if ISI wanted to purchase the Wellington tract, the company also would have to buy the 40-acre parcel, as a "package deal."

In the Summer of 2005, LeGrand began talking with his brothers and sisters about his purchasing from them all of the property they had inherited from their father, *i.e.*, the 40-acre parcel and the beneficiaries' 25% interest in the Wellington tract. LeGrand and Mitchell also discussed LeGrand's purchasing the 25% interest that Mitchell owned outright in the Wellington tract, as well as a 3.84-acre parcel of land that adjoined Wellington and was owned by Mitchell and his wife, Carmon. LeGrand did not advise

his siblings that he was also negotiating with ISI for the prospective sale of the 40-acre parcel and Wellington tract.

In October 2005, LeGrand prepared and delivered to each of his brothers and sisters a proposed contract for the purchase by LeGrand of each sibling's interest in the 40-acre parcel and the Wellington tract. The contracts prepared for each of the six siblings other than Mitchell were identical: proposing a purchase price of \$325,000 for each sibling's interest in the two properties, \$75,000 to be paid in cash at closing "or on December 5, 2005, whichever occurs first," and \$250,000 to be paid by December 31, 2006, and "secured by Purchaser's personal guarantee and a first mortgage . . . on the Wellington Road Property only." The contract prepared for Mitchell was for the purchase of his inherited shares of the 40-acre parcel and Wellington tract, as well as the 25% interest he owned outright in Wellington and the 3.84-acre parcel adjacent to Wellington owned by Mitchell and his wife. The purchase price and financing terms were left blank in the contract prepared for Mitchell.

All seven of LeGrand's siblings signed their respective contracts -- certain with handwritten changes that did not affect the purchase price or payment terms -- and returned them to LeGrand. Mitchell inserted in his contract a total purchase price of \$1,025,000, of which \$75,000 was to be paid in cash at closing, and \$950,000 financed as provided in the other contracts. All the contracts called for a closing date of December 5, 2005. LeGrand never signed any of the contracts.

Also in October 2005, ISI sent to LeGrand two proposed contracts prepared by ISI's attorneys: one for the purchase by ISI of the 40-acre parcel for \$810,000, but setting no firm closing date; the other for the purchase by ISI of the Wellington tract, leaving blank the purchase price amount, but providing for a closing date of "on or before December 27, 2006." Both proposed contracts were pre-dated October 12, 2005, and named, as "Seller," "Lagrande [sic] Lowther, Mitchell Lowther, et al." After making several handwritten changes (including the deletion from both contracts of "Mitchell

Lowther, et al," as sellers; inserting in the 40-acre contract a closing date of "on or before January 27, 2006"; and inserting in the Wellington contract a purchase price of \$5,450,000), LeGrand signed both contracts, as the only "Seller," on or about October 24, 2005, and returned them to ISI for execution. LeGrand did not inform his siblings of these developments.

As the closing date approached for LeGrand's purchase of his siblings' interests in the properties, the parties discussed closing immediately on the 40-acre parcel, inasmuch as some of the siblings were in dire financial need. In an effort to do so, LeGrand arranged for a short-term loan from South Carolina Bank and Trust, N.A. ("SCB&T").

At or before closing, LeGrand persuaded his siblings to accept \$73,000 each, in cash, for the conveyance of the 40-acre parcel to LeGrand. The siblings agreed to this -- as opposed to the \$75,000 in cash each was to receive, under their respective contracts, at closing on both the 40-acres and Wellington -- purportedly to allow LeGrand \$14,000 to pay closing costs. (The \$14,000 sum equals the \$2,000 difference between \$75,000 and \$73,000, multiplied by seven.) Accordingly, a purchase price of \$511,000 for the 40-acre parcel -- the product of seven times \$73,000 -- was agreed to by all parties and closing held on December 8, 2005.

At the December 8 closing, LeGrand and Mark, as Personal Representatives of Mr. Lowther's Estate, and in accordance with the terms of his Will, executed a Deed of Distribution releasing to Gene, Sandra, Bube, Rita, Clark, Mitchell, and Mark all of the real property that Mr. Lowther had owned at death, including the 40-acre parcel and the decedent's interest in the Wellington tract. Each of the seven siblings then executed a deed conveying the 40-acre parcel to LeGrand, for a stated consideration of \$511,000.

LeGrand subsequently closed on his loan from SCB&T -- borrowing \$585,000 and securing the loan with a mortgage on the 40-acre parcel -- and paid each of his siblings \$73,000 from the loan proceeds. The siblings knew LeGrand had to borrow the

money to pay the purchase price in cash.

LeGrand did not disclose to his siblings, at or in connection with the December 8 closing, that he had signed, and sent to ISI for execution, the two proposed contracts for the sale to ISI, by LeGrand alone, of the 40-acre parcel and Wellington tract, respectively. LeGrand testified that, by mid-December 2005, he received those contracts by mail from ISI, both having been executed by ISI under date of November 21, 2005, apparently accepting the handwritten changes LeGrand had made.

On December 20, 2005, a closing was held on the purchase by LeGrand from his siblings of their respective interests in the Wellington tract, as well as the purchase by LeGrand from Mitchell and his wife, Carmon, of the 3.84-acre parcel adjoining Wellington. At or in connection with this closing, LeGrand's siblings executed a deed conveying to LeGrand their interests in the Wellington tract, for a stated consideration of \$2,464,000. Also, Mitchell and his wife, Carmon, executed a deed conveying to LeGrand the 3.84-acre parcel adjacent to Wellington, for a nominal consideration of "five dollars (\$5.00) with love and affection."

To finance the entire purchase price, LeGrand executed seven promissory notes, one to each of his siblings. The notes to Gene, Sandra, Bube, Rita, Clark, and Mark were each for \$252,000, and the note to Mitchell was for \$952,000 (the \$700,000 difference representing the purchase price for Mitchell's separate 25% interest in Wellington and, presumably, the adjoining 3.84-acre parcel owned by Mitchell and his wife). All notes were made payable in full, without interest, on December 31, 2006. The combined principal sum of the notes, \$2,464,000, was secured by a mortgage executed by LeGrand on or about December 28, 2005.

As provided in the terms of the notes, payment was also secured by the following:

- A general warranty deed, executed by LeGrand on or about December 20, 2005, reconveying to his siblings the respective interests in Wellington that they sold to LeGrand at the December 20 closing; provided, however, that this

deed was to be held in escrow by LeGrand's attorney pending payment of the notes, voided if the notes were paid in full, but delivered and recorded, to effect reconveyance in lieu of foreclosure, if LeGrand defaulted on the notes.

- LeGrand's agreement to pay to each sibling, in the event of default, a 7.14% share of the net proceeds (as defined in the notes) from the sale of any of the lots owned by LeGrand in the Echo Tango subdivision in Beaufort County. (In their contracts with LeGrand, the siblings agreed to release and quitclaim to LeGrand any right they might have to the Echo Tango lots.)

The closing costs for the foregoing transactions totaled \$14,050.50, which LeGrand paid from the SCB&T loan proceeds.

None of the documents executed at or in connection with the December 8 or 20, 2005 closings were recorded until December 28, 2005. On that date, the Deed of Distribution from the Personal Representatives to the seven siblings, the deeds from the siblings to LeGrand, and the SCB&T mortgage on the 40-acre parcel were recorded in the Jasper County Register of Deeds' Office. Inexplicably, LeGrand's \$2,464,000 mortgage to his siblings (securing the purchase price for the siblings' interest in the Wellington tract) was not recorded until February 14, 2006. The deed from Mitchell and Carmon to LeGrand of the 3.84 parcel adjoining Wellington was not recorded until May 8, 2006.

At the closing on December 20, 2005, although asked whether he had a contract or buyer for either the 40-acre parcel or the Wellington tract, LeGrand failed to disclose to the siblings the existence of the ISI contracts, indicating only that he was "taking a risk" personally by purchasing the properties from his siblings. Sandra, Mitchell, and Bube testified credibly that they trusted LeGrand and relied on him to tell them if he had a prospective buyer for the properties.

LeGrand testified that he never told the siblings about the ISI contracts because he already had a deal with the siblings to buy their interests in the subject properties, and

that his dealings with ISI were not the siblings' business.

On February 17, 2006, LeGrand closed on the sale of the 40-acre parcel to Amberwinds, LLC ("Amberwinds"), as assignee of ISI, for contract price of \$810,000. From the gross amount due the seller, the following were paid at closing: payoff of the SCB&T mortgage in the amount of \$593,872.50; seller's attorney fee of \$1,250.00; a judgment against Clark Lowther in the amount of \$6,575.98; and a South Carolina Electric & Gas Company creditor's claim against the Decedent's Estate in the amount of \$1,256.61. After allowing a \$6.24 credit to the seller for prorated real estate tax paid in advance, the net proceeds of sale paid to LeGrand was \$207,051.15.

The deed for the sale and conveyance to Amberwinds was recorded in the Jasper County Register of Deeds' Office on February 24, 2006. LeGrand still had not informed his siblings of the transaction, and Sandra, Mitchell, and Bube first learned of it in March 2006.

ISI never closed under its contract for the purchase of the Wellington tract from LeGrand, and LeGrand defaulted on payment to his siblings of the combined principal sum of \$2,464,000 due by December 31, 2006, under the promissory notes he had executed on December 20, 2005.

At some point in time after his default, and in accordance with the terms of the notes, LeGrand caused to be delivered to his siblings the escrowed deed in lieu of foreclosure, reconveying to them their interests in the Wellington tract. LeGrand also has made the following distributions to the siblings from his profits on the sale of Echo Tango lots:

Mitchell	\$ 36,000
Sandra	22,000
Bube	16,000
Clark	16,000
Gene	16,000

Mark	16,000
Rita	<u>16,000</u>
Total	\$138,000

The bulk of the above distributions, *i.e.*, all except for the first \$20,000 to Mitchell and \$6,000 to Sandra, were made after this civil action was commenced on February 15, 2008.

III. Conclusions of Law

All requirements of the applicable statutes and rules of court with respect to jurisdiction, venue, and notice have been satisfied in this action.

No evidence has been presented against the Defendant Mark on any of the causes of action asserted in the Complaint. Moreover, as an Estate beneficiary, Mark appears to be in the same position as the other beneficiaries, with respect to LeGrand's purchase and sale of the 40-acre parcel. The Complaint should be dismissed against the Defendant Mark.

No evidence has been presented to support the allegations in the Complaint regarding the Defendants' alleged sale of timber from Estate property, and retention of the profits thereof, in violation of their fiduciary duties, as a conversion of Estate assets, or otherwise. The relief requested in the Complaint, with respect to the alleged "Timber Profits," is denied.

A. Breach of Fiduciary Duties and Measure of Damages.

In *Ex Parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E. 2d 836 (Ct. App. 2009), the South Carolina Court of Appeals set forth the following characteristics of the fiduciary relationship that exists between the personal representative and the beneficiaries of a decedent's estate:

A personal representative is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-702 (Supp. 2008); S.C. Code Ann. § 62-1-201 (Supp. 2008). "That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental." *Witherspoon v. Stogner*, 182 S.C. 413, 414, 189 S.C. 758, 759 (1937). "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E. 2d 629, 631 (1992). "One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E. 2d 467, 473 (Ct. App. 2004).

381 S.C. at 555, 673 S.E. 2d at 840.

Under S.C. Code § 62-3-101, "[u]pon the death of a person, his real property devolves to the persons to whom it is devised by his last will . . . *subject to . . . the purposes of administration, particularly in the exercise of the powers of the personal representative* under §§ 62-3-709, 62-3-710, and 62-3-711" (Emphasis added.) Section 62-3-711(a) provides that "[u]ntil the termination of his appointment . . . a personal representative has the same power over the title to property of the estate that an absolute owner would have, *in trust however, for the benefit of the creditors and others interested in the estate.*" (Emphasis added.)

One of the "purposes of administration" in this case was to fulfill the Decedent's express desire, under Article V of his Will, that the Estate's real property be "sold at market value as expediently as possible." That was a responsibility undertaken and pursued by LeGrand from the earliest stages of the Estate's administration. It was a power entrusted to him, by law and with the concurrence of his siblings, to be exercised for their benefit, as devisees.

LeGrand agreed with his siblings to purchase the 40-acre parcel for \$511,000, knowing that its market value was much higher -- as evidenced by his contemporaneous personal contract to sell the same property to ISI for \$810,000 -- and knew, or had reason

to know, that a direct sale by the siblings to ISI for the same price could have been arranged. (In fact, the contract submitted to LeGrand by ISI had identified the "Seller" as "Lagrande [sic] Lowther, Mitchell Lowther, et al," but LeGrand struck out Mitchell and the others.) Even when asked about prospective sales of the 40-acre parcel, he failed to disclose his separate deal with ISI to those who trusted him to act for their benefit, and to whom he was obligated to so act.

LeGrand retained the opportunity to rectify the matter, through the date of his closing with Amberwinds in February 2006, but he did not do so. He also persisted in his nondisclosure of the deal to his siblings through the closing date and after.

LeGrand's testimony that he was taking a personal risk in his dealings with ISI, and that those dealings were not the business of the estate's beneficiaries, further evidences his failure to observe his fiduciary responsibilities.

As a court-appointed Personal Representative of the Decedent's Estate, LeGrand breached his fiduciary duties to the Estate's beneficiaries, and deprived them of the profit on the sale of the 40-acre parcel that he, in fact, realized and retained, as a result of his private deal with ISI and Amberwinds.

"If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust." *S.C. Code Ann.* § 62-3-712. "A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of: (1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or (2) *the profit the trustee made by reason of the breach.*" *Id.* § 62-7-1002(a) (emphasis added).

Measuring damages for LeGrand's breach of his fiduciary duties in this case begins with the profit realized him on his sale to Amberwinds of the 40-acre parcel that he had acquired from the Estate beneficiaries two months earlier. LeGrand's profit should not be measured -- as asserted by the Plaintiffs -- simply by the difference

between the price he paid to his siblings (\$511,000) and the gross sales price to Amberwinds (\$810,000). That would overlook the fact that he cleared only \$207,051.15 from the Amberwinds closing, after payment of title clearance and reasonable closing costs. Moreover, the largest title clearance cost, payoff of the SCB&T mortgage, derived from LeGrand having borrowed the money, with his siblings' knowledge, to pay them cash for the initial sale.

In determining the damages to be awarded, the \$207,051.15 realized by LeGrand from the Amberwinds closing should be reduced by the \$138,000 in distributions that he made subsequently to the siblings from his profits on the sale of two Echo Tango lots. Those were payments that LeGrand may have been obligated to make, by reason of his default on the promissory notes to his siblings. However, those obligations were incurred, and the payments made, pursuant to the overall deal negotiated between LeGrand and the siblings for his purchase of their interests in both the 40-acre parcel and the Wellington tract. Therefore, the foregoing ET distributions equitably should offset damages awarded on the basis of profit retained by LeGrand from the sale to Amberwinds.³

Allowing an offset based on the "overall deal" between LeGrand and his siblings is consistent with the rule of *Ellie v. Miccichi*, 358 S.C. 78, 594 S.E. 2d 485 (Ct. App. 2004), viz., "two contracts executed at different times relating to the same subject matter, entered into by the same parties, are to be construed as one contract and considered as a whole." 358 S.C. at 92, 594 S.E. 2d at 492.

Thus, by reason of LeGrand's breach of his fiduciary duties, judgment should be rendered for the Plaintiffs against LeGrand for damages in the amount of \$69,051.15 (representing the remainder of \$207,051.15 minus \$138,000.00); provided, however, that

³ Should further profit distributions, from the sale of ET lots, be made or become due to the siblings under the terms of the promissory notes, LeGrand should be allowed a credit against the respective distributions for damages paid to the respective distributees under this Order of Judgment.

the damage award should be apportioned equally among all seven devisees.

B. Statute of Limitations and Laches Defenses.

An action by an estate beneficiary against a personal representative for breach of fiduciary duty must be asserted within six months after the filing of a final accounting, proposal for distribution, petition for settlement of an estate, and proofs required under S.C. Code § 62-3-1001, or otherwise be barred. *S.C. Code Ann.* § 62-3-1005. Such documents have not been filed with respect to Mr. Lowther's Estate -- the Personal Representatives having filed only an *interim* accounting. Therefore, this action was commenced within the time limitation of § 62-3-1005. It is also noted that the action was commenced less than three years after the acts complained of and, thus, within the general three-year limitation of § 15-3-530. The action is not barred by applicable statute of limitations, as pleaded by the Defendants.

The bulk of the ET distributions (\$112,000 of the \$138,000 total) were made by LeGrand *after* the Plaintiffs commenced this action, and the payments appear to have been made pursuant to LeGrand's obligations under the promissory notes. Less than two years elapsed between the Amberwinds closing and commencement of this action. There is no basis for application of the doctrine of laches as a bar to this action, as pleaded by the Defendants.

C. Disposition of Other Causes of Action.

The judgment and damage award for breach of fiduciary duties makes it unnecessary to address the causes of action asserted in the Complaint for constructive trust, negligent misrepresentation, and unjust enrichment, and those causes of action are dismissed.

While LeGrand breached his fiduciary duties to the Estate beneficiaries, as determined above, the evidence is not sufficient to show *fraudulent* misrepresentation by

LeGrand. Accordingly, the causes of action asserted in the Complaint for fraud, constructive fraud, and fraud in the inducement are dismissed.

The evidence is not sufficient to show conversion, as alleged by the Plaintiffs, and that cause of action is dismissed.

No evidence was presented to impeach the completeness or accuracy of the interim accounting filed by Personal Representatives on December 3, 2007, nor was any evidence presented to support the cause of action asserted for an accounting. Accordingly, that cause of action is dismissed.

The Personal Representatives were re-appointed *provisionally* by this Court, on October 16, 2007, for the sole purpose of accounting to this Court for their handling of estate assets. An interim accounting was filed, as noted above. The Order of appointment strictly prohibits them from making any disposition of estate assets, or proceeds thereof, without specific written authorization of this Court. Aside from accounting to the Court, the Order of appointment authorizes the Personal Representatives only to preserve and protect from waste any estate assets under their control. The foregoing restrictions remain in effect.

After the conclusion of the case instant, it will remain for the Court to determine what further acts of estate administration, if any, may be necessary or appropriate. However, given the continuing restraint on the Personal Representatives' authority to act, it is not necessary to remove them at this time, and the cause of action asserted for removal is dismissed.

D. Punitive Damages.

"Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Keane v. Lowcountry Pediatrics, P.A.*, 372 S.C. 136, 148, 641 S.E. 2d 53, 60 (Ct. App. 2007). Under that standard, the evidence is not clear

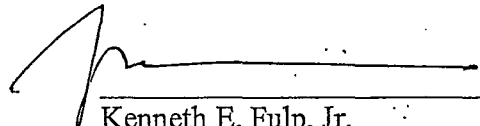
and convincing that LeGrand's conduct warrants an award of punitive damages, and no such award is made.

IV. Judgment

Wherefore, it is ORDERED, ADJUDGED, and DECREED that:

1. The Complaint is dismissed against the Defendant Mark.
2. Judgment is rendered for the Plaintiffs against the Defendant LeGrand for breach of fiduciary duties, as aforesaid, and the Plaintiffs are awarded damages for such breach in the amount of \$69,051.15; *provided, however*, that such award is apportioned among and payable in equal shares to Gene, Sandra, Bube, Rita, Clark, Mitchell, and Mark.

AND IT IS SO ORDERED.



Kenneth E. Fulp, Jr.
Associate Judge
Beaufort County Probate Court

Beaufort, South Carolina

December 21, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE PROBATE COURT
CASE NO. 2007ES0700655

IN THE MATTER OF ESTATE OF)
CHARLES E. LOWTHER, A/K/A)
CHARLES EUGENE LOWTHER)

ORDER

2007 OCT 16 PM 5:43
PROBATE COURT
BEAUFORT COUNTY, SC

FILED

Following proper notice, this Court convened a status conference on October 15, 2007, at 2:00 p.m., for the purpose of determining whether good cause exists to restore this estate case to active status. Present at the conference were: H. Fred Kuhn, Jr., Esquire, representing the former Personal Representatives, Edward LeGrande Lowther and Mark Allen Lowther; Charles Eugene Lowther, Jr., and his attorney, R. Thayer Rivers, Jr., Esquire; Clayton Clark Lowther; Mitchell Saxon Lowther; and Effie Sandra L. Turpin. Prior to the conference, the Court received a letter from Harley D. Ruff, Esquire, as attorney for Ms. Turpin, dated October 10, 2007, which was copied to Messrs. Kuhn and Rivers.

In the conference, Mr. Rivers expressed concern about the absence of any accountings of record by the Personal Representatives, and alleged various sales of estate assets by the Personal Representatives and non-reporting of the decedent's personal property assets in the estate inventories filed by them. Mr. Ruff raised similar concerns in his letter. Mr. Kuhn asked for a period of forty-five days to file any required accountings.

Without objection, this Court determined in the conference to re-appoint the former Personal Representatives provisionally, for the sole purpose of properly accounting for their handling of estate assets thus far.

Accordingly, it is ORDERED that:

1. Edward LeGrande Lowther and Mark Allen Lowther are provisionally appointed as Personal Representatives of this estate, for the sole purpose of

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accounting to this Court for their handling of assets of the estate.

2. **Edward LeGrande Lowther and Mark Allen Lowther, as provisional Personal Representatives, shall prepare, execute, and file with this Court, *no later than November 30, 2007*, a Supplemental Inventory and Appraisement (Form #350PC) of all assets of the decedent's estate as of the date of his death, and a complete Accounting, proper in form and substance, of all receipts and disbursements of estate assets by them, from the date of the decedent's death until the present.** Simultaneously with filing such documents, copies shall be served on all counsel of record and interested persons not represented by counsel.

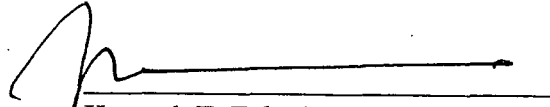
3. The authority of **Edward LeGrande Lowther and Mark Allen Lowther** under this provisional appointment is limited strictly to rendering to this Court the above-described Inventory and Appraisement and Accounting, and they **are prohibited from any sale, disbursement, transfer, assignment, hypothecation, distribution, or other disposition of any estate assets, or the proceeds of any estate assets, without specific written authorization by this Court.** The only such authorization provided by this Order is for the provisional Personal Representatives to pay the delinquent \$3,069.50 fee due to the Jasper County Probate Court under S.C. Code §8-21-770(B), without further delay, which payment shall be remitted to this Court for transmittal to the Jasper County Probate Court.

4. Edward LeGrande Lowther and Mark Allen Lowther shall preserve and protect from waste any estate assets in their possession or under their control, including without limitation funds on deposit with any financial institution.

5. The necessity and/or advisability of further proceedings herein will be determined following receipt and analysis of said Supplemental Inventory and Appraisement and Accounting.

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AND IT IS SO ORDERED.



Kenneth E. Fulp, Jr.
Associate Judge
Beaufort County Probate Court

Beaufort, South Carolina

October 16, 2007

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CHARLES E. LOWTHER

Case # 2007ES0700655

Mailing of October 16, 2007

H. Fred Kuhn, Jr., Esquire
PO Drawer 507
Beaufort, SC 29901-0507

R. Thayer Rivers, Jr., Esquire
PO Box 668
Ridgeland, SC 29936-0668

Harley D. Ruff, Esquire
17 Professional Village Circle
Beaufort, SC 29907

Mr. Mark Allen Lowther

Mr. Edward LeGrande Lowther

Mr. Mitchell Saxon Lowther

Ms. Vivian Gene L. Tillotson

Ms. Effie Sandra L. Turpin

Mr. Charles E. Lowther, Jr.
C/o Thayer Rivers, Jr., Esq.
PO Box 668
Ridgeland, SC 29936

Ms. Rita Elizabeth L. Rogers

Mr. Clayton Clark Lowther
C/O Ms. Sandra L. Turpin

SC Electric & Gas Company
1400 Lady Street, E30
Columbia, SC 29218

Sauls Funeral Home
PO Box 1630
Ridgeland, SC 29936-1630

000042

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

IN THE PROBATE COURT

CASE NUMBER: 2004-ES-27- 00068

CHARLES E. LOWTHER
DECEASED

E. LEGRAND LOWTHER & MARK ALLEN LOWTHER
PERSONAL REPRESENTATIVE

Upon review of the file, it appears to this court that there is no recent activity in this estate. Pursuant to **Rule 4 of the South Carolina Rules of Probate Court**, this file should be removed from the active docket with leave to restore upon good cause being shown why the case should be continued as a pending case. **It is therefore,**

ORDERED, ADJUDGED AND DECREED that the same be and hereby stricken from the active records of this Court with leave to restore, this Order shall not be construed as exonerating any surety of its obligation created under bond.

IT IS SO ORDERED this the 8th day of March, 2007.


Joseph N. Malphrus
Probate Judge

cc: H. Fred Kuhn, Jr., Esquire

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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

EFFIE SANDRA L. TURPIN, C.E. LOWTHER, JR.,
CLAYTON CLARK LOWTHER, and MITCHELL SAXON
LOWTHER, INDIVIDUALLY AND REPRESENTING AS
A CLASS OF BENEFICIARIES OF THE ESTATE OF
C. E. LOWTHER, SR.,

Respondents,

vs.

E. LEGRAND LOWTHER, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C.E. LOWTHER, SR., and MARK ALLEN LOWTHER, AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
C. E. LOWTHER SR.

OF WHOM E. LEGRAND LOWTHER IS

NOTICE OF APPEAL

Appellant **RECEIVED**

APR 09 2012

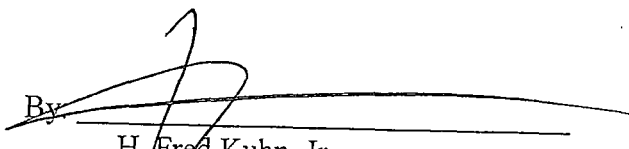
SC Court of Appeals

The Appellant, E. Legrand Lowther, hereby appeals the Orders of the Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge for the Beaufort County Court of Common Pleas entitled "Order on Appeal: Affirmed in Part, Reversed in Part" dated November 17, 2011 and filed on November 22, 2011 and "Order Dismissing Motion to Reconsider, Alter or

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Amend Judgment" dated March 21, 2012, copies of which are attached hereto. Appellant received written notice of the entry of the Order Dismissing Motion to Reconsider, Alter or Amend Judgment on March 23, 2012.

MOSS, KUHN & FLEMING, P.A.

By 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 - facsimile

Beaufort, South Carolina
April 4, 2012

Other Counsel of Record:

Harley D. Ruff, Esquire
Ruff & Ruff
17 Professional Village Circle
Beaufort, South Carolina 29907

R. Thayer Rivers, Jr., Esquire
Attorney at Law
Post Office Box 668
Ridgeland, South Carolina 29936

Attorneys for Respondents

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CERTIFICATE OF SERVICE

Undersigned certifies that the **Notice of Appeal**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

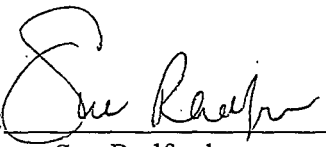
The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
102 Ribaut Road
Post Office Drawer 1228
Beaufort, South Carolina 29901

R. Thayer Rivers, Jr., Esquire
Attorney at Law
Post Office Box 668
Ridgeland, South Carolina 29936

Harley D. Ruff, Esquire
Ruff & Ruff
17 Professional Village Circle
Beaufort, South Carolina 29907

in a post office or official depository under the exclusive care and custody of the United States

Postal Service, on April 4, 2012.

By: 
Sue Radford
Secretary for H. Fred Kuhn, Jr.

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RECEIVED

APR 09 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

2012 MAR 21 PM 4:46
JEREMY ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Effie Sandra L. Turpin, C. E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell Saxon
Lowther, individually and representing as a
class of beneficiaries of the Estate of C.E.
Lowther, Sr., ... Appellants – Respondents,

v.

E. LeGrand Lowther, individually and as
Personal Representative of the Estate of C.E.
Lowther, Sr., and Mark Allen Lowther, as
Personal Representative of the Estate of C.E.
Lowther, Sr., of whom E. LeGrand Lowther
is, ... Respondent - Appellant.

ORDER ~~DISMISSING~~ MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT
Denying

This matter came before the Court at a hearing on March 13, 2012 on a Motion to
Reconsider, Alter or Amend Judgment of this Court, filed by Respondent – Appellant, E.
LeGrand Lowther. Present at the hearing were H. Fred Kuhn, Jr., Esq., counsel for Respondent –
Appellant, Harley D. Ruff, Esq. and R. Thayer Rivers, Jr., Esq., counsel for Appellants –
Respondents.

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At the hearing, Mr. Kuhn argued just the first item in his Motion (Paragraph 1), that the Court erred in reversing the Probate Court's judgment which reduced the damages against LeGrand by an amount equal to distributions that LeGrand made to his siblings from proceeds received from the sale of the Echo Tango lots.

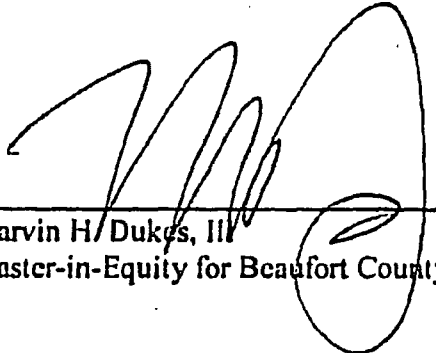
Having considered the arguments by both sides, this Court remains in Agreement with its previous Judgment and finds no reason to reconsider, alter or amend the previous Judgment.

Therefore, Respondent-Appellant's Motion to Reconsider, Alter or Amend Judgment is hereby ~~DISMISSED~~.

Denied

AND IT IS SO ORDERED.

March 21, 2012
Beaufort, South Carolina


Marvin H. Dukes, II
Master-in-Equity for Beaufort County

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THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

2011 NOV 22 PM 4:10
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Effie-Sandra L. Turpin, C. E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell Saxon
Lowther, individually and representing as a
class of beneficiaries of the Estate of C.E.

Lowther, Sr., ... Appellants – Respondents,

v.

E. LeGrand Lowther, individually and as
Personal Representative of the Estate of C.E.
Lowther, Sr., and Mark Allen Lowther, as
Personal Representative of the Estate of C.E.
Lowther, Sr, of whom E. LeGrand Lowther

is Respondent - Appellant.

ORDER ON APPEAL:
AFFIRMED IN PART, REVERSED IN PART

The Beneficiaries and E. LeGrand Lowther both appeal from the Order of the Beaufort County Probate Court dated December 21, 2010 in this case. For the reasons set forth below, I affirm in part, reverse in part, and substitute a judgment amount in favor of the Appellants – Respondents against E. LeGrand Lowther of \$289,923.65.

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I. PROCEDURAL/FACTUAL BACKGROUND

Appellants-Respondents (hereinafter, "Beneficiaries") sued E. LeGrand Lowther, Jr. (hereinafter "LeGrand") for breach of fiduciary duty and other causes of actions. The Beneficiaries alleged that LeGrand violated his fiduciary duties to them by selling a 40.81 acre parcel of unimproved real property in Jasper County belonging to the Estate (hereinafter the "40-acre parcel") for \$810,000, and then soliciting a purchase of the 40-acre parcel from the Beneficiaries for \$511,000 without disclosing the pending third party sale, and then ultimately selling the 40-acre parcel for \$810,000.

LeGrand was appointed as Co-Personal Representative of the Estate of C. E. Lowther by the Jasper County Probate Court on June 17, 2004. LeGrand is still to this day a Co-Personal Representative of the Estate. All of the transactions complained of by the Beneficiaries occurred during this process of estate administration.

A key estate asset was the 40-acre parcel. On October 12, 2005, LeGrand entered into a contract to sell the 40-acre parcel to International Society of Investors ("ISI") for \$810,000.00¹. This contract was originally made out as the "Seller" being "Lagrande Lowther, Mitchell Lowther, et al.", but LeGrand changed "Seller" to just himself. At the time of this contract the 40-acre parcel belonged to the Estate.

After entering into this ISI contract, LeGrand approached the Beneficiaries to solicit their sale to LeGrand of their interest in the 40-acre parcel. LeGrand never disclosed to any of them that he had "pre-sold" the 40-acre parcel to ISI for \$810,000.00. All of the Beneficiaries did agree to sell their interests in the 40-acre parcel to LeGrand, and on December 28, 2005 LeGrand closed on the purchase of the 40-acre parcel from the Beneficiaries for \$511,000.00².

¹ A copy of the cover page of this Contract is attached as Exhibit 1.

² A copy of the cover sheet of the HUD-1 from the closing is attached as Exhibit 2.

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Within two months of that closing, on February 14, 2006, LeGrand closed on his sale of the 40-acre parcel to Amberwinds, LLC ("Amberwinds") for \$810,000.00. As revealed at trial in the testimony of Mike Jones, a principal in the transaction, ISI and Amberwinds were virtually the same entity, with the same individual owners, and the closing proceeded exactly as scheduled under contract with LeGrand.

As part of the overall transactions, LeGrand convinced the Beneficiaries to "quitclaim" all of their interests in certain lots at "Echo Tango" to LeGrand, for no additional consideration.

The Beneficiaries signed contracts agreeing to that transfer, with the caveat (agreed upon by LeGrand) that if LeGrand defaulted on their notes, then the Beneficiaries would be entitled to 50% of the proceeds from the future sale of Echo Tango lots. LeGrand ultimately did default on those notes.

The Echo Tango lots were long owned by the Decedent. Legal title to these properties changed over the years for various reasons. At the time of Decedent's death, legal title to these properties was in LeGrand's name. However, it has been repeatedly admitted and conceded by LeGrand himself that LeGrand equitably owned only a 50% interest in these properties, with the other 50% interest owned by the Decedent. LeGrand admitted that the Decedent owned a 50% interest in deposition testimony, trial testimony and even in a written agreement³. Decedent's Will, signed on the date of his death, left this 50% interest to the Beneficiaries, not to LeGrand.

This matter was tried before The Honorable Kenneth E. Fulp, Jr., Associate Beaufort County Probate Judge, without a jury, on June 23 and 26, 2009. On December 21, 2010, Judge Fulp issued an Order of Judgment (hereinafter "Probate Court Order") against LeGrand for breach of fiduciary duty, and awarding damages of \$ 69,051.15. In coming up with this amount, Judge Fulp started with the sales price on the sale to Amberwinds - \$810,000 - and reduced it for

³ Copies of testimony and the Agreement are attached collectively as Exhibit 4.

(1) the entire actual mortgage payoff amount due SCB&T of \$593,872.50; (2) seller's attorney's fee of \$1,250.00; (3) a judgment against Clark Lowther in the amount of \$6,575.98; (4) and a South Carolina Electric & Gas Company creditor's claim against the Decedent's Estate in the amount of \$1,256.61; (5) distributions made to the Beneficiaries on profits made from the sale of "Echo Tango" lots in the amount of \$138,000. A small credit of \$6.24 was added for prorated real estate tax. These appeals followed.

II. STANDARD OF REVIEW

"Appeal from the probate court is governed by the provisions of the Probate Code." In re Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993). The Probate Code requires appeals from the probate court be to the circuit court. S.C. Code Ann. § 62-1-308. The Probate Code further instructs the circuit court to "hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(d). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." In re Howard, 315 S.C. at 360, 434 S.E.2d at 257. "[I]f there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that [the appellate court] would apply were the appeal taken directly to either [the supreme court or court of appeals]." Id. at 361, 434 S.E.2d at 257.

The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity. In re Estate of Hyman, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004); In re Thames, 344 S.C. 564, 568, 544 S.E.2d 854, 856 (Ct. App. 2001). An issue regarding statutory interpretation is a question of law. Wimberly v. Barr, 359 S.C. 414, 597 S.E.2d 853 (Ct. App. 2004). Thus, "the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to

support them.” In re Howard, 315 S.C. at 361, 434 S.E.2d at 257; see also In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (2005) (“If the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court’s findings of fact unless a review of the record discloses there is no evidence to support them.”). The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury. In re Howard, 315 S.C. at 361, 434 S.E.2d at 257.

III. LAW/ANALYSIS.

A. Appeals of the Beneficiaries

1. Measurement of Damages Based on “Clearance” versus Profits

The Beneficiaries argue that the Probate Court erred in measuring damages based on what LeGrand “cleared” from his sale of the 40-acre tract, rather than the profit he made on the sale. I agree.

The proper way to measure damages for breach of fiduciary duty is to determine the profit the fiduciary made by reason of the breach, or stated differently, what the fiduciary entity and/or beneficiaries would have earned but for the breach. See Restatement (Third) of Trusts §227 (1992), S.C. Code Ann. §62-7-1002(a).

In this case, LeGrand purchased the 40-acre tract from the Beneficiaries for \$511,000. But rather than paying \$511,000 in cash, LeGrand closed on the purchase by placing a first mortgage of \$585,000 (\$74,000 more than was needed to pay the purchase price) against the 40-acre tract⁴. This was LeGrand’s voluntary decision. None of the excess mortgage borrowings went to the Beneficiaries.

⁴ A copy of the Mortgage showing LeGrand’s borrowing of \$585,000 is attached as Exhibit 3. The HUD-1 from the closing shows a borrowing of \$511,000; however, LeGrand really borrowed \$585,000. Beneficiaries have asserted that the HUD-1 entry was intentionally deceptive on the part of LeGrand and his counsel, to keep the Estate’s beneficiaries from knowing that LeGrand had borrowed much more than the \$511,000 needed to close.

The excess mortgage borrowings by LeGrand do not affect the true profit that LeGrand ultimately made by selling the 40-acre tract to Amberwinds. The simple facts are that LeGrand purchased the 40-acre tract from the Beneficiaries for \$511,000, and that he had presold the 40-acre tract and did in fact close on the sale of it to Amberwinds for \$810,000. The profit, then – which is equal to the extra amount that the Beneficiaries would have earned but for LeGrand's actions – was \$299,000.

The Probate Court erred by giving LeGrand credit or reduction for the \$74,000 excess mortgage, which is both irrelevant to the case and misleading. By focusing on what LeGrand later "cleared" versus the correct measurement of damages – his profit – the Probate Court would have allowed him to keep the \$74,000 excess mortgage borrowings. What borrowings LeGrand may have made, and what LeGrand may have done with the excess funds that he voluntarily borrowed, are irrelevant to the profit that he realized in this transaction.

I affirm the Probate Court's reduction in damages for (1) seller's attorney's fee of \$1,250.00; (2) a judgment against Clark Lowther in the amount of \$6,575.98; (3) and a South Carolina Electric & Gas Company creditor's claim against the Decedent's Estate in the amount of \$1,256.61 since these amounts directly affected LeGrand's profit made on the sale. Similarly, I also affirm the grant of the "credit" of \$6.24.

Therefore, I reverse the Probate Court's method of measuring damages. In light of my reversal also on the "Echo Tango" proceeds discussed below, I substitute a judgment amount in favor of the Beneficiaries against LeGrand of \$289,923.65.

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2. Reduction in Damages for Echo Tango Proceeds

The Beneficiaries also argue that the Probate Court erred by reducing the damages against LeGrand by an amount equal to distributions that LeGrand made to his siblings from profits on the sale of two "Echo Tango" lots. I agree.

Presumably, the Probate Court misunderstood the Echo Tango distributions as some type of "windfall" to the Beneficiaries that should offset their loss on the 40-acre tract dollar for dollar. The truth however is that there was no windfall at all, but instead just the receipt of what the Beneficiaries were entitled to at that time and at the time of the Decedent's death, and accordingly the reduction makes no sense and it is not appropriate.

As stated above, the Echo Tango lots were long owned by the Decedent. Legal title to these properties changed over the years for various reasons. At the time of Decedent's death, legal title to these properties was in LeGrand's name. However, LeGrand has repeatedly admitted and conceded he equitably owned only a 50% interest in these properties, with the other 50% interest owned by the Decedent. Decedent's Will, signed on the date of his death, left this 50% interest to the Beneficiaries, not to LeGrand.

There was no windfall at all to the Beneficiaries from LeGrand's default. All LeGrand's default did was to prevent a situation where – knowingly or not – the Beneficiaries gave away giant values⁵ to LeGrand for free. The Beneficiaries have not received – and they will not receive – one penny more than that to which they were entitled, by LeGrand's own admissions, at the time of the Decedent's death. There is no windfall and nothing that should legally or equitably reduce the damages to the Beneficiaries.

⁵ Echo Tango basically consists of five lots. LeGrand has sold one of the lots for \$700,000. The other four lots, while perhaps not as valuable as the first, are similar and have been on the market for sale.

Similarly, the distribution of future Echo Tango profits does not and should not reduce the damages to the Beneficiaries in this case. The Probate Court, by stating that LeGrand "should be allowed" such a credit in the future, compounds its clear error in believing that Echo Tango is relevant at all to the damages suffered in this case, and sets up a situation where LeGrand in effect could get off completely free for his conduct.

Therefore, I reverse the Probate Court's reduction of damages attributable to the Echo Tango profits. In light of my reversal also on the measurement of damages discussed above, I substitute a judgment amount in favor of the Beneficiaries against LeGrand of \$289,923.65.

3. Punitive Damages

The Beneficiaries argue that the Probate Court erred by not imposing punitive damages against LeGrand. I disagree.

A decision on punitive damages is very fact-specific, and I decline to reverse the Probate Court, as the finder of fact, regarding punitive damages. Accordingly, I affirm the denial of punitive damages.

B. Appeals of LeGrand

1. Breach of Fiduciary Duty – Not Acting in Capacity as Fiduciary

LeGrand argued that the Probate Court erred by finding that LeGrand had breached his fiduciary duty to the Beneficiaries while not acting as fiduciary in connection with the challenged transaction. I disagree.

I affirm the Probate Court's decision on this issue, and fully adopt the rulings from the Probate Court Order on this issue.

2. Breach of Fiduciary Duty – LeGrand did not Profit from Challenged Transaction

LeGrand argued that the Probate Court erred by finding that LeGrand had breached his fiduciary duty to the Beneficiaries because he did not profit from the challenged transaction. I disagree.

I affirm the Probate Court's decision on this issue, and fully adopt the rulings from the Probate Court Order on this issue.

3. Breach of Fiduciary Duty – Where there was not a Breach of any Fiduciary Duty

LeGrand argued that the Probate Court erred by finding that LeGrand had breached his fiduciary duty to the Beneficiaries where there was no such breach of fiduciary duty. I disagree.

I affirm the Probate Court's decision on this issue, and fully adopt the rulings from the Probate Court Order on this issue.

C. Motion to Dismiss LeGrand's Appeal

The Beneficiaries moved to dismiss LeGrand's appeal to this Court, due to his failure to file a "Grounds for Appeal" with the Probate Court as required by S.C. Code Ann. §62-1-308(a).

LeGrand concedes that he failed to file a "Grounds for Appeal" with the Beaufort County Probate Court, as required by S.C. Code Ann. §62-1-308(a). Instead, LeGrand filed his Grounds for Appeal with the Circuit Court on January 24, 2011. Although LeGrand did not comply with the statute, he offers an affidavit explaining the misfiling. The Beneficiaries argue that the case of Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (S.C. 1994), stands for the proposition that this appeals statute requires strict compliance.

Still, I deny this motion to dismiss. While admittedly LeGrand did not comply with the above-cited statute, an attempt was made and, additionally, I find that there was no prejudice to

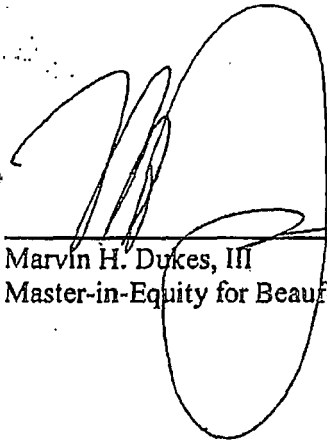
the Beneficiaries because they were aware of LeGrand's filing of the Grounds for Appeal with the Circuit Court.

IV. CONCLUSION

While the Probate Court properly held that LeGrand breached his fiduciary duty to the Beneficiaries, the Probate Court committed clear errors by using an improper measurement of damages and by giving unwarranted credits to LeGrand's benefit. The Probate Court Order is hereby affirmed in part and reversed in part, as described above, and the judgment amount against LeGrand is hereby modified to \$289,923.65.

AFFIRMED IN PART, REVERSED IN PART.

November 7, 2011
Beaufort, South Carolina



Marvin H. Dukes, III
Master-in-Equity for Beaufort County

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CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT FOR SALE AND PURCHASE made and entered into this 12th day of October, 2005, by and between Lagrande Lowther, Mitchell Lowther, et al hereinafter referred to as ("Seller"), and International Society of Investors, a North Carolina Limited Liability Company, or its designee or assigns hereinafter referred to as ("Purchaser").

WITNESSETH:

Subject to the terms and conditions of this Agreement, and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. PREMISES, IMPROVEMENTS AND CHATTELS. Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the land specifically described as Lowther Property, approximately 40 acres fronting Bee's Creek Road, being in the County of Jasper, South Carolina (the "Property").

2. PURCHASE PRICE. Purchaser hereby agrees to pay to Seller as the purchase price for the Premises the sum of Eight Hundred Ten Thousand Dollars (\$810,000.00) subject to adjustments, credits, and pro-rations as set forth herein below (the "Purchase Price"), to be paid as follows:

- 2.1. Within Forty Eight (48) hours after the execution of this Agreement (Effective Date), Purchaser shall deposit into the Russell Law Firm Trust Account, the Escrow Agent, the sum of Five Thousand Dollars (\$5,000) as a good faith deposit to be held pursuant to the terms of this Contract.
- 2.2. The balance of the Purchase Price (including a credit for the amount of the Deposits of \$ 5,000), shall be due at closing.

3. CONDITIONS PRECEDENT. This Contract For Sale and Purchase is subject to and conditional upon:

- 3.1. The Purchaser obtaining horizontal construction financing.
- 3.2. The land being permitted for no less than 55 units.
- 3.3. The Purchaser receiving confirmation that all utilities (including electrical, water, and telephone services) are available to the property and are adequate for Buyers intended use.
- 3.4. The Purchaser receiving all permits, licenses, approvals or consent from any and all governmental authorities and agencies having jurisdiction over the property and which are necessary to allow development, construction of the Property, such permits, licenses, approvals and consents to include, without limitation, building permits, storm water management permits, concurrence

A. Settlement Statement

U.S. Department of Housing
and Urban Development

EXHIBIT 2

HUD-1 (3-88) OMB No. 2502-0285

B. Type of Loan

1 FHA 2. FmHA 3. Conv. Union 4. VA 5. Conv. Ins 6. P/a Number 7. Loan Number 8. Mortgage Insurance Case Number

C. Notes: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower

E. Name and Address of Seller

F. Name and Address of Lender

R. Leonard Lowther

Vivian Gene L. Tiltonson,
Rita Elizabeth L. Rogers,
Mark Allen Lowther, et al

G. Property Location

40.01 acres
Jasper County, SC
US 10 10 010

H. Settlement Agent

Moss & Kuhn, P.A.

I. Date of Settlement

J. Settlement Date

Moss, Kuhn & Fleming, P.A.
1501 North St
Greenville, SC 29602

12/21/09

K. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower	
101. Contract sales price	511,000.00
102. Personal property	
103. Settlement charges to borrower (line 1400)	3,409.78
104.	
105.	
Adjustments for items paid by seller in advance	
106. City/town taxes	to
107. County taxes	to
108. Assessments	to
109.	
110.	
111.	
112.	
120. Gross Amount Due From Borrower	514,409.78

L. Summary of Seller's Transaction

400. Gross Amount Due To Seller	
401. Contract sales price	511,000.00
402. Personal property	
403.	
404.	
405.	
Adjustments for items paid by seller in advance	
406. City/town taxes	to
407. County taxes	to
408. Assessments	to
409.	
410.	
411.	
412.	
420. Gross Amount Due To Seller	511,500.00

M. Amounts Paid By Or In Behalf Of Borrower

201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207. pd per closing 12.8.09 w/SCRA & T	511,000.00
208.	
209.	

N. Reductions in Amount Due To Seller

501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	0.00
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507. pd per closing 12.8.09 w/SCRA & T	511,000.00
508.	
509.	

O. Adjustments for items unpaid by seller

210. City/town taxes	to
211. County taxes	to
212. Assessments	to
213.	
214.	
215.	
216.	
217.	
218.	
219.	

P. Adjustments for items unpaid by seller

510. City/town taxes	to
511. County taxes	to
512. Assessments	to
513.	
514.	
515.	
516.	
517.	
518.	
519.	

120. Total Paid By/For Borrower

511,509.08

520. Total Reduction Amount Due To Seller

511,000.00

300. Cash At Settlement From/To Borrower

600. Cash At Settlement To/From Seller

301. Gross amount due from borrower (line 120)	514,409.78
302. Less amounts paid by/for borrower (line 220)	511,000.00

601. Gross amount due to seller (line 420)	511,500.00
602. Less reductions in amt due seller (line 520)	511,000.00

303. Cash From To Borrower 3,409.78

603. Cash To From Seller 0.00

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4
\$15.00
Mortgage

200500005093
Filed for Record In
JASPER COUNTY
PATSYE M GREENE
12-28-2005 At 09:29
MORTGAGE 15.
Volume 394 Page 24

EXHIBIT 3

This document was prepared by (name, address, phone):
SOUTH CAROLINA BANK AND TRUST, N.A.
850 JOHN C. CALHOUN DRIVE
ORANSEBURG, SC 29118
(803) 634-2176

____ State of South Carolina _____ Space Above This Line For Recording Date _____

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 12-08-2005 and the parties and their addresses are as follows:

MORTGAGOR: E. LEGRAND LOWTHER
D.A.

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: SOUTH CAROLINA BANK AND TRUST, N.A.
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
850 JOHN C. CALHOUN DRIVE
PO BOX 8007 ORANSEBURG, SC 29118

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
SEE ATTACHMENT FOR FULL LEGAL DESCRIPTION

The property is located in BEAUFORT COUNTY at 40 ACRES ON HIGHWAY 13
(County)
BEES CREEK, South Carolina
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT not for FHAAL, FRMFC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES (page 1 of 8)
ENCLOSURE, © 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCD-FEB-BC 11/21/2003 *Eth*

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3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 1,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances for interest accrued on such advances made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagor shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date);

NOTE DATED 12-08-2005 IN THE AMOUNT OF \$585,000.00 IN THE NAME OF E. LEGRAND LANTIER

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
- 6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
- 8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

EXHIBIT 4

er v. Lowther

! Lowther taken March 27, 2009

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1 A Yes.

2 Q What does that say?

3 A In consideration for the price paid herein,
4 Seller additionally agrees to release any right which
5 Seller may have in that property and lots in the Echo Tango
6 area, Beaufort County, and will execute a Quitclaim deed to
7 said property at closing.

8 Q Who are the sellers?

9 A This was the sellers that were selling --

10 Q Your siblings, right?

11 A Yeah, my siblings, yeah.

12 Q So doesn't that say exactly a hundred and eighty
13 degrees the opposite of what you just said, that a
14 mandatory condition of this is they say that Echo Tango is
15 yours, and they Quitclaim it back to you?

16 A It was a legal thing to do, because when my
17 father died, Echo Tango was in my name.

18 Q So do you think this language here, of them
19 legally signing a written contract quit claiming Echo Tango
20 back to you is consistent with your prior testimony of they
21 know Echo Tango is half their's?

22 A Yes. I was buying them out of Echo Tango, also
23 any interest they may try to have in Echo Tango that they
24 thought they had. I was buying everything from them. There
25 never was any question that they were going to get fifty

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1 percent of the proceeds out of Echo Tango. I made it clear
2 to them. I made it clear to the attorneys.

3 Q So you made it clear that notwithstanding your
4 title ownership to Echo Tango --

5 A Yes.

6 Q -- and notwithstanding your going to the effort
7 of, I assume, telling your lawyer to write this in the
8 contract that they give up anything they have in Echo
9 Tango, your testimony is you, still, out of the goodness of
10 your heart, going to give them fifty percent of the closing
11 proceeds?

12 A They were getting it. It was entitled to them.
13 Okay? In my opinion.

14 Q You admit it is entitled to them now, since you
15 defaulted on the Note.

16 A It was entitled to them before. I was going to
17 give it to them. I felt like I owed it to them. I think I
18 verified that with Mr. Rivers this morning, didn't I Mr.
19 Rivers?

20 MR. RIVERS: You haven't seen that, but we
21 verified that that was legally binding.

22 MR. RUFF: Well, that's not part of my case.

23 BY MR. RUFF:

24 Q Let's get back, then, to your role as fiduciary.

which is exhibit 5, and I asked you was that your original operating agreement. And what was your answer?

A Yes.

Q It was?

A Yes.

MR. KUHN: Which is what he just said.

COURT: You're saying the unmarked document is something else?

MR. KUHN: It's marked. He's identified exhibit

5.

BY MR. RIVERS:

Q Now, let me ask you this. This is a copy of exhibit 5, I'd like to put that in here.

MR. KUHN: So this makes sense to me later, what we've been referring to as exhibit 3 is exhibit 3 out of the deposition which is now marked as exhibit 7 to this.

MR. RIVERS: Correct.

(WHEREUPON, a document was marked as Plaintiff's Exhibit Number 7 for the purposes of identification).

MR. RIVERS: Correct.

COURT: And I still haven't seen Number 6, which as I understand it, is a disputed document. Okay.

BY MR. RIVERS:

Q Now, while the title to Echotango was in your

Bettye Anderson & Associates.
Beaufort, South Carolina
(843)525-0791 (800)543-5506

Direct by Mr. Rivers

Page 12 of 97

name, it's undisputed that you and your dad owned it together 50/50; is that right?

A Yes. Uh-huh.

Q Okay. And in the exhibit number 7, it recites that he is to be reimbursed for his original investment of four acres in Grahamville, that be'ng what y'all gave Nancy Horry Garbade Jenkins, whatever, for the property which was valued at \$20,000; is that right?

A Yes. That was in the original agreement.

Q And at some point, y'all got straight on that \$20,000?

A Yes, we did.

Q Was that by you writing him a check, or him being given credit for certain development costs, or how?

A Him being given money.

Q So you wrote him a check for \$20,000?

A No. I gave him money in different ways. In cash, bought an automobile for him, borrowed money and gave him cash on a building.

Q Okay. Now when y'all were doing this work, when did you get this property from Nancy?

A 1986, if I'm not mistaken.

Q Okay. And at the time that y'all got this property, how did you divide up the initial expenses?

A The initial expenses?

Bettye Anderson & Associates
Beaufort, South Carolina
(843)525-0791 (800)543-5506

Direct by Mr. Rivers

Page 13 of 97

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STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

AGREEMENT

This is to acknowledge that the following individuals are the equitable and true owners of the below-described interest in Echo Tango property located in the Chechessee Community in Beaufort County. Acknowledging this ownership interest, title, however, shall be in the name of B. LeGrand

Lowther for business purposes.

B. LeGrand Lowther	50% ownership
C. E. Lowther	50% ownership

All net proceeds from any sales shall be divided according to the above interests. Expenses are to be reimbursed before net proceeds are divided. C.E. Lowther is to be reimbursed for his original investment of 4 acres in Grahamville, total value \$20,000.00, which were traded as part of the original purchase of the Echo Tango property. LeGrand Lowther is to be reimbursed for all other expenses, which include, but are not limited to: legal fees, governmental fees, development costs, maintenance costs, taxes, engineering fees, utility fees, permit and license fees and any other associated costs.

Agreed to this the _____ day of _____, 2002.

C. E. Lowther
WITNESS

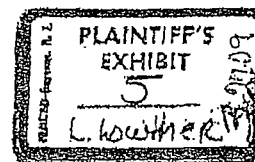
B. LeGrand Lowther
E. LEGRAND LOWTHER

WITNESS

C. E. LOWTHER

PLAINTIFF'S
EXHIBIT

75-11-09



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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Effie Sandra L. Turpin, C.E. Lowther,
Jr., Mitchell Saxon Lowther, individually)
and representing as a class the beneficiaries)
of the Estate of C.E. Lowther, Sr.,)

Plaintiffs)

v.)

E. LeGrand Lowther, individually and)
as Personal Representative of the Estate)
of C.E. Lowther, Sr., and Mark Allen)
Lowther, as Personal Representative of)
the Estate of C.E. Lowther, Sr.,)

Defendants)

COPY

IN THE PROBATE COURT

CASE # 2007ES0700655

SUMMONS

FILED
RECORDED
FEB 15 PM 4:13
CLERK OF COURT
BEAUFORT COUNTY, SC

TO THE DEFENDANTS, E. LEGRAND LOWTHER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF C.E. LOWTHER, SR., AND MARK ALLEN LOWTHER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF C.E. LOWTHER, SR.:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at their office located at 17 Professional Village Circle, Beaufort, South Carolina 29907 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

BY: RUFF & RUFF, LLC
Attorneys for Plaintiff

Signature:

Name:

Address:

Harley D. Ruff

17 Professional Village Circle

Beaufort, SC 29907

Telephone (O): (843) 524-5400

February 6, 2008

Beaufort, South Carolina

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STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF BEAUFORT)

CASE # 2007ES0700655

Effie Sandra L. Turpin, C.E. Lowther, Jr.,)
Mitchell Saxon Lowther, individually and)
representing as a class the beneficiaries)
of the Estate of C.E. Lowther, Sr.,)
Plaintiffs)

COMPLAINT

v.)

E. LeGrand Lowther, individually and)
as Personal Representative of the Estate)
of C.E. Lowther, Sr., and Mark Allen)

Lowther, as Personal Representative of)
the Estate of C.E. Lowther, Sr.,)

Defendants)

Plaintiffs Effie Sandra L. Turpin, C.E. Lowther, Jr., and Mitchell Saxon Lowther, individually and representing as a class the beneficiaries of the Estate of C.E. Lowther, Sr. ("Plaintiffs"), complaining of Defendant E. LeGrand Lowther, individually and as Personal Representative of the Estate of Charles Eugene Lowther, Jr. ("LeGrand") and Mark Allen Lowther as Personal Representative of the Estate of Charles Eugene Lowther, Jr. ("Mark") (together, "Defendants"), would through their undersigned counsel respectfully show unto the Court as follows:

PARTIES

1. Plaintiffs are citizens and residents of Jasper County, South Carolina, and are beneficiaries of the Estate of C.E. Lowther, Sr. (the "Estate"), which estate is being administered through the Beaufort County, South Carolina Probate Court, as Case Number 2007ES0700655.

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2. Defendants are, upon information and belief, citizens and residents of Jasper County, South Carolina, and are the Personal Representatives of the Estate.

JURISDICTION

3. This Court has jurisdiction over these matters based upon South Carolina Code section 62-1-302(a).

VENUE

4. Venue is appropriate in Beaufort County, South Carolina, pursuant to South Carolina Code sections 62-1-303 and 62-3-201.
-

SUMMARY OF THE CASE

5. This is a civil case in which one or both of the Defendants, who are the Personal Representatives of the Estate, have violated their fiduciary duties to the Estate's beneficiaries by: (1) converting and defrauding the Estate's beneficiaries out of \$299,000, by selling Estate land to a third party for \$810,000, and then soliciting a "sale" of the Estate land to LeGrand by the Estate's beneficiaries (who had no notice or knowledge of the third party sale) for \$511,000, so that in effect LeGrand could take \$299,000 of the Estate's profit on the third party sale, and (2) converting and misappropriating Estate income from timber sales.

FACTS

6. Decedent died on June 11, 2004.
7. Part of Decedent's estate consisted of a 40.81 parcel of land in Jasper County, South Carolina (the "Estate Land").
8. Decedent's Will left the Estate Land to Plaintiffs.
9. Decedent's Will named Defendants as Personal Representative of his Estate.

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10. The Probate Court of Jasper County, South Carolina appointed Defendants as Personal Representative of Decedent's estate (Jasper County Probate Case 2004ES2700068) by order dated June 17, 2004. Such case was later stricken under Rule 4, South Carolina Rules of Probate Court, by Order of the Honorable Joseph N. Malphrus, Jr. dated March 8, 2007.
11. Said case was transferred to the Beaufort County Probate Court and a hearing was held on October 15, 2007 to determine whether good cause existed to re-open the estate and restore it to active status. By Order of the Honorable Kenneth E. Fulp, Jr., Defendants continue to serve as Personal Representatives of Decedent's Estate.
12. On October 12, 2005, LeGrand entered into a contract to sell the Estate Land to International Society of Investors, a North Carolina limited liability company, for \$810,000 (the "ISI Contract"). A copy of the ISI Contract is hereto attached as Exhibit 1.
13. Soon after entering into the ISI Contract, LeGrand solicited Plaintiffs to "sell" the Estate Land to him for \$511,000. LeGrand represented to Plaintiffs that \$511,000 represented fair market value for the Estate Land, that the Plaintiffs would be better off "selling" the Estate Land to LeGrand than for the Estate to place the Estate Land on the open market for sale, and that he (LeGrand) likely would have to take a loss if he were to re-sell the Estate Land. At the time, Plaintiffs had no notice or knowledge whatsoever that LeGrand had already entered into the ISI Contract, to sell the Estate Land for \$810,000. (The \$299,000 difference between the \$810,000 sale price minus the \$511,000 received by the Estate's beneficiaries is referred to herein as the "Estate Land Profits".)
14. Upon reaching the agreement with Plaintiffs, Defendants then filed a "Deed of Distribution", transferring the Estate Land to Plaintiffs, and had Plaintiffs simultaneously

sign a Deed of the Estate Land to LeGrand. Plaintiffs' Deed of the Estate Land to LeGrand was recorded on December 28, 2005. A copy of Plaintiffs' deed is hereto attached as Exhibit 2.

15. Less than two months later, on February 14, 2006, LeGrand closed on the \$810,000 sale of the Estate Land to Amberwinds, LLC, upon information and belief to be the successor or assignee under the ISI Contract. A copy of the deed to Amberwinds, LLC and the closing statement from such sale are together hereto attached as Exhibit 3.

-
16. Defendants, during their tenure as Personal Representative, have sold timber ("Timber") from Estate property for, on information and belief, approximately \$300,000. However, Defendants have reported receiving much less from Timber sales, on the Estate's accounting. (The Timber revenues above what Defendants have reported on the Estate's Accounting are referred to herein as the "Timber Profits".)

FIRST CAUSE OF ACTION

(CONSTRUCTIVE TRUST)

17. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
18. A constructive trust has arisen because the circumstances, including fraud, bad faith, abuse of confidence and violation of a fiduciary duty, under which the Estate Land was acquired by LeGrand from Plaintiffs and subsequently re-sold, makes it inequitable that the Estate Land Profits be retained by LeGrand.
19. As a direct and proximate result of LeGrand's acts and/or omissions, Plaintiffs request that the court impose a constructive trust upon the Estate Land Profits illegally, improperly, and tortiously obtained by LeGrand.

SECOND CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY)

20. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
 21. A fiduciary relationship has existed between Plaintiffs and Defendants, insofar as Defendants are the Personal Representative of the Estate, of which estate Plaintiffs are beneficiaries.
 22. Defendants owed fiduciary duties to Plaintiffs.
-
23. Defendants violated his fiduciary duties to Plaintiffs, by converting and defrauding Plaintiffs out of the Estate Land Profits and the Timber Profits.
 24. Defendants' violations have caused direct financial damage to Plaintiffs.

THIRD CAUSE OF ACTION

(FRAUD)

25. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
26. LeGrand represented to Plaintiffs that his purchase price of \$511,000 for the Estate Land represented fair market value for the Estate Land, and that the Plaintiffs would be better off "selling" the Estate Land to LeGrand than for the Estate to place the Estate Land on the open market for sale.
27. LeGrand's representations were false.
28. LeGrand's representations were material.
29. LeGrand knew of the falsity of his representations, and/or recklessly disregarded their truth or falsity.
30. LeGrand intended that Plaintiffs act upon his representations.
31. Plaintiffs were ignorant of the falsity of LeGrand's representations.

- 32. Plaintiffs relied on the truth of LeGrand's representations.
- 33. Plaintiffs had the right to rely on LeGrand's representations.
- 34. Plaintiffs were consequently and proximately injured by LeGrand's representations.

FOURTH CAUSE OF ACTION

(CONSTRUCTIVE FRAUD)

- 35. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
- 36. Plaintiffs were consequently and proximately injured by LeGrand's representations.

FIFTH CAUSE OF ACTION

(FRAUD IN THE INDUCEMENT)

- 37. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
- 38. LeGrand represented to Plaintiffs that his purchase price of \$511,000 under the Estate Land Contract represented fair value for the Estate Land, and that Plaintiffs would be better off "selling" the Estate Land to LeGrand than for the Estate to place the Estate Land on the open market for sale.
- 39. LeGrand's representations were false representations relating to a present or preexisting fact.
- 40. LeGrand intended to deceive Plaintiffs.
- 41. Plaintiffs had the right to rely on LeGrand's representations.
- 42. Plaintiffs were consequently and proximately injured by LeGrand's representations.

SIXTH CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION)

- 43. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
- 44. LeGrand represented to Plaintiffs that his purchase price of \$511,000 for the Estate Land

represented fair value for the Estate Land, and that Plaintiffs would be better off “selling” the Estate Land to LeGrand than for the Estate to place the Estate Land on the open market for sale.

- 45. LeGrand’s representations were false.
- 46. LeGrand had a pecuniary interest in making the representations.
- 47. LeGrand owed a duty of care to see that he communicated truthful information to Plaintiffs.
- 48. LeGrand breached that duty by failing to exercise due care.
- 49. Plaintiffs justifiably relied on LeGrand’s representations.
- 50. Plaintiffs suffered a pecuniary loss as the proximate result of their reliance on LeGrand’s representations.

SEVENTH CAUSE OF ACTION

(CONVERSION)

- 51. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
- 52. The Estate Land Profits and the Timber Profits rightfully belong to Plaintiffs.
- 53. Defendants are obligated to deliver the Estate Land Profits and the Timber Profits to Plaintiffs.
- 54. Defendants have assumed and exercised the rights of ownership over the Estate Land Profits and the Timber Profits belonging to the Plaintiffs, without authority, to the exclusion of the rights of the Plaintiffs.
- 55. Defendants have illegally detained the Estate Land Profits and the Timber Profits from the Plaintiffs.
- 56. Plaintiffs have been consequently and proximately injured by Defendants’ actions.

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EIGHTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

- 57. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
- 58. Through the Estate Land transaction, Plaintiffs conferred a benefit upon LeGrand.
- 59. LeGrand realized that benefit.
- 60. LeGrand has retained that benefit.
- 61. The circumstances described herein make it inequitable for LeGrand to retain that benefit without paying its value.

NINTH CAUSE OF ACTION

(ACCOUNTING)

- 62. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
- 63. Defendants have acted, are acting, and will continue to act in a manner that is illegal, fraudulent, oppressive and unfairly prejudicial to the Estate and to the Plaintiffs.
- 64. Defendants have misappropriated, taken, misapplied, or wasted financial assets belonging to the Estate and/or to the Plaintiffs.
- 65. Defendants should be ordered to provide a full, accurate accounting of the Estate, as well as a full, accurate accounting of all funds, other assets, or benefits that have been included in or part of, or that have been received from and/or taken from, the Estate Land Profits and the Timber Profits.

TENTH CAUSE OF ACTION

(REMOVAL OF PERSONAL REPRESENTATIVES)

- 66. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
- 67. Pursuant to South Carolina Code section 62-3-611(b), removal of Defendants as Personal

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Representatives of the Estate would be in the best interests of the Estate.

68. Pursuant to South Carolina Code section 62-3-611(b), Defendants as Personal Representatives of the Estate have mismanaged the Estate and have failed to perform their duties pertaining to the office.
69. Pursuant to South Carolina Code section 62-3-611(a), Defendants as Personal Representatives of the Estate shall not act after receipt of notice of this removal proceeding except to account, to correct maladministration, or to preserve the estate.

WHEREFORE, Plaintiffs pray for judgment against Defendants, for the following:

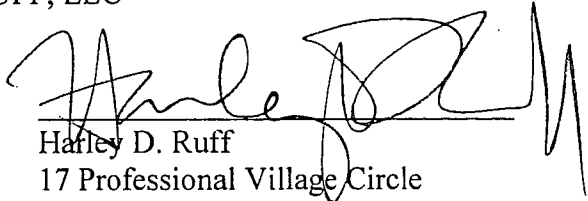
- i. For the actual, special, incidental and consequential damages sustained in an amount to be more specifically proven at trial;
- ii. For punitive damages;
- iii. For the imposition of a constructive trust upon the Estate Land Profits and the Timber Profits belonging to Plaintiffs;
- iv. For an Order requiring Defendants to provide Accountings;
- v. For the costs of this action;
- vi. For reasonable attorneys' fees;
- vii. For the removal of Defendants as Personal Representatives of the Estate; and
- viii. For such other and further relief as this Honorable Court may deem just and proper.

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Respectfully submitted,

Effie Sandra L. Turpin, C.E. Lowther, Jr.,
Mitchell Saxon Lowther, individually and
representing as a class the beneficiaries of
the Estate of C.E. Lowther, Sr., Plaintiffs

By their attorneys,
RUFF & RUFF, LLC

Signature: 

Name: Harley D. Ruff

Address: 17 Professional Village Circle
Beaufort, SC 29907

Telephone: (843) 524-5400

and

Name: R. Thayer Rivers, Jr., Esquire

Address: Post Office Box 668
Ridgeland, SC 29936

Telephone: (843) 726-8136

Beaufort, South Carolina
February 6, 2008

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CONTRACT FOR SALE AND PURCHASE

E.J. **THIS CONTRACT FOR SALE AND PURCHASE** made and entered into this 12th day of October, 2005, by and between **Lagrande Lowther, ~~Mitchell Lowther, et al~~**, hereinafter referred to as ("Seller"), and **International Society of Investors, a North Carolina Limited Liability Company**, or its designee or assigns hereinafter referred to as ("Purchaser").

WITNESSETH:

Subject to the terms and conditions of this Agreement, and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. **PREMISES, IMPROVEMENTS AND CHATTELS.** Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the land specifically described as Lowther Property, approximately 40 acres fronting Bee's Creek Road, being in the County of Jasper, South Carolina (the "Property").

2. **PURCHASE PRICE.** Purchaser hereby agrees to pay to Seller as the purchase price for the Premises the sum of **Eight Hundred Ten Thousand Dollars** (\$810,000.00) subject to adjustments, credits, and pro-rations as set forth herein below (the "Purchase Price"), to be paid as follows:

- 2.1. Within Forty Eight (48) hours after the execution of this Agreement (Effective Date), Purchaser shall deposit into the Russell Law Firm Trust Account, the Escrow Agent, the sum of Five Thousand Dollars (\$5,000) as a good faith deposit to be held pursuant to the terms of this Contract.
- 2.2. The balance of the Purchase Price (including a credit for the amount of the Deposits of \$ 5,000), shall be due at closing.

3. **CONDITIONS PRECEDENT.** This Contract For Sale and Purchase is subject to and conditional upon:

- 3.1. The Purchaser obtaining horizontal construction financing.
- 3.2. The land being permitted for no less than 55 units.
- 3.3. The Purchaser receiving confirmation that all utilities (including electrical, water, and telephone services) are available to the property and are adequate for Buyers intended use.
- 3.4. The Purchaser receiving all permits, licenses, approvals or consent from any and all governmental authorities and agencies having jurisdiction over the property and which are necessary to allow development, construction of the Property, such permits, licenses, approvals and consents to include, without limitation, building permits, storm water management permits, concurrence

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E.J.

approvals, etc.

- 3.5. The Purchaser being satisfied in its absolute discretion with the results of soil tests, subsurface water tests and a level 1 Environmental Site Assessment.
- 3.6. However, and notwithstanding anything herein to the contrary, the Buyer has the option to waive one or more of the said conditions.
- 3.7. The Seller agrees to cooperate with Purchaser as reasonably requested and without expense in obtaining the satisfaction, fulfillment, and/or compliance with any or all conditions or contingencies hereunder. Seller hereby authorizes Purchaser to make any applications, petitions or submissions as may be required to obtain any and all such land use changes or amendments, permits, licenses, consents or approvals which may be required to allow the development of Purchaser's Intended Use. To the extent required, Seller agrees to execute or join in any such applications, petitions or submissions, or similar documentation.

4. **INSPECTION PERIOD.** Purchaser shall have a period of 30 days from and after the Effective Date (The Inspection Period) within which to satisfy itself as to the Conditions Precedent in paragraph 3 herein. If on or before the end of the Inspection Period the Conditions Precedent are not satisfied or waived, and/or Purchaser in Purchaser's sole and absolute discretion determines that the Premises are not suitable or acceptable in all respects, or that Purchaser's intended use thereof is not feasible, all in Purchaser's sole judgment, then Purchaser shall have the right to terminate this Contract, in which event the deposit will be returned to Purchaser, and thereafter the parties shall have no further obligations, duties or liability hereunder except under paragraph 14 below.

- 4.1 In order to allow Purchaser to expeditiously and timely complete such tests, studies, etc., as referred to herein above, Seller shall deliver to Purchaser within five (5) days after the Effective Date copies of any and all surveys, title policies or commitments, appraisals, environmental audits or studies, engineering reports, studies, plans or drawings, site plans or layouts, zoning or land use documentation or information, soil tests, studies or reports, studies, plans or drawings, site plans or layouts, zoning or land use documentation or information, soil tests, studies or reports, wetlands jurisdictional determinations or reports, feasibility studies, concurrence evaluations, documentation or information concerning the Premises or any correspondence concerning any of such topics, which Seller, or any agent or representative of Seller has in its possession.

8-7-01 5. **EXTENSIONS.** In the event the Purchaser does not have the, site plan approval, building permits, and all other permits (as required) within the Inspection Period then Purchaser may elect to extend said Period until December 27, 2006, after which date the closing conditions apply, with all other terms conditions and dates to be adjusted accordingly.

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6. **SURVEY.** Purchaser shall obtain a boundary survey (the "Survey") of the Premises within

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30 days after expiration of Inspection period (Paragraph. 4,) and compliance and/or waiver of conditions in Paragraph. 3. certified by the surveyor to the Purchaser, Purchaser's counsel, the Seller and the Title Insurance Company as having been made in compliance with the minimum technical standards adopted for surveys conducted in the State of South Carolina, which survey shall also be in form and content satisfactory to the Title Insurance Company for the purposes of issuing the owner's title insurance policy required by this Agreement, and deleting there from the standard general exceptions for matters which might be revealed by the accurate survey of the Premises and shall deliver a sealed copy of same to Seller. Said survey shall show and designate any and all of the Permitted Exceptions, and any and all other easements, rights of way, encroachments, overlaps or improvements pertaining to the boundaries of the Premises by metes and bounds or other appropriate legal description. In the event the legal description contained in the Survey describes the Premises as more than one parcel, the Survey shall contain the surveyor's certification to the effect that all such parcels which comprise the Premises are contiguous each to the other, and that there are no gaps, gores, overlaps or hiatuses. Moreover, in the event that the legal description of the Premises describes the Property as more than one parcel, the title insurance policy to be issued in accordance with Paragraph 3 above shall contain a contiguity endorsement and a survey endorsement insuring that all the parcels comprising the Premises are contiguous each to the other, with no gaps, gores, overlaps or hiatuses. The Survey shall certify the acreage for the entire Premises to the second decimal place. The Survey shall further certify that no portion of the Premises is located within the one hundred (100) year flood plain or within any Special Flood Hazard Area as established by the local, state or federal government; or, if any portion of the Premises does lie in the one hundred (100) year flood plain, the Survey shall delineate such areas, and certify the amount of acreage lying within each or either of such areas. The cost of the Survey shall be borne by Purchaser and paid by Purchaser on or before Closing.

8. CURING OF UNPERMITTED EXCEPTIONS AND SURVEY DEFECTS.

Purchaser shall have fifteen (15) days after the delivery of the last to be delivered of the Survey and the Title Commitment to examine same. If the Title Commitment or Survey discloses either unpermitted exceptions, exceptions or encroachments which are unacceptable to Purchaser, or matters that render the title unmarketable (herein referred to as "title defects"), Purchaser shall so notify Seller on or before the end of the applicable fifteen (15) day period, and Seller shall thereafter use its best efforts to have the defects removed. In the event Seller is unable to have such title defects removed or corrected on or before 60 days after said notice, Purchaser shall have the right to either: (a) terminate this Agreement upon written notice to Seller, and all sums paid or deposited by Purchaser hereunder shall be returned to Purchaser with neither party having any further obligation hereunder; or (b) waive such objection and proceed to closing of this transaction in accordance with the terms hereof without any reduction in the Purchase Price.

9. SELLER'S DOCUMENTS. Seller shall execute and deliver to Purchaser at closing, the following:

9.1. A General Warranty Deed executed by Seller

conveying fee simple title of the Premises to Purchaser, subject only to the Permitted Exceptions, in form satisfactory to the Purchaser and the title Insurance company;

9.2. A Seller's affidavit sufficient in form and content to satisfy the requirements of the applicable South Carolina Statutes, and to permit deletion of all of the standard ALTA general exceptions from the Title Commitment and the Title Policy;

9.3. Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, or which may be required by the Title Company in order to issue the Title Policy as required by the Title Commitment.

E.L.L. 10. **EXPENSE PROVISIONS.** State documentary stamps required on the deed, ^{cell-back fees} the cost and expenses of any corrective instruments or actions, the title insurance premium and title search charges shall be paid by Seller on or before Closing. The cost of recording the deed and the cost of the Survey shall be paid by the Purchaser on or before closing. Each party shall bear and pay its own attorneys' fees and expenses. ~~Seller shall pay for corrective instruments or actions and deed preparation.~~

11. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.** The Seller hereby represents, warrants and covenants to and with the Purchaser as follows:

11.1. Prior to Closing, the Seller shall hold fee simple title to the Premises subject to no liens, contracts, mortgages, Agreements, pledges, encumbrances, charges or defects of any kind other than those to be removed at closing except the Permitted Exceptions. From and after the Effective Date hereof, Seller shall not enter into any contracts, Agreements, encumbrances, liens, or other documents or instruments for or regarding the sale, transfer, disposition, assignment, conveyance, encumbrance, lien, pledge of the Premises, or any part thereof or any interest therein, or which may result in any lien or encumbrance with regard to the Premises, or any part thereof, or an interest therein, without the prior written consent of the Purchaser.

11.3. Seller has paid (or covenants that he will pay prior to Closing) any and all taxes (excluding taxes not yet due) which have or could become a lien or charge against the Premises, subject to the pro-ration herein provided.

11.4. Except for the liens, encumbrances or charges against the Premises shown on the public records, there are no other liens, encumbrances, unpaid bills to vendors, outstanding obligations or charges (contingent or absolute) in existence against such Seller or any business conducted thereon, or any existing undisclosed or unrecorded liens, encumbrances or charges, which could adversely affect title to the Premises after the Effective Date hereof or the Closing Date, and Seller has no knowledge of any matters pending that could result in a lien against the Premises, or in any way substantially adversely affect title to the Premises.

11.5. From and after the Effective Date hereof, Seller will not cause, permit, suffer, or allow any change, modification, or alteration to be made to the Premises, or any part or portion thereof, or its physical condition without the prior written consent of Purchaser.

11.6. No notice from governmental body has been served upon Seller claiming any violation of any law, ordinance, code or regulations as to the Premises, and Sellers have no knowledge that any such violation exists with regard to the Premises.

11.7. That there are no leases of the Premises, or any portion thereof, other than are disclosed herein.

11.8 Seller has not received any notice, and has no knowledge, that the Premises, or any portion thereof, is or will be subject to or affected by: (i) any special assessments, whether or not presently a lien thereon; or (ii) any condemnation, eminent domain, change in grade of public streets, or similar proceeding.

11.9. That there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, to which Seller is a party, ~~affecting the Premises, or any portion thereof, or relating to or arising out of the ownership of the Premises, in any court or before or by any Federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.~~

11.10. Seller has the full right, power and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and Agreements of Seller hereunder.

11.11. Seller has no knowledge or notice that any present default or breach exists under any mortgage or other encumbrance encumbering the Premises, or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Premises.

11.12. The Property has access to a publicly dedicated road right-of-way.

12. **REPRESENTATIONS.** Purchaser hereby represents and warrants to Seller as follows:

12.1. To the best of Purchaser's knowledge, no consent to the transaction contemplated by this Agreement by any person or entity other than Purchaser is required;

12.2. The person executing this Agreement on behalf

of the Purchaser is fully and duly authorized to do so by Purchaser, and any and all actions required to make this Agreement and the performance thereof legally binding obligations of Purchaser, have been duly and Legally taken. No further consent, authorization or approval of any person or entity is required for Purchaser to enter into or perform this transaction.

13. **CONTINUING REPRESENTATIONS AND WARRANTIES.** The representations and warranties of the parties contained herein shall be deemed to be continuing representations and warranties up to and including the Closing Date and at all times between the Effective Date hereof and the Closing Date, with the same force and effect as though such representations and warranties had been made as of Closing.

14. **ACCESS TO THE PREMISES.** Seller covenants and agrees that from and after the date hereof, and until the Closing Date, it will afford Purchaser, and its authorized representatives and agents, entry upon and access to the Premises for the purpose of satisfying itself with respect to the representations, warranties and covenants of the Seller contained herein, and to take soil tests, borings, make surveys or layouts for the improvements, or such other tests, evaluations, or investigations as Purchaser may deem necessary or desirable. Purchaser hereby agrees to repair any damage to the premises occasioned by the Purchasers conducting test borings or otherwise being on the property during the inspection period and indemnify and hold Seller harmless from and against any and all loss, damage, injury, claim, cost or expense of any nature whatsoever including attorneys' fees (whether incurred before, during or after trials, or upon any appellate level) arising from or pertaining to Purchaser's exercise of its rights granted by this Paragraph 14 which obligation shall survive any termination of this Agreement.

15. **General Conditions to Obligations of the Purchaser.** The obligations of Purchaser hereunder are, at the option of Purchaser, subject to and contingent upon the conditions that:

15.1. The representation and warranties made by Seller herein shall be correct statements of fact as said facts exist as of the Closing Date, and at all times between the Effective Date hereof and the Closing Date, and with the same force and effect as though such representations and warranties had been made as of the Closing Date;

15.2. All terms, covenants, Agreements and provisions of this Agreement to be complied with and performed by the Seller on or before the Closing Date shall have been duly complied with and performed.

15.3. If these conditions are not met then, at Purchaser's option, the Deposit shall be returned to Purchaser upon Purchaser's notice of termination of the Contract given prior to Closing.

16. **REAL ESTATE COMMISSION.**

9.1. Both Seller and Purchaser hereby represent and warrant

that neither Seller nor Purchaser have engaged or dealt with any agent, broker or finder with regard to this Agreement or to the sale and purchase of the Property contemplated hereby.

E.L.F. 17. **CLOSING.** Subject to the terms and conditions hereof, including Paragraph 5 herein the Closing of this transaction shall be held at such time as may be mutually agreed upon by Seller and Purchaser, at the office of a closing agent to be determined by the buyer, ~~30 days after the receipt by Purchaser of all necessary site approvals and permits.~~ At Purchaser's option, the closing may be held sooner than the foregoing dates, so long as Purchaser gives Seller not less than ten (10) days notice of the Closing date. Seller shall deliver possession of the Premises to Purchaser on the Closing Date. E.L.F.

18. **PRORATIONS.**

18.1. Real estate taxes for the year of Closing shall be

Pro-rated on an accrual basis as of the Closing Date, based upon the most recent ascertainable taxes. The parties agree to a reprobation and adjustment of the real estate taxes when the actual tax bill for the year of closing is received.

18.2. If at any time before the date hereof, the

Premises, or any part thereof, shall be the subject of any assessment or ~~assessments which are payable in annual installments,~~ other than ad valorem real estate taxes, then for the purposes of this Agreement all of the unpaid installments of any such assessment including those which are to become due and payable after closing, shall be deemed to be due and payable and shall be paid and discharged by Seller on or before closing.

18.3. With regard to Closing, each party shall pay the

fees of its attorney and the costs of preparing all documents which this Agreement requires such party to furnish. If there is any dispute regarding this Agreement, the prevailing party shall be entitled to collect its costs and attorneys' fees, through trial and all appeals, from the losing party.

19. **CONDEMNATION.** If, prior to Closing, the Premises or any portion thereof is condemned or taken under power of eminent domain, or if Seller receives any notice or knowledge that any such taking is threatened or contemplated by any governmental agency or entity or any other entity having the power of eminent domain, then, in any such event, Seller shall promptly give notice thereof to Purchaser in writing. Purchaser shall then have the options of either (a) terminating this Contract and receiving a refund of any and all Deposits paid hereunder, with neither party thereafter having any further obligations to the other hereunder, or (b) waiving such matters and proceeding to close this transaction without reduction in the Purchase Price, but with the right to receive any and all awards or monies payable as a result of any such taking. Purchaser shall make such election by giving written notice thereof to Seller at any time prior to Closing.

21. ESCROW AGENT AND ESCROW PROCEDURE. In the event of any dispute under this Agreement, the Escrow Agent shall have the right to interplead the Deposit into the registry of any court of competent jurisdiction. The interpleading of said Deposit into the registry of the court shall release the Escrow Agent from any further or continuing liability with respect to the disposition of such Deposit. In such event only, Escrow Agent will be entitled to reimbursement to the extent of all costs and expenses reasonably incurred to obtain an order of interpleader, including reasonable attorneys fees, to be reimbursed by the party at fault. Escrow Agent shall exercise ordinary care with respect to the custody and delivery of the Deposits and any other duties of Escrow Agent under this Contract. Escrow Agent will not be liable for any act or omission that is undertaken in good faith and with ordinary care. Without limitation, Escrow Agent may assume, without verification, the genuineness of any signatures on any writings that are regular on their face and may maintain the deposits in interest thereon in a federally insured, commingled trust account. Escrow Agent will not be liable for any act, omission, or failure of the depository institution unless specifically authorized or directed by Escrow Agent. No provision of this Contract by itself authorizes recovery of monetary damages, costs, expenses, or attorney's fees from or against Escrow Agent. Escrow Agent will have a reasonable period of time to comply with all further instructions received pursuant to this Contract, which in all events will be not less than five (5) working days. Escrow Agent's sole duty of collection with respect to any instrument payable to Escrow Agent is to present such instrument promptly for payment and to advise the parties promptly if it is not then collected in the ordinary course of banking business. Escrow Agent shall not be responsible for the performance of any financial institution into which the Deposit is deposited. Seller acknowledges and agrees that the Escrow Agent is Seller's attorney, and that the Escrow Agent's status as such shall not disqualify the Escrow Agent from acting as Seller's attorney with regard to this transaction, or any dispute or litigation arising from or concerning this transaction or this Agreement, including, without limitation, a dispute with regard to the Deposit.

22. CONTRACT CONSTRUCTION. Buyer and Seller acknowledge that this Contract was prepared after substantial negotiations between the parties. This Contract shall not be interpreted against either party solely because such party or its counsel drafted the Contract.

23. MISCELLANEOUS.

(a) Notices. Any notice required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been given when delivered, if delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Seller:

If to Purchaser:

International Society of Investors
1304 Paddock Drive Suite F103

Raleigh, NC 27610

With copy to: Kathie L. Russell, Esq.
327 West Morgan Street, Suite 200
Raleigh, NC 27601

or at such other address which either party may from time to time specify in writing to the other.

(b) Assignment. All or any portion of Purchaser's rights and duties under this Agreement shall be transferable and assignable.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) Amendments and Termination. Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser, acting by their respective duly authorized agents or representatives.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) Section Headings. The section headings inserted in this Agreement are for convenience only and are intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(h) Merger of Prior Agreements. This Agreement supersedes all prior Agreements and understandings between the parties hereto relating to the subject matter hereof.

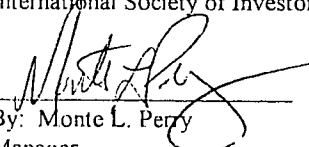
(i) Attorneys' Fees and Costs. In any litigation arising out of or pertaining to this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees, whether incurred before, after or during trial, or upon any appellate level.

(j) Time. Time is of the essence of this Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extend to 5:00 P.M. on the next ensuing business day.

E.L.L. (k) Acceptance. If this Agreement is not executed and delivered by both parties on or before October 18, 2005, it shall be null and void.

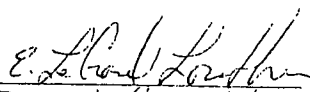
WITNESS, the due execution hereof as of the day and year below written.

International Society of Investors, LLC.


By: Monte L. Perry
Manager

Date: 11/21/05

SELLER


By: E. LeGrand Loewher

Date: 24 Oct 2005

Exhibit A

Legal description to be determined by closing agent

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

2004 JUL 17 PM 2:35
LAST WILL AND TESTAMENT OF

JASPER COUNTY, S.C.

I, Charles Eugene Lowther, a resident of and domiciled in the town of Ridgeland in the STATE OF SOUTH CAROLINA and the aforesaid county, do hereby make, publish and declare this to be my Last Will and Testament, and I do hereby revoke expressly and permanently all Wills and Codicils at any time heretofore made by me, whether destroyed or not.

I. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any request or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate, and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property included in my estate for such tax purposes.

II. I give, devise, and bequeath the following money or personal property:
One-fourth (1/4) of Wellington Plantation property on S.C. Hwy 336. Forty acres of land (adjoining property owned by Jeffery and Reneau Barker) on S.C. Hwy 13/Beescreek Road, Jasper County. One half (1/2) of acreage on waterfront at Chechessee River in the settlement known as Barri-Tarri (Echotango), Beaufort County, SC. One (1) lot on left of S.C. Hwy 336 at Lemon Island Marina and Chechessee River, Beaufort County. One building (approximately 4000 sqft) on property at S.C. Hwy 17/Jacob Smart Blvd, city of Ridgeland, Jasper County, SC. Personal possessions such as furniture, appliances, tools, backhoe, tractor with attachments, dump truck, keepsakes, etc. One burial plot in Ridgeland Cemetery, Jasper County.

to:

Vivian Gene Lowther Tillotson
Effie Sandra Lowther Turpin
Charles Eugene Lowther, Jr.
Rita Elizabeth Lowther Rogers
Clayton Clark Lowther
Mitchell Saxon Lowther
Mark Allen Lowther

CERTIFY THAT THIS IS A TRUE COPY
OF DOCUMENTS IN THIS OFFICE DATED

THIS 17th DAY OF August 2004
Joseph M. Malphrus, Jr.
JOSEPH M. MALPHRUS, Judge of Probate

Edward LeGrande Lowther, my son and partner in business shall receive the sum of \$1.00 and shall not share in my estate. This fulfills his desire to be excluded from any further inheritance.

HOWEVER, in the event that the above person or persons predeceases me, I give

000090

that same money or personal property to his or her surviving beneficiaries. If there are no surviving beneficiaries, this money or personal property shall go to:

The American Cancer Society shall inherit my estate if all of my children, grandchildren, and great grandchildren predecease me in death.

III. I direct all my just debts and funeral expenses be paid as soon as possible after my death.

IV. I name Edward LeGrande Lowther as personal representative (executor) of this will without bond. If this person or institution shall for any reason fail to qualify or cease to act as personal representative, I name Mark Allen Lowther as personal representative, again without bond, instead.

V. I hereby empower my Executor to sell property, real or personal, for cash or on time, without and order of Court, at such time and upon such terms and conditions as shall seem best. I desire my estate be placed in a company or corporation, my property sold at market value as expediently as possible. The net proceeds should then be divided among my heirs equally and as timely as possible. Should any of my heirs desire to receive

property in lieu of cash, my personal representatives shall consider what is in the best interest of my heirs, collectively, and act in accordance.

I further state my desire that my children use their inheritance wisely. Should a brother or sister be unable to provide for themselves or family, I desire that the remaining children assist them financially, emotionally, physically, and spiritually. Each child should contribute as equally as possible. I do not require this be imposed on my heirs but I strongly urge they take care of one another.

The burial plot in Ridgeland Cemetery is to be given to Charles Eugene Lowther, Jr., Effie Sandra Turpin, and Rita Elizabeth Lowther Rogers as their final resting places. Should there be space, they are to decide who may be buried there. The adjoining burial plot has previously been given to Mitchell and Carmon Lowther.

I, Charles E. Lowther, the testator, sign my name to this will, consisting of 3 pages, this 11 day of June, 2004.

Being duly sworn, I declare to the undersigned authority that I sign this document as my last will, that I sign it willingly, and that I execute it as my free and voluntary act for the purposes therein expressed.

I declare that I am of the age and majority or otherwise legally empowered to make a will, and under no constraint or undue influence.

Charles E. Lowther
(Signed)

2004 JUN 17 PM 2:35
JASPER COUNTY, S.C.

000091

9
\$ 15.00 F.F.
1890.20

200500005092
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
12-28-2005 At 09:24 am.
DEED 1905.70
Volume 337 Page 1 - 9

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER) WARRANTY DEED

Know All Men by These Presents, that we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR and MITCHELL SAXON LOWTHER, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of Five Hundred Eleven Thousand Dollars (\$511,000.00) to us paid by E LEGRAND LOWTHER, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said E LEGRAND LOWTHER, his heirs and assigns, forever, the following described real property, to-wit:

SEE ATTACHED EXHIBIT A

This being the identical property conveyed to the Grantor(s) herein by Deed of Distribution of the Estate of C E Lowther dated ~~12-8-05~~ and recorded in Deed Book 336 at Page 291, Office of the Clerk of Court of Jasper County, South Carolina.

Grantee's Address: Po Box 995, Ridgeland, SC 29936

This Deed prepared by the law office of Moss, Kuhn & Fleming, P.A., Post Office Drawer 507, Beaufort, South Carolina 29901-0507

TMS No: 063-39-04-010

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said E LEGRAND LOWTHER, his Heirs and Assigns forever.

And we, VIVIAN GENE L TILLOTSON, RITA ELIZABETH L ROGERS, MARK ALLEN LOWTHER, EFFIE SANDRA L TURPIN, CLAYTON CLARK LOWTHER, C. E. LOWTHER, JR. and MITCHELL SAXON LOWTHER do hereby bind our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said E LEGRAND LOWTHER, his Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

000092

EXHIBIT A

ALL that certain piece, parcel or tract of land, lying and being situate in the Grahamville Section, Jasper County, South Carolina, containing 40.81 acres, more or less, and being shown as Map and Parcel No 063-39-04-010 in the Office of the Jasper County Tax Assessor.

This being the balance of that certain 43 acre parcel which was conveyed to Mitchell S. Lowther by deed recorded in Deed Book 176 at Page 100 in the Office of the Clerk of Court for Jasper County, South Carolina. ✓

SAVE AND EXCEPT all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, Jasper County, containing (0.75) acres, and being shown and designated as "Area = 0.75 A.C." On that certain plat entitled *Survey of (0.75)Ac being subdivided from C. E. Lowther property located in Grahamville, Jasper County, South Carolina Tax Map #063-00-04-010*. Said plat was prepared for Gerald C & Genie Tillotson, Sr, by Harold R Johnson Surveying and is dated April 29, 2002. This plat is recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Plat Book 28 at Page 145.

This being a portion of the property conveyed to C E Lowther by Deed recorded in Deed Book 282 at Page 142 and Deed Book 282 at Page 146 in the Office of the Clerk of Court for Jasper County, South Carolina.

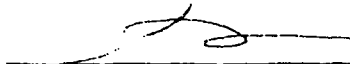
TMP 063 39 04 010

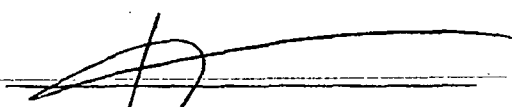
The within instrument has been transferred
this 5 day of Jan. 2006 at
9:25 o'clock AM, and recorded
in Transfer Book 3 Page 539
in Assessor's Office. Tax Map No. 063-39-04-010
Transfer No. 5-27-1485
Debbie D. Pinchney
JASPER COUNTY, S.C.

000093

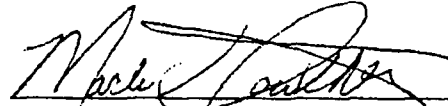
WITNESS our Hand(s) and Seals(s) this 8th day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:





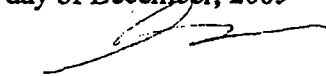
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

 (Seal)
MARK ALLEN LOWTHER

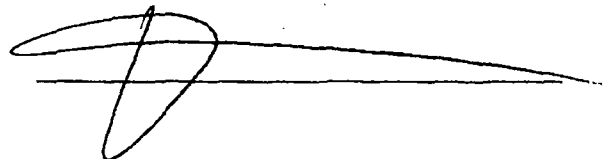
(Seal)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th
day of December, 2005



Notary Public for South Carolina)
My Commission expires: 1-27-12)



000094

WITNESS our Hand(s) and Seals(s) this 5th day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

[Signature]

[Signature]

C. E. Lowther, Jr. (Seal)
C E LOWTHER, JR
[Signature] (Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 5th
day of December, 2005

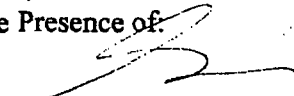
[Signature]
Notary Public for South Carolina)
My Commission expires: 12/12)

[Signature]

000095

WITNESS our Hand(s) and Seals(s) this 8th day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:





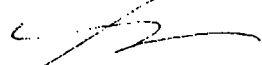
MITCHELL SAXON LOWTHER (Seal)

(Seal)

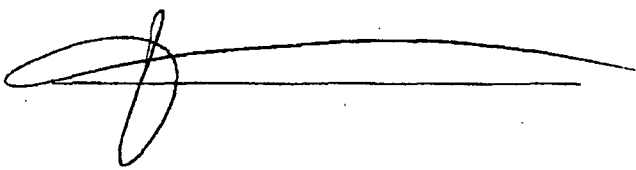
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th
day of December, 2005



Notary Public for South Carolina)
My Commission expires: 12.12)

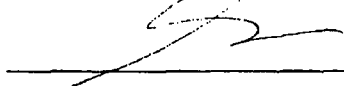


000096

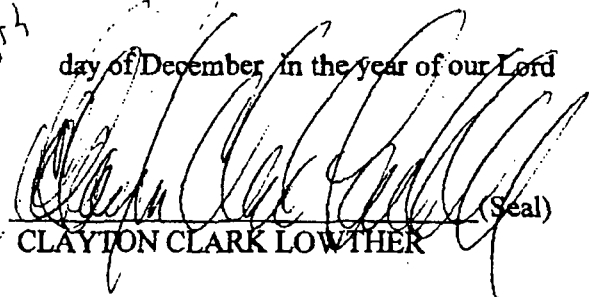
WITNESS our Hand(s) and Seals(s) this
two thousand and five.

8th day of December in the year of our Lord

Signed, Sealed and Delivered
in the Presence of:



)
)
)
)
)


(Seal)

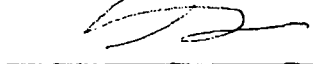
CLAYTON CLARK LOWTHER

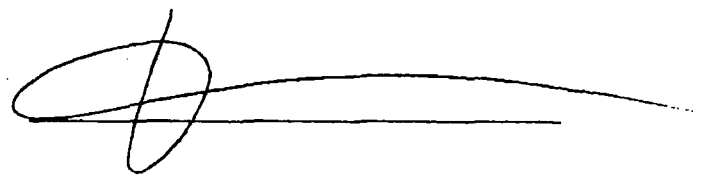
(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
day of December, 2005


Notary Public for South Carolina)
My Commission expires: 1.29.12)



WITNESS our Hand(s) and Seals(s) this 8th day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

[Signature]

Effie Sandra L. Turpin (Seal)
EPPIE SANDRA L TURPIN

____ (Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th
day of December, 2005

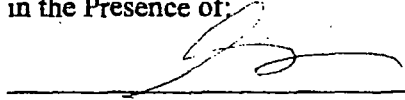
[Signature]
Notary Public for South Carolina)
My Commission expires: 1-29-12)

[Signature]

000098

WITNESS our Hand(s) and Seals(s) this 8th day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:



 (Seal)
VIVIAN GENE TILLOTSON

(Seal)

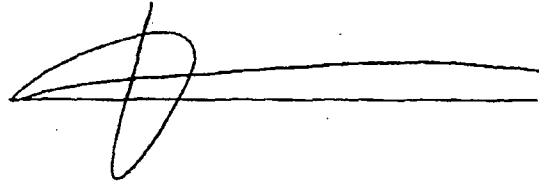
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th
day of December, 2005

Notary Public for South Carolina

My Commission expires: 1-29-12



000099

WITNESS our Hand(s) and Seals(s) this 8th day of December in the year of our Lord two thousand and five.

Signed, Sealed and Delivered
in the Presence of:

[Signature]

[Signature] (Seal)
RITA ELIZABETH L ROGERS
[Signature] (Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th
day of December, 2005

Notary Public for South Carolina)
My Commission expires: 1-29-12)

[Signature]

DEED BOOK 337 PAGE 0040
DATE 1-3-06
[Signature]
AUDITOR JASPER COUNTY SC

000100

3
\$10.00 FF
2997.00

200600000760
PATSYE M GREENE
REGISTER OF DEEDS
JASPER COUNTY
02-24-2006 01:01 pm.
REC FEE: 10.00
STATE TAX \$ 2106.00
LOCAL TAX \$ 891.00

200600000760
Filed for Record in
JASPER COUNTY
PATSYE M GREENE
02-24-2006 At 01:01 pm.
DEED 3007.00
Volume 341 Page 14 - 16

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
WARRANTY DEED

Know All Men by These Presents, that I, **E LEGRAND LOWTHER**, hereinafter referred to as Grantor(s) in the State aforesaid, for and in consideration of the sum of Eight Hundred Ten Thousand Dollars (\$810,000.00) to me paid by **AMBERWINDS, LLC**, hereinafter referred to as Grantee(s) in the State aforesaid and (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said **AMBERWINDS, LLC**, its successors and assigns, forever, the following described real property, to-wit:

See Attached Exhibit A for Property description

This being the identical property conveyed to the Grantor(s) herein by Deed of Vivian Gene L Tillotson, Rita Elizabeth L Rogers, Mark Allen Lowther, Effie Sandra L Turpin, Clayton Clark Lowther, C E Lowther, Jr, and Mitchell Saxon Lowther dated December 8, 2005 and recorded on December 28, 2005 in Deed Book 337 at Pages 1 - 9 in the Office of the Clerk of Court for Jasper County, South Carolina.

Grantee's Address: 1304 Paddock Drive, Suite F-103
Raleigh, NC 27609

This Deed prepared by the law office of Moss, Kuhn & Fleming
P.A., Post Office Drawer 507, Beaufort, South Carolina 29901-0507

TMS No: 063 39 04 010

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **AMBERWINDS, LLC**, its Successors and Assigns forever.

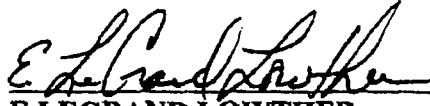
And I, **E LEGRAND LOWTHER** do hereby bind my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said **AMBERWINDS, LLC**, its Successors and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

200600000760
THAYER RIVERS

000101

WITNESS my Hand(s) and Seals(s) this day of in the year of our
Lord two thousand and six.

Signed, Sealed and Delivered
in the Presence of:

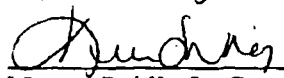
 (Seal)
E LEGRAND LOWTHER

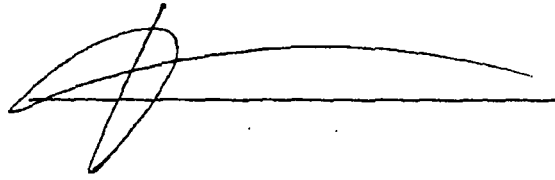
(Seal)

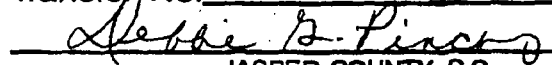
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned and made oath that s/he saw the within-named Grantor(s) sign, seal and, as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 14th
day of May, 2006


Notary Public for South Carolina)
My Commission expires: 8-22-12)



The within instrument has been transferred
this 2nd day of June 2006 at
10:25 o'clock A. M., and recorded
in Transfer Book 3 Page 546
in Assessor's Office. Tax Map No. 063-39-04-06
Transfer No. 6-27-228

JASPER COUNTY, S.C.

000102

EXHIBIT A

ALL that certain piece, parcel or tract of land, lying and being situate in the Grahamville Section, Jasper County, South Carolina, containing 40.81 acres, more or less, and being shown as Map and Parcel No 063-39-04-010 in the Office of the Jasper County Tax Assessor.

This being the balance of that certain 43 acre parcel which was conveyed to Mitchell S Lowther by deed recorded in Deed Book 176 at Page 100 in the Office of the Clerk of Court for Jasper County, South Carolina. ✓

SAVE AND EXCEPT all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, Jasper County, containing (0.75) acres, and being shown and designated as "Area = 0.75 A.C." On that certain plat entitled *Survey of (0.75)Ac being subdivided from C. E. Lowther property located in Grahamville, Jasper County, South Carolina Tax Map #063-00-04-010*. Said plat was prepared for Gerald C & Genie Tillotson, Sr, by Harold R Johnson Surveying and is dated April 29, 2002. This plat is recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Plat Book 28 at Page 145.

This being a portion of the property conveyed to C E Lowther by Deed recorded in Deed Book 282 at Page 142 and Deed Book 282 at Page 146 in the Office of the Clerk of Court for Jasper County, South Carolina.

TMP 063 39 04 010

DEED BOOK 341 PAGE 053
DATE 2/28/06
Harold R Johnson

000103

A. HUD-1 UNIFORM SETTLEMENT STATEMENT

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins.	6. File No. or: 2006-13	7. Loan Number:	8. Mortgage Insurance Case Number:
4. ☐ VA 5. ☐ Conv. Ins.			

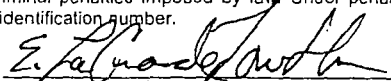
C. NOTE: This form furnishes a statement of settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown for informational purposes and are not included in the totals.

D. Name & Address of Borrower: Amberwinds, LLC	E. Name, Address & TIN of Seller: E. Legrande Lowther	F. Name & Address of Lender:
G. Property Location: Grahamville Section 40.81 Acres, more or less TMS: 063-39-04-010	TIN of Seller: Place of Settlement 304 Russell Street Ridgeland, South Carolina	H. Settlement Agent: R. Thayer Rivers, Jr., Esquire
		I. Settlement Date: February 17, 2006

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due from Borrower:		400. Gross Amount Due to Seller:	
101. Contract sales price	810,000.00	401. Contract sales price	\$810,000.00
102. Personal Property		402. Personal Property	
103. Borrower's settlement charges (line 1400)	\$7,622.00	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to	\$ 0.00	406. City/town taxes to	\$ 0.00
107. County taxes 1-1-06 to 1-17-06	\$ 6.24	407. County taxes 1-1-06 to 1-17-06	\$ 6.24
108. Assessments to	\$ 0.00	408. Assessments to	\$ 0.00
109. to	\$ 0.00	409. to	\$ 0.00
110.		410.	
111.		411.	
112.		412.	
113.		413.	
120. Gross Amount Due from Borrower	\$817,628.24	420. Gross Amount Due to Seller	\$810,006.24
200. Amounts Paid by or in Behalf of Borrower:		500. Reductions in Amount Due to Seller:	
201. Deposits or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	\$1,250.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage	593,872.50
205.		505. Payoff of second mortgage	
206.		506. Clark Lowther Judgment	6,575.98
207.		507. SCE&G Creditor Claim (Lowther Estate)	1,256.61
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to	\$ 0.00	510. City/town taxes to	\$ 0.00
211. County taxes to	\$ 0.00	511. County taxes to	\$ 0.00
212. Assessments to	\$ 0.00	512. Assessments to	\$ 0.00
213. to	\$ 0.00	513. to	\$ 0.00
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/for Borrower	\$ 0.00	520. Total Reduction Amount Due Seller	\$602,955.09
300. Cash at Settlement From/to Borrower		600. Cash at Settlement To/from Seller	
301. Gross amount due from borrower (line 120)	\$817,628.24	601. Gross amount due to seller (line 420)	\$810,006.24
302. Less amounts paid by/for borrower (line 220)	\$ 0.00	602. Less reductions in amount due seller (line 520)	\$602,955.09
303. Cash ☒ from ☐ to Borrower	\$817,628.24	603. Cash ☒ to ☐ from Seller	\$207,051.15

Substitute Form 1099 Seller Statement

The information in Blocks E, G, H, I & line 401 (or, if line 401 is asterisked, line 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. If this real estate is your principal residence, file Form 2119, *Sale or Exchange of Principal Residence*, for any gain, with your income tax return; for other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040). You are required to provide the Settlement Agent (named above) with your correct taxpayer identification number. If you do not provide the Settlement Agent with your taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.


E. Legrande Lowther (Seller)

(Seller)

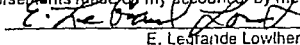
000104

L. Settlement Charges

700. Total Sales/Broker's Commission: (based on Division of Commission (line 700) as follows:		\$810,000.00 @	%	Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
701.					
702.					
703. Commission paid at Settlement					\$ 0.00
704.					
800. Items Payable in Connection with Loan					
801. Loan Origination Fee					
802. Loan Discount					
803. Appraisal Fee					
804. Credit Report					
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee					
807.					
808.					
809.					
810.					
811.					
812.					
813.					
814.					
900. Items Required by Lender to Be Paid in Advance					
901. Interest from		to	@ \$	per day	
902. Mortgage Insurance Premium for					
903. Hazard Insurance Premium for					
904.					
905.					
1000. Reserves Deposited with Lender					
1001. Hazard insurance	months @ \$		per month	\$ 0.00	
1002. Mortgage insurance	months @ \$		per month	\$ 0.00	
1003. City property taxes	months @ \$		per month	\$ 0.00	
1004. County property taxes	months @ \$		per month	\$ 0.00	
1005. Annual assessments	months @ \$		per month	\$ 0.00	
1006.	months @ \$		per month	\$ 0.00	
1007.					
1008.					
1009. Aggregate Accounting Adjustment					
1100. Title Charges					
1101. Settlement/closing fee					
1102. Abstract/title search to Freelance Abstracting Services				175.00	
1103. Title examination					
1104. Title insurance binder					
1105. Document preparation					
1106. Notary fees					
1107. Attorney's fees to R. Thayer Rivers, Jr., Esquire (includes above item numbers)				3,000.00	
1108. Title insurance (includes above item numbers)					
1109. Lender's coverage					
1110. Owner's coverage \$810,000.00				1,440.00	
1111. Attorney fees to Moss, Kuhn & Fleming, P.A.					1,250.00
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Recording fees: Deed 10.00 Mortgage Release				\$ 10.00	\$ 0.00
1202. City/county tax/stamps: Deed Mortgage				\$ 0.00	
1203. State tax/stamps: Deed Mortgage				\$ 0.00	
1204. Documentary Stamps				2,997.00	
1205.					
1206.					
1300. Additional Settlement Charges					
1301. Survey					
1302. Pest Inspection					
1303.					
1304.					
1305.					
1306.					
1307.					
1308.					
1400. Total Settlement Charges (This Number Transfers to Lines 103 & 502 Above)				\$7,622.00	\$1,250.00

CERTIFICATION

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.


E. Legrande Lowther

Seller

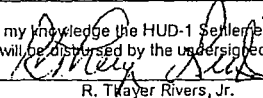
Borrower

Monte Perry for Amberwinds, LLC

Seller

Borrower

To the best of my knowledge the HUD-1 Settlement Statement which I have prepared is true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.


R. Thayer Rivers, Jr.

Settlement Agent

February 17, 2006

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

000105

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE PROBATE COURT
CASE NO. 2007ES0700655

EFFIE SANDRA L. TURPIN, C.E.)
LOWTHER, JR., MITCHELL SAXON)
LOWTHER, INDIVIDUALLY AND)
REPRESENTING AS A CLASS OF THE)
BENEFICIARIES OF THE ESTATE OF)
C.E. LOWTHER, SR.,)

Plaintiffs,)

vs.)

E. LEGRAND LOWTHER,)
INDIVIDUALLY AND AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF C.E. LOWTHER, SR. and MARK)
ALLEN LOWTHER, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF C.E. LOWTHER, SR.,)

Defendants.)

ANSWER

2008 MAR 11 PM 3:52
PROBATE COURT
BEAUFORT COUNTY, SC

FILED

TO: HARLEY D. RUFF, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

The Defendants, answering the Complaint, and by way of counterclaim, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. The allegations of paragraph 1 of the Complaint are admitted.
2. The allegations of paragraph 2 of the Complaint are admitted.
3. The allegations of paragraph 3 of the Complaint are admitted.
4. The allegations of paragraph 4 of the Complaint are admitted.
5. The allegations of paragraph 5 of the Complaint are denied.
6. The allegations of paragraph 6 of the Complaint are admitted.

7. The allegations of paragraph 7 of the Complaint are admitted.
8. The allegations of paragraph 8 of the Complaint are admitted.
9. The allegations of paragraph 9 of the Complaint are admitted.
10. The allegations of paragraph 10 of the Complaint are admitted.
11. The allegations of paragraph 11 of the Complaint are admitted.
12. With respect to the allegations of paragraph 12 of the Complaint, the date alleged is denied and the remaining allegations of said paragraph are admitted.
13. The allegations of paragraph 13 of the Complaint are denied.
14. With respect to the allegations of paragraph 14 of the Complaint, it is admitted that the Defendants, in their capacities as the Personal Representatives of the Estate, duly and properly distributed to the Plaintiffs their interest in the Estate land pursuant to a duly executed, filed and delivered Deed of Distribution. It is further admitted that the Plaintiffs, and others, freely and voluntarily conveyed to the Defendant Legrand Lowther subject land pursuant to the Deed which is attached to the Complaint. It is further affirmatively alleged that this transaction was a subpart of a larger transaction entered into between the parties to the transaction. The remaining allegations of said paragraph are denied.
15. With respect to the allegations of paragraph 15 of the Complaint it is admitted that Legrand Lowther sold the subject land on February 17, 2006 to Amber Winds, LLC and that a true and accurate copy of the closing statement and Deed are attached to the Complaint. The remaining allegations of said paragraph are denied.
16. With respect to the allegations of paragraph 16 of the Complaint it is admitted that the Defendants, in their capacity as Personal Representatives, have sold timber, but the remaining allegations of said paragraph are denied.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

17. The allegations of paragraph 17 of the Complaint do not require a response.
18. The allegations of paragraph 18 of the Complaint are denied.
19. The allegations of paragraph 19 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

20. The allegations of paragraph 20 of the Complaint do require a response.
21. The allegations of paragraph 21 of the Complaint are admitted.
22. The allegations of paragraph 22 of the Complaint are admitted.
23. The allegations of paragraph 23 of the Complaint are denied.
24. The allegations of paragraph 24 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

25. The allegations of paragraph 25 of the Complaint do not require a response.
26. The allegations of paragraph 26 of the Complaint are denied.
27. The allegations of paragraph 27 of the Complaint are denied.
28. The allegations of paragraph 28 of the Complaint are denied.
29. The allegations of paragraph 29 of the Complaint are denied.
30. The allegations of paragraph 30 of the Complaint are denied.
31. The allegations of paragraph 31 of the Complaint are denied.
32. The allegations of paragraph 32 of the Complaint are denied.
33. The allegations of paragraph 33 of the Complaint are denied.
34. The allegations of paragraph 34 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE FORTH CAUSE OF ACTION

35. The allegations of paragraph 35 of the Complaint do not require a response.

36. The allegations of paragraph 36 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

37. The allegations of paragraph 37 of the Complaint do not require a response.
38. The allegations of paragraph 38 of the Complaint are denied.
39. The allegations of paragraph 39 of the Complaint are denied.
40. The allegations of paragraph 40 of the Complaint are denied.
41. The allegations of paragraph 41 of the Complaint are denied.
42. The allegations of paragraph 42 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION

43. The allegations of paragraph 43 of the Complaint do not require a response.
44. The allegations of paragraph 44 of the Complaint are denied.
45. The allegations of paragraph 45 of the Complaint are denied.
46. The allegations of paragraph 46 of the Complaint are denied.
47. The allegations of paragraph 47 of the Complaint are denied.
48. The allegations of paragraph 48 of the Complaint are denied.
49. The allegations of paragraph 49 of the Complaint are denied.
50. The allegations of paragraph 50 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

51. The allegations of paragraph 51 of the Complaint do not require a response.
52. With respect to the allegations of paragraph 52 of the Complaint, it is admitted that a portion of the Estate land rightfully belonged to the Plaintiffs, that their interest in the Estate land was duly conveyed to them, and they then freely and voluntarily sold their interest. It is admitted that a portion of the timber sales proceeds rightfully belonged to the

Estate, and that the Plaintiffs had an interest in the Estate. The remaining allegations of said paragraph are denied.

53. With respect to the allegations of paragraph 53 of the Complaint, it is admitted that Defendants were obligated to convey and deliver to the Plaintiffs their interest in the Estate land, and this was done pursuant to a Deed of Distribution. It is further admitted that the Defendants were obligated to deliver to the Estate the Estate's share of any timber sales proceeds, to be utilized for Estate purposes. The remaining allegations of this paragraph are denied.

54. The allegations of paragraph 54 of the Complaint are denied.

55. The allegations of paragraph 55 of the Complaint are denied.

56. The allegations of paragraph 56 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE EIGHT CAUSE OF ACTION

57. The allegations of paragraph 57 of the Complaint does not call for a response.

58. With respect to the allegations of paragraph 58 of the Complaint it is admitted that the Plaintiffs sold their interest in a portion of the land which they received from the Estate to the Defendant Legrand Lowther, freely and voluntarily for an agreed upon negotiated purchase price. The remaining allegations of said paragraph are denied.

59. With respect to the allegations of paragraph 59 of Complaint it is admitted that the Plaintiffs freely and voluntarily executed the Deed which is attached to the Complaint, in exchange for the Defendant Legrand Lowther paying to the Plaintiffs the agreed upon purchase price. The remaining allegations of said paragraph are denied.

60. The allegations of paragraph 60 of the Complaint are denied.

61. The allegations of paragraph 61 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION

- 62. The allegations of paragraph 62 of the Complaint does not call for a response.
- 63. The allegations of paragraph 63 of the Complaint are denied.
- 64. The allegations of paragraph 64 of the Complaint are denied.
- 65. With respect to the allegations of paragraph 65 of the Complaint it is admitted that the Defendants have provided to the Plaintiffs, as well as each of the beneficiaries of the Estate of Charles E. Lowther, and have filed with the Beaufort County Probate Court, an accounting. The remaining allegations of said paragraph are denied.

FOR A FIRST DEFENSE TO THE TENTH CAUSE OF ACTION

- 66. The allegations of paragraph 66 of the Complaint does not call for a response.
- 67. The allegations of paragraph 67 of the Complaint are denied.
- 68. The allegations of paragraph 68 of the Complaint are denied.
- 69. The allegations of paragraph 69 of the Complaint are denied.

FOR SECOND DEFENSE TO ALL CAUSES OF ACTION

- 70. Each cause of action fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

- 71. Each cause of action is barred by the applicable statute of limitations.

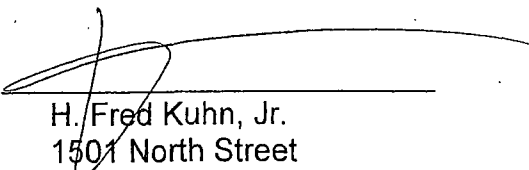
FOR A THIRD DEFENSE TO EACH CAUSE OF ACTION

- 72. Each cause of action is barred by laches.

WHEREFORE, having fully answered the Complaint, these Defendants pray that the same be dismissed, that they be reimbursed for the costs and attorney's fees incurred in defending this action, together with such other and further relief as this Honorable Court

may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Defendants

Beaufort, South Carolina
March 7, 2008

CERTIFICATE OF SERVICE

Undersigned certifies that the **Answer**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Harley D. Ruff, Esquire
Ruff & Ruff
17 Professional Village Circle
Beaufort, South Carolina 29907

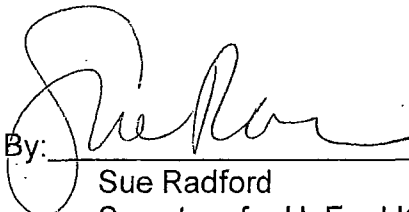
R. Thayer Rivers, Esquire
Post Office Box 668
Ridgeland, South Carolina 29936

Rita Elizabeth L. Rogers
2628 Bees Creek Road
Ridgeland, South Carolina 29936

C. Clark Lowther
Post Office Box 207
Ridgeland, SC 29936

Vivian Gene Tillotson
PO Box 699
Ridgeland, SC 29936

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on March 11, 2008.

By: 
Sue Radford
Secretary for H. Fred Kuhn, Jr.

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT
2011 DEC -9 PM 3:48

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

Effie Sandra L. Tuprin, C. E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell Saxon
Lowther, individually and representing as a
class of beneficiaries of the Estate of C. E.
Lowther, Sr.

Appellants-Respondents

v.

E. Legrand Lowther, individually and as
Personal Representative of the Estate of C. E.
Lowther, Sr., and Mark Allen Lowther, as
Personal Representative of the Estate of C. E.
Lowther, Sr., of whom E. Legrand Lowther
is

Respondent-Appellant

MOTION TO RECONSIDER, ALTER
OR AMEND JUDGMENT

TO: HARLEY D. RUFF, ESQUIRE and R. THAYER RIVERS, JR., ESQUIRE, ATTORNEYS
FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that the Defendant E. Legrand Lowther, individually and as
Personal Representative of the Estate of C. E. Lowther, Sr. hereby moves before the Honorable

Marvin H. Dukes, III, Master in Equity for Beaufort County, pursuant to Rule 59, SCRCP, for a reconsideration of, amendment of, and alteration of that Order of Judgment dated November 17, 2011, filed November 22, 2011 and received on November 29, 2011, on the following grounds:

1. The Court erred in finding and concluding that the Probate Court erred by reducing the damages against Legrand by an amount equal to distributions that Legrand made to his siblings from proceeds received from the sale of Echo Tango lots for the following reasons:

a. The Court erred in concluding that the Probate Court misunderstood the Echo Tango distributions as some type of "windfall" to the beneficiaries where the Probate Court clearly did not consider these distributions to be a "windfall".

b. The Court erred in concluding that the reduction for these distributions "makes no sense and is not appropriate," where the converse is true, i.e., it makes no sense and is not appropriate for Legrand to give these monies to the beneficiaries and not receive any credit for these distributions, treating them as if they had not been made.

c. Failing to give Legrand credit for these distributions breaches, is contrary to, and ignores the express terms in plain english of the contract and agreement entered into between the parties.

d. Failing to give Legrand credit for these distributions renders the contract of the parties regarding the Echo Tango lots a nullity.

e. Failing to give Legrand credit for the Echo Tango distributions fails to treat the transaction entered into by the parties as a whole, that is, the transaction regarding the 40-acres, the entire Wellington Plantation properties, and the Echo Tango lots are all interrelated and were part of one, unified, transaction, and the Probate Court correctly treated the subject real estate transactions

as one, unified, transaction.

f. Failing to give Legrand credit for the funds paid to the beneficiaries gives the beneficiaries the benefit of their part of the bargain regarding the 40-acre parcel, but fails to give Legrand the benefit of the bargain regarding the Echo Tango property.

g. Failing to give Legrand credit of the payments made to the beneficiaries for the Echo Tango properties gives the beneficiaries 100% of the profits from the 40-acre portion of the transaction, plus it gives Legrand zero credit for \$138,000.00 actually paid to the beneficiaries, a completely inequitable and nonsensical result.

h. The Court erred in finding that the beneficiaries gave away great values to Legrand for free, where this finding is not supported by the evidence.

i. The Master's aforesaid findings, in which the Master is acting as an Appellate Court, impermissibly intrude upon the fact finding role of the Probate Court and substitutes the Master's findings of fact for the Probate Court's finding of fact, which exceeds the authority of the Master acting in his appellate capacity. This is an action at law and the findings of fact rendered by the Probate Court cannot be disturbed unless there is no evidence to support them.

2. The Court erred in failing to apportion the distributions made to the beneficiaries from the proceeds received from the sale of the Echo Tango lots according to the amounts they received. It is uncontested that Legrand made the following distributions to his siblings from the proceeds received from the sale of Echo Tango lots as follows:

Mitchell	\$36,000
Sandra	\$22,000
Bube	\$16,000
Clark	\$16,000
Gene	\$16,000

Mark	\$16,000
Rita	\$16,000

The Order of the Court treats all siblings equally yet Mitchell, for example, has received \$20,000 more than all of his siblings save Sandra, who has received \$6,000 more than all of her siblings, save Mitchell. The Court's Order fails to take into account the fact that Mitchell and Sandra have already received more than their siblings.

3. The Order of the Court fails to take into account that only Sandra, Bube, Clark and Mitchell are Plaintiffs. Although the caption of the Order recites that they are "representing as a class of beneficiaries of the Estate of C. E. Lowther, Sr., no class has ever been certified, no evidence has ever been introduced that they are representing a class and they are clearly acting on their own behalf. The Order of the Court impermissibly enters judgment against Legrand in favor of individuals who are not parties to this action.

4. The Court erred in failing to reverse the Probate Court's finding that Legrand breached a fiduciary duty to his siblings inasmuch as the subject real estate transaction did not involve the performance by Legrand of any fiduciary duty, took place outside the Estate of C. E. Lowther, Sr., did not involve the performance of any duties as fiduciary or as a personal representative, but rather, was a negotiated arm's length transaction entered into by all parties freely and voluntarily outside of the Estate.

It is, accordingly, respectfully requested:

a. That the Master in Equity reconsider, alter or amend his Order of Judgment dated November 17, 2011 and affirm that portion of the Order of the Beaufort County Probate Court which properly gives Legrand credit for distributions paid to his siblings and the Plaintiffs from proceeds

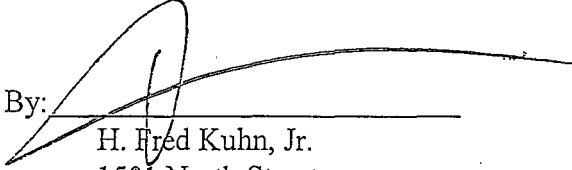
of Echo Tango lot sales;

b. Adjust the judgment with respect to each Plaintiff according to the amount of funds already received by each Plaintiff individually, rather than assuming that each Plaintiff is entitled to equal credit;

c. Vacate any judgment against Legrand in favor of the non-party siblings; and

d. Reverse the Order of the Probate Court finding that Legrand breached a fiduciary duty and vacating the judgment.

~~MOSS, KUHN & FLEMING, P.A.~~

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302- FX

Beaufort, South Carolina
December 9, 2011

Attorneys for the Defendants

000118

CERTIFICATE OF SERVICE

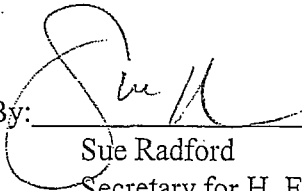
2011 DEC -9 PM 3:48

Undersigned certifies that the ~~Motion to Reconsider, Alter or Amend Judgment~~, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Harley D. Ruff, Esquire
17 Professional Village Circle
Beaufort, SC 29907

R. Thayer Rivers, Jr., Esquire
Post Office Box 668
Ridgeland, SC 29936

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on December 9, 2011.

By: 

Sue Radford
Secretary for H. Fred Kuhn, Jr.

000119

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

Effie Sandra L. Turpin, C. E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell Saxon
Lowther, individually and representing as a
class of beneficiaries of the Estate of C.E.

Lowther, Sr., ...Appellants – Respondents,

v.

E. LeGrand Lowther, individually and as
Personal Representative of the Estate of C.E.
Lowther, Sr., and Mark Allen Lowther, as
Personal Representative of the Estate of C.E.
Lowther, Sr, of whom E. LeGrand Lowther
is.....

Respondent - Appellant.

RETURN TO MOTION TO
RECONSIDER, ALTER OR AMEND JUDGMENT

Appellants-Respondents hereby make the following Return to Respondent-Appellant's
(hereinafter "LeGrand") Motion to Reconsider, Alter or Amend Judgment as follows:

1. Echo Tango Lots. This Court's decisions regarding the Echo Tango profits were completely correct. The Court's decision is not "contrary to" the earlier agreements among the parties, nor does it render the earlier agreements a "nullity". Those agreements went through as

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agreed on by the parties. That is not the issue here. Rather, the issue is LeGrand's breach of fiduciary duty to the beneficiaries of the Estate – which breach was discovered after the agreements went through – by making a \$299,000 profit on the 40 acres tract through his nondisclosure of his existing contract with a third-party buyer.

Running through LeGrand's objections is the implication that the transactions among the parties, when viewed as a whole, were financially fair to the beneficiaries, and that the beneficiaries were benefitted by the "other" parts of the transactions. But the facts show otherwise.

The transactions among the parties, other than the 40-acre transaction, were:

- a. A 230-acre parcel of land known as the "Wellington" property. Appellants-Respondents introduced evidence at the Probate Court trial showing that LeGrand had a deal with International Society of Investors (hereinafter "ISI") to sell Wellington, just as he did with the 40 acres. If ISI had gone through with its purchase of Wellington from LeGrand, LeGrand would have made another roughly \$300,000 profit compared to what he paid the beneficiaries. Because that sale did not go through, LeGrand defaulted on his notes to the beneficiaries. Even then, the beneficiaries had to file a foreclosure lawsuit against LeGrand to recover their interests in Wellington. All that having been done, as to Wellington, the beneficiaries and LeGrand are both now back to where they were before this transaction. Ultimately LeGrand paid the beneficiaries nothing for Wellington, and Wellington is now owned by all of them in the same percentages as was the case at the time of the Decedent's death.

- b. The Echo Tango Lots. As part of the overall transactions, LeGrand convinced the Beneficiaries to “quitclaim” all of their interests in certain lots at Echo Tango to LeGrand, for no additional consideration. The Echo Tango lots were long owned by the Decedent. Legal title to these properties changed over the years for various reasons. At the time of Decedent’s death, legal title to these properties was in LeGrand’s name. However, it has been repeatedly admitted and conceded by LeGrand himself that LeGrand equitably owned only a 50% interest in these properties, with the other 50% interest owned by the Decedent. Decedent’s Will, signed on the date of his death, left this 50% interest to the beneficiaries, not to LeGrand. The beneficiaries signed contracts agreeing to the transfer to LeGrand, with the caveat that if LeGrand defaulted on their notes, then the beneficiaries would be entitled to 50% of the proceeds from the future sale of Echo Tango lots. LeGrand ultimately did default on those notes. All that having been done, as to Echo Tango, the beneficiaries are at best now back to where they were before this transaction. Ultimately LeGrand paid the beneficiaries nothing for Echo Tango, and the beneficiaries are now collectively entitled to 50% of the proceeds from Echo Tango sales, which is the same percentage as was the case at the time of the Decedent’s death. In fact, the beneficiaries legally may be somewhat worse off now regarding Echo Tango. At the Decedent’s death, they were the owners of a 50% equitable title to the Echo Tango property itself. Now, they may be only entitled to a profits interest, with all important decision including when to sell, for what price, whether and how to divide the property, etc., being up to LeGrand solely.

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2. Echo Tango Apportionment of Profits. This issue is not relevant to the case brought by the Appellants-Respondents, is not relevant to the Probate Court Order from which LeGrand appealed, and is not relevant to this Court's Order on which LeGrand has filed his Motion to Reconsider, Alter or Amend Judgment.

3. "Parties" Issue. The "parties" issue now raised by LeGrand was not preserved for appellate review. Appellants-Respondents clearly brought their action for themselves "and a class of beneficiaries of the Estate of C.E. Lowther, Sr." The Probate Court granted its judgment in favor of all seven (7) beneficiaries of the Estate. LeGrand never before raised the "parties" issue, and did not file a SCRPC Rule 59 motion in Probate Court over the "parties" issue. Accordingly, this issue is not preserved for review. Ulmer v. Ulmer, 369 S.C. 486, 632 S.E. 2d 858 (S.C. 2006), In the Interest of Michael H., 360 S.C. 540, 602 S.E. 2d 729 (S.C. 2004).

Also, LeGrand did not appeal the Probate Court's "parties" ruling. The Circuit Court has appellate jurisdiction over only those matters which are properly appealed. In re Estate of Cretzmeyer, 356 S.C. 12, 615 S.E. 2d 116 (S.C. 2005). "A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case." Austin v. Specialty Transportation Services, 358 S.C. 298, 594 S.E. 2d 867 (S.C. App. 2004). Accordingly, the inclusion of all seven (7) beneficiaries in the recovery is now the law of the case.

Further, even if this issue had been preserved for review by LeGrand and had been appealed by LeGrand, LeGrand's objections are without merit. The Probate Court has the power to address breaches of fiduciary duty by fiduciaries. S.C. Code § 62-3-712 states that if an exercise of power concerning an estate is improper, "the personal representative is liable to

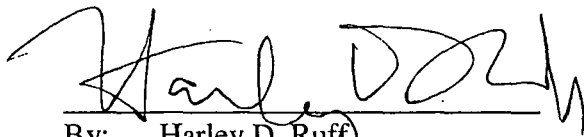
interested persons for damage or loss resulting from breach of his fiduciary duty.” (emphasis added) All seven (7) beneficiaries clearly are interested persons. Appellants-Respondents brought this action for the benefit of all beneficiaries, and this action has resulted in a “common fund” for the benefit of all beneficiaries. The “class action” procedures under SCRCF Rule 23 were not available here because of the “numerosity” issue.

4. Other objections. The facts of this case have clearly shown and the Probate Court correctly ruled, that the subject real estate transaction did involve the performance by LeGrand of a fiduciary duty, took place as part of the settlement of the Estate of C.E. Lowther, Sr., and involved the performance of duties as fiduciary and as Personal Representative.

Accordingly, the Respondent-Appellant’s Motion to Reconsider, Alter or Amend Judgment should be denied.

Respectfully submitted by:

RUFF & RUFF, LLC



By: Harley D. Ruff
17 Professional Village Circle
Beaufort, SC 29907
(843) 524-5400

Date: December 21, 2011

Attorneys for Appellants-Respondents

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IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO.2010-CP-07-06284

Effie Sandra L. Turpin, C.E. Lowther, Jr.
Mitchell Saxon Lowther, individually and
representing as a class the beneficiaries
of the Estate of C.E. Lowther, Sr.,

Plaintiffs-Respondents

vs.

E. LeGrand Lowther, individually and as
Personal Representative of the Estate
of C. E. Lowther, Sr., and Mark Allen
Lowther, as Personal Representative of
the Estate of C. E. Lowther, Sr.,
Defendants, of Whom E. LeGrand
Lowther, individually and as
Personal Representative of the Estate
of C. E. Lowther, Sr is

Appellant.

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JERRI ANN ROSENBAUM
BEAUFORT COUNTY, S.C.
CLERK OF COURT

GROUND OF APPEAL

The Appellant, E. Legrand Lowther, Individually and as Personal Representative of the Estate of C. E. Lowther, Sr., has appealed the Order of Judgment of the Beaufort County Probate Court filed December 21, 2010 in Case Number 2007ES0700655 to the Beaufort County Court of Common Pleas. Pursuant to S. C. Code Ann. 62-1-308(a) (2010), the Appellant hereby files his Grounds of Appeal, as follows:

I. STATEMENT OF THE CASE

A. PROCEDURAL BACKGROUND

This is an action by three of the beneficiaries of the Estate of C. E. Lowther, Sr. against the Personal Representatives, alleging the breach of

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fiduciary duties in connection with a real estate transaction. It was commenced by the filing of a Summons and Complaint in the Beaufort County Probate Court on February 15, 2008. In their Complaint, the Plaintiffs allege that the Defendants, who are the Personal Representatives of the Estate of C. E. Lowther, Sr., violated their fiduciary duties owed to the Estate's beneficiaries by: (1) converting and defrauding the Estate's beneficiaries out of \$299,000.00, by purchasing a 40.81 acre parcel of land belonging to the Estate for \$511,000.00 and then selling this land to a third party for \$810,000.00, without disclosing the pending third party sale, and (2) by converting and misappropriating Estate income from timber sales.⁶ The Complaint alleges causes of action for constructive trust, breach of fiduciary duty, fraud, constructive fraud, fraud in the inducement, negligent misrepresentation, conversion, and unjust enrichment. The Complaint also requests an accounting and the removal of the Personal Representatives.

The foregoing pleadings were personally served upon the Defendants and on April 11, 2008 the Defendants filed their Answer to the Complaint. The Answer consists of a qualified general denial, and asserts the affirmative defenses of the statute of limitations and laches.

This matter was tried before the Honorable Kenneth E. Fulp, Jr., Associate Beaufort County Probate Judge, sitting without a jury, on June 23 and 26, 2009. The Plaintiffs were represented by Harley D. Ruff, Esquire, and R. Thayer Rivers, Jr., Esquire. The Defendants were represented by H. Fred Kuhn, Jr.,

⁶ The improper timber sale cause of action was decided in Appellant's favor and is accordingly no longer an issue.

Esquire. Testimony was taken from Effie Sandra L. Turpin, C. E. Lowther, Jr., Mitchell Saxon Lowther, E. Legrand Lowther, and Michael Jones. Numerous documents were admitted into evidence.

On December 21, 2010, Judge Fulp issued his Order of Judgment. Judge Fulp dismissed the Complaint entirely against the co-Defendant Mark Lowther. Judge Fulp ruled in the Appellant's favor on all causes of action except for the claim of breach of fiduciary duty. The Order concluded that there was no fraud, constructive fraud, fraud in the inducement, negligent misrepresentation, conversion, constructive trust, or unjust enrichment, and the causes of action based on these allegations were dismissed. The cause of action for an accounting was also dismissed, Judge Fulp declined to grant the request to remove Appellant as Personal Representative of the Estate.

On the sole surviving cause of action for breach of fiduciary duty, the Order granted judgment in favor of the Respondents against the Appellant for breach of fiduciary duty in connection with a real estate transaction, and awarded damages in the amount of \$69,051.15, and provided that these damages were to be apportioned equally among all seven beneficiaries of the Estate.

Lastly, Judge Fulp concluded that punitive damages were not appropriate.

The Appellant filed his Notice of Intent to Appeal on December 30, 2010.

B. FACTUAL BACKGROUND

C. E. Lowther, Sr. died on June 11, 2004. At the time of his death, he was a citizen and resident of Jasper County, South Carolina. Mr. Lowther, a widower, was survived by his eight (8) children. Three (3) of his children are the Plaintiffs

herein, to-wit: Effie Sandra L. Turpin ("Sandra"), C. E. Lowther, Jr. ("Bube"), and Mitchell Saxon Lowther ("Mitchell"). Two (2) of Mr. Lowther's children are the Defendants herein, to-wit: E. Legrand Lowther ("Legrand") and Mark Allen Lowther ("Mark"). His other three (3) children are Vivian Gene Lowther Tillotson ("Gene"), Rita Elizabeth Lowther Rogers ("Rita") and Clayton Clark Lowther ("Clark").

At the time of his death, Mr. Lowther owned a 40.81 acre parcel of unimproved property on Bees Creek Road in Jasper County, South Carolina (hereinafter the "40 acre" parcel) and he owned an undivided 25% interest in an unimproved 226.35 acre parcel of land in the Wellington Plantation area of Jasper County, South Carolina (hereinafter the Wellington Plantation). The other owners of the Wellington Plantation parcel were Legrand, who owned an undivided 50% interest, and Mitchell, who owned an undivided 25% interest.

Mr. Lowther's Last Will and Testament, which was executed on the day he died, was duly filed with the Jasper County Probate Court on June 17, 2004. In his Will, Mr. Lowther left the 40 acre parcel and his undivided 25% interest in the Wellington Plantation property to all of his children, in equal shares, excluding Legrand. Legrand was excluded from taking an equal share along with his brothers and sisters in his father's Estate at his own request. Legrand testified that he felt that his brothers and sisters were more in need, and Sandra, who drafted the Will, confirmed that it was Legrand's request not to be included in his father's Estate. The Will expressly recites that it was Legrand's desire to be excluded from any inheritance.

On June 17, 2004 Legrand and Mark were appointed as Personal Representatives of the Estate, which bore Jasper County Probate Case Number 2004ES2700068. On March 8, 2007, the Honorable Joseph N. Malphrus, Jr., Jasper County Probate Court Judge, struck the case pursuant to Rule 4, South Carolina Rules of Probate Court.

The Estate was subsequently transferred by Judge Malphrus to the Beaufort County Probate Court, and as a result of a hearing held on October 15, 2007 the Estate was re-opened and restored to active status, with Legrand and Mark continuing to serve as Personal Representatives.

After their father died, the beneficiaries of the Estate agreed that the land inherited by them from their father should be sold as expeditiously as possible. Some of the beneficiaries, including the Plaintiffs herein, were in dire financial need and needed cash. Sandra was retired and living on social security and helping to raise her daughter and granddaughter, while neither Mitchell nor Bube were employed.

Clark approached a local developer, John Tilton, about buying the 40 acre parcel. Mr. Tilton submitted an offer to buy this parcel for either \$240,000.00 or \$250,000.00. Some of the beneficiaries were in favor of accepting this offer, but others believed the offer was too low, and it was eventually refused. Mr. Tilton later orally increased his offer to \$400,000.00, but this offer was never reduced to writing and he did not pursue it.

In the meantime, Legrand contacted a realtor, Jennifer Bergman, about selling the 40 acre parcel. As a result of Mrs. Bergman's efforts, Donnie Wall on

behalf of Bear Creek Partners offered \$600,000.00 to purchase the 40 acre parcel. This offer was accepted by the beneficiaries, a contract was executed, and a closing set. The closing, however, never took place and Bear Creek defaulted on the contract.

In February or March of 2005 a developer, International Society of Investors, LLC ("ISI") contacted Legrand about purchasing the Wellington Plantation property. One of ISI's principals, Michael Jones, had learned about the Wellington Plantation property through his father, Howell Jones, who was a good friend of Legrand and who had worked with Legrand when Legrand served on the Jasper County Planning Commission. Legrand showed the Wellington Plantation property to Mr. Jones and his partner, Monte Perry, explaining that he owned a 50% interest in the property, and the remaining 50% was owned by his brothers and sisters. Mr. Jones and Mr. Perry explained that they would check out the property and get back with Legrand if they were interested in purchasing it. Mr. Jones explained that ISI was interested in purchasing Wellington in order to develop it into a residential subdivision, and they needed time in order to perform "due diligence," that is, to ensure electricity, water and sewer were available and to see what density was allowable. Mr. Jones subsequently contacted the local electrical utility regarding the provision of electrical service to the property, and upon learning that there was no water or sewer available to the property, began negotiating with the nearby Town of Ridgeland regarding annexing the property into the Town in order to obtain water and sewer at a cost savings.

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During the Summer of 2005, Legrand began talking to his brothers and sisters about his purchasing from them all of the property that they had inherited from their father, i.e., the 40 acre parcel and the jointly held 25% interest in Wellington Plantation. Legrand and Mitchell also discussed Legrand's purchasing the 25% interest which Mitchell owned outright in Wellington Plantation, as well as a 3.84 acre parcel of land that adjoined Wellington and was owned by Mitchell's wife, Carmen. After the Bear Creek closing fell through, Legrand started talking to each of his brothers and sisters individually about buying these properties, and made an initial offer to each of his brothers and sisters, except Mitchell, of \$275,000.00. This offer was not accepted.

Through the late summer, Legrand continued his discussions with his brothers and sisters regarding purchasing their interest in the 40 acre parcel and Wellington Plantation which they had inherited from their father, and also continued discussing with Mitchell purchasing Mitchell's undivided 25% interest in Wellington Plantation and the 3.84 acre parcel from Mitchell's wife, Carmen. During the course of these discussions a fourth parcel of real estate, known as Echo Tango, was brought into play. Echo Tango is a small subdivision located in Beaufort County that Legrand had owned for many years. It originally consisted of 6 lots. These lots are located on deep water, but they are low lying and originally did not have access to sewer. Without sewer, these lots had little to no value. In 1997, Legrand had sold one of these lots for \$110,000.00 to Mr. Kolberg on the hope that sewer would be made available. After a nearly 10 year legal battle and spending hundreds of thousands of dollars on sewer and other

improvements, Legrand had succeeded in supplying sewer to these lots, and had recently sold a second lot to Mr. Malphrus for \$700,000.00. The remaining four (4) lots are comparable to the lot sold to Mr. Malphrus. While his father was alive, out of love and affection for his father, Legrand had promised his father that he would share the profits of the Echo Tango Subdivision with his father. Although the Echo Tango Subdivision was owned by Legrand individually, and was not part of their father's estate, Legrand's brothers and sisters, as part of the sale of their interest in the 40 acre parcel and Wellington Plantation, wanted Legrand to make the same promise regarding Echo Tango to them.

In mid-August of 2005, Legrand and his siblings reached an agreement for the purchase of their property and Legrand started the process of getting contracts written for each of his siblings to review and sign.

In early September 2005, Mike Jones on behalf of ISI contacted Legrand and indicated that ISI had performed its due diligence on Wellington and it was interested in purchasing Wellington. By that time, the Bear Creek contract on the 40 acre parcel had fallen through, so Legrand told Mr. Jones that the 40 acre parcel was now available and if ISI wanted to purchase Wellington, it also had to purchase the 40 acre parcel. Legrand showed the 40 acre parcel to Mr. Jones, who indicated that he would talk to his partner, Monte Perry, and get back with Legrand.

Around the end of September or beginning of October, Mr. Perry called Legrand and indicated that ISI was interested in purchasing both the Wellington Plantation parcel and the 40 acre parcel. They discussed a price of \$800,000.00

for the 40 acre parcel, and they ended the conversation with Mr. Perry stating that he would prepare a proposed contract and send it to Legrand to review. Several days passed and Legrand did not receive the expected contract, despite calling Mr. Perry several times to check on its status.

On October 16 and 17 Legrand delivered individual proposed contracts to each of his brothers and sisters, reflecting the agreement they had earlier reached. Sandra's personal calendar reflects that she discussed the proposed sale with Legrand on October 6, and that she received the proposed contract from Legrand on October 17. None of these proposed contracts were signed by Legrand. Each of these proposed contracts, except for the contract delivered to Mitchell, was identical. The proposed contract for each brother or sister, excluding Mitchell, called for him or her to sell to Legrand his or her interest in the Wellington Plantation property, which was a 1/7th of a 25% interest, and his or her interest in the 40 acre parcel, which would have been a 1/7th interest. The proposed purchase price was \$325,000.00, payable \$500.00 as an earnest money deposit, \$74,500.00 paid at closing and the \$250,000.00 balance to be paid no later than December 31, 2006. Each proposed contract recites that this balance due would be secured by a first mortgage on the Wellington Plantation property only, and sets a closing date of no later than December 5, 2005.

The proposed contract delivered to Mitchell called for Legrand to purchase Mitchell's entire interest in the Wellington Plantation property, which was the 1/7th of a 25% interest inherited from his father as well as the 25% interest which he owned outright, Mitchell's interest in the 40 acre parcel, and also the 3.84 acre

parcel owned by Carmen. On Mitchell's proposed contract, the purchase price was left blank, and none of the amounts for the earnest money, the amount paid at closing, or the balance due, were filled in.

Each of the proposed contracts contains the following clauses:

SELLER'S TITLE. It is acknowledged that Seller may not presently hold record title to the conveyed property, but will acquire record title as a beneficiary of the Estate of C. E. Lowther, either by Will or through intestacy as an heir-at-law, and Seller agrees to convey title upon receipt of the same as set forth above in the Closing paragraphs.

CONTINGENCY. Purchaser's obligation to perform is contingent upon all owners of the conveyed property entering into agreements to sell the subject property to Purchaser upon mutually agreeable terms so that Purchaser acquires a sole, undivided interest.

QUIT CLAIM DEED. In consideration for the price paid herein, Seller, additionally agrees to release any right which Seller may have in that property and lots in the Echo Tango area of Beaufort County and will execute a Quit Claim deed to said property at closing.

ARM'S LENTH (sic, LENGTH) TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Represent of the Estate of C. E. Lowther, the Seller acknowledges that this is an arm's length business transaction and Purchaser has made no promises, representations or statements, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's own due diligence prior to entering into this Agreement.

Sandra did not immediately sign the contract, but rather retained the contract overnight in order to "pick it apart." She explained that there were some terms set forth in the contract with which she did not agree, and there were other things that she felt needed to be added to the contract. The next day, October 18, 2005, she met with Mitchell, who had also been given a proposed contract,

and together they discussed their contracts, and made some changes. Her calendar reflects that she also met with Bube and they discussed the proposed contract. Sandra made several changes on the proposed contract and then signed it and returned it to Legrand.

Mitchell's proposed contract was given to him by Legrand with a blank for the purchase price. Mitchell filled in a price of \$1,025,000.00 as the price he was willing to sell all of his interest in the 40 acre parcel and the Wellington Plantation property (both that 1/7th of the 25% interest inherited from his father as well as his individual 25% interest which he owned outright), as well as the 3.86 acres owned by his wife Carmen. Mitchell also wrote into the contract that the purchase price would be paid \$500.00 as earnest money, \$74,500.00 at closing, and a \$950,000.00 balance due to be paid no later than December 31, 2006. Mitchell also made several handwritten changes to the proposed contract, after which he and Carmen both signed it and returned it to Legrand.

Eventually, all of the brothers and sisters signed the proposed contracts, with Clark, Rita and Gene, like Sandra and Mitchell, making various handwritten changes or alterations to the contract that had been proposed by Legrand. The only two (2) who did not make alternations to the proposed contract were Mark and Bube. Legrand never signed the proposed contracts tendered back to him by his brothers and sisters.

The brothers and sisters were aware that Legrand did not have the money to pay them on their proposed contracts, and that his plan was to sell, or "flip," the properties so that he could pay them. At the time that Sandra, Mitchell, and

Bube either received or delivered the proposed contracts back to Legrand, they asked Legrand if he had a contract or sale for the properties, and he accurately told them that he did not. Legrand did not volunteer any information regarding the interest previously expressed in the properties by ISI.

A few days later, Legrand received in the mail proposed unsigned contracts from ISI regarding both the 40 acre parcel and the Wellington Plantation property. Legrand reviewed these proposed contracts and was not in agreement with the proposed terms. Legrand accordingly made some substantive changes to both contracts. On the proposed contract for the 40 acres, he changed the closing date from an indefinite date to not later than January 27, 2006. The proposed contract for the Wellington property contained a blank for the purchase price, and Legrand inserted a proposed purchase price of \$5,450,000.00. He also added a clause that, in essence, required ISI to re-convey back to him three (3) lots out of Wellington Plantation. On both contracts, he shifted the responsibility for most of the closing costs from himself to ISI. The proposed contract for the Wellington Plantation property did not require payment of any of the purchase price until December 31, 2006. Both contracts from ISI referenced the sellers, in addition to Legrand, as "Mitchell Lowther, et al." Since, by that time, Legrand had received the proposed contracts from his brothers and sisters, he struck through the reference to his brothers and sisters as sellers.

Legrand was not entirely comfortable with either contract because, as he expressed it, neither contract had any "teeth." Each contract contained numerous conditions precedent that, in essence, would allow ISI to walk away

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from closing if the property turned out not to be suitable for ISI's intended development. Nonetheless, with no other interest in the properties being expressed, Legrand elected to assume the risk of ISI electing not to close and, after making the above noted changes, signed the contracts. He signed the contracts on October 24, 2005 and mailed them back to ISI, which was located in North Carolina.

Legrand continued to discuss with his brothers and sisters his proposed purchase of the 40 acre parcel and their interest in Wellington Plantation, as well as the 3.84 acre parcel from Carmen. During these discussions, the issue of Legrand's ownership of the remaining lots in Echo Tango resurfaced. Under the proposed contracts signed by the brothers and sisters, they had each agreed to execute quit claim deeds over to Legrand for any interest which they may have in the Echo Tango property, thereby extinguishing any claim they may have concerning this property. During these ensuing discussions the parties agreed that if Legrand defaulted on the mortgage for Wellington Plantation then, in lieu of foreclosure, he would simply re-convey back to his brothers and sisters their interest in the Wellington Plantation property, and additionally, he would give them a share in the profits, if any, that he eventually would make on the Echo Tango property. They further agreed he would retain control over the Echo Tango property, and that development of the Wellington Plantation property would be by a weighted vote.

During this time, the parties also discussed closing immediately on the 40 acre parcel, inasmuch as some of the brothers and sisters, particularly Sandra,

Mitchell, and Bube, were in dire financial need. One of the changes to the proposed written contracts made by most of the brothers and sisters, including Sandra and Mitchell, shifted the burden of the closing costs from themselves to Legrand. Legrand, however, did not have the money to pay the closing costs. To get around this impasse, they agreed to reduce the amount of money paid up front to each brother and sister from \$75,000.00 to \$73,000.00, and add this \$2,000.00 difference to the amount being financed, thereby freeing \$14,000.00 (7 x \$2,000) to pay closing costs.

Additionally, they agreed that, rather than one unified price for all the property, they would allocate \$511,000.00 (or \$73,000.00 each) out of the total purchase price being paid by Legrand for all the properties, as attributable to the 40 acre parcel, so that a closing on the 40 acre parcel could proceed without delay.

Finally, Legrand agreed that rather than wait to see if he could re-sell or flip the properties, he would attempt to see if he could borrow the money for at least the 40 acre parcel so that the brothers and sisters who were in financial need could have some immediate relief. Accordingly, he contacted SCB&T and was successful in arranging a short term loan.

None of the foregoing agreements were ever reduced to writing or incorporated into the proposed contracts. Accordingly, Legrand never signed the contracts that had been modified and signed by his brothers and sisters.

The parties moved forward with their contemplated transaction and on December 8, 2005 the parties closed the 40 acre parcel transaction. On that

date, Legrand and Mark, as Personal Representatives of Mr. Lowther's Estate and in accordance with the terms of his Will, executed a Deed of Distribution conveying to the brothers and sisters all of the real estate that had been owned by Mr. Lowther. (Defendant's Exhibit 6). Each of the brothers and sisters then executed a deed conveying the 40 acre parcel to Legrand, with a recited consideration of \$511,000.00. On that same date, Legrand closed on his loan from SCB&T, borrowing \$585,000.00, and securing this loan with a mortgage on the 40 acre parcel. (Defendant's Exhibit 7). In accordance with their renegotiated agreements, Legrand paid all the closing costs on each of these transactions, and paid each of his brothers and sisters \$73,000.00. All the parties were aware that Legrand needed to re-sell the 40 acres in order to pay off the mortgage with SCB&T on the 40 acres. Again, the topic of whether or not Legrand had a contract or a buyer was discussed and he informed them that he did not have a contract or sale.

Subsequently, Legrand received in the mail the proposed contracts which he had sent to ISI, duly executed by ISI. They had been signed by Monte Perry on behalf of ISI on November 24, 2005.

On December 20 or 21, 2005, the second half of the transaction between Legrand and his brothers and sisters closed. At that time, they executed a deed to Legrand conveying all of their interest in Wellington Plantation², each brother and sister conveying the interest which they inherited from their father, and Mitchell also conveying the 25% interest which he had owned since before his

²Which they had previously received in the December 8, 2005 Deed of Distribution.

father's death. (Defendant's Exhibit 10). This deed recites a consideration of \$2,464,000.00. In exchange, Legrand gave Notes to his brothers and sisters. The Note to each brother and sister, excluding Mitchell, was for \$252,000.00. Mitchell's Note was for \$952,000.00. Each Note called for a balloon payment no later than December 31, 2006. Reflecting the agreement of the parties reached during their discussions following the delivery of the proposed contracts by the brothers and sisters back to Legrand, each Note³ contains the following clause:

~~Borrower shall execute a General Warranty Deed conveying an undivided one-seventh of a 25% interest to Note holder in the Wellington Plantation property, a copy of which is provided with this Note. The original of this Deed shall be held in escrow by the closing attorney and shall be voided if Borrower shall pay in full the amount due the Note holder. In the event that Borrower should be in default or should fail to pay the Note holder in full when due, then said Note holder agrees to accept as his sole remedy, in lieu of foreclosure, the property conveyed to him pursuant to said Deed and said Deed shall then be delivered and recorded. In that event, said Note holder agrees to manage, develop, market, encumber, or sell said property in accordance with the majority vote of the joint owners thereof, with votes weighted according to ownership interest (e.g., a 10% owner casts 10 votes). Furthermore, in the event that Borrower should fail to pay the Note holder in full when due, then the Note holder shall additionally be entitled to receive a "share" of the "net proceeds" from the sale of any lot in the Echo Tango subdivision being developed by Borrower. "Net proceeds" are those proceeds received by Borrower from the sale of a lot or lots after Borrower has been reimbursed for all development expenses for the subdivision, including but not limited to taxes, maintenance, the cost of the sewer, the cost of litigating the sewer issue, attorneys fees, and marketing expenses. The Note holder's "share" shall be a pro rata share equal to one-seventh of a fifty (50%) percent share, or 7.14%.~~

(Defendant's Exhibit 11).

³Mitchell's Note also provides for re-conveying back to him the 25% interest that he owned prior to his father's death.

In accordance with the foregoing provision in the Note, on December 20, 2005 Legrand executed a General Warranty Deed which re-conveyed back to each of his brothers and sisters the interest that they had just conveyed to him in Wellington Plantation. This deed was held in escrow and not delivered. (Defendant's Exhibit 23). Legrand also executed a mortgage to his brothers and sisters, referencing each of the individual Notes, in the combined principal sum of \$2,464,000.00. This Mortgage encompassed all of Wellington Plantation. (Defendant's Exhibit 12). Legrand paid the closing costs incurred in connection with this transaction. As the parties had anticipated in their earlier discussions, the closing costs for all of these transactions totaled almost \$14,000.00, primarily documentary tax stamps (to be precise, \$14,050.50), which were paid using the excess SCB&T loan proceeds. (Plaintiff's Exhibit 4 and 8).

Sandra was represented in the closings by her own attorney.

Legrand's contract with ISI for the 40 acre parcel called for a closing no later than January 26, 2006. As noted earlier, Legrand was concerned about these contracts with ISI because, in his opinion, the conditions precedent were so broad and discretionary as to allow ISI to walk away from the contracts, leaving him without any recourse. When the closing deadline of January 26, 2006 came and went without any closing, Legrand became frantic, calling Monte Perry with ISI "day and night." He not only did not have the money to pay his brothers and sisters for the Wellington Plantation property, but he also did not have the money to pay SCB&T on the mortgage he had just taken out. As he

testified, if he was unable to sell the 40 acres quickly, he would have been "bankrupt."

Fortunately, after ISI walked away from the contract for the 40 acres, Legrand was able to negotiate a sale of the 40 acres to another developer, Amberwinds, LLC, for the same price. The 40 acres was sold by Legrand to Amberwinds on February 17, 2006 for \$810,000.00. (Defendant's Exhibit 8). In connection with the closing Legrand received a credit of \$6.24 for prorated taxes, and incurred settlement charges of \$1,250.00. The payoff of the mortgage to SCB&T was \$593,872.50. In order to convey good title, he also had to pay off a judgment against Clark in the amount of \$6,575.98, and pay a creditor's claim that had been filed against his father's estate in the amount of \$1,256.61. He accordingly received \$207,051.15 in proceeds from the sale.⁴

Shortly thereafter, in March 2006 Sandra, Mitchell and Bube learned about Legrand's sale of the 40 acres to Amberwinds for \$810,000.00. Although they were upset, they elected not to take any action at that time. Instead, they waited to see if Legrand would be able to pay them the balance of the purchase price, i.e., \$2,464,000.00, which was due no later than December 31, 2006.

Unfortunately, ISI, just as it had with the 40 acre contract, walked away from the contract on Wellington Plantation. Unlike with the 40 acre parcel, Legrand was unable to find a substitute buyer for Wellington Plantation and he was, accordingly, unable to pay to his brothers and sisters the \$2,464,000.00 he owed them. Pursuant to the terms of the Notes, Legrand delivered to his

⁴The same attorney who represented Amberwinds in that transaction is one of the Plaintiffs' attorneys.

brothers and sisters the escrowed deed in lieu of foreclosure, reconveying to them their interests in Wellington Plantation. (Defendant's Exhibit 23). Also in accordance with the terms of the Notes, Legrand began providing to his brothers and sisters interim accountings as to the receipts and expenses incurred in connection with Echo Tango. (Defendant's Exhibit 25). At the request of some of his brothers and sisters, including the Plaintiffs herein, who remained in financial need, Legrand began making advance distributions of Echo Tango profits, beginning in May of 2007 and continuing through December of 2008. At the time of trial, from the Echo Tango sales, Mitchell had received \$36,000.00, Sandra had received \$22,000.00 and Bube had received \$16,000.00. Clark, Rita, Gene and Mark had received \$16,000.00 each. In all, \$138,000.00 from the Echo Tango lot sales had been distributed by Legrand to his brothers and sisters by the time of the trial, in accordance with the terms of their agreement as set forth in the Notes.

II. ARGUMENT

A. BREACH OF FIDUCIARY DUTY

A personal representative, of course, is a fiduciary. S.C. Code Ann. §62-3-703(a) (2010).⁵ The fiduciary is required to observe the standards of care applicable to trustees. *Id.* "A personal representative has the duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective Will and (the South Carolina Code of Laws), as expeditiously and

⁵The sections of the South Carolina Probate Court Code cited herein were amended effective June 7, 2010. The operative language, however, is the same both before and after the amendment.

efficiently as is consistent with the best interest of the estate." *Id.* If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons who are damaged or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. S.C. Code Ann. §62-3-712 (2010).

The party asserting the existence of a fiduciary relationship has the burden of establishing such by clear and convincing evidence. Once the fiduciary relationship is established, the law presumes that any transaction between the parties by which the dominate party has profited is fraudulent. When it is alleged that a fiduciary has breached such duty by fraud, self dealing, or conflict of interest, the burden of proof shifts to the fiduciary to prove fair dealing by clear and convincing evidence. The burden is then upon the fiduciary to establish the honesty of the transaction, or to show that he or she acted fairly and informed the other party of all material facts relating to the challenged transaction. This burden is generally met if the fiduciary shows that the principal acted with full knowledge and intent or with advice of independent legal counsel. Other significant factors in meeting that burden include showing that the fiduciary made frank disclosure of available information, he paid adequate consideration, and the principal had competent and independent advice. See generally, *Am.Jur Fraud*, §472 (2010) (footnotes omitted).

1. THE COURT ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW IN RESPONDENTS' FAVOR ON THE BREACH OF FIDUCIARY DUTY CAUSE OF ACTION, WHERE THE APPELLANT WAS NOT ACTING AS A FIDUCIARY IN CONNECTION WITH THE CHALLENGED TRANSACTION.

The first question, accordingly, is whether the Plaintiffs have satisfied their burden of proving that the Appellant was acting as a fiduciary in connection with the challenged transaction. It is clear in this case that Appellant was not acting as a fiduciary when he purchased the land from his siblings. The transaction took place completely outside the Estate, and did not involve the exercise of any fiduciary powers by the Appellant. The Plaintiffs' position seems to be that all they need show is that the Appellant was one of the Personal Representatives of their father's Estate, and the challenged transaction involves real estate which they inherited from their father's Estate. Such a showing, however, is inadequate. In order for a fiduciary duty to apply, the challenged transaction must somehow involve "the exercise of (fiduciary) power concerning the Estate." S.C. Code Ann. §62-3-712 (2010). As a fiduciary, a Personal Representative has a fiduciary duty to settle and distribute the Estate of the decedent in accordance with the terms of the Will, as expeditiously and efficiently as is consistent with the best interest of the Estate and its interested parties, including beneficiaries. S.C. Code Ann. §62-3-703(a) (2010).

The challenged transaction in this case simply does not involve the Appellant's fiduciary duties. In other words, the challenged transaction did not

involve the Appellant exercising any of the powers conferred upon him by virtue of his appointment as one of the Personal Representatives of the Estate. The subject real estate, in accordance with the terms of the Will, was distributed and deeded to the rightful beneficiaries. The Estate was not involved in the challenged transaction. The Estate was neither the buyer nor the seller. This was a transaction between individuals which took place entirely outside the Estate.

Significantly, this is not a case in which the Personal Representative, exercising his power as Personal Representative, sells property belonging to the Estate to himself as an individual, and then disburses the sales proceeds to the beneficiaries. In such a case, the transaction, taking place within the confines of the Estate, involves the Personal Representative utilizing the powers conferred upon him in his capacity as Personal Representative to accomplish the transaction. The case now before the court is completely different. Legrand purchased from his brothers and sisters real estate that they owned outright. The transaction was neither facilitated by nor made possible by the fact that Legrand was serving as the Personal Representative of his father's Estate. In closing on the subject transaction, Legrand did not exercise any of the powers which he had acquired by virtue of his position as Personal Representative of his father's Estate. There is simply no causal connection between Legrand's position as Personal Representative, and the challenged transaction. The simple fact that his brothers and sisters had acquired title to the property by inheritance does not render their subsequent decision to sell this property subject to the

scrutiny of a fiduciary transaction. Legrand did not use his position as Personal Representative to force or influence the sale. Conversely, the Plaintiffs were fully aware that they owned this property individually and negotiated the sale individually.

"If, in the course of administering an Estate, a Personal Representative undertakes to sell property of the Estate, the Representative's fiduciary obligation requires him to secure the best price obtainable under the circumstances."

~~Am.Jur2d, Executors and Administrators, §726 (2010). See also, S.C. Code~~
Ann. §62-3-713 (2010). In the case now before the court, the challenged transaction did not take place "in the course of administering an Estate." The property that was being sold was not "property of the Estate" but property that had been distributed to and belonged to the individual sellers, and it was not the Personal Representative who was undertaking to sell the property, but rather, it was being sold by its individual owners. In short, the challenged transaction took place outside the Estate, not within it. The exercise of fiduciary powers were simply not involved.

2. THE COURT ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW IN RESPONDENTS' FAVOR ON THE BREACH OF FIDUCIARY DUTY CAUSE OF ACTION, WHERE THE APPELLANT DID NOT PROFIT FROM THE CHALLENGED TRANSACTION.

Assuming, *arguendo*, that the Plaintiffs have proven by clear and convincing evidence that the challenged transaction somehow involved the exercise of a fiduciary duty, the next step in the analysis is to determine whether

the fiduciary profited from the subject transaction. As previously noted, the law presumes that any transaction involving a fiduciary duty in which the fiduciary has profited is fraudulent, and if it is alleged that the fiduciary has breached such duty by fraud, self dealing, or conflict of interest, the burden of proof shifts to the fiduciary to prove fair dealing by clear and convincing evidence.

The next question, accordingly, is whether Legrand has profited from the subject transaction. In determining whether Legrand has "profited" from the challenged transaction, the Probate Court ignored the totality of the circumstances and focused instead solely upon the 40 acres. The Probate Court seems to have concluded that Legrand's profit was obvious, inasmuch as he purchased the 40 acres for \$511,000.00 from his siblings, and later sold the 40 acres to a third party for \$810,000.00. This view of what actually took place, however, is overly simplistic and contrary to the evidence. The sale of the 40 acres was clearly only one subpart of a much larger transaction.

As the Probate Court correctly noted (Order of Judgment, pg. 14), "(t)he general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the Court will consider and construe them together." *Café Associates, Ltd. v. Gerngross*, 305 S.C. 6, 10, 406 S.E.2d 162, 164 (1991). "Moreover, where the instruments have not been executed simultaneously but relate to the same subject matter and have been entered into by the same parties, the transaction comprising the contract will be considered as a whole." *Klutts Resort Realty, Inc. v. Down-Round*

Development Corporation, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). "In South Carolina, two (2) contracts executed at different times relating to the same subject matter, entered into by the same parties, are to be construed as one (1) contract and considered as a whole." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 92, 594 S.E.2d 485, 492 (Ct. App. 2004). "This rule applies even where the parties are not the same, if the several instruments were known to all the parties and were delivered the same time to accomplish an agreed purpose." *Id.*, 358 S.C. at 93, ~~594 S.E.2d at 493.~~

The evidence in this case establishes that the 40 acre transaction was simply a subpart to a larger transaction that involved Wellington Plantation and the Echo Tango Subdivision, as well as, from Mitchell and Carmen's point of view, the 3.84 acres. The proposed contracts between the parties contain a single, lump sum price for **all** the properties. Each proposed contract was expressly contingent upon **all** brothers and sisters agreeing to sell and Legrand acquiring **all** the property. The 40 acres closed separately only because some of the brothers and sisters were in dire financial circumstances and could not wait to receive cash. When cash for closing was needed, \$2,000.00 from the "down payment", from each brother and sister was freely shifted to the amount financed. The purchase and sale of one property was clearly contingent upon and inter-related with the purchase and sale of the other properties.

Looking at the transaction as a whole, it cannot be said that Legrand has "profited" from the transaction. Indeed, the evidence suggests that the brothers and sisters made a favorable deal by virtue of the fact that they now have an

interest in the Echo Tango Subdivision's profits. Any "profit" which they may have lost on the up front sale of the 40 acres, they are going to recoup many times over by virtue of their acquired one-half (½) interest in the Echo Tango Subdivision profits. The last lot that sold in Echo Tango brought a purchase price of \$700,000.00. The brothers and sisters have already received \$138,000.00 collectively from Echo Tango, and the four (4) lots remaining to be sold are comparable to the one that last sold. The potential interest which the brothers and sisters have collectively acquired in the Echo Tango Subdivision is, accordingly, worth \$1,400,000.00. The up-front "profit" which Legrand made on the 40 acres is being offset by a nearly five-fold loss on Echo Tango. Conversely stated, the brothers and sisters are in a position to make a profit of nearly \$1,100,000.00⁶ on this transaction, over and above the \$138,000.00 in cash which they have already pocketed. The evidence is clear that the "fiduciary" has not profited from this transaction where, at best, he made \$300,000.00 up front, but has since paid out \$138,000.00 in cash and has given up half the profits which he will receive on four (4) lots valued at \$700,000.00 each, which he owned free and clear. Looking at the transaction as a whole, which is required, it is the siblings who will come out on top, not Legrand.

3. THE COURT ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW IN RESPONDENTS' FAVOR ON THE BREACH OF FIDUCIARY DUTY CAUSE OF ACTION, WHERE THERE WAS NOT A BREACH OF ANY FIDUCIARY DUTY.

⁶The net profit resulting from the difference between the \$1,400,000.00 potential profit in Echo Tango less the \$300,000.00 "loss" on the 40 acres.

Assuming that the challenged transaction involved the exercise of a fiduciary duty, and that the fiduciary profited from the transaction, the next step in the analysis is to determine whether there was a breach of the fiduciary duty. The Plaintiffs allege that Legrand breached his fiduciary duty either actively, by misrepresenting that there was no contract or sale pending with ISI, or passively, by failing to disclose the interest expressed by ISI in the 40 acres and the contemplated purchase price.

~~As previously noted, if the transaction involves the exercise of fiduciary~~ duties and the fiduciary profits from the transaction, then the fiduciary must prove "fair dealing" which would include a full disclosure of all material facts relating to the fiduciary transaction. *Am.Jur2d, Fraud and Deceit*, §472 (2010). The simple fact is that Legrand did not have a contract with ISI at the time that the 40 acres closed, although negotiations had taken place. A price of \$800,000.00 for the 40 acres had been discussed, but no price on Wellington Plantation had been discussed or agreed to, and the 40 acre purchase was expressly conditioned upon the purchase of Wellington Plantation. In looking at the materiality of Legrand's failure to disclose the ongoing negotiations with Amberwinds, one of the things the Court should consider is Legrand's intent or state of mind. The real estate market at that time was highly speculative, as borne out by the fact that two (2) prior deals on the 40 acres had fallen through. The deal with ISI also eventually fell through. In the existing market, even a signed and sealed contract was no guarantee of a closing taking place. Some of the brothers and sisters had been in favor of selling the 40 acres at a substantially lower price, and there

was no evidence that the \$511,000.00 was an unfair price. ISI did not end up purchasing the 40 acre parcel, and also walked away from the Wellington Plantation contract. Amberwinds did not even enter the picture until much later, and the eventual sale to Amberwinds occurred completely after the fact.

Additionally, the challenged transaction was heavily negotiated by the Plaintiffs. Legrand's offer was not made on a take-it-or-leave-it basis, and they reviewed his proposed contract carefully, eventually rejecting it and making ~~counter-offers.~~ After these counter-offers were made, negotiations continued, the result of which was a substantially more favorable deal for the brothers and sisters, bringing into play the half (½) interest in the Echo Tango Subdivision. The proposed contracts contain an express disclaimer that the Plaintiffs are not relying upon any representations made by Legrand. The contract signed by each sibling expressly states:

ARM'S LENTH (sic, LENGTH) TRANSACTION. Although Purchaser and Seller are related, and although Purchaser is a co-Personal Represent of the Estate of C. E. Lowther, the Seller acknowledges that this is **an arm's length business transaction** and Purchaser has made **no promises, representations or statements**, except those set forth herein in writing, upon which Seller is relying, and Seller has conducted Seller's **own due diligence** prior to entering into this Agreement.

(some emphasis added).

Significantly, the brothers and sisters are not neophytes. Mitchell, for example, is a residential contractor and a real estate developer. Transactions such as the one here at issue are the focus of his profession. Sandra, a registered nurse, hired an attorney and was independently represented in

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connection with the challenged transaction. There is no evidence that any Plaintiff relied upon Legrand's advice or counsel in entering into the challenged transaction. Indeed, each Plaintiff actively negotiated to get the best deal that he or she could. The three siblings who did not join in this suit - Rita, Gene and Clark are apparently satisfied with the transaction and did not even testify.

The Plaintiffs each testified that they independently asked Legrand if he had a contract or sale for any of the subject properties and he told them that he ~~did not. Although he had had discussions with ISI, and was negotiating with ISI,~~ at the time he was asked about a contract or sale it was correct to state that he had neither. He had received proposed contracts from ISI, but the contracts were not acceptable to him and with respect to Wellington a price had not even been discussed. He made significant changes to the contracts, and returned them to ISI, proffering for the first time a price on Wellington. His counter offers to ISI were not accepted by ISI until November 24, 2005, and he did not learn of their acceptance until mid-December, well after the 40 acre transaction had closed.

It would be pure speculation to conclude that any of the Plaintiffs would have done anything different even if Legrand had signed contracts with ISI in hand. The parties had had signed contracts on the 40 acres in hand previously, and those contracts had proven not to be worth the paper on which they were written. The contracts with ISI, likewise, had no "teeth" and ISI was free to walk away at any time, as it eventually did. The evidence is not "clear, convincing and cogent" that each Plaintiff would have walked away from the immediate

guaranteed cash which they so desperately needed, in exchange for an unenforceable promise of a 1/7th share in more money, and given up the lucrative potential profits in Echo Tango, part of which they have already received.

4. THE COURT ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW IN RESPONDENTS' FAVOR ON THE BREACH OF FIDUCIARY DUTY CAUSE OF ACTION, WHERE THE BREACH OF FIDUCIARY DUTY DID NOT PROXIMATELY CAUSE ANY DAMAGES.

Finally, even if the evidence proved that the challenged transaction involved the exercise of a fiduciary duty, that the fiduciary profited from this transaction, and that the fiduciary breached his fiduciary duty in connection with this transaction, the next step is to determine whether the breach of that duty proximately caused the Plaintiff's damages. In this respect, the Plaintiffs blithely assert that if they had known about ISI's involvement, they would have never agreed to the challenged transaction. This completely self-serving testimony, however, is unsupported and uncorroborated by any other evidence. Each of the Plaintiffs stated, and emphasized, that they were in dire financial straits and needed cash immediately. It is not reasonable to conclude that they would have given up the guarantee of \$73,000.00 cash in hand in exchange for the possibility that they might obtain a little more money at some indefinite point in the future. The \$299,000.00 difference between the two (2) sales prices (\$810,000.00 versus \$511,000.00) is certainly significant, but once you divide it into seven (7) shares and consider that the \$511,000.00 includes no closing costs or liens,

while the \$810,000.00 involves paying closing costs, as well as the existing liens (judgment against Clark and a claim against the Estate (Defendant's Exhibit 9)), the significance lessens. Additionally, the deal for Wellington Plantation, which involved millions of dollars, would have been taken off the table, and likewise, the proffered partnership in the Echo Tango profits would have been lost. To conclude that the brothers and sisters, if they had known about ISI, would have walked away from guaranteed immediate cash that they desperately needed, as well as a several million dollar deal for Wellington and more than a million dollars in potential profits on Echo Tango Subdivision, all in exchange for yet another unenforceable promise to purchase the 40 acres by an unknown entity, involves pure speculation.

5. THE COURT ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW IN RESPONDENTS' FAVOR ON THE BREACH OF FIDUCIARY DUTY CAUSE OF ACTION, WHERE THE PLAINTIFFS RATIFIED THE TRANSACTION.

Finally, even if the evidence proved that the challenged transaction involved the exercise of a fiduciary duty, that the fiduciary profited from this transaction, that the fiduciary duty was breached in connection with this transaction, and that the breach proximately caused damages to the Plaintiffs, this cause of action still must fail. This is because the Plaintiffs, with full knowledge of all the facts, ratified the transaction and elected to receive benefits from the transaction.

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"The right to avoid a contract for fraud may be lost through acts or conduct constituting waiver, ratification, estoppel, or laches, although there must be clear proof of such acts or conduct and that they occurred after the deceived party had secured knowledge of the fraud." *CJS Contracts*, §172 (2010). The Plaintiffs had full knowledge of all the facts as of March 2006. With full knowledge of the facts, they thereafter accepted repeated payments from Legrand on Echo Tango Subdivision. Rather than moving to void or set aside the transaction, they waited for nearly two (2) years before bringing this action in February of 2008, and in the meantime demanded and received payments from Legrand on Echo Tango, with Bube receiving \$16,000.00, Sandra receiving \$22,000.00, and Mitchell receiving \$36,000.00. It is noteworthy that the brothers and sisters who are not Plaintiffs in this lawsuit have likewise ratified the transaction, and a total of \$138,000.00 in Echo Tango profits has been paid.

"Fraud inducing a contract may be waived. A contract obtained by fraud, which is voidable and not void, may be ratified by the party who was induced by the fraud to enter into the contract. Ratification or its equivalent is shown where, with actual or constructive knowledge of the true facts, a party by acts of commission or omission shows a clear intent to affirm the contract despite the fraud, as where he or she accepts the benefits thereof, or insists on performance of the contract by the other party, or otherwise acts in a manner inconsistent with repudiation." *CJS Contracts*, §172 (2010).

"When one is induced through false and fraudulent representations to enter into an agreement, upon discovery thereof, he has an election to either

rescind, in which he must tender back that which he has received, or he may affirm the agreement, and maintain his action in damages for deceit, but **his election must be promptly made**, and, when once made, is final. If one elects to affirm the agreement, after full knowledge of the truth respecting the false and fraudulent representations, and thereafter continues to carry it out and receive its benefits, he may not thereafter maintain an action in damages for deceit, because this would constitute a ratification of the agreement and a condemnation of the fraud; otherwise one might, with knowledge of fraud, speculate upon the advantages or disadvantages of an agreement, receive its benefits, and thereafter repudiate all its obligations." *Tisdell v. Central Savings Bank & Trust Co.*, 90 CO 114, 130, 6 P2d 912, 917-18 (1931) (emphasis added). As noted above, the Plaintiffs in this case waited nearly two (2) years before complaining about the subject transaction after learning all the facts, and in the meantime repeatedly demanded and received benefits from the subject transaction.

By electing to continue to receive benefits from the transaction subsequent to their obtaining full knowledge of all the facts, the Plaintiffs have elected to affirm the transaction and have ratified the transaction. See generally, *Am.Jur, Fraud*, §331 (2010).

For each of the foregoing reasons, it is respectfully submitted that the Probate Court erred in failing to find for the Appellant on the breach of fiduciary duty cause of action.

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B. DAMAGES

6. THE PROBATE COURT ERRED IN GRANTING JUDGMENT AGAINST THE APPELLANT IN FAVOR OF INDIVIDUALS WHO WERE NOT PARTIES.

The Order of Judgment issued by the Beaufort County Probate Court concludes as follows:

Wherefore, it is ORDERED, ADJUDGED, and DECREED that:

...

2. Judgment is rendered for the Plaintiffs against the Defendant Legrand for breach of fiduciary duties, as aforesaid, and the Plaintiffs are awarded damages for such breach in the amount of \$69,051.15; provided, however, that such award is apportioned among and payable in equal shares to Gene, Sandra, Bube, Rita, Clark, Mitchell, and Mark.

AND IT IS SO ORDERED.

Order of Judgment, pg. 17.

The Probate Court, accordingly, rendered judgment against the Appellant in favor of each of the Appellant's seven (7) siblings, in the amount of \$9,864.45, (which equals a one-seventh equal share in the aggregate judgment of \$69,051.15. It is axiomatic that a judgment can be rendered in this case only in favor of the Plaintiffs. Entering a judgment in favor of non-parties exceeded the Court's powers and jurisdiction.

A Court has jurisdiction only over the parties involved in the case before it.

A Court has no jurisdiction to affect the rights of a non-party.

Entering a judgment in favor of a non-party violates fundamental principals of due process. The Appellant had no notice that a judgment might be rendered

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against him in favor of a non-party, and had no opportunity to be heard regarding such a possibility. Conversely, the non-parties had no notice nor opportunity to be heard regarding this matter, and it is equally unfair that they may be bound by a decision rendered in a case in which they made no claims.

Additionally, the Order puts the Appellant in the untenable position of being forced to pay a judgment against non-parties, yet the non-parties are still theoretically free to pursue these exact same claims against the Appellant, since ~~principals of *res judicata* and collateral estoppel do not apply to a non-party.~~ See, generally, *Duckett v. Goforth*, 374 S.C. 446, 464 - 65, 649 S.E.2d 72, 81 - 82 (Ct. App. 2007).

It was accordingly error for the Probate Court to enter judgments in favor of individuals who are not even parties to this action. If the Probate Court was correct in determining that the total damages of \$69,051.15 was suffered equally by each of the seven (7) siblings, then the Court should have entered judgment in favor of each of the three (3) Plaintiffs, Sandra, Bube, and Mitchell, in the amount of \$9,864.45.

7. IN RENDERING ITS JUDGMENT, THE PROBATE COURT ERRED IN CONCLUDING THAT THE TOTAL DAMAGES OF \$69,051.15 SHOULD BE APPORTIONED EQUALLY AMONG THE PLAINTIFFS, WHERE THE PLAINTIFFS HAVE PREVIOUSLY RECEIVED PAYMENTS IN NON-EQUAL AMOUNTS.

After concluding that Legrand had breached a fiduciary duty the Probate Court then proceeded to calculate the damages suffered as a result of this breach.

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The Court first noted that the net proceeds received by Legrand from the sale of the 40 acres was \$207,051.15, explaining as follows:

On February 17, 2006, Legrand closed on the sale of the 40-acre parcel to Amberwinds, LLC ("Amberwinds"), as assignee of ISI, for contract price of \$810,000.00. From the gross amount due the seller, the following were paid at closing: payoff of the SCB&T mortgage in the amount of \$593,872.50; seller's attorney fee of \$1,250.00; a judgment against Clark Lowther in the amount of \$6,575.98; and a South Carolina Electric & Gas Company creditor's claim against the Decedent's Estate in the amount of \$1,256.61. After allowing a \$6.24 credit to the seller for prorated real estate tax paid in advance, the net proceeds of the sale paid to Legrand was \$207,051.15.

Order of Judgment, pg. 10.

Next, the Court then noted that Legrand, in accordance with the terms of their transaction, has made the following distributions to his siblings from his profits on the sale of Echo Tango lots:

Mitchell	\$36,000.00
Sandra	\$22,000.00
Bube	\$16,000.00
Clark	\$16,000.00
Mark	\$16,000.00
Gene	\$16,000.00
Rita	\$16,000.00
Total	\$138,000.00

See Order of Judgment pp. 10 - 11.

Finally, the Probate Court concluded that, in determining the damages to be awarded, the \$207,051.15 realized by Legrand from the Amberwinds closing

should be reduced by the \$138,000.00 in distributions that he made subsequently to his siblings from his profits on the sale of two (2) Echo Tango lots. Order of Judgment, pg. 14. This is how the Probate Court arrived at the resulting judgment damages figure of \$69,051.15 (representing the remainder of \$207,051.15 minus \$138,000.00).

The Court then concluded, however, that the \$69,051.15 should be apportioned equally among all seven (7) siblings, which would entitle them to \$9,864.45 each.—

It is respectfully submitted that apportioning the \$69,051.15 judgment equally among the siblings was error, inasmuch as the \$138,000.00 which has already been paid towards the “damages” was not paid equally to all the siblings. If the \$138,000.00 had been paid equally to all the siblings, then it would have been correct to equally apportion the remaining balance of \$69,051.15. Since the damages were suffered equally by all the siblings, then the damages should have been calculated on an equal basis.

Assuming arguendo that the total damages suffered by the siblings was \$207,051.15, then each sibling suffered damages of \$29,578.73 (one-seventh of \$207,051.15). Mitchell, however, has already received payment against the sum of \$36,000.00. Sandra has already received payments totaling \$22,000.00, which would leave a balance owed to her of \$7,578.73. Each of the other siblings has received payments totaling only \$16,000.00, leaving a balance of \$13,578.73 owed to each of them. The error committed by the Probate Court is that the \$138,000.00 setoff was not paid equally to each of the seven (7) siblings,

but rather, the total setoff payments paid to Mitchell and Sandra were substantially higher than the total paid to the others. Since the damages were suffered equally, the set-offs should have been applied on an individual basis, as follows:

Name of Siblings	Total	Total Damages	Set-Offs	Balance Owed
Mitchell	\$29,578.73	\$207,051.15	\$36,000.00	-\$6,421.26
Sandra	\$29,578.73	\$207,051.15	\$22,000.00	\$ 7,578.73
Bube	\$29,578.73	\$207,051.15	\$16,000.00	\$13,578.73
Clark	\$29,578.73	\$207,051.15	\$16,000.00	\$13,578.73
Gene	\$29,578.73	\$207,051.15	\$16,000.00	\$13,578.73
Mark	\$29,578.73	\$207,051.15	\$16,000.00	\$13,578.73
Rita	\$29,578.73	\$207,051.15	\$16,000.00	\$13,578.73
TOTAL			\$138,000.00	\$69,051.15

Accordingly, since only Mitchell, Sandra, and Bube are the Plaintiffs in this lawsuit, the judgment rendered by the Probate Court should only have been as to their interest. See Issue No. 6, *supra*. As to Mitchell, no judgment should have been awarded, since his damages were \$29,578.73, and he has already been paid as a set-off against these damages the sum of \$36,000.00. He has already

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been paid in full, and no further payment is owed at this time.⁷ Sandra suffered the same damages, and has been paid \$22,000.00, so the judgment in her favor should have been for the remaining balance of \$7,578.73, which is slightly less than the \$9,864.45 to which she is entitled under the existing Order. Conversely, however, Bube, who also suffered the same damages has been paid only \$16,000.00, and the judgment in his favor should have been for \$13,578.73, which is more than the amount to which he is entitled under the existing Order.

Accordingly, ~~it is respectfully submitted that, since Mitchell, Sandra and Bube~~ are the only Plaintiffs in this action, the judgment should have been zero in favor of Mitchell, \$7,578.73 in favor of Sandra, and \$13,578.73 in favor of Bube.

CONCLUSION

The Plaintiffs freely and voluntarily entered into a relatively complex and multi-layered real estate transaction involving multiple properties. These properties were hardly "hot items." The testimony was that their father had unsuccessfully tried to sell these properties prior to this death, and the beneficiaries themselves, particularly Clark, tried to sell these properties following his death, without success, and that potential purchasers, even when contracts were in hand, ultimately refused to close. Some of the brothers and sisters had an urgent need for cash, but even so, they rejected Legrand's initial offer to purchase the properties. Extensive negotiations took place over a prolonged period of time. The brothers and sisters, rather than relying on Legrand conducted their own due diligence. Sandra, for example, consulted with an

⁷ The Probate Court correctly noted that further distributions from sales of the remaining Echo Tango lots will be made to each of the siblings. The credit on Mitchell's account can be taken into account on these future distributions.

accountant who specialized in real estate transactions and hired an attorney who assisted her in the negotiation, drafting, and closing of the subject transactions. Mitchell is a real estate developer who enters into transactions of this nature as part of his customary business. The Plaintiffs have received everything for which they bargained. As a result of their hard bargaining, the brothers and sisters have received an interest in the Echo Tango Subdivision that will potentially overshadow by many times the amount of profit which they could have conceivably received on the 40 acres. No one component of this transaction can be viewed in isolation, and when viewed as a whole, the transaction greatly favors the Plaintiffs, not the Appellant Legrand.

The bottom line is that both sides of this transaction assumed certain risks. All parties knew that Legrand did not have sufficient funds to pay for the properties, and that he would have to "flip" these properties in order to fulfill his contractual obligations without defaulting. Legrand was hoping that he would be able to re-sell these properties, and thereby avoid default and forfeiting a half interest in his Echo Tango Subdivision to his brothers and sisters. The brothers and sisters, on the other hand, were willing to accept the sure thing of the immediate guaranteed cash, and then either receive another \$2,464,000.00 collectively in a year, or at worse, simply get back their Wellington Plantation property and start to collect half the profits from the Echo Tango subdivision. Legrand risked bankruptcy and the loss of half of Echo Tango if he was unable to sell either property, while his brothers and sisters risked relatively little. As it turned out, Legrand was able to sell one of the properties to a third party, and

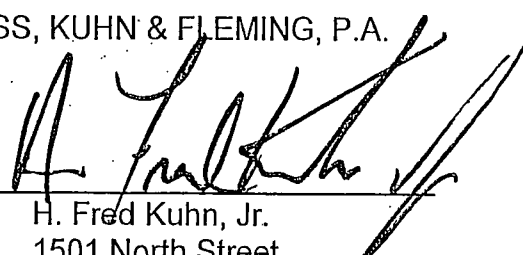
thereby avoid foreclosure by SCB&T and the resulting bankruptcy, but Wellington Plantation remained an albatross, which ended up costing him half the profits in Echo Tango. In the final analysis, Legrand was enriched by about \$300,000.00 on the 40 acre parcel portion of the transaction, but in exchange he has already paid \$138,000.00 in cash and lost another \$1,400,000.00 in potential profits on Echo Tango.

In the final analysis, this is a transaction which both parties assumed risks that—seemed reasonable at the time, and it appears that the Plaintiffs made the better deal.

It is accordingly respectfully requested that the judgment entered against Appellant by the Beaufort County Probate Court be reversed, or alternatively, that the judgment be modified to reflect a judgment in favor of Sandra and Bube, only, for \$7,578.73 and \$13,578.73, respectively.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, SC 29901-0507
[843]524-3373
[843]524-1302 facsimile

Beaufort, South Carolina
January 22, 2011

Attorneys for the Appellant

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CERTIFICATE OF SERVICE

Undersigned certifies that the **Grounds of Appeal**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Harley D. Ruff, Esquire
Ruff & Ruff
17 Professional Village Circle
Beaufort, South Carolina 29907

R. Thayer Rivers, Esquire
Post Office Box 668
Ridgeland, South Carolina 29936

Rita Elizabeth L. Rogers

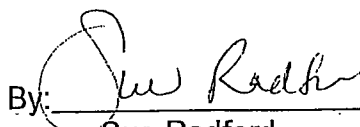
C. Clark Lowther

Vivian Gene Tillotson

Mark A. Lowther

2011 JAN 24 PM 3:56
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on January 24, 2011

By: 
Sue Radford
Secretary for H. Fred Kuhn, Jr.

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THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2007ES0700655

Effie Sandra L. Turpin, C. E. Lowther, Jr., Clayton
Clark Lowther, and Mitchell Saxon Lowther,
individually and representing as a class of
beneficiaries of the Estate of C.E. Lowther, Sr., ...Appellants,

v.

E. LeGrand Lowther, individually and as Personal
Representative of the Estate of C.E. Lowther, Sr.,
and Mark Allen Lowther, as Personal Representativ
of the Estate of C.E. Lowther, Sr., ...Respondents.

GROUNDS FOR APPEAL

Appellants hereby submit their grounds for appeal of the Order in this case, of the
Beaufort County Probate Court dated December 21, 2010, pursuant to S.C. Code § 62-1-308(a).

1. STATEMENT OF THE CASE

A. Procedural Background

Plaintiffs sued D E. LeGrand Lowther, Jr. (hereinafter "LeGrand") for breach of fiduciary
duty and other causes of actions. Plaintiffs alleged that LeGrand violated his fiduciary duties to
Plaintiffs by converting and defrauding the Estate's beneficiaries out of \$299,000, by purchasing
a 40.81 acre parcel of land belonging to the Estate for \$511,000 and then selling the 40-acre tract
to a third party for \$810,000, without disclosing the pending third party sale.

This matter was tried before The Honorable Kenneth E. Fulp, Jr., Associate Beaufort County Probate Judge, without a jury, on June 23 and 26, 2009. On December 21, 2010, Judge Fulp issued an Order of Judgment (hereinafter "Probate Court Order"), entering a judgment against LeGrand for breach of fiduciary duty, and awarding damages of \$ 69,051.15.

B. Factual Background

The "Findings of Fact" contained in the Probate Court Order are accurate and are hereby incorporated into these Grounds for Appeal. However, they include a lot of irrelevant information and significantly overcomplicate and confuse what is really a straightforward case, and accordingly Plaintiffs hereby offer these simplified and relevant facts.

LeGrand was appointed as Co-Personal Representative of the Estate of C. E. Lowther by the Jasper County Probate Court on June 17, 2004. A key estate asset was a 40.81 acre parcel of unimproved real property on Bees Creek Road in Jasper County (hereinafter "40-acre parcel").

On October 12, 2005, LeGrand entered into a contract to sell the 40-acre parcel to International Society of Investors ("ISI") for \$810,000.00¹. This contract was originally made out as the "Seller" being "Lagrande Lowther, Mitchell Lowther, et al.", but LeGrand changed "Seller" to just himself. At the time of this contract the 40-acre parcel belonged to the Estate.²

After entering into this ISI contract, LeGrand then approached the Estate's beneficiaries to solicit their sale to LeGrand of the 40-acre parcel. LeGrand never disclosed to any of them that he had "pre-sold" the 40-acre parcel to ISI for \$810,000.00. All of the beneficiaries did

¹ A copy of the cover page of this Contract is attached as Exhibit 1.

² LeGrand asserts, on page 23 of his Grounds for Appeal, that "the challenged transaction did not take place in the course of administering an Estate" and that "the property that was being sold was not property of the estate." Both statements are plainly false. The record shows that LeGrand was appointed as co-Personal Representative of the Estate on June 17, 2004, he is still a co-Personal Representative of the Estate at this date, and the 40-acre parcel was owned by the Decedent when he died and thus belonged to the Estate. All of the transactions complained of occurred during this process of Estate administration.

agree to sell their interests in the 40-acre parcel to LeGrand, and on December 28, 2005 LeGrand closed on the purchase of the 40-acre parcel from the beneficiaries for \$511,000.00³.

Within two months of that closing, on February 14, 2006, LeGrand closed on his sale of the 40-acre parcel to Amberwinds, LLC⁴ ("Amberwinds") for \$810,000.00.

2. ARGUMENT

A. The Probate Court erred by measuring damages by what LeGrand "cleared" from the Amberwinds sale, rather than the profit that he received, since the "clearance" was artificially reduced by mortgage funds that LeGrand pocketed.

The proper way to measure damages for breach of fiduciary duty is to determine the profit the fiduciary made by reason of the breach, or stated differently, what the fiduciary entity and/or beneficiaries would have earned but for the breach. See Restatement (Third) of Trusts §227 (1992), S.C. Code Ann. §62-7-1002(a).

In this case, LeGrand purchased the 40-acre tract from the Estate's beneficiaries for \$511,000. But rather than paying \$511,000 in cash, LeGrand closed on the purchase by placing a first mortgage of \$585,000 (\$74,000 more than was needed to pay the purchase price) against the 40-acre tract⁵. This was LeGrand's voluntary decision. And LeGrand then pocketed this roughly \$74,000 excess mortgage money for himself; none of it went to the Estate's beneficiaries.

The excess mortgage money pocketed by LeGrand does not affect the true profit that LeGrand ultimately made by preselling the 40-acre tract to Amberwinds. The simple facts are

³ A copy of the cover sheet of the HUD-1 from the closing is attached as Exhibit 2.

⁴ In his Grounds for Appeal, LeGrand tries to assert that the ISI contract fell through and that he found a "new" buyer in Amberwinds. This is both false and intentionally misleading. As revealed at trial in the testimony of Mike Jones, a principal in the transaction, ISI and Amberwinds were virtually the same entity, with the same individual owners, and the closing proceeded exactly as scheduled under the contract with LeGrand.

⁵ A copy of the Mortgage showing LeGrand's borrowing of \$585,000 is attached as Exhibit 3. The HUD-1 from the closing shows a borrowing of \$511,000; however, LeGrand really borrowed \$585,000 and pocketed the \$74,000 excess amount. Appellants submit that the HUD-1 entry was intentionally deceptive on the part of LeGrand and his counsel, to keep the Estate's beneficiaries from knowing that LeGrand had borrowed much more than the \$511,000 needed to close.

that LeGrand purchased the 40-acre tract from the Estate's beneficiaries for \$511,000, and that he had presold the 40-acre tract and did in fact close on the sale of it to Amberwinds for \$810,000. The profit, then – which is equal to the extra amount that the beneficiaries would have earned but for LeGrand's actions – was \$299,000.

The Probate Court got tripped up by LeGrand's \$74,000 excess mortgage, which is both irrelevant to the case and misleading. By focusing on what LeGrand later "cleared" versus the correct measurement of damages – his profit – the Probate Court in effect allowed him to steal the \$74,000 excess mortgage money which he pocketed. What borrowings LeGrand may have made are irrelevant to the profit that he realized in this transaction.

Using the Probate Court's warped logic, if LeGrand had only placed a \$200,000 mortgage against the 40-acre tract, and thus had "cleared" over \$600,000 from his sale of the 40-acre tract to Amberwinds, then presumably the Probate Court would think that he owes the beneficiaries \$600,000 – a result that Appellants would concede to be unfair. And if LeGrand had placed a \$1,000,000 mortgage against the 40-acre tract, then he would have "cleared" nothing from the subsequent sale to Amberwinds and the Probate Court would think that he owes the beneficiaries nothing. The Probate Court's bad math – and apparent complete misunderstanding of how mortgage borrowing works – predictably led to an incorrect and nonsensical result.

Suppose, for example, that LeGrand had borrowed only \$511,000, which was exactly the amount that he needed to pay the beneficiaries to purchase the 40-acre tract and exactly the total amount that was disbursed to the beneficiaries at closing. In that case, LeGrand would have "cleared" an extra \$74,000 in the subsequent closing with Amberwinds, and presumably the

Probate Court would have ruled that LeGrand owes them \$74,000 more. Why then should it be any different when LeGrand earlier pocketed the \$74,000 excess mortgage money for himself?

The Probate Court also reduced the damage amount because of a few other payments: Legrand's attorney's fee (\$1,250.00), a judgment against Clark Lowther (\$6,575.98), a SCE&G claim against the Estate (\$1,256.61). Appellants contest the reduction for attorney's fee; this was LeGrand's personal expense, and the attorneys paid knew about the concealed presale to Amberwinds and did nothing to aid the beneficiaries of the estate. The payment for the judgment against Clark Lowther is legitimate, but at a minimum the Probate Court then should have ruled that each of the other heirs should receive an equal amount from the recovery before Clark Lowther, rather than ruling that the beneficiaries should divide the recovery equally. Appellants contest the reduction for the SCE&G claim, as they question whether that was a true debt of the Decedent versus a debt of LeGrand, on which there was no evidence at trial and on which the Probate Court just made a wild guess.

It is clear, then, that the Probate Court erred by not following legal principles or basic common sense in measuring the damages in this case. The profit received by LeGrand and withheld from the Estate's beneficiaries – which is the correct measurement of actual damages in this case – is \$299,000.

B. The Probate Court erred by reducing the damages by amounts paid from sales of the Echo Tango lots.

The Probate Court also erroneously reduced the damages against LeGrand by an amount equal to distributions that LeGrand made to his siblings from profits on the sale of two "Echo Tango" lots. Presumably, the Probate Court misunderstood the Echo Tango distributions as some type of windfall to the Estate's beneficiaries that should offset their loss on the 40-acre

tract dollar for dollar.⁶ The truth however is that there was no windfall at all, but instead just the receipt of what the beneficiaries were entitled to at that time and at the time of the Decedent's death, and accordingly the reduction makes no sense.

The properties at Echo Tango were long owned by the Decedent. Legal title to these properties changed over the years for various reasons. At the time of Decedent's death, legal title to these properties was in LeGrand's name. However, it has been repeatedly admitted and conceded by LeGrand himself that LeGrand equitably owned only a 50% interest in these properties, with the other 50% interest owned by the Decedent⁷. Decedent's Will, signed on the date of his death, left this 50% interest to the Estate's beneficiaries, not to LeGrand.

As part of the overall transactions between LeGrand and the Estate's beneficiaries regarding the sale of the 40-acre tract and Wellington, LeGrand convinced the beneficiaries to "quitclaim" their 50% combined interest in Echo Tango to LeGrand, for zero additional consideration. And the beneficiaries signed contracts agreeing to that transfer, with the caveat (agreed upon by LeGrand) that if LeGrand defaulted on their notes, then the beneficiaries would be entitled to 50% of the proceeds from the future sale of Echo Tango properties.

In any event, LeGrand did default on the notes, and the beneficiaries are now back to where they were when the Decedent died: being entitled to 50% of the proceeds from the future sale of Echo Tango properties. However, there is no windfall at all. All LeGrand's default did was to prevent a situation where – knowingly or not – the beneficiaries gave away giant values⁸ to LeGrand for free. The beneficiaries have not received – and they will not receive – one penny

⁶ We say "presumably" because the Probate Court gives no logical reasoning behind the reduction, but only a one-sentence statement that "those obligations were incurred, and the payments made, pursuant to the overall deal..." So what if they were?

⁷ Copies of relevant deposition testimony of LeGrand admitting this are attached collectively as Exhibit 4.

⁸ Echo Tango basically consists of five lots. LeGrand has sold one of the lots for \$700,000. The other four lots, while perhaps not as valuable as the first, are similar and have been on the market for sale.

more than that to which they were entitled at the time of the Decedent's death. There is no windfall and nothing that should legally or equitably reduce the damages to the beneficiaries.

Worse, the Probate Court – by footnote – tries to insert itself in a matter over which it has absolutely no jurisdiction, the distribution of future Echo Tango profits. (See Probate Court Order, page 13.) The strong likelihood is that there will be much, much more than \$69,051.15 of profits distributions from future sales of Echo Tango lots. The Probate Court, then, by stating that LeGrand “should be allowed” such a credit in the future, sets up a situation where LeGrand in effect could get off completely free for his conduct. In fact, if as expected future sales of Echo Tango lots produce profits of at least \$1,000,000 for the Estate's beneficiaries, then under the Probate Court's thinking, LeGrand could have stolen much more from the beneficiaries and face no consequences.

In an effort to defend himself, LeGrand tries to confuse and blur the situation by referring to other properties and other transactions between himself and the Estate's beneficiaries – in other words, both Echo Tango and the “Wellington” property – and asking that one look at all transactions as a whole. While unfortunately this trick worked with the Probate Court, the key is that even if one accepts LeGrand's challenge to look at all transactions, this only makes things worse for LeGrand. As discussed above, Echo Tango has turned into a net zero for the beneficiaries. They are no better off on Echo Tango now than they were at the Decedent's death; and the only reason they are not substantially worse off (probably by \$1,000,000 or more) is that LeGrand defaulted on their notes. And regarding the “Wellington” property, the evidence at trial showed that LeGrand had lined up another deal preselling “Wellington” without the knowledge of the Estate's beneficiaries. This transaction, if it had closed, would have yielded another \$200,000+ profit to LeGrand through another breach of fiduciary duty. LeGrand's “defense” of

the 40-acre tract transaction based on the failure of his presale of Wellington to close is like a house robber defending himself for a theft of jewelry by claiming that he was not also able to steal the silverware too!

This case is much simpler than the Probate Court gave it credit for, and LeGrand was and still is trying to whip up confusion to distract the courts from the fact that he made a \$299,000 profit on the 40-acre tract at the expense of the Estate's beneficiaries. Echo Tango simply is not relevant to this case and the interests of the Estate's beneficiaries in Echo Tango – their own property rights – have no business offsetting the damages suffered in this case.

C. The Probate Court erred by not imposing punitive damages against LeGrand.

After requesting briefs from counsel on the issue of punitive damages and taking additional months apparently just to consider punitive damages in this case, the Probate Court – in one sentence and with no explanation or analysis – stated, “the evidence is not clear and convincing that LeGrand's conduct warrants an award of punitive damages”. The facts and evidence of the case indicate the exact opposite.

Punitive damages can be awarded in legal actions where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. Keane v. Lowcountry Pediatrics, P.A., 372 S.C. 136, 641 S.E.2d 53 (S.C. App. 2007), Austin v. Specialty Transp. Serv., 358 S.C. 298, 313, 594 S.E.2d 867 (S.C. App. 2004), S.C. Code Ann. §15-33-135. An award of punitive damages can serve two purposes: (1) punishing the wrongdoers and deterring them and others from engaging in similar reckless, willful, wanton, or malicious conduct; and (2) vindicating a private right of the injured party by requiring the wrongdoers to pay money to that party. Clark v. Cantrell, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000). Punitive damages awards are appropriate in breach of fiduciary

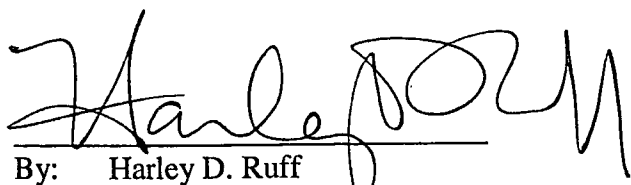
duty actions, as they are for other actions at law. See Mazloom v. Mazloom, 382 S.C. 307, 675 S.E.2d 746 (S.C. App. 2009), Jordan v. Holt, 362 S.C. 201, 608 S.E.2d 129 (S.C. 2005). Punitive damages may be imposed upon a trustee where there is evidence his management of the estate was in bad faith or conscious indifference to the rights of the beneficiaries. Cartee v. Lesley, 290 S.C. 333, 350 S.E.2d 388 (S.C. 1986).

It is difficult to conceive a more obvious or gross breach of fiduciary duty than that which happened in this case. The facts are that LeGrand was a co-Personal Representative of the Estate, that he presold the 40-acre tract to a third party for \$810,000, that he never disclosed this presale to the Estate's beneficiaries, that he solicited the Estate's beneficiaries to sell their interests in the 40-acre tract to himself for \$511,000, that he denied the existence of a third party deal to resell, and that very soon after purchasing from the Estate's beneficiaries he in fact did resell the 40-acre tract to the third party for a \$299,000 profit. LeGrand himself admitted to preselling the 40-acre tract at trial and to concealing that presale from the beneficiaries.

There is no question that all of this conduct was willful, wonton, and in disregard of the rights of the Estate's beneficiaries. LeGrand entered into every step of these transactions voluntarily and intentionally, he obviously has no regrets for his conduct as he testified at trial that he had not done anything wrong, and he continues to hold the \$299,000 profit that he realized. Further, imposition of punitive damages would advance the good and proper policy message that fiduciaries cannot steal from those whose best interests they are charged to uphold.

Accordingly, Appellants request that this Court partially reverse the Order of the Beaufort County Probate Court by increasing the actual damages against LeGrand from \$69,051.15 to \$299,000.00, and by imposing punitive damages against LeGrand in an appropriate amount.

RUFF & RUFF, LLC

A handwritten signature in black ink, appearing to read "Harley D. Ruff", is written over a horizontal line.

By: Harley D. Ruff
17 Professional Village Circle
Beaufort, SC 29907
(843) 524-5400

Date: February 3, 2011

Attorneys for Appellants

CONTRACT FOR SALE AND PURCHASE

E. J. L. **THIS CONTRACT FOR SALE AND PURCHASE** made and entered into this 12th day of October, 2005, by and between **Lagrande Lowther, ~~Mitchell Lowther, et al~~**, hereinafter referred to as ("Seller"), and **International Society of Investors, a North Carolina Limited Liability Company**, or its designee or assigns hereinafter referred to as ("Purchaser").

WITNESSETH:

Subject to the terms and conditions of this Agreement, and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser agree as follows:

1. **PREMISES, IMPROVEMENTS AND CHATTELS.** Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the land specifically described as Lowther Property, approximately 40 acres fronting Bee's Creek Road, being in the County of Jasper, South Carolina (the "Property").

2. **PURCHASE PRICE.** Purchaser hereby agrees to pay to Seller as the purchase price for the Premises the sum of **Eight Hundred Ten Thousand Dollars (\$810,000.00)** subject to adjustments, credits, and pro-rations as set forth herein below (the "Purchase Price"), to be paid as follows:

- 2.1. Within Forty Eight (48) hours after the execution of this Agreement (Effective Date), Purchaser shall deposit into the Russell Law Firm Trust Account, the Escrow Agent, the sum of Five Thousand Dollars (\$5,000) as a good faith deposit to be held pursuant to the terms of this Contract.
- 2.2. The balance of the Purchase Price (including a credit for the amount of the Deposits of \$ 5,000), shall be due at closing.

3. **CONDITIONS PRECEDENT.** This Contract For Sale and Purchase is subject to and conditional upon:

- 3.1. The Purchaser obtaining horizontal construction financing.
- 3.2. The land being permitted for no less than 55 units.
- 3.3. The Purchaser receiving confirmation that all utilities (including electrical, water, and telephone services) are available to the property and are adequate for Buyers intended use.
- 3.4. The Purchaser receiving all permits, licenses, approvals or consent from any and all governmental authorities and agencies having jurisdiction over the property and which are necessary to allow development, construction of the Property, such permits, licenses, approvals and consents to include, without limitation, building permits, storm water management permits, concurrence

E. J. L. 000177

HUD-1 (3/88) OMB No. 2502-0265

B. Type of Loan

1. FHA 2. FmHA 3. Conv. Unins. 6. File Number 7. Loan Number 8. Mortgage Insurance Case Number
 4. VA 5. Conv. Ins. Lowther heirs 40 acres

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower E. Name and Address of Seller F. Name and Address of Lender

E. Legrand Lowther

Vivian Gene L. Tilletson,
Rita Elizabeth L. Rogers,
Mark Allen Lowther, et al

G. Property Location

40.81 acres
Jasper County SC
063 39 04 010

H. Settlement Agent

Moss & Kuhn, P.A.

I. Settlement Date

Moss, Kuhn & Fleming, P.A.
1501 North St.
Beaufort, SC 29902

12/20/05

J. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower

101. Contract sales price 511,000.00

102. Personal property

103. Settlement charges to borrower (line 1400) 3,405.70

104.

105.

Adjustments for items paid by seller in advance

106. City/town taxes to

107. County taxes to

108. Assessments to

109.

110.

111.

112.

120. Gross Amount Due From Borrower 514,405.70

K. Summary of Seller's Transaction

400. Gross Amount Due To Seller

401. Contract sales price 511,000.00

402. Personal property

403.

404.

405.

Adjustments for items paid by seller in advance

406. City/town taxes to

407. County taxes to

408. Assessments to

409.

410.

411.

412.

420. Gross Amount Due To Seller 511,000.00

200. Amounts Paid By Or In Behalf Of Borrower

201. Deposit or earnest money

202. Principal amount of new loan(s)

203. Existing loan(s) taken subject to

204.

205.

206.

207. pd per closing 12.8/05 w/SCR&T 511,000.00

208.

209.

Adjustments for items unpaid by seller

210. City/town taxes to

211. County taxes to

212. Assessments to

213.

214.

215.

216.

217.

218.

219.

220. Total Paid By/For Borrower 511,000.00

300. Cash At Settlement From/To Borrower

301. Gross amount due from borrower (line 120) 514,405.70

302. Less amounts paid by/for borrower (line 220) (511,000.00)

303. Cash From To Borrower 3,405.70

500. Reductions in Amount Due To Seller

501. Excess deposit (see instructions)

502. Settlement charges to seller (line 1400)

503. Existing loan(s) taken subject to

504. Payoff of first mortgage loan

505. Payoff of second mortgage loan

506.

507. pd per closing 12.8/05 w/SCR&T 511,000.00

508.

509.

Adjustments for items unpaid by seller

510. City/town taxes to

511. County taxes to

512. Assessments to

513.

514.

515.

516.

517.

518.

519.

520. Total Reduction Amount Due To Seller 511,000.00

600. Cash At Settlement To/From Seller

601. Gross amount due to seller (line 420) 511,000.00

602. Less reductions in amt. due seller (line 520) (511,000.00)

603. Cash To From Seller 0.00

000178

200500005093
 Filed for Record in
 JASPER COUNTY
 PATSYE N GREENE
 12-28-2005 At 09:29 am.
 MORTGAGE 15.00
 Volume 394 Page 240 - 248

9
 \$15.00
 Marked.

This document was prepared by (name, address, phone):
 SOUTH CAROLINA BANK AND TRUST, N.A.
 950 JOHN C. CALHOUN DRIVE
 ORANGEBURG, SC 29118
 (803) 634-2179

State of South Carolina _____ Space Above This Line For Recording Data _____

REAL ESTATE MORTGAGE (With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 12-28-2005 and the parties and their addresses are as follows:

MORTGAGOR: E. LEGRAND LOWMYER

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: SOUTH CAROLINA BANK AND TRUST, N.A.
 ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
 950 JOHN C. CALHOUN DRIVE
 PO BOX 9007 ORANGEBURG, SC 29118

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
 SEE ATTACHMENT FOR FULL LEGAL DESCRIPTION

The property is located in BERNARD COUNTY at 40 ACRES ON HIGHWAY 13
 _____, BERNARD, South Carolina
 _____, _____, _____
 (Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENTS SET FOR FINAL PUBLIC FILING AND NOT FOR CONSUMER PURPOSES (page 2 of 8)
©1994, 2001 BankOne Systems, Inc., St. Cloud, MN Form AGCO-RER-SC 1/21/2003

3

000179

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 1,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgages shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) *(e.g., borrower's name, note amount, interest rate, maturity date)*
- NOTE DATED 12-08-2005 IN THE AMOUNT OF \$665,000.00 IN THE NAME OF E. LEGRAND LANTIER
- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.
- If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.
5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

ELK

000180

er v. Lowther

Lowther taken March 27, 2009

PAGE 123

1 A Yes.

2 Q What does that say?

3 A In consideration for the price paid herein,
4 Seller additionally agrees to release any right which
5 Seller may have in that property and lots in the Echo Tango
6 area, Beaufort County, and will execute a Quitclaim deed to
7 said property at closing.

8 Q Who are the sellers?

9 A This was the sellers that were selling --

10 Q Your siblings, right?

11 A Yeah, my siblings, yeah.

12 Q So doesn't that say exactly a hundred and eighty
13 degrees the opposite of what you just said, that a
14 mandatory condition of this is they say that Echo Tango is
15 yours, and they Quitclaim it back to you?

16 A It was a legal thing to do, because when my
17 father died, Echo Tango was in my name.

18 Q So do you think this language here, of them
19 legally signing a written contract quit claiming Echo Tango
20 back to you is consistent with your prior testimony of they
21 know Echo Tango is half their's?

22 A Yes. I was buying them out of Echo Tango, also
23 any interest they may try to have in Echo Tango that they
24 thought they had. I was buying everything from them. There
25 never was any question that they were going to get fifty

000181

1 percent of the proceeds out of Echo Tango. I made it clear
2 to them. I made it clear to the attorneys.

3 Q So you made it clear that notwithstanding your
4 title ownership to Echo Tango --

5 A Yes.

6 Q -- and notwithstanding your going to the effort
7 of, I assume, telling your lawyer to write this in the
8 contract that they give up anything they have in Echo
9 Tango, your testimony is you, still, out of the goodness of
10 your heart, going to give them fifty percent of the closing
11 proceeds?

12 A They were getting it. It was entitled to them.
13 Okay? In my opinion.

14 Q You admit it is entitled to them now, since you
15 defaulted on the Note.

16 A It was entitled to them before. I was going to
17 give it to them. I felt like I owed it to them. I think I
18 verified that with Mr. Rivers this morning, didn't I Mr.
19 Rivers?

20 MR. RIVERS: You haven't seen that, but we
21 verified that that was legally binding.

22 MR. RUFF: Well, that's not part of my case.

23
24 BY MR. RUFF:

25 Q Let's got back, then, to your role as fiduciary.

THE STATE OF SOUTH CAROLINA
In The Beaufort County Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Probate Court

Kenneth E. Fulp, Jr., Associate Probate Judge

Case No. 2007ES0700655

Effie Sandra L. Turpin, C. E. Lowther, Jr., Clayton
Clark Lowther, and Mitchell Saxon Lowther,
individually and representing as a class of
beneficiaries of the Estate of C.E. Lowther, Sr.,.....Appellants,

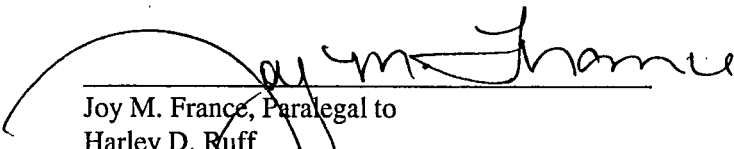
v.

E. LeGrand Lowther, individually and as Personal
Representative of the Estate of C.E. Lowther, Sr.,
and Mark Allen Lowther, as Personal Representative
of the Estate of C.E. Lowther, Sr.....Respondents.

PROOF OF SERVICE

I certify that I have served the Grounds for Appeal on Rita E. L. Rogers, by depositing a copy of it in
the United States Mail, postage prepaid, on February 3, 2011, addressed as follows:

February 3, 2011



Joy M. France, Paralegal to
Harley D. Ruff
Ruff & Ruff LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
(843) 524-5400
Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In The Beaufort County Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Probate Court

Kenneth E. Fulp, Jr., Associate Probate Judge

Case No. 2007ES0700655

Effie Sandra L. Turpin, C. E. Lowther, Jr., Clayton
Clark Lowther, and Mitchell Saxon Lowther,
individually and representing as a class of
beneficiaries of the Estate of C.E. Lowther, Sr.,.....Appellants,

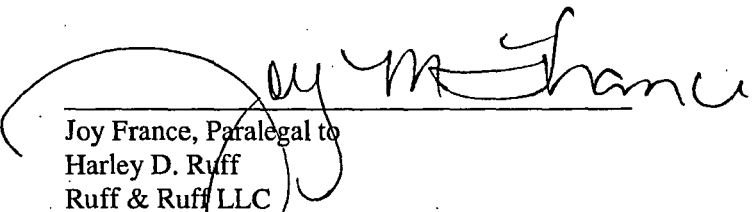
v.

E. LeGrand Lowther, individually and as Personal
Representative of the Estate of C.E. Lowther, Sr.,
and Mark Allen Lowther, as Personal Representative
of the Estate of C.E. Lowther, Sr.....Respondents.

PROOF OF SERVICE

I certify that I have served the Grounds for Appeal on E. LeGrand Lowther, individually and as Personal Representative of the Estate of C.E. Lowther, Sr., and Mark Allen Lowther, as Personal Representative of the Estate of C.E. Lowther, Sr., by depositing a copy of it in the United States Mail, postage prepaid, on February 3, 2011, addressed to their attorney of record, H. Fred Kuhn, Jr., Esq., P.O. Drawer 507, Beaufort, South Carolina 29901.

February 3, 2011



Joy France, Paralegal to
Harley D. Ruff
Ruff & Ruff LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
(843) 524-5400
Attorney for Appellant

000184

THE STATE OF SOUTH CAROLINA
In The Beaufort County Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Probate Court

Kenneth E. Fulp, Jr., Associate Probate Judge

Case No. 2007ES0700655

Effie Sandra L. Turpin, C. E. Lowther, Jr., Clayton
Clark Lowther, and Mitchell Saxon Lowther,
individually and representing as a class of
beneficiaries of the Estate of C.E. Lowther, Sr.,.....Appellants,

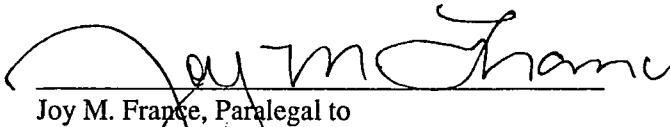
v.

E. LeGrand Lowther, individually and as Personal
Representative of the Estate of C.E. Lowther, Sr.,
and Mark Allen Lowther, as Personal Representative
of the Estate of C.E. Lowther, Sr.....Respondents.

PROOF OF SERVICE

I certify that I have served the Grounds for Appeal on Vivian Gene Tillotson, by depositing a copy of it
in the United States Mail, postage prepaid, on February 3, 2011, addressed as follows: .

February 3, 2011


Joy M. France, Paralegal to
Harley D. Ruff
Ruff & Ruff LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
(843) 524-5400
Attorney for Appellant

000185

THE STATE OF SOUTH CAROLINA
In The Beaufort County Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Probate Court

Kenneth E. Fulp, Jr., Associate Probate Judge

Case No. 2007ES0700655

Effie Sandra L. Turpin, C. E. Lowther, Jr., Clayton
Clark Lowther, and Mitchell Saxon Lowther,
individually and representing as a class of
beneficiaries of the Estate of C.E. Lowther, Sr.,.....Appellants,

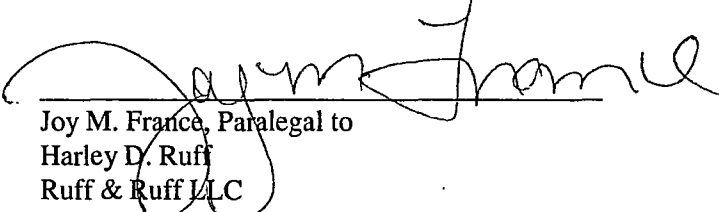
v.

E. LeGrand Lowther, individually and as Personal
Representative of the Estate of C.E. Lowther, Sr.,
and Mark Allen Lowther, as Personal Representative
of the Estate of C.E. Lowther, Sr.,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Grounds for Appeal on Mark A. Lowther, by depositing a copy of it in
the United States Mail, postage prepaid, on February 3, 2011, addressed as follows:

February 3, 2011



Joy M. France, Paralegal to
Harley D. Ruff
Ruff & Ruff LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
(843) 524-5400
Attorney for Appellant

000186

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BEAUFORT COUNTY
PROBATE COURT

KENNETH E. FULP, JR., ASSOCIATE JUDGE

CASE NO.: 2010-CP-07-06274
2010-CP-07-06284

Effie Sandra L. Turpin, C. E. Lowther, Jr., Clayton
Clark Lowther, and Mitchell Saxon Lowther,
individually and representing as a class of
beneficiaries of the Estate of C.E. Lowther, Sr., ...Plaintiff,

v.

E. LeGrand Lowther, individually and as Personal
Representative of the Estate of C.E. Lowther, Sr., and
Mark Allen Lowther, as Personal Representative of the
Estate of C.E. Lowther, Sr. Defendants.

MEMORANDUM IN SUPPORT OF GROUNDS FOR APPEAL

This Memorandum is provided in response to Judge Dukes's request for a memorandum on the issue of reduction of damages due to profits made on "Echo Tango" lots.

The Probate Court erroneously reduced the damages against LeGrand by an amount equal to distributions that LeGrand made to his siblings from profits on the sale of two "Echo Tango" lots. Presumably, the Probate Court misunderstood the Echo Tango distributions as some type of windfall to the Estate's beneficiaries that should offset their loss on the 40-acre tract dollar for

dollar.¹ The truth however is that there was no windfall at all, but instead just the receipt of what the beneficiaries were entitled to at that time and at the time of the Decedent's death, and accordingly the reduction makes no sense.

The properties at Echo Tango were long owned by the Decedent. Legal title to these properties changed over the years for various reasons. At the time of Decedent's death, legal title to these properties was in LeGrand's name. However, it has been repeatedly admitted and conceded by LeGrand himself that LeGrand equitably owned only a 50% interest in these properties, with the other 50% interest owned by the Decedent. Copies of relevant deposition testimony of LeGrand admitting this are attached collectively as Exhibit 1. A copy of trial testimony of LeGrand admitting this is attached as Exhibit 2. A copy of an Agreement signed prior to the Decedent's death by LeGrand admitting his ownership interest was only 50% is attached as Exhibit 3. Copies of relevant testimony of LeGrand in the Probate Court hearing will be submitted in a supplemental filing as Exhibit 4 to this Memorandum as soon as transcription can be completed. Decedent's Will, signed on the date of his death, left this 50% interest to the Estate's beneficiaries, not to LeGrand.

As part of the overall transactions between LeGrand and the Estate's beneficiaries regarding the sale of the 40-acre tract and Wellington, LeGrand convinced the beneficiaries to "quitclaim" their 50% combined interest in Echo Tango to LeGrand, for zero additional consideration. And the beneficiaries signed contracts agreeing to that transfer, with the caveat (agreed upon by LeGrand) that if LeGrand defaulted on their notes, then the beneficiaries would be entitled to 50% of the proceeds from the future sale of Echo Tango properties.

¹ We say "presumably" because the Probate Court gives no logical reasoning behind the reduction, but only a one-sentence statement that "those obligations were incurred, and the payments made, pursuant to the overall deal..." So what if they were?

In any event, LeGrand did default on the notes, and the beneficiaries are now back to where they were when the Decedent died: being entitled to 50% of the proceeds from the future sale of Echo Tango properties. However, there is no windfall at all. All LeGrand's default did was to prevent a situation where – knowingly or not – the beneficiaries gave away giant values² to LeGrand for free. The beneficiaries have not received – and they will not receive – one penny more than that to which they were entitled at the time of the Decedent's death. There is no windfall and nothing that should legally or equitably reduce the damages to the beneficiaries.

In fact, the beneficiaries legally may be somewhat worse off now regarding Echo Tango. At the Decedent's death, they were the owners of a 50% equitable title to the Echo Tango property itself. Now, they may be only entitled to a profits interest, with all important decisions including when to sell, for what price, whether and how to divide the property, etc., being up to LeGrand solely.

Worse, the Probate Court – by footnote – tries to insert itself in the distribution of future Echo Tango profits. (See Probate Court Order, page 13.) The strong likelihood is that there will be much, much more than \$69,051.15 of profits distributions from future sales of Echo Tango lots. The Probate Court, then, by stating that LeGrand “should be allowed” such a credit in the future, sets up a situation where LeGrand in effect could get off completely free for his conduct. In fact, if as expected future sales of Echo Tango lots produce profits of at least \$1,000,000 for the Estate's beneficiaries, then under the Probate Court's thinking, LeGrand could have stolen much more from the beneficiaries and face no consequences.

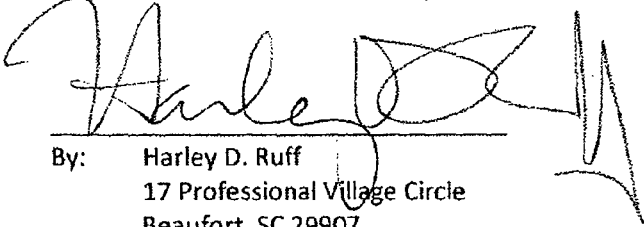
Through all the various transactions, Echo Tango has turned into a net zero for the beneficiaries. They are no better off on Echo Tango now than they were at the Decedent's death;

² Echo Tango basically consists of five lots. LeGrand has sold one of the lots for \$700,000. The other four lots, while perhaps not as valuable as the first, are similar and have been on the market for sale.

they may be worse off as described above; and the only reason they are not substantially worse off (probably by \$1,000,000 or more) is that LeGrand defaulted on their notes.

This case is much simpler than the Probate Court gave it credit for, and LeGrand was and still is trying to whip up confusion to distract the courts from the fact that he made a \$299,000 profit on the 40-acre tract at the expense of the Estate's beneficiaries. Echo Tango simply is not relevant to this case and the interests of the Estate's beneficiaries in Echo Tango – their own property rights – have no business offsetting the damages suffered in this case.

RUFF & RUFF, LLC

A handwritten signature in black ink, appearing to read "Harley D. Ruff", is written over a horizontal line. To the right of the signature is a vertical line.

By: Harley D. Ruff
17 Professional Village Circle
Beaufort, SC 29907
(843) 524-5400

Date: October 6, 2011

Attorneys for Effie Sandra L. Turpin, C. E. Lowther, Jr., Clayton Clark Lowther, and Mitchell Saxon Lowther, individually and representing as a class of beneficiaries of the Estate of C.E. Lowther, Sr.

er v. Lowther

Lowther taken March 27, 2009

PAGE 123

1 A Yes.

2 Q What does that say?

3 A In consideration for the price paid herein,
4 Seller additionally agrees to release any right which
5 Seller may have in that property and lots in the Echo Tango
6 area, Beaufort County, and will execute a Quitclaim deed to
7 said property at closing.

8 Q Who are the sellers?

9 A This was the sellers that were selling --

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11 A Yeah, my siblings, yeah.

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13 degrees the opposite of what you just said, that a
14 mandatory condition of this is they say that Echo Tango is
15 yours, and they Quitclaim it back to you?

16 A It was a legal thing to do, because when my
17 father died, Echo Tango was in my name.

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20 back to you is consistent with your prior testimony of they
21 know Echo Tango is half their's?

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23 any interest they may try to have in Echo Tango that they
24 thought they had. I was buying everything from them. There
25 never was any question that they were going to get fifty

1 percent of the proceeds out of Echo Tango. I made it clear
2 to them. I made it clear to the attorneys.

3 Q So you made it clear that notwithstanding your
4 title ownership to Echo Tango --

5 A Yes.

6 Q -- and notwithstanding your going to the effort
7 of, I assume, telling your lawyer to write this in the
8 contract that they give up anything they have in Echo
9 Tango, your testimony is you, still, out of the goodness of
10 your heart, going to give them fifty percent of the closing
11 proceeds?

12 A They were getting it. It was entitled to them.
13 Okay? In my opinion.

14 Q You admit it is entitled to them now, since you
15 defaulted on the Note.

16 A It was entitled to them before. I was going to
17 give it to them. I felt like I owed it to them. I think I
18 verified that with Mr. Rivers this morning, didn't I Mr.
19 Rivers?

20 MR. RIVERS: You haven't seen that, but we
21 verified that that was legally binding.

22 MR. RUFF: Well, that's not part of my case.

23

24 BY MR. RUFF:

25 Q Let's got back, then, to your role as fiduciary.

• Special Referee Hearing - May 11, 2009 •

which is exhibit 5, and I asked you was that your original operating agreement. And what was your answer?

A Yes.

Q It was?

A Yes.

MR. KUHN: Which is what he just said.

COURT: You're saying the unmarked document is something else?

MR. KUHN: It's marked. He's identified exhibit 5.

BY MR. RIVERS:

Q Now, let me ask you this. This is a copy of exhibit 5, I'd like to put that in here.

MR. KUHN: So this makes sense to me later, what we've been referring to as exhibit 5 is exhibit 5 out of the deposition which is now marked as exhibit 7 to this.

MR. RIVERS: Correct.

(WHEREUPON, a document was marked as Plaintiff's Exhibit Number 7 for the purposes of identification).

MR. RIVERS: Correct.

COURT: And I still haven't seen Number 6, which as I understand it, is a disputed document. Okay.

BY MR. RIVERS:

Q Now, while the title to Echotango was in your

Bettye Anderson & Associates
Beaufort, South Carolina
(843)525-0791 (800)543-5506

Direct by Mr. Rivers

Page 12 of 97

name, it's undisputed that you and your dad owned it together 50/50; is that right?

A Yes. Uh-huh.

Q Okay. And in the exhibit number 7, it recites that he is to be reimbursed for his original investment of four acres in Grahamville, that being what y'all gave Nancy Horry Garbade Jenkins, whatever, for the property which was valued at \$20,000; is that right?

A Yes. That was in the original agreement.

Q And at some point, y'all got straight on that \$20,000?

A Yes, we did.

Q Was that by you writing him a check, or him being given credit for certain development costs, or how?

A Him being given money.

Q So you wrote him a check for \$20,000?

A No. I gave him money in different ways. In cash, bought an automobile for him, borrowed money and gave him cash on a building.

Q Okay. Now when y'all were doing this work, when did you get this property from Nancy?

A 1986, if I'm not mistaken.

Q Okay. And at the time that y'all got this property, how did you divide up the initial expenses?

A The initial expenses?

Bettye Anderson & Associates
Beaufort, South Carolina
(843)525-0791 (800)543-5506

Direct by Mr. Rivers

Page 13 of 97

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Exhibit 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER) AGREEMENT

This is to acknowledge that the following individuals are the equitable and true owners of the below-described interest in Echo Tango property located in the Chechessee Community in Beaufort County. Acknowledging this ownership interest, title, however, shall be in the name of E. LeGrand Lowther for business purposes.

E. LeGrand Lowther	50% ownership
C. E. Lowther	50% ownership

All net proceeds from any sales shall be divided according to the above interests. Expenses are to be reimbursed before net proceeds are divided. C.E. Lowther is to be reimbursed for his original investment of 4 acres in Grahamville, total value \$20,000.00, which were traded as part of the original purchase of the Echo Tango property. LeGrand Lowther is to be reimbursed for all other expenses, which include, but are not limited to: legal fees, governmental fees, development costs, maintenance costs, taxes, engineering fees, utility fees, permit and license fees and any other associated costs.

Agreed to this the _____ day of _____, 2002.

Lara E. Lowther
WITNESS

E. LeGrand Lowther
E. LEGRAND LOWTHER

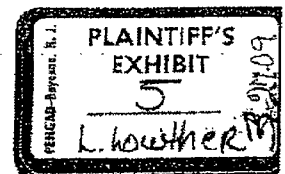
WITNESS

C. E. LOWTHER

PLAINTIFF'S
EXHIBIT

7 5-11-09

000195



STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT
CASE NO: 2007-ES-07-00655

ORIGINAL

COUNTY OF BEAUFORT)

EFFIE SANDRA L. TURPIN,)
C. E. LOWTHER, JR.,)
MITCHELL SAXON LOWTHER,)
INDIVIDUALLY AND)
REPRESENTING AS A CLASS)
THE BENEFICIARIES OF THE)
ESTATE OF C.E. LOWTHER,)
SR.,)

Plaintiffs,)

-vs-)

TRANSCRIPT OF RECORD

E. LEGRAND LOWTHER,)
INDIVIDUALLY AND AS)
PERSONAL REPRESENTATIVE)
OF THE ESTATE OF C.E.)
LOWTHER, SR., AND MARK)
ALLEN LOWTHER, AS)
AS PERSONAL)
REPRESENTATIVE OF THE)
ESTATE OF C.E. LOWTHER,)
SR.)

Defendants.)

JUNE 23, 2009, AND JUNE 26, 2009
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KENNETH E. FULP, JR., JUDGE.

A P P E A R A N C E S:

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R. THAYER RIVERS, JR., ESQ.
ATTORNEYS FOR THE PLAINTIFFS

H. FRED KUHN, JR., ESQ.
ATTORNEY FOR DEFENDANTS

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1 THE CLERK: Today is Tuesday, June
2 23, 2009. The time is approximately 9:30 a.m. The matter
3 before The Court is in reference to case number
4 2007ES0700655 in the Estate of Charles E. Lowther, to wit,
5 Effie Sandra L. Turpin, et al, Plaintiffs, versus E.
6 LeGrande Lowther, et al, Defendants, trial on the merits.

7 Present in person before The Court is
8 for the plaintiffs Harley D. Ruff, Esq. and R. Thayer
9 Rivers, Jr., Esq. and for the defendants H. Fred Kuhn, Jr.,
10 Esq.

11 THE COURT: Okay.

12 Did I just hear a cell phone?

13 MR. RUFF: I apologize, Your Honor.
14 I neglected to turn -- I just turned my off. I neglected to
15 turn it off right when I walked in the room. I apologize to
16 everyone in court.

17 THE COURT: Okay.

18 I want to correct the pronunciation of
19 the decedent's name to Lowther.

20 Notice was properly given under the
21 scheduling order by issuance of The Court's scheduling order
22 on March 11. So with that having been said, I'll now
23 entertain open statements, brief opening statement from each
24 side.

25 Which plaintiffs' attorney will give the

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1 opening statement?

2 MR. RUFF: I will, Your Honor.

3 THE COURT: Okay.

4 MR. RUFF: Your Honor, if it please
5 The Court, the issue in this case, this case is fairly
6 straightforward, Your Honor. The main issue in this case is
7 what does it mean under South Carolina law to be a
8 fiduciary.

9 As Your Honor knows, it is borne out by
10 Code Section 62 dash 3 dash 703; a personal representative
11 is a fiduciary and a personal representative must act in the
12 best interest of the beneficiaries if the estate.

13 Your Honor, the evidence today is going
14 to show that, as Your Honor knows, LeGrande Lowther, the
15 defendant, was nominated under the will as the personal
16 representative of the estate and he was so appointed by this
17 Court some time back.

18 The evidence is gonna show, Your Honor,
19 that one of the main assets of this estate, in fact, the
20 asset that's relevant today is inventory item number 1 of
21 the estate which is a piece of property that I'm going to
22 refer to today, Your Honor, as the 40 acres. This property
23 has to go by a different name just to avoid -- There's
24 several properties involved in this family and this estate
25 but for the sake of clarity, Your Honor, I'm going to refer

1 to it throughout the day as the 40 acres.

2 Your Honor, the evidence is going to
3 show that Mr. LeGrande Lowther as personal representative
4 filed an inventory with this Court valuing the 40 acres
5 originally at \$163,001. The evidence is further going to
6 show that he entered in to a contract to sell the 40 acres
7 to The International Society of Investors - company out of
8 North Carolina - for \$810,000.

9 Your Honor, the evidence is then going
10 to show that before that closing he approached the
11 beneficiaries of the estate and he arranged to buy the 40
12 acres from the beneficiaries for \$511,000, which is \$299,000
13 less than the contract that the evidence is going to show
14 today with The International Society of Investors.

15 And not only did he arrange to buy it at
16 that price from the beneficiaries, but he failed to disclose
17 the existence of The International Society of Investors
18 contract and he, in fact, denied the very existence of the
19 contract with The International Society of Investors.

20 Your Honor, the evidence will further
21 show that the contract with the beneficiaries of the estate
22 for Mr. Lowther personally to buy this plot for \$511,000
23 closed in December of 2005 and evidence will further show
24 that two months or I believe less than two months later Mr.
25 Lowther flipped or resold the property pursuant to his

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1 International Society of Investors contract form \$810,000,
2 pocketing a profit of \$299,000.

3 Your Honor, very simply put our
4 contention is that the law means what it says and that
5 personal representatives are fiduciaries who have to act in
6 the best interest of the beneficiaries of the estate and
7 it's the crux of our case, the central theme of our case
8 that this series of transactions affected by the defendant
9 Mr. Lowther constitute wrongful conduct and a violation of
10 the basic fiduciary duty.

11 Thank you, Your Honor.

12 THE COURT: All right.

13 Mr. Kuhn.

14 MR. KUHN: Please The Court, Your
15 Honor, I represent LeGrande Lowther.

16 What the plaintiffs want The Court to do
17 is rescue them from what they believe was a bad deal that
18 they freely and voluntarily made. Mr. LeGrande Lowther as a
19 fiduciary had a duty to collect the assets of the estate and
20 distribute those assets to the beneficiaries in accordance
21 with the terms of the will which is what he did.

22 What the plaintiffs in this case are
23 trying to do is take a transaction that involves more than
24 the subject of 40 acres of land and isolate that part of the
25 transaction to try to show some basic unfairness.

1 There's actually three partials of land
2 involved with this transaction and we expect the evidence
3 will show that there was one contract between Mr. Lowther
4 and each of the beneficiaries.

5 There's seven other beneficiaries. He
6 contracted individually with each of those beneficiaries and
7 entered in to a price that included the 40 acres. For
8 example, most of the beneficiaries had an equal interest in
9 this property and the lump sum price was \$325,000. For
10 \$325,000 they were selling their interest in this 40 acres,
11 they were selling their interest in a 200 plus acre parcel
12 and if Mr. Lowther was unable to pay them within one year
13 they would get back the 200 acres of land. Mr. Lowther
14 would have borne all the expense. They would have borne no
15 risk on that, the 200-acre parcel, the larger parcel.

16 Plus, that would have clarified a claim
17 that they were making that they had an interest in a third
18 parcel which is called the Echo Tango parcel. It's deep-
19 water property right by Lemon Island Marina on the
20 Chechessie River, had six lots in it. One of those lots
21 sold for \$700,000; extremely valuable price of land.

22 It was their contention - and some
23 legitimacy to the contention because Mr. Lowther had reached
24 this agreement with his father before he passed - that they
25 would have a one-half interest in that property and would

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1 share the profits of that of that property and Mr. Lowther
2 would bear all the expense of developing that property,
3 which he has done at a cost to him out of pocket of several
4 hundred thousand dollars.

5 So this was one transaction that
6 involved, actually, three parcels of property. What they're
7 trying to do is focus The Court on one aspect of this
8 transaction.

9 The evidence will show that as we sit
10 here today Mr. Lowther is actually in the hole on this
11 transaction because of what he has spent on the Echo Tango
12 property from what they have gained on the Echo Tango
13 property.

14 The law that I believe they are relying
15 on is the law that talks about fiduciary who sell the
16 property to himself, the personal representative buys the
17 property from the estate for a price. That's not the case.

18 What happened here is he dealt with the
19 beneficiaries, negotiated with the beneficiaries and the
20 contract recites that they acknowledge that they will be
21 receiving title to this property. They acknowledge it's an
22 arm's-length transaction. I think most importantly in
23 writing they acknowledge that they're not relying on any
24 representations made by LeGrande Lowther to them and entered
25 in to this transaction and they have exercised their own due

1 diligence prior to executing the contract because Mr.
2 Lowther was aware that he was a personal representative. He
3 wanted to make sure they understood that they were not
4 relying on anything he said in signing this contract.

5 Thank you.

6 THE COURT: All right.

7 Because this case has been in mediation
8 on certain issues and we've had no stipulation, in fact,
9 regarding the matters under the Complaint that's being heard
10 today, Summons and Complaint, but The Court did receive
11 another mediation results report from the mediator David
12 Tedder, was filed, received and filed June 12, there's a
13 couple of statements in his concluding comments that I guess
14 I need to read to ask counsel to what extent, if any, it
15 eliminates any of the matters that are alleged under the
16 Complaint or that we're here to try.

17 And I'm referring to the last two
18 sentences of his concluding comments. Quote, "On April 6 we
19 were able to agree on the amounts and how much had been
20 distributed from certain sales resulting in the creation of
21 draft spreadsheets defining the several transactions and
22 what distributions should have been made."

23 Now, does any of that bear on what we're
24 here to hear today?

25 Again, gentlemen, only one of you are

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1 gone be able to speak. You can decide.

2 MR. RIVERS: He wasn't there, is what
3 I was gone -- He's lead counsel; he wasn't at the mediation.

4 THE COURT: Okay. Yes.

5 MR. RIVERS: The issues in front of
6 you today specifically were not mediated. We determined
7 right off the bat that was no way to solve that. So nothing
8 in front of you today was heard by the mediator.

9 THE COURT: Are you telling me that
10 I ordered them to be mediated and y'all determined that they
11 wouldn't be mediated?

12 MR. RIVERS: Right off -- Well, we
13 had a long discussion, Mr. Tedder, as to there was a list of
14 issues, like this, and Mr. Tedder did a fantastic job of
15 over, I think, three different mediations going through that
16 giant list of issues that bound to an agreement on,
17 probably, 90 percent.

18 THE COURT: Well, he mentioned some
19 non-probate issues but the probate court ordered that
20 probate issues be mediated. Was that done?

21 MR. RIVERS: It was not done
22 successfully, no, sir.

23 THE COURT: Is this because of this
24 agreement that it wouldn't be mediated?

25 MR. RIVERS: We discussed it off the

1 bat. We discussed numerous times but there was never any
2 agreement. The parties were, like, miles apart, not feet
3 apart.

4 THE COURT: Well, that's quite an
5 admission to make here. I'm, really, somewhat concerned
6 about that. Perhaps that obviates the next question I was
7 gonna ask.

8 Mr. Kuhn, do you have anything to add to
9 that?

10 MR. KUHN: Yes, Your Honor.

11 We mediated this issue unsuccessfully,
12 then moved on to --

13 THE COURT: Was an agreement made
14 that the issues, the probate issues would not be mediated?

15 MR. KUHN: No, sir.

16 We tried to mediate the issues and could
17 not do it and I think what Mr. Tedder means, what he says
18 there is came clear pretty early on that the issue was not
19 going to be resolved unless we were able to resolve all the
20 other issues and then come back to it.

21 THE COURT: Is there further
22 mediation scheduled?

23 MR. KUHN: No, sir.

24 We've, in fact, tried the non-probate
25 issues in front of Tom Johnson, Special Referee, waiting on

1 his decision.

2 THE COURT: You mean there's another
3 trial going on on the matters that I'm hearing today?

4 MR. KUHN: No, sir, no, sir, other
5 issues between the same parties.

6 THE COURT: Is there another lawsuit
7 pending? And when was that commenced?

8 MR. KUHN: There're two lawsuits
9 and they have been commenced within the last 18 months.

10 MR. RIVERS: Both the probate matter
11 and the other lawsuit were filed approximately the same
12 week.

13 THE COURT: Are there decisions in
14 those issues that would bear on what we're hearing today?

15 MR. RIVERS: No, sir.

16 MR. KUHN: No, sir.

17 THE COURT: Okay, okay.

18 Well, just keep in mind, when any court
19 orders action that pending before it to be mediated it
20 doesn't expect to be told that the parties got together and
21 agreed it wouldn't be mediated, that they would take care of
22 the other issues, perhaps issues pending before other courts
23 and not these because the whole purpose of that exercise
24 and, presumably, the reason the parties were paying for
25 mediation

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1 is so that this matter could be resolved.

2 So that's all I have to say on the
3 subject. I've heard what you've said and I think the
4 mediator's reports speak for themselves. That is
5 disappointing, to say the least.

6 So that having been said, is there
7 anything further you want to say on that before we move on
8 to hear the evidence here?

9 MR. KUHN: I just don't want you to
10 get the wrong impression. We've all gotten together,
11 brothers and sisters who aren't here, and meet all day long
12 with David Tedder and reach a point of tentative agreement
13 on some issues, recessed, went to the accountant David Mims,
14 had him go back and do some more stuff on numbers, met again
15 for another whole day my office, mediated again. So we
16 mediated, I mean.

17 THE COURT: Well, is it a matter
18 that just there wasn't enough time to get to those issues?

19 MR. KUHN: No, sir, that we just
20 could not reach an agreement.

21 MR. RIVERS: We just hit an impasse
22 on this and every time we came back to it we hit an impasse
23 right of the bat.

24 As he said, a vast amount of time was
25 spent on the overall subject. This issue was brought in a

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1 number of times but always hit an impasse.

2 MR. RUFF: That's right, Your
3 Honor.

4 There're two side-by-side cases, one in
5 the circuit court that Mr. Rivers is handling and one here
6 in the probate court that I'm lead counsel for.

7 I did, I spent all day in Mr. Kuhn's
8 office with, probably, everyone in this room here and I
9 think
10 everyone did give a good college try to mediate these
11 decisions and, like Your Honor and, I'm sure, a lot of
12 people in this room, I'm sorry that mediation was
13 unsuccessful but what Mr. Rivers said was right, we were
14 just so far apart.

15 THE COURT: Okay.

16 Let's go ahead and proceed. At this
17 time plaintiffs' attorney can call their first witness.

18 MR. RUFF: Your Honor, our first
19 witness is Miss Sandra Turpin.

20 Sandra Lowther Turpin,
21 first being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION BY MR. RUFF:

24 Q. Miss Turpin, good morning.

25 A. Good morning.

1 Q. Miss Turpin, you the same Miss Turpin who's a
2 beneficiary in this estate?

3 A. Yes, I am.

4 Q. And are you a taker under the will of the
5 decedent?

6 A. Yes.

7 Q. Miss Turpin, how are you related to the decedent?

8 A. I'm his older sister.

9 To the decedent?

10 Q. Yes, ma'am.

11 A. My father?

12 Q. Yes, ma'am.

13 A. He's my father.

14 Q. Miss Turpin, how are you related, if at all, to
15 the defendant Mr. LeGrande Lowther?

16 A. He's my younger brother.

17 Q. Younger brother?

18 A. Yes.

19 Q. And, Miss Turpin, what kind of work do you do?

20 A. I'm an RN and a healthcare administrator.

21 Q. Are you currently employed?

22 A. No.

23 Q. You're not?

24 A. I've retired.

25 Q. Okay.

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1 Miss Turpin, what's your main source of income
2 now?

3 A. My social security that I get monthly.

4 Q. Okay.

5 Is that your only source?

6 A. That's my only source of income.

7 Q. Roughly, how much is that, ma'am?

8 A. A thousand four hundred an six dollars.

9 Q. And what's your -- Pardon the question, Miss
10 Turpin, but what's your age, please?

11 A. I'm 66.

12 Q. Okay.

13 And where do you live, Miss Turpin?

14 A. I live in Ridgeland, South Carolina.

15 Q. Okay.

16 And with whom do you live?

17 A. I live with you daughter and two of her children.

18 Q. That would be your grandchildren?

19 A. Yes.

20 Q. So the four of you live together?

21 A. Yes.

22 Q. Okay.

23 A. And the house, we own the house jointly.

24 Q. All right.

25 Miss Turpin --

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1 MR. RUFF: First I'd like to ask
2 that The Court mark this as exhibit 1. This is the original
3 inventory and appraisalment of the estate.

4 MR. KUHN: No objection.

5 THE COURT: Without objection will
6 be so admitted.

7 (Inventory and Appraisalment marked
8 and entered in to evidence as Plaintiffs' Exhibit 1 without
9 objection.)

10 MR. RUFF: Would The Court prefer
11 that I use a copy or us this exhibit for Mrs. Turpin?

12 THE COURT: You know, as long as
13 what you use, is there any objection to using copies?

14 MR. KUHN: No, sir, Your Honor.

15 Q. Miss Turpin, what I've marked here, what I've
16 marked here as exhibit 1, have you seen this document
17 before?

18 A. Yes.

19 Q. Okay.

20 And when's the first time you saw this document?

21 A. When I found out that our case in probate was
22 going to be inactive. Was inactive.

23 Q. Okay.

24 And if you can flip forward to page 2 for me,
25 please.

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1 A. All right.

2 Q. First line. Can you read that first line,
3 please, for me?

4 A. Forty point seven nine acres, Grahamville, Jasper
5 County, South Carolina.

6 Q. Miss Turpin, what I referred to earlier as the 40
7 acres, is this the same? Is this the same property that's
8 shown as item 1 in the inventory?

9 A. Yes.

10 Q. Okay.

11 What value is shown for that property?

12 A. A hundred sixty-three thousand one hundred
13 dollars.

14 Q. Okay.

15 Now, Miss Turpin, do you have any idea how the
16 personal representative came up with this valuation?

17 A. No.

18 Q. Okay.

19 Did he ever ask you about your thoughts about the
20 valuation of the property?

21 A. No.

22 Q. To your knowledge, did he have an appraisal made
23 of this property, ever?

24 A. No.

25 Q. Did you have any input, whatsoever, in that

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1 number appearing on this inventory?

2 A. No.

3 Q. Okay.

4 A. I'm surprised at this number.

5 MR. RUFF: Your Honor, I realize
6 this is part of The Court's record already but I'd like to
7 have this admitted in to evidence as exhibit 1.

8 THE COURT: I believe it already has
9 been.

10 MR. RUFF: Admitted in to evidence.
11 Okay. Thank you. Thank you, Your Honor.

12 Q. All right.

13 Miss Turpin, what was your attitude about this 40
14 acres of property after your father died?

15 A. The 40 acres belonged to seven heirs of my
16 father. LeGrande asked not be included in the will as he
17 had received his portion while Daddy was still alive.

18 Q. Yes, ma'am.

19 A. And the 40 acres and the one parcel that we
20 owned, the seven heirs owned outright that did not have a
21 mortgage on it and was in a very sellable place since
22 housing division had been built next to it.

23 Q. Miss Turpin, did you express a desire to any of
24 your family members about whether you wished to keep the
25 property or whether you wished to sell it?

1 A. I expressed a wish to sell it. My dad and tried
2 to sell it and that did not work.

3 I was talking to my brother Clark and we were so
4 in need of money that we went and asked LeGrande to put a
5 value on it and let us help sell it.

6 Q. Okay.

7 Were you consistent, then, in your desire to sell
8 this piece of property?

9 A. Yes.

10 Q. Okay.

11 Did you ever second guess yourself or question
12 that at any time after your father's death?

13 A. Well, no. It was the only piece of property that
14 we could sell without, really, having LeGrande's permission.

15 Q. Did you approach the personal representative Mr.
16 LeGrande Lowther and ask him to sell the property after your
17 father's death?

18 A. Yes. Many times.

19 Q. Can you define many times, about how often you
20 and Mr. LeGrande Lowther talked about that?

21 A. At one time I probably was speaking to him every
22 day about it. And then I talked to Clark and Clark says,
23 well, I can get a sale for it; let me try.

24 Q. Clark being your brother?

25 A. Yes. Clayton Clark.

1 Q. Okay.

2 A. And so we got LeGrande to come over to my house
3 and explained what we wanted to do, we wanted to help sell
4 it, and would he give us a price and let us try to sell it.
5 And I believe the price that he wrote down on a piece of
6 paper was \$240,000 and Clark didn't think that was enough
7 but he said, this is all you want for it?

8 Q. Okay.

9 Did Mr. Lowther, Mr. LeGrande Lowther, I mean the
10 personal representative, did he ever turn over the job of
11 selling the property to you the heirs of the estate?

12 A. He turned it over to Clark.

13 Q. Oh, he did?

14 A. Uh-huh. He told him to go ahead and sell it and
15 that would give us some money.

16 Q. Okay.

17 But did any sale ever come of that?

18 A. Right, it did.

19 Q. I'm sorry. Did any sale to a third party come of
20 that process?

21 A. It did not but everybody accepted that offer.

22 In fact, Clark bought an offer to LeGrande of a
23 company who wanted to buy it for that price.

24 Q. Okay.

25 So he bought that offer to LeGrande?

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1 A. Yes, sir.

2 Q. Okay.

3 Now, Miss Turpin, did Mr. LeGrande Lowther ever
4 express his desire to purchase this property from you and
5 the other heirs?

6 A. Eventually he did. He said that if possible he'd
7 like to get his money together and purchase the whole kit
8 and caboodle, all of it.

9 Q. When was the first time? This is important.
10 When was the first time that Mr. LeGrande Lowther approached
11 you with an offer by himself to purchase this property?

12 A. I would say early summer of '05.

13 Q. And was there a number involved or was it just a
14 concept?

15 A. There were several numbers. He came and talked
16 to me about \$250,000 and I said no. He sent me to a CPA
17 that both of us know to find out about raw land and I did
18 that. I went and talked to him and he talked as though that
19 number were good, was a good figure. But I didn't see it.
20 I could not see that that as a good figure.

21 Q. So?

22 A. I didn't agree.

23 Q. Did those talks just fizz out then? Did anything
24 come of that?

25 A. No.

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1 A little, weeks later he came back and offered
2 \$325,000.

3 Q. Okay.

4 MR. RUFF: Miss Turpin, I'm gonna
5 ask The Court mark this as exhibit 2.

6 THE COURT: Has Mr. Kuhn seen this?

7 MR. RUFF: He's not.

8 THE COURT: Okay.

9 Would you show it to him first?

10 MR. RUFF: Yes, Your Honor.

11 MR. KUHN: I don't have any
12 objection, Your Honor.

13 THE COURT: Document just mentioned
14 will be received in evidence as Plaintiff's Exhibit 2.

15 (Calendar marked and entered in to
16 evidence as Plaintiffs' Exhibit 2 without objection.)

17 THE COURT: Do you need this for
18 questioning?

19 MR. RUFF: I do, Your Honor.

20 Q. Miss Turpin, are you familiar with this document?

21 A. Yes. This is a page out of my 2005 calendar.
22 That I keep.

23 Q. And you keep that calendar yourself?

24 A. Yes.

25 Q. And are all those entries on the calendar, are

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1 those all your handwriting?

2 A. Yes.

3 Q. And you're absolutely certain that you're
4 familiar with this document and that it's yours?

5 A. Yes.

6 MR. RUFF: Your Honor, I'd like
7 this introduce, formally introduce in to evidence.

8 THE COURT: Okay. Without
9 objection.

10 MR. KUHN: Yes, sir, Your Honor.

11 THE COURT: Be so, it will be so
12 admitted.

13 Q. Okay.

14 Miss Turpin, can you please read this entry from
15 your calendar from October 17, 2005?

16 A. October 17, Amy, Dr. Thomas, you want me to read
17 that?

18 Q. No, ma'am. The next one.

19 A. You want me to read the one from the twenty-
20 third?

21 Q. No, ma'am, the seventeenth.

22 A. Excuse me, I'm sorry.

23 LeGrande gave me contract for buyout. Bube over
24 times two. Mitchell Lowther Saxon and Carmen were, were
25 over. Spencer stayed night with Mitchell. E.L.L - who is

1 LeGrande - to bring money to me but Bube here.

2 Q. Now, please explain for The Court LeGrande gave
3 me contract for buyout. Please explain what that means,
4 what happened on October 17 of 2005.

5 A. Well, quite surprisingly, he bought me a
6 document, a personal --

7 Q. By he you mean Mr. LeGrande Lowther?

8 A. Pardon?

9 Q. Mr. LeGrande Lowther brought that to you?

10 A. Yes, sir.

11 Q. Thank you. Go ahead.

12 A. And it was a personal contract to buy all that I
13 had inherited from my father.

14 Q. Okay.

15 And did that contract have a price associated
16 with it?

17 A. It did.

18 Q. Okay.

19 And, Miss Turpin, before October 17 when Mr.
20 LeGrande Lowther approached you with this contract did you
21 have either a written or an oral agreement with him to sell
22 any of your inherited property?

23 A. No.

24 Q. Okay.

25 So but you admit, you concede that you had

1 discussed it from time to time with the idea of selling it,
2 is that right?

3 A. Right. At that time LeGrande and I talked almost
4 every day and -- but we had not talked about that in the
5 last few days and I was very surprised when he came up with
6 a contract.

7 THE COURT: Excuse me. If someone
8 could get her a glass of water.

9 A. Thank you.

10 Q. Okay.

11 So how did you feel on the seventeenth when your
12 brother Mr. LeGrande Lowther approached you with this
13 contract buyout your share of the property?

14 A. Well, he wanted immediately. He wanted me to
15 sign it, to read it and sign it and I was very uncomfortable
16 with that because I had to -- I needed to pick it apart.

17 Also, there were terms in there that I don't
18 agree with and things I felt like needed to be added and --

19 Q. Now, Miss Turpin, you've already said that you
20 have no agreement whatsoever with Mr. Lowther before October
21 17. On the seventeenth, the day he produced this
22 contract --

23 A. Right.

24 Q. -- to you, according to your calendar, did you
25 have an agreement with him on that day to sell your interest

1 in this property?

2 A. No, I didn't.

3 Q. Okay.

4 I'd like for you to read the first part of your
5 entry, your calendar entry on October 18 of 2005, Miss
6 Turpin.

7 A. Mitchell came early and explained contract, wrote
8 in changes, initialed and signed. LeGrande mad but okay by
9 the time he left. Received \$4,000 from LeGrande on marina
10 lot.

11 Q. Okay.

12 Let's -- To be clear let's -- When you say
13 Mitchell that's your brother Mitchell Lowther who's here in
14 the courtroom today?

15 A. Yes.

16 Q. He's one of the beneficiaries of the estate,
17 also?

18 Now, by Mitchell came earlier and explained
19 contract, what does that mean? Did he come to your home or
20 --

21 A. Well, he came and we discussed it.

22 I found out that some of my brothers and sisters
23 had signed it on the spot. I don't know whether they read
24 it or not but I was one of the few who had not signed it.

25 Q. By on the spot you mean the night, the day before

1 October 17, 2005?

2 A. When he -- When LeGrande took the contract to
3 them they went ahead and signed it.

4 Q. On the same day that you got it, October 17, or
5 are you not sure one way --

6 A. I'm not sure what date he took them. I know
7 that --

8 MR. KUHN: Your Honor, it's
9 hearsay, then, if she doesn't -- wasn't there when it
10 happened, as to what they did when they got the contracts.

11 THE COURT: Well, I think he was
12 just asking what she knew and I'm gone overrule the
13 objection.

14 Q. Going on with this entry, says, Mitchell came
15 early and explained contract. Does that mean Mitchell's
16 explaining the contract to you or you to him? Please tell
17 us all about what happened to the best of your recollection
18 on October 18, 2005.

19 A. We were going through that contract to be sure
20 that it was on the up and up.

21 Q. By we you mean you and Mitchell?

22 A. Mitchell and I, right.

23 Q. Were there any other persons in this meeting on
24 the eighteenth of October?

25 A. Not that I remember.

000226

1 Q. Was Mr. LeGrande Lowther there?

2 A. No. No.

3 Q. Were either of your other brothers in the
4 courtroom today or were either of them at this meeting?

5 A. No.

6 Q. Okay.

7 So please then go on and explain, explain the
8 substance of this meeting on October 18.

9 A. I wanted to be sure that we were fully covered.
10 I still had some doubts on the price. Also, nothing was
11 mentioned in the contract about Echo Tango, that I could
12 remember and or find. And I, I had to hear somebody explain
13 to me exactly what was gonna happen.

14 I had formed in my mind what I thought would
15 happen if I signed the contract and, of course, as I went
16 through I wrote in what I would like to see different on the
17 contract.

18 Mitchell agreed with me that, that those were
19 good things to add, that he agreed with that, and when
20 LeGrande came in, then I signed it but I had written in
21 three separate things.

22 Q. Ultimately, Mrs. Turpin, did you agree voluntarily
23 to sell, for you collectively, did you collectively agree
24 ultimately to sell the 40 acres to LeGrande Lowther for
25 \$511,000?

000227

1 A. I did but you have to understand that I was in a
2 very, very poor condition. I have a sick daughter who is
3 unable to work. She has two children and all the bills are
4 paid by me. I think she gets a hundred and seventy-eight
5 dollars a month child support and independent families at
6 that time were paying her, like, a hundred and thirty
7 dollars, somewhere along that line.

8 Q. Yes, ma'am.

9 A. And we had been begging LeGrande to sell
10 anything, a lot, the 40 acres, anything, so we could have
11 some money.

12 Q. By the time you made this ultimate agreement, by
13 you I mean all of you together made this ultimate agreement
14 to sell the 40 acres to LeGrande Lowther for \$511,000 were
15 you personally aware of Mr. LeGrande Lowther's effort to
16 sell the property to any third party?

17 A. He told me he had no sale for it.

18 Q. And did he volunteer that information to you or
19 did you ask him that?

20 A. Well, he volunteered it but I thereafter asked
21 him on a regular basis, so much so that he really got angry
22 with me.

23 Q. Would that also have been in October of 2005?

24 A. Oh, yes.

25 Q. Now back to your calendar and when you said E L L

1 made, is E L L an acronym for E. LeGrande Lowther?

2 A. For LeGrande.

3 Q. Was part of why he was mad? Because you were
4 asking him whether he had another sale?

5 A. Right.

6 MR. KUHN: Your Honor, I object to
7 that as leading, Your Honor.

8 THE COURT: Just rephrase, please.

9 Q. Why was Mr. LeGrande Lowther mad on October 18?

10 A. He was mad because Mitchell and I had gotten
11 together and added to the contract. He was also mad that I
12 asked again did he have a sale for it and he told he did not
13 have a sale for it and I said then how, how are you gonna
14 pay for this.

15 Q. Okay.

16 And how did he answer you?

17 A. His answer was that he was going to borrow the
18 money and that he had a little money and he thought that he
19 could bring the deal together.

20 He was aggravated that I would not let it go. I
21 asked who he was dealing with and he said that he wasn't
22 dealing with anybody, that we had the mess of Clark selling
23 the property to a party. LeGrande turned that contract
24 down.

25 Then someone else made an offer and then a third

000229

1 offer came in and I can't tell you all the details of those
2 but we were sitting there and LeGrande told me that it
3 didn't make any difference who I thought the property should
4 be sold to, it was gone be sold to the person who offered
5 the most because the will said to sell it for market value
6 and I believe he went to the probate judge in Jasper County
7 about that fact and got a ruling or some such thing.

8 Q. But ultimately these efforts at selling the
9 property or the efforts that you knew about for selling it
10 to a third party, those efforts failed ultimately, is that
11 right?

12 A. Right.

13 He said he would probably end up taking a loss on
14 it.

15 Q. By he you mean LeGrande Lowther?

16 A. LeGrande.

17 Q. All righty.

18 So you voluntarily, ultimately entered in to a
19 deal to sell, you, all of you, the heirs to sell to him for
20 \$511,000?

21 A. Right.

22 MR. RUFF: Your Honor, I'd like
23 this marked as exhibit 3.

24 THE COURT: Okay. It will be so
25 marked.

000230

Without objection?

MR. KUHN: No objection, Your Honor.

(Warranty deed marked and entered in to evidence as Plaintiffs' Exhibit 3 without objection.)

Q. Mrs. Turpin, do you recognize this document?

A. It's the warranty deed.

Q. Okay..

A. For the 40 acres with the selling price on it.

Q. Miss Turpin, is this the ultimate outcome of the agreement that all of you reached with Mr. LeGrande Lowther, this deed to him individually for \$511,000?

A. We did but LeGrande also told us that if he was able to sell it for more than what he gave us that he would give us the money that he made off of it.

MR. KUHN: Object to that, Your Honor. It's parole evidence rule. It directly contradicts the written contract between them.

MR. RUFF: Your Honor, well, I don't think the contract is relevant to this and the parole evidence rule, in order to apply it would just apply to representations made before the contract was entered in to.

The contract, number 1, is not even in evidence and she's talking about the closing date which was after the contract.

000231

1 MR. KUHN: Also, statute of frauds,
2 I'll add that as another grounds, Your Honor. This is a
3 real estate transaction.

4 THE COURT: Well, I'm gonna allow
5 the question. I'm just gonna hold in abeyance my ruling on
6 the admissibility but let's ask your question again and
7 let's proceed and then I'll determine it's admissibility.

8 MR. RUFF: Thank you, Your Honor.

9 Q. Miss Turpin, please describe the events that
10 happened at this closing time when you and your siblings
11 sold this property according to this deed for \$511,000 to
12 Mr. LeGrande Lowther.

13 A. We met one evening in Mr. Kuhn's conference room
14 to sign all of these papers and I personally was worried
15 about LeGrande and the fact that he may not find a buyer
16 because some of that land was low, it need fill, but -- and
17 I asked him again.

18 Q. Miss Turpin, this, the deed you'll see -- you'll
19 see your signature here. It's dated December 8, 2005. Is
20 that the date or about the date on which you had this
21 meeting at Mr. Kuhn's office to --

22 A. December 8 would've been in the afternoon.

23 He came by and told me that to notify the
24 brothers and sisters to go over and sign on the eighth at a
25 certain time and to be sure that we were all there to sign

1 it, that he would not be there but Mr. Kuhn would be there
2 to answer our questions.

3 Q. Okay.

4 A. And when I got there Mr. Kuhn nor LeGrande was
5 there. A lady helped us with these contracts and, in fact,
6 I sit in the foyer for quite awhile, the lobby, whatever.

7 Q. Yes, ma'am.

8 A. Without signing mine. I wasn't gone sign it.

9 Q. This closing where these deeds were signed, were
10 all of you siblings there? Who all was present at this
11 meeting?

12 A. Myself, Rita Rogers, Genie Tillotson, Mark
13 Lowther, Eugene Lowther and I believe that's all. Mitchell
14 and Clark were not there. They were not available.

15 Q. A few minutes ago you testified that you asked
16 Mr. Lowther back in October several times, you said, about
17 the existence of a third party sale and that he denied that
18 to you. Now let's fast forward. We're now a month and a
19 half later. We're at December 8, 2005 and we're at the
20 closing.

21 What knowledge, if any, on December 8, the date
22 of the closing, what knowledge did you have about any
23 efforts by the personal representative Mr. LeGrande Lowther
24 to resell this property?

25 A. None.

000233

1 Q. No knowledge?

2 And did you ask Mr. LeGrande Lowther in December,
3 as you testified you did in October, about his efforts to
4 resell this 40 acres?

5 A. I did ask him but not on this day. Not on the
6 eighth or the fifth, whatever that is.

7 Q. Do you remember when you last asked him about his
8 efforts to resell the property?

9 A. On December 21 when we sit around the table in
10 the conference room to sign everything I was standing up and
11 I asked him do you have a sale for the 40 acres. And he
12 said, Sandra, I'm gone tell you one more time, I do not have
13 a sale for the 40 acres.

14 Q. And that date, the twenty-first, is that the date
15 where the closing proceeds were disbursed?

16 A. Right.

17 Q. Okay.

18 THE COURT: Excuse me just a second.

19 For purposes of that pending objection,
20 Mr. Kuhn, to the earlier testimony the witness gave.

21 MR. KUHN: Yes, sir, Your Honor.

22 THE COURT: When I asked, I just
23 want -- I think that's been mooted. I think because I asked
24 Mr. Ruff to rephrase the question. I have not heard that
25 statement made since then. I'm not gone consider the answer

1 that was earlier given so I believe that moots the
2 objection.

3 MR. KUHN: Yes, Your Honor. Thank
4 you.

5 MR. RUFF: I'd like The Court to
6 mark this next document as an additional exhibit.

7 THE COURT: Unless there's an
8 objection it'll be so marked.

9 MR. KUHN: No objection.

10 (Settlement Statement marked and
11 entered in to evidence as Plaintiffs' Exhibit 4 without
12 objection .)

13 THE COURT: And also without
14 objection, just to keep it straight, Plaintiff Exhibit 3,
15 the deed that was previously marked be admitted in evidence
16 as such.

17 MR. KUHN: I have no objection to
18 that, Your Honor.

19 Q. You recognize this document, Miss Turpin?

20 A. This is a settlement statement from when we
21 signed all of these papers on the twenty-first.

22 Q. Will you please look at the last page of that
23 settlement statement, Miss Turpin?

24 A. Yes.

25 Q. Is that your signature there, among several

1 signatures?

2 A. Yes.

3 Q. Okay.

4 Is this a true and accurate copy of the
5 settlement statement that came from the closing of the sale
6 to LeGrande Lowther for \$511,000?

7 A. As near as I can tell, yes.

8 Q. And you signed it, correct?

9 A. Yes.

10 MR. RUFF: Your Honor, I'd like
11 this to be admitted into evidence as our next exhibit.

12 THE COURT: May I see it just a
13 moment?

14 All right.

15 It will be so admitted without
16 objection.

17 Q. Now, Miss Turpin, a few minutes go we were
18 discussing the signing of the deeds on December 8. You
19 talked about a later meeting where the closing proceeds were
20 disbursed.

21 This settlement statement reflects a settlement
22 date of December 20, 2005, in the upper right hand portion.
23 Is that the date or about the date on which you were
24 discussing when you should you met at Mr. Kuhn's office?

25 A. I would have to say about the date.

000236

1 Q. Right up close to Christmastime?

2 A. Yes.

3 Q. Okay.

4 Now, just as you discussed what happened at the
5 earlier meeting, please discuss the procedure and what went
6 on at this meeting for the disbursement of the closing
7 proceeds.

8 A. As we sit around the table I believe the first
9 thing that we signed was a quit claim deed on Echo Tango but
10 each deed and agreement was sent around the table and we
11 were to read it and after the paper went around than paper
12 for signatures, like this, was sent after it.

13 Q. Okay.

14 A. And with somebody reading, maybe reading this.
15 Some papers preceded this and it was a little confusing.

16 Q. But, ultimately, does this settlement statement
17 reflect, again, the price that you agreed to, the price
18 established by the deed, \$511,000?

19 A. It does because I had no choice. In this matter.

20 Q. And did you receive at this closing a
21 disbursement of your share of these funds? Your one-seventh
22 share I mean.

23 A. No.

24 Q. When did you receive those funds?

25 A. I believe we received them the next day.

000237

1 Q. The next day? From Mr. Kuhn's office?

2 A. Uh-huh.

3 Q. Okay.

4 A. I'm sorry, I didn't mean to say uh-huh.

5 Q. Just as you testified about the December 8
6 meeting, who all was at this meeting in the later part of
7 December, what I'll call the closing meeting. Who was in
8 attendance at that meeting?

9 A. Genie Tillotson; Eugene, Jr.; Clark, Mitchell,
10 Mark. LeGrande was there. I was there. Rita was there.

11 Q. Your brother Mr. LeGrande Lowther was there?

12 A. Yes. He was.

13 Q. On this date that deeds were signed, on this date
14 in late December, what knowledge did you have on that date,
15 if any, about Mr. LeGrande Lowther's efforts to resell this
16 property to a third party?

17 A. None.

18 Q. I'll ask you the same question I asked you about
19 earlier. Did you ask Mr. LeGrande Lowther about his efforts
20 to resell this property to third parties?

21 A. I certainly did.

22 Q. And what was his --

23 A. I asked him if he had a sale.

24 Q. And what was his response to you, Miss Turpin.

25 A. No. I do not.

1 Q. So is it your contention that he denied the
2 existence of a third party sale at the time that he
3 presented the contracts to you in mid October, at the time
4 you signed the deeds on December 8 and in late December at
5 what I'll call the closing meeting?

6 MR. KUHN: I object. That's
7 leading.

8 A. Yes.

9 MR. RUFF: Just trying to tie this
10 up.

11 THE COURT: Just I believe her
12 testimony speaks for itself without further elaboration so
13 I'll sustain that objection.

14 MR. RUFF: All right, Your Honor.

15 Q. Now, later, Miss Turpin, after the deal closed,
16 when did you find out that LeGrande Lowther flipped or
17 resold this 40 acres for \$810,000?

18 A. In March of 2006 when he handed me a stack of
19 papers like this which was the settlement papers for
20 everybody. And I said what is all this and he said it's
21 settlement papers and I laid them out and looked at them
22 after he left and he had given me everybody's and I tried to
23 hand them out but I didn't even have these until then.

24 Q. So you're certain it was about three months after
25 the closing disbursement --

000239

1 A. Yes, sir.

2 Q. -- that you found out about --

3 A. Yes.

4 Q. -- his sale?

5 A. I already -- I already knew that he had mortgaged

6 Echo Tango without our knowledge.

7 Q. Which is a different piece of property?

8 A. Right.

9 For \$50,000 and he and I had already had words
10 about that.

11 And even at that time he did not mention that he
12 had borrowed money on the 40 acres.

13 Q. So you said it's March when you found out?

14 A. Yes.

15 Q. Did you find out from him telling you or did you
16 find out through reading this big stack of papers you
17 said --

18 A. I found out from my brother Eugene.

19 Q. Okay.

20 How did you feel in March of 2006 when you found
21 out that your brother had resold or flipped the property for
22 \$810,000?

23 A. Sick.

24 Q. Can you elaborate on that, please?

25 A. Angry.

000240

1 Well, I felt like that was our one piece of
2 property to make some money off and we needed it really
3 bad and we needed it to last until December 31 of '06 when
4 the next payment was due us and it just -- it just crushed
5 me.

6 Q. Did you have any discussions with Mr. LeGrande
7 Lowther after you found out in March of 2006?

8 A. Yes, I did.

9 Q. And tell us about those discussions. Regarding
10 the 40 acres.

11 A. He said that it could've been worse, he could've
12 put it up for sale and got anything that he could've got for
13 it and handed that to us but he went to a lot of trouble to
14 get it sold so that we could have enough money to live on
15 and he didn't see anything wrong with the fact that he had
16 dealt with someone and signed a contract and never told us
17 about it. He saw nothing irregular. He did not feel that
18 it was any of our business.

19 Q. This was a conversation you had with him in March
20 or just after March of 2006?

21 A. I probably happened in March, just as soon as I
22 found out what was going on.

23 Q. Since then have you had any word with Mr.
24 LeGrande Lowther about the 40 acre transaction?

25 A. I've had many conversations with him. Mostly my

1 conversations have had to do with the fact that we weren't
2 paid and asking what had it cost him to put the sewer in at
3 Echo Tango, et cetera, trying to keep up with what was going
4 on.

5 Q. Okay.

6 A. I also wanted to know how much each of us owed
7 him.

8 Q. Yes, ma'am.

9 A. He had a partial record of that.

10 I wanted him to know that I was hiring a lawyer
11 and I talked to him. Mitchell and I talked to him twice
12 more before this thing, before we filed all of our papers.

13 Q. Yes, ma'am.

14 A. Trying to get him to do the right thing. By all
15 of the property.

16 He had -- He had a deed signed on Echo Tango from
17 my father for the purposes of selling it but Echo Tango
18 believed 50 percent to LeGrande and 50 percent to my father
19 but he told the heirs that is he wanted to he could keep it
20 and we would get none of it.

21 And that was his attitude with me when I found
22 out he'd borrowed \$50,000 against it.

23 Q. Okay.

24 A. That it was none of my business.

25 Q. At all times, though, at all times before the

1 disbursement of the closing proceeds in late December for
2 the 40 acres, were you at all times ignorant of other third
3 party offers or possible deals on the 40 acre property?

4 A. Well, now, I knew about a couple of deals, like
5 the ne Clark got.

6 Q. Which was for a lot less?

7 A. Oh, yeah.

8 Q. Okay.

9 A. And then the mention of Bear Creek. I knew that
10 a particular person, Dondi Wall had put that bid in.

11 Q. Now, but you were ignorant of The International
12 Society of Investors contract, is that right?

13 A. Yes.

14 Q. Now, let's talk about Mr. LeGrande Lowther's
15 denials, consistent denials of those, of the deal with
16 International Society of Investors.

17 Did you rely on those denials in making your
18 decision to go forward with the sale of your portion of the
19 40 acres?

20 MR. KUHN: Your Honor, I'm gone
21 object again. This violates the parole evidence rule, the
22 statute of frauds. The contract says in writing she's not
23 relying on any representations. There's a written contract
24 that deals with this.

25 THE COURT: Mr. Ruff.

000243

1 MR. RUFF: I'm asking for her
2 reliance after this contract was entered in to. The parole
3 evidence rule would -- To the extent there is a merger
4 clause in this document, it would only wipe out, if
5 anything, any representations made before the contract was
6 entered in to. I'm asking her about her reliance after this
7 contract was signed, her reliance as of December when the
8 closing went forward.

9 MR. KUHN: I'd add a relevancy
10 ground. She was already obligated by contract --

11 MR. RUFF: The reliance is relevant
12 to the issue of fraud which was alleged in our Complaint,
13 Your Honor. It's an essential element of our fraud case.

14 THE COURT: Objection overruled.

15 Q. Did you rely on Mr. LeGrande's consistent
16 denials?

17 A. No. I went to the computer and I went to Jasper
18 County and Beaufort County and looked up all the paperwork I
19 could find and I found the mortgage where he had mortgaged
20 the 40 acres.

21 Q. Excuse me but I think you're talking about after
22 the fact. I'm talking about in the period between --

23 MR. KUHN: Your Honor, I object.
24 He's cutting her off halfway through her answer.

25 THE COURT: Well, I did note that.

000244

1 That diminishes the value of the answer so it's noted for
2 the record.

3 Proceed.

4 Q. In the period, in the fall, between October and
5 December when you got your money.

6 A. Right.

7 Q. Did you rely on his denials of The International
8 Society of Investors deal in making your decision to close
9 on the property?

10 A. Yes. Yes. When he kept denying I said, well, he
11 doesn't have a deal.

12
13 Q. Okay.

14 And this, what you just said a couple of minutes
15 ago about finding paperwork and all, was that after the
16 closing or before?

17 A. That was after March when I found out that he had
18 borrowed money on the 40 acres before he even talked to us.

19 Q. Which was several months later? Several months
20 after the closing?

21 A. No. He borrowed money on the --

22 Q. I'm sorry. You said you found out in March. Is
23 that several months after the closing?

24 A. No. The money he borrowed on the 40 acres he
25 borrowed before we signed out contracts, our personal

000245

1 contracts.

2 Q. Yes, ma'am, that's true but I wasn't asking about
3 the time he was borrowing money. I was asking about the
4 time you're finding out about the borrowing of the money and
5 all that.

6 A. I'm sorry. Ask me one more time.

7 Q. When you said earlier that you -- that you found
8 out about his mortgage and these other transactions Mr.
9 LeGrande Lowther had made in borrowing money, when you
10 answered no to my question about reliance, was that in the
11 October December time period or was that later, like March
12 of next year?

13
14 A. I'm sorry, I still don't understand that
15 question.

16 Q. Let me try to make it a little bit simpler.

17 In the October to December time period, between
18 the first meeting you had on your calendar about this
19 contract through the date that LeGrande Lowther closed now
20 the purchase of this property is it your testimony that Mr.
21 LeGrande Lowther consistently denied the existence of a
22 transaction with International Society of Investors?

23 A. Yeah.

24 Q. And at that time, at that time, when you said he
25 denied that to you did you bank on that?

1 A. I sure did, yes.

2 Q. In making your decision did you bank on that in
3 making your decision to go forward with the sale to Mr.
4 LeGrande Lowther?

5 A. Yes, I did.

6 Q. And when you found out about the borrowings and
7 the other sale that you just testified about a couple of
8 minutes ago when you answered no, was that in that October
9 to December time period or was that later in March after the
10 deal was already closed?

11 A. Okay. Ask me that again. I'm sorry.

12 Q. Okay.

13 When did you find out about his subsequent -- his
14 mortgaging and reselling of the 40 acre property?

15 A. March of '06.

16 Q. Okay. Okay.

17 And by that time the transaction had already
18 closed?

19 A. Right.

20 Q. Right?

21 A. Yes.

22 Q. So there's nothing to rely on or not rely on --

23 A. Right.

24 Q. -- isn't that true?

25 A. Right.

000247

1 Q. So back to my initial question, consistently from
2 October 17 through December 20 or 21, the date of the
3 closing, did you consistently rely on Mr. LeGrande Lowther's
4 denial, denial of The International Society of Investors?

5 A. Yes, yes.

6 Q. Now, had you known, had you known about the
7 contract and sale to The International Society of Investors
8 would you have gone forward with your sale, with your part
9 of the sale to Mr. LeGrande Lowther for \$511,000?

10 MR. KUHN: I object to that, Your
11 Honor. It's speculation and self-serving.

12 MR. RUFF: Your Honor, one of the
13 elements of fraud is, not only the reliance and the right to
14 rely, or the right rely. Stated differently, one of the
15 elements of fraud is whether someone had the right to rely,
16 whether that reliance was reasonable, i.e., whether she
17 would have taken the action that she took but for the fraud
18 that we alleged. It's one of the essential elements of
19 fraud.

20 THE COURT: Well, certainly, the
21 elements of fraud have to be -- have to be proven but I
22 believe, you know, I believe the question is objectionable,
23 primarily on it's extremely loaded and leading and,
24 certainly, she can testify. You know, I want her to be able
25 to testify but perhaps you could rephrase your question.

1 We'll deal with the objection in that manner.

2 Q. Was Mr. LeGrande Lowther's denial important to
3 you, material to you in making your decision to go through
4 with the sale to him?

5 A. Very much so. Essential.

6 Q. Okay.

7 And did you feel that your reliance on his
8 representation, that it was wrong for you to rely on what he
9 was telling you? At the time?

10 A. No.

11 Q. Why not?

12 A. Well, he's my brother who I have trusted my whole
13 life. He was made a personal representative of the will and
14 it's hard to separate those two, that he can be a
15 representative over here and not be my brother over here who
16 gives me good advice.

17 Q. So did you trust him?

18 A. Yes.

19 Q. And did you think he was telling you the truth?

20 A. Yes. I was sure he was telling me the truth.

21 Q. And at all times were you ignorant that his
22 representation of there being on sale was false? Were you
23 ignorant?

24 A. I was very ignorant of it.

25 Q. Just a few more questions for you, Miss Turpin.

000249

1 MR. RUFF: Your Honor, I have next
2 exhibit I'd like to have marked.

3 THE COURT: Okay.

4 Mr. Kuhn, are you aware of what --

5 MR. KUHN: I'm not sure.

6 MR. RUFF: It's the warranty deed
7 for the sale by the heirs of the property Mr. Kuhn brought
8 in in his opening statement called Wellington to Mr.
9 LeGrande Lowther.

10 MR. KUHN: No objection.

11 THE COURT: Okay. Without objection
12 this will be marked, I believe it's Plaintiff's Exhibit 5.

13 (Warranty Deed marked and entered
14 in to evidence as Plaintiffs' Exhibit 5 without objection.)

15 THE COURT: And by the way, if
16 there're any other exhibits that the clerk doesn't have for
17 marking that she's been testifying from, make sure the clerk
18 gets them so that --

19 MR. RUFF: Okay.

20 I think we've marked --

21 THE COURT: Do we have them all
22 through number 4?

23 I'd like to see number 2, by the way.

24 This will be number 5.

25 Q. Miss Turpin, do you recognize this document?

000250

1 A. Yes.

2 Q. What is this?

3 A. This is a warranty deed to LeGrande Lowther from
4 the heirs. We're taking a mortgage on all of our property
5 for \$2,464,000.

6 And I have to tell you, until I saw this paper
7 here to us paid by E. LeGrande Lowther, somehow I overlooked
8 that or I wouldn't have signed that.

9 THE COURT: And may I see that one?

10 Q. So while this isn't the 40 acres that's the
11 subject of this lawsuit this is other estate property, is
12 that right?

13 A. Yes.

14 Q. Okay.

15 A. But my understanding was that the 40 acres and
16 all were tied together.

17 Q. Mrs. Turpin, I'm gone ask you some of the same
18 questions.

19 Were you aware that when you sold this property,
20 you again meaning all seven of you who were the grantors in
21 that deed. When you sold this property to Mr. LeGrande
22 Lowther for two point four six four million dollars were you
23 aware that Mr. LeGrande Lowther had a contract to sell this
24 property to International Society of Investors for two point
25 seven two five million?

1 A. Absolutely not.

2 Q. Okay.

3 When did you decide to sell this property to Mr.
4 LeGrande Lowther? Wellington, now, I mean.

5 A. Right.

6 It would have been at the same time that I
7 decided to sell the 40 acres. It was a lump property deal.

8 Q. Back to the exhibit --

9 A. Right.

10 Q. -- the calendar, is it true that when Mr.
11 LeGrande Lowther approached you with the contract it was a
12 contract for both properties?

13 A. It was a contract for all three properties.

14 Q. Okay. Okay.

15 Now, ask you the same question I did about the 40
16 acres because it's important here because what the other
17 side said.

18 At the time that you agreed to sell Wellington,
19 this property, your share of it to Mr. LeGrande Lowther,
20 LeGrande Lowther, were you aware of any efforts by Mr.
21 LeGrande Lowther to sell this property to third parties?

22 A. I knew that he had tried, even when Daddy was
23 alive, to sell the property but we were told that he had
24 tried and there just was nobody to buy it.

25 We were selling it lot by lot. At that time.

1 Q. You said you were told. You were told by whom?

2 A. LeGrande.

3 Q. Okay.

4 Did you ask him? Did you ask him about his
5 efforts to sell Wellington to any third parties?

6 A. Yes.

7 Q. And what did he tell you?

8 A. He told me that he was trying to sell Wellington,
9 that he had a good contact, to give him three weeks or to
10 give him 10 days or to give him a month. This went on and
11 on and on.

12 He always had somebody that was coming to look at
13 it and who was gonna purchase it but we didn't discuss the
14 price of it.

15 Fifty percent of Wellington belonged to LeGrande.

16 Q. Okay.

17 MR. RUFF: I'm gone introduce this
18 as -- Well, I ask this be marked as the next exhibit.

19 THE COURT: Okay.

20 First of all, the deed, the warranty
21 deed that was last testified to is admitted as Plaintiff's
22 Exhibit 5.

23 Now, this, Mr. Kuhn, is headed Contract
24 for Sale and Purchase.

25 I suppose we'd better, Mr. Kuhn -- Let's

1 make a practice of showing it to him so he can determine
2 whether he objects.

3 MR. KUHN: No objection, Your
4 Honor.

5 THE COURT: Any objection to just
6 going ahead and admitting it in evidence as Plaintiff's
7 Exhibit 6?

8 MR. KUHN: No, sir.

9 THE COURT: So admitted.

10 (Contract for Sale and Purchase
11 marked and entered in to evidence as Plaintiffs' Exhibit 6
12 without objection.)

13 Q. Now, Miss Kuhn -- Miss Turpin, what did this
14 contract show Mr. LeGrande Lowther as selling this property
15 for to The International Society of Investors?

16 A. He would be selling Wellington Plantation for
17 \$5,450,000.

18 Q. And did he already own a portion of Wellington
19 before your father died?

20 A. He owned 50 percent undivided interest.

21 Q. Okay.

22 And would it be fair, then, to say that the sale
23 of the heirs 50 percent share was for 50 percent of that
24 amount, two point seven two five million dollars?

25 A. The heirs owned 25 percent of Wellington.

200254

1 Q. Yes, ma'am.

2 A. And Mitchell owned 25 percent.

3 Q. I'm adding theirs together.

4 A. Okay.

5 And your question was?

6 Q. Is half of that two point seven two five million
7 dollars?

8 A. Yes.

9 Q. Okay. Thank you.

10 THE COURT: Before that exhibit gets
11 out of control let's mark it and I'd like to see it please.

12 Q. In making your agreement to sell your interest in
13 Wellington to Mr. Lowther for two point four six four
14 million were you at all aware of his sale to International
15 Society of Investors for two point seven two five million?

16 A. No.

17 Q. Did you ask him whether he had made a sale to
18 International Society of Investors or any other third party?

19 A. Right. I asked him if he had a sale.

20 Q. And what was his response?

21 A. No.

22 Q. And when you went to closing on this piece of
23 property, at the closing time for the sale of the Wellington
24 property by the heirs what did you know, if anything, then
25 about Mr. LeGrande Lowther's efforts to sell this property

1 to a third party?

2 A. Nothing.

3 Q. Did you ask him at the closing meeting whether he
4 had any third party sales in place or pending for the
5 Wellington property?

6 A. Yes.

7 Q. What did he say to you?

8 A. He said no. He was taking a big risk.

9 Q. Well, when did you later find out?

10 A. They had contracts signed, sealed and delivered
11 before I ever signed my first personal contract.

12 MR. KUHN: I object to that as
13 hearsay, Your Honor, unless she can lay a foundation for how
14 she knew he had signed, sealed contracts before she signed
15 hers.

16 THE COURT: Okay.

17 MR. RUFF: I believe she said she
18 found out about it after the fact.

19 MR. KUHN: I'd like to know how she
20 found out. I think it's got to be hearsay.

21 THE COURT: In terms of the
22 testimony showing her state of mind at the time, I think, I
23 think that would be an exception to the hearsay rule and
24 will overrule your objection to that basis.

25 Q. Tell me how you felt when you found out that Mr.

1 LeGrande Lowther was profiting for another \$300,000 under
2 this transaction.

3 A. I was angry. I was put out with him. I
4 considered at that point he was not trustworthy, that the
5 person I knew didn't exist any longer.

6 Q. Did you find out about these transactions
7 simultaneous with finding out about the profit that he made
8 on the 40 acre transaction?

9 A. No. I got that, a copy of that transaction
10 first.

11 Q. Well, that meaning which one?

12 A. The 40 acres.

13 Q. Okay.

14 A. From Amber Wind.

15 Q. Yes, ma'am.

16 A. I went online and got all the information on the
17 Amber Winds and tried to trace that and could not.

18 And I thought that that was all he had sold.

19 Q. And how much later was it that you found out
20 about these transactions involving Wellington?

21 A. Just a few weeks.

22 Q. And before you found out about the Wellington
23 transactions, I think you've already testified but how did
24 you feel toward your brother before you found out about the
25 Wellington transactions?

000257

1 A. Well, I trusted him with my life. If I needed
2 anything, counseling, help, if I needed somebody to talk to
3 that's who I went to.

4 Q. And after you found out about the 40 acres and
5 the Wellington transactions?

6 A. Well, we had to go to a different status of --

7 Q. Yes, ma'am.

8 A. -- friendship there. It was extremely hard to
9 deal with him.

10 Q. Okay.

11 MR. RUFF: And one more exhibit I'd
12 like to have marked, Your Honor.

13 MR. KUHN: I have no objection.

14 MR. RUFF: This document be
15 admitted in to evidence by consent, Your Honor.

16 THE COURT: Okay.

17 Without objection it'll be so admitted
18 Plaintiff's Exhibit 8, I believe. Or is it seven? Seven?
19 Seven.

20 (Contract for Sale and Purchase
21 marked and entered in to evidence as Plaintiffs' Exhibit 7
22 without objection.)

23 Q. I think we're now going back to the 40 acres.
24 Miss Turpin.

25 Are you familiar with this document, Miss Turpin?

1 A. Yes.

2 Q. In paragraph 2 what does this show that Mr.
3 LeGrande Lowther sold, or resold I should say, the 40 acres
4 to The International Society of Investors for?

5 A. Eight hundred and ten thousand dollars.

6 Q. And that's \$299,000 more than he just paid you?

7 A. And I could not understand how it was legal to
8 have LeGrande Lowther, Mitchell Lowther, et al.

9 Q. Okay.

10 A. At the top and then Mitchell and the rest of us
11 marked off of it.

12 Q. Now, Mrs. Turpin, you'll notice in the first --

13 MR. RUFF: I think His Honor has
14 this contract.

15 Q. You'll notice in the first two lines of this
16 contract on page 1, this contract is dated October 12, 2005,
17 and your testimony from earlier and your calendar bears this
18 out, is that your first meeting for LeGrande Lowther about a
19 contract was October 17?

20 A. That's correct.

21 Q. Okay.

22 And you're sure about the October 17 meeting
23 being your first --

24 A. I am positive about it.

25 Q. Okay.

000259

1 And, again, you had no knowledge about this --
2 You had no knowledge about this document which is dated
3 October 12, 2005?

4 A. None.

5 Q. And, again, just as -- Did Mr. LeGrande Lowther
6 deny the existence of this document also to you?

7 A. Yes.

8 MR. KUHN: Your Honor, I object to
9 leading.

10 THE COURT: I sustain.

11 MR. RUFF: Your Honor, these are
12 all the questions I have for this witness. If we want to
13 take a couple of minutes break or something before Mr.
14 Kuhn's cross, that'd be fine with me.

15 THE COURT: Okay. That'd be a good
16 idea.

17 Ma'am, I will have to ask you. You're
18 gone be subject to cross-examination by Mr. Kuhn so you may
19 not discuss your testimony or any of the facts of this
20 matter with anyone while we're in recess.

21 A. Okay.

22 THE COURT: Okay?

23 I will stand in recess for 10 minutes.

24 (Court recessed for
25 approximately 10 minutes.)

000260

1 THE COURT: We're back on the
2 record. Miss Turpin's cross-examination by Mr. Kuhn.

3 MR. KUHN: Please The Court, Your
4 Honor.

5 CROSS-EXAMINATION BY MR. KUHN:

6 Q. Miss Turpin, as I understand, when your daddy
7 passed away he owned a hundred percent of this 40 acres, is
8 that correct?

9 A. Yes.

10 Q. And with respect to the 200 plus acres that we
11 call Wellington property, that was owned 25 percent by your
12 daddy, 25 percent your brother Mitchell, seated here in the
13 coat and tie, owned outright and 50 percent was owned by
14 your brother LeGrande, correct?

15 A. Yes.

16 Q. Okay.

17 And with respect to the Echo Tango property, and
18 just brief, that's deep water property near Lemon Island
19 Marina on the Chechessie River that has either five or six
20 lots on it now?

21 A. Yes.

22 Q. Subdivided? Okay.

23 That was titled solely in your brother LeGrande's
24 name, is that correct?

25 A. Yes.

000261

1 Q. And with respect to the Echo Tango property,
2 there was at least, in your opinion as well as your other
3 brothers and sisters the belief that your daddy had a 50
4 percent equitable interest in that property?

5 A. Yes.

6 Q. And that is why on the inventory and appraisalment
7 that Mr. Ruff showed you earlier a hundred percent of the 40
8 acres is shown and 25 percent of the Wellington property is
9 shown but Echo Tango is not mentioned at all, is that right?

10 A. Yes.

11 Q. Now, before your father passed away he wanted, he
12 was trying to sell the 40 acres and the Wellington property?

13 A. I know he was trying to sell the 40 acres and
14 they at times were trying to sell Wellington, yes.

15 Q. Your daddy and LeGrande were putting money in to
16 Wellington to try to subdivide it and make it in to lots and
17 maybe sell lots, stuff like that, correct?

18 A. Yes.

19 Q. Okay.

20 So these properties were actively on the market.
21 This isn't like family heirloom property that y'all wanted
22 to keep in the family and hold on to?

23 A. No, but it was not advertised or turned over to a
24 realtor, that I'm aware of.

25 Q. And this was investment property, basically?

1 A. Yes.

2 Q. Okay.

3 And then when your daddy passed, you testified
4 you were hurting financially a was, I think you said Clark
5 was hurting financially and y'all wanted to sell the
6 property?

7 A. Well, not the minute he died I wasn't in that bad
8 of shape but I got there.

9 Q. As time passed?

10 A. Actually, he put in the will that -- He told me
11 he could not figure out how to divide the property so it
12 would be even and so he thought the thing to do was to sell
13 it and everybody would balance cash.

14 Q. Take their interest, take their share of cash?

15 A. Right.

16 Q. Miss Turpin, if I can show you, is this a copy of
17 your daddy's will?

18 A. Yes.

19 MR. KUHN: Your Honor, just for easy
20 reference I'd move to introduce this.

21 THE COURT: Okay.

22 Mr. Ruff, we stipulate that that's a
23 true copy of the probated will?

24 MR. RUFF: Yes, Your Honor.

25 THE COURT: Okay.

1 And it will be so admitted.

2 Now, it bears a marking down on the
3 right Plaintiff's Exhibit 1 but we'll put our exhibit number
4 over it.

5 This will be Defendant's Exhibit 1.

6 (Last Will and Testament marked and
7 entered into evidence as Defendant's Exhibit 1.)

8 Q. In the language I believe is in the will your
9 father states I desire my estate to be placed in a
10 corporation
11 and my property sold at market value as expediently as
12 possible.

13 X. Yes.

14 MR. KUHN: I'll save time if I
15 could move to introduce these documents. These are all my
16 exhibits. If I can get them marked and --

17 THE COURT: Okay.

18 Have they been run by Mr. Ruff?

19 MR. KUHN: Yes, Your Honor.

20 MR. RUFF: They're all right, Your
21 Honor, and, Your Honor, I can similarly do the same thing
22 with any of ours that are not part of Mr. Kuhn's but if Your
23 Honor would prefer that I wait for my next witness to do
24 that, that's fine, too.

25 THE COURT: Well, I'd rather you

1 just wait till your next witness.

2 Okay.

3 So, Mr. Kuhn, it's the agreement that
4 each of those in cirratum will be marked Defendant's
5 Exhibit's 2, 2, et cetera?

6 MR. KUHN: Yes, sir, Your Honor.

7 THE COURT: Okay.

8 And that's with stipulation so they'll
9 be so admitted and I just ask the clerk to put her, her
10 exhibit mark over the existing ones there. It appears
11 they've been admitted in some other proceeding.

12 MR. KUHN: Yes, Your Honor,
13 depositions is what those were, Your Honor.

14 (Inventory and Appraisement marked
15 and entered into evidence as Defendant's Exhibit 2 without
16 objection. Inventory and Appraisement marked and entered
17 into evidence as Defendant's Exhibit 3 without objection.
18 Real Estate Purchase and Sale Contract marked and entered
19 into evidence as Defendant's Exhibit 4 without objection.
20 Real Estate Purchase and Sale Contract marked and entered
21 into evidence as Defendant's Exhibit 5 without objection.
22 Deed of Distribution marked and entered into evidence as
23 Defendant's Exhibit 6 without objection. Real Estate
24 Mortgage marked and entered into evidence as Defendant's
25 Exhibit 7 without objection. Warranty Deed marked and

1 entered into evidence as Defendant's Exhibit 8 without
2 objection. HUD Uniform Settlement Statement marked and
3 entered into evidence as Defendant's Exhibit 9 without
4 objection. Warranty Deed marked and entered into evidence
5 as Defendant's Exhibit 10 without objection. Notes marked
6 and entered into evidence as Defendant's Exhibit 11 without
7 objection. Mortgage marked and entered into evidence as
8 Defendant's Exhibit 12 without objection. Note marked and
9 entered into evidence as Defendant's Exhibit 13 without
10 objection. Real Estate Purchase and Sale Contract marked
11 and entered into evidence as Defendant's Exhibit 14 without
12 objection. Real Estate Purchase and Sale Contract marked
13 and entered into evidence as Defendant's Exhibit 15 without
14 objection. Real Estate Purchase and Sale Contract marked
15 and entered into evidence as Defendant's Exhibit 16 without
16 objection. Real Estate Purchase and Sale Contract marked
17 and entered into evidence as Defendant's Exhibit 17 without
18 objection. Real Estate Purchase and Sale Contract marked
19 and entered into evidence as Defendant's Exhibit 18 without
20 objection.)

21 Q. After your father passed you said you had asked
22 LeGrande to see if he could sell some of the property?

23 A. Well, after Daddy died all of us talked to him
24 about selling some lots so that we would have some money,
25 yes.

000266

1 We needed to pay for the funeral and some of us were in more
2 need than others.

3 Q. And I think you mentioned that you actually for
4 awhile turned it over to Clark to try to sell?

5 A. Clark said he had a sale for it and LeGrande
6 said, sure, you can sell it and gave him a number, yes.

7 Q. This is your brother Clark seated beside Mitchell
8 in the glasses?

9 A. Yes.

10 Q. And I think Clark actually did get an offer or a
11 closing contract from someone?

12 A. Yes.

13 Q. And you remember how much that price was?

14 A. I do not.

15 Q. You remember if it was less than what you
16 eventually sold it for?

17 A. Much less, I'm sure.

18 Q. And at one point LeGrande came to you and made an
19 offer for \$240,000 and you turned that down?

20 A. I thought it was 250.

21 Q. Or 250?

22 A. I won't argue that but, yeah, I told him no.

23 Q. So I guess you had in your mind a value of what
24 you thought was a fair value for these properties?

25 A. I think that that answer was off the top of my

1 head.

2 I was rather attached to Wellington.

3 Q. And the deal that eventually you struck with
4 LeGrande encompassed - and you said it was a lump sum
5 package - all three properties, the 40 acres, Wellington and
6 Echo Tango, correct?

7 A. Right.

8 Q. And the contract that you signed, you did not
9 accept that as he gave it to you. You got it, discussed it
10 with Mitchell, made some changes, made a counter proposal
11 back to LeGrande with your changes which he then accepted
12 although he was not rule happy about it, does that sort
13 of --

14 A. Yes.

15 Q. -- summarize?

16 And that contract is what's in evidence as
17 Defendant's Exhibit 18, is that correct?

18 A. Yes.

19 Q. And that's your signature on the last page?

20 A. Yes, it is.

21 Q. And although this is dated the blank day of
22 October, 2005, it's your memory that you actually signed
23 this on October 18, I believe, is that correct? Or whatever
24 the date --

25 A. Seventeenth.

000268

1 Q. -- on your calendar?

2 And it was a lump sum purchase price for
3 \$325,000?

4 A. Yes.

5 Q. And what you were selling was all of your
6 interest in Wellington and all of your interest in the 40
7 acres, correct? For that price?

8 A. And, as my understanding went, all of my interest
9 in Echo Tango.

10 Q. Okay. Yes, ma'am, you're correct.

11 And your interest in the 40 acres was a 1/7
12 interest, is that --

13 A. No.

14 Yeah, 1/7.

15 Q. One-seventh?

16 A. Of a hundred percent interest.

17 Q. Now, your interest in the Wellington property was
18 1/7 of 25 percent?

19 A. Correct.

20 Q. And the terms, at least in this contract, for
21 \$500 earnest money, \$74,500 paid at closing or on December
22 5, which ever occurred first, and then \$250,000 representing
23 the balance due to be paid no later than December 31, 2006,
24 did I recite those terms correctly?

25 A. Yes.

000269

1 Q. And to your knowledge did each of your brothers
2 and sisters except for Mitchell agree to the same price?

3 A. Except for Mitchell, yes. My understanding was
4 that we were all getting the same amount.

5 Q. And we say except for Mitchell because Mitchell
6 was getting more because in addition to purchasing what
7 Mitchell had inherited from your daddy LeGrande was also
8 going to purchase from Mitchell the 25 percent that Mitchell
9 owned outright? Is that correct? Is that your
10 understanding? Or do you know?

11 A. Well, I don't know what you mean by outright.
12 Mitchell signed a contract just like this.

13 Q. But Mitchell owned 25 percent of Wellington in
14 his own name, correct?

15 A. Yes.

16 Q. And was it your understanding when you signed
17 this contract that Mitchell was also selling his interest?

18 A. Yes.

19 Q. And from your discussions with Mitchell on today
20 you signed this contract was it your understanding that
21 Mitchell was selling not only what he inherited from your
22 daddy but he was selling his 25 percent interest that he
23 already owned before your daddy passed?

24 A. Would you repeat that?

25 Q. What was your understanding Mitchell was selling?

000270

1 A. The same thing that I was selling, his interest
2 in the 40 acres, his 25 percent interest in Wellington, his
3 1/7 of 25 percent in Wellington and his 1/7 of 50 percent of
4 Echo Tango.

5 Q. Okay.

6 And, well, what's your educational background?

7 A. I have an associate degree in arts in nursing but
8 I actually have over four years of college. I just changed
9 majors and went in to nursing.

10 Q. I had to ask the obvious but sometimes we have
11 to. You can read, write, speak and understand the English
12 language, right?

13 A. I sure can. Except for what lawyers write.

14 Q. Well, if you turn to page 2 --

15 THE COURT: May I have a copy of
16 this contract to follow along with? Is there a spare copy?

17 MR. KUHN: This is a different
18 child but it's identical to Defense Exhibit 17.

19 THE COURT: Wait. I think you
20 referred to 18 before. Is what she's testifying about 18 or
21 17?

22 MR. KUHN: She's testifying about
23 18 but the language is identical in 17 except --

24 THE COURT: But is it a different
25 contract?

000271

1 MR. KUHN: Yes, sir, it's a
2 different contract.

3 THE COURT: Okay.

4 Do you have a copy of what she's --

5 MR. KUHN: I do not, Your Honor.

6 A. Do you want to hold --

7 THE COURT: No, that's okay.

8 I'm gonna need to see. I want to make
9 sure I'm looking at the one she's testifying about but I'll
10 have to take a look at it after she does.

11 Okay.

12 Q. There's some bold type at the bottom of the final
13 paragraph arm's length transaction?

14 A. Yes.

15 Q. That's in all capital letters and it's bold? Is
16 that correct? Where it says arm's length transaction?

17 A. Yes.

18 Q. Does it say although the purchaser and seller are
19 related and although the purchaser is a co-personal
20 representative of the estate of C. E. Lowther the seller
21 acknowledges that this is an arm's length business
22 transaction and purchaser has made no promises,
23 representations or statements except those set forth herein
24 in writing upon which seller is relying and seller had
25 conducted seller's own due diligence prior to entering in to

1 this agreement? Is that what that paragraph states?

2 A. That's what it states.

3 Q. And whose initials are that immediately below
4 that paragraph?

5 A. Those are mine.

6 THE COURT: May I see that now?

7 MR. KUHN: Show that to His Honor.

8 Q. You state that at that time you asked LeGrande if
9 he had any other contracts for this property?

10 A. Yes, I asked if he had any contracts for the 40
11 acres, for Wellington, for any of it.

12 I could not understand why he could not sell any
13 of it.

14 Q. Your contract was signed on December 17 or
15 October 18 or October 17, correct?

16 A. October 17 or 18, right.

17 Q. And if I can show you Plaintiff's Exhibit 7 which
18 is the contract between LeGrande Lowther and International
19 Society of Investors, what's the date that they accepted Mr.
20 LeGrande's offer?

21 A. This is 11.21.05.

22 Q. That'll be November 21, 2005?

23 A. Uh-huh.

24 THE COURT: May I see that, please?

25 Now, is this one of your exhibits?

1 MR. KUHN: It's one of the
2 Plaintiff's Exhibits, Plaintiff's 7, Your Honor.

3 THE COURT: Okay.

4 Forgive me, I keep getting confused by
5 the photocopy of the tag.

6 MR. KUHN: That's my personal copy,
7 Your Honor, there.

8 Q. Now, when you went to close in December of 2005
9 you received 70 something thousand dollars in cash, correct?
10 Or a check.

11 A. Seventy-three thousand dollars.

12 Q. Okay.

13 Now, the purchase price was 325,000. What was
14 your understanding as to when you'd receive the balance of
15 your money?

16 A. By December 31, 2006.

17 Q. And did LeGrande sign a note for you promising to
18 pay you that money by December 31, 2006?

19 A. Yes.

20 Q. And is this a copy of that note contained within
21 Defendant's Exhibit 11? The note from LeGrande to you for
22 the balance of the purchase price?

23 A. Yes.

24 Q. And to your knowledge, since everybody was in the
25 room closing, did he give a similar note to everybody?

1 A. I would -- Well, one note was passed around and
2 then the signature page. None of us walked out with any
3 paperwork.

4 Q. And did everybody receive a similar -- Did he
5 sign a similar note for everybody?

6 A. I don't know.

7 Q. Okay.

8 THE COURT: Is the note marked as an
9 exhibit?

10 MR. KUHN: Yes, sir, Your Honor.
11 All the notes are here together in Defendant's Exhibit 11.

12 And I'd point out, Your Honor, that
13 they're all for \$252,000 to every sibling except for
14 Mitchell. His note is for, I believe, \$952,000.

15 THE COURT: Give me just a second
16 before proceeding.

17 Okay, you may proceed.

18 Q. I believe you testified at that time you and your
19 brothers and sisters also signed a quit claim deed over to
20 LeGrande for the Echo Tango property, correct?

21 A. Yes.

22 Q. And in the note that is addressed in the second
23 paragraph of what happens to the Echo Tango property if
24 LeGrande defaults on that note, correct?

25 A. You said paragraph two?

000275

1 Q. Well, which is the top paragraph on that page.

2 A. Yes.

3 Q. Summarizing, basically, he defaults on the note
4 you acquire the right to share in a portion of the profits
5 from the Echo Tango subdivision, correct?

6 A. Yes.

7 Q. Your share roughly equaled to 1/7 of 50 percent
8 interest?

9 A. Yes.

10 THE COURT: May I see the note,
11 please?

12 Q. After the closing you were represented by an
13 attorney, correct?

14 A. Yes.

15 Q. And that was Attorney Dan Saxon of the Hilton
16 Head bar?

17 A. Yes.

18 Q. And do you recall if Mr. Saxon at the closing
19 renegotiated some of the terms of the note? We had to
20 change the note to --

21 A. Yes.

22 Q. -- comply with his request?

23 A. Yes.

24 Q. And, likewise, the contract that LeGrande
25 presented to you, that was not on a take or leave it basis.

000276

1 You made some changes and presented it back to me, correct?

2 A. You're talking about my personal contract?

3 Q. Yes, ma'am.

4 A. Yes, I did.

5 Q. And you were free, if you had so chosen, not to
6 sign that, correct?

7 A. Yes.

8 Q. And you could've asked for more money if you had
9 wanted to, correct?

10 A. Yes.

11 Q. You were aware, I believe you testified earlier,
12 that LeGrande was going to have to do something to come up
13 with the money to pay you the balance he owed to you as well
14 as the rest of your brothers and sisters because you knew he
15 didn't have it?

16 A. Right.

17 Q. And Is that why you kept asking him do you have
18 another sale, do you have another sale, do you have another
19 buyer?

20 A. That would be one reason, yes.

21 Q. You know unless he did have another buyer and he
22 was able to flip this property he was not gone be able to
23 pay y'all what he owed you, correct?

24 A. That would be correct.

25 Q. And when December 31, 2006, arrived he was unable

1 to pay you, correct? Or he did not pay you?

2 A. He did not pay us.

3 Q. He defaulted on the note?

4 A. Yes.

5 Q. And under the terms of the note you and your
6 brothers and sisters became entitled to receive some of the
7 proceeds from Echo Tango and the profits from Echo Tango,
8 correct?

9 A. That would be correct.

10 Q. And I believe you have received \$22,000 so far
11 out of Echo Tango, correct?

12 A. I don't know.

13 Q. Does that sound approximately correct? A \$15,000
14 check and \$6,000 check?

15 A. Yes, that's correct.

16 That \$15,000 was a loan.

17 Q. But that was out of the Echo Tango?

18 A. Okay.

19 Q. So you received 73,000 plus, almost you've
20 received \$97,000 total from this transaction, does --

21 A. About right.

22 Q. -- that sound about right?

23 A. Uh-huh.

24 Q. That's a yes?

25 A. Yes. I'm sorry.

000278

1 Q. Now, are you aware that LeGrande Lowther is
2 actually in the hold, as we stand here, on this transaction?
3 He's actually lost money.

4 A. No, I don't understand that.

5 MR. KUHN: I think that's all the
6 questions I have, if I could have just a second.

7 That's all the questions I have, Your
8 Honor.

9 THE COURT: Any redirect?

10 MR. RUFF: Just a couple of
11 questions, Your Honor.

12 REDIRECT EXAMINATION BY MR. RUFF:

13 Q. Now, Mrs. Turpin, Mr. Kuhn stated that the
14 contract covered all three properties but what properties
15 are actually sold according to page 1 of this contract? How
16 many properties are being sold?

17 MR. KUHN: Your Honor, I'm gone
18 object. I didn't state this contract covered all three
19 properties. Mrs. Turpin stated it covered all three
20 properties.

21 THE COURT: I'll overrule that and
22 let him ask his question. The contract's in evidence.

23 A. All the seller's right, title and interest in and
24 two 230 more or less acre parcel of land which would be
25 Wellington.

1 Q. That's what we call --

2 A. Property, right.

3 Q. What's the second one?

4 A. All the seller's right, title, et cetera, to the
5 40.7 9 more or less acre parcel of land on Bees Creek Road.

6 Q. And is that what I've called the 40 acres
7 throughout this trial so far?

8 A. It is.

9 Q. Now, on page 2 of the contract -- Oh, I'm sorry.
10 On page 1 of the contract it states a purchase price. Is
11 that purchase piece for those two properties?

12 A. That purchase price is for three properties.

13 Q. Okay.

14 And the property that Mr. Kuhn has referred to as
15 Echo Tango, is that true under that clause on page 2 that
16 that was -- that you and your siblings agreed to throw that
17 in and deed that over to Mr. LeGrande Lowther as part of
18 this transaction?

19 A. That we agreed to throw that in?

20 Q. Yes, ma'am, to deed your interest in that
21 property under this contract to Mr. LeGrande Lowther.

22 A. Well, it was either deed it to him or lose it.

23 Q. Okay.

24 But you didn't get any money directly for Echo
25 Tango under this contract, did you?

1 A. No.

2 Q. Okay.

3 MR. KUHN: That's leading.
4 Contract speaks for itself, number 1.

5 THE COURT: I think you're right.

6 MR. RUFF: We're gone ask The Court
7 to take notice of the fact, I mean we can go through these
8 numbers and, admittedly, they're very confusing but I think
9 one thing we're in agreement on is that the two point nine
10 seven five million dollar figure, Your Honor, which is the
11 sum total of all of the contracts of all the beneficiaries
12 equals, that equals the sum of the two sales that have
13 already been introduced as part of the record, the sale of
14 the 40 acres for \$511,000 and the sale of what we call
15 Wellington for two point four six four million, that two
16 point nine seven five million is derived at. That is the
17 grand total of the cash and notes paid to the sellers for
18 both properties and you get to the exact same number.

19 I just wanted The Court to take notice
20 of that. I mean these documents are all in the record.

21 MR. KUHN: He asked me to agree but
22 I need to be able to follow it. I'm sorry, start over.

23 MR. RUFF: The cash paid, which in
24 evidence, and the notes introduced by Mr. Kuhn, the grand
25 total of all of these is two point nine seven five million

000281

1 dollars which is the grand total of what the seven heirs
2 were paid for their interest in these two properties and
3 that exactly equals the purchase price, the deed purchase
4 price for the two properties here, \$511,000 for the 40 acres
5 and two point four six four million dollars for Wellington.

6 I just want The Court to take notice of
7 that. I know these numbers are confusing and I just -- I
8 want there to be a mechanism to tie them together.

9 THE COURT: Well, to the extent that
10 we've got in evidence contracts for both transactions and
11 they have purchase price in them I don't know at this point
12 in time, you know, those documents, I would think, speak for
13 themselves.

14 MR. RUFF: Yes.

15 THE COURT: In terms of assessing
16 the evidence, be a little premature. It's I think argument
17 on the subject. Now, for purposes of defining the evidence
18 or narrowing or summarizing it is premature so I will
19 decline that offer to take notice and I'll just note that
20 the contracts are in evidence.

21 MR. RUFF: Thank you, Your Honor.

22 Q. And, Miss Turpin, and again, it's already in
23 evidence that Mr. LeGrande Lowther had a contract to sell
24 what we call the 40 acres for 810,000 and that's correct to
25 your knowledge?

1 A. Yes.

2 Q. Okay.

3 And is it also correct, to your knowledge, as has
4 been introduced in to evidence that Mr. LeGrande Lowther
5 also had a contract with some buyer to sell Wellington, 50
6 percent of the share of Wellington that he did not already
7 own for two point seven two five million dollars? Isn't
8 that correct?

9 A. Yes.

10 Q. Which is more than two point four six four
11 million dollars he paid you the heirs, correct?

12 A. Yes.

13 Q. So isn't it true that had he -- had the
14 Wellington resale occurred that Mr. LeGrande Lowther would
15 have made an additional almost \$300,000 profit --

16 A. Yes.

17 MR. RUFF: Thank you very much.

18 Those are all the questions I have Your
19 Honor.

20 THE COURT: Anything further, Mr.
21 Kuhn?

22 RECROSS-EXAMINATION BY MR. KUHN:

23 Q. And, of course, you're aware that that second
24 sale of Wellington to International Society of Investors did
25 not occur, correct?

000283

1 A. Yes.

2 Q. So Mr. LeGrande Lowther's the one who bore the
3 risk of those contracts falling through?

4 A. Well, he's not the only one who bore the risk;
5 we all did.

6 Q. But he's the one who put the money on the line?
7 He paid you what he owed you under the contract, correct?

8 A. Not the total amount. He paid me \$73,000. As a
9 down payment.

10 Q. Then when he defaulted he has deeded back to you
11 the Wellington property and he has given to you moneys from
12 Echo Tango, correct?

13 A. And did he deed back my \$2,000 he borrowed from
14 me? Out of my -- I was supposed to get 75,000.

15 Q. Under the terms of the note and mortgage if he
16 defaulted you got a deed back for the Wellington property,
17 correct?

18 A. Well, then what happens to my 200 -- my \$2,000
19 that that night --

20 Q. Answer my question, please, Miss Turpin.

21 A. Was that a question? I apologize.

22 Q. Yes, ma'am.

23 Under the terms of the mortgage if he defaulted
24 your remedy was you got a deed back for the Wellington
25 property and you received a share in the Echo Tango

1 property, correct?

2 A. That would be correct.

3 MR. KUHN: Thank you.

4 THE COURT: All righty.

5 If there's nothing further, then you may
6 step down, ma'am.

7 A. Thank you.

8 THE COURT: Your next witness, Mr.
9 Ruff.

10 MR. RUFF: Thank you, Your Honor.
11 Our next witness is Mitchell Lowther.

12 MITCHELL SAXON LOWTHER,
13 First being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. RUFF:

16 Q. Mr. Lowther, are you the same Mitchell Lowther
17 who's 1/7 beneficiary of this estate?

18 A. I am.

19 Q. And you're the Mitchell Lowther named as a
20 recipient under the will, is that correct?

21 A. I am.

22 Q. Mr. Lowther, how were you related to the decedent
23 in this case?

24 A. He was my father.

25 Q. Okay.

1 And how are you related to Miss Turpin, who just
2 finished testifying?

3 A. She is my sister.

4 Q. And how are you related to Mr. LeGrande Lowther
5 who's the defendant?

6 A. He's my brother.

7 Q. Okay.

8 Mr. Lowther, where do you live?

9 A. I live in Ridgeland, now on Wise Street, 346 Wise
10 Street.

11 Q. Okay.

12 Mr. Lowther, with whom do you live?

13 A. Who lives with me? Is that what you asked me?

14 Q. Yes, sir.

15 A. My wife Carman and my son Aaron.

16 Q. Okay.

17 And, Mr. Lowther, what kind of work do you do?

18 A. I'm disabled; I don't work.

19 Q. Okay. All right.

20 Mr. Lowther what, then is your source of income?

21 A. My source of income was the sale of properties
22 that I had acquired when I was working. A small amount was
23 one, was the sale of Lemon Island Marina.

24 Q. Okay.

25 What's your source of income now, sir?

1 A. I don't have a source of income. I'm supposed to
2 start getting a social security disability check next month.

3 Q. Because of your disability?

4 A. Yes, sir.

5 Q. All right.

6 Mr. Lowther, after your father's death, please
7 tell The Court about any conversations you had with your
8 brother LeGrande Lowther about the possible sale of the 40
9 acres.

10 A. We talked a great deal from time to time about
11 selling the 40 acres and I think, really, one of the main
12 reasons the 40 acres came up, first and foremost, was there
13 was mortgage that we knew of on the 40 acres. I had cleared
14 the mortgage on the 40 acres a few years before and it was
15 free and clear property.

16 Q. Okay.

17 A. They built a subdivision next to it so it became
18 rapidly valuable. You know, every several months it was
19 rising in value but it was easily, we thought, disposable
20 because people were asking about it.

21 Q. After your father's death did you want to hang on
22 to that property or did you want to sell it?

23 A. I wanted to sell; I needed to sell. I didn't
24 have -- I didn't have a source of income and nothing did
25 most of the other brothers and sisters. They needed to

1 sell.

2 Q. Okay.

3 And did you express that desire to the personal
4 representative Mr. LeGrande Lowther?

5 A. Many times.

6 Q. Okay.

7 And immediately after your father's death what do
8 you know about the efforts made towards selling the 40
9 acres?

10 A. I know that we had all expressed a desire to have
11 it sold. LeGrande said he had been talking with people
12 about selling the 40 acres to them. When it kind of came to
13 a head pretty quick was it didn't get sold Clark said, well,
14 I think I can sell it, I know somebody that want's the 40
15 acres now. And LeGrande said, well, if you can negotiate
16 the price sell it and an amount was discussed and I don't
17 remember the amount. I think it was 250,000, 240,000
18 roughly.

19 It was to Mr. Tilton, John Tilton. And when
20 Clark came back and said Mr. Tilton will buy the property
21 LeGrande said he could not sell the property to Mr. Tilton,
22 that he had discussed it with the probate judge in Ridgeland
23 and he had to sell the land for fair value, fair market
24 value.

25 Q. So nothing came of this offer of Mr. Tilton?

000288

1 A. No. LeGrande did not accept his offer.

2 Q. And is this the same transaction that Miss Turpin
3 testified about earlier?

4 A. That's exactly right.

5 Q. All right. Thank you.

6 Now, when was the first time that Mr. LeGrande
7 Lowther approached you about the purchase of your interest
8 in this forty acres?

9 A. Shortly before he gave me a contract and he left
10 a contract for me with my sister on the seventeenth of
11 October. I saw it on the eighteenth.

12 Q. Do you recall that through her calendar or do you
13 recall that personally?

14 A. I recall it personally and through her calendar
15 because I watched her write on her calendar. She kept
16 important dates.

17 I visited her frequently, a couple of times a
18 week, from Columbia.

19 Q. And you believe that you were given your contract
20 the same time --

21 A. I know I was given my contract at the same time,
22 on the eighteenth because I then discussed the contract with
23 her as best I understood it. We kind of discussed it with
24 each other so we could understand the terms of it, on the
25 eighteenth.

000289

1 Q. What was your first reaction when Mr. LeGrande
2 Lowther approached you with this, with this contract in
3 October?

4 A. I said great, we need to sell it and I discussed
5 that with him and I asked him, I said, now, do you have sale
6 for this property, do you have a contract on this property.

7 Q. Now, you're referring to Mr. LeGrande Lowther?

8 A. LeGrande.

9 Q. Okay.

10 Go ahead.

11 A. With anybody. He said, no, I don't but I think I
12 can sell it, people's interested in it, I believe I can sell
13 it and I asked him a couple of times, I said, now, do you
14 have a contract on this property. He said, no, I do not
15 have a contract on this property.

16 Q. Okay.

17 A. I'm taking a chance that I can sell it.

18 Q. All right.

19 And did that -- What happened after that?

20 A. He presented those contracts to us on the -- left
21 them with my sister on the seventeenth because mine was
22 there on the eighteenth and we looked at them and we did
23 sign them.

24 And we discussed it at the meeting in Mr. Kuhn's
25 office on December 21.

000290

1 Q. Let's --

2 A. Okay.

3 Want to wait on that?

4 Q. So your testimony is you signed the contract
5 there in October?

6 A. I signed the contract the eighteenth of October.

7 Q. And you've already testified about what Mr.
8 LeGrande Lowther told you but did you have any personal
9 knowledge about the existence of any other third party
10 offers or proposals or contracts to buy the 40 acres?

11 A. Previous to this contract I knew that Dondi Wall
12 had made an offer on the property and apparently didn't
13 fulfill his part of the contract but other than that I knew
14 of no other offers or contracts and I was very careful to
15 inquire about that. Several times.

16 Q. And did you know about The International Society
17 of Investors' offer and proposal at that time in October?

18 A. Never did. Did not know about it at all.

19 Q. And did you -- You said you asked -- Did you ask
20 Mr. Lowther about that?

21 A. I asked him several times about contracts,
22 including in the December meeting --

23 Q. Okay.

24 A. -- again.

25 Q. We're talking about October.

000291

1 A. Okay.

2 Q. Okay.

3 Now, again, from October, you said you signed the
4 contract you believe on about October 18?

5 A. Yes, sir.

6 Q. Okay.

7 So about six weeks, seven weeks later, we go to
8 December 8 and the exhibit's already in the record where you
9 signed your deed or your share of the \$511,000.

10 A. I actually signed it on the thirteenth, actually.

11 Q. On the thirteenth?

12 A. Yes, sir.

13 Q. Even though it's dated the eighth?

14 A. Everybody went over to sign except for me and
15 Clark.

16 I was in Columbia. I went into Mr. Kuhn's office
17 on the thirteenth and signed mine.

18 Q. Okay.

19 So you were at Mr. Kuhn's office when you signed
20 on the thirteenth?

21 A. I was.

22 Q. Okay.

23 Who else was present on today you showed up to
24 sign the deed effecting this sale?

25 A. Clark was with me because he signed on the same

1 day and my sister Sandra drove me.

2 Q. Okay.

3 A. Over there.

4 Q. She was there also?

5 A. She was.

6 Q. Was Mr. LeGrande Lowther there?

7 A. No.

8 Q. Okay.

9 On that date in December when you signed your
10 deed, which is already in evidence, did you have any
11 personal knowledge of any third party offers, proposals or
12 contracts intending to purchase this property?

13 A. Absolutely not.

14 Q. Did you know of the pending contract for LeGrande
15 Lowther personally to sell this property to The
16 International Society of Investors?

17 A. I did not.

18 Q. At that meeting, you said on December 13, did you
19 inquire about the existence of any such proposals or
20 contracts?

21 A. Nobody there to inquire of. It was just the
22 secretary there and signed, signed the paper. LeGrande was
23 not there.

24 Q. Okay. All right.

25 Now, another meeting was testified to, I believe

1 on December 20 or 21 where the formal closing and
2 disbursement of proceeds happened.

3 A. Yes.

4 Q. Were you at that meeting?

5 A. I was.

6 Q. Which is about a week later?

7 A. Twenty-first of December.

8 Q. Right before Christmastime?

9 A. Yes.

10 Q. Okay.

11 Who all was at that meeting, sir?

12 A. The seven heirs, my brother LeGrande, Fred Kuhn
13 and Mr. Kuhn's secretary, my wife Carman.

14 Q. On that date, December 21, did you have any
15 personal knowledge about the existence of any third party
16 offers or proposals or contracts for the 40 acres on
17 December 21?

18 A. I did not have any knowledge of that. I even
19 asked pointedly three different occasions in that meeting
20 was there any contracts. I said, LeGrande, do you have a
21 contract on this forty acres, do you have a contract on
22 Wellington with anybody, is there a contract. The third
23 time he was very, I'll just say stern and firm. He said I'm
24 taking a chance, I don't have a contract, this is the last
25 time I'm gonna tell you, I'm taking a chance here that I can

1 sell this property, I'm doing it for y'all, I don't have a
2 contract.

3 Q. You said he said that the third time?

4 A. Yes, sir. Three times that night.

5 Q. What about the first two times? What did he say
6 the first two times?

7 A. Basically the same thing but not quite as loud.

8 Q. Same thing being what?

9 A. That there is no contract, I can't, I don't know
10 that I can sel it, I'm taking a chance.

11 Q. Did all the siblings -- You believe that all them
12 heard that?

13 A. I know they all heard it.

14 Q. Okay.

15 A. I made a point that everybody heard me ask that
16 question more than once.

17 Q. Now, I've covered the 40 acres but I'm just gone
18 briefly cover Wellington.

19 A. Yes, sir.

20 Q. In October when you signed your contract, I
21 believe you said on October 18 --

22 A. Eighteenth.

23 Q. -- did you know of any third party offers,
24 proposals or contract regarding the property we're calling
25 Wellington?

1 A. I did not

2 Q. And on December 13, I think you said, the date
3 the deed was signed, did you know of any third party offers,
4 proposals or contracts for Wellington as of that date?

5 A. I did not.

6 Q. Okay.

7 And as of the date the closing funds were
8 disbursed regarding Wellington, of the notes I should say,
9 did you know of any third party offers, contracts or
10 proposals for the sale of the Wellington, the resale of the
11 Wellington property?

12 A. I didn't. I didn't know about any of them.

13 Q. And on those dates did you inquire of Mr.
14 LeGrande Lowther or anyone, did you inquire about the
15 existence of any such proposals, offers or contracts for the
16 Wellington property?

17 A. I did inquire of LeGrande. And LeGrande said I
18 don't have any contract on the 40 acres, I don't have a
19 contract, I'm taking a chance that I can sell this property.
20 I said if you've got --

21 Q. The Wellington property.

22 A. Yes.

23 Q. You said 40 acres.

24 A. And he said I'm taking a chance that I can sell
25 this property, I think I can, I have a good idea I can but

1 I'm still taking a chance here.

2 Q. Okay.

3 Mr. Lowther, when did you find out that Mr.
4 LeGrande Lowther had a contract for the sale of the 40 acres
5 and subsequently went through on that contract to sell it to
6 The International Society of Investors for \$810,000?

7 A. About three months after, which would've been
8 around March. I didn't see but I heard from my sister that
9 he had sold the property, the 40 acres for roughly \$300,000
10 more than what he paid us.

11 Q. So when she found out, as she testified earlier,
12 she relayed that to you?

13 A. She relayed that information to me.

14 Q. How'd you feel when you heard that?

15 A. I was -- I mean it made me sick. I was sick; I
16 was angry. I was upset about it. I didn't think it was
17 right.

18 Q. And at all times from October through the
19 disbursement of funds in December, were you at all times
20 during that period ignorant of The International Society of
21 Investors' contract for \$810,000?

22 A. I sure was.

23 Q. At all times were you similarly ignorant of the
24 existence of the five point four five million dollar
25 contract for the Wellington property?

1 A. I was.

2 Q. Back to the 40 acres again, I believe you
3 testified about Mr. LeGrande Lowther's denials. Did you
4 rely on his denials in making your decision to go forward
5 with the sale of your interest in the 40 acres?

6 A. I absolutely did.

7 Q. Did you similarly rely on is denials in making
8 your decision to go forward on the sale of your share of the
9 property we've called Wellington?

10 A. I absolutely did.

11 Q. Again, had you known of the existence of ISI
12 contract for the 40 acres would you have gone forward with
13 the sale of your share of that property?

14 A. Not at that price I wouldn't have.

15 Q. What would you have done?

16 A. We were entitled to the entire amount and he had
17 already stated to us that he was gone look out for our best
18 interest. He said he was gonna do that, get us the most he
19 could for that 40 acres. He even said if I end up selling
20 it for more I'll give you'll the difference.

21 Q. Let's talk about that.

22 MR. KUHN: Your Honor, I'm gone
23 object to that as parole evidence rule, statute of fraud,
24 self-serving, directly violates the terms of the written
25 contract, it's a real estate transaction and he'll also

1 testify that the price is different than what the price set
2 forth in the deed is.

3 MR. RUFF: I'm hearing him make a
4 representation about the direct contact with Mr. Lowther
5 some three months after the contract was signed which,
6 again, by definition of the parole evidence rule would void
7 out representations made before the contract was signed.
8 This is a later made representation of which Mr. Lowther has
9 personal knowledge.

10 MR. KUHN: And I object on --

11 MR. RUFF: Has relevance on the
12 issue of fraud.

13 MR. KUHN: And I add relevance as a
14 ground, what happened after the fact.

15 THE COURT: Okay.

16 I'm gone overrule both objections,
17 parole evidence and relevance.

18 Q. Had you known about the existence of these
19 contracts what would you have done?

20 A. I would have demanded that we get our rightful
21 share of the moneys or we wouldn't have signed. I would
22 have never sold those properties for what we did had I known
23 what the contract amount was.

24 Q. Now, let's explore this, this promise at closing
25 of paying you more. What promise was made directly to you

1 by Mr. Lowther?

2 A. When we discussed --

3 MR. KUHN: Could I just not a
4 continuing objection?

5 MR. RUFF: This is the same
6 question you overruled seconds ago.

7 THE COURT: Are you repeating that
8 objection?

9 MR. KUHN: Yes, sir. He keeps
10 asking; I felt I need to keep objecting to it until --

11 THE COURT: Thank you but I think,
12 you know, we're in areas where we're talking about the
13 witness' state of mind at the time and it's directly
14 relevant to the elements of proof or at least one of the
15 causes of action asserted.

16 I don't think you can foreclose this
17 testimony by asserting that, that by virtue of a merger of a
18 contract into a real estate deed that it applies to this
19 testimony and, consequently, I'm overruling your objection.

20 Okay.

21 I'll note your exception for the record.

22 MR. KUHN: Thank you.

23 Q. Mr. Lowther, again, please explain this, this
24 asserted promise of additional funds.

25 A. Well, when I had asked the question and my sister

1 had asked the question of him in the December 21 meeting
2 several times about was there a contract, did he have a sale
3 for this property or anything and he adamantly denied that
4 there was any contract he also added a phrase in there and
5 said if I sell this property for more than what I'm offering
6 you for it now, if I can get more for it later I'll give you
7 the difference in purchase price. He was telling us that we
8 were getting everything that was there on this piece of
9 property.

10 Q. He promised you the entire?

11 A. All of it.

12 He had already said on several occasions he was
13 not entitled to any money out of the 40 acres, that he was
14 gone get us all of it the best he could, the most he could,
15 that the law required that he get us the most he could.
16 That was his statement, that he discussed it with the
17 probate judge in October and in November and in December
18 when we met with him several times. He said I'm gone get
19 you the most that we can for that property.

20 Q. This later promise that your asserting --

21 A. Yes.

22 Q. -- for what I call a surplusage, over 511,000,
23 that's not in writing anywhere, is it, Mr. Lowther?

24 A. No, sir, not that I know of.

25 But I believed him.

1 Q. And why did you believe him?

2 A. I've dealt with him all of my life. He's my
3 brother; he's a business partner but I knew that as the
4 executor, or I say executor, it's personal representative I
5 think is the correct term but I really felt like he was
6 gonna do the right thing there. That, that had everything
7 to do with the decisions that we made that night.

8 MR. RUFF: That's all I have right
9 now, Mr. Lowther.

10 THE COURT: Okay.

11 Answer any questions Mr. Kuhn may have,
12 please.

13 A. Yes, sir.

14 CROSS-EXAMINATION BY MR. KUHN:

15 Q. What is your educational background?

16 A. Graduated high school, Thomas Heyward Academy
17 1971; got two years of college at The University of South
18 Carolina.

19 Q. What is your business background?

20 A. I was co-owner of Lemon Island Marina which was a
21 wholesale seafood --

22 THE COURT: Excuse me just a second.

23 I'd like the talking in the courtroom to
24 cease. It's interfering with the testimony.

25 Proceed.

000302

1 Q. You said you were co-owner of Lemon Island
2 Marina.

3 A. Lemon Island Marina which was, basically, a
4 wholesale seafood company.

5 I was in the building trade for -- from about
6 1986 to 2000, contractor.

7 Q. Residential home contractor?

8 A. Yes.

9 Did a lot of commercial work, too, when I worked
10 with LeGrande and my father.

11 Q. And as part of the residential home contracting
12 business you served as a general contractor?

13 A. I did.

14 Q. And did you also develop properties?

15 A. I did. I happened start the development of
16 Wellington Plantation.

17 Q. The Wellington subdivision that you were involved
18 in?

19 A. Yeah.

20 Q. You're familiar with reviewing contracts?

21 A. Pretty good. I've done several of them.

22 Q. And you've run fairly large businesses?

23 A. I have.

24 Q. And you understood when you signed the contract
25 with LeGrande on November 18, 2005, that was a valid,

1 binding contract?

2 A. Yes. I felt like it was valid.

3 Q. That's one reason you reviewed it with your
4 sister Sandra, make sure you both understood it, correct?

5 A. Yeah. She had some questions she wanted to ask
6 me about it.

7 Q. And you both made some changes to the contract
8 and made a counter proposal back to LeGrande which accepted,
9 correct?

10 A. Yes. I noticed a couple of things was changed on
11 it.

12 Q. At that time you asked him if he had any other
13 contracts with anybody else and he told you he did not, is
14 that what you testified?

15 A. Right. He said he did not have sale for the
16 property or a contract on it or anything.

17 Q. If I recall your testimony, he said he did not
18 have a contract, there were people who were interested in
19 the property and he was trying to find someone that he could
20 in turn sell it to but there was no such person in
21 existence. Does that sort of summarize it?

22 A. Yes.

23 Q. Okay.

24 And the only contract of which you are aware is
25 the contract to The International Society of Investors for

000304

1 \$810,000?

2 A. Is that the only contract I'm aware of?

3 Q. Yes, sir, for the 40 acres.

4 A. No. I testified that there were other contracts
5 now the 40 acres that came before that one.

6 Q. Let's back up a little bit, then. Before you
7 signed your contract to sell your interest to LeGrande
8 efforts had been made to sell the 40 acres, correct?

9 A. Yes.

10 Q. And at least two other offers had come in from
11 Dondi Wall and I forget the other gentleman's name.

12 A. John Tilton, I think.

13 Q. John Tilton, yes, sir.

14 And those offers had been refused?

15 A. John Tilton's offer had been refused and, as I
16 understand it, when it came closing date on the Dondi Wall -
17 I think that was called Bear Creek Development or something
18 - they didn't -- When the closing date came they didn't pay
19 their money, I think is how that one went.

20 Q. Do you recall what that purchase price was?

21 A. I don't, Mr. Kuhn. No, I don't, I don't
22 remember.

23 Q. After you signed your contract with LeGrande the
24 only contract that you're aware of that had came in to place
25 for the 40 acres was the \$810,000 with The International

1 Society of Investors?

2 A. That's the only one I've seen.

3 Q. And that contract did not come in to existence
4 until November 21 of 2005, is that your understanding?

5 A. No, I don't understand that; I don't.

6 Q. If that is true, that that was not accepted until
7 November 21, 2005, then LeGrande was telling you the truth
8 in October that he did not have a contract, that there were
9 people who were interested and just trying to sell the
10 property?

11 A. Well, no, he wasn't exactly telling the truth,
12 Mr. Kuhn, because he said -- he said he didn't have a
13 contract on it, he didn't have sale on it and the fact of
14 the matter is at that point in time he had made an agreement
15 with somebody to buy that property.

16 Q. Who?

17 A. ISI.

18 Q. You got any proof of that? A contract other than
19 what's been put in to --

20 A. I've seen the contracts that was put in to
21 evidence that had dates on them prior to us signing that
22 contract, yes.

23 Q. Offers and discussions had taken place but no
24 contract existed.

25 A. Well, the dates, I mean the dates would have to

000306

1 speak for themselves. I don't have the right here before
2 me.

3 Q. You said a contract doesn't come in to existence
4 till everybody signed and agreed to the terms?

5 MR. RUFF: Your Honor, he's asking
6 the witness for a legal conclusion, object.

7 THE COURT: Well, we've had that
8 happen several times today but I'm not gone pay any
9 attention to his legal opinion, so.

10 MR. KUHN: I'll move on, then, Your
11 Honor.

12 Q. At the time you closed on the property in
13 December you asked LeGrande again - your testimony is - if
14 he had a contract on the property?

15 A. I did

16 Q. And at that time if he had said, yes, I do, for
17 \$810,000 to International Society of Investors, at that time
18 you were already obligated under your contract to sell the
19 property to him, were you not?

20 A. Well, you know, I don't know legally what that
21 would be. I don't know but I know that, that I wouldn't
22 have signed the papers on the twenty-first if I had known he
23 had a contract for more money than what he was offering us.
24 No, I would not have gone through with it.

25 Q. When you say more money, he had offered you

000307

1 alone, I think 952 some thousand dollars for your interest
2 in Wellington, Echo Tango and --

3 A. Nine hundred and fifty-five, nine hundred fifty.

4 Q. Nine hundred fifty-five thousand?

5 A. Nine hundred and fifty.

6 Q. He gave it to you?

7 A. Nine fifty.

8 Q. Okay.

9 A. Plus \$75,000 for the 40 acres.

10 Q. Yes, sir.

11 So he owed you more money than what he sold the
12 entire 40 acres for?

13 A. Yeah, but that contract including my interest in
14 Wellington and in Echo Tango.

15 Q. Yes, sir.

16 A. And two pieces of property, the three point four
17 eight acres which he purchased from me separately that was
18 owned by my wife and I had in my name five lots of
19 Wellington that was solely in my name which I knew were
20 jointly owned by us. Those properties were in my name. I
21 signed those over, also.

22 Q. So you can't look at this transaction as 40 acres
23 stand alone transaction; you've got to look at this in
24 conjunction, all the other real estate that was transferred
25 in conjunction with this transaction, correct? To get a

1 true picture of what was bought and what was sold?

2 A. You know, I think you can look at each piece
3 individually and the contract as a whole. I think it's very
4 easy to determine because the prices were negotiated out for
5 each piece of property. It was separate. We know what
6 money was given for what piece of property. That wasn't a
7 secret. So, you know, the \$75,000 that was given to each of
8 us for the 40 acres - which ended up being \$73,000 instead
9 of 75 - was \$299,000 short of what it sold for and had we
10 know that I know I wouldn't have signed any such contract to
11 do that. I wouldn't have done it.

12 Q. You'd already signed the contract.

13 A. But you know what? I wouldn't have gone through
14 with it.

15 Q. You'd risk being in breach of contract?

16 A. I sure would have.

17 MR. KUHN: That's all I have.

18 THE COURT: Any redirect, Mr. Ruff?

19 MR. RUFF: Just one, couple of
20 brief questions, Your Honor.

21 REDIRECT EXAMINATION BY MR. RUFF:

22 Q. Regarding the Wellington property.

23 A. Yes, sir.

24 Q. Have you since found out that -- What have you
25 since found out about your brother's contract to The

1 International Society of Investors for the Wellington
2 property?

3 A. That he signed a large contract with The
4 International Society of Investors to sell that property and
5 that it was for a large amount of money and that my fair
6 share of that should've been more.

7 Q. And that contract's already in evidence --

8 A. It's one of these that's in evidence.

9 Q. But is it true that the shares of you and the
10 other siblings except for Mr. LeGrande Lowther would've been
11 -- I'm sorry. The shares of you and all your siblings
12 except for LeGrande Lowther were 50 percent of Wellington,
13 is that right?

14 A. That's correct.

15 Q. And is it right that 50 percent of five point
16 four five million is two point seven two five million?

17 A. Yes, sir.

18 Q. And how does that relate to the two point four
19 six four million that you sold LeGrande -- sold it to
20 LeGrande for?

21 A. Well, we should've got more money, is what
22 should've happened. We got less than what we should've got.
23 We should've got 50 percent of the proceeds.

24 Q. So how would you characterize his treatment of
25 you on the Wellington property as opposed to the 40 acre

1 property? LeGrande's treatment of you?

2 A. I think it was equally unfair. I think he
3 treated me badly in both deals.

4 MR. RUFF: Thank you.

5 THE COURT: Anything further, Mr.
6 Kuhn?

7 MR. KUHN: No, sir, Your Honor.

8 THE COURT: Okay.

9 Sir, you may step down.

10 And you may call your next witness, Mr.
11 Ruff.

12 MR. RUFF: Out next witness is
13 Eugene Lowther.

14 CHARLES EUGENE LOWTHER

15 JR., first being duly

16 sworn, testified as

17 follows:

18 DIRECT EXAMINATION BY MR. RUFF:

19 Q. Mr. Lowther, are you the same Charles Eugene
20 Lowther who's a beneficiary of this estate?

21 A. Yes, sir.

22 Q. And are you the same Charles Eugene Lowther who's
23 named in the will to receive the 1/7 share of this estate?

24 A. Yes, sir.

25 If you'd give me one minute, I'd like to

000311

1 apologize to The Court for talking awhile ago.

2 I'm bipolar and sometimes I get to thinking
3 something and I forget where I'm at. And I'm sorry for
4 that.

5 THE COURT: Your apology's accepted.

6 A. Thank you, sir.

7 Q. Mr. Lowther, where do you live?

8 A. I live in a warehouse.

9 Q. Where is that?

10 A. That's on what we call Jacob Smart Boulevard.

11 My father --

12 Q. What town is that in?

13 A. Ridgeland.

14 Q. What kind of work do you do, Mr. Lowther?

15 A. I don't. I'm getting on disability.

16 I was on disability but three things happened and
17 I was taken off but I'm trying to get back on again.

18 Q. Mr. Lowther, what's your current main source of
19 income?

20 A. Who'll ever pity me.

21 Q. Are you on any governmental --

22 A. No.

23 Well, I get some food stamps.

24 Well, I've got a 12-year-old daughter that I have
25 to take care of and --

1 Q. Do you get benefits on her account?

2 A. I get benefits on her account and my account.

3 Q. Okay.

4 Mr. Lowther, after your father died what was your
5 attitude about keeping or selling the property we call the
6 40 acres?

7 A. When my daddy died, I had been living with him
8 with my daughter, 12-year-old daughter for a year. And
9 after he died and the will came out and I saw the 40 acres
10 was given to, I call us the lucky seven, that we got 1/7 of
11 25 percent and LeGrande got 50 percent and Mitchell 25
12 percent, I call us the lucky seven.

13 So that meant a lot to me because I had nowhere
14 to live. The red house had been torn down, my father's. I
15 had been evicted from that red house.

16 Q. Did you want to keep or did you want to sell the
17 40 acres?

18 A. I needed to sell the 40 acres and get some money
19 so I could have a place to live for me and my daughter.

20 Q. You're onboard, then, with Sandra and Mitchell
21 about wanting to sell the 40 acres?

22 A. Yes. We were all onboard.

23 Q. Okay.

24 A. All my siblings.

25 Q. Now, Mr. Lowther, when was the first time that

1 Mr. LeGrande Lowther approached you with an offer to buy out
2 your interest in the 40 acres?

3 A. That would've been about, I reckon about around
4 October.

5 Q. Okay.

6 A. About three months before Christmas.

7 Q. Okay.

8 Do you believe that that -- Did you meet with
9 Sandra and Mitchell regarding that, that written contract?

10 A. I talked to them, yes, I sure had.

11 Q. You believe that the written contract that was
12 presented to you by LeGrande Lowther was presented to you
13 the same time as Sandra's and Mitchell's?

14 A. I don't know because LeGrande would come to where
15 I was at, at Logan Lane and I said, LeGrande, why don't we
16 all meet together. He said, well, I'm dealing with each one
17 of you different because we all got a different interest in
18 this estate and I just -- I'll talk to you and then I'll go
19 talk to them and we'll get it sold.

20 Q. What was your -- What was your reaction when
21 LeGrande Lowther presented this contract to you for your
22 portion of the property?

23 A. He didn't present me the contract. I had found
24 out through Mitchell talking about it and my brother Clark
25 that John Tilton wanted to buy the 40 acres and LeGrande had

1 been telling me personally that he had no sale for that 40
2 acres. So I went to John Tilton. I said, John, did you
3 want to buy the 40 acres. I said it's for sale. He said,
4 Charles, he said, I've already dealt with your brother
5 LeGrande about buying it; I've offered him almost a half a
6 million dollars for it.

7 Q. Let's go --

8 A. No. I want to tell you this.

9 And I said, well, you know, prove that.

10 MR. KUHN: Your Honor, hearsay.

11 A. I said show me a check.

12 THE COURT: Excuse me, sir, Excuse
13 me.

14 A. Oh, excuse me, Judge.

15 THE COURT: Okay.

16 You're objecting on basis of hearsay?

17 MR. KUHN: Yes, Your Honor.

18 THE COURT: There has been plenty of
19 hearsay today and I've allowed it in.

20 I'm not allow this in. I note your
21 exception for the record but we're talking here again about
22 causes of action, a lot of which has to do with the state of
23 mind of the parties so I'm gonna allow it.

24 Q. Let's get back to LeGrande's, Mr. LeGrande
25 Lowther's contract to you, not anybody else's contract.

1 What was your reaction when Mr. LeGrande Lowther
2 proposed his own personal contract to you, side?

3 A. Well, his proposal was that he would mortgage the
4 land to the bank.

5 Q. Okay.

6 A. And my share would be \$75,000.

7 Q. Were you willing to sell?

8 A. Yes. I needed to.

9 Q. And just as Sandra and Mitchell did, did you
10 ultimately sign your contract with LeGrande Lowther?

11 A. Yes.

12 Q. And you did so voluntarily?

13 A. Yes.

14 Q. And at the time you signed your contract with
15 LeGrande Lowther did you know of the existence of The
16 International Society of Investors offer, proposal or any
17 contract?

18 A. No, sir, I did not.

19 Q. Okay.

20 At the time you entered in to your contract did
21 you inquire of Mr. LeGrande Lowther or of anyone else
22 regarding an International Society of Investors proposal,
23 offer or contract?

24 A. I didn't know anything about that.

25 I call them Amber Winds.

1 Q. That's who they -- That's who ultimately
2 acquired. Technically was same entity but did you --

3 A. My understanding was that he had no sales and was
4 negotiating with no one --

5 Q. All right.

6 A. -- just he was gone mortgage it himself.

7 Q. How did you come by that understanding for what
8 you just said, that there were no sale

9 A. LeGrande sold me so.

10 Q. When did he tell you that?

11 A. He told me that on four occasions.

12 Q. Okay.

13 A. He told me in October, November and December.

14 Q. Okay.

15 A. And he said he couldn't, and, you know, and he
16 kept saying he couldn't find anybody to sell any of the land
17 to yet houses were going up all around on our land, on the
18 estate.

19 Q. Let's go to December. It's already in evidence,
20 what I call the master deed for this property which as
21 signed by everyone, purported signed by everyone on December
22 8.

23 Were you at Mr. Kuhn's office the date of this,
24 that meeting on --

25 A. Yes, yes.

000317

1 Q. And, and you signed your deed?

2 A. Yes.

3 Q. Best of your recollection, on that date?

4 A. Yes.

5 Q. And who, who was there with you when you signed
6 your deed? To the best of your memory.

7 A. I think all the siblings was there.

8 Q. Okay.

9 And on that day, the date you signed your deed in
10 December did you have any knowledge on that day about the
11 existence of any proposals, offers or contract with
12 International Society of Investors, or any other third
13 party, for that matter?

14 A. No, sir, there was not in my mind. I was never
15 aware of anything like that.

16 Q. And on that date, on November 8 did you ask about
17 the existence of any other such contracts, offers or
18 proposals for the 40 acres?

19 A. I don't know if I asked that day. I asked enough
20 up to that time that I was satisfied that there was nobody
21 else that wanted to buy that 40 acres but LeGrande.

22 Q. And were you also at this meeting on December, I
23 think it's the twenty-first, what I call the closing
24 meeting?

25 A. Yes, yes, yes.

000318

1 Q. You were at that meeting?

2 A. Yes, sir.

3 Q. Okay.

4 And as of that date, towards Christmastime, were
5 you aware that date of any offers, proposals or contracts --

6 A. No, sir.

7 Q. -- between LeGrande Lowther and any third party?

8 A. No, sir.

9 Q. Okay.

10 You remember asking on that day of LeGrande
11 Lowther whether he had any offers, sales or contracts?

12 A. Again, if you're trying to establish a time line,
13 I don't know if I can do that perfectly but my last talk
14 with LeGrande, when I finally asked him about the sale of
15 the 40 acres, it was that he was gone mortgage it himself so
16 that we could have some money and I said why don't we try to
17 sell it. I said it's 40 acres. I said the fair market
18 value's \$15.00, isn't it, and he said yeah. He said but if
19 I mortgage it, then we can find a sale later on and y'all
20 can get that much more money. And I said all right, that's
21 good. I said thank you.

22 Q. By more you mean more than \$511,000?

23 A. Yes.

24 Q. Now, same questions about Wellington. All
25 through this time period, from October 17 through the end of

1 December were you ever aware to any third party offers,
2 proposals or contracts with respect to the property we're
3 calling Wellington?

4 A. No, I wasn't. I wasn't, no.

5 Q. And did you ask Mr. LeGrande Lowther about the
6 existence of any of those --

7 A. Oh, yes, I did. Yes, sir, I did.

8 Q. How many times did you ask him about the
9 Wellington proposals?

10 A. Well, let's say this. I had a 12-year-old
11 daughter and I had no source of income and the family was
12 split apart completely at this time and I was begging
13 LeGrande as executor of the estate to help me out.

14 Q. Okay.

15 Now, when did you find out, you find out about
16 the ultimate sale by LeGrande Lowther, the 40 acres for
17 \$810,000 to International Society of Investors?

18 A. When I went to the Ridgeland courthouse where
19 they keep the records and I went through them. And I
20 found --

21 Q. Is that the same time that Sandra did that or is
22 it a different time?

23 A. I'm the one that told Sandra about it.

24 Q. Okay.

25 And approximately when did you find out about

000320

1 that?

2 A. About the time, March. About the time I told her.

3 Q. Okay. March. Okay.

4 When you found that out how did you feel?

5 A. I felt like crying. I did cry.

6 I went to him and asked him how could he do that.
7 I tried to get this thing undone. I said, LeGrande, I got a
8 12-year-old daughter. I said and you know I can't work.
9 And you know Daddy promised to build me and my daughter a
10 house and take care of us but he died before he could do it
11 and you know it was on your shoulders to do that.

12 Q. Okay.

13 And just to be clear, important element, at all
14 relevant times between October through the end of December
15 were you at all times ignorant of any other offers,
16 proposals or contracts for either the 40 acres or the
17 Wellington property?

18 A. Yes, I was.

19 THE COURT: Excuse me. Mr. Kuhn's
20 on his feet.

21 MR. KUHN: Been asked and answered.
22 Plus it's --

23 THE COURT: Yes, I believe we are
24 getting cumulative. I sustain.

25 MR. RUFF: All right.

000321

1 Q. And these denials that you testify about of Mr.
2 LeGrande Lowther, did you rely on those denials in going
3 forward with your part of the --

4 A. I trusted explicitly. I love my brother. I love
5 my brother now but when I found out what he had done, what
6 could I do? What could I do?

7 Q. Did you feel it was fair on your part to rely on
8 his denial of those third party transactions?

9 A. I thought that whatever he said was the gospel
10 truth because he loved me and I loved him and he was looking
11 out for me.

12 Q. Okay.

13 And had you known about the existence of The
14 International Society of Investors contract and previous
15 offer, proposal, would you have gone through with your sale
16 of the property we're calling the 40 acres?

17 A. Well, I would not, I would not have settled for
18 the money he gave us. I'd have wanted the money that they
19 gave him.

20 Q. All right.

21 And finally, Mr. Lowther, you said and heard
22 couple times earlier today, talked about a promise to pay
23 you what I call the surplusage. Let's be clear about what
24 Mr. LeGrande Lowther communicated to you about his promise,
25 if any, to pay you an additional amount upon a subsequent

1 resale of the property.

2 A. He put his arms around my shoulders --

3 THE COURT: Excuse me, Excuse me,
4 Excuse me.

5 A. Yes, sir.

6 MR. KUHN: Same objection, parole
7 evidence rule, statute of frauds, self-serving. That's the
8 reason we have the statute of frauds, is so we don't enter a
9 real estate contract for a set price and have people come in
10 to court and testify I know that's what the contract says, I
11 know that's what the deed says but the real price was
12 whatever I'm gone say it is in court.

13 THE COURT: Mr. Ruff.

14 MR. RUFF: Well, Your Honor, it's
15 the same question I asked the witnesses earlier. I think
16 it's relevant to the extent there's an allegation here that
17 Mr. LeGrande Lowther at closing and even thereafter promised
18 them more money, promised them a surplusage. That's
19 certainly relevant to the issue of fraud, again, for the
20 reason expressed earlier.

21 That's not subject to the parole
22 evidence rule, I don't believe because this is well after
23 the contract was entered in to and it's relevant evidence,
24 Your Honor, and if Mr. LeGrande Lowther disputes it he'll
25 have his opportunity this afternoon to refute that.

000323

1 THE COURT: You know, Mr. Kuhn, this
2 is, of course, to a great extent, a proceeding in equity.
3 Several of the causes of action are equitable causes of
4 action.

5 Moreover, the whole reason the action is
6 before This Court is because at the times relevant in the
7 proceeding your client and, of course, I believe it was Mr.
8 Mark Allen Lowther, who we haven't heard much about today,
9 but were under appointment as personal representatives of
10 the estate and I believe the dealings of those, of them as
11 fiduciaries with the interested persons in the estate is
12 relevant to these transactions and cannot be unduly
13 restrained by the version of the parole elements rule that
14 you're citing according to your view of that.

15 A contract is signed. It's merged in to
16 the deed at closing and there can be absolutely no question
17 about the transaction. I believe that's essentially what
18 you're saying, or any testimony regarding the transaction,
19 and I don't believe that the parole evidence rule requires
20 that strain, that that strain of construction of the rule is
21 called for here and so it's for those reasons that, among
22 others I've stated, including state of mind, exceptions to
23 hearsay but, specifically with regard to the parole evidence
24 rule.

25 It's for those reasons that I'm

000324

1 overruling and that I'm overruling your latest objection.

2 MR. KUHN: If I could add another
3 ground, it's beyond the scope of the Complaint. The
4 Complaint alleges fraud and that the representation was that
5 \$511,000 did not represent the fair value for the estate
6 plan and this doesn't have anything to do with whether or
7 not \$511,000 is a fair value for that land.

8 THE COURT: Well, I'll have to
9 access that after I hear all the evidence. Just so I'm
10 overruling your objection.

11 MR. KUHN: Just for the record,
12 it's my position that Mr. Lowther did not approach them as
13 the personal representative of the estate to buy the land.

14 THE COURT: Well, that's clear from
15 your pleadings. That's subject to proof here, okay?

16 And all I'm saying is when you bring up
17 relevance and when you bring up the parole evidence rule I'm
18 viewing that in light of the fact that at all times relevant
19 there was a pending probate court proceeding involving this
20 estate and involving the defendants and I think, I think, I
21 think that's very relevant and I believe that the
22 defendant's dealings we persons who are the heirs of the
23 estate have to be viewed in that light and I'm so viewing
24 it. So I overrule that objection.

25 Q. Mr. Lowther, let's go back to the question about

000325

1 what I called earlier the surplusage, that is I want you to
2 testify about any promises made to you direct by Mr.
3 LeGrande Lowther about, about furnishing you any additional
4 funds upon a future resell of the property. Please go
5 forward.

6 A. Well, that was real important for him to express
7 to me, it seemed. Bube, whatever, if I ever can sell this
8 40 acres for more than what I'm mortgaging it for and I'm
9 mortgaging so we don't have to sell it so that if I can sell
10 it, probably be more than I'm mortgaging it later on I'll
11 give you that money and I'll give the rest of you the money
12 and that'll help y'all be more secure. And he bought in,
13 says, don't you and Charlie Girl - that's my daughter's name
14 - need a place to live? And I believed him and he promised.

15 THE COURT: Now, at this point I
16 believe we're getting cumulative because it's been that
17 testimony before.

18 MR. RUFF: That's my final
19 question, Your Honor. Thank you.

20 THE COURT: Okay. Okay.

21 Any cross-examination, Mr. Kuhn?

22 MR. KUHN: No, sir.

23 THE COURT: Okay.

24 You may step down, sir.

25 A. Thank you.

1 THE COURT: Any more witnesses, Mr.
2 Ruff?

3 MR. RUFF: Yes, Your Honor. Our
4 next witness will be the defendant Mr. LeGrande Lowther and,
5 Your Honor, I note for the record, it's 12:30 right now and
6 we anticipate that unlike the last couple of witnesses, we
7 anticipate that this direct examination may go for at least
8 an hour, an hour and a half, Your Honor, and we're happy to
9 go forward with it right now, Your Honor, but we don't want
10 everyone to go hungry, waiting for lunch because we do
11 anticipate this examination will be -- take a little while.

12 THE COURT: Will you have any other
13 witnesses?

14 MR. RUFF: Yes, Your Honor, we'll
15 have one, perhaps two other witnesses after him.

16 THE COURT: Okay.

17 Mr. Kuhn.

18 MR. KUHN: Your Honor, I don't know
19 if there's a solution. I have a logistical problem. I
20 think you're aware of it and I don't know if there is a
21 solution.

22 I started a case in family court
23 yesterday, an all-day case that we did not finish, tried it
24 all day long, went in the evening and quit from exhaustion.
25 It was supposed to have finished yesterday, contested

000327

1 custody case.

2 Judge Fuge, the family court judge who's
3 trying the case, rearranged the family court stuff so that
4 this afternoon was opened up so we could finish that case
5 this afternoon in that court. I told him that I was due to
6 be in this court first thing this morning for an all-day
7 case and the response was I hope it finishes by 2:00. I
8 don't think he meant that flippantly, just, again, he didn't
9 have a solution for it, either.

10 MR. RUFF: Your Honor, we'd be
11 happy, on our part, to keep going right through 2:00.
12 That's okay. I don't mind doing that.

13 We do have Mr. Lowther and at least one
14 more witness and we do anticipate that -- I'd love to think
15 we'd be done by 2:00 but I don't think that'll be the case.

16 MR. KUHN: And that's my concern,
17 also.

18 THE COURT: How long do you
19 anticipate that 2:00 matter going?

20 MR. KUHN: The full afternoon.

21 THE COURT: In light of that I'd
22 like to see if we can at least finish plaintiffs' case today
23 and I would suggest that we -- If any of you feel strongly
24 that we need to break for lunch at this time, I was gone
25 suggest we take about a five-minute, five- or 10-minute

000328

1 recess and then call your next witness then.

2 MR. RUFF: We're happy to go all
3 the way through 2:00 or later, Your Honor.

4 THE COURT: You know, I had reserved
5 the courtroom for the entire day for this matter and this is
6 a bit, a bit --

7 MR. KUHN: Yes, sir, Your Honor.

8 THE COURT: --disconcerting.

9 MR. KUHN: I had no choice.

10 THE COURT: Was this something you
11 agreed to?

12 MR. KUHN: No, sir. We tried the
13 case to the evening and he just called it quits for a day
14 and said come back.

15 THE COURT: Well, I'm well aware of
16 the supreme court, of the appellate court rule that governs
17 presence and proceedings in view of conflict and so, Mr.
18 Ruff, I don't know what else I can say. I think we would
19 have to defer for the family court proceeding.

20 MR. RUFF: And you're right, Your
21 Honor. I mean I do think we can -- I mean given the pace of
22 how things have gone so far I think it's more likely than
23 not that our case would be done by three. I don't know if
24 there's a way Mr. Kuhn could contact Judge Fuge to see if a
25 slight delay would be okay.

000329

1 I mean, granted, that court has priority
2 or what have you but, still, in light of everything I'm sure
3 Judge Fuge has other things going on, too.

4 THE COURT: Because the alternative
5 is gonna be to continue the resumption of this till another
6 day and it won't be tomorrow because we've got other matters
7 tomorrow.

8 MR. KUHN: My next question.

9 I apologize. That case was supposed to
10 been finished yesterday and not through anything I or any of
11 the parties in that case did. It's just there were
12 emergency matters that got put ahead of us and we didn't get
13 started till late.

14 THE COURT: Okay.

15 MR. KUHN: And we went late to see
16 if we could finish but the court reporter was just worn out.

17 THE COURT: Okay.

18 Let's do this, before I decide whether
19 for you to call your witness, let's take a brief recess and
20 during that time if you could inquire whether that matter is
21 still scheduled. I'm not trying to assert precedence over
22 that proceeding at all but if you could inquire whether it's
23 still scheduled to begin at 2:00.

24 MR. KUHN: I'll explain the
25 situation here.

000330

1 THE COURT: All I'm asking is just
2 to see if you could get some more definition readings.
3 Sometimes they're not ready to get to it by two but if you
4 could try to find out what the current schedule is, then
5 we'll have a better idea to know whether to resume with the
6 testimony today or continue to another day.

7 MR. RUFF: We'll do the best on our
8 side, Your Honor - I think two more witnesses - to speed
9 this along so it can be done as soon as possible.

10 THE COURT: Okay.
11 We'll stand in recess for five minutes
12 or so.

13 Mr. Kuhn, if you could try to find out
14 something about whether that's gone start at two.

15 (Court recessed for approximately
16 five minutes.)

17 THE COURT: Mr. Kuhn, what is the
18 word?

19 MR. KUHN: Word is for me to be
20 over there at 2:00 sharp.

21 THE COURT: Two o'clock, okay.

22 MR. KUHN: Yes, sir, and the
23 schedule is cleared. They've cleared everything off and
24 they said they would come get me so if they're running late.

25 And I apologize, Your Honor. Just to be

1 clear, yesterday they took a break, since it's obvious we're
2 not gone finish today let me go check the schedule, see we
3 can reconvene; went out and came in and said looks like I
4 can clear some stuff tomorrow afternoon and I stood up
5 immediately and said, Your Honor, I've to be in this court
6 all day tomorrow and I don't think it was meant to be a
7 flippant reaction or a non-caring reaction, just a kind of
8 like, you know, sometimes cases don't last as long as you
9 think they will and hope that'll be through by 2:00.

10 THE COURT: Okay.

11 Well, the rules of The Court are clear
12 about the resolution of conflict.

13 MR. KUHN: And I apologize to
14 everybody.

15 THE COURT: On reflection in there,
16 I think, Mr. Ruff, rather than -- I mean that's an hour and
17 15 minutes away and while, you know, this is not a great
18 prospect, I don't want you to have to commit. You
19 forthrightly indicated that Mr. Lowther might be on the
20 stand for at least an hour.

21 MR. RUFF: I did, Your Honor, but
22 we're gone change the order of our direct examination. We
23 have one more witness who I'm confidence we can have done by
24 2:00 and I guess what we'll all have to agree to do is
25 continue this for Mr. LeGrande Lowther's testimony.

1 THE COURT: Well, and I understand
2 that but I'm sure if your got another witness, each of them
3 have taken, the whole thing, at least a half an hour but I
4 guess what I'm trying to think about and, even though I
5 don't -- this is very disconcerting for this to happen, I
6 really don't like the prospect of telling another lawyer
7 that he's gonna have to be in this court till two without a
8 break and then go in to a trial that's gone last all
9 afternoon. I think, from a human standpoint, everybody is
10 entitled to a break.

11 We're gonna have to resume this anyway,
12 on your case, on another day and how would you feel about us
13 just going ahead and adjourning for the day today?

14 MR. RUFF: Well, if that's your
15 order I respect that. My next witness will be shorter, much
16 shorter than the others and he's also from out of state. So
17 I think we can have him over and done with in about 15 or 20
18 minutes.

19 THE COURT: Okay.

20 Mr. Kuhn, is that fair with you?

21 MR. KUHN: Whatever, Your Honor.

22 THE COURT: Okay.

23 MR. KUHN: And thank you for the
24 consideration.

25 I raised that point next door and they

000333

1 gave me a blank stare.

2 THE COURT: Well, okay.

3 Let's try to avoid cumulative testimony
4 or anything else. We'll do that but just so we can devote
5 all our time between now and the completion of this witness.

6 I want to decide now, if we can, when
7 we're gonna resume on this thing with as little delay as
8 possible. My calendar would allow us to resume this Friday
9 morning.

10 MR. RUFF: Your Honor, I don't may
11 have to -- I don't have a calendar with me, or a smart phone
12 or something. I can call my office immediately on a phone
13 and see what we can clear and I'm sure we can do -- We want
14 to do it --

15 THE COURT: Well, I don't want to
16 delay the witness testimony.

17 What we'll do is if y'all don't know
18 about this right now what I will ask is that before we leave
19 I've gone say either Friday morning or Monday morning.

20 MR. KUHN: Okay.

21 THE COURT: Would be clear for me.

22 MR. KUHN: Okay.

23 THE COURT: Unfortunately, and I'll
24 tell you right away, 3:00 Monday I've got an appointment out
25 of the office so my preference would be Friday, if at all

000334

1 possible, and we can get this matter completed.

2 So without further ado, I'll have Rose
3 check with your offices about that after this and we'll
4 coordinate that.

5 For the benefit of those in the
6 audience, we're sorry about this but it's unavoidable.

7 So let's go ahead and call your next
8 witness.

9 MR. RUFF: Next witness is Mr. Mike
10 Jones.

11 MICHAEL OLIVER JONES,
12 first being duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION BY MR. RUFF:

15 Q. Mr. Jones, Mr. Jones, where do you live?

16 A. Just north of Raleigh, North Carolina.

17 Q. Okay. Thank you, sir.

18 What kind of work do you do, Mr. Jones?

19 A. I am an estimator for a utility contracting
20 company.

21 Q. Okay.

22 And at the time of these transactions which have
23 been discussed, in late 2005, what was your line of work or
24 business back then?

25 A. Land development.

000335

1 Q. Okay.

2 And for whom did you work?

3 A. Company called Four Winds Development.

4 Q. And is that a direct affiliate of International
5 Society of Investors?

6 A. Yes, sir, it is.

7 Q. And were you a partner? What was your status
8 with this company?

9 A. I was a member, one of three members.

10 Q. Okay.

11 So there were three of you who were in
12 partnership?

13 A. Yes, sir.

14 Q. And did all three of you own this company?

15 A. Yes, sir.

16 Q. And was this company, in fact, the company that
17 I've referred today as International Society of Investors
18 that agreed to purchase certain properties from Mr. LeGrande
19 Lowther?

20 A. That is correct.

21 Q. Okay.

22 And you would classify yourself as a principal
23 with that company?

24 A. Former, formerly.

25 Q. Former principal?

1 A. Yes.

2 Q. You were a principal of the company back at that
3 time?

4 A. Yes, sir.

5 Q. Thank you, sir.

6 Mr. Jones, please describe for The Court your
7 background with the defendant here Mr. LeGrande Lowther.

8 A. Met Mr. Lowther through, I mean just, basically,
9 looking for property. I asked my father if he knew of any
10 in the area and he gave me Mr. Lowther's name.

11 Q. How'd your father know Mr. Lowther?

12 A. My father was planning director for Jasper
13 County.

14 Q. Okay.

15 And he just knows a lot of people.

16 So I checked with my mother as well who also
17 worked at the tax assessor's office for Jasper County and
18 she gave me some information and that's how we got in touch
19 with Mr. Lowther.

20 Q. Okay. All right.

21 Please describe your first -- We've described a
22 piece of property today, the property that's at issue in
23 this case. It's called the 40 acres and you're familiar
24 with this property, Mr. Jones?

25 A. Yes, sir.

000337

1 Q. Okay.

2 Please describe your first contact with any of
3 the family members including Mr. LeGrande Lowther regarding
4 this 40 acres.

5 A. The best I can recall, when we were initially
6 talking to Mr. LeGrande Lowther about a piece of property
7 called Wellington Estates. At that time, very early in
8 negotiations on Wellington the 40 acre parcel was brought to
9 our attention, that was available.

10 Q. Brought to you attention by who?

11 A. By Mr. Lowther.

12 Q. Mr. LeGrande Lowther?

13 A. Yes, sir, Mr. LeGrande Lowther.

14 Q. I don't mean to belabor the point but everybody
15 here's name Lowther so I just --

16 A. Sorry, sorry. Mr. LeGrande Lowther.

17 Q. When was your first contact with Mr. LeGrande
18 Lowther about these properties?

19 A. I don't have a specific date. I can -- I can say
20 mid '05, June, July of 2005.

21 Q. Summer of 2005?

22 A. Sounds right, yes, sir.

23 Q. Okay.

24 And so your first contact is you approached Mr.
25 LeGrande Lowther and what did you do when you approached him

1 in mid 2005?

2 A. Expressed interest in possibly purchasing the
3 property to do some development.

4 Q. And by the property do you mean the 40 acres or
5 Wellington?

6 A. Wellington Estates.

7 Q. Wellington?

8 A. Yes, sir.

9 Q. Okay.

10 And what was Mr. Lowther's response to that
11 inquiry of yours?

12 I believe he was open. He was open to the idea,
13 was willing to talk about it so we carried forth
14 negotiations.

15 Q. Okay.

16 And was this all the time just about Wellington
17 or did the 40 acres come in, also?

18 A. Very early in negotiations. I can't say it was
19 the very first day we talked about it but very early in
20 negotiations the 40 acres came in to play.

21 Q. And how did that happen?

22 A. Wellington's a large piece of property and we
23 done no development in South Carolina so --

24 Q. By we you mean your company?

25 A. The company, correct.

1 Q. Okay.

2 A. We really weren't looking -- It's not that we
3 weren't looking for a parcel that large but, you know,
4 that's a lot of land to try to develop.

5 So, you know, I'm not sure whose idea
6 originally it was, whether we asked if he knew of any
7 smaller parcels or he volunteered there was a smaller parcel
8 but when he mentioned there was a 40 acre parcel in the
9 vicinity we were interested. In the 40 acres. So, you
10 know, that's where it started.

11 Q. When did you start negotiating with Mr. LeGrande
12 Lowther regarding the 40 acres?

13 A. I don't know the exact date but it was very, very
14 early in the negotiation process.

15 Q. Which you said started in June or July?

16 A. June or July, best of my recollection, yes, sir.

17 Q. Okay.

18 Now, let's talk about these negotiations in June
19 or July for both properties. How did they transpire, sir?

20 A. Several phone conversations, very few face-to-
21 face meetings because of the distance between the Raleigh
22 area and Ridgeland, a lot of phone conversations.

23 Once the properties were identified I pretty much
24 turned think negotiations over to Monty Perry (ph) who was
25 the managing member at the time.

000340

1 Q. Was he one of your two partners?

2 A. He was, yes.

3 And he pretty much handled the remaining
4 negotiations from that point.

5 Q. Okay.

6 But before that happened you were aware that Mr.
7 LeGrande Lowther wanted to sell to your company both
8 parcels?

9 A. That's correct.

10 Q. Okay.

11 And was this deal from Mr. LeGrande Lowther, we
12 he open to selling both, either, neither? Did both have to
13 be sold? How would you characterize the negotiation that
14 you had with Mr. Lowther?

15 A. Mr. Lowther, Mr. LeGrande Lowther was adamant on
16 the 40 acre parcel.

17 Q. Did you say adamant?

18 A. Adamant at selling the 40 acre parcel as a
19 contingent on us being able to purchase the Wellington
20 parcel.

21 Q. Was it your feeling, then, that they were part of
22 the package deal?

23 A. They were absolutely part of the package deal,
24 yes, sir. We were actually not going to be allowed to close
25 the Wellington parcel unless we did purchase the 40 acre

1 parcel as well.

2 Q. And was that clear early on in your negotiation
3 or did that become clear later?

4 A. It was fairly on in the negotiations of the
5 property.

6 Q. Okay. All right.

7 An exhibit's been introduced and I think it's
8 Plaintiff's Exhibit and, gosh, I've lost track of the
9 numbers. This is the contract between LeGrande Lowther and
10 The International Society of Investors for the 40 acres for
11 810,000. It's Plaintiff's Exhibit 9.

12 Mr. Jones - Seven, I'm sorry. I'm not wearing
13 my glasses - do you recognize this contract?

14 A. Yes, sir. This, this looks like one of our
15 standard contracts or sale or purchase.

16 THE COURT: May I have exhibit 7,
17 please?

18 Q. All right.

19 Now, Mr. Jones, when you say it's one of our
20 standard, who prepared this contract?

21 A. That particular contract was, I believe, prepared
22 by probably Kathy Russell (ph), Russell Law Firm.

23 Q. The same Russell Law Firm who's name here in
24 section --

25 A. Yes, sir. Yes, sir, that's correct.

1 Q. And she's your company's attorney?

2 A. That's correct.

3 Q. Or your former company's attorney?

4 A. That's correct.

5 Q. All right.

6 Now, Mr. Jones, this contract here, the date on
7 page 1 is October 12. Now, there's different dates on the
8 signature page.

9 Please explain, if you would, the date being
10 October 12, the transpiring of the process, the entire
11 process from when you had an oral deal with Mr. Lowther to
12 what your company did after you had an oral deal with Mr.
13 Lowther that consummated in the preparation of this
14 contract. Please take us through that history. And what
15 happened.

16 A. I'm sorry, I'm not clear on what you're asking
17 me.

18 Q. Based on that contract being dated October 12,
19 when did your company, to the best of your recollection,
20 have an oral deal with Mr. Lowther to purchase this
21 property.

22 MR. KUHN: I'm gone object.
23 There's no assumption they did have an oral deal prior to
24 the --

25 THE COURT: And I don't think the

000343

1 same considerations would apply to this witness' testimony
2 as we've applied to those of beneficiaries and I know Mr.
3 Kuhn has had a standing objection on several grounds.

4 I believe this testimony, I mean under
5 the statute of frauds I think we're pretty clear, an oral
6 contract for the sale of land can't be proven.

7 MR. RUFF: Okay.

8 Q. But before this contract was drafted did your
9 company feel that it had a deal with Mr. Lowther to purchase
10 this property?

11 MR. KUHN: I'm gone object.

12 MR. RUFF: Asking for what they
13 felt, Your Honor.

14 MR. KUHN: Object, irrelevant.
15 Their subjected feeling was, it's just not relevant.

16 THE COURT: Well, if the testimony
17 is being -- If you're trying to elicit testimony that there
18 was the understanding of a deal, again, I have to fall back
19 on statute of frauds in this case.

20 Q. What would your company typically do, what would
21 your company typically do once an oral deal on the
22 acquisition of a piece of property was made? What would
23 your company typically do before a contract is signed?

24 MR. KUHN: Again, I object. What's
25 typically done doesn't have any relevance to what's done in

1 this case.

2 THE COURT: Well, I'm gone overrule
3 your objection there. I believe he can testify as to what
4 their standard business practices were.

5 Q. What would been your standard business practice
6 regarding this land?

7 A. Normally what we would do after we've identified
8 a parcel of property that peaks interest we would make
9 contact with the owner. We would first find out if the
10 owner's even open to negotiations or sale.

11 Q. All right.

12 A. We would then, obviously, get a rough idea of the
13 dollar amount that they were looking for for the property.
14 And if that's something that would fall in to the range of
15 something we would be interested in, then we would proceed
16 with getting an idea for the area, you know, is there gonna
17 be power available to the area, is there water or sewer
18 available to the area.

19 We would make contact with the town, county,
20 some, some agency to find if those, if those items are
21 available.

22 Q. And did you do that in this case?

23 A. We did, yes, sir.

24 Q. Of the principals of your company who was
25 responsible for what I'm gonna call all that due diligence

000345

1 work?

2 A. That myself.

3 Q. You?

4 A. Yes, sir, that was me.

5 Q. Okay.

6 Please explain the due diligence work that you
7 did then in the summer of 2005.

8 A. Once the 40 acres was identified as, as a
9 potential purchase we would -- I would have contacted South
10 Carolina Electric and Gas to find out if electricity is
11 obviously available to the property and if not what cost
12 would we have to bear to get it out there.

13 Water and sewer, because they have such a
14 large impact you can put on a parcel it's very important for
15 us to know if it's there and if it is, fine; if not how can
16 we get it there and at what cost to get it there.

17 So I contacted The Town of Ridgeland, not a
18 hundred percent sure if the property was or was not in the
19 town limits. I found out that the parcel, I believe, was
20 not in the town limits but they would be willing to annex
21 that area in order to get those, the necessary utilities to
22 us at substantial cost savings.

23 THE COURT: Okay.

24 Now, Mr. Ruff, I'm going to hold you to the
25 15 minutes under the circumstances. We've got five more

000346

1 minutes.

2 MR. RUFF: Okay.

3 A. How long did that due diligence take?

4 Q. That due diligence process takes, takes several
5 weeks. No one cares as much about your project as you do so
6 getting a return phone call is, you know, is sometimes
7 lengthy.

8 Q. And when was that due diligence done date wish in
9 relation to that date of October 12?

10 A. In order for us to get a contract on October 12
11 on the property I would have at least had to have a verbal
12 that those items met our criteria enough that we would be
13 willing to go forward. So, you know, there again, without
14 knowing the exact date I would -- I would guess several
15 weeks.

16 Q. Okay.

17 A. You know, several weeks.

18 Q. Would you go -- Would your company typically go
19 through that due diligence process without an oral deal as
20 to the price and terms with the seller?

21 A. No, sir. No, sir.

22 Q. So your believe is your company had an oral deal
23 in light of what you just said?

24 A. That is correct.

25 THE COURT: I believe that's already

000347

1 been ruled out.

2 MR. RUFF: All right. All right.

3 THE COURT: At least the
4 admissibility of it.

5 Q. Now, this contract is dated at the top October
6 12. When was the order, so to speak, when was the request
7 of Miss Russell, attorney to prepare this contract?

8 A. I don't have that information. Based on past
9 experiences, I would say that it was probably very close to
10 -- Well, I mean depending on how many revisions there were.
11 So I mean --

12 Q. Okay.

13 And you typically would or would not prepare such
14 a contract before an oral deal was made?

15 A. We would typically hash out the majority of the
16 oral -- or the terms of the contract before we would go
17 through the expense of having a contract like that written
18 up.

19 Q. Right.

20 Now, this contract is signed by Mr. LeGrande
21 Lowther on October 24, 2005.

22 A. Yes, sir.

23 Q. What's the reason, to the best of your memory,
24 for the difference between the twelfth which is the date
25 your attorney put on page 1 and the twenty-fourth which is

000348

1 when Mr. LeGrande Lowther signed it?

2 A. I really don't have a recollection on that, on
3 why that time difference is there other than probably
4 getting it to him.

5 You know, there may have been some minor changes.

6 I would venture to say that probably because of
7 the distance between the Raleigh area and here may play a
8 large role in that time difference.

9 Q. And can you account for the difference between
10 this contract's stated date of October 12, 2005, and when
11 your partner signed it on November 21, 2005?

12 A. Well, we had more than one deal going at the
13 time. So, you know, assuming we got this back from Mr.
14 Lowther, you know, several days after he signed it, then I
15 really can't account for the time other than it being
16 standard practice for us to, you know --

17 Q. At the time you -- At the time you --

18 A. -- to evaluate.

19 Q. At the time you were going through these
20 transactions were you aware that this property was owned by
21 the estate of the late Mr. Lowther? Was your company aware
22 of that?

23 A. The 40 acres you're referring to?

24 Q. Yes.

25 A. No, sir. I was not aware the 40 acres was part

000349

1 of an estate.

2 Q. Well, who'd you think owned it, then?

3 A. I thought Mr. LeGrande Lowther owned it.

4 Q. What made you believe that? What led you to
5 that?

6 A. Just past experience, just the negotiations the
7 dealings. We had talked to Mr. Lowther about Wellington in
8 which case he told us that it was an estate property.

9 Q. Wellington?

10 A. Wellington, yes, sir, the larger parcel.

11 Q. But not the 40 acres?

12 A. But not the 40 acres.

13 Q. On the first page of the contract I ask you to
14 look at the second line here which says by and between
15 LeGrande Lowther comma Mitchell Lowther comma et al and that
16 I struck out. Who struck that out?

17 A. It would appear that Mr. Lowther struck it out.
18 He has initialed beside it. On the -- On the contract so it
19 would appear that he probably --

20 Q. Did you raise any questions about that strike-
21 out?

22 A. I would not have been in this negotiation at the
23 time so, no, sir, I would not have.

24 Q. At all times your company believed that Mr.
25 Lowther was the 100 percent owner of this property?

000350

1 A. Yes, sir.

2 Q. Okay.

3 Did Mr. Lowther tell you anything about the
4 beneficiaries of this estate or the fact that they were 1/7
5 takers under the will?

6 A. For the 40 acres?

7 Q. For all the estate property including the 40
8 acres.

9 A. Not about the 40 acres, no, sir.

10 Q. Did you know the fact that he was the personal
11 representative of an estate?

12 A. No, sir. That's not something I would've known.

13 Q. Okay.

14 THE COURT: Okay. Let's wrap it up.

15 MR. RUFF: Okay. I've got couple
16 of final questions.

17 Q. Would it have affected your company's dealings at
18 all with Mr. LeGrande Lowther to know that he was purchasing
19 the property subsequent to your contract from the heirs of
20 this estate for \$299,000 less than what he was selling it to
21 you for?

22 MR. KUHN: I'm gone object, Your
23 Honor. What's the relevance of that?

24 A. I don't -- I don't know.

25 THE COURT: I think it calls for a

000351

1 speculative answer and I'll disallow it.

2 MR. RUFF: All right.

3 THE COURT: Sustain the objection.

4 Q. The final question is so regarding the 40 acres,
5 is it clear in your mind that that was part of the deal with
6 your company consistently from June to July of 2005 forward?
7 The 40 acres?

8 A. Being, being a condition of the sale of
9 Wellington?

10 Q. Being part of the property that would have to be
11 sold, yes, sir.

12 A. Yes, sir, yes, sir, it is belief that is the
13 fact, yes, sir.

14 Q. So it would not be true for someone to assert
15 that that property came along at the last minute?

16 A. Oh, was certainly not a last minute, no, sir.

17 THE COURT: Okay. I think that's
18 one passed the last question. And moreover, I believe
19 that's been previously testified.

20 MR. RUFF: All right.

21 THE COURT: Mr. Kuhn, any cross-
22 examination?

23 MR. KUHN: Yes, sir, Your Honor,
24 just real briefly, if I may.

CROSS-EXAMINATION BY MR. KUHN:

Q. Mr. Jones, if you would look at Plaintiff's Exhibit 7. Do you still have it?

A. I do not.

THE COURT: I have it.

MR. KUHN: Your Honor, if you'll keep it I'll show him a copy.

And Defendant's Exhibit, the contract, the other contract.

I'll move to introduce the other contract. I thought it was already in.

I think it is already in.

THE COURT: I believe -- Which contract are you talking about?

MR. KUHN: This is the contract for the Wellington property.

THE COURT: Well, was it introduced as part of the sheath of documents you introduced?

I don't think it was introduced by the plaintiff.

MR. KUHN: I thought I had done it but apparently I overlooked it. If I could go ahead and just introduce it now.

THE COURT: Okay.

And does Mr. Ruff have this?

000353

MR. RUFF: No objection.

THE COURT: Okay.

Without objection it'll be so admitted.

That will be Defendant's Exhibit 19.

(Contract for Sale and Purchase
marked and entered into evidence as Defendant's Exhibit 19
without objection.)

Q. Mr. Jones, if you'd look at Plaintiff's Exhibit
7, Defendant's Exhibit 19, are those the two contracts enter
in to between International Society of Investors and the
seller, one for the 40 acres and one for the Wellington
Plantation property?

A. It would appear they are, yes, sir.

Q. And those are both dated on the first page
October 12?

A. Yes, sir, they are.

Q. And the seller in both cases, your company's
attorney put in LeGrande Lowther, Mitchell Lowther, et al,
correct?

A. That is correct, yes, sir.

Q. And et al, do you know what that stands for?

A. I do not.

Q. Do you know it means and others?

A. I do.

Q. Do you know why your attorney would have put the

000354

1 sellers are LeGrande Lowther, Mitchell Lowther and others
2 unless your attorney was aware that the seller was somebody
3 other than just LeGrande Lowther?

4 A. I can only speculate that --

5 Q. I don't want you to speculate. Is the answer you
6 don't know?

7 A. I do not know, yes, sir.

8 Q. Obviously, your attorney knew there was reason to
9 put more sellers on the page? Felt the need to do so?

10 A. I wasn't part of this so I can't answer that for
11 you, items.

12 Q. That was prepared by your company's attorney?

13 A. I believe so, yeah.

14 Q. They were both signed by Mr. Lowther, LeGrande
15 Lowther on October 24 and then accepted by your company on
16 November 21, 2005, correct?

17 A. November 21, 2005, yes, sir.

18 Q. And you testified earlier that LeGrande Lowther
19 was adamant that the 40 acres could be purchased by your
20 company, or Wellington, rather, could be purchased only by
21 your company if your company also agreed to purchase the 40
22 acres?

23 A. That's correct.

24 Q. All right.

25 He wanted this to be a package deal?

000355

1 A. Yes, sir.

2 Q. Buy them both or don't buy either one, correct?

3 A. No, sir. Buy the 40 acres and buy Wellington or
4 don't buy the 40 acres and don't buy Wellington.

5 Q. If you wanted Wellington you had to buy the 40
6 acres?

7 A. That's correct.

8 Q. And the Wellington property, your attorney left
9 the purchase price blank, apparently?

10 A. On the Wellington property?

11 Q. Yes, sir.

12 A. I don't know. I mean I see it filled in. I
13 don't know. I wouldn't have seen it before it was given to
14 Mr. Lowther for the final draft.

15 Q. And do you know if that's Mr. Lowther's
16 handwriting or if he filled in the purchase price and then
17 sent it back to your company?

18 A. I don't know.

19 Q. Do you know if that's why your company took over
20 a month to sign the acceptance, is because that was Mr.
21 Lowther's purchase price and your company was trying to
22 decide whether or not accept it or not?

23 A. There again, I don't know. I would not been in
24 the negotiation at that point.

25 Q. Okay.

000356

1 Very well could've been there was no deal at all
2 until that purchase price, the \$5,000,000 plus was agreed
3 upon, correct?

4 A. Ask me that again, I'm sorry.

5 Q. It very will could be that there was no deal at
6 all, oral or written, until that purchase price that Mr.
7 Lowther tendered back to your company, where he filled in
8 the blank was agreed upon on November 21, 2005?

9 A. I'm sorry, one more time. I'm sorry, I'm just --

10 MR. KUHN: I'll withdraw the
11 question. I think the answer's clear.

12 A. I'm sorry.

13 THE COURT: May I see the exhibit 19
14 that's just been admitted.

15 Any redirect, Mr. Ruff, briefly?

16 MR. RUFF: Your Honor, I don't
17 think I have any other redirect but I thought, I want to
18 make sure that these two exhibits were introduced. I think
19 they were, as part of Mr. Kuhn's submission, and if they
20 weren't, they're relevant here. It's the Amber Wind's deed
21 ultimately for \$810,000 and it's the HUD 1 from the Amber
22 Wind sale.

23 THE COURT: Clerk can make available
24 Defendant's Exhibits.

25 MR. KUHN: I have no objection.

1 THE COURT: Okay.

2 MR. RUFF: And I don't think I have
3 any other questions.

4 THE COURT: Okay.

5 Those documents, Rose, will be admitted
6 as Defendant's Exhibit in cirratum as long as you don't have
7 them already admitted.

8 MR. RUFF: Right. That's right,
9 Your Honor.

10 THE COURT: That it, then?

11 MR. RUFF: Well, that's it for Mr.
12 Jones, Your Honor, yes, sir.

13 THE COURT: Okay.

14 Thank you, sir. You're excused.

15 Okay.

16 We will adjourn now with the proviso,
17 hopefully, that we will resume either -- and I'll say Friday
18 morning at 9:30 or Monday morning at 9:30 to complete, my
19 preference being Friday. If you could each check as soon as
20 you can after leaving and let me put the onus on you,
21 please, to call Rose Reedy (ph), the clerk, and tell her
22 which of those is available, whether both are available.

23 And, Mr. Kuhn, I need you to do so as
24 well.

25 She'll expect to hear from y'all some

000358

1 time this afternoon.

2 Mr. Kuhn, if you're in court till five,
3 certainly we don't expect you to call till first thing in
4 the morning but we'd like to get this nailed down by first
5 thing in the morning.

6 MR. KUHN: My office tell me I'm
7 available both mornings if I can get someone to handle
8 something for me at family court Friday morning at 11:45.
9 So I should be available both times.

10 THE COURT: Well, again, we need to
11 know without qualification whether you are.

12 MR. KUHN: Yes, sir.

13 THE COURT: So we'll expect to have
14 this nailed down tomorrow morning. I'll just have the
15 attorneys there relevant parties.

16 MR. RUFF: One thing, Your Honor,
17 if there's a family court matter pending at 11:45, I don't
18 know what The Court's practice for this is but we would
19 consent to starting a little bit earlier than 9:30. I don't
20 know what The Court's --

21 THE COURT: Well, I think Mr. Kuhn
22 said he's gonna try to get somebody do that for him.

23 MR. RUFF: Okay.

24 MR. KUHN: Get Kimberly or Corey.

25 THE COURT: Yeah.

000359

1 I would not like to be constrained to
2 finishing it up in 2 hours and 45 minutes, given what we've
3 been through today.

4 MR. RUFF: All right.

5 THE COURT: So let's clear the decks
6 either for Friday morning or Monday morning and thank you
7 all for your attention and we'll stand in recess until the
8 date we resume, to be cleared up and coordinated with the
9 clerk.

10 MR. RUFF: Thank you.

11 MR. KUHN: Thank you, Your Honor.

12 WHEREUPON, Court recessed for
13 the day and reconvened on Friday, June 26, 2009.
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000360

1 -- FRIDAY, JUNE 26, 2009 --

2 THE CLERK: Beaufort County Probate
3 Court is now in session, The Honorable Kenneth E. Fulp, Jr.,
4 presiding.

5 Let the record show that the date is
6 Friday, June 26, 2009, and the time is approximately 9:30
7 a.m..

8 The matter before The Court is in
9 reference to case number 2007-ES-07-00655, The Estate of
10 Charles Eugene Lowther, to wit, Effie Sandra L. Turpin, et
11 al, Plaintiff, versus E. LeGrande Lowther, et al,
12 Defendants, continuation of trial on the merits.

13 Present in person before The Court is
14 for the plaintiffs Harley D. Ruff, Esquire, and R. Thayer
15 River, Jr., Esquire. For the defendants, H. Fred Kuhn, Jr.,
16 Esquire.

17 THE COURT: Okay. Thank you.

18 I didn't mind anybody'd mind getting
19 underway a couple of minutes early since everybody seemed to
20 be here.

21 Before I ask Mr. Ruff to call his next
22 witness I want to clarify, generally, my rulings from the
23 other day overruling Mr. Kuhn's motions, or objections to
24 the plaintiffs' testimony regarding things said by LeGrande
25 Lowther in contract negotiations and before and after the

000361

1 closing of the real property transaction at issue.

2 Generally, his objections were
3 based on hearsay and parole evidence rule grounds. The
4 Complaint in the matter alleges an action against the
5 defendants, causes of action for breach of fiduciary duty,
6 fraud and constructive trust, among others.

7 The Complaint specifically alleges
8 false representations by the defendant LeGrande Lowther,
9 that he knew representations were false and that the
10 plaintiffs relied on those representations to their
11 detriment. Those are just allegations; they are not
12 evidence.

13 With respect to the admissibility
14 of evidence on those causes of action the following legal
15 principals apply: Words offered to show notice or knowledge
16 on the part of the declarant or the hearer are not hearsay.
17 Out of court statements offered to show their effect on the
18 person hearing them is not hearsay. Proof of a statement to
19 show that a party relied and acted upon it is not hearsay.
20 Evidence offered to prove the declarant's state of mind is
21 an exception to the hearsay rule. Most important - and here
22 I do want to quote from the text I'm relying on, in part but
23 for this action, most importantly, words constituting fraud
24 or actionable deceit are admissible as non-hearsay. Such
25 words are not offered to prove the truth of the statements.

1 In fact, the words are usually offered in court to prove a
2 misrepresentation of the fact.

3 That is citing the case of State versus
4 Homewood (ph.), 2 41 South Carolina 2 31 1962, and,
5 generally, I have reference in those principals of law to
6 Craig's Treatise on South Carolina Evidence, Second Edition,
7 2000, section 16 point 8, pages 492 to 498 and the South
8 Carolina cases cited in it. It is a publication of The
9 South Carolina Bar.

10 In addition, rule 80 -- Excuse me, rule
11 8 0 1 D 2 A of The South Carolina Rules of Evidence provides
12 that a statement offered against a party, that is the
13 parties own statement, is not hearsay.

14 As to the parole evidence rule, the
15 testimony objected to was not offered and, certainly, will
16 not be considered to modify the terms of the written
17 contracts in question. Rather, the statements made by the
18 defendant are deemed relevant to the causes of action
19 asserted for fraud and breach of fiduciary duty and are
20 admissible as such.

21 I believe, as I indicated the other day,
22 that to follow Mr. Kuhn's construction, rigid construction
23 of the parole evidence rule, if you did that a contract
24 could never be challenge on grounds of fraud and that's not
25 what the law provides.

000363

1 It's also noted that The Doctrine of
2 Merger by Deed generally comes in to play where the terms of
3 a contract have been modified at closing such that other
4 deed -- such that they merge in to the deed that is
5 delivered to settle the transaction.

6 None of the foregoing that I've just
7 cited or stated is a ruling on the merits of this action,
8 simply a ruling on the admissibility of the evidence.

9 So with that clarification we'll open it
10 up for further evidence. Mr. Ruff, would you call your next
11 witness?

12 MR. RUFF: Yes, Your Honor.

13 Our next witness is the defendant Mr.
14 LeGrande Lowther.

15 EDWARD LEGRANDE LOWTHER.
16 first being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. RUFF:

19 Q. Mr. Lowther, would you please state your name for
20 The Court's record?

21 A. Yes. My name is Edward LeGrande Lowther.

22 Q. And, Mr. Lowther, you're the same Edward LeGrande
23 Lowther who's the defendant in this case?

24 A. Yes, I am.

25 Q. And you are one of the personal representatives

000364

1 of this estate?

2 A. Yes.

3 Q. Thank you.

4 How are you related to the decedent Mr. Lowther.

5 A. He is my father.

6 Q. Mr. Lowther, where do you live?

7 A. In Ridgeland, South Carolina.

8 Q. Okay.

9 And you own your own home there?

10 A. Yeah.

11 Q. What line of work are you in, Mr. Lowther?

12 A. I'm a general contractor.

13 Q. Okay.

14 And how long have you been in that line of work?

15 A. Thirty-something years.

16 Q. Okay.

17 And have you always worked on your own or have
18 you been in partnership with other people?

19 A. I started out in a partnership with my dad and
20 eventually went on to be on my own.

21 Q. Okay.

22 And you build residential homes or commercial?

23 A. I've done residential, commercial and industrial.

24 Q. Okay.

25 Have you been successful in your business

1 endeavors, in your view?

2 A. Yes, sir. I consider myself to be successful.

3 Q. Good. Okay.

4 MR. RUFF: With Court's permission,
5 I'd like to show Mr. Lowther Defendant's Exhibit 1, which is
6 right there, The Last Will and Testament.

7 Q. Mr. Lowther, you've seen this document
8 previously. This is your father's last will?

9 A. Yes.

10 Q. Can you identify this exhibit as his will? Or a
11 copy thereof?

12 A. Yes.

13 Q. Okay.

14 Mr. Lowther, let's go back to the date on which
15 this will was signed which was June 11, 2004. Mr. Lowther,
16 that was the date your father passed away, wasn't it?

17 A. Yes.

18 Q. Please discuss for The Court's knowledge your
19 background with this will and your dealings with your father
20 regarding the preparation of this will.

21 A. My dad had --

22 MR. KUHN: I'm gone object on
23 relevance grounds. The will's the will. What led up to the
24 creation of the will isn't, really, very relevant.

25 MR. RUFF: Your Honor, it is going

1 to be relevant. There's a clause that I'm gonna get to in
2 just a second where the decedent references Mr. Lowther's,
3 Mr. LeGrande Lowther's own desire not to be included in the
4 will and we think that's relevant to the issue of how these
5 assets flow from this estate.

6 MR. KUHN: I'll withdraw the
7 objection, Your Honor.

8 THE COURT: Okay. So noted.

9 Q. Please describe the events of June 11, 2004,
10 regarding the preparation and signing of this will.

11 A. Before my dad passed away and some months before
12 he had been trying to get his will made out, Last Will and
13 Testament, and I'd made a couple of appointments with
14 different attorneys to help him get it straightened out and,
15 of course, he broke both of those appointments. He just
16 didn't feel like going to see an attorney.

17 And he'd also asked Sandra to see if she could
18 help him out. And Sandra would ask me a couple of questions
19 from time to time on it and had a packet. I don't know. It
20 was like a Last Will and Testament, a standard form type
21 thing that --

22 Q. Go on.

23 A. And so, anyhow, Sandra had been working on it and
24 we had talked about what had to go in the will.

25 Q. Okay.

000367

1 A. Okay.

2 And, basically, that's how the will came about.
3 I'd had conversations with my dad and he had wanted me to be
4 the executor, the personal representative and I told him I
5 really didn't want to but finally I conceded that I would be
6 but I didn't want to be an heir to any of the property.

7 I had worked for what I had. I'd worked and paid
8 for what I had and I felt like I had brothers and sisters
9 that needed what he had. I've been successful in my
10 business. I've been fortunate and I didn't, I didn't want
11 anything from him in his will.

12 Q. Who actually typed or drafted this will?

13 A. I think, I believe Sandra did this.

14 Q. Your sister Sandra?

15 A. Yes.

16 Q. And you were there at the same time?

17 A. Yes.

18 Q. Okay.

19 I reference this language, Mr. Lowther - May I
20 hold this?

21 A. Yes, sir.

22 Q. - towards the bottom where it says that Edward
23 LeGrande Lowther, my son and partner in business show
24 receive the sum of \$1 and show not share in my estate. This
25 fulfills his desire to be excluded from any further

000368

1 inheritance.

2 Is that an accurate statement on your father's
3 part?

4 A. Well, I've never received any inheritance at all
5 from him, okay?

6 Q. This statement about your desire, though, is that
7 an accurate --

8 A. Yeah. Yes.

9 Q. And you stated --

10 A. I didn't want -- I didn't want to be given any of
11 the property that was his.

12 Q. Okay.

13 And you still feel that way?

14 A. Yes.

15 Q. Okay.

16 Mr. Lowther, I going to --

17 MR. RUFF: May I hold Plaintiff's
18 Exhibit 7?

19 A. Mr. Lowther, I'm gonna show you this document
20 which has already been introduce as Plaintiff's Exhibit
21 Number 7. This is the contract between LeGrande Lowther and
22 International Society of Investors. Do you recognize this
23 document, sir?

24 A. Yes, sir, I do.

25 Q. Okay.

000369

1 Can you please describe this document, what this
2 document is, sir?

3 A. This is a contract for sale of 40 acres that had
4 -- that had been part of my dad's estate. That was deeded to
5 the children.

6 Q. Who is that contract between, Mr. Lowther?

7 A. It's between myself and ISI.

8 Q. ISI being International Society of Investors?

9 A. Yes.

10 Q. Thank you.

11 Mr. Lowther.

12 A. Yes.

13 Q. You heard Mr. Mike Jones yesterday.

14 What was the first contact you had with any
15 principal of International Society of Investors regarding
16 estate property?

17 A. Back in February or March of 2005 Monty Perry and
18 Mike Jones contacted me and wanted to come down. They were
19 interested --

20 Q. Mike Jones being the same gentleman who
21 testified --

22 A. Yes.

23 They were interested in Wellington?

24 Q. Wellington?

25 A. Yeah.

000370

1 Q. All right.

2 Please describe what happened in your discussions
3 with them?

4 A. They came down and when I met Mike Jones I
5 realized who he was. His father was Hal Jones, the planning
6 commission who I had dealt with. I used to be on the Jasper
7 County Appeals Zoning Board.

8 Q. Okay.

9 A. And he was planning director and he'd issue
10 permits from time to time on the contracts that I was the
11 contractor.

12 We got to talking and he said do you want to sell
13 Wellington and I explained to him that, yeah, that I owned
14 half of it, my brothers and sisters own half of it and he
15 said, well, we're doing some due diligence and before we did
16 anything further we wanted to find out if it was for sale
17 and Mike had mentioned that his daddy had told him that it
18 was for sale.

19 And so we started taking. They asked me about
20 the property a few things about it and I told them what I
21 knew about it and that it's a good piece of property. So
22 they said we'll, we'll do our due diligence and this stuff
23 and work on this and we'll get back with you.

24 Q. You're still talking about the Wellington
25 property?

000371

1 A. Yeah, we talked strictly about Wellington right
2 now.

3 Q. All right.

4 Mr. Lowther, please describe your first contact
5 with anyone with International Society of Investors
6 regarding the 40 acre property.

7 A. The first contact, I think, I'm sure was when
8 Mike Jones came down to discuss Wellington in September of
9 2005. He came into my office.

10 Q. September?

11 A. Yes.

12 I'd just got back off of vacation.

13 Q. Mr. Jones yesterday the 40 acres being part of
14 your dealings was made - quote - early on -- end of quote.
15 So you're saying he's not telling the truth?

16 MR. KUHN: Your Honor, I object.
17 He's pitting one witness against the other and, of course,
18 I'd rely on Your Honor's memory of this testimony. He was
19 very uncertain as to when that first contact was.

20 MR. RUFF: No. He said early on
21 and it was June and July. I'm just -- For clarification,
22 Your Honor. We have contradiction in testimony and I'm
23 trying to get Mr. LeGrande Lowther's side of this.

24 MR. KUHN: The question was, is Mike
25 Jones telling the truth.

000372

1 MR. RUFF: That's for His Honor to
2 determine.

3 THE COURT: I think that will have
4 to be determined from the record. I think Mr. Ruff's
5 allowed to question this witness. I think it's clearly an
6 adverse situation. He's questioning an adverse party and I
7 think he's allowed to ask questions like this and I'm not
8 really understanding your objection.

9 MR. KUHN: He asked Mr. Lowther is
10 Mike Jones telling the truth when he said something
11 different from what Mr. Lowther said.

12 THE COURT: Okay.

13 I think under the rules of evidence we
14 have a hostile witness situation and I believe Mr. Ruff can
15 question as if on cross-examination and I gone allow him to
16 do so. You're overruled.

17 Q. And Mike Jones testified yesterday that the
18 dealings with the 40 acres were - quote - early on - end of
19 quote - and that they started in June or July. So you're
20 saying he's incorrect or he's not telling the truth.

21 MR. KUHN: I have an additional
22 objection.

23 MR. RUFF: That's the same question
24 I just asked.

25 MR. KUHN: Additional ground of

000373

1 objection is that that's an inaccurate summary of Mr.
2 Jones's testimony.

3 MR. RUFF: Well, Your Honor, it is
4 not, according to my notes that I have right here but the
5 transcript will speak for itself.

6 THE COURT: Well, again, if it's
7 inaccurate, then that will effect the value of the question
8 and the answer on review of the record.

9 Q. Keep going, Mr. Lowther.

10 A. Mr. Jones is mistaken because I never spoke with
11 him about till September when he bought a blank contract for
12 the Wellington tract. He came in to talk about Wellington,
13 bought a blank contract for us to look over.

14 Q. So your testimony is that the first contact
15 regarding the 40 acres, now, not --

16 A. Yes.

17 Q. The 40 acres.

18 A. Forty acres.

19 Q. Was in September of 2005?

20 A. Yes. It was right after I got back off of
21 vacation. I went end of August on vacation and when I got
22 back Mike wanted to meet with me.

23 Q. Was that in early September or late September --

24 A. No, it was early September, somewhere between the
25 third or fifth of September, if I'm not mistaken.

1 Q. Okay.

2 And do you have a diary or a calendar that you
3 looked at in --

4 A. No. I just remember when I got back off of
5 vacation that he was meeting with me early on.

6 Q. And was your vacation around Labor Day? Is that
7 why you --

8 A. No, it was -- It was the end of August, last week
9 of August.

10 Q. And you remember that?

11 A. Yes.

12 Q. Okay.

13 So, so your testimony, make sure I have this
14 straight here, and The Court has it straight. Your
15 testimony is that the first contact with International
16 Society of Investors regarding the 40 acres was sometime
17 between the third and seventh of September?

18 A. Yeah, somewhere in that neighborhood.

19 Q. Okay, sir. All right.

20 THE COURT: And, excuse me, Mr.
21 Ruff. This is rather awkward but I think we need some WD-40
22 on that chair but I just want to mention, Mr. Lowther,
23 when --

24 A. I can't hear it.

25 THE COURT: -- you're swiveling back

000375

1 and forth it's make a noticeable squeak.

2 Q. If you'll please explain to The Court, then, what
3 happened here in this first week of September. How did the
4 contact --

5 A. Well, Mike had come down to talk about Wellington
6 a little bit and to bring me a copy of what they were
7 proposing in their contract.

8 Q. Okay.

9 A. When he did that I mentioned to Mike, I said
10 Mike, there's a possibility that 40 acres may be come
11 available. And he asked me about it. I said, well, this
12 was part of my dad's property that was over there where his
13 house used to be. He says, well, we're familiar with that.
14 He said I thought it was under contract.

15 Q. Now, the 40 acres, you're referencing the same 40
16 acres --

17 A. Yeah.

18 Q. -- that's the subject of this action, right?

19 A. Yeah.

20 Q. Okay.

21 Go on, sir.

22 A. And he said, and Mike told me, said, well, I
23 thought that was under contract. I said, well, it was; the
24 people defaulted and now it's under litigation. I says I
25 can't -- we can't do anything with it right now because of

1 the lawsuit pending - and it's still pending today.

2 Q. Okay.

3 A. And he said -- And before he left I said do you
4 want to ride and look at where the land is at. He says I
5 know but let's ride over there.

6 Q. By the land you're --

7 A. The 40 acres.

8 Q. All righty.

9 A. And we rode over there. I showed him, kind of,
10 the boundaries of it and he said he would go back and talk
11 to Monty.

12 Q. And this showing of the land, this also happened
13 right there?

14 A. Yes.

15 Q. The first of September?

16 A. Same day he came to the house.

17 Q. All righty.

18 A. He said he'd go back and tell Monty about it and
19 see if they were interested in it but they were more
20 interested in the Wellington right now. He said, you know,
21 we need to get this, need to work on Wellington. I said
22 okay.

23 And I never heard from them.

24 Q. So there was no offer or acceptance for the 40
25 acres made then --

000377

1 A. Not at all.

2 Q. Okay.

3 What happened after that, Mr. Lowther?

4 A. The whole time this was going on and since mid
5 summer, since, actually, before then, I had been
6 negotiating. When the deal fell through, on the \$600,000
7 contract on the 40 acres fell through and it was under
8 litigation, I knew my brothers and sisters needed some money
9 and I started negotiating and --

10 Q. We'll get to that in just a second.

11 A. Well --

12 Q. I'm asking you --

13 A. -- you want to know --

14 Q. No, sir. I asked you about what went on then
15 between you and The International Society of Investors.

16 A. Nothing went on.

17 Q. After September?

18 A. Not till some time in very end of September or
19 October.

20 Q. Okay.

21 Well, and that's what I'm asking.

22 A. Okay.

23 Q. You said that nothing happened then from
24 September 3 and 5.

25 A. For about three weeks.

000378

1 Q. What happened with respect to your relationship
2 with International Society of Investors after that?

3 A. I approached Mr. Kuhn because I was wondering
4 about the 40 acres with the lawsuit, whether it could be
5 sold.

6 Q. Okay.

7 And he said, well, and he looked at the lawsuit
8 and the way it read Mr. Linguend (ph) or Bear Creek,
9 whatever, the one that had the lawsuit, they had a lawsuit
10 but they didn't tie the property. He said there was some
11 wording that you have to put to tie the property where you
12 can't sell it.

13 Q. Okay.

14 A. And I said, well, it can be sold? And he said,
15 yes, it can. I said, okay.

16 Q. So Mr. Kuhn gave you that advice in September?

17 A. Yes.

18 Q. Okay.

19 A. Very end of September.

20 Q. All right.

21 A. Okay.

22 Then couple days after that or within a week
23 after that I called Monty Perry who is the negotiator and
24 money man with ISI and asked him if he was interested in
25 buying, I had 40 acres, there was 40 acres and if he was

000379

1 interested in buying it. And he said where is it, and I
2 explained to him where it was at. And he, and Monty told
3 me, he said, LeGrande, I thought that was under contract. I
4 said, well, Monty, it was; the buyer defaulted, there's a
5 lawsuit pending but the land is not tied up where it can't
6 be sold.

7 Q. Why'd you have to tell him this land? Hadn't he
8 seen it, according to your testimony, back in early
9 September?

10 A. No. Mike saw it, not Monty.

11 Q. Okay. Already.

12 Go on,

13 A. Monty hadn't been back down. I hadn't seen Monty
14 back in Ridgeland since early spring.

15 Q. Okay.

16 A. I'd talked with him on the phone a couple of
17 times.

18 Q. So when did you resume this conversation?

19 A. Very first, very first of October. I told Monty
20 about the property and asked him if he was interested in it.
21 He said, well, he'd have to get back to me. He said let me
22 look it over. I said I showed it to Mike. He said, well,
23 Mike has said nothing to me about it. I said okay. Well, I
24 said it's here. He said I'm familiar with the property.
25 And so he said I'll get back with you in a couple of days.

1 And it was, it was, like, three or four days later he called
2 me back and said, yes, he was interested in the property.

3 Q. Monty Perry called you back?

4 A. Who?

5 Q. Monty Perry.

6 A. Monty Perry, yes.

7 Q. And this was still late September, early October?

8 A. Early October when he did that. It was early
9 October.

10 Q. Okay. All right.

11 And how many days after this was it? You said
12 three or four days?

13 A. About three or four days. He was gone call me in
14 two days and I know he didn't and I didn't call him back. I
15 said, well, if he's interested he'll call me.

16 Q. Okay.

17 A. And it wasn't long after that he called me.

18 Q. When he made this call to you three or four days
19 later, describe that phone call.

20 A. He called me and told me he was interested I
21 think.

22 Q. Okay.

23 A. And I said, well, then -- And he said -- I said
24 do you want me to try to get a contract up on it. He says,
25 no; he says I'll send you a contract similar to the other

1 one that Mike brought you for Wellington.

2 Q. What else did you discuss about the property in
3 this phone call?

4 A. We talked about a price.

5 Q. Okay.

6 And was discussed - because this is very
7 important - the negotiations you had about the price in this
8 phone call.

9 A. Yeah.

10 Q. Go ahead.

11 A. He asked me what I wanted for the property and I
12 told him what I wanted. I told him I wanted \$800,000.

13 Q. In this phone call?

14 A. Yes.

15 Q. And what did he say?

16 A. Actually, actually, let me take that. I told him
17 when he called the first day, when I called him the first
18 time and told about the property, he asked me then what I
19 wanted for the property and I told him \$800,000.

20 Q. Okay.

21 A. And he said I'll think about it and I'll call you
22 back, and he could me back --

23 Q. The first call, before --

24 A. Yes, yes.

25 Q. Okay. I'm with you.

1 A. Because that's what he wanted to think about the
2 price and what it was. He said, he said he would get me --
3 He called back and said, yes, I'm interested, we're
4 interested in the property. I said, well, do I need to try
5 to get a contract and let you look it over, you want to get
6 me on. He says, he says, my law firm up here, we'll get
7 one.

8 And so I sat there and waited on a contract from
9 him.

10 Q. So the late September or early October - I just
11 want to make sure your testimony.

12 A. October when that happened.

13 Q. Okay.

14 You talked to him?

15 A. Yes.

16 Q. You threw out a price of \$800,000?

17 A. Yes.

18 Q. Okay.

19 He said he'd think about it?

20 A. He'd think about it.

21 Q. And three or four days later he called you back
22 and what did he say, again?

23 A. He said, we're interested, we're interested in
24 getting that. He says we've got a few things we want to do,
25 a little bit of due diligence but I'll with -- I said do you

1 want me to try to get a contract together for you to be
2 looking over. He says, no, I'll take care of that.

3 Q. So he told you he was gonna write up a
4 contract --

5 A. Yes.

6 Q. -- three or four days after you made that offer
7 to him?

8 A. Yes.

9 Q. For \$800,000?

10 A. Yes.

11 Q. So he accepted your price --

12 A. He said, he said he would buy for that, yes.

13 Q. By he meaning The International Society --

14 A. The international society, yeah.

15 Q. This was done right beginning of October?

16 A. Yes, sir. Within the first -- Within the first
17 week fact October.

18 Q. All right. Thank you, Mr. Lowther.

19 So you made this deal with I over the telephone.
20 Then what happened?

21 A. Nothing.

22 Q. Nothing?

23 A. He kept on and I kept calling him and I didn't
24 get a contract; I didn't get anything from him.

25 Q. Let's go back to this contract. This is what we

1 introduce yesterday as Plaintiff's Exhibit 7.

2 Who prepared this, this contract, Mr. Lowther?

3 A. I would assume Russell Law Firm who is his
4 attorney, prepared this contract.

5 Q. Okay.

6 And after this phone call there in the first week
7 in October where you were advised that he accepted the
8 \$800,000 purchase price, how'd this contract get in to you,
9 sir?

10 A. He finally sent me the contract. It came to me
11 in the mail, if I'm not -- I'm trying to think how I got
12 this contract.

13 It was -- It wasn't faxed.

14 Q. You'll note that the contract, on the front page
15 is dated October 12.

16 A. Yeah.

17 Q. About how much time elapsed between this phone
18 call the first week of October to when you physically
19 received this contract, regardless of how you received?

20 A. Some time, probably -- I probably got this
21 contract, probably in the neighborhood of a week.

22 Q. Okay.

23 A week after the phone call?

24 A. Yeah.

25 Q. Okay.

1 A. It was probably somewhere around the --

2 Q. All right.

3 Now, you said --

4 A. Eighteenth or nineteenth of October, something
5 like that.

6 Q. You said nothing happened in the meantime. Was
7 it frustrating to you --

8 A. Well, it's frustrating. I, I called Monty to
9 find out about the contract and, actually, call a couple of
10 times. A couple of times I couldn't get him. Finally I got
11 him. And he said it should be there any day.

12 Q. Okay.

13 A. And I think about three days after that it showed
14 up.

15 Q. Okay. All right.

16 And then what happened when you received this
17 contract you've testified about a week or so later?

18 A. I took it over to Mr. Kuhn's office to look it
19 over.

20 Q. Mr. Kuhn looked it over for you?

21 A. Yeah. Made some changes in it.

22 And I came in blank, just without any signatures
23 or anything. We looked it over, made some changes, signed
24 it and sent it back.

25 Q. Okay.

000386

1 May I hold it again, sir?

2 A. It looks we signed it on the twenty-fourth of
3 October. So I sent it out that day other the next.

4 Q. Okay.

5 Let's talk about those changes you're
6 referencing. I'm calling your attention to the second line
7 of page 1 of the contract.

8 The contract initially read a contract binding
9 between LeGrande Lowther comma Mitchell Lowther comma et al
10 comma hereinafter referred to as seller. There's a
11 delineation there marked over everybody's name --

12 A. Yeah.

13 Q. -- except yours with your initial. Who did that,
14 sir?

15 A. Well, undoubtably, I initialed it. I don't know
16 whether I did it or Mr. Kuhn did it.

17 Q. At the time this contract was entered in to this
18 property was part of your father's estate, correct?

19 A. Yes.

20 Q. Okay.

21 What made you, what made you strike everyone
22 else's name from the first paragraph of this contract, sir?

23 A. Because I had -- I had a deal with my brothers
24 and sisters from sometime in mid August to buy everything
25 from them so that they could receive some money. They

1 needed some money; part of them needed money. And I had
2 been negotiating with them during the summer, trying to see
3 what I could pay for the land. And before I went on
4 vacation I made an agreement with them, a verbal agreement
5 to buy all the property from them, each of them
6 individually.

7 Q. Now, yesterday Sandra Turpin testified that the
8 file approach you made to her - and it's according to her
9 calendar, which I Plaintiff's Exhibit 2 --

10 A. Yeah.

11 Q. -- was October 17. You're saying she's lying
12 about that?

13 A. I'm saying she's mistaken.

14 THE COURT: You know, Mr. Ruff, even
15 though it's cross-examination, to characterize what he has
16 testified previously as saying that a prior witness was
17 lying, I think that is, is going a little too far.

18 MR. RUFF: Mistaken.

19 THE COURT: Cross-examine him based
20 on what he's actually testified to.

21 Q. Your testimony is that you approached Miss
22 Turpin, who testify yesterday, in mid August?

23 A. No. I approached them before then.

24 Q. Before mid August?

25 A. I had been talking with them about -- This is

1 what I need to get back to. When the \$600,00 contract fell
2 through and we weren't able to sell the 40 acres, I know
3 they needed money and they had no way to get any. And I
4 started talking with each of them individually about buying
5 their property. And my initial offer to each of them for
6 the -- except for Mitchell because Mitchell had a bigger
7 portion of Wellington - was \$275,000.

8 Q. So your testimony is the first contact with
9 Sandra Turpin, your sister --

10 A. Yes.

11 Q. -- despite her testimony and her calendar --

12 A. Yes, despite all those facts.

13 Q. -- was before October 17

14 A. Yes, definitely.

15 Q. Second, your testimony is that your first contact
16 with Mitchell Lowther, despite his testimony yesterday, was
17 before October 17?

18 A. Yes.

19 Q. And your testimony is that your first contact
20 with Eugene, Charles Eugene Lowther, your brother, despite
21 his testimony yesterday, was also before October 17?

22 A. Definitely.

23 Q. You have an explanation, then, for the presence
24 of October 17 in Miss Turpin's calendar?

25 A. That's when I delivered the contract for them to

1 sign to proceed with the sale.

2 We had negotiated it; we had talked about it.
3 They each on individually agreed to a price. Mitchell,
4 actually, I offered Mitchell a price; he turned it down and
5 said he wanted this amount and I agreed to his terms.

6 Q. Well, I mean the testimony is they did agree to a
7 price. The question's when.

8 A. Yeah. And they agreed to it in August because
9 before I left to go on vacation and went to Mr. Kuhn's
10 office and asked him if he would start preparing the
11 contract so that when I got back that we could get this done
12 and get the brothers and sisters some money.

13 Q. Do you have any evidence whatsoever supporting
14 your allegation that you met with them in August of 2005 to
15 discuss buying them out before October 17?

16 A. Do I have any evidence?

17 Q. Other than what you're saying that but do you
18 have any proof of that at all?

19 A. Not on me. I could get some -- I could get some
20 testimony to verify that.

21 Q. But you don't have any?

22 A. Not here today, I don't.

23 Q. Now, you say you signed this contract on -- May I
24 have the contract back?

25 Signed this contract on the twenty-fourth,

000390

1 correct?

2 A. Yes.

3 Q. What'd you do then, sir?

4 A. I sent it back to Monty Perry.

5 Q. Okay.

6 Were there any other negotiations between you and
7 Mr. Perry or anyone else from that point forward regarding
8 the 40 acres?

9 A. No.

10 Q. Okay.

11 A. I just -- I couldn't get the contract back,
12 signed from Mr. Perry.

13 Q. Okay.

14 Mr. Perry signed the contract. The date's on it
15 is November 21, is that right?

16 A. I didn't even get it back then.

17 Yes, sir.

18 I didn't get it back till sometime in December.

19 Q. Okay.

20 A. I had Mr. Kuhn call him and find out what was
21 going on.

22 Q. And what was, you stated, the reason for the
23 delay there.

24 A. I don't know exact word of Mr. Kuhn over the
25 phone because Mr. Kuhn talked with him.

000391

1 Q. Okay. Okay. That's good. All right.

2 Well, then, let's go back to this phone call in
3 the first week of October, you said.

4 A. Yes.

5 Q. So your testimony is there were two phone calls,
6 other one, two phone calls --

7 A. Within days apart.

8 Q. -- in which you offered \$800,000 and the second
9 one during which Mr. Perry on behalf of ISI accepted
10 \$800,000 as the price?

11 A. Yes.

12 Q. Okay.

13 And were -- You said both those phone calls took
14 place in early, first week of October. Did they both take
15 place before October 12?

16 A. Yes.

17 Q. Okay. Thank you.

18 A. Yes.

19 Q. So you had a phone call. You got what you
20 thought was an agreement with him by phone before October
21 12, before this contract was drafted by Miss Russell.

22 A. Yes. We had a verbal agreement.

23 Q. When did you tell your brothers and sisters
24 about the sale to International Society of Investors?

25 A. You're talking about this one right here?

1 Q. Yes, sir, the sale of the 40 acres.

2 A. I didn't because I didn't have a sale; I had an
3 agreement. I did not have a sale.

4 Q. Okay.

5 When did you tell your brothers and sisters
6 about your agreement with The International Society of
7 Investors regarding the 40 acres.

8 A. I didn't tell them.

9 Q. Never?

10 A. Nope. I did not.

11 Q. Why not?

12 A. Because I had already had an agreement with them
13 to buy everything from them, individually.

14 Q. So you thought it was none of their business.

15 A. I had an agreement. We had a deal in August. I
16 was getting the paperwork prepared.

17 Q. So in your view were your dealings with
18 International Society of Investors any of their business?

19 A. Not in my opinion.

20 Q. No?

21 A. Yeah.

22 Q. Okay.

23 Your decision to not tell them anything about
24 International Society of Investors, was that your decision
25 or were you -- Was that someone else's decision or was it on

1 someone's advice?

2 A. Well, ultimately, it was my decision.

3 Q. Ultimately, it, ultimately, suggests that you
4 that you thought about it but explain the process you went
5 through in deciding to not disclose The International
6 Society of Investors transactions. Or contract, agreement
7 with your siblings.

8 A. Repeat that question because I'm trying to figure
9 out --

10 Q. You said, ultimately, it was my decision,
11 ultimately.

12 A. Yeah.

13 After consulting --

14 Q. That's what I'm getting at, consulting with who?

15 A. With my attorney.

16 Q. You mean Mr. Kuhn?

17 A. Mr. Kuhn about what I'd talked to Monty Perry
18 about and I said I need to find out if I needed to -- if
19 there's anything I need to do. He says, no, you don't have
20 a contract. He says you don't have a sale. He says you've
21 got verbal, a verbal agreement.

22 Q. So is it your testimony that he told you not to
23 tell your brothers and sisters?

24 A. He told me --

25 MR. KUHN: I'm gone object.

000394

1. A. -- it wasn't necessary.

2. MR. KUHN: Getting in to
3. attorney/client privileged communications here.

4. THE COURT: I sustain.

5. Q. Now, you admit you don't tell your brothers and
6. sisters about reaching the agreement with International
7. Society of Investors?

8. A. Once again, yes, sir, Mr. Ruff, I did.

9. Q. You did not tell them?

10. A. Did not tell them.

11. Q. And the testimony came out yesterday that you met
12. with your brothers and sisters, according to Miss Turpin's
13. calendar, on October 17 and 18 regarding their contracts?

14. A. I delivered the contracts on that day.

15. Q. And did you discuss your agreement with The
16. International Society of Investors with any of your siblings
17. on those dates?

18. A. No. I did not.

19. Q. Not with Sandra?

20. A. None of them.

21. Q. None of them.

22. Q. None of them?

23. A. None of them.

24. Q. The next legal point in time, in fact, after
25. that, based on the testimony and evidence we had yesterday,

1 the other day, was December 8 when there was a meeting at
2 Mr. Kuhn's office for the deeds to be sign. Were you
3 present at that meeting?

4 A. Yes, I was.

5 Q. December 8?

6 And at that meeting did you discuss with any of
7 your siblings your agreement with The International Society
8 of Investors?

9 A. No, sir. I wasn't asked by any of my siblings
10 about that and I did not discuss it with them.

11 Q. Did you discuss it with them?

12 A. No.

13 Q. Okay.

14 And that's despite the fact that they had signed
15 the contract in November?

16 A. Yes.

17 Q. Is that correct?

18 A. Yes.

19 Q. Okay.

20 And the next point in time was December 21, I
21 believe, what I called the other day, the closing meeting
22 where checks were disbursed and the deal was closed. Were
23 you present for that meeting, sir?

24 A. The deal was closed December 8. The deeds were
25 recorded, and everything, on the twenty-first and the HUD

000396

1 statement signed and money released. The deal, all the
2 deals were signed on December 8.

3 Q. That's right but the meeting that was testified
4 about the other day that was held on the twenty-first, were
5 you present at that meeting?

6 A. There wasn't a meeting held on the twenty-first.
7 That's today they came in individually and signed the HUD
8 statement and received their money.

9 Q. That's what -- I'm referencing that as a meeting.

10
11 Were you there --

12 A. No.

13 Q. -- for those transactions on the twenty-first?

14 A. No.

15 Q. Okay.

16 Now, on October 17 and 18, let's back to the
17 first of those three days.

18 A. Yes.

19 Q. Those are the dates that our clients testified
20 and the calendar bore out that you met with them regarding
21 the individual contracts, October 17 and 18, 2005?

22 A. Yes.

23 Q. Were you asked about other dealings, proposals or
24 offers of contracts regarding the 40 acres?

25 A. Not to my knowledge. I can't remember.

000397

1 Q. Not to your knowledge?

2 A. Yeah. I don't remember being asked anything
3 about it.

4 Q. You might've been asked about it, then?

5 A. Probably not.

6 Q. But it's possible?

7 A. No need for me to speculate.

8 Q. But it's possible?

9 A. I would remember it if I was asked.

10 Q. But you don't remember it?

11 A. And so, undoubtedly, I wasn't asked.

12 Q. Pardon me?

13 A. Undoubtedly, I wasn't asked because I would
14 remember that.

15 Q. You're now saying you do remember?

16 A. That's not what I said, Mr. Ruff. I said,
17 undoubtedly, it didn't happen or I would have remembered. I
18 was trying to recollect and, no, I don't remember any of
19 that.

20 Q. So now you're saying you're sure that you were
21 not asked on the seventeenth or eighteenth?

22 A. Yes.

23 Q. That's your testimony?

24 A. I was not asked.

25 Q. Okay.

000398

1 A. Okay.

2 Q. So once again, Miss Turpin was very emphatic that
3 she did ask you about that. She' mistaken?

4 A. She's mistaken.

5 Q. And Mitchell Lowther who said the same thing?

6 A. Yeah, Mitchell's mistaken.

7 Q. And Charles Eugene who was even more emphatic
8 than them the other day in testimony, he's mistaken, also?

9 A. Yes, he is mistaken.

10 Q. Let's talk about this meeting on December 8, the
11 deed meeting in Mr. Kuhn's office.

12 A. Yes.

13 Q. And you were there, right?

14 A. Yes, I was there.

15 Q. Okay.

16 Were you asked at that meeting about the
17 existence of other transactions, offers, contracts or
18 dealings with third parties regarding the 40 acres?

19 A. No, I was not.

20 Q. You're sure about that day?

21 A. I'm positive about that, at that meeting.

22 Q. Is there something that made you so sure right of
23 the bat about that meeting and not so sure --

24 A. I just remember --

25 Q. -- about the first of October?

1 A. Well, I'm sure about October 17 because I was not
2 asked about it on that day.

3 And I remember the discussions of the meeting on
4 the eighth.

5 Q. And you were there for the whole meeting?

6 A. Yes, the whole meeting.

7 Q. So once again, when Sandra testified that asked
8 you point blank about that on December 8 she's mistaken?

9 A. Yes, she is.

10 Q. And so is Mitchell?

11 A. Mitchell and Eugene.

12 Q. And so is Eugene?

13 A. Yes.

14 Q. And they're all mistaken when they testified, as
15 they did, that --

16 A. Yes.

17 Q. -- each other asked the same question of you at
18 closing, also, because they were all together?

19 A. Yeah.

20 Q. Everybody's mistaken except you?

21 A. I didn't say everybody's mistaken. I said those
22 three are mistaken.

23 Q. But it is your testimony that at all points from
24 the initial contact from International Society of Investors
25 about this property which you say is first week of