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RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Master-In- Equity

Mikell R. Scarborough, Judge

Case No. 2012-211963

William C Mitchell, Appellant.

v.

James T Helwig, Respondent.

RECORD ON APPEAL

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RECEIVED

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SC Court of Appeals

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Order of April 8, 2011

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C. Mitchell, Plaintiff, vs. James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2010-CP-10-5532 **ORDER**

FILED
2011 APR -8 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Presiding Judge:	Deadra L. Jefferson
Hearing Date:	February 22, 2011
Plaintiff's Attorney:	Pro Se
Defendants' Attorneys:	James Sullivan, Esq. Brian Duffy, Esq. Alec Beard, Esq. Andy Haselden, Esq. Christy Fargnoli, Esq.
Court Reporter:	Leah Dupree

This matter came before the Court on February 22, 2011, on motions filed on behalf of the Defendants, James T. Helwig, Michael L. Masiowski, and Elizabeth A. Masiowski (hereinafter collectively referred to as the Defendants), moving the Court to dismiss with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Complaint filed against the Defendants by the Plaintiff, William C. Mitchell. Defendant James T. Helwig's Motion to Dismiss was filed August 5, 2010, and Defendants Michael L. Masiowski and Elizabeth A. Masiowski's Motion to Dismiss was filed August 6, 2010. Present at the hearing was the Plaintiff, William C. Mitchell, who appeared without the representation of counsel. Appearing at the hearing on behalf of the Defendant James T. Helwig were Alec Beard, Esquire and Andy Haselden, Esquire. Appearing on behalf of the Defendants Michael L.

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Masiowski and Elizabeth A. Masiowski were Brian Duffy, Esquire and Christy Fargnoli, Esquire. At such time, the Court heard arguments from both sides and has since reviewed the pleadings and memoranda filed with the Court. For the reasons set forth below, the Defendants' Motions to Dismiss with Prejudice are granted as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and denied as to the causes of action for malicious prosecution and abuse of process.

FACTUAL AND PROCEDURAL BACKGROUND

According to the facts alleged in the Plaintiff's Complaint, in April 2001, Defendant Helwig contacted the Plaintiff about constructing a dock at a property located at 3088 Pignatelli Crescent, Mount Pleasant, South Carolina, property Defendant Helwig had recently purchased. (Compl. ¶ 4.) On April 23, 2001, Defendant Helwig signed a contract agreeing to pay Forty Thousand Five Hundred and 00/100 ($40,500.00) Dollars to the Plaintiff for construction of the dock. (*Id.* ¶ 5.) Along with the signed contract, Defendant Helwig sent a check to the Plaintiff for Thirteen Thousand Five Hundred and 00/100 ($13,500.00) Dollars as a deposit. (*Id.*) Sometime after forming the contract, the Plaintiff allegedly had material delivered to Defendant Helwig's property in Mount Pleasant. (*Id.* ¶ 11.) Defendant Helwig subsequently sent another check to the Plaintiff in the amount of Thirteen Thousand Five Hundred and 00/100 ($13,500.00) Dollars. (*Id.* ¶ 12.) While allegedly dealing with Defendant Helwig, the Plaintiff claims he also had ongoing contracts with Defendants Michael and Elizabeth Masiowski to construct docks at two separate locations for an alleged total price of Fifty-Eight Thousand Five Hundred and 00/100 ($58,500.00) Dollars. (*Id.* ¶ 14.) The Complaint further alleges that while working for the Masiowskis, the Plaintiff and Defendant Michael Masiowski had discussions related to Defendant Masiowski "buying into the Plaintiff's dock construction business." (*Id.* ¶ 16.)

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Between mid-July and August 5, 2001, the Plaintiff claims he discovered that Defendant Michael Masiowski had hired his entire work crew and formed a new dock construction company. (*Id.* ¶¶ 18–23.)

According to the Complaint, by August 6, 2001, the Defendants conspired with one another to breach their respective contracts with the Plaintiff to construct docks at the Defendants' properties. (*Id.* ¶¶ 24–26.) The Plaintiff further alleges that by August 6, 2001, the Defendants, in furtherance of their alleged conspiracy, hired the Plaintiff's crew while he was out of town. (*Id.* ¶¶ 26, 32–33.) According to the Plaintiff's own allegations, the Defendants each provided the Plaintiff with letters on August 6, 2001 terminating their respective agreements with the Plaintiff and demanded a return of money paid to the Plaintiff. (*Id.* ¶¶ 26–36.) The Plaintiff further alleges an attorney representing the Defendants sent correspondence to the Plaintiff on September 17, 2001 confirming the Defendants' position. (*Id.* ¶ 36, Ex. H.)

According to the Complaint, on December 12, 2001, "[t]he Plaintiff was arrested on a warrant for Breach of Trust and Obtaining Money Under False Pretenses." (*Id.* ¶ 40, 51.) The warrant for the Plaintiff's arrest was allegedly signed by Defendant Helwig. (*Id.* ¶ 40.) According to the Plaintiff's allegations, the Plaintiff believed the Defendants pursued the criminal action against him because he "had not given in to the threats, intimidations and complied with the demands of the Defendant[s] to refund the Defendant[s] the payment[s] which the Defendant[s] had made on the contracts with the Plaintiff." (*Id.*) According to the Complaint, the Plaintiff was first notified by his attorney in early January 2008 that the above-mentioned criminal proceedings had been dismissed. (*Id.* ¶ 43.) The Plaintiff then alleges he obtained a copy of the dismissal from the Charleston County Clerk of Court. (*Id.*)

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The Plaintiff filed suit against the Defendants on July 9, 2010, asserting five separate causes of action against the Defendants: civil conspiracy; tortious interference with a contract; intentional interference with business expectancy; malicious prosecution; and abuse of process. (*Id.* ¶¶ 48–54.)

The Defendants each filed Motions with this Court, requesting that this Court dismiss the Plaintiff's Complaint against the Defendants with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure based on the grounds that the applicable statute of limitations bars each and every cause of action asserted by the Plaintiff's Complaint against the Defendants. S.C. Code Ann. §§ 15-3-510, 15-3-530.[1]

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[1] In Defendants Michael and Elizabeth Masiowski's August 6, 2008 Motion, they also advanced an alternative request that the Court convert the Motion to Dismiss to one for summary judgment according to Rule 12(b). "A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading. Rule 10(c), SCRCP. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon the allegations set forth on the face of the complaint. However, on a 12(b)(6) motion, if matters outside the pleading are presented to and not excluded by a court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, SCRCP, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (holding trial court did not convert the 12(b)(6) motion into a motion for summary judgment by considering the HUD-1 Statement that was not attached to the complaint but was referenced therein and was attached to the respondent's memorandum in support of the motion to dismiss); Rule 12(b)(6), SCRCP. Here, Defendant Helwig's August 5, 2010 Motion to Dismiss included, as exhibits, the Indictment/Warrant Status Change Form indicating cases 2002-GS-10-0590 and 2006-GS-10-1202 were nol prossed; Defendants Michael and Elizabeth Masiowski's August 6, 2010 Motion to Dismiss included, as exhibits, the Indictment and Indictment/Warrant Status Change Form for case 2006-GS-10-1202; and the Memorandum in Support of Defendants Michael and Elizabeth Masiowski's Motion to Dismiss filed February 18, 2011 included the deposition transcript of Philip Middleton. While Defendants asked that their Motions be converted to one for summary judgment, all materials of record discussed in the body of this Order were either attached by the Defendants as exhibits to a pleading or memorandum in support of the Motions to Dismiss, and the Court finds that the conversion to summary judgment is not warranted. Further, the Court finds that discovery has not been completed and converting the Motion to one for summary judgment would be premature. Even if the Court were to treat the motion as one for summary judgment at this juncture, the statute of limitations issue sufficiently creates a question of fact on the causes of action for malicious prosecution and abuse of process. The Court notes that Defendant Helwig filed an Amended Motion to Dismiss on February 11, 2011 in which he advanced an alternative request that the Court convert the Motion to Dismiss to one for summary judgment. However, this Motion was not before the Court on February 22, 2011 as it was not on the Court's weekly motions docket. Nevertheless, as a result of this Order, the February 11, 2011 Motion to Dismiss becomes moot.

LEGAL STANDARD

According to South Carolina law, "[u]nder Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 376 S.C. 83, 87, 655 S.E.2d 736, 737 (2007). Furthermore, "[t]he decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint." *Id.* at 87, 655 S.E.2d at 737–38. In ruling on a motion to dismiss, the trial court must determine "whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Id.* at 87, 655 S.E.2d at 738. Accordingly, "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory," a South Carolina court must refuse to grant a motion to dismiss. *Id.*

CONCLUSIONS OF LAW

According to South Carolina statutory law, "[t]he periods for the commencement of actions other than for the recovery of real property shall be as prescribed in" Title 15, Chapter 3, Article 5 of the South Carolina Code of Laws. S.C. Code Ann. § 15-3-510. Certain provisions of Article 5 set forth the following limitations: "Within three years: . . . (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law." *Id.* § 15-3-530. South Carolina statutory law governing limitations on actions further states that "all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." *Id.* § 15-3-535.

According to South Carolina case law,

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and

> circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.

Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). Accordingly, "[t]he statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." *Id.* South Carolina courts applying Section 15-3-535 have reasoned that "the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another." *Kelly v. Logan, Jolley, & Smith, LLP*, 383 S.C. 626, 682 S.E.2d 1, 5 (Ct. App. 2009); *see also True v. Monteith*, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997).

Generally, South Carolina courts follow the principle "that an affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense." *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). Despite this general rule, the *Spence* court recognized the following exception:

> Most courts allow such defenses to be raised in a motion to dismiss under Rule 12(b) "when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense."

Id. at 124, 628 S.E.2d at 878; *see also Medlin v. South Carolina Farm Bureau Mut. Ins. Co.*, 325 S.C. 195, 196–97, 480 S.E.2d 739, 740 (1997) (dismissing case on limitations grounds at motion to dismiss stage where relevant facts were apparent from complaint).

According to the Plaintiff's own allegations, the claims for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy are based on

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actions taken by the Defendants in 2001, actions the Plaintiff admits full awareness of in his own allegations. (*See* Compl. ¶¶ 48–50.) The Summons and Complaint were not filed until July 9, 2010. Therefore, the Court finds the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy were not filed within the applicable statute of limitations and should be dismissed.

The claim for malicious prosecution, however, does not accrue until the prosecution is resolved in the prospective plaintiff's favor. *McBride v. School Dist. of Greenville* County, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2010) ("The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."); *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). For purposes of this motion only, the Court will regard the statute of limitations for the abuse of process claim as having the same starting point.

The parties agree that the Plaintiff's criminal prosecution for Obtaining Signature Under False Pretenses and Breach of Trust each ended with a *nolle prosequi* that were each signed December 21, 2006 and filed with the Clerk of Court on December 27, 2006.[2] Although that date is not expressly stated in the Complaint, the Complaint incorporates the public filing by reference. (Compl. ¶¶ 43, 51; *see, e.g., Secretary of State for Defence v. Trimble Navigation, Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (noting that when reviewing a Rule 12(b)(6) motion the court may properly take judicial notice of matters of public record)).

[2] Plaintiff's indictment number for the charge of Obtaining Signature or Property Under False Pretenses is 2002-GS-10-0590, and the indictment number for the charge of Breach of Trust is 2006-GS-10-1202.

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In any event, the December 27, 2006 filing of the documents resolving the criminal prosecution is properly before the Court as a public record of which the Court may take judicial notice. "When a court takes judicial notice of a fact it 'admit[s] into evidence and consider[s], without proof of the facts, matters of common and general knowledge.'" *South Carolina Dep't of Social Servs. v. Janice G*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) (quoting *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 377, 228 S.E.2d 108, 112 (1976)). "To be subjected to judicial notice, a fact must be of 'such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.'" *Janice G*, 383 S.C. at 227, 678 S.E.2d at 467 (quoting *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct.App.2002)).

According to South Carolina case law, the Court may "take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." *See Janice G*, 383 S.C. at 227, 678 S.E.2d at 467 (holding that the court could take judicial notice of acceptances and affidavits of services where they were filed with the family court and were, therefore, part of the record). Accordingly, the Court takes judicial notice of the public filing of the *nolle prosequi* for both the True Bill for Obtaining a Signature Under False Pretenses and the Grand Jury's Direct Indictment for Breach of Trust at issue here. However, while the Court may take judicial notice it would not be dispositive of the issue in this case, as the allegations of the complaint give rise to competing inferences on a question of material fact therefore making dismissal of the case under Rule 12(b)(6) inappropriate. *Osprey, Inc. v. Cabana Ltd. P'ship*, 333 S.C. 323, 332, 509 S.E.2d 275, 279 (Ct. App. 1998), *overruled on other grounds by I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

What the parties do not agree on, however, is whether that public filing or some

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reasonable time thereafter commences the statute of limitations for the malicious prosecution and abuse of process claims or whether the statute is triggered only by Plaintiff's actual notice of the resolution, which he contends was more than a year later, in early 2008. Plaintiff contends that he relied on his criminal defense attorney, Phillip Middleton, Esquire, to apprise him of the status of his criminal case, and he was first notified by his attorney in January 2008 that his criminal case was dismissed. (Pl.'s Reply to Def.'s Am. Mot. for Summary Judgment ¶ 7.) According to Philip Middleton, Esquire, he learned in the early months of 2008 that the case was dismissed after studying the Clerk of Court's website. (Middleton Aff. 7.) It was at this time that he informed the Plaintiff that the case had been dismissed.[3] (*Id.* at 8.)

According to South Carolina case law, filings with a clerk of court, particularly in cases where the plaintiff was a party, constitute constructive notice. *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 800 (Ct. App. 1997) (holding the statute of limitations began to run, at the latest, when the bond documents were publicly filed with the clerk of court at which time the residents had constructive notice). However, the Defendant's Motion to Dismiss is made pursuant to Rule 12(b)(6), SCRCP. In ruling on a motion to dismiss, the trial court must determine "whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Brazell*, 376 S.C. at 87, 655 S.E.2d at 738. Accordingly, "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory," a South Carolina court must refuse to grant a motion to dismiss. *Id.* Moreover, "where the

[3] During the hearing, the Court contacted the Charleston County Solicitor's Office who informed the Court that the solicitor in charge of the case handles the *nolle prosequi* of an indictment, and that solicitor prepares a status change form and files it with the Clerk of Court's office and, depending on the solicitor, generally notifies defense counsel. The Court informed the parties of this procedure during the hearing. The assistant solicitor handling Plaintiff's indictments, 2002-GS-10-0590 and 2006-GS-10-1202, was Kim Steele, Esquire who is no longer with the Charleston County Solicitor's Office. The Solicitor's Office pulled the Plaintiff's files containing these two indictments, but it did not contain any notation or letter indicating when or if defense counsel was notified of the *nolle prosequi*. The Solicitor's Office stated that this is not unusual, as notice to defense counsel is often given by phone or email. However, some assistant solicitors send letters or make a notation in their file of a notice of dismissal to counsel. In this instance Ms. Steele did not.

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allegations of the complaint give rise to competing inferences on a question of material fact, dismissal of the case under Rule 12(b)(6) is not appropriate." *Osprey*, 333 S.C. at 332, 509 S.E.2d at 279.

The statute of limitations is triggered "by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another." *Kelly*, 383 S.C. at 626, 682 S.E.2d at 5. The Court finds that the allegations in the Complaint give rise to competing inferences on a question of the material fact of whether the Plaintiff had inquiry or constructive notice of the *nolle prosequi.* Here, the Plaintiff's criminal prosecution for Obtaining Signature Under False Pretenses and Breach of Trust each ended with a *nolle prosequi* that were each signed December 21, 2006 and filed with the Clerk of Court on December 27, 2006. However, the Plaintiff contends that he and his attorney were actively engaged in negotiations with the solicitor's office and that during this process he relied on his criminal defense attorney to apprise him of the status of his case. The Plaintiff's criminal defense attorney testified by affidavit that he learned in the early months of 2008, after studying the Clerk of Court's website, the case was dismissed, and it was at this time that he informed the Plaintiff that the case had been dismissed. (Middleton Aff. 7.) Moreover, the Court is advised that it is the procedure of the Charleston County Solicitor's Office that the assistant solicitor in charge of the case handles the *nolle prosequi* of the indictment, and that the assistant solicitor does a status change form, files it with the Clerk of Court's office, and notifies defense counsel. The Plaintiff's file is void of evidence that the solicitor's office notified the Plaintiff's defense attorney. Though communication by the solicitor's office is often by email or telephone, the Court finds there is an inference raised by the pleadings as to when the Plaintiff received notice that his charges were dismissed. Accordingly, a dismissal pursuant to Rule 12(b)(6), SCRCP as

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to the causes of action for malicious prosecution and abuse of process is not appropriate.

Therefore, only the claims for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy must be dismissed as barred by the applicable statute of limitations.

CONCLUSION

Based on the analysis set forth above, the Defendants' Motions to Dismiss with Prejudice are GRANTED as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and the Defendants' Motions to Dismiss with Prejudice are DENIED as to the causes of action for malicious prosecution and abuse of process.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina
April 8, 2011

11 11-04-11

Order of December 29, 2011

(Order on following page)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2010-CP-10-5532
William C. Mitchell,	)	
	)	
Plaintiff,	)	**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT FILED ON BEHALF OF DEFENDANT JAMES T. HELWIG PURSUANT TO RULE 56**
	)	
vs.	)	
	)	
James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski,	)	
	)	
Defendants.	)	

FILED
2012 JAN -6 AM 10: 55
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on December 12, 2011, on a Motion filed by the Defendant James T. Helwig, moving this Court for an Order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in favor of the Defendant Helwig based on the failure of the Plaintiff to present a question of fact concerning the barring by the applicable statute of limitations of each and every remaining cause of action asserted by the Plaintiff's Complaint against the Defendant Helwig, or in the alternative, the failure of the Plaintiff to present a question of fact as to the elements required for the remaining causes of action, and therefore, the Court should dismiss the Plaintiff's entire action against the Defendant Helwig as a matter of law.

On December 12, 2011, the Court heard arguments from both sides on the matter and has since reviewed the record before the Court. For the reasons set forth herein, the Defendant Helwig is entitled to judgment as a matter of law as to all claims against him in this matter.

FACTUAL AND PROCEDURAL BACKGROUND

After reviewing the record, the Court finds the following facts to be undisputed: In April 2001, the Defendant, James T. Helwig, contacted the Plaintiff about constructing a dock at a property located at 3088 Pignatelli Crescent, Mount Pleasant, South Carolina, property the

Defendant Helwig had recently purchased. (Compl. ¶ 4.) On April 23, 2001, the Defendant Helwig signed a contract agreeing to pay $40,500.00 to the Plaintiff for construction of the dock. (*Id.* ¶ 5.) Along with the signed contract, the Defendant Helwig sent a check to the Plaintiff for $13,500.00 as a deposit. (*Id.*)

Sometime after forming the contract, the Plaintiff had material delivered to the Defendant Helwig's property in Mount Pleasant. (*Id.* ¶ 11.) The Defendant Helwig subsequently sent another check to the Plaintiff in the amount of $13,500.00. (*Id.* ¶ 12.) However, beyond delivering the above-mentioned material, the Plaintiff never actually began construction of the dock. (Mitchell Dep. 142:11–12, June 29, 2011; *see also* Thomas Dep. 26:12–24, Nov. 23, 2011.) Finally, on August 6, 2001, the Defendant Helwig provided the Plaintiff with a letter terminating his agreement with the Plaintiff and demanding a return of the $27,000.00 in payment. (*Id.* ¶¶ 26, 28, 30.) Subsequently, the Defendant Helwig was informed by the South Carolina Contractors' Licensing Board that the Plaintiff was not licensed at the time the Plaintiff entered into the contract to build a dock for the Defendant Helwig. (September 10, 2011 Letter from Stan Bowen to the Defendant Helwig; Helwig Dep. 28:21–29:1, May 31, 2011.) Furthermore, the Licensing Board informed the Defendant Helwig that the Plaintiff did not become licensed until June 6, 2001. (*Id.*) However, the Plaintiff was only licensed to build a dock with a maximum value of $30,000.00. (August 28, 2001 Letter from Stan Bowen to the Defendant Helwig.) When the Plaintiff declined to refund the Defendant Helwig the $27,000.00 paid to him, the Defendant Helwig decided to seek legal counsel. (*Id.* 7:12–18, 85:19–86:4.) On the recommendation of legal counsel, the Defendant Helwig decided to report the incident to the Mount Pleasant Police Department. (*Id.* 8:15–12:22.)

After the Mount Pleasant Police Department and the Charleston County Solicitor's Office performed an investigation, the Solicitor's Office determined probable cause existed for arresting

the Plaintiff on a charge of Obtaining Money by False Pretenses. (Knisley Dep. 22:3–17, July 28, 2011.) The Plaintiff was arrested on December 12, 2001. (Compl. ¶ 40, 51.) According to the record before the Court, the Plaintiff was later charged with Breach of Trust. A trial date was set for November 18, 2004. However, the Plaintiff failed to appear and a bench warrant was issued by the Court on December 7, 2004. A trial on the charges was then rescheduled for September 2006; however, the Solicitor's Office continued the trial. (Helwig Dep. 67:23–68:20.) The Solicitor's Office informed the Defendant Helwig that the trial could be tentatively scheduled for November or December 2006. (*See id.*) The Defendant Helwig could not be available for a tentatively scheduled trial on those dates. (*See id.*) Ultimately, the Solicitor's Office decided to dispose of the charges by *nolle prosequi* on December 21, 2006.

The Plaintiff filed suit against the Defendant Helwig on July 9, 2010, asserting five separate causes of action against the Defendant Helwig: civil conspiracy; tortious interference with a contract; intentional interference with business expectancy; malicious prosecution; and abuse of process. (Compl. ¶¶ 48–54.) According to the Plaintiff's own allegations, all of the claims are based on actions taken by the Defendant Helwig in 2001. (*See id.*)

On August 5, 2010, the Defendant Helwig filed a Motion to Dismiss with the Court and served the Plaintiff. On February 22, 2011, the Honorable Deadra L. Jefferson for the Charleston County Court of Common Pleas heard arguments on the Defendant Helwig's Motion. On April 8, 2011, Judge Jefferson filed an Order dismissing all causes of action asserted by the Plaintiff's Complaint, except for the malicious prosecution and abuse of process claims.

LEGAL STANDARD

According to Rule 56, "[t]he judgment sought should be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C. R. Civ. P. 56(c). According to South Carolina caselaw, "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

As explained by the South Carolina Supreme Court, "[i]n determining whether any triable issues of fact exist, the [trial] court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). If a court finds that the "evidence supports but one reasonable inference . . . , the question becomes a matter of law for the court." *Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 888 (1994). It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine. *Durkin v. Hansen,* 313 S.C. 343, 346, 437 S.E.2d 550, 552 (Ct. App. 1993). Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper. *Bloom v. Ravoira,* 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000).

CONCLUSIONS OF LAW

No Question of Fact Exists as to the Plaintiff's Failure to Commence the Remaining Causes of Action Within the Period of Three Years as Established by South Carolina Statutory and Case Law.

According to South Carolina statutory law, "[t]he periods for the commencement of actions other than for the recovery of real property shall be as prescribed in" Title 15, Chapter 3, Article 5 of the South Carolina Code of Laws. S.C. Code Ann. § 15-3-510. Certain provisions of Article 5 set forth the following limitations: "Within three years: (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law." *Id.* § 15-3-

530. South Carolina statutory law governing limitations on actions further states that "all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." *Id.* § 15-3-535.

According to South Carolina case law, "[t]he exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). Accordingly, "[t]he statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." *Id.* South Carolina courts applying section 15-3-535 have reasoned that "the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another." *True v. Monteith*, 327 S.C. 116, 118, 489 S.E.2d 615, 617 (1997).

The Defendant Helwig argues that no question exists regarding the fact that Plaintiff's remaining claims against the Defendant Helwig are time-barred by the limitations period set forth in South Carolina Code of Laws Section 15-3-530(5). Under the legal standard governing summary judgment motions, the Defendant Helwig argues no question of fact exists that the Plaintiff knew or by the exercise of reasonable diligence, should have known the remaining claims asserted in the Complaint might have existed more than three years prior to the Complaint's filing on July 9, 2010.

A. Malicious Prosecution

South Carolina courts require a plaintiff to prove the following elements when asserting a malicious prosecution claim:

(1) institution or continuation of original judicial proceedings, either civil or criminal;
(2) by, or at the instance of, the defendants;
(3) termination of such proceedings in plaintiff's favor;
(4) malice in instituting the proceedings;
(5) lack of probable cause; and
(6) resulting injury or damage.

Gaar v. North Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986).

While not addressed directly by a South Carolina appellate court, ostensibly, the statute of limitations begins to run on a malicious prosecution claim when the complained of proceeding terminates in a plaintiff's favor. *See Brooks v. City of Winston-Salem,* 85 F.3d 178, 183 (4th Cir. 1996) (claim for malicious prosecution does "not accrue until a favorable termination is obtained").

According to South Carolina law, filings with a clerk of court, particularly in cases where the plaintiff is a party, constitute constructive notice. *Berry v. McLeod,* 328 S.C. 435, 445, 492 S.E.2d 794, 800 (Ct. App. 1997) (holding the statute of limitations began to run, at the latest, when the bond documents were publicly filed with the clerk of court, at which time, the plaintiff residents had constructive notice). In similar cases involving matters of public record, South Carolina courts have evinced a willingness to find constructive notice for purposes of barring claims under an applicable statute of limitations. *Fuller-Ahrens Partnership v. South Carolina Dept. of Highways and Public Transp.*, 311 S.C. 177, 181–82, 427 S.E.2d 920, 922–23 (1993). As discussed in the *Fuller-Ahrens* decision, constructive notice is an integral part of our judicial system.

Although not binding in South Carolina, the Court finds instructive an opinion rendered in Texas state courts. In *Lang v. City of Nacogdoches*, 942 S.W.2d 752 (Tex. Ct. App. 1997), at the behest of the defendant, the plaintiff was arrested on February 4, 1990, for criminal trespass. 942 S.W.2d at 756. However, the charges were subsequently dropped on May 21, 1990. *Id.* Although the plaintiff had retained a criminal attorney and maintained frequent contact with his legal

representation, the plaintiff failed to discover the criminal charges had been dropped until December 5, 1991. *Id.* After discovering the charges had been dropped, the plaintiff filed a complaint on February 3, 1992, against the defendant, alleging a claim for malicious prosecution. *Id.* The defendant filed a motion for summary judgment, arguing that the applicable one year statute of limitations barred the plaintiff's malicious prosecution claim. *Id.* at 756–57.

After stating the general rule that the applicable statute of limitations begins to run when the alleged malicious prosecution ends, the *Lang* court addressed the plaintiff's argument that under the "discovery rule," the limitations period began on December 5, 1991, when the plaintiff's attorney informed him the criminal case had been dismissed. *Id.* at 758. Specifically, the plaintiff argued that he "exercised reasonable diligence to discover the status of the charges by repeatedly checking with [his] attorney and that [he] believed the charges were still pending during that time." *Id.*

Unconvinced by the argument, the *Lang* court found that "matters disclosed in public records filed in the county courthouse are not such circumstances where it is difficult for the injured party to learn of the [alleged injury]." *Id.* In general, the *Lang* court found that "a person is charged with constructive notice of the actual knowledge that could have been acquired by examining public records." *Id.* The *Lang* court further "concluded that interested parties are charged with constructive notice of the contents of documents recorded in the public records of the county." *Id.* Because the existence of and date of the dismissal were undisputed, the *Lang* court ruled that the plaintiff's malicious prosecution was barred by the applicable statute of limitations. *Id.*

After reviewing the above case law, this Court finds South Carolina courts apply the constructive notice doctrine in cases where the subject notice is filed with the Clerk of Court and thus publicly available to all interested parties. Moreover, this Court finds persuasive the *Lang* decision and adopts its reasoning.

In the instant case, neither party disputes that notice of the dismissal of the underlying criminal actions filed against the Plaintiff were filed with the Clerk of Court on December 27, 2006. The Defendant Helwig maintains that the filing of the dismissals in the public records, as a matter of law, placed the Plaintiff on notice as of December 27, 2006. Therefore, the Court should rule as a matter of law that the malicious prosecution cause of action asserted by the Complaint is time-barred pursuant to South Carolina Code of Laws Section 15-3-530. The Court agrees.

Following the reasoning provided in the *Lang* decision and the South Carolina cases finding constructive notice in matters involving public record, this Court finds the Plaintiff knew or by the exercise of reasonable diligence should have known the alleged favorable termination occurred, at the latest, on December 27, 2006, and as of that date, a claim for malicious prosecution might exist against the Defendant Helwig. According to South Carolina Code of Laws Section 15-3-530(5), the Plaintiff had until December 27, 2009, to file a malicious prosecution claim against the Defendant Helwig.

As noted above, the Plaintiff failed to file the Complaint until July 9, 2010, ~~the Plaintiff failed to file the Complaint until July 9, 2010~~. This Court finds that while examining the record in a light most favorable to the nonmoving party, no question of fact exists as to the Plaintiff's failure to file the malicious prosecution claim against the Defendant Helwig within the applicable statute of limitations. This Court finds the Plaintiff filed the malicious prosecution claim more than three and a half years after the Plaintiff knew or by the exercise of reasonable diligence, should have known he had a potential claim. Therefore, this Court dismisses as a matter of law the malicious prosecution cause of action asserted by the Complaint against the Defendant Helwig because no question of fact exists regarding the failure of the Plaintiff to bring the claim within the time period set forth in South Carolina Code of Laws Section 15-3-530.

B. Abuse of Process

Under South Carolina law, "[t]o successfully maintain an abuse of process claim, the plaintiff must show an ulterior purpose and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *Swicegood*, 379 S.C. at 351-52, 665 S.E.2d at 213. As opposed to malicious prosecution, the right to bring an abuse of process claim accrues when process is first used for an improper purpose, rather than when the proceedings terminate in favor of the Plaintiff. *See Yoost*, 925 N.E.2d at 771.

According to South Carolina law, "[t]he abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure." *Food Lion, Inc. v. United Food Commercial Workers Int'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002). Furthermore, "[a]n ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process." *First Union Mortgage Corp. v. Thomas*, 317 S.C. 63, 74, 451 S.E.2d 907, 914 (Ct. App. 1994). Finally, "[t]he improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself." *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997).

The allegations of the Complaint and the Plaintiff's deposition testimony confirm the Plaintiff knew or should have known he might have a claim for abuse of process, at the latest, by December 12, 2001. In the Complaint, the Plaintiff alleges that the Defendant Helwig "used the criminal justice process and held the Plaintiff hostage to the system to force the Plaintiff to refund payments made on contracts with the Defendant[s], as a mean[s] of extortion." (Compl. ¶ 54.) On December 12, 2001, "the Plaintiff knew, because Plaintiff had not given in to the threats, intimidations and complied with the demands of the Defendant's to refund the Defendants the payments which the Defendants had made on contracts with the Plaintiff[,] [t]he Plaintiff was

arrested on a warrant for Breach of Trust and Obtaining Money Under False Pretenses." (*Id.* ¶ 40.) According to the Plaintiff's own allegations, the Plaintiff at the time of his arrest in December 2001 believed the Defendant Helwig pursued the criminal action against him for the alleged improper purpose of extorting money from the Plaintiff.

In his deposition testimony, the Plaintiff confirmed he believed at the time of his arrest that the Defendant Helwig was pursuing charges against the Plaintiff to gain an objective not legitimate in the use of the process:

Q Okay. When you were arrested and you -- when were you arrested on the charges?
A 2001, I believe it was.
Q Late 2001, I believe. Correct?
A It seemed like it was in December. I'm not sure.
Q All right. When you were arrested, why did you think Mr. Helwig had pressed charges against you?
A Because he was pissed off I wouldn't give him his money back that I didn't owe and he wanted to prosecute me.
Q Okay. And you knew that as of -- at the time you were being arrested?
A That was my opinion, yes, sir.
Q Okay. I have your -- here it is. I'm looking at your Complaint, paragraph 54. All right. It's the abuse of process allegation, and in it -- and I'll just read it for you, and you can check if you want to: The . . . defendants negligently, willfully, with callous and reckless indifference used the criminal justice process and held the plaintiff hostage to the system to force the plaintiff to refund payments made on contracts with the defendants as a means of extortion. Okay?
A That's what I just said.
Q And that was your belief at the time that you were arrested?
A I don't know, that's what it states when this was filed.
Q Okay. Well, it's your allegation.
A There could have been ten beliefs at that time in 2001. You're asking me what this legal document states, that's what it states, yes, sir, as of the date that it's dated.
Q Okay. It's your allegation -- I think it's fair for me to assume that this is an opinion you had at the time you were being arrested.
A It could have been an opinion I had in 2001, I'm not sure.
Q Okay. You did just say that at the time you were arrested you believed that Mr. Helwig was pissed off and that you owed him money and that's why he had you arrested.
A And because I wouldn't refund it, he wanted to use the criminal process as a collection agency.
Q In 2001.
A Yes, sir.

(Mitchell Dep. 165:24–168:1) Therefore, as alleged on the face of the Complaint and as admitted

during his deposition, the Plaintiff believed as of December 12, 2001, that the Defendant Helwig had instituted process against him for an improper purpose.

As noted above, the Plaintiff failed to file the Complaint until July 9, 2010. This Court finds that while examining the record in a light most favorable to the nonmoving party, no question of fact exists as to the Plaintiff's failure to file the abuse of process claim against the Defendant Helwig within the applicable statute of limitations. This Court finds the Plaintiff filed the abuse of process claim well beyond three years after the Plaintiff knew or by the exercise of reasonable diligence, should have known he had a potential claim. Therefore, this Court dismisses as a matter of law the abuse of process cause of action asserted by the Complaint against the Defendant Helwig because no question of fact exists regarding the failure of the Plaintiff to bring the claim within the time period set forth in South Carolina Code of Laws Section 15-3-530.

CONCLUSION

NOW, THEREFORE, because the Plaintiff has failed to raise a genuine issue of fact as to his failure to file the abuse of process and malicious prosecution claims against the Defendant Helwig within the applicable statute of limitations, the Court grants the Defendant Helwig's Motion for Summary Judgment and dismisses the causes of action against him as a matter of law; and

IT IS FURTHER ORDERED THAT, having made that determination, the Court does not need to address the Defendant Helwig's motion for summary judgment as to the merits of the causes of action asserted by the Plaintiff against the Defendant Helwig.

AND IT IS SO ORDERED.

The Honorable Mikell R. Scarborough
Master-In-Equity, Charleston County

Dec. 29, 2011
Charleston, South Carolina

Order of April 23, 2012

No order has been written or filed, only the Form 4 was filed with the clerk of court by the Master-In-Equity.

See April 23, 2012,and December 12,2011 transcript for Ruling, and Form 4

(Transcript on following page)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-5532

William C. Mitchell — PLAINTIFF(S)

James T. Helwig, et al — DEFENDANT(S)

Submitted by: Master in Equity	Attorney for : ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

FILED
2012 MAY -1 PM 2:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol Nonsuit), ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP, ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed, ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : The Court hereby respectuflly denies Plaintiff's Rule 59(e) motion.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge — 3062 Judge Code — Date 4/30/12

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

Complaint

(Complaint on following page)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**IN THE 9th JUDICIAL CIRCUIT**
	)	**Case # 2010-CP-10-** 5532
COUNTY OF CHARLESTON	)	
	)	
William C. Mitchell	)	**COMPLAINT**
	)	**Jury Trial Requested**
Plaintiff	)	
	)	
VS.	)	
	)	
James T. Helwig,	)	
Michael L. Masiowski,	)	
Elizabeth A Masiowski,	)	
Defendants		

FILED
2010 JUL -9 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE –NAMED:

Plaintiff, William C Mitchell, by and through its undersigned attorneys, complaining of the above-captioned Defendants, alleges and says as follows:

1. **Plaintiff is a resident of Charleston County , South Carolina**

2. **Plaintiff is informed and believes that the Defendants above-named are Residents of the County of Charleston, South Carolina.**

3. **The subject of this action is Civil Conspiracy, Intentional Interference With Business Expectancy, Tortuous Interference With A Contract, Malicious Prosecution, Abuse of Process, by the above-named defendants.**

4. **That on or about the middle of April 2001, Plaintiff received a phone call from Mr. James T. Helwig who was living in New Jersey at the time. The Defendant stated that he had bought a house from Mr. John Hines located at 3088 Pignattelli Cresent, in Dunes West, Mt Pleasant, S C.**

Defendant Helwig stated that Mr. Hines had given him a copy of a dock construction proposal that the Plaintiff had given Mr. Hines to build a dock at 3088 Pignatelli Cresent , Mt Pleasant, SC. Plaintiff and Defendant talked telephonically about the docks construction and the price to build such a dock. We agreed on the construction and the price and Plaintiff sent the Defendant a contract, overnight by U.P.S. On or about April 20, 2001 this Defendant and the Plaintiff talked again about the proposed contract. We discussed the fact that this Defendant was at that time living in New Jersey but would in the future be moving to the Mt Pleasant address. That Plaintiff would build the dock future after in the Defendant Helwig had moved to Mt Pleasant. Plaintiff explained to this Defendant that Plaintiff had several contracts to build other docks ahead of this Defendant's but that Plaintiff would build this Defendant's dock as soon as possible. For this reason and due to uncertain weather ahead, no set time was put in the contract for the Plaintiff to start to build and to finish the dock for this Defendant.

5. **This Defendant signed the contract in the amount of Forty Thousand Five Hundred ($40,500.00) Dollars while this Defendant was living in New Jersey and sent it back to Plaintiff by U. P.S. , along with a check in the amount of $13,500.00 as deposit for the contract.**

See Exhibit "A" "B" & "C"

6. **Sometime later this Defendant call the Plaintiff and informed the Plaintiff that he was now in Mt. Pleasant, but was not yet living at 3088 Pignatelli Cresent address, but had rented a condo in Mt. Pleasant. This Defendant stated that he would like to see the new Dock Machine of the Plaintiff's at work, that this Defendant and Plaintiff discussed in the several prior telephonic conversations.**

7. **Plaintiff later met this Defendant and drove to Awendaw, S C were the Dock Machine was working. Plaintiff was building a dock with a 600 foot long walkway, with pier head and floating dock at said location.**

8. **This Defendant watched the Dock Machine at work, viewed the type of material used to build the dock, the type of construction, the crew that was working, etc. This Defendant and Plaintiff discussed the construction, the spacing of the docks decking and the reason for it. The piles and the treatment of the piles and lumber used to build this dock and later build this Defendant's dock. Plaintiff was at this time about 1/3 complete of the walkway for this dock in Awendaw, S C.**

9. **Plaintiff again explained to this Defendant that the plaintiff had one other dock to build before Plaintiff could start work on this Defendants dock.**

10. **This Defendant and the Plaintiff talked about Plaintiff's construction and the construction of other dock builders. This was several weeks after we had entered into a contract to build this Defendants dock. Plaintiff told this Defendant that the Plaintiff had built a dock across the creek from this Defendant's property on Darts Cove another local dock builders had also built a dock on Darts Cove. That if this Defendant wanted to see the difference in construction, we could go and look at the dock built by the Plaintiff's competitor on Darts Cove. The Plaintiff and this Defendant later went and looked at the dock on Darts Cove that one of Plaintiff's competitors had built.**

11. **Later, the material for this Defandants dock was delivered to 3088 Pignatelli Cresent. This Defendant met the Plaintiff there and saw the material delivered. This Defendant informed the Plaintiff that Defendant did not want the material placed on the back lawn for this Defendant**

was having some work done to the lawn and the material would be in the way of his yard work. In order to place this material were this Defendant waned it to be placed, Plaintiff had to remove the front gate going to the back yard and also removed several sections of the fence across the back of the property. The Plaintiff and the driver from the supplier that delivered the construction material placed the construction material for this Defendant's dock behind the fence line at the Defendants property were his dock was to be built. This Defendant had not moved into the Pignatelli Cresent address as the Defendant was re-modeling and building additions to the house.

12. This Defendant paid the Plaintiff the second payment of $13,500.00 under the terms of his contract. See Exhibit "A"

13. While delivering the material to build the dock at this Defendants property on Pignatelli Cresent. The Plaintiff while at the property saw and talked to the building superintendent for Defendant Helwigs remolding and additions. Plaintiff had previously met this superintendent who was also building the house on Adrian Way for Michael & Elizabeth Masiowski. The superintendent told Plaintiff that he and Michael & Elizabeth Masiowski were doing the re-modleing and addition for Mr. Helwig. Plaintiff did think much about this comment at the time. Mr. Helwig's dock was the next dock that Plaintiff was going to build.

14. At this time Plaintiff, his foremen and work crew was working on a dock for Michael & Elizabeth Masiowski, at 3809 Adrian Way, Park West, Mt Pleasant. Plaintiff also had a second contract with Michael & Elizabeth Masiowski to build a dock at 1799 Greely Rd., Park West, Mt Pleasant

S C. The two Contracts totaled Fifty Eight Thousand Five Hundred ($58,500.00) Dollars. The dock on Greely Road for Defendant's Michael & Elizabeth Masiowski was to be built after Mr. Helwigs dock was built. See Exhibit "D" & "E"

15. On or about the middle of July, 2001, the Plaintiff along with a full crew of men were building the dock for Michael & Elizabeth Masiowski at 3809 Adrian Way, Mt Pleasant, S. C. Plaintiff's crew only lacked about two week to complete this dock.

16. During the construction of the dock on Adrian Way, the Defendant's Michael & Elizabeth Masiowski and the Plaintiff had several conversations about them buying into the Plaintiff's dock construction business. Michael Masiowski stated to the Plaintiff that he had for a long time wanted to get in the dock building business. We talked about him buying into Plaintiff's dock construction business for around $100,000.00. Plaintiff explained to these Defendant's that Plaintiff was going out of town, and we would talk about this when Plaintiff returned.

17. On or about the middle of July 2001, Plaintiff's foreman, James Carter, who was the only person on the crew trained to operate the new dock machine, and who had worked for the Plaintiff several years, told the Plaintiff that he and the other men on the crew had been approached at the job site, about starting a new company to build docks and being paid more money. Plaintiff ask who had come to this job and talked to them about this. James Carter would not tell Plaintiff.

18. Plaintiff told James and the crew of men working that he was going to be out of town the last 10 days of the month and Plaintiff needed them to complete the dock before Plaintiff got back. Plaintiff told James that the

Plaintiff had made arrangement for him to call and give his report to a friend of the Plaintiff and to pick up the checks for every worker on Friday. Plaintiff gave James the name and phone number of the Plaintiff's friend to turn in his report and pick up his and the crew's checks.

19. **Plaintiff was out of town the last of July until the 4th of August, 2001.**

20. **The Plaintiff called on Thursday to get James report and to ok the checks for James and the crew. Plaintiff was informed that James had not called and had not turned in any reports. Plaintiff tried to call James but to no avail.**

21. **The Plaintiff then ask the friend Plaintiff had left the checks for the men with to go by the job at Adrain Way, to check the work and talk to James. The Plaintiff received a call back that no work was being done at the job on Adrian Way, and that neither James nor the crew were at the job. Plaintiff continued to try to call James but to no avail.**

22. **Plaintiff returned to Charleston, S C on Sunday, August 4, 2001. Monday August 5, 2001, Plaintiff went to the Masiowski job site on Adrian Way.. Neither Plaintiff's foreman nor any of the crew was there for work. Plaintiff tried to call James and the other men of the crew but to no avail.**

t

23. **Plaintiff received a call that night, Monday, August 5th, 2001 from Defendant, Michael Masiowski. The Defendant asks the Plaintiff how the Plaintiff was going to finish the job with no crew. The Plaintiff did not understand at that time why the Defendant Masiowski would make such a statement. Plaintiff at that time did not know that the Defendant's Masiowski had already hired the Plaintiff's foremen and entire work**

crew and formed a new dock construction company, owned by the Defendant's. These Defendant's then ask me to meet him at the Adrian Way job site the following morning, Tuesday August 6th,, 2001 at 10 AM.

24. The next morning, Tuesday, August 6th, 2001, Plaintiff was at the Adrian Way job site at 10 A M. The Defendants Dr. Masiowski and Mr. Helwig both show up together and the exact same time.

25. Plaintiff did not understand how Mr. Helwig knew Plaintiff was going to be at the job site on Adrian Way, that Tuesday, morning at 10 AM. Plaintiff had not spoken to Mr. Helwig about the contracts with Michael & Elizabeth Masiowski and had not spoken to Mr. Helwig about the Masiowski job site on Adrian Way. Plaintiff had not spoken to Mr. Helwig, and had not informed him that Plaintiff was going out of town for the previous 10 days, nor when Plaintiff would return.

26. The three Defendants had already at that time agreed and entered into a conspiracy to cancel three contracts with the Plaintiff to build docks for the three Defendants totaling Ninety Nine Thousand $99,000.00) Dollars. These Defendants then planed to have the newly formed dock construction company, that was owned by the Defendants to take over the three contracts and build the three docks. The Defendant's knew from the conspiracy with each other when the Plaintiff was going to be out of town and when the Plaintiff was to return and when the Plaintiff was to be back at the Adrian Way job site.

27. The Defendants had in fact already formed a new dock construction company, hired the Plaintiff's foremen, and entire work crew and prepared letters to give to the Plaintiff canceling these Defendant's contracts with Plaintiff. See Exhibit "F" & "G"

28. **The Defendants Dr. Masiowski and Mr. Helwig arrived at the Adrian Way job site in separate vehicles but together and at the exact same time. The Defendants both got out of their vehicles, walked together over to where Plaintiff was standing. Defendant, Dr. Masiowski first handed Plaintiff a letter canceling his two contracts, then the Defendant, Mr. Helwig handed Plaintiff a letter canceling his contract. The Defendant's then without conversation turned and went back to their vehicles and left the job site.**

29. **Plaintiff had two contracts with Defendants, Michael & Elizabeth Masiowski totaling Fifty Eight Thousand Five Hundred ($58,500,00) Dollars, and the letter stated they were canceling both contracts.**

See Exhibits "D" "E" & "F"

30. **Plaintiff had one contract with Defendant, Helwig totaling Forty Thousand Five Hundred ($40,500.00) Dollars, and his letter stated he was canceling it. See Exhibits "A" & "G"**

31. **Plaintiff was in shock, disbelief and could not understand what was going on. Plaintiff's only reply was he would be in touch with them later.**

32. **Plaintiff later that day was able to reach James Carter, the Plaintiff's foremen. Mr. Carter informed the Plaintiff that he and the rest of the crew were now working for a new dock construction company that the Defendant's Masiowski owned.**

33. **Mr. Carter further informed the Plaintiff that he and the Plaintiff's former crew , now working for the new dock construction company, owned by the Defendant's Masiowski and were going to complete the dock at 3809 Adrian Way, build the dock at 3088 Pignattlli Cresent and then build the dock at 1799 Greely Road.**

34. **This is the same three docks that the Plaintiff had valid contracts to build for the three Defendants.**

35. **Three contracts that were wrongfully canceled totaling Ninety Nine Thousand ($99,000.00) Dollars, and Plaintiff was left with no foreman, no crew, and the Plaintiff did not know where his dock building tools or equipment was located. The Plaintiff was in shock to say the least because he was shut down.**

36. **Plaintiff then retained Attorney Stanley C Rogers in Mt Pleasant, SC, and Attorney Rogers contacted the Defendants who informed him that Attorney Dennis E. O'Neill office was representing the Defendants.**

See Exhibit "H"

37. **Plaintiff then met with Defendant Dr. Masiowski, at Attorney Dennis O'Neill office along with another Attorneys in the Attorney O'Neals office. Defendant, Dr. Masiowski and Plaintiff agreed that the Defendants would pay the Plaintiff the $5,000.00 due on the job on Adrian Way and the balance when the Plaintiff completed the job, that Plaintiff would complete the job at 3809 Adrian Way. That after that the Plaintiff would discuss the remaining contracts with the Defendant's. The Defendant Dr. Masiowski agreed to pay the Plaintiff the $5,000.00 the following Friday.**

38. **In the mean time the Plaintiff had put an ad in the Post &Courier in Charleston, S C , to hire and train a new crew and an operator to be trained to operate he Plaintiff's dock machine.**

39. **Friday came and the Defendant's, Michael & Elizabeth Masiowski, failed to pay the Plaintiff the $5,000.00 as agreed. Plaintiff informed the**

Defendant's that due to the letter the Defendants had given the Plaintiff canceling these Defendant's contract, that until the $5,000.00 that was past due was paid the Plaintiff could not do any more work on the dock construction at 3809 Adrian Way.

40. The next thing the Plaintiff knew, because Plaintiff had not given in to the threats, intimidations and complied with the demands of the Defendant's to refund the Defendant's the payment's which the Defendant's had made on the contracts with the Plaintiff. The Plaintiff was arrested on a warrant for Breach of Trust and Obtaining Money Under False Pretense. The warrant was signed by James T Helwig.

See Exhibit "I"

41. During the following years up until the time the case was dismissed, Plaintiff remained under great pressure, mental and emotional distress, financial investment loss and damages, and loss time, because of the aforesaid actions of these Defendant's.

42. Plaintiff was forced to retain an Attorney to defend the Plaintiff. Required to post a Bond in order to be released from jail. Over the next several years Plaintiff was repeatedly and continuously required to appear in court. Each time the case would be put off by the other side. Each time the Plaintiff was told that if Plaintiff would agree to refund the monies paid under the terms of the contracts to the Defendant's, that the charges would be dismissed. Each time Plaintiff refused. Plaintiff had not done anything wrong and refused to be threatened, intimated and coerced. The Plaintiff repeatedly requested a jury trial. Each time the case was continued by the prosecutor.

43. Plaintiff was first notified by Plaintiff's Attorney Philip Middleton, in early January 2008, that the above- mentioned case had just been

dismissed. (Plaintiff only a short time before had again been summoned to General Sessions Court for trial. The Plaintiff, Plaintiff's Attorney Phillip Middleton, witness James Carter, the Plaintiff's previous foremen, appeared at court for trial. The Plaintiff's attorney and Plaintiff then were told again by the prosecutor that the case would not be tried at that time, but was continued). Plaintiff's Attorney Phillip Middleton instructed the Plaintiff to go to the Charleston County Clerk of Court's office and get a copy of this dismissal and bring it to his office. Plaintiff's Attorney Phillip Middleton told the Plaintiff that he wanted to see the reason stated for the dismissal. Plaintiff immediately went to the Clerk of Courts office, got a copy of the dismissal and took it to Plaintiff's Attorney Philip Middleton office. Plaintiff's Attorney Phillip Middleton at that time confirmed to the Plaintiff that the case had been dismissed. See Exhibit

44. When Plaintiff had previously went by the job site at 1799 Greely Rd, Park West, Mt Pleasant and saw James Carter (The Plaintiff's former foreman and the previous crew that worked for the Plaintiff) working on the same dock that Plaintiff had a contract on.

45. Plaintiff was later told by James Carter that Mr. Carter he had went to LLR, in Columbia, S C in take the test to get a contractor's license, for the newly formed dock construction company, but that he had failed the test. Mr. Carter also told the Plaintiff that the building superintendent working on the house on Adrian Way and Pignatelli Cresent for the Defendant's had also taken the contractor's license test, for the newly formed dock construction company, owned by the Defendant's, but he had also failed the test.

46. Plaintiff some months later saw James Carter and was told by James Carter that because no one working for the new dock construction

company, owned by the Defendant's could pass the contractor's license test and therefore could not get a contractor's license, that the new dock construction company had gone out of business. South Carolina State Law requires that any dock costing more than Five Thousand dollars to build, be build by a state licensed general contractor.

47. **That on or about August 6, 2001, the Defendants did negligently, fraudulently, willfully, knowingly, with reckless and callous indifference and malice canceled these contracts. The Defendants then attempted by threats of criminal arrest and intimidation, to force the Plaintiff to refund the payments the Defendant's had made on the contracts. The Defendant's entered into an agreement and conspiracy to cancel the Defendant's three contracts totaling Ninety Nine Thousand ($99,000.00) Dollars with the Plaintiff. The Defendant's hire the Plaintiff's foreman and entire work crew, for the Defendant's newly created dock construction company, to take over the three contracts and build said docks. The Plaintiff has suffered financial loss and damages because of the Defendant's action.**

See Exhibit's "A" "E" & "D"

FOR A FIRST CAUSE OF ACTION

Civil Conspiracy

48. **Plaintiff re-alleges Plaintiff's 1 to 47 of his above set forth allegations That on or about the middle of July 2001, the Defendant's did negligently, fraudulently, willfully, knowingly, with reckless and callous indifference, and with malice did entered into an conspiracy to tortuously interfere and cancel three contracts the Defendant's had with the Plaintiff to build docks for the Defendant's totaling some Ninety Nine Thousand ($99,000.00) Dollars. That the Defendant's had knowledge of all three contracts and conspired together to cancel the three contracts**

and force the Plaintiff by threats of criminal arrest and intimidation to refund payments made by the Defendants on the three contracts. The Defendant's did in fact cause the Plaintiff to be arrested. Plaintiff's 40. The Defendant's also planned to hire and in fact did hire the Plaintiff's entire experienced work crew, including the Plaintiff's foreman. The Defendant's knew and understood that by hiring the Plaintiff's entire work crew it would cause Plaintiff to stop work on the dock construction contract, at 3809 Adrian Way, as well as not have an experienced working crew and trained foreman to complete the other two contracts Plaintiff had with the Defendant's. The Defendant's knew from past experience how hard it was to hire trained and experienced workers in the dock construction business. The Defendant's knew and understood that by hiring Plaintiff's entire experienced work crew and trained foreman they would be able to start the Defendant's newly formed dock construction business, have money from the three existing contracts, have a experienced work force for future contracts and work, as well as experienced workers to complete the three contracts the Defendant's previously had with Plaintiff. The Defendant's did in fact cancel these contracts. The Defendant's planned and deliberately conspired together and waited until the plaintiff was out of town to carry out this initial part of the conspiracy. The Defendant's did hire the Plaintiff's trained and experienced work crew and foreman and did start a new dock construction company. Then upon Plaintiff's return the Defendant's did in fact cancel the Defendant's three contracts totaling Ninety Nine Thousand ($99,000.00) Dollars. The Defendant's knew that this would close down the Plaintiff's dock construction business, and virtually put the Plaintiff out of business, and at the least, temporarily eliminate the Plaintiff from future competition. The Defendant's conspiring together, agreed that upon the Plaintiff returning from out of town, the Defendant's would and "did in fact" show up at the Adrian Way, "dock" job site, together and at the exact same time. The Defendant's together at

that time, gave the Plaintiff letters canceling all three contracts. The Defendant's had on that date, already hired the Plaintiff's foremen (James Carter) and the entire work crew, and Defendant's started their own dock construction company. All of which cost the Plaintiff financial loss and damages.

See Exhibit "A" "D" & "E"

FOR A SECOND CAUSE OF ACTION

Tortuous Interference with a Contract

49. **Plaintiff re-alleges Plaintiff's 1 to 48 of his above set forth allegetions. That Defendant's did negligently, fraudulently, willfully, knowingly, with reckless and callous indifference and malice, cause each Defendant to cancel contracts they had with the Plaintiff totaling Ninety Nine Thousand ($99,000.00) dollars, for their improper purposes of personal and financial gain. The Defendant's interfering with the Plaintiff's prospective economic advantage, to defraud and cheat the Plaintiff out of the Plaintiff's profits and livelly hood. This was a deliberate and planned action by the Defendant's. That the Defendant's meant to put the Plaintiff out of business, cause emotional and financial loss and other damage to the Plaintiff and to use these funds to start their own dock construction company, by methods that are not within the privilege of fair competition. That the Plaintiff suffered financial loss and damages because of the Defendant's action.**

See exhibit "A" "D" & "E"

FOR A THIRD CAUSE OF ACTION

Intentional Interference with Business Expectancy

Plaintiff re-alleges Plaintiff's 1 to 49 of his above set forth allegations.

50. The Defendant's did negligently, fraudulently, willfully, knowingly, with malice, and callous and reckless indifference, tortiously interfered with the contracts between Plaintiff and the Defendant's and interfered with the Plaintiff's prospective economic advantage and causes to be canceled contracts totaling Ninety Nine Thousand ($99,000.00) Dollars between the Plaintiff and Defendant's for their own personal and financial gain and greed. That without the Defendant's misconduct Plaintiff would have continued in the contracts and realized the expectancy. That the Plaintiff suffered financial loss and damages because of the Defendant's actions.

See Exhibits "A" "D" & "E"

FOR A FOURTH CAUSE OF ACTION

Malicious Prosecution

51. The Plaintiff re-alleges Plaintiff's 1 to 50 of his above set forth allegations. That the Defendant's did negligently, maliciously, willfully, knowingly with callous and reckless indifference and without probable cause have the Plaintiff, William C Mitchell arrested and incarcerated on or about December 12, 2001. That the original case was terminated in favor of the Plaintiff in December, 2008. That the Defendant's played an active role in the original case. That the Defendant's acted without reasonable or just cause or excuse.

52. That Defendant's had fraud, malice and improper motive in instituting such criminal proceedings. The Defendant's actions were motivated by fraud and for the Defendant's personal and financial gain.

53. **The Defendant's attempted to force the Plaintiff to give the Defendant's refunds of the monies paid to Plaintiff under the terms of a legitimate contracts, in order that the Defendant's Masiowski would have the monies from their contracts for larger profit's for these Defendant's own new dock construction company and to put the Plaintiff out of business competition with these two Defendant's. That for seven years the Plaintiff suffered emotional and mental distress, anguish, financial loss, pecuniary damages, and attorney's fees in defending the criminal charges.**

See Exhibit " I"

FOR A FIFTH CAUSE OF ACTION

Abuse of Process

54. **The plaintiff re-alleges Plaintiff's 1 to 53 of his above set forth allegations.That Defendant's negligently, willfully, with callous and reckless indifference used the criminal justice process and held the Plaintiff hostage to the system to force the Plaintiff to refund payments made on contracts with the Defendant's, "as a meant of extortion". The plaintiff has suffered financial loss and damages because of the Defendant's actions.**

See Exhibit "A" "D" "E" & "I"

Whereas Plaintiff prays for a judgment against the Defendants in actual and punitive damages in the amount of Five Million ($ 5,000.000.00) Dollars, plus attorney's fees, cost of this action and such other relief as the Court may deem proper.

This 9 day of July, 2010
Charleston, S C

William C Mitchell Pro Se
9452 Koester Road
P O Box 332
Ladson, S C 29456
(843) 797-7538

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE 9TH JUDICIAL CIRCUIT
CASE No: 2010-CP-10- 5532

WILLIAM MITCHELL,

Plaintiff,

-vs-

James T Helwig
Michael L Masiowski
Elizabeth A Masiowski

Defendant.

FILED
2010 JUL -9 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

VERIFICATION OF COMPLAINT

I VERIFY that I have read the attached Complaint, and that I, William Mitchell, individually have furnished all information available to me, and to my attorney. Except as to allegations made upon information and belief, which allegations I do believe to be true, all other allegation are true based on my personal knowledge and my personal records or information available to me.

William Mitchell Pro Se
9452 Koester Road
P O Box 332
Ladson, S C 29456
(843) 797-7538

SWORN to before me this
9 day of July 2010.

Notary Public for South Carolina
My Commission Expires: February 21, 2016

My Commission Expires

BILL MITCHELL
MARINE CONTRACTOR & SALVOR

Phone: 843-797-7538
FAX 843-824-8670
PO BOX 60908
N. CHARLESTON, SC 29419
9452 KOESTER ROAD - LADSON, SC 29456

PROPOSAL AND ACCEPTANCE

TO James T. Helwig
3088 Pignattelli Crescent, Dunes West
Mt Pleasant, S C 29466

PHONE 216-7655 | DATE 4-18-01

JOB NAME / LOCATION
Same

Phone 609-252-1940 Fax 609-252-1941

OCRM 98-039-J | JOB PHONE 843-881-2293

We hereby submit specifications and estimates for:

Furnish all labor, equipment and material for the following dock system;

1- Walkway , 4' wide by 450' long with handrails on both sides.
2- Pierhead and Floating Dock , lay out to suite owner per 120'Sq.Ft on permit or as amended by O C R M, with two benches and handrails.
3- Alum . Ramp as mfg. By Carolina Water works..
4- Boat Lift , four pile 7,000 lbs with remote control
5- Include conduit for water to Pierhead, EXTRA
6- Subcontract electricals for lift., EXTRA
SEE ATTACHED DRAWINGS FOR DETAILS AND SPEC'S.

All Lumber to be Southern Yellow Pine # 2 , C C A 40
All Piles to be 6" tip's , Marine Treated C C A 2.5
All nails , bolt's , screw's etc. To be Galv.

We Propose hereby to furnish material and labor - complete in accordance with the above specifications, for the sum of:
Forty Thousand Five Hundred & NO/100 dollars ($ 40,500.00

Payment to be made as follows:
A payment of 1/3 the above upon signing this agreement, A payment of 1/3 upon delivery of material , A payment of ½ the remaing balance upon completion of ½ the above work Balance in full upon completion of above described work

Owner to carry fire, tornado and other necessary insurance. It is further understood and agreed that any and all monies paid under this contract are a simple payment on this contract, and any such monies and/or payments paid hereunder, are not a payment in trust, and not required to be held in any particular manner, or for any specified purpose and no accounting is required for the use of same. No monies paid herein are implied or expressed to be a payment in trust.

Authorized Signature

Note: This proposal may be withdrawn if not accepted within days.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Authorized Signature James T. Helwig 4/23/01

Signature

Date of Acceptance:

Exhibit "A"

SEAWALLS-BULKHEADS
RIP-RAP
REPAIRS

PIERS
FLOATING DOCKS
BOAT LIFTS

Page No. of Pages

BILL MITCHELL
MARINE CONTRACTOR & SALVOR

Phone: 843-797-7538 843-572-9754 PO BOX 60904
FAX 843-824-8670 N. CHARLESTON, SC 29419
9452 KOBSTER ROAD - LADSON, SC 29456

PROPOSALAND ACCEPTANCE

TO Mr John Hines
3088 Pignatelly
Mt Pleasant . S C

James T. Hellwig (Jim)
3089 Pignatelli Crescent
MT Pleasant, SC 29466
609-252-1940 - Princeton
1941 - Fax
effec 5/1/01 - 843-216-7655 - MT Pleasant

PHONE 884-0244

DATE 8-31-00

JOB NAME / LOCATION
Dunes West

JOB PHONE

OCRM-98-038-J

We hereby submit specifications and estimates for:

Furnish all labor, material and equipment for the construction of the following

1 - Walkway - 4' wide x 450' long
2 - Pierhead - 10' wide x 10' long
3 - Ramp - Alum./plywood deck 3' wide by 16' long
4 - Floating Dock - 8' wide x 8' long
all Piles 2.5 Marine treated
all Timber CCA .40 ground contact
all bolts, screws, nails are galv.
5 - Handrails after = $4,580.00
(Center Runner)

We Propose hereby to furnish material and labor - complete in accordance with the above specifications, for the sum of:

Twenty Nine thousand Five Hundred dollars ($

Payment to be made as follows

25 Percent of Buyer signing this agreement, a payment of Buyers Delivery of Material. Balance in full upon Completion

Owner to carry fire, flotation and other necessary insurance. It is further understood and agreed that any and all monies paid under this contract are a simple payment on this contract and any such monies and/or payments paid hereunder, are not a payment in trust, and not required to be held in any particular manner or for any specified purpose and no accounting is required for the use of same. No monies paid hereto are implied or expressed to be a payment in trust.

Authorized Signature

Note This proposal may be withdrawn by us if not accepted within 30 days

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Authorized Signature

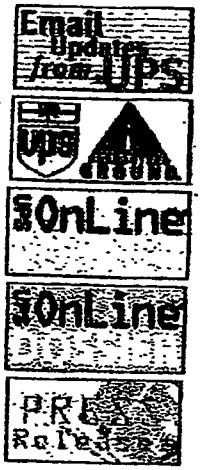
Signature

Date of Acceptance

Exhibit "B"

Exhibit "C"

UPS Tracking Information



SHIPMENT TRACKING — TRACKING RESULTS

UPS ONLINE TOOLS™

Tracking Summary

To see a detailed report for each package, please select the De button.

TRACKING NUMBER	STATUS	
1. N380 0409 366	Delivered	Delivered on: Apr 20, 20(8:52 A.M. Delivered to: US Signed by: J HELWIG Service Type: NEXT DA

Tracking results provided by UPS: Apr 20, 2001 4:18 P.M. E Time (USA)

NOTICE: UPS authorizes you to use UPS tracking systems solely to tr shipments tendered by or for you to UPS for delivery and for no other pu Any other use of UPS tracking systems and information is strictly prohit

Top of Page

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| Back to Yahoo |

http://www.wwapps.ups.com/tracking/tracking.cgi

REPAIRS FLOATING DOCKS BOAT LIFTS

Page No of Pages

BILL MITCHELL
MARINE CONTRACTOR & SALVOR

Phone: 843-797-7538
FAX 843-824-8579
9452 ROESTER ROAD - LADSON, SC 29456
PO BOX 60909
N. CHARLESTON, SC 29419

PROPOSAL AND ACCEPTANCE

TO: Michael & Elizabeth Masiowski
2741 Palmetto Blvd
Mt Pleasant, S C 29464

PHONE 216-0046 DATE

JOB NAME / LOCATION
3809 Adrian Way, Park West S/D

OCRM permit
00-264-R

JOB PHONE
224-6515

We hereby submit specifications and estimates for:

Furnish all labor, material and equipment for the construction of the following dock system;

1- Walkway, 4' wide by 340' long with handrails both sides.
2- Pierhead, 10' wide by 12' long, with hand rails.
3- Alum. Ramp, 3' wide by 16' long
4- Floating dock, 4' wide by 10' long.

SEE ATTACHED DRAWINGS FOR DETAIL'S AND SPEC'S.

Credit to be given for any material furnished by owner (BM)

$9000 ck

We Propose hereby to furnish material and labor

Twenty Seven Thousand Five Hundred & NO/100 dollars ($ 27,500.00)

Payment to be made as follows:

A payment of 1/3 the above upon signing this agreement. A payment of 1/3 the above upon delivery of material. A payment 1/2 the remaining balance upon completion of ½ the above work. Balance in full upon completion of above described work.

Owner to carry fire, tornado and other necessary insurance. It is further understood and agreed that any and all monies paid under this contract are a single payment on this contract and any such monies and/or payments paid hereunder, are not a payment in trust, and not required to be held in any particular manner, or for any specified purpose and no accounting is required for the use of same. No monies paid herein are implied or expressed to be a payment in trust.

Authorized Signature

Note: This proposal may be withdrawn by us if not accepted within days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature

Date of Acceptance:

Exhibit "D"

REPAIRS FLOATING DOCKS BOAT LIFTS

Page No. of Pages

BILL MITCHELL

MARINE CONTRACTOR & SALVOR

Phone: 843-797-7538
FAX 843-824-8678
PO BOX 60888
N. CHARLESTON, SC 29419
9452 ROESTER ROAD - LADSON, SC 29456

PROPOSAL AND ACCEPTANCE

TO: Michael & Elizabeth Masiowski
2741 Palmetto Blvd.
Mt Pleasant , S C 29464

PHONE: 216-0046

DATE: May 15, 2001

JOB NAME / LOCATION: 1799 Greeley Rd, Park West S/D

OCRM Permit: 00-765-R

JOB PHONE:

We hereby submit specifications and estimates for:

Furnish all labor , material and equipment for the construction of the Following dock system;

1- Walkway , 4' wide by 260' long with hand rails both sides.
2- Pierhead , 10' wide by 12' long with handrails.
3- Alum. Ramp , 3' wide by 16' long
4- Floating dock , 4' wide by 10' long.
5- Four pile boat lift , 10,000 lbs with remote control

SEE ATTACHED DRAWINGS FOR DETAIL'S AND SPEC'S.

$ 1000 initial
$ 1000 balance due by May 1st

We Propose hereby to furnish material and labor – complete in accordance with above specifications, for the sum of:

Thirty One Thousand & No/100 dollars ($31,000.00)

Payment to be made as follows:

A payment of 1/3 the above upon signing this agreement. A payment of 1/3 the above upon delivery of material. A payment of 1/2 the remaining balance upon completion of ½ the above work. Balance in full upon completion of above described work.

Owner to carry fire, tornado and other necessary insurance. It is further understood and agreed that any and all monies paid under this contract are a single payment on this contract and any such monies and/or payments paid hereunder, are not a payment in trust; and not required to be held in any particular manner, or for any specified purpose and no accounting is required for the use of same. No monies paid hereto are implied or expressed to be a payment in trust.

Authorized Signature

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature

Date of Acceptance:

Exhibit "E"

Michael L. Masiowski, M.D.
2741 Palmetto Hall Blvd.
Mt. Pleasant, SC 29464
Home Phone 843-216-0046

August 05, 2001

Exhibit "F"

Bill Mitchell
9452 Koester Road
Ladson, SC 29456

Dear Mr. Mitchell,

This letter concerns several issues in regards to the construction of our Dock at Lot 9 Melrose, 3809 Adrian Way, and the Planned construction of a Dock at Lot 1 Melrose, 1799 Greeley Rd. These properties are located in the Park West subdivision in the Town of Mt. Pleasant, S.C.

You were hired to construct the dock at Lot 9 in a timely fashion. In our discussions, you stated that the dock would take two to three weeks to complete. You were also made aware of the impending sale of this property and the importance of the timely completion of the dock. I was also led to believe that the dock would be constructed using a pile driver.

The construction of the dock began five weeks ago and the dock is less than half way completed. Furthermore, the piles have not been driven, they have been jetted. Of greatest concern is the fact that little or no work has been done in the last two weeks (none in the last week) and that during that time there was no significant weather which would cause such delay. On a project that should take no more than three weeks, two weeks of inactivity (unrelated to weather) should, and shall be, considered non-performance.

I have attempted to contact you several times during the past week. I have left messages that have not been returned. I have tried your cellular phone without success.

For the above stated reasons I find it necessary to take the following actions:

1. Our agreement concerning Lot 1 Melrose is immediately terminated. I expect prompt return of the Ten thousand dollar deposit paid to you. You are not to purchase any material for this job and you are not to visit the job site.

2. You are to resume active construction of the dock located at Lot 9 Melrose no later than August 8, 2001. This should include no less than 4 full time workers and the remaining piles should be driven. At this time speed is of the essence, and the dock shall be completed within 2 weeks.

3. If active construction of the dock does not resume by August 8, 2001 our agreement shall be terminated.

Sincerely,

Michael Masiowski

Exhibit "J"

August 6, 2001

Mr. Bill Mitchell
9452 Koester Road
Ladson, SC 29456

Dear Mr. Mitchell,

This letter is to inform you that, effective immediately, I am terminating your services to build a dock at our home at 3088 Pignatelli Crescent, Mount Pleasant, SC 29466 and am requiring a return of amounts ($27000.00) paid to you in good faith as progress payments. I am regretfully taking this action because you have not performed reasonably and under terms of our agreement. An abbreviated chronology of events follows:

- **April 18, 2001**-Agreement signed and payment off $13500.00 rendered to you.
- **May 19, 2001**-Dock permit assignment sent to you upon closing of our home sale. You acknowledged receipt and said all paperwork would be processed through OCRM. (As of August 4, 2001, OCRM had no record of my permit.)
- **June 12, 2001**-Partial material delivered to our home. Fence removed on our property to accommodate. You said the dock would be started on June 18, 2001. We remitted a second payment of $13500.00 to you at this time, even though the material was to be delivered in installments.
- **June 26, 2001**-We returned from a trip and found no work had been done on the dock. I initiated several phone calls to you and received no reply.
- **July 6, 2001**-You came to our condo and stated that the dock would be started by mid-week of July 9.

1. OCRM had not approved the application
2. No plans

The July 6 visit was the last contact I have had with you despite my repeated calls requesting we talk and meet. In the interim period, you even started a new dock in Park West ahead of ours. Efforts to meet you there on four occasions were fruitless.

It has now been seven weeks since the June 18 promised start date. We have no dock;

much of the material has warped; our backyard landscaping has been delayed; and our property has been in disarray waiting for delivery of all the material due. Also, you apparently never contacted OCRM to execute our permit, as you stated you had. We are extremely disappointed with this situation and your failure to communicate with us for more than a month.

I expect prompt reimbursement of advance payments ($27000.00) made to you.

Sincerely,

JT Helwig

James T. Helwig
3088 Pignatelli Crescent
Mount Pleasant, SC 29466

LJR.

CC: Stan Bowan, Licensing Enforcement = 896-4856
Mark Caldwell, OCRM
J. Lynn McCants, Attorney at Law P.O. Box. 11329

29211-1329

1-803-896-4364

Exhibit "H"

DENNIS E. O'NEILL
ATTORNEY-AT-LAW, L.L.C.

1473 Stuart Engals Blvd.
Mt. Pleasant, S.C. 29464
Telephone: (843) 884-9494
Telefax: (843) 971-9282

Post Office Box 160
Mt. Pleasant, S.C. 29465

1002 Landfall Way
Seabrook Island, S.C. 29455
Telephone: (843) 768-9494
Telefax: (843) 768-1212

September 17, 2001

Stanley C. Rodgers, Esquire
300 West Coleman Blvd.
Mt. Pleasant, SC 29464

RE: Helwig vs. Mitchell
Masiowski vs. Mitchell

Dear Stanley:

I am writing on behalf of my clients, Dr. and Mrs. Michael Masiowski and Mr. James T. Helwig, in relation to their respective claims against Mr. Bill Mitchell doing business as Bill Mitchell Marine Contractors. I have enclosed for your review a photocopy of correspondence received by Mr. Helwig in which Mr. Helwig is informed by the South Carolina Contractor Licensing Board that Mr. Mitchell was first issued a South Carolina General Contractors License on June 6, 2001.

In light of the fact that Mr. Mitchell was not a licensed General Contractor at the time he entered into contracts with Dr. and Mrs. Masiowski and Mr. James T. Helwig, the contracts entered into by Mr. Mitchell are null and void.

Dr. Masiowski is willing to permit your client to keep the funds paid for the construction of the dock at Adrian Way. However, he demands the immediate return of the $10,000.00 deposit paid for the dock at the Greelcy Road location, upon which no work has taken place.

Mr. Helwig demands the immediate return of the $27,000.00 paid by him to Mr. Mitchell on April 18th ($13,500.00) and June 12th ($13,500.00) for which no work has been done to the dock to be located at 3088 Pignattelli Crescent, Mt. Pleasant.

If Mr. Mitchell does not return these funds to Dr. Masiowski and Mr. Helwig to my office on or before October 1, 2001, your client may be assured that Dr. and Mrs. Masiowski and Mr. Helwig will pursue all available legal remedies against him.

Thank you in advance for your prompt attention to this matter and for your client's anticipated cooperation. I am

Sincerely yours,

Dennis E. O'Neill
Attorney at Law, L.L.C.
DEO/bv

Enclosure
cc: Dr. and Mrs. Michael Masiowski
Mr. James T. Helwig

609-252-1940

JAMES T HELWIG TTEE
TERESA E HELWIG TTEE
JAMES T HELWIG TST U/A 02/26/96
3 LANDFALL LN
PRINCETON NJ 08540

1648

80-568/1012

Date 4/23/01

124247393 04-27-01 7365 5215 10

Pay to the Order of Bill Mitchell $ 13500.00

Thirteen thousand five hundred and 00/100 Dollars

EXPENSE CODE

Fidelity Investments

United Missouri Bank
Warsaw, Missouri

For Dock - 3695 Pignatelli James T. Helwig

⑈ 0 1 2 0 5 6 8 ⑈ 1648 ⑈ 7 7 1 0 5 2 5 0 6 3 5 0 ⑈ ⑈ 0 0 0 1 3 5 0 0 0 0 ⑈

AHDPLMD

Exhibit "J"

RULE 5

61

Answer

(Answer on following page)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	
William C. Mitchell,	)	C/A No.: 2010-CP-10-5532
	)	
Plaintiff,	)	
	)	**ANSWER ON BEHALF OF**
vs.	)	**DEFENDANT JAMES T. HELWIG**
	)	**(Jury trial demanded)**
James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski,	)	
	)	
Defendants.	)	

FILED
2011 APR 29 PM 4:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: WILLIAM C. MITCHELL, PLAINTIFF PROCEEDING PRO SE

Defendant, James T. Helwig, by and through his undersigned attorneys, answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE TO THE FACTUAL ALLEGATIONS

1. Each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted is denied, and strict proof is demanded thereof.

2. The Defendant is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph One (1) of the Complaint, and therefore, said allegations are denied.

3. The Defendant denies the allegations contained in Paragraph Two (2) of the Complaint as stated.

4. No response is required to the allegations contained in Paragraph Three (3) of the Complaint. To the extent a response is required, said allegations are denied.

5. As to the allegations contained in Paragraph Four (4) of the Complaint, the Defendant admits so much of Paragraph Four as states that the Defendant discussed building a

dock with the Plaintiff sometime in April 2001. The Defendant denies the remaining allegations contained in Paragraph Four (4) of the Complaint as stated.

6. As to the allegations contained in Paragraph Five (5) of the Complaint, the Defendant admits so much of Paragraph Five as states that the Defendant sent the Plaintiff a check in the amount $13,500.00. The Defendant denies the remaining allegations contained in Paragraph Five (5) of the Complaint as stated.

7. As to the allegations contained in Paragraph Six (6) of the Complaint, the Defendant admits so much of Paragraph Six as implies that the Defendant discussed the construction of a dock with the Plaintiff. The Defendant denies the remaining allegations contained in Paragraph Six (6) of the Complaint as stated.

8. As to the allegations contained in Paragraph Seven (7) of the Complaint, the Defendant admits so much of Paragraph Seven as states that the Plaintiff showed the Defendant a dock in Awendaw, South Carolina. The Defendant denies the remaining allegations contained in Paragraph Seven (7) of the Complaint as stated.

9. The Defendant denies the allegations contained in Paragraph Eight (8) of the Complaint as stated.

10. The Defendant denies the allegations contained in Paragraph Nine (9) of the Complaint as stated.

11. The Defendant denies the allegations contained in Paragraph Ten (10) of the Complaint as stated.

12. The Defendant denies the allegations contained in Paragraph Eleven (11) of the Complaint as stated.

13. As to the allegations contained in Paragraph Twelve (12) of the Complaint, the Defendant admits so much of Paragraph Twelve as states that the Defendant paid the Plaintiff a second payment of $13,500.00. The Defendant denies the remaining allegations contained in Paragraph Twelve (12) of the Complaint as stated.

14. The Defendant denies the allegations contained in Paragraph Thirteen (13) of the Complaint as stated.

15. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Fourteen (14) of the Complaint and therefore, denies the allegations as stated.

16. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Fifteen (15) of the Complaint and therefore, denies the allegations as stated.

17. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Sixteen (16) of the Complaint and therefore, denies the allegations as stated.

18. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Seventeen (17) of the Complaint and therefore, denies the allegations as stated.

19. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Eighteen (18) of the Complaint and therefore, denies the allegations as stated.

20. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Nineteen (19) of the Complaint and therefore, denies the allegations as stated.

21. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Twenty (20) of the Complaint and therefore, denies the allegations as stated.

22. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Twenty-One (21) of the Complaint and therefore, denies the allegations as stated.

23. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Twenty-Two (22) of the Complaint and therefore, denies the allegations as stated.

24. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Twenty-Three (23) of the Complaint and therefore, denies the allegations as stated.

25. As to the allegations contained in Paragraph Twenty-Four (24) of the Complaint, the Defendant admits so much of Paragraph Twenty-Four as states that the Defendant met the Plaintiff on August 6, 2001. The Defendant denies the remaining allegations contained in Paragraph Twenty-Four (24) of the Complaint as stated.

26. No response is required to the allegations contained in Paragraph Twenty-Five (25) of the Complaint. To the extent a response is required, said allegations are denied.

27. The Defendant denies the allegations contained in Paragraph Twenty-Six (26) of the Complaint.

28. As to the allegations contained in Paragraph Twenty-Seven (27) of the Complaint, the Defendant admits so much of Paragraph Twenty-Seven as states that the Defendant gave a the Plaintiff a prepared letter. The Defendant denies the remaining allegations contained in Paragraph Twenty-Seven (27) of the Complaint.

29. As to the allegations contained in Paragraph Twenty-Eight (28) of the Complaint, the Defendant admits so much of Paragraph Twenty-Eight as states that the Defendant was at a job site on August 6, 2001, and handed the Plaintiff a letter. The Defendant denies the remaining allegations contained in Paragraph Twenty-Eight (28) of the Complaint.

30. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Twenty-Nine (29) of the Complaint and therefore, denies the allegations as stated.

31. The Defendant denies the allegations contained in Paragraph Thirty (30) of the Complaint as stated.

32. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Thirty-One (31) of the Complaint and therefore, denies the allegations as stated.

33. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Thirty-Two (32) of the Complaint and therefore, denies the allegations as stated.

34. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Thirty-Three (33) of the Complaint and therefore, denies the allegations as stated.

35. The Defendant denies the allegations contained in Paragraph Thirty-Four (34) of the Complaint.

36. The Defendant denies the allegations contained in Paragraph Thirty-Five (35) of the Complaint.

37. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Thirty-Six (36) of the Complaint and therefore, denies the allegations as stated.

38. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Thirty-Seven (37) of the Complaint and therefore, denies the allegations as stated.

39. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Thirty-Eight (38) of the Complaint and therefore, denies the allegations as stated.

40. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Thirty-Nine (39) of the Complaint and therefore, denies the allegations as stated.

41. As to the allegations contained in Paragraph Forty (40) of the Complaint, the Defendant admits so much of Paragraph Forty as states that the Plaintiff was arrested for Breach of Trust and Obtaining Money by False Pretenses after an independent investigation by both the Mount Pleasant Police Department and Charleston County Solicitor's Office. The Defendant denies the remaining allegations contained in Paragraph Forty (40) of the Complaint.

42. The Defendant denies the allegations contained in Paragraph Forty-One (41) of the Complaint as stated.

43. The Defendant denies the allegations contained in Paragraph Forty-Two (42) of the Complaint as stated.

44. The Defendant denies the allegations contained in Paragraph Forty-Three (43) of the Complaint.

45. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Forty-Four (44) of the Complaint and therefore, denies the allegations as stated.

46. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Forty-Five (45) of the Complaint and therefore, denies the allegations as stated.

47. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph Forty-Six (46) of the Complaint and therefore, denies the allegations as stated.

48. The Defendant denies the allegations contained in Paragraph Forty-Seven (47) of the Complaint.

FOR A FIRST DEFENSE TO THE FIRST THROUGH THIRD CAUSES OF ACTION

49. As to the allegations contained in Paragraphs Forty-Eight (48) through Fifty (50), the Plaintiff's Causes of Action for Civil Conspiracy, Tortious Interference with a Contract, and Intentional Interference with Business Expectancy, such actions have been dismissed with prejudice as stated in the Order filed by the Court on April 8, 2011, and therefore the allegations related to these Causes of Action require no response. To the extent that such allegations require a response, the Defendant denies the allegations.

FOR A FIRST DEFENSE THE FOURTH CAUSE OF ACTION

50. The Defendant denies the allegations contained in Paragraphs Fifty-One (51) through Fifty-Three (53) and demands strict proof thereof.

FOR A FIRST DEFENSE THE FIFTH CAUSE OF ACTION

51. The Defendant denies the allegations contained in Paragraph Fifty-Four (54) and demands strict proof thereof.

52. As to the final unnumbered Paragraph consisting of the Plaintiff's prayer for judgment, the Defendant denies that the Plaintiff is entitled to any relief whatsoever.

FOR A SECOND DEFENSE

53. Further answering, the Defendant would show that the allegations of the Complaint have failed to state facts sufficient to constitute a cause of action against the Defendant and therefore, the Complaint must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

54. Further answering, the Defendant would show that the causes of action filed by the Plaintiff are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE

55. Further answering, the Defendant would show that the Plaintiff's claims are barred by the doctrines of laches, waiver, estoppel and unclean hands.

FOR A FIFTH DEFENSE

56. Further answering, the Defendant would show that the Plaintiff by commencing this action against the Defendant, violated Section 15-36-10 of the South Carolina Code.

Therefore, the Defendant reserves all rights available under Section 15-36-10 as against the Plaintiff.

FOR A SIXTH DEFENSE

57. Any claim on behalf of the Plaintiff for punitive damages is barred by the provisions of the United States and the South Carolina Constitutions.

58. That Plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

59. That Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

60. That the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of the Defendant.

61. That the Plaintiff's claim for punitive damages violates the Federal doctrine of separation of powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SEVENTH DEFENSE

62. The Defendant gives notice of his intent to assert any further affirmative defenses that his information-gathering process may indicate is supported by fact and law. The Defendant reserves the right to amend this Answer and assert such defenses.

WHEREFORE, having fully answered the Complaint herein, the Defendant demands that the same be dismissed against him for costs, and for such other and further relief as may be just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.

By: _____

Andrew E. Haselden
James P. Sullivan
1110 Queensborough Blvd., Suite C
Mt. Pleasant, SC 29464
(843) 216-6940 (telephone)
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(843) 216-6942 (facsimile)
ahaselden@hnblaw.com
jsullivan@hnblaw.com
Attorneys for the Defendant James T. Helwig

Mount Pleasant, South Carolina
April 29, 2011

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C. Mitchell, Plaintiff, v. James T. Helwig, Michael L. Masiowski and Elizabeth A. Masiowski, Defendants.	IN THE COURT OF COMMON PLEAS C.A. NO.: 2010-CP-10-5532 **CERTIFICATE OF SERVICE**

FILED
2011 APR 29 PM 4:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, the undersigned employee of Howser, Newman & Besley, L.L.C., do hereby certify that I have served the foregoing **Answer on Behalf of Defendant James T. Helwig,** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below:

T. Alexander Beard, Esq.
Beard Law Offices
1002 Anna Knapp Boulevard, Suite 202
Mount Pleasant, SC 29464

Christy Fargnoli, Esq.
John L. McDonald, Jr., Esquire
Clawson & Staubes, LLC
126 Seven Farms Dr., Suite 200
Charleston, SC 29492

William C. Mitchell, Pro Se
P.O. Box 332
9452 Koester Road
Ladson, SC 29456

James T. Helwig
146 North Plaza Court
Mount Pleasant, SC 29464

Brian Duffy, Esq.
Duffy & Young LLC
96 Broad Street
Charleston, SC 29401

Andrew E. Haselden

April 29, 2011

Testimony

(Testimony on following page)

Affidavit of Phillip Middleton, Esq.

Affidavit of William C Mitchell

Affidavit of Attorney Phillip Middleton

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	Case No. 2010-CP-10-5532
William C. Mitchell,)	
)	
Petitioner,)	
)	
vs.)	AFFIDAVIT
)	
James T. Helwig, Michael L. Masiowski, Elizabeth A. Masiowski,)	
)	
Defendants.)	
)	

FILED
2011 JAN -6 PM 11:49
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, **PHILIP A. MIDDLETON**, who being duly sworn, deposes, and says as follows:

1. That he is an attorney licensed to practice law in the State of South Carolina and is currently so licensed and during all the times hereinafter was acting in his capacity as a licensed attorney and an officer of the court;

2. That he was retained by William C. Mitchell in approximately 2002 to defend him against two impending charges: one involving James T. Helwig;

3. That during the preparation of the defense of the case, your deponent did a good deal of legal research into the questions involved, as well as having numerous meetings with William C. Mitchell and the various solicitors involved in the case;

4. That the case was called for trial in late summer or early fall of 2007, whereupon your deponent's client, William C. Mitchell and an important witness, appeared ready for trial;

5. That on the day your deponent appeared for trial, he was informed after approximately a day's wait, that the case would not be heard in that term of court;

6. That your deponent received no further word as to the disposition of or the time of the trial of the case thereafter;

7. That your deponent learned in the early months of 2008 from studying the Clerk of Court's website that the case had been dismissed. There was a reason stated for the dismissal which was not available through the website;

8. That your deponent at that time informed William C. Mitchell that the case had been dismissed;

FURTHER, , YOUR DEPONENT SAYS NOT.

Sign Name: _____
Print Name: Philip A. Middleton

SWORN to before me this 23rd day of August, 2010.

_____
Notary Public for SC
My Commission Expires: 05/31/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 9th JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case N0. 2010-CP-10-5532
	)	
William C. Mitchell	)	
Plaintiff	)	**AFFIDAVIT**
	)	
	)	
James T. Helwig, personally,	)	
Michael Masiowski, personally,	)	
Elizabeth Masiowski, personally	)	
	)	

FILED
2011 JAN -6 PM 1:49
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, **WILLIAM C. MITCHELL,** who being duly sworn, deposes, and says as follows:

1. That he is the plaintiff in the above caption case. That he was the defendant in the James T. Helwig criminal case;

2. That in 2002 Plaintiff retained Attorney Phillip Middleton to defend him in the Helwig criminal case;

3. That during the preparation of the defense of this case, defense attorney Phillip Middleton informed Plaintiff that of he had numerous meetings with the various solicitors in this case;

4. That defense attorney Phillip Middleton numerous times informed plaintiff, that the solicitor's office was going to try this case and was not going to dismiss the case;

5. That plaintiff, defense attorney and important witness appeared for trial in late October or early November 2006;

6. That the day the plaintiff, defense attorney Middleton and witness appeared for trial, they were informed that the case would not be heard in that term of court;

7. That the plaintiff, plaintiff defense attorney Middleton received no further word as to the disposition of or time of trial of the case thereafter;

8. That plaintiff was informed in early 2008, by defense attorney Middleton that the case had been dismissed.

9. That early 2008 was the first time plaintiff had any knowledge that the case had been dismissed.

Sign name: _____

Print name: _____

SWORN to before me this 6th day of JAN. 2011

_____

Notary public for South Carolina

My Commission Expires

My Commission expires May 5, 2013

SEE TRANSCRIPT

(Transcript on following page)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

WILLIAM MITCHELL,

Plaintiff,

VS.

JAMES HELWIG, ET AL,

Defendants.



CASE NO.:2010-CP-10-5532

Hearing before the Honorable Mikell R. Scarborough, reported by Bernadette A. Cali, CSR and Notary Public, at 10:00 a.m. on December 12, 2011 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: William Mitchell, Pro se'
9452 Koester Road
Ladson, S.C. 29456

For Defendant Helwig: James P. Sullivan, Esq.
Howser, Newman & Besley, LLC
1110 Queensborough Blvd. Suite C
Mt. Pleasant, S.C. 29464-3625

For Defendant Masiowski: Christina Rae Fargnoli, Esq.
Clawson & Staubes. LLC
126 Seven Farms Dr. Suite 200
Charleston, S.C. 29492

Bernadette A. Cali, CSR
Notary Public

THE COURT: This afternoon we have the case of William C. Mitchell as Plaintiff. Mr. Mitchell.

MR. MITCHELL: Yes, sir.

THE COURT: Mr. Mitchell is representing himself in this matter; versus James T. Helwig.

MR. SULLIVAN: Yes, Your Honor. James Sullivan on behalf of Mr. Helwig.

THE COURT: Mr. Sullivan, and Michael Masiowski?

MS. FARGNOLI: Christy Fargnoli on behalf of both Michael and Elizabeth Masiowski.

MR. SULLIVAN: We also have Alex Beard.

THE COURT: I think we're here scheduled today for motions for summary judgment, and I think that's from both Defendant parties; right? From Helwig and Masiowski?

MR. SULLIVAN: That's correct, Your Honor.

MS. FARGNOLI: That's correct, Your Honor.

THE COURT: Mr. Mitchell, my assistant Mr. McDaniel handed me something, and it said Plaintiff's motion to dismiss Defendant Helwig's motion for summary judgment, and for a directed verdict for Plaintiff, and sanctions. It was --

MR. MITCHELL: I was going to clock it in downstairs, Your Honor, and I left my wallet and check book and everything in the truck. She said I had to

pay a fee, so I wanted to be sure that you got the motion, we could hear it, because it's regarding a false affidavit.

THE COURT: Well, it was clocked in at 1:50 today and clock-in date was canceled, and you didn't have your $25 fee to go with that. So, I'll get to that in turn, but I'll allow these parties -- and I will tell you that I have had a chance, today, to review at least the motions for summary judgment, and I've had a chance to review the Plaintiff's memoranda in response to those motions. One was filed in August and the other was filed in December, December 5th. I'm assuming you all got copies of those. I don't know if you did or not.

MR. MITCHELL: Yes, sir.

MR. SULLIVAN: From the Plaintiff? I got a copy.

THE COURT: His responses?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: So, I'll do that.

Now, one thing I did see, Mr. Mitchell, before we get started. I saw in there a reference to a res judicata allegation because Judge --

MR. MITCHELL: -- Jefferson already ruled on the matter; yes, sir.

THE COURT: She ruled on a 12(b)(6) motion to

dismiss. They had asked that the 12(b)(6) motion be turned into summary judgment. She declined to do that relative to, I think, the matters that are before us today which is abuse of process and malicious prosecution. So those have not been heard -- number one, those have not been heard as motions for summary judgment yet.

I'm going to ask counsel who is going to argue the cases today, you-all are in both the statute of limitations issue and the merits of those two causes of action?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: And Ms. Fargnoli?

MS. FARGNOLI: Yes, Your Honor.

THE COURT: So she was only looking at it, as I could see, from a timing standpoint. In any event, Mr. Mitchell, her ruling at that time would not be res judicata. Res judicata would, by definition, effect the merits of the action, and so she's not effected the merits. You're still allowed to go forward if she denies their 12(b)(6) motion and, in fact, there have been multiple instances of summary judgment motions, although I don't think we're going to, hopefully, go there in this case. So the problem that the plaintiff's case sometimes has is the defendants are

trying to cut your knees off every step along the way, and your goal is to try to get to a jury or finder of fact.

MR. MITCHELL: Certainly.

THE COURT: You're not there yet. And they are trying to keep you from getting there today. I'll allow them to argue their motions, and then I'll turn to you, once they've both argued, and I'll ask you to respond in kind.

MR. MITCHELL: Yes, sir.

THE COURT: All right. Very good.

MR. SULLIVAN: I'll go first, Your Honor. Thank you.

May it please the Court, Defendant James Helwig moves the Court for an order granting summary judgment pursuant to Rule 56.

As the Court has pointed out we are basing our motion on no question of fact concerning the applicable statute of limitations for the abuse of process in which the prosecution claims, and no question of fact as to the merits of those two claims.

I have provided the Court with a memo. I don't want to go over the facts too much, more than necessary for the Court. But as you know, this -- the Plaintiff's action is based on an April 2001 contract

between the Plaintiff and Mr. Helwig to build a dock at his Mt. Pleasant address.

In April Mr. Helwig paid a deposit to Mr. Mitchell of 13,500. Some material was later delivered. Mr. Helwig again paid 13,500 for a total of $27,000. After some time passed by, by August 2001, Mr. Helwig wasn't happy with the performance, no actual work building the dock had taken place, so Mr. Helwig informed the Plaintiff that he was terminating the contract.

After that Mr. Helwig discovered that -- was told by the South Carolina Contractor's Licensing Board that Plaintiff was not licensed to build a dock worth more than $30,000. In this case the contract was for $40,500.

Mr. Helwig gave Plaintiff plenty of opportunity to pay him back. He asked Plaintiff to pay him back the $27,000 paid to him. After not getting any money back Mr. Helwig sought legal counsel, and after discussing the case with his legal counsel he was advised to report to the Mt. Pleasant Police Department, which he did.

The Mt. Pleasant Police Department did an investigation. They also talked to the Contractor's Licensing Board; found out that Mr. Mitchell was not

licensed to build any docks until June 2001 and even when he was licensed, as I said before, was not licensed to build a dock more than $30,000. The Mt. Pleasant Police Department did it's investigation, contacted the Solicitor's Office in Charleston County. Working together with the Solicitor's Office the Solicitor's Office decided -- determined there was probable cause and instituted criminal actions against Mr. Mitchell; specifically, obtaining money by false pretenses.

Plaintiff was arrested, actually ten years ago to this day, December 12, 2001. A bench warrant was issued, Plaintiff was arrested.

For several reasons the case dragged along in the Solicitor's Office. It was scheduled for trial a couple of times. One time the Plaintiff actually failed to appear. Another bench warrant was issued against him. Eventually another trial was scheduled in September 2006. That was continued, and it just came kept going on and on and on. Eventually, it was nolle pros and everybody apparently went on their way until July 9, 2010 when the Plaintiff filed a Complaint against Mr. Helwig and the other Defendants, and now we're just down to the abuse of process and malicious prosecution claims.

Basically what we're arguing is, as far as the statute of limitations goes, the malicious prosecution -- I've briefed some case law from South Carolina that we believe stands for the proposition that when a Plaintiff and a party -- when there are filings with the Clerk of Court, those filings with the Clerk of Court constitute constructive notice to a party that's involved in that action.

There is no dispute in this case that when the case was -- when the criminal actions were dismissed against Mr. Mitchell the dismissal was filed with the Clerk of Court in December 27, 2006.

Mr. Mitchell is going to argue that he didn't get notice of that. He relied on his attorney. We understand there is deposition testimony. We understand that. But we believe the case law in South Carolina stands for the proposition that constructive notice would count, and it would be December 27, 2006 notice to the Plaintiff, when it was filed with the -- when the dismissal was filed with the Clerk of Court.

I briefed a few cases, especially in real estate law. Constructive notice is a part of our case law. We did not find any case law specifically on the malicious prosecution scenario.

I did cite some case law from Texas that is

directly on point, basically says -- Texas court says if you're involved in a criminal action you're on notice. Whatever is filed with the Clerk of Court, that's notice to you. I would just invite the Court to consider that. I think that's persuasive case law that an appellate court in South Carolina would follow.

THE COURT: Texas authority you cited me?

MR. SULLIVAN: Yes, Your Honor. When I emailed the memo to the Court I did also include a copy of that Texas case.

THE COURT: I didn't print those 50-some-odd pages.

MR. SULLIVAN: Okay. I did not print the case law, but I would be happy to get it to you at a later time, if the Court would like.

THE COURT: You're telling me I've got it somewhere?

MR. SULLIVAN: Yes, I sent it, emailed December 5th.

So, again, it's just we believe this December 27, 2006 counts as the date of notice. Obviously, July 9, 2010 is three years -- three and a half years after that.

As far as the abuse of process claim goes, if you look at the Complaint that Mr. Helwig filed -- I'm

sorry, Mr. Mitchell filed against Mr. Helwig, in his own Complaint the Plaintiff alleges that Mr. Helwig quote, used the criminal justice process, held the Plaintiff hostage to the system to force the Plaintiff to refund payments on contracts with the Defendant, as a means of extortion. That's Paragraph 54 of the Complaint.

He further admits that at the time of his arrest on December 12, 2001, quote, the Plaintiff knew, because Plaintiff had not given into the threats of intimidation and complied with the demands of the Defendants to refund the Defendants the payments which the Defendants had made on the contract with the Plaintiff. The Plaintiff was arrested on a warrant for breach of trust and obtaining money under false pretenses.

Our argument is that in his own Complaint he admits when he was arrested he thought that Mr. Helwig was trying to extort money from him. Obviously, we dispute that, but we think that counts as reasonable notice to Mr. Mitchell on the date of his arrest, December 12, 2001.

That's -- as the Court knows, ulterior purpose is the main element in abuse of process. Our argument is December 2001 Mr. Mitchell was on notice that he may

have an abuse of process claim against Mr. Helwig.

He also testified during his deposition, that I've referenced in the memo, and I'll just read briefly from it, question from Mr. Helwig's attorney, all right, when you were arrested why did you think Mr. Helwig had pressed charges against you? Answer, because he was pissed off, I wouldn't give him his money back that I didn't owe and he wanted to prosecute me. Question, okay, you knew that as of -- at the time you were being arrested? Answer, that was my opinion; yes, sir.

Again, we're just arguing that between the Complaint and his deposition that Mr. Mitchell has admitted that he had notice of the potential of abuse of process claim as early as December 2001.

THE COURT: That would be back to the time of the arrest; right?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Where are you reading from there?

MR. SULLIVAN: I referenced it in the memo. It's a passage from -- on page 13 of the memo. It's a quoted passage from Mr. Mitchell's deposition.

THE COURT: Line, page and date of deposition?

MR. SULLIVAN: I have dates -- June 29, 2011, the lines -- page 165 starting on line 24 through page 168 line 1. So those are the statute of limitations

arguments.

As for the merits, regarding the malicious prosecution claim, as the Court knows one of the elements is that the termination of the criminal proceedings in the Plaintiff's favor. As we've discussed, this was nolle pros. I would argue -- I didn't brief this in the memo, but I would argue that the Plaintiff hasn't raised any evidence that would show that the dismissal of the case was in circumstances that implied his innocence.

I think I've attached all the documents related to the dismissal in the brief. I would make that argument. Obviously, the Plaintiff disagrees with that. That's one, the termination.

So we would argue there is no evidence that termination was in his favor. Nolle pros doesn't necessarily mean in his favor. According to case law that I've quoted -- actually, I didn't quote it because I haven't briefed it, but looking at the case law, I would be happy to file a supplement. The dismissal has to be in circumstances that imply the innocence of the Plaintiff. We don't think that's been raised here. Beyond that the main focus of my memo was on probable cause.

According to South Carolina case law the burden is

on the Plaintiff to show that the prosecuting person or entity lacked probable cause to pursue criminal action against the Plaintiff. According to our appellate decision probable cause means, I've quoted in the memo, the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he had been charged.

Now, the timing of this is, obviously, important. According to case law probable cause is looked at from the point of view of the party prosecuting. The question is not what the actual facts were but what he honestly believed them to be.

I've quoted case law, it's a Kinton(phonetic) v Mobile Home Industries, Inc. It's a 1980 Supreme Court case where the Court stated that South Carolina courts have long embraced the rule that true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution.

As I've included in Exhibit A there, after the solicitor got involved a true bill of indictment was issued against Mr. Mitchell in February 2002, I believe. And the assistant solicitor involved in all this was Edward Knisely. We had the opportunity to

depose Mr. Knisely.

THE COURT: That was a malicious prosecution?

MR. SULLIVAN: Yes.

THE COURT: I'm sorry. The true bill in '02 was as to what? Breach of trust?

MR. SULLIVAN: Actually, I believe obtaining money by false pretenses. The breach of trust was an independent, maybe a lack of -- may not be the proper term. I don't do a whole lot of criminal law -- was in 2006. That was -- I believe that was instituted completely by the Solicitor's Office. Mr. Helwig had nothing to do with that, basically.

THE COURT: I saw in Judge Jefferson's -- some note she had. One was in '02, one was in '06.

MR. SULLIVAN: If I'm not incorrect, I believe it was breach of trust 2006.

THE COURT: All right.

MR. SULLIVAN: So we deposed Mr. Knisely, who was the assistant solicitor who was involved in bringing the criminal action against Mr. Mitchell, and he testified to his cooperation with the Mt. Pleasant Police Department.

Basically the Mt. Pleasant Police Department did their investigation and sent their file to Mr. Knisely, and included in that file was an August 28, 2001 letter

and a September 10, 2001 letter from Stan Bowen who is the investigator for the South Carolina Contractor's Licensing Board. And Mr. Helwig had contacted the contracting board to ask about Mr. Mitchell when nothing was being done about his dock and wasn't getting his money back. And the letters were sent back. It is included in Exhibit B which is a certified copy of the Mt. Pleasant Police Department's file as to the investigation against Mr. Mitchell.

And those two letters -- Stan Bowen indicated to Mr. Helwig in one letter he indicated that Mr. Mitchell was licensed as a marine contractor, but his license limited him to contract of construction of docks with a value of $30,000 or less. The September 10, 2001 letter indicated that Mr. Mitchell was not licensed until June 6, 2001.

Mr. Knisely got those documents from Mt. Pleasant who had gotten them from Mr. Helwig, reviewed those letters, spoke with Mr. Helwig.

There was also an issue about Mr. Mitchell showing Mr. Helwig a dock that he claimed he had built before he entered the contract or, actually, I guess it was just after the contract was entered. Mr. Helwig later found out that this dock had, in fact, been built by a different dock company, so there was some

misrepresentation there as far as Mr. Helwig was concerned.

So between that, the two letters he got, the lack of work and the failure to return the $27,000, all that was presented to the assistant solicitor, Mr. Knisely, and he testified basically that there was probable cause. And the Solicitor's Office, through Mr. Knisely, informed the Mt. Pleasant Police Department that there was probable cause to arrest Mr. Mitchell for obtaining money by false pretenses.

THE COURT: So Knisely was in the picture prior to the arrest?

MR. SULLIVAN: Yes. In fact, during his deposition he testified that he did all this before he even actually talked to Mr. Helwig about any of it. He was just looking at the file presented to him by the Mt. Pleasant Police Department, and just based on that file he indicated to the Mt. Pleasant Police Department that there was probable cause, go ahead and arrest him; municipal judge from Mt. Pleasant signed the bench warrant, and that's how we got started with the criminal action against Mr. Mitchell.

Also, just interestingly, the assistant solicitor Mr. Knisely, also testified about how he reviewed Mr. Mitchell's criminal record. We have, in the court

record for this case, we have submitted evidence of several criminal actions filed against Mr. Mitchell, a couple of convictions. Some were for breach of trust. Obviously, there is some question about the timing of it, and I'm not going to sit here and argue admissibility to you, Your Honor, but I think it's important to note that Mr. Knisely reviewed all that criminal record, and in his testimony he testified that after his review Mr. Mitchell was, quote, a career criminal and con artist who had a very lengthy history of property convictions, including a litany of criminal felony charges that are brought in Beaufort County after some multiple year period in the '90's.

He reviewed the criminal record and determined that the, quote, the exact type of scheme where the Plaintiff would enter into an agreement to build a dock for someone; he would take cash payment for the work and either not complete the work or run off with the money; appeared to be that this was his MO for some substantial time period of time in Beaufort County and he had moved on to Charleston County.

And Mr. Knisely testified that that's something solicitors do, they look at a criminal record, especially when the facts are similar and that kind of goes into the equation of whether or not there is

probable cause, which he determined. Again, this is the Solicitor's Office determining there is probable cause.

He was arrested, as we discussed. The case was eventually dismissed, but I just think taking all this into account, according to the case law, I don't think a reasonable juror could reach any conclusion but the facts and circumstances within the knowledge of Mr. Helwig, the Mt. Pleasant Police Department, and the Solicitor's Office. All the circumstances within their knowledge at that time would lead any reasonable person to believe the Plaintiff was guilty of obtaining money by false pretenses.

I don't think there is any other conclusion that can be reached, Judge, by those facts and circumstances that were known in the fall/winter of 2001. I think that this issue is appropriate to dismiss a malicious prosecution claim whether on statute of limitations or the merits, based on the fact that there was probable cause at the time.

As far as abuse of process goes, again, there is an ulterior-purpose requirement to bring an abuse of process claim. Mr. Helwig would argue that there is no question of fact, that his only purpose in bringing criminal -- in cooperating with this criminal action

against Mr. Mitchell was to get his money back. He believed that the money was taken from him, was taken wrongly and that he needed -- deserved to have it back; the only reason why he cooperated with the Mt. Pleasant Police Department and the Solicitor's Office.

I've quoted some case law. Case Gider(phonetic) versus C-H-U-R-P-Y-E-S, Inc. It's a South Carolina Supreme Court case. I don't have a citation directly but, basically, it was a case where a store had an employee who took some money. The employee used that money for something else. He was supposed to deposit it in the bank. He didn't. He kept it. The store instituted criminal action against the employee. The employee was arrested. Later the store later dismissed the charges.

The employee later filed an abuse of process claim. And it was dismissed on summary judgment, I believe, and basically the Court decided that there is no liability when the process has been carried to its authorized conclusion even though with bad intentions.

It doesn't matter whether Mr. Helwig didn't like Mr. Mitchell. It doesn't matter what his intentions were as far as abuse of process go. If he was just using it for what would be a legitimate purpose, which would be to get the money that he thought was

legitimately his, then there is no abuse of process claim.

The memo contains much more information; be happy to go into further detail, but I think the Court gets the gist of our argument and be happy to listen to Mr. Mitchell and respond in any proper way.

THE COURT: I'll hear from Ms. Fargnoli first. Give me the name of that case you were just citing, too.

MR. SULLIVAN: Abuse of process?

THE COURT: Yes.

MR. SULLIVAN: Gider versus Churpeyes.

THE COURT: You do or don't have the cite on that?

MR. SULLIVAN: 370 S.C. 424, 635 Southeast 2cd 562. It's a 2006 Supreme Court case.

THE COURT: Okay. All right. Stands for the proposition that use of process to its logical conclusion is not abuse of process? Is that what you're telling me?

MR. SULLIVAN: The facts are a little different, but I think it's analogous. You had an employee that took money. The employee didn't really think they did anything wrong with the money. They were supposed to deposit it in the store's account at a bank. Instead they used it for their own purpose. I think they just

kept the money and didn't deposit it for a couple of days. Went back, told the store, hey, I'm sorry, I should have put this money in the bank and I didn't. Bank -- and the store decided to institute criminal action anyway. So it was kind of a retaliatory move from plaintiff's perspective.

In that case the Supreme Court basically said, well, the person took money, they instituted criminal action just to get their money back. They weren't really trying to do anything personally to the plaintiff even though the plaintiff gave the money back, confessed their crime and moved on with their lives.

So I think it just stands for the proposition that here you have Mr. Helwig, there is no reason why he's instituting criminal actions other than to get the money back that he thought was his. Obviously, there is a dispute whether or not -- obviously, Mr. Mitchell disputes that money was actually his, for reasons that I'm sure he will explain. I just think the two cases are analogous in that respect. That's just beyond the statute of limitations argument.

THE COURT: Yes, from a timing standpoint the abuse of process would take place at the institution or the conclusion of the process?

MR. SULLIVAN: That's a good point. Abuse of process is different than malicious prosecution. There isn't really any case law on it. I discussed what case law I found and with your indulgence -- under South Carolina law to successfully maintain an abuse of process claim the plaintiff must show an ulterior purpose and willful act in the use of the process that's not usual in the regular course of the proceeding. The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure or purpose not intended by -- there was no case law specifically on point about the statute of limitations, when it began. But just by extension, if the element is plaintiff must show an ulterior purpose and a willful act I believe the willful act here would have him arrested.

The ulterior purpose that Mr. Mitchell discussed in his Complaint and at his deposition was that Mr. Helwig was trying to extort, use the criminal proceedings to basically black mail -- and those are his words -- Mr. Mitchell into paying Mr. Helwig back.

We, obviously, disagree that's an ulterior purpose, but for the purpose of statute of limitations if he thinks that's an ulterior purpose he thought it at the time he was arrested, which would put him on

notice for the claim.

THE COURT: Give me the relevant fact timeframe for when Mr. Helwig made his complaint to, I assume, his initial complaint was to --

MR. SULLIVAN: The Contractor's Licensing Board?

THE COURT: Right.

MR. SULLIVAN: I'm not sure if I would characterize it as a complaint more than an inquiry. He had hired Mr. Mitchell to build this dock for him.

THE COURT: Let me stop you there. Initially, inquiry was to the Contractor's Licensing Board by Mr. Helwig?

MR. SULLIVAN: I believe so. Stan Bowen was his name. He was an investigator for the Licensing Board.

THE COURT: Then who was it that then contacted the Town of Mt. Pleasant? Was that the Licensing Board or Mr. Helwig?

MR. SULLIVAN: Mr. Helwig after getting advice from his legal counsel.

THE COURT: So when was the Town of Mt. Pleasant contacted?

MR. SULLIVAN: I want to say probably September 2001. About a month or month and a half after Mr. Helwig terminated his contract with Mr. Mitchell.

THE COURT: The arrest warrants came. So it went from the Town of Mt. Pleasant to the Solicitor's Office, from the Solicitor's Office back to the Town. The Town -- judge issued a warrant. He was picked up ten years ago today?

MR. SULLIVAN: I believe that's right. I'll have to look at the exhibits.

THE COURT: Okay.

MR. SULLIVAN: Also, I think it's important to note that when Mr. Helwig -- and I've attached an affidavit from Mr. Helwig that Mr. Mitchell has raised an issue with, that I'll discuss after he raises it, but Mr. Helwig hired Mr. Mitchell based on the fact that he believed he was licensed, properly licensed to legally build a dock that was worth $40,500.

THE COURT: Okay.

MR. SULLIVAN: I did attach exhibits; the report from the Mt. Pleasant Police Department that does contain a timeline about when the institution of these criminal actions took place. Looks like it was around October 2001 when the communications between Mt. Pleasant -- Mt. Pleasant Police Department contacted Mr. Mitchell and tried to resolve this, to no avail.

THE COURT: Has he got his money back yet?

MR. SULLIVAN: No, Your Honor. Mr. Helwig did

receive some credit from a subsequent dock construction company that actually built his dock at his Mt. Pleasant residence, and that dock company gave him some credit for some material that Mr. Mitchell had dropped off, about $2200.

THE COURT: Was any work ever constructed between April and the time that their client tried to terminate the contract?

MR. SULLIVAN: We don't believe it could be characterized as work. He dropped off, Mr. Mitchell had -- believe it was Guy C. Lee, a material supplier in Mt. Pleasant dropped off, basically, wood in Mr. Helwig's backyard. That was it.

THE COURT: Those materials were delivered when?

MR. SULLIVAN: I want to say that would be -- it was when -- shortly before Mr. Helwig paid the second installment; second, third, 13,500, so I'm looking for the check. The check was paid by Mr. Helwig -- the second installment of $13,500 was paid to Mr. Mitchell on June 12; so shortly before that time that the materials dropped off.

THE COURT: Okay.

MR. SULLIVAN: I believe.

THE COURT: All right. Ms. Fargnoli, let me hear from you.

MS. FARGNOLI: Your Honor, as you know I represent the Masiowskis, Defendants Michael and Elizabeth here in the courtroom today. Just like Mr. Helwig there is only two causes of action left with respect to them; malicious prosecution and abuse of process.

We believe we're entitled to summary judgment on both of those claims, because it is undisputed that the Masiowskis never brought any legal process against the Plaintiff. They never pressed any criminal charges, never brought any civil claims against him. Quite frankly, never done anything except get sued in this suit.

I'm going to be brief on the facts, because while we certainly support Mr. Helwig's summary judgment, we certainly believe he's entitled to it, the Masiowskis are in a much different boat, because they were not involved in this criminal process. Again, that is undisputed in this case.

In 2001 Mr. Masiowski entered into agreement with Mr. Mitchell to construct two docks; one at a green way (phonetic) and one at Greely Road; paid deposits on both of those. Some time later the Masiowskis terminated those agreements because they learned about the licensing problem that you've heard about, and because the work was not being timely performed; sort

of the same situation.

They never got their deposits back. Despite all of this they chose not to press criminal charges or sue them civilly.

As you know, both claims for malicious prosecution and abuse of process contained one very key element which is the use of process. Malicious prosecution, the elements are set forth in a case, Garr(phonetic) versus North Myrtle Beach, 339 Southeastern 2nd 887. The first element that has to be proven is institution or continuation of judicial proceedings either civil or criminal. With abuse of process under the Swisegood(phonetic) versus Lott case talk about the standard for abuse of process, that's 665 Southeastern 2nd 211, where the Court states to successfully maintain an abuse of process claim plaintiff must show ulterior purpose and a willful act in the use of process. That is not proper in the regular conduct of the proceeding so, as you see, an additional element, obviously, is the use of some process.

It is undisputed in this case, neither Mike nor Elizabeth ever brought any legal process against the Plaintiff. This is verified by all of the testimony taken in this case so far. By the Plaintiff's own deposition, his own deposition he admitted that they've

never pressed criminal charges against him.

This was also verified by Mr. Helwig in his deposition, by solicitor Ed Knisely. He said he's never even spoken to the Masiowskis. They never signed a warrant, never done written statements, never met with them. Mr. Mitchell's attorney Philip Middleton in the criminal case also testified that the Masiowskis were not involved in the criminal proceedings at all.

This record is completely devoid of any involvement by the Masiowskis in the criminal proceedings or any proof of any civil proceedings, because there haven't been any.

For those reasons we believe the Masiowskis are entitled to summary judgment, as a matter of law, today. All the discovery's been done, nothing has come up. In our memo, which I hope you received, we attached deposition transcripts for the depositions I just referenced. We also attached all of the documents we received from anyone concerning the criminal charges and the Masiowskis' name don't appear in any of them.

Again, for those reasons we feel the Masiowskis are entitled to summary judgment. To the extent the Court wishes to consider other grounds we, obviously, believe that the legal analysis Mr. Sullivan talked about with respect to the statute of limitations,

probable cause, and ulterior purpose also apply to the Masiowskis.

THE COURT: Take me back to what their relationship was with them. They did contract to build two docks?

MS. FARGNOLI: Yes, Your Honor.

THE COURT: At two different locations, and made deposits?

MS. FARGNOLI: Yes, Your Honor.

THE COURT: For each of those locations?

MS. FARGNOLI: Right.

THE COURT: What timeframe are we talking about here?

MS. FARGNOLI: In 2001. This is about the same timeframe as Mr. Helwig was dealing with.

THE COURT: Are they neighbors or something?

MS. FARGNOLI: I think they live near each other; sort of a coincidence. I'm not exactly sure.

THE COURT: They did request their money back at some point in time?

MS. FARGNOLI: They did.

THE COURT: Once they got wind of the lack-of-licensing issue? They've never gotten a return of their funds?

MS. FARGNOLI: Correct.

THE COURT: Never instituted any type of legal process is what you're telling me?

MS. FARGNOLI: Correct, Your Honor.

THE COURT: Civil or criminal?

MS. FARGNOLI: Correct. None whatsoever, as admitted by the Plaintiff in his deposition.

THE COURT: All right. Good enough. Thank you.

Mr. Mitchell, I'm going to let you talk.

MR. MITCHELL: Good morning, Your Honor. Good afternoon.

THE COURT: My first question for you, then, would be what is the basis -- I'll start with the last first. What would be your basis for suing the Masiowskis?

MR. MITCHELL: In the beginning, Your Honor, the Masiowskis had -- I've been in the dock building business for 40 years.

THE COURT: Just tell me what your basis for suing the Masiowskis is.

MR. MITCHELL: I will, Your Honor. There is three contracts involved in this dispute, one with Mr. Helwig, two with Dr. and Mrs. Masiowski.

Dr. and Mrs. Masiowski, we had two contracts to build two docks with them. We were in the process of building one of those docks. At the time it was about 75% complete, then I went on a vacation; Dr. Masiowski

hired my crew, started his own dock construction company, canceled both of his contracts, canceled Mr. Helwig, and he arrived at the same time, canceling Mr. Helwig's contract.

The builder for Mr. Helwig was also the builder for Dr. Masiowski. That's how the three of them became intertwined together. There was a conspiracy amongst the three of them to cancel these contracts, start their own dock construction company, which would give them a hundred thousand dollars worth of work to start off, now that's the gist of the case.

THE COURT: All right. Well, that's all well and good, but you've already lost the conspiracy case. Judge Jefferson has thrown that out. Let me make my question maybe a little bit clearer.

What process, if any -- I'm talking about legal process now -- have the Masiowskis brought against you that would entitle you to some relief?

MR. MITCHELL: They didn't bring any criminal action against me, because they didn't have a cause of action, Your Honor. I was in the middle of the contract -- completing the contract when they canceled the contract; contract law 101.

THE COURT: So what civil process have they brought against you?

MR. MITCHELL: The totality of the circumstances between the Masiowskis and the Helwigs.

THE COURT: So you're back to the conspiracy?

MR. MITCHELL: Yes, sir.

THE COURT: That's not going to fly for you.

MR. MITCHELL: Maybe not.

THE COURT: What about the prosecution? What prosecution, if any, was brought? Sounds like none.

MR. MITCHELL: By the Masiowskis?

THE COURT: Yes, sir.

MR. MITCHELL: There was none brought, because there was no reason to bring any.

THE COURT: All right. Sounds like they are going to prevail, at least on both claims against them today. Okay?

MR. MITCHELL: Yes, sir.

THE COURT: There is nothing there. Now, you've got a right to appeal the judge's order.

MR. MITCHELL: I understand that.

THE COURT: But as it relates to what's left, as I understand what's left in your case, and that's a claim for malicious process and abuse of process.

MR. MITCHELL: Yes, sir.

THE COURT: The way you've asked that as to Mr. and Ms. Masiowski is that they've not brought any

process whatsoever, legal process whatsoever, civil or criminal and, therefore, there would be no claim for malicious prosecution, unless you can tell me some other ulterior motive that's involved or ulterior purpose involved in some type of proceeding, then I'm going to dismiss it as to abuse of process, as well, as to the Masiowskis.

MR. MITCHELL: I'm not aware of any, Your Honor, on behalf of the Masiowskis.

THE COURT: All right. Then I'm going to grant their motion for summary judgment. They will be released and they will get out of the case.

I would ask you to prepare me an order along those lines. You can stay or go as I discuss the Helwig matter with Mr. Mitchell. We'll go on from there.

MS. FARGNOLI: Thank you, Your Honor.

(Discussion off the record.)

THE COURT: I'll sit on it for five days. If I hear you have a problem, let me know, but I'm not hearing anything which would keep these people in this case, and so I want to free them up to go do whatever else they would rather be doing.

Thank you all for coming.

MS. FARGNOLI: Thank you.

THE COURT: Now, let's talk about the Helwigs,

because clearly the Helwigs brought a criminal complaint or instituted a criminal complaint.

MR. MITCHELL: He signed the warrant and affidavit.

THE COURT: So I don't have to ask the same question. There is legal process that's been instituted. We've got to get into two things. One is the timeliness of the legal process, your bringing of that action; and, two, would be the ulterior motive or ulterior purpose. In other words, the merits. We're getting into the merits.

So let me start with that question and go back to -- I want you to make the record for me. Let's go back to what happened. I don't think there is any question but that -- sounds to me, Mr. Mitchell, ten years ago today -- today must be your day.

MR. MITCHELL: I didn't realize today was the day.

THE COURT: We're 12/12/11. That's a long time coming. Here we are. So, anyway, that's when the arrest was made. So let's talk about -- let's first talk about the arrest and then what happened, as far as your knowledge of what transpired. Let's talk about the facts.

MR. MITCHELL: To talk about that we need to go back to the beginning of case. Mr. Sullivan has stated

a number of misfacts here.

Number one, Mr. Helwig lived in New Jersey. We were in South Carolina, of course. The property in question is in South Carolina. There was another person, a John Hines(phonetic) who owned this property. We were building a dock on Dart Cove Way which was built in 200 -- latter part of 2000. We have submitted the documents from OCRM and so forth to verify this. We built this dock.

Mr. Hines, who lived at the 3088 Pignatelli Crescent came around to our job site, asked me to give him a price on a dock that he was interested in building. I went over at some point in time, gave him a proposal on the dock at his property at 3088 Pignatelli Crescent. There was a competitor of ours who was building another dock two lots down from where we built the dock on Dart Cove Way. This was built by one of our competitors.

Mr. Helwig signed a contract, contacted me, furnished a copy of Mr. Hines' proposal; we negotiated back and forth on the phone, he signed a contract, sent it down to me with the initial payment on the contract.

The contract clearly states that any monies paid under the terms of that contract are not paid in trust; there is no accounting required; not to be used for any

specific purpose, et cetera. That's in the bottom clause of the contract.

THE COURT: They are supposed to be getting something for their money; aren't they?

MR. MITCHELL: It's a contract, Your Honor. It's a simple payment on a contract.

THE COURT: So a contract to do what?

MR. MITCHELL: Contract to build a dock.

THE COURT: There you go.

MR. MITCHELL: There is no time limit set for when this dock was supposed to be built because due to weather, equipment and so forth you can have delays.

Mr. Mitchell, the Plaintiff, was in the process of doing a dock at Awendaw which was 500 and something feet long. He was also in the process of doing a dock for Dr. Masiowski. Mr. Helwig's dock was on the schedule to be the next dock built. Mr. Masiowski's dock was approximately 75% complete when they canceled the contract. There was meetings with their attorney, our attorney, about paying the balance of some monies that was due at that time under the terms of the contract. Anyway, it was canceled.

Mr. Helwig also, at that point in time, canceled his contract. Prior to his canceling the contract the Plaintiff delivered the material for the building of

Mr. Helwig's dock, which was placed on the critical line behind his fence line which we had to remove, simply because he didn't want it on his yard. He was doing some landscaping.

As far as this Licensing Board issue is concerned, back in 2001 Mr. Mitchell was not required to have a license, number one. Number two, he was -- had been in negotiation with LLR since 1999 when this regulation came into effect. There is exemptions to that regulation. Mr. Helwig filed a complaint with LLR, talked to Mr. Stan Bowen. That complaint went through the Contractor's Licensing Board. Mr. Helwig was furnished copies that there was no violation of the license, there was no violation of the amount of the contract.

THE COURT: Is that the document you're referring to?

MR. MITCHELL: Yes, sir.

THE COURT: What's the date on that?

MR. MITCHELL: August 3rd, 2001. August 13, I'm sorry.

THE COURT: Has that been provided to Mr. Sullivan?

MR. SULLIVAN: Yes.

MR. MITCHELL: August 29, and may be different

dates on different ones, Your Honor.

THE COURT: Let me see the one you were just holding up. Show it to Mr. Sullivan.

(Discussion off the record.)

(Hands up document.)

MR. MITCHELL: This is the document from the LLR, Your Honor, and this is a copy of the contract with the clause here and the original contract, of course, had Mr. Helwig's signature and he testified at his deposition that he accepted those terms.

THE COURT: That's just a blank piece of paper there.

MR. MITCHELL: The reason I gave you that was because the copy doesn't -- you can't -- it's blurred. This section, and you can read this clearly, Your Honor.

THE COURT: All right.

MR. MITCHELL: I apologize. This was back in August when Mr. Helwig received that, prior to the issuing of any warrant.

THE COURT: Okay.

(pause)

THE COURT: So the August 29 document says there has been no violation.

MR. MITCHELL: Yes, sir; on both counts.

THE COURT: Then they dismissed it and closed their file October 25th of 2001.

MR. MITCHELL: Yes, sir.

THE COURT: Got it. All right. Go ahead.

MR. MITCHELL: There was never, at any point in time before Mr. Helwig canceled his contract, any discussion regarding the Plaintiff being licensed, period. There was never any reason to discuss it. It didn't come up when he was in New Jersey, didn't come up when he was in South Carolina. He saw three, four different jobs that was going on by the Plaintiff, and under contract law 101 a plaintiff is entitled to his profit, his overhead and his expenses when a party cancels their contract.

Now, out of the $27,000 that they allege that the Plaintiff took from Mr. Helwig, Mr. Helwig paid it as a simple payment on the terms of his contract; under the terms of the contract. The contract is unambiguous. It speaks for itself.

Now, if you subtract all of that from the $27,000, plus the material that was delivered to his job, maybe Mr. Helwig owes Mr. Mitchell money. I don't know. That's never been totaled. But the point being, Mr. Mitchell did not enter into a contract, take his money and do nothing. He was in the process of

conducting his normal business, went on vacation, when his crew was hired and a separate construction company was formed which was later put out of business because they couldn't pass the Contractor's Licensing test. That was another issue with the Masiowski job.

Now, as far as this Texas, Missouri, Mississippi law cited by Mr. Sullivan, I don't know what their rules are, the civil rules, Your Honor, but in South Carolina the Civil Rules of Criminal Procedure 109 clearly states that the defendant or the defendant's counsel shall be notified by the Solicitor's Office of the deposition -- disposition, rather, of the case.

That was not done in this case. This case started in 2001. In 2006, some four or five prosecutors later, the case was dismissed. It was never called for trial by any of those prosecutors simply because they didn't have a case and they couldn't win it.

The case was dismissed and a nolle pros filed in 2006. Philip Middleton, who was the defense attorney, Your Honor, has supplied an affidavit to the court in Judge Jefferson's hearing, and I believe it's attached to my reply, whereby he states that the Defendant wasn't notified until 2008 that the case had been dismissed.

In 2006, up until two or three months ago,

Charleston County Clerk of Court was on a private computer system. Today they are on a state-wide system. There was no way the attorney, the Defendant or anybody else could go on line and pull up that case and the records in it. If you wanted to see the file you had to go down to the Clerk's office and ask to see the file.

Now, it's my understanding that from Mr. Knisely's deposition that some 10,000 cases a month that the solicitor handles. If all 10,000 of those people walked into the Clerk's office and asked to see the file, you would have a mad house. Plus you've got two or three clerks there handing out files. If there is only a hundred people they could walk out with documents and nobody would ever know. So that's an impractical way for that to be handled.

The Solicitor's Office further tells all defendants don't contact us, we're not going to discuss your case with you, contact your attorney, he will advise you the status of your case. Under Rule 109 they are supposed to notify him.

Judge Jefferson recessed her court for 30 to 45 minutes and went and contacted the Solicitor's Office and demanded that they look and see if there was any letters, email, memos, notes, anything indicating that

the defense or the Defendant had been notified. She states in her Order that it's totally void of any such notice.

THE COURT: I saw that.

MR. MITCHELL: As far as the warrant and the probable cause, Your Honor, a warrant is not conclusive for probable cause. I think there's case law on that that I cited. I don't have it in front of me just this second. But the Berry-McLeod case that the defense cited was a bond issue. That's a total different animal. They have to have public hearings. They have to have city ordinances and all of these things. It's totally different from a notice in a criminal case, Your Honor.

Under True(phonetic) versus Monty(phonetic) it clearly states -- Supreme Court clearly states that a client should be able to trust his attorney and take his advice without having to check his attorney every time he talks to him.

Under Heck(phonetic) versus Humphrey(phonetic) it's clear that you cannot bring a malicious prosecution until after the case is dismissed, because prior to that you don't have a case. The statute of limitations doesn't run until after that, Your Honor.

As far as, again, the difference between what the

defense was talking about in Berry and McLeod and real estate law and the records at the RMC Office being notice versus a criminal case is totally different, Your Honor.

Now, furthermore, I don't recall, and I read the portions of Mr. Knisely's deposition that defense submitted to the Court. I don't recall reading in there anywhere where Mr. Knisely stated that he considered the Plaintiff to be a career criminal or a con artist.

THE COURT: That's not going to matter for the purpose of this motion.

MR. MITCHELL: But it prejudices the Court.

THE COURT: I'm not going to let that prejudice me against you, Mr. Mitchell.

MR. MITCHELL: Thank you, Your Honor.

THE COURT: I can assure you of that.

Let's go back to the specifics of this. When you allege abuse of process are you not contending that the process which was abused was a criminal process?

MR. MITCHELL: Yes, sir. I'm alleging that he used criminal process as a collection agency, because he didn't want to go through the civil process. He was told, and the Mt. Pleasant Police Department was told when they first contacted the Solicitor's Office,

Sean-- I forget his name but it's in the record, told them that this was not a criminal case, it was a civil case. Then Mr. Helwig's attorney, Dennis O'Neil, set up a meeting with the solicitor. He, Mr. Helwig, Mr. Hoose(phonetic) and Walter Bilbro on my behalf were at this meeting. It was at that meeting that Mr. Knisely told the Mt. Pleasant police there might be probable cause for this warrant to be issued. That was based on an arbitrary decision and not based on law, Your Honor. Because it's clear, under the terms of the contract, obtaining money under false pretenses, what do you take? Money. You can't take money that belongs to you, Your Honor.

Mr. Knisely at that point testified he had only been with the Solicitor's Office three months. He didn't have any prior experience before that. So he made a mistake in judgment, Your Honor, is my position. And there was no probable cause. The warrant itself does not establish definite probable cause. If there is a dispute about that I understand it's a jury decision for the jury to decide.

THE COURT: That's right. How do you allege the process was abused, then?

MR. MITCHELL: I allege the process was abused by using the criminal process instead of the civil

process, Your Honor.

THE COURT: To collect a debt?

MR. MITCHELL: Yes, sir; to collect a debt, that may or may not have been owed.

THE COURT: I'm not sure we're ever going to get to that question; are we?

MR. MITCHELL: I'm sorry? It's never come up, Your Honor.

THE COURT: Well, if the process was presented in 2001, then don't you have the same problem that you had with those other causes of action, that they would have arisen in 2001 and, therefore, by virtue of the statute it's too late?

MR. MITCHELL: False arrest and false imprisonment arise at the time of arrest.

THE COURT: I'm not talking about malicious prosecution and false arrest. I'm talking about abuse of process. If they abused the process in 2001 when they sought the warrant, the statute of limitations, per force, would run from 2001.

MR. MITCHELL: If Your Honor is correct on that, yes.

THE COURT: That's exactly what happened in all those other cases, and I don't know why Judge Jefferson didn't rule on it that way but --

MR. MITCHELL: I don't know either.

THE COURT: -- malicious prosecution. But I want to make sure we're clear. Your allegation of the abuse of process instituted at the time the process instituted, which was the issuance of the arrest warrant on yourself; correct?

MR. MITCHELL: Yes, sir.

THE COURT: So, then, that's been, as we sit here today, that's been ten years. If you back date this to the filing of the Complaint, then we're in 2009 -- '10, excuse me.

MR. MITCHELL: Yes.

THE COURT: So clearly that's past the three year timeframe.

Now --

MR. MITCHELL: If the statute started to run in 2001 you would be correct.

THE COURT: So I have your agreement at least as to timing. If that's correct then the timing was correct. That's a different standard than malicious prosecution; correct?

MR. MITCHELL: Yes, sir.

THE COURT: We're in agreement on that, that that doesn't start until such time as the process -- the prosecution would end in the Defendant's favor?

MR. MITCHELL: Yes, sir.

THE COURT: So that's the factual inquiry we've got the take a look at on the malicious prosecution claim.

MR. MITCHELL: Yes, sir.

THE COURT: All right. So let's look at that a moment.

The -- evidently, and I'm looking -- my main source of information on this is Judge Jefferson's Order. She says in December of 2006 the nolle pros was entered. Where you have a problem is you claim that you did not get notice of that until sometime in 2008, as I recall.

MR. MITCHELL: Yes, sir.

THE COURT: I can't recall. I saw an affidavit.

MR. MITCHELL: Philip Middleton stated that, Your Honor, and he testified to that at his deposition.

THE COURT: I thought you said the fall of '07 or fall of '08?

MR. MITCHELL: '08, Your Honor.

THE COURT: All right. So -- and your knowledge of the dismissal of the action came through your attorney; is that right?

MR. MITCHELL: Yes, sir.

THE COURT: I don't have Mr. Middleton here, but

he alleges that in the early months of 2008, from studying the Clerk's website, the case was dismissed. It doesn't state the reason for it.

MR. MITCHELL: It didn't state a reason, Your Honor. It had on there see notes, and when Mr. Middleton called me he asked me to go to the Clerk's office and pull that file and get a copy of everything in there and the notes. I did this. There are no notes.

THE COURT: He also alleges in his affidavit the case was called for trial in late summer or early fall of 2007.

MR. MITCHELL: I believe it was in 2006. He made an error in that date, Your Honor. He corrected that in his deposition.

THE COURT: So that may have been in '06.

MR. MITCHELL: That was '06.

THE COURT: Which would have been prior to the dismissal.

MR. MITCHELL: We were called for trial in November of '06. We showed up with our witnesses and so forth. We hung around the Court for half a day. The solicitor finally came out, said we're not going to call this case, we'll notify you when it's going to be called, go home; and told me to keep in touch with my

attorney again. That's been my instructions the whole time.

THE COURT: So that's November of '06 you were in court for trial?

MR. MITCHELL: Yes, sir. Then in December of '06 they apparently filed the nolle pros, which we were totally unaware. We received no notice, and under Rule 109 we were supposed to.

THE COURT: Okay. You cited Rule 109, did you not?

MR. MITCHELL: Yes, sir.

THE COURT: Rules of Criminal Procedure?

MR. MITCHELL: Yes, sir. It clearly states -- the last sentence says, the state shall notify the defendant or defense counsel of the action taken, true bill, no bill, dismissal, et cetera.

(pause)

THE COURT: What's that rule number again?

MR. MITCHELL: 109, Your Honor.

(pause)

MR. MITCHELL: 109(c).

THE COURT: Do you have a copy of that?

MR. MITCHELL: Yes, sir.

(Hands up document.)

MR. MITCHELL: I believe it's also in the reply

that was filed with the Court, Your Honor.

MR. SULLIVAN: If I may, we've tried to find that rule, but my understanding is it may be an older rule that's been since taken off the books. That's our understanding.

THE COURT: I'm not finding it in the new rule books.

MR. MITCHELL: Apparently, Judge Jefferson was familiar with it, Your Honor, because she handles criminal court, and that's when she recessed the court to check with the Solicitor's Office to see if the file reflected any notice.

THE COURT: Well, the current rule, at least back in nine and eleven, under the rule book we have now, the disposition of arrest warrants is now Rule 3(c), no longer 109(c). The language is a little bit different, none of which apparently require -- has the same language where the state shall notify the defendant of the action taken. I don't know why that is, but it is.

Rule 39 reads, although the existing criminal practice rules heretofore adopted are repealed as of the effective date of these South Carolina Rules of Criminal Procedure -- which I'm trying to remember when -- they try to change these rules all the time. I don't have to deal with these, thank God. I saw some

reference to 1988.

Rule 109 sounds like something we were dealing with when I was a prosecutor. That was in the mid 80's.

MR. MITCHELL: I don't know, Your Honor. I was given the information by the court administrative office as to where to find this rule.

THE COURT: The action taken pursuant to those should be entered in the records of the Clerk of Court pursuant to procedures.

(Reading)

THE COURT: We do know that it was entered into the Clerk's office in December of '06. We do know that; right?

MR. MITCHELL: Yes, sir.

THE COURT: The Order was December 27 or something?

MR. MITCHELL: I believe it was 27th, Your Honor; around that time; yes, sir.

THE COURT: You think you were called to trial a month before?

MR. MITCHELL: Yes, sir.

THE COURT: But you don't have any written or oral record that the case was dismissed?

MR. MITCHELL: Mr. Middleton did, and I believe he

furnished that to the defense at his deposition.

THE COURT: Did he have any record --

MR. MITCHELL: Testified in his deposition.

MR. SULLIVAN: Not that I recall. I think what he testified to in his deposition was his notice -- was the dismissal. Whatever date he said he got that from Mr. Mitchell is whatever date he testified to.

THE COURT: That's an '08 timeframe, says in his affidavit.

MR. SULLIVAN: Yes.

THE COURT: He looked for it himself, I think it was. January of '08?

MR. MITCHELL: Early '08, Your Honor. He wasn't sure of the date, and I'm not either.

THE COURT: All right. So early 2008 from studying the Clerk's website --

MR. MITCHELL: Yes, sir.

THE COURT: -- is how he got notice?

All right. So from '08 to '10 you're within the three years. If it's '07, December of '06, December of '09 you're not into three years. The question for the Court is when the notice became effective for you to bring your action.

MR. MITCHELL: Yes, sir.

THE COURT: Now, Mr. Sullivan argues that it's

sufficient when the Clerk enters it in the record. I know you don't agree with that. Tell me your position.

MR. MITCHELL: My position is, very simply, he's alleging, under Berry-McLeod, real estate law. Real estate law is totally different than criminal law. The rules are totally different. The fact that this Berry -- or Bell and McLeod case was a bond issue. You've got public notices. You've got public hearings and all of these other things. The Solicitor's Office tells a defendant when he appears at the first roll call, don't call us, we're not going to talk to you, we're not going to tell you anything. Keep in touch with your defense attorney, he will advise you of the status of your case.

Now, that to me is pretty conclusive, Your Honor. If a defendant called them he's not going to. Again, to reiterate, I understand from Mr. Knisely's deposition that it's probably 10,000 cases a month. There is no way for those 10,000 people to contact the Clerk's office and find out the disposition of their case. It would overwhelm the Clerk's office. So it's not even a practical suggestion to do that. The only way the defendant, then, has of knowing what is going on is through his defense attorney. Truth versus Monteeth(phonetic), the Supreme Court, states the

client should be able to rely and depend one hundred percent on his counsel's advice and follow that advice. That's what I did in this case, Your Honor.

THE COURT: All right. So based upon that it was sometime in early '08 that you got notice that the case had ended?

MR. MITCHELL: Yes, sir.

THE COURT: There is no question but that suit was filed in July of '10?

MR. MITCHELL: Yes, sir.

THE COURT: All right. Got it. Mr. Sullivan, anything in response?

MR. SULLIVAN: Yes. I don't know if there is a particular place the Court wants me to start.

THE COURT: I think we're focusing in on the facts. What it boils down to, then, is your argument is constructive notice that was filed with the Clerk's office.

MR. SULLIVAN: Yes, sir.

THE COURT: Therefore, it's notice to the world under the authority of Berry versus McLeod.

MR. SULLIVAN: We got Berry versus McLeod; also did cite a Fuller-Ahrens Partnership versus South Carolina Department of Highways and Public Transportation in the memo.

THE COURT: What was the Texas case?

MR. SULLIVAN: I have the Lang versus City of Nacogdoches.

MR. MITCHELL: That's another Texas case, Your Honor.

THE COURT: All right. Versus the actual notice through the counsel, which they contend was early of '08. That's just on your timing question.

MR. SULLIVAN: Very good, Your Honor. I would just respond, Mr. Mitchell stated several times that criminal cases are different. I agree one hundred percent.

Unfortunately, this is a civil case. This -- the issue here is notice in a civil case. He's brought a civil case against Mr. Helwig and Berry-McLeod is a civil case. I understand it's real estate or -- I'm sorry. I understand it's not -- the underlying action is not malicious prosecution. I'm sorry. The underlying action is not criminal. But we have notice, and in a civil case constructive notice has been adopted by South Carolina law. I don't think that the fact that this is a malicious prosecution as opposed to a real estate bond, whatever the issue was in Berry and Fuller, I don't think that's relevant. South Carolina civil cases have adopted constructive notice. There is

no -- that's why I cited the Lang decision, which I do think is persuasive.

I think it just boils down to that constructive notice. We just think that courts have adopted constructive notice.

As far as the merits, I'm to understand abuse of process is gone, statute of limitations --

THE COURT: I'm going to find it's been -- it was filed outside the statute of limitations. It's conceivable that it was filed with an ulterior purpose, however; that filing was in 2001. It's been, at this point in time, ten years but clearly eight years by the time the action was brought.

MR. SULLIVAN: I'm not sure I heard Mr. Mitchell's argument against the probable cause element required or lack of probable cause requirement of malicious prosecution. I understand he did turn up those letters from the Contractor's Licensing Board.

THE COURT: I'm assuming they are in your all's records from discovery, right?

MR. SULLIVAN: He has produced those to me. We didn't receive his opposition reply brief until today, so I wasn't aware he was going to address those, but I will point out -- I may be mistaken -- but I don't believe Mr. Helwig is copied on those letters at all.

Mr. Helwig testified he didn't make a complaint, and maybe we're just splitting hairs here. He called the Contractor's Licensing Board to inquire about Mr. Mitchell's licensing or lack thereof. I haven't seen anything that indicates those complaints are related specifically to Mr. Helwig. They may be, and, again, I don't have those in front of me. I don't believe there is a reference to Mr. Helwig or Pignatelli Crescent, and I certainly don't think that there is any evidence that those were actually received by Mr. Helwig.

MR. MITCHELL: Mr. Helwig testified in his deposition that he did receive a letter from Stan Bowen --

MR. SULLIVAN: That is correct.

MR. MITCHELL: -- stating these issues.

MR. SULLIVAN: And those are the letters that I referred to and that Mr. Knisely testified about, and I did not include the letters that Mr. Helwig received. I just referred to them through Mr. Knisely's deposition. I would be happy to hand those up to the Court.

THE COURT: Sure.

MR. MITCHELL: Let me see them.

THE COURT: Show him.

MR. MITCHELL: I believe we had asked for these in deposition and weren't supplied copy copies of them, Your Honor.

MR. SULLIVAN: They have been made exhibits to several depositions, I believe.

THE COURT: Let me take a look.

MR. SULLIVAN: Depositions Mr. Mitchell attended. And as you can see from the top of that, that was part of the Mt. Pleasant Police Department's file that was produced to the solicitor. There was testimony in Mr. Knisely's deposition about that. My point is that Mr. Helwig -- all this argument that Mr. Mitchell wasn't required to be licensed at that time, I don't think we're going to resolve that issue today.

I will say that we have asked repeatedly for any evidence that Mr. Mitchell was told by the Licensing Board that you're grandfathered in. We did receive those other letters which seemed to indicate there might have been some sort of leniency. I don't know what to say about those other than the fact that Mr. Helwig didn't know about that. He didn't receive those letters. He didn't know anything about those letters when he was instituting the criminal action against Mr. Mitchell. All he had were those two letters from Stan Bowen. All the prosecutor had were

those two letters from Mr. Bowen. All the Mt. Pleasant Police Department had were those letters from Mr. Bowen. Based on those letters, which clearly state that Mr. Mitchell was not licensed, and then when he was -- at the time the contract was made, contract was April 2001, looks like he was licensed in June 2001. Even when he became licensed it was only for construction of docks $30,000 or less. The contract here was $40,500.

So my point is that those were the facts and circumstances that Mr. Helwig knew. That's what lead him to contact the Mt. Pleasant Police Department. They contacted Stan Bowen, and in their record notes, I've made that as an exhibit, it was sometime after the criminal action was instituted, but I believe it was in January 2002 that the Mt. Pleasant Police Department actually got a call from Mr. Bowen and in their record note that they were told that he wasn't licensed and that he had to be licensed. Everybody thought he had to be licensed. I don't know whether there was some sort of grandfathering in. I don't think it's relevant here. It was what everybody knew at 2001. As far as anyone could tell he should have had a license. He didn't have a license. He didn't start the construction of the dock between April and August. He

didn't return money back to Mr. Helwig.

Again, I don't think the purpose here is to argue whether or not that contract is valid. This isn't a contract action. I understand Mr. Mitchell believes that that money was his to do whatever he wants with. But, again, I think the issue here is at the time Mr. Helwig certainly had a right to believe that money should be returned to him and was being held wrongfully. Certainly the prosecutor's office believed that to be true also, and that's why the criminal action was instituted.

THE COURT: These letters that Mr. Mitchell provided me with have specific case numbers on them.

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Did this case ever get that? V-01/02-28 and --

MR. MITCHELL: I believe the letter from Mr. Bowen, Your Honor, refers to Mr. Helwig, if my memory is correct.

MR. SULLIVAN: He's talking about the letters he provided, not the August-September letter?

THE COURT: You're correct. Sure does.

MR. MITCHELL: That's the violation that was alleged, the lack of license and the amount of the contract. The Licensing Board ruled there was no

violation, period.

MR. SULLIVAN: That may well be true, Your Honor. The point is that Mr. Helwig wasn't aware of that. The prosecutor's office wasn't aware of that --

MR. MITCHELL: The prosecutor has copies of those in his file.

MR. SULLIVAN: Please let me finish -- at the time they instituted the action. That's when they determined, prosecutor's office determined there was probable cause.

THE COURT: Okay.

MR. MITCHELL: I believe in the prosecutor's file, Your Honor, they do have copies of this letter and also the ruling on the violations.

THE COURT: Dock Systems, Inc. was the business you were operating under?

MR. MITCHELL: Yes, sir. A corporation duly licensed under the laws of the state of South Carolina.

THE COURT: That's the DSI? That's V-01/0229?

MR. SULLIVAN: That's an interesting point. Although Mr. Bowen indicated that Mr. Mitchell had become licensed in June 2001 that's not exactly true from what I understand. We did subpoena the Contractor's Licensing Board and didn't receive anything beyond a few applications filed by

Mr. Mitchell that we don't think are relevant to today's motion, but Mr. Mitchell is still not licensed to build docks. Dock Systems, Inc. or some version thereof holds the license, as far as we know.

THE COURT: The contract he entered into, was that in his name or through Dock Systems?

MR. SULLIVAN: I don't recall off the top my head. I can check real quick.

THE COURT: Okay.

MR. MITCHELL: Your Honor, the contract entered into, I believe, was in my name, because it was prior to the issuance of the license under the name of Dock Systems. At the time of the issuance of the license, of course you can change the business name to whatever you prefer. But I believe the contract was in the name of Bill Mitchell, Marine Contractor.

MR. SULLIVAN: That's my understanding, Your Honor.

Again, I also think it's important to realize that Mr. Helwig spent an inordinate amount of time to get Mr. Mitchell to build this dock, which he didn't -- please allow me.

MR. MITCHELL: I'll allow you to finish.

MR. SULLIVAN: This is all going on in 2001. He spends $27,000, which he never gets back. He believes

he is -- it is his right to contact the police, which he does, and the police and the prosecutor's office tell him that he has -- there is probable cause to pursue criminal action. He cooperates with the prosecutor's office for years and years.

Mr. Helwig has a residence in Florida. He came up a couple of times to try and cooperate with the Solicitor's Office. For reasons beyond his control it dragged on. For five years it's hanging in the back of his mind. Finally, everything goes away. He wipes it away from his memory. Figures that $27,000 is lost, and then three years after that -- three and a half years this starts and this has been going on since July 9, 2010.

I understand that's not necessarily a legal argument, but I do think it's important to understand that Mr. Helwig has had to deal with this situation when he tried to wash his hands clean of it, and everybody could have walked away, basically, no harm done, so to speak, in 2006, and here we are today in 2011 still arguing about it.

MR. MITCHELL: Your Honor, in 2001 the Plaintiff way arrested for seven years. The Plaintiff was under not only emotional stress and pressure from being prosecuted, of his family being destroyed, his business

being destroyed, all of these other elements. The defense talks about what Mr. Helwig did. What did the Plaintiff have to go through for seven years? Simply because Mr. Helwig, who was chief financial officer for a large pharmaceutical company, certainly understood the terms of the contract. He testified at his deposition that he not only understood it, he agreed to it. So I don't think Mr. Helwig had any legitimate expectation of getting a full refund of his $27,000. There was absolutely no reason to, Your Honor; if there was any refund due at all.

THE COURT: You take the position, I'm sure, that the nolle pros terminated the case in your favor, did it not, the criminal case?

MR. MITCHELL: Yes, sir.

THE COURT: What's the malice you're talking about? Just the filing of the complaint for the warrant or is it something other than that?

MR. MITCHELL: I think I cited some other reasons, Your Honor. I don't recall them off top of my head. I apologize.

THE COURT: I'll look to it.

Here's what I'm going to do. I'm going to grant summary judgment as to the abuse of process. I'm going to request that you-all submit to me -- resubmit to me,

in order form, your memoranda as to why I should rule in your favor, from your perspective.

MR. SULLIVAN: Yes, sir.

THE COURT: You can include that in the same order if you would like. Provide a copy to Mr. Mitchell. Mr. Mitchell, you can do the same. It would be why I should deny their motion for summary judgment, and you're going to want to go into the facts of the malicious prosecution argument. I would ask you to limit it to that, because at this point in time that's what you've got left to go forward to trial.

If you are successful -- if I don't grant your motion for summary judgment, then I'm going to have to get you back here. Is this case back referred to me for good?

MR. SULLIVAN: I believe it is.

THE COURT: There are a bunch of issues in here as to jury trial.

MR. MITCHELL: I prefer a jury trial, Your Honor.

THE COURT: You-all ask for it, so we'll cross that bridge when we get to it. I'm not going to even look at that yet. I saw jury trial demands in the answers, and I'm assuming the Plaintiff wanted that, too.

MR. MITCHELL: Yes, sir.

THE COURT: All right. So get me the -- how about the next two weeks? Can you do it before the end of the year? I would like to get it done while it's fresh in my mind.

MR. SULLIVAN: Yes. Is the Court all right with email?

THE COURT: Yes. Email it in Word so I can monkey with it.

MR. MITCHELL: Before January 1, 2012?

THE COURT: Yes. What's today's date?

MR. SULLIVAN: I'll have it to you by the 23rd.

THE COURT: If you can get it to me by the end of the year I'll take a look at them.

MR. MITCHELL: How about the ruling on the frivolous lawsuit action? That's never been ruled on. He brought that up in his new motion.

MR. SULLIVAN: We'll reserve that until after this summary judgment decision. We have --

THE COURT: The claim for frivolous proceedings?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Okay. We'll cross that bridge -- doesn't it have to terminate in somebody's favor?

MR. SULLIVAN: Yes. We'll refer it.

THE COURT: Ain't terminated yet.

MR. MITCHELL: How about the motion filed this

morning, Your Honor, on the false affidavit?

THE COURT: You're going to need to resubmit that and I don't know -- I didn't even look at it, but if it's a question of fact --

MR. MITCHELL: It is, Your Honor.

THE COURT: -- is what you're raising, it's going to have to be an undisputed question of fact in order for me to rule on summary judgment. If it's a question of fact, one side says X, the other side says Y, by definition that's not a question that can be decided as a matter of law. That's what we're here for today; a question of law. Undisputed question of fact --

MR. MITCHELL: It's an undisputed question of fact, Your Honor.

THE COURT: I'm not going to take it up. It hasn't been filed properly. If you want it to be filed properly you'll have to go back and pay your $25 fee.

MR. MITCHELL: I would have, Your Honor, but --

(Discussion off the record.)

THE COURT: Thank you, gentlemen.

(Hearing concluded.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

C E R T I F I C A T E

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcr: by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interes in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this May 31, 2012.

Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT

WILLIAM MITCHELL,

Plaintiff,

VS.

JAMES HELWIG, ET AL,

Defendants.

COPY

CASE NO.:2010-CP-10-5532

Hearing before the Honorable Mikell R. Scarborough, reported by Bernadette A. Cali, CSR and Notary Public, at 2:00 p.m. on April 23, 2012 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

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Bernadette A. Cali, CSR
Notary Public

(Hearing commenced.)

THE COURT: Next up is the case of William Mitchell versus James Helwig and Michael and Elizabeth Masiowski. This is before the Court on a motion to reconsider, as I recall. The Court granted -- I'm trying to make sure I get this straight. I'm looking at an Order from January 5, January 6 this year, dated December of last year but in this case -- summary judgment was granted on behalf of the Defendant Masiowskis.

MR. SULLIVAN: Yes, Your Honor I'm here on behalf of Defendant James D. Helwig. You also granted the order -- I believe your order for the Masiowskis was just a simple Form Four. I don't recall a written order. The order that I believe you're referring to that was issued in January was for Defendant James T. Helwig on Statute of Limitations.

THE COURT: Yes, hold on.

MR. SULLIVAN: James P. Sullivan.

THE COURT: Mr. Sullivan, you represent?

MR. SULLIVAN: I represent Mr. Helwig.

THE COURT: And then?

MR. BEARD: Alex Beard for Mr. Helwig.

THE COURT: Also for Mr. Helwig.

MR. BEARD: Yes, sir.

THE COURT: The Mazouskis were represented by whom?

MR. SULLIVAN: Represented by Christy Fargnoli from Clawson & Staubes. Your Honor, I do have a memo in opposition, if I may approach.

THE COURT: Yes, but I need to make sure I have this Order right. Hold on.

(pause)

THE COURT: Looks like both orders were entered the same dates. All right. So as to Helwigs, the same dates. December 29 was the day of the Order entered January 6; granted a motion for summary judgment filed on behalf of the Helwigs pursuant to Rule 56. And in that Order the Court found the Plaintiff failed to raise a genuine issue of material fact as his failure to file the claim, so abuse of process, malicious prosecution within the applicable Statute of Limitations.

(Reading)

THE COURT: I did not get the substantive merits of the case; is that correct? Okay.

Now, you've got a response to -- I do have, from Mr. Mitchell, a motion, I think it was.

MR. MITCHELL: Yes, sir.

THE COURT: Let me see what he's got and I'll go from there.

(Hands up document.)

MR. SULLIVAN: Here, Your Honor.

THE COURT: Thank you, sir.

All right. Mr. Mitchell, pro se', this is your motion, sir. You may proceed.

MR. MITCHELL: Thank you, Your Honor.

As the Court just stated, we're here on the motion to reconsider, remand or rescind the previous Court's order granting summary judgment to the Defendant based on the statute of limitations.

I believe that, Your Honor, that you may have simply made a clerical error under Rule 68 and signed the Order granting the Defendant summary judgment based on the statute of limitations by mistake.

THE COURT: All right.

MR. MITCHELL: At the December 12th hearing before this Court the Defendant's motion for summary judgment was based on statutes of limitation, on the same set of facts, the same circumstances that the Defendant made before the Honorable Judge Jefferson on February 22nd, 2011 which Judge Jefferson denied. There was a motion for reconsideration filed. The Judge also denied that.

There is no -- there was no new facts or evidence

presented to this Court at the December 12th hearing based on the motion for summary judgment on the statute of limitations.

Under rule -- South Carolina Rule of Civil Procedure, Rule 43(l) mandates denial of Defendant's motion for summary judgment based on the same set of facts and same circumstances on the statute of limitations, Your Honor.

THE COURT: What's the rule?

MR. MITCHELL: 43(l).

(pause)

THE COURT: All right. Okay.

MR. MITCHELL: The Defendant again, as I said, introduced no new facts or evidence that was not introduced at Judge Jefferson's hearing and was ruled by Judge Jefferson. She ruled on February 22nd. She recessed the court, conducted her own investigation, after that came back. The Court then ruled that the statute of limitations on the malicious prosecution and abuse of process had not run and allowed the case to go forward.

THE COURT: Did she state in her -- you say she did her own investigation. I'm assuming you're talking about legal research.

MR. MITCHELL: No, sir. She recessed the court

for 30 to 45 minutes, went and contacted the solicitor's office, had the solicitor go through the entire file to see if they had complied with Rule 109, which they had not. She stated in her order, which the Court has a copy of, that the file was completely void of any memos, emails, notes, letters, anything complying with Rule 109.

Rule 109 says that she shall, not maybe, if, or but, but shall notify the Defendant or the Defendant's attorney, which they failed to do. Therefore, she ruled that the statute of limitations did not apply and allowed the case to go forward, Your Honor.

On December 12th when we had the hearing before this Court, at the close of the hearing, Your Honor, you ordered me, as the Plaintiff, to file a memorandum and brief with the Court stating why the null pros was terminated in favor of the Plaintiff. You also, at that time, ordered the Defendant to file a memorandum and brief as to why the null pros was not in favor of the Plaintiff. You gave the time period as of December the 31st, 2011 to file this.

On December 29 -- between the 27th and 29th, I'm not sure the exact date, the Defendant, rather than filing a motion on why the null pros was not in favor of the Plaintiff, simply filed a proposed order

granting summary judgment on the malicious prosecution and abuse of process.

They have not, as of this date, filed a memorandum as instructed by the Court. The Plaintiff on December 30 filed his memorandum as to why the null pros was in favor of the Plaintiff. Then upon being notified by the Clerk of Court that an order had been issued on the 29th of December, even before the Court had received the Plaintiff's memorandum, had an opportunity to review it, and again this is why I say I think it was in error, Your Honor. And, therefore, the Court, you know, didn't allow any consideration to the Plaintiff as instructed by the Court.

I think the Court should set aside -- simply issue a final order setting aside this summary judgment and allow the case to go to trial.

THE COURT: All right.

MR. SULLIVAN: Your Honor, may it please the Court.

I don't believe after -- the Court -- that motion to dismiss analysis by a Court is different than the analysis for a motion for summary judgment. The Order issued by Judge Jefferson allowing the abuse of process and malicious prosecution claim to go forward specifically stated that the Court's ruling was solely

upon the allegations set forth on the face of the Complaint; that the -- after that we filed a motion for summary judgment. We had a lengthy hearing in front of the Court. Mr. Mitchell has referred to the Court's request that each side brief the issue --

THE COURT: Before you go there let me make sure I'm clear. The Judge's -- Judge Jefferson's ruling was a Rule 12 motion?

MR. SULLIVAN: Yes, sir. We did move in the alternative for -- to convert it to a summary judgment but she, in her order, she found that converting the motion to a summary judgment motion was not warranted. We filed -- it was an amended motion to dismiss. We filed an amended motion asking for summary judgment in the alternative. She found that it was not on the calendar, therefore, she only heard the motion to dismiss under 12(b)(6).

THE COURT: All right. She did not entertain the summary judgment motion, is what I hear you say.

MR. SULLIVAN: That's my understanding of the Order, Your Honor.

THE COURT: All right.

MR. SULLIVAN: And this issue was actually addressed by Your Honor during our hearing. Mr. Mitchell brought up the issue of res judicata and

the Judge did a good job of explaining the differences between a motion 12(b)(6) and motion for summary judgment. Our simple argument is that it's a different standard; that the Court is not beholden to any order under motion to dismiss.

As far as the statute of limitations issue goes, she did find that the statute of limitations argument did not meet the 12(b)(6) standard, but that does not restrain the Court from finding for the Defendant Helwig on the statute of limitations issue at the summary judgment stage. Your Honor knows this, of course.

The other issue, Mr. Mitchell has referred to briefing the issue of whether or not a null pros was a favorable determination. I do not recall the Court asking each side to brief that. That was not -- we did argue the merits at the same time at that hearing. That was not an issue that was specifically addressed. We focused more on the probable cause. I just simply don't recall that. I'm not going to call the Plaintiff's honesty into question, but I don't recall that.

Simply stated we think there is nothing, no reason why the Court couldn't issue a finding under Rule 56 simply because the Court had denied our motion to

dismiss under 12(b)(6).

THE COURT: All right. Mr. Mitchell.

MR. MITCHELL: Your Honor, at the end of the hearing on December 12th you specifically instructed and ordered me to file this memorandum on why the null pros was terminated in favor of the Plaintiff. You specifically instructed and ordered the Defendant to file a memorandum on why it was not in favor of the Defendant -- in favor of the Plaintiff, excuse me.

There was no question in my mind at that time, because I filed the motion. I filed it on the 30th which was on a Friday, Your Honor.

Again, the statute of limitations issue, I think, was determined by Judge Jefferson. The statute of limitations, we didn't argue the time on the statute of limitations at the hearing on the 12th, other than Judge Jefferson's Order, that I recall, Your Honor.

THE COURT: What I recollect, I'm not even looking at the record, but what I recollect is two orders came in, two proposed orders came in. One addressed the substantive issue of whether or not there had been an abuse of process or malicious prosecution, and the other was strictly a procedural issue, whether or not you were entitled to get to that point. That's my recollection.

MR. MITCHELL: I only sent one order.

THE COURT: I only issued one order. Does that sound right?

MR. SULLIVAN: That's exactly right. I did issue two proposed orders, one on statute of limitations and one addressing the merits of the issue.

THE COURT: Okay. I just stumbled on Judge Jefferson's Order. Give me one second. That's from April 11.

(pause)

MR. MITCHELL: If it please the Court, Your Honor.

THE COURT: Just one second.

(pause)

THE COURT: In reading Judge Jefferson's Order dated April 8, 2011 she is clearly applying a 12(b)(6) standard of review. She does go into what was in the solicitor's file. She finds on page 9, according to South Carolina case law, filings with the Clerk of Court, particularly cases where the Plaintiff was a party, constitutes constructive notice.

(Reading)

THE COURT: She then goes on and says, based upon -- I think there was an affidavit of Philip Middleton in here saying he didn't get notice until sometime in 2008.

MR. MITCHELL: That is correct.

THE COURT: Then the Court went on at the bottom of page 10 to say, there is an inference raised by the pleadings as to when the Plaintiff received notice that his charges were dismissed. Dismissal pursuant to 12(b)(6) is not appropriate. The different standard 12(b)(6) means you just look at the documents themselves. She's gone a little bit further than that but clearly is looking at it from a 12(b)(6) standpoint, so I don't think her analysis was at the level of a summary judgment motion, which is what this Court was looking at.

So as to Rule 43(l) I'll find that is not appropriate, and I will tell you maybe it's appropriate, not appropriate, but I've had cases which summary judgment is denied in one instance and somebody comes forward with new facts or further discovery and it gets granted in another instance, so I tell you that for your own edification, really.

MR. MITCHELL: Yes, sir.

THE COURT: Getting back to the next issue, that having to do with the memoranda that was filed, and I saw that the date of the Plaintiff's memoranda was filed December 30th, basically at 12 noon. The Order of the Court wasn't filed until January, but it's

clearly dated December 29th, the date prior thereto. In looking at my notes I don't see exactly what, in my notes, what I ordered to happen; however, the question before the Court, I did seem to phrase as whether or not what was the -- when was notice effective, is what my note to myself was. When was notice effective? Was it the date case was null prossed or the case the Plaintiff claimed they received the notice? You acknowledge those to be two different dates?

MR. MITCHELL: Yes, sir.

THE COURT: Since I think the case was filed in 2010, if it's 2008 it's a timely filing. If it was 2006 it would not be a timely filing.

MR. MITCHELL: Yes, sir.

THE COURT: Okay? So now take me back through your memoranda that you submitted. Let's talk about that as to why the Court should not stand on the motion -- or Order for summary judgment then. What's the basis? What have you presented that would change or alter the Court's --

MR. MITCHELL: Basis is the statute of limitations doesn't apply; that there was no notice under Rule 109. The rule clearly states that the Defendant or the Defendant's counsel shall be notified. The previous Court, Judge Jefferson, conducted an investigation,

found that that did not exist and, therefore, the statute of limitations didn't apply.

There is an affidavit filed in the case from Philip Middleton stating as to when he received notice, Your Honor, and when he notified me. There is nothing else in the file dictating or showing or proving any other date; therefore, the statute of limitations didn't start to run until we received notice.

THE COURT: You're claiming actual notice; correct?

MR. MITCHELL: Yes, sir.

THE COURT: Actual notice.

MR. MITCHELL: Yes, sir.

THE COURT: Cited you the rule from Judge Jefferson's Order that talked about constructive notices being the record of the Clerk of Court.

MR. MITCHELL: Yes, Your Honor. But Rule 109 says that we have to have actual notice.

THE COURT: Rule 109 is a criminal court rule, is it not?

MR. MITCHELL: Yes, sir. And Judge Jefferson conducts criminal court all the time, was very familiar with it.

MR. SULLIVAN: Your Honor, we've done some research. I am not aware of what Rule 109 is. May

have been a rule in the past.

THE COURT: Didn't we get into this before?

MR. SULLIVAN: We did.

MR. MITCHELL: We got into Rule 109 on the hearing on the 12th. And the Defendant was furnished copies of it.

MR. SULLIVAN: My understanding is that is no longer in effect. It's been superceded or --

THE COURT: I think it has, because I don't think the criminal rules have those rules any more -- they don't have those numbers any more. There were some criminal rules, I just don't think they have numbers like 109 any more.

MR. MITCHELL: I don't know that.

THE COURT: If you apply an old rule that doesn't apply then --

MR. MITCHELL: Well --

THE COURT: Unless we have a new rule. These rules change all the time, you know.

MR. MITCHELL: Judge Jefferson thought it applied in February.

MR. SULLIVAN: I didn't see any reference to Rule 109 in the Order issued by Judge Jefferson. I was not personally at that hearing, but I've reviewed the Order.

MR. MITCHELL: That was the purpose why she recessed the Court and conducted her own investigation, Your Honor.

THE COURT: Mr. Mitchell, here's the problem you've got with that. Judges aren't allowed to conduct their own investigations, so I'm telling you -- at least that's the law in this state. Now, in Europe they do it different. Judges are investigating officers over there. In this state they don't do that. They do legal research and render opinions, but I've already stated for your benefit and the record that Judge Jefferson's standard was 12(b)(6). That's a different standard than Rule 56. So this Court is looking at some different criteria than what --

MR. MITCHELL: The Judge's order of February 22nd, Your Honor, she states on page 4 in the footnotes, that the only reason she didn't convert -- this was summary judgment, or rule on it was because it was premature. There had been no discovery at that time.

THE COURT: There you go. There is the explanation right there. They went from being premature to being mature. Once it matured this Court so far has ruled not in your favor. It matured but not in your favor.

This Court's ruling on page 7, in its Order, is

that -- this Court finds South Carolina courts apply the constructive notice doctrine in cases where the subject notice is filed with the Clerk of Court. This is publicly available to all interested parties. Moreover, this Court finds persuasive the Lang decision, case out of Texas, I think, cited to the Court.

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Lang versus Lacadocious(phonetic).

MR. MITCHELL: That was McBride in that case, Your Honor, on a bond issue which is a totally separate animal in that you've got to have public hearings, newspaper notices and all kinds of things, and in this matter you don't.

THE COURT: So then I went on to find that it was three and a half years later. That's as to malicious prosecution. Malicious prosecution at the bottom of page 8, I found that you were too late on that one. Then abuse of process is addressed starting on page 9. I found abuse of process should have -- would have been -- start date for that was December 12, 2001. So failure to file a Complaint until July 9, 2010 was well beyond the three years. Abuse of process, the process has to be abusive from the start. It's not a subsequent determination. Malicious prosecution would

be malicious -- in the event that it's malicious, it's not being done for the proper purposes; okay? But back to -- I agree with you that the factual inquiry in this case has to do with when -- how did I put it? When was the notice effective? That's how I put it.

MR. MITCHELL: Yes, sir.

THE COURT: I'm ruling, Mr. Mitchell, as a matter of law that the notice was effective under our laws when it was filed with the Clerk's office and not when it was actually received by you or by your counsel, some, I assume, what would be a year, year and a half later, sometime in '08.

MR. MITCHELL: Yes, sir.

THE COURT: So I'm making that finding as a matter of law -- finding of fact as a matter of law based upon the law in the State of South Carolina, and it's on that basis that I have granted summary judgment to the Helwigs.

Now, I will tell you, Mr. Mitchell, that may be an error of law. If it is an error of law you are free to take that matter up on appeal.

MR. MITCHELL: I intend to, Your Honor.

THE COURT: I figured you probably would.

MR. MITCHELL: You know that.

THE COURT: I don't have a problem with that.

MR. MITCHELL: Yes, sir.

THE COURT: I like to quote my old friend former Chief Justice Bubba Ness. I may be in error, but I'm not in doubt.

MR. MITCHELL: Yes, sir. Bubba was a fine gentleman. I personally knew him.

THE COURT: So did I. And I got the receiving end of a bunch of erroneous opinions from him, too. But at the time he was on the Supreme Court and we would have to live with it.

So that is my ruling. I've not heard anything today that would alter or change my opinion about that, Mr. Mitchell. I wanted to give you -- I will tell you this. I don't always entertain a Rule 59(e) motion. Sometimes I just summarily grant or dismiss it, but I wanted to give you an opportunity to come in here today and tell me why you felt that I was incorrect. Having heard your argument, and the ones that I have heard have been Judge Jefferson previously ruled upon it, found it was a question of fact. I find that's a different legal standard that she was using in her Order than I'm finding in mine, number one.

Number two, I don't think 43(l) would keep me from finding it under these circumstances anyway.

Number two, the factual question here, in the

event there was a genuine issue of material fact, which would entitle you to trial on the issue of notice, I'm not finding in your favor. I'm finding that established law in this state for a long time is that filing with the Clerk is sufficient constructive notice to put you on notice that your case has been dismissed and the statute started to run at that time. That differs from your allegation of actual notice. I understand that. If you can get the Supreme Court to say you've got to get actual notice, then we'll be back here and end up trying this case. Okay? Might be me, might be another judge, but on that issue if you can convince them of that then you'll prevail and come back and get reversed.

MR. MITCHELL: We'll try.

THE COURT: I understand. All right.

MR. MITCHELL: Thank you, Your Honor.

MR. SULLIVAN: Just one other thing. I have filed a motion for sanctions in this case. I believe this is the epitome of a frivolous lawsuit. Mr. Mitchell contracted to build a dock for my client. He wasn't licensed at the time.

MR. MITCHELL: License has nothing to do with the issue, Your Honor.

THE COURT: Hold one second. Let Mr. Sullivan

Appellant Exhibit 1

Notice of Motion and Motion to Dismiss Plaintiff's Complaint Pursuant to rule 12(b)(6)

(Appellant Exhibit 1 on following page)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2010-CP-10-5532
William C. Mitchell,	)	
	)	
Plaintiff,	)	**NOTICE OF MOTION AND MOTION**
	)	**TO DISMISS PLAINTIFF'S COMPLAINT**
vs.	)	**AGAINST DEFENDANT JAMES T. HELWIG**
	)	**PURSUANT TO RULE 12(b)(6)**
James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski,	)	**AND FOR SANCTIONS**
	)	
Defendants.	)	

FILED
2010 AUG -5 PM 3:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

10-13357

TO: WILLIAM C. MITCHELL, PLAINTIFF PROCEEDING *PRO SE*

YOU WILL PLEASE TAKE NOTICE that Defendant James T. Helwig, by and through his undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Ninth Judicial Circuit, on the tenth (10th) day after service hereof or at such a time and place as is convenient to the Court and counsel for an Order granting this Defendant's Motion to Dismiss with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, as to the Complaint against him.

This Motion is based upon the following grounds: (1) the applicable statute of limitations bars each and every cause of action asserted by the Plaintiff's Complaint against this Defendant, S.C. Code Ann. § 15-3-510, 530; *Spence v. Spence*, 368 S.C. 106, 123–24, 628 S.E.2d 869, 878 (2006); *Cobin v. Hearst-Argyle Television Inc., et al.*, 561 F. Supp. 2d 546, 550–52 (D.S.C. 2008); *see* Exhibit A; and (2) the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action upon which relief may be granted under any theory. Therefore, Rule 12(b)(6) requires the Plaintiff's Complaint be dismissed with prejudice.

Additionally, this Defendant will move before the Presiding Judge of the Court of Common Pleas, Ninth Judicial Circuit, on the tenth (10th) day after service hereof or at such a time and place as is convenient to the Court and counsel for an Order requiring the Plaintiff to pay to this Defendant the amount of reasonable attorney's fees and reasonable costs including, but not limited to, the time required of this Defendant by the frivolous suit instituted by the Plaintiff, travel expenses, mileage, parking, and any additional reasonable consequential expense of this Defendant resulting from the frivolous suit instituted by the Plaintiff. S.C. Code Ann. § 15-36-10; S.C. R. Civ. P. 11(a).

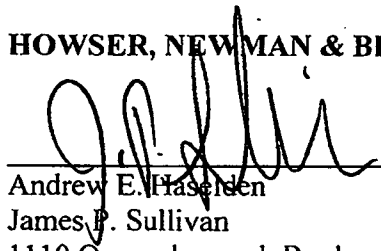
This Motion will be based upon the pleadings, Memorandum of Law, South Carolina Code of Law, applicable case law and other matters as may be acceptable to the Court.

Pursuant to Rule 11(a), the undersigned have "no duty of consultation on motions to dismiss . . . or with *pro se* litigants."

[signature block on following page]

Respectfully submitted by,

HOWSER, NEWMAN & BESLEY, L.L.C.



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Attorney for Defendant James T. Helwig

Mount Pleasant, South Carolina
August 5, 2010

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment Per Form)

DEFENDANT: Mitchell, William C.
LAST FIRST MIDDLE

a/k/a: _____
LAST FIRST MIDDLE

INDICTMENT NUMBER: 2002-GS-10-0590

WARRANT/TICKET No.: G248424

DISPOSITION (Check One) REASON (Optional):

4A ( ) Dismissed _____

4B (✓) Nolle Prosequi per victim's request - See notes

6 ( ) Judicial Dismissal Court Administrator's Review _____

7 ( ) Remanded Charge: _____ Court: _____

8A ( ) Dismissed at Prelim Judge _____ Date _____ ( ) Check for return of file if seeking Direct Indictment

8B ( ) No Bill Grand Jury Term _____

9 ( ) Failure to Appear Date Bench Warrant Issued _____

10 ( ) Other _____

Authorized By: Kimberly A. Steele Date: 12/21/06

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: MA
	DATE:

FILED

EXHIBIT
tabber A

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment Per Form)

DEFENDANT
Mitchell, William C.
LAST FIRST MIDDLE

INDICTMENT NUMBER
2006 -GS-10- 1202

a/k/a _____
LAST FIRST MIDDLE

WARRANT/TICKET No.
Direct Indictment

DISPOSITION (Check One) **REASON (Optional):**

4A ( ) Dismissed _____

4B (✓) Nolle Prosequi per victim's request - See notes

6 ( ) Judicial Dismissal Court Administrator's Review _____

7 ( ) Remanded Charge: _____ Court: _____

8A ( ) Dismissed at Prelim Judge _____ Date _____ ( ) Check for return of file if seeking Direct Indictment

8B ( ) No Bill Grand Jury Term _____

9 ( ) Failure to Appear Date Bench Warrant Issued _____

10 ( ) Other _____

Authorized By: Kelly Thimbaly A. Steele Date: 12/21/06

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: MA
	DATE:

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	C.A. NO.: 2010-CP-10-5532
William C. Mitchell, Plaintiff, v. James T. Helwig, Michael L. Masiowski and Elizabeth A. Masiowski, Defendants.	**CERTIFICATE OF SERVICE**

FILED
2010 AUG -5 PM 12: 23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Stephanie L. Deaton, an employee of Howser, Newman & Besley, L.L.C., do hereby certify that I have served the foregoing **Notice of Motion and Motion to Dismiss Plaintiff's Complaint Against Defendant James T. Helwig Pursuant to Rule 12(b)(6) and for Sanctions,** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below:

T. Alexander Beard, Esq.
Beard Law Offices
1002 Anna Knapp Boulevard, Suite 202
Mount Pleasant, SC 29464

Brian Duffy, Esq.
Duffy & Young LLC
96 Broad Street
Charleston, SC 29401

William C. Mitchell, Pro Se
P.O. Box 332
9452 Koester Road
Ladson, SC 29456

James T. Helwig
146 North Plaza Court
Mount Pleasant, SC 29464

Stephanie L. Deaton

Stephanie L. Deaton

August 5, 2010

Appellant Exhibit 2

Notice of Amended Motion and Amended Motion to Dismiss Plaintiff's Complaint Rule 12(b)(6) or in the Alternative, Motion for Summary Judgment Pursuant to Rule 56 and for Sanctions.

(Appellant Exhibit 2 on following page)

FILED
2011 FEB 1 PM 1:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	Civil Action No.: 2010-CP-10-5532
William C. Mitchell,)	
Plaintiff,)	**NOTICE OF AMENDED MOTION AND AMENDED MOTION TO DISMISS PLAINTIFF'S COMPLAINT AGAINST DEFENDANT JAMES T. HELWIG PURSUANT TO RULE 12(b)(6) OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56 AND FOR SANCTIONS**
vs.)	
James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski,)	
Defendants.)	

TO: WILLIAM C. MITCHELL, PLAINTIFF PROCEEDING *PRO SE*

YOU WILL PLEASE TAKE NOTICE that Defendant James T. Helwig, by and through his undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Ninth Judicial Circuit, on the tenth (10th) day after service hereof or at such a time and place as is convenient to the Court and counsel for an Order:

(1) Dismissing the Plaintiff's Complaint against the Defendant Helwig with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure based on the following grounds: (a) the applicable statute of limitations bars each and every cause of action asserted by the Plaintiff's Complaint against the Defendant Helwig, S.C. Code Ann. § 15-3-510, 530; *Spence v. Spence*, 368 S.C. 106, 123–24, 628 S.E.2d 869, 878 (2006); *Cobin v. Hearst-Argyle Television Inc., et al.*, 561 F. Supp. 2d 546, 550–52 (D.S.C. 2008); *see* Exhibit A; and (b) the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action upon which relief may be granted under any theory; or, in the alternative,

(2) Granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in favor of the Defendant Helwig based on the failure of the Plaintiff to present a question of fact concerning the barring by the applicable statute of limitations of each and every cause of action asserted by the Plaintiff's Complaint against the Defendant Helwig, or in the alternative, the failure of the Plaintiff to present a question of fact as to any of the causes of action, and therefore, the Court should dismiss the Plaintiff's entire action as a matter of law, S.C. Code Ann. § 15-3-510, 530; *Bloom v. Ravoira*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000); *Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 888 (1994); *Durkin v. Hansen*, 313 S.C. 343, 346, 437 S.E.2d 550, 552 (Ct. App. 1993); *see* Exhibits A and B.

Additionally, the Defendant Helwig will move before the Presiding Judge of the Court of Common Pleas, Ninth Judicial Circuit, on the tenth (10th) day after service hereof or at such a time and place as is convenient to the Court and counsel for an Order requiring the Plaintiff to pay to the Defendant Helwig the amount of reasonable attorney's fees and reasonable costs, including, but not limited to, the time required of the Defendant Helwig by the frivolous suit instituted by the Plaintiff, travel expenses, mileage, parking, and any additional reasonable consequential expense of the Defendant Helwig resulting from the frivolous suit instituted by the Plaintiff. S.C. Code Ann. § 15-36-10; S.C. R. Civ. P. 11(a).

This Motion will be based upon the pleadings, Memorandum of Law, South Carolina Code of Law, applicable case law, attached Exhibits, and other matters as may be acceptable to the Court. Pursuant to Rule 11(a), the undersigned have "no duty of consultation with *pro se* litigants."

Respectfully submitted by,

HOWSER, NEWMAN & BESLEY, L.L.C.

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Attorney for Defendant James T. Helwig

Mount Pleasant, South Carolina
February 11, 2011

ENI 2001-12-05390

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

HOOSE, MPPD

01009441

ARREST WARRANT NUMBER

G248424

DECEMBER 12, 2001

ACTION OF GRAND JURY

FEB 05 2002

TRUE BILL

Judy Cavanaugh

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury *Date:*

EXHIBIT

tabbies

A

DOCKET NO. 2002-GS-10-0590

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2002

THE STATE

vs.

WILLIAM C. MITCHELL

Indictment for

OBTAINING SIGNATURE OR PROPERTY UNDER FALSE PRETENSES MORE THAN SECOND PROPERTY OFFENSE

2001 598 (1)

180

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
OBTAINING SIGNATURE OR PROPERTY UNDER
FALSE PRETENSES MORE THAN SECOND PROPERTY
OFFENSE

At a Court of General Sessions, convened on February 4, 2002 the Grand Jurors of Charleston County present upon their oath:

That William C. Mitchell did in Charleston County on or about April 23, 2001 having previously been convicted of at least two (2) offenses for which the term of imprisonment is contingent upon the value of the property involved, willfully, feloniously and unlawfully obtain by false pretense or representation, money or property from one James Helwig, to wit: the defendant did misrepresent himself to the victim by entering into a contract with the victim for work that he was not licensed to perform, and also by showing a completed dock to the victim that was not built by the defendant. Further, the defendant did not provide the required services after payment to him by the victim, such payment having the approximate total value of Twenty-Seven Thousand Dollars and No Cents ($27,000.00), with the intent to cheat and defraud the victim. This is in violation of §16-13-240 and §16-1-57 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY _____ DEPUTY CLERK

GENERAL SESSIONS

NOTICE TO RESTORE

WARRANT NO. G18404 INDICTMENT NO. 2002 GS-10-0590
(If indicted)

Defendant MITCHELL, William C.

was arrested on 12-12-01 and charged with

OBTAINING SIG. UNDER FALSE PRETENSE.

On 1-14-05 (date) this case was administratively removed from the docket of pending cases with leave to restore and notice is hereby given that said case is restored for trial because:

☐ The defendant entered the PTI program on _____ but has failed to successfully complete the program.

☐ The defendant was judicially committed on _____ but has now been reported to be competent to stand trial.

☑ The defendant failed to appear for trial on 12-1-04 but is now available to stand trial.

Notice given this 15 day of MARCH, 20 05.

FILED
2005 MAR 15 AM 11:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

HEYWARD BRYAN
Solicitor

9TH
Judicial Circuit

Solicitor will complete this three part form on each warrant being restored, remove and retain the pink copy and transmit to clerk the original and green copy. The clerk will initiate a new docket sheet using the original information (warrant number, date of arrest, etc.). The clerk will attach the green copy of this form to the green copy of the docket sheet and mail both to Court Administration. The clerk will attach the white copy of this form to the original docket sheet of the case that was administratively removed.

NOTE: No unindicted warrant can be restored after being dismissed for more than two (2) years.

SCCA/224 (2/03)

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY _____
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

FILED
2004 DEC -8 AM 7:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

MOTION FOR AND ISSUANCE OF BENCH WARRANT

THE STATE OF SOUTH CAROLINA)
)
versus)
William Mitchell)
)
AKA,)
)
Defendant)

Arrest Warrant Number: G248424
Indictment Number: 2004-GS-10-0590
Charge: Obtaining Signature Under False Pretense, $5000 or more

TO: JULIE J. ARMSTRONG, CHARLESTON COUNTY CLERK OF COURT

The State of South Carolina, through the undersigned, requests that this Court issue its Bench Warrant on the above-referenced case. Attorney Notified

The undersigned attests:

(1) ☒ That the above-named defendant was directly indicted by the Charleston County Grand Jury; or

(2)(a) That the above-named defendant failed to make a scheduled appearance in Charleston County General Sessions Court on Nov 18th 2004 ; and Roll Call @ 2pm

(b)(1) ☒ That the defendant's name appeared on the Charleston County General Sessions Court Docket published pursuant to South Carolina Code of Laws Section 1-7-330; and/or

(b)(2) ☐ That the defendant was informed on his/her bond of the mandatory roll call date; and/or

(b)(3) ☒ That the defendant was notified by personal mailing of his court appearance date; and

(c) That the defendant was required to be present in court at the above time pursuant to the conditions of his/her bond; and

(d) That the defendant is not being detained in the Charleston County Detention Center, nor is he incarcerated in the South Carolina Department of Corrections; and

(e) That the defendant is not presently enrolled in the Pre-Trial Intervention Program; and

(f) That a Dismissal or *Nolle Prosequi* has not been entered on the above charges.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY DEPUTY CLERK

12-1-04
Date

Solicitor/Deputy Solicitor/Assistant Solicitor

LET A BENCH WARRANT BE ISSUED FORTHWITH FOR THE ABOVE-NAMED DEFENDANT.

12/7/04.
Date

Judge

FOR USE OF THE CLERK OF COURT'S OFFICE ONLY

A BENCH WARRANT MAY ONLY BE WITHDRAWN BY WRITTEN ORDER OF THE COURT FILED WITH THE CLERK OF COURT

FOR USE OF THE SOLICITOR'S OFFICE ONLY

WHITE - Indictment YELLOW - Expungement Solicitor GREEN - Clerk of Court PINK - Solicitor

4

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment Per Form)

DEFENDANT: Mitchell, William C.
LAST FIRST MIDDLE

a/k/a _____
LAST FIRST MIDDLE

INDICTMENT NUMBER: 2002-GS-10-0590

WARRANT/TICKET No.: G248424

DISPOSITION (Check One) REASON (Optional):

4A ( ) Dismissed _____

4B (✓) Nolle Prosequi per victims request - See notes

6 ( ) Judicial Dismissal Court Administrator's Review: _____

7 ( ) Remanded Charge: _____ Court: _____

8A ( ) Dismissed at Prelim Judge _____ Date _____ ( ) Check for return of file if seeking Direct Indictment

8B ( ) No Bill Grand Jury Term _____

9 ( ) Failure to Appear Date Bench Warrant Issued _____

10 ( ) Other _____

Authorized By: Kimberly A. Steele Date: 12/21/06

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: MA
	DATE:

2006 DEC 21 AM 11:50

FILED

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____
DEPUTY CLERK

GV 2001-12-05390

WITNESSES

KEITH HAIR AND/OR

MATT CASEY

HOOSE, MPPD

01009441

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DECEMBER 12, 2001

ACTION OF GRAND JURY

FEB

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury *Date:*

185

DOCKET NO. 2006-GS-10-1209

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2006

THE STATE

vs.

WILLIAM C. MITCHELL

Indictment for

BREACH OF TRUST

FILED
2006 FEB 15 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
BREACH OF TRUST

At a Court of General Sessions, convened on February 13, 2006 the Grand Jurors of Charleston County present upon their oath:

That WILLIAM C. MITCHELL did in Charleston County on or about April 23, 2001 while purporting to work as a dock builder, with the intent to defraud the victim, James Helwig, received more than Five Thousand Dollars ($5000) from Mr. Helwig to build a dock for which no work was ever done, and did convert said funds to his own use with the intent to permanently deprive James Helwig of possession of said funds. This is in violation of §16-13-230 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By: DEPUTY CLERK

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment Per Form)

DEFENDANT
Mitchell, William C.
LAST FIRST MIDDLE

a/k/a _____
LAST FIRST MIDDLE

INDICTMENT NUMBER
2006 -GS-10- 1202

WARRANT/TICKET No.
Direct Indictment

DISPOSITION (Check One)

REASON (Optional):

4A ( ) Dismissed _____

4B (✓) Nolle Prosequi per victim's request - see notes

6 ( ) Judicial Dismissal Court Administrator's Review: _____

7 ( ) Remanded Charge: _____ Court: _____

8A ( ) Dismissed at Prelim Judge _____ Date _____ ( ) Check for return of file if seeking Direct Indictment

8B ( ) No Bill Grand Jury Term _____

9 ( ) Failure to Appear Date Bench Warrant Issued _____

10 ( ) Other _____

Authorized By: Kelly A. Thimbaly A. Steele Date: 12/21/06

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: MM
	DATE:

2006 DEC 21 AM 11:50

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY: Wanda Wyche
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

William C. Mitchell,

Plaintiff,

vs.

James T. Helwig, Michael L. Masiowski and Elizabeth A. Masiowski,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICAL CIRCUIT.
CASE NO.: 2010-CP-10-5532

CERTIFICATE OF AUTHENTICITY

The undersigned hereby certifies that the enclosed documents are a complete true and accurate copy of records requested pursuant to the South Carolina Freedom of Information Act, S.C. Code Annotated Sections 30-4-10 through 30-4-165, related to an investigation into the activities of William Curtis Mitchell, Case #01-009441, including but not limited to all tangible documents maintained by the **Records Custodian,** at **Mount Pleasant Police Department,** located at **100 Ann Edwards Lane, Mount Pleasant, South Carolina, 29464.**

SIGNED: B M Carter

POSITION: Captain

TODAY'S DATE: 2·10·11

COMPANY NAME/ADDRESS: Mount Pleasant Police Department 100 Ann Edwards LN Mount Pleasant, SC 29464

SWORN to before me this 10th day of February, 2011

Claire W. Baker

Notary Public for South Carolina

My Commission Expires: August 22, 2017

EXHIBIT

tabbies B

POLICE DEPARTMENT
100 ANN EDWARDS LANE
(843) 884-4176

MOUNT PLEASANT



SOUTH CAROLINA

29464

RONALD R. PERRY
CHIEF OF POLICE
www.mppolice.com

INVESTIGATIVE DIVISION

PROSECUTIVE SUMMARY

CONFIDENTIAL: This is an official file of the Mount Pleasant Police Department. Dissemination for criminal justice purposes only.

CASE #: 01-009441
CASE AGENT: DET. F.R. HOOSE

INCIDENT DATE: APRIL 23, 2001

CHARGE (S): OBTAINING MONEY BY FALSE PRETENSES
#G-248424

DEFENDANT (S): 1) WILLIAM CURTIS MITCHELL
W/M DOB 09/16/39
SSN# 248-58-8655
9452 KOESTER RD.
LADSON, SC 29456
(843) 797-7538

VICTIM (S): JAMES HELWIG
3088 PIGNATELLI CRESCENT
MT.PLEASANT, SC 29466
(843) 216-7655

POLICE DEPARTMENT
100 ANN EDWARDS LANE
(843) 884-4176

MOUNT PLEASANT

SOUTH CAROLINA
29464

RONALD R. PERRY
CHIEF OF POLICE
www.mppolice.com

WITNESSES:

1) DETECTIVE F.R. HOOSE
100 ANN EDWARDS LANE
MT.PLEASANT, SC 29464
(843) 856-2179

ASSIGNED AS CASE AGENT. OBTAINED WRITTEN STATEMENT FROM JAMES HELWIG. RECEIVED MISC. DOCUMENTS FROM BOTH HELWIG AND DEFENDANT. MADE CONTACT WITH DEFENDANT. CONDUCTED INVESTIGATION.

2) JAMES HELWIG
3088 PIGNATELLI CRESCENT
MT.PLEASANT, SC 29466
(843) 216-7655

HE IS THE VICTIM IN THIS CASE, AND SIGNED THE AFFIDAVIT. HE ALSO PROVIDED A WRITTEN STATEMENT AS WELL AS DOCUMENTS REGARDING THIS CASE.

POLICE DEPARTMENT
100 ANN EDWARDS LANE
(843) 884-4176

MOUNT PLEASANT

SOUTH CAROLINA

29464

RONALD R. PERRY
CHIEF OF POLICE
www.mppolice.com

STATEMENT OF FACTS:

ON APRIL 23, 2001 A CONTRACT WAS RATIFIED BETWEEN THE VICTIM, AND THE DEFENDANT. THE DEFENDANT WAS TO BUILD A DOCK AT THE VICTIM'S HOME, 3088 PIGNATELLI CRESCENT FOR $40,500.00. THE VICTIM PAID THE DEFENDANT $27,000.00 AS REQUIRED BY THE CONTRACT, BUT WORK WAS NEVER DONE BY THE DEFENDANT. IN MAY 2001 THE DEFENDANT SHOWED THE VICTIM A DOCK AT 2368 DARTS COVE WAY, AND REPRESENTED THE DOCK AS WORK HE COMPLETED. THE VICTIM THEN DISCOVERED THAT THAT DOCK WAS NOT BUILT BY THE DEFENDANT. THE VICTIM ALSO DISCOVERED THAT AT THE TIME THE DEFENDANT ENTERED INTO HIS CONTRACT HE WAS NOT PROPERLY LICENSED, AND WAS NOT LICENSED UNTIL JUNE 6, 2001. THAT LICENSE LIMITED THE DEFENDANT TO JOBS PRICED AT NO MORE THAT $30,000.00. THE VICTIM PROVIDED A SIGNED WRITTEN STATEMENT OF THE EVENTS. DETECTIVE HOOSE CONFIRMED ALL OF THE ABOVE INFORMATION.

I HAVE REVIEWED THIS CASE PACKET WHICH ONLY CONTAINS COPIES OF THE INVESTIGATIVE FILE. ALL OF THE INFORMATION CONTAINED WITHIN IS COMPLETE TO THE BEST OF MY KNOWLEDGE.

SUPERVISOR **CASE AGENT**

AGENCY I.D.
SC0 100300

INCIDENT REPORT
MT. PLEASANT POLICE DEPARTMENT

Hood

Case Number: 01-009441 | NCIC: Inq. | Entd

EVENT

Incident Type	Completed	FrcdEntry	Premise Type	#Entered	
Breach of Contract	Yes	No	Reside		X Individl Soc/Public
					Business Other
					Fin Inst Unknown
					Governmn Police Off
					Religious Organizatn

Incident Location (Subdivision, Apartment and Number, Street Name and Number): 3088 Pignattelli Crest: Dunes West | ZipCode: 29464 | Weapon Type:

Incident Date	24 Hr.	To	Date	24 Hr.	Dispatch Date and Time	Time Arrived	Depart Time	Location No.
04/18/01	00:00		10/11/01	15:36	10/11/01	14:46	14:56	15:36	

Complainant's Name(Last,First,Middle)	Relationship to Subj.	Res.	Race	Sex	Age	Eth.	Day Phone	Eve Phone
same As Victim								

Address | City | State | ZipCode | Location No.

VICTIM NO. 1

Victim's Name (Last,First,Middle)	Relationship to Subj.	Res.	Race	Sex	Age	Eth.	Day Phone	Eve Phone
Helwig, James T.	OK	J	W	M	58	N	216-7655	817-2293

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tatoos, Glasses, Clothing, Etc.
600	190	BRO	BRO	

Address: 3088 Pignattelli Crest | City: Mt. Pleasant | State: SC | ZipCode: 29464 | Location No.:

Visible Injury? No Explain:

Complaint of Non-visible Injuries? No

Using Alcohol? No
Drugs? No Type:

Two-man Vehicle | One-man Vehicle | Detective/SPLASMT | Other | Alone | Assisted

SUBJECT #1

X Suspect / Runaway / Wanted / Warrant / Arrest / Jail / Summons

Name(Last,First,Middle)	Race	Sex	Age	Eth.	Date of Birth
Mitchell, Bill	B	M	55	N	

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tatoos, Glasses, Clothing, Etc.
602	210	GRY	BRO	Glasses, Beard

Address: 9452 Koester Rd. | City: Ladson | State: SC | ZipCode: 29456 | Location: XXX

Using Alcohol? No
Drugs? No Type:

Arrested Near Scene
Total # Arrested

Date/Time of Offense | Date/Time of Arrest

NARRATIVE

I responded to the O'Neil law Firm in reference to Mr. O'Neil's client, Mr. Helwig needing to report a breach of trust. Upon arriving I spoke with the victim who stated that Mr. Mitchell was supposed to build a dock for him and never did the job. He stated that he payed Mr. Mitchell two installments on April 18, 2001 and June 12, 2001 totaling $27,000. He stated that Mr. Mitchell still has not begun work on the dock. He also stated that Mr. Mitchell showed him a dock at the time of him hiring him and stated that he had built it. Mr. Helwig later found out that the dock was not built by Mr. Mitchell but by another company. Mr. Helwig also stated that he found out later that he did not have a contrctor's license at the time he paid Mr. Mitchell. Mr. Helwig's attorney has attempted to contact Mr. Mitchell several times but nothing has come of it. Mr. Helwig stated that Mr. Mictchell had delivered some materials to his home after the first payment but they had nothing to do with the job. He also stated that the materials were now ruined due to the weather.

Jurisdiction of Theft Law Enforcement Agency | Jurisdiction of Recovery Law Enforcement Agency

PROPERTY TEST

							Total Value
Type (Group)							
Stolen							
Damaged							
Burned							
Recovered							
Seized							

ADMIN

Subj. Identified Yes / Subj. Located No | X Active / Unfounded | Admin Closed | Arrested: Under 18 / 18 & Over | Ex. Clearance: Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death | No Prosecution | Extradition Denied | Victim Declines Cooperation | Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
Ofc. R Thomas	10/11/01	2034	[signature]	10-11-01	8964
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number: 01-009441

NCIC: Inq. | Entd.

Original Report	X	Supplemental Report		Modifies Original		Case Status Report	Page 1 of 3

NARRATIVE

INCIDENT TYPE: BREACH OF TRUST

VICTIM: JAMES HELWIG

10/15/01 THE VICTIM, JAMES HELWIG, CAME INTO THE DETECTIVE OFFICE TO SPEAK TO ME ABOUT THIS CASE. HE PROVIDED ME WITH SOME COROSPONDENCE RELATED TO A DOCK THAT WAS SUPPOSED TO BE BUILT BY THE SUSPECT, BILL MITCHELL. HE PROVIDED ME WITH A COPY OF A CONTRACT/PROPOSAL DATED 04/18/01 THAT PROVIDED THAT A DOCK WOULD BE BUILT BY THE MITCHELL AT HELWIG'S RESIDENCE FOR $40,500.00. 1/3 PAYMENT WAS TO BE SENT BY HELWIG UPON SIGNING THE CONTRACT, AND 1/3 PAYMENT WAS TO BE SENT UPON DELIVERY OF MATERIAL. 1/2 PAYMENT OF THE BALANCE WAS TO BE SENT UPON COMPLETION OF HALF OF THE WORK, AND THE REMAINING BALANCE WAS TO BE PAID UPON COMPLETION OF THE JOB. HELWIG STATED THAT HE SENT A CHECK #1648 FOR $13,500.00 ON 04/23/01, AND ANOTHER CHECK #1713 FOR $13,500.00 ON 06/12/01. EACH PAYMENT WAS SENT TO MITCHELL FROM HIS HOME IN NEW JERSEY. HE ALSO PROVIDED ME WITH COPIES OF BOTH OF THOSE CHECKS, AND IT APPEARED THAT MITCHELL RECEIVED EACH PAYMENT. HELWIG THEN GAVE A WRITTEN STATEMENT. HE STATED THAT MITCHELL TOLD HIM THAT WORK ON THE DOCK WOULD BEGIN IN EITHER JUNE OR JULY. HE STATED THAT HE ARRIVED IN MT.PLEASANT ON MAY 3 TO PREPARE FOR MOVING FROM NEW JERSEY. HE STATED THAT ON MAY 10 HE, HIS WIFE, AND MITCHELL WENT TO LOOK AT A FEW OF MITCHELL'S DOCKS. HELWIG STATED THAT MITCHELL SHOWED THEM A DOCK IN AWENDAW, AND ANOTHER DOCK IN DUNES WEST. HE STATED THAT THE DOCK IN DUNES WEST WAS LOCATED AT 2368 DARTS COVE WAY WHICH WAS ACROSS THE MARSH FROM HIS HOME. HE STATED THAT HE WAS UNDER THE IMPRESSION THAT MITCHELL HAD BUILT THAT DOCK. HE STATED THAT THE PREVIOUS OWNERS OF HIS RESIDENCE TOLD HIM THAT MITCHELL HAD BUILT THAT DOCK, AND THAT MITCHELL WAS SHOWING HIM THE DOCK AS HIS PREVIOUS WORK. HE STATED THAT WHILE THEY WERE LOOKING AT THAT DOCK THE HOMEOWNER CALLED MITCHELL BACK TO THE HOUSE. HE STATED THAT MITCHELL ADVISED THAT THE OWNER ASKED THEM TO LEAVE THE PROPERTY. HELWIG STATED THAT AT SOME POINT HE WENT BACK TO 2368 DARTS COVE WAY, AND SPOKE TO THE HOME OWNERS. HE LEARNED THAT MITCHELL HAD NOT BUILT THEIR DOCK, AND THAT IT WAS BUILT BY DOCKS UNLIMITED. HELWIG STATED THAT AFTER THEY CLOSED ON THEIR HOME HE WAS ASKED BY MITCHELL TO FAX HIM A COPY OF THE DOCK ASSIGNMENT THAT TRANSFERED THE OWNERSHIP

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin / Closed	Arrested Under 18 / X 18 & Over	Ex. Clearance Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death; Victim Declines Cooperation; No Prosecution; Extradition Denied; Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-02	
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number: 01-009441

NCIC: Inq. | Entd.

	Original Report	X	Supplemental Report		Modifies Original		Case Status Report	Page 2 of 3

NARRATIVE

DETECTIVE SUPPLEMENTAL

10/15/01 FROM HINES TO THE HELWIGS ON 05/19/01. HE STATED THAT MITCHELL WAS TO FILE THIS WITH THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT (OCRM). HELWIG STATED THAT HE LEARNED FROM A MARK CALDWELL OF OCRM THAT MITCHELL DID NOT FILE THE DOCK ASSIGNMENT UNTIL 07/16/01. HELWIG STATED THAT MITCHELL WAS TO START WORK ON THE DOCK ON 06/18/01. HELWIG STATED THAT ON 06/11/01 VISITED THE DOCK LOCATION, BUT NEVER TOURED THE MARSH NOR DID HE VALIDATE THE DOCK CONFIGURATION. HELWIG STATED THAT HE LEARNED LATER THAT THE AREA WAS NOT SUITABLE FOR THE TYPE OF DOCK MITCHELL WAS SUPPOSED TO BUILD. HE STATED THAT HE ASKED MITCHELL IF HE SUBMITTED THE DOCK ASSIGNMENT TO OCRM, AND MITCHELL TOLD HIM THAT HE KNEW THE PEOPLE THERE, AND THAT THERE WOULD NOT BE ANY PROBLEMS. HELWIG STATED THAT ON 06/12/01 MITCHELL DELIVERED SOME MATERIALS TO THE PROPERTY, AND TOLD HIM THAT WORK WOULD BEGIN BY 06/18/01. HE STATED THAT HE THEN SENT THE SECOND PAYMENT OF $13,500.00 TO MITCHELL. HELWIG STATED THAT HE WAS TOLD BY HIS CURRENT BUILDER THAT THE MATERIAL WAS NOT THE RIGHT TYPE FOR SOUND CONSTRUCTION. HELWIG STATED THAT HE WENT ON A TRIP ON 06/13/01, AND WHEN HE RETURNED ON 06/26/01 HE FOUND THAT NO WORK HAD BEEN DONE. HE STATED THAT HE MADE REPEATED CALLS TO MITCHELL, BUT GOT NO RESPONSE. HE STATED THAT ON 07/06/01 MITCHELL CAME TO HIS HOME, AND ADVISED HIM THAT THE WORK WAS HELD UP BY WEATHER AS WELL AS EQUIPMENT PROBLEMS. MITCHELL ADVISED HELWIG HIM THAT HE WOULD START WORK THE WEEK OF 07/09/01. HELWIG STATED THAT WAS THE LAST CONTACT HE HAD WITH MITCHELL, AND NO WORK WAS DONE. HELWIG STATED THAT ON 07/10/01 HE LEARNED FROM PEOPLE RENOVATING HIS HOME THAT MITCHELL HAD STARTED A DOCK IN PARK WEST ON ADRIAN WAY. HE STATED THAT HE CALLED MITCHELL, BUT GOT NO RESPONSE. HELWIG STATED THAT HE KNEW THERE WAS A DOCK ON ADRIAN WAY, BUT THAT HE HAD A VERBAL AGREEMENT THAT HIS WOULD BE BUILT FIRST. HE STATED THAT HE MADE ATTEMPTS TO CONTACT MITCHELL, BUT WAS UNABLE TO DO SO. HELWIG STATED THAT ON 08/06/01 HE WROTE A LETTER TO MITCHELL TERMINATING HIM FROM THE AGREEMENT, AND REQUESTING HE RETURN THE $27,000.00. HELWIG STATED THAT HE HAND DELIVERED THE

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin / Closed	Arrested Under 18 / X 18 & Over	Ex. Clearance Und 18 / 18&Over
Reason for Ex. Clearance:	Offender Death / Victim Declines	No Prosecution / Cooperation	Extradition Denied / Juvenile-No Custody	

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-27-02	103
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number	NCIC Inq.	NCIC Entd.
01-009441		

	Original Report	X	Supplemental Report		Modifies Original		Case Status Report	Page 1 of 3

NARRATIVE

DETECTIVE SUPPLEMENTAL

10/15/01 LETTER TO MITCHELL AT THE ADRIAN WAY LOCATION. HELWIG STATED THAT MITCHELL STATED HE WOULD CALL HIM LATER THAT EVENING, BUT HE NEVER CALLED. HELWIG STATED THAT HE SPOKE TO A STAN BOWENS OF THE SOUTH CAROLINA STATE LICENSING BOARD WHO ADVISED HIM THAT MITCHELL WAS FIRST ISSUED A LICENSE ON 06/06/01. BOWENS ADVISED HELWIG THAT HIS LICENSE MITCHELL WAS ISSUED LIMITED HIM TO JOBS OF NO MORE THAN $30,000.00. HELWIG ALSO LEARNED OF SEVERAL COMPLAINTS THAT HAD BEEN FILED AGAINST MITCHELL. HELWIG STATED THAT ON 09/10/01 HIS ATTORNEY, DENNIS O'NEIL, SENT A LETTER TO MITCHELL'S ATTORNEY, STANLEY RODGERS, AND HE LEARNED THAT MITCHELL HAD TERMINATED RODGERS AS HIS ATTORNEY. HELWIG STATED THAT MITCHELL NEVER RESPONDED TO THE LETTER.

10/17/01 I PLACED SEVERAL PHONE CALLS TO MITCHELL, AND LEFT MESSAGES FOR HIM.

10/18/01 I RECEIVED A PHONE CALL FROM MITCHELL. HE STATED THAT HE WOULD NOT COME INTO SEE ME, BUT ADVISED THAT I COULD SPEAK TO HIS ATTORNEY. HE STATED THAT HIS ATTORNEY WAS DONALD HOWE, AND THAT HE WOULD HAVE HIM CALL ME.

10/22/01 I RECEIVED A PACKAGE FROM MITCHELL THAT CONTAINED COROSPONDENCE RELATED TO THIS SITUATION WITH HELWIG.

I SPOKE TO ASST. SOLICITOR SHAWN KENT, AND HE TOLD ME THAT THE CASE APPEARED TO BE CIVIL IN NATURE. HE STATED THAT I SHOULD FAX HIM INFORMATION ON THE CASE AT WHICH TIME I FAXED HIM THE CASE. I THEN SPOKE TO ED KNISLEY OF THE SOLICITOR'S OFFICE, AND HE STATED THAT HE WOULD LOOK OVER THE FILE I HAD FAXED OVER.

10/25/01 I SPOKE TO MITCHELL,AND ADVISED HIM THAT THE SOLICITOR'S OFFICE WAS REVIEWING THE CASE. LATER THIS DATE I SPOKE TO ED KNISLEY, AND HE ADVISED THAT THERE WAS PROBABLE CAUSE TO CHARGE MITCHELL WITH OBTAINING MONEY BY FALSE PRETENSES.

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin Closed	Arrested Under 18	Arrested X 18 & Over	Ex. Clearance Und 18	Ex. Clearance 18&Over

Reason for Ex. Clearance: Offender Death; Victim Declines Cooperation; No Prosecution; Extradition Denied; Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-02	913
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number: 01-009441

NCIC: Inq. | Entd.

Original Report	X	Supplemental Report		Modifies Original		Case Status Report	Page 1 of 1

NARRATIVE

DETECTIVE SUPPLEMENTAL

11/05/01 I MAILED A SUBPEONA TO THE FIRST CITIZENS BANK OF SOUTH CAROLINA FOR BANK RECORDS REGARDING MITCHELL.

11/14/01 I DROPPED THE SUBPEONA FOR BANK OF SOUTH CAROLINA OFF AT THE CHUCK DAWLEY BRANCH OFFICE.

11/16/01 I RECEIVED A CALL FROM FIRST CITIZENS BANK OF SOUTH CAROLINA ACKNOWLEDGING RECEIPT OF THE SUBPEONA.

11/19/01 THE VICTIM, JAMES HELWIG, SIGNED AFFIDAVITS CHARGING MITCHELL WITH OBTAINING MONEY BY FALSE PRETENSES.

11/26/01 I SPOKE TO MITCHELL ON THE PHONE, AND ADVISED HIM OF THE ARREST WARRANT. HE STATED THAT HE WOULD MEET ME AT THE BOND COURT TO TURN HIMSELF IN.

11/29/01 I SPOKE TO WALTER BILBRO, WHO STATED THAT HE WAS REPRESENTING MITCHELL. HE STATED THAT HE HAD INFORMATION THAT WOULD EXONERATE HIS CLIENT. HE ADVISED THAT HE WOULD SET UP A MEETING AT THE SOLICITOR'S OFFICE WITH ED KNISLEY ON 12/03/01 AT 1100 HOURS. HE DID NOT ELABORATE ON THE INFORMATION. I NOTIFIED THE VICTIM OF THE CHANGE.

12/03/01 I MET WITH HELWIG, DENNIS O'NEILL, ED KNISLEY, AND WALTER BILBRO AT THE SOLICITOR'S OFFICE. WALTER BILBRO PRESENTED TWO CASE SUMMARIES FROM THE S.C. CONTRACTOR'S LICENSING BOARD CLEARING MITCHELL OF TWO COMPLAINTS. ONE COMPLAINT WAS FOR MITCHELL USING A NAME OTHER THAN WHAT WAS ON HIS LICENSE, AND THE OTHER WAS FOR EXCEEDING HIS LICENSE LIMITATIONS. HE WAS CLEARED IN BOTH CASES. IN REFERENCE TO THE LICENSE COMPLAINT AN AGREEMENT WAS REACHED THAT MITCHELL WOULD NOT BE HELD ACCOUNTABLE FOR JOBS UNDER CONTRACT BEFORE BEING LICENSED.

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin Closed	Arrested Under 18 / X 18 & Over	Ex. Clearance Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death; Victim Declines; No Prosecution; Cooperation; Extradition Denied; Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-2	2103
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number	NCIC Inq.	NCIC Entd.
01-009441		

	Original Report	X	Supplemental Report		Modifies Original		Case Status Report	Page 1 of 1

NARRATIVE

DETECTIVE SUPPLEMENTAL

12/03/01 WALTER BILBRO FAXED ME COPIES OF THE CONTRACTORS BOARD SUMMARIES. HE ALSO ADVISED THAT HE WOULD HAVE MITCHELL AT BOND COURT ON 12/12/01 AT 1430 HOURS SO THE ARREST WARRANT COULD BE SERVED.

12/12/01 I MET WITH MITCHELL AND WALTER BILBRO AT BOND COURT. THE ARREST WARRANT FOR OBTAINING MONEY BY FALSE PRETENSES WAS SERVED, AND A BOND HEARING WAS HELD. THE VICTIM, HELWIG, SPOKE TO JUDGE GUEDALIA BY SPEAKER PHONE DURING THE PROCEEDING. MITCHELL WAS GIVEN A PERSONAL RECOGNICANTS BOND, PHOTOGRAPHED, FINGERPRINTED, AND RELEASED. DURING FINGERPRINTING MITCHELL ADVISED THAT WHEN HE WAS SHOWING HELWIG THE DOCK ON DARTS COVE WAY HE WAS SHOWING COMPETITOR'S WORK NOT HIS WORK.

12/28/01 I MADE CONTACT WITH JIM AND DELORES KEATING AT 2368 DARTS COVE WAY. THEY BOTH STATED THAT THEY REMEMBERED WHEN MITCHELL AND HELWIG WERE LOOKING AT THEIR DOCK. THEY STATED THAT THEY DID NOT KNOW WHAT CONVERSATION TOOK PLACE BETWEEN MITCHELL AND HELWIG. THEY STATED THAT THEIR DOCK WAS BUILT BY DOCKS UNLIMITED (SHAWN MICHAELS #881-6750).

01/07/02 I SPOKE TO STAN BOWEN OF THE S.C. STATE CONTRACTOR'S LICENSING BOARD ABOUT THE INVESTIGATION INTO MITCHELL. HE STATED THAT MITCHELL WAS BEING INVESTIGATED FOR SEVERAL INCIDENTS OF OPERATING WITHOUT A LICENSE, AND THAT HELWIG'S COMPLAINT CAME IN AFTER THOSE COMPLAINTS WERE DISPOSED OF. HE STATED THAT AT THE TIME OF THE HELWIG CONTRACT MITCHELL WAS NOT UNDER THE BOARDS JURISDICTION BECAUSE HE DID NOT HAVE A LICENSE. HE STATED THAT THE COMPLAINTS WERE DISMISSED BECAUSE A CONSENT ORDER WAS DRAWN UP. HE STATED THAT THE CONSENT ORDER COMBINED THE VARIOUS COMPLAINTS, REQUIRED MITCHELL TO GET A LICENSE, AND PAY A PUNITIVE FINE. WHEN THE CONSENT ORDER WAS COMPLETED THE AGREEMENT STIPULATED THAT ANY ADDITIONAL COMPLAINTS WOULD BE DISMISSED.

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded / Admin Closed	Arrested: Under 18 / X 18 & Over	Ex. Clearance: Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death; Victim Declines; No Prosecution; Cooperation; Extradition Denied; Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-02	
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number: 01-009441

NCIC: Inq. | Entd.

Original Report	X	Supplemental Report		Modifies Original		Case Status Report	Page 1 of 1

NARRATIVE

DETECTIVE SUPPLEMENTAL

01/07/02 HE STATED THAT THE CONSENT ORDER DID NOT GRANDFATHER HELWIGS CONTRACT WITH MITCHELL MAKING HIM PROPERLY LICENSED AT THE TIME OF THE CONTRACT. HE STATED THAT MITCHELL WAS STILL REQUIRED TO BE PROPERLY LICENSED AT THE TIME OF THE HELWIG CONTRACT. HE STATED THAT MITCHELL WAS STILL NOT PROPERLY LICENSED ON 04/18/01 WHEN HE ENTERED INTO THE CONTRACT WITH HELWIG. HE STATED THAT THE CONSENT ORDER DID NOT ABSOLVE MITCHEL OF ANY PRIOR WRONG DOING. BOWEN ALSO ADVISED THAT HE WAS NOT PART OF THE CONSENT ORDER.

THIS CASE IS CLOSED BY ARREST: WILLIAM CURTIS MITCHELL
W/M DOB 09/16/39
9452 KOESTER RD.
LADSON, SC 29456

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin Closed	Arrested: Under 18 X 18 & Over	Ex. Clearance: Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death | Victim Declines Cooperation | No Prosecution | Extradition Denied | Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-02	
			Follow-up Investigation?		

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: 0100944 DATE: 10-15-01

TIME: 4:00 PM

STATEMENT OF: James T. Helwig

ADDRESS: 3088 Pignatelli Crescent, MT Pleasant SC 29466 Phone #: 843-216-7655

PLACE OF EMPLOYMENT: Retired Phone #:

RACE: W SEX: M BIRTH DATE: 2-11-43

My wife and I purchased the above home in Dunes West on May 18, 2001. (Closing Date). Prior to closing we obtained quotes for a dock to be built on our property. The previous owners of our home had a bid from Bill Mitchell and recommended we speak with him. We did and entered into a contract with him on April 18, 2001. I immediately sent him a check ($13500.00) on April 18 from my home in Princeton, NJ, which represented 1/3 of the contract price ($40,500.00). Mr. Mitchell stated that he should start our dock no later than June/July 2001.

We arrived in MT Pleasant on May 3 to prepare for our move. On May 10 we asked Mitchell to take us to see a few of his docks. He showed us one dock in Awendaw that was in progress and one at 2368 Darts Cove Way, Dunes West, which is directly across the marsh from our home. (The Hines had told us previously that Mitchell had built that dock.) While my wife and I were looking at the dock, Mitchell was called back to the house by the owner. He told us later that the owner would like us to leave. I didn't think too much of it

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: _____ DATE: _____
TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

then, but I finally went back to the house and learned from the owner that Mitchell had not built that dock. It was built by Docks Unlimited owned by Sean Barnes. The owner (woman) recalled the incident where she asked Mitchell to leave. We feel that this represents a total misrepresentation of product to a prospective customer.

After the closing of our home sale, Mitchell asked me to fax to him a copy of the "Dock Assignment" of ownership to us from the Hines. I did so on May 19, 2001 and Mitchell confirmed receipt on May 20 via a phone call. This document is important because it must be filed with the Ocean and Coastal Resource Management (OCRM) so they can update their permit records. The dock builder assumes responsibility for this paperwork. (I later learned from Mark Caldwell of OCRM that they did not receive this Dock Assignment from Mitchell until July 16, 2001. This was two months after he received it from me and one month after he told me he would start our dock on June 18, 2001.)

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: _____ DATE: _____
TIME: _____

STATEMENT OF: James T. Helwig
ADDRESS: _____ Phone #: _____
PLACE OF EMPLOYMENT: _____ Phone #: _____
RACE: _____ SEX: ___ BIRTH DATE: _____

On June 11, 2001 Mitchell visited our new house where the dock was to be built. He never toured the marsh and the stream bed. He did nothing to validate the dock configuration we had contracted, which I learned much later was not suitable for our marsh area. That is the area was not wide enough for a boat lift and pier head of the size he had recommended. I also asked him if our paperwork had been submitted to OCRM. He said that he knew the people there and that there would be no problem. I said I wanted all approvals documented by appropriate authorities. He agreed to do so.

On June 12, 2001, Mitchell delivered some material to our property. He said he would start work the next week - by June 18. He had to pull down some of our backyard fence to deliver the material. He said he would repair everything upon completion of the dock.

In accordance with the contract, I paid Mitchell on June 12 an additional 1/3 of the contract price ($13500.00) upon

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WITNESSES:
Det. _____

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: _____ DATE: _____
TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

receipt of some material. The balance was to be delivered in stages. The amount on hand represented no more than 1/6 to 1/4 of required material. It subsequently warped within a short period of time, and I was told by my current dock builder that the wood was not all the right type for sound construction.

We left on June 13 for a two week trip. Mitchell was to have started the dock on June 18 while we were gone. We returned on June 26, 2001 and found nothing done. I placed an immediate call to Mitchell, but received no answers. Repeated attempts to call him went unanswered.

On July 6, 2001 Mitchell arrived unexpectantly at our home (temporary Condo in Dunes West - we didn't move into our home until July 30) and said he had been held up by rains and equipment problems. He said he would start our dock the following week of July 9. I asked that he call me the night before he started. This was the last contact I had ~~from~~ with Mitchell. He never called me or attempted to tell me

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: _____ DATE: _____
TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

why he was not working on our dock.

In fact, I heard on July 10 from our builder that was renovating our home that Mitchell had started a dock on Adrian Way in Park West. I immediately tried to call Mitchell to learn if this was true, He did not respond to my message. This is important because I knew this property and had a previous oral agreement with Mitchell that our dock would be built before this one on Adrian Way. I called and left messages several times for Mitchell and even drove 3 times to Adrian Way to find him. All went to no avail.

We moved into our house on July 30 and were tied up with the move for a week. Finally on August 6, 2001 I wrote a letter to Mitchell terminating our agreement and required return of all amounts ($27000.00) paid to him. ~~Prior~~ I delivered this letter to him in person on August 6 at the Adrian Way dock, where I learned he would be. He acknowledged orally

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: _____ DATE: _____ TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

to me at that time his non-performance and said he would call me that night. He never did call.

Before I terminated the agreement, I contacted two people - Mark Caldwell at OCRM and Stan Bowan, an investigator with the State General Contractors Board. Mr. Caldwell informed me, as stated previously, that the Dock Assignment was not received by OCRM until July 16. (Therefore, it appears there was no good faith effort on Mitchell's behalf to start my dock on June 18 or July 9 because the paperwork had not been processed. You must receive an orange placard from OCRM before you can start building.) Also, the builder was responsible for sending OCRM a configuration of the dock pierhead before construction would be approved. This configuration has never been sent by Mitchell to OCRM.

I contacted Mr. Bowan to determine if Mr. Mitchell was licensed and if any complaints had been received at his office. He investigated the matter and subsequently

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: _____ DATE: _____
TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

informed me in writing of the following:

1) Mr. Mitchell was first issued a South Carolina Contractors license on June 6, 2001

2) The license carried a dollar limitation of $30000.00 per job.

3) As a result of the information received from Mr Mitchell and a conversation with him, two complaints were registered against him:
   a) Exceeding dollar limitation amount
   b) Using erroneous name on letterhead and contract.

4) Several other complaints had been received in his office concerning Mitchell.

From the above, it is clear that Mitchell was not licensed to enter into a contract with me on April 18, 2001.

In a final attempt to obtain justice from Mr. Mitchell, I retained an attorney (Dennis O'Neill) on September 10, 2001.

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: _____ DATE: _____
TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

Mr. O'Neill sent a letter on September 17, 2001 to Mitchell's aHorney, Stanley C. Rodgers. The essence of the letter was that the contract with me was null and void because he was not licensed to perform this work. We demanded return of all amounts ($27000.00) paid to him. Mitchell did not respond by the October 1 deadline and, apparently, terminated his aHorney.

On October 11, 2001 I filed a police report with Officer Rebecca Thomas in the presence of my aHorney, Mr. O'Neill. I desire justice and do not want Mr. Mitchell to be able to defraud other people as I have been.

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

DET.

I have received a copy of the above statement: James T. Helwig

AGENCY I.D.	DATE/TIME OF ARREST	BOOKING REPORT	CASE NUMBER
SC0 100300	12/12/01 @1430	MT. PLEASANT POLICE DEPARTMENT	01009441

PERSONAL DATA

DEFENDANT NAME (LAST, FIRST, MIDDLE)	RACE	SEX	DATE OF BIRTH	DOCKET NUMBER
MITCHELL - WILLIAM CURTIS	W	M	9/16/39	

AGE	ETH.	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER	VISIBLE SCARS AND MARKS	NCIC	I.D. NUMBER
61	N	600	190	GRY	BLU	248-58-8655	N/A		

ADDRESS (NUMBER AND STREET)	CITY	STATE	ZIP CODE	RESIDENT	PHONE NUMBER
9452 KOESTER RD.	LADSON	SC	29456	Y N U	

ALIAS	PLACE OF BIRTH	DRIVERS LICENSE NUMBER	STATE
	COLUMBIA, SC	00939251S	SC

EMPLOYER OR OCCUPATION	NEXT OF KIN	ADDRESS (CITY AND STATE)
CONTRACTOR	ROBERT MITCHELL (SON)	COLUMBIA, SC

BOOKING OFFICER'S NAME	NUMBER	ARRESTING OFFICER	AGENCY	NUMBER
		HOSE-FIR.	MPPD	2033

ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE: ☐ SEMI-AUTO ☐ FULL-AUTO ☐ ON VIEW ARREST ☐ SUMMONED ☒ CUSTODY

JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFFERED TO OTHER AUTHORITY (J—This Jurisdiction. S—State. O—Out of State. U—Unknown)

ADDITIONAL CASE NUMBERS ☐ MORE IN REMARKS

CHARGE / BOND / DISPOSITION

IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C

	A	B	C
CHARGE I.D.			
CHARGE	OBTAINING MONEY FALSE PRETENSE 7 $5,000.00		
STATUTE	16-13-240		
BOND AMOUNT			
BOND TYPE			
NEXT DATE			
DISPOSITION	WARRANT # G-248424		
	DAYS / AMOUNT	DAYS / AMOUNT	DAYS / AMOUNT
SENTENCE			
TIME SERVED			
GOOD TIME			
BALANCE			
PAID			
RECEIPT NUMBER			

RELEASE DATE	TIME	RELEASING OFFICER	NUMBER	AGENCY RELEASED TO

SIGNATURE OF RECEIVING OFFICIAL X _____ LIST ANY REMARKS BELOW

REMARKS:

BOND HEARING 12/12/01 @ 1430

TURN IN W/ WARRANT # G-248424

DEFENDANTS PERSONAL PROPERTY RECEIPT — TOTAL CASH AT TIME OF ARREST → $

QUANTITY	ITEM	QUANTITY	ITEM

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X _____ DEFENDANT'S SIGNATURE AT TIME OF ARREST

_____ OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X _____

State of South Carolina
County of Charleston
CRIME VICTIM INFORMATION

PLEASE PRINT ENTIRE FORM CLEARLY AND MAKE SURE BOTTOM COPY IS LEGIBLE (ONE FORM PER VICTIM)

DEFENDANT/JUVENILE INFORMATION

CHECK (✓) COURT WHERE CHARGES WILL BE HEARD: [X] General Sessions [ ] Summary Court [ ] Family Court

ACCUSED'S LAST NAME	ACCUSED'S FIRST NAME	MIDDLE INITIAL
Mitchell	William	C.

CHARGE(S): Obtain Money / False Pretenses > $5,000

TICKET/ARREST WARRANT(S) #	DATE OF ARREST	OCA#
G-248424	12/12/11	01-00-4411
ARRESTING OFFICER	**BADGE NUMBER**	**POLICE AGENCY**
Hoge - F.J.	2033	MPD

VICTIM INFORMATION

NAME OF VICTIM: James Howard

STREET ADDRESS	CITY/STATE	ZIP CODE
3088 Pontiac Crescent	Mt. Pleasant, SC	29466
MAILING ADDRESS IF DIFFERENT FROM ABOVE	**CITY/STATE**	**ZIP CODE**

TELEPHONE NUMBERS OF VICTIMS	HOME	WORK	PAGER	MOBILE
	216-7655			817-2293

ALTERNATE CONTACT INFORMATION OR IF VICTIM IS DECEASED, MENTALLY ILL OR A MINOR CHILD

NAME OF ALTERNATE CONTACT	RELATIONSHIP
N/A	

STREET ADDRESS	CITY/STATE	ZIP CODE
MAILING ADDRESS IF DIFFERENT FROM ABOVE	**CITY/STATE**	**ZIP CODE**

TELEPHONE NUMBERS OF ALTERNATE CONTACT	HOME	WORK	PAGER	MOBILE

PERSON COMPLETING ABOVE INFORMATION

NAME OF OFFICER	AGENCY	BADGE NUMBER
F.J. Hoge	MPD	2033
SIGNATURE OF OFFICER		**DATE**
		12/12/11

CERTIFICATION TO COURT (Completed by Arresting/Appearing Officer)

[X] A representative of MPD
ARRESTING AGENCY

acknowledges that a reasonable attempt was made to notify the above-designated victim sufficiently in advance of the bond hearing.

[ ] A representative of _____
ARRESTING AGENCY

indicates that the above-designated victim did not wish to be notified of the bond hearing, or indicated they did not wish to appear.

SIGNATURE OF REPRESENTATIVE/OFFICER	DATE
	12/12/11
SIGNATURE OF SUMMARY COURT JUDGE	**DATE**

If more than one victim - PAGE _____ OF _____

WHITE - Family/Bond/Summary Court YELLOW - Detention Center PINK - Solicitor GOLD - Law Enforcement Agency GREEN - Victim

CENTRALIZED PRELIMINARY HEARING COURT

Russell Building
2144 Melbourne Street
Room 103
North Charleston, S.C. 29405
(843) 740-5873

NOTICE TO CLERK OF COURT
AND
SOLICITOR OF JUDICIAL CIRCUIT

UNIFORM WARRANT NUMBER(S)
1) G248424
2)
3)
4)
5)
6)

5

PRELIMINARY EXAMINATION/BOND RECONSIDERATION
IN 2001-OW-10-005987

THE STATE VS. MITCHELL, WILLIAM CURTIS

THE CRIMINAL ACT(S) CHARGED IN THIS CRIMINAL CASE IS/ARE:
OBTAIN SIGNATURE UNDER FALSE P — OCA # 01009441
OCA #
OCA #
OCA #
OCA #
OCA #

RECEIVED
JAN 09 2002
BY:

THE DEFENDANT IN THIS CRIMINAL ACTION IS REPRESENTED BY:

WALTER GILGRO, JR

RUSSELL BUILDING 2144 MELBOURNE ST. ROOM 130, NORTH CHARLESTON SC 29405

01/18/2002 AT 10:00 A.M.

PURSUANT TO SECTION 17-23-162: "THE AFFIANT LISTED ON AN ARREST WARRANT OR THE CHIEF INVESTIGATING OFFICER FOR THE CASE MUST BE PRESENT TO TESTIFY AT THE PRELIMINARY HEARING OF THE PERSON ARRESTED PURSUANT TO THE WARRANT." NOW, THEREFORE IT IS ORDERED THAT THE DEFENDANT NAMED ABOVE BE GRANTED A PRELIMINARY EXAMINATION/BOND RECONSIDERATION TO BE HELD AT THIS PLACE, TIME, AND DATE.

01/08/2002
SEAL

JAMES B. GOSNELL, JR., MAGISTRATE
CHARLESTON COUNTY

COPIES TO: CLERK OF COURT
SOLICITOR
SUMMARY COURT FILE
ATTORNEY FOR DEFENDANT
ARRESTING/INVESTIGATING OFFICER
OFFICER HOOSE/AFFIANT
AGENCY MPPD - CITY OF MT. PLEASANT

RECEIVED
JAN 2002
BY:

HOOSE

WALTER BILBRO, JR. P.C.
ATTORNEY AT LAW
1365 ASHLEY RIVER ROAD
CHARLESTON, S.C. 29407
(843) 766-2277 (843) 766-4226 FAX

[redacted]

Fax

To: DET. HOOSE From: WALTER BILBRO, JR.

Fax: 856-2182 Date: 12/3/01

Phone: Pages: PAGE(S) INCLUDING COVER SHEET : 5

Re:

MITCHELL, BILL

Urgent For Review Please Comment Please Reply

NOTE; IF YOU ARE NOT THE ADDRESSEE ON THIS MESSAGE, PLEASE BE AWARE THAT THE CONTENTS OF THIS FAX MAY BE CONFIDENTIAL AND SUBJECT TO ATTORNEY/CLIENT PRIVILIGE.

Hope these are helpful.

(for W. Bilbro)

SECTION 40-1-200. Unlawful practice.

A person who practices or offers to practice a regulated profession or occupation in this State in violation of this article or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars.

Edward L. Knisley, Jr.
Assistant Solicitor

Solicitor, Ninth Judicial Circuit
Charleston County Courthouse
2144 Melbourne Avenue
N. Charleston, SC 29405

(843) 740-5850
FAX: (843) 740-5858
Pager: (843) 937-3954

WALTER BILBRO, JR. P.C.
ATTORNEY AT LAW
1365 ASHLEY RIVER ROAD
CHARLESTON, S.C. 29407
(843) 768-2277 (843) 766-4226 FAX

[redacted]

Fax

To: DET. FRED Lowe From: WALTER BILBRO, JR.

Fax: 856-2182 Date: 11-29-01

Phone: Pages: 5 PAGE(S) INCLUDING COVER SHEET

Re:

Urgent For Review Please Comment XXX Please Reply

NOTE: IF YOU ARE NOT THE ADDRESSEE ON THIS MESSAGE, PLEASE BE AWARE THAT THE CONTENTS OF THIS FAX MAY BE CONFIDENTIAL AND SUBJECT TO ATTORNEY/CLIENT PRIVILIGE.

First Citizens Bank
Member FDIC
1230 MAIN STREET
POST OFFICE BOX 29
COLUMBIA, SC 29202
www.fcbsc.com

November 16, 2001

Mount Pleasant Police Department.
Attention: Detective Hoose
100 Ann Edwards Lane
Mount Pleasant, South Carolina 29464

RE: Case #01009441

Dear Detective Hoose:

Enclosed is the information you requested by court order for the above referenced case. When we spoke on the phone today I indicated that there were two accounts, however, the second account was not opened until July so there would be no information available for June on the that account.

The cost for time spent in research to complete this subpoena is $10.00. Please issue a check for this amount made payable to First Citizens Bank and reference our case #57117.

Please contact me at 803-733-3644 if you have any questions or need further assistance.

Sincerely,

Kim Henry
Deposit Operations Supervisor

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
TOWN OF MOUNT PLEASANT)
)
vs.)
)
CASE NUMBER 01009441
)
_____)

IN THE MUNICIPAL COURT
FOR MOUNT PLEASANT

COURT ORDER

TO: BANK OF SOUTH CAROLINA
1337 CHUCK DAWLEY BLVD
MT PLEASANT SC 29464
ATTN: SALLY ALTMAN

YOU ARE HEREBY REQUIRED to submit to the Mount Pleasant Police Department any and all account information for Bill Mitchell, Kocak Brothers or Dock Systems Inc during the month of April 2001.

FAIL NOT ON PAIN OF THE FINE AND FORFEITURE THAT WILL FALL THEREON.

This 5th day of November, 2001 upon receipt.

11/05/2001
(Date)

MUNICIPAL JUDGE
TOWN OF MOUNT PLEASANT

INVESTIGATION BY:
DET. F.R. HOOSE
100 ANN EDWARDS LANE
MT. PLEASANT, SC 29464

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
TOWN OF MOUNT PLEASANT)
)
vs.)
)
CASE NUMBER 01009441
)
_____)

IN THE MUNICIPAL COURT
FOR MOUNT PLEASANT

COURT ORDER

TO: FIRST CITIZENS BANK OF SOUTH CAROLINA
ATTN: DENNIS CHAPMAN
P O BOX 29
COLUMBIA SC 29202

YOU ARE HEREBY REQUIRED to submit to the Mount Pleasant Police Department any and all account information for Bill or William Mitchell and/or Dock Systems Inc. during the month of June 2001.

FAIL NOT ON PAIN OF THE FINE AND FORFEITURE THAT WILL FALL THEREON.

This 5th day of November, 2001 upon receipt.

11/05/2001
(Date)

MUNICIPAL JUDGE
TOWN OF MOUNT PLEASANT

INVESTIGATION BY:
DET. F.R. HOOSE
100 ANN EDWARDS LANE
MT. PLEASANT, SC 29464

First Citizens Bank

BUSINESS SIGNATURE CARD

079022739101 Acct Type Business Checking II 05/09/2001

Branch 222 Opened by S. Alexander X New ____ Amended ____ Temp

DOCK SYSTEM INC

TIN: 570954585

Amended By: _____

Account Ownership Designation:

Corporation

DOCUMENTATION OBTAINED: X Corp. Resolution ____ Unincorp. Resolution ____ Partnership Agreement ____ Other _____

FIRST-CITIZENS BANK AND TRUST COMPANY OF SOUTH CAROLINA

[The relationship between the Bank and account holder(s) remain(s) the same regardless of (possible) conversions of this account.]

The undersigned:

(1) acknowledge that at least one authorized signer has received at least one copy of each of the following documents: Business Deposit Accounts Fee Schedule/Interest Disclosures brochure; Rules and Regulations for Checking, Savings, MMDA Accounts/Funds Availability/Direct Deposit, Cardholder Agreement and Electronic Fund Transfer Disclosures brochure.

(2) agree to the provisions set forth in the above documents.

(3) certify that the "Account Ownership Designation" indicated above is correct.

(4) certify that the purpose of this account is for business use and is not for consumer purposes.

(5) CERTIFY, UNDER PENALTIES OF PERJURY, THAT: (A) THE TAXPAYER IDENTIFICATION NUMBER SHOWN ABOVE IS CORRECT; AND (B) THE ACCOUNT IS NOT SUBJECT TO BACKUP WITHHOLDING BECAUSE (1) THE ENTITY IS EXEMPT FROM BACKUP WITHHOLDING, OR (2) THE ENTITY HAS NOT BEEN NOTIFIED BY THE INTERNAL REVENUE SERVICE (IRS) THAT IT IS SUBJECT TO BACKUP WITHHOLDING AS A RESULT OF FAILURE TO REPORT ALL INTEREST OR DIVIDENDS, OR (3) THE IRS HAS NOTIFIED THE ENTITY THAT IT IS NO LONGER SUBJECT TO BACKUP WITHHOLDING. (NOTE: ITEM (B) MUST BE CROSSED OUT IF THE ENTITY HAS BEEN NOTIFIED BY THE IRS THAT IT IS CURRENTLY SUBJECT TO BACKUP WITHHOLDING BECAUSE OF UNDER-REPORTING INTEREST OR DIVIDENDS ON ITS TAX RETURN.); AND (C) THE ENTITY IS A U.S. ENTITY.

THE INTERNAL REVENUE SERVICE DOES NOT REQUIRE YOUR CONSENT TO ANY PROVISION OF THIS DOCUMENT OTHER THAN THE CERTIFICATIONS REQUIRED TO AVOID BACKUP WITHHOLDING AS CONTAINED IN ITEM (5).

Authorized Signatures:

WILLIAM MITCHELL _____

Title President

_____

Title _____

_____

Title _____

_____

Title _____

MISC-011 (Rev. 2/01)

Direct Inquiries To: FIRST CITIZENS BANK
903 JOHNNIE DODDS BLVD
MT. PLEASANT SC 29464
843-216-2101

DOCK SYSTEM INC
9452 KOESTER RD
LADSON SC 29456

Your Account At A Glance

Checking Balance: 15,189.43

IM 222

Statement Period: June 1, 2001
Thru June 30, 2001

Business Checking II
Account Number: 000079022739101

Taxpayer I.D. 57-0954585
Enclosures This Statement: 0

Beginning Balance	12,592.24+	Statement Period Days	30
3 Deposits	33,642.00+	Average Collected Balance	18,008.00+
0 Other Credits	.00		
41 Checks	31,044.81-		
0 Other Debits	.00		
Monthly Service Charge	.00		
Ending Balance	15,189.43+		

Deposits To Your Account

Date	Amount	Date	Amount	Date	Amount
06-05	13,666.00	06-13	13,500.00	06-15	6,476.00

Checks Paid From Your Account

Check No.	Date	Amount	Check No.	Date	Amount	Check No.	Date	Amount
908	06-18	411.00	929	06-11	1,500.00	943	06-19	25.00
910*	06-08	190.00	930	06-14	253.34	944	06-19	80.00
917*	06-04	315.72	931	06-12	80.00	945	06-19	411.00
918	06-01	503.50	932	06-18	100.00	947*	06-22	243.19
919	06-01	1,500.00	933	06-15	100.00	948	06-19	500.00
920	06-06	404.39	934	06-28	100.00	950*	06-21	500.00
921	06-18	95.00	935	06-18	100.00	951	06-22	330.00
922	06-04	225.00	936	06-12	500.00	952	06-25	2,000.00
923	06-08	169.53	937	06-19	11.54	954*	06-26	200.34
924	06-07	120.00	938	06-13	500.00	960*	06-27	300.00
925	06-06	500.00	939	06-13	1,680.00	962*	06-29	101.89
926	06-08	2,500.00	940	06-19	140.00	963	06-29	4,500.00
927	06-07	2,900.00	941	06-15	252.87	280222*	06-11	3,623.70
928	06-27	601.00	942	06-15	2,476.80			

*Prior Check Number(s) Not Included or Out of Sequence.

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
06-01	10,588.74+	06-07	19,789.63+	06-13	22,546.40+
06-04	10,048.02+	06-08	16,930.10+	06-14	22,293.06+
06-05	23,714.02+	06-11	11,806.40+	06-15	25,939.39+
06-06	22,809.63+	06-12	11,226.40+	06-18	25,233.39+

Direct Customer Inquiry Calls To
FIRST CITIZENS BANK
Hotline At 1-888-612-4444.

Direct Inquiries To: FIRST CITIZENS BANK
903 JOHNNIE DODDS BLVD
MT. PLEASANT SC 29464
843-216-2101

DOCK SYSTEM INC
9452 KOESTER RD
LADSON SC 29456

IM 222

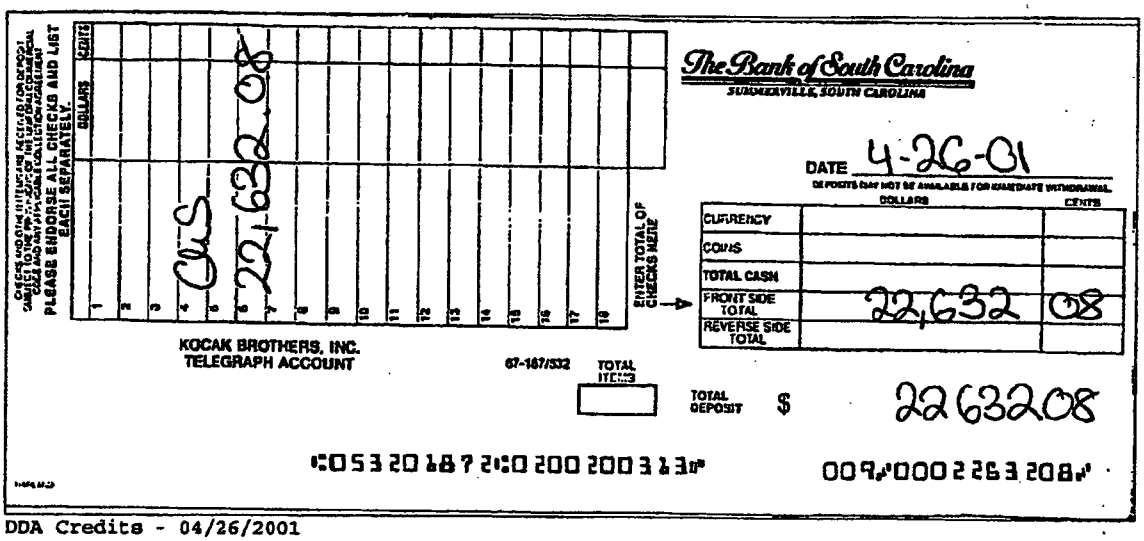
Statement Period: June 1, 2001
Thru June 30, 2001

Account Number: 000079022739101

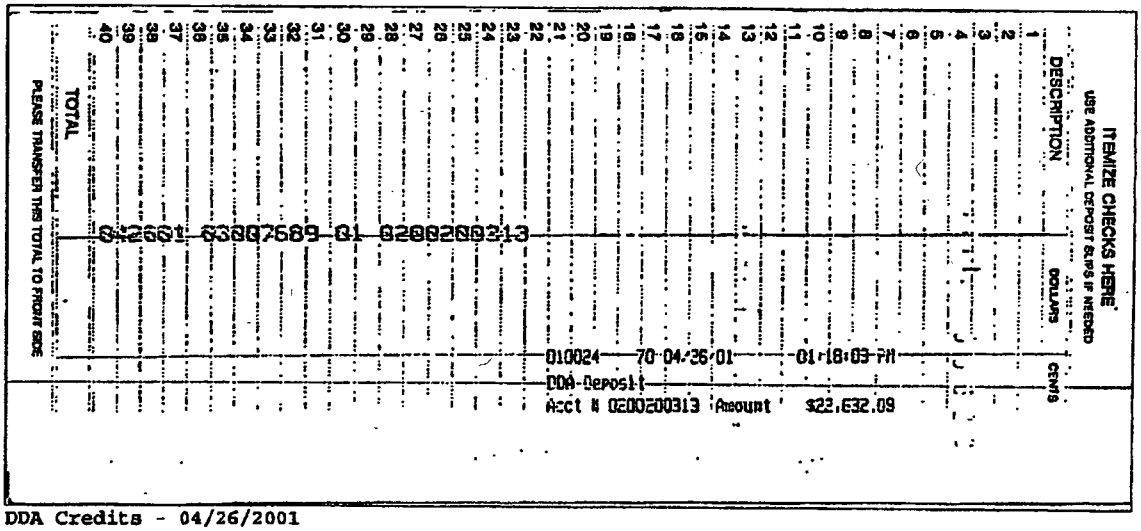
Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
06-19	24,065.85+	06-25	20,992.66+	06-28	19,791.32+
06-21	23,565.85+	06-26	20,792.32+	06-29	15,189.43+
06-22	22,992.66+	06-27	19,891.32+		

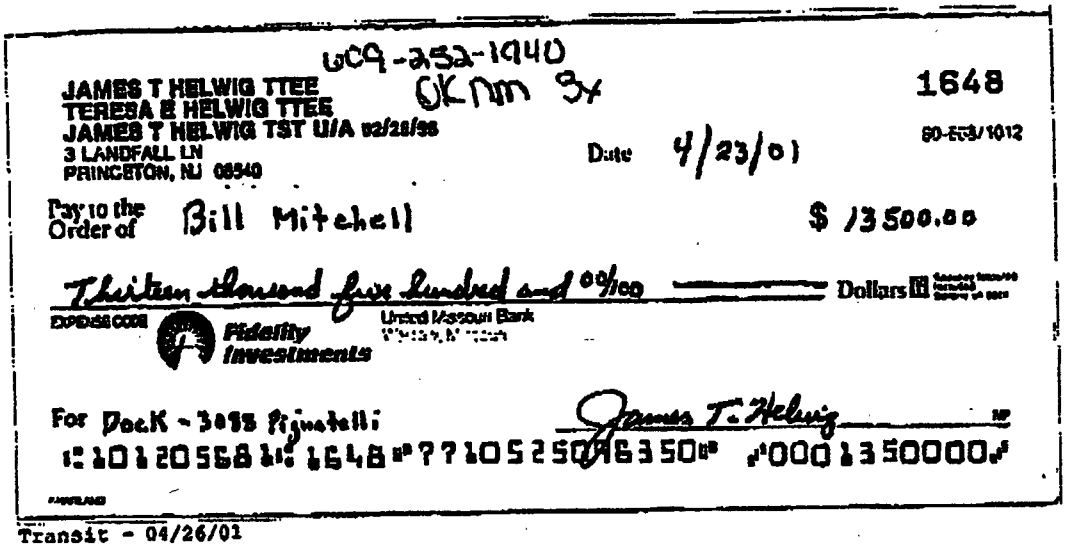
Around The Corner Or Around The Clock. Online Banking Gives You Every Option.



DDA Credits - 04/26/2001



DDA Credits - 04/26/2001



JAMES T HELWIG TTEE
TERESA E HELWIG TTEE
JAMES T HELWIG TST U/A 02/28/98
3 LANDFALL LN
PRINCETON, NJ 08540

ucq-252-1940
OK nm 3x

1648

80-553/1012

Date 4/23/01

Pay to the Order of Bill Mitchell

$ 13500.00

Thirteen thousand five hundred and 00/100 Dollars

Fidelity Investments

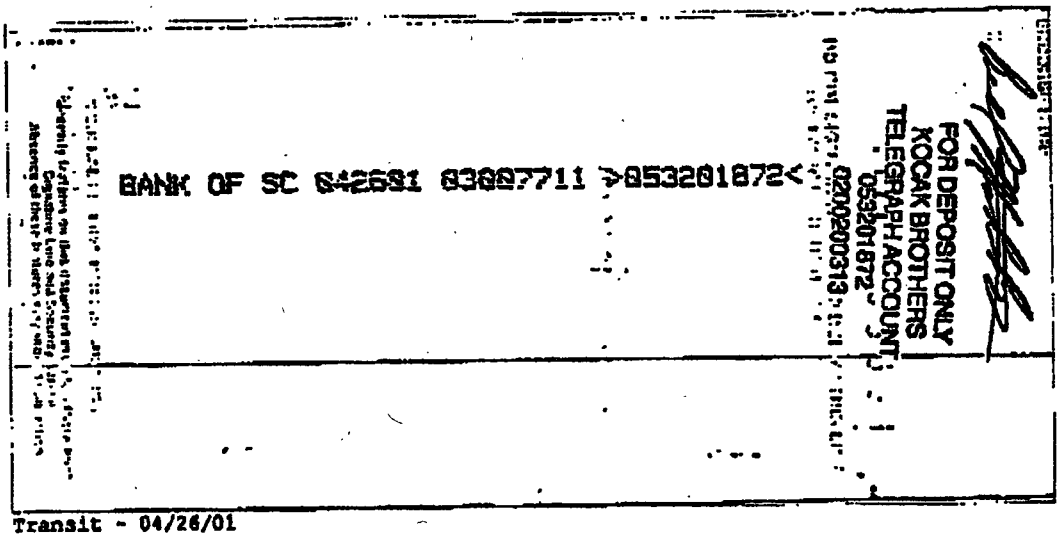
United Missouri Bank

For Dock - Boss Pizzatelli

James T. Helwig

⑈101205688⑈ ⑆1648⑈ ⑆710525016350⑈ ⑈000135000000⑈

Transit - 04/26/01



BANK OF SC 042691 03007711 >853201872<

FOR DEPOSIT ONLY
KOCAK BROTHERS
TELEGRAPH ACCOUNT
853201872

Transit - 04/26/01

609-252-1940

JAMES T HELWIG TTEE
TERESA E HELWIG TTEE
JAMES T HELWIG TST U/A 02/26/96
3 LANDFALL LN
PRINCETON, NJ 08540

CKM 34

1648

80-568/1012

Date 4/23/01

Pay to the Order of Bill Mitchell $ 13,500.00

Thirteen thousand five hundred and 00/100 Dollars

EXPENSE CODE

Fidelity Investments

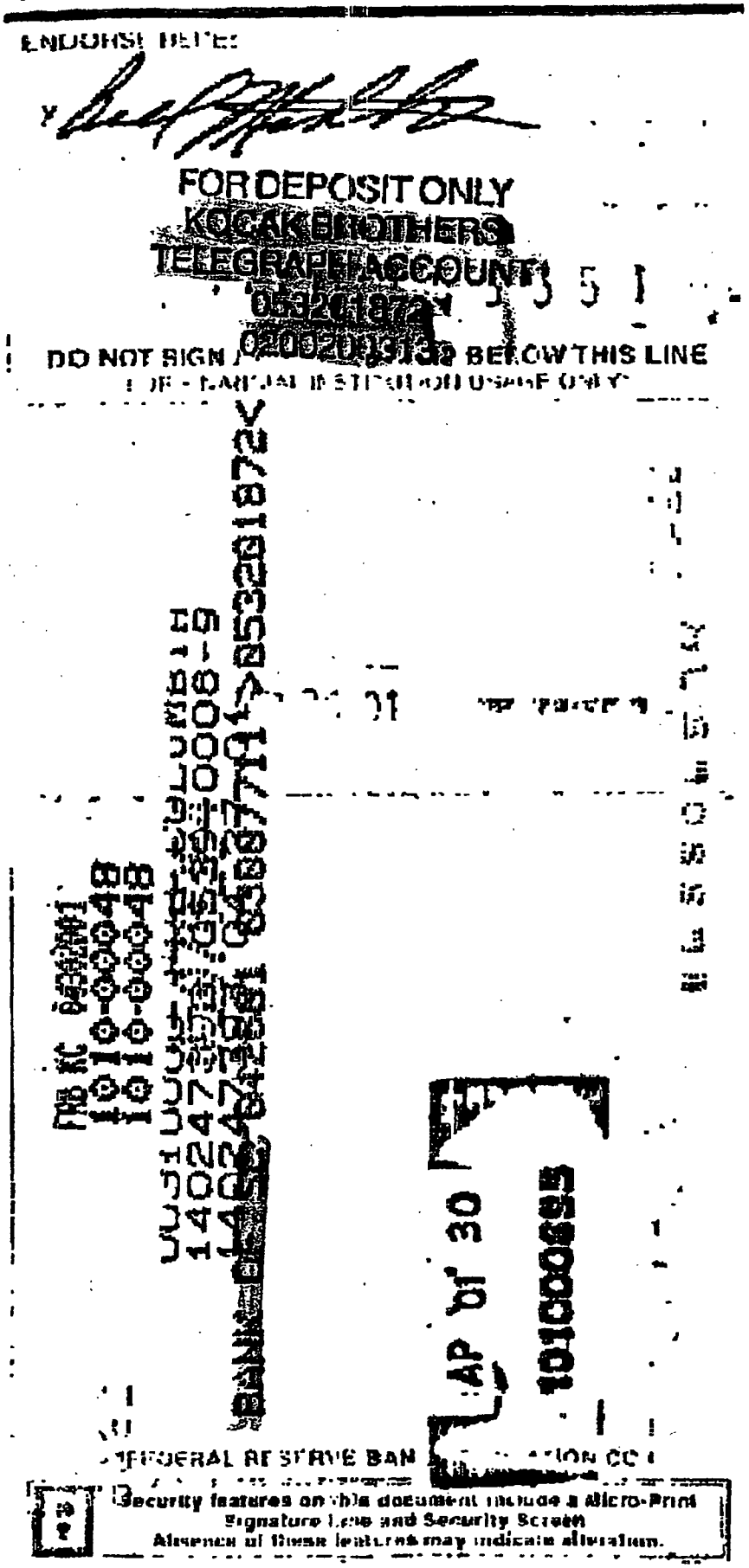
United Missouri Bank
Warsaw, Missouri

For Dock - 3095 Pignatelli

James T. Helwig

⑈101205681⑈ 1648 ⑈?105250?6350⑈ ⑆000135000⑆

AUPLAND


ENDORSE HERE:
FOR DEPOSIT ONLY
KOCAK BROTHERS
TELEGRAPH ACCOUNT
DO NOT SIGN BELOW THIS LINE
FOR FINANCIAL INSTITUTION USE ONLY
FEDERAL RESERVE BAN
Security features on this document include a Micro-Print
Signature Line and Security Screen
Absence of these features may indicate alteration.

JAMES T HELWIG TTEE
TERESA E HELWIG TTEE
U/A 02/26/96
3088 PIGNATELLI CRESCENT
MT. PLEASANT, SC 29466

1713

80-568/1012

Date 6-12-01

Pay to the Order of Bill Mitchell 41596 06-14-01 144 $ 13500.00

Thirteen thousand five hundred and 00/100 Dollars

EXPENSE CODE

Fidelity Investments

United Missouri Bank
Warsaw, Missouri

For #2 - Stock

James T. Helwig

⑈101205681⑈1713⑈ ⑆105250663⑆ ⑈0001350000⑈

ENDORSE HERE:

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USE ONLY

REG. CC

others
ards:

if altered:

of modification of "Original
ument" screen on back of check
dotted line

appear with
chemical alteration
absence of padlock icon

Padlock design is a certification mark of Check Payment Systems Association

First Citizens Bank of S.C.

South Carolina
Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

September 10, 2001

Mr. Jim Helwig
3088 Pignatelli Cresent, Dunes Cresent
Mt. Pleasant, S.C. 29466

Re: Dock Contractor

Dear Mr. Helwig,

In response to your faxed letter dated September 10, 2001 you asked for the date that your dock contractor Mr Bill Mitchell was granted a State of South Carolina General Contractors' License. In checking our records we find that Mr. Bill Mitchell was first issued a South Carolina General Contractors License on June 6, 2001.

All general and mechanical contractors are now listed in the Contractors Board WEBB site, www.llr.state.sc.us, and can be verified for licensure.

I hope this information answers your questions.

Please call if I can be of any further assistance.

Sincerely yours,

Stan Bowen
Investigator

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

August 28, 2001

Mr. Jim Helwig
3088 Pignatelli Cresent, Dunes Cresent
Mt. Pleasant, S.C. 29466

Re: Dock Contractor

Dear Mr. Helwig,

In your faxed letter of August 10, 2001 you asked several questions in regards to your dock contractor Mr. Bill Mitchell. Mr. Mitchell is currently licensed with the State of South Carolina Contractors Licensing Board as a General Contractor and as a Marine [redacted]

I hope this information answers your questions.

Please call if I can be of any further assistance.

Sincerely yours,

Stan Bowen
Investigator

GRAND JURY FACT SHEET

DEFENDANT: Mitchell, Bill

CASE NUMBER: 2001-P-09441

CHARGES: Breach of Trust

STATEMENT OR CONFESSION:

SUMMERY OF FACTS:

ON APRIL 23, 2001 A CONTRACT WAS RATIFIED BETWEEN THE VICTIM, AND THE DEFENDANT. THE DEFENDANT WAS TO BUILD A DOCK AT THE VICTIM'S HOME, 3088 PIGNATELLI CRESCENT FOR $40,500.00. THE VICTIM PAID THE DEFENDANT $27,000.00 AS REQUIRED BY THE CONTRACT, BUT WORK WAS NEVER DONE BY THE DEFENDANT. IN MAY 2001 THE DEFENDANT SHOWED THE VICTIM A DOCK AT 2368 DARTS COVE WAY, AND REPRESENTED THE DOCK AS WORK HE COMPLETED. THE VICTIM THEN DISCOVERED THAT THAT DOCK WAS NOT BUILT BY THE DEFENDANT. THE VICTIM ALSO DISCOVERED THAT AT THE TIME THE DEFENDANT ENTERED INTO HIS CONTRACT HE WAS NOT PROPERLY LICENSED, AND WAS NOT LICENSED UNTIL JUNE 6, 2001. THAT LICENSE LIMITED THE DEFENDANT TO JOBS PRICED AT NO MORE THAT $30,000.00. THE VICTIM PROVIDED A SIGNED WRITTEN STATEMENT OF THE EVENTS. DETECTIVE HOOSE CONFIRMED ALL OF THE ABOVE INFORMATION.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C. Mitchell, Plaintiff, v. James T. Helwig, Michael L. Masiowski and Elizabeth A. Masiowski, Defendants.	IN THE COURT OF COMMON PLEAS C.A. NO.: 2010-CP-10-5532 **CERTIFICATE OF SERVICE**

FILED
2011 FEB 11 PM 1:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Stephanie L. Deaton, an employee of Howser, Newman & Besley, L.L.C., do hereby certify that I have served the foregoing **Notice of Amended Motion and Amended Motion to Dismiss Plaintiff's Complaint Against Defendant James T. Helwig Pursuant to Rule 12(b)(6) or in the Alternative, Motion for Summary Judgment Pursuant to Rule 56 and for Sanctions,** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below:

T. Alexander Beard, Esq.
Beard Law Offices
1002 Anna Knapp Boulevard, Suite 202
Mount Pleasant, SC 29464

Brian Duffy, Esq.
Duffy & Young LLC
96 Broad Street
Charleston, SC 29401

William C. Mitchell, Pro Se
P.O. Box 332
9452 Koester Road
Ladson, SC 29456

James T. Helwig
146 North Plaza Court
Mount Pleasant, SC 29464

Stephanie L. Deaton

February 11, 2011

Appellant Exhibit 3

Plaintiff's Answer and Motion to Dismiss Defendant's Motion to Dismiss and for sanctions

(Appellant Exhibit 3 on following page)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE 9 TH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE # 2010-CP-10-5532
William C. Mitchell	)	**Plaintiff's Opposition and Plaintiff's Motion**
	)	**To Dismiss, Defendant's Motion To Dismiss**
V.	)	**And For Sanctions**
	)	
James T. Helwig, personally,	)	
Michael Masiowski, personally,	)	
Elizabeth Masiowski, personally	)	
	)	
Defendants	)	

FILED
2010 SEP -7 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT

TO; Defendant, James T. Helwig;

The Plaintiff above named, William C Mitchell, Pro Se, hereby object to Defendants, Motion To Dismiss and For Sanctions. For the following reasons, Plaintiffs, Motion To Dismiss, should be granted.

1-The ruling on a 12(b)(6),SCRCP, motion to dismiss must be based solely upon the allegation set forth on face of the complaint. Plyler v. Burns, 373 S.C. 637,645, 647 S.E. 2d 188,192 (2007). The motion cannot be granted if the facts set forth in the complaint and inferences reasonable deducible therefrom would entitle the plaintiff to any relief on any theory of the case."Toussaint v Ham 292 S.C. 415,416, 357 S.E. 2d 8, 9 (1987)", Ashley River Prop. I, L. L. C. v. Ashley River Prop. II, L.L.C. 374 S.C.271, 278, 648 S.E.2d 295,298 (Ct. App. 2007)

2- South Carolina Rules of Civil Procedure, " Summary Judgment", Rule 56 (c). The judgment sought shall be rendered forthwith , if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

3-Defendant is estopped from claiming the statue of limitations as a defense. The delay that otherwise would have given operation to the statue had been induced by the Defendant's conduct. The facts alleged in the Plaintiff's complaint place the Defendant squarely at the heart of the civil conspiracy, malicious prosecution, intentional interference with business expectancy, tortuous interference with contracts, and abuse of process. The Defendant acted in a morally blameworthy and egregious manner. Defendant's conduct caused the criminal action to be instituted against the Plaintiff, did cause it to be maintained, did voluntarily aide or assisted in its prosecution all with-out probable cause. " Black v Lexington Sch. Dist. No. 2, 327 S.C. 55, 61 488S.E. 2d 327, 330 (1997)" Heck v. Humphrey, 512 U.S. 477 (1994) Complaint 40.

See attached Plaintiff's Exhibit " I ", Complaint 40

4-Further, the Defendant is estopped from claiming the statute of limitation as a defense, because, the Plaintiff was barred by the criminal prosecution of the Defendant from bring a civil action for civil conspiracy, intentional interference with business expectancy, tortuous interference with contracts, malicious prosecution and abuse of process, until the criminal prosecution was terminated in favor of the Plaintiff. For other-wise the Plaintiff might obtain judgment in the one case and yet be convicted in the other, which would of course disprove the averment of a want of probable cause. Further, to permit a convicted criminal defendant to proceed with a Malicious Prosecution claim would permit a collateral attack on the conviction through the vehicle of a civil suit. Parke v. Raley,506 U.S. 20, 29-30 (1992), Teague

v. Lane, 489 U.S. 288,308 (1989). A cause of action for Malicious Prosecution does not accrue until the original proceedings have terminated in the plaintiff favor. 1 C. Corman, Limitation of action, 7.4.1 p. 532 (1991) Carnes v. Atkins Bros. C., 123 La. 26, 31, 48 So. 572, 574 (1909)

5- The favorable termination requirement avoids the statute of limitation problem, because the statute of limitation clock dose not start until termination in favor of the plaintiff, and the plaintiff has knowledge, knew or should have known he had a cause of action.

/

6- Plaintiff had to and did rely upon his criminal defense Attorney Phillip Middleton, from the beginning of the prosecution, to advise him and keep him apprised of the status of the Helwig criminal case. Plaintiff exercised reasonable diligence from 2001 until 2008, (when Plaintiff was first advised by defense Attorney Phillip Middleton, that the Helwig criminal case had been dismissed), by keeping in constant touch with his defense Attorney, and the attorney advising him on a regular basis of the status of the case.

7-Relevant facts apparent from the Plaintiff's complaint are clear that the Plaintiff had no legal right to sue as long as the criminal prosecution was pending. "Matthews v City of Greenwood, 305 S.C. 267,269, 407 S.E. 2d 668,669 (Ct. App. 1991)" Thus, a Particular cause of action accrues " at the Moment when plaintiff knew or should have known that plaintiff has a legal right to sue on it". Complaint 43

See Plaintiff's Exhibit " 1"

8- South Carolina Code of Laws, section 15-3-100. Effect of stay of action or statutory prohibition. When the commencement of an action shall be stayed by injunction or

statutory prohibition the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

9- The facts of the complaint are that in 2001, the Defendant's Masiowski's entered into a civil conspiracy with Defendant Helwig. Induced and convinced Helwig , to cancel his dock contract and institute criminal action against the Plaintiff. In doing so the Defendant's Masiowski's and Defendant Helwig, with malice " the deliberate intentional doing of an act without just cause or excuse, " Law at 437, 629 S.E 2d at 649, Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 479, 289 S.E. 2d 414, 416 (1982)", did caused Plaintiff Mitchell to be arrested and prosecuted. The civil conspiracy is at the heart of the cause of Plaintiff," Mitchell" being arrested and prosecuted. Without the conspiracy between the Defendant's Masiowski's, and Defendant Helwig, there would have been no arrest, and no prosecution of Plaintiff Mitchell.

10-This conspiracy did cause the malicious prosecution and abuse of process, without probable cause and with improper motive. Plaintiff could not bring this civil action against Defendant's Helwig and the Masiowski's, while the criminal prosecution was pending.

11- The facts in the complaint place all three of the Defendant's squarely at the heart of the conspiracy and the cause of the action by the Plaintiff. Without the Defendant Helwig there would be no conspiracy, malicious prosecution, etc. Without Defendant's " the Masiowski's there would be no conspiracy, malicious prosecution, etc.. Without all three of the Defendant's conspiring together, there would not be an action by the Plaintiff for civil conspiracy, intentional interference with business expectancy, tortuous interference with contracts, malicious prosecution and abuse of process.

12- A conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E. 2d 150, 153). Robinson v. First Union nat. Bank, 350 S.C. 339,348, 565 S.E.2d 309,314 (Ct.App. 2002)

13- The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMontte v. Punch Line of Columbia, Inc., 296 S.C.66, 370 S.E. 2d 711 (1988), Cowbun v. Leventis 366 S.C. 20,49, 619 S.E.2d 437,453, (Ct.App. 2005), Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 9 Ct. App 2004).

14- In Melton v Williams, 281 S.C. 182, 262 S.E.2d 612 (Ct.App. 1984), the court concluded that, even though an arrest warrant was issued, that it was for a jury to say whether or not there was probable cause in an action for malicious prosecution, Kinton v Mobile Home Indus., inc., 274 S.C. 179, 182, 262 S.E.2d 727,728 (1980) , it is only pima facie evidence and not conclusive, and the existence of an arrest warrant dose not conclusively establish probable cause for prosecution.

15-The Defendant Helwig, subsequent misuse of process, (even if) properly obtained that constitutes the tort of abuse of process. Mullins v. Sanders, 54 S.E. 2d 116, 122, (Va. 1949) " as a means of extortion," the existence of an ulterior purpose, Donohoe Const. Co. v. Mt. Vernon Assoc., 369 S.E. 2d at 857,862.

16- The Defendant's allegation of a frivolous action by the Plaintiff, under, S C Code of Law 15-36-10; S. C. R. Civ. P. 11 (a). Plaintiff alleges S.C Code of Law 15-36-10, (A-

2), (A-3, a, b, c, d) as an affirmative defense. Further, Plaintiff alleges the defense, that Plaintiff could not bring this action until the criminal prosecution was dismissed in favor of the Plaintiff, and until Plaintiff knew, and had knowledge and/or should have known Plaintiff had a cause of action.

17- Further, as to a frivolous action by the Plaintiff, as alleged by the Defendant. Plaintiff was barred by criminal prosecution from bringing this civil action until the criminal prosecution was dismissed. "Matthews v City of Greenwood, 305 S.C. 267,269, 407 S.E. 2d 668,669 (Ct. App. 1991)" Thus, a Particular cause of action accrues " at the Moment when plaintiff has a legal right to sue on it", "Heck v. Humphrey, 512 U.S.477 (1994)" .

18- The provisions of Section 15-36-10, The South Carolina Frivolous Civil Proceedings Sanctions Act, section (J). The provisions of this section shall not apply where an attorney or a pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, medication, or reversal of the existing law.

19-Further, Defendant has failed to notify Plaintiff of a change of attorney as required in SCRCP, Rule 11 (B). An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the court, and not otherwise. Written notice of change of attorney must be served as provided by Rule 5. Therefore, Defendant's Motion to Dismiss and for Sanctions, should be denied.

See attached Plaintiff Exhibit "2" & "3"

20- Plaintiff at the present time does not know the correct attorney for the Defendant Helwig or whom Plaintiff is expected to communicate with in this matter. Therefore, Defendant's Motion To Dismiss And For Sanctions, should be dismissed.

WHEREFORE, based on the grounds set forth above, and such further material as may be properly submitted to the Court, Plaintiff prays this Honorable Court to enter an order as follows;

1- Granting Plaintiff's Motion to Dismiss and Denying Defendant's Motion To Dismiss and For Sanctions

2- That the Defendant be ordered to answer the Summons & Complaint, that was served on the Defendant , July 10, 2010, within 10 days

3- That the Defendant be ordered to answer the Request for Production and Interrogatories', that was server on the Defendant, July 14, 2010 within 10 days.

4- Taxing the cost of defending this action against Defendant , and

5- Awarding the Plaintiff such further relief as it may deem just and proper.

This 11 day of August, 2010

William C Mitchell. Pro Se
P O Box 332
9452 Koester Road
Ladson, S C 29456
(843) 797-7538

EXHIBIT "I"

ARREST WARRANT

G- 248424

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of Mount Pleasant

THE STATE

against

WILLIAM CURTIS MITCHELL

Bill Mitchell

Address: 5450 Roaster Rd

Lawson, SC 29456

Phone: _____ SSN: _____

Sex: M Race: W Height: 5'2 Weight: 210

DL State: SC DL #: 009392515

DOB: 9/16/39 Agency ORI #: SC0100300

Prosecuting Agency: MPPD

Prosecuting Officer: Det. Hoose

Offense: OBTAINING MONEY BY FALSE PRETENSES > $5000

Offense Code: _____

Code/Ordinance Sec. 16-13-240

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/☐ Municipality of _____. The accused to be arrested and brought before me to be dealt with according to law

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

I copy of this arrest warrant was delivered to defendant WILLIAM CURTIS MITCHELL

12/12/01 1430hrs

_____
Signature of Constable/Law Enforcement Officer

TURN WARRANT TO:

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of Mount Pleasant)

Personally appeared before me the affiant James T. Helwig who being duly sworn deposes and says that defendant Bill Mitchell did within this county and state on April 23, 2001 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Mount Pleasant) in the following particulars:

DESCRIPTION OF OFFENSE: OBTAINING MONEY BY FALSE PRETENSES > $5000
16-13-240

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Sworn to and subscribed before me on November 19, 2001

MNC Cole (L.S.)
Signature of Issuing Judge
Mel Coleman

James T. Helwig
Signature of Affiant James T. Helwig
Affiant's Address 3088 Pignattelli Crest
Mt. Pleasant, SC 29464
Affiant's Telephone 817-2293

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of Mount Pleasant)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on April 23, 2001 defendant Bill Mitchell did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Mount Pleasant) as set forth below:

DESCRIPTION OF OFFENSE: OBTAINING MONEY BY FALSE PRETENSES $5000
16-13-240

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

MNC Cole (L.S.)
Signature of Issuing Judge
Judge Code: Mel Coleman

Judge's Address 100 Edwards Lane
Mount Pleasant, SC 29465
Judge's Telephone 884-67955

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

DEFENDANT COPY

237

Plaintiff Exhibit "1"

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No. 2010-CP-10-5532
William C. Mitchell,)) Petitioner,)) vs.)) James T. Helwig, Michael L. Masiowski, Elizabeth A. Masiowski,)) Defendants.)	AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, **PHILIP A. MIDDLETON**, who being duly sworn, deposes, and says as follows:

1. That he is an attorney licensed to practice law in the State of South Carolina and is currently so licensed and during all the times hereinafter was acting in his capacity as a licensed attorney and an officer of the court;

2. That he was retained by William C. Mitchell in approximately 2002 to defend him against two impending charges: one involving James T. Helwig;

3. That during the preparation of the defense of the case, your deponent did a good deal of legal research into the questions involved, as well as having numerous meetings with William C. Mitchell and the various solicitors involved in the case;

4. That the case was called for trial in late summer or early fall of 2007, whereupon your deponent's client, William C. Mitchell and an important witness, appeared ready for trial;

5. That on the day your deponent appeared for trial, he was informed after approximately a day's wait, that the case would not be heard in that term of court;

6. That your deponent received no further word as to the disposition of or the time of the trial of the case thereafter;

7. That your deponent learned in the early months of 2008 from studying the Clerk of Court's website that the case had been dismissed. There was a reason stated for the dismissal which was not available through the website;

8. That your deponent at that time informed William C. Mitchell that the case had been dismissed;

FURTHER, , YOUR DEPONENT SAYS NOT.

Sign Name: _____
Print Name: Philip A. Middleton

SWORN to before me this 23rd day of August, 2010.

_____
Notary Public for SC
My Commission Expires: 05/31/17

Plaintiff Exhibit "Z"

BEARD LAW OFFICES

T. ALEXANDER BEARD
ATTORNEY AT LAW

1002 ANNA KNAPP BOULEVARD
SUITE 202
MOUNT PLEASANT, SOUTH CAROLINA 29464

PHONE (843) 216-0331
FAX (843) 884-7950
E-MAIL beardlaw@comcast.net

July 13, 2010

Mr. William C. Mitchell
Post Office Box 332
9452 Koester Road
Ladson, SC 29456

Re: William C. Mitchell
v. James T. Helwig, et al.
Civil Action No. 2010-CP-10-5532

Dear Mr. Mitchell:

Please be advised that I represent Mr. Helwig in the above referenced action. All future communications concerning this matter should be directed to me.

The copy of the Summons and Complaint served on Mr. Helwig references Exhibits to the Complaint, including Paragraphs 40 and 43, but some of these Exhibits must have been inadvertently left out when copying.

Please send me copies of the Exhibits for Paragraphs 40 and 43 of your Complaint. Your cooperation and assistance are appreciated.

Sincerely,

T. Alex Beard

T. Alexander Beard

TAB:jct
cc: James T. Helwig

Plaintiff Exhibit "3"

William Mitchell

9452 Koester Road
Ladson, S C 29456

Phone (843) 797-7538 E-Mail: wmcaptain@juno.com

July 16. 2010

Attorney T. Alexander Beard
1020 Anna Knapp Blvd.. suite 202
Mt. Pleasant. S C 29494

Dear Mr. Beard:

It was nice talking to you the other day by phone. Again please be assured that all future communications concerning this matter will be directed to you. Enclosed please fine a copy of paragraph 40, Exhibit " I ".

Paragraph 43 Exhibit was a typing error as there is no exhibit for paragraph 43.

Sincerely

William C Mitchell

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**IN THE 9th JUDICIAL CIRCUIT**
	)	**Case # 2010-CP-10-** 5532
COUNTY OF CHARLESTON	)	
	)	
William C. Mitchell	)	
	)	**CERTIFICATE OF SERVICE**
Plaintiff	)	
	)	
VS.	)	
	)	
James T. Helwig,	)	
Michael L. Masiowski,	)	
Elizabeth A Masiowski,	)	
Defendants		

FILED
2010 SEP -7 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The undersigned hereby certifies that a true copy of Plaintiff's Objection & Motion To Dismiss, Defendant's Motion To Dismiss and For Sanctions, for Defendant James Helwig, were served this 7 day of Sept. 2010, by depositing same in the United States mail. Postage pre-paid, and addressed to the following

T Alexander Beard, Esq.
Beard Law Firm
1002 Anna Knapp Blvd., suite 202
Mt Pleasant, S C 29464

James P. Sullivan, Esq.
1110 Queensborough Blvd., suite C
Mt Pleasant, S C 29464

By: _____

William C. Mitchell
P O Box 332
9452 Koester Rd
Ladson , S C 29456
(843) 797-7538

Appellant Exhibit 4

Plaintiff's Answer and Objection to Defendant's Amended Motion to Dismiss Rule 12(b)(6) or in the Alternative, Motion for Summary Judgment Rule 56 and Sanctions

(Appellant Exhibit 4 on following page)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Case #2010-Cp-10-5532
William C. Mitchell Plaintiff	)	PLAINTIFF'S REPLY AND OBJECTION TO DEFENDANT'S AMENDED MOTION TO DISMISS RULE 12(B)(6) OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT RULE 56 AND FOR SANCTIONS
V.	)	
James T. Helwig, personally, Michael Masiowski, personally, Elizabeth Masiowski, personally	)	

FILED
2011 MAR -4 PM 3:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: DEFENDANT ABOVE NAMED , JAMES T. HELWIG;

COMES NOW PLAINTIFF WILLIAM C MITCHELL, PRO SE and objects to To Defendant's Amended Motion To Dismiss, Alternative Motion For Summary Judgment, Rule 56 and For Sanctions for the following reasons;

1- A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegation set forth on face of the complaint and a motion cannot be sustained if the facts alleged and inferences reasonable deducible therefrom would entitle the plaintiff to any relief on any theory of the case."Toussaint v Ham 292 S.C. 415,416, 357 S.E. 2d 8, 9 (1987)"

2- South Carolina Rules of Civil Procedure, " Summary Judgment", Rule 56 (c). The judgment sought shall be rendered forthwith , if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

3- Defendant is estopped from claiming the statues of limitations as a defense. The delay that otherwise would have given operation to the statues had been induced by the Defendant's

conduct. The facts alleged in the complaint place the Defendant squarely at the heart of the civil conspiracy, malicious prosecution, intentional interference with business expectancy, tortuous interference with contracts, and abuse of process. The Defendant acted in a morally blameworthy and egregious manner. Defendant's conduct caused the criminal action to be instituted against the Plaintiff, did cause it to be maintained, did voluntarily aide or assisted in its prosecution all with-out probable cause. " Black v Lexington Sch. Dist. No. 2, 327 S.C. 55, 61 488S.E. 2d 327, 330 (1997)" See attached Exhibit I Heck v. Humphrey, 512 U.S. 477 (1994)

4-Further, the Defendant is estopped from claiming the statute of limitation as a defense, because, the Plaintiff was barred by the criminal prosecution of the Defendant from bring a civil action for civil conspiracy, intentional interference with business expectancy, tortuous interference with contracts, malicious prosecution and abuse of process, until the criminal prosecution was terminated in favor of the Plaintiff. For other-wise the Plaintiff might obtain judgment in the one case and yet be convicted in the other, which would of course disprove the averment of a want of probable cause. Further, to permit a convicted criminal defendant to proceed with a Malicious Prosecution claim would permit a collateral attack on the conviction through the vehicle of a civil suit. Parke v. Raley,506 U.S. 20, 29-30 (1992) Teague v. Lane, 489 U.S. 288,308 (1989).

5- A cause of action for Malicious Prosecution does not accrue until the original proceeding have terminated in the plaintiff favor. 1 C. Corman, Limitation of action, 7.4.1 p. 532 (1991) Carnes v. Atkins Bros. C., 123 La. 26, 31, 48 So. 572, 574 (1909)

6-The favorable termination requirement avoids the statutes of limitation problem, because the statutes of limitation clock dose not start until termination in favor of the plaintiff, and the plaintiff has knowledge, knew or should have known he had a cause of action.

7- Plaintiff had to and did rely upon his criminal defense Attorney Phillip Middleton, from the beginning of the prosecution in 2001, to advise him and keep him apprised of the status of the Helwig criminal case. Plaintiff exercised reasonable diligence from 2001 until January, 2008, (when Plaintiff was first advised by defense Attorney Middleton, that the Helwig criminal case had been dismissed), by keeping in constant touch with his defense Attorney, and the attorney advising him on a regular basis of the status of the case.

8-Relevant facts apparent from the Plaintiff's complaint are clear that the Plaintiff had no legal right to sue as long as the criminal prosecution was pending. "Matthews v City of Greenwood, 305 S.C. 267,269, 407 S.E. 2d 668,669 (Ct. App. 1991)" Thus, a Particular cause of action accrues " at the Moment when plaintiff knew or should have known that plaintiff has a legal right to sue on it". Complaint 43

9- The facts of the complaint are that, there was a civil conspiracy between the Defendant Helwig, and Defendant's "the Masiowski's" to injure to the Plaintiff. Plaintiff could not bring this civil action against Defendant Helwig, while the criminal prosecution was pending.

10- The facts as alleged in the complaint place all three of the Defendant's squarely at the heart of the conspiracy. Without the Defendant Helwig there would be no conspiracy. Without Defendant's " the Masiowski's there would be no conspiracy. Without all three of these . Defendant's conspiring together there would have not been any civil conspiracy, intentional interference with business expectancy, tortuous interference with contracts, malicious prosecution and abuse of process. T he Conspiracy may be inferred from the very nature of the

acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E. 2d 150, 153). Robinson v. First Union nat. Bank, 350 S.C. 339,348, 565 S.E.2d 309,314 (Ct.App. 2002)

11- The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMontte v. Punch Line of Columbia, Inc., 296 S.C.66, 370 S.E. 2d 711 (1988), Cowbun v. Leventis 366 S.C. 20,49, 619 S.E.2d 437,453, (Ct.App. 2005), Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 9 Ct. App 2004).

12- In Melton v Williams, 281 S.C. 182, 262 S.E.2d 612 (Ct.App. 1984), court concluded that, even though an arrest warrant was issued, that it was for a jury to say whether or not there was probable cause in an action for malicious prosecution, Kinton v Mobile Home Indus., inc., 274 S.C. 179, 182, 262 S.E.2d 727,728 (1980) , it is only pima facie evidence and not conclusive, and the existence of an arrest warrant dose not conclusively establish probable cause for prosecution.

13-The Defendant Helwig, subsequent misuse of process, (even if) properly obtained that constitutes the tort of abuse of process. Mullins v. Sanders, 54 S.E. 2d 116, 122, (Va. 1949) " as a means of extortion," the existence of an ulterior purpose, Donohoe Const. Co. v. Mt. Vernon Assoc., 369 S.E. 2d at 857,862.

14- As to Defendant's allegation of a frivolous action by the Plaintiff under, S C Code of Law 15-46-10; S. C. R. Civ. P. 11 (a). Plaintiff alleges S.C Code of Law 15-36-10, S.C.R. Civ. P. , 11(A-,2), (A-3, a, b, c, d) as an affirmative defense.

15- Further, as to a frivolous action by the Plaintiff, as alleged by the Defendants Plaintiff was barred by criminal prosecution from bringing this civil action until the criminal prosecution was dismissed. "Matthews v City of Greenwood, 305 S.C. 267,269, 407 S.E. 2d 668,669 (Ct. App. 1991)" Thus, a Particular cause of action accrues " at the Moment when plaintiff has a legal right to sue on it", "Heck v. Humphrey, 512 U.S.477 (1994)" .

16- The provisions of Section 15-36-10, S C R Civ. P., (J). The provisions of this section shall not apply where an attorney or a pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, medication, or reversal of the existing law.

17- Further, Plaintiff hereby objects to the introduction by Defendant's Helwig, of hearsay evidence at this Motion To Dismiss hearing. (See Defendant's Exhibits "A" & "B"

18- A police report or arrest affidavit is not admissible into evidence as a public record exception to the hearsay rule because of the adversarial nature of the confrontation between the police and the defendant.

19- In this case there is no opportunity for the Plaintiff to rebut or even challenge the accuracy of what is contained in the report.

20- It is not subject to cross examination or any adversarial testing as to the reliability or truthfulness of the facts contained herein.

21- The police reports Defendant Helwig, are attempting to introduce are not admissible into evidence under FRCP 803(8) (B) and (C).

22- The police reports are nothing more than summary of statement made by the Defendant Helwig. The contents of a witness statement to a police officer are not matters

observed by the officer for purposes of Rule 803 (8) (B). See Ramrattan v. Burger King Corp., 656 F. Supp. 522,529 (D.Md. 1987).

23- The police report also does not contain " factual findings" based on the officers own investigation and cannot be admitted under Rule 803(8) (C). See Beech Aircraft Corp. v. Rainey, 488U.S. 153,169 (1988). " The Requirement that the report contain factual findings bars admission of statement not based on factual investigation" The report language, which refers to what Defendant Helwig "stated and indicated during an interview, demonstrates that police officer was simply recording what defendant Helwig told him. Officer made no effort to evaluate defendants credibility and reach no independent conclusions based on defendants " Helwig" testimony. As a result, officers report lacked the typical characteristics of a factual finding. See Ramrattan v. Burger King Corp.

24- Cases from several jurisdictions indicate that when a police report simply records a witness statement, the report cannot be admitted under Rule 803 (8) (C).
See Unites States of America, Appellee, v. Nick Cloyd Enterline, Appellant, 894 F. 2d 287.(8th Cir) , Victory ParkApartments, Inc. v Axelson, 367 N.W. 2d 155, 162 (N.D. 1985), Baker v. Elcona homes Corp., 588 F 2d 551, 559 (6th Cir 1978).

25- Further, investigative reports lack sufficient guarantee of trustworthiness because they are made in an adversary setting. See United States v. Puente, 826 F. 2d 1415, 1417-18 (5th Cir. 1987)

26- Further, although evidence is relevant, it should be excluded where danger of unfair prejudice substantially outweighs its probative value. See State v. Cooley, 342 S.C. 63,536 S.E. 2d 666 (2000)

27- Further, Petitioner has also failed to cite any case in which the contents of an arrest report were treated as matter of law for motion filed.

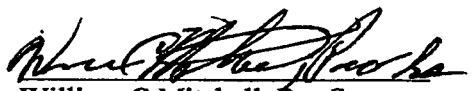
28- Plaintiff moves for the above Defendant's Amended Motions to be dismissed as it contains inadmissible hearsay which has no relevance to this hearing before the court.

29-This is a hearing on Defendant's Motion To Dismissed based on the Statues of Limitation, and Rule 12 (b) (6) failure to state a claim, and Rule 56, Summary Judgment, and Frivolous Action, and Protective Order and Sanctions.

30- Plaintiff received this Amended Motions on February 12, 2011 and has had only four (4) working days to reply.

Wherefore, Plaintiff prays for Dismissal of Defendant's Amended Motions.

February 18, 2011
Charleston, S C



William C Mitchell, Pro Se
9452 Koester Road
Ladson, S C 29456
(843) 797-7538

Appellant Exhibit 5

Defendant's Notice of Motion and motion for Summary judgment Pursuant to Rule 56

(Appellant Exhibit 5 on following page)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2010-CP-10-5532
William C. Mitchell,	)	
	)	
Plaintiff,	)	**NOTICE OF MOTION AND**
	)	**MOTION FOR SUMMARY JUDGMENT**
vs.	)	**PURSUANT TO RULE 56 OF THE SOUTH**
	)	**CAROLINA RULES OF CIVIL PROCEDURE**
James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski,	)	
	)	
Defendants.	)	

FILED
2011 JUN 23 PM 1:3
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: WILLIAM C. MITCHELL, PLAINTIFF PROCEEDING *PRO SE*

YOU WILL PLEASE TAKE NOTICE that Defendant James T. Helwig, by and through his undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Ninth Judicial Circuit, on the tenth (10th) day after service hereof or at such a time and place as is convenient to the Court and counsel for an Order granting summary judgment to the Defendant Helwig pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

This Motion is based on the following grounds: (1) Plaintiff has failed to present a question of fact concerning the barring by the applicable statute of limitations of the remaining causes of action for malicious prosecution and abuse of process asserted by the Plaintiff's Complaint against the Defendant Helwig, or (2) in the alternative, the failure of the Plaintiff to present a question of fact as to the remaining causes of action for malicious prosecution and abuse of process, and therefore, the Court should dismiss the Plaintiff's entire action as a matter of law, S.C. Code Ann. § 15-3-510, 530; *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642 (2006); *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006); *Bloom v.*

Ravoira, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000); *Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 888 (1994); *Fuller-Ahrens Partnership v. South Carolina Dept. of Highways and Public Transp.*, 311 S.C. 177, 427 S.E.2d 920 (1993); *Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 289 S.E.2d 414 (1982); *Kinton v. Mobile Home Industries, Inc.*, 274 S.C. 179, 262 S.E.2d 727 (1980); *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 143 S.E.2d 607 (1965); *Guider v. Churpeyes, Inc.*, 370 S.C. 424, 635 S.E.2d 562 (Ct. App. 2006); *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005); *Durkin v. Hansen*, 313 S.C. 343, 346, 437 S.E.2d 550, 552 (Ct. App. 1993) *see also Levy v. Ohl*, 477 F.3d 988 (8th Cir. 2007); *Yoost v. Zalcberg*, 925 N.E.2d 763 (2010); *Lang v. City of Nacogdoches*, 942 S.W.2d 752 (Tex. Ct. App. 1997).

This Motion will be based upon the pleadings, Memorandum of Law, deposition testimony, answers to discovery requests, South Carolina Code of Law, applicable case law, and other matters as may be acceptable to the Court. Pursuant to Rule 11(a), the undersigned have "no duty of consultation with *pro se* litigants."

[signature block on following page]

Respectfully submitted by,

HOWSER, NEWMAN & BESLEY, L.L.C.

Andrew E. Haselden
James P. Sullivan
1110 Queensborough Boulevard, Suite C
Mount Pleasant, South Carolina 29464
(843) 216-6940 (telephone)
(877) 216-6970 (toll free)
(843) 216-6942 (facsimile)
ahaselden@hnblaw.com
jsullivan@hnblaw.com
Attorneys for Defendant James T. Helwig

-and-

T. Alexander Beard
1002 Anna Knapp Boulevard, Suite 202
Mount Pleasant, South Carolina 29464
(843) 216-0331 (telephone)
(843) 884-7950 (facsimile)
beardlaw@comcast.net
Attorney for Defendant James T. Helwig

Mount Pleasant, South Carolina
June 22, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

William C. Mitchell,

Plaintiff,

v.

James T. Helwig, Michael L. Masiowski and Elizabeth A. Masiowski,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2010-CP-10-5532

CERTIFICATE OF SERVICE

FILED
2011 JUN 23 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, the undersigned employee of Howser, Newman & Besley, L.L.C., do hereby certify that I have served the foregoing **Notice of Motion and Motion for Summary Judgment,** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below or by electronic mail:

T. Alexander Beard, Esq.
Beard Law Offices
1002 Anna Knapp Boulevard, Suite 202
Mount Pleasant, SC 29464

William C. Mitchell, Pro Se
P.O. Box 332
9452 Koester Road
Ladson, SC 29456

Brian Duffy, Esq.
Duffy & Young LLC
96 Broad Street
Charleston, SC 29401

Christy Fargnoli, Esq.
John L. McDonald, Jr., Esquire
Clawson & Staubes, LLC
126 Seven Farms Dr., Suite 200
Charleston, SC 29492

James T. Helwig
146 North Plaza Court
Mount Pleasant, SC 29464

Stephanie L. Deaton

June 23, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

William C. Mitchell,
☐ Plaintiff,

CASE NO. 2010-CP-10-5532

v.

MOTION INFORMATION FORM AND COVER SHEET

James T. Helwig, Michael L. Masiowski and Elizabeth A. Masiowski,
☒ Defendants.

Pro Se Plaintiff: William C. Mitchell Address: P.O. Box 332 9452 Koester Rd. Ladson, South Carolina 29456 phone: (843)797-7538 fax: e-mail: other:	Defendant's Attorney: James P. Sulllivan Bar No. Address: 1110 Queensborough Blvd. Suite C Mt. Pleasant, SC 29464 Phone: 843-216-6940 fax: 843-216-6942 e-mail: jsullivan@hnblaw.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --

_____ June 23, 2011
Signature of Attorney for Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25
☐ EXEMPT (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

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

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

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

SCCA/233 (1/2003)

Appellant Exhibit 6

Plaintiff's reply to Defendant's Motion for Summary Judgment

(Appellant Exhibit 6 on following page)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON ,PLEAS
	)	IN THE 9 TH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE # 2010-CP-10-5532
William C. Mitchell	)	**Plaintiff's Reply and Opposition**
V.	)	**To Defendants Motion For Summary Judgment**
	)	
James T. Helwig, personally,	)	
Michael Masiowski, personally,	)	
Elizabeth Masiowski, personally	)	
	)	
Defendants	)	

FILED
2011 AUG -3 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

TO: DEFENDANT'S, JAMES T. HELWIG AND MICHAEL L. AND ELIZABETH A. MASIOWSKI;

The Plaintiff above named, William C Mitchell, Pro Se, hereby object to Defendants, Motion For Summary Judgment. For the following reasons, Defendants, Motion for Summary Judgment, should be denied.

1-A hearing on a 12(b)(6) Motion to Dismiss or to convert to Summary Judgment was held on February 22,2011, before the Honorable Deadra L. Jefferson. The Motion to Dismiss and Motion to convert to Summary Judgment was denied.

See Attached Exhibit (1)

2- The court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). In determining whether any triable issues of fact exist, the evidence and

all reasonable inferences must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008).

3- South Carolina Code Ann. § 15-3-530 (Supp. 1998) provides a three year statute of limitations for malicious prosecution suits. Pursuant to S.C. Code Ann. § 15-3-535 (Supp. 1998), all actions initiated under § 15-3-530(5) must be commenced within three years after the person knew, or by the exercise of "reasonable diligence" should have known, that he had a cause of action.

Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997).

4- However, the case of Berry v. McLeod is a totally different issue. That case involved a public bond issue, requiring a public hearing, and after such hearing, a filing with the clerk of court. To compare the Berry v. McLeod case to this case would be to compare apples to oranges.

5- The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.

***Mitchell v. Holler*, 311 S.C. 406, 409, 429 S.E.2d 793, 795 (1993)**

***Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 278 S.E.2d 333 (1981).**

6-Further, the Defendant's are estopped from claiming the statute of limitation as a defense, because, the Plaintiff was barred by criminal prosecution from bring this civil action for malicious prosecution and abuse of process, until Plaintiff knew, or by the exercise of reasonable diligence should have known that he had a cause of action. "Heck v. Humphrey, 512 U.S.477 (1994)"

7- The facts are that Plaintiff could not bring this civil action against Defendant Helwig, while the criminal prosecution was pending. "Matthews v City of Greenwood, 305 S.C. 267,269, 407 S.E. 2d 668,669 (Ct. App. 1991)" Thus, a Particular cause of action accrues " at the Moment when plaintiff knew or should have known that plaintiff has a legal right to sue on it".

8- South Carolina Code of Laws, section 15-3-100. Effect of stay of action or statutory prohibition. When the commencement of an action shall be stayed by injunction or statutory prohibition the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

9- The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and when the testimony is conflicting upon the question, it becomes an issue for the jury to decide. Brown v. Finger, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962).

10- Reasonable minds could differ on this issue. See Byerly v. Connor, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992) (stating summary judgment is appropriate when "plain, palpable, and indisputable facts exist on which reasonable minds cannot differ"). The determination of when

the Plaintiff Mitchell knew or should have known of any potential claims is a jury issue. See Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 274, 384 S.E.2d 693, 696 (1989); overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. Of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995) (finding that when all of the evidence goes to the reasonableness of a party's actions, the statute of limitations issue becomes one for the jury to decide).

11-The Defendant's are estopped from claiming the statues of limitations as a defense. The delay that otherwise would have given operation to the statues had been induced by the Defendant's conduct. The facts as alleged in the complaint place the Defendant's squarely at the heart of the , malicious prosecution and abuse of process. The Defendant's acted in a morally blameworthy and egregious manner.

12- The Defendant's conduct caused the criminal action to be instituted against the Plaintiff, did cause it to be maintained, did voluntarily aide or assisted in its prosecution all with-out probable cause. " Black v Lexington Sch. Dist. No. 2, 327 S.C. 55, 61 488S.E. 2d 327, 330 (1997)"

13- In Melton v Williams, 281 S.C. 182, 262 S.E.2d 612 (Ct.App. 1984), court concluded that, even though an arrest warrant was issued, that it was for a jury to say whether or not there was probable cause in an action for malicious prosecution, Kinton v Mobile Home Indus., inc., 274 S.C. 179, 182, 262 S.E.2d 727,728 (1980) , it is only pima facie evidence and not conclusive, and the existence of an arrest warrant dose not conclusively establish probable cause for prosecution.

14- From the outset of the criminal proceedings, because plaintiff was represented by counsel, the Solicitors office had informed and instructed Plaintiff that they would not talk to Plaintiff

about the case. Therefore, Plaintiff must and did rely upon his criminal defense Attorney Phillip Middleton, from the beginning of the prosecution in 2001, to advise him and keep him apprised of the status of the Helwig criminal case. Plaintiff exercised reasonable diligence from 2001 until 2008, (when Plaintiff was first advised by his defense Attorney Middleton, that the Helwig criminal case had been dismissed), by keeping in constant touch with his defense Attorney.

15- Further that the solicitor's office failed to notify defendant and/or defendants defense attorney of the dismissal in this case as require by law. The Criminal Rules of Procedure state as follows;

109- DISPOSITION OF ARRESTWARRANTS

(c) Action on Warrant. Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the State shall take action on the warrant by (1) preparing an indictment; (2) assigning an indictment number; (3) presenting the indictment to the Grand Jury; and (4) filing the outcome of the presentment with the Clerk of Court within twenty-four (24) hours if the Grand Jury has not returned the indictment directly to the Clerk. If the State formally dismisses the warrant the prosecutor shall notify the Clerk of Court in writing. The solicitor may make referral to pre-trial intervention or other diversionary program, which would stay the requirements of this rule. If the solicitor makes any other affirmative disposition, it shall be in writing and filed with the Clerk of Court. **The State shall notify the defendant or defense counsel of the action taken (e.g. True Bill, No Bill, Dismissal, or other).**

16- The facts of the complaint are that in 2001, the Masiowski's entered into a civil conspiracy with Helwig, induced and convinced Helwig , to cancel his dock contract and institute criminal action against the Plaintiff. In doing so the Defendant's Masiowski's and Defendant Helwig, with malice " the deliberate intentional doing of an act without just cause or excuse, " Law at 437, 629 S.E 2d at 649, Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 479, 289 S.E. 2d 414, 416 (1982)", caused the Plaintiff Mitchell to be arrested and prosecuted. The civil

conspiracy is at the heart of the cause of Plaintiff," Mitchell" being arrested and prosecuted. Without the conspiracy between the Defendant's Masiowski, and Defendant Helwig, there would have been no arrest, and no prosecution of Plaintiff Mitchell.

17- The conspiracy between the Defendant's Masiowski's, and the Defendant Helwig, did cause the malicious prosecution of Plaintiff, "Mitchell", without probable cause and with improper motive. Plaintiff could not bring this civil action against Defendant's Helwig and Masiowski's, while the criminal prosecution was pending.

18-The facts in the complaint place all three of the Defendant's squarely at the heart of the conspiracy. Without the Defendant Helwig there would be no conspiracy. Without Defendant's " the Masiowski's there would be no conspiracy. Without all three of these Defendant's conspiring together there would have not been any, malicious prosecution and abuse of process.

19- Defendant's subsequent misuse of process, (even if) properly obtained that constitutes the tort of abuse of process. Mullins v. Sanders, 54 S.E. 2d 116, 122, (Va. 1949) " as a means of extortion," the existence of an ulterior purpose, Donohoe Const. Co. v. Mt. Vernon Assoc., 369 S.E. 2d at 857,862.

20- To the best of Plaintiff recollection, Plaintiff first became aware of this breach of trust indictment in the early months of 2008. Plaintiff was never notified or served with any breach of trust indictment, and had no knowledge of the breach of trust indictment and dismissal, filed February 15, 2006, until Plaintiff at the request of Plaintiff's criminal defense attorney Phillip

Middleton, did go to the Clerk of Court's office and was given by the Clerk of Courts office, a copy of this breach of trust indictment and dismissal.

21- The Plaintiff had no knowledge and should not have known he had a cause of action against the Defendant's until after being notified in early 2008 , by Plaintiff's criminal defense attorney Phillip Middleton, that the Helwig criminal case against him had been dismissed.

See attached exhibit (2)

22-Defendant's alleges that the Plaintiff's claim arises out of a prosecution which began with the direct indictment issued on February 15, 2006 and ended with the dismissal of the prosecution on December 27, 2006. The facts in Plaintiff's complaint are clear. Plaintiff's claims arises out of the criminal prosecution of the Plaintiff, that began with an arrest warrant, signed by James T. Helwig, on November 19, 2001. That Plaintiff received notice of the dismissal of said charges from his defense Attorney Middleton in early 2008. Therefore, Defendant's Motion For Summary Judgment, should be denied

23-Viewing the evidence in the light most favorable to the Plaintiff Mitchell, there is more than one reasonable inference as to when the Mitchell knew or should have known they had a claim against Defendants

As such, the court must not granted Defendant's Motions for Summary Judgment based on the expiration of the statute of limitations

24- Further, the statute of limitations is tolled when strict application of the

statute of limitations would be inequitable.

Lambert v. United States, 44 F.3d 296, 298 (5th Cir.1995).

25- The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff.

Lantzy v. Centex Homes, 73 P.3d 517, 523 (Cal. 2003)

26- **Floree Hooper v. Ebenezer Senior Services and Rehabilitation Center**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Opinion No. 26748
Heard September 17, 2009 – Filed December 14, 2009

It has been observed that "[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control."

27- **Bailey v. Glover, 88 U.S. (21 Wall.) 342, 22 L.Ed. 636 (1874).** The tolling doctrine is used in the interests of justice to accommodate both a defendant's right not to be called upon to defend a stale claim and a plaintiff's right to assert a meritorious claim when equitable circumstances have prevented a timely filing. Equitable tolling focuses on the plaintiff's excusable ignorance of the limitations period and on [the] lack of prejudice to the defendant

Supreme Court of the United States
Holland v.Florida No 09-5327, Decided June 14, 2010

28-The court states that the diligent required in equitable tolling is

"reasonable diligent" Lonchar ,517 US at 326, **"Not Maximum Feasible Diligent"** Starns v. Andrews,524 F. 3d 612,618(Ca5 2008)

More v Knight,368 F 3d936,940(CA7 2004)

29- In a case involving the doctrine of equitable tolling, the defendant does not have the statute of limitations as a valid defense because it has not yet run. Rather, the statute of limitations is tolled when strict application of the statute of limitations would be inequitable.

WHEREFORE, base on the grounds set forth above, and such further material as may be properly submitted to the Court, Plaintiff respectfully prays this Honorable Court deny Defendant's Motion For Summary Judgment;

This 29 day of July at Charleston, S C

William C Mitchell, Pro Se

9452 Koester Road

Ladson, S C 29456

(843) 797-7538

cSTATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**IN THE 9th JUDICIAL CIRCUIT**
	)	**Case # 2010-CP-10- 5532**
COUNTY OF CHARLESTON	)	
	)	
William C. Mitchell	)	
	)	**CERTIFICATE OF SERVICE**
Plaintiff	)	
	)	
VS.	)	
	)	
James T. Helwig,	)	
Michael L. Masiowski,	)	
Elizabeth A Masiowski,	)	

FILED
2011 AUG -3 AM 11:52
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants

The undersigned hereby certifies that a true copy of Plaintiff's Reply to Defendants Motion for Summary Judgment , were served July 29, 2011, by depositing same in the United States mail. Postage pre-paid, and addressed to the following

T. Alexander Bear, Esq.
Attorney at Law
1002 Anna Knapp Blvd, Suite 202
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John L McDonald, Jr, Esq.
126 Seven farms Dr, Suite 200
Charleston, S c 29492

By: _____

William C. Mitchell
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Plaintiff Exhibit "1"

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON) William C. Mitchell, Petitioner, vs. James T. Helwig, Michael L. Masiowski, Elizabeth A. Masiowski, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No. 2010-CP-10-5532 AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, **PHILIP A. MIDDLETON**, who being duly sworn, deposes, and says as follows:

1. That he is an attorney licensed to practice law in the State of South Carolina and is currently so licensed and during all the times hereinafter was acting in his capacity as a licensed attorney and an officer of the court;

2. That he was retained by William C. Mitchell in approximately 2002 to defend him against two impending charges: one involving James T. Helwig;

3. That during the preparation of the defense of the case, your deponent did a good deal of legal research into the questions involved, as well as having numerous meetings with William C. Mitchell and the various solicitors involved in the case;

4. That the case was called for trial in late summer or early fall of 2007, whereupon your deponent's client, William C. Mitchell and an important witness, appeared ready for trial;

5. That on the day your deponent appeared for trial, he was informed after approximately a day's wait, that the case would not be heard in that term of court;

6. That your deponent received no further word as to the disposition of or the time of the trial of the case thereafter;

7. That your deponent learned in the early months of 2008 from studying the Clerk of Court's website that the case had been dismissed. There was a reason stated for the dismissal which was not available through the website;

8. That your deponent at that time informed William C. Mitchell that the case had been dismissed;

FURTHER, , YOUR DEPONENT SAYS NOT.

Sign Name: _____
Print Name: Philip A. Middleton

SWORN to before me this 23rd day of August, 2010.

_____
Notary Public for SC
My Commission Expires: 05/31/17

Exhibit (2)
Plaintiff Received 04/12/2011

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C. Mitchell, Plaintiff, vs. James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2010-CP-10-5532 **ORDER**

2011 APR -3 A 11:54
CHARLIE LAMBERTON
CLERK OF COURT

Presiding Judge:	Deadra L. Jefferson
Hearing Date:	February 22, 2011
Plaintiff's Attorney:	Pro Se
Defendants' Attorneys:	James Sullivan, Esq. Brian Duffy, Esq. Alec Beard, Esq. Andy Haselden, Esq. Christy Fargnoli, Esq.
Court Reporter:	Leah Dupree

This matter came before the Court on February 22, 2011, on motions filed on behalf of the Defendants, James T. Helwig, Michael L. Masiowski, and Elizabeth A. Masiowski (hereinafter collectively referred to as the Defendants), moving the Court to dismiss with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Complaint filed against the Defendants by the Plaintiff, William C. Mitchell. Defendant James T. Helwig's Motion to Dismiss was filed August 5, 2010, and Defendants Michael L. Masiowski and Elizabeth A. Masiowski's Motion to Dismiss was filed August 6, 2010. Present at the hearing was the Plaintiff, William C. Mitchell, who appeared without the representation of counsel. Appearing at the hearing on behalf of the Defendant James T. Helwig were Alec Beard, Esquire and Andy Haselden, Esquire. Appearing on behalf of the Defendants Michael L.

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Masiowski and Elizabeth A. Masiowski were Brian Duffy, Esquire and Christy Fargnoli, Esquire. At such time, the Court heard arguments from both sides and has since reviewed the pleadings and memoranda filed with the Court. For the reasons set forth below, the Defendants' Motions to Dismiss with Prejudice are granted as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and denied as to the causes of action for malicious prosecution and abuse of process.

FACTUAL AND PROCEDURAL BACKGROUND

According to the facts alleged in the Plaintiff's Complaint, in April 2001, Defendant Helwig contacted the Plaintiff about constructing a dock at a property located at 3088 Pignatelli Crescent, Mount Pleasant, South Carolina, property Defendant Helwig had recently purchased. (Compl. ¶ 4.) On April 23, 2001, Defendant Helwig signed a contract agreeing to pay Forty Thousand Five Hundred and 00/100 ($40,500.00) Dollars to the Plaintiff for construction of the dock. (*Id.* ¶ 5.) Along with the signed contract, Defendant Helwig sent a check to the Plaintiff for Thirteen Thousand Five Hundred and 00/100 ($13,500.00) Dollars as a deposit. (*Id.*) Sometime after forming the contract, the Plaintiff allegedly had material delivered to Defendant Helwig's property in Mount Pleasant. (*Id.* ¶ 11.) Defendant Helwig subsequently sent another check to the Plaintiff in the amount of Thirteen Thousand Five Hundred and 00/100 ($13,500.00) Dollars. (*Id.* ¶ 12.) While allegedly dealing with Defendant Helwig, the Plaintiff claims he also had ongoing contracts with Defendants Michael and Elizabeth Masiowski to construct docks at two separate locations for an alleged total price of Fifty-Eight Thousand Five Hundred and 00/100 ($58,500.00) Dollars. (*Id.* ¶ 14.) The Complaint further alleges that while working for the Masiowskis, the Plaintiff and Defendant Michael Masiowski had discussions related to Defendant Masiowski "buying into the Plaintiff's dock construction business." (*Id.* ¶ 16.)

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Between mid-July and August 5, 2001, the Plaintiff claims he discovered that Defendant Michael Masiowski had hired his entire work crew and formed a new dock construction company. (*Id.* ¶¶ 18–23.)

According to the Complaint, by August 6, 2001, the Defendants conspired with one another to breach their respective contracts with the Plaintiff to construct docks at the Defendants' properties. (*Id.* ¶¶ 24–26.) The Plaintiff further alleges that by August 6, 2001, the Defendants, in furtherance of their alleged conspiracy, hired the Plaintiff's crew while he was out of town. (*Id.* ¶¶ 26, 32–33.) According to the Plaintiff's own allegations, the Defendants each provided the Plaintiff with letters on August 6, 2001 terminating their respective agreements with the Plaintiff and demanded a return of money paid to the Plaintiff. (*Id.* ¶¶ 26–36.) The Plaintiff further alleges an attorney representing the Defendants sent correspondence to the Plaintiff on September 17, 2001 confirming the Defendants' position. (*Id.* ¶ 36, Ex. H.)

According to the Complaint, on December 12, 2001, "[t]he Plaintiff was arrested on a warrant for Breach of Trust and Obtaining Money Under False Pretenses." (*Id.* ¶ 40, 51.) The warrant for the Plaintiff's arrest was allegedly signed by Defendant Helwig. (*Id.* ¶ 40.) According to the Plaintiff's allegations, the Plaintiff believed the Defendants pursued the criminal action against him because he "had not given in to the threats, intimidations and complied with the demands of the Defendant[s] to refund the Defendant[s] the payment[s] which the Defendant[s] had made on the contracts with the Plaintiff." (*Id.*) According to the Complaint, the Plaintiff was first notified by his attorney in early January 2008 that the above-mentioned criminal proceedings had been dismissed. (*Id.* ¶ 43.) The Plaintiff then alleges he obtained a copy of the dismissal from the Charleston County Clerk of Court. (*Id.*)

The Plaintiff filed suit against the Defendants on July 9, 2010, asserting five separate causes of action against the Defendants: civil conspiracy; tortious interference with a contract; intentional interference with business expectancy; malicious prosecution; and abuse of process. (*Id.* ¶¶ 48–54.)

The Defendants each filed Motions with this Court, requesting that this Court dismiss the Plaintiff's Complaint against the Defendants with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure based on the grounds that the applicable statute of limitations bars each and every cause of action asserted by the Plaintiff's Complaint against the Defendants. S.C. Code Ann. §§ 15-3-510, 15-3-530.[1]

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[1] In Defendants Michael and Elizabeth Masiowski's August 6, 2008 Motion, they also advanced an alternative request that the Court convert the Motion to Dismiss to one for summary judgment according to Rule 12(b). "A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading. Rule 10(c), SCRCP. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon the allegations set forth on the face of the complaint. However, on a 12(b)(6) motion, if matters outside the pleading are presented to and not excluded by a court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, SCRCP, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (holding trial court did not convert the 12(b)(6) motion into a motion for summary judgment by considering the HUD-1 Statement that was not attached to the complaint but was referenced therein and was attached to the respondent's memorandum in support of the motion to dismiss); Rule 12(b)(6), SCRCP. Here, Defendant Helwig's August 5, 2010 Motion to Dismiss included, as exhibits, the Indictment/Warrant Status Change Form indicating cases 2002-GS-10-0590 and 2006-GS-10-1202 were nol prossed; Defendants Michael and Elizabeth Masiowski's August 6, 2010 Motion to Dismiss included, as exhibits, the Indictment and Indictment/Warrant Status Change Form for case 2006-GS-10-1202; and the Memorandum in Support of Defendants Michael and Elizabeth Masiowski's Motion to Dismiss filed February 18, 2011 included the deposition transcript of Philip Middleton. While Defendants asked that their Motions be converted to one for summary judgment, all materials of record discussed in the body of this Order were either attached by the Defendants as exhibits to a pleading or memorandum in support of the Motions to Dismiss, and the Court finds that the conversion to summary judgment is not warranted. Further, the Court finds that discovery has not been completed and converting the Motion to one for summary judgment would be premature. Even if the Court were to treat the motion as one for summary judgment at this juncture, the statute of limitations issue sufficiently creates a question of fact on the causes of action for malicious prosecution and abuse of process. The Court notes that Defendant Helwig filed an Amended Motion to Dismiss on February 11, 2011 in which he advanced an alternative request that the Court convert the Motion to Dismiss to one for summary judgment. However, this Motion was not before the Court on February 22, 2011 as it was not on the Court's weekly motions docket. Nevertheless, as a result of this Order, the February 11, 2011 Motion to Dismiss becomes moot.

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LEGAL STANDARD

According to South Carolina law, "[u]nder Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 376 S.C. 83, 87, 655 S.E.2d 736, 737 (2007). Furthermore, "[t]he decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint." *Id.* at 87, 655 S.E.2d at 737–38. In ruling on a motion to dismiss, the trial court must determine "whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Id.* at 87, 655 S.E.2d at 738. Accordingly, "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory," a South Carolina court must refuse to grant a motion to dismiss. *Id.*

CONCLUSIONS OF LAW

According to South Carolina statutory law, "[t]he periods for the commencement of actions other than for the recovery of real property shall be as prescribed in" Title 15, Chapter 3, Article 5 of the South Carolina Code of Laws. S.C. Code Ann. § 15-3-510. Certain provisions of Article 5 set forth the following limitations: "Within three years: . . . (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law." *Id.* § 15-3-530. South Carolina statutory law governing limitations on actions further states that "all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." *Id.* § 15-3-535.

According to South Carolina case law,

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and

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> circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.

Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). Accordingly, "[t]he statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." *Id.* South Carolina courts applying Section 15-3-535 have reasoned that "the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another." *Kelly v. Logan, Jolley, & Smith, LLP*, 383 S.C. 626, 682 S.E.2d 1, 5 (Ct. App. 2009); *see also True v. Monteith*, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997).

Generally, South Carolina courts follow the principle "that an affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense." *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). Despite this general rule, the *Spence* court recognized the following exception:

> Most courts allow such defenses to be raised in a motion to dismiss under Rule 12(b) "when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense."

Id. at 124, 628 S.E.2d at 878; *see also Medlin v. South Carolina Farm Bureau Mut. Ins. Co.*, 325 S.C. 195, 196–97, 480 S.E.2d 739, 740 (1997) (dismissing case on limitations grounds at motion to dismiss stage where relevant facts were apparent from complaint).

According to the Plaintiff's own allegations, the claims for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy are based on

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actions taken by the Defendants in 2001, actions the Plaintiff admits full awareness of in his own allegations. (*See* Compl. ¶¶ 48–50.) The Summons and Complaint were not filed until July 9, 2010. Therefore, the Court finds the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy were not filed within the applicable statute of limitations and should be dismissed.

The claim for malicious prosecution, however, does not accrue until the prosecution is resolved in the prospective plaintiff's favor. *McBride v. School Dist. of Greenville* County, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2010) ("The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."); *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). For purposes of this motion only, the Court will regard the statute of limitations for the abuse of process claim as having the same starting point.

The parties agree that the Plaintiff's criminal prosecution for Obtaining Signature Under False Pretenses and Breach of Trust each ended with a *nolle prosequi* that were each signed December 21, 2006 and filed with the Clerk of Court on December 27, 2006.[2] Although that date is not expressly stated in the Complaint, the Complaint incorporates the public filing by reference. (Compl. ¶¶ 43, 51; *see, e.g.*, *Secretary of State for Defence v. Trimble Navigation, Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (noting that when reviewing a Rule 12(b)(6) motion the court may properly take judicial notice of matters of public record)).

[2] Plaintiff's indictment number for the charge of Obtaining Signature or Property Under False Pretenses is 2002-GS-10-0590, and the indictment number for the charge of Breach of Trust is 2006-GS-10-1202.

In any event, the December 27, 2006 filing of the documents resolving the criminal prosecution is properly before the Court as a public record of which the Court may take judicial notice. "When a court takes judicial notice of a fact it 'admit[s] into evidence and consider[s], without proof of the facts, matters of common and general knowledge.'" *South Carolina Dep't of Social Servs. v. Janice G*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) (quoting *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 377, 228 S.E.2d 108, 112 (1976)). "To be subjected to judicial notice, a fact must be of 'such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.'" *Janice G*, 383 S.C. at 227, 678 S.E.2d at 467 (quoting *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct.App.2002)).

According to South Carolina case law, the Court may "take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." *See Janice G*, 383 S.C. at 227, 678 S.E.2d at 467 (holding that the court could take judicial notice of acceptances and affidavits of services where they were filed with the family court and were, therefore, part of the record). Accordingly, the Court takes judicial notice of the public filing of the *nolle prosequi* for both the True Bill for Obtaining a Signature Under False Pretenses and the Grand Jury's Direct Indictment for Breach of Trust at issue here. However, while the Court may take judicial notice it would not be dispositive of the issue in this case, as the allegations of the complaint give rise to competing inferences on a question of material fact therefore making dismissal of the case under Rule 12(b)(6) inappropriate. *Osprey, Inc. v. Cabana Ltd. P'ship*, 333 S.C. 323, 332, 509 S.E.2d 275, 279 (Ct. App. 1998), *overruled on other grounds by I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

What the parties do not agree on, however, is whether that public filing or some

8

reasonable time thereafter commences the statute of limitations for the malicious prosecution and abuse of process claims or whether the statute is triggered only by Plaintiff's actual notice of the resolution, which he contends was more than a year later, in early 2008. Plaintiff contends that he relied on his criminal defense attorney, Phillip Middleton, Esquire, to apprise him of the status of his criminal case, and he was first notified by his attorney in January 2008 that his criminal case was dismissed. (Pl.'s Reply to Def.'s Am. Mot. for Summary Judgment ¶ 7.) According to Philip Middleton, Esquire, he learned in the early months of 2008 that the case was dismissed after studying the Clerk of Court's website. (Middleton Aff. 7.) It was at this time that he informed the Plaintiff that the case had been dismissed.[3] (*Id.* at 8.)

According to South Carolina case law, filings with a clerk of court, particularly in cases where the plaintiff was a party, constitute constructive notice. *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 800 (Ct. App. 1997) (holding the statute of limitations began to run, at the latest, when the bond documents were publicly filed with the clerk of court at which time the residents had constructive notice). However, the Defendant's Motion to Dismiss is made pursuant to Rule 12(b)(6), SCRCP. In ruling on a motion to dismiss, the trial court must determine "whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Brazell*, 376 S.C. at 87, 655 S.E.2d at 738. Accordingly, "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory," a South Carolina court must refuse to grant a motion to dismiss. *Id.* Moreover, "where the

[3] During the hearing, the Court contacted the Charleston County Solicitor's Office who informed the Court that the solicitor in charge of the case handles the *nolle prosequi* of an indictment, and that solicitor prepares a status change form and files it with the Clerk of Court's office and, depending on the solicitor, generally notifies defense counsel. The Court informed the parties of this procedure during the hearing. The assistant solicitor handling Plaintiff's indictments, 2002-GS-10-0590 and 2006-GS-10-1202, was Kim Steele, Esquire who is no longer with the Charleston County Solicitor's Office. The Solicitor's Office pulled the Plaintiff's files containing these two indictments, but it did not contain any notation or letter indicating when or if defense counsel was notified of the *nolle prosequi*. The Solicitor's Office stated that this is not unusual, as notice to defense counsel is often given by phone or email. However, some assistant solicitors send letters or make a notation in their file of a notice of dismissal to counsel. In this instance Ms. Steele did not.

9 9-9-11

allegations of the complaint give rise to competing inferences on a question of material fact, dismissal of the case under Rule 12(b)(6) is not appropriate." *Osprey*, 333 S.C. at 332, 509 S.E.2d at 279.

The statute of limitations is triggered "by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another." *Kelly*, 383 S.C. at 626, 682 S.E.2d at 5. The Court finds that the allegations in the Complaint give rise to competing inferences on a question of the material fact of whether the Plaintiff had inquiry or constructive notice of the *nolle prosequi.* Here, the Plaintiff's criminal prosecution for Obtaining Signature Under False Pretenses and Breach of Trust each ended with a *nolle prosequi* that were each signed December 21, 2006 and filed with the Clerk of Court on December 27, 2006. However, the Plaintiff contends that he and his attorney were actively engaged in negotiations with the solicitor's office and that during this process he relied on his criminal defense attorney to apprise him of the status of his case. The Plaintiff's criminal defense attorney testified by affidavit that he learned in the early months of 2008, after studying the Clerk of Court's website, the case was dismissed, and it was at this time that he informed the Plaintiff that the case had been dismissed. (Middleton Aff. 7.) Moreover, the Court is advised that it is the procedure of the Charleston County Solicitor's Office that the assistant solicitor in charge of the case handles the *nolle prosequi* of the indictment, and that the assistant solicitor does a status change form, files it with the Clerk of Court's office, and notifies defense counsel. The Plaintiff's file is void of evidence that the solicitor's office notified the Plaintiff's defense attorney. Though communication by the solicitor's office is often by email or telephone, the Court finds there is an inference raised by the pleadings as to when the Plaintiff received notice that his charges were dismissed. Accordingly, a dismissal pursuant to Rule 12(b)(6), SCRCP as

10 of 11

to the causes of action for malicious prosecution and abuse of process is not appropriate.

Therefore, only the claims for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy must be dismissed as barred by the applicable statute of limitations.

CONCLUSION

Based on the analysis set forth above, the Defendants' Motions to Dismiss with Prejudice are GRANTED as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and the Defendants' Motions to Dismiss with Prejudice are DENIED as to the causes of action for malicious prosecution and abuse of process.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____ DEPUTY CLERK

Charleston, South Carolina
April 8, 2011

11 11-9-11

Appellant Exhibit 7

Plaintiff's Motion to Dismiss Defendant James T Helwig, Motion for Summary Judgment and for a Directed Verdict for Plaintiff and Sanctions

(Appellant Exhibit 7 on following page)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**IN THE NINTH JUDICIAL CIRCUIT**
	)	**Case # 2010-CP-10-5532**
COUNTY OF CHARLESTON	)	
	)	
William C. Mitchell	)	**Plaintiff Motion to Dismiss Defendants James T. Helwig, Motion for Summary Judgment and for a Directed Verdict for Plaintiff and Sanctions**
	)	
	)	
Plaintiff	)	
	)	
VS.	)	
	)	
James T. Helwig,	)	
Michael L. Masiowski,	)	
Elizabeth A Masiowski,	)	
Defendants		

FILED
2011 DEC 16 PM 1:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW the Plaintiff, William C Mitchell, Pro Se, and moves this Honorable Court to Dismiss, Defendant James T. Helwig's, Motion for Summary Judgment and for a Directed Verdict in favor of the Plaintiff and for Scansions based on the following:

1- The Defendant James T. Helwig, knowingly, willingly and blatantly, with total disregard for this Honorable Court and the truth, has submitted a False Affidavit to this Honorable Court in support of his Motion for Summary Judgment.

2- That Defendant James T. Helwig, testified in his deposition that was taken May 31, 2011.

3- When ask the question, who built the dock for you at 3088 Pignatelli Cresant, Mt Pleasant, S C, replied, Dock Doc's Inc. (Defendants deposition, page 38, lines 6 and 7.

See Exhibit "A"

4- Further, the Defendant has furnished to Plaintiff, in reply to Plaintiff Request for Production and Interrogatories, dated November 17, 2011, a copy of the contract with Dock Doc's, Inc., to in fact build the dock for Mr. Helwig at 3088 Pignatelli Cresant, Mt Pleasant, S C in 2001.

See Exhibit "B".

5- The Defendant now attaches an False Affidavit in his Memorandum of Fact and Law, in support of his Motion for Summary Judgment, that states that a totally different company, Docks Unlimited, did in fact build the dock for Mr. Helwig at 3088 Pignatelli Cresant, Mt. Pleasant, S C .

6- Further, Defendant in this False Affidavit states the Docks Unlimited, gave him a credit of $2,269.00 for material furnished by the Plaintiff, that Dock Unlimited used in the construction of said dock.

7- This comes as a total surprise to Plaintiff, and based on previous investigation by the Plaintiff is a totally False Affidavit.

See Exhibit "C"

8- As this court is aware, all motions were to be filed by Monday, December 5, 2011. My Computer was down and in the repair shop until after 3 PM, Tuesday afternoon, December 6, 2011.

9- Late Tuesday, December 6, 2011, I received an e-mail from attorney James P. Sullivan, With a copy of the Memorandum of Fact & Law filed with this court of Monday, December 5, 2011.

See Exhibit "D"

10- I did not have the opportunity to study the Defendant, James T. Helwig, memorandum before Friday night, December 9, 2011.

11- After reviewing the Defendants affidavit, his deposition and reviewing the facts and evidence, it is clear that this Affidavit is False.

12- The filing of a False Affidavit is a violation of the Rules of Professional Conduct, Rule 407, SCACR, Rule 3.3 and Rule 8.4(d).

Therefore, the Plaintiff moves for a Dismissal of Defendant, James T. Helwig Motion for Summary Judgment and for a Directed Verdict, for the Plaintiff, and for Sanctions against the Defendant, James T.Helwig, and for Sanctions against the attorney for the Defendant James T. Helwig.

This December 12, 2011



William C Mitchell, Pro Se
9452 Koester Rd.
Ladson, S C 29456
(843) 797-7538

William Mitchell

9452 Koester Road
Ladson, S C 29456

Phone (843) 797-7538 Fax (843) 797-7538

Jilie J Armstrong
Clerk of Court
100 Broad St, Suite 106
Charleston, S C 29456

Dear Ms Armstrong;

Enclose please find a Motion for filing along with a check of $25.00 filing fee.

Also please find copy of Motion , along with a self addressed evenlope to mail a stamped copy to me.

Sincerely

William C Mitchell, Pro Se

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C Mitchell ☒ Plaintiff v. James T Helwig, Micheal And Elizabeth Masiowski ☒ Defendant.	))))))))))	IN THE COURT OF COMMON PLEAS CASE NO. 2010-CP-10-5532- - - MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
, Bar No. PRO Se Address: 9452 Koester Rd, Ladson, S C phone: 797-7538 fax: e-mail: other:	James Sullivan, Bar No. Address: phone: fax: e-mail: other:

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

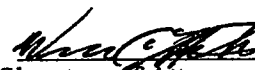
SECTION I: Hearing Information

Nature of Motion: False Affidavit
Estimated Time Needed: 15 Min Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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



Signature of Attorney for ☒Plaintiff / ☐Defendant — December 14, 2012 Date submitted

SECTION III: Motion Fee

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

Name of Court Reporter:

- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

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

SCCA/233 (11-03)

Appellant Exhibit 8

Plaintiff Memorandum of fact and law to Defendant Motion for Summary Judgment

(Appellant Exhibit 8)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON ,PLEAS
	)	IN THE 9 TH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE # 2010-CP-10-5532
William C. Mitchell	)	**Plaintiff's Memorandum of Fact and Law**
V.	)	**To Defendants Motion For Summary Judgment**
	)	
James T. Helwig, personally,	)	
Michael Masiowski, personally,	)	
Elizabeth Masiowski, personally	)	
	)	
Defendants	)	

FILED
2011 DEC -5 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

MEMORANDUM OF FACT

This memorandum is on this Motion for Summary Judgment filed by the Defendants and now before this Honorable Court.

1-The Plaintiff was arrested in 2001 on a warrant signed by Defendant James Helwig.

2-A dismissal form in the criminal case was filed with the clerk of court by the solicitor's office on or about December 27, 2006.

3-Plaintiff was first notified by his Defense Attorney Phillip Middleton, in early 2008, that the case was dismissed.

4-Plaintiff filed an action on July 9, 2010, asserting five separate causes of action against the Defendants: civil conspiracy; tortuous interference with a contract; intentional interference with a business expectancy; malicious prosecution and abuse of process.

5- Defendants each filed a Motion to Dismiss and an alternative request that the Court convert the Motion to Dismiss to one for Summary Judgment.

6-A hearing on the 12(b)(6) Motion to Dismiss and to convert to Summary Judgment, based on the statute of limitation, was held on February 22, 2011, before the Honorable Deadra L. Jefferson.

7-The Motion to Dismiss and to convert to Motion for Summary Judgment, based on the statute of limitation, was Granted as to the causes of action for civil conspiracy, tortuous interference with a contract, and intentional interference with business expectancy . The Motion to Dismiss and to convert to a Motion for Summary Judgment, based on the statute of limitation, as to the causes of action for malicious prosecution and abuse of process were DENIED. Order dated, April 8, 2011

See Attached Exhibit (A)

8-The Defendants also filed a Motion for Reconsideration, which was denied by Judge Jefferson. Order dated May 4, 2011

See Attached Exhibit (B& C)

MEMORANDUM OF LAW

RULE 4

MOTIONS IN GENERAL

9- Further, SCRCrimP, Rule 4(b),

(a) Form of Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(b) Subsequent Applications for Order After Refusal. If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.

10- # The Supreme Court of South Carolina

RE: Amendments to the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules

---

ORDER

By Order dated January 31, 2003, new Rule 41.1, SCRCP, and amendments to Rule 43, SCRCP, and Rule 232, SCACR were submitted to the General Assembly pursuant to Art. V, § 4A, of the South Carolina Constitution. More than ninety days having passed since the submission to the General Assembly without rejection, new Rule 41.1, SCRCP, and the amendments to Rule 43, SCRCP, and Rule 232, SCACR, are effective immediately.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E. C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina

May 5, 2003

11- **SCRCP, RULE 43(1)**

Subsequent Applications for Order After Refusal. If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action.

12- The Defendants filed their Motion for Summary Judgment, based on the statute of limitation which motions are based on the same set of facts, evidence and circumstances that Judge Jefferson previously heard and ruled on.

13- Should this Honorable Court decide to hear these Motions for Summary Judgment, based on the statute of limitation, the same facts and evidence, then previous rulings by the Honorable Darda L Jefferson, raises the Plaintiff defense of res judicata.

Statute of Limitation

14- The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question. If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of

action, the question is one for the jury. **Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 338-39, 354 S.E.2d 672, 681-82 (2000).**

15-The test of whether a Person should have known the operative facts is objective, rather than subjective, and the discovery rule focuses on whether the complaining party acquired knowledge of any existing facts sufficient to put the party on inquiry.

16- Under 15-3-535, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another.

See Exhibit (D)

17- The client should be able to rely on the attorney's advice and should be able to follow this advice without fear the attorney is not acting in the client's best interest.

***True v. Monteith*, 327 S.C. 116, 489 S.E.2d 615 (S. C. 1997)**

Therefore, based on the foregoing, the Defendants Motion for Summary Judgment should be denied.

This 5 day of December, 2011

William C Mitchell, Pro Se

9452 Koester Rd

Ladson, S C 29456

(843) 797-7538

Exhibit "A"

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2010-CP-10-5532
William C. Mitchell, Plaintiff, vs. James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski, Defendants.	**ORDER**

FILED
2011 APR -8 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY.....

Presiding Judge:	Deadra L. Jefferson
Hearing Date:	February 22, 2011
Plaintiff's Attorney:	Pro Se
Defendants' Attorneys:	James Sullivan, Esq. Brian Duffy, Esq. Alec Beard, Esq. Andy Haselden, Esq. Christy Fargnoli, Esq.
Court Reporter:	Leah Dupree

This matter came before the Court on February 22, 2011, on motions filed on behalf of the Defendants, James T. Helwig, Michael L. Masiowski, and Elizabeth A. Masiowski (hereinafter collectively referred to as the Defendants), moving the Court to dismiss with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Complaint filed against the Defendants by the Plaintiff, William C. Mitchell. Defendant James T. Helwig's Motion to Dismiss was filed August 5, 2010, and Defendants Michael L. Masiowski and Elizabeth A. Masiowski's Motion to Dismiss was filed August 6, 2010. Present at the hearing was the Plaintiff, William C. Mitchell, who appeared without the representation of counsel. Appearing at the hearing on behalf of the Defendant James T. Helwig were Alec Beard, Esquire and Andy Haselden, Esquire. Appearing on behalf of the Defendants Michael L.

1 of 11

Masiowski and Elizabeth A. Masiowski were Brian Duffy, Esquire and Christy Fargnoli, Esquire. At such time, the Court heard arguments from both sides and has since reviewed the pleadings and memoranda filed with the Court. For the reasons set forth below, the Defendants' Motions to Dismiss with Prejudice are granted as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and denied as to the causes of action for malicious prosecution and abuse of process.

FACTUAL AND PROCEDURAL BACKGROUND

According to the facts alleged in the Plaintiff's Complaint, in April 2001, Defendant Helwig contacted the Plaintiff about constructing a dock at a property located at 3088 Pignatelli Crescent, Mount Pleasant, South Carolina, property Defendant Helwig had recently purchased. (Compl. ¶ 4.) On April 23, 2001, Defendant Helwig signed a contract agreeing to pay Forty Thousand Five Hundred and 00/100 ($40,500.00) Dollars to the Plaintiff for construction of the dock. (*Id.* ¶ 5.) Along with the signed contract, Defendant Helwig sent a check to the Plaintiff for Thirteen Thousand Five Hundred and 00/100 ($13,500.00) Dollars as a deposit. (*Id.*) Sometime after forming the contract, the Plaintiff allegedly had material delivered to Defendant Helwig's property in Mount Pleasant. (*Id.* ¶ 11.) Defendant Helwig subsequently sent another check to the Plaintiff in the amount of Thirteen Thousand Five Hundred and 00/100 ($13,500.00) Dollars. (*Id.* ¶ 12.) While allegedly dealing with Defendant Helwig, the Plaintiff claims he also had ongoing contracts with Defendants Michael and Elizabeth Masiowski to construct docks at two separate locations for an alleged total price of Fifty-Eight Thousand Five Hundred and 00/100 ($58,500.00) Dollars. (*Id.* ¶ 14.) The Complaint further alleges that while working for the Masiowskis, the Plaintiff and Defendant Michael Masiowski had discussions related to Defendant Masiowski "buying into the Plaintiff's dock construction business." (*Id.* ¶ 16.)

2 2011

Between mid-July and August 5, 2001, the Plaintiff claims he discovered that Defendant Michael Masiowski had hired his entire work crew and formed a new dock construction company. (*Id.* ¶¶ 18–23.)

According to the Complaint, by August 6, 2001, the Defendants conspired with one another to breach their respective contracts with the Plaintiff to construct docks at the Defendants' properties. (*Id.* ¶¶ 24–26.) The Plaintiff further alleges that by August 6, 2001, the Defendants, in furtherance of their alleged conspiracy, hired the Plaintiff's crew while he was out of town. (*Id.* ¶¶ 26, 32–33.) According to the Plaintiff's own allegations, the Defendants each provided the Plaintiff with letters on August 6, 2001 terminating their respective agreements with the Plaintiff and demanded a return of money paid to the Plaintiff. (*Id.* ¶¶ 26–36.) The Plaintiff further alleges an attorney representing the Defendants sent correspondence to the Plaintiff on September 17, 2001 confirming the Defendants' position. (*Id.* ¶ 36, Ex. H.)

According to the Complaint, on December 12, 2001, "[t]he Plaintiff was arrested on a warrant for Breach of Trust and Obtaining Money Under False Pretenses." (*Id.* ¶ 40, 51.) The warrant for the Plaintiff's arrest was allegedly signed by Defendant Helwig. (*Id.* ¶ 40.) According to the Plaintiff's allegations, the Plaintiff believed the Defendants pursued the criminal action against him because he "had not given in to the threats, intimidations and complied with the demands of the Defendant[s] to refund the Defendant[s] the payment[s] which the Defendant[s] had made on the contracts with the Plaintiff." (*Id.*) According to the Complaint, the Plaintiff was first notified by his attorney in early January 2008 that the above-mentioned criminal proceedings had been dismissed. (*Id.* ¶ 43.) The Plaintiff then alleges he obtained a copy of the dismissal from the Charleston County Clerk of Court. (*Id.*)

The Plaintiff filed suit against the Defendants on July 9, 2010, asserting five separate causes of action against the Defendants: civil conspiracy; tortious interference with a contract; intentional interference with business expectancy; malicious prosecution; and abuse of process. (*Id.* ¶¶ 48–54.)

The Defendants each filed Motions with this Court, requesting that this Court dismiss the Plaintiff's Complaint against the Defendants with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure based on the grounds that the applicable statute of limitations bars each and every cause of action asserted by the Plaintiff's Complaint against the Defendants. S.C. Code Ann. §§ 15-3-510, 15-3-530.[1]

---

[1] In Defendants Michael and Elizabeth Masiowski's August 6, 2008 Motion, they also advanced an alternative request that the Court convert the Motion to Dismiss to one for summary judgment according to Rule 12(b). "A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading. Rule 10(c), SCRCP. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon the allegations set forth on the face of the complaint. However, on a 12(b)(6) motion, if matters outside the pleading are presented to and not excluded by a court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, SCRCP, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (holding trial court did not convert the 12(b)(6) motion into a motion for summary judgment by considering the HUD-1 Statement that was not attached to the complaint but was referenced therein and was attached to the respondent's memorandum in support of the motion to dismiss); Rule 12(b)(6), SCRCP. Here, Defendant Helwig's August 5, 2010 Motion to Dismiss included, as exhibits, the Indictment/Warrant Status Change Form indicating cases 2002-GS-10-0590 and 2006-GS-10-1202 were nol prossed; Defendants Michael and Elizabeth Masiowski's August 6, 2010 Motion to Dismiss included, as exhibits, the Indictment and Indictment/Warrant Status Change Form for case 2006-GS-10-1202; and the Memorandum in Support of Defendants Michael and Elizabeth Masiowski's Motion to Dismiss filed February 18, 2011 included the deposition transcript of Philip Middleton. While Defendants asked that their Motions be converted to one for summary judgment, all materials of record discussed in the body of this Order were either attached by the Defendants as exhibits to a pleading or memorandum in support of the Motions to Dismiss, and the Court finds that the conversion to summary judgment is not warranted. Further, the Court finds that discovery has not been completed and converting the Motion to one for summary judgment would be premature. Even if the Court were to treat the motion as one for summary judgment at this juncture, the statute of limitations issue sufficiently creates a question of fact on the causes of action for malicious prosecution and abuse of process. The Court notes that Defendant Helwig filed an Amended Motion to Dismiss on February 11, 2011 in which he advanced an alternative request that the Court convert the Motion to Dismiss to one for summary judgment. However, this Motion was not before the Court on February 22, 2011 as it was not on the Court's weekly motions docket. Nevertheless, as a result of this Order, the February 11, 2011 Motion to Dismiss becomes moot.

LEGAL STANDARD

According to South Carolina law, "[u]nder Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 376 S.C. 83, 87, 655 S.E.2d 736, 737 (2007). Furthermore, "[t]he decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint." *Id.* at 87, 655 S.E.2d at 737–38. In ruling on a motion to dismiss, the trial court must determine "whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Id.* at 87, 655 S.E.2d at 738. Accordingly, "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory," a South Carolina court must refuse to grant a motion to dismiss. *Id.*

CONCLUSIONS OF LAW

According to South Carolina statutory law, "[t]he periods for the commencement of actions other than for the recovery of real property shall be as prescribed in" Title 15, Chapter 3, Article 5 of the South Carolina Code of Laws. S.C. Code Ann. § 15-3-510. Certain provisions of Article 5 set forth the following limitations: "Within three years: . . . (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law." *Id.* § 15-3-530. South Carolina statutory law governing limitations on actions further states that "all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." *Id.* § 15-3-535.

According to South Carolina case law,

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and

5

> circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.

Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). Accordingly, "[t]he statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." *Id.* South Carolina courts applying Section 15-3-535 have reasoned that "the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another." *Kelly v. Logan, Jolley, & Smith, LLP*, 383 S.C. 626, 682 S.E.2d 1, 5 (Ct. App. 2009); *see also True v. Monteith*, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997).

Generally, South Carolina courts follow the principle "that an affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense." *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). Despite this general rule, the *Spence* court recognized the following exception:

> Most courts allow such defenses to be raised in a motion to dismiss under Rule 12(b) "when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense."

Id. at 124, 628 S.E.2d at 878; *see also Medlin v. South Carolina Farm Bureau Mut. Ins. Co.*, 325 S.C. 195, 196–97, 480 S.E.2d 739, 740 (1997) (dismissing case on limitations grounds at motion to dismiss stage where relevant facts were apparent from complaint).

According to the Plaintiff's own allegations, the claims for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy are based on

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actions taken by the Defendants in 2001, actions the Plaintiff admits full awareness of in his own allegations. (*See* Compl. ¶¶ 48–50.) The Summons and Complaint were not filed until July 9, 2010. Therefore, the Court finds the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy were not filed within the applicable statute of limitations and should be dismissed.

The claim for malicious prosecution, however, does not accrue until the prosecution is resolved in the prospective plaintiff's favor. *McBride v. School Dist. of Greenville* County, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2010) ("The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."); *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). For purposes of this motion only, the Court will regard the statute of limitations for the abuse of process claim as having the same starting point.

The parties agree that the Plaintiff's criminal prosecution for Obtaining Signature Under False Pretenses and Breach of Trust each ended with a *nolle prosequi* that were each signed December 21, 2006 and filed with the Clerk of Court on December 27, 2006.[2] Although that date is not expressly stated in the Complaint, the Complaint incorporates the public filing by reference. (Compl. ¶¶ 43, 51; *see, e.g., Secretary of State for Defence v. Trimble Navigation, Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (noting that when reviewing a Rule 12(b)(6) motion the court may properly take judicial notice of matters of public record)).

[2] Plaintiff's indictment number for the charge of Obtaining Signature or Property Under False Pretenses is 2002-GS-10-0590, and the indictment number for the charge of Breach of Trust is 2006-GS-10-1202.

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In any event, the December 27, 2006 filing of the documents resolving the criminal prosecution is properly before the Court as a public record of which the Court may take judicial notice. "When a court takes judicial notice of a fact it 'admit[s] into evidence and consider[s], without proof of the facts, matters of common and general knowledge.'" *South Carolina Dep't of Social Servs. v. Janice G*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) (quoting *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 377, 228 S.E.2d 108, 112 (1976)). "To be subjected to judicial notice, a fact must be of 'such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.'" *Janice G*, 383 S.C. at 227, 678 S.E.2d at 467 (quoting *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct.App.2002)).

According to South Carolina case law, the Court may "take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." *See Janice G*, 383 S.C. at 227, 678 S.E.2d at 467 (holding that the court could take judicial notice of acceptances and affidavits of services where they were filed with the family court and were, therefore, part of the record). Accordingly, the Court takes judicial notice of the public filing of the *nolle prosequi* for both the True Bill for Obtaining a Signature Under False Pretenses and the Grand Jury's Direct Indictment for Breach of Trust at issue here. However, while the Court may take judicial notice it would not be dispositive of the issue in this case, as the allegations of the complaint give rise to competing inferences on a question of material fact therefore making dismissal of the case under Rule 12(b)(6) inappropriate. *Osprey, Inc. v. Cabana Ltd. P'ship*, 333 S.C. 323, 332, 509 S.E.2d 275, 279 (Ct. App. 1998), *overruled on other grounds by I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

What the parties do not agree on, however, is whether that public filing or some

reasonable time thereafter commences the statute of limitations for the malicious prosecution and abuse of process claims or whether the statute is triggered only by Plaintiff's actual notice of the resolution, which he contends was more than a year later, in early 2008. Plaintiff contends that he relied on his criminal defense attorney, Phillip Middleton, Esquire, to apprise him of the status of his criminal case, and he was first notified by his attorney in January 2008 that his criminal case was dismissed. (Pl.'s Reply to Def.'s Am. Mot. for Summary Judgment ¶ 7.) According to Philip Middleton, Esquire, he learned in the early months of 2008 that the case was dismissed after studying the Clerk of Court's website. (Middleton Aff. 7.) It was at this time that he informed the Plaintiff that the case had been dismissed.[3] (*Id.* at 8.)

According to South Carolina case law, filings with a clerk of court, particularly in cases where the plaintiff was a party, constitute constructive notice. *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 800 (Ct. App. 1997) (holding the statute of limitations began to run, at the latest, when the bond documents were publicly filed with the clerk of court at which time the residents had constructive notice). However, the Defendant's Motion to Dismiss is made pursuant to Rule 12(b)(6), SCRCP. In ruling on a motion to dismiss, the trial court must determine "whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Brazell*, 376 S.C. at 87, 655 S.E.2d at 738. Accordingly, "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory," a South Carolina court must refuse to grant a motion to dismiss. *Id.* Moreover, "where the

[3] During the hearing, the Court contacted the Charleston County Solicitor's Office who informed the Court that the solicitor in charge of the case handles the *nolle prosequi* of an indictment, and that solicitor prepares a status change form and files it with the Clerk of Court's office and, depending on the solicitor, generally notifies defense counsel. The Court informed the parties of this procedure during the hearing. The assistant solicitor handling Plaintiff's indictments, 2002-GS-10-0590 and 2006-GS-10-1202, was Kim Steele, Esquire who is no longer with the Charleston County Solicitor's Office. The Solicitor's Office pulled the Plaintiff's files containing these two indictments, but it did not contain any notation or letter indicating when or if defense counsel was notified of the *nolle prosequi*. The Solicitor's Office stated that this is not unusual, as notice to defense counsel is often given by phone or email. However, some assistant solicitors send letters or make a notation in their file of a notice of dismissal to counsel. In this instance Ms. Steele did not.

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allegations of the complaint give rise to competing inferences on a question of material fact, dismissal of the case under Rule 12(b)(6) is not appropriate." *Osprey*, 333 S.C. at 332, 509 S.E.2d at 279.

The statute of limitations is triggered "by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another." *Kelly*, 383 S.C. at 626, 682 S.E.2d at 5. The Court finds that the allegations in the Complaint give rise to competing inferences on a question of the material fact of whether the Plaintiff had inquiry or constructive notice of the *nolle prosequi*. Here, the Plaintiff's criminal prosecution for Obtaining Signature Under False Pretenses and Breach of Trust each ended with a *nolle prosequi* that were each signed December 21, 2006 and filed with the Clerk of Court on December 27, 2006. However, the Plaintiff contends that he and his attorney were actively engaged in negotiations with the solicitor's office and that during this process he relied on his criminal defense attorney to apprise him of the status of his case. The Plaintiff's criminal defense attorney testified by affidavit that he learned in the early months of 2008, after studying the Clerk of Court's website, the case was dismissed, and it was at this time that he informed the Plaintiff that the case had been dismissed. (Middleton Aff. 7.) Moreover, the Court is advised that it is the procedure of the Charleston County Solicitor's Office that the assistant solicitor in charge of the case handles the *nolle prosequi* of the indictment, and that the assistant solicitor does a status change form, files it with the Clerk of Court's office, and notifies defense counsel. The Plaintiff's file is void of evidence that the solicitor's office notified the Plaintiff's defense attorney. Though communication by the solicitor's office is often by email or telephone, the Court finds there is an inference raised by the pleadings as to when the Plaintiff received notice that his charges were dismissed. Accordingly, a dismissal pursuant to Rule 12(b)(6), SCRCP as

to the causes of action for malicious prosecution and abuse of process is not appropriate.

Therefore, only the claims for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy must be dismissed as barred by the applicable statute of limitations.

CONCLUSION

Based on the analysis set forth above, the Defendants' Motions to Dismiss with Prejudice are GRANTED as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and the Defendants' Motions to Dismiss with Prejudice are DENIED as to the causes of action for malicious prosecution and abuse of process.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina
April 8, 2011

11 11-9-11

Exhibit "B"

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2010-CP-10-5532
William C. Mitchell,)
)
Plaintiff,) **ORDER**
)
vs.)
)
James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski,)
)
Defendants.)

FILED
2011 MAY -4 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Presiding Judge:	Deadra L. Jefferson
Hearing Date:	February 22, 2011
Plaintiff's Attorney:	Pro Se
Defendants' Attorneys:	James Sullivan, Esq. Brian Duffy, Esq. Alec Beard, Esq. Andy Haselden, Esq. Christy Fargnoli, Esq.
Court Reporter:	Leah Dupree

THIS MATTER is before the Court on the Defendants Michael L. Masiowski and Elizabeth A. Masiowski's Motion to Alter or Amend a Judgment pursuant to Rules 59(e), SCRCP. Defendants Michael L. Masiowski and Elizabeth A. Masiowski's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, filed August 6, 2010, was decided by the Court after a non-jury motion hearing on February 22, 2011. A Court Order granting the Motion to Dismiss as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and denying the Motion to Dismiss as to the causes of action for malicious prosecution and abuse of process was filed on April 8, 2011 and received by Defendants Michael L. Masiowski and Elizabeth A. Masiowski on April 13, 2011.[1] The

[1] The Plaintiff alleges in his Reply that the Defendants were electronically notified on April 8, 2011 of the filing of the Court's Order. The Court notes that it did not electronically notify any of the parties of its ruling and Order.

1 of 2

Defendants Michael L. Masiowski and Elizabeth A. Masiowski's Motion to Alter or Amend was filed on April 25, 2011 and received by the Court on April 25, 2011.[2] The Plaintiff's Objection and Reply to the Defendants' Motion was filed on April 27, 2011 and received by the Court on April 29, 2011.

Having considered the Defendants' Motion, the Plaintiff's Reply, the timeliness of the Motion, as well as the various interests balanced by the Court at the time of the ruling, the Defendants Michael L. Masiowski and Elizabeth A. Masiowski's Motion to Alter or Amend is hereby denied.[3]

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

5/2, 2011
Charleston, South Carolina

The Court signed the Order on April 8, 2011 and filed the same with the Charleston County Clerk of Court's Office on April 8, 2011. A copy of the Order was placed in the mail to both the Plaintiff and the Defendants' attorneys on the same day.

[2] Pursuant to Rule 59(e), SCRCP, a motion to alter or amend must be served not later than ten (10) days after receipt of the written notice of the entry of the order. According to the Defendants' Motion, they received written notice of the Court's Order on April 13, 2011, and according to the Certificate of Service filed with the Defendants' Motion, the Motion was served upon the opposing party on April 22, 2011. Further, Rule 59(g), SCRCP, provides that a copy of the Motion shall be provided to the Judge within ten (10) days after filing the Motion. Defendants' Motion was filed April 25, 2011, and a copy of the Motion was provided to the Judge on the same day. Accordingly, the Court finds the Defendants' Motion is in compliance with Rules 59(e) and (g), SCRCP.

[3] This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

Exhibit #11

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C. Mitchell, Plaintiff, vs. James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2010-CP-10-5532 **ORDER**

FILED
2011 MAY -4 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Presiding Judge:	Deadra L. Jefferson
Hearing Date:	February 22, 2011
Plaintiff's Attorney:	Pro Se
Defendants' Attorneys:	James Sullivan, Esq. Brian Duffy, Esq. Alec Beard, Esq. Andy Haselden, Esq. Christy Fargnoli, Esq.
Court Reporter:	Leah Dupree

THIS MATTER is before the Court on the Defendant James T. Helwig's Motion to Alter or Amend a Judgment pursuant to Rules 59(e), SCRCP. Defendant James T. Helwig's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, filed August 5, 2010, was decided by the Court after a non-jury motion hearing on February 22, 2011. A Court Order granting the Motion to Dismiss as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and denying the Motion to Dismiss as to the causes of action for malicious prosecution and abuse of process was filed on April 8, 2011 and received by Defendant James T. Helwig on April 13, 2011.[1] The Defendant James T. Helwig's

[1] The Plaintiff alleges in his Reply that the Defendants were electronically notified on April 8, 2011 of the filing of the Court's Order. The Court notes that it did not electronically notify any of the parties of its ruling and Order. The Court signed the Order on April 8, 2011 and filed the same with the Charleston County Clerk of Court's Office

Motion to Alter or Amend was filed on April 25, 2011 and received by the Court on April 27, 2011.[2] The Plaintiff's Objection and Reply to the Defendant's Motion was filed on April 27, 2011 and received by the Court on April 29, 2011.

Having considered the Defendant's Motion, the Plaintiff's Reply, the timeliness of the Motion, as well as the various interests balanced by the Court at the time of the ruling, the Defendant James T. Helwig's Motion to Alter or Amend is hereby denied.[3]

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

5/2, 2011
Charleston, South Carolina

on April 8, 2011. A copy of the Order was placed in the mail to both the Plaintiff and the Defendants' attorneys on the same day.

[2] Pursuant to Rule 59(e), SCRCP, a motion to alter or amend must be served not later than ten (10) days after receipt of the written notice of the entry of the order. According to the Defendant's Motion, he received written notice of the Court's Order on April 13, 2011, and according to the Certificate of Service filed with the Defendant's Motion, the Motion was served upon the opposing party on April 21, 2011. Further, Rule 59(g), SCRCP, provides that a copy of the Motion shall be provided to the Judge within ten (10) days after filing the Motion. Defendant's Motion was filed April 25, 2011, and a copy of the Motion was provided to the Judge on April 27, 2011. Accordingly, the Court finds the Defendant's Motion is in compliance with Rules 59(e) and (g), SCRCP.

[3] This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

Exhibit "D"

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No. 2010-CP-10-5532
William C. Mitchell, Petitioner, vs. James T. Helwig, Michael L. Masiowski, Elizabeth A. Masiowski, Defendants.	AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, **PHILIP A. MIDDLETON**, who being duly sworn, deposes, and says as follows:

1. That he is an attorney licensed to practice law in the State of South Carolina and is currently so licensed and during all the times hereinafter was acting in his capacity as a licensed attorney and an officer of the court;

2. That he was retained by William C. Mitchell in approximately 2002 to defend him against two impending charges: one involving James T. Helwig;

3. That during the preparation of the defense of the case, your deponent did a good deal of legal research into the questions involved, as well as having numerous meetings with William C. Mitchell and the various solicitors involved in the case;

4. That the case was called for trial in late summer or early fall of 2007, whereupon your deponent's client, William C. Mitchell and an important witness, appeared ready for trial;

5. That on the day your deponent appeared for trial, he was informed after approximately a day's wait, that the case would not be heard in that term of court;

6. That your deponent received no further word as to the disposition of or the time of the trial of the case thereafter;

7. That your deponent learned in the early months of 2008 from studying the Clerk of Court's website that the case had been dismissed. There was a reason stated for the dismissal which was not available through the website;

8. That your deponent at that time informed William C. Mitchell that the case had been dismissed;

FURTHER, , YOUR DEPONENT SAYS NOT.

Sign Name: _____
Print Name: Philip A. Middleton

SWORN to before me this 23rd day of August, 2010.

_____
Notary Public for SC
My Commission Expires: 05/31/17

Appellant Exhibit 9

Plaintiff Reply to and Memorandum of fact and law to Defendant motion for Summary Judgment

(Appellant Exhibit 9 on following page)

EXHIBIT (C)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON ,PLEAS
	)	IN THE 9 TH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE # 2010-CP-10-5532
William C. Mitchell	)	**Plaintiff's Reply to, and Memorandum of Fact and**
	)	**Law, To Defendant Helwig's, Motion For**
V.	)	**Summary Judgment**
	)	
James T. Helwig, personally,	)	
Michael Masiowski, personally,	)	
Elizabeth Masiowski, personally	)	
	)	
Defendants	)	

FILED
2011 DEC 30 P 12: 09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

MEMORANDUM OF FACT AND LAW

This reply and memorandum is on the Motion for Summary Judgment filed by the Defendant James Helwig.

1-The Plaintiff was arrested in 2001 on a warrant signed by Defendant James Helwig.

2-A dismissal form in the criminal case was filed with the clerk of court by the solicitor's office on or about December 27, 2006.

3-Plaintiff was first notified by his Defense Attorney in early 2008, that the case was dismissed.

4-Plaintiff has brought an action against the Defendants. The Defendants have filed a Motion for Summary Judgment based on the statute of limitation.

5-A hearing on a 12(b)(6) Motion to Dismiss or to convert to Summary Judgment was held on February 22, 2011, before the Honorable Deadra L. Jefferson. The Motion to Dismiss was deined and Motion for Summary Judgment was denied as being premature. Dated, April 8, 2011

See Attached Exhibit (1)

6- A Motion for Reconsideration was filed by the Defendants and denied by Judge Jefferson.

See Attached Exhibit (2)

7- The Honorable Deadra L. Jefferson, after conducting her own independent investigation determined and ruled on the following finding of facts and Conclusions of Law.

8- That the prosecution was resolved in the Plaintiff's favored. McBride v. School Dist. Of Greenville County, 389 S.C. 546,565, 698 S.E. 2d 845, 855 (Ct.App.2010).

9- That the filing of the documents resolving the criminal prosecution in favor of the Plaintiff is properly before the court. Bowers v Bowers, 349 S.C. 85,94, 561 S.E. 2d 610,615 (Ct App. 2002). Accordingly, the Court takes judicial notice of the public filing of the nolle prosequi for both the True Bill for Obtaining Money Under false Pretense and the Grand Jury's Direct Indictment for Breach of Trust at issue here.

10-That the allegations of the complaint give rise to competing inferences on a question of material fact.

11- The Court found that the allegation in the Complaint give rise to competing inferences on a question of material fact of whether the Plaintiff had a duty of inquiry or constructive notice of the Nolle Prosequi in these cases.

12- Moreover, the Court is advised that it is the procedure of the Charleston County Solicitor's Office that the assistant solicitor in charge of the case handles the nolle prosequi of the indictment, and the assistant solicitor does a status change form, files it with the Clerk of Court's office, and **NOTIFIES THE DEFENSE COUNSEL.**

SCRCP R43(l)

18- SCRCrimP, **RULE 43(1)**

(l) Subsequent Applications for Order After Refusal. If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action.

19- Constructive notice and actual notice are not one and the same. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 64, 504 S.E.2d 117, 122 (1998). Rather, a person has actual notice "where the person . . . either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even though such means may not be employed by him." Id. at 64 n. 6, 504 S.E.2d at 122 n. 6. In contrast, "constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts." Id. "A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title." Harbison Comm. Ass'n, Inc., v. Mueller, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995).

20-The case cited by Defendant Helwig, is not applicable. *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997). This case involved a public bond issue, requiring a public hearing, newspaper advertizing, and after such, a filing with the clerk of court. To compare notice in the Berry v. McLeod case to notice in this case would be to compare apples to oranges.

21, Further, Defendant Helwig, have failed to cite any case on point.

22- The issue of notice, probable cause, the malicious prosecution and the statute of limitations, the nolle prosequi, has been decided and ruled on, therefore, the law of the case doctrine may preclude the Defendants from challenging Judge Jefferson's ruling, and the doctrine does prevent the Defendant's from raising the issues, in this Motion for Summary Judgment.

23- Judge Jefferson's ruling is the law of the case. See ML-Lee Acquisition Fund, LP v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case).

24- The evidence indicates the Plaintiff were not on notice of the nolle prosequi in these case, as no evidence exists within the record indicating Plaintiff or Plaintiff's criminal defense counsel knew of the nolle prosequi in this case before 2008. Thus, although the Plaintiff may have been on constructive notice of the filing of the nolle prosequi, the Plaintiff nor the Plaintiff's defense counsel were not on actual notice, migrating any allegation of unclean hands.

25- The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and when the testimony is conflicting upon the question, it becomes an issue for the jury to decide. Brown v. Finger, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962).

26- This Honorable Court would effectively be reversing Judge Jefferson's prior ruling, to now rule differently on the question that the nolle prosequi, was resolved in favor of the Plaintiff, notice in the case, and the statute of limitation, or probable cause, in this cases.

27- The Defendant Helwig, now is arguing the same issues, on the same set of facts and evidence, that he argued before the Honorable Deadra L. Jefferson on February 22, 2011.

28-All of which has been heard and ruled on by the Honorable Deadra L. Jefferson.

29-Defendant cites some cases from Tex., Mo., and Miss., Plaintiff is not aware of the Crim. RP for these states. However the SCCrimRP, 109 clearly states the following:

30-SCRCrimP,**109- DISPOSITION OF ARRESTWARRANTS**

(c) Action on Warrant. Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the State shall take action on the warrant by (1) preparing an indictment; (2) assigning an indictment number; (3) presenting the indictment to the Grand Jury; and (4) filing the outcome of the presentment with the Clerk of Court within twenty-four (24) hours if the Grand Jury has not returned the indictment directly to the Clerk. If the State formally dismisses the warrant the prosecutor shall notify the Clerk of Court in writing. The solicitor may make referral to pre-trial intervention or other diversionary program, which would stay the requirements of this rule. If the solicitor makes any other affirmative disposition, it shall be in writing and filed with the Clerk of Court. **The State shall notify the defendant or defense counsel of the action taken (e.g. True Bill, No Bill, Dismissal, or other).**

31- Further, the Defendant Helwig, is now asking this court to act as an appeal court and overturn the previous ruling by the Honorable Deadra L. Jefferson.

32- A hearing was held on December 12, 2001, on the Defendant Helwig, Motion for Summary Judgment for malicious prosecution an abuse of process.

33- The Court, without making a ruling on the Motion for Summary Judgment for malicious prosecution, instructed the Plaintiff to file a memorandum showing that the nolle Presequi, in the criminal case was terminated in favor of the Plaintiff.

34- The Court also instructed the Defendant Helwig, to file a memorandum showing why the nolle prosequi, was not resolved in favor of the Plaintiff.

35-The Court indicating it would then make a ruling on the Defendant Helwigs, Motion for Summary Judgment for malicious prosecution.

36-Defendant Helwig, has failed to respond and file a memorandum, "as instructed by this court", on why the termination of the Nolle Prosequi, was not in favor of the Plaintiff.

37-Therefore, Defendant Helwig's, Motion for Summary Judgment should be denied.

38-Further, this issue was not raise or mentioned by the Defendant Helwig, in his Motion for Summary Judgment, has not been previously mentioned by the Defendant Helwig, at any time in this case, has not been argued at any time in this case, and Defendant Helwig, has not filed an Motion to Amend or Alter, thus the issue is not properly before the court.

See Peterson v. Porter, 389 S.C. 148, 152, 697 S.E.2d 656, 658 (Ct. App. 2010) (holding appellant failed to preserve issue for this court's review where appellants raised the employer-employee argument in his motion to reconsider but failed to raise it during the summary judgment proceedings); Kiawah Prop. Owners Group v. Pub. Serv. Comm'n, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating a party may not raise an issue in a motion to reconsider, alter, or amend a judgment that could have been presented prior to the judgment)., L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2009) (stating if a party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review). Despite Appellants raising this issue in a Rule 59(e) motion, the circuit court did not rule on it. Therefore, the issue

is preserved for our review. Pye v. Estate of Fox, 369 S.C. 555, 566, 633 S.E.2d 505, 510 (2006) (finding once an issue has been properly raised by a Rule 59(e) motion, it is preserved, and a second motion is not required if the court does not specifically rule on the issue raised).

39-Further, if the issue were properly before this court, the Defendant bears the burden of proof in the issue of the nolle prosequi, not being terminated in favor of the Plaintiff.

40-Because this issue is not properly before this court, for this court at this time to make a finding or conclusion on this issue, would not be proper.

STANDARD OF REVIEW

41-Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); Rule 56(c), SCRCP. See also Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998)(trial court should grant motion for summary judgment when pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment as matter of law). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998); Pye v. Aycock, 325

S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). If triable issues exist, those issues must go to the jury. Rothrock v. Copeland, 305 S.C. 402, 409 S.E.2d 366 (1991); Young, supra.

42-Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997); Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Young, supra; Truck South, Inc. v. Patel, 332 S.C. 222, 503 S.E.2d 774 (Ct. App. 1998). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Young, supra; Moriarty, supra. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Young, supra; Pye, supra.

43- The facts of the case are that on October 22 2001, Detective F. Hoose, having questions regarding probable cause, contacted the Charleston Count Solicitor's office and spoke to Assistant Solicitor Shawn Kent. (Detective F. Hoose is the officer for the Mt. Pleasant Police Department), that investigated this case". See deposition Knisley page 9, lines 23 to 25, page 10, lines 14 to 17. Exhibit " 3 "

44- On October 22, 2001, after Detective F. Hoose, had explained the facts and evidence of the case to assistance solicitor Shawn Kent, Detective Hoose, was advised, by assistant solicitor Kent, that this was a civil case, not a criminal case. See deposition. Knisley, page 51, lines 6 to 11and page 53,lines 13 to 19. Exhibit "4 & 5"

45- Detective F. Hoose then informed Defendants attorney Dennis O'Niell of assistant solicitor Kent's decision.

46- Defendants Attorney Dennis O'Neill, then immediately contacted the Charleston county solicitor's office and sought out an assistant solicitor that would be more agreed to initiate prosecution of the case.

47-Defendants, attorney Dennis O'Neill, at that time talked to assistant solicitor Edward L. Knisley, Jr., and arranged for a meeting on October 25, 2001,with assistant solicitor Ed Knisley.

see Helwig deposition page 30 line 18" Exhibit "6"

48-This meeting took place on October25, 2001, just three days after attorney O'Neill was informed by Detective Hoose of assistant solicitor Kent position.

49-Present at this meeting on October 25, 2001, were Defendant Helwig, defendant's attorney Dennis O'Neill, Detective F. Hoose and Plaintiff's attorney Walter Bilbro and assistant solicitor Ed Knisley.

See helwig deposition page 30, lines 17 to 19 Exhibit "6"

50-According to his testimony, at his deposition, see Knisley depo., page 5, lines 22 to 25, pages 6, lines 1 to 4 and lines 10 to 15, at this point in time Assistant Solicitor Ed Knisley, had been out of law school one year, and had worked as an assistant solicitor, at the Solicitors office for 3 to 4 months. Exhibit "7 "

51-- Assistant Solicitor Ed Knisley, being very inexperienced, and under pressure from the much more experienced defendants attorney Dennis O'Neil, and Defendant Helwig, both of whom were insistent that the Plaintiff be arrest and prosecuted.

52-Assistant solicitor Ed Knisley had in his procession, a copy of the contract, a copy of Defendant Helwigs, written statement to the Mt Pleasant Police Department, and all other relevant documents and was well aware of the terms and conditions of the contract.

53- Assistant Solicitor Knisley, stated in his deposition. Page 92, lines 12 to 25, page 93, lines 1 to 9, that the " terms and conditions" of the contract between Defendant Helwig, and the Plaintiff had no legal meaning to him, and was just some sort of contrived gibberish by a con artist.

Exhibit "8 & 9"

54-When assistant solicitor Knisley was asked, I want to make sure you understand what it says, Knisley replyed, I don't understand what it says, no sir. I don't think it's of any legal consequence. I think it has some gibberish in it. See Knisley deposition , page 97, lines 14 to 18.

Exhibit "10"

55-Assistant solicitor Ed Knisley, conclusory decision, that there was Probable Cause, was not based on legal standards, or on rules of law, but was based on preference, bias, prejudice, rather than on reason or fact, and was an unreasonable act of an individual will without regard for the facts or applicable criminal law.

56-The record afforded does not substantiate a basis for such a decision.

57-The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). Thus, "[i]f the contract's language is clear and unambiguous, the language alone determines the contract's force and effect."

58- Assistant solicitor Ed Knisley knew or should have known that the court is not at liberty to change the contract. see depo. Knisley, page 91,lines 13 to 22. Exhibit "8"

59-Further, assistant solicitor Ed Knisley knew or should have known that, under contract law, if a party to a contract cancels a contract then the injured party is entitled to the overhead, expenses and profit involved in that contract as damages.

60-The Plaintiff and the Defendant , entered into a contract on or about April18, 2001 for the Plaintiff to build a dock for Defendant Helwig, at some point in time in the future.. At the point in time the contract was entered, the Defendant Helwig was living out of state and had not yet moved to South Carolina. Exhibit "11"

See Defendant Helwig written statement dated October 15, 2001, page 1, lines 8 & 9

61-Dendant Helwig admits he read and understood the terms and conditions of the contract and further testified he signed the contract and agreed to the terms and conditions of the contract.

See Helwig Deposition Page 17, lines 12 to 25, page 18, lines 1 to 4,page 56,lines21 to 25, page 57 ,lines 1 to 25, page 58,lines 1 to 4 Exhibit "12,13 & 14"

62-The facts and evidence in this case prove that the Plaintiff was to build this dock for the Defendant Helwig, at some point in time in the future.

See Helwig deposition page 51, lines 1 to 10 Exhibit "15"

63- The terms and conditions of the contract signed by the Defendant Helwig, clearly state ;

It is further understood and agreed that any and all monies paid under this contract are a single payment on the contract and any such monies and/or payment paid hereunder, are not a payment in trust, and not required to be held in any particular manner, Or for any specific purpose and no accounting is required for the use of same. No monies herein are implied or expressed to be a payment in trust.

ACCEPTANCE OF PROPOSAL: The above prices and specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. A 1 ½ % interest per month

on any unpaid balance past due, plus attorneys fees and cost of collection

65-As to the defendants allegations regarding the Beaufort County charges, which occurred in the early 90's; assistant solicitor Knisley, did not receive this information until well after the October 25, 2001, meeting with defendant Helwigs and attorney Dennis O'Neill, and therefore it could not have had any bearing on assistant solicitor Knisley decision of probable cause, on October 25, 2001.

66- Assistant solicitor Knisley, knew or should have known the law, and the elements of the crime of, Obtaining Money By False Pretense, and that Obtaining Money or Goods by False Pretense, is larceny

67- All monies paid under the terms and conditions of this contract to the Plaintiff, simply belonged to the Plaintiff.

68-Once the payment was made to Plaintiff, it belonged to Plaintiff. Therefore, if the money in question belonged to plaintiff, how could plaintiff steal from himself or his company.

see contract Exhibi "16"

69-Assistant Solicitor Ed Knisley, in a rush to judgment, arbitrarily and capriciously, made the decision that there was probable cause to arrest and prosecute the Plaintiff.

70-Further, assistant solicitor Knisley, having Defendant Helwigs written statement to the Mt Pleasant Police Department, dated October 15, 2001, in hand, knew or should have known that the facts and evidence in this case prove that the Plaintiff was to build this dock for the Defendant at some point in time in the future.

See Helwig statement to MPPD Exhibit "11"

71-A promise to do an act in the future is not a representation of a present or past fact.

72-In the case, State v. Jamie McCutcheon, No. 0404, Court of Appeals, Heard Jan. 23, 1985. Decided March 4, 1985. The Court ruled that a promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretense. State v. Winter, 98 S.C.294, 82 S.E.2d 419 (1914)

73-Assistant solicitor admits in his deposition, page 64, lines 3 to 13, and page 65, lines 1 to 23 that he understood that the Department of Labor, Licensing and Regulation, the South Carolina Contractors Licensing Board were the authority on the licensing and limit issues, and had ruled that the violations alleged by defendant Helwig, were ruled to be NO VIOLATION. See depo Knisley, page 67, lines 21 to 25. Exhibit "17 & 18"

74-Assistant Solicitor Knisley, had no facts or evidence of a past or present fact upon which this prosecutions could be based.

75-Further, any alleged conversation between Plaintiff and Defendant does not constitute a basis for a criminal prosecution for Obtaining Money By False Pretense.

76-Assistance Solicitor Knisley knew or should have known that the elements of the crime of Obtaining Money By False Pretenses, simply did not exist in this case.

77-Further, the facts and evidence show that assistant solicitor Knisley, did handled this case for three years, and had sole discretion to call this case for trial, at will, yet refused to call this case for trial. See deposition Knisley , page 76, lines 5 to 13. Exhibit "19"

78-As to the Breach of Trust charge; this was a direct indictment.

79- Assistant solicitor Kimberly Steel, that handed this case, knew that the elements of a crime of Breach of Trust, did not exist in this case.

80-Therefore, the charge of Breach of Trust, was dismissed and nolle prosequi.

81- In a Breach of Trust case, the state must prove the exact trust which has been breached.

82- The question in this case, is whether the Plaintiff received the property" In this case the money" in trust, which Plaintiff violated.

83-The contract entered into between plaintiff and Defendant Helwig states the following;

It is further understood and agreed that any and all monies paid under this contract are a single payment on the contract and any such monies and/or payment paid hereunder, are not a payment

in trust, and not required to be held in any particular manner, Or for any specific purpose and no accounting is required for the use of same. No monies herein are implied or expressed to be a payment in trust.

ACCEPTANCE OF PROPOSAL: The above prices and specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. A 1 ½ % interest per month
on any unpaid balance past due, plus attorneys fees and cost of collection
84-Defendants Helwig, testified in his deposition, that he understood and accepted these term and conditions and that he signed the contract, clearly stating the above.

85-Therefore, no trust is attached to the money in question. State v Shirer, 205 S.C. 392, 408 (1883), State v Green 5 S.C. 65 (1873), State v Cody, 180 S.C. 417, 186 S E 165(1936), State v White, 244 S. C. 349, 137 S.E 2d 97 (1964), State v Jordan, 255 S. c. 86, 177 S E 2d 464 (1970) State v LeMaster, 231 S.C.321, 58 S E 2d 756(1957)

86- In this case both the Obtaining Money Under False Pretense charge and Breach of Trust charge, just because the complaining witness, Defendant Helwig, alleged some elusive fraudulent intent, and rather than go to the expense of a civil trial, brought criminal charges against the Plaintiff, assistant solicitor Knisley, knew or should have known there was no probable cause, based on applicable law and facts.

87-That is why the four different assistant solicitor's assigned to these cases, starting with Assistant Solicitor Ed Knisley, being assigned to the case for three years, from 2001 until 2004, assistant solicitor Heyward Carter assigned to the case from 2004 & 2005, assistant solicitor

Gergory Voigt assigned to the case in early 2006 and last assistant solicitor Kimberly Steel in 2006, would not call these cases for trial.

88-Where there is a conflicting evidence as to probable cause, then it becomes a question for the jury.

89- Further, this is why the last assistant solicitor Kimberly Steel, nolle prosequi these cases. The status form change filed with the Clerk of Court, states Nolle prosequi, see notes. There were no notes attached to the status change form or in the file at the Clerk of Court office.

See Exhibit " 20 & 21"

90-This is a clear implication of, does imply, and is consistent with the innocence of the Plaintiff in these cases.

91- Further, the defendant had demanded a full and complete refund of all monies paid under the term of this contract in this case.

92-Defendant has refused to give Plaintiff any credit for monies defendant received for the material Plaintiff had furnished for the construction of his dock, and also refused to give Plaintiff any credit for overhead, expenses or profit regarding this contract, which Plaintiff is entitled to.

93- Defendant with malice did have the Plaintiff arrested and prosecuted, all without just or probable cause.

94- In this cause of action, malice is "the deliberate intentional doing of a wrongful act without just cause or excuse." Eaves v. Broad River Elec. Coop., Inc., 277 S.C. 475, 479, 289 S.E.2d

414, 416 (1982) (internal quotation omitted). It does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition. Law, 368 S.C. at 437, 629 S.E.2d at 649.

95-Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person. Moreover, malice may be implied where the evidence reveals a *disregard of the consequences of an injurious act, without reference to any special injury that* may be inflicted on another person. Malice also may be implied in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.

96-One need not show actual malice in order to successfully maintain an action for malicious prosecution.

97- Further, This court does not have the authority to decide credibility issues or to resolve conflicts in the evidence. Parrish, 376 S.C. at 319, 656 S.E.2d at 388.

98- This is a question for a jury.

99- The defendant Helwig, did institute the prosecution, did persist and fully participate in the prosecution, without probable cause and cause injury and damage to the Plaintiff

100- Defendant Helwig, did sign the affidavit and arrest warrant, and Plaintiff was arrested and the indictment charges, obtaining money by false pretense.

See Exhibit " 22 & 23"

101-On or about February 13, 2006, some five years later, someone obtained another and a different indictment for Breach of Trust. See Exhibit "24"

102- The Plaintiff was never served a copy of this 2006, Breach of Trust indictment and Plaintiff was never arrested on this indictment or charge.

103- The first the Plaintiff knew of the indictment of Breach of Trustcharge, was when Plaintiff when to the Clerk of Court in 2008 to get a copy of the file on the charge of Obtaining Money By False Pretense , as he was requested to do by Plaintiff's defense counsel and was also given a copy of the Breach of Trust indictment and its dismissal form, which stated "see notes".

104-There were "no notes" attached to or in the files at the Clerk of Courts office.

105- There were a total of four different assistance solicitors handling this case over a five year period of time, from 2001 until 2006.

106- In a final attempt to pressure and force the Plaintiff to settle the case, assistant solicitor Kimberly A.Steel, sent notice that the case was to be called for trial. The Plaintiff and Plaintiff and witness, with Plaintiff's counsel showed up ready for trial." Plaintiff believes this was sometime between September and November 2006." After waiting around outside the court room most of the day, Assistant Solicitor Steel finally informed the Plaintiff's defense council Phillip Middleton, that the case was not going to be called at that time, and would notify defense counsel when the case was to be called.

107- Assistant solicitor Kimberly Steel, and three other assistant solicitor's previously assigned to the case, were well aware that the Plaintiff stood ready all time to defend himself at a trial and refused to give in to the unreasonable demand of the defendant Helwig and the state.

108-All four of the assistant solicitors, Edward Knisley, from 2001 until 2004, Heyward Carter, in 2004 and 2005, GregoryVoigt, in 2006 and Kimberly Steel in 2006, assigned to these cases had the authority, to call these cases, at will.

109- For five years, not one of the four assistant solicitors assigned to the cases, would call the cases for trial, which imply and is consistent with the innocence of the plaintiff.

See Exhibit's " 25, 26 & 27"

110-The last assistant solicitor assigned to these cases was Kimberly Steel. In 2006, Ms. Steel filed a change of status form with the Clerk of Court, on or about December 27, 2006, after Nolle Prosequi, both the Obtaining Money Under False Pretense and Breach of Trust cases.

111-This is further evidence that the nolle prosequi was a complete nolle prosequi, and was terminated if favor of the Plaintiff.

112-The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.

113- Further, Defendant Helwig , in August 2001, did contact and file with the South Carolina Dept. of Labor, License and Regulation, South Carolina Contractors Licensing Board, two complaints.

114- Complaint number one. That Plaintiff in 2001, had entered into a contract with Defendant Helwig, without the proper license from Dept. of Labor, Licensing and Regulation, and the South Carolina Licensing Contractors Board.

115- Complaint number 2. That the Plaintiff, in June, 2001, did obtain a license from Dept. of L.L.R. and the South Carolina Contractors Licensing Board. That Plaintiff in 2001 had entered into a contract with the Defendant Helwig, which exceeded his license.

116- The South Carolina Dept. of Labor, License and Regulation Dept, and the South Carolina Contractors Licensing Board, conducted an investigation into both these complaints.

117- Upon completion of their investigation, the Dept. of L.L.R and South Carolina Contractors Licensing Board, ruled that there was no violation of either, of the two complaints, made by Defendant Helwug, against the Plaintiff, and closed these matters.

118-The Plaintiff and Defendant Helwig, were informed and notified in writing of these rulings, by the Dept.of.L.L.R and the South Carolina Contractors Licensing Board.

See attached LLR Exhibit "28,29,30,31,32, & 33"

119- The Defendant's conduct caused the criminal action to be instituted against the Plaintiff, did cause it to be maintained, did voluntarily aide or assisted in its prosecution all with-out probable cause. " Black v Lexington Sch. Dist. No. 2, 327 S.C. 55, 61 488S.E. 2d 327, 330 (1997)"

120- In Melton v Williams, 281 S.C. 182, 262 S.E.2d 612 (Ct.App. 1984), court concluded that, even though an arrest warrant was issued, that it was for a jury to say whether or not there was probable cause in an action for malicious prosecution, Kinton v Mobile Home Indus., inc., 274 S.C. 179, 182, 262 S.E.2d 727,728 (1980) , it is only pima facie evidence and not conclusive, and the existence of an arrest warrant dose not conclusively establish probable cause for prosecution.

121- If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action. The question is one for the jury. Moriarty v. Garden Sanctuary Church of God, 341 S C 320, 338-39, 354 S.E. 2d 672,681-82 (2000)

122- A client should not be expected to investigate an attorney's loyalty every time the attorney provides the client with counsel. The client should be able to rely on attorney's advice and should be able to follow this advice without fear the attorney is not acting in the client's best interest. True v. Monteith, 327 S.C. 116, 489 S.E. 2d 615 (1997)

123- Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008).

124- Therefore, based on the totality of the circumstances, the law, the facts, the clear and convincing evidence, that establishes these charges was nolle prosequi for reasons that imply or are consistent with innocence, Plaintiff's action for malicious prosecution should be maintained.

WHEREFORE, base on the grounds set forth above, and such further material as may be properly submitted to the Court, Plaintiff respectfully prays this Honorable Court deny Defendant Helwig, Motion For Summary Judgment;

This 30 day of December, 2011

William C Mitchell, Pro Se

9452 Koester Rd

Ladson, S C 29456

(843) 797-7538

Exhibit 102 35

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C. Mitchell, Plaintiff, vs. James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2010-CP-10-5532 **ORDER**

FILED
2011 MAY -4 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Presiding Judge:	Deadra L. Jefferson
Hearing Date:	February 22, 2011
Plaintiff's Attorney:	Pro Se
Defendants' Attorneys:	James Sullivan, Esq. Brian Duffy, Esq. Alec Beard, Esq. Andy Haselden, Esq. Christy Fargnoli, Esq.
Court Reporter:	Leah Dupree

THIS MATTER is before the Court on the Defendant James T. Helwig's Motion to Alter or Amend a Judgment pursuant to Rules 59(e), SCRCP. Defendant James T. Helwig's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, filed August 5, 2010, was decided by the Court after a non-jury motion hearing on February 22, 2011. A Court Order granting the Motion to Dismiss as to the causes of action for civil conspiracy, tortious interference with a contract, and intentional interference with business expectancy, and denying the Motion to Dismiss as to the causes of action for malicious prosecution and abuse of process was filed on April 8, 2011 and received by Defendant James T. Helwig on April 13, 2011.[1] The Defendant James T. Helwig's

[1] The Plaintiff alleges in his Reply that the Defendants were electronically notified on April 8, 2011 of the filing of the Court's Order. The Court notes that it did not electronically notify any of the parties of its ruling and Order. The Court signed the Order on April 8, 2011 and filed the same with the Charleston County Clerk of Court's Office

Motion to Alter or Amend was filed on April 25, 2011 and received by the Court on April 27, 2011.[2] The Plaintiff's Objection and Reply to the Defendant's Motion was filed on April 27, 2011 and received by the Court on April 29, 2011.

Having considered the Defendant's Motion, the Plaintiff's Reply, the timeliness of the Motion, as well as the various interests balanced by the Court at the time of the ruling, the Defendant James T. Helwig's Motion to Alter or Amend is hereby denied.[3]

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

5/2, 2011
Charleston, South Carolina

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on April 8, 2011. A copy of the Order was placed in the mail to both the Plaintiff and the Defendants' attorneys on the same day.

[2] Pursuant to Rule 59(e), SCRCP, a motion to alter or amend must be served not later than ten (10) days after receipt of the written notice of the entry of the order. According to the Defendant's Motion, he received written notice of the Court's Order on April 13, 2011, and according to the Certificate of Service filed with the Defendant's Motion, the Motion was served upon the opposing party on April 21, 2011. Further, Rule 59(g), SCRCP, provides that a copy of the Motion shall be provided to the Judge within ten (10) days after filing the Motion. Defendant's Motion was filed April 25, 2011, and a copy of the Motion was provided to the Judge on April 27, 2011. Accordingly, the Court finds the Defendant's Motion is in compliance with Rules 59(e) and (g), SCRCP.

[3] This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(i), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

2 4 2

333

Exhibit 3

Q. Going back to the beginning, you spoke with a detective whose -- I'm going to show you what -- now, this has been -- this is a document that has been produced or made an exhibit of. It is part of what was marked as Defendant's Exhibit No. 17. That is page five from that.

MR. DUFFY: Marked in a different?

MR. SULLIVAN: Yes. It was marked as an exhibit to Mr. Mitchell's deposition. As opposed to making new exhibits, I'm just going to refer to them as exhibits from the past deposition, to the extent I use those exhibits. If that's okay with everybody.

MR. DUFFY: You sure it's from Mitchell's deposition?

MR. SULLIVAN: Yes. It's from Mr. Mitchell's deposition.

MR. DUFFY: This is only one page.

MR. SULLIVAN: Yes. Well, you have the whole -- I'm only showing him one page.

BY MR. SULLIVAN:

Q. Do you recognize that at all?

A. I do.

Q. And I'm specifically pointing to the entry for the date of October 22, 2001. It looks to me like Detective Hoose has gotten in touch with the

Solicitor's Office and then the Solicitor's Office asked Detective Hoose to fax over a copy of his file. Is that about accurate?

A. That's accurate, yes.

Q. On 10/25, Detective Hoose makes an entry that he had spoken with you. Does that sound accurate?

A. That's accurate.

Q. Have you had a chance to review the file that was faxed over from -- as far as you remember, had you had a chance to review the file that Detective Hoose had faxed over?

A. I did, yes.

Q. Between 10/22/01 and 10/25/01 you had a chance to review the file that Detective Hoose had faxed over in relation to this case?

A. Yes.

Q. I am going to make this -- take a look at this for a second and tell me if you recognize it?

A. Yes, I do.

MR. SULLIVAN: I would like to mark that Defendant's Exhibit No. 20. I'm just going to go chronologically.

(DFT. EXH. 20, Proposal and Acceptance, was marked for identification.)

BY MR. SULLIVAN:

Q. If you look at the very top there, it appears to me that this was part of a fax from the Mount Pleasant Police Department. Is that about right to you?

A. That's what it appears to be, yes.

Q. What's the date that's listed there?

A. October 23, '01.

Q. I'll represent to you that I got this document from the solicitor's file, so it looks to me like this document was faxed to the Solicitor's Office from the Mount Pleasant Police Department on October 23, 2001. Does that sound reasonable?

A. It does.

Q. Can you tell me, just from what you remember and in reviewing the document, what this document is?

A. This appears to be the original Proposal and Acceptance of contract that Mr. Helwig entered into with Mr. Mitchell's company for the dock and the payment arrangements pursuant to that contract.

Q. What's the payment arrangement, according to this document?

A. According to the contract, payment of one-third was due upon signing the agreement, a

payment of one-third upon delivering, a payment of one-half of the remaining balance upon completion of half of the work, and then the balance in full upon completion of the work.

Q. And the total of the contract is what?

A. It says $40,500.

Q. It's signed by what appears to be Bill Mitchell, and I'll just represent to you that Mr. Mitchell has admitted in his deposition that he did sign this; and Mr. Helwig has admitted that that is, in fact, his signature at the bottom there, just to let you know.

A. Okay.

Q. At this point we have the file faxed from the Mount Pleasant Police Department. You had spoken with Detective Hoose; correct? When I say "at this point," I'm talking the late October timeframe, 2001.

A. Correct.

Q. They fax over a file. Part of this file is the proposal that Mr. Helwig and Mr. Mitchell had to -- or the contract they had entered into for Mr. Mitchell to build the dock for Mr. Helwig; correct?

A. Correct.

Q. You received all this before even talking

EXHIBIT 49

MR. SULLIVAN: I might have a copy for you to speed this along.
BY MR. MITCHELL:
Q. Hand you this breach of trust indictment.
A. Okay.
Q. That's in Mr. Helwig's case?
A. It indicates Mr. Helwig is the victim, yes, sir.
Q. Are you familiar with that indictment?
A. No, sir. This is the first time I have ever seen this.
MR. SULLIVAN: Do you want to make an exhibit out of this?
MR. MITCHELL: No.
BY MR. MITCHELL:
Q. When you met with Detective Hoose and Mr. O'Neill, Mr. Helwig, and Mr. Bilbro, you had received all of the information from Detective Hoose involving this case?
A. I received other information subsequent to that.
Q. From Mr. Hoose?
A. I'm sure I received some follow-up information from Mr. Hoose. I received other information by way of subpoena. I received some -- I

received certified copies of all of your old criminal convictions and indictments from Philip Middleton, who I think was your attorney at that point.
Q. Well, I'm referring to the documents and information you had received from Detective Hoose.
A. Had I received that before this meeting?
Q. Yes.
A. I believe I did. I believe the meeting occurred after I received all of that, but I can't say for sure.
Q. That was on October 25 of 2001 that you had all this information from Mr. Hoose?
A. That's what appears from the documents, yes, sir.
Q. I'll show you the defendant's -- well, I don't know if it's -- I thought it was being introduced.
MR. SULLIVAN: What are you looking for?
MR. MITCHELL: Didn't you introduce this statement as a document?
MR. SULLIVAN: It was made an exhibit in the past.
BY MR. MITCHELL:
Q. I show you this document and ask you if you recognize it?

A. I do.
Q. On 10/22 it says Mr. Hoose received a packet from Mr. Mitchell containing correspondence relating to the situation herein. Would you read the following paragraph, please.
A. 10/22/01, again this was written by Detective Hoose: "I received a package from Mitchell that contained correspondence related to the situation with Helwig. I spoke to Assistant Solicitor Shaun Kent, and he told me the case appeared to be civil in nature. He stated that I should fax the information on the case, at which time I faxed him the case. I then spoke to Ed Knisley of the Solicitor's Office, and he stated that he would look over the file I had faxed over."
Q. Were you aware that Mr. Kent had advised Mr. Hoose this was a civil matter and not criminal?
A. I was aware that Mr. Kent had a telephone conversation with Detectives Hoose and based on the limited facts that Mr. Kent had heard --
Q. Were you privy to that conversation?
A. I had a conversation with Mr. Kent about the conversation. Mr. Kent spoke to me about this conversation, yes.
MR. SULLIVAN: Mr. Mitchell, let him

finish his answer.
THE WITNESS: Subsequent to that, Mr. Kent had Detective Hoose send over the documents, and at the time I was the one who was primarily -- me and somebody else were handling these types of offenses primarily, so essentially the buck was passed to me to deal with it.
BY MR. MITCHELL:
Q. So Mr. Kent received the documents first?
A. No. I believe they were sent to me directly, I believe. Or they may have been sent to Mr. Kent and he handed them off to me. But Mr. Kent didn't have any involvement with it other then the initial telephone call with Detective Hoose.
Q. But in any way event, Mr. Kent was familiar with the circumstances?
A. Mr. Kent had a telephone conversation. I don't know that Mr. Kent ever saw any of the documents that Detective Hoose sent over.
Q. Well, I assume the conversation would have relayed Mr. Helwig's statement and the circumstances of the case for him to make a determination that it was civil and not criminal. Would that be correct?
A. I don't know what the nature of that call was. I know from my personal experience it's

common -- it was, and probably still is, I'm sure, commonplace for a detective to consult with the Solicitor's Office by telephone, and in some situations, the facts are simple enough such that a clear decision is made by telephone. In other cases, as was the case here, obviously, it was necessary to look a little more deeply into it, see some of the documents, before a decision could be made.

Q. That was your decision?

A. Yes, sir.

Q. It was not Mr. Kent's?

A. Correct.

Q. Mr. Kent said it was civil and not criminal?

MR. SULLIVAN: Object to the form.

THE WITNESS: My recollection is that Mr. Kent told the detective that, based on the limited facts presented by telephone, it appeared it could be a civil case rather than criminal. However, the final determination would have to be made upon a review of the documents related to it and the other facts surrounding the matter.

BY MR. MITCHELL:

Q. But you weren't privy to that conversation?

A. No, sir.

Q. And in the documents that you received during your -- what is your normal investigative procedure in a case like this?

A. Well, the first step, certainly, is to obtain any documents or other evidence that's relevant, whether that be documentary evidence, affidavits from witnesses, statements from witnesses, bank records can be relevant; and then again, just review all the materials, occasionally interview witnesses, and make the determinations from there.

Q. You mentioned in your earlier testimony you had spoken to a Stan Bowen in Columbia with South Carolina Labor, Licensing and Regulation?

A. Yes, sir.

Q. Contractors' Board?

A. Yes, sir.

Q. And he was an investigator?

A. Yes, sir.

Q. Would he be in a position to make policy for the Board?

A. I don't believe so, no, sir.

Q. So any information you got from him would have been his opinions?

MR. SULLIVAN: Object to the form.

BY MR. MITCHELL:

Q. During your phone conversations.

A. Well, there could be some opinion, but it also could be based on documents or statutory law or regulations.

Q. Let's go back to this letter, August the 28th, of the South Carolina Licensing Board from Mr. Stan Bowen to Mr. Helwig. You said you were familiar with that and you had received a copy of it?

A. Yes, sir.

MR. SULLIVAN: For the record, that was Exhibit 22.

BY MR. MITCHELL:

Q. Also, this letter of September 10 from Mr. Stan Bowen to Mr. Helwig.

A. Yes, sir.

Q. Do you know who made those notes on that?

A. No, sir.

Q. Those handwritten notes?

A. No, sir.

Q. They could have been made by anybody?

A. They could have been made by anyone other than myself.

Q. You didn't make those?

A. No, sir. If I made it, it would not be

legible, probably.

Q. Sounds like my writing. Based on the information that you received from Mr. Bowen, Mr. Mitchell obtained a license in 2001, June 6 of 2001. Is that correct?

A. That's what the letter indicates.

Q. Are you aware or were you made aware by Mr. Bowen of any prior agreements made between Mr. Mitchell and the LLR with regards to any existing contracts prior to Mr. Mitchell being licensed in 2001?

A. I remember that there was -- there were some very -- what appeared very complex proceedings dealing with the license issues between you and the Board, but the details of that I don't recall.

Q. You said some very complex. What do you mean by that?

A. As I recall, you had engaged in contracting work in violation of the law. There were some complaints to LLR at some point and there were some -- I don't know if it was done by consent order or by what manner, there were some adjudication of those complaints that dealt with your license or lack of license from time to time.

Q. You have a copy of any complaints?

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amount of $30,000.
Q You were provided this in the form of a letter from who?
A From Mr. Bowen at the South Carolina State Licensing Board.
Q I thought you testified earlier you didn't receive any documents from there?
A I don't believe I did.
Q Did you receive anything else from them?
A Just that letter.
Q Just that letter?
A Right.
Q Did you ever receive a copy of a -- you said that was from Mr. Stan Bowen?
A Yes.
Q Have you ever seen these documents?
A No.
Q Is this a copy of the letter you received from Mr. Bowen?
A No, this is not the letter. He documented the fact that he was not licensed in a different letter. This is the letter that he informed -- that he had written to Mr. Mitchell on that date, August 13, 2001, informing him of a violation.
MR. SULLIVAN: Are you going to make these

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exhibits?
MS. FARGNOLI: Can we mark them now?
(Helwig Deposition Exhibit No. 4 was marked for identification.)
BY MR. MITCHELL:
Q You never saw those documents before?
A No, I have not.
Q You never filed a formal complaint with Mr. Bowen at LLR?
A No.
Q Did Officer Hoose ever discuss with you the investigation of this case?
A No.
Q And after this meeting at the solicitor's office, which was, I believe you said, around the 19th or something?
A The warrant was signed on the 19th. The meeting, there was an October 15 and October 25, but it was a mid-October '01 date.
Q Who informed you to come and sign this warrant?
A The solicitor.
Q The solicitor himself?
A Right. They are called assistant solicitors. We're using the term generically.
Q Yes, sir. What was said by the assistant

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solicitor at this meeting besides his finding of facts?
A As I stated before, he re-reviewed for all of the parties the facts of the case and gave Mr. Mitchell's attorney the opportunity to say anything that he wanted at that time. So it was basically a review of the facts, and that was the extent of the meeting.
Q And did Mr. Mitchell's attorney say anything?
A Yes, he did.
Q Do you recall what he said?
A I recall some of the points, yes.
Q And that would have been?
A That in many cases he was not aware. He wasn't aware of the license situation, that he wasn't licensed at the time he entered into a contract with me. He was not aware of the misrepresentation of property that was shown to me as indicative of his work, and basically had to go over certain things with his client.
Q What did your attorney say at the meeting?
A I don't recall.
Q What did you say at the meeting?
A I don't recall.
Q Did you say anything?
A Probably so. It was a review of the facts. Everything that has been stated is what I reviewed.
Q You reviewed the facts at that time? I

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misunderstood your answer.
A The solicitor presented the facts. If there was a question to me at that time, I would have answered it. But I do not have a dialogue or a written statement of the entire proceedings.
Q You don't recall what your attorney said at the meeting?
A It's a vague question. I don't know if you have --
MR. MITCHELL: Well, do you have --
A -- a specific point.
MR. SULLIVAN: Let him answer the question, please.
A Go ahead.
Q Do you recall your attorney stating at this meeting -- I'm referring to Mr. O'Neill now -- stating to the solicitor, in fact, that his client, referring to you, Mr. Helwig, had deep pockets, and he wanted a warrant issued for Mr. Mitchell's arrest?
MR. SULLIVAN: Object to the form of the question.
A Absolutely not.
Q When you were reviewing the facts, you said, number one, the fact that Mr. Mitchell was not properly licensed. Is that correct?

Exhibit 1

affirmative or negative answer, that you reply with a yes or no, as opposed to nodding your head, shaking your head, or uh-huh or huh-uh. We all fall into it, so I'd just like to politely remind you.

A. All right.

Q. Of course, we won't talk over each other. I'll let you finish your answer, and you'll let me finish my question, and that way we'll keep the record nice and clean. If you have any question about a question that I ask, if you need me to rephrase or repeat, please do so. I'll do that for you as many times as you need me to, so you completely understand the question I ask. And I'll assume if you do answer a question, that you have fully understood and are able to answer that question truthfully.

I won't go into a whole lot of background. Why don't we just start with your education. Start with high school, just for the heck of it.

A. Graduated from Bishop England High School in Charleston, went to the College of Charleston, undergraduate and USC Law School in Columbia.

Q. When did you graduate USC?

A. 2000.

Q. What did you do after that?

A. Immediately after law school, I was a law

clerk for a circuit court judge, Paul Burch, in the South Carolina's Fourth Circuit. Then, did that for a year, went to the Solicitor's Office in Charleston, was there for about four years. Left there; I was with an insurance defense firm for just over a year. Went back to the Solicitor's Office for about three years, and I've been the Deputy County Attorney for Charleston County now. I've been there about four years this week, actually.

Q. Let me just clean up some dates there. So law clerk from roughly 2000-2001?

A. Yeah. Probably July of -- or August 2000 to July of '01, and then Solicitor's Office until July of -- three and a half, four years later. Four years later, maybe.

Q. What defense firm did you work for?

A. At the time it was Anderson & Segui, JJ Anderson and Phillip Segui.

Q. And that was for about a year?

A. Yes.

Q. Then you went back to the Solicitor's Office?

A. Yes.

Q. That would have been roughly 2005 to?

A. Yes. Probably '05 to '07 or '08.

Q. About three years?

A. Yeah.

Q. Now you work for the County?

A. Right.

Q. What do you do for the County?

A. It's more of a general counsel position. Legal advisor, legal advisor to different county departments, county council. Probably focus on labor employment issues, advising our public safety departments, the sheriff, the EMS departments. And currently coordinating the redistricting -- council redistricting effort. Pretty much a general practice of anything you can possibly conceive of.

Q. Keeps it interesting. Well, as you may or may not know, we're here today for a case that Mr. Mitchell has brought as a pro se plaintiff against my client, Mr. Jim Helwig, and another defendant, Dr. Maslowski and his wife, Mrs. Maslowski. He had brought this claim related to -- part of the claim is related to charges that were brought against Mr. Mitchell in the fall of 2001, and through our discovery process, we believe you had some dealings with that case; so we're here today to ask you some questions about how much you remember about the case, the criminal case that was brought against

Mr. Mitchell in which Mr. Helwig was involved. I understand it was ten years ago now, so it's a while. Just do the best you can with whatever you can remember. If you're guessing or estimating, just let me know; certainly won't hold you to anything, considering the time that has passed.

I guess I'll just go ahead and ask you: Do you remember the case that was brought against Mr. Mitchell in relation to Mr. Helwig?

A. I do.

Q. Why don't you tell me a little bit about what you remember, and we'll do our best to go in chronological order.

A. Sure. To the best of my recollection, I initially became aware of the matter some point at the end of 2001 when I spoke to Detective Fred Hoose from the Mount Pleasant Police Department about the general facts of the matter. Subsequent to that, I met with Mr. Helwig, the victim, Mr. Helwig's attorney, Dennis O'Neill, Detective Hoose, and I don't recall who else, about the case. I reviewed the documents that were provided to me thus far, and at some point subsequent to that meeting, an arrest warrant was obtained for Mr. Mitchell, charging him with, I believe, initially with obtaining money by false pretenses.

Exhibit 8

MR. SULLIVAN: Let him finish his answer.
BY MR. MITCHELL:
Q. Did you finish your answer?
A. **Yes, sir.**
Q. It's simple. Without Mr. Helwig, you would not have had a case to prosecute. Yes or no?
A. **It's not that simple, because you say you would not have a case. It depends on your definition of "have a case." If Mr. Helwig had never existed, this case would not have been initiated. If Mr. Helwig had disappeared, the case would not have gone forward, probably.**
Q. Had Mr. Helwig not signed the affidavit and arrest warrant, charging Mr. Mitchell with obtaining money by false pretenses under 16-13-240, if Mr. Helwig had not have done those things, you would not have had a case, would you?
A. **Probably not, no, sir.**
Q. Thank you. That was the question to start with. Do you know what the weather was back then?
A. **No, sir.**
Q. Have you ever heard of weather causing delays in construction?
A. **Yes, sir.**
Q. Kind of an act of God, ain't it?

A. **Yes, sir.**
Q. Something you can't control?
A. **Correct.**
Q. Ever heard of equipment failures, breakdowns?
A. **Yes, sir.**
Q. That also causes delays, don't it?
A. **I suppose it could.**
Q. When did you obtain all of your facts and evidence in this case?
A. **There was no specific date.**
Q. In the beginning you said you had certain documents that Mr. Hoose had supplied you?
A. **Yes, sir.**
Q. Did Mr. Helwig supply you any documents?
A. **He may have.**
Q. Did his attorney supply you any documents?
A. **He may have.**
Q. Did Mr. Mitchell's attorney supply you any documents?
A. **He did.**
Q. So there was a continual process of gathering all of the facts and evidence. Would that be fair?
A. **Yes, sir.**

Q. But at some point you got all those facts and evidence together and were ready to proceed or dismiss the case?
A. **Yes, sir.**
Q. Do you know when that would have been?
A. **No, sir.**
Q. Are you familiar with contract law? You said you deal with public services?
A. **Generally.**
Q. Some of the labor issues that are involved today?
A. **Yes, sir.**
Q. Isn't it a well-established principle that the law dictates where an agreement that's complete on its face, it's plain, unambiguous in its terms, that the court is not at liberty to search for a meaning beyond the instrument itself?
A. **That's a principle of law I'm familiar with.**
Q. Sir?
A. **That's a principle of law that I am familiar with.**
Q. Would that be a true statement?
A. **Well, that's a principle of law. Depending on other facts and circumstances -- that's a**

principle of law. That's not a fact.
Q. Where an agreement is complete on its face, it's plain, it's unambiguous in its terms, the court is not at liberty to search for meaning beyond the instrument itself. Would that be a true statement?
A. **I don't know. That may be true in some cases, I suppose. It may be untrue in others. Your question suggests that a court is going to make a certain decision. I have no way to know what decision or --**
Q. If I asked the court to look at this contract and read that paragraph about the money being not in trust, no accounting, et cetera, et cetera, that's pretty plain and unambiguous, isn't it?
MR. SULLIVAN: Object to the form.
THE WITNESS: That particular question appears to me to be some sort of contrived gibberish by a con artist in order to try and escape some liability for breach of trust. It appears to have no legal meaning to me.
BY MR. MITCHELL:
Q. What doesn't?
A. **That paragraph.**
Q. That paragraph doesn't having legal

Exhibit

meaning to you?
A. No, sir, not in my estimation.
Q. Are you familiar with contract law?
A. Generally, yes, sir.
Q. Is that part of a contract?
A. This would appear to be a contract.
Q. Would that be part of that contract?
A. It would appear to be part of the contract.
Q. Is it unambiguous?
A. I think it's very ambiguous.
Q. In what way?
A. Well, for example, it says: "The owner shall carry fire, tornado, and other necessary insurance." I suppose it's ambiguous as to what other insurance would be necessary. That would depend on the circumstances of the contract. "All monies paid under the contract are a simple payment on this contract." I'm not sure what the legal significance of the phrase "simple payment" is.
Q. You know what a simple payment on a contract is, don't you?
A. I'm familiar with the concept of that. But in terms of this, I'm not sure what the meaning --
Q. Well, the --

A. -- the intent of this is.
MR. SULLIVAN: Look, we're going to have to end this deposition if you keep interrupting him. You can't interrupt him when he's answering a question.
MR. MITCHELL: You want to stop interrupting me?
MR. SULLIVAN: No. Because we're trying to keep this deposition under the rules that govern depositions in South Carolina. You ask a question completely, let him answer it completely, and then move on. You cannot interrupt him.
MR. MITCHELL: I'm misunderstanding when I think he's completed, okay?
MR. SULLIVAN: Well, if he's still talking, he hasn't completed his answer.
MR. DUFFY: Just be patient and ask your next question.
MR. CANGELOSI: Mr. Mitchell, if I can just say, it's as much for your sake as it is for his, because if she can't take it down and it's not accurate, it's not going to do you any good either.
MR. MITCHELL: Sure, I understand.
(A recess transpired.)
BY MR. MITCHELL:

Q. Getting back to Mr. Helwig's contract. You stated that it was your opinion that that paragraph we were discussing about the monies not being in trust, et cetera, was simply a ploy for some con artist to cheat somebody?
A. Yes, sir.
Q. My question, then, would be: Is not the contractor in a particular contract allowed to protect his interest?
A. Yes, sir.
Q. Getting back to the question of this being unambiguous in its terms, you just read, I believe it says, that any payments of a simple payment on a contract?
A. Yes, sir.
Q. That's pretty simple, isn't it?
A. I don't know how to answer that question, sir.
Q. Well, that's a pretty simple statement, isn't it?
A. I don't know.
Q. You don't know?
A. I don't know.
Q. If I entered into a contract with you and I said, okay, any money you pay me is going to be a

simple payment on this contract, would that be a simple statement? Would you understand it?
A. It's fairly simple, I suppose.
Q. Have you ever had anybody come to you and say, Oh, I gave somebody money to buy something, they didn't do it, and I'd like to prosecute them?
A. Oh, sure, yes.
Q. That kind of eliminates that problem, don't it? When it says the money is not to be placed in trust, there's no accounting, it can be used for whatever, that the contractor is to furnish the material, that eliminates that problem, don't it?
A. No, sir. You cannot escape criminal liability for a contractual provision.
Q. You're not escaping from anything. That wasn't my question. My question was: Rather than being able to come to you and say, Oh, I gave Mr. Mitchell $20,000 to buy material and he didn't do it, he can't say that under the terms of that contract, can he?
A. Sir, I don't know whether he could or not. That calls for a legal conclusion.
Q. In other words, you're just not going to answer the question?
MR. SULLIVAN: Object to the form.

Exhibit "10"

THE WITNESS: I'm happy to answer your question, sir.
BY MR. MITCHELL:
Q. Read the rest of that paragraph.
A. **You're asking me for an opinion, or are you asking me a question about --**
Q. You're the prosecutor. I'm asking you to read that paragraph.
A. **I read the paragraph.**
Q. What does it say?
A. **I believe I already read that into the record. Do you want me to -- are you asking me what I believe --**
Q. I want to make sure you understand what it says.
A. **I don't understand what it says, no, sir. I don't think it's of any legal consequence. I think it has some gibberish in it.**
Q. That's your opinion again?
A. **Yes, sir.**
Q. You're giving an opinion. You don't want to give me one, but you want to give one on that. Is that correct?
A. **What would you like me to give you an opinion on again, I'm sorry?**

Q. I'll withdraw the question. Did you ever discuss with Mr. Middleton these Beaufort cases?
A. **Yes, sir.**
Q. And what was that discussion?
A. **I believe at some point we had -- I don't know if the law has changed since then, but at the time, there were certain offenses related to offenses, whether it be breach of trust or obtaining by false pretenses, that if it was the highest tier, meaning, I think it was over $5,000 or the ten-year imprisonment threshold, that if a person had -- those are classified as serious offenses. I think it's Statute 17-1-40, maybe. And a third conviction for a serious offense required/mandated a sentence of life without parole. And based on your rap sheet, your rap sheet indicated you had several prior felony convictions that are classified as serious offenses. It appeared that this may well be a third serious offense that would mandate a life-without-parole sentence. And I had that discussion with Mr. Middleton, and Mr. Middleton kindly did the work for me and went down to Beaufort and obtained copies of all those certified convictions for me.**
Q. Are you sure Mr. Middleton went down to Beaufort?

A. **I'm about 99 percent sure Mr. Middleton went to Beaufort. I received them from Mr. Middleton.**
Q. You received the information from Mr. Middleton. You don't know who went to Beaufort, though, did you?
A. **He may have sent someone. He may have sent someone. I don't know. But it came from Mr. Middleton's office.**
Q. You had that discussion with Mr. Middleton?
A. **Yes, sir.**
Q. What was the results of it?
A. **There was no result of that. He provided me with the prior convictions. That became part of the file of the case.**
Q. Well, you're trying to put Mr. Mitchell in jail for life. You got a case here that you're a hundred percent sure you could win. Why did you not bring it for trial in three years?
MR. DUFFY: Objection. Asked and answered.
THE WITNESS: I think you've already asked me that question.
BY MR. MITCHELL:
Q. No, I didn't.

A. **Why was the case not called for trial in three years?**
Q. No, that wasn't my question.
A. **I'm sorry, what was your question?**
Q. My question was: You got a case here that you're trying to put Mr. Mitchell in jail for life, you got a case here you say you can't lose, and yet you won't call it for trial in three years. Why?
MR. SULLIVAN: Object to the form.
MR. DUFFY: Same objection.
THE WITNESS: There were various reasons that the case was not called for trial.
BY MR. MITCHELL:
Q. What?
A. **Well, some of those reasons could include various priorities on the docket. For example, violent crimes might take precedence over crimes of this nature. Other cases where victims may have been going out of town, moving, those would take precedence. But it could be a lot of different reasons.**
Q. One of them could have been you couldn't win the case and you didn't want to try it, too, couldn't it?
MR. SULLIVAN: Object to the form.

MOUNT PLEASANT POLICE DEPARTMENT

PAGE ___ OF: ___

OCA #: 01-00944 DATE: 10-15-01
TIME: 4:00 PM

STATEMENT OF: James T. Helwig
ADDRESS: 3088 Pignatelli Crescent, MT Pleasant SC 29466 Phone #: 843-216-7655
PLACE OF EMPLOYMENT: Retired Phone #:
RACE: W SEX: M BIRTH DATE: 2-11-43

My wife and I purchased the above home in Dunes West on May 18, 2001. (Closing Date). Prior to closing we obtained quotes for a dock to be built on our progerty. The previous owners of our home had a bid from Bill Mitchell and recommended we speak with him. We did and entered into a contract with him on April 18, 2001. I immediately sent him a check ($13500,00) on April 18 from my home in Princeton, NJ, which represented 1/3 of the contract price ($40500,00). Mr. Mitchell stated that he should start our dock no later than June/July 2001.

We arrived in MT Pleasant on May 3 to prepare for our move. On May 10 we asked Mitchell to take us to see a few of his docks. He showed us one dock in Awendaw that was in progress and one at 2368 Darts Cove Way, Dunes West, which is directly across the marsh from our home. (The Hines had told us previously that Mitchell had built that dock) While my wife and I were looking at the dock, Mitchell was called back to the house by the owner. He told us later that the owner would like us to leave. I didn't think too much of it

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:
Det. [signature]

[signature]

RULE 5

I have received a copy of the above statement: James T. Helwig

EXHIBIT 12

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Q Who was that?
A Katrina Johnson.
Q Who was she with?
A She was my realtor. She was with Prudential at the time.
Q Let's get back to the Mount Pleasant Police Department a few minutes. What documents did you provide to Officer Hoose when you made your statement?
A I just provided him with my statement.
Q You didn't provide him any documents?
A I don't know that I did.
Q I hand you a copy of a contract here and ask you if you recognize that document?
A Yes.
Q Is that your signature?
A Yes.
Q To the best of your knowledge is that Mr. Mitchell's signature?
A Yes.
Q You read and understood this contract when you signed it?
A Yes.
Q Did you have any questions about this contract when you signed it?
A No, I added the two items that we had had

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discussion on. They were written in there.
Q Other than that, was there any questions you had about the contract?
A No.
Q How did you meet Mr. Mitchell?
A Via phone call. The people that we bought our house from, John Hines, had given me a copy of a dock proposal upon the acceptance of the bid for that house. He said you might want to contact this individual, he has given a quote for a dock for our property.
Q Who was that person?
A John Hines, the previous owner of 3088 Pignatelli Crescent.
Q After you gave this statement to Officer Hoose, what happened next?
A He did his investigation and contacted the solicitor's office.
Q Do you know who he contacted at the solicitor's office?
A The assistant solicitor that was assigned to the case was Ed Knisley.
Q Did he contact anyone with the solicitor's office prior to talking to Mr. Knisley?
A Not to my knowledge.
Q Did Officer Hoose ever tell you that he had

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talked to an assistant solicitor at the solicitor's office and was told this is a civil matter, not criminal?
A I am not aware of it.
Q So then what happened next?
A There was a meeting with the solicitor; with Mr. Mitchell's attorney; and myself; my attorney, Dennis O'Neill; and Ed Knisley where they reviewed the facts of the case. The solicitor made a determination there was a basis to move the case forward and it proceeded from there.
Q Who arranged this meeting?
A I don't know. I assume the solicitor.
Q Who was present at this meeting again?
A The solicitor, Ed Knisley; myself; Dennis O'Neill, my attorney; and Mr. Mitchell's attorney, who was Mr. Middleton, I believe.
Q Would it have been Mr. Bilbro, Attorney Walter Bilbro?
A I don't remember that name.
Q Yes, sir. In reviewing the facts of the case, what documents did you provide the solicitor?
A The solicitor had the documents that the attorney had, which was the contract and my statement, are the basic ones that I remember.
Q So in order to review the case --

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A And the checks that I had written.
Q -- the solicitor had a copy of the contract, your statement to Officer Hoose, and a copy of some canceled checks?
MR. SULLIVAN: Object to the form of the question.
A I forgot to say that Detective Hoose was also at the meeting. That's what I believe. And Detective Hoose had conducted an investigation, and anything he would have had would have been there also.
Q You said you didn't give him any documents.
A I didn't. He did his own investigation.
Q Where would he have gotten the documents other than from you?
A There are other people involved, OCRM, the State Licensing Board, Mr. Bowen made a reference, mark Caldwell at OCRM. He visited other people that Mr. Mitchell had shown me a dock that he supposedly had built. There was other information available that the police brought forth through the solicitor.
Q Would any of these other people have been privy to your contract and checks?
A No.
Q So you would have had to provide that?
MR. SULLIVAN: Objection to the form.

EXHIBIT 11

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and had driven to Adrian Way myself three or four times to try to see if he was there, and he was not. So I merely asked that if he shows up for the work that's being done on the dock to just let me know so I could come over and see him.
Q And when did you go to Adrian Way before August 6?
A The week and a half before that. As I said, I was informed on July 10 that the dock was being built. I immediately tried to call between July 11 and 14, and then I tried again the week of July 16th on calls. I drove to Adrian Way three to four times and was not able to locate Mr. Mitchell.
Q You drove to Adrian Way three to four times during the week of the 16th?
A Three to four even between the 11th and the 14th and then again on the week of the 16th.
Q So you went three or four times the week of the 11th through the 14th?
A Right.
Q And another three or four times during the week of the 16th?
A Maybe once. One more time.
Q Maybe one more time?
A Right.

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Q Did you see anybody working on the dock at that time?
A I don't recall. But Mr. Mitchell was not there.
Q Did you get out and -- where was the dock located?
A There was a way in which you could drive the cul-de-sac and actually see the dock from the side, so I did not have to get out and go back.
Q Could you see anybody working on the dock?
A I don't recall.
Q You don't recall? Could Mr. Mitchell have been working on the dock in the water under the dock and you not seen him?
A No.
Q Your answer was no?
A No.
Q So if Mr. Mitchell would have been on that site working on that project, you would have seen him?
A Yes. And he never answered any of my phone calls throughout that whole period. July 6, that time that he came to the condo to tell me he would start on July 9, was the last time I saw Mr. Mitchell until August 6th.
Q Did you ever discuss Mr. Masiowski's dock with

Page 55

him?
A No.
Q Did you ever state to Officer Hoose or Mr. Masiowski or anybody else that Mr. Mitchell was supposed to build your dock before he built the dock on Adrian Way?
A I gave, in my written report and any testimony to the police department or the solicitor I stated the dates that I just stated to you. The start dates promised were June 18th and then July 9th.
Q Do you know when Mr. Mitchell started the work on the dock on Adrian Way?
A I was informed by my builder that the dock was being built on July 10. I did not know about it before then. It's only in subsequent information that was attached to your Complaint that I learned approximately from letters from Mr. Masiowski that it must have been started around the 1st of July.
MR. MITCHELL: Mr. Sullivan and Miss Christy, if it's all right, I want to substitute this document for this one because this one is a copy and is blurred.
MR. SULLIVAN: Say that again.
MR. MITCHELL: Because I have some questions I want to ask Mr. Helwig about that one.
MS. FARGNOLI: You want to substitute?

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MR. MITCHELL: Yeah.
MS. FARGNOLI: Oh, that's fine. Do me a favor, when you ask, just refer to the exhibit number so I will remember when I go back and read the transcript what we're talking about.
MR. SULLIVAN: There appears to be a phone number on this copy that is not on this copy. For the record, there is a phone number written in pen on the contract copy that Mr. --
MR. MITCHELL: That would have been Mr. Helwig's number, I assume.
MR. SULLIVAN: Other than that, I can't see a difference.
THE WITNESS: That was my cell phone.
MR. SULLIVAN: Can we make them both exhibits?
MR. MITCHELL: Yeah, that's fine.
(Helwig Deposition Exhibit No. 6 was marked for identification.)
(Recess taken.)
BY MR. MITCHELL:
Q I ask you to look at the paragraph here across from Mr. Mitchell's signature. Can you read that?
A Yes.
Q Would you read it into the record?
A "Owner to carry fire, tornado, and other

Exhibit "14"

Page 57

necessary insurance. It is further understood and agreed that any and all monies paid under this contract are a simple payment on this contract, and any such monies and/or payments paid hereunder are not a payment in trust and not required to be -- should be held in any particular manner or for any specified purpose and no accounting is required for the use of the same. No monies paid herein are implied or expressed to be a payment in trust."

Q That's pretty clear, isn't it?

MR. SULLIVAN: Object to the form.

A Your point?

Q Did you understand the meaning of that?

A Yes.

Q That's on the contract that you signed?

A Yes.

Q Right below that it says Acceptance and Proposal. Would you read that. This is a clear copy, I'm sorry.

MR. SULLIVAN: Which one are we looking at?

THE WITNESS: No. 6.

BY MR. MITCHELL:

Q At the bottom, that's your signature?

A "The above prices, specifications, and conditions are satisfactory and are hereby accepted. You

Page 58

are authorized to do the work as specified. Payment will be made as outlined above."

Q And that's your signature?

A Yes.

Q Yes, sir. Do you ever recall anyone mentioning an assistant solicitor named Shaun Kent?

A No.

Q Did anyone ever tell you or do you have any knowledge that Officer Hoose spoke to this assistant solicitor Shaun Kent and was told that this was a civil matter, not a criminal matter?

A No.

Q You kept mentioning in your statements today this dock across from your property at 2368 Darts Cove Way, that you had looked at this dock with Mr. Mitchell and your wife, I believe?

A Yes.

Q And you stated earlier that Mr. Hines had stated to you that he pointed across the creek and said this is the dock that Mr. Mitchell built?

A He stated that Mr. Mitchell had told him that he had built that dock.

Q Oh, that Mr. Mitchell had told him?

A When he made the proposal for Mr. Hines, Mr. Mitchell pointed to that dock and said I built that

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dock.

Q How do you know that's what Mr. Mitchell told him?

A I don't. Mr. Hines related that conversation to me. That's all I know. On May 10th after we visited the Awendaw dock with Mr. Mitchell, my wife was very upset with the quality of the work at the Awendaw and said can we see another dock that you built.

Mr. Mitchell took us to 2368 Darts Cove Way. We got out of the car, walked across the property through the backyard out to the end of the dock, and Mr. Mitchell said I built this dock. My wife said if you can build a dock like this, this is exactly what we want.

While we were at the end of that dock, Mr. Mitchell said excuse me. There was a woman coming up out of her backyard. Mr. Mitchell went up there, talked to the woman, came back and said we have to leave. That was the end of that particular experience.

Q Did Mr. Hines tell you he had ever visited that site where Mr. Mitchell allegedly built a dock on Darts Cove?

A No.

Q He didn't tell you that? He just stated that Mr. Mitchell told him he built that dock?

A Right.

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Q Is it possible that if Mr. Mitchell had built a dock two or three lots adjacent to this 2368 Darts Cove Way and there was an existing dock at that time at this other address two or three lots away, that Mr. Mitchell did build, is it possible that Mr. Hines could have been referring to a different dock?

MR. SULLIVAN: Object to the form.

A No, the only dock that could be seen at that time from Mr. Hines' backyard was the dock at 2368 Darts Cove Way. When we were visiting that dock with Mr. Mitchell and he said he built it, I had no reason to believe that he did not because I had in the back of my mind that Mr. Hines had pointed to this dock and stated that Mr. Mitchell had told him that he had built this dock.

Q So you had it pretty much set in your mind that Mr. Hines had told that you Mr. Mitchell built this dock; and therefore, you believed that Mr. Mitchell had built this dock?

A And Mr. Mitchell took me to that dock and said that he built this dock.

Q Could Mr. Mitchell have told you this is a competitor's dock, and this is the manner in which they build a dock different than what we build?

A Absolutely not.

Exhibit 13

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A I don't recall. I imagine it was by mail.
Q Would you have included the contract with that check?
A I don't know.
Q You don't know?
A Oh, I must have signed it and returned it, yes. But I don't know if it was with the check or whether I faxed it. There were certain documents being faxed. Whether I faxed the signature back or sent it with the check, I don't recall.
Q You said you don't recall Mr. Thomas' business name?
A No, I don't.
Q Would you have his address?
A I don't have that now. As I said, I discarded his card a couple of years back.
Q To your knowledge he was working for himself?
A Yes, it was his business.
Q During this time you were out of town, I believe you stated, from mid July to the end of July of 2001?
A I was out of town for a two-week vacation from just after the material was delivered. It was delivered on June 12. And I returned on, I think it was June 26. I was out of town for ten days, like the 16th to the

Page 50

26th.
Q Was that June or July?
A Of June.
Q I'm sorry?
A Of June.
Q You mentioned earlier you had tried to get in touch with Mr. Mitchell the latter part of July and was unable to get in touch with him. By phone, I assume?
A That is correct. This may be an appropriate time to just, if I may, put the time line into perspective with regard to when start dates were to take place on the dock.
Q Well, I'll hand you a copy of the contract. Is there a starting date on that contract?
A No.
Q Is there a starting date mentioned anywhere in the contract?
A No.
Q When you visited the site in Awendaw that Mr. Mitchell was working on, you were aware that he was doing other work?
A He was doing that dock in Awendaw.
Q Yes, sir.
A He was building that dock.
Q Did you have any knowledge as to whether he had

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any other jobs to do?
A What I was going to say, when I entered into the contract on April 18th, I naturally would ask when would you be approximately starting. I was told June or July. On May 10th when we were at Awendaw, we were merely just looking at the quality of the docks. We did not discuss a start date at that time.
Q Uh-huh.
A The next start date that was discussed was on June 12th when the material was delivered. At that time Mr. Mitchell specifically stated, I will start the dock on June 18th. I then went on vacation, as I said, and I was gone over the 18th and returned on June 26th and no work had been done on the dock.
And that's to your question of trying to get in touch. There were several phone calls trying to find out why it hadn't started. He then showed up at our condominium -- we did not move into the house yet -- on July 6 unannounced. I was surprised to see him. He said because of rain and equipment problems that we have not been able to start, but I will start July 9.
On July 10th is when Mr. Thomas showed up at my house for work and said are you aware that Mr. Mitchell is building a dock on Adrian Way. More calls followed and more visits to try to locate

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Mr. Mitchell to no avail.
Q You were already aware that Mr. Mitchell was building that dock on Adrian Way, weren't you?
A No.
Q When you visited the site previously on Adrian Way and met Mr. Thomas and looked at Mr. Masiowski's house, was there any discussion about a dock at that time?
A No.
Q Did you have any conversations with Mr. Masiowski regarding this meeting on August 6 of 2001 between yourself, Mr. Masiowski, and Mr. Mitchell about trying to get in touch with Mr. Mitchell and not being able to?
MR. SULLIVAN: Object to the form of the question.
MS. FARGNOLI: Object to the form.
A There was no meeting between myself, Mr. Masiowski, and Mr. Mitchell. As I stated previously, I had asked Mr. Masiowski to call me if Mr. Mitchell ever showed up so I could come over and talk to him. And that's what happened on August 6.
Q Why would you say if Mr. Mitchell ever showed up?
A Because I could not reach Mr. Mitchell by phone

BILL MITCHELL
MARINE CONTRACTOR & SALVOR

PROPOSALAND ACCEPTANCE

Phone: 843-797-7538
FAX 843-824-8570
PO BOX 60908
N. CHARLESTON, SC 29419
9452 KOESTER ROAD - LADSON, SC 29456

TO James T. Helwig
3088 Pignattelli Crescent , Dunes West
Mt Pleasant, S C 29466

PHONE 216-7655 DATE 4-18-01

JOB NAME / LOCATION
Same

Phone-609-252-1940 Fax 609-252-1941

OCRM 98-039-J JOB PHONE

We hereby submit specifications and estimates for:

Furnish all labor, equipment and material for the following dock system;

1- Walkway , 4' wide by 450' long with handrails on both sides.
2- Pierhead and Floating Dock , lay out to suite owner per 120' Sq.Ft on permit or as amended by O C R M, with two benches and handrails.
3- Alum . Ramp as mfg. By Carolina Water works..
4- Boat Lift , four pile 7,000 lbs with remote control
5- Include conduit for water to Pierhead
6- Subcontract electricals for lift.

SEE ATTACHED DRAWINGS FOR DETAILS AND SPEC'S.

All Lumber to be Southern Yellow Pine # 2 , C C A .40
All Piles to be 6" tip's , Marine Treated C C A 2.5
All nails , bolt's , screw's etc. To be Galv.

We Propose hereby to furnish material and labor - complete in accordance with the above specifications, for the sum of:
Forty Thousand Five Hundred & NO/100 dollars ($ 40,500.00

Payment to be made as follows:
A payment of 1/3 the above upon signing this agreement, A payment of 1/3 upon delivery of material , A payment of ½ the remaining balance upon completion of ½ the above work.Balance in full upon completion of above described work.

Owner to carry fire, tornado and other necessary insurance. It is further understood and agreed that any and all monies paid under this contract are a simple payment on this contract and any such monies and/or payments paid hereunder, are not a payment in trust, and not required to be held in any particular manner, or for any specified purpose and no accounting is required for the use of same. No monies paid herein are implied or expressed to be a payment in trust.

Authorized Signature

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature James T. Helwig 4/23/01

Date of Acceptance:

Signature

PLAINTIFF'S DEPOSITION EXHIBIT
Helwig 1
5-31-11
PENGAD 800-631-6989

Exhibit "1"

Clerk of Court's office to the Solicitor's Office, and the Solicitor's Office can choose to dismiss the warrant or send the matter to the grand jury for indictment.

Q. I'll show you this handwritten document that Mr. Sullivan had. Are you familiar with that?

A. No, sir.

Q. You're not?

A. No, sir.

Q. Do you know who Ron Galloway is?

A. No, sir.

Q. Never spoke to him?

A. I may have, but I don't know the name. I don't recognize the name or know anything about that, to my recollection.

Q. If I told you he was the administrator of the LLR, Contractors' Licensing Board, would you recognize him?

A. No, sir.

Q. With regards to --

MR. SULLIVAN: I'm sorry, hang on a second. For the record, you might have already seen this, but those are the handwritten notes that I had previously shown to Mr. Knisley, but I did not make an exhibit out of them.

MR. MITCHELL: No, you didn't.

MR. SULLIVAN: And you're not going to make an exhibit out of them?

MR. MITCHELL: No. On second thought, I think I will.

(PLF. EXH. 1, Handwritten notes, was marked for identification.)

BY MR. MITCHELL:

Q. Show you some other documents here from the LLR, one of which included is the letter previously introduced as Defendant's Exhibit 22. These are documents that you furnished to Mr. Philip Middleton, the defense attorney for Mr. Mitchell in the criminal case, and they're marked Rule 5, and ask you if you recognize those documents?

A. By the Rule 5 rubber stamp, I can tell that they were sent from the Solicitor's Office to an attorney.

Q. Do you have a copy of them in your documents that you brought with you today?

A. I don't know, sir. I'd have to look.

Q. Do you want to look?

A. Sure.

MR. SULLIVAN: Can I look at these?

MR. DUFFY: How many pages are we talking

about?

MR. SULLIVAN: Five pages. The first page is a just a copy of the August 28, 2001, letter, that there's a copy in Exhibit 22.

THE WITNESS: In the file that I have, that I glanced at before today, there's a copy of the August 28, '01, letter that was marked as an exhibit and the September 10, 2001, letter that we discussed earlier. September 10th again, August 28th again, and then there are some series of other letters. I have four pages of documents from LLR in this file.

BY MR. MITCHELL:

Q. It's dated August 29, 2001?

A. Yes, sir.

Q. That would be -- there's some handwritten notes on there. I don't know if it's yours or Mr. Bowen's or whose it is.

A. I don't know whose writing that is.

Q. But it has Mr. Stan Bowen's name down there and the date and phone number?

A. Yes, sir.

Q. That would be an alleged violation number V-01/02-28. Is that correct?

A. Yes, sir.

Q. I show you a letter dated October the

25th, to Bill Mitchell, regarding that same violation.

A. Yes, sir.

Q. What does that state the disposition is?

A. The letter states: "Dear Mr. Mitchell: The above-referenced complaint was presented to the Board on October 18, 2001, with a recommendation from the Investigative Review Committee to dismiss the case because there were no violations. The Board agreed to dismiss this complaint and the files on this case are hereby closed." It's signed by Terry King of the Contractors' Licensing Board.

Q. That's case number V-01/02-28?

A. Yes, sir.

Q. Show you another letter dated August 28, 2001, case number V as in Victor dash 01 slash 02-29.

A. Okay.

Q. What was the disposition of that?

A. There's a recommendation that states this case should be dismissed because there was no violation. This case is being forwarded to the Investigative Review Committee, and if they agree with the recommendation, this case will be presented to the Contractors' Licensing Board on October 18, 2001, for consideration. Upon for approval for dismissal, the files in this matter will be closed.

Q. And that's V-01/02-29. Would you read the disposition there of that case?

A. **V-01/02-29. "The above-referenced complaint was presented to the Board on October 18, 2001. The Board agrees to dismiss this complaint, and the files on this case are hereby closed."**

Q. So LLR is the authority when it comes to licensing of contractors in the State of South Carolina?

A. **Yes, sir.**

Q. And whatever they decide is what applies. Is that correct?

MR. SULLIVAN: Object to the form.

BY MR. MITCHELL:

Q. Well, if they said it's no violation, you couldn't say it's a violation, could you?

MR. SULLIVAN: Same objection.

THE WITNESS: Are we talking about a criminal violation or a licensing violation?

BY MR. MITCHELL:

Q. The licensing violation.

A. **No. The Solicitor's Office would have no role in that matter, no, sir.**

Q. And if they said that the contract amount exceeded referred to earlier by you in the licensing

of Mr. Mitchell having a maximum of $30,000, and if the Board said that there was no violation for exceeding that, you would have no jurisdiction there, would you?

MR. SULLIVAN: Object to the form.

THE WITNESS: That depends on a lot of other facts.

BY MR. MITCHELL:

Q. Well, if the Board said Mr. Mitchell's license of $30,000 in his contract with Mr. Helwig exceeded that, and if the Board said it was not a violation of the contractors' licensing laws, then it would be no violation. Is that correct?

MR. SULLIVAN: Object to the form.

THE WITNESS: I suppose that could be argued, yes, sir. I don't know the -- I don't know the detail -- this is an administrative regulatory matter that I was not privy to, so I don't know the details of that matter.

BY MR. MITCHELL:

Q. But they are the Licensing Board, are they not?

A. **They are.**

Q. So if they say the license is valid, it's valid, isn't it?

A. **That would probably be the case, yes, sir.**

Q. Thank you.

(PLF. EXH. 2, 8/28/2001 letter; 8/29/2001 letter; 8/29/2001 letter; 10/25/2001 letter, all from South Carolina Contractors' Licensing Board, was marked for identification.)

BY MR. MITCHELL:

Q. In other words, Mr. Knisley, if the South Carolina Licensing Board made an agreement with Mr. Mitchell prior to the license being issued in June of 2001 that any contract existing by Mr. Mitchell, regardless of the amount, was grandfathered in and would be covered by his license, that would be their decision, would it not?

A. **I suppose that could be a decision they could reach.**

Q. I didn't ask you if they could reach that decision. I said, that would be their decision to determine, would it not?

A. **Yes, sir.**

Q. And if they determined there was no violation, if there was a million-dollar contract, and there was no violation, then there would have been no violation under the Contractors' Board rules?

A. **I believe so.**

Q. Thank you. After a person is arrested, they have to attend a role call?

A. **Yes, sir.**

Q. What is that?

A. **The role call is the -- I believe it's a statutory provision, or maybe in the rules of criminal procedure, providing that all persons that are indicted by the grand jury have to appear in General Sessions Court on a given date.**

Q. For?

A. **Years ago, and even to this day in some small counties, where they may have just a small number of criminal defendants at any given time, it served different purposes. One purpose was to make sure the person was still in town, hadn't skipped town. Other times it would be used as an opportunity to resolve the case, dispose of the case. In larger counties, particularly in Charleston, where there's ten thousand criminal defendants pending at any given moment, it's just not -- it's not a practical -- it doesn't serve a practical purpose anymore.**

Q. In Charleston County, sometimes you may have ten thousand criminal defendants at any given time?

A. Yes, sir.

Exhibit "19"

attorney that the case was set for trial on such and such a date?

A. Yes, sir.

Q. That would be a normal procedure?

A. Yes, sir.

Q. So if he received a notice, he should prepare for trial?

A. Not necessarily. There are always a large number of cases that are set for trial, but there may be other facts that are known that indicate that a case won't be reached for trial that particular week.

Q. Sure. Other cases, murder cases, that wouldn't finish in time. But normally the procedure would be to prepare for trial?

A. Correct.

Q. Have you ever discussed a case with a defendant that was represented by an attorney?

A. Not substantively, no, sir.

Q. Have you ever told a defendant that he could keep active account of his case status by contacting the Clerk of Court's office?

A. No, sir.

Q. Would you tell a defendant that?

A. No, sir.

Q. You said you work at the Solicitor's

Office at the present time?

A. No, sir. I work for the County Attorney's office.

Q. Do you use a computer system at the clerk's office in your present job?

A. Yes, sir.

Q. Are you aware that they just switched over to a statewide program?

A. I'm aware, and I'm very sad about that, because it's worthless compared to what we used to have here, yes.

Q. I don't know anything about that, other than the fact that the Supreme Court ordered it, and it was done. Prior to that, though, then you would be aware that they were on a private computer system?

A. The county's, yes, sir.

Q. The county's computer system, but it was a private system?

A. Yes, sir.

Q. Upon the disposition of the case, criminal case, what are the solicitor's duties and responsibilities?

A. Depends on how the case was disposed of, what type of disposition.

Q. Well, let's say that the case is

dismissed?

A. If an arrest warrant -- an arrest warrant is dismissed prior to an indictment, if there's been an indictment, then the indictment is dismissed or null processed.

Q. Then what?

A. There's a form that's filled out by the solicitor, indicating the disposition, and it's forwarded to the Clerk of Court's office, and the Clerk of Court will enter that disposition in the court records.

Q. What about the defendant or the defendant's attorney?

A. Sometimes a letter will be sent to the defense attorney, informing them of that disposition; other times, it's not.

Q. Are you familiar with the criminal rules of Procedure Rule 109?

A. Not offhand.

Q. Well, it states in there that the Solicitor's Office shall notify the defendant or the defendant's defense attorney of the disposition of the case once it's disposed of. Were you aware of that?

A. No, sir.

Q. Did you ever notify any defense attorneys

that the case had been dismissed?

A. This case or any case?

Q. Any case.

A. Oh, absolutely.

Q. How long did you handle this case?

A. I think I had this case from whenever it was initiated until the time I left the Solicitor's Office.

Q. When was that?

A. '03 or '04. I don't recall the year offhand.

Q. So you had it two or three years?

A. Yes, sir.

Q. Did you ever make any offers to Mr. Mitchell to enter a plea on this case, or his attorney?

A. I don't recall.

Q. Well, if the case is three years old, it's sitting on your desk. Why is it sitting there?

MR. SULLIVAN: Object to the form.

THE WITNESS: Cases age for different reasons. A case could age because witnesses aren't available. A case could age because there's other cases that are given a higher priority. There's a variety of reasons.

Exhibit "20"

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment Per Form)

DEFENDANT

Mitchell, William C.
LAST FIRST MIDDLE

a/k/a _____
LAST FIRST MIDDLE

INDICTMENT NUMBER

2002-GS-10-0590

WARRANT/TICKET No.

G248424

DISPOSITION (Check One)

REASON (Optional):

4A ( ) Dismissed

4B (✓) Nolle Prosequi — per victim's request - see notes

6 ( ) Judicial Dismissal — Court Administrator's Review _____

7 ( ) Remanded — Charge: _____ Court: _____

8A ( ) Dismissed at Prelim — Judge _____ Date _____ ( ) Check for return of file if seeking Direct Indictment

8B ( ) No Bill — Grand Jury Term _____

9 ( ) Failure to Appear — Date Bench Warrant Issued _____

10 ( ) Other _____

Authorized By: Kimberly A. Steele Date: 12/21/06

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: MM DATE:

EXHIBIT 21

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment Per Form)

DEFENDANT
Mitchell, William C.
LAST FIRST MIDDLE

a/k/a _____
LAST FIRST MIDDLE

INDICTMENT NUMBER
2006 -GS-10- 1202

WARRANT/TICKET No.
Direct Indictment

DISPOSITION (Check One)

REASON (Optional):

4A ( ) Dismissed _____

4B (✓) Nolle Prosequi per victim's request - see notes

6 ( ) Judicial Dismissal Court Administrator's Review _____

7 ( ) Remanded Charge: _____ Court: _____

8A ( ) Dismissed at Prelim Judge _____ Date _____ ( ) Check for return of file if seeking Direct Indictment

8B ( ) No Bill Grand Jury Term _____

9 ( ) Failure to Appear Date Bench Warrant Issued _____

10 ( ) Other _____

Authorized By: Kelly Thimbaly A. Steele Date: 12/21/06

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: MM
	DATE:

FILED
2006 DEC 27 AM 11:50
ORANGE COUNTY

ATTESTED A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CIR. CT. ORANGE CO.
By: Sarah Clarke
DEPUTY CLERK

ARREST WARRANT

G- 248424

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Mount Pleasant

THE STATE

against

WILLIAM CURTIS MITCHELL

Bill Mitchell

ress: 9452 Koastar Rd

Ladson, SC 29456

ne: _____ SSN: _____

: M Race: W Height: 5'2 Weight: 210

State: SC DL #: 009392515

3: 9/16/79 Agency ORI #: SC0100300

secuting Agency: MPPD

secuting Officer: Det. Hoose

nse: OBTAINING MONEY BY FALSE PRETENSES > $5000

_____ Offense Code: _____

le/Ordinance Sec. 16-13-240

warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused to be arrested and brought before me to be lt with according to law.

_____ (L.S.)
Signature of Judge

e: _____

RETURN

copy of this arrest warrant was delivered to endant WILLIAM CURTIS MITCHELL

12/12/01 1430hrs

_____
Signature of Constable/Law Enforcement Officer

TURN WARRANT TO:

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Mount Pleasant

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant James T. Helwig who being duly sworn deposes and says that defendant Bill Mitchell did within this county and state on April 23, 2001 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Mount Pleasant) in the following particulars:

DESCRIPTION OF OFFENSE: OBTAINING MONEY BY FALSE PRETENSES > $5000
16-13-240

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Sworn to and subscribed before me on November 19, 2001

M L C
Signature of Issuing Judge (L.S.)
Mel Coleman

James T. Helwig
Signature of Affiant James T. Helwig

Affiant's Address 3088 Pignattelli Crest
Mt. Pleasant, SC 29464

Affiant's Telephone 817-2293

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Mount Pleasant

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on April 23, 2001 defendant Bill Mitchell did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Mount Pleasant) as set forth below:

DESCRIPTION OF OFFENSE: OBTAINING MONEY BY FALSE PRETENSES $5000
16-13-240

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

M L C
Signature of Issuing Judge (L.S.)
Mel Coleman
Judge Code: _____

Judge's Address 100 Ann Edwards Lane
mount pleasant, SC 29465

Judge's Telephone 884-57955

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

353

DEFENDANT COPY

Exhibit "23"

State of South Carolina

OCA#01-009441

AFFIDAVIT

COUNTY OF CHARLESTON
TOWN OF MT.PLEASANT

Personally appeared before me, a magistrate of this County, one James Helwig who first being duly sworn, deposes and says that (name of defendant)

BILL MITCHELL

did within this County and State on the 23rd day of April 2001, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
OBTAINING MONEY BY FALSE PRETENSES>$5,000
16-13-240

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts.

That on April 23, 2001 while at 3088 Pignatelli Crescent which is in the Town of Mt.Pleasant, County of Charleston, State of South Carolina, the defendant, Bill Mitchell, willfully and unlawfully commit the offense of **Obtaining Money by False Pretenses** in violation of section **16-13-240** of the South Carolina code of laws 1976, as amended. In that the defendant did enter into a contract with the victim, James Helwig, to build a dock at the victim's residence. That the victim paid the defendant $27,000.00 for the work to be done, but the defendant did not provide the required services after payment. That at the time the contract was entered into the defendant did not have the required license to perform the work, and misrepresented himself to the victim when showing a completed dock that he did not build. The defendant did such acts with the intent to defraud the victim of the $27.000.00, and not complete the work as contracted. The facts to establish the above are that on April 23, 2001 the defendant and victim entered into a contract to have a dock built at the victim's home. The victim paid the defendant an initial $13,500.00 by check#1648, and then on June 12, 2001 the victim paid the defendant another $13,500.00 by check#1713. Both of the checks were paid through the victim's Fidelity Investments United Missouri Bank account, and deposited by the defendant. Further investigation revealed that the defendant was not licensed for the work contracted at the time the contract was ratified, and that he falsely represented himself as the builder of a dock located at 2368 Darts Cove Way when in fact he did not build that dock. The affiant, James Helwig is a witness to prove the same. All of which is against the law, peace, and dignity of the State of South Carolina.

James T. Helwig
Affiant

Sworn to and Subscribed before me

this 19th day of Nov, 2001

(L.S.)
Signature of Judge

Address 3088 Pignatelli Crescent
MT Pleasant, SC 29466

Phone 843-216-[illegible]55

EXHIBIT 44

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
BREACH OF TRUST

At a Court of General Sessions, convened on February 13, 2006 the Grand Jurors of Charleston County present upon their oath:

That WILLIAM C. MITCHELL did in Charleston County on or about April 23, 2001 while purporting to work as a dock builder, with the intent to defraud the victim, James Helwig, received more than Five Thousand Dollars ($5000) from Mr. Helwig to build a dock for which no work was ever done, and did convert said funds to his own use with the intent to permanently deprive James Helwig of possession of said funds. This is in violation of §16-13-230 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

Mark Keister

Exhibit "25"

The State of South Carolina

Solicitor, Ninth Judicial Circuit

Solicitor, Ralph E. Hoisington
CHARLESTON AND BERKELEY COUNTIES
101 MEETING STREET, FOURTH FLOOR
CHARLESTON, SC 29401
TELEPHONE: (843) 958-1900
FAX: (843) 958-1905
www.scsolicitor9.org

May 27, 2005

Mr. Philip Middleton, Esq.
147 Wappoo Creek Drive
Charleston S.C. 29412

RE: **State of South Carolina vs. William C. Mitchell**
Obtaining Goods and Services under False Pretense $5000+
Unlawful Practice of a Regisistered Professional

Dear Mr. Middleton:

Please let this letter serve as **NOTICE OF TRIAL.**

Your client's case has been placed on the trial docket for the next term, June 13th, 2005 and may be called at any time that week. The case will continue to be placed on each subsequent trial docket until the case is reached. Please be prepared for trial on June 13th, 2005, as the State is ready to proceed.

Should you have any matters still outstanding, please bring those to my attention immediately, so that they may be resolved in a timely manner. If there is anything further needed from my office, please let me know as soon as possible, so all necessary pre-trial matters will be taken care of before the case is called.

I look forward to working with you on this matter.

Heyward Carter
Assistant Solicitor

Cc: Mr. William C. Mitchell, 9452 Koester Rd., Ladosn, S.C. 29456

The State of South Carolina

Solicitor, Ninth Judicial Circuit

SOLICITOR

CHARLESTON AND BERKELEY COUNTIES
101 MEETING STREET
CHARLESTON, S.C. 29401
TELEPHONE: 843-958-1900
FAX: 843-958-1905
www.scsolicitor9.org

RALPH E. HOISINGTC

March 8, 2006

Phillip Middleton
147 Wappoo Creek Drive
Charleston, SC 29412

Re: ***State of South Carolina v. William C. Mitchell***
Charge(s): Breach of Trust, Obtaining Goods Under False Pretenses

Dear Mr. middleton:

Your client's case has been placed on the plea docket for the week of **April 10, 2006.** Please call this office the **FRIDAY before** to determine the exact date and time. Regardless of whether your client intends on entering a plea of guilty, your client's presence is required on the date and time of his/her scheduled plea.

Bench warrants will be issued for any defendant who fails to appear.

Sincerely,
Gregory Voigt
Gregory Voigt
Assistant Solicitor

GV/pdp

cc: William Mitchell 9452 Koester Rd. Ladson, SC 29456

The State of South Carolina



Solicitor, Ninth Judicial Circuit

SOLICITOR

CHARLESTON AND BERKELEY COUNTIES
101MEETING STREET, FOURTH FLOOR
CHARLESTON, S.C. 29401
TELEPHONE: 843-958-1900
FAX. 843-958-1905

RALPH E. HOISINGTON

FACSIMILE TRANSMITTAL FORM

TO: Philip Middleton 762-5276

FROM: Kim Steele

DATE: Oct. 20, 2006 TIME: 10:26a.m

NUMBER OF PAGES (INCLUDING COVER PAGE) 2

MESSAGE: Additional discovery for William Mitchell

If you have any problems with transmission of fax copy, please call (843) 958-1900 and ask for Shamika

NOTE All information transmitted hereby is intended only for use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. Mail.

SOUTH CAROLINA
CONTRACTORS' LICENSING BOARD
Synergy Office Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

CERTIFIED MAIL

7000 0600 0025 2586 9813

RETURN RECEIPT REQUESTED

Mr. Bill Mitchell
Marine Contractor & Salvor
P.O. Box 60908
N. Charleston, S.C. 29419

359

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

August 13, 2001

Mr. Bill Mitchell
Marine Contractor & Salvor
P.O. Box 60908
N. Charleston, S.C. 29419

RE: Proposal for floating dock for James T. Helwig – 3088 Pignattelli Cresent, Dunes West
Mt. Pleasant, S.C. 29466

Case Number – V-01/02-29

Dear Mr. Mitchell,

It has come to the attention of this office that you have submitted a proposal for the walkway and floating dock work for the above referenced project in Mt. Pleasant, S.C., under a name other than the name which appears on your license. Our records indicate that you are licensed under the name of Dock Systems Inc.

Anyone engaged in the business of general or mechanical contracting in the State of South Carolina must be properly licensed before submitting a bid or undertaking a project. Please refer to the South Carolina Code of Laws, Section 40-11-20 (8),(9), that defines a contractor and Section 40-11-370(B) that states it is unlawful to engaged in construction under a name other than the name which appears on the license issued. Penalties for illegal contracting are set forth in Section 40-11-100 and 40-11-200. Injunctive relief is found in Section 40-11-210.

In view of these statutes and the fact that you appear to be doing business in a name other than the name in which you are licensed, **you must fax (803-896-4364) or send a complete written explanation as to your involvement with this project to this office within five (5) days upon receipt of this letter.**

This office will review the violation and will make a recommendation to the board as to what action should be taken. The recommendation will be based upon your response to resolve this matter.

Sincerely yours,

Stan Bowen
Investigator

South Carolina Department of Labor, Licensing and Regulation
Jim Hodges, Governor
Rita M. McKinney, Director

EXHIBIT 30

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

TO: The Investigative Review Committee/Complainant/Respondent

FROM: Stan Bowen

DATE: August 29, 2001

SUBJECT: The Matter of Bill Mitchell / Bill Mitchell Contractor & Salvor
Case Number: V-01/02-28

Summary of Facts:

1. A complaint was received alleging that the contractor on the project was exceeding his license limitations

2. My investigation determined that the possible violation had been before the contractor was licensed with the board. In a previous meeting with the administrative staff an agreement was reached that he would not be held accountable for previous jobs under contract before being licensed.

Issues to be Resolved:

None.

Recommendation

This case should be dismissed because there is no violation.

Note to complainant:

This case is being forwarded to the Investigative Review Committee and if they agree with the above recommendation, this case will be presented to Contractors' Licensing Board on October 18, 2001 for consideration, upon approval for dismissal, the files in this matter will be closed.

EXHIBIT 11

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Office: (803) 896-4686
Compliance Fax: (803) 896-4364
License Fax: (803) 896-4701

OCTOBER 25, 2001

TO: BILL MITCHELL
MARINE CONTRACTOR & SALVOR
P.O. BOX 60908
N. CHARLESTON, SC 29419

RE: FORMAL CLOSURE OF COMPLAINT #V01/02-28

DEAR MR. MITCHELL:

THE ABOVE REFERENCED COMPLAINT WAS PRESENTED TO THE BOARD ON OCTOBER 18, 2001 WITH A RECOMMENDATION FROM THE INVESTIGATIVE REVIEW COMMITTEE TO DISMISS THE CASE BECAUSE THERE WERE NO VIOLATIONS. THE BOARD AGREED TO DISMISS THIS COMPLAINT AND THE FILES ON THIS CASE ARE HEREBY CLOSED.

YOURS TRULY,

Terry King

TERRY KING
REGLUATORY COMPLIANCE DEPARTMENT

CC: FILES

South Carolina
Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

TO: The Investigative Review Committee/Complainant/Respondent

FROM: Stan Bowen

DATE: August 29, 2001

SUBJECT: The Matter of CLB vs Bill Mitchell
Case Number: V-01/02-29

Summary of Facts:

1. A complaint was received alleging that the contractor on the project was doing business in a name other than the name which appears on his general contractors license

2. My investigation determined that the contractor had used some personal stationary to draw up a contract prior to being licensed and also on some correspondence sent to this office.

Issues to be Resolved:

None.

Recommendation

This case should be dismissed because there is no violation.

Note to complainant:

This case is being forwarded to the Investigative Review Committee and if they agree with the above recommendation, this case will be presented to Contractors' Licensing Board on October 18, 2001 for consideration, upon approval for dismissal, the files in this matter will be closed.

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Office: (803) 896-4686
Compliance Fax: (803) 896-4364
License Fax: (803) 896-4701

OCTOBER 25, 2001

TO: BILL MITCHELL
MARINE CONTRACTOR & SALVOR
P.O. BOX 60908
N. CHARLESTON, SC 29419

RE: FORMAL CLOSURE OF COMPLAINT #V01/02-29

DEAR MR. MITCHELL:

THE ABOVE REFERENCED COMPLAINT WAS PRESENTED TO THE BOARD ON OCTOBER 18, 2001 WITH A RECOMMENDATION FROM THE INVESTIGATIVE REVIEW COMMITTEE TO DISMISS THE CASE BECAUSE THERE WERE NO VIOLATIONS. THE BOARD AGREED TO DISMISS THIS COMPLAINT AND THE FILES ON THIS CASE ARE HEREBY CLOSED.

YOURS TRULY,

Terry King Jr

TERRY KING
REGLUATORY COMPLIANCE DEPARTMENT

CC: FILES

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

Exhibit (D)

91

WILLIAM C MITCHELL
PRO SE
PO BOX 332
LADSON SC 29456-0332

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Master/order-defnt J. Helwig's mot for sum judg is granted

CASE NO: 2010CP1005532
William C Mitchell VS James T Helwig , defendant, et al

This judgment was entered on the 06th day of January, 2012, and a copy mailed first class on Tuesday, January 10, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

20102 20120106546O1.00091

Appellant Exhibit 10

Plaintiff's Reply to Order of Summary judgment and Reconsideration

(Appellant Exhibit on following page)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**IN THE NINTH JUDICIAL CIRCUIT**
	)	**Case # 2010-CP-10-5532**
COUNTY OF CHARLESTON	)	
	)	
William C. Mitchell	)	**Plaintiff's Reply to Order of Summary**
	)	**Judgment and Request for Reconsideration**
Plaintiff	)	
	)	
VS.	)	
	)	
James T. Helwig,	)	
Michael L. Masiowski,	)	
Elizabeth A Masiowski,	)	
Defendants		

FILED
2012 JAN 19 PM 3:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: James T Helwig, Defendant:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff William C. Mitchell, proceeding Pro Se, will move before the Honorable Mikell R. Scarborough, Master-In-Equity, Charleston County, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel, for reconsideration, to rescind and cancel or to alter or amend its order of December 29, 2011, pursuant to Rule 59(e), SCRCP, as to certain issues addressed in the Court's Order of Summary Judgment for the Defendant James T Helwig, on the Plaintiff's causes of action of Malicious Prosecution and Abuse of Process. This order was filed January 6, 2012, with the Charleston County, Clerk of Court. Notice was received by Plaintiff William C. Mitchell, Pro Se, on January 14, 2012. The grounds for this Motion are as follows:

1-That the Court erred in its Order, dated December 29, 2011, and filed January 6, 2012, in issuing Summary Judgment to Defendant James T. Helwig on the Plaintiff's causes of action for Malicious Prosecution and Abuse of Process, based on the same set of facts and evidence, and the statute of limitation as previously heard by the Honorable Derdra L. Jefferson.

2-At a hearing before the Honorable Dreda L Jefferson, held on February 22, 2011, Judge Jefferson heard the same set of facts and evidence and ruled on the statute of limitation in this case and ruled that the Plaintiff can maintain and continue the causes of action for Malicious Prosecution and Abuse of Process.

3-SCRCP, Rule 4(b), **RULE 4, MOTIONS IN GENERAL**

(a) Form of Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(b) Subsequent Applications for Order After Refusal. If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.

4 - SCRCP, **RULE 43(1)**

(l) Subsequent Applications for Order After Refusal. If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action.

5-The issue of notice, probable cause, the malicious prosecution, and abuse of process, and the statute of limitations, and the nolle prosequi, based on the same set of facts and evidence has been decided and ruled on, therefore, the law of the case doctrine may preclude the Defendants

from challenging Judge Jefferson's ruling, and the doctrine does prevent the Defendant's from raising the issues, in their Motion for Summary Judgment.

6- Judge Jefferson's ruling is the law of the case. See ML-Lee Acquisition Fund, LP v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case).

7- The Defendant Helwig, did argue before this Honorable Court, at the hearing on December 12, 2011, the same issues, on the same set of facts and evidence that he argued before the Honorable Deadra L. Jefferson, on February 22, 2011.

8-This Honorable Court is now overruling and effectively reversing Judge Jefferson's prior ruling, if this Court allows its present order for Summary Judgment, based on the statute of limitation to stand, in this case.

9- Therefore, the Order of Summary Judgment, for Defendant Helwig, dated December 29, 2011, and filed with the Charleston County, Clerk of Court on January 6, 2012, should be rescinded and canceled.

10- Further, the Court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits and error of law. **U.S. v. Thompson-Riviere**, 561 F.3d 345, 348 (4th Cir. 2009)

11-Further, that the Court erred in not following its own instructions.

12-At the end of the hearing before the Honorable Mikell R. Scarborough, on December 12, 2011, without the Court making a ruling, the Court ordered Plaintiff to file a memorandum and brief, by December 31, 2011, as to why the Nolle Prosqui, in the criminal case, in this matter, was terminated in favor of the Plaintiff

13-The Defendant, James T Helwig, at the same hearing and at the same time, was ordered by the Court, to file a memorandum and brief, by December 31, 2011, as to why the Nolle Prosequi, in the criminal case, in this matter, was not terminated in favor of the Plaintiff.

14-The Defendant Helwig, did not bother to file a memorandum or brief. This is a willful and total disregard of this Courts order.

15- Instead, on December 27, 2011, Defendants counsel, sent an e-mail and mailed by the U.S. Post Office, to the Court, a proposed order for Summary Judgment for the Defendant Helwig, on the causes of action by the Plaintiff, of Malicious Prosecution and Abuse of Process, based on the statute of limitation.

See Exhibit (A)

16-The Court would have received the hard copy of the above proposed order on December 28 or 29, 2011.

17-This Honorable Court without following its own instructions, did on December 29, 2011, signed an issued this proposed order for Summary Judgment, based on the statute of limitation, for the Defendant James T Helwig on the causes of action of Malicious Prosecution and Abuse of Process.

See Exhibit (B)

18-The Plaintiff following the Court orders, issued on December 12, 2011, did on December 30, 2011, file a memorandum and brief, as to why the Nolle Prosequi, was terminated in favor of the Plaintiff in the criminal case, in this matter.

See Exhibit (C)

19-At that time, the Plaintiff had no knowledge of the Court, signing or issuing the above mentioned proposed order of Summary Judgment, dated December 29, 2011, for Defendant James T Helwig, until Plaintiff, on January 14, 2012, received in the U S mail, an notice of filing of an Summary Judgment, for the Defendant Helwig, from the Charleston County, Clerk of Court.

See Exhibit (D & E)

20-The Court without following its own orders and instructions, without allowing the Plaintiff to comply with the Courts order, without reviewing or even considering Plaintiffs memorandum and brief, had in fact already signed the proposed order granting Defendant James T Helwigs Motion for Summary Judgment for Malicious Prosecution and Abuse of Process, based on the statute of limitation. This is clearly unconscionable.

21- Further, there is pending before this Honorable Court a Motion to Dismiss and Sanctions, filed December 16, 2012, by the Plaintiff, based on the Defendant Helwig, filing a False Affidavit, in support of Defendants Motion for Summary Judgment.

22- Plaintiff respectfully request that this motion be heard and ruled on.

See Exhibit (F)

Therefore, based on the facts and evidence in this case, the Plaintiff respectfully request that this Court rescind, and/or cancel, the order for Summary Judgment, signed on

December29,2011, for Defendant James T Helwig, on the Plaintiff's, causes of action of Malicious Prosecution and Abuse of Process.

This 18 day of January, 2012

William C. Mitchell, Pro Se
9452 Koester Rd
Ladson, S C 29456
(843)797-7538

Appellant Exhibit 11

False Affidavit Filed by Defendant Helwig

(Appellant exhibit on following page)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
William C Mitchell	)	CASE NO.
[X] Plaintiff	)	2010-CP-10-5532- - -
	)	
v.	)	MOTION AND ORDER INFORMATION FORM AND COVER SHEET
	)	
James T Helwig, Micheal And Elizabeth Masiowski	)	
[X] Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
, Bar No. PRO Se	James Sullivan, Bar No.
Address:	Address:
9452 Koester Rd, Ladson, S C	
phone: 797-7538 fax:	phone: fax:
e-mail: other:	e-mail: other:

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

SECTION I: Hearing Information

Nature of Motion: False Affidavit
Estimated Time Needed: 15 Min Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

William C Mitchell Jr Esq — December 14, 2012
Signature of Attorney for ☒ Plaintiff / ☐ Defendant — Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	_____ JUDGE
☐ Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

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

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**IN THE NINTH JUDICIAL CIRCUIT**
	)	**Case # 2010-CP-10-5532**
COUNTY OF CHARLESTON	)	
	)	
William C. Mitchell	)	**Plaintiff Motion to Dismiss Defendants**
	)	**James T. Helwig, Motion for Summary**
	)	**Judgment and for a**
Plaintiff	)	**Directed Verdict for Plaintiff and Sanctions**
	)	
VS.	)	
	)	
James T. Helwig,	)	
Michael L. Masiowski,	)	
Elizabeth A Masiowski,	)	
Defendants		

FILED
2011 DEC 16 PM 1:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW the Plaintiff, William C Mitchell, Pro Se, and moves this Honorable Court to Dismiss, Defendant James T. Helwig's, Motion for Summary Judgment and for a Directed Verdict in favor of the Plaintiff and for Scansions based on the following:

1- The Defendant James T. Helwig, knowingly, willingly and blatantly, with total disregard for this Honorable Court and the truth, has submitted a False Affidavit to this Honorable Court in support of his Motion for Summary Judgment.

2- That Defendant James T. Helwig, testified in his deposition that was taken May 31, 2011.

3- When ask the question, who built the dock for you at 3088 Pignatelli Cresant, Mt Pleasant, S C, replied, Dock Doc's Inc. (Defendants deposition, page 38, lines 6 and 7.

See Exhibit "A"

4- Further, the Defendant has furnished to Plaintiff, in reply to Plaintiff Request for Production and Interrogatories, dated November 17, 2011, a copy of the contract with Dock Doc's, Inc., to in fact build the dock for Mr. Helwig at 3088 Pignatelli Cresant, Mt Pleasant, S C in 2001.

See Exhibit "B".

5- The Defendant now attaches an False Affidavit in his Memorandum of Fact and Law, in support of his Motion for Summary Judgment, that states that a totally different company, Docks Unlimited, did in fact build the dock for Mr. Helwig at 3088 Pignatelli Cresant, Mt. Pleasant, S C .

6- Further, Defendant in this False Affidavit states the Docks Unlimited, gave him a credit of $2,269.00 for material furnished by the Plaintiff, that Dock Unlimited used in the construction of said dock.

7- This comes as a total surprise to Plaintiff, and based on previous investigation by the Plaintiff is a totally False Affidavit.

See Exhibit "C"

8- As this court is aware, all motions were to be filed by Monday, December 5, 2011. My Computer was down and in the repair shop until after 3 PM, Tuesday afternoon, December 6, 2011.

9- Late Tuesday, December 6, 2011, I received an e-mail from attorney James P. Sullivan, With a copy of the Memorandum of Fact & Law filed with this court of Monday, December 5, 2011.

See Exhibit "D"

10- I did not have the opportunity to study the Defendant, James T. Helwig, memorandum before Friday night, December 9, 2011.

11- After reviewing the Defendants affidavit, his deposition and reviewing the facts and evidence, it is clear that this Affidavit is False.

12- The filing of a False Affidavit is a violation of the Rules of Professional Conduct, Rule 407, SCACR, Rule 3.3 and Rule 8.4(d).

Therefore, the Plaintiff moves for a Dismissal of Defendant, James T. Helwig Motion for Summary Judgment and for a Directed Verdict, for the Plaintiff, and for Sanctions against the Defendant, James T.Helwig, and for Sanctions against the attorney for the Defendant James T. Helwig.

This December 12, 2011

William C Mitchell, Pro Se
9452 Koester Rd.
Ladson, S C 29456
(843) 797-7538

EXHIBIT C

AFFIDAVIT OF JAMES T. HELWIG

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON William C. Mitchell, *Plaintiff*, v. James T. Helwig; Michael L. Masiowski; and Elizabeth A. Masiowski, *Defendants.*	IN THE COURT OF COMMON PLEAS C/A No.: 08-CP-10-5499 **AFFIDAVIT OF JAMES T. HELWIG IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT T FILED ON BEHALF OF THE DEFENDANT JAMES T. HELWIG**

PERSONALLY APPEARED BEFORE ME, James T. Helwig, after being duly sworn, deposes and declares, under penalties of perjury, the following true and correct statements:

1. I am over the age of eighteen.

2. I am a named Defendant in the above-captioned case.

3. William C. Mitchell never informed me about his lack of contractor's license.

4. I entered into the April 23, 2001, contract with Mr. Mitchell based on my understanding that Mr. Mitchell was properly licensed to build a dock worth $40,500.00.

5. Docks Unlimited, a properly licensed dock company, subsequently built the dock for my Pignatelli residence.

6. I received a $2,269.00 credit from Docks Unlimited for some material delivered by Mr. Mitchell that Docks Unlimited used in constructing my dock.

7. Beyond the $2,269.00 credit, I have received no other refund from Mr. Mitchell for the $27,000.00 I paid to him based on the contract I entered into with Mr. Mitchell partially based on my understanding he was properly licensed to build a dock worth $40,500.00.

8. I agreed to allow my legal counsel to contact the Mount Pleasant Police

Department only after the following: I learned from the South Carolina Contractor's Licensing Board that Mr. Mitchell did not possess the required contractor's license at the time I entered into the contract with him; I learned from the South Carolina Contractor's Licensing Board that Mr. Mitchell was never licensed to build a dock worth $40,500.00; and Mr. Mitchell refused to refund the $27,000.00 I paid to him despite his failure to build the dock he was not legally allowed to build.

FURTHER AFFIANT SAYETH NAUGHT.

James T. Helwig

James T. Helwig

SWORN TO BEFORE ME this

30th day of September 2011.

Stephanie L. Deatra (L.S.)

Notary Public for South Carolina

My Commission Expires: 6-11-2019

Dock Doc's, Inc.
673 Oak Marsh Drive
Mt. Pleasant, SC 29464
803-881-2698 or 881-6206
S.C. Contractor's # 94568

November 19, 2001

Mr. & Mrs. Jim Helwig
3088 Pignatelli Crescent
Mt. Pleasant, SC 29466

Dear Mr. & Mrs. Helwig:

Please find below the revised contract with the walkway length changed.

We would like to offer the following revised contract to build your dock at 3088 Pignatelli Crescent, Dunes West :

1. Furnish all materials and labor to build a 4' x 400' walkway with two handrails. The walkway will have 16' of cantilevered benches at the end of the walkway. The walkway will lead to a 3' x 18' aluminum ramp with two handrails. The ramp will connect to an 8' x 15' floating dock.

2. All pilings will be round 2.5 CCA treated. Pilings will be set on 12' centers, the walkway pilings will be 6-8" butts. Number One will be used on all decking. Trex will be used for the handrail cap and benches. All other lumber will be number two .40 CCA treated pine. Stringers and headers will be 2" x 8", the decking will be 2" x 6". All hardware will be galvanized, except for stainless nails in the decking and floating dock.

3. We will run a PEX 3/4" water line with a hose bibb. You will need your plumber to make the connections.

4. Our charge for this will be $ 42,200.00. Any change in the length of the walkway in either direction will be a cost adjustment of $ 91.00 a lineal foot.

LS LS J & TH JH

5. An additional option you may wish to consider is:

_____ 1. To add electrical conduit would be $910.00.

All permits and approvals will be the responsibility of the owner. The owner will be asked to approve the final layout for the dock before construction begins. A survey if needed will be the responsibility of the owner. To accept this contract, please sign and return one copy. We have received your $500.00 binder. The remainder of the twenty-five percent materials deposit will be due when materials are delivered to the site. Then a sixty percent deposit draw will be due upon completion of the walkway. The remainder will be due within ten days of completion of the work. Any unpaid balance after thirty days will accrue interest at the rate of 1 1/2 percent per month. Any legal fees required to complete this contract will be the owner's responsibility. Due to fluctuating lumber prices this contract must be accepted within thirty days to be valid. We look forward to working with you in the near future.

Sincerely,

Lang Shaffer

Accepted: James T. Helwig

Date: 11-21-01

Options: _____

Binder Received: $500.00 8/21/01

4 x 400 walkway @ $62 ft	$ 24,800.00	62.00
Trex hr1	$ 400.00	1.00
handrails x 2 @ 12	$ 9,600.00	24.00
3' x 18' aluminum ramp	$ 2,200.00	
fl 8 x 15 @ $24sq	$ 2,880.00	
16' cantilevered bench	$ 720.00	
water line	$ 800.00	2.00
stainless	$ 800.00	2.00
	$ 42,200.00	91.00

conduit	$ 910.00

for people and they don't know when they're going to be built and there's just this --

A The business model is to build a dock for a customer and tell the customer, This is what we're doing now, when we finish it, yours is going to be next.

Q Whenever that --

A Now, if I have to wait 30 days for material, you're going to have to wait 30 days.

Q When was this contract signed?

A In April.

Q When did construction begin on it?

A We never began construction on it.

Q Okay.

A Because Mr. Helwig cancelled his contract.

Q When?

A August the 5th, I believe it was.

Q So that's May, June, July, four months later? You hadn't done any work on it.

A Three or four months, yes, sir.

Q In four months, you didn't do any work on the dock that you promised to build for him.

A Yes, we had.

Q Okay. What work was that.

that's 2, times 3, that's 600 boards. You take a look at the pictures and you add them up, they're 16-foot boards. You get 4 boards per foot, that's 60 to the pallet, that's 660 boards, so there was enough boards there to deck his whole dock. Now, you're asking me a percentage, I haven't bothered to figure it up.

Q I just thought since you've been in the dock business --

A I know that the majority of the material was delivered.

Q Okay.

A He didn't have room for the rest of it.

Q So your testimony is the majority of the material had been delivered.

A According to the documents, yes, sir.

Q But none of it had actually been used to begin construction of the actual dock.

A He cancelled his contract before we started the dock, yes, sir.

Q Four months after you had signed it.

A Whatever that date was, yes, sir.

Q Did you ever inform the Ocean and Coastal Resource Management of a date you intended to begin the construction on Mr. Helwig's dock?

invalid, you are correct.

Q Okay.

A But until the court rules it, mine and your opinion don't count.

Q But your opinion counts as far as the fact that you weren't required to have a contractor's license.

A The court ruled on that, I didn't.

Q Okay. We don't know which court.

A Yes, sir, the Fourth Circuit in the federal court.

Q A federal court in 1974 --

A '75.

Q 25, 24 years before the statute was actually enacted.

A It still applies. The 1899 Rivers and Harbors Act is still effective.

Q All right. Okay. So we've established that beyond the 6- to $7,000 maybe that the material's worth, you haven't paid any monies to Mr. Helwig.

A I haven't refunded any monies to Mr. Helwig, no, sir.

Q Okay. When you were arrested and you -- when were you arrested on the charges?

record.

A We'll have to look to see exactly what he says.

Q Okay. But we can agree that Dr. Masiowski did confirm that Mr. Helwig had no financial interest in this company.

A Yes, sir.

Q That he wasn't an employee of this company, whatever company --

A Not to my knowledge.

Q Wasn't a coowner.

A That was his testimony, if I recall --

Q And possibly --

A -- correctly, yes, sir.

Q Sorry. I didn't mean to interrupt you.

A That's what I recall, yes, sir.

Q And, further, Dr. Masiowski did testify that his company, whatever company that may have been, did no work on Mr. Helwig's dock.

A I believe he testified that, yes.

Q Okay. Part of your abuse of process claim states that there was an ulterior purpose?

A I'd have to look at the Complaint.

Q Okay. Well, we've just discussed that Mr. Helwig went to the police because he wanted his

(DEFENDANT'S EXHIBIT NO. 18 MARKED FOR IDENTIFICATION.)

Q All right. And it reads, A person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a:

(1) felony and, upon conviction, must be fined not more than five thousand (sic) dollars and imprisoned not more than ten years if the value of the property is ten thousand dollars or more. Okay?

A Yes, sir.

Q All right. And as far as Mr. Helwig knew, you failed to tell him that you weren't licensed on April 18th, 2001, to build a dock.

A I don't know what Mr. Helwig knew or when he knew it.

Q All right. We've already established many times that at some point Mr. Helwig knew --

A At some point.

Q All right. And as of April 18, 2001, he didn't know that.

A I don't know if he did or didn't on

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) Case No.: 2010-CP-10-5532

WILLIAM C. MITCHELL,
Plaintiff(s),
-vs-
JAMES T. HELWIG,
MICHAEL L. MASIOWSKI and
ELIZABETH A. MASIOWSKI,
Defendant(s).

DEPOSITION OF:

DOYLE P. THOMAS, JR.

COPY

Given before John P. Crawford, Jr., Court Reporter and Notary Public, at Clawson and Staubes, LLC, 126 Seven Farms Drive, Suite 200, Charleston, South Carolina, on Wednesday, November 23rd, 2011, commencing at 10:00 o'clock, a.m.

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A P P E A R A N C E S

For the Plaintiff(s):	William C. Mitchell, Pro Se 9452 Koester Road Ladson, SC 29456
For the Defendant(s): Masiowski	Clawson & Staubes, LLC By: Christina R. Fargnoli, Esquire 126 Seven Farms Drive, Suite 200 Charleston, SC 29492
For the Defendant(s): Helwig	Howser Newman & Besley, LLC By: James Patrick Sullivan, Esquire 215 East Bay Street, Suite 303 Charleston, SC 29401

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No exhibits were proffered.

(Doyle P. Thomas, Jr., being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MR. MITCHELL:

Q. Doyle, you know me, I'm Bill Mitchell.

A. I've met you. Yes.

Q. We've met in the past. This is a deposition. Have you ever given a deposition before?

A. Yes. I have.

Q. Well, you're aware that you're under oath just like if you were testifying and so forth.

A. Yes, sir.

Q. Will you please state your full name and address for the record?

A. Doyle P. Thomas, Junior, PO Box 5, Adams Run, South Carolina, 29426.

Q. What is your physical address, Mr. Thomas?

A. 8006 Highway 126.

Q. And what is your age?

A. Fifty-three.

Q. And where did you go to school?

A. What year?

Q. When you started.

A. I can't remember. It's in Florida.

Q. You're from Florida?

A. Yes, sir.

Q. How long did you live in Florida?
A. About six or seven years. I was born there.
Q. And when did you move to, did you move to South Carolina after that?
A. I moved to Georgia after that.
Q. Georgia?
A. Uh-huh.
Q. And how long did you live there?
A. Probably up to the age of about twelve, thirteen years of age.
Q. Okay. And then you move to?
A. Charleston, South Carolina.
Q. You went to school here in Charleston?
A. I went to school at Middleton High School.
Q. And you graduated?
A. No. I graduated in Lincolnton, Georgia.
Q. And when was that?
A. In 1977.
Q. And what did you do after you finished school, did you go to college?
A. No, sir.
Q. Did you go to any tech schools?
A. No, sir.
Q. Did you start work after that?
A. Yes, sir.

Q. And what type work was that?
A. I started work when I was about fifteen in a machine shop, while I was going through high school.
Q. And how long did you do that?
A. About two years.
Q. And what did you do after that?
A. I got straight into the building trades, carpenter.
Q. And you worked in Georgia, or did you come back to South Carolina?
A. No. South Carolina was where I started my carpentry.
Q. Okay. In Charleston?
A. Yes, sir.
Q. Are you married?
A. Yes. I am.
Q. Do you have children?
A. Yes. I do.
Q. How many?
A. One son.
Q. One son?
A. Uh-huh.
Q. And where do you work at present?
A. I am self-employed, T & T Builders. I am a

licensed residential builder.
Q. You're licensed by LLR?
A. Uh-huh.
Q. You have a builder's license through LLR?
A. Yes. I do, in the State of South Carolina.
Q. Do you have a general contractor's license through them or just a --
A. No. Residential builder's. No General.
Q. Back in 2001, you were working for Dr. Masiowski, I believe?
A. That's correct.
Q. And you were building a home for him?
A. Yes. We were subbing the work for him.
Q. You were what?
A. Subbing out all of the work. Michael was the contractor.
Q. And you were?
A. Subcontractor.
Q. Subcontractor or superintendent?
A. Pretty much that and supervision. He hired me to supervise the job.
Q. And you had been in the home building business how long at that time?
A. Really, not at that time not doing the home building as a subcontractor. I didn't have my

residential license at that time. It was shortly after.

Q. At the time you were working for Dr. Masiowski, you didn't have a residential builder's license?

A. I had a subcontractor's license. He pulled the permit. He was the builder.

Q. Yes, sir.

A. Yes.

Q. And you were acting more as a superintendent in a supervisory capacity?

A. And doing the subcontract work, framing, siding, whatnot.

Q. When did you get your license with LLR?

A. I don't have a general date. I've been doing it probably about eight to ten years now, on my license.

Q. How long?

A. About eight years or so.

Q. About eight years?

A. Uh-huh.

Q. So, that was in 2001, this is 2012. That would have been 2003 or 2004?

A. Somewhere in that area.

Q. Somewhere in that area?

A. Yeah. I don't recollect right off.

Q. Yes, sir.

MS. FARGNOLI: Bill, are you referring to the residential builder's license?

MR. MITCHELL: Yeah. Yes, ma'am. I'm sorry.

A. And you can get that information through the State of South Carolina, if you need.

Q. Sure. And how did you come to know Dr. Masiowski?

A. Through a mutual friend. Actually, not through a mutual friend, but through Guy C. Lee. He was looking for somebody and they gave him my name.

Q. Who is Guy C. Lee?

A. Guy C. Lee Building Materials.

Q. And they are located?

A. Right there on Highway 17 North in Mount Pleasant.

Q. They're a building supply company?

A. That's correct.

Q. And you were buying most of your building supplies from them at that time?

A. Not really. He took care of all the --

Q. No. I mean, when --

A. His was the first jobs we did in Mount Pleasant.

Q. Okay. When you say we?

A. We?
Q. You said that his was the first job we did. Who is the we?
A. Subs, us, whoever was hired.
Q. And did you have a business name at that time?
A. You know what, I believe it was the same thing. I believe it was T & T Builder.
Q. I'm sorry?
A. I believe it was T & T Builders.
Q. T & T Builders?
A. I believe so. I can't quite recollect.
Q. And were your duties, other than the supervision with Dr. Masiowski?
A. You'll have to clarify that. As I told you that, I was a subcontractor, which mean we did the miscellaneous work on houses. What we didn't do, other subs came in and did.
Q. And you hired those subs?
A. I gave them to Michael to handle. Yes. Michael paid everybody.
Q. So, everybody was paid by Dr. Masiowski?
A. That's correct.
Q. And who issued those checks?
A. Mike and Elizabeth.
Q. And you, on a daily basis or a weekly basis,

filed reports with Dr. Masiowski on the progress and these sorts of things?

A. No. They were there pretty much every other day watching the stuff go on. I did not have to --

Q. So, y'all -- I'm sorry.

A. Yeah. He lived right there around the corner, so they were always at the house with the kids. We didn't, you know, I just referred him to the things that he had to do to build this house.

Q. So, you had constant communication with Dr. Masiowski and Ms. Masiowski?

A. Oh, yes.

Q. Was she responsible for or did she make any of the decisions as far as the work being done and changes, et cetera?

A. No. They were both of them at the same together making those decisions, Mike and Elizabeth.

Q. And this was the house on Adrian Way we're talking about?

A. That's correct.

Q. And how long did you work for Dr. Masiowski?

A. Somewhere around six to seven months, somewhere in that area.

Q. When would that have started?

A. I could not give you a date. That's been twelve

years or so. I don't have anything in front of me. I don't have any paperwork. I don't hold onto the paperwork after four or five years.

Q. But, you worked for him from six to eight months during that time?

A. That's correct.

Q. And I believe you testified that he bought all the material and furnished all the material for the job?

A. That's correct. He had the account at Guy C. Lee. I gave him the amounts, he ordered them, and took care of the bill.

Q. You are aware that Mr. Mitchell entered into a contract with Dr. Masiowski to build a dock on Adrian Way?

A. Well, I know nothing about a contract. I know the day you came over, I met you, he introduced me to you, and I don't remember much more after that.

Q. But, you were aware that Mr. Mitchell was to build the dock at Adrian Way?

A. I assume so.

Q. Prior to that, how long had you been working for Dr. Masiowski?

A. That was it. Oh, prior to that house?

Q. Yes.
A. We built the first house for him.
Q. No. Prior to meeting Mr. Mitchell?
A. Repeat that question.
Q. When you met Mr. Mitchell at the Adrian Way job, you had been working for Dr. Masiowski for how long?
A. I could not recollect an amount of time.
Q. Could it have been a couple of months or so?
A. That you were there working?
Q. No, sir. That you had been working for Dr. Masiowski?
A. Yeah. I believe it was. It was probably two or three months. I think the house was finishing up on the framing stages.
Q. And prior to your meeting Mr. Mitchell over at the Adrian Way job, had Dr. Masiowski attempted to build a dock there?
A. No. Not to my knowledge.
Q. Okay. Did you ever have any conversations with Dr. Masiowski wanting to start a dock construction company?
A. No, sir.
Q. Are you aware that Dr. Masiowski did, in fact, start a dock construction company?

A. No, sir.
Q. Did you meet Mr. James Carter, who was a foreman for Mr. Mitchell there at the Adrian Way job?
A. I don't recollect any names. I didn't pay a whole bunch of attention to what was going on back in there besides the lumber, us having to move stuff to get lumber back through there with the trucks. I really didn't have conversations with the guys or anything.
Q. But, you were there when Mr. Mitchell had material delivered for the dock?
A. Yes. I saw material there.
Q. Do you know who finished the dock at Adrian Way, who completed the dock?
A. I do not know.
Q. Were you there at the time --
A. It was still going on when we had finished.
Q. Did you ever have any conversations with any of Mr. Mitchell's crew about a dock construction company that Dr. Masiowski was forming?
A. No. Huh-uh. No, sir.
Q. Did you have anything to do with the dock construction company, Coastal Docks, that Dr. Masiowski started?
A. I know nothing about it. Once we finished

Michael's house, we were gone. I mean, we didn't have any conversation about anything of such sorts.

Q. Did you build the house on Greeley Road for Dr. Masiowski?

A. That was the first one?

Q. The second one.

A. Greeley Road?

Q. Yeah. Right around the corner from Adrian Way?

A. Yeah. That was the first house we built.

Q. No. It wasn't built at the time. It was built afterwards.

A. Then, I don't know what you're talking about. We built the first house for him on the cul-de-sac before you get --

Q. That's Adrian Way. The cul-de-sac is Adrian Way.

A. Yeah. Well, we built the first one in the first cul-de-sac, and then the second one, which is where you built the dock, we built the second house there for him.

Q. Are you aware of how built the dock at the Greeley Way site?

A. No. I don't know anything about a dock there. I don't recall there ever being a dock there when we built the house.

Q. Did you ever receive any checks from Coastal Docks?
A. I don't know the company you're referring to. So, no, sir.
Q. Well, this was the dock construction company that Dr. Masiowski had started.
A. No, sir. I didn't receive any checks from such a company.
Q. Well, if Dr. Masiowski has testified that you did receive some checks from them, he would be in error?

MS. FARGNOLI: Object to the form of the question. Go ahead and answer it.

A. Repeat the question.
Q. If Dr. Masiowski testified that you did receive some checks from Coastal Dock, which is the dock construction company that he had formed, he would be mistaken?

MS. FARGNOLI: Same objection.

A. He would be mistaken because all of my checks were written from the personal account from Michael and Elizabeth Masiowski.
Q. Okay. So, according to your testimony, when you finished these two houses, that was the end of your working relationship with Dr. Masiowski?

A. That's correct.
Q. How did you come to know Mr. James Helwig?
A. Mr. Helwig had come over the first time we were building for Michael and just met us there, stopped at the job.
Q. And which house was that?
A. That was the first house, not the Adrian Way, but the one in the first cul-de-sac. I don't know if that was Greeley. It's been years. I know the last house was on Adrian, but the cul-de-sac before it.
Q. So, he came over there, and what happened?
A. Just talked to me, got on the job, came and asked me if I wanted to do some work for him.
Q. How did he know that you wre working at that location?
A. Just riding around.
Q. And saw somebody building a house and stopped and talked to them?
A. Yeah. I get that a lot.
Q. And what was that conversation about, as far as the construction that he wanted done?
A. He had just minor cosmetics to be done in his home. It was nothing major. We just went and observed the work, gave him a price, he okayed

it, and we did it in the same time we were building that first house for Michael.

Q. And between the time that you first met Mr. Helwig and started the project on -- I believe he lived on Pignatelli Crescent in Mount Pleasant?

A. That sounds familiar. In Wild Dunes.

Q. In Dunes West?

A. Yeah, Dunes West. Yes, sir.

Q. Did you have an occasion to see Mr. Mitchell at that location?

A. I never saw you at that location at all, period. I don't know anything about a dock being built there or anything.

Q. Exactly what work did you do for Mr. Helwig at Pignatelli Crescent?

A. Interior cosmetic work.

Q. And what was the total price of that?

A. I could not tell you. That's been years ago. I don't have any recollections of --

Q. Do you recall what you do?

A. A little painting, a little cosmetics, changing out a little bit of counter tops, nothing --

Q. Did you remodel a bathroom?

A. Yeah. We did some remodel work inside one of the

bathrooms, the master.

Q. Would it have amounted to over twenty-five hundred dollars?

A. I don't recollect. I don't recollect at this point.

Q. And Mr. Helwig paid you directly for that?

A. Yes, sir.

Q. The checks were made out to you?

A. Yes, sir.

Q. Or to your company?

A. Yes, sir.

Q. And I believe from earlier testimony, you did not have a builder's license at that time?

MR. SULLIVAN: Object to the form.

A. I had a subcontractor's license, which allows me to do subcontractor work.

Q. Who issues a subcontractor's license?

A. The State of South Carolina. You have to have one. It's a specialty license.

Q. Speciality as to what?

A. To do subcontract work. It's for subcontractors, electricians, plumbers, carpenters, trim guys. It's a speciality license.

Q. Uh-huh. And you had a specialty license at that time?

A. Yes, sir.
Q. What's the difference between a speciality license and a residential builder's license?
A. You can't pull permits.
Q. I'm sorry?
A. You cannot pull permits. It's just cosmetic, no structural.
Q. In what name was this license in?
A. Probably Doyle Thomas, at the time, because the residential builder's license is in my personal name. They usually do it in your personal name.
Q. What are the requirements to get this speciality license?
A. You just have to have insurance.
Q. Do you have to take a test of any type?
A. No test for a subcontractor's license.
Q. You're required to have what type insurance, workman's comp?
A. Workman's comp, general liability. It runs you about sixteen hundred dollars a year. It's what any subcontractor has to carry, and it's still true to this day. I don't let anybody work on my jobs unless they are licensed and insured.
Q. When you say licensed and insured, what do you mean?

A. As subcontractors.
Q. By LLR?
A. Correct.
Q. And that comes under Title 40 of the LLR licensing?
MS. FARGNOLI: Object to the form.
A. I don't know what title comes under. I don't keep up with that stuff.
Q. Okay. Did you have any conversation with Mr. Helwig regarding his dock?
A. No, sir. No conversation whatsoever about his dock.
Q. You never had any at all?
A. Never called me, never conversed personally with me or anything, once we finished his job.
Q. Well, during the job, did you have any conversations with him?
A. No, sir.
Q. Did you see Mr. Mitchell or the material to build Mr. Helwig's dock there when you were there?
A. I don't recollect seeing anything because I really didn't pay any attention to it. No, sir.
Q. Did you ever discuss with Dr. Masiowski Mr. Helwig's dock?
A. No, sir.

Q. Never had any conversations with him?
A. Not to my recollection.
Q. And the time frame, I'm trying to understand here, you were working for Dr. Masiowski building the house on Adrian Way?
A. The first house.
Q. That's where Mr. Mitchell was working was Adrian Way?
A. Uh-huh.
Q. I don't know if that was your first or second house, but the Adrian Way job?
A. Uh-huh.

MS. FARGNOLI: Say yes, for the record, or no.

A. Yes.

MS. FARGNOLI: Thank you.

Q. Mr. Mitchell was working on the job building a dock, and that was in between the second house that was built, and you stopped work on the house and went and did this remodeling for Mr. Helwig? Explain that to me.
A. I'm trying to remember. Like I said, it's been ten or twelve years ago. So, to tell you the truth, I can't even remember when we did Mr. Helwig's. I really can't.

Q. Okay. If you don't remember, you don't remember.
A. I honestly can't remember if it was even the first house or the second house. My memory is not as good as it used to be.
Q. Well, mine slips, too. So, you never had any conversations with Mr. Helwig about his dock or the material that was delivered to the dock, the quality of the material or anything like that?
A. No, sir.
Q. Do you have any experience in the dock building business?
A. No, sir.
Q. You never had any conversations with Mr. Carter, James Carter, who was the foreman for Mr. Mitchell?
A. No, sir.
Q. You don't have any knowledge that Dr. Masiowski started a dock construction company of his own?
A. I really don't. No, sir. I never discussed anything about a dock company.
Q. Did you ever discuss with Dr. Masiowski his canceling his contracts with Mr. Mitchell?
A. No, sir.
Q. Did you ever discuss with Dr. Masiowski Mr. Mitchell being arrested because of those

contracts with him and Mr. Helwig?
A. No, sir.
Q. Never had any conversations?
A. No conversation.
Q. At that time, did you have any conversations with Dr. Masiowski about obtaining a license from LLR as a general contractor, residential builder, or a specialty builder?
A. For myself?
Q. For yourself or for his company?
A. Oh, no, sir.
Q. He never discussed that with you?
A. There was no discussion whatsoever about any kind of going into business or doing any docks or anything else. It wasn't my goal in my own personal life.
Q. Yes, sir. So, you never had any conversations about working for Dr. Masiowski and his dock construction company?
A. Huh-uh. That's nothing I wanted to get into. So, no. We did not discuss anything about building docks. It's not my forte and I don't care for it.
Q. It's a little different work.
A. That's right. And I do what I do best at, and

that's just to build the houses.

Q. Well, I find that's the best thing to do.

A. If I don't know how to wire a house, I hire someone to wire it.

Q. Well, let me clear about one other point. When you were working for Mr. Helwig, you stated you had a specialty license from LLR --

A. The State of South Carolina.

Q. -- a subcontractor?

A. Yes.

Q. Bear with me one moment, please. I don't have anymore questions.

CROSS EXAMINATION BY MR. SULLIVAN:

Q. Mr. Thomas, we met before the deposition briefly. For the record, my name is Jim Sullivan. I represent Mr. Helwig in this matter. I have very few questions. If you have any questions about the questions I ask, please ask me to rephrase or repeat, and I'll do that as many times as you like.

A. Yes, sir.

Q. I assume you don't need a break?

A. I'm fine. Thank you.

Q. Do you have any knowledge about Mr. Helwig owning a dock building business?

A. No, sir.
Q. Any knowledge about Mr. Helwig operating a dock building business?
A. No, sir.
Q. Do you have any knowledge about him having any ownership interest, any interest at all in a dock building business?
A. No, sir. He never struck me as a man that wanted to get any involvement such as that. I think he was pretty much retired and having a wonderful life.
Q. I won't dispute that. You testified a little bit for Mr. Mitchell about your knowledge or lack thereof of a dock being built at Mr. Helwig's Pignatelli residence where you were doing some cosmetic work, as you put it. I know that was a long time ago, and I believe you said you don't remember ever seeing Mr. Mitchell at Mr. Helwig's residence?
A. That's correct.
Q. Okay. Do you remember ever seeing any type of, what looked like dock construction going on at Mr. Helwig's residence?
A. No, sir.
Q. That's all I've got. Thank you.

MS. FARGNOLI: I have no questions.

MR. SULLIVAN: Anything else?

MR. MITCHELL: I don't have any other questions.

(Deposition concluded at 10:29 o'clock, a.m.)

* * *

STATE OF SOUTH CAROLINA)
: C-E-R-T-I-F-I-C-A-T-E
COUNTY OF CHARLESTON)

I, John P. Crawford, Jr., Court Reporter and Notary Public, certify that I did have **Doyle P. Thomas, Jr.** to appear before me at 10:00 o'clock, a.m. on Wednesday, November 23rd, 2011, at Clawson and Staubes, LLC, 126 Seven Farms Drive, Suite 200, Charleston, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 30th day of November, 2011.

S/

Notary Public for South Carolina
My Commission Expires: May 29, 2012

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related to the case, the facts or the evidence of the case, or anything that would lead to the discovering of facts or evidence in the case.

MS. FARGNOLI: I would like to put on the record as well that my understanding of Judge Nicholson's order, and interpretation of that order, is the same as Mr. Sullivan's understanding of that order. So I am just reiterating what he says.

(Witness sworn.)

JAMES T. HELWIG,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Mr. Helwig. How are you, sir?
A Good afternoon.
Q What is your full name?
A James T. Helwig.
Q For the record, your address, please, sir?
A 146 North Plaza Court, Mount Pleasant, South Carolina, 29464.
Q Are you from South Carolina, Mr. Helwig?
A No.
Q Where are you from, sir?
A I was born in New Bedford, Massachusetts,

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raised basically in Ohio.
Q Where did you move here from, Ohio?
A I moved here from Princeton, New Jersey.
Q What did you do in New Jersey, Mr. Helwig?
A I worked for Bristol-Myers Squibb.
Q Were you one time CFO for General Electric Corporation?
A I was a manager for finance for the appliance business in Louisville, Kentucky. I held various other positions for GE, but that was my last position.
Q When you were in New Jersey what was your position?
A I was senior vice president of finance for the pharmaceutical business of Bristol-Myers Squibb.
Q As senior financial officer, what did that job description entail?
A I was in charge of all financial matters affecting the business.
Q Were you in charge of payment of bills, receivables, payables, things of that nature?
A I had people that worked for me that were responsible for that, but all of that came under the financial organization.
Q Any disputes, et cetera, that would be your responsibility to settle those, as far as if there was a

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dispute of payments, either a receivable or a payable?
A Generally not. That would have been handled by my management.
Q Did you deal with any of the contracts with any of your --
A Only if there was a significant high level issue.
Q What is your educational background, Mr. Helwig?
A I have a bachelor of science, major in finance from Bowling Green State University in Ohio.
Q Regarding the dispute of the contract between you and Mr. Mitchell, who was your attorney at that time?
A At that time it was Dennis O'Neill.
Q It wasn't a Mr. Phelps with his office?
A No.
Q It was Mr. O'Neill?
A Yes.
Q Did you make a complete and full disclosure of all the facts and documents in this case to Mr. O'Neill?
MR. SULLIVAN: I object to that. That would fall under attorney-client privilege.
MR. MITCHELL: He disclosed the information, it's attorney-client privilege.
MR. SULLIVAN: The second you start going into

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the material, any discussion, I will object and instruct the witness not to answer the question.
BY MR. MITCHELL:
Q Are you familiar with the difference between a criminal case and a civil case?
MR. SULLIVAN: Object to the form of the question.
You can answer.
A Yes.
Q In your position as chief financial officer, did you deal with any disputes and contracts as far as the payments and the terms in the agreement of the contract?
A Not specifically.
Q Who did you contact at the -- who contacted the Mount Pleasant Police Department on your behalf to make this initial report?
MR. SULLIVAN: Object to the form of the question.
THE WITNESS: Do I answer?
MR. SULLIVAN: Answer it the best you can.
A My attorney at that time, Dennis O'Neill.
Q Mr. O'Neill contacted them on your behalf?
A On his recommendation, attorney's recommendation.

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Q What did he recommend?
A I first met with Mr. O'Neill on September 10, '01. His recommendation at that time was that the contract was null and void. He recommended that a letter be sent to Mr. Mitchell outlining the situation and calling for a refund of amounts paid. And that determining what happened then, he would then look at other alternatives in terms of a course of action.
Q What was your understanding of why the contract was null and void?
A The contract was null and void because Mr. Mitchell was not licensed at the time the contract was entered into, and that was the principal reason it was null and void.
Q Are you familiar with the South Carolina general contractors and marine contractors statutes?
A I am not familiar with the statutes. I'm familiar with the licensing board.
Q In what respect?
A I had contacted Mr. Stan Bowen at the licensing board on October -- August 3 of '01.
Q Who is Mr. Stan Bowen?
A He is an officer or representative within that organization. I don't know his title.
Q Would he have been an investigator?

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A I don't know. No, I don't believe so, but I don't know his title.
Q Yes, sir. Did you file a complaint with LLR?
A I did not file any complaints at that time. Attorney had recommended that any complaints would be filed based on the response from the letter that was sent on September 17.
Q Let me repeat the question. Did you file a complaint with the LLR?
A I did not, no.
Q Never?
A Not to my knowledge, no.
Q Did anyone else on your behalf file a complaint with the LLR?
A Not to my knowledge.
Q You never received a copy of a complaint or the results of a complaint being filed on your behalf from LLR?
A No, I didn't.
Q When Mr. O'Neill contacted the Mount Pleasant Police Department, what happened?
MR. SULLIVAN: Object to the form of the question.
A He arranged for a meeting with them, and I believe that was around October 15 of '01.

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Q When did he contact them?
A I'm not sure. A week before.
Q A week or so before?
A Right.
Q Where was that meeting to take place?
A It took place in his office.
Q At his office. You did not go to Officer Hoose's office?
A No, I did not. Not at that time. I went the second time. When I had to give a written summary I went to his office.
Q And at the meeting at Mr. O'Neill's office did you give a statement, either oral or written?
A Detective Hoose was not there initially. It was a woman detective. I don't recall her name. She just did the initial investigative to see if there were enough facts to carry forward. Then they set up a meeting with Detective Hoose separately.
Q Where was that meeting?
A I believe that was at the police headquarters.
Q And at that meeting did you give a written statement?
A Then I gave a written statement.
Q At the meeting with this initial officer, you gave an oral statement?

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A Yes, she was asking questions, and I was responding.
Q But no written statements?
A No.
Q Did you ever give more than one written statement to the Mount Pleasant Police Department?
A No, just one.
Q Just the one. Did the officer -- you said it was a lady officer that came the first time?
A On the initial time.
Q Did she have a conversation with your attorney at that time?
A The three of us were together in the same room.
Q The whole time she was there?
A Yes.
Q To the best of your knowledge, did you provide a complete and full disclosure of all the facts of the case to the officer?
A Yes, I did.
Q Did you provide a complete and full disclosure of all the facts to Officer Hoose at the second meeting?
A Yes.
Q At that point in time you had canceled your contract with Mr. Mitchell?
A That is correct. I canceled it on August 6.

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to '06 to the time it was dismissed.
Q He was representing you from '01, from the initial, until '06 when the charges were dismissed?
A That's right, December of '06.
Q How was he billing you?
MR. SULLIVAN: I object to the form of that question. Mr. Mitchell, we talked about this outside.
BY MR. MITCHELL:
Q Was he billing you on an hourly basis?
MR. SULLIVAN: One at a time. This question goes past the protective order –
MR. MITCHELL: No, because it leads to when you bill somebody by the hour -- go off the record.
(Discussion off the record.)
MR. SULLIVAN: Back on the record. I also object on the grounds of attorney-client privilege.
MR. MITCHELL: That's not privileged.
MR. SULLIVAN: I'm making the objection.
BY MR. MITCHELL:
Q My question is did Attorney O'Neill bill you hourly for his services?
MR. SULLIVAN: You can answer that.
A Dennis O'Neill did not bill me.
Q Who billed you?
A No one. His time was very limited on this

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case. I mainly worked with the solicitor after the solicitor became involved. Dennis O'Neill had very little to do after that point.
Q So you are saying from 2001 to 2006, whatever Mr. O'Neill did was free?
A He did not bill me.
Q Did you pay Mr. O'Neill any monies for that service during that time?
A No.
Q So he would have donated that service for free?
MR. SULLIVAN: Objection.
A He did not bill me.
Q During Mr. O'Neill's representing you during this matter with Mr. Mitchell, did he discuss with you all of the occurrences in the matter on a current basis?
MR. SULLIVAN: Object to the form of the question.
A Could you rephrase? I don't understand the question.
Q If he was told something by Officer Hoose, would he relay that information to you?
A We had periodic phone calls, but they were very limited. Naturally, he would inform me if something had occurred, yes.
Q Did anybody, Detective Hoose or Attorney

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O'Neill, ever inform you that the solicitor's office had stated that this case was a civil matter, not a criminal matter?
MR. SULLIVAN: Object to the form of the question. I am objecting based on attorney-client privilege. I will tell Mr. Helwig not to answer any questions about what Mr. O'Neill talked to him about, the substance of.
BY MR. MITCHELL:
Q Okay. My question then is did anyone tell you or inform you that the solicitor's office had previously stated this was a civil matter, not a criminal matter?
MR. SULLIVAN: Again, if anyone includes his attorney, I will object on attorney-client privilege.
A I will answer.
Q Did anybody else besides your attorney?
A No. The solicitor, Ed Knisley, determined that it was a criminal matter.
Q Did anyone advise you that the matter had been reviewed by someone at the solicitor's office before the meeting with Mr. Knisley?
A No.
Q Did you ever contact Officer Hoose, or to your knowledge did anyone contact Officer Hoose inquiring as to why the warrant had not been issued sooner?

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A No.
Q So at this meeting with the solicitor's office, did you make a statement to the solicitor's office?
A No formal statement.
Q Did you make an oral statement?
A He had my written statement from the police report. That was my formal statement.
Q Did you contribute anything to that at this meeting?
A It was just a review of the case, all the facts that were on the table.
Q What other facts was on the table?
A I will repeat again, the fact that Mr. Mitchell was not licensed at the time that he entered into the contract, that there was misrepresentation of property and work to be performed, that two checks for $13,500 each had been written and paid to Mr. Mitchell, and my written summary of report to the police.
Q How do you know that Mr. Mitchell wasn't licensed at that time?
A I was informed by phone and then by letter from Mr. Bowen from the South Carolina State Licensing Board that Mr. Mitchell was not licensed on April 18 when we entered into the contract. He wasn't licensed until June 6 of '01. At that time it was for only the maximum

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amount of $30,000.
Q You were provided this in the form of a letter from who?
A From Mr. Bowen at the South Carolina State Licensing Board.
Q I thought you testified earlier you didn't receive any documents from there?
A I don't believe I did.
Q Did you receive anything else from them?
A Just that letter.
Q Just that letter?
A Right.
Q Did you ever receive a copy of a -- you said that was from Mr. Stan Bowen?
A Yes.
Q Have you ever seen these documents?
A No.
Q Is this a copy of the letter you received from Mr. Bowen?
A No, this is not the letter. He documented the fact that he was not licensed in a different letter. This is the letter that he informed -- that he had written to Mr. Mitchell on that date, August 13, 2001, informing him of a violation.
MR. SULLIVAN: Are you going to make these

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exhibits?
MS. FARGNOLI: Can we mark them now?
(Helwig Deposition Exhibit No. 4 was marked for identification.)
BY MR. MITCHELL:
Q You never saw those documents before?
A No, I have not.
Q You never filed a formal complaint with Mr. Bowen at LLR?
A No.
Q Did Officer Hoose ever discuss with you the investigation of this case?
A No.
Q And after this meeting at the solicitor's office, which was, I believe you said, around the 19th or something?
A The warrant was signed on the 19th. The meeting, there was an October 15 and October 25, but it was a mid-October '01 date.
Q Who informed you to come and sign this warrant?
A The solicitor.
Q The solicitor himself?
A Right. They are called assistant solicitors. We're using the term generically.
Q Yes, sir. What was said by the assistant

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solicitor at this meeting besides his finding of facts?
A As I stated before, he re-reviewed for all of the parties the facts of the case and gave Mr. Mitchell's attorney the opportunity to say anything that he wanted at that time. So it was basically a review of the facts, and that was the extent of the meeting.
Q And did Mr. Mitchell's attorney say anything?
A Yes, he did.
Q Do you recall what he said?
A I recall some of the points, yes.
Q And that would have been?
A That in many cases he was not aware. He wasn't aware of the license situation, that he wasn't licensed at the time he entered into a contract with me. He was not aware of the misrepresentation of property that was shown to me as indicative of his work, and basically had to go over certain things with his client.
Q What did your attorney say at the meeting?
A I don't recall.
Q What did you say at the meeting?
A I don't recall.
Q Did you say anything?
A Probably so. It was a review of the facts. Everything that has been stated is what I reviewed.
Q You reviewed the facts at that time? I

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misunderstood your answer.
A The solicitor presented the facts. If there was a question to me at that time, I would have answered it. But I do not have a dialogue or a written statement of the entire proceedings.
Q You don't recall what your attorney said at the meeting?
A It's a vague question. I don't know if you have --
MR. MITCHELL: Well, do you have --
A -- a specific point.
MR. SULLIVAN: Let him answer the question, please.
A Go ahead.
Q Do you recall your attorney stating at this meeting -- I'm referring to Mr. O'Neill now -- stating to the solicitor, in fact, that his client, referring to you, Mr. Helwig, had deep pockets, and he wanted a warrant issued for Mr. Mitchell's arrest?
MR. SULLIVAN: Object to the form of the question.
A Absolutely not.
Q When you were reviewing the facts, you said, number one, the fact that Mr. Mitchell was not properly licensed. Is that correct?

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that's outside the Protective Order.
THE WITNESS: I will not answer.
MR. MITCHELL: That has nothing to do with his financial information.
MR. SULLIVAN: It doesn't have anything to do with this case either.
MR. MITCHELL: Yes, it does.
MR. SULLIVAN: I am going to object to the question. I will instruct him not to answer.
BY MR. MITCHELL:
Q Do you have a copy of the contract you had with Mr. Thomas?
A No.
Q Do you have a copy of the checks you paid him?
A Checks are no longer copyable, but I have records of all payments.
Q You do have records of all payments?
A Yes.
Q Would you provide that to me?
MR. SULLIVAN: I am again going to object under the Protective Order that this has no relevance to any dock building that occurred in this case. You can talk to the judge.
BY MR. MITCHELL:
Q Did you ever see a license of Mr. Thomas' from

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LLR?
A A license for my construction work, yes.
Q You did see an LLR license?
A I believe so. He is a licensed contractor.
Q I don't know. That's what I'm asking you.
A Yes.
Q And you did see that?
A Yes.
Q Do you recall what he was licensed as?
A No.
Q Do you recall the amount of his license?
A No.
Q To your knowledge did Mr. Masiowski have anything to do with the business or company relating to the remodeling on your house?
A No.
Q Did you review your statement you gave to Officer Hoose before this deposition?
A Yes.
Q When did you do that?
MR. SULLIVAN: Again, I instruct my client not to talk about any review that might have happened while he was with his attorneys.
MR. MITCHELL: I didn't say with his attorneys.
MR. SULLIVAN: I'm just telling my client.

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BY MR. MITCHELL:
Q Did you review this in front of your attorney?
A Yes.
Q This is a statement you gave to the officer, isn't it?
A That is correct.
MR. MITCHELL: So it's not privileged.
MR. SULLIVAN: I was objecting to any questions that might come around the discussions we had around his statement. I agree that the statement with Detective Hoose is not privileged.
BY MR. MITCHELL:
Q And I believe you stated that you canceled your contract with Mr. Mitchell; is that correct?
MR. SULLIVAN: Object to the form of the question.
You can answer.
BY MR. MITCHELL:
Q Well, you delivered the letter saying you canceled the contract.
A I understand. I'm getting ready to answer.
Q Yes, sir.
A The first time that we were finally called to trial was going to be around September of 2006. That trial got deferred, delayed. The next time, they said,

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would possibly be November, December of '06. The solicitor called me and gave me that information. I said can you guarantee that it will take place when he called at that time. She said at that time, no, I can't guarantee it won't get delayed again. So at that time, and it was in November of '06, I said I will not come forth as a witness; I will not be here. The solicitor then made the decision to drop the case, and that was so documented, I believe, on 12-21-06.
Q You said you would not be here in November, I believe?
A I said if she could not guarantee that there would be a trial date, that I would not come back for it. I was going to be out of town. It had then been five years.
Q Well, that was November of '06?
A '06, sir. So it had been five years with no activity. And I questioned the solicitor's priorities. And I just said it wasn't worth coming back and then having it delayed again.
Q When you questioned the solicitor as to why this case had not been tried, what did they tell you?
A There were varying things through the years. But one in '03 was that Mr. Mitchell had been indicted on another charge, and that charge took precedence. And

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they couldn't do anything for that entire period with this case because that charge took precedence.
Q What was that charge; do you know?
A Child molestation.
Q Okay. Are you familiar with the disposition of that case?
A No, I'm not.
Q Why would that case take precedence over your case?
A I'm not aware. That's what I was told by the solicitor.
Q What solicitor told you that?
A The solicitor at the time. I don't know if it was Heyward Carter or the next one. Heyward Carter followed Ed Knisley, and then I forget thereafter.
Q You said the first time this case was called for trial, to your knowledge, was in September of. . .
A Of '06.
Q '06?
A Right.
Q That would have been almost five years later?
A That's correct.
Q During that five years, the case was not called, to your knowledge?
A That's right.

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Q Did anybody ever tell you why?
A As I repeated, that was one reason given in '03 that I recall. I just even stopped communicating thereafter, so no other reasons were given. There were changes in assistant solicitors. I assume it was docket issues and priorities of the solicitor's office.
Q But you did keep in touch with the solicitor's office --
A Yes, I did.
Q -- all of these five years as to getting this case tried?
A Yes, I did.
MR. SULLIVAN: I object to the form of that question.
BY MR. MITCHELL:
Q And you were insistent that he go ahead and try the case up until that point?
MR. SULLIVAN: Object to the form of the question.
A Yes.
Q And you were very unhappy that they didn't, weren't you?
MR. SULLIVAN: Object to the form of the question.
You can answer.

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A Yes.
Q Sir?
A Yes.
Q You wanted Mr. Mitchell prosecuted and put in prison, didn't you?
MR. SULLIVAN: Same objection.
A I wanted justice to prevail.
Q What would your justice be?
A I had no idea as to what the ultimate judgment would be. I just wanted the charges prosecuted so this would not happen to any other person.
Q What was your perception of justice?
A I had no outcome that I ever communicated.
Q Why were you insistent that the case be tried?
MR. SULLIVAN: Object to the form of the question.
A Because I had been harmed, and others would be harmed. And this was wrong, and I wanted it prosecuted.
Q In other words, based on your understanding of what occurred, you felt you had been wronged and you wanted Mr. Mitchell prosecuted?
MR. SULLIVAN: Object to the form.
A That is correct.
Q Sir?
A Yes. I will add that it was not my

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determination. The determination to prosecute was that of the solicitor alone. I merely would have been a witness.
Q No, you were the person that signed the warrant and the affidavit. Is that correct?
MS. FARGNOLI: Object to the form of the question.
MR. SULLIVAN: Object to the form of the question.
A Yes, I signed the warrant.
Q I asked you a few minutes ago -- this is a statement that you gave to Officer Hoose -- if that was a statement you reviewed prior to giving this deposition, and you stated yes. Is that a copy of that statement?
A No, this is the police report. This is not my statement. This is the investigative report by Detective Hoose.
Q Okay. Did you review that report?
A No, I don't recall reviewing that one.
Q Is this your statement?
A Yes.
MR. SULLIVAN: For the record, this appears to be a copy of a statement given by --
MR. MITCHELL: Yes, a copy of a statement.
MR. SULLIVAN: There are highlights and notes

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building business?
A No.
Q Have you ever owned an interest in a company that had an interest in the dock building business?
A No.
Q Have you ever had any interest in having an interest in a dock building business?
A No.
Q I believe we have heard testimony from you today that it's your understanding that the criminal case brought against Mr. Mitchell by the Charleston County solicitor was dismissed sometime in December 2006. Is that correct?
A Yes.
Q And have you done anything since December 2006 to assist the solicitor in any prosecution of any case, criminal case, against Mr. Mitchell?
A No.
Q How much did you pay Mr. Mitchell at that time, you believe, to build this dock for you at the Pignatelli residence?
A The amount paid?
Q Yes.
A $27,000.
Q Do you have any information about whether or

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not those checks were actually cashed?
A They were cashed.
Q Have you ever received any amount of that money back from Mr. Mitchell?
A No.
Q I believe that's all I have for now.
MR. MITCHELL: I just have a couple of questions.

EXAMINATION
BY MR. MITCHELL:

Q This material that was delivered to your job site, did you pay for it?
A No.
Q To your knowledge who paid for it?
A Mr. Mitchell.
Q So you did receive something back of the $27,000 you had paid out, didn't you?
MR. SULLIVAN: Object to the form.
A No.
Q You received the material, didn't you?
A I stated the value of that material was $2,269.
Q That was not my question. You received the material, didn't you?
A I received the material.
Q Then whatever Mr. Mitchell paid for that

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material to the supplier, you would have received at that point in time; would that be correct?
MR. SULLIVAN: Object to the form. You can try to answer. If you don't understand it, ask him.
THE WITNESS: I don't understand.
BY MR. MITCHELL:
Q So you did receive something back?
A Not in my opinion.
Q Well, if the material cost $5,000 or $7,000, and you got the material, would you not be receiving something?
MR. SULLIVAN: Object to the form of the question.
A Those values are highly inflated.
Q That was not my question. My question was regardless of the value of the material, if you received the material if it had a monetary value, you received that value; did you not?
MR. SULLIVAN: Object to the form of the question.
A Yes.
Q Sir?
A Yes.
Q So your prior statement that you received nothing is not true?

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A I said I did not receive a refund of my $27,000.
Q I don't believe you were asked that.
MR. SULLIVAN: Object to the form of the question. Do you have a question?
MR. MITCHELL: No, I don't have any more questions.

FURTHER EXAMINATION
BY MS. FARGNOLI:

Q I have one more, I think. I want to make sure I understand. Can you explain the reasons for the dismissal of the charges against Mr. Mitchell?
A The only reason for dismissal was that the solicitor could not guarantee when a trial date would take place. And after November of '06 I could physically not be there unless I knew a specific date.
Q The charges were not dismissed because you felt Mr. Mitchell was not guilty of the charges? Is that a fair statement?
A That is fair.
MS. FARGNOLI: That's all I have.
MR. SULLIVAN: I just have one to clean up some testimony from before.

KNISLEY Dep.

Q. Going back to the beginning, you spoke with a detective whose -- I'm going to show you what -- now, this has been -- this is a document that has been produced or made an exhibit of. It is part of what was marked as Defendant's Exhibit No. 17. That is page five from that.

MR. DUFFY: Marked in a different?

MR. SULLIVAN: Yes. It was marked as an exhibit to Mr. Mitchell's deposition. As opposed to making new exhibits, I'm just going to refer to them as exhibits from the past deposition, to the extent I use those exhibits. If that's okay with everybody.

MR. DUFFY: You sure it's from Mitchell's deposition?

MR. SULLIVAN: Yes. It's from Mr. Mitchell's deposition.

MR. DUFFY: This is only one page.

MR. SULLIVAN: Yes. Well, you have the whole -- I'm only showing him one page.

BY MR. SULLIVAN:

Q. Do you recognize that at all?

A. I do.

Q. And I'm specifically pointing to the entry for the date of October 22, 2001. It looks to me like Detective Hoose has gotten in touch with the

Solicitor's Office and then the Solicitor's Office asked Detective Hoose to fax over a copy of his file. Is that about accurate?

A. That's accurate, yes.

Q. On 10/25, Detective Hoose makes an entry that he had spoken with you. Does that sound accurate?

A. That's accurate.

Q. Have you had a chance to review the file that was faxed over from -- as far as you remember, had you had a chance to review the file that Detective Hoose had faxed over?

A. I did, yes.

Q. Between 10/22/01 and 10/25/01 you had a chance to review the file that Detective Hoose had faxed over in relation to this case?

A. Yes.

Q. I am going to make this -- take a look at this for a second and tell me if you recognize it?

A. Yes, I do.

MR. SULLIVAN: I would like to mark that Defendant's Exhibit No. 20. I'm just going to go chronologically.

(DFT. EXH. 20, Proposal and Acceptance, was marked for identification.)

BY MR. SULLIVAN:

Q. If you look at the very top there, it appears to me that this was part of a fax from the Mount Pleasant Police Department. Is that about right to you?

A. That's what it appears to be, yes.

Q. What's the date that's listed there?

A. October 23, '01.

Q. I'll represent to you that I got this document from the solicitor's file, so it looks to me like this document was faxed to the Solicitor's Office from the Mount Pleasant Police Department on October 23, 2001. Does that sound reasonable?

A. It does.

Q. Can you tell me, just from what you remember and in reviewing the document, what this document is?

A. This appears to be the original Proposal and Acceptance of contract that Mr. Helwig entered into with Mr. Mitchell's company for the dock and the payment arrangements pursuant to that contract.

Q. What's the payment arrangement, according to this document?

A. According to the contract, payment of one-third was due upon signing the agreement, a

payment of one-third upon delivering, a payment of one-half of the remaining balance upon completion of half of the work, and then the balance in full upon completion of the work.

Q. And the total of the contract is what?

A. It says $40,500.

Q. It's signed by what appears to be Bill Mitchell, and I'll just represent to you that Mr. Mitchell has admitted in his deposition that he did sign this; and Mr. Helwig has admitted that that is, in fact, his signature at the bottom there, just to let you know.

A. Okay.

Q. At this point we have the file faxed from the Mount Pleasant Police Department. You had spoken with Detective Hoose; correct? When I say "at this point," I'm talking the late October timeframe, 2001.

A. Correct.

Q. They fax over a file. Part of this file is the proposal that Mr. Helwig and Mr. Mitchell had to -- or the contract they had entered into for Mr. Mitchell to build the dock for Mr. Helwig; correct?

A. Correct.

Q. You received all this before even talking

10:25AM 1 Regulation, and it's addressed to Mr. Helwig. And can
10:25AM 2 you tell me a little bit about the contents of the
10:25AM 3 letter that you remember and after reviewing the
10:25AM 4 document?
10:25AM 5 **A. As part of this matter, I remember there**
10:25AM 6 **was an issue as to whether Mr. Mitchell was properly**
10:25AM 7 **licensed by the state to perform contracting, the**
10:25AM 8 **contracting work of this nature. Mr. Helwig at some**
10:25AM 9 **point had gotten in touch with the Contractors'**
10:26AM 10 **Licensing Board to make inquiries about this. And the**
10:26AM 11 **August 28, 2001, letter from Stan Bowen, who's an**
10:26AM 12 **investigator at the Contractors' Licensing Board,**
10:26AM 13 **indicated that Mr. Mitchell was currently licensed at**
10:26AM 14 **least as of August 28 of 2001 as a General Contractor**
10:26AM 15 **and Marine Specialty Contractor with a license**
10:26AM 16 **limitation of $30,000 per job. The second letter,**
10:26AM 17 **dated September 10, 2001, also from Stan Bowen at the**
10:26AM 18 **Contractors' Licensing Board to Mr. Helwig, indicates**
10:26AM 19 **that Bill Mitchell was first issued a General**
10:26AM 20 **Contractors License on June 6 of 2001.**
10:26AM 21 Q. Have you ever dealt with Stan Bowen before
10:26AM 22 this case?
10:26AM 23 **A. I don't believe I've dealt with him before**
10:26AM 24 **this case. I did have some telephone conversations**
10:27AM 25 **with him during the pendency of this case, though.**

10:27AM 1 Q. So from these two documents, you're
10:27AM 2 reviewing these documents in your official capacity
10:27AM 3 for the Solicitor's Office, and you're reading these
10:27AM 4 two documents, and the document from August 28 is
10:27AM 5 information from Stan Bowen that Mr. Mitchell's
10:27AM 6 license limits him to jobs of $30,000 or less;
10:27AM 7 correct?
10:27AM 8 **A. Correct.**
10:27AM 9 Q. We looked at the proposal. The total
10:27AM 10 value of the dock Mr. Mitchell had agreed to build for
10:27AM 11 Mr. Helwig was $40,500?
10:27AM 12 **A. Correct.**
10:27AM 13 Q. So after looking at this document, as a
10:27AM 14 solicitor, you have facts in front of you that the
10:27AM 15 contract that Mr. Mitchell had signed is, in fact,
10:27AM 16 greater than the limitation of his license, at least
10:27AM 17 as far as the information that Stan Bowen has
10:28AM 18 provided. Does that sound accurate?
10:28AM 19 **A. Correct. And that he was not licensed --**
10:28AM 20 **it did not appear he was licensed at the time he**
10:28AM 21 **entered into the contract with Mr. Helwig.**
10:28AM 22 Q. Right. And that's the September 10, 2001,
10:28AM 23 letter that's part of Exhibit 22?
10:28AM 24 **A. Correct.**
10:28AM 25 Q. Would the Contractors' Licensing Board of

10:28AM 1 the LLR be an office that the solicitor could
10:28AM 2 reasonably rely upon for facts?
10:28AM 3 **A. Absolutely.**
10:28AM 4 Q. So after reviewing these two facts, the
10:28AM 5 Solicitor's Office believes, based upon reasonable
10:28AM 6 reliance of the LLR, that Mr. Mitchell was not
10:28AM 7 licensed at the time of the contract, and further,
10:28AM 8 that even when he did become licensed, on June 6,
10:28AM 9 2001, his license did not cover docks greater than
10:28AM 10 $30,000 in value. Is that correct?
10:28AM 11 **A. That's correct.**
10:28AM 12 Q. Again, this file was faxed to you on
10:28AM 13 October 23, and this was before the Solicitor's Office
10:28AM 14 has had any direct contact with Mr. Helwig; correct?
10:29AM 15 **A. To the best of my recollection, yes.**
10:29AM 16 Q. Just a general question: After getting
10:29AM 17 this file and reviewing this file, did you have a
10:29AM 18 chance to review Mr. Mitchell's criminal record?
10:29AM 19 **A. I did.**
10:29AM 20 Q. Tell me what you remember about that
10:29AM 21 review, if anything.
10:29AM 22 **A. As I recall Mr. Mitchell's criminal**
10:29AM 23 **record, it appeared to me, with all due respect to**
10:29AM 24 **Mr. Mitchell, that he was a career criminal and con**
10:29AM 25 **artist. He had a very lengthy history of property**

10:29AM 1 **convictions. I think he had a federal conviction**
10:29AM 2 **sometime in the 1970s. More relevant was a litany of**
10:29AM 3 **criminal felony charges that were brought in Beaufort**
10:29AM 4 **County after some multiyear period in the '90s, I**
10:30AM 5 **believe, for the exact same type of scheme, where he**
10:30AM 6 **would entered into an agreement to build a dock for**
10:30AM 7 **someone, he would take cash payment for the work, and**
10:30AM 8 **either not complete the work or just run off with the**
10:30AM 9 **money, and it appeared to be that this was his MO for**
10:30AM 10 **some substantial period of time in Beaufort County,**
10:30AM 11 **and that he had moved on to Charleston County.**
10:30AM 12 Q. Now, is that normal practice, for the
10:30AM 13 Solicitor's Office to do a check of the criminal
10:30AM 14 record of an individual who's been accused of a crime?
10:30AM 15 **A. It is. And particularly in a case like**
10:30AM 16 **this, where one of the elements of the offense is a**
10:30AM 17 **fraudulent intent, seeing that same pattern of conduct**
10:31AM 18 **in the past is certainly relevant to the element of**
10:31AM 19 **fraudulent intent, as opposed to a mistake or**
10:31AM 20 **something of that nature.**
10:31AM 21 Q. How about conversations with Stan Bowen?
10:31AM 22 Did you have any conversation with Stan Bowen after
10:31AM 23 looking at these documents?
10:31AM 24 **A. I did, yes.**
10:31AM 25 Q. Do you remember anything about any

specifics about conversations with him?

A. No specifics, other than just some discussion of confirming the licensure dates and license limitations and I believe some history of complaints to the Contractors' Board by other individuals.

Q. Show you this and tell me -- I'll represent to you, I got this from the solicitor's file. I really don't know whether it became part of the file while you were there or after you had left. So if you don't recognize it, I won't ask you any questions about it.

A. I don't recognize it.

MR. SULLIVAN: For the record, it's handwritten notes that were provided by the Solicitor's Office through a request for their file. Because the witness doesn't recognize it, I'm going to assume it may have been written after he had left, so I'm not going to ask the witness about it. You're welcome to hang on to and ask the witness questions about it later, if you want, Mr. Mitchell.

BY MR. SULLIVAN:

Q. Going back to what was marked as Exhibit 17, the record -- I believe you might have it underneath all that. Looking at the date entry for

October 25, 2001, can you just read it out loud for me, please?

A. 10/25/01. "I spoke to Mitchell." This is Detective Hoose writing this. Detective Hoose wrote: "I spoke to Mitchell and advised him that the Solicitor's Office was reviewing the case. Later this date I spoke to Ed Knisley and he advised that there was probable cause to charge Mitchell with obtaining money by false pretenses."

Q. Do you remember that conversation?

A. Generally, yes.

Q. Is that accurate, that you did, in fact, advise Detective Hoose that the Solicitor's Office believed there was probable cause to charge Mr. Mitchell with obtaining signature by false pretenses?

A. Obtaining money by false pretenses, yes.

Q. Obtaining money by false pretenses, excuse me. That's dated October 25. Is there any reason for you to disagree with the date of that entry as far as the date of that phone call that took place?

A. No, no reason.

Q. Do you agree with me that that phone call occurred after you had reviewed the documents that have been sent to you October 23, 2001?

A. That's correct.

Q. So after reviewing the proposal that we've marked as Exhibit 20 for $40,500, signed by Mr. Helwig and Mr. Mitchell, after reviewing the checks that we have marked as Exhibit 21 and Exhibit 9, indicating that Mr. Helwig had, in fact, paid Mr. Mitchell two-thirds of the contract price according to the agreement, and after reviewing the correspondence from Stan Bowen from the LLR, indicating that Mr. Mitchell did not have a license at the time of the contract, and even when he did have a license, it was limited to $30,000, after reviewing all those documents, that is when the Solicitor's Office determined that there was probable cause to charge Mr. Mitchell for obtaining money by false pretenses. Is that accurate?

A. That's accurate.

Q. Again, this is all occurring before the Solicitor's Office, as far as you can remember, had any direct contact with Mr. Helwig?

A. Correct.

Q. I'm going to show you a document that's been previously marked as Exhibit 18 to Mr. Mitchell's deposition. It's a copy of the actual statute for the charge of obtaining a signature or property by false pretenses, and it's Section 16-13-240. Are you

familiar with this statute?

A. Yes, I am.

Q. You've talked a little bit about false pretense, and that's the first -- well, I'll just read it out loud for the court reporter. "A person who by false pretense or representation obtains a signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of," and then there are three classes.

You talked a little bit about the false pretense. In your capacity at the Solicitor's Office, working for the Solicitor's Office, what about the facts that we have already talked about led the Solicitor's Office to believe there was probable cause that Mr. Mitchell had, in fact, made a false pretense or representation to Mr. Helwig?

A. The elements of the offense, to break down the elements, one of the elements is a false representation; the other element is an inducement; and then, finally, actually obtaining the money or the property; and then, finally, the fourth element, I guess, is the attempt to defraud. There would appear to be at least two key false representations made by

10:37AM 1 **Mitchell to Mr. Helwig in this matter, the first**
10:37AM 2 **simply being the representation that he would, in**
10:37AM 3 **fact, perform the work that was contracted, when, in**
10:37AM 4 **fact, it appeared that he did not perform the work**
10:37AM 5 **that was contracted. Another false representation, as**
10:37AM 6 **I recall, from the case was an allegation that**
10:37AM 7 **Mr. Mitchell had shown Mr. Helwig a dock somewhere in**
10:37AM 8 **Mount Pleasant and indicated that he had built that**
10:38AM 9 **dock, and the intent there appeared to be to show the**
10:38AM 10 **nature/quality of his work; and it was later**
10:38AM 11 **determined that the dock that Mitchell showed to**
10:38AM 12 **Mr. Helwig was, in fact, not built by Mitchell but by**
10:38AM 13 **another dock contractor. So those are two of the**
10:38AM 14 **false representations that were made.**
10:38AM 15 **Q.** Obviously we have the contract, so there
10:38AM 16 was, in fact, a signature obtained by Mr. Mitchell.
10:38AM 17 It's indisputable that Mr. Helwig did, in fact, sign
10:38AM 18 the contract; correct?
10:38AM 19 **A. Correct.**
10:38AM 20 **Q.** And we've also looked at the checks, and
10:38AM 21 it's indisputable, and I'll represent to you that
10:38AM 22 Mr. Helwig hasn't denied that he, in fact, cashed the
10:38AM 23 checks that amounted to two-thirds of the contract;
10:38AM 24 correct?
10:38AM 25 **A. Correct.**

10:38AM 1 **Q.** You talked a little bit about how the
10:39AM 2 Solicitor's Office would determine intent. You talked
10:39AM 3 a little bit about a review of the criminal record and
10:39AM 4 how that could assist the Solicitor's Office in that
10:39AM 5 determination. If you could just repeat that for me?
10:39AM 6 **A. Sure. You know, the criminal record, if**
10:39AM 7 **there's a history of a particular MO or scheme,**
10:39AM 8 **history of the same sort of thing, that's certainly**
10:39AM 9 **relevant to that element. That standing alone may or**
10:39AM 10 **may not be enough. But in any case, when you have**
10:39AM 11 **cases like this, probably the key thing here, aside**
10:39AM 12 **from the criminal history that indicated the intent to**
10:39AM 13 **defraud or cheat, was the fact that no construction**
10:39AM 14 **whatsoever, as I recall, had occurred. I believe he**
10:39AM 15 **delivered some materials to the jobsite. And**
10:39AM 16 **Mr. Helwig was living out of state at the time, and I**
10:39AM 17 **don't believe -- because of that, I don't believe he**
10:40AM 18 **had the ability to monitor on a regular basis what was**
10:40AM 19 **going on with the construction.**
10:40AM 20 **But in any case, he had paid a significant**
10:40AM 21 **portion of the $40,500 contract value to Mitchell, and**
10:40AM 22 **very little or no work had ever been performed. That**
10:40AM 23 **alone, I felt, was sufficient evidence of an intent to**
10:40AM 24 **defraud. The converse would be, if he had partially**
10:40AM 25 **performed the work. And when you get into that**

10:40AM 1 **situation, say he completed 50 percent of the work and**
10:40AM 2 **50 percent of the payment had been made, it's hard to**
10:40AM 3 **discern or certainly prove beyond a reasonable doubt**
10:40AM 4 **an intent to defraud, when you have a situation like**
10:40AM 5 **that. This case, though, is far and away very**
10:41AM 6 **different than that. This seemed clear that this was**
10:41AM 7 **a fraudulent act. And when you couple those facts**
10:41AM 8 **with his criminal history and with the allegations**
10:41AM 9 **made down in Beaufort on a number of occasions, it**
10:41AM 10 **dovetailed in nicely as to the typical crimes that he**
10:41AM 11 **had been convicted of in the past.**
10:41AM 12 **Q.** So as the assistant solicitor at that
10:41AM 13 time, you believed you had the facts and
10:41AM 14 circumstances, considering everything that you had
10:41AM 15 been provided by the Mount Pleasant Police Department,
10:41AM 16 that Mr. Mitchell was guilty of obtaining a signature
10:41AM 17 of property by false pretenses?
10:41AM 18 **A. Correct.**
10:41AM 19 **Q.** And in your mind and as the assistant
10:41AM 20 solicitor, was that a reasonable belief?
10:41AM 21 **A. Absolutely.**
10:41AM 22 **Q.** I'm going to show you this document. It
10:41AM 23 has been previously marked as Exhibit 15 to
10:41AM 24 Mr. Mitchell's deposition. Tell me if you recognize
10:42AM 25 that?

10:42AM 1 **A. I do.**
10:42AM 2 **Q.** Tell me what that is, please.
10:42AM 3 **A. This is arrest warrant G-248424, charging**
10:42AM 4 **Bill Mitchell with obtaining money by false pretenses**
10:42AM 5 **in an amount greater than $5,000. It's signed by**
10:42AM 6 **Judge Mel Coleman, who's a Mount Pleasant municipal**
10:42AM 7 **judge, and it was served on Bill Mitchell on 12/12 of**
10:42AM 8 **'01.**
10:42AM 9 **Q.** Tell me a little bit about the magistrate
10:42AM 10 judge's role in this, signing this arrest warrant.
10:42AM 11 **A. Basically the role of the issuing judge is**
10:42AM 12 **to make an initial determination based upon the facts**
10:42AM 13 **presented. There's an affidavit that would be**
10:42AM 14 **attached to this that would set forth the facts,**
10:43AM 15 **establishing probable cause. The affiant, in this**
10:43AM 16 **case it was Mr. Helwig, would have been placed under**
10:43AM 17 **oath and would acknowledge to the judge the facts in**
10:43AM 18 **the affidavit were correct to the best of his**
10:43AM 19 **knowledge at the time, and the judge would have the --**
10:43AM 20 **would be in the position of determining whether those**
10:43AM 21 **amounted to sufficient probable cause to issue the**
10:43AM 22 **arrest warrant.**
10:43AM 23 **Q.** So the judge has a role in determining
10:43AM 24 whether there's probable cause to validate this arrest
10:43AM 25 warrant?

10:43AM A. **Correct.**

10:43AM Q. Would the judge have occasion to, in a typical situation, occasion to speak to any law enforcement officers before issuing this arrest warrant?

10:43AM A. **Yes, that would be possible. The slightly unique thing about this, back at the time, Mount Pleasant Police Department, they were -- they would, in some of these financial-type cases, as I call it, Mount Pleasant had a practice of having a victim sign an arrest warrant as an affiant from time to time, as opposed to a law enforcement officer. That was simply the practice of that agency at the time. It was not common practice among other agencies, but Mount Pleasant tended to do that from time to time.**

10:44AM Q. Moving along, I have two documents to show you that have been marked at Defendant's Exhibit 16 to Mr. Mitchell's deposition. Take a look at those real quickly, please.

10:45AM A. **Yes.**

10:45AM Q. Can you tell me if you recognize them or are familiar with them?

10:45AM A. **I do.**

10:45AM Q. Tell me a little bit about the first page. It's titled Indictment for Obtaining Signature or

10:45AM Property under False Pretenses, more than Second Property Offense.

10:45AM A. **This is the body of the indictment that was presented to the February 4, 2002, Grand Jury in Charleston County, alleging the elements of the offense, and alleging that the offense violated 16-13-240, the statute dealing with obtaining a signature or property under false pretenses.**

10:46AM Q. This is a determination made by a grand jury?

10:46AM A. **The body of the indictment was prepared by my office. I signed the indictment. It went before the grand jury, and it was true billed and signed by the foreperson.**

10:46AM Q. And I was going to ask that. The second page of that document, we do have the signature of one, looks like, Judy Cavanaugh, the foreperson of the grand jury. So tell me what -- I don't do much criminal work. If you could, if you would, explain what process this starts. Once you have a grand jury and then a true bill, just explain a little bit what that process is.

10:46AM A. **Sure. Bringing a criminal case in the Court of General Sessions to go forward and be initiated as a criminal case in the court system, it**

10:46AM **occurs by one of two ways. Well, there always has to**
10:47AM **be a grand jury indictment. Again, this is just in**
10:47AM **General Sessions Court. There's always a grand jury**
10:47AM **indictment. That grand jury indictment can be one of**
10:47AM **two forms. It can either be based upon an arrest**
10:47AM **warrant, which in this case it was based upon an**
10:47AM **arrest warrant that we referenced earlier; or the**
10:47AM **solicitor can prepare what's known as a direct**
10:47AM **indictment, and that is where, without someone being**
10:47AM **arrested, the solicitor presents facts to the grand**
10:47AM **jury, and if the grand jury returns a true bill on the**
10:47AM **direct indictment, a warrant is issued subsequent to**
10:47AM **that. That's commonly done as sort of a follow-up in**
10:47AM **other cases. I believe, perhaps in this case, at some**
10:47AM **point there may have been a direct indictment,**
10:47AM **prepared dealing with the violation of the licensing**
10:47AM **statutes, but I'm not certain of that. But anyway, in**
10:47AM **this case, on the second page of the indictment under**
10:47AM **witnesses, it shows that Detective Hoose of Mount**
10:47AM **Pleasant was the grand jury witness, and so it appears**
10:48AM **that Detective Hoose testified before the grand jury**
10:48AM **to the facts of this case.**

10:48AM Q. So the grand jury based at least part of its decision on testimony from Detective Hoose?

10:48AM A. **The grand jury based its decision on the**

10:48AM **facts that I put in the indictment that I prepared and**
10:48AM **on the testimony of Detective Hoose, yes.**

10:48AM Q. You say a case is then brought against Mr. Mitchell. Who's bringing the case?

10:48AM A. **The State of South Carolina brings the case. There's a statute in South Carolina that states that all criminal actions are brought by the State as a party against an individual.**

10:48AM Q. So we're not talking about Mr. Helwig isn't bringing this case against Mr. Mitchell; it's the State?

10:48AM A. **That's correct.**

10:48AM Q. I don't think I have a whole lot more for you. Just looking at those two documents, the indictment and the true bill for the indictment, does it appear to you that Mr. Helwig's signature appears on either of those documents?

10:49AM A. **No, sir. A victim of a crime would never be required to endorse or approve of anything with a grand jury indictment. That would never be the case.**

10:49AM Q. I just have one more document for you here. This is a new document, so take a look at it, and if you recognize it, I'll make an exhibit out of it; if not, I want to ask you any questions about it.

10:49AM A. **I do recognize this, yes.**

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raised basically in Ohio.
Q Where did you move here from, Ohio?
A I moved here from Princeton, New Jersey.
Q What did you do in New Jersey, Mr. Helwig?
A I worked for Bristol-Myers Squibb.
Q Were you one time CFO for General Electric Corporation?
A I was a manager for finance for the appliance business in Louisville, Kentucky. I held various other positions for GE, but that was my last position.
Q When you were in New Jersey what was your position?
A I was senior vice president of finance for the pharmaceutical business of Bristol-Myers Squibb.
Q As senior financial officer, what did that job description entail?
A I was in charge of all financial matters affecting the business.
Q Were you in charge of payment of bills, receivables, payables, things of that nature?
A I had people that worked for me that were responsible for that, but all of that came under the financial organization.
Q Any disputes, et cetera, that would be your responsibility to settle those, as far as if there was a

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dispute of payments, either a receivable or a payable?
A Generally not. That would have been handled by my management.
Q Did you deal with any of the contracts with any of your --
A Only if there was a significant high level issue.
Q What is your educational background, Mr. Helwig?
A I have a bachelor of science, major in finance from Bowling Green State University in Ohio.
Q Regarding the dispute of the contract between you and Mr. Mitchell, who was your attorney at that time?
A At that time it was Dennis O'Neill.
Q It wasn't a Mr. Phelps with his office?
A No.
Q It was Mr. O'Neill?
A Yes.
Q Did you make a complete and full disclosure of all the facts and documents in this case to Mr. O'Neill?
MR. SULLIVAN: I object to that. That would fall under attorney-client privilege.
MR. MITCHELL: He disclosed the information, it's attorney-client privilege.
MR. SULLIVAN: The second you start going into

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the material, any discussion, I will object and instruct the witness not to answer the question.
BY MR. MITCHELL:
Q Are you familiar with the difference between a criminal case and a civil case?
MR. SULLIVAN: Object to the form of the question.
You can answer.
A Yes.
Q In your position as chief financial officer, did you deal with any disputes and contracts as far as the payments and the terms in the agreement of the contract?
A Not specifically.
Q Who did you contact at the -- who contacted the Mount Pleasant Police Department on your behalf to make this initial report?
MR. SULLIVAN: Object to the form of the question.
THE WITNESS: Do I answer?
MR. SULLIVAN: Answer it the best you can.
A My attorney at that time, Dennis O'Neill.
Q Mr. O'Neill contacted them on your behalf?
A On his recommendation, attorney's recommendation.

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Q What did he recommend?
A I first met with Mr. O'Neill on September 10, '01. His recommendation at that time was that the contract was null and void. He recommended that a letter be sent to Mr. Mitchell outlining the situation and calling for a refund of amounts paid. And that determining what happened then, he would then look at other alternatives in terms of a course of action.
Q What was your understanding of why the contract was null and void?
A The contract was null and void because Mr. Mitchell was not licensed at the time the contract was entered into, and that was the principal reason it was null and void.
Q Are you familiar with the South Carolina general contractors and marine contractors statutes?
A I am not familiar with the statutes. I'm familiar with the licensing board.
Q In what respect?
A I had contacted Mr. Stan Bowen at the licensing board on October -- August 3 of '01.
Q Who is Mr. Stan Bowen?
A He is an officer or representative within that organization. I don't know his title.
Q Would he have been an investigator?

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A I don't know. No, I don't believe so, but I don't know his title.
Q Yes, sir. Did you file a complaint with LLR?
A I did not file any complaints at that time. Attorney had recommended that any complaints would be filed based on the response from the letter that was sent on September 17.
Q Let me repeat the question. Did you file a complaint with the LLR?
A I did not, no.
Q Never?
A Not to my knowledge, no.
Q Did anyone else on your behalf file a complaint with the LLR?
A Not to my knowledge.
Q You never received a copy of a complaint or the results of a complaint being filed on your behalf from LLR?
A No, I didn't.
Q When Mr. O'Neill contacted the Mount Pleasant Police Department, what happened?
MR. SULLIVAN: Object to the form of the question.
A He arranged for a meeting with them, and I believe that was around October 15 of '01.

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Q When did he contact them?
A I'm not sure. A week before.
Q A week or so before?
A Right.
Q Where was that meeting to take place?
A It took place in his office.
Q At his office. You did not go to Officer Hoose's office?
A No, I did not. Not at that time. I went the second time. When I had to give a written summary I went to his office.
Q And at the meeting at Mr. O'Neill's office did you give a statement, either oral or written?
A Detective Hoose was not there initially. It was a woman detective. I don't recall her name. She just did the initial investigative to see if there were enough facts to carry forward. Then they set up a meeting with Detective Hoose separately.
Q Where was that meeting?
A I believe that was at the police headquarters.
Q And at that meeting did you give a written statement?
A Then I gave a written statement.
Q At the meeting with this initial officer, you gave an oral statement?

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A Yes, she was asking questions, and I was responding.
Q But no written statements?
A No.
Q Did you ever give more than one written statement to the Mount Pleasant Police Department?
A No, just one.
Q Just the one. Did the officer -- you said it was a lady officer that came the first time?
A On the initial time.
Q Did she have a conversation with your attorney at that time?
A The three of us were together in the same room.
Q The whole time she was there?
A Yes.
Q To the best of your knowledge, did you provide a complete and full disclosure of all the facts of the case to the officer?
A Yes, I did.
Q Did you provide a complete and full disclosure of all the facts to Officer Hoose at the second meeting?
A Yes.
Q At that point in time you had canceled your contract with Mr. Mitchell?
A That is correct. I canceled it on August 6.

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Q How did you cancel it?
A I had written a letter. And I met Mr. Mitchell at the dock on Adrian Way, and I handed it to him personally.
Q Had you talked to Mr. Mitchell prior to that about canceling your contract?
A There were many phone calls and visits to Adrian Way to try to locate Mr. Mitchell which went unresponded to and unable to locate. I was informed he would be there on August 6. I immediately went over and had had the letter prepared to give to him.
Q Who prepared the letter for him?
A I did.
Q Who told you that Mr. Mitchell was going to be at the Adrian Way project on August 6?
A Mike Masiowski.
Q How do you know Mr. Makowski (sic)?
A Initially -- it's just purely a coincidence -- when we were looking for homes in Mount Pleasant before April '01, we happened to look at the house that was being built for him. He was considering selling the house if he could sell it. Otherwise, he was going to live in it. Coincidentally, we met him during a tour with our realtor at the house.
I didn't meet him again until July 10 when

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case. I mainly worked with the solicitor after the solicitor became involved. Dennis O'Neill had very little to do after that point.
Q So you are saying from 2001 to 2006, whatever Mr. O'Neill did was free?
A He did not bill me.
Q Did you pay Mr. O'Neill any monies for that service during that time?
A No.
Q So he would have donated that service for free?
MR. SULLIVAN: Objection.
A He did not bill me.
Q During Mr. O'Neill's representing you during this matter with Mr. Mitchell, did he discuss with you all of the occurrences in the matter on a current basis?
MR. SULLIVAN: Object to the form of the question.
A Could you rephrase? I don't understand the question.
Q If he was told something by Officer Hoose, would he relay that information to you?
A We had periodic phone calls, but they were very limited. Naturally, he would inform me if something had occurred, yes.
Q Did anybody, Detective Hoose or Attorney

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O'Neill, ever inform you that the solicitor's office had stated that this case was a civil matter, not a criminal matter?
MR. SULLIVAN: Object to the form of the question. I am objecting based on attorney-client privilege. I will tell Mr. Helwig not to answer any questions about what Mr. O'Neill talked to him about, the substance of.
BY MR. MITCHELL:
Q Okay. My question then is did anyone tell you or inform you that the solicitor's office had previously stated this was a civil matter, not a criminal matter?
MR. SULLIVAN: Again, if anyone includes his attorney, I will object on attorney-client privilege.
A I will answer.
Q Did anybody else besides your attorney?
A No. The solicitor, Ed Knisley, determined that it was a criminal matter.
Q Did anyone advise you that the matter had been reviewed by someone at the solicitor's office before the meeting with Mr. Knisley?
A No.
Q Did you ever contact Officer Hoose, or to your knowledge did anyone contact Officer Hoose inquiring as to why the warrant had not been issued sooner?

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A No.
Q So at this meeting with the solicitor's office, did you make a statement to the solicitor's office?
A No formal statement.
Q Did you make an oral statement?
A He had my written statement from the police report. That was my formal statement.
Q Did you contribute anything to that at this meeting?
A It was just a review of the case, all the facts that were on the table.
Q What other facts was on the table?
A I will repeat again, the fact that Mr. Mitchell was not licensed at the time that he entered into the contract, that there was misrepresentation of property and work to be performed, that two checks for $13,500 each had been written and paid to Mr. Mitchell, and my written summary of report to the police.
Q How do you know that Mr. Mitchell wasn't licensed at that time?
A I was informed by phone and then by letter from Mr. Bowen from the South Carolina State Licensing Board that Mr. Mitchell was not licensed on April 18 when we entered into the contract. He wasn't licensed until June 6 of '01. At that time it was for only the maximum

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amount of $30,000.
Q You were provided this in the form of a letter from who?
A From Mr. Bowen at the South Carolina State Licensing Board.
Q I thought you testified earlier you didn't receive any documents from there?
A I don't believe I did.
Q Did you receive anything else from them?
A Just that letter.
Q Just that letter?
A Right.
Q Did you ever receive a copy of a -- you said that was from Mr. Stan Bowen?
A Yes.
Q Have you ever seen these documents?
A No.
Q Is this a copy of the letter you received from Mr. Bowen?
A No, this is not the letter. He documented the fact that he was not licensed in a different letter. This is the letter that he informed -- that he had written to Mr. Mitchell on that date, August 13, 2001, informing him of a violation.
MR. SULLIVAN: Are you going to make these

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LLR?
A A license for my construction work, yes.
Q You did see an LLR license?
A I believe so. He is a licensed contractor.
Q I don't know. That's what I'm asking you.
A Yes.
Q And you did see that?
A Yes.
Q Do you recall what he was licensed as?
A No.
Q Do you recall the amount of his license?
A No.
Q To your knowledge did Mr. Masiowski have anything to do with the business or company relating to the remodeling on your house?
A No.
Q Did you review your statement you gave to Officer Hoose before this deposition?
A Yes.
Q When did you do that?
MR. SULLIVAN: Again, I instruct my client not to talk about any review that might have happened while he was with his attorneys.
MR. MITCHELL: I didn't say with his attorneys.
MR. SULLIVAN: I'm just telling my client.

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BY MR. MITCHELL:
Q Did you review this in front of your attorney?
A Yes.
Q This is a statement you gave to the officer, isn't it?
A That is correct.
MR. MITCHELL: So it's not privileged.
MR. SULLIVAN: I was objecting to any questions that might come around the discussions we had around his statement. I agree that the statement with Detective Hoose is not privileged.
BY MR. MITCHELL:
Q And I believe you stated that you canceled your contract with Mr. Mitchell; is that correct?
MR. SULLIVAN: Object to the form of the question.
You can answer.
BY MR. MITCHELL:
Q Well, you delivered the letter saying you canceled the contract.
A I understand. I'm getting ready to answer.
Q Yes, sir.
A The first time that we were finally called to trial was going to be around September of 2006. That trial got deferred, delayed. The next time, they said,

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would possibly be November, December of '06. The solicitor called me and gave me that information. I said can you guarantee that it will take place when he called at that time. She said at that time, no, I can't guarantee it won't get delayed again. So at that time, and it was in November of '06, I said I will not come forth as a witness; I will not be here. The solicitor then made the decision to drop the case, and that was so documented, I believe, on 12-21-06.
Q You said you would not be here in November, I believe?
A I said if she could not guarantee that there would be a trial date, that I would not come back for it. I was going to be out of town. It had then been five years.
Q Well, that was November of '06?
A '06, sir. So it had been five years with no activity. And I questioned the solicitor's priorities. And I just said it wasn't worth coming back and then having it delayed again.
Q When you questioned the solicitor as to why this case had not been tried, what did they tell you?
A There were varying things through the years. But one in '03 was that Mr. Mitchell had been indicted on another charge, and that charge took precedence. And

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they couldn't do anything for that entire period with this case because that charge took precedence.
Q What was that charge; do you know?
A Child molestation.
Q Okay. Are you familiar with the disposition of that case?
A No, I'm not.
Q Why would that case take precedence over your case?
A I'm not aware. That's what I was told by the solicitor.
Q What solicitor told you that?
A The solicitor at the time. I don't know if it was Heyward Carter or the next one. Heyward Carter followed Ed Knisley, and then I forget thereafter.
Q You said the first time this case was called for trial, to your knowledge, was in September of. . .
A Of '06.
Q '06?
A Right.
Q That would have been almost five years later?
A That's correct.
Q During that five years, the case was not called, to your knowledge?
A That's right.

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Q Did anybody ever tell you why?
A As I repeated, that was one reason given in '03 that I recall. I just even stopped communicating thereafter, so no other reasons were given. There were changes in assistant solicitors. I assume it was docket issues and priorities of the solicitor's office.
Q But you did keep in touch with the solicitor's office --
A Yes, I did.
Q -- all of these five years as to getting this case tried?
A Yes, I did.
MR. SULLIVAN: I object to the form of that question.
BY MR. MITCHELL:
Q And you were insistent that he go ahead and try the case up until that point?
MR. SULLIVAN: Object to the form of the question.
A Yes.
Q And you were very unhappy that they didn't, weren't you?
MR. SULLIVAN: Object to the form of the question.
You can answer.

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A Yes.
Q Sir?
A Yes.
Q You wanted Mr. Mitchell prosecuted and put in prison, didn't you?
MR. SULLIVAN: Same objection.
A I wanted justice to prevail.
Q What would your justice be?
A I had no idea as to what the ultimate judgment would be. I just wanted the charges prosecuted so this would not happen to any other person.
Q What was your perception of justice?
A I had no outcome that I ever communicated.
Q Why were you insistent that the case be tried?
MR. SULLIVAN: Object to the form of the question.
A Because I had been harmed, and others would be harmed. And this was wrong, and I wanted it prosecuted.
Q In other words, based on your understanding of what occurred, you felt you had been wronged and you wanted Mr. Mitchell prosecuted?
MR. SULLIVAN: Object to the form.
A That is correct.
Q Sir?
A Yes. I will add that it was not my

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determination. The determination to prosecute was that of the solicitor alone. I merely would have been a witness.
Q No, you were the person that signed the warrant and the affidavit. Is that correct?
MS. FARGNOLI: Object to the form of the question.
MR. SULLIVAN: Object to the form of the question.
A Yes, I signed the warrant.
Q I asked you a few minutes ago -- this is a statement that you gave to Officer Hoose -- if that was a statement you reviewed prior to giving this deposition, and you stated yes. Is that a copy of that statement?
A No, this is the police report. This is not my statement. This is the investigative report by Detective Hoose.
Q Okay. Did you review that report?
A No, I don't recall reviewing that one.
Q Is this your statement?
A Yes.
MR. SULLIVAN: For the record, this appears to be a copy of a statement given by --
MR. MITCHELL: Yes, a copy of a statement.
MR. SULLIVAN: There are highlights and notes

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made on it that I assume Mr. Mitchell made in his review that were not a part of the original statement.
Is that a fair statement?
MR. MITCHELL: Yes, sir.
MR. SULLIVAN: Are you going to make this an exhibit?
MR. MITCHELL: No.
BY MR. MITCHELL:
Q Is that the statement you reviewed prior to this meeting for the deposition?
A Yes.
Q This page here, will you look at the part that's highlighted at the top of the page, the first paragraph?
MR. SULLIVAN: For the record, we're looking at the copy of a Mount Pleasant Police Department statement of James T. Helwig, and currently looking at unnumbered pages.
MS. FARGNOLI: Looks like Page 2.
MR. MITCHELL: I don't see any page numbers on here.
THE WITNESS: Let me see the date of the last page to make sure it's the same. I don't know why this isn't dated.
MR. MITCHELL: I don't know either.

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not those checks were actually cashed?
A They were cashed.
Q Have you ever received any amount of that money back from Mr. Mitchell?
A No.
Q I believe that's all I have for now.
MR. MITCHELL: I just have a couple of questions.

EXAMINATION
BY MR. MITCHELL:

Q This material that was delivered to your job site, did you pay for it?
A No.
Q To your knowledge who paid for it?
A Mr. Mitchell.
Q So you did receive something back of the $27,000 you had paid out, didn't you?
MR. SULLIVAN: Object to the form.
A No.
Q You received the material, didn't you?
A I stated the value of that material was $2,269.
Q That was not my question. You received the material, didn't you?
A I received the material.
Q Then whatever Mr. Mitchell paid for that

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material to the supplier, you would have received at that point in time; would that be correct?
MR. SULLIVAN: Object to the form. You can try to answer. If you don't understand it, ask him.
THE WITNESS: I don't understand.
BY MR. MITCHELL:
Q So you did receive something back?
A Not in my opinion.
Q Well, if the material cost $5,000 or $7,000, and you got the material, would you not be receiving something?
MR. SULLIVAN: Object to the form of the question.
A Those values are highly inflated.
Q That was not my question. My question was regardless of the value of the material, if you received the material if it had a monetary value, you received that value; did you not?
MR. SULLIVAN: Object to the form of the question.
A Yes.
Q Sir?
A Yes.
Q So your prior statement that you received nothing is not true?

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A I said I did not receive a refund of my $27,000.
Q I don't believe you were asked that.
MR. SULLIVAN: Object to the form of the question. Do you have a question?
MR. MITCHELL: No, I don't have any more questions.

FURTHER EXAMINATION
BY MS. FARGNOLI:

Q I have one more, I think. I want to make sure I understand. Can you explain the reasons for the dismissal of the charges against Mr. Mitchell?
A The only reason for dismissal was that the solicitor could not guarantee when a trial date would take place. And after November of '06 I could physically not be there unless I knew a specific date.
Q The charges were not dismissed because you felt Mr. Mitchell was not guilty of the charges? Is that a fair statement?
A That is fair.
MS. FARGNOLI: That's all I have.
MR. SULLIVAN: I just have one to clean up some testimony from before.

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FURTHER EXAMINATION
BY MR. SULLIVAN:

Q I believe you testified you did receive credit from Dock Doc's for the material that Mr. Mitchell had delivered; is that correct?
A Yes.
Q What was the amount of that credit?
A $2,269, to the best of my memory, of the invoice.
Q How much did you pay Mr. Mitchell to build your dock?
A $27,000 out of the 40,500 quote.
MR. SULLIVAN: That's all I have.
MR. MITCHELL: I have a follow-up question, please.

FURTHER EXAMINATION
BY MR. MITCHELL:

Q In regards to the criminal dismissal in 2006, to make sure I understand what you are saying, these charges were dismissed. You had a conversation with the solicitor, assistant solicitor, about that, the dismissal of those charges?
A The assistant solicitor called me, yes.
Q Yes. And your conversation or your agreement, if I understand it correctly, was that unless they could

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EXAMINATION
BY MS. FARGNOLI:
Q Mr. Helwig, my name is Christina Fargnoli. We met a few minutes ago. I have a couple of questions. Today we have discussed a few meetings that you had with members of the Mount Pleasant Police Department and with assistant solicitors concerning possible criminal charges against Mr. Mitchell. Is that a fair statement?
A Yes.
Q Was Mike Masiowski in any of those meetings?
A No.
Q Was Elizabeth Masiowski at any of those meetings?
A No.
Q To your knowledge did Mike or Elizabeth Masiowski sign a warrant for William Mitchell's arrest.
A No.
Q To your knowledge were Mike or Elizabeth Masiowski involved in bringing any criminal charges against Mr. Mitchell?
A Not to my knowledge.
Q To your knowledge did Mike and Elizabeth Masiowski make the decision to not prosecute Mr. Mitchell?
A I am not aware of what he did or did not do.

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Q Let me clear that up real quick. Again, to your knowledge Mike and Elizabeth Masiowski were not involved in bringing criminal charges against Mr. Mitchell?
A That's correct.
MS. FARGNOLI: Thank you.
MR. SULLIVAN: For the record, I represent Mr. Helwig, and I have a couple of questions.
EXAMINATION
BY MR. SULLIVAN:
Q Let me show you a document I have made some copies of. If you'd take a look at that and tell me if you recognize that.
A Yes, I do.
Q For the record, can you identify that?
A This is the statement that I made to the Mount Pleasant Police Department on October 15, 2001.
Q For the record is that a similar copy as Mr. Mitchell was asking you about just a few moments ago?
A Yes, it is.
Q Look through it and tell me how many pages are there.
A Eight pages.
Q Can you identify which page Mr. Mitchell was asking you about that he had highlighted certain

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passages?
A On Page 4, first paragraph.
MR. SULLIVAN: I'd like to make this an exhibit to the deposition, please.
(Defendant's Exhibit No. 1 was marked for identification.)
Q The dock we have been talking about at 2368 Darts Cove Way, is that the correct address, 2368, as far as you know?
A Yes.
Q I believe you testified that Mr. Mitchell told you that he had built that dock?
A Yes.
Q Have you come to any independent knowledge about who, in fact, did build that dock?
A Yes.
Q Was that person Mr. Mitchell?
A No.
Q Do you know the name of the dock company that did build the dock?
A Docks Unlimited. Sean Barnes, B-A-R-N-E-S.
Q Have you ever been professionally involved in the dock building business?
A No.
Q Have you ever owned any interest in a dock

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building business?
A No.
Q Have you ever owned an interest in a company that had an interest in the dock building business?
A No.
Q Have you ever had any interest in having an interest in a dock building business?
A No.
Q I believe we have heard testimony from you today that it's your understanding that the criminal case brought against Mr. Mitchell by the Charleston County solicitor was dismissed sometime in December 2006. Is that correct?
A Yes.
Q And have you done anything since December 2006 to assist the solicitor in any prosecution of any case, criminal case, against Mr. Mitchell?
A No.
Q How much did you pay Mr. Mitchell at that time, you believe, to build this dock for you at the Pignatelli residence?
A The amount paid?
Q Yes.
A $27,000.
Q Do you have any information about whether or

EXHIBIT C

AFFIDAVIT OF JAMES T. HELWIG

POLICE DEPARTMENT
100 ANN EDWARDS LANE
(843) 884-4176

MOUNT PLEASANT

SOUTH CAROLINA
29464

RONALD R. PERRY
CHIEF OF POLICE
www.mppolice.com

STATEMENT OF FACTS:

ON APRIL 23, 2001 A CONTRACT WAS RATIFIED BETWEEN THE VICTIM, AND THE DEFENDANT. THE DEFENDANT WAS TO BUILD A DOCK AT THE VICTIM'S HOME, 3088 PIGNATELLI CRESCENT FOR $40,500.00. THE VICTIM PAID THE DEFENDANT $27,000.00 AS REQUIRED BY THE CONTRACT, BUT WORK WAS NEVER DONE BY THE DEFENDANT. IN MAY 2001 THE DEFENDANT SHOWED THE VICTIM A DOCK AT 2368 DARTS COVE WAY, AND REPRESENTED THE DOCK AS WORK HE COMPLETED. THE VICTIM THEN DISCOVERED THAT THAT DOCK WAS NOT BUILT BY THE DEFENDANT. THE VICTIM ALSO DISCOVERED THAT AT THE TIME THE DEFENDANT ENTERED INTO HIS CONTRACT HE WAS NOT PROPERLY LICENSED, AND WAS NOT LICENSED UNTIL JUNE 6, 2001. THAT LICENSE LIMITED THE DEFENDANT TO JOBS PRICED AT NO MORE THAT $30,000.00. THE VICTIM PROVIDED A SIGNED WRITTEN STATEMENT OF THE EVENTS. DETECTIVE HOOSE CONFIRMED ALL OF THE ABOVE INFORMATION.

I HAVE REVIEWED THIS CASE PACKET WHICH ONLY CONTAINS COPIES OF THE INVESTIGATIVE FILE. ALL OF THE INFORMATION CONTAINED WITHIN IS COMPLETE TO THE BEST OF MY KNOWLEDGE.

SUPERVISOR

CASE AGENT

AGENCY I.D.
SC0 100300

INCIDENT REPORT
MT. PLEASANT POLICE DEPARTMENT

Hood

Case Number: 01-009441 | NCIC: Inq. | Entd

EVENT

Incident Type	Completed	FrcdEntry	Premise Type	#Entered	
Breach of Contract	Yes	No	Reside		X Individl Soc/Public
					Business Other
					Fin Inst Unknown
					Governmn Police Off
					Religious Organizatn

Incident Location (Subdivision, Apartment and Number, Street Name and Number): 3088 Pignattelli Crest: Dunes West | ZipCode: 29464 | Weapon Type:

Incident Date	24 Hr.	To	Date	24 Hr.	Dispatch Date and Time	Time Arrived	Depart Time	Location No.
04/18/01	00:00		10/11/01	15:36	10/11/01	14:46	14:56	15:36	

Complainant's Name(Last,First,Middle)	Relationship to Subj.	Res.	Race	Sex	Age	Eth.	Day Phone	Eve Phone
same As Victim								

Address | City | State | ZipCode | Location No.

VICTIM NO. 1

Victim's Name (Last,First,Middle)	Relationship to Subj.	Res.	Race	Sex	Age	Eth.	Day Phone	Eve Phone
Helwig, James T.	OK	J	W	M	58	N	216-7655	817-2293

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tatoos, Glasses, Clothing, Etc.
600	190	BRO	BRO	

Address: 3088 Pignattelli Crest | City: Mt. Pleasant | State: SC | ZipCode: 29464 | Location No.:

Visible Injury? No Explain:

Complaint of Non-visible Injuries? No

Using Alcohol? No
Drugs? No Type:

Two-man Vehicle | One-man Vehicle | Detective/SPLASMT | Other | Alone | Assisted

SUBJECT #1

X Suspect
Runaway
Wanted
Warrant
Arrest
Jail
Summons

Name(Last,First,Middle)	Race	Sex	Age	Eth.	Date of Birth
Mitchell, Bill	B	M	55	N	

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tatoos, Glasses, Clothing, Etc.
602	210	GRY	BRO	Glasses, Beard

Address: 9452 Koester Rd. | City: Ladson | State: SC | ZipCode: 29456 | Location: XXX

Using Alcohol? No
Drugs? No Type:

Arrested Near Scene
Total # Arrested

Date/Time of Offense | Date/Time of Arrest

NARRATIVE

I responded to the O'Neil law Firm in reference to Mr. O'Neil's client, Mr. Helwig needing to report a breach of trust. Upon arriving I spoke with the victim who stated that Mr. Mitchell was supposed to build a dock for him and never did the job. He stated that he payed Mr. Mitchell two installments on April 18, 2001 and June 12, 2001 totaling $27,000. He stated that Mr. Mitchell still has not begun work on the dock. He also stated that Mr. Mitchell showed him a dock at the time of him hiring him and stated that he had built it. Mr. Helwig later found out that the dock was not built by Mr. Mitchell but by another company. Mr. Helwig also stated that he found out later that he did not have a contrctor's license at the time he paid Mr. Mitchell. Mr. Helwig's attorney has attempted to contact Mr. Mitchell several times but nothing has come of it. Mr. Helwig stated that Mr. Mictchell had delivered some materials to his home after the first payment but they had nothing to do with the job. He also stated that the materials were now ruined due to the weather.

Jurisdiction of Theft Law Enforcement Agency | Jurisdiction of Recovery Law Enforcement Agency

PROPERTY/EST

Type (Group)						Total Value
Stolen						
Damaged						
Burned						
Recovered						
Seized						

ADMIN

Subj. Identified Yes / Subj. Located No | X Active / Unfounded | Admin Closed | Arrested Under 18 / 18 & Over | Ex. Clearance Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death | No Prosecution | Extradition Denied | Victim Declines Cooperation | Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
Ofc. R Thomas	10/11/01	2034	[signature]	10-11-01	8904
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number: 01-009441

NCIC: Inq. | Entd.

Original Report	X	Supplemental Report		Modifies Original		Case Status Report	Page 1 of 3

INCIDENT TYPE: BREACH OF TRUST

VICTIM: JAMES HELWIG

NARRATIVE

10/15/01 THE VICTIM, JAMES HELWIG, CAME INTO THE DETECTIVE OFFICE TO SPEAK TO ME ABOUT THIS CASE. HE PROVIDED ME WITH SOME COROSPONDENCE RELATED TO A DOCK THAT WAS SUPPOSED TO BE BUILT BY THE SUSPECT, BILL MITCHELL. HE PROVIDED ME WITH A COPY OF A CONTRACT/PROPOSAL DATED 04/18/01 THAT PROVIDED THAT A DOCK WOULD BE BUILT BY THE MITCHELL AT HELWIG'S RESIDENCE FOR $40,500.00. 1/3 PAYMENT WAS TO BE SENT BY HELWIG UPON SIGNING THE CONTRACT, AND 1/3 PAYMENT WAS TO BE SENT UPON DELIVERY OF MATERIAL. 1/2 PAYMENT OF THE BALANCE WAS TO BE SENT UPON COMPLETION OF HALF OF THE WORK, AND THE REMAINING BALANCE WAS TO BE PAID UPON COMPLETION OF THE JOB. HELWIG STATED THAT HE SENT A CHECK #1648 FOR $13,500.00 ON 04/23/01, AND ANOTHER CHECK #1713 FOR $13,500.00 ON 06/12/01. EACH PAYMENT WAS SENT TO MITCHELL FROM HIS HOME IN NEW JERSEY. HE ALSO PROVIDED ME WITH COPIES OF BOTH OF THOSE CHECKS, AND IT APPEARED THAT MITCHELL RECEIVED EACH PAYMENT. HELWIG THEN GAVE A WRITTEN STATEMENT. HE STATED THAT MITCHELL TOLD HIM THAT WORK ON THE DOCK WOULD BEGIN IN EITHER JUNE OR JULY. HE STATED THAT HE ARRIVED IN MT.PLEASANT ON MAY 3 TO PREPARE FOR MOVING FROM NEW JERSEY. HE STATED THAT ON MAY 10 HE, HIS WIFE, AND MITCHELL WENT TO LOOK AT A FEW OF MITCHELL'S DOCKS. HELWIG STATED THAT MITCHELL SHOWED THEM A DOCK IN AWENDAW, AND ANOTHER DOCK IN DUNES WEST. HE STATED THAT THE DOCK IN DUNES WEST WAS LOCATED AT 2368 DARTS COVE WAY WHICH WAS ACROSS THE MARSH FROM HIS HOME. HE STATED THAT HE WAS UNDER THE IMPRESSION THAT MITCHELL HAD BUILT THAT DOCK. HE STATED THAT THE PREVIOUS OWNERS OF HIS RESIDENCE TOLD HIM THAT MITCHELL HAD BUILT THAT DOCK, AND THAT MITCHELL WAS SHOWING HIM THE DOCK AS HIS PREVIOUS WORK. HE STATED THAT WHILE THEY WERE LOOKING AT THAT DOCK THE HOMEOWNER CALLED MITCHELL BACK TO THE HOUSE. HE STATED THAT MITCHELL ADVISED THAT THE OWNER ASKED THEM TO LEAVE THE PROPERTY. HELWIG STATED THAT AT SOME POINT HE WENT BACK TO 2368 DARTS COVE WAY, AND SPOKE TO THE HOME OWNERS. HE LEARNED THAT MITCHELL HAD NOT BUILT THEIR DOCK, AND THAT IT WAS BUILT BY DOCKS UNLIMITED. HELWIG STATED THAT AFTER THEY CLOSED ON THEIR HOME HE WAS ASKED BY MITCHELL TO FAX HIM A COPY OF THE DOCK ASSIGNMENT THAT TRANSFERED THE OWNERSHIP

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin Closed	Arrested: Under 18 / X 18 & Over	Ex. Clearance: Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death | No Prosecution | Extradition Denied | Victim Declines Cooperation | Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-2	405
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number: 01-009441

NCIC: Inq. | Entd.

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DETECTIVE SUPPLEMENTAL

NARRATIVE

10/15/01 FROM HINES TO THE HELWIGS ON 05/19/01. HE STATED THAT MITCHELL WAS TO FILE THIS WITH THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT (OCRM). HELWIG STATED THAT HE LEARNED FROM A MARK CALDWELL OF OCRM THAT MITCHELL DID NOT FILE THE DOCK ASSIGNMENT UNTIL 07/16/01. HELWIG STATED THAT MITCHELL WAS TO START WORK ON THE DOCK ON 06/18/01. HELWIG STATED THAT ON 06/11/01 VISITED THE DOCK LOCATION, BUT NEVER TOURED THE MARSH NOR DID HE VALIDATE THE DOCK CONFIGURATION. HELWIG STATED THAT HE LEARNED LATER THAT THE AREA WAS NOT SUITABLE FOR THE TYPE OF DOCK MITCHELL WAS SUPPOSED TO BUILD. HE STATED THAT HE ASKED MITCHELL IF HE SUBMITTED THE DOCK ASSIGNMENT TO OCRM, AND MITCHELL TOLD HIM THAT HE KNEW THE PEOPLE THERE, AND THAT THERE WOULD NOT BE ANY PROBLEMS. HELWIG STATED THAT ON 06/12/01 MITCHELL DELIVERED SOME MATERIALS TO THE PROPERTY, AND TOLD HIM THAT WORK WOULD BEGIN BY 06/18/01. HE STATED THAT HE THEN SENT THE SECOND PAYMENT OF $13,500.00 TO MITCHELL. HELWIG STATED THAT HE WAS TOLD BY HIS CURRENT BUILDER THAT THE MATERIAL WAS NOT THE RIGHT TYPE FOR SOUND CONSTRUCTION. HELWIG STATED THAT HE WENT ON A TRIP ON 06/13/01, AND WHEN HE RETURNED ON 06/26/01 HE FOUND THAT NO WORK HAD BEEN DONE. HE STATED THAT HE MADE REPEATED CALLS TO MITCHELL, BUT GOT NO RESPONSE. HE STATED THAT ON 07/06/01 MITCHELL CAME TO HIS HOME, AND ADVISED HIM THAT THE WORK WAS HELD UP BY WEATHER AS WELL AS EQUIPMENT PROBLEMS. MITCHELL ADVISED HELWIG HIM THAT HE WOULD START WORK THE WEEK OF 07/09/01. HELWIG STATED THAT WAS THE LAST CONTACT HE HAD WITH MITCHELL, AND NO WORK WAS DONE. HELWIG STATED THAT ON 07/10/01 HE LEARNED FROM PEOPLE RENOVATING HIS HOME THAT MITCHELL HAD STARTED A DOCK IN PARK WEST ON ADRIAN WAY. HE STATED THAT HE CALLED MITCHELL, BUT GOT NO RESPONSE. HELWIG STATED THAT HE KNEW THERE WAS A DOCK ON ADRIAN WAY, BUT THAT HE HAD A VERBAL AGREEMENT THAT HIS WOULD BE BUILT FIRST. HE STATED THAT HE MADE ATTEMPTS TO CONTACT MITCHELL, BUT WAS UNABLE TO DO SO. HELWIG STATED THAT ON 08/06/01 HE WROTE A LETTER TO MITCHELL TERMINATING HIM FROM THE AGREEMENT, AND REQUESTING HE RETURN THE $27,000.00. HELWIG STATED THAT HE HAND DELIVERED THE

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin / Closed	Arrested: Under 18 / X 18 & Over	Ex. Clearance: Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death | No Prosecution | Extradition Denied | Victim Declines Cooperation | Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-27-02	103
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

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01-009441		

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DETECTIVE SUPPLEMENTAL

10/15/01 LETTER TO MITCHELL AT THE ADRIAN WAY LOCATION. HELWIG STATED THAT MITCHELL STATED HE WOULD CALL HIM LATER THAT EVENING, BUT HE NEVER CALLED. HELWIG STATED THAT HE SPOKE TO A STAN BOWENS OF THE SOUTH CAROLINA STATE LICENSING BOARD WHO ADVISED HIM THAT MITCHELL WAS FIRST ISSUED A LICENSE ON 06/06/01. BOWENS ADVISED HELWIG THAT HIS LICENSE MITCHELL WAS ISSUED LIMITED HIM TO JOBS OF NO MORE THAN $30,000.00. HELWIG ALSO LEARNED OF SEVERAL COMPLAINTS THAT HAD BEEN FILED AGAINST MITCHELL. HELWIG STATED THAT ON 09/10/01 HIS ATTORNEY, DENNIS O'NEIL, SENT A LETTER TO MITCHELL'S ATTORNEY, STANLEY RODGERS, AND HE LEARNED THAT MITCHELL HAD TERMINATED RODGERS AS HIS ATTORNEY. HELWIG STATED THAT MITCHELL NEVER RESPONDED TO THE LETTER.

10/17/01 I PLACED SEVERAL PHONE CALLS TO MITCHELL, AND LEFT MESSAGES FOR HIM.

10/18/01 I RECEIVED A PHONE CALL FROM MITCHELL. HE STATED THAT HE WOULD NOT COME INTO SEE ME, BUT ADVISED THAT I COULD SPEAK TO HIS ATTORNEY. HE STATED THAT HIS ATTORNEY WAS DONALD HOWE, AND THAT HE WOULD HAVE HIM CALL ME.

10/22/01 I RECEIVED A PACKAGE FROM MITCHELL THAT CONTAINED COROSPONDENCE RELATED TO THIS SITUATION WITH HELWIG.

I SPOKE TO ASST. SOLICITOR SHAWN KENT, AND HE TOLD ME THAT THE CASE APPEARED TO BE CIVIL IN NATURE. HE STATED THAT I SHOULD FAX HIM INFORMATION ON THE CASE AT WHICH TIME I FAXED HIM THE CASE. I THEN SPOKE TO ED KNISLEY OF THE SOLICITOR'S OFFICE, AND HE STATED THAT HE WOULD LOOK OVER THE FILE I HAD FAXED OVER.

10/25/01 I SPOKE TO MITCHELL,AND ADVISED HIM THAT THE SOLICITOR'S OFFICE WAS REVIEWING THE CASE. LATER THIS DATE I SPOKE TO ED KNISLEY, AND HE ADVISED THAT THERE WAS PROBABLE CAUSE TO CHARGE MITCHELL WITH OBTAINING MONEY BY FALSE PRETENSES.

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin Closed	Arrested Under 18 / X 18 & Over	Ex. Clearance Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death / Victim Declines Cooperation / No Prosecution / Extradition Denied / Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-02	915
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
MT. PLEASANT POLICE DEPARTMENT

Case Number: 01-009441

NCIC: Inq. | Entd.

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DETECTIVE SUPPLEMENTAL

11/05/01 I MAILED A SUBPEONA TO THE FIRST CITIZENS BANK OF SOUTH CAROLINA FOR BANK RECORDS REGARDING MITCHELL.

11/14/01 I DROPPED THE SUBPEONA FOR BANK OF SOUTH CAROLINA OFF AT THE CHUCK DAWLEY BRANCH OFFICE.

11/16/01 I RECEIVED A CALL FROM FIRST CITIZENS BANK OF SOUTH CAROLINA ACKNOWLEDGING RECEIPT OF THE SUBPEONA.

11/19/01 THE VICTIM, JAMES HELWIG, SIGNED AFFIDAVITS CHARGING MITCHELL WITH OBTAINING MONEY BY FALSE PRETENSES.

11/26/01 I SPOKE TO MITCHELL ON THE PHONE, AND ADVISED HIM OF THE ARREST WARRANT. HE STATED THAT HE WOULD MEET ME AT THE BOND COURT TO TURN HIMSELF IN.

11/29/01 I SPOKE TO WALTER BILBRO, WHO STATED THAT HE WAS REPRESENTING MITCHELL. HE STATED THAT HE HAD INFORMATION THAT WOULD EXONERATE HIS CLIENT. HE ADVISED THAT HE WOULD SET UP A MEETING AT THE SOLICITOR'S OFFICE WITH ED KNISLEY ON 12/03/01 AT 1100 HOURS. HE DID NOT ELABORATE ON THE INFORMATION. I NOTIFIED THE VICTIM OF THE CHANGE.

12/03/01 I MET WITH HELWIG, DENNIS O'NEILL, ED KNISLEY, AND WALTER BILBRO AT THE SOLICITOR'S OFFICE. WALTER BILBRO PRESENTED TWO CASE SUMMARIES FROM THE S.C. CONTRACTOR'S LICENSING BOARD CLEARING MITCHELL OF TWO COMPLAINTS. ONE COMPLAINT WAS FOR MITCHELL USING A NAME OTHER THAN WHAT WAS ON HIS LICENSE, AND THE OTHER WAS FOR EXCEEDING HIS LICENSE LIMITATIONS. HE WAS CLEARED IN BOTH CASES. IN REFERENCE TO THE LICENSE COMPLAINT AN AGREEMENT WAS REACHED THAT MITCHELL WOULD NOT BE HELD ACCOUNTABLE FOR JOBS UNDER CONTRACT BEFORE BEING LICENSED.

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin Closed	Arrested: Under 18 / X 18 & Over	Ex. Clearance: Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death | Victim Declines Cooperation | No Prosecution | Extradition Denied | Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-2	1103
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
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12/03/01 WALTER BILBRO FAXED ME COPIES OF THE CONTRACTORS BOARD SUMMARIES. HE ALSO ADVISED THAT HE WOULD HAVE MITCHELL AT BOND COURT ON 12/12/01 AT 1430 HOURS SO THE ARREST WARRANT COULD BE SERVED.

12/12/01 I MET WITH MITCHELL AND WALTER BILBRO AT BOND COURT. THE ARREST WARRANT FOR OBTAINING MONEY BY FALSE PRETENSES WAS SERVED, AND A BOND HEARING WAS HELD. THE VICTIM, HELWIG, SPOKE TO JUDGE GUEDALIA BY SPEAKER PHONE DURING THE PROCEEDING. MITCHELL WAS GIVEN A PERSONAL RECOGNICANTS BOND, PHOTOGRAPHED, FINGERPRINTED, AND RELEASED. DURING FINGERPRINTING MITCHELL ADVISED THAT WHEN HE WAS SHOWING HELWIG THE DOCK ON DARTS COVE WAY HE WAS SHOWING COMPETITOR'S WORK NOT HIS WORK.

12/28/01 I MADE CONTACT WITH JIM AND DELORES KEATING AT 2368 DARTS COVE WAY. THEY BOTH STATED THAT THEY REMEMBERED WHEN MITCHELL AND HELWIG WERE LOOKING AT THEIR DOCK. THEY STATED THAT THEY DID NOT KNOW WHAT CONVERSATION TOOK PLACE BETWEEN MITCHELL AND HELWIG. THEY STATED THAT THEIR DOCK WAS BUILT BY DOCKS UNLIMITED (SHAWN MICHAELS #881-6750).

01/07/02 I SPOKE TO STAN BOWEN OF THE S.C. STATE CONTRACTOR'S LICENSING BOARD ABOUT THE INVESTIGATION INTO MITCHELL. HE STATED THAT MITCHELL WAS BEING INVESTIGATED FOR SEVERAL INCIDENTS OF OPERATING WITHOUT A LICENSE, AND THAT HELWIG'S COMPLAINT CAME IN AFTER THOSE COMPLAINTS WERE DISPOSED OF. HE STATED THAT AT THE TIME OF THE HELWIG CONTRACT MITCHELL WAS NOT UNDER THE BOARDS JURISDICTION BECAUSE HE DID NOT HAVE A LICENSE. HE STATED THAT THE COMPLAINTS WERE DISMISSED BECAUSE A CONSENT ORDER WAS DRAWN UP. HE STATED THAT THE CONSENT ORDER COMBINED THE VARIOUS COMPLAINTS, REQUIRED MITCHELL TO GET A LICENSE, AND PAY A PUNITIVE FINE. WHEN THE CONSENT ORDER WAS COMPLETED THE AGREEMENT STIPULATED THAT ANY ADDITIONAL COMPLAINTS WOULD BE DISMISSED.

ADMIN

Subj. Identified YES / Subj. Located YES	Active / Unfounded	Admin Closed	Arrested Under 18 / X 18 & Over	Ex. Clearance Und 18 / 18&Over

Reason for Ex. Clearance: Offender Death / Victim Declines Cooperation / No Prosecution / Cooperation / Extradition Denied / Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-02	
			Follow-up Investigation?		

AGENCY I.D.
SC0100300

SUPPLEMENTARY REPORT
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NARRATIVE

DETECTIVE SUPPLEMENTAL

01/07/02 HE STATED THAT THE CONSENT ORDER DID NOT GRANDFATHER HELWIGS CONTRACT WITH MITCHELL MAKING HIM PROPERLY LICENSED AT THE TIME OF THE CONTRACT. HE STATED THAT MITCHELL WAS STILL REQUIRED TO BE PROPERLY LICENSED AT THE TIME OF THE HELWIG CONTRACT. HE STATED THAT MITCHELL WAS STILL NOT PROPERLY LICENSED ON 04/18/01 WHEN HE ENTERED INTO THE CONTRACT WITH HELWIG. HE STATED THAT THE CONSENT ORDER DID NOT ABSOLVE MITCHEL OF ANY PRIOR WRONG DOING. BOWEN ALSO ADVISED THAT HE WAS NOT PART OF THE CONSENT ORDER.

THIS CASE IS CLOSED BY ARREST: WILLIAM CURTIS MITCHELL
W/M DOB 09/16/39
9452 KOESTER RD.
LADSON, SC 29456

ADMIN

Subj. Identified YES	Active	Admin	Arrested	Ex. Clearance
Subj. Located YES	Unfounded	Closed	Under 18 X 18 & Over	Und 18 18&Over

Reason for Ex. Clearance: Offender Death | No Prosecution | Extradition Denied | Victim Declines Cooperation | Juvenile-No Custody

Reporting Officers	Date	Unit Nr	Approving Officer	Date	Unit Nr
HOOSE-F.R.	01/08/02	2033		1-22-02	
			Follow-up Investigation?		

MOUNT PLEASANT POLICE DEPARTMENT

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OCA #: 01-00944 DATE: 10-15-01

TIME: 4:00 PM

STATEMENT OF: James T. Helwig

ADDRESS: 3088 Pignatelli Crescent, MT Pleasant SC 29466 Phone #: 843-216-7655

PLACE OF EMPLOYMENT: Retired Phone #: ___

RACE: W SEX: M BIRTH DATE: 2-11-43

My wife and I purchased the above home in Dunes West on May 18, 2001. (Closing Date). Prior to closing we obtained quotes for a dock to be built on our progerty. The previous owners of our home had a bid from Bill Mitchell and recommended we speak with him. We did and entered into a contract with him on April 18, 2001. I immediately sent him a check (#13500,00) on April 18 from my home in Princeton, NJ, which represented 1/3 of the contract price ($40500,00). Mr. Mitchell stated that he should start our dock no later than June/July 2001.

We arrived in MT Pleasant on May 3 to prepare for our move. On May 10 we asked Mitchell to take us to see a few of his docks. He showed us one dock in Awendaw that was in progress and one at 2368 Darts Cove Way, Dunes West, which is directly across the marsh from our home. (The Hines had told us previously that Mitchell had built that dock.) While my wife and I were looking at the dock, Mitchell was called back to the house by the owner. He told us later that the owner would like us to leave. I didn't think too much of it

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

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OCA #: _____ DATE: _____ TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

then, but I finally went back to the house and learned from the owner that Mitchell had not built that dock. It was built by Docks Unlimited owned by Sean Barnes. The owner (woman) recalled the incident where she asked Mitchell to leave. We feel that this represents a total misrepresentation of product to a prospective customer.

After the closing of our home sale, Mitchell asked me to fax to him a copy of the "Dock Assignment" of ownership to us from the Hines. I did so on May 19, 2001 and Mitchell confirmed receipt on May 20 via a phone call. This document is important because it must be filed with the Ocean and Coastal Resource Management (OCRM) so they can update their permit records. The dock builder assumes responsibility for this paperwork. (I later learned from Mark Caldwell of OCRM that they did not receive this Dock Assignment from Mitchell until July 16, 2001. This was two months after he received it from me and one month after he told me he would start our dock on June 18, 2001.)

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

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TIME: _____

STATEMENT OF: James T. Helwig
ADDRESS: _____ Phone #: _____
PLACE OF EMPLOYMENT: _____ Phone #: _____
RACE: _____ SEX: ___ BIRTH DATE: _____

On June 11, 2001 Mitchell visited our new house where the dock was to be built. He never toured the marsh and the stream bed. He did nothing to validate the dock configuration we had contracted, which I learned much later was not suitable for our marsh area. That is the area was not wide enough for a boat lift and pier head of the size he had recommended. I also asked him if our paperwork had been submitted to OCRM. He said that he knew the people there and that there would be no problem. I said I wanted all approvals documented by appropriate authorities. He agreed to do so.

On June 12, 2001, Mitchell delivered some material to our property. He said he would start work the next week - by June 18. He had to pull down some of our backyard fence to deliver the material. He said he would repair everything upon completion of the dock.

In accordance with the contract, I paid Mitchell on June 12 an additional 1/3 of the contract price ($13500.00) upon

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WITNESSES:
Det. [signature]

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

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TIME: _____

STATEMENT OF: James T. Helwig
ADDRESS: _____ Phone #: _____
PLACE OF EMPLOYMENT: _____ Phone #: _____
RACE: _____ SEX: ___ BIRTH DATE: _____

receipt of some material. The balance was to be delivered in stages. The amount on hand represented no more than 1/6 to 1/4 of required material. It subsequently warped within a short period of time, and I was told by my current dock builder that the wood was not all the right type for sound construction.

We left on June 13 for a two week trip. Mitchell was to have started the dock on June 18 while we were gone. We returned on June 26, 2001 and found nothing done. I placed an immediate call to Mitchell, but received no answers. Repeated attempts to call him went unanswered.

On July 6, 2001 Mitchell arrived unexpectantly at our home (temporary Condo in Dunes West - we didn't move into our home until July 30) and said he had been held up by rains and equipment problems. He said he would start our dock the following week of July 9. I asked that he call me the night before he started. This was the last contact I had ~~from~~ with Mitchell. He never called me or attempted to tell me

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:
Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

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STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

why he was not working on our dock.

In fact, I heard on July 10 from our builder that was renovating our home that Mitchell had started a dock on Adrian Way in Park West. I immediately tried to call Mitchell to learn if this was true, He did not respond to my message. This is important because I knew this property and had a previous oral agreement with Mitchell that our dock would be built before this one on Adrian Way. I called and left messages several times for Mitchell and even drove 3 times to Adrian Way to find him. All went to no avail.

We moved into our house on July 30 and were tied up with the move for a week. Finally on August 6, 2001 I wrote a letter to Mitchell terminating our agreement and required return of all amounts ($27000.41) paid to him. ~~Prior~~ I delivered this letter to him in person on August 6 at the Adrian Way dock, where I learned he would be. He acknowledged orally

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

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STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

to me at that time his non-performance and said he would call me that night. He never did call.

Before I terminated the agreement, I contacted two people - Mark Caldwell at OCRM and Stan Bowan, an investigator with the State General Contractors Board. Mr. Caldwell informed me, as stated previously, that the Dock Assignment was not received by OCRM until July 16. (Therefore, it appears there was no good faith effort on Mitchell's behalf to start my dock on June 18 or July 9 because the paperwork had not been processed. You must receive an orange placard from OCRM before you can start building.) Also, the builder was responsible for sending OCRM a configuration of the dock pierhead before construction would be approved. This configuration has never been sent by Mitchell to OCRM.

I contacted Mr. Bowan to determine if Mr. Mitchell was licensed and if any complaints had been received at his office. He investigated the matter and subsequently

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [signature]

_____

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

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TIME: _____

STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

informed me in writing of the following:

1) Mr. Mitchell was first issued a South Carolina Contractors license on June 6, 2001

2) The license carried a dollar limitation of $30000.00 per job.

3) As a result of the information received from Mr Mitchell and a conversation with him, two complaints were registered against him:
   a) Exceeding dollar limitation amount
   b) Using erroneous name on letterhead and contract.

4) Several other complaints had been received in his office concerning Mitchell.

From the above, it is clear that Mitchell was not licensed to enter into a contract with me on April 18, 2001.

In a final attempt to obtain justice from Mr. Mitchell, I retained an attorney (Dennis O'Neill) on September 10, 2001.

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

Det. [illegible]

I have received a copy of the above statement: James T. Helwig

MOUNT PLEASANT POLICE DEPARTMENT

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STATEMENT OF: James T. Helwig

ADDRESS: _____ Phone #: _____

PLACE OF EMPLOYMENT: _____ Phone #: _____

RACE: _____ SEX: ___ BIRTH DATE: _____

Mr. O'Neill sent a letter on September 17, 2001 to Mitchell's aHorney, Stanley C. Rodgers. The essence of the letter was that the contract with me was null and void because he was not licensed to perform this work. We demanded return of all amounts ($27000.00) paid to him. Mitchell did not respond by the October 1 deadline and, apparently, terminated his aHorney.

On October 11, 2001 I filed a police report with Officer Rebecca Thomas in the presence of my aHorney, Mr. O'Neill. I desire justice and do not want Mr. Mitchell to be able to defraud another people as I have been.

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: James T. Helwig

WITNESSES:

DET.

I have received a copy of the above statement: James T. Helwig

AGENCY I.D.	DATE/TIME OF ARREST
SC0 100300	12/12/01 @1430

BOOKING REPORT

MT. PLEASANT POLICE DEPARTMENT

CASE NUMBER: 01009441

PERSONAL DATA

DEFENDANT NAME (LAST, FIRST, MIDDLE)	RACE	SEX	DATE OF BIRTH	DOCKET NUMBER
MITCHELL - WILLIAM CURTIS	W	M	9/16/39	

AGE	ETH.	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER	VISIBLE SCARS AND MARKS	NCIC	I.D. NUMBER
61	N	600	190	GRY	BLU	248-58-8655	N/A		

ADDRESS (NUMBER AND STREET)	CITY	STATE	ZIP CODE	RESIDENT	PHONE NUMBER
9452 KOESTER RD.	LADSON	SC	29456	J (S) U	

ALIAS	PLACE OF BIRTH	DRIVERS LICENSE NUMBER	STATE
	COLUMBIA, SC	00939515	SC

EMPLOYER OR OCCUPATION	NEXT OF KIN	ADDRESS (CITY AND STATE)
CONTRACTOR	ROBERT MITCHELL (SON)	COLUMBIA, SC

BOOKING OFFICER'S NAME	NUMBER	ARRESTING OFFICER	AGENCY	NUMBER
		HOUSE-FR.	MPPD	2033

ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE: ☐ SEMI-AUTO ☐ FULL-AUTO ☐ ON VIEW ARREST ☐ SUMMONED ☒ CUSTODY

JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFFERED TO OTHER AUTHORITY (J—This Jurisdiction. S—State. O—Out of State. U—Unknown)

ADDITIONAL CASE NUMBERS: MORE IN REMARKS ☐

CHARGE / BOND / DISPOSITION

IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C

	A	B	C
CHARGE I.D.			
CHARGE	OBTAINING MONEY FALSE PRETENSE 7 $5,000.00		
STATUTE	16-13-240		
BOND AMOUNT			
BOND TYPE			
REL. DATE			
DISPOSITION	WARRANT # G-248424		

	A DAYS	A AMOUNT	B DAYS	B AMOUNT	C DAYS	C AMOUNT
SENTENCE						
TIME SERVED						
GOOD TIME						
BALANCE						
PAID						
RECEIPT NUMBER						

RELEASE DATE	TIME	RELEASING OFFICER	NUMBER	AGENCY RELEASED TO

SIGNATURE OF RECEIVING OFFICIAL X _____ LIST ANY REMARKS BELOW

REMARKS:

BOND HEARING 12/12/01 @ 1430

TURN IN W/ WARRANT

DEFENDANTS PERSONAL PROPERTY RECEIPT

TOTAL CASH AT TIME OF ARREST→ $

QUANTITY	ITEM	QUANTITY	ITEM

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X _____ DEFENDANT'S SIGNATURE AT TIME OF ARREST

_____ OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X _____

First Citizens Bank
Member FDIC
www.fcbsc.com

1230 Main Street
Post Office Box 29
Columbia, SC 29202

November 16, 2001

Mount Pleasant Police Department.
Attention: Detective Hoose
100 Ann Edwards Lane
Mount Pleasant, South Carolina 29464

RE: Case #01009441

Dear Detective Hoose:

Enclosed is the information you requested by court order for the above referenced case. When we spoke on the phone today I indicated that there were two accounts, however, the second account was not opened until July so there would be no information available for June on the that account.

The cost for time spent in research to complete this subpoena is $10.00. Please issue a check for this amount made payable to First Citizens Bank and reference our case #57117.

Please contact me at 803-733-3644 if you have any questions or need further assistance.

Sincerely,

Kim Henry
Deposit Operations Supervisor

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
TOWN OF MOUNT PLEASANT)
)
vs.)
)
CASE NUMBER 01009441
)
)

IN THE MUNICIPAL COURT
FOR MOUNT PLEASANT

COURT ORDER

TO: BANK OF SOUTH CAROLINA
1337 CHUCK DAWLEY BLVD
MT PLEASANT SC 29464
ATTN: SALLY ALTMAN

YOU ARE HEREBY REQUIRED to submit to the Mount Pleasant Police Department any and all account information for Bill Mitchell, Kocak Brothers or Dock Systems Inc during the month of April 2001.

FAIL NOT ON PAIN OF THE FINE AND FORFEITURE THAT WILL FALL THEREON.

This 5th day of November, 2001 upon receipt.

11/05/2001
(Date)

MUNICIPAL JUDGE
TOWN OF MOUNT PLEASANT

INVESTIGATION BY:
DET. F.R. HOOSE
100 ANN EDWARDS LANE
MT. PLEASANT, SC 29464

STATE OF SOUTH CAROLINA	)	IN THE MUNICIPAL COURT
	)	FOR MOUNT PLEASANT
COUNTY OF CHARLESTON	)	
	)	
	)	COURT ORDER
TOWN OF MOUNT PLEASANT	)	
	)	
vs.	)	
	)	
CASE NUMBER 01009441		
	)	
_____	)	

TO: FIRST CITIZENS BANK OF SOUTH CAROLINA
ATTN: DENNIS CHAPMAN
P O BOX 29
COLUMBIA SC 29202

YOU ARE HEREBY REQUIRED to submit to the Mount Pleasant Police Department any and all account information for Bill or William Mitchell and/or Dock Systems Inc. during the month of June 2001.

FAIL NOT ON PAIN OF THE FINE AND FORFEITURE THAT WILL FALL THEREON.

This 5th day of November, 2001 upon receipt.

11/05/2001
(Date)

MUNICIPAL JUDGE
TOWN OF MOUNT PLEASANT

INVESTIGATION BY:
DET. F.R. HOOSE
100 ANN EDWARDS LANE
MT. PLEASANT, SC 29464

First Citizens Bank

BUSINESS SIGNATURE CARD

079022739101 Acct Type Business Checking II 05/09/2001

Branch 222 Opened by S. Alexander X New ____ Amended ____ Temp

DOCK SYSTEM INC

TIN: 570954585

Amended By: _____

Account Ownership Designation:

Corporation

DOCUMENTATION OBTAINED: A Corp. Resolution ___ Unincorp. Resolution ___ Partnership Agreement ___ Other _____

FIRST-CITIZENS BANK AND TRUST COMPANY OF SOUTH CAROLINA

[The relationship between the Bank and account holder(s) remain(s) the same regardless of (possible) conversions of this account.]

The undersigned:

(1) acknowledge that at least one authorized signer has received at least one copy of each of the following documents: Business Deposit Accounts Fee Schedule/Interest Disclosures brochure; Rules and Regulations for Checking, Savings, MMDA Accounts/Funds Availability/Direct Deposit, Cardholder Agreement and Electronic Fund Transfer Disclosures brochure.

(2) agree to the provisions set forth in the above documents.

(3) certify that the "Account Ownership Designation" indicated above is correct.

(4) certify that the purpose of this account is for business use and is not for consumer purposes.

(5) **CERTIFY, UNDER PENALTIES OF PERJURY, THAT: (A) THE TAXPAYER IDENTIFICATION NUMBER SHOWN ABOVE IS CORRECT; AND (B) THE ACCOUNT IS NOT SUBJECT TO BACKUP WITHHOLDING BECAUSE (1) THE ENTITY IS EXEMPT FROM BACKUP WITHHOLDING, OR (2) THE ENTITY HAS NOT BEEN NOTIFIED BY THE INTERNAL REVENUE SERVICE (IRS) THAT IT IS SUBJECT TO BACKUP WITHHOLDING AS A RESULT OF FAILURE TO REPORT ALL INTEREST OR DIVIDENDS, OR (3) THE IRS HAS NOTIFIED THE ENTITY THAT IT IS NO LONGER SUBJECT TO BACKUP WITHHOLDING. (NOTE: ITEM (B) MUST BE CROSSED OUT IF THE ENTITY HAS BEEN NOTIFIED BY THE IRS THAT IT IS CURRENTLY SUBJECT TO BACKUP WITHHOLDING BECAUSE OF UNDER-REPORTING INTEREST OR DIVIDENDS ON ITS TAX RETURN.); AND (C) THE ENTITY IS A U.S. ENTITY.**

THE INTERNAL REVENUE SERVICE DOES NOT REQUIRE YOUR CONSENT TO ANY PROVISION OF THIS DOCUMENT OTHER THAN THE CERTIFICATIONS REQUIRED TO AVOID BACKUP WITHHOLDING AS CONTAINED IN ITEM (5).

Authorized Signatures:

WILLIAM MITCHELL _____

Title President

_____

Title _____

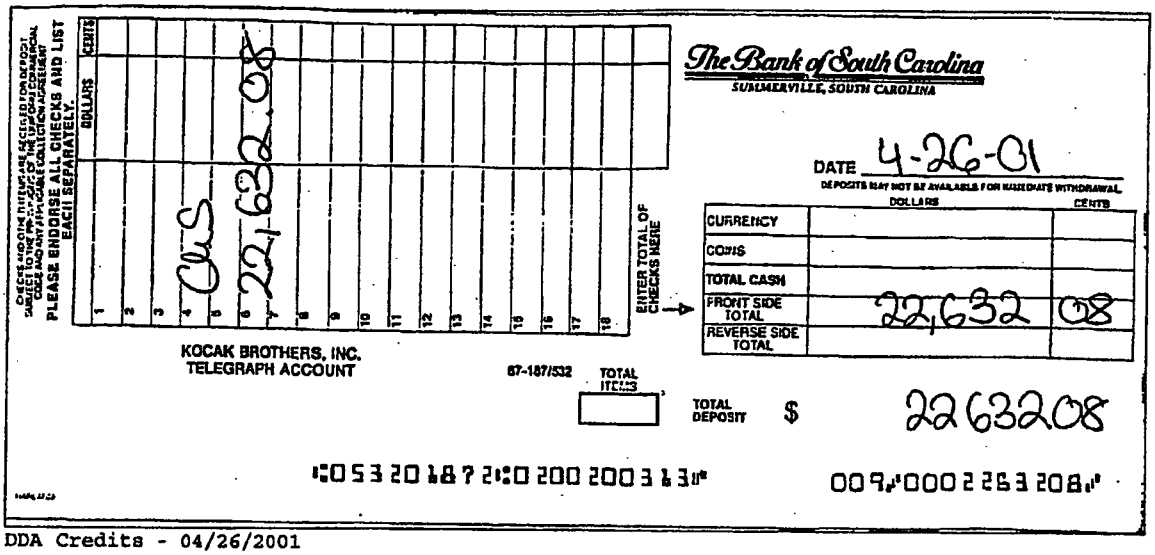
_____

Title _____

_____

Title _____

MISC-011 (Rev. 2/01)



The Bank of South Carolina
SUMMERVILLE, SOUTH CAROLINA

DATE 4-26-01

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

	DOLLARS	CENTS
CURRENCY		
COINS		
TOTAL CASH		
FRONT SIDE TOTAL	22,632	08
REVERSE SIDE TOTAL		

PLEASE ENDORSE ALL CHECKS AND LIST EACH SEPARATELY.

CHECKS AND/OR ITEMS ARE ACCEPTED FOR DEPOSIT SUBJECT TO THE TERMS OF THE DEPOSITORY AGREEMENT AND/OR APPLICABLE COLLECTION AGREEMENT

	DOLLARS	CENTS
1		
2		
3	CUS	
4		
5		
6	22,632	08
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		

ENTER TOTAL OF CHECKS HERE →

KOCAK BROTHERS, INC.
TELEGRAPH ACCOUNT

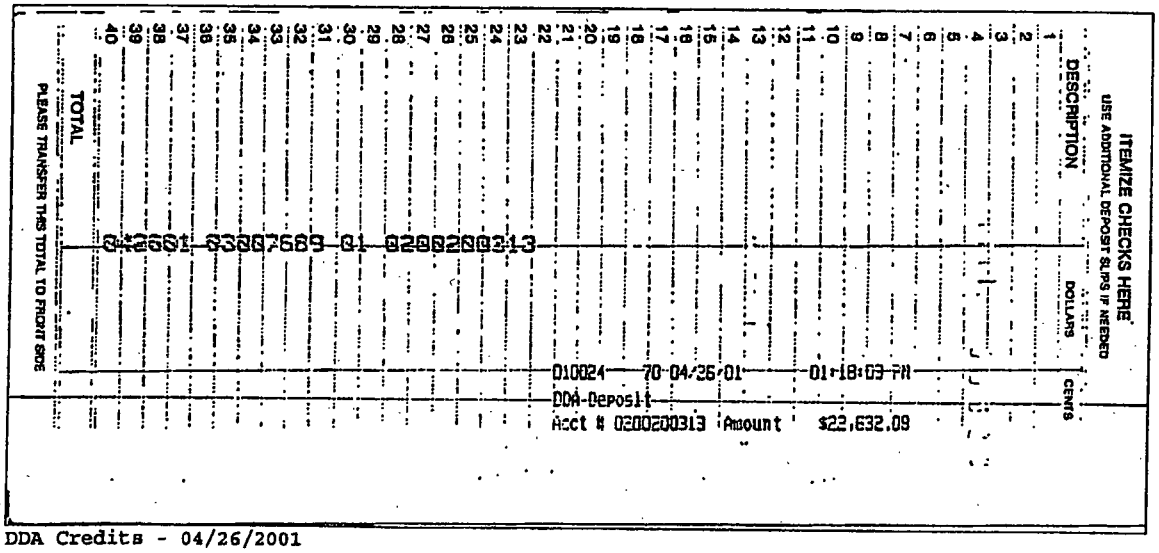
67-187/532

TOTAL ITEMS

TOTAL DEPOSIT $ 22632.08

⑆053201871⑆0200200313⑈ 009⑈00022632.08⑈

DDA Credits - 04/26/2001



ITEMIZE CHECKS HERE
USE ADDITIONAL DEPOSIT SLIPS IF NEEDED

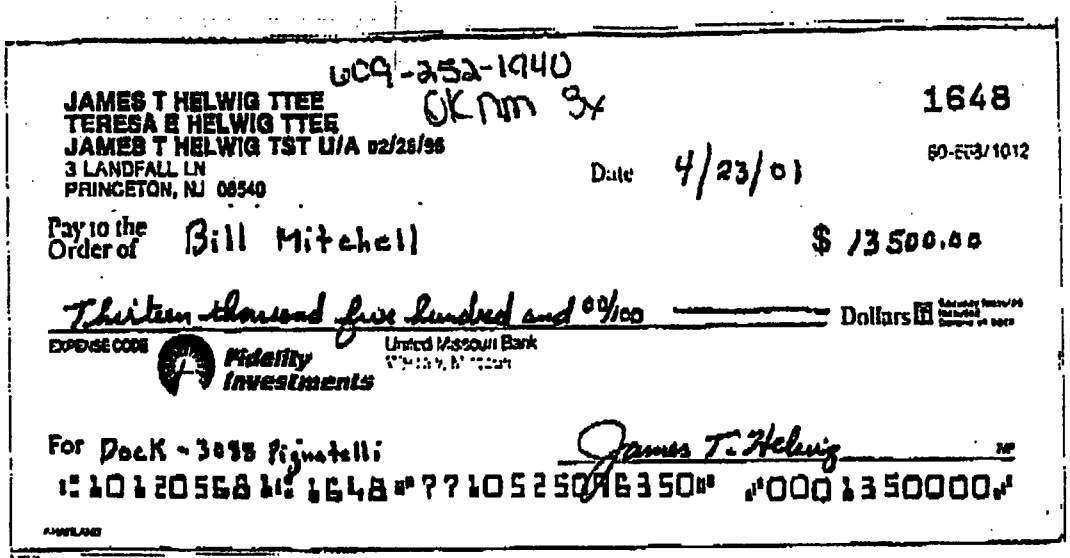
	DESCRIPTION	DOLLARS	CENTS
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			
39			
40	TOTAL		

PLEASE TRANSFER THIS TOTAL TO FRONT SIDE

⑆042601⑆03807689 01 0200200313

D10024 70 04/26/01 01:18:03 PM
DDA-Deposit
Acct # 0200200313 Amount $22,632.09

DDA Credits - 04/26/2001



009-252-1940
OK nm 3x

JAMES T HELWIG TTEE
TERESA E HELWIG TTEE
JAMES T HELWIG TST U/A 02/26/98
3 LANDFALL LN
PRINCETON, NJ 08540

1648

60-503/1012

Date 4/23/01

Pay to the Order of Bill Mitchell $ 13500.00

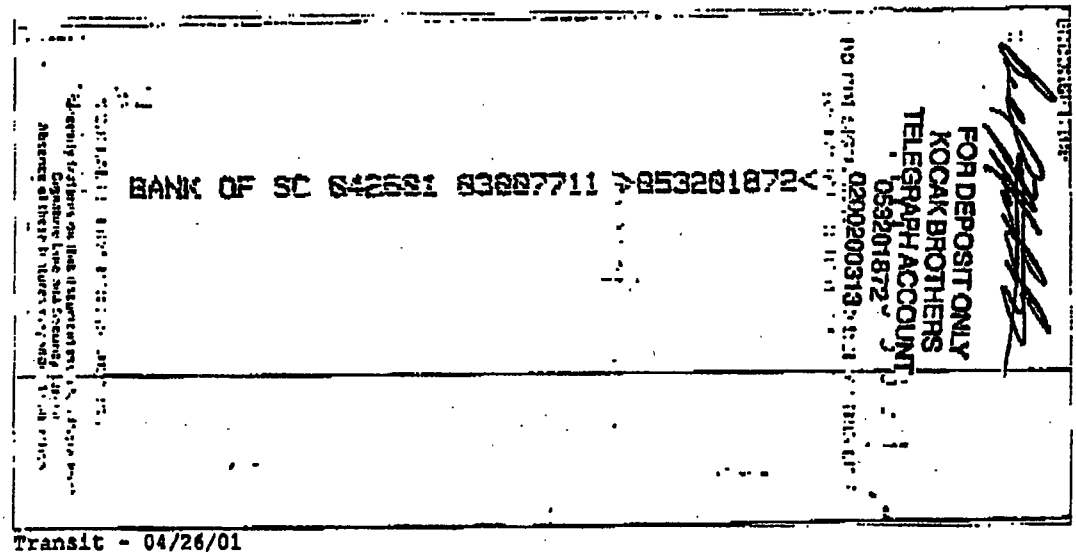
Thirteen thousand five hundred and 00/00 Dollars

EXPENSE CODE Fidelity Investments United Missouri Bank

For Dock - 3055 Pignatelli James T. Helwig

⑈101205681⑈ ⑆1648⑈ 771052506⑆350⑈ ⑈0001350000⑈

Transit - 04/26/01



FOR DEPOSIT ONLY
KOCAK BROTHERS
TELEGRAPH ACCOUNT
053201872

BANK OF SC 042581 83207711 ⑆053201872⑆

Transit - 04/26/01

TOTAL P.02

609-252-1940

JAMES T HELWIG TTEE
TERESA E HELWIG TTEE
JAMES T HELWIG TST U/A 02/26/96
3 LANDFALL LN
PRINCETON NJ 08540

CKnm 3x

1648

80-568/1012

Date 4/23/01

1492247393 04-27-01 7365 5215 10

Pay to the Order of Bill Mitchell

$ 13,500.00

Thirteen thousand five hundred and 00/100 ——— Dollars

Security features included. Details on back.

EXPENSE CODE

Fidelity Investments

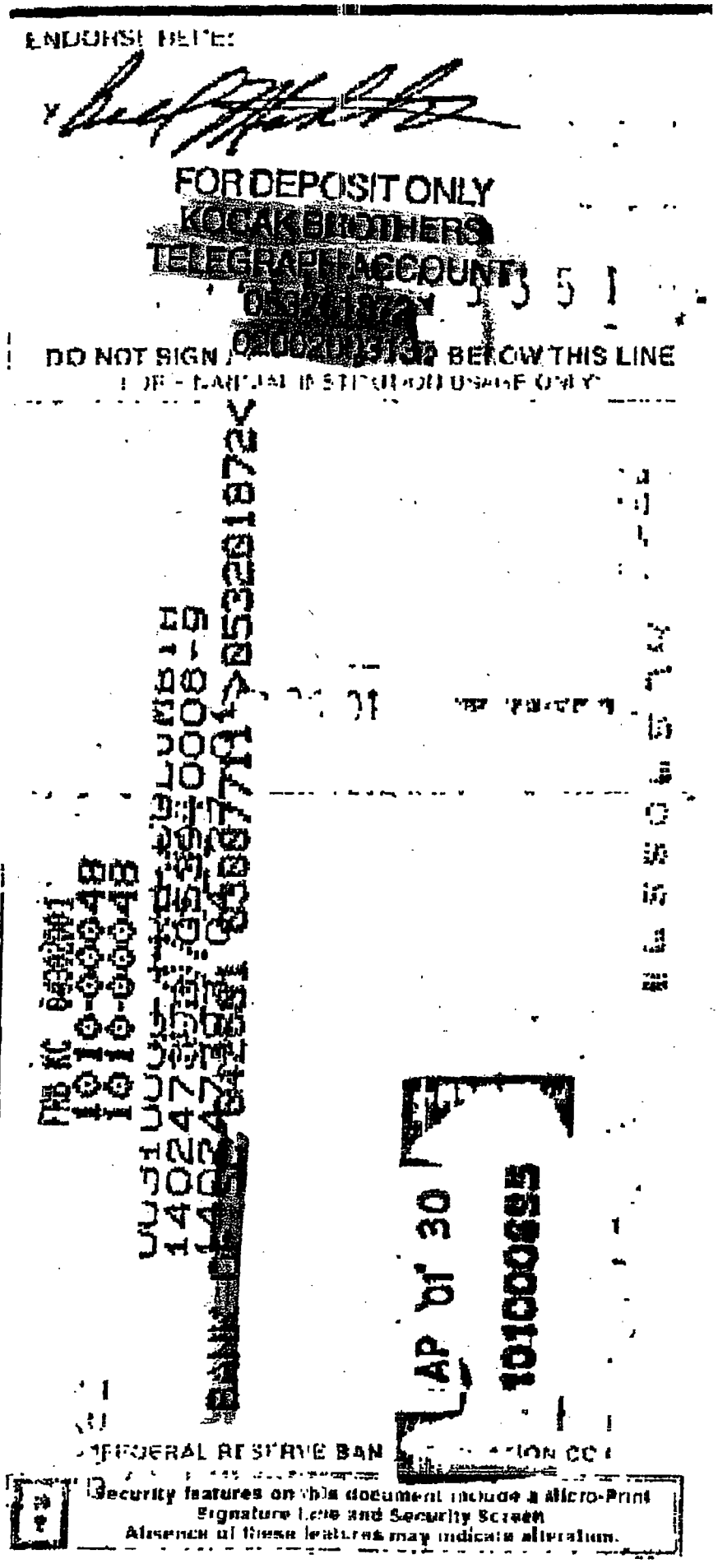
United Missouri Bank
Warsaw, Missouri

For Dock - 30% Pignatelli

James T. Helwig

⑈101205681⑈ 1648 ⑈771052501⑈6350⑈ ⑆000135000⑆

460


ENDORSE HERE:
FOR DEPOSIT ONLY
KOCAK BROTHERS
TELEGRAPH ACCOUNT
DO NOT SIGN BELOW THIS LINE
FOR FINANCIAL INSTITUTION USE ONLY
AP 01 30
10100695
Security features on this document include a Micro-Print
Signature Line and Security Screen
Absence of these features may indicate alteration.

South Carolina
Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 8964686
FAX: (803) 8964364

September 10, 2001

Mr. Jim Helwig
3088 Pignatelli Cresent, Dunes Cresent
Mt. Pleasant, S.C. 29466

Re: Dock Contractor

Dear Mr. Helwig,

In response to your faxed letter dated September 10, 2001 you asked for the date that your dock contractor Mr Bill Mitchell was granted a State of South Carolina General Contractors' License. In checking our records we find that Mr. Bill Mitchell was first issued a South Carolina General Contractors License on [redacted]

All general and mechanical contractors are now listed in the Contractors Board WEBB site, www.llr.state.sc.us, and can be verified for licensure.

I hope this information answers your questions.

Please call if I can be of any further assistance.

Sincerely yours,

Stan Bowen
Investigator

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

August 28, 2001

Mr. Jim Helwig
3088 Pignatelli Cresent, Dunes Cresent
Mt. Pleasant, S.C. 29466

Re: Dock Contractor

Dear Mr. Helwig,

In your faxed letter of August 10, 2001 you asked several questions in regards to your dock contractor Mr. Bill Mitchell. Mr. Mitchell is currently licensed with the State of South Carolina Contractors Licensing Board as a General Contractor and as a Marine [redacted] per job.

I hope this information answers your questions.

Please call if I can be of any further assistance.

Sincerely yours,

Stan Bowen
Investigator

GRAND JURY FACT SHEET

DEFENDANT: Mitchell, Bill

CASE NUMBER: 2001-P-09441

CHARGES: Breach of Trust

STATEMENT OR CONFESSION:

SUMMERY OF FACTS:

ON APRIL 23, 2001 A CONTRACT WAS RATIFIED BETWEEN THE VICTIM, AND THE DEFENDANT. THE DEFENDANT WAS TO BUILD A DOCK AT THE VICTIM'S HOME, 3088 PIGNATELLI CRESCENT FOR $40,500.00. THE VICTIM PAID THE DEFENDANT $27,000.00 AS REQUIRED BY THE CONTRACT, BUT WORK WAS NEVER DONE BY THE DEFENDANT. IN MAY 2001 THE DEFENDANT SHOWED THE VICTIM A DOCK AT 2368 DARTS COVE WAY, AND REPRESENTED THE DOCK AS WORK HE COMPLETED. THE VICTIM THEN DISCOVERED THAT THAT DOCK WAS NOT BUILT BY THE DEFENDANT. THE VICTIM ALSO DISCOVERED THAT AT THE TIME THE DEFENDANT ENTERED INTO HIS CONTRACT HE WAS NOT PROPERLY LICENSED, AND WAS NOT LICENSED UNTIL JUNE 6, 2001. THAT LICENSE LIMITED THE DEFENDANT TO JOBS PRICED AT NO MORE THAT $30,000.00. THE VICTIM PROVIDED A SIGNED WRITTEN STATEMENT OF THE EVENTS. DETECTIVE HOOSE CONFIRMED ALL OF THE ABOVE INFORMATION.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	C.A. NO.: 2010-CP-10-5532
William C. Mitchell, Plaintiff, v. James T. Helwig, Michael L. Masiowski and Elizabeth A. Masiowski, Defendants.	**CERTIFICATE OF SERVICE**

I, Stephanie L. Deaton, an employee of Howser, Newman & Besley, L.L.C., do hereby certify that I have served the foregoing **Notice of Amended Motion and Amended Motion to Dismiss Plaintiff's Complaint Against Defendant James T. Helwig Pursuant to Rule 12(b)(6) or in the Alternative, Motion for Summary Judgment Pursuant to Rule 56 and for Sanctions,** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below:

T. Alexander Beard, Esq.
Beard Law Offices
1002 Anna Knapp Boulevard, Suite 202
Mount Pleasant, SC 29464

Brian Duffy, Esq.
Duffy & Young LLC
96 Broad Street
Charleston, SC 29401

William C. Mitchell, Pro Se
P.O. Box 332
9452 Koester Road
Ladson, SC 29456

James T. Helwig
146 North Plaza Court
Mount Pleasant, SC 29464

FILED
2011 FEB 11 PM 1:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Stephanie L. Deaton

February 11, 2011

Direct Inquiries To: FIRST CITIZENS BANK
903 JOHNNIE DODDS BLVD
MT. PLEASANT SC 29464
843-216-2101

DOCK SYSTEM INC
9452 KOESTER RD
LADSON SC 29456

Your Account At A Glance

Checking Balance: 15,189.43

IM 222

Statement Period: June 1, 2001
Thru June 30, 2001

Business Checking II
Account Number: 000079022739101

Taxpayer I.D. 57-0954585
Enclosures This Statement: 0

Beginning Balance	12,592.24+	Statement Period Days	30
3 Deposits	33,642.00+	Average Collected Balance	18,008.00+
0 Other Credits	.00		
41 Checks	31,044.81-		
0 Other Debits	.00		
Monthly Service Charge	.00		
Ending Balance	15,189.43+		

Deposits To Your Account

Date	Amount	Date	Amount	Date	Amount
06-05	13,666.00	06-13	13,500.00	06-15	6,476.00

Checks Paid From Your Account

Check No.	Date	Amount	Check No.	Date	Amount	Check No.	Date	Amount
908	06-18	411.00	929	06-11	1,500.00	943	06-19	25.00
910*	06-08	190.00	930	06-14	253.34	944	06-19	80.00
917*	06-04	315.72	931	06-12	80.00	945	06-19	411.00
918	06-01	503.50	932	06-18	100.00	947*	06-22	243.19
919	06-01	1,500.00	933	06-15	100.00	948	06-19	500.00
920	06-06	404.39	934	06-28	100.00	950*	06-21	500.00
921	06-18	95.00	935	06-18	100.00	951	06-22	330.00
922	06-04	225.00	936	06-12	500.00	952	06-25	2,000.00
923	06-08	169.53	937	06-19	11.54	954*	06-26	200.34
924	06-07	120.00	938	06-13	500.00	960*	06-27	300.00
925	06-06	500.00	939	06-13	1,680.00	962*	06-29	101.89
926	06-08	2,500.00	940	06-19	140.00	963	06-29	4,500.00
927	06-07	2,900.00	941	06-15	252.87	280222*	06-11	3,623.70
928	06-27	601.00	942	06-15	2,476.80			

*Prior Check Number(s) Not Included or Out of Sequence.

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
06-01	10,588.74+	06-07	19,789.63+	06-13	22,546.40+
06-04	10,048.02+	06-08	16,930.10+	06-14	22,293.06+
06-05	23,714.02+	06-11	11,806.40+	06-15	25,939.39+
06-06	22,809.63+	06-12	11,226.40+	06-18	25,233.39+

Direct Customer Inquiry Calls To
FIRST CITIZENS BANK
Hotline At 1-888-612-4444.

Direct Inquiries To: FIRST CITIZENS BANK
903 JOHNNIE DODDS BLVD
MT. PLEASANT SC 29464
843-216-2101

DOCK SYSTEM INC
9452 KOESTER RD
LADSON SC 29456

IM 222

Statement Period: June 1, 2001
Thru June 30, 2001

Account Number: 000079022739101

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
06-19	24,065.85+	06-25	20,992.66+	06-28	19,791.32+
06-21	23,565.85+	06-26	20,792.32+	06-29	15,189.43+
06-22	22,992.66+	06-27	19,891.32+		

Around The Corner Or Around The Clock. Online Banking Gives You Every Option.

JAMES T HELWIG TTEE
TERESA E HELWIG TTEE
U/A 02/26/96
3088 PIGNATELLI CRESCENT
MT. PLEASANT, SC 29466

1713

80-568/1012

Date 6-12-01

Pay to the Order of Bill Mitchell 41596 06-14-01 144 $ 13500.00

Thirteen thousand five hundred and 00/100 Dollars

EXPENSE CODE

Fidelity Investments

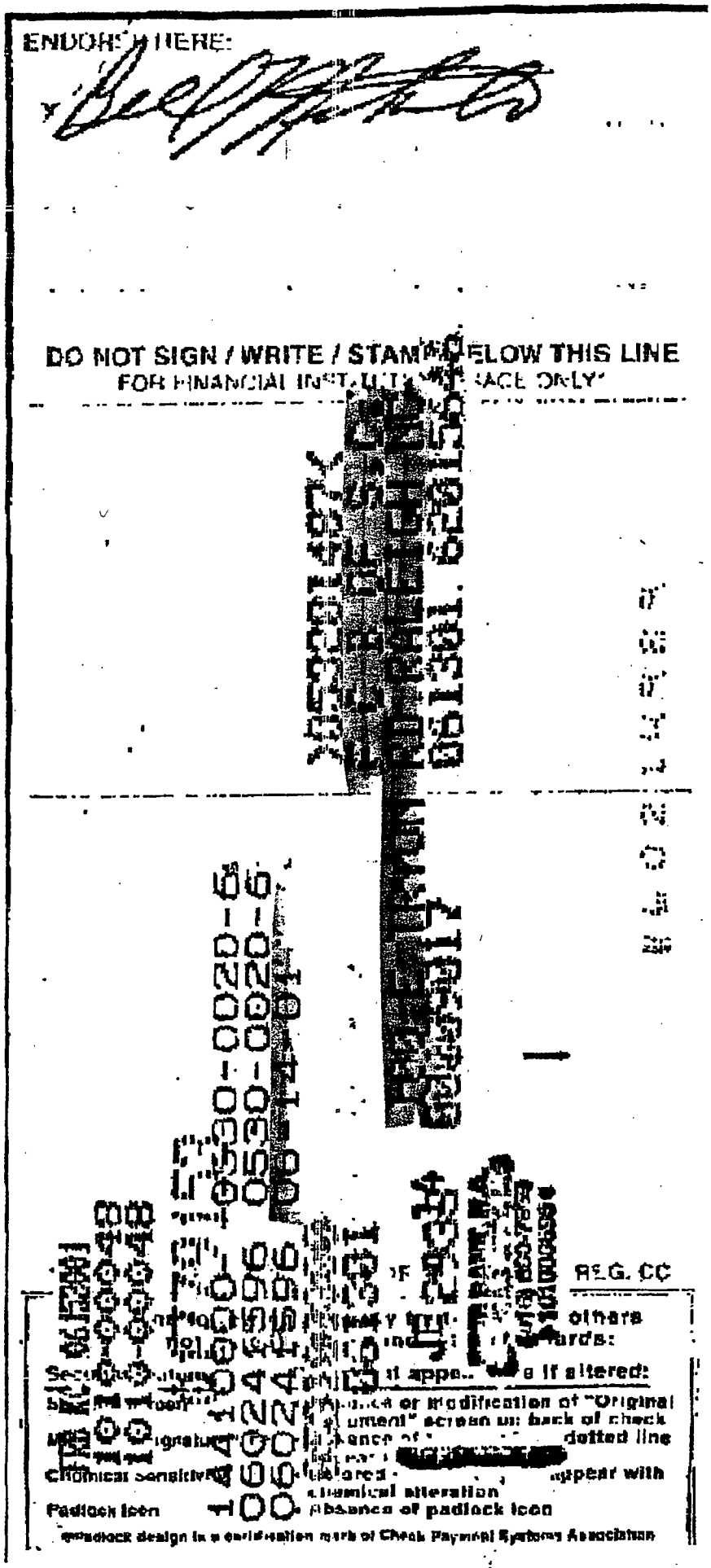
United Missouri Bank
Warsaw, Missouri

For #2 - Pack

James T. Helwig

⑈101205681⑈1713⑈ 771052506⑆350⑈ ⑆000135000⑆

468



First Citizens Bank of S.C.

State of South Carolina

OCA#01-009441

AFFIDAVIT

COUNTY OF CHARLESTON
TOWN OF MT.PLEASANT

Personally appeared before me, a magistrate of this County, one James Helwig who first being duly sworn, deposes and says that (name of defendant)

BILL MITCHELL

did within this County and State on the 23rd day of April 2001, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
OBTAINING MONEY BY FALSE PRETENSES>$5,000
16-13-240

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts.

That on April 23, 2001 while at 3088 Pignatelli Crescent which is in the Town of Mt.Pleasant, County of Charleston, State of South Carolina, the defendant, Bill Mitchell, willfully and unlawfully commit the offense of **Obtaining Money by False Pretenses** in violation of section **16-13-240** of the South Carolina code of laws 1976, as amended. In that the defendant did enter into a contract with the victim, James Helwig, to build a dock at the victim's residence. That the victim paid the defendant $27,000.00 for the work to be done, but the defendant did not provide the required services after payment. That at the time the contract was entered into the defendant did not have the required license to perform the work, and misrepresented himself to the victim when showing a completed dock that he did not build. The defendant did such acts with the intent to defraud the victim of the $27.000.00, and not complete the work as contracted. The facts to establish the above are that on April 23, 2001 the defendant and victim entered into a contract to have a dock built at the victim's home. The victim paid the defendant an initial $13,500.00 by check#1648, and then on June 12, 2001 the victim paid the defendant another $13,500.00 by check#1713. Both of the checks were paid through the victim's Fidelity Investments United Missouri Bank account, and deposited by the defendant. Further investigation revealed that the defendant was not licensed for the work contracted at the time the contract was ratified, and that he falsely represented himself as the builder of a dock located at 2368 Darts Cove Way when in fact he did not build that dock. The affiant, James Helwig is a witness to prove the same. All of which is against the law, peace, and dignity of the State of South Carolina.

James T. Helwig
Affiant

Sworn to and Subscribed before me

this 19th **day of** NOV, **2001**

_____(L.S.)
Signature of Judge

Address _____

_____

Phone _____

POLICE DEPARTMENT
100 ANN EDWARDS LANE
(843) 884-4176

MOUNT PLEASANT

SOUTH CAROLINA
29464

RONALD R. PERRY
CHIEF OF POLICE
www.mppolice.com

received
1/30/02

INVESTIGATIVE DIVISION

PROSECUTIVE SUMMARY

CONFIDENTIAL: This is an official file of the Mount Pleasant Police Department. Dissemination for criminal justice purposes only.

CASE #: 01-009441
CASE AGENT: DET. F.R. HOOSE

INCIDENT DATE: APRIL 23, 2001

CHARGE (S): OBTAINING MONEY BY FALSE PRETENSES
#G-248424

DEFENDANT (S): 1) WILLIAM CURTIS MITCHELL
W/M DOB 09/16/39
SS# 248-58-8655
9452 KOESTER RD.
LADSON, SC 29456
(843) 797-7538

VICTIM (S): JAMES HELWIG
3088 PIGNATELLI CRESCENT
MT.PLEASANT, SC 29466
(843) 216-7655

RULE 5

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 8964686
FAX: (803) 8964364

TO: The Investigative Review Committee/Complainant/Respondent

FROM: Stan Bowen

DATE: August 29, 2001

SUBJECT: The Matter of CLB vs Bill Mitchell
Case Number: V-01/02-29

Summary of Facts:

1. A complaint was received alleging that the contractor on the project was doing business in a name other than the name which appears on his general contractors license

2. My investigation determined that the contractor had used some personal stationary to draw up a contract prior to being licensed and also on some correspondence sent to this office.

Issues to be Resolved:

None.

Recommendation

This case should be dismissed because there is no violation.

Note to complainant:

This case is being forwarded to the Investigative Review Committee and if they agree with the above recommendation, this case will be presented to Contractors' Licensing Board on October 18, 2001 for consideration, upon approval for dismissal, the files in this matter will be closed.

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

August 28, 2001

Mr. Jim Helwig
3088 Pignatelli Cresent, Dunes Cresent
Mt. Pleasant, S.C. 29466

Re: Dock Contractor

Dear Mr. Helwig,

In your faxed letter of August 10, 2001 you asked several questions in regards to your dock contractor Mr. Bill Mitchell. Mr. Mitchell is currently licensed with the State of South Carolina Contractors Licensing Board as a General Contractor and as a Marine Specialty Contractor both with a group 1 license limitation of $30,000.00 per job.

I hope this information answers your questions.

Please call if I can be of any further assistance.

Sincerely yours,

Stan Bowen
Investigator

RULE 5

South Carolina
Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

September 10, 2001

Mr. Jim Helwig
3088 Pignatelli Cresent, Dunes Cresent
Mt. Pleasant, S.C. 29466

Re: Dock Contractor

Dear Mr. Helwig,

In response to your faxed letter dated September 10, 2001 you asked for the date that your dock contractor Mr Bill Mitchell was granted a State of South Carolina General Contractors' License. In checking our records we find that Mr. Bill Mitchell was first issued a South Carolina General Contractors License on June 6, 2001.

All general and mechanical contractors are now listed in the Contractors Board WEBB site, www.llr.state.sc.us, and can be verified for licensure.

I hope this information answers your questions.

Please call if I can be of any further assistance.

Sincerely yours,

Stan Bowen
Investigator

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Compliance Fax: (803) 896-4364
License Fax: (803) 896-4701

OCTOBER 25, 2001

TO: BILL MITCHELL
MARINE CONTRACTOR & SALVOR
P.O. BOX 60908
N. CHARLESTON, SC 29419

RE: FORMAL CLOSURE OF COMPLAINT #V01/02-28

DEAR MR. MITCHELL:

THE ABOVE REFERENCED COMPLAINT WAS PRESENTED TO THE BOARD ON OCTOBER 18, 2001 WITH A RECOMMENDATION FROM THE INVESTIGATIVE REVIEW COMMITTEE TO DISMISS THE CASE BECAUSE THERE WERE NO VIOLATIONS. THE BOARD AGREED TO DISMISS THIS COMPLAINT AND THE FILES ON THIS CASE ARE HEREBY CLOSED.

YOURS TRULY,

Terry King

TERRY KING
REGLUATORY COMPLIANCE DEPARTMENT

CC: FILES

RULE 5

South Carolina Contractors' Licensing Board

Synergy Business Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4686
FAX: (803) 896-4364

TO: The Investigative Review Committee/Complainant/Respondent

FROM: Stan Bowen

DATE: August 29, 2001

SUBJECT: The Matter of Bill Mitchell / Bill Mitchell Contractor & Salvor
Case Number: V-01/02-28

3

Summary of Facts:

1. A complaint was received alleging that the contractor on the project was exceeding his license limitations

2. My investigation determined that the possible violation had been before the contractor was licensed with the board. In a previous meeting with the administrative staff an agreement was reached that he would not be held accountable for previous jobs under contract before being licensed.

Issues to be Resolved:

None.

Recommendation

This case should be dismissed because there is no violation.

Note to complainant:

This case is being forwarded to the Investigative Review Committee and if they agree with the above recommendation, this case will be presented to Contractors' Licensing Board on October 18, 2001 for consideration, upon approval for dismissal, the files in this matter will be closed.

Stan Bowen 1/7/01
Re: Case
(803) 896-4856

South Carolina Department of Labor, Licensing and Regulation
Jim Hodges
Governor
Rita M. McKinney
Director

RULE 5

South Carolina Contractors' Licensing Board

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OCTOBER 25, 2001

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MARINE CONTRACTOR & SALVOR
P.O. BOX 60908
N. CHARLESTON, SC 29419

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YOURS TRULY,

Terry King Jr

TERRY KING
REGLUATORY COMPLIANCE DEPARTMENT

CC: FILES

RULE 5

RIP-RAP REPAIRS | FLOATING DOCKS BOAT LIFTS

Page No. of Pages

BILL MITCHELL

MARINE CONTRACTOR & SALVOR

Phone: 843-797-7538
FAX 843-824-8670
PO BOX 80908
N. CHARLESTON, SC 29418
9452 KOESTER ROAD - LADSON, SC 29456

PROPOSAL AND ACCEPTANCE

TO James T. Helwig
3088 Pignattelli Crescent, Dunes West
Mt Pleasant, S C 29466

PHONE 216-7655 | DATE 4-18-01

JOB NAME / LOCATION
Same

Phone 609-252-1940 Fax 609-252-1941

OCRM 98-039-J | JOB PHONE

We hereby submit specifications and estimates for:

Furnish all labor, equipment and material for the following dock system;

1- Walkway, 4' wide by 450' long with handrails on both sides.
2- Pierhead and Floating Dock, lay out to suite owner per 120'Sq.Ft on permit or as amended by O C R M, with two benches and handrails.
3- Alum. Ramp as mfg. By Carolina Water works.
4- Boat Lift, four pile 7,000 lbs with remote control
5- Include conduit for water to Pierhead
6- Subcontract electricals for lift.

SEE ATTACHED DRAWINGS FOR DETAILS AND SPEC'S.

All Lumber to be Southern Yellow Pine #2, C C A .40
All Piles to be 6" tip's, Marine Treated C C A 2.5
All nails, bolt's, screw's etc. To be Galv.

We Propose hereby to furnish material and labor - complete in accordance with the above specifications, for the sum of:
Forty Thousand Five Hundred & NO/100 dollars ($ 40,500.00

Payment to be made as follows:
A payment of 1/3 the above upon signing this agreement, A payment of 1/3 upon delivery of material, A payment of ½ the remaing balance upon completion of ½ the above work Balance in full upon completion of above described work.

Owner to carry fire, tornado and other necessary insurance. It is further understood and agreed that any and all monies paid under this contract are a simple payment on this contract and any such monies and/or payments paid hereunder, are not a payment in trust, and are not required to be held in any particular manner, or for any specified purpose and no accounting is required for the use of same. No monies paid herein are implied or expressed to be a payment in trust.

Authorized Signature

Note: This proposal may be days.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Authorized Signature James T. Helwig 4/23/01

Signature

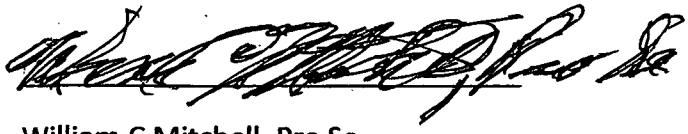
Date of Acceptance:

RULE 5

Certificate of Counsel

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

March 28, 2013



William C Mitchell, Pro Se

9452 Koester Road

Ladson, S C 29456

(843) 797-7538