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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

\_\_\_\_\_  
Docket No: 08-CP-40-0009  
\_\_\_\_\_

Larry A. Yates ..... Appellant,

v.

The Estate of Alvin Yates ..... Respondent.

\_\_\_\_\_  
**RECORD ON APPEAL**  
\_\_\_\_\_

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**INDEX  
RECORD ON APPEAL**

**DOCUMENT** **PAGES**

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**MOTION COURT'S RECORD ON APPEAL**

Motion Court's Judge Lee's Order of June 27, 2012, Denying Plaintiff's Motion to Amend Judge Lee's Order of June 7, 2012 ..... 4

Plaintiff's June 22, 2012, Motion to Amend Judgment. .... 6

Motion Court's Judge Lee's Order of June 7, 2012, Denying Plaintiff's Motion for Relief from Trial Court's Judge Childs' October 23, 2009, Order of Judgment taken from July 13, 2009 Bench Trial ..... 14

Plaintiff's March 9, 2012, Memorandum in Support of Plaintiff's Motion for Relief from Trial Court's Judge Childs' October 23, 2009, Order of Judgment taken from July 13, 2009, Bench Trial ..... 20

Plaintiff's December 16, 2011, Notice of Motion and Rule 60(b) Motion for Relief from Trial Court's Judge Childs' October 23, 2009, Order of Judgment taken from July 13, 2009, Bench Trial ..... 32

**TRIAL COURT'S RECORD ON APPEAL**

Trial Court's Judge Childs' October 23, 2009, Order of Judgment taken from July 13, 2009, Bench Trial and denying the existence of a Plaintiff claimed Partnership between Plaintiff, Larry Yates and his (now deceased) cousin, Alvin Yates ..... 35

Plaintiff's Request for Charges for Trial Held July 13, 2009, (Actually accepted as Case Law for Judge Childs to consider) ..... 48

Transcript of Record of Testimony and Proceedings of Bench Trial held July 13, 2009, before Judge Childs ..... 52

Opening Remarks of pro se Plaintiff, Larry Yates ..... 56

Opening Remarks of Counsel for Defendant, Ronald Hall ..... 58

Witness Larry Yates Direct Examination by Mr. Yates ..... 62

Witness Larry Yates Cross Examination by Mr. Hall ..... 96

Witness Larry Yates Redirect Examination by Mr. Yates ..... 110

Closing Arguments by Mr. Yates ..... 114

Closing Arguments by Mr. Hall .....	117
Additional Closing Arguments by Mr. Yates .....	119
Exhibits of Record Entered as Evidence for Bench Trial held July 13, 2009, before Judge Childs .....	122
<u>Plaintiff's Exhibit No. 1</u> Consists of July 5, 2003, Partnership Agreement, Affidavit Testimony as to Partnership Agreement and applicable Partnership Case Law .....	122
<u>Plaintiff's Exhibit No. 2</u> Consist of July 31, 2003, Wachovia Bank Prime Equity Line of Credit Note for \$139,100.00, signed by Alvin Yates and Larry Yates, Affidavit Testimony and applicable Case Law as to Partnership Property bought with Partnership Funds .....	125
<u>Plaintiff's Exhibit No. 3</u> Consist of Signature Building Systems' August 5, 2003 Invoice for \$75,762.29 for Modular Built Home sold to the Alvin Yates – Larry Yates Partnership, Affidavit Testimony and applicable Case Law as to Partnership Property bought with Partnership Funds .....	131
<u>Plaintiff's Exhibit No. 4</u> Consists Wachovia Bank Official Check for \$67,762.29 made payable to Signature Building Systems with Remitters Larry and Alvin Yates, Affidavit Testimony and Case Law as to Partnership Property bought with Partnership Funds .....	133
<u>Plaintiff's Exhibit No. 5</u> Consists of Title to Real Estate for 1.2 acre lot sold to the Partnership and paid for with Partnership funds, but titled in the name of Partner Alvin Yates as per Case Law for purchasing Partnership Property .....	135
<u>Plaintiff's Exhibit No. 6</u> Consists of Service Contract/Invoice from Robert Hildreth Land Clearing for Construction work on Partnership Property and Paid for from Partnership Funds as per Affidavit Testimony of Partner Larry Yates .....	138
<u>Plaintiff's Exhibit No. 7</u> Consists of Invoices from Southeastern Concrete Products for Construction Materials for work on Partnership Property and Paid for from Partnership Funds as per Affidavit Testimony of Partner Larry Yates .....	140
<u>Plaintiff's Exhibit No. 8</u> Consists of Invoices from Cripple Creek Construction, Carolina Ceramics and Hardaway Concrete Company for Construction Materials for work on Partnership Property and Paid for by Partnership Funds as per Affidavit Testimony of Partner Larry Yates .....	143

<u>Plaintiff's Exhibit No. 9</u> Consists of Invoices from White Crane Company for Construction Work on Partnership Property and Paid for by Partnership Funds as per Affidavit Testimony of Partner Larry Yates .....	147
<u>Plaintiff's Exhibit No. 10</u> Consists of Statement of Earnings for Steve McAteer and Partnership Check for \$212.00 as payment for Construction Labor on Partnership Property and Paid for by Partnership Funds as per Affidavit Testimony of Larry Yates .....	150
<u>Plaintiff's Exhibit No. 11</u> Consists of a Ledger of all Partnership Expenditures for "On Site Construction" of Partnership Property, Including an Itemized Summary of all Accounts showing Budget Items, Estimated Cost, Spent to Date, Yet to Spend, Percent Complete, and Over (Under) Balances through June 28, 2004. Also, Affidavit Testimony of Partner Larry Yates, Certifying Exhibit No. 11 to be a true Accounting of use of Partnership Funds and applicable Case Law that " <i>Partnership books shall be kept, subject to any Agreement between the Partners</i> " .....	152
<u>Plaintiff's Exhibit No. 12</u> Consists of a Ledger of all of Partner Alvin Yates Expenditures for "On Site Construction" of Partnership Property, Including a Summary of Code No. 24, Alvin Yates Miscellaneous Accounts showing Estimated Cost (\$1,000), Spent to Date(\$3,925) , Yet to Spend (\$0.00), Percent Complete (100%), and Over (\$2,925) Balances through June 28, 2004. Also, Affidavit Testimony Certifying Exhibit No. 12 to be true Accounting of use of Partnership Funds and applicable Case Law .....	164
<u>Plaintiff's Exhibit No. 13</u> Consists of an Itemized Accounting of and Reimbursement Adjustments of Partnership Expenses paid from Alvin Yates' Personal Account or Alvin Yates' Personal Expenses paid from Partnership's Construction Account. Also, a Partnership's Construction Account Check made payable to Alvin Yates in an Amount of \$4,566.81. Also, Affidavit Testimony and applicable Case Law .....	167
<u>Plaintiff's Exhibit No. 14</u> Consists of a Property Appraisal of the Partnership's Property by Certified Appraisal Services, estimating the value of the Partnership Property to be \$235,000 as of July 20, 2004. Also, Affidavit Testimony and Case Law. ....	169
<u>Plaintiff's Exhibit No. 15</u> Consists of a Photograph of the Partnership Property and Affidavit Testimony pertaining to all Plaintiff's Exhibits 1 – 14 .....	176
Defendant's January 15, 2008, Answer to Plaintiff's Complaint .....	182
Plaintiff's January 2, 2008, Complaint .....	186

**MOTION COURT'S RECORD ON APPEAL  
Page 4 to Page 34**

**Motion Court's Judge Lee's Order of  
June 27, 2012, Denying Plaintiff's  
Motion to Amend Judge Lee's Order  
of June 7, 2012**



**MOTION COURT'S RECORD ON APPEAL**

**Plaintiff's June 22, 2012,  
Motion to Amend Judgment**

MOTION COURT'S RECORD ON APPEAL

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Case No: 08-CP-40-0009

Larry A. Yates, as sole surviving )  
Partner of a Partnership with )  
Alvin Yates, )

Plaintiff, )

vs. )

The Estate of Alvin Yates, )  
Wachovia Bank, N.A., and )  
First Citizens Bank & Trust )

Defendants. )

PLAINTIFF'S MOTION TO  
AMEND JUDGMENT

2012 JUN 22 PM 4:24  
JEANETTE W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

Pursuant to SCRPC Rule 52(b) and/or Rule 59(e), Plaintiff Larry A. Yates (Plaintiff Yates) moves this Court to amend the findings found in this Court's Order of June 7, 2012, wherein the Plaintiff's motion to set-aside, was denied. Grounds for amending this Court's findings, are based on Hearing Court's error in its standard of review for determining the Hearing Court's findings for denial of Plaintiff's Motion to Set-aside.

Plaintiff's Motion to Set Aside should have been GRANTED because:

- 1. The Motion was UNOPPOSED by Defendant.

Plaintiff's motion to set-aside should have been granted, because the motion was unopposed<sup>1</sup> by the Defendant. The Plaintiff's motion was properly supported with memorandum of law, transcript of trial, trial exhibits, affidavit testimony and oral arguments at hearing. The Defendant (personal representative) was not in attendance for the hearing. Only the Defendant's attorney was present for the hearing, but he refused to participate in the hearing, by refusing to accept copies of Plaintiff's memorandum and/or exhibits that were filed with the Court. The Defendant's attorney

<sup>1</sup> "When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the mere allegations of his pleadings." Moody v. McLellan, 295 S.C. 157, 163; 367 S.E.2d 449, 452-53 (Ct. App. 1988)

## MOTION COURT'S RECORD ON APPEAL

rudely walked out of the hearing before the hearing was concluded. The hearing judge duly noted the conduct of the Defendant's attorney, as part of the hearing record.

When a motion is made and properly supported by facts and case law, as this Plaintiff's motion was supported, the Defendant should not be allowed to prevail without having to provide the Court with facts and case law supporting its opposition.

This Defendant, has not left her home in New Jersey, to attend either the July 2009 trial or this March 2012 hearing. This Defendant has not provided any affidavit testimony, offered any exhibits or any other evidence. The trial record nor the hearing record contains even a scintilla of evidence that was provided by the Defendant. Furthermore, the Defendant has not even attempted to provide any evidence, at all.

At trial, the Plaintiff provided the Court with affidavit testimony, case law, in court testimony, partnership agreement and other partnership exhibits. At the hearing, he provided the Court with affidavit testimony, case law, memorandum of law and other trial exhibits.

However, by way of errors of judgment, by both the trial judge and the hearing judge, this "stay-at-home, do-nothing" Defendant has miraculously prevailed at trial and now at this hearing. Clearly any findings and/or decisions by these courts that are based on these obvious errors of judgment, would have been taken in violation of the Plaintiff's constitutionally given rights to due process and a fair trial. Any ruling or judgments taken in violation of the Plaintiff's constitutional rights, is void and must be set-aside by the hearing judge.

### 2. The Motion Court Failed to Review Trial Court Record "De Novo."

The standard of review pursuant to Rule 60(b)(4) is de novo.<sup>2</sup> The motion court judge is compelled to vacate the October 26, 2009 judgment against the Plaintiff, because a de novo review of the trial record will confirm that the trial judge's failure to consider the "substantial<sup>3</sup> evidence" for the Plaintiff, was a violation of the Plaintiff's

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2. De Novo. The court gives no deference to the lower court's decision and applies the same standard as the district court. *Whatley v. CNA Ins. Co.*, 189 F.3d 1310, 1313 (11th Cir. 1999).

3. Substantial Evidence. Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

## MOTION COURT'S RECORD ON APPEAL

constitutional right to due process and the right to a fair trial. A judgment taken in violation of a Plaintiff's constitutional rights afforded him by the Fifth and Fourteenth amendments of the U.S. Constitution, is a void judgment. A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside." 7 J.Moore, Moore's Federal Practice, para. 60.25[2] at 301 (2d ed. 1973). The issue of whether the Plaintiff was denied due process involves a constitutional question of law that this hearing judge reviews de novo. In re Center Wholesale, Inc., 759 F.2d 1440, 1445 (9th Cir. 1985).

### 3. The Motion Court Failed to Review Judgment for "Clearly Erroneous Findings."

The standard of review pursuant to Rule 60(b)(4) is de novo. The motion court judge is compelled to vacate the October 26, 2009 judgment against the Plaintiff, because a de novo review of the trial record will confirm that the trial judge's findings set forth in the October 26, 2009 order of judgment were "clearly erroneous."<sup>4</sup>

There are numerous false statements, opinions and findings of fact that are common entries found in the trial Court's October 26, 2009, Order of Judgment and in the Defense's counsel's exparte post-trial memorandum. These entries are not evidence, are not found as part of the trial record, but the Court's Order of Judgment is mostly based on entries that are not evidence contained in the trial record. Some examples of entries contained in the Court's "Order" that are not found in the trial record, are as follows:

- 1) There is no evidence on the record, that "Decedent Alvin Yates ('Decedent') died on April 16, 2005. (Order.Pg1)
- 2) There is no evidence on the record, that "His estate was probated in Lexington County." (Order.Pg1)
- 3) There is no evidence on the record, that "The probate court determined that the sole asset of Decedent's estate is modular home, located at 400 Grover Wilson Road, Blythewood, South Carolina 29016." (Order.Pg1)

4. Clearly Erroneous. "Review under the clearly erroneous standard is significantly deferential." Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court's findings unless it's left with the "definite and firm conviction that a mistake has been committed." Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982).

## MOTION COURT'S RECORD ON APPEAL

- 4) There is no evidence on the record, that "Plaintiff first attempted to intervene in the probate proceedings claiming that the 400 Grover Wilson Road property was owned by a partnership entered into by him and the decedent on or about July 3, 2005," (Order.Pg1)
- 5) There is no evidence on the record, that "The probate judge refused to hear the matter determining that the probate court lacked jurisdiction." (Order.Pg1)
- 6) There is no evidence on the record, that "Probate administration of the Decedent's estate has since closed." (Order.Pg2)
- 7) There is no evidence on the record, that "Prior to April 12, 2000, Decedent made various loans to Plaintiff on which the Plaintiff defaulted." (Order.Pg2.#1)
- 8) There is no evidence on the record, that an April 12, 2000, "Confession of Judgment" had any relevance with regard to determining the existence of the July 5, 2003 partnership. (Order.Pg2.#2)
- 9) There is no evidence on the record, that "Plaintiff's only responsibility under the [Partnership] Agreement was to account for project expenditures." (Order.Pg3.#3)
- 10) There is no evidence on the record, that "Decedent [singularly] obtained an open-end mortgage...." (Order.Pg3.#4)
- 11) There is no evidence on the record, that "Decedent [singularly] purchased a 4BR/ 3-1/2 bath modular building ....." (Order.Pg3.#5)
- 12) There is no evidence on the record, that "Decedent [singularly] paid for the modular home...." (Order.Pg4.#5)
- 13) There is no evidence on the record, that "Decedent died on April 16, 2005. (Order.Pg5.#13)
- 14) There is no evidence on the record, that "probate court determined that the property known as 400 Grover Wilson Road is the sole asset of Decedent's estate. (Order.Pg5.#14)
- 15) There is no evidence on the record, that "Defendant argues that there was never any agreement to create a partnership between the parties, and the Agreement submitted by Plaintiff contains no language creating a partnership

## MOTION COURT'S RECORD ON APPEAL

between the parties. Moreover, Defendant claims that Plaintiff made no contribution to the alleged partnership, and thus, the existence of a partnership cannot be implied from the conduct of the parties. (Order.Pg6)

16) There is evidence on the record, that the partners did share profits and losses. (Order.Pg7&8) (Trial Trans.Pg14.Lns20-23)

17) There is no evidence on the record that would allow the Court to find, "that the partners did not share profits and losses. (Order.Pg8) (Trial Trans.Pg14.Lns20-23)

18) There is no evidence on the record, that "establishes that Decedent financed the project exclusively." (Order.Pg9) (Trial Trans.Pg16.Lns6-11)

19) There is evidence on the record, that does indicated that "Defendant [parties] intended the property located at 400 Grover Wilson Road, to be partnership property." (Order.Pg10) (Trial Trans.Pg13.Lns15-25)

20) There is evidence on the record, that "the parties did intend to share control and management over the partnership property." (Order.Pg11) (Trial Trans.Pg30.Lns7-19)

21) There is evidence on the record, that "the parties did intend to enter into a partnership." (Order.Pg11) (Trial Trans.Pg19.Lns3-12)

These "clearly erroneous"<sup>4</sup> finding of facts contained in the trial court's October 26, 2009 order of judgment are a violation of the Plaintiff's constitutional right to due process and the right to a fair trial. A judgment taken in violation of a Plaintiff's constitutional rights afforded him by the Fifth and Fourteenth amendments of the U.S. Constitution, is a void judgment. A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside." 7 J.Moore, Moore's Federal Practice, para. 60.25[2] at 301 (2d ed. 1973). The issue of whether the Plaintiff was denied due process involves a constitutional question of law that this hearing judge reviews de novo. In re Center Wholesale, Inc., 759 F.2d 1440, 1445 (9th Cir. 1985).

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5.Clearly Erroneous. "Review under the clearly erroneous standard is significantly deferential." Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court's findings unless it's left with the "definite and firm conviction that a mistake has been committed." Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982).

## MOTION COURT'S RECORD ON APPEAL

### 4. The Motion Court Failed to Review Judgment for "Abuse of Discretion."

The standard of review pursuant to Rule 60(b)(4) is de novo. The motion court judge is compelled to vacate the October 26, 2009 judgment against the Plaintiff, because a de novo review of the trial record will confirm that the trial judge's findings set forth in the October 26, 2009 order of judgment were an "abuse of discretion."<sup>6</sup>

The Order of Judgment contains facts and conclusions of law that are not supported by the trial record. It is obvious, to the Plaintiff, that the trial Court's Order of Judgment is based on ex parte communications with the Defendant's counsel. At the end of the trial, the Court allowed Plaintiff Yates to "hand up" a schedule of case laws, that the Plaintiff wanted the Court to consider, in reaching its decision. The Defendant was given a copy by the Plaintiff, and the Defendant was invited by the Court, to respond "in kind," with its own schedule of case laws, if done so within ten (10) days from the day of trial. The Defendant never responded with its own schedule of case laws, as allowed by the Court, but instead, the Defendant's counsel conducted ex parte communications with the Court, by sending in what can best be described as a post trial "addendum" to Defense counsel's "in court" closing arguments. Defense counsel's post trial arguments were entitled "[M]emorandum of the Estate of Larry Yates (sic) in Response to Post Trial Memorandum Submitted by Plaintiff."

It was an abuse of discretion for the trial Court to engage in ex parte communications with the Defense's counsel, but it was an even more egregious abuse of discretion, for the trial Court to issue the October 26, 2009, Order of Judgment that was mostly based on the outrageous and untrue statements and opinions contained in the Defense counsel's, "[M]emorandum of the Estate of Larry Yates (sic) in Response to Post Trial Memorandum Submitted by Plaintiff." First of all, the trial Court should have been aware that the Defendant defaulted to a finding, for the Plaintiff, in that the Defendant failed to offer any defense what-so-ever, in the July 13, 2009 trial. Secondly, the trial Court should have realized that statements and opinions made by Defense's

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6. Abuse of Discretion. Under this standard, a review court will "uphold any district court determination that falls within a permissible range of permissible conclusions." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 400 (1990). Under this standard, the review court must affirm unless it determines that "the district court has made a clear error of judgment, or has applied an incorrect legal standard." *Alexander v. Fulton County*, 207 F.3d 1303, 1326 (11th Cir. 2000).

## MOTION COURT'S RECORD ON APPEAL

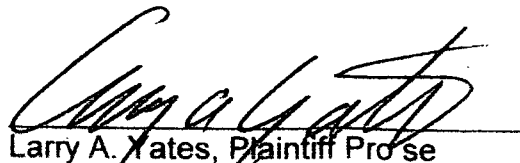
counsel, whether as part of in-trial closing arguments or ex parte post-trial memorandum are not evidence, are not part of the record and therefore cannot be a bases of the Court's final Order of Judgment. (emphasis added)

There are numerous false statements, opinions, and findings of fact that are common entries found in the trial Court's October 26, 2009, Order of Judgment and in the Defense's counsel's ex parte post-trial memorandum. These entries are not evidence, are not found as part of the trial record, but the Court's Order of Judgment is mostly based on entries that are not evidence contained in the trial record.

This "abuse of discretion"<sup>6</sup> was a violation of the Plaintiff's constitutional right to due process and the right to a fair trial. A judgment taken in violation of a Plaintiff's constitutional rights afforded him by the Fifth and Fourteenth amendments of the U.S. Constitution, is a void judgment. A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside."

Wherefore, on multiple grounds, (as set forth above) the trial court's order of judgment issued on October 26, 2009, which was taken in violation of a Plaintiff's constitutional rights afforded him by the Fifth and Fourteenth amendments of the U.S. Constitution, is a void judgment. Under SCRCP Rule 60(b)(4) a party is entitled to relief from a judgment if it is void, thus the trial court's October 26, 2009 order of judgment should be set aside in response to this motion to amend.

Respectfully Submitted,



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June 22, 2012

**Motion Court's Judge Lee's Order of  
June 7, 2012, Denying Plaintiff's  
Motion for Relief from Trial Court's  
Judge Childs' October 23, 2009,  
Order of Judgment taken from July  
13, 2009 Bench Trial**

MOTION COURT'S RECORD ON APPEAL

STATE OF SOUTH CAROLINA )
COUNTY OF RICHLAND )
Larry A. Yates, )
Plaintiff, )
vs. )
The Estate of Alvin Yates, )
Defendant. )

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 08-CP-40-0009

ORDER

This matter came before the Court on March 9, 2012 for a hearing on Plaintiff's Motion for Relief from the October 26, 2009 Order of Judgment. Plaintiff appeared pro se, and Ronald Hall, Esquire, represented Defendant.

BACKGROUND

On April 16, 2005 Defendant Alvin Yates ("Decedent") died, leaving an estate that was probated in Lexington County. The sole asset of Decedent's estate was a residential home built by Signature Buildings Systems, Inc. The home sat on 1.217 acres located at 400 Grover Wilson Road, Blythewood, South Carolina, 29016 ("Grover Wilson Road.") Plaintiff filed this action claiming the Grover Wilson Road property was owned by a partnership he and Decedent had entered into in July 2005, entitling Plaintiff to dissolve or wind up the affairs of that property.

A non-jury trial was conducted on July 13, 2009 before Judge J. Michelle Childs. By Order dated October 23, 2009, the Court ruled for Defendant, finding that no legally valid partnership existed between Plaintiff and Decedent prior to Decedent's death, that Decedent was the sole owner of the Grover Wilson Road property, and that Plaintiff was therefore not entitled to dissolve the affairs of the alleged partnership with respect to the Grover Wilson Road property.

Plaintiff subsequently filed a Motion for Reconsideration on November 30, 2009, which was denied due to its lack of timeliness on March 10, 2009. On March 15, 2010, Plaintiff filed a Notice of Appeal with the South Carolina Court of Appeals. Defendant filed its Motion to Dismiss the Appeal. The South Carolina Court of Appeals granted Defendant's Motion to Dismiss on April 28, 2010.

2012 JUN - 8 PM 3:20
JEANETTE W. McBRIDE
C.P. & G.S.
RICHLAND COUNTY
FILED

Handwritten initials and a hash symbol (#).

## MOTION COURT'S RECORD ON APPEAL

Plaintiff now moves for relief from this Court's October 26, 2009 Order on two grounds. Plaintiff first argues that he is entitled to relief under Rule 60(b)(4) of the South Carolina Rules of Civil Procedure ("SCRCP") on grounds that this Court violated his due process rights. Plaintiff argues that the Order in favor of Defendant improperly denied him a fair trial since Defendant chose not to present a case disproving any fact that a partnership existed and also because of alleged ex parte communications. Second, Plaintiff argues that he is entitled to relief under Rule 60(b)(6) SCRCP as a result of the Court's alleged abuse of discretion. Plaintiff prays for relief from the October 29, 2009 Order and a retroactive Directed Verdict.

### STANDARD OF REVIEW

Rule 60(b), SCRCP requires the moving party to show one of five enumerated reasons before the court may grant relief from an order. Patterson v. McNeill & Associates, Inc., 312 S.C. 471, 472, 441 S.E.2d 328, 329 n.2 (Ct. App. 2005). A Motion for Relief from an Order is appropriate pursuant to Rule 60(b)(4), SCRCP, where a party shows "the judgment is void." Tri-County Ice and Fuel v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). In order for a judgment to be void under Rule 60(b)(4), it must be one that, "from its inception, is a complete nullity and is without legal effect." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002). In relevant part, void judgments are judgments rendered by courts "which failed to provide proper due process . . . ." Id. The standard of review in deciding whether to grant or deny any Rule 60(b) motion lies within the sound discretion of the reviewing judge. Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 47, 590 S.E.2d 502, 504 (Ct. App. 2003).

### DISCUSSION

Plaintiff alleges that the October 26, 2009 Order is void under Rule 60(b)(4) of the SCRCP because this Court did not provide him due process in the form of a fair trial.

Plaintiff first argues that he was entitled to a directed verdict following the July 13, 2009 non-jury trial because Defense counsel "did not offer a defense." Plaintiff alleges that because the Court ruled in favor of the Defendant it abused its judicial discretion and therefore violated his due process rights.

Plaintiff's allegation that he was entitled to a directed verdict is not appropriate in this case. A directed verdict under Rule 50(a), SCRCP, may be made when the trial court finds that no evidence exists for a jury to reasonably return a verdict in favor of the non-moving party.

## MOTION COURT'S RECORD ON APPEAL

Estate of Haley ex. rel. Haley v. Brown, 370 S.C. 240, 252-53, 634 S.E.2d 62, 68-69 (Ct. App. 2006). A motion for directed verdict is only appropriate in jury trials. Hinton v. Designer Ensembles, Inc., 335 S.C. 305, 318, 516 S.E.2d 665, 671 n.3 (Ct. App. 1999). Because this case was heard in a non-jury trial, a directed verdict would not have been an appropriate motion, had one ever been made.

Despite the fact that Defendant chose not to call witnesses, Plaintiff has the burden of proving his case by a preponderance of the evidence. Smith v. Smith, 194 S.C. 247, 9 S.E.2d 584, 591 (1940). Under Rule 52(a), SCRCP, the judge, sitting without a jury, acts as the trier of fact and is allowed to independently weigh all the evidence, determine the findings of fact and conclusions of law, and render a judgment. Defendant in this case entered evidence at trial and cross-examined the only witness. The Court, as the trier of fact, properly considered this evidence at the conclusion of the trial.

Plaintiff also maintains that his due process rights were violated and the Court abused its discretion because Defense counsel allegedly engaged in (and the October 26, 2009 Order contained facts that were drawn from) post-trial ex parte communications with the Court. Ex parte communications are communications between counsel and the court outside the presence of opposing counsel and are, therefore, prohibited. Black's Law Dictionary (9th ed. 2009). Plaintiff refers to Defendant's Memorandum of Estate of Larry (sic) Yates in Response to Post Trial Memorandum Submitted By Plaintiff ("Defendant's response") as evidence of the alleged ex parte communication. Rule 5(e), SCRCP, states that

"[t]he filing of pleadings and *other papers* with the court as required by these rules shall be made by filing them with the clerk of court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk." (emphasis added).

The July 13, 2009 trial transcript indicates that Plaintiff requested the Judge to consider case law, which he presented at the conclusion of the trial. The trial judge instructed Plaintiff to give a copy of the documents to Defendant. Trial Tr. p. 68. Thereafter, the record indicates that the Court further instructed Defendant that he had the option of responding within ten days. *Id.* There is no Certificate of Service of Defendant's response that can be found within this case file nor was the Defendant's response filed with the Clerk of Court. It does not appear that Plaintiff

## MOTION COURT'S RECORD ON APPEAL

had notice of the Defendant's response or the opportunity to respond to it. This does not, however, end the inquiry relating to due process.

Even if the contents of Defendant's response were set aside, the October 26, 2009 Order would remain the same. Decedent was the financier for the modular home project, he borrowed money against his own home and the property in question to finance the project, and had secured a Confession of Judgment against Plaintiff for \$143,978 three years prior to the alleged partnership formation. Based on these facts and the legal analysis of the partnership agreement by the Trial Court in the Order, no legally binding partnership had formed between Plaintiff and the Decedent.

The foremost requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." S.C.N.B. v. Central Carolina Livestock Market, 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986). The record, including all pleadings, exhibits, and the trial transcript indicate that Plaintiff had a full and fair opportunity to present his evidence and exhibits during trial. The Court appropriately withheld its ruling in this case until after trial in order to independently review the law and weigh all the evidence. To the extent that Plaintiff had complaints regarding the findings of fact included in the Court's Order, Plaintiff should have timely raised these issues before the trial court and in a timely appeal to the South Carolina Court of Appeals.

Plaintiff additionally moves for relief from this Court's October 26, 2009 Order on the basis that the trial Court abused its discretion and has identified Rule 60(b)(6) as the applicable Rule. South Carolina, however, has not adopted Rule 60(b)(6) of the Federal Rules of Civil Procedure. *See* Rule 60, SCRCPP Notes. Therefore, Rule 60(b)(6) of the Federal Rules of Civil Procedure cannot be grounds for relief from judgment in state court.

In his motion, Plaintiff indicates that he prays for a retroactive Directed Verdict. Rule 60(b), SCRCPP, does not give the reviewing court the ability to retroactively decide this case as a remedy for a Motion for Relief from an Order. Therefore, the prayer for a Directed Verdict is denied.

In conclusion, Plaintiff has failed to show that the trial court violated his due process rights and that the October 26, 2009 Order is one that, "from its inception, is a complete nullity and is without legal effect." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561


**MOTION COURT'S RECORD ON APPEAL**

S.E.2d 659, 661 (Ct. App. 2002). Therefore, Plaintiff's prayer for relief from the October 26, 2009 Order is denied.

**ORDER**

Based on the foregoing reasons, **IT IS ORDERED** that Plaintiff's Motion for Relief from this Court's October 26, 2009 Order of Judgment is denied.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
June 7, 2012

apl  
#5

**Plaintiff's March 9, 2012,  
Memorandum in Support of Plaintiff's  
Motion for Relief from Trial Court's  
Judge Childs' October 23, 2009  
Order of Judgment taken from  
July 13, 2009, Bench Trial**

MOTION COURT'S RECORD ON APPEAL

STATE OF SOUTH CAROLINA )
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Case No: 08-CP-40-0009

Larry A. Yates, as sole surviving )
Partner of a Partnership with )
Alvin Yates, )

Plaintiff, )

vs. )

The Estate of Alvin Yates, )
Wachovia Bank, N.A., and )
First Citizens Bank & Trust )

Defendants. )

PLAINTIFF'S MEMORANDUM
IN SUPPORT OF PLAINTIFF'S
MOTION FOR RELIEF FROM JUDGMENT

Pursuant to SCRCR Rule 60(b), Plaintiff Larry A. Yates (Plaintiff Yates) respectfully submits the following Memorandum in support of his Motion for Relief from this Court's October 26, 2009, Order of Judgment. For reasons as set forth below, Plaintiff Yates prays that this Court set-aside its October 26, 2009, Order of Judgment, which wrongly denied the existence of Plaintiff Yates' July 5, 2003, Partnership with his cousin, Alvin Yates. This Court's denial, wrongly denied him, his considerable (est. \$235,000) equitable interest, in his and his cousin's Partnership's property.

BACKGROUND

- Jan 3,'08 Plaintiff Yates filed suit (Case No. 08-CP-40-0009) challenging the Estate of Alvin Yates' (Defendant) claim against his and his deceased cousin's (Alvin Yates) Partnership's property. (Plaintiff's Exhibit "A")
Jan 15,'08 The Estate of Alvin Yates, Defendant, served and filed its Answer on Plaintiff Yates and the Clerk of Court, respectively. (Plaintiff's Exhibit "B")
Jul 13,'09 A non-jury trial was held in this Court, before Circuit Court Judge, J. Michelle Childs, on July 13, 2009. (Plaintiff's Trial Exhibits 1 thru 15)
Jul 18,'09 Defense counsel submitted an exparte post trial "addendum" to his "in court" closing arguments. Defense counsel's post trial arguments were entitled "[M]emorandum of the Estate of Larry Yates (sic) in Response to Post Trial Memorandum Submitted by Plaintiff." (Plaintiff's Exhibit "C")

## **MOTION COURT'S RECORD ON APPEAL**

- Oct 26,'09 This Court issued its October 26, 2009, Order of Judgment, denying the existence of Plaintiff Yates' Partnership with his cousin, Alvin Yates. Plaintiff Yates was served with a copy of the Order, on November 2, 2009. (Plaintiff's Exhibit "D")
- Nov30,'09 Plaintiff Yates filed his "Motion to Reconsider" and "Memorandum in Support of Plaintiff's Motion to Reconsider" on November 30, 2009. (Plaintiff's Exhibit "E")
- Mar10,'10 This Court issued its March 10, 2010, Order denying Plaintiff Yates' Motion for Reconsideration. The Motion was denied on grounds that the Motion was not filed within 10 days after receipt of this Court's October 26, 2009 Order of Judgment. (Plaintiff's Exhibit "F")
- Mar15,'10 As the Appellant, Plaintiff Yates filed his Notice of Appeal with the SC Court of Appeals, for a review of this Court's October 26, 2009, Order of Judgment, denying the existence of Plaintiff Yates' Partnership with his cousin, Alvin Yates. (Plaintiff's Exhibit "G")
- Mar15,'10 As the Respondent, the Estate of Alvin Yates filed its Motion to Dismiss Plaintiff Yates' Appeal of this Court's October 26, 2009, Order of Judgment, denying the existence of Plaintiff Yates' Partnership with his cousin, Alvin Yates. (Plaintiff's Exhibit "H")
- Apr28,'10 The SC Court of Appeals issued its Order "Granting" the Respondent's, March 15, 2010, Motion to Dismiss Plaintiff Yates' Appeal of this Court's October 26, 2009, Order of Judgment. The Appeal was Dismissed because the March 15, 2010, filing date was too late to file, because Plaintiff Yates' Motion to Reconsider was filed late, and therefore did not stay the time for filing Appellant Yates' Notice of Appeal. (Plaintiff's Exhibit "J")
- Dec 15,'11 Plaintiff Yates filed the present Motion for Relief from this Court's October 26, 2009, Order of Judgment. This Motion for Relief from Judgment Hearing is presently scheduled for March 9, 2012

## MOTION COURT'S RECORD ON APPEAL

### ARGUMENT FOR REVIEW UNDER SCRCP RULE 60(b)(4)

#### (Court's October 26, 2009 Order of Judgment is Void)

Under SCRCP Rule 60(b)(4), a party is entitled to relief from a judgment if it is void. A judgment is void if it is taken in violation of the party's constitutional rights to a fair trial. The trial Court's failure to direct the judicious and expeditious disposition of the Plaintiff Yates' July 13, 2009, non-jury trial, violated his "due process" rights to a fair trial, afforded him under the fifth and fourteenth amendments to the United States Constitution, and therefore the October 26, 2009, Order of Judgment, is void<sup>1</sup>.

At trial, Plaintiff Yates gave in-court testimony, offered affidavit testimony, and introduced document exhibits and case law relating to each exhibit, into evidence. (Plaintiff's Exhibit "K") All of this evidence was left uncontested, in that the Defendant did not offer a defense. (Trial Trans.Pg62.Lns7-18) As part of Plaintiff Yates' closing argument, he reminded the Court that,

*"the Plaintiff presented plenty of evidence that there was a Partnership. We testified of (about) the Partnership and existence of the Partnership. I mean, (for Defense Counsel) just to come in here and say (argue) that they (the Defense) didn't want it to be a Partnership, they should have provided evidence to show that there was no Partnership, because all of the evidence that you heard today, points to a Partnership."*

Instead of presenting a defense, including offering testimony and/or submitting other evidentiary materials, and/or referencing pertinent case law, the Defendant chose to concede the trial Court's verdict, to the Plaintiff. A directed verdict for the Plaintiff would have been in compliance with the constitutional rights of the Plaintiff, that is the "right for a fair trial." (emphasis added)

If the July 13, 2009, non-jury trial, would have instead been a jury trial, and the Court could have ruled that there was enough evidence to send it to the jury, the Court

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<sup>1</sup>It is well settled that a judgment is void "if the court that considered it ... or if the parties or if [the court] acted in a manner inconsistent with due process of law." Vol. 11, Wright and Miller, Federal Practice and Procedure at 198, 200. Res judicata does not preclude a litigant from making a direct attack under Rule 60(b) upon the judgment before the court which rendered it. Watts, 752 F.2d at 410 (quoting Jordan v. Gilligan, 500 F.2d 701, 710 (6th Cir. 1974)). See also Kremer v. Chemical Const. Corp., 102 S.Ct. 1883, 1897 (1982) (We have previously recognized that the judicially created doctrine of collateral estoppel does not apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity to litigate the claim or issue", Allen v. McCurry, 449 U.S. 90, 95 (1980); Montana v. United States, 440 U.S. 147, 153 (1979)). "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation."

## MOTION COURT'S RECORD ON APPEAL

If the July 13, 2009, non-jury trial, would have instead been a jury trial, and the Court could have ruled that there was enough evidence to send it to the jury, the Court would have been obligated to instruct the jury with a "preponderance of the evidence" jury charge, as follows:

*"You (the Jury) must deliver a verdict in accordance with the preponderance of the evidence. This means that the evidence of one party must be more convincing to you than the evidence of the other party. The evidence must lead you to believe that the existence of a particular fact is more probable than its non-existence, even if you have some doubt. You must apply this test to the evidence as a whole, as it relates to the plaintiff's claim. Evidence in a civil trial does not have to convince you of a fact beyond a reasonable doubt, as would have to be in a criminal case. It is only necessary for either the Plaintiff or the Defendant to prove the Fact is more likely than not, that is, by the greater weight or, what we in the legal profession call, 'the preponderance of the evidence.'*

*What we mean by the greater weight of the evidence, or the preponderance of the evidence, can be illustrated by imagining a traditional set of scales. When the case begins, the scales are even. After all the evidence has been presented, if the scales should remain even, or if they should tip, even slightly, in favor of the Defendant, then the Plaintiff will have failed to meet his burden of proof, and your verdict would be for the Defendant. If, on the other hand, the scales tip, even ever so slightly, in favor of the Plaintiff, then he will have met his burden of proof, and your verdict would be for the Plaintiff."*

Instead of summarily declaring a verdict for the Plaintiff, from the "bench," as would have been expected in a non-contested, non-jury trial, the Court ruled, that;

*"(W)e will look through the entire file and then we'll send you a written decision."* (Trial Trans.Pg67.Lns23-25)

On October 26, 2009, (3-1/2 months after the non-contested trial) the Court issued its decision / verdict, in favor of the Defendant, the Estate of Alvin Yates, ruling that the July 5, 2003, Partnership that Plaintiff Yates testified he had with his cousin, Alvin Yates, never existed. (Plaintiff's Exhibit "E")

In light of all the evidence, supporting the existence of a partnership and no evidence opposing the existence of a partnership, as recorded in the official transcript of the record of the July 13, 2009 trial, this Court's October 26, 2009, Order of Judgment is an unmistakable an egregious violation of the Plaintiff's "due process" rights, that are afforded him under the fifth and fourteenth amendments to the United States Constitution. (emphasis added)

## **MOTION COURT'S RECORD ON APPEAL**

Since the Court' October 26, 2009, Order of Judgment was taken in violation of the Plaintiff's constitutional "due process" rights to a fair trial, the Court's October 26, 2009, Order of Judgment, is void! Under Rule 60(b)(4), a party is entitled to relief from a judgment, if it is void.

Therefore the Plaintiff is entitled to relief from the Court's October 26, 2009, Order of Judgment, because the judgment is VOID<sup>2</sup>.

### **ARGUMENT FOR REVIEW UNDER SCRPC RULE 60(b)(6)**

#### **(Order of Judgment taken as a Result of Court's Abuse of Desecration)**

Under SCRPC Rule 60(b)(6), a party is entitled to relief from a judgment if it is taken as a result of the trial Court's Abuse of Desecration. The trial Court's October 26, 2009, Order of Judgment is not true and fair representation of the evidence, as it is documented by the official record of the transcript, of the trial proceedings.

The Order of Judgment contains facts and conclusions of law that are not supported by the trial record. It is obvious, to the Plaintiff, that the trial Court's Order of Judgment is based on exparte communications with the Defendant's counsel. At the end of the trial, the Court allowed Plaintiff Yates to "hand up" a schedule of case laws, that the Plaintiff wanted the Court to consider, in reaching its decision. The Defendant was given a copy by the Plaintiff, and the Defendant was invited by the Court, to respond "in kind," with its own schedule of case laws, if done so within ten (10) days from the day of trial. The Defendant never responded with its own schedule of case laws, as allowed by the Court, but instead, the Defendant's counsel conducted exparte communications with the Court, by sending in what can best be described as a post trial "addendum" to Defense counsel's "in court" closing arguments. Defense counsel's post

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<sup>2</sup>As noted above, it is well settled that a judgment is void "if the court that considered it ... or if the parties or if [the court] acted in a manner inconsistent with due process of law." Vol. 11, Wright and Miller, Federal Practice and Procedure at 198, 200. Res judicata does not preclude a litigant from making a direct attack under Rule 60(b) upon the judgment before the court which rendered it. Watts, 752 F.2d at 410 (quoting Jordan v. Gilligan, 500 F.2d 701, 710 (6th Cir. 1974). See also Kremer v. Chemical Const. Corp., 102 S.Ct. 1883, 1897 (1982) (We have previously recognized that the judicially created doctrine of collateral estoppel does not apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity to litigate the claim or issue", Allen v. McCurry, 449 U.S. 90, 95 (1980); Montana v. United States, 440 U.S. 147, 153 (1979)). "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation."

## MOTION COURT'S RECORD ON APPEAL

trial arguments were entitled "[M]emorandum of the Estate of Larry Yates (sic) in Response to Post Trial Memorandum Submitted by Plaintiff." (Plaintiff's Exhibit "C")

It was an abuse of discretion for the trial Court to engage in exparte communications with the Defense's counsel, but it was an even more egregious abuse of discretion, for the trial Court to issue the October 26, 2009, Order of Judgment that was mostly based on the outrageous and untrue statements and opinions contained in the Defense counsel's, "[M]emorandum of the Estate of Larry Yates (sic) in Response to Post Trial Memorandum Submitted by Plaintiff." First of all, the trial Court should have been aware that the Defendant defaulted to a directed verdict, for the Plaintiff, in that the Defendant failed to offer any defense what-so-ever, in the July 13, 2009 trial. Secondly, the trial Court should have realized that statements and opinions made by Defense's counsel, whether as part of in-trial closing arguments or exparte post-trial memorandum, are not evidence, are not part of the record and therefore cannot be a bases of the Court's final Order of Judgment.

There are numerous false statements, opinions and findings of fact that are common entries found in the trial Court's October 26, 2009, Order of Judgment and in the Defense's counsel's exparte post-trial memorandum. These entries are not evidence, are not found as part of the trial record, but the Court's Order of Judgment is mostly based on entries that are not evidence contained in the trial record. Some examples of entries contained in the Court's "Order" (Plaintiff's Exhibit "D") that are not found in the trial record, are as follows:

- 1) There is no evidence on the record, that "Decedent Alvin Yates ('Decedent') died on April 16, 2005. (Order.Pg1)
- 2) There is no evidence on the record, that "His estate was probated in Lexington County." (Order.Pg1)
- 3) There is no evidence on the record, that "The probate court determined that the sole asset of Decedent's estate is modular home, located at 400 Grover Wilson Road, Blythewood, South Carolina 29016." (Order.Pg1)
- 4) There is no evidence on the record, that "Plaintiff first attempted to intervene in the probate proceedings claiming that the 400 Grover Wilson Road property was owned by a partnership entered into by him and the decedent on or about July 3, 2005," (Order.Pg1)

## **MOTION COURT'S RECORD ON APPEAL**

- 5) There is no evidence on the record, that "The probate judge refused to hear the matter determining that the probate court lacked jurisdiction." (Order.Pg1)
- 6) There is no evidence on the record, that "Probate administration of the Decedent's estate has since closed." (Order.Pg2)
- 7) There is no evidence on the record, that "Prior to April 12, 2000, Decedent made various loans to Plaintiff on which the Plaintiff defaulted." (Order.Pg2.#1)
- 8) There is no evidence on the record, that an April 12, 2000, "Confession of Judgment" had any relevance with regard to determining the existence of the July 5, 2003 partnership. (Order.Pg2.#2)
- 9) There is no evidence on the record, that "Plaintiff's only responsibility under the [Partnership] Agreement was to account for project expenditures." (Order.Pg3.#3)
- 10) There is no evidence on the record, that "Decedent [singularly] obtained an open-end mortgage...." (Order.Pg3.#4)
- 11) There is no evidence on the record, that "Decedent [singularly] purchased a 4BR/ 3-1/2 bath modular building ....." (Order.Pg3.#5)
- 12) There is no evidence on the record, that "Decedent [singularly] paid for the modular home...." (Order.Pg4.#5)
- 13) There is no evidence on the record, that "Decedent died on April 16, 2005. (Order.Pg5.#13)
- 14) There is no evidence on the record, that "probate court determined that the property known as 400 Grover Wilson Road is the sole asset of Decedent's estate. (Order.Pg5.#14)
- 15) There is no evidence on the record, that "Defendant argues that there was never any agreement to create a partnership between the parties, and the Agreement submitted by Plaintiff contains no language creating a partnership between the parties. Moreover, Defendant claims that Plaintiff made no contribution to the alleged partnership, and thus, the existence of a partnership cannot be implied from the conduct of the parties. (Order.Pg6)
- 16) There is evidence on the record, that the partners did share profits and losses. (Order.Pg7&8) (Trial Trans.Pg14.Lns20-23)
- 17) There is no evidence on the record that would allow the Court to find, "that the partners did not share profits and losses. (Order.Pg8) (Trial Trans.Pg14.Lns20-23)

## MOTION COURT'S RECORD ON APPEAL

18) There is no evidence on the record, that “establishes that Decedent financed the project exclusively.” (Order.Pg9) (Trial Trans.Pg16.Lns6-11)

19) There is evidence on the record, that does indicated that “Defendant [parties] intended the property located at 400 Grover Wilson Road, to be partnership property.” (Order.Pg10) (Trial Trans.Pg13.Lns15-25)

20) There is evidence on the record, that “the parties did intend to share control and management over the partnership property.” (Order.Pg11) (Trial Trans.Pg30.Lns7-19)

21) There is evidence on the record, that “the parties did intend to enter into a partnership.” (Order.Pg11) (Trial Trans.Pg19.Lns3-12)

When comparing the contents of the Court's October 26, 2009, Order, against the record of the July 13, 2009 trial, there are so many discrepancies, that it does make one wonder how and why the Court could or would have issued such an evidence deficient Order of Judgment?

When comparing the contents of the Court's October 26, 2009, Order, against the Defendant's counsel's post-trial (exparte) memorandum, there are so many similarities that it is abundantly obvious that the trial Court's Order did incorporated most of the biased opinions and false statements contained in the Defendant's counsel's July 18, 2009 Memorandum. (Plaintiff's Exhibit “D”)

However, it is more likely, than not, that the Defendant's counsel provided the Court with a “proposed order” that mirrored most of the biased opinions and false statements that were contained in the Defendant's counsel's July 18, 2009 Memorandum. (Plaintiff's Exhibit “D”) If so, that would explain the Court's evidence deficient Order of Judgment, but would not explain or justify the Court's oblivious unawareness of the Defense's failure to offer any defense, at trial, in response to the Plaintiff's abundance of evidence as to the existence of a Partnership between the Plaintiff and the Plaintiff's cousin, Alvin Yates.

In any case, the non-jury Court's failure to issue an evidence based order, that fairly represents the Plaintiff's affirmative presentation of evidence that strongly supports

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Abuse of Discretion. Under this standard, a review court will “uphold any district court determination that falls within a permissible range of permissible conclusions.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 400 (1990). Under this standard, the review court must affirm unless it determines that “the district court has made a clear error of judgment, or has applied an incorrect legal standard.” *Alexander v. Fulton County*, 207 F.3d 1303, 1326 (11th Cir. 2000).

## MOTION COURT'S RECORD ON APPEAL

the existence of Plaintiff Yates' partnership with his cousin, Alvin Yates, is an egregious case of the Court's abuse of discretion.

Since the Court' October 26, 2009, Order of Judgment was taken in violation of the Plaintiff's constitutional "due process" rights to a fair trial, the Court's October 26, 2009, Order of Judgment, is void! Under Rule 60(b)(4), a party is entitled to relief from a judgment, if it is void. Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation.

The trial Court should have been aware that when Defendant failed to offer any defense what-so-ever, in the July 13, 2009 trial, the Defendant defaulted to a directed verdict, for the Plaintiff. Therefore the Plaintiff is entitled to relief from the Court's October 26, 2009, Order of Judgment, and is entitled to a retroactive directed verdict as if the Defendant had originally defaulted on its Answer to the Plaintiff's Complaint. The Plaintiff prays this review Court will review De Novo, giving no deference to the trial Court's decision and now apply the same standard as the trial Court should have given the litigants for the July 13, 2009 trial.

The following is an updated reiteration of the prayer from the Plaintiff's original January 3, 2008 Complaint (Plaintiff's Exhibit "A"), and this Plaintiff again prays that this Honorable Court will inquire into matters set forth herein and make the following declarations:

1. That, under the Partnership Laws of the State of South Carolina, the Partners, Larry Yates and Alvin Yates, were involved in a legally formed and operating Partnership.<sup>3</sup>

2. That, both parties to the partnership did execute a note and/or mortgage in favor of Wachovia Bank to secure partnership funds for payment of the costs of purchase and construction of the home located at 400 Grover Wilson Road, Blythewood, SC.

<sup>3</sup> Partnership laws for the State of South Carolina, provide in part that, "[w]here parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, there is a partnership." (Stephens v. Stephens. 50 S.E.2<sup>nd</sup> 577, 213 S.C. 525) Also, "[w]here parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners." (Moore v. Moore. 599 S.E.2<sup>nd</sup> 467, 460 S.C. 241) Furthermore, a partnership agreement may be implied and without express intention. One of the most important tests as to the existence of a partnership, is the intention of the parties.

## MOTION COURT'S RECORD ON APPEAL

3. That, the 400 Grover Wilson Road, Blythewood, SC property, was bought with partnership funds, and therefore belongs to the partnership.<sup>4</sup>

4. That, even though title to the 400 Grover Wilson Road property was taken only in the name of Alvin Yates, the property was bought with partnership funds, and therefore is partnership property.<sup>5</sup>

5. That, Larry Yates, as the sole surviving Partner of the Partnership, has a Partner's "Lien" against the partnership property.<sup>6</sup>

6. That, Larry Yates, as the sole surviving Partner of the Partnership, has a right to have partnership property applied to payment or security of partnership debt, in order to relieve him of personal liability.<sup>7</sup>

7. That, Larry Yates, as the sole surviving Partner of the Partnership, is the legally authorized person who is responsible for the sale of Partnership property.<sup>8</sup>

8. That, Larry Yates, as the sole surviving partner of the Partnership, has the right to carry on partnership business, collect the assets, pay creditors, and wind up the partnership business, and is accountable to the deceased partner's representatives for the latter's share of surplus assets.<sup>9</sup>

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<sup>4</sup> Property bought with partnership funds, belongs to partnership. (Stephens v. Stephens. 50 S.E.2nd 577, 213 S.C. 525)

<sup>5</sup> Property bought with partnership funds, in name of a single partner, belongs to partnership. (Stephens v. Stephens. 50 S.E.2nd 577, 213 S.C. 525)

<sup>6</sup> The sole surviving Partner of the Partnership, has a Partner's "Lien" against the partnership property and, "has the right to insist that the partnership assets be applied to payment of partnership debts upon the winding up of the partnership affairs." (Wolfe v. Hewes, 254 S.E.2d 204)

<sup>7</sup> The sole surviving Partner of the Partnership, has, "a right to have partnership property applied to payment or security of partnership debt, in order to relieve him from personal liability." (Casey v. Grantham, 79 S.E.2d 735)

<sup>8</sup> That, "upon the dissolution of a partnership by the death of one partner, the surviving partner becomes a trustee of the partnership property for the purpose of liquidating the partnership affairs and as expeditiously as the circumstances will permit to convert the assets into cash, pay off the liabilities, adjust the equities between the partners, and distribute the remainder of the estate between himself, as the surviving partner, and the representatives of the deceased partner according to their respective interests." (Schenk v. Lewis, 118 S.E. 631, 125 S.C. 228)

In doing so, "the surviving partner has the power to sell partnership realty for the purpose of liquidation." (Schenk v. Lewis, 118 S.E. 631, 125 S.C. 228)

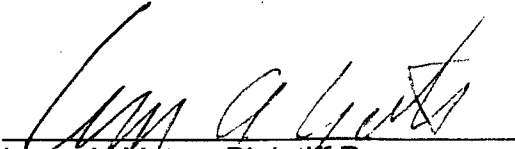
<sup>9</sup> The surviving partner has the right to carry on partnership business, collect the assets, pay creditors, and wind up the partnership business, and is accountable to the deceased partner's representatives for the latter's share of surplus assets. (Crews v. Sweet, 118 S.E. 613, 125 S.C. 303, 29 A.L.R. 43)

## MOTION COURT'S RECORD ON APPEAL

10. That, where legal action is necessary for foreclosure and/or vacating the real property belonging to the partnership, Larry Yates, as the sole surviving partner, is the proper party to bring suit for debts due to the partnership and other actions affecting the partnership; the representative of the deceased partner not being necessary party.<sup>11</sup>

11. That, Larry Yates, as the sole surviving partner of the Partnership that existed between himself and Alvin Yates, has a "Partner's Lien" on the Partnership property located at 400 Grover Wilson Road; Blythewood, SC, as of April 16, 2005, the date of death of Partner, Alvin Yates. The appraised value of \$235,000.00, is the lien amount and this "Partner's Lien" is prior in time and prior in right to any subsequent liens that may have attached or will attach to the property, hereafter.

Respectfully Submitted,

  
Larry A. Yates, Plaintiff Pro se  
612 Ashwood Circle  
West Columbia, SC 29169  
803-917-6224 (phone & text msg)  
[larryayates@gmail.com](mailto:larryayates@gmail.com) (email)

March 9, 2012

<sup>10</sup> The surviving partner can carry on the partnership's business without authority from the personal representative of the deceased partner." (Rowell v. Adams, 65 S.E. 207, 83 S.C. 124)

<sup>11</sup> Where legal action is necessary for foreclosure and/or vacating the property, the Plaintiff, "as the surviving partner, is the proper party to bring suit for debts due to the partnership and other actions affecting the partnership; the representatives of the deceased partner not being necessary parties." (Crews v. Sweet, 118 S.E. 613, 125 S.C. 303, 29 A.L.R. 43) A surviving partner may sue on a note due the partnership, without joining as plaintiffs the representatives of the deceased partner. (Dial v. Agnew, 6 S.E. 295, 28 S.C. 454)

**Plaintiff's December 16, 2011, Notice  
of Motion and Rule 60(b) Motion for  
Relief from Trial Court's Judge  
Childs' October 23, 2009, Order of  
Judgment taken from July 13, 2009,  
Bench Trial**

MOTION COURT'S RECORD ON APPEAL

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Case No: 08-CP-40-0009

Larry A. Yates, as sole surviving )  
Partner of a Partnership with )  
Alvin Yates, )

Plaintiff, )

vs. )

The Estate of Alvin Yates, )  
Wachovia Bank, N.A., and )  
First Citizens Bank & Trust )

Defendants. )

NOTICE OF MOTION  
AND MOTION

JEANE L. A. MORRIS  
C.C.P. & G.S.

2011 DEC 16 PM 2:36

RICHLAND COUNTY  
FILED

TO: THE ESTATE OF ALVIN YATES  
% RONALD R. HALL, ESQ  
1055 SUNSET BLVD  
WEST COLUMBIA, SC 29169

THE ESTATE OF ALVIN YATES  
% DELLA J. MEYER  
1 GLEN AVE, APT 221  
GLEN ROCK, NJ 07452

PLEASE TAKE NOTICE THAT THE PLAINTIFF, Larry A. Yates, hereby moves this Court under the provisions of Rule 60(b) of the South Carolina Rules of Civil Procedure, to set aside the July 2009, non-jury Court's Order of Judgment, dated October 23, 2009.

Under Rule 60(b)(4),<sup>1</sup> the October 23, 2009 Order of Judgment should be set aside because, it is void. The July 2009 Court's failure to direct the judicious and expeditious disposition of the Plaintiff's non-jury trial, violated the Plaintiff's due process right to a fair trial afforded him under the fifth and fourteenth amendments to the United States Constitution, and therefore the October 23, 2009 Order of Judgment is void.

<sup>1</sup> Motion under Rule 60(b)(4) reviewed de novo. *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001).

## MOTION COURT'S RECORD ON APPEAL

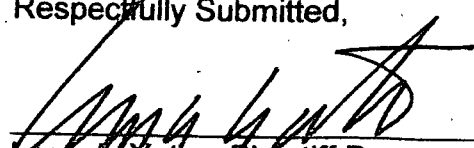
Under Rule 60(b)(6),<sup>2</sup> the October 23, 2009 Order of Judgment should be set aside because of the July 2009 Court's abuse of discretion in making a clear error of judgment, and applying an incorrect legal standard.

Under Rule 60(b)(6),<sup>2</sup> the October 23, 2009 Order of Judgment should be set aside because of the July 2009 Court's abuse of discretion in ignoring the substantial evidence that was presented by the Plaintiff and uncontested by the Defendant. The Defendant did not offer any testimony or present any evidence, whatsoever. This abuse of discretion also violated the Plaintiff's due process right to a fair trial afforded him under the fifth and fourteenth amendments to the United States Constitution, and therefore the October 23, 2009 Order of Judgment is void.<sup>1</sup>

Grounds for this Rule 60(b) Motion to Set Aside the Court's October 23, 2009 Order of Judgment are based on evidence contained in the Record of the Trial. This Motion will also be supported prior to a Hearing by Plaintiff's Supplemental "Memorandum in Support of Plaintiff's Rule 60(b) Motion to Set Aside.

THEREFORE, based on more than a preponderance of the evidence, as set forth in the Record of Trial, which was presented to the Court at trial, this Plaintiff prays that this Court will set aside the July 2009 Court's October 23, 2009 Order of Judgment, and relieve him of the unfair trial verdict that was rendered against him by the July 2009, non-jury Court.

Respectfully Submitted,

  
Larry A. Yates, Plaintiff Pro se  
612 Ashwood Circle  
West Columbia, SC 29169  
803-917-6224 (phone & text msg)  
[larryayates@gmail.com](mailto:larryayates@gmail.com) (email)

December 16, 2011

<sup>2</sup> Motion under Rule 60(b)(6) reviewed for abuse of discretion. American Bankers Ins. Co. v. Northwestern Nat'l Ins. Co., 198 F.3d 1332, 1338 (11th Cir. 1999); Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316 (11th Cir. 2000).

**TRIAL COURT'S RECORD ON APPEAL  
Page 35 to Page 190**

**Trial Court's Judge Childs'  
October 23, 2009,  
Order of Judgment taken from  
July 13, 2009, Bench Trial  
Denying the existence of a Plaintiff  
claimed Partnership between  
Plaintiff, Larry Yates and his (now  
deceased) cousin, Alvin Yates**

**TRIAL COURT'S RECORD ON APPEAL**

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LARRY A. YATES, )

Plaintiff, )

v. )

ESTATE OF ALVIN YATES, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2008-CP-40-00009

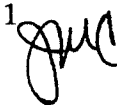
**ORDER**

FILED  
2009 OCT 26 AM 8:57  
JANELLE A. TORRIDE  
C.C.P. & D.S.

This matter came before the Court on July 13, 2009 for a non-jury trial. Present at the hearing were Larry A. Yates, Plaintiff, appearing *pro se*; and Ronald R. Hall, Esquire, representing Defendant, Estate of Alvin Yates.

**FACTUAL AND PROCEDURAL BACKGROUND**

Decedent Alvin Yates ("Decedent") died on April 16, 2005. His estate was probated in Lexington County. The probate court determined that the sole asset of Decedent's estate is residential real estate consisting of 1.217 acres on which sits a Signature Buildings System, Inc. modular home, located at 400 Grover Wilson Road, Blythewood, South Carolina 29016 ("400 Grover Wilson Road"). Plaintiff first attempted to intervene in the probate proceedings claiming that the 400 Grover Wilson Road property was owned by a partnership entered into by him and the Decedent on or about July 3, 2005. The probate judge refused to hear the matter determining that the probate court lacked jurisdiction. Subsequently, Plaintiff filed this action alleging that (1)

<sup>1</sup> 

## TRIAL COURT'S RECORD ON APPEAL

he and Decedent had a legally valid partnership prior to Decedent's death; (2) that Decedent and Plaintiff used partnership funds to secure the partnership property; and (3) that Plaintiff, as the sole surviving partner, is entitled to wind up the partnership and distribute partnership assets accordingly. Defendant filed an Answer denying the allegations in Plaintiff's Complaint. Plaintiff and Defendant thereafter sought summary judgments against each other, which were denied by the Circuit Court. Probate administration of the Decedent's estate has since closed.

NOW THEREFORE, based upon the foregoing, the Court makes the following:

### FINDINGS OF FACT

#### Plaintiff's Claim that a Partnership Existed between Plaintiff and Decedent

Based on the testimony and evidence presented to the Court at trial, the Court finds and concludes the following with respect to Plaintiff's claim that Plaintiff and Decedent established a legally valid partnership:

1. Prior to April 12, 2000, Decedent made various loans to Plaintiff on which Plaintiff defaulted.
2. On April 12, 2000, the Richland County Clerk of Court entered a "*Confession of Judgment*" in which Plaintiff agreed to pay Decedent Ten Thousand Dollars (\$10,000.00) per month until he paid off his indebtedness from defaulting on the various notes, loans, and interest owed to Decedent in the amount of \$143,978.00.
3. Plaintiff and Decedent signed a document entitled "*Project Partnership Agreement*" ("Agreement") on July 5, 2003, which involved the purchase and construction of a modular building systems home from Signature Building Systems, Inc. The home was to be

*JMC*

## TRIAL COURT'S RECORD ON APPEAL

placed on a lot that would be purchased from D.L. Wilson located at 400 Grover Wilson Road, Blythewood, SC 29016. The Agreement stated that Decedent would finance the purchase and construction of the home through various credit cards, a line of credit equity loan from Wachovia Bank and from a bank account, "A. Yates & L. Yates Construction Account." Decedent would reimburse all expenses for financing the construction project using his Wachovia line of credit or the proceeds from the future sale of the property. Finally, the Agreement stated the order and manner in which proceeds from the eventual sale of the property were to be distributed: (1) costs associated with the sale of the property; (2) repayment of the Wachovia loan for the cost of the modular home; (3) payment of the balance owed to D.L. Wilson for the sale of the land known as 400 Grover Wilson Road; (4) repayment of the Wachovia loan and credit cards for the cost associated with construction and site improvements; (5) venture capital payment to "Partner A. Yates"; and (6) "repayment of any remaining balance of Wachovia Bank Loan attributed to or owed by Partner L. Yates;" Plaintiff's only responsibility under the Agreement was to account for project expenditures.

4. On July 31, 2003, Decedent obtained an open-end mortgage on his property located at 612 Ashwood Circle, West Columbia, South Carolina 29169 ("Ashwood") in the amount of \$139,100.00 with Wachovia Bank, N.A. (Def.'s Ex. 1). On the same date, Wachovia Bank extended a prime equity line of credit" to Decedent and Plaintiff on July 31, 2003 in the amount of \$139,100.00 secured by the Ashwood mortgage. (Pl.'s Ex. 2).

5. On August 5, 2003, Decedent purchased a 4BR/ 3- 1/2 Bath modular building systems home from Signature Building Systems, Inc. of St. George, South Carolina for

*[Handwritten signature]*

## TRIAL COURT'S RECORD ON APPEAL

\$75,762.29. The invoice for sale of the modular home indicates that it was purchased by Larry Yates. (Pl.'s Ex. 3). Decedent paid for the modular home with a cashier's check from Wachovia in the amount of \$67,762.29 to Signature Building Systems, Inc. listing Larry and Alvin Yates as remitter. (Pl.'s Ex. 4).

6. On October 28, 2003, D.L. Wilson, daughter of Plaintiff, transferred title to real property located at 400 Grover Wilson Road to Decedent in exchange for a cash payment of \$5,000.00 with a balance of \$16,200.00 to be paid at a later date. The property was titled in the name of Decedent Alvin Yates. (Pl.'s Ex. 5).

7. The following construction work was performed at the property located at 400 Grover Wilson Road: (1) land clearing services provided by Robert Hildreth Land Clearing; (2) the purchase of concrete materials from Southeastern Concrete Products; (3) the purchase of materials for the preparation of the foundation from Cripple Creek Corporation, Inc., Carolina Ceramics, and Hardaway Concrete Co., Inc.; (4) of a crane to install the modular home at the property from White Crane Company, Inc.; and (5) the vinyl side installation work performed by Steve McAteer. (Pl.'s Exs. 6- 10).

8. Plaintiff claimed that he and Decedent used a Wachovia checking account entitled "Al Yates & Larry Yates Construction Account" to pay for all of the above-listed repairs and improvements. Plaintiff only introduced into evidence copies of the actual checks for the following improvements and repairs to the property located at 400 Grover Road: the land clearing services (\$900.00); crane rental (\$900.00); and vinyl siding installation (\$212.00).



## TRIAL COURT'S RECORD ON APPEAL

9. Plaintiff introduced into evidence a check from the "Al Yates & Larry Yates Construction Account" to reimburse Decedent for personal monies that he put into the checking account in the amount of \$4,566.81. (Pl.'s Ex. 13).

10. Plaintiff kept accountings with respect to the expenditures for the construction work performed on the property located at 400 Grover Wilson Road from July 1, 2003 through June 28, 2004 in accordance with the Agreement between the parties. (Pl.'s Exs. 11- 12).

11. On July 20, 2004, the property located at 400 Grover Wilson Road had an appraisal value of \$235,000.00. (Pl.'s Ex. 14).

12. On August 26, 2004, Decedent obtained a mortgage for \$100,000.00 secured by the property located at 400 Grover Wilson Road with First Citizens Bank and Trust Company, Inc. (Def.'s Ex. 2).

13. Decedent Alvin Yates died on April 16, 2005.

14. The probate court determined that the property known as 400 Grover Wilson Road is the sole asset of Decedent's estate:

### LAW/ ANALYSIS

Plaintiff claims that a partnership existed between him and Decedent pursuant to the partnership laws of South Carolina, S.C. Code Ann. § 33-41-10, *et. seq.* (1976). Plaintiff claims that the "*Project Partnership Agreement*" ("Agreement") expressly created a partnership between Plaintiff and Decedent; or in the alternative, a partnership can be implied by the conduct of the parties. Plaintiff argues that the partnership owned the property located at 400 Grover Wilson Road and the funds generated by the alleged partnership in this property. Defendant

*jud*

## TRIAL COURT'S RECORD ON APPEAL


argues that there was never any agreement to create a partnership between the parties; and the Agreement submitted by Plaintiff contains no language creating a partnership between the parties. Moreover, Defendant claims that Plaintiff made no contribution to the alleged partnership, and thus, the existence of a partnership cannot be implied from the conduct of the parties.

“A ‘partnership’ is an association of two or more persons to carry on as co-owners a business for profit...” S.C. Code Ann. § 33-41-210 (Supp. 2003). In Stephens v. Stephens, the Supreme Court held:

It is well settled that where the parties to a contract, by their acts, conduct, or agreement show that they intended to combine their property, labor, skill and experience, or some of these elements on one side, and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners.

213 S.C. 525, 50 S.E.2d 577, 580 (1948). “A partnership agreement may rest in parol. It may be implied and without express intention.” Halbersberg v. Berry, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct. App. 1990) (citing Wyman v. Davis, 223 S.C. 172, 74 S.E.2d 694 (1953)). “[I]f the partners intend to and do enter into such a contract as in the eye of the law constitutes a partnership, they thereby become partners whether they are designated as such or not in the contract. And when all of the conditions exist which by law create a legal relationship, the effects flowing legally from such relation follow whether the parties foresaw and intended them or not.” Stephens, 213 S.C. at 531, 50 S.E.2d at 579 (quoting 20 R.C.L. 831).

No one test has been delineated by the courts for establishing the existence of a partnership. However, “[o]ne of the most important tests as to the existence of a partnership is

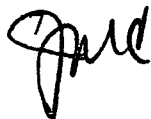


## TRIAL COURT'S RECORD ON APPEAL

the intention of the parties.” Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004) (quoting Stephens, 213 S.C. at 530-1, 50 S.E.2d at 579). In Halbersberg, the court of appeals summarized several tests that are instructive to this Court. The court stated that “[t]he following tests are appropriate in determining whether a partnership exists: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management.” 302 S.C. 97, 101, 394 S.E.2d 7, 10 (1990) (citing Terry v. Brashier, 262 S.C. 639, 207 S.E.2d 82 (1974)). In light of the three Halbersberg tests, the Court examines the Agreement and relevant conduct of the parties surrounding the Agreement to determine whether the parties intended to enter into a partnership to construct and sell the property located at 400 Grover Wilson Road.

### Sharing of Profits and Losses

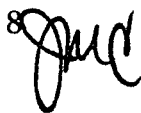
With respect to the first test enumerated in Halbersberg, the Court finds that Plaintiff and Defendant did not “share profits and losses.” 302 S.C. at 101, 394 S.E.2d at 10. The Agreement outlines the manner and order in which proceeds from the eventual sale of the property were to be distributed. The Agreement states that Decedent would receive a “[v]enture [c]apital payment” estimated to be approximately \$20,000.00 and finally, Plaintiff would receive “*repayment of any remaining balance of Wachovia Bank Loan attributed to or owed by Partner L. Yates.*” (Pl. Ex. 1) (emphasis added). A plain reading of this language illustrates that Plaintiff and Decedent were not in a profit-sharing venture together. The term “repayment” indicates that Decedent and Plaintiff agreed that Decedent would reimburse Plaintiff for the expenses he incurred over the course of the construction and installation project at 400 Grover Wilson Road.



## TRIAL COURT'S RECORD ON APPEAL

This language further indicates that Decedent would repay Plaintiff for personal expenditures already paid over the course of the project, not that Plaintiff would share in the future profits from the eventual sale of the property. The disbursement to Decedent is also instructive. Decedent would receive “a [v]enture [c]apital payment,” indicating that Decedent was to receive the profits from the real estate venture estimated to be \$20,000.00. (Pl.’s Ex. 1) (emphasis added). At trial, Plaintiff did not present testimony that he was to share in the profits of the alleged partnership and how those profits were to be allocated between the parties. Moreover, it is not clear that any profits were ever realized from the construction project. The property was appraised at \$235,000 but was never sold. In fact, Decedent took a mortgage out on the property in 2004. Therefore, the Court finds that Plaintiff failed to establish that he was to share in the profits other than monies owed either to Plaintiff personally or debts to third parties as a result of Plaintiff’s involvement in the construction project.

Moreover, it appears from the Agreement, testimony and exhibits entered by the parties at trial that Decedent bore sole responsibility for any and all of the losses incurred during the course of the project. He obtained a mortgage on his personal property at Ashwood; title to 400 Grover Wilson Road listed him as grantee; the Agreement clearly indicates that Decedent would be solely responsible for financing the project through funds borrowed from Wachovia; and the “[d]ay to day expenses [would] be paid from Partner, A. Yates’ Bank-of-America Credit Card account or from A. Yates and L. Yates Construction Account,” all funded by Decedent. (Pl.’s Ex. 1). Therefore, the Court finds that the parties did not intend to share profits and losses.

A handwritten signature in black ink, appearing to be "JAC" with a small circle above the "J".

## TRIAL COURT'S RECORD ON APPEAL

### Community of Interest in Capital or Property

With respect to the second Halbersberg test, the Court finds that Plaintiff has failed to establish that the parties intended to share in a "community of interest in capital or property." 302 S.C. 97 at 101, 394 S.E.2d at 10. The property located at 400 Grover Wilson Road is alleged to be the sole asset of the partnership. The Agreement outlines several actions that Plaintiff and Decedent, as "Partners," agreed to undertake involving the purchase of the property and the modular home from Signature Building Systems, Inc. However, both the Agreement and the parties' conduct establish that Decedent was the sole investor of resources in the project. Decedent obtained financing for the project and reimbursed Plaintiff for all of the daily costs associated with the project. Plaintiff introduced the following evidence at trial to establish joint ownership: (1) the Wachovia line of credit with both parties listed; (2) the cashier's check in the amount of \$67,762.29, with Larry and Alvin Yates as remitter; (3) the deed to 400 Grover Wilson Road; and (4) a receipt for the modular home listing Plaintiff as purchaser. Despite the evidence offered by Plaintiff, the Court finds that Plaintiff has not sufficiently proven that the parties were in community of interest of capital or property. Although both parties had access to the Wachovia line of credit and Plaintiff's name was printed in the remitter line on the check used to purchase the modular home, the accompanying mortgage establishes that Decedent financed the project exclusively. Plaintiff oversaw the construction project on the property and had access to the funds for the purpose of facilitating the project. However, mere access to the construction funds does not indicate Plaintiff's joint ownership of the property. The deed, listing Decedent Alvin Yates as grantee, further establishes Decedent's ownership of the property.

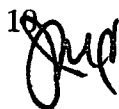
9 *Jud*

## TRIAL COURT'S RECORD ON APPEAL

Plaintiff signed the deed as a witness, merely indicating that he was present at the closing. By Plaintiff's own admission, there is no record that the property was ever deeded to the partnership. With respect to the Signature Building Systems receipt, Plaintiff testified that his name was listed on the invoice because he handled the purchase transaction with the company. Because Plaintiff was responsible for overseeing the construction project, the receipt, without more, does not establish that the parties intended to create a partnership. Therefore, the Court finds that the evidence does not indicate that Decedent intended to title the property located at 400 Grover Wilson Road in the name of the alleged partnership.

### Community of Interest in Control and Management

Plaintiff fails to establish that the parties intended to create a partnership with respect to the third prong of Halbersberg: "community of interest in control and management." 302 S.C. at 101, 394 S.E.2d at 10. The Agreement does not expressly address who was to have primary control in the alleged partnership. However, it does expressly establish that Decedent would fund the entire project and that Plaintiff was to account for all expenditures made in the course of the construction work on the property. Plaintiff presented numerous invoices for the construction project to prove that he controlled the partnership. The invoices and accounting records, however, merely show that Plaintiff controlled the day-to-day affairs of the construction project on behalf of Decedent. He did not control the disposition of the partnership property. That the Agreement required Plaintiff to account to Decedent for every expenditure is telling on this point. Moreover, the fact that there was a joint account entitled the "Alvin Yates and Larry Yates Construction Account" does not establish Plaintiff's control over the partnership property. This


10  


## TRIAL COURT'S RECORD ON APPEAL

account appears to have been set up to facilitate the construction project. Because Plaintiff managed the construction project, it was practical and logical for Plaintiff to have access to the various accounts. Therefore, the mere fact that Plaintiff had access to these funds does not establish that Plaintiff and Decedent were carrying on as co-owners in a business for profit. Plaintiff has not established that the parties intended to share control and management over the alleged partnership property.

### Partnership Agreement

The Court finds that the language used in the Agreement describing the parties as partners does not establish that a partnership existed. Although the Agreement is entitled "*Project Partnership Agreement*" and the parties are referred to as "partners" throughout the document, the Court finds that this language is not dispositive. Rather, the Court finds that "[n]ot every contract to do something with another creates a partnership. The mere existence of an instrument labeled a partnership contract, and its characterization of the signatories as partners, does not conclusively prove the existence of a partnership, nor is the name given the instrument a decisive factor. The intention of the parties explained by the wording and substance of their agreement is paramount." 28 S.C. Jur. Partnerships and Joint Ventures § 7. Therefore, with respect to the Agreement signed by the parties on July 5, 2003, the Court further finds that it was merely a contract describing the relative roles of the respective parties in the construction and eventual sale of the modular home on Decedent's property and does not show that the parties intended to enter into a partnership.

11 

## TRIAL COURT'S RECORD ON APPEAL


### Partnership Property and Partnership Dissolution

Because the Court finds that there was never a validly created partnership between Plaintiff and Decedent, the Court finds that there is no need to address "partnership" property and dissolution.

### CONCLUSION

The Court finds that a legally valid partnership never existed between Plaintiff and Decedent. Therefore, Defendant is the sole owner of the property located at 400 Grover Wilson Road, Blythewood, SC 29016, and Plaintiff is not entitled to dissolve or wind up the affairs of the "partnership" with respect to that property.

**AND IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED.**

  
The Honorable J. Michelle Childs  
Presiding Judge  
Fifth Judicial Circuit

this 23<sup>rd</sup> day of October, 2009.  
Columbia, South Carolina.

**Plaintiff's Request for Charges for  
Trial Held July 13, 2009, (Actually  
accepted as Case Law for Judge  
Childs to consider)**

**TRIAL COURT'S RECORD ON APPEAL**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF RICHLAND )  
 Case No: 08-CP-40-0009

Larry A. Yates, as sole surviving )  
 Partner of a Partnership with )  
 Alvin Yates, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 The Estate of Alvin Yates, )  
 Wachovia Bank, N.A., and )  
 First Citizens Bank & Trust )  
 )  
 Defendants. )

**PLAINTIFF'S REQUEST FOR CHARGES  
 FOR TRIAL HELD JULY 13, 2009**

If appropriate for a non-jury trial, the Plaintiff hereby submits his request charges of the Partnership Law that could be applied to the evidence that was presented at trial.

**REQUESTED CHARGES**

1. Under the Partnership Laws of the State of South Carolina, the Partners were involved in a legally formed and operated Partnership. Partnership laws provide in part that, *"Where parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, there is a partnership."* (Stephens v. Stephens. 50 S.E.2<sup>nd</sup> 577,213 S.C. 525)

2. Also, *"Where parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either*

**TRIAL COURT'S RECORD ON APPEAL**

*expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners.*" (Moore v. Moore. 599 S.E.2<sup>nd</sup> 467, 460 S.C. 241)

3 Furthermore, a partnership agreement may be implied and without express intention. One of the most important tests as to the existence of a partnership, is the intention of the parties.

4. Both parties to the partnership did execute a note and/or mortgage in favor of Wachovia Bank to secure partnership funds for payment of the costs of construction..

5. Title to the 400 Grover Wilson Road property was, upon partial completion, placed in the name of Partner Alvin Yates, the property was intended as partnership property. And as such, "*property bought with partnership funds, in name of a single partner, belongs to partnership.* (Stephens v. Stephens. 50 S.E.2<sup>nd</sup> 577, 213 S.C. 525)

6. However, Larry Yates, as the sole surviving Partner of the Partnership, has a Partner's "Lien" against the partnership property and, "*has the right to insist that the partnership assets be applied to payment of partnership debts upon the winding up of the partnership affairs.*" (Wolfe v. Hewes, 254 S.E.2d 204)

7. He also has, "*a right to have partnership property applied to payment or security of partnership debt, in order to relieve him from personal liability.*" (Casey v. Grantham, 79 S.E.2d 735)

8. And, the Plaintiff is the legally authorized person who should be responsible for the sale of Partnership property, in that, "*upon the dissolution of a partnership by the death of one partner, the surviving partner becomes a trustee of the partnership property for the purpose of liquidating the partnership affairs and as expeditiously as the circumstances will permit to convert the assets into cash, pay off the liabilities, adjust the equities between the partners, and distribute the remainder of the estate between himself, as the surviving partner, and the representatives of the deceased partner according to their respective interests.*" (Schenk v. Lewis, 118 S.E. 631, 125 S.C. 228)

## TRIAL COURT'S RECORD ON APPEAL

8. In doing so, *the surviving partner has the power to sell partnership realty for the purpose of liquidation.*" (Schenk v. Lewis, 118 S.E. 631, 125 S.C. 228)

9. And, *"The surviving partner has the right to carry on partnership business, collect the assets, pay creditors, and wind up the partnership business, and is accountable to the deceased partner's representatives for the latter's share of surplus assets."* (Crews v. Sweet, 118 S.E. 613, 125 S.C. 303, 29 A.L.R. 43)

10. Furthermore, *"a surviving partner is entitled to take and hold as survivor, for the purpose of administering the co-partnership estate, but after the effects have been reduced to money, and the debts of the co-partnership paid, the share of the deceased partner constitutes assets, and belongs to his representative.* (Moffatt v. Thomson, 5 Rich.Eq. 155, 57 Am.Dec. 737)

11. And, as pertinent to the issue at hand, *"the surviving partner can carry on the partnership's business without authority from the personal representative of the deceased partner."* (Rowell v. Adams, 65 S.E. 207, 83 S.C. 124)

12. And, in this case, where the Purchasers are in default, and where they are not prepared to pay their full encumbrance of the contract of sale, and where legal action is necessary for foreclosure and/or vacating the property, the Plaintiff, *"as the surviving partner, is the proper party to bring suit for debts due to the partnership and other actions affecting the partnership; the representatives of the deceased partner not being necessary parties."* (Crews v. Sweet, 118 S.E. 613, 125 S.C. 303, 29 A.L.R. 43)

13. And, *"a surviving partner may sue on a note due the partnership, without joining as plaintiffs the representatives of the deceased partner."* (Dial v. Agnew, 6 S.E. 295, 28 S.C. 454)

**Transcript of Record of Testimony  
and Proceedings of Bench Trial  
held July 13, 2009, before  
Judge Childs**

**TRIAL COURT'S RECORD ON APPEAL**

STATE OF SOUTH CAROLINA                    )  
  ) COURT OF COMMON PLEAS  
COUNTY OF RICHLAND                    ) 2008-CP-40-0009

LARRY A. YATES                                )  
  ) PLAINTIFF                                )  
  ) vs.                                        ) TRANSCRIPT OF RECORD  
  )    )  
THE ESTATE OF ALVIN YATES                )  
  ) DEFENDANT                                )

July 13, 2009  
Columbia, South Carolina

B E F O R E:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

A P P E A R A N C E S:

RONALD R. HALL, ESQ.  
Attorney for the Defendant

LARRY A. YATES  
Appearing pro se

CAROL M. THUEME, RPR  
Official Court Reporter

# TRIAL COURT'S RECORD ON APPEAL

## I N D E X

### OPENING STATEMENTS:

Mr. Yates	4
Mr. Hall	6

### WITNESSES:

PAGE

#### LARRY YATES

Direct Examination by Mr. Yates	10
Cross-Examination by Mr. Hall	35

### CLOSING ARGUMENTS:

Mr. Yates	62
Mr. Hall	65

CERTIFICATE OF REPORTER	69
-------------------------	----

## TRIAL COURT'S RECORD ON APPEAL

### EXHIBITS

Plaintiff's			ID	EVD
Exhibit No. 1	Partnership agreement		9	15
Exhibit No. 2	Wachovia agreement		9	17
Exhibit No. 3	Invoice 8-5-03		9	19
Exhibit No. 4	Check copy 8-18-03		9	21
Exhibit No. 5	Title		9	23
Exhibit No. 6	Invoice 7-14-03		9	25
Exhibit No. 7	Invoice 7-29-03		9	26
Exhibit No. 8	Invoice 7-30-03		9	27
Exhibit No. 9	Invoice 8-19-03		9	28
Exhibit No. 10	Message 9-1-03		9	29
Exhibit No. 11	Accounting 6-28-04		9	30
Exhibit No. 12	Accounting 6-28-04		9	32
Exhibit No. 13	Accounting 4-29-04		9	33
Exhibit No. 14	Appraisal 7-20-04		9	33
Exhibit No. 15	Affidavit of Larry Yates		34	34
Defendant's			ID	EVD
Exhibit No. 1	Mortgage 7-31-03		47	47
Exhibit No. 2	Mortgage 8-26-04		47	47
Exhibit No. 3	Confession of Judgment		51	51

1 THE COURT: This is Larry Yates, plaintiff, and  
2 Alvin Yates, defendant, et al, Case No. 2008-CP-40-0009.  
3 Both parties are here.

4 MR. YATES: Yes, Your Honor. Larry Yates is not  
5 et al. It's Larry Yates as Larry Yates, one plaintiff.

6 THE COURT: Sir, are you going to be  
7 representing yourself pro se?

8 MR. YATES: I am, Your Honor.

9 THE COURT: All right. Then you are Mr. Alvin  
10 Yates?

11 MR. HALL: No, Your Honor, Mr. Alvin Yates died  
12 in April 2005. I'm Ronald Hall representing the estate  
13 and would like to make an opening statement to the Court.

14 THE COURT: All right. We will proceed first  
15 with some brief opening remarks to the Court and then  
16 we'll allow you all to put up your testimony.

17 I'll begin with you, Mr. Yates, Larry Yates.

18 MR. YATES: Thank you, Your Honor.

19 Your Honor, this dispute from which the case  
20 arose began on or about April 16th, 2005, upon the death  
21 of Plaintiff Larry Yates's cousin and business partner,  
22 Alvin Yates.

23 The plaintiff claims that the cousins, Alvin  
24 Yates and Larry Yates were partners in a partnership that  
25 was formed for the purpose of purchasing a pre-fabricated

1 modular home, four bedrooms, three-and-a-half baths from  
2 Signature Building Systems, Incorporated, of St. George,  
3 South Carolina, and then finishing the home's construction  
4 on-site of a building lot in Blythewood, South Carolina,  
5 that was purchased from the Plaintiff Larry Yate's  
6 daughter.

7           The defendant would claim that there was never  
8 any partnership and that the completed \$235,000 house was  
9 built on -- that was built on a lot at 400 Grover Wilson  
10 Road in Blythewood, South Carolina, was the sole property  
11 of Alvin Yates and that the plaintiff, Larry Yates, never  
12 had and does not now have any interest in or rights to the  
13 \$235,000 property. And defendant had no intentions of  
14 paying any of the debts that were incurred for the  
15 purchase and construction of the \$235,000 house.

16           However, the plaintiff, Larry Yates, will  
17 provide testimony and other conclusive evidence that there  
18 was a need -- indeed a partnership that existed between  
19 Alvin Yates and Larry Yates and that the house and  
20 property was constructed, was paid for with partnership  
21 funds, and therefore the property did and still belongs to  
22 the partnership. And the plaintiff, Larry Yates, as the  
23 sole surviving partner of the partnership has a duty and a  
24 right to wind up the affairs of the partnership by selling  
25 the partnership property, paying all the partnership

1. debts, and then equally dividing the profits, if any,  
2. between himself and the estate of the deceased partner,  
3. Alvin Yates.

4. Thank you, Your Honor.

5. THE COURT: Okay. All right. I'd be happy to  
6. hear from you, Mr. Hall.

7. MR. HALL: Your Honor, if it please the Court.

8. Alvin Yates died on April 16th, 2005. Since he  
9. died, Mr. Larry Yates, who is a distant cousin of Alvin  
10. Yates, has been trying to seize the property at 400 Grover  
11. Wilson Road in Richland County. That property was listed  
12. as the sole asset of the estate of Alvin Yates.

13. Alvin Yates died in Lexington County. His  
14. estate is probated in Lexington County.

15. That estate -- that property at Grover Wilson  
16. Road was the sole asset listed.

17. The estate has gone through probate. Mr. Yates  
18. has brought several proceedings in probate court in  
19. Lexington County trying to seize this property at Grover  
20. Wilson Road. He finally raised the issue of this alleged  
21. partnership between he and Alvin Yates and Judge Eckstrom  
22. ruled he did not have jurisdiction to hear that issue  
23. since it involved property in Richland County, and that's  
24. what brought us to this court today.

25. In the meantime, the estate proceeded through

1 the normal procedures. Deeds of distribution were issued  
2 to the heirs, deeding them the property at 400 Grover ...  
3 Wilson Road. The final inventory and appraisal was  
4 filed. All the documents were filed with the Lexington  
5 County Probate Court, and the estate has been closed. So  
6 I'm not really sure why we're here today.

7 If Mr. Larry Yates is claiming some alleged  
8 partnership and through this partnership that somehow  
9 gives him the right to seize and have and hold the  
10 property at 400 Grover Wilson Road, we don't see that.  
11 The property was deeded to Alvin Yates. It was in his  
12 estate, it was used by Alvin Yates to obtain two mortgages  
13 which were used to -- the funds of which were used to  
14 construct the property, the house at 400 Grover Wilson  
15 Road.

16 So I'm really at a loss as to -- even if a  
17 partnership had been established, how is that going to  
18 effect the interest of the property at 400 Grover Wilson  
19 Road?

20 THE COURT: Okay. So the deeds of distribution  
21 went to whom?

22 MR. HALL: To the heirs. There were seven or  
23 eight heirs.

24 THE COURT: Okay. And then, at that time then,  
25 Mr. Yates, did you challenge at all anything in the

1 probated matter?

2 MR. YATES: Your Honor, Mr. Hall is trying to  
3 testify that the deeds of distribution didn't go to all  
4 the heirs. In fact, the property -- the estate didn't  
5 even sell the property. There's records in the estate in  
6 probate court that the house was not sold by the estate.  
7 So if Mr. Hall wants to have someone to testify about what  
8 went on in the estate, that would be fine, but as of now,  
9 we need to go ahead and see if we can't establish this  
10 partnership dispute.

11 THE COURT: Okay. Then upon establishing the  
12 partnership, what do you contend that would do?

13 MR. YATES: That will make the property the  
14 property of the partnership and the partnership can sell  
15 the property.

16 THE COURT: But how so will it make the  
17 property, the property of the partnership?

18 MR. YATES: Because of any property that was  
19 built and paid for by partnership funds would be  
20 partnership property.

21 THE COURT: All right. We'll proceed.

22 Mr. Yates, you can call your first witness.

23 MR. YATES: Your Honor, as you know, it's a  
24 little touchy having to be your own attorney, but I want  
25 to call myself, Larry Yates, as the first witness.

1 THE COURT: Okay.

2 MR. YATES: But can I do a little bookkeeping  
3 first?

4 THE COURT: Certainly.

5 MR. YATES: I have an original document here.  
6 May I approach?

7 I have an original document here that has all  
8 the exhibits that I had planned to try to get entered into  
9 evidence.

10 THE COURT: Okay.

11 MR. YATES: And I was going to ask the Court if  
12 the court reporter could mark this document as far as  
13 marking the exhibits and then I have extra copies for  
14 Mr. Hall and --

15 MR. HALL: We're going to object to a group of  
16 exhibits being introduced. If he wants to introduce them  
17 during his testimony, then let's look at them as he  
18 points --

19 MR. YATES: That's what I'm going to do.

20 THE COURT: Okay. But give him a copy so he'll  
21 be familiar with what you're trying to get into evidence.

22 (WHEREUPON, Plaintiff's Exhibits Nos. 1-14 were  
23 marked for identification only.)

24 LARRY YATES, after being duly sworn, testified  
25 as follows:

1 THE COURT: All right, sir.

2 DIRECT EXAMINATION

3 MR. YATES: All right. As a witness, I'm going  
4 to try to keep my witness different from my motions to the  
5 Court and everything, so I'm going to try to key her in to  
6 what I'm doing.

7 And if it please the Court, I have a short,  
8 one-page statement that I would like to read into the  
9 record and then the rest of it is a short introduction of  
10 the evidence.

11 THE COURT: Okay.

12 MR. YATES: All right. As a witness, I'm  
13 testifying my name's Larry Yates and my present address is  
14 612 Ashwood Circle in West Columbia, South Carolina.

15 I studied engineering at the University of South  
16 Carolina from September of 1959 through December of 1963.  
17 Although I did not earn my degree, I worked in the  
18 engineering business in the design of commercial -- design  
19 of commercial and industrial -- institutional, I'm  
20 sorry -- building heating and air conditioning systems,  
21 including such buildings as the USC Law School and  
22 numerous other large projects throughout South Carolina  
23 and the Southeast.

24 In 1975, I founded a mechanical contracting  
25 design and build company which both designed and installed

1 heating and air conditioning and plumbing systems in many  
2 large projects in the Columbia area, as well as projects  
3 in Savannah, Hilton Head, Myrtle Beach, Aiken, and as far  
4 north as Virginia Beach, Virginia, and as far south as  
5 Macon, Georgia.

6           During the time that I was in the construction  
7 business -- contracting business, I became involved in  
8 developing a patented process and manufacturing the  
9 equipment that would economically recycle asphalt paving  
10 materials for the rehabilitation of asphalt highways.  
11 Although I was awarded three patents and attracted almost  
12 \$3 million in investor money for research and development,  
13 I was never able to move the company into profitable  
14 manufacturing of equipment or production of recycled  
15 material.

16           Afterwards, I became involved with real estate  
17 and renovation and the sale of existing homes and in a  
18 couple of instances, the contracting of new homes. On one  
19 such -- one such project involved a family member's  
20 purchase and construction of a large prefabricated home in  
21 the Lexington area. We were able to get the family member  
22 a very large, well-constructed home for considerable less  
23 than the normal market price for similar homes in that  
24 neighborhood.

25           It was some times after that, after we had

1 finished the large prefabricated home for a family member.  
2 that I was visiting my cousin, Alvin Yates, who lives in a  
3 retirement -- who lived in a retirement community in Hulon  
4 Greene, behind Lexington Medical Center. While there, I  
5 received a phone call from the sales agent for the  
6 prefabricated home company that was inquiring if I knew of  
7 anyone that would be interested in purchasing a four  
8 bedroom, three-and-a-half bath, two-story prefabricated  
9 home that the company had in inventory because the builder  
10 defaulted on the contract to purchase the home that he was  
11 supposed to build for his clients down on the South  
12 Carolina coast. I told him that I did not know anyone  
13 right off, but that I would ask around and let him know if  
14 anyone had an interest.

15 As soon as I was off the phone, my cousin Alvin  
16 was asking me what the call was all about. I went over  
17 the details that I had been told with him and he wanted to  
18 know if I thought that he and I could build and finish the  
19 house and be able to sell it and make some money. I told  
20 him I would have to do an estimate before I would be able  
21 to have an opinion one way or the other. He wanted us to  
22 look into it and wanted to go down to St. George, South  
23 Carolina, to see the factory and to look at the house that  
24 we were talking -- that they were trying to sell. I was  
25 not thinking about doing anything with this home. Even

1     though I had the builder's license, I did not have the  
2     necessary money for financing a speculative project of  
3     that size.

4             Anyway, we went over the estimates and visited  
5     the factory and checked out the prefabricated home that  
6     was for sale and decided to proceed with a partnership to  
7     purchase and construct the home. Alvin was delighted to  
8     be involved in the building development and never missed a  
9     chance to tell all of his family and friends about what he  
10    was doing.

11            MR. HALL: Your Honor, we're going to object to  
12    any testimony regarding what Alvin Yates said under the  
13    dead man's statute.

14            THE COURT: Sustained.

15            MR. YATES: As a further witness, I am familiar  
16    with the facts and circumstances involving the partnership  
17    that existed between partners Alvin -- between Larry A.  
18    Yates and Alvin Yates and with the financing and  
19    construction of the partnership property located at 400  
20    Grover Wilson Road in Blythewood, South Carolina, a  
21    picture of which is shown on the cover of this document as  
22    it was in 2007. And I hereby certify that the copy of the  
23    project partnership agreement under which the home was  
24    constructed, as evidenced by -- herein as Exhibit 1, is a  
25    true copy of the partnership agreement that was entered

1 into on July 5th 2003, between Alvin Yates and Larry  
2 Yates.

3           Some of the specifics of the agreement include  
4 (1) plans to purchase a four bedroom, three-and-a-half  
5 bath modular building home from System Building -- from  
6 Signature Systems, Incorporated, located in St. George,  
7 South Carolina; (2) plans to construct the home on a  
8 permanent brick foundation on a lot of land located in  
9 northeast Richland County at 400 Grover Wilson Road in  
10 Blythewood, South Carolina; (3) plans to pay approximately  
11 \$79,000 for the prefabricated home including delivery for  
12 the house and garage packages and dry-in set for the  
13 house; (4) plans for obtaining financing for the purchase  
14 of the home and payment of all necessary on-site  
15 materials, equipment, and labor to complete the house for  
16 occupancy; (5) plans for marketing and sale of the  
17 house -- sale of the completed home; (6) plans for Larry  
18 Yates to keep -- for partner Larry Yates to keep and  
19 report a full and accurate accounting of all project  
20 expenditures, and; (7) plans for the proceeds of the sale  
21 of the property to first be applied to the payment of the  
22 partnership debt, and lastly to the payment of profits to  
23 the partners.

24           And as a plaintiff, I move that this partnership  
25 agreement, along with the plaintiff's affidavit testimony

1 and case law as to Exhibit No. 1, be entered into evidence  
2 as Plaintiff's Exhibit No. 1.

3 THE COURT: Okay. Mr. Hall, any objection?

4 MR. HALL: No objection.

5 THE COURT: Okay.

6 (WHEREUPON, Plaintiff's Exhibit No. 1 was  
7 admitted into evidence.)

8 THE COURT: That will be your first exhibit.  
9 Okay. And that's the project partnership agreement?

10 MR. YATES: Yes, ma'am.

11 THE COURT: All right.

12 MR. YATES: So we don't have to mark them now?

13 THE COURT: The court reporter will mark it in a  
14 moment. Okay.

15 MR. YATES: Okay.

16 THE COURT: You've got this as a document that  
17 has Exhibits Nos. 1 through 14 right now. But I assume  
18 you're going to talk about the rest of them.

19 MR. YATES: Yes, I am.

20 THE COURT: So right now only one is in  
21 evidence.

22 MR. YATES: Thank you, Your Honor.

23 Now testimony as to Exhibit No. 2.

24 As a witness, I am testifying that the partners  
25 did apply for and receive a prime equity line of credit

1 secured by residential property belonging to Alvin Yates,  
2 located at 612 Ashwood Circle, in West Columbia, South  
3 Carolina, in an amount of \$139,100 from Wachovia Bank for  
4 the expressed purpose of purchasing partnership property  
5 that would become 400 Grover Wilson Road home and  
6 property. That the note securing the prime equity line of  
7 credit was executed and signed by both partners Larry  
8 Yates and Alvin Yates on July 21st, 2003, as evidenced by  
9 Exhibit No. 2, which I hereby certify to be a true copy of  
10 the Wachovia Bank National Association's Prime Equity Line  
11 of Credit Agreement and Disclosure Statement.

12 And as the plaintiff, I move that this note and  
13 credit agreement, along with the plaintiff's affidavit  
14 testimony and case law as Exhibit No. 2, be entered into  
15 evidence as Plaintiff's Exhibit No. 2.

16 THE COURT: Any objection?

17 MR. HALL: We object to that, Your Honor,  
18 because if you look at the exhibit, there's no signature  
19 page or anything there that would -- probate page or  
20 anything, nor is there any indication that that document's  
21 ever been recorded in the public records of Richland  
22 County.

23 THE COURT: Okay. It's got a signature only of  
24 Alvin Yates on here. Well, it's got both. I'm sorry,  
25 it's got Alvin Yates and Larry Yates on there.

1 MR. HALL: You're looking at Exhibit 2?

2 THE COURT: Exhibit 2, that's the Wachovia Bank  
3 National Association Prime Equity Line of Credit.

4 MR. HALL: Mine doesn't have a signature page.  
5 Your's has a signature?

6 I know their names are on the first page, but --

7 MR. YATES: That's probably just a mistake. I'm  
8 sorry.

9 MR. HALL: I don't have that page.

10 THE COURT: Okay.

11 MR. HALL: But as I said, I do object to it  
12 because it's not been -- there's no indication it's been  
13 recorded in the public records in Richland County.

14 MR. YATES: May I show Mr. Hall the page?

15 THE COURT: Sure.

16 MR. HALL: I see why it hasn't been recorded.  
17 All this is, is a note. It's not a mortgage.

18 THE COURT: Right.

19 MR. HALL: Your Honor, I don't mind him  
20 introducing that.

21 THE COURT: Okay. That will be moved into  
22 evidence as well.

23 (WHEREUPON, Plaintiff's Exhibit No. 2 was  
24 admitted into evidence.)

25 MR. YATES: Now testimony as to Exhibit No. 3.

1           As a witness, I am testifying that the  
2 partnership did use partnership funds secured from  
3 Wachovia Bank for the intended purposes of purchasing  
4 partnership property consisting of a four bedroom,  
5 three-and-a-half bath modular Building System home from  
6 Signature Building Systems, Incorporated, of St. George,  
7 South Carolina, as evidenced by Exhibit No. 3 which I  
8 hereby certify to be a true copy of the final invoice  
9 dated August 5th, 2003, from Signature Building Systems in  
10 the amount of \$75,762.29.

11           As the plaintiff, I move that this final invoice  
12 for the purchase of partnership property, along with  
13 plaintiff's affidavit testimony and case law as to Exhibit  
14 No. 3, be entered into evidence as Plaintiff's Exhibit  
15 No. 3.

16           MR. HALL: We'd object to that, Your Honor, on  
17 the grounds that the exhibit I'm looking at, Exhibit  
18 No. 3, says that something was sold to Larry Yates. Alvin  
19 Yates's name doesn't appear anywhere on here, nor does it  
20 say basically what this is. I'm not sure what this is  
21 from the invoice, what it's for. I see it is for  
22 \$75,762.29, but what that's for, I don't know. And, as I  
23 said, Alvin Yates's name appears nowhere on here, nor does  
24 any alleged partnership name appear anywhere on here. It  
25 seems that something was sold to Larry Yates.

1 THE COURT: Do you want to explain, sir?

2 MR. YATES: Yes, ma'am. Yes, Your Honor.

3 In the partnership agreement itself, the reason  
4 for the partnership was to purchase the prefabricated home  
5 built in the factory in St. George, South Carolina. And  
6 if you look at the partnership agreement, No. 3, as per  
7 the contract with Signature Building Systems, the house  
8 and garage package will cost the partners approximately  
9 \$79,000 which includes delivery of the home and garage  
10 package and dry-in set for the house. So this \$79,000 is  
11 consistent with what the purpose of the partnership  
12 agreement.

13 And that was the main part of -- that was all  
14 the components. They brought it in on five different  
15 trailers. This house was already constructed in St.  
16 George and it was delivered to the site in Blythewood on  
17 five different big haulers, and that was the cost of it.

18 THE COURT: I'll accept it based on that limited  
19 testimony for its use.

20 MR. YATES: Thank you, Your Honor.

21 (WHEREUPON, Plaintiff's Exhibit No. 3 was  
22 admitted into evidence.)

23 MR. YATES: Just a note about the invoice was  
24 this started out as a -- when they called about it, it was  
25 a discounted invoice because it had already been sold to

1 someone else, and the reason that my name is on it is I  
2 was the one that dealt with the company for the home that  
3 belonged to our family member and the salesman knew me and  
4 called me about the house and that's the reason it's in my  
5 name, but Alvin Yates and myself, we went down there and  
6 looked at everything and decided to go ahead and buy it.

7 Now, Exhibit No. 4 is a copy of the Wachovia  
8 check that was written the same day that we closed the  
9 loan and it was for the payment of that invoice. So as a  
10 witness -- now the testimony is Exhibit No. 4.

11 As a witness, I'm testifying that the  
12 partnership did use the partnership funds secured from  
13 Wachovia Bank for the payment of Signature Building  
14 Systems' final invoice by way of a wire-transfer advanced  
15 payment of \$8,000 as a production deposit and by way of a  
16 \$67,762.29 Wachovia Bank official check No. 34 -- I'm  
17 sorry, 354081369 made payable to Signature Building  
18 Systems, Incorporated, with remitter as Larry and Alvin  
19 Yates as evidenced by Exhibit No. 4, which I hereby  
20 certify to be a true copy of Wachovia Bank's official  
21 check dated August 18th 2003, in the amount of \$67,762.29.

22 As the plaintiff, I move that this Wachovia Bank  
23 official check made payable to Signature Building Systems  
24 with Larry and Alvin Yates as remitters, along with the  
25 plaintiff's affidavit testimony and case law as to Exhibit

1 No. 4, be entered into evidence as Plaintiff's Exhibit  
2 No. 4.

3 THE COURT: Any objection?

4 MR. HALL: No, ma'am.

5 THE COURT: Okay. It will be so admitted.

6 (WHEREUPON, Plaintiff's Exhibit No. 4 was  
7 admitted into evidence.)

8 MR. YATES: Thank you.

9 Now testimony as to Exhibit No. 5, which is a  
10 deed where the title to the lot was deeded to Alvin Yates  
11 from D.L. Wilson. And now testimony as to Exhibit No. 5.

12 As a witness, I am testifying that the  
13 partnership did use partnership funds secured from  
14 Wachovia Bank for the purchase of a parcel of land  
15 containing 1.217 acres from D.L. Wilson, daughter of  
16 partner Larry A. Yates, for which the partnership paid  
17 \$5,000 for the transfer of the property into partner Alvin  
18 Yates's name in exchange for cash payment of \$5,000 and  
19 promise of payment of an additional \$16,200 from the  
20 proceeds of the sale of the partnership property, as  
21 evidenced by the Exhibit No. 5, which I certify to be a  
22 true copy of the title to real estate where D.L. Wilson  
23 transferred title to the 400 Grover Wilson Road property  
24 to Alvin Yates, even though she had not been paid the  
25 balance of the \$16,200, which still remains unpaid.

1           As the plaintiff, I move that this title to real  
2 estate, along with the plaintiff's affidavit testimony and  
3 case law as to Exhibit No. 5, be entered into evidence as  
4 Plaintiff's Exhibit No. 5.

5           THE COURT: Any objection?

6           MR. HALL: Well, yes, ma'am. Before we enter  
7 that, I would like ask Mr. Larry Yates a few questions  
8 about this Exhibit No. 5.

9           THE COURT: Okay.

10          MR. HALL: Mr. Larry Yates, you keep referring  
11 to this as partnership funds and partnership property.  
12 But is it not true, sir, that your Exhibit No. 5 says that  
13 this is a deed from D.L. Wilson to Alvin Yates?

14          MR. YATES: Yes, it does.

15          MR. HALL: Do you see anywhere in there where it  
16 refers to this being partnership property?

17          MR. YATES: No, it's not. It doesn't refer to  
18 partnership property.

19          MR. HALL: It doesn't refer to that?

20          MR. YATES: No, sir.

21          MR. HALL: Do you have a check for -- a copy of  
22 the check for \$21,200, that was paid to D.L. Wilson?

23          MR. YATES: It wasn't paid to D.L. Wilson.  
24 There was only \$5,000 paid to D.L. Wilson.

25          MR. HALL: Well, do you have a copy of a

1 settlement statement showing that only \$5,000 was paid?

2 MR. YATES: No, I don't have that.

3 MR. HALL: Do you have anything showing that a  
4 claim was ever made by D.L. Wilson against the property or  
5 against you or against Alvin Yates by D.L. Wilson for the  
6 balance of \$16,200?

7 MR. YATES: I don't have that.

8 MR. HALL: Nothing?

9 MR. YATES: No, sir.

10 MR. HALL: No objection to the deed being  
11 introduced into evidence.

12 THE COURT: Okay.

13 (WHEREUPON, Plaintiff's Exhibit No. 5 was  
14 admitted into evidence.)

15 MR. YATES: One thing I wanted to point out is  
16 that, as we go through these exhibits, you will note that  
17 the house, the invoice for the house was dated August 5th,  
18 2003, and the house was delivered shortly thereafter and  
19 set on the lot which was still in the name of D.L. Wilson.

20 It was not until a later date -- it was not  
21 until the end of October of 2003 that the deed was  
22 actually delivered to Alvin Yates for the partnership.

23 So the house was already constructed on the lot  
24 of land with money that had been purchased from Wachovia  
25 Bank, which the partners borrowed for building the house.

1 So at the least, the only thing that would be belonging to  
2 Alvin Yates as far as title is concerned is the lot of  
3 land.

4 Now testimony as to Exhibit No. 6.

5 As a witness, I am testifying that the  
6 partnership did use partnership funds secured from  
7 Wachovia Bank for the intended purpose of clearing of land  
8 for house and yard by Robert Hildreth Land Clearing  
9 Company, as evidenced by Exhibit No. 6, which I certify to  
10 be a true copy of the service contract and invoice of  
11 July 14th, 2003, in the amount of \$900, and a payment of  
12 same by Al Yates and Larry Yates Construction Account  
13 Check No. 0093, dated July 17th, 2003, and made payable to  
14 Robert Hildreth Land Clearing Company in the amount of  
15 \$900.

16 As the plaintiff, I move that this service  
17 contract, invoice and check, along with the plaintiff's  
18 affidavit testimony as to Exhibit 6, be entered into  
19 evidence as Plaintiff's Exhibit No. 6.

20 MR. HALL: Your Honor, if it please the Court,  
21 we object to that. If the Court will refer to the exhibit  
22 which Mr. Larry Yates is trying to introduce into  
23 evidence, on Robert Hildreth's Land Clearing Service  
24 contract, my copy says that this work was done on the 300  
25 block of Grover Wilson Road, Ridgeway, South Carolina, not

1 400 Grover Wilson Road, even though the check says it was  
2 issued for 400 Grover Wilson Road.

3 MR. YATES: Your Honor, this was clear land,  
4 there wasn't any -- the block numbers hadn't even been  
5 assigned when they cleared this land, so the nearest  
6 address to that is 322 Grover Wilson Road and this was  
7 right next to it, so we had no way of knowing that -- or  
8 Mr. Hildreth had no way of knowing that the address was  
9 going to be 400 Grover Wilson Road rather than 300.

10 THE COURT: The check is dated three days later,  
11 though, with 400 Grover Wilson Road. So what changed?

12 MR. YATES: We went to the county and probably  
13 got the septic tank permit and they assign addresses at  
14 that point.

15 THE COURT: Okay. I'll overrule. I'll allow it  
16 in based on that explanation.

17 MR. YATES: Thank you, Your Honor.

18 (WHEREUPON, Plaintiff's Exhibit No. 6 was  
19 admitted into evidence.)

20 MR. YATES: Now testimony as to Exhibit No. 7.

21 As a witness, I am testifying that the  
22 partnership did use partnership funds secured from  
23 Wachovia Bank for the intended purpose of purchasing  
24 concrete block products as evidenced by Exhibit No. 7,  
25 which I certify to be a true copy of the sales ticket of

1 Southeastern Concrete Block Products, dated July 29th,  
2 2003, in the amount of \$642.60, and of payment receipt of  
3 same by Al Yates and Larry Yates Construction Account  
4 Check No. 0098, dated July 28th, 2003, and made payable to  
5 Southeastern Concrete Products in the amount \$642.60.

6 As the plaintiff, I move that the sales ticket  
7 and payment receipt, along with the plaintiff's affidavit  
8 testimony as to Exhibit No. 7, be entered into evidence as  
9 Plaintiff's Exhibit No. 7.

10 MR. HALL: No objection.

11 THE COURT: Okay. It's going to be admitted.

12 MR. YATES: Thank you, Your Honor.

13 (WHEREUPON, Plaintiff's Exhibit No. 7 was  
14 admitted into evidence.)

15 MR. YATES: Now testimony as to Exhibit No. 8.

16 As a witness, I am testifying that the  
17 partnership did use partnership funds secured from  
18 Wachovia Bank for the intended purpose of purchasing  
19 various other materials for the preparation of brick and  
20 block foundation which included the following: 20.93 tons  
21 of stone costing \$329.65, and one load of masonry sand  
22 costing \$150 from Cripple Creek Corporation with  
23 respective payments by way of Al Yates and Larry Yates  
24 Construction Account Checks No. ~0099 and 1001, and invoice  
25 acknowledgment from Carolina Ceramics for brick and mortar

1 costing \$1,057.77, and Hardaway Concrete Company for  
2 pre-mixed concrete costing \$926.10, and paid by Al Yates  
3 and Larry Yates Construction Account Check No. 1027, each  
4 of which I certify to be true copies.

5 As the plaintiff, I move that these invoices  
6 with payment notes, along with the affidavit testimony as  
7 to Evidence No. 8, be entered into evidence as Plaintiff's  
8 Exhibit No. 8.

9 MR. HALL: No objection.

10 THE COURT: Okay. Admitted.

11 (WHEREUPON, Plaintiff's Exhibit No. 8 was  
12 admitted into evidence.)

13 MR. YATES: Now testimony as to Exhibit No. 9.

14 As a witness, I am testifying that the  
15 partnership did use partnership funds secured from  
16 Wachovia Bank for the intended purpose of crane rental  
17 from White Crane Company for unloading and setting various  
18 sections of the prefabricated home that the partnership  
19 purchased from Signature Building Systems as evidenced by  
20 White Crane Company Work Order No. 002034, Revised Invoice  
21 6293, dated August 22nd, 2003, for an adjusted price of  
22 \$900, and payment by Al Yates and Larry Yates Construction  
23 Account Check No. 1020, dated August 29th, 2003, which I  
24 certify to be true copies of the work order, revised  
25 invoices, and Al Yates and Larry Yates Construction

1 Account Check No. 1020.

2 As the plaintiff, I move that the work order,  
3 revised invoice, and Al Yates and Larry Yates Construction  
4 Account check, along with the plaintiff's affidavit  
5 testimony as to Exhibit No. 9, be entered into evidence as  
6 Plaintiff's Exhibit No. 9.

7 THE COURT: Any objection?

8 MR. HALL: No objection.

9 THE COURT: Okay. It will be so admitted.

10 MR. YATES: Thank you, Your Honor.

11 (WHEREUPON, Plaintiff's Exhibit No. 9 was  
12 admitted into evidence.)

13 MR. YATES: Now testimony as to Exhibit No. 10.

14 As a witness, I am testifying that the  
15 partnership did use partnership funds secured from  
16 Wachovia Bank for the intended purpose of vinyl siding  
17 installation by Steve McAtee as evidenced by fax message  
18 from Larry A. Yates, L.A. Yates and Associates  
19 accounting for labor amount due and payment thereof by Al  
20 Yates and Larry Yates Construction Account Check No. 1025,  
21 dated September 6th, 2003, in the amount of \$212, which I  
22 certify to be true copies of the fax message and Check  
23 No. 1025.

24 As the plaintiff, I move that this fax message  
25 and Check No. 1025, along with the plaintiff's affidavit

1 testimony as evidenced in Exhibit No. 10, be entered into  
2 evidence as Plaintiff's Exhibit No. 10.

3 MR. HALL: No objection.

4 THE COURT: Okay. It will be so admitted.

5 (WHEREUPON, Plaintiff's Exhibit No. 10 was  
6 admitted into evidence.)

7 MR. YATES: Now testimony as to Exhibit No. 11.

8 As a witness, I am testifying that as required  
9 by Item No. 6 of the partnership agreement between Alvin  
10 Yates and Larry Yates, partner Larry Yates did keep a full  
11 and accurate accounting of all project expenditures as  
12 evidenced by Exhibit No. 11, which includes a summary  
13 sheet with 25 itemized account numbers and names and  
14 estimates of expected costs and spent-to-date totals as  
15 calculated from lists of individual invoices on the  
16 following pages, all of which I hereby certify to be a  
17 true accounting of the use of partnership funds for the  
18 construction of property -- of partnership property  
19 located at 400 Grover Wilson Road in Blythewood, South  
20 Carolina.

21 As the plaintiff, I move that this partnership  
22 accounting, along with the plaintiff's affidavit testimony  
23 and case law as to Exhibit No. 11, be entered into  
24 evidence as Plaintiff's Exhibit No. 11.

25 THE COURT: Any objection?

1 MR. HALL: No objection.

2 THE COURT: Okay. That will be so admitted.

3 (WHEREUPON, Plaintiff's Exhibit No. 11 was  
4 admitted into evidence.)

5 MR. YATES: Thank you, Your Honor.

6 Now testimony as to Exhibit No. 12.

7 As a witness, I am testifying that partner Alvin  
8 Yates did take an active part in the day-to-day operation  
9 of the partnership as evidenced by invoice charges to  
10 Alvin Yates miscellaneous, under Accounting Code No. 24  
11 and individual invoices listed under Accounting Code  
12 No. 24, including expenses for weekly breakfast meetings  
13 held at Lizard's Thicket Restaurant and dinner meetings at  
14 Macaroni Grill for the purpose of discussing partnership  
15 business and various charges for gas for travel to and  
16 from the partnership job site at 400 Grover Wilson Road in  
17 Blythewood, South Carolina, which I hereby certify to have  
18 been true business expenses charged to the Alvin Yates  
19 miscellaneous account.

20 Now, as the plaintiff, I move that this Alvin  
21 Yates miscellaneous accounting, along with the plaintiff's  
22 affidavit testimony and case law as to Exhibit No. 12, be  
23 entered into evidence as Plaintiff's Exhibit No. 12.

24 THE COURT: Any objection?

25 MR. HALL: I'm going to object to that. Who

1 drew this thing up?

2 THE COURT: Do you want to explain?

3 MR. YATES: This is the accounting that I kept  
4 on a daily basis, and these are all the invoices.

5 THE COURT: This is referring to Exhibits 11  
6 and 12?

7 MR. YATES: No, I'm sorry. This is -- yes,  
8 11 is all of the accounting. And this, Exhibit No. 12, is  
9 just taking -- it's the same front page, which is the  
10 totals, and if you look down at the bottom of that page,  
11 it's Item No. 24 is Alvin Yates miscellaneous -- it's an  
12 account for Alvin Yates miscellaneous. And it was  
13 estimated to cost \$1,000, and it cost \$3,925. And if you  
14 look at the next pages, under No. 24 --

15 THE COURT: Okay. In Exhibit 12, I only have  
16 two pages.

17 MR. YATES: That's right. Look at the second  
18 page. And if you go down to No. 24, it says, "Gas, Al  
19 Yates, Union 76; No. 24, Gas, Al Yates, Exxon; 24,  
20 Macaroni Grill dinner meeting; 24, Office Depot file  
21 supplies."

22 THE COURT: This accounting was done by whom?

23 MR. YATES: This was done by Larry Yates as  
24 called for by the partnership agreement.

25 THE COURT: Okay. Overruled. Okay. It will be

1 entered.

2 MR. YATES: Thank you, Your Honor.

3 (WHEREUPON, Plaintiff's Exhibit No. 12 was  
4 admitted into evidence.)

5 MR. YATES: Now testimony as to Exhibit No. 13.

6 As a witness, I am testifying that the  
7 partnership did use partnership funds secured by Wachovia  
8 Bank for reimbursing partner Alvin Yates for personal  
9 monies that he had contributed to the partnership  
10 construction account as evidenced by partner Larry Yates's  
11 April 29th, 2004, letter of accounting which itemizes  
12 various contributions totaling \$4,566.81 and payment of  
13 same to partner Alvin Yates by Al Yates and Larry Yates  
14 Construction Account Check No. 1053, which I certify to be  
15 true copies of the April 29th, 2004, letter of accounting  
16 and Al Yates and Larry Yates Construction Account Check  
17 No. 1053.

18 As the plaintiff, I move that this accounting of  
19 partner Alvin Yates's contributions to the partnership  
20 construction account and the Alvin Yates and Larry Yates  
21 Construction Account Check No. 1053, along with the  
22 plaintiff's affidavit testimony and case law as to Exhibit  
23 No. 13, be entered into evidence as Plaintiff Exhibit  
24 No. 13.

25 MR. HALL: No objection.

1 THE COURT: Okay. That will be entered.

2 (WHEREUPON, Plaintiff's Exhibit No. 13 was  
3 admitted into evidence.)

4 MR. YATES: Now testimony as to Exhibit No. 14.

5 As a witness, I am testifying that the  
6 partnership did receive an evaluation appraisal of the  
7 partnership property, as of July 20th, 2004, from  
8 Certified Appraisal Services, Incorporated, which gave an  
9 evaluation of the value of the partnership property of the  
10 four bedroom, three-and-one-half bath home and 1.2 acre  
11 lot at 400 Grover Wilson Road, Blythewood, South Carolina,  
12 to be \$235,000.

13 As the plaintiff, I move that this \$235,000  
14 appraisal of the partnership property located at  
15 400 Grover Wilson Road in Blythewood, South Carolina,  
16 along with the plaintiff's affidavit testimony and case  
17 law as to Exhibit No. 14, be entered into evidence as  
18 Plaintiff's Exhibit No. 14.

19 MR. HALL: No objection.

20 THE COURT: Okay. It will be so admitted.

21 (WHEREUPON, Plaintiff's Exhibit No. 14 was  
22 admitted into evidence.)

23 MR. YATES: Your Honor, would it be appropriate  
24 if I made a motion to enter this whole book as Exhibit  
25 No. 15, which includes an original affidavit testimony?

1 THE COURT: Okay. So the affidavit testimony at  
2 the beginning would be your Exhibit 15, is that what  
3 you're indicating?

4 MR. YATES: Yes, ma'am.

5 THE COURT: Okay. Any objection?

6 MR. HALL: No objection.

7 THE COURT: Okay. Madam Court Reporter, those  
8 list Exhibits 1 through 14 and then the first part would  
9 be Exhibit 15.

10 (WHEREUPON, Plaintiff's Exhibit No. 15 was  
11 marked for identification and received into  
12 evidence.)

13 THE COURT: All right. You can continue.

14 MR. YATES: Just as testimony, I would just like  
15 to say that, you know, this was an endeavor between Alvin  
16 Yates and Larry Yates as a partnership, and he was very  
17 involved. He was elderly in age, but he was in good  
18 health when he started this partnership and built this  
19 house. And unfortunately, it took longer to build and  
20 longer to sell than what we had anticipated and his  
21 untimely death has put us into this situation that we're  
22 in now with the dispute with his estate.

23 But there is no question that, you know, our  
24 intention was to build this house as a partnership and was  
25 to sell the house and to split the money -- to pay the

1 bills and split all the money, and that was the original  
2 intent of the partners that consisted of Larry Yates,  
3 myself, and Alvin Yates.

4 That's all I have for this witness.

5 THE COURT: Okay.

6 CROSS-EXAMINATION

7 BY MR. HALL:

8 Q Mr. Larry Yates, you have been using that phrase  
9 "partnership" and "partnership agreement" and "partner"  
10 quite lucratively during your testimony.

11 Do you have any independent document showing any  
12 classification as a partnership other than your testimony?  
13 Do you have any copies of checks saying Alvin Yates, Larry  
14 Yates partnership? Do you have anything you filed with  
15 the Secretary of State? Do you have anything saying that  
16 there was a partnership between Alvin -- other than the  
17 document which you yourself drew up? Anything?

18 A Mr. Hall, in South Carolina partnership law, you can  
19 have a partnership. You don't have to have a document  
20 with the Secretary of State, you don't even have to have a  
21 document. You just have to have an intent to do a job  
22 together as partners, then you have a partnership. And as  
23 a learned counsel of law, I'm sure that you understand  
24 that, as far as --

25 Q You have nothing, right? You have nothing?

**TRIAL TESTIMONY (Larry Yates Cross Examination by Mr. Hall)**

1 A I have a book full of evidence that Alvin Yates and  
2 Larry Yates had a partnership and intended to have a  
3 partnership to build this house.

4 Q Well, let's look at your book. Look at Exhibit 1.  
5 Did you tender Exhibit 1? Would you read paragraph four  
6 of Exhibit 1 for me, please?

7 A It is agreed that the project will be financed by  
8 partner Al Yates mainly from funds borrowed from his line  
9 of credit equity line with Wachovia Bank. Day-to-day  
10 expenses will be paid from Alvin Yates's Bank of America  
11 credit card account or from partner Alvin Yates's  
12 Providian credit card account or from Alvin Yates and  
13 Larry Yates Construction Account. Payment or  
14 reimbursement of expenses paid from these or other  
15 accounts would be made from partner Alvin Yates's Wachovia  
16 line of credit equity line from the proceeds of the sale.

17 Q So what you're introducing, or what you have  
18 introduced as Exhibit 2, you refer to as Alvin Yates's  
19 account?

20 A All right.

21 Q Alvin Yates's account, not a partnership account,  
22 Alvin Yates's account?

23 A I can explain that.

24 Q In your partnership agreement that you drew up --

25 A Yes, sir.

**TRIAL TESTIMONY (Larry Yates Cross Examination by Mr. Hall)**

1 Q -- where does it say anywhere in this partnership  
2 agreement, Mr. Yates, that you are contributing anything?  
3 Anything?

4 A The partnership agreement says, you know, that I'm  
5 doing --

6 Q Well, please point that out to me where it says --

7 A Well, I have a contractor's building license and I --

8 Q Please point that out to me where it says you are  
9 contributing something.

10 A The partnership agreement is what it is.

11 Q Please point it out to me where you are contributing  
12 something to this.

13 A It says, "It is further agreed that partner Larry  
14 Yates will keep a full and accurate accounting of all  
15 project expenditures and will provide weekly reports to  
16 this accounting."

17 And then it says, when it comes down to Item  
18 No. 7, it says, "First payment of closing costs and other  
19 costs of the sale, including selling commissions to  
20 partner Larry Yates Real Estate Services, Bob Mandel's  
21 Real Estate Advocates or other selling real estate  
22 company.

23 Next, the payment of Wachovia Bank loan for the  
24 cost of the home.

25 The next payment for the cost of the lot to D.L.

1 Wilson.

2 Next, repayment of Wachovia Bank loan or credit  
3 card for the cost of construction and site improvements.

4 Next, venture capital payment to partner Alvin  
5 Yates.

6 And finally, repayment of any remaining balance  
7 on Wachovia Bank loan attributed to or owned by partner  
8 Larry Yates, 20,000.

9 Q But it said that that loan is Alvin Yates's loan?

10 A All right. If you let me explain.

11 Q I will, please.

12 A When we drew up the partnership agreement, Alvin  
13 Yates had a loan at Wachovia for about \$60,000, a line of  
14 credit loan. When we got in -- once we got the  
15 partnership agreement and looked at the cost and went to  
16 buy the house, we needed more money than that, so both of  
17 us went to Wachovia Bank and got a new loan. So the new  
18 loan was only taken out in July of 2003 and it was for the  
19 partnership and it was taken out by Larry Yates and Alvin  
20 Yates.

21 Q Well --

22 A So my name was on the note and I was responsible for  
23 paying half of the note. So I contributed half of the  
24 money that was --

25 Q But who actually wound up paying that, Mr. Yates?

1 A Who ended up paying it?

2 Q It was Alvin Yates, right?

3 A No, sir. It hasn't been paid.

4 Q I will show you two documents here and ask if you  
5 recognize these documents.

6 A So these documents were, if I'm reading them right --

7 Q They're mortgages, right?

8 A I don't know what these are.

9 First of all, this document is the one I was  
10 telling you about. That was --

11 Q No, don't tell me yet. Do you recognize these  
12 documents?

13 A I can identify this one. I'm not sure what this one  
14 is.

15 Q You're in real estate, Mr. Yates, and you don't know  
16 a mortgage when you see one?

17 A I see a mortgage on this.

18 This mortgage is the mortgage that Alvin Yates  
19 had when we signed the partnership agreement. It was paid  
20 off when we got the new loan. This mortgage was no longer  
21 any good and the mortgage that belonged to -- the note  
22 that belonged to Alvin Yates and Larry Yates together as  
23 partners took its place.

24 Q The note that you referred to in your partnership  
25 agreement as solely being the note of Alvin Yates, is

1 that the note you're talking about?

2 A This is the one in the partnership agreement.

3 Q These are two mortgages, right?

4 A I don't know if this is -- these are different dates  
5 This is 2002, this is 2004. This is a different deal all  
6 together. This is a mortgage --

7 Q That's the mortgage on 400 Grover Wilson Road?

8 A No, this is not the Wachovia --

9 Q No, no.

10 A It's not the Wachovia note.

11 MR. HALL: All right. I'd like to mark these as  
12 Defendant's 1 and 2.

13 MR. YATES: Wait a minute.

14 MR. HALL: Do you object?

15 MR. YATES: I object.

16 MR. HALL: Fine.

17 MR. YATES: For right now.

18 BY MR. HALL:

19 Q Mr. Yates, do you remember me taking your deposition?

20 A I do.

21 Q April 17th, 2008?

22 A I don't remember what date it was, but I remember the  
23 deposition.

24 Q Let me show you that deposition. Referring here to  
25 page 24, line 17, and just start reading right there.

1 A That's what you want me to read?

2 Q Line 17. The line numbers are on your left.

3 A "Do you know why we would have deeded this -- why he  
4 would have deeded this --" Line 17.

5 Q Just keep reading.

6 A "-- property at 612 Ashwood Circle to himself and his  
7 wife -- and your wife with the right of survivorship?

8 Because he wanted me to have the property.

9 Did your wife pay any consideration for this  
10 property?

11 I think she paid \$5 or something.

12 Well, and it says assumption of \$139,000  
13 mortgage."

14 Q Exactly. Turn the page, please, continue. That's  
15 right, you're on the right page.

16 A Well, it says up here, "the assumption of the  
17 \$139,000 mortgage."

18 Q That your wife assumed that mortgage?

19 A "I did that, too.

20 So with the mortgage on it?

21 Yes, the mortgage that we built the house out  
22 there on that with."

23 Q Go ahead, continue.

24 A "The mortgage that Mr. Yates took out from First  
25 Citizens?

1                   No, the money that we used out of the Wachovia  
2                   account to build the house."

3           Q     Go ahead.

4           A     Well, I --

5           Q     That's your testimony. I'm asking you to read your  
6                   testimony, sworn testimony here. Just read that page.

7           A     "So the mortgage -- so with the mortgage on it?

8                   Yes, the mortgage that we built the house out  
9                   there on with.

10                   The mortgage that Mr. Yates took out with First  
11                   Citizens?

12                   No, the money that we used out of the Wachovia  
13                   account to build the house.

14                   All right. Do you have a -- well, let's get  
15                   this straight then. A mortgage was taken out on 612  
16                   Ashwood Circle to build the 400 Grover Wilson Road  
17                   property?

18                   Correct."

19           Q     That's your answer, correct?

20           A     Right.

21                   "In addition, Defendant's Exhibit 2, another  
22                   mortgage was taken out for \$100,000 from First Citizens  
23                   Bank?

24                   Right."

25           Q     That's your answer, right?

1 A Yes.

2 "So we're saying a total of \$239,000 in loans?

3 That's what the property appraised for.

4 Now, some of that 139,000 was Alvin's money  
5 before we did the partnership, so about 40,000 of that was  
6 his, so the rest of it was on the home.

7 So what about the, say, 200,000 of the money  
8 that we got from both places for the house which we got  
9 and the house appraised for 235,000."

10 Q So it's these two mortgages, one on Ashwood Circle  
11 and then one with First Citizens, that you testified at  
12 your deposition were used to build the house on Grover  
13 Wilson Road?

14 A Correct.

15 Q Okay. Those two mortgages?

16 A I mean part of both of those two mortgages.

17 Q Other than the 40,000 that went back to Alvin Yates?

18 A Well, we didn't use all the 100,000 on the house.

19 MR. HALL: Again, I'd ask that this be marked as  
20 Defendant's Exhibit 1 and 2.

21 MR. YATES: I object.

22 THE COURT: Okay. What's the basis of the  
23 objection?

24 MR. YATES: I mean, he needs to have somebody  
25 here to identify what these are.

1 BY MR. HALL:

2 Q You can't identify them as mortgages?

3 A I can't identify those as far as -- under what  
4 context? I don't know.

5 Q You've already testified in your deposition that you  
6 knew what they were. They were made exhibits to the  
7 deposition.

8 A Well, I mean, that's fine. I just want to make sure  
9 that, you know, the Court understands what they are.

10 The first one is an old mortgage that was  
11 obsolete about three weeks after we did the partnership  
12 agreement because this was not going to be enough money to  
13 build the house, and it was only for 106,000.

14 Did you change mortgages?

15 Q No, we didn't change mortgages. That's the same two  
16 mortgages. One is the mortgage on Grover Wilson Road and  
17 one is the mortgage on Ashwood Circle that you testified  
18 in your deposition that the money was used to build the  
19 house.

20 A Yes, this is the mortgage that --

21 Q Now, are you going to perjure yourself and change  
22 your testimony now?

23 A Well, I was looking at this date wrong. It looked  
24 like this date was --

25 Q But you've already read in your deposition when you

1 testified this money was used to build the house.

2 A This mortgage goes along with this note, with  
3 No. 2 -- with Exhibit No. 2. This is the mortgage that  
4 goes along with this note.

5 Q Mr. Yates, are you in the real estate business?

6 A I am.

7 Q Have you ever done anything in real estate?  
8 Anything?

9 A I have done a lot.

10 Q All right. Will you read the caption on this exhibit  
11 that you're referring to? What does that caption say?

12 A It says: "Wachovia Bank National Association Prime  
13 Equity Line of Credit Agreement and Disclosure Statement."

14 Q Prime Equity Line of Credit Agreement and Disclosure  
15 Statement?

16 A Yes.

17 Q Does that say anything about a mortgage?

18 A No, but every note has a mortgage. You don't give  
19 anybody \$139,000 --

20 Q Does it say anything in that document about it being  
21 secured by a mortgage?

22 A I'm sure it does.

23 Q Where?

24 A Well, it's a long document, but I think --

25 Q Well, you introduced it into evidence.

1 A Well, the bank is not going to loan \$139,000 without  
2 having it secured.

3 Q Well, I respectfully submit, Mr. Yates, you can't say  
4 what the bank is going to do.

5 A I've just never -- I've never known of a bank writing  
6 a note and to loan somebody money and not securing the  
7 note with a mortgage.

8 Q Do you know of any lawsuit by Wachovia Bank to  
9 collect on this note that you have introduced as evidence?

10 A Yes, I do.

11 Q Where?

12 A It was in foreclosure.

13 Q What was in foreclosure?

14 A This mortgage.

15 Q That mortgage?

16 A Yes.

17 Q But that's not 400 Grover Wilson Road. That's the  
18 mortgage your wife assumed.

19 A This is the mortgage on -- in the partnership  
20 agreement, the mortgage on 612 Ashwood Circle.

21 Q Which you testified in your deposition your wife  
22 assumed that mortgage?

23 A And it still was assumed.

24 Q So it couldn't have been anything partnership, right,  
25 your wife assumed it?

1 A Yes, it is in the partnership. It was partnership  
2 debt.

3 Q What about this mortgage on Grover Wilson Road? Was  
4 that partnership debt?

5 A Some of it was, yes.

6 Q Some of it was?

7 A Yes.

8 Q All right. So you know about these two mortgage?

9 A Yes, I do.

10 MR. HALL: All right. Introduce them as  
11 Defendant's Exhibit 1 and 2.

12 THE COURT: Okay.

13 (WHEREUPON, Defendant's Exhibits Nos. 1-2 were  
14 marked for identification and received into  
15 evidence.)

16 BY MR. HALL:

17 Q Mr. Yates, you submitted various documents here from  
18 various contractors. Do you have a copy of a bill of  
19 lading or receipt, delivery receipt or anything from any  
20 trucking company saying that this house was delivered to  
21 400 Grover Wilson Road?

22 A I may have. Well, it's in the invoice.

23 Q I know there's an invoice, but do you have a bill of  
24 lading or a receipt?

25 A The freight escrow was 4,500 --

1 Q What exhibit are you referring to?

2 A Exhibit No. 2 -- 3, Exhibit No. 3.

3 On the invoice it says, Richland County sales  
4 tax and use tax, South Freight escrow was \$4,527.

5 Q Okay. But you have no bill of lading or anything  
6 showing what was delivered, right?

7 A South Carrier deposits --

8 Q I understand that.

9 A -- which was \$3,750. We had to pay a deposit on the  
10 trucks -- that the trailers, that they brought them up  
11 there, so they'd be sure and get them back. If you didn't  
12 take the house off when you got there, they would charge  
13 him that deposit, so that was a way of getting the house  
14 unloaded and put on the site.

15 Q I understand. And it's still your testimony that you  
16 and Alvin Yates was in partnership?

17 A Yes, sir.

18 Q When was your partnership formed?

19 A On July 5th, 2003.

20 Q 2003?

21 A Let me make sure. Exhibit No. 1 is dated July 5th,  
22 2003.

23 Q Let me show you a document and ask if you recognize  
24 this, Mr. Yates. Do you recognize that?

25 A I do.

1 Q What is that?

2 A Well, if you've got a long time to hear a story  
3 that --

4 Q No, sir. I'm just asking what that document is.

5 A It's a confession of judgment.

6 Q In the action entitled what?

7 A Alvin Yates versus Larry Yates.

8 Q And that's you, Larry Yates?

9 A I'm Larry Yates.

10 Q And how much is the judgment for?

11 A The judgment is for -- I can't tell exactly how much  
12 it is.

13 Q \$140,000 sound familiar that's written there on the  
14 front of the judgment?

15 A It's two different ones here, amounts of 45,000 and  
16 143,500.

17 Q A judgment by Alvin Yates against you?

18 A Yes, but --

19 Q In the year 2000 case?

20 A In 2000, yes.

21 Q And so what you're telling the Court is that just a  
22 few years later, Alvin Yates entrusts his financial  
23 well-being to you and goes into a partnership with you  
24 after getting a \$143,000 judgment against you?

25 A Yes, because I'm the one that had him get this

1 confession of judgment.

2 MR. HALL: I'd like to mark this Defendant's 3.

3 THE WITNESS: I'd like to finish testifying.

4 BY MR. HALL:

5 Q Go ahead.

6 A Mr. Hall, back in 2000, I was in Alvin Yates's will  
7 and I was his power of attorney, everything. And we had a  
8 judgment against me by -- named by Robert Rutland, which  
9 came out of the asphalt recycling business, and it was a  
10 court judgment, it wasn't a nonpayment.

11 Q Do you have a copy of that?

12 A It's on file in the --

13 Q If you do not have a copy today, Mr. Yates, you can't  
14 testify regarding that.

15 A Yes, I can.

16 THE COURT: He's objecting to that testimony.

17 MR. HALL: I'm objecting to that testimony,  
18 exactly.

19 THE WITNESS: Well, I object to putting anything  
20 like this in there if I can't explain it.

21 THE COURT: You can explain that document, but  
22 you're explaining what it is, you're identifying it.

23 MR. HALL: You're explaining the facts behind  
24 it.

25 THE WITNESS: I really can't identify it.

1 MR. HALL: We still would like to admit this as  
2 evidence, copies of public record.

3 THE COURT: Okay. And you've identified this,  
4 sir, as a confession of judgment against you, correct?

5 THE WITNESS: Yes, but I object to it being  
6 entered because the circumstances that was not really --  
7 there was no such amount of money that I owed Alvin Yates.

8 THE COURT: Okay. Well, this is a public  
9 document and you've identified it and that you've  
10 indicated that you understand that document.

11 MR. HALL: Defendant's 3.

12 MR. YATES: And I'd like to point out that was  
13 back in 2000.

14 THE COURT: That's fine. The date will stand  
15 for itself.

16 MR. YATES: All right.

17 (WHEREUPON, Defendant's Exhibit No. 3 was marked  
18 for identification and received into evidence.)

19 BY MR. HALL:

20 Q Mr. Yates, what happened to the property at 1207  
21 Bearcreek Road in Blythewood, South Carolina?

22 A It was defaulted on by Arnold Palmer.

23 Q Do you know what property I'm talking about?

24 A Yes, sir.

25 Q That you gave Arnold Palmer \$40,000 for?

1 A Alvin and I gave Arnold Palmer \$40,000.

2 Q Here, let me show you the document so you aren't  
3 assuming and guessing.

4 Do you recognize that?

5 A I do.

6 Q And what is that?

7 A It is a document that was the result of the  
8 partnership selling the property to Arnold Palmer on a  
9 land sale contract rather than --

10 Q Be careful now, Mr. Yates. Look at the address of  
11 the property. You're getting confused. That's Bearcreek  
12 Road.

13 A Do you want to testify to it, sir?

14 Q That's Bearcreek Road.

15 A I understand. This is --

16 Q Who does it say is the purchaser on the Bearcreek  
17 Road property?

18 A Alvin Yates and Larry Yates.

19 Q So you weren't selling anything to Arnold Palmer, you  
20 all were buying the property on Bearcreek Road?

21 A But if you get the contract, the land contract for  
22 the Grover Wilson Road property, in that contract it gives  
23 Arnold Palmer \$40,000 credit for the interest in this  
24 property.

25 Q And what happened to that property?

1 A This property -- Arnold Palmer defaulted on this  
2 property and took it back.

3 Q Arnold Palmer took it back?

4 A He sure did. And also he defaulted on the Grover  
5 Wilson Road property. So he defaulted on both of them,  
6 both of the contracts.

7 Q Well, he's the seller of that property, Mr. Yates.  
8 How can he default on it if he's the seller? Only the  
9 purchaser can default.

10 A No, because he had to pay payments on this -- keep  
11 paying payments on this property for the \$40,000 credit.  
12 And he didn't do that and he took it back and rented it to  
13 his sister.

14 Q Well, you've got me confused now. You're saying that  
15 Arnold Palmer sold you and Alvin Yates --

16 A No, we gave him credit on --

17 Q According to this contract. We'll get to the other  
18 in a minute. According to this contract, he sold you the  
19 Bearcreek Road property for \$40,000?

20 A He gave us -- no, he sold the property for -- this is  
21 a \$40,000 down payment toward the purchase of the Grover  
22 Wilson Road property.

23 Q Right. So you gave him a \$40,000 down-payment credit  
24 in exchange for the property?

25 A No, he gave me interest -- he gave us interest in the

1 property, a \$40,000 interest which he had. But he had to  
2 continue on assuming the balance that was on the property,  
3 which he never did pay.

4 So anyway, this is part of the same transaction -  
5 of the land transfer -- the land contract of the 400  
6 Grover Wilson Road property --

7 Q Well, tell me about that.

8 A -- when he bought this house here.

9 Q Tell me about this transfer.

10 A We had it on the market for sale for a long time and  
11 we couldn't find anybody to -- would get a mortgage and  
12 pay us cash for the value of the house and so Arnold  
13 Palmer wanted to buy it on a land contract and for us to  
14 finance it for him for a short period in which time he  
15 would pay \$1,500 a month as far as payments are concerned.

16 Q Make payments to who?

17 A To Alvin and Larry Yates.

18 Q How much of that money did you get?

19 A All the money that we got from Arnold Palmer went to  
20 pay the debt for the house which was the Wachovia Bank and  
21 the First Citizens Bank. That's all he was supposed to be  
22 doing was making payments on those.

23 Q And that's Defendant's 1 and 2?

24 A Yes, sir.

25 Q Okay. So Arnold Palmer -- the payments -- the \$1500

1 a month, you all sold him the house under a contract of  
2 sale?

3 A Yes.

4 Q And the \$1,500 a month was going to pay the payments  
5 on the mortgage payments taken out by Alvin Yates; is that  
6 right?

7 A The mortgage payments taken out by Larry and Alvin  
8 Yates and Alvin Yates for the partnership with First  
9 Citizens.

10 Q Well, let me show you Defendant's 1 and 2 again. If  
11 you would, show me the name Larry Yates on there. Just  
12 point that out to me.

13 A Well, on a mortgage --

14 Q Just point out the name Larry Yates to me.

15 A Well, let me explain to you.

16 Q No, I'm asking -- no, you answer my question first,  
17 then you can explain.

18 A The mortgage is in Alvin Yates's name.

19 Q Both of them?

20 A Both of them.

21 Q Both of them. Larry Yates's name doesn't appear  
22 anywhere, does it?

23 A Well, the mortgage -- the bank would only take a  
24 mortgage with the name of the party that is on the title  
25 to the real estate, and Alvin Yates was on the title to

1 both of these properties, although the note was signed by  
2 Larry Yates and Alvin Yates.

3 Q Good. Alvin Yates's name is on the title to both  
4 pieces of property. Not partnership, not Larry Yates,  
5 Alvin Yates's name?

6 A Correct.

7 Q Correct. Thank you.

8 A But the Ashwood Circle property is not being claimed  
9 as partnership property.

10 Q Do you think the possibility that you had  
11 140-something-thousand-dollar judgment against you by  
12 Alvin Yates had something to do with you not being able to  
13 get a mortgage loan?

14 A Absolutely not. I mean, that would -- that didn't  
15 keep me from getting a note, though.

16 Q All right. So, Mr. Yates, to kind of summarize,  
17 notwithstanding all your allegations of a partnership and  
18 the partnership dealings and the partnership did this and  
19 the partnership did that, all we have indicating any kind  
20 of partnership arrangement are some accounting records --

21 MR. YATES: Your Honor, I object to him  
22 testifying.

23 THE COURT: I think he's getting to the  
24 question.

25 BY MR. HALL:

1 Q -- are some accounting records that you yourself  
2 prepared; is that correct?

3 A I prepared them and went over with Alvin every week.

4 Q And this alleged partnership agreement, is it not  
5 true, Mr. Larry Yates, that you were nothing more than a  
6 project manager on this project? That Alvin Yates, by  
7 your own testimony, by your own agreement paragraph which  
8 you read into the record, he put in all the money, he put  
9 up all the money for everything, everything? You didn't  
10 put up anything. You were basically a project manager  
11 overseeing the construction of a house on property owned  
12 by Alvin Yates, and, at the end of the day, Alvin Yates  
13 owned the property and the house?

14 A No, sir, that's not right.

15 Q Well, Mr. Yates, can you answer a question for me?

16 A Yes, sir.

17 Q Can you tell me why in all the time that intervened  
18 between the time that you made the deal with Signature  
19 Home Systems and the death of Mr. Alvin Yates, you never  
20 had any document prepared saying this property is  
21 partnership property or Larry Yates has an interest in the  
22 400 Grover Wilson Road property, no document whatsoever?

23 A It was assumed between he and I that it was a  
24 partnership project and we both had equal interest in  
25 everything.

1 Q Which turned out to be a bad assumption, right?  
2 Because you've been fighting ever since he died in April  
3 of 2005 to grab that property and you haven't succeeded  
4 yet?

5 A Well, we're not through with this trial yet.

6 MR. HALL: No further questions.

7 THE COURT: Okay. All right, sir. You can step  
8 down.

9 MR. YATES: I would like to rebuttal.

10 THE COURT: Okay. But rebuttal would come after  
11 defense puts up a case. Let me find out if that's the  
12 case.

13 Do you have any more witnesses for your part of  
14 the case?

15 MR. YATES: Well, I don't want rebuttal. I want  
16 to request a reply for this witness.

17 THE COURT: Okay. Go ahead.

18 MR. YATES: Could I have those Exhibits No.1  
19 and 2?

20 THE COURT: And this would be limited to  
21 information brought out on cross-examination.

22 MR. YATES: All right. Your Honor, I want  
23 No. 3.

24 THE COURT: Go ahead.

25 MR. YATES: I would like to testify as to

1 Defendant's Exhibit No. 3, which is confession of judgment  
2 that Larry Yates gave to Alvin Yates back in the year of  
3 2000. And, in fact, it was April of 2000.

4 At that time we were involved with a disgruntled  
5 employee of the asphalt recycling process that we were  
6 working on. Alvin was a partner in a recycling business  
7 with me and some parts of it. And we had just had a  
8 lawsuit where Robert Rutland was awarded a \$300,000  
9 judgment. It was less than that -- I'm not sure -- it was  
10 a couple-hundred-thousand-dollar judgment, and Alvin Yates  
11 was scared to death of Robert Rutland.

12 MR. HALL: Your Honor, we're going to object to  
13 any testimony regarding Alvin Yates's state of mind at  
14 that time.

15 THE COURT: Sustained.

16 MR. YATES: Anyway, we -- I was concerned that  
17 Robert Rutland would try to attach the judgment against me  
18 to my association with Alvin Yates and to his estate and  
19 to whatever he had, whatever property he had. And I  
20 suggested that he do two things: I suggested he take me  
21 out of his will, and I had assisted him and had him draw  
22 up a new will taking me out of his will; and I also  
23 suggested that we write up a confession of judgment and  
24 file it in the court so that we would have -- so that he  
25 would have some security against Robert Rutland trying to

1     come against him.

2             MR. HALL: Your Honor, we're going to object.  
3     He is implicating a dead man in a fraudulent transaction.  
4     He's saying that they came up with this thing and  
5     committed fraud against a creditor. I can't believe he's  
6     sitting there giving sworn testimony.

7             MR. YATES: We have plenty reason that we could  
8     come up with this document, and that's what we did. And  
9     we filed it.

10            THE COURT: Okay.

11            MR. YATES: And besides that, afterwards we  
12     transferred some patents into Alvin Yates's name and  
13     cleared up this document as far as any money that I did  
14     actually owe him. It was all cleared up and we were  
15     straight.

16            And I took care of Alvin Yates every day of his  
17     life. I was at his house just about every day, and as he  
18     got --

19            MR. HALL: Objection. Self-serving testimony.

20            THE COURT: Overruled. Go ahead, but it needs  
21     to be limited to what was on cross-examination.

22            MR. YATES: Anyway, this was just an aid to help  
23     Alvin Yates and try to ease his mind that he wouldn't be  
24     getting in any trouble.

25            I think that's all I have, Your Honor.

1 THE COURT: Okay. All right. You may step  
2 down.

3 Any other testimony or witnesses?

4 MR. YATES: Yes, ma'am. I'd like to call Nancy  
5 Yates to the stand.

6 THE COURT: Okay.

7 MR. HALL: Your Honor, we're going to object to  
8 that. We sent this man interrogatories and asked him the  
9 names and addresses of witnesses. This is an unknown  
10 witness.

11 THE COURT: Okay. Is that correct, that he  
12 asked you to identify your witnesses?

13 MR. YATES: It's been so long ago, Your Honor,  
14 I'm not sure.

15 MR. HALL: It was in April of 2008. We sent him  
16 interrogatories.

17 THE COURT: You have a duty to supplement your  
18 interrogatories to let a person know who might be  
19 testifying so that they can determine if they wish to take  
20 a deposition.

21 MR. YATES: Okay. Well, she just has knowledge  
22 of the partnership and --

23 THE COURT: But she can't testify if he asked  
24 you for the name and then you didn't supply him the name.  
25 Because he would have had the opportunity to take her

1 deposition so that he would know what she was going to  
2 testify about prior to this trial.

3 MR. YATES: That's fine, Your Honor.

4 THE COURT: Okay. So that concludes your case?

5 MR. YATES: Yes, Your Honor, we rest.

6 THE COURT: Okay. Does defense have anything?

7 MR. HALL: Your Honor, I was going to call the  
8 personal representative; however, she's an 85-year-old  
9 woman. She fell in the doctor's office Friday and she  
10 could not -- she is from Glen Rock, New Jersey, and  
11 couldn't fly down.

12 Furthermore, all the transactions involved in  
13 this alleged partnership took place before Alvin Yates  
14 died and the personal representative only became involved  
15 after he died, so we wouldn't have any testimony on that.  
16 However, I do have an argument I'd like to make.

17 THE COURT: Okay. You all can make your closing  
18 arguments, that's fine. Plaintiff?

19 MR. YATES: Your Honor, what we have provided  
20 here is basically a lot of evidence that would show that a  
21 partnership existed, and that's the only question that we  
22 have today.

23 We have the Exhibit No. 1, which is the  
24 partnership agreement and -- which under the partnership  
25 laws of the State of South Carolina, which I'm sure you're

1 familiar with, but when the parties to a contract by their  
2 acts, conduct, or agreement show that they intend to  
3 combine their property, labor, skill and experience, or  
4 some or similar elements on one side and some on the  
5 other, to carry on as principals or co-owners a common  
6 business, trade, or venture as a commercial enterprise and  
7 to share either expressly or implicitly or by implication  
8 the profits and losses or expenses that may be incurred,  
9 there is a partnership. And there's other case law added  
10 to that.

11 Now, we have presented evidence that all of  
12 the -- that the money for the partnership was acquired by  
13 the two partners and that the partners used the money to  
14 purchase a home and the cashier's check that purchased the  
15 home was remitted by Larry and Alvin Yates. The note with  
16 the bank was signed by Alvin and Larry Yates. The  
17 property was purchased from Larry Yates's daughter.

18 And the case law on something like that, under  
19 the partnership law, The State of South Carolina versus  
20 Stevens, "Property bought with partnership funds in the  
21 name of the single partner belongs to the partnership."

22 And also under Stevens v. Stevens, "The fact  
23 that the land has been purchased with partnership assets  
24 raises a presumption that the land was intended to form  
25 part of the partnership property, though the legal title

1 may be in the name of an individual partner."

2           So we're -- the contention is that everything --  
3 of course, the house was bought with partnership funds and  
4 placed on the land even before the land was purchased. So  
5 there's no doubt that the land was bought with partnership  
6 funds and it would belong to partnership property.

7           And under No. 3, in the case law as far as  
8 No. 3, The Uniform Partnership Act of the State of South  
9 Carolina, Code Section 33-41-231, "All property originally  
10 brought into partnership or subsequently acquired by  
11 purchase or otherwise on account of the partnership is  
12 partnership property. Unless contrary intentions appears,  
13 property acquired with partnership funds is partnership  
14 property."

15           And then under Stevens v. Stevens, "Property  
16 bought with partnership funds belongs to the partnership."

17           Also, a North Carolina case, "All property  
18 purchased on account of the partnership is partnership  
19 property unless contrary intentions appear."

20           And as we go forward with the other exhibits,  
21 everything was paid for out of the account, construction  
22 account of Alvin Yates and Larry Yates which is consistent  
23 with the partnership that Alvin Yates and Larry Yates had  
24 together.

25           And on 14, the case as far as the partnership is

1 concerned under The Uniform Partnership Act of the State  
2 of South Carolina, Code Section 33-41-230, Paragraph 1  
3 reads: "All property originally bought in the partnership  
4 or subsequently acquired by purchase or otherwise on  
5 account of the partnership is partnership property."

6 This whole house right here was paid for and was  
7 bought with partnership funds and constructed on  
8 partnership property and by the partnership of Alvin Yates  
9 and Larry Yates.

10 THE COURT: Anything else?

11 MR. YATES: I think that's all.

12 THE COURT: Okay. Defense closing argument.

13 MR. HALL: Your Honor, if it please the Court.

14 In number one, it's just incredulous to think that Alvin  
15 Yates would have gone into partnership with anybody that  
16 owed him \$143,000.

17 MR. YATES: Your Honor --

18 MR. HALL: Number two, it's been established in  
19 his deposition and from Mr. Larry Yates's testimony on the  
20 stand, all the money put into this transaction was  
21 borrowed by Alvin Yates; there wasn't no partnership  
22 funds. The mortgages and everything was committed to and  
23 signed by Alvin Yates. There is no partnership account.

24 Number three, under the 32-3-10 Statute of  
25 Frauds, it says under Subsection 4: "To charge any person

1 upon any contract or sale of lands, tenements, or  
2 hereditaments, or any interest in or concerning them,  
3 unless the agreement upon which such action shall be  
4 brought or some memorandum or note thereof should be in  
5 writing."

6 There's nothing in writing showing that Alvin  
7 Yates had any intention of transferring this property to  
8 any kind of partnership or that ever did transfer the  
9 property to any kind of partnership.

10 Also, under Section 27-23-50 of the South  
11 Carolina Code, "No leases, estates, or interest either of  
12 freehold term of years, or uncertain interest of, into or  
13 out of any lands, tenements, or hereditaments, shall at  
14 any time be assigned, granted, or surrendered unless it be  
15 by deed or note in writing, signed by the party so  
16 assigning, granting, or surrendering them."

17 Nothing's been offered showing anything signed  
18 by Alvin Yates that he ever intended this to be  
19 partnership property or that he ever intended Larry Yates  
20 to have any interest in the property whatsoever.

21 We respectfully submit that if Larry Yates wants  
22 to hold his ground and insist there was some kind of  
23 partnership, we maintain there wasn't, that Larry Yates  
24 was nothing more than a project manager on this project  
25 that was built on property owned by Larry Yates and paid

1 for by Larry Yates. And even in his own exhibits of  
2 Exhibit 1, in his so-called "project partnership  
3 agreement," it said in Item 4 that Alvin Yates is the sole  
4 funder of the project, not Alvin and Larry Yates. Larry  
5 Yates put nothing into this project. He was nothing more  
6 than a project manager.

7 We respectfully submit that the property belongs  
8 to Alvin Yates's estate. It has been probated through his  
9 estate, and that's where it should remain.

10 Thank you.

11 MR. YATES: Your Honor, if I may. I would like  
12 to point out that we presented -- the plaintiff presented  
13 plenty of evidence that there was a partnership. We  
14 testified of the partnership and existence of the  
15 partnership. The defendant has provided no witnesses, no  
16 evidence whatsoever to dissuade the Court from accepting  
17 the partnership as a partnership. I mean, just to come in  
18 here and say that they don't want it to be a partnership,  
19 if they didn't want it to be a partnership, they should  
20 have provided evidence to show that there was no  
21 partnership because all the evidence that you heard today  
22 points to a partnership.

23 THE COURT: All right. Thank you. We will look  
24 through the entire file and then we'll send you a written  
25 decision.

1 MR. HALL: Thank you, Your Honor.

2 MR. YATES: Your Honor, is it appropriate to --  
3 in a non-jury trial to do request to charges?

4 MR. HALL: This is a non-jury trial.

5 THE COURT: Well, it's non-jury. When you say  
6 "request to charge," I'm the one who essentially -- let me  
7 see what you're talking about.

8 MR. YATES: I wonder if it's appropriate that I  
9 provide this.

10 THE COURT: Basically you're looking at some law  
11 that you want me to look at. You can give it to the other  
12 side, and if you wish to respond, just do so within the  
13 next ten days.

14 MR. HALL: Thank you, ma'am.

15 MR. YATES: Thank you, ma'am. Thank you, Your  
16 Honor.

17 THE COURT: Okay.

18 (The proceedings were concluded.)

19 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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**Trial Exhibits of Record**

**Entered as Evidence for Bench Trial  
held July 13, 2009, before Judge Childs**

**Plaintiff's Exhibit No. 1**

**Consists of July 5, 2003, Partnership  
Agreement.**

**Also, Affidavit Testimony as to  
Partnership Agreement and Applicable  
Partnership Case Law**

### AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 1

1. I am familiar with the facts and circumstances involving the Partnership that existed between partners Larry A. Yates and Alvin Yates and with the financing and construction of the partnership property located at 400 Grover Wilson Road, in Blythewood, South Carolina, a picture of which is shown on the cover sheet of this document, as it was in 2007, and I hereby certify that the copy of the "Project Partnership Agreement" under which the home was constructed and which is attached hereto as Plaintiff's Exhibit No. 1, is a true copy of the Partnership Agreement that was entered into on July 5, 2003, between Alvin Yates and Larry A. Yates.

### CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 1

Under the Partnership Laws of the State of South Carolina, the Partners were involved in a legally formed and operated Partnership. As per Stephens v. Stephens, "where parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, there is a partnership." (Stephens v. Stephens, 50 S.E.2<sup>nd</sup> 577, 213 S.C. 525)

Also, "Where parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners." (Moore v. Moore, 599 S.E.2<sup>nd</sup> 467, 460 S.C. 241) Furthermore, a partnership agreement may be implied and without express intention. One of the most important tests as to the existence of a partnership, is the intention of the parties.

**TRIAL COURT'S RECORD ON APPEAL**

**PROJECT PARTNERSHIP AGREEMENT**

This Agreement of Partnership, made July 5, 2003 is by and between Alvin Yates (hereinafter "Partner A. Yates") and Larry Yates (hereinafter "Partner L. Yates").

1. Realizing that time is of the essence, the Partners have and hereby agreed to purchase a previously built, but unsold, 4BR / 3-1/2BA modular building systems home from Signature Building Systems, Inc., 176 Academy Road, St. George, SC 29477. The house package comes with a 2 - Car Garage Package which includes panelized walls, roof trusses, sheeting, roofing shingles, windows, passage door and siding, all to be assembled on site.

2. With the approval of the Richland County Planning Commission, the house and garage package will be set and constructed on a permanent foundation on lot of land located in N.E. Richland County @ 400 Grover Wilson Road, Blythewood, SC 29016, that is to be purchased from D.L. Wilson.

3. As per a Contract with Signature Building Systems, Inc., the house and garage package will cost the Partner's approximately \$79,000 which includes delivery for the house and garage package and dry-in set for the house.

4. It is agreed that the project will be financed by Partner, A. Yates, mainly from funds borrowed from his line-of-credit equity loan with Wachovia Bank. Day to day expenses will be paid from Partner, A. Yates' Bank-of-America Credit Card account or from Partner, A. Yates' Providian Credit Card account or from A. Yates & L. Yates Construction Account. Payment or reimbursement of expenses paid from these or any other account will be made from Partner A. Yates' Wachovia Bank line-of-credit equity loan or from proceeds of sale of property.

5. It is agreed to list the property "For Sale" with Columbia area Realtor, Bob Mandel, owner and Broker-in-Charge of Real Estate Advocates Realty, 1818 Bull Street, Columbia, SC 29201. The property will be listed at the highest reasonable price during construction, with the sale price to be adjusted to actual market conditions whenever construction is completed.

TRIAL COURT'S RECORD ON APPEAL

6. It is further agreed that Partner L. Yates will keep a full and accurate accounting of all project expenditures and will provide weekly reports of this accounting.

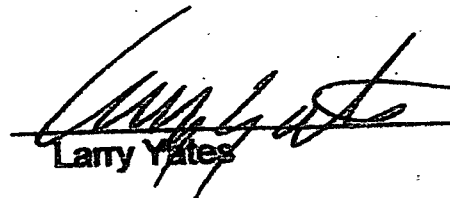
7. Proceeds from the sale of the property shall be distributed and paid according to the order of distribution, as follows:

- a. First, payment of closing cost and other costs of sale including selling commissions to Partner, L. Yates' Real Estate Services, Bob Mandel's Real Estate Advocates or other selling Real Estate Company. Est \$8,000.00
- b. Next, repayment of Wachovia Bank loan for cost of House. \$79,050.00
- c. Next, payment for cost of Lot to D.L. Wilson. \$21,200.00
- d. Next, repayment of Wachovia Bank loan or Credit Cards for cost of Construction and Site Improvements. Est \$69,750.00
- e. Next, Venture Capital payment to Partner A. Yates. \$20,000.00
- f. Finally, repayment of any remaining balance of Wachovia Bank Loan attributed to or owed by Partner L. Yates. Est \$20,000.00

**TOTAL ESTIMATED DISTRIBUTION** **\$218,000.00**

WITNESS the parties hereto by their hands and seals the day and year first above written.

 (L.S.)  
Alvin Yates

 (L.S.)  
Larry Yates

Plaintiff's Exhibit No. 2

Consist of July 31, 2003, Wachovia Bank Prime Equity Line of Credit Note for \$139,100.00, signed by Alvin Yates and Larry Yates.

Also, Affidavit Testimony and Applicable Case Law as to Partnership Property Bought with Partnership Funds.

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 2**

2. That the partners did apply for and receive a "Prime Equity Line of Credit" secured by residential property, belonging to Alvin Yates, located at 612 Ashwood Circle, in West Columbia, South Carolina, in an amount of \$139,100 from Wachovia Bank, for the expressed purpose of purchasing partnership property, that would become 400 Grover Wilson Road home and property. That the Note securing this Prime Equity Line of Credit was executed and signed by both partners, Larry A. Yates and Alvin Yates, on July 21, 2003, as evidenced by Plaintiff's Exhibit No. 2, which I hereby certify to be a true copy of the "Wachovia Bank, National Association's Prime Equity Line of Credit Agreement & Disclosure Statement," which is also attached hereto as Plaintiff's Exhibit No. 2.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 2**

Under the Partnership Laws of the State of South Carolina, Larry Yates, as the sole surviving Partner of the Partnership, has a Partner's "Lien" against the partnership property and, "has the right to insist that the partnership assets be applied to payment of partnership debts upon the winding up of the partnership affairs." (Wolfe v. Hewes, 254 S.E.2d 204)

He also has, "a right to have partnership property applied to payment or security of partnership debt, in order to relieve him from personal liability." (Casey v. Grantham, 79 S.E.2d 735)

**TRIAL COURT'S RECORD ON APPEAL**  
**Wachovia Bank, National Association**  
**Prime Equity Line of Credit Agreement & Disclosure Statement**

Date of Agreement: July 31, 2003

Maximum Credit Limit: \$ 139100.00

Borrower(s)

ALVIN YATES

LARRY YATES

The Prime Equity Line of Credit Agreement & Disclosure Statement ("Agreement") contains the terms which apply to the Prime Equity Line Account ("Account") with Wachovia Bank, National Association. The words "I," "me," and "my," which also mean "we," "us," and "our," if more than one Borrower, mean the person or persons signing this Agreement. The words "you," "your," and "yours" mean Wachovia Bank, National Association ("Wachovia Bank, N.A.").

**ACCESSING THE PRIME EQUITY LINE**

Wachovia Bank, N.A. will establish an Account and issue to me Prime Equity Line Checks and if applicable law permits, a Credit Card Access Device ("Card"). The Prime Equity Line Checks and Card can be used to obtain Advances from my Account during the Draw Period, up to the amount of the Maximum Credit Limit established in this Agreement. Wachovia Bank, N.A. will charge all Advances obtained under the terms of this Agreement to my Account. Advances made pursuant to Prime Equity Line Checks will be for the amount of the Prime Equity Line Check. Advances made pursuant to the use of a Card will be for the amount of the purchase or for the amount of the Advance obtained with the Card at any ATM or other outlet.

If I have a Demand Deposit Account with you and I request you to initiate an Advance from my Account, so that items presented against my Demand Deposit Account which would otherwise overdraw my Wachovia Bank, N.A. Demand Deposit Account are honored, I agree that Wachovia Bank, N.A. may charge such Advances to my Account and that such Advances shall be in increments of \$100.00.

I agree that any Prime Equity Line Checks or Cards that you supply to me are your property and must be returned to you immediately upon demand if I am in Default of this Agreement or my Advance privileges are terminated or suspended in accordance with the terms of this Agreement.

**MAXIMUM CREDIT LIMIT**

My Maximum Credit Limit is indicated above. I agree never to allow the Outstanding Balance due on my Account to exceed the Maximum Credit Limit. I also agree that you are not obligated to pay any Advance or other charge against my Account that would make my Account Outstanding Balance exceed my Maximum Credit Limit. I agree to immediately repay, upon demand, any Outstanding Balance that exceeds the Maximum Credit Limit established hereunder. Any increases in my Maximum Credit Limit I request will require that a new application be approved in accordance with your then applicable underwriting standards and I must sign any additional agreements that in your opinion are necessary to secure your interest.

**DRAW PERIOD**

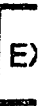
Except as provided herein and unless terminated earlier in accordance with the terms of this Agreement, I may obtain Advances under the terms of this Agreement for twenty (20) years from the Date of Agreement ("Draw Period"). For Accounts secured by property located in Connecticut, the Draw Period is ten (10) years from the Date of Agreement.

**OBLIGATION TO LEND**

You are absolutely obligated under the terms of this Agreement to make Advances not to exceed, at any one time in the aggregate, the amount indicated as the Maximum Credit Limit and I agree to repay any Advances under the terms of this Agreement. Your obligation to make Advances to me under this Agreement ends when the right to obtain Advances terminates at the end of the Draw Period or when such Advance privileges are suspended or terminated in accordance with the terms of this Agreement.

**FINANCE CHARGE ON MY ACCOUNT BALANCE**

- (a) My Account has a monthly billing cycle. A Finance Charge computed on a monthly periodic rate will be imposed, if at the end of any day of the billing cycle, there is a balance owing on my Account. The monthly periodic rate for an initial Advance, if any, made by you will begin to accrue on the date of this Agreement. The monthly periodic rate for any Advance other than an initial Advance will begin to accrue on the Transaction Date as indicated on my billing statement.
- (b) You will figure the Finance Charge on my Account by applying the monthly periodic rate to the "average daily balance" owing on my Account (including current transactions). To calculate the "average daily balance" you will take the beginning balance of my Account each day, add any new Advances and Fees charged to the Account pursuant to the terms of this Agreement, and subtract any payments or credits. This gives you the daily balance. Then, you will add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives you the "average daily balance."
- (c) The Finance Charge imposed during a billing cycle will be determined by applying the monthly periodic rate that is 1/12 of the corresponding ANNUAL PERCENTAGE RATE to the average daily balance. The ANNUAL PERCENTAGE RATE and monthly periodic rate are variable rates and are subject to change on the first day of each billing cycle, if there was a prior change in the Index, which is the Prime Rate as regularly published in the Eastern edition of *The Wall Street Journal* ("Prime Rate").



- (d) If the Prime Rate becomes unavailable, you will select a new index which is based on a historical movement substantially similar to the rate in effect at the time the Prime Rate becomes unavailable. You will give me notice of this change.
- (e) The corresponding ANNUAL PERCENTAGE RATE is effective as of the 1st day of the calendar month in which you receive your Statement and is based on the Prime Rate as published in the Eastern edition of *The Wall Street Journal* on the 25th day of the prior calendar month plus a Margin of 0.75 %. If more than one Prime Rate is published on the 25th day of the prior calendar month, you will use the higher rate as the Prime Rate. If the Prime Rate is not published on the 25th day of the prior calendar month, the index will be the Prime Rate published on the last business day prior to the 25th.
- (f) During the first twelve months of the Agreement, as measured from the date of the Agreement ("Initial Period"), if I take Advances totaling at least \$5,000.00, the ANNUAL PERCENTAGE RATE will be discounted for the remaining months left in the Initial Period. During the Initial Period, the ANNUAL PERCENTAGE RATE will equal the Index (WSJ Prime Rate) plus the discounted Margin which is 0.75 %. The ANNUAL PERCENTAGE RATE for the Initial Period is not based on the Margin that is used to make later rate adjustments. After the Initial Period, the ANNUAL PERCENTAGE RATE for the remaining term of the Agreement will be determined in accordance with subsection (e) above.
- (g) Assuming that the discounted ANNUAL PERCENTAGE RATE is not in effect, the initial monthly periodic rate of 0.417 % will apply to my average daily balance during my first billing cycle and the initial corresponding ANNUAL PERCENTAGE RATE will be 5.000 %. An increase in the ANNUAL PERCENTAGE RATE and monthly periodic rate will result in increased Finance Charges and minimum payment amounts. The corresponding ANNUAL PERCENTAGE RATE for each billing cycle will be shown on my billing statement for that cycle. The ANNUAL PERCENTAGE RATE includes only interest and no other costs.
- (h) The maximum ANNUAL PERCENTAGE RATE will never exceed eighteen percent (18%). In North Carolina, the maximum ANNUAL PERCENTAGE RATE will never exceed sixteen percent (16%).

**Other Charges.** In addition to the FINANCE CHARGE which will be added to my Account each billing cycle, I will pay the following real estate closing and security filing fees:

"X" = Wachovia Bank, N.A. Pays Fee		"X" = Wachovia Bank, N.A. Pays Fee	
Survey	\$ _____	Georgia Mortgage Fee	\$ _____
Title Examination	\$ <u>100.00</u>	Settlement Fee	\$ <u>200.00</u>
Title Insurance	\$ _____	Points	\$ _____
Recording Fee	\$ <u>13.00</u>	Commitment Fee	\$ _____
Appraisal Fee	\$ <u>18.00</u> X	Broker Fee	\$ _____
Flood Certification Fee	\$ <u>11.50</u>	Additional Settlement Fee	\$ _____
Intangible Tax	\$ _____		\$ _____
Document Stamp Tax	\$ _____		\$ _____
		<b>TOTAL</b>	\$ <u>342.50</u>
<b>WACHOVIA BANK, N.A. FEES PAID \$ <u>18.00</u></b>		<b>CUSTOMER FEES PAID \$ <u>324.50</u></b>	

**Closing Cost Repayment Option.** If checked, I request that you pay the Other Charges indicated with an "X" above for me. I will pay the remaining Other Charges not so indicated. In consideration of your payment of the Other Charges indicated above I agree to reimburse you for the Other Charges that you have paid on my behalf, in the event I pay the entire Outstanding Balance and close this Account on or before one calendar year after the opening date of this Account. If I pay the entire Outstanding Balance and close this Account after one year, but on or before two calendar years after the opening date of this Account, I agree to reimburse you fifty percent (50%) of the amount of closing costs you paid for me. I understand that I may pay my entire Outstanding Balance at any time without having to reimburse you for the closing costs as long as my Account remains open.

**Statement.** If I have an Outstanding Balance or a credit balance in excess of \$1.00 or if there is any Finance Charge imposed during a billing cycle, you will send me a Statement. I promise to pay you in accordance with the terms of this Agreement in United States Dollars drawn on an institution located in the United States. I understand I am prohibited from using an Advance to make my payments on this Account. I agree to be responsible for any fees or costs associated with the processing of my payments on my Account should I use a method of payment that results in extra costs or fees being assessed to you.

**Payment Schedule.** During the Draw Period, I agree to pay the minimum monthly payment not later than the payment due date shown on my Statement as follows:

- Option A:** I will make a minimum monthly payment equal to the greater of the Finance Charge on the outstanding Advances plus accrued but unpaid Fees or \$50.00.
- Option B:** I will make a minimum monthly payment of the greater of 1.5% of the Outstanding Balance shown on my Statement or \$50.00.

Upon expiration of the Draw Period, I will make a minimum monthly payment of the greater of 2% of the Outstanding Balance shown on my Statement or \$50.00 until the entire Outstanding Balance is paid in full.

If at any time, the Outstanding Balance is less than \$50.00, the minimum monthly payment will be the Outstanding Balance.

For purposes of this Agreement, the term "Outstanding Balance" includes all unpaid Advances, accrued but unpaid Finance Charges and accrued but unpaid Fees permitted to be charged to my Account under the terms of this Agreement or the Security Instrument.

**Application of Payments.** Unless otherwise prohibited by applicable law, payments will be applied in the following order: First, to the accrued but unpaid promotional Finance Charges due; next to non-promotional Finance Charges due; next to any Fees that have been charged in accordance with the terms of this Agreement. The remainder of any payment will be applied first to any unpaid promotional Advances and then to any non-promotional Advances. Promotional Advances

and Finance Charges refer to offers to use my Account on special terms that you may make to me from time to time; you will provide the terms of any promotional offer or special Finance Charge as the time that you make the offer available. I understand that making more than the minimum payment may not advance my next payment due date.

**Minimum Monthly Payment Change.** Subject to your approval, during the Draw Period, I agree that I may change my minimum payment option to any option listed above upon written notice of my request to change my minimum payment option.

**PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, N.A. EQUITY LINE SERVICES, VA 0343, PO BOX 13327, ROANOKE, VA 24040.**

**Late Fee.** I agree that any Late Fee imposed by you will be charged to my Account.

If this Agreement is governed by New York law and all of a minimum monthly payment is not received within fifteen (15) days of the due date provided on my Statement, you will impose a Late Fee of two percent (2%) of the amount of the minimum monthly payment.

If this Agreement is governed by North Carolina law and all of a minimum monthly payment is not received within fifteen (15) days of the due date provided on my Statement, you will impose a Late Fee of four percent (4%) of the amount of the minimum monthly payment.

If this Agreement is governed by South Carolina law and is secured by a subordinate lien on real property and all of a minimum monthly payment is not received within ten (10) days of the due date provided on my Statement, you will impose a Late Fee of the lesser of \$13.50 or five percent (5%) of the amount of the minimum monthly payment but not less than \$5.40. Otherwise, if all of a minimum monthly payment is not received within ten (10) days of the due date provided on my Statement, you will impose a Late Fee of five percent (5%) of the amount of the minimum monthly payment.

If this Agreement is governed by a law other than those listed in this Section (above) and all of a minimum monthly payment is not received within ten (10) days of the due date provided on my Statement, you will impose a Late Fee of five percent (5%) of the amount of the minimum monthly payment.

**Return Items Fee.** If I make a payment to my Account by check or draft and the check or draft is returned unpaid for any reason, I agree to pay a charge of \$20.00 for each returned check or draft. If this Agreement is governed by Maryland law and I make a payment to my Account by check or draft and the check or draft is returned unpaid for any reason, I agree to pay a charge of \$15.00 for each returned check or draft. I agree that this fee will be charged to my Account.

**Stop Payment Fee.** If I request you to stop payment on an Advance made with a Prime Equity Line Check, to the extent not prohibited by applicable law, I agree to pay your scheduled fee for such service. I will be notified of the amount of such fee at the time that such action is requested. I agree that this fee will be charged to my Account.

**Administrative/Servicing Fees.** I agree that, if after closing, I request other services related to servicing or administering my Account for which you have a scheduled charge, to the extent not prohibited by applicable law, I will pay you the then current fee for such services or request if you agree to perform such services or request. I will be notified of the amount of the fee at the time that such action is requested. I agree that any such fees will be charged to my Account.

**Agreement Secured by Security Instrument.** In addition to the protections given to you under this Agreement, a Security Instrument on real property (the "Property") described in the Security Instrument and dated the same date as this Agreement, protects you from possible losses which might result if I do not keep the promises which I make in this Agreement. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Agreement.

**Change of Terms of This Agreement.** In addition to other rights you may have under the terms of this Agreement, you may change the terms and conditions of this Agreement when any of the following events shall occur:

- (1) if the index and margin used with this Account are no longer available;
- (2) if you make a change that I specifically agree to in writing;
- (3) if you make a change that will unequivocally benefit me throughout the remainder of the term of this Agreement; or
- (4) if you make any insignificant change in the terms of this Agreement.

**Suspension and/or Reduction of Credit Limit.** I agree that you may prohibit additional Advances or reduce the Maximum Credit Limit when any of the following events shall occur:

- (1) if the value of the Property that secures this Agreement declines significantly below the Property's appraised value during the time of this Agreement;
- (2) if you reasonably believe I will be unable to fulfill the repayment obligations under this Agreement due to a material change in my financial circumstances;
- (3) if I am in default of any material obligations under this Agreement, such material obligations include, but are not limited to, all of my promises in this Agreement regarding the payment of money to you and the preservation of your rights in the Property;
- (4) if action by a governmental body does not allow you to impose the ANNUAL PERCENTAGE RATE currently applicable to this Agreement;
- (5) if action by a governmental body adversely affects the priority of your Security Instrument to the extent that the value of the security interest is less than 120 percent of the amount of my Maximum Credit Limit;
- (6) if you are notified by a governmental agency that regulates your lending activities that continuing Advances constitutes an unsafe and unsound practice;
- (7) if during any period in which the ANNUAL PERCENTAGE RATE corresponding to the monthly periodic rate reaches the maximum interest rate allowed under this Agreement. Provided I am in compliance with the other terms of this Agreement, I understand you will reinstate credit privileges if the ANNUAL PERCENTAGE RATE declines below the maximum ANNUAL PERCENTAGE RATE; or
- (8) if I request that you suspend any Advance or reduce the Maximum Credit Limit.

## TRIAL COURT'S RECORD ON APPEAL

**Reinstatement of Advance Privileges.** Except as provided for in this Agreement, I understand that if my Advance privileges are suspended or my Maximum Credit Limit is reduced, it is my responsibility to request reinstatement of my Advance privileges that have been suspended. If I request reinstatement of my Advance Privileges, I further understand that may be required to pay for an appraisal of the Property to determine if the value has changed.

If you suspend Advances or reduce the Maximum Credit Limit, I understand you will mail or deliver written notice of your action no later than three business days after the action and that such notice will contain the specific reason for the action.

**Default/Termination.** I will be in default if any of the following events shall occur:

- (1) if I fail to make my payments when they are due;
- (2) if I have engaged in fraud or material misrepresentation in connection with my Account;
- (3) if my action or inaction adversely affects the Property or your rights in the Property or I am in breach of any term of the Security Instrument; or
- (4) if I breach any term of this Agreement.

If I am in Default under the terms of this Agreement, you may, at your option and in your sole discretion, take the following action:

- (1) terminate my Advance privileges and demand the Outstanding Balance to be due and payable immediately in full in a single payment, with interest due on the Balance at the ANNUAL PERCENTAGE RATE as provided for in this Agreement until paid; or
- (2) temporarily or permanently prohibit additional Advances or reduce the Maximum Credit Limit without demanding payment in full.

If you do not immediately terminate the Advance privileges and demand repayment of the Outstanding Balance, such action shall not constitute a waiver of your right to subsequently terminate the Account or demand repayment of the Outstanding Balance at a later time, if the event of Default still exists or another event of Default occurs at that time.

In the event of Default, if I do not immediately pay the Outstanding Balance and if this obligation is referred to an attorney-at-law for collection, who is not a salaried employee of you, to the extent not prohibited by applicable law, you will have the right to collect attorney fees not exceeding fifteen percent (15%) of the Outstanding Balance along with court costs and expenses. Any default of this Agreement will also constitute an event of Default of the Security Instrument securing my performance of the obligations set forth in this Agreement. Upon Default, you may proceed to enforce the terms of this Agreement or enforce any rights that you may have under the Security Instrument.

**"DEFAULT IN THE PAYMENT OF THE LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THIS LOAN. UNDER FEDERAL LAW, YOU MAY HAVE THE RIGHT TO CANCEL THIS LOAN. IF YOU HAVE THIS RIGHT, THE LENDER IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT."**

**Termination by Less than All Borrowers.** If one or more persons are liable under the terms of this Agreement and less than all of said persons request in writing that future Advances be terminated or temporarily suspended hereunder, you will block and otherwise suspend further Advance privileges. Upon receipt of such notice from one or all of us, you will provide written notice to all Borrowers that the Advance privileges have been suspended. I understand that said Advance privileges will not be reinstated by you until you receive a written request from all persons liable on this Account requesting reinstatement of the Advance privileges. I further agree that any request to grant reinstatement will be made at the sole discretion of you and in accordance with your policies in effect at the time such request is made.

I understand that during the time of any such suspension or termination that I must continue to abide by the terms of the Agreement including, but not limited to the Payment Schedule.

**Voluntary Termination.** I can cancel my Account at any time by destroying all of my unused Prime Equity Line Checks and any Card Access Devices that may have been issued in connection with my Account and sending you a signed letter requesting that you cancel my Account. I understand that my obligations under this Agreement and any changes made under it prior to cancellation will continue to apply until I have completely paid the Outstanding Balance on the Account.

**Required Property and Flood Insurance.** I agree to purchase and to continue to maintain property insurance (and flood insurance if so required) on the secured Property in an amount not less than the entire Outstanding Balance for all prior and current obligations secured by my Property or in such an amount satisfactory to you. I understand I may purchase required property and flood insurance from anyone I choose who is acceptable to you. I agree that in the event I am required to purchase property and/or flood insurance and fail to do so that you may purchase said insurance on my behalf and add the amount of the premium to my then Outstanding Balance. I agree that you have an irrevocable power of attorney to file proofs of loss or other insurance claims and anything else to obtain insurance proceeds in my name.

**Assignment/Transfer of Account.** I cannot transfer or assign my Account or this Agreement to any other person, however, I agree you can assign or transfer this Agreement and the Security Instrument securing this Agreement.

**Change of Address.** I will advise you promptly if I change my mailing address or if I sell the Property securing this Account.

**Notices.** All written notices and statements from you to me will be considered given when placed in the United States mail, postage paid, and addressed to me at my current address as it appears in your records. If this is a joint Account, written notice to one person is notice to all persons.

**Removal of Security Interest.** At any time when the Outstanding Balance secured by the Security Instrument is zero, you shall, at my written request, execute a Satisfaction and provide me with a recorded copy. Absent my request, the Security Instrument will remain in full force and effect until the Draw Period has expired and the Outstanding Balance is paid in full.

**PRIMA FACIE RECORD ON APPEAL**  
Governing Law. I agree that this Agreement shall be governed by and interpreted entirely under the law of the State where the Property securing this Agreement is located and applicable federal law. If the Property securing the Agreement is located in Maryland, this Agreement is governed by MD Code Ann., Commercial Law §12-1001 et. seq. and applicable federal law.

Other Provisions. Each of us who signed this Agreement is individually and jointly obligated for all payments due under this Agreement. If you request, I will give you any information needed to reevaluate my Account or my creditworthiness. I will not request credit information from others including but not limited to obtaining a credit report from a Consumer Reporting Agency. You may use the information obtained from a Consumer Reporting Agency to market additional products or services to me. In the event that the amount of interest on my Account exceeds the maximum permitted by law, you agree to repay me upon demand the amount paid which exceeds the maximum interest rate, or at your option, to reduce the then Outstanding Balance by the excess amount of interest. This Agreement constitutes the entire Agreement between the parties. If any part of this Agreement is not valid, all other parts will remain enforceable. I understand I should consult a tax advisor regarding the deductibility of interest and charges for my Account.

**CAUTION - IT IS IMPORTANT THAT YOU READ ALL PAGES OF THIS AGREEMENT BEFORE YOU SIGN IT. DO NOT SIGN THIS AGREEMENT IF IT CONTAINS ANY BLANK SPACES.**

By signing below, I agree to all of the above terms and certify that I received a completed copy of this Agreement.

*Alvin Yates*  
Borrower  
ALVIN YATES

*Larry Yates*  
Borrower  
LARRY YATES

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

**Plaintiff's Exhibit No. 3**

**Consist of Signature Building Systems'  
August 5, 2003 Invoice for \$75,762.29  
for Modular Built Home sold to the Alvin  
Yates – Larry Yates Partnership.**

**Also, Affidavit Testimony and Applicable  
Case Law as to Partnership Property  
bought with Partnership Funds**

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 3**

3. That the partnership did use the partnership funds secured from Wachovia Bank, for the intended purpose of purchasing partnership property consisting of a 4BR / 3-1/2 Bath modular building systems home, from Signature Building Systems, Inc, of St. George, South Carolina, as evidenced by Plaintiff's Exhibit No. 3, which I hereby certify to be a true copy of the "Final Invoice" dated August 5, 2003, from Signature Building Systems, in the amount of \$75,762.29, which is attached hereto as Plaintiff's Exhibit No.3.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 3**

Under the Uniform Partnership Act of the State of South Carolina, Code Section 33-41-230 (1) "All property originally brought into the partnership .... or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property."

(2) "Unless the contrary intention appears property acquired with partnership funds is partnership property."

In Stephens v. Stephens, "property bought with partnership funds, belongs to partnership. (Stephens v. Stephens, 50 S.E.2<sup>nd</sup> 577, 213 S.C. 525)

Also, in North Carolina case of Jones v. Shoji, "all property purchased on account of partnership is partnership property unless contrary intentions appears. (Jones v. Shoji, 428 S.E.2d 865, 110 N.C.App. 48)

TRIAL COURT'S RECORD ON APPEAL

URE BUILDING SYSTEMS, INC.  
 RINGBROOK AVENUE  
 C. PA 18507

Invoice Number:  
 RBSC003-Spec  
 Invoice Date:  
 Aug 5, 2003

**FINAL**

(570)774-1000  
 (570)774-1010

**Invoice**

ry Yates  
 Box 11008  
 olumbia, SC 29211

Ship to:  
 Speculation  
 400 Grover Wilson Road  
 Richland County  
 Blythewood, SC 29016

Customer ID	Customer PO	Payment Terms	
Yates (SC)		C.O.D.	
Sales Rep ID	Shipping Method	Ship Date	Due Date
Baker (SC)			8/5/03

Qty	Item	Description	Unit Price	Extension
		South: sales base		83,714.00 ✓
		Credit for All Floor Coverings		-5,009.00 ✓
		South:sales options		1,385.00 ✓
		South-sales discounts given.		-14,579.00 ✓
		Richland County SC Use Tax		2,129.10 ✓
		South: Freight Escrow		4,527.00 ✓
		South-sales-engineering		500.00 ✓
		South-sales-state seals		450.00 ✓
		South: Carrier Deposits		3,750.00 ✓
		South-sales-Res.Warranty		160.00 ✓
		CO #S51659		-1,225.00 ✓
		Richland County SC Use Tax		-39.81 ✓
		Production Deposit:Wire 6/25/2003 for \$8,000.00		
		**NOTE: CARRIER USEAGE FEES OF \$325.00 (\$65 Per carrier) WILL BE DEDUCTED FROM CARRIER REFUND**		

**PAYMENT TERMS\*\***  
 Certified Funds  
 Cashier's Check  
 Payment of Funds With  
 The Transfer of \$\$\$  
 8/12/03

Check No: Spec 6/25/03 Wire

Subtotal 75,762.29  
 Sales Tax  
 Total Invoice Amount 75,762.29  
 Payment Received 8,000.00

**TOTAL**  
**132**  
 67,762.29  
 64,337.29

**Plaintiff's Exhibit No. 4**

**Consists Wachovia Bank Official Check  
for \$67,762.29 made payable to  
Signature Building Systems with  
Remitters Larry and Alvin Yates.**

**Also, Affidavit Testimony and Case Law  
as to Partnership Property bought with  
Partnership Funds**

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 4**

4. That the partnership did use the partnership funds secured from Wachovia Bank, for the payment of Signature Building Systems' "Final Invoice" by way of a wire transfer advance payment of \$8,000 as a production deposit and by way of a \$67,762.29 Wachovia Bank, Official Check No. 354081369 made payable to Signature Building Systems, Inc., with remitter as Larry and Alvin Yates, as evidenced by Plaintiff's Exhibit No. 4, which I hereby certify to be a true copy of Wachovia Bank's Official Check, dated August 18, 2003, in the amount of \$67,762.29, which is attached hereto as Plaintiff's Exhibit No.4.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 4**

Under the Uniform Partnership Act of the State of South Carolina, Code Section 33-41-230 (1) "All property originally brought into the partnership ... or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property."

(2) "Unless the contrary intention appears, property acquired with partnership funds is partnership property."

In Stephens v. Stephens, "property bought with partnership funds, belongs to partnership" (Stephens v. Stephens, 50 S.E.2d 577, 213 S.C. 525)

Also, in North Carolina case of Jones v. Shoji, "all property purchased on account of partnership is partnership property unless contrary intentions appears."

(Jones v. Shoji, 428 S.E.2d 865, 110 N.C.App. 48)

TRIAL COURT'S RECORD ON APPEAL

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373154291420 420418 NEW 01/03 iD FIRST DATA 668207493

DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

OFFICIAL CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

23-97  
1020

354081369

0004134

08/18/2003

WACHOVIA

To The  
Or SIGNATURE BUILDING SYSTEMS, INC.

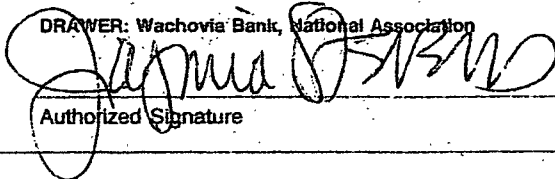
\$ 67,762.29

SIXTY SEVEN THOUSAND SEVEN HUNDRED SIXTY TWO DOLLARS AND 29 CENTS

Dollars

MARRY AND ALVIN YATES

DRAWER: Wachovia Bank, National Association



MP

Insured by Integrated Payment Systems Inc., Englewood, Colorado  
Post: One 1/2 Denver, Colorado

Authorized Signature

⑈420418⑈ ⑆102000979⑆ 68003540813696⑈

**Plaintiff's Exhibit No. 5**

**Consists of Title to Real Estate for 1.2 acre lot Sold to the Partnership and Paid for with Partnership funds, but Titled in the name of Partner Alvin Yates.**

**Also, Affidavit Testimony and Case Law for purchasing Partnership Property with Partnership funds, but Titled in Name of Partner.**

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 5**

5. That the partnership did use partnership funds secured from Wachovia Bank, for the purchase of a parcel of land containing 1.217 acres, from D.L. Wilson, daughter of partner Larry A. Yates, for which the partnership paid \$5,000 for the transfer of the property into partner Alvin Yates' name in exchange for cash payment of \$5,000 and promise of payment of an additional \$16,200 from the proceeds of the sale of the partnership property, as evidenced by Plaintiff's Exhibit No. 5, which I certify to be a true copy of the Title To Real Estate where D.L. Wilson transferred title to 400 Grover Wilson Road Property to Alvin Yates even though she had not been paid the balance of the \$16,200, which still remains unpaid.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 5**

Under the Partnership Laws of the State of South Carolina, as per Stevens v. Stephens, "property bought with partnership funds, in name of a single partner, belongs to partnership. (Stevens v. Stephens. 50 S.E.2<sup>nd</sup> 577, 213 S.C. 525)

Also, under Stevens v. Stephens, the "fact that land has been purchased with partnership assets raises a presumption that the land was intended to form part of the partnership property, though the legal title may be in the name of an individual partner (Stevens v. Stephens. 50 S.E.2<sup>nd</sup> 577, 213 S.C. 525)

**TRIAL COURT'S RECORD ON APPEAL**

Book 00868-2130  
2003112458 10/29/2003 12 15 11 79 Deed  
Fee: \$10.00 County Tax: \$23.65 State Tax: \$55.90



Space above line for recording information

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, D. L. WILSON, hereinafter referred to as Grantor, in the State aforesaid, for and in consideration of the sum of TWENTY-ONE THOUSAND TWO HUNDRED AND NO/100 (\$21,200.00) DOLLARS to me paid by ALVIN YATES, hereinafter referred to as Grantee in the State aforesaid, (the receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee, his Heirs and Assigns:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE FOR LEGAL DESCRIPTION AND DERIVATION

This conveyance is made subject to existing easements and to easements and restrictions of record including those shown on recorded plats.

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

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

And the Grantor do hereby bind Grantor's Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee,

PLEASE BE ADVISED THAT NO TITLE SEARCH WAS CONDUCTED IN THE CONVEYANCE OF THE HEREIN PROPERTY. BERNSTEIN AND BERNSTEIN, ATTORNEYS AT LAW, IS NOT LIABLE FOR ANY TITLE DEFECTS.

TRIAL COURT'S RECORD ON APPEAL

his Heirs and Assigns, against Grantor and Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our Hands and Seals this 20 day of Oct, 2003 in the year of our Lord two thousand three and in the two hundredth and twenty-seventh year of the sovereignty and independence of the United States of America.

Signed, Sealed and Delivered  
in the Presence of

[Signature]  
1st Witness

D. L. Wilson  
D. L. Wilson

[Signature]  
2nd Witness

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

PERSONALLY appeared before me Larry A. Yeltes and made oath that s/he saw the within-named Grantor sign, seal and, as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he, with Beth E. Bernstein, witnessed the execution thereof.

[Signature]  
1st Witness

SWORN to and subscribed before me  
this 20 day of October, 2003.

[Signature]  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 2-23-05

PLEASE BE ADVISED THAT NO TITLE SEARCH WAS CONDUCTED IN THE CONVEYANCE OF THE  
HEREIN PROPERTY. BERNSTEIN AND BERNSTEIN, ATTORNEYS AT LAW, IS NOT LIABLE FOR ANY TITLE DEFECTS.

**Plaintiff's Exhibit No. 6**

**Consists of Service Contract/Invoice from Robert Hildreth Land Clearing for Construction work on Partnership Property and Paid for from Partnership Funds as per Affidavit Testimony of Partner Larry Yates.**

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 6**

6. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Clearing of Land for House and Yard" by Robert Hildreth Land Clearing Company as evidenced by Plaintiff's Exhibit No. 6, which I certify to be a true copy of "Service Contract and Invoice" of July 14, 2003 in the amount of \$900.00 and of payment of same by "Al Yates & Larry Yates Construction Account" check No. 0093, dated July 17, 2003, and made payable to Robert Hildreth Land Clearing Company in the amount of \$900.00, both of which are attached hereto, as Plaintiff's Exhibit No. 6.

TRIAL COURT'S RECORD ON APPEAL  
**ROBERT HILDRETH**  
**LAND CLEARING**

Highway 21 South  
 Ridgeway, SC  
 (803) 337-2261 or 2513

**SERVICE CONTRACT/INVOICE**

Date: July-17-03  
 Business/Name: Larry A Yates  
 Address: 300 Black Crover Wilson Rd Ridgeway SC  
Po Box 11008 Columbia, SC 29211  
 Phone #: Home 803-917-6224 Work 1-800-831-1885

DESCRIPTION OF WORK REQUESTED	HOURS	AMOUNT
<u>Clean of Land For House and Yard</u>		

AL YATES & LARRY YATES  
 CONSTRUCTION ACCOUNT  
 PO BOX 11008  
 COLUMBIA, SC 29211

0093

July 17, 2003

67-776/532

Pay to the Order of Robert Hildreth Land Clearing Company

Date

\$ 900.00

Nine Hundred

Dollars



**WACHOVIA**  
 ACH RT 053207768

For 400 Grover Wilson Rd

⑆053207766⑆1010082248400⑆0093

TOTAL:

\$ 900.00

I/we agree to pay for the above work described within 30 days. I/we understand that any unpaid balance after that time will be turned over for collection. Seller may commence action against the Purchaser to recover the amount due and pursue all remedies for the collection of such amount including reasonable costs of collection and attorney's fees incurred in the collection. Payment upon receipt of invoice.

Customer's Signature \_\_\_\_\_

Date: \_\_\_\_\_

Hildreth Representative \_\_\_\_\_

Date: \_\_\_\_\_

**Plaintiff's Exhibit No. 7**

**Consists of Invoices from Southeastern  
Concrete Products for Construction  
Materials for work on Partnership  
Property and Paid for from Partnership  
Funds as per Affidavit Testimony of  
Partner Larry Yates**

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 7**

7. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of purchasing "Concrete Block Products" as evidenced by Plaintiff's Exhibit No. 7, which I certify to be a true copy of "Sales Ticket" of Southeastern Concrete Products, July 29, 2003, in the amount of \$642.60 and of "Payment Receipt" of same by "Al Yates & Larry Yates Construction Account" check No. 0098, dated July 28, 2003, and made payable to Southeastern Concrete Products in the amount of \$642.60, both of which are attached hereto, as Plaintiff's Exhibit No. 7.

# SOUTHEASTERN CONCRETE PRODUCTS

FEDERAL COURTS RECORD ON APPEAL



P.O. BOX 2104 • Cayce-West Columbia, SC 29171  
 917 Fink Street • Cayce, SC 29033  
 PHONE (803) 794-7363 FAX: (803) 794-7365

## SALES TICKET

TICKET NO.	TICKET DATE
228418	7/29/03
150	CUSTOMER ACCOUNT NO.

**"It Pays To Use Quality Concrete Products"**

PREPAID ACCOUNTS  
 COLUMBIA SC 00000

L. A. YATES & ASSOC.  
 400 GROVER WILSON RD  
 BLYTHEWOOD, SC

ORDER NUMBER	SLSM/N	SHIP DATE	ORDER NO.	TRUCK/DRIVER	TERMS	F.O.B. POINT
K.M.	10			154 DANNY	CASH	C

QUANTITY	U/M	DESCRIPTION	UNIT PRICE	AMOUNT
180	EA	NW 8X8X16 REGULAR 2 Cubes of 90 EA	.90	162.00
200	EA	NW 8X8X16 DOUBLE CORNER 2 Cubes of 90 EA + 20 EA	1.02	204.00
50	EA	NW 4X8X16 PARTITION 0 Cubes of 150 EA + 50 EA	.76	38.00
50	EA	NW 4X8X16 SOLID 0 Cubes of 120 EA + 50 EA	.98	49.00
15	EA	TYPE S SOUTHEASTERN MASONRY CEMENT 0 Cubes of 45 EA + 15 EA	5.20	78.00
1	EA	BLOCK DELIVERY CHARGE	81.00	81.00
Estimated Total Weight			18465	
			Sale	612.00
			50 5.00% Sales Tax	30.60
			Freight	.00
			Misc	.00

TIME 9:36:25	ON JOB	OFF JOB	AMOUNT DUE	642.60
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**AIMS OF DAMAGE OR SHORTAGE MUST BE NOTED ON THIS BILL**

THE SIGNATURE BELOW SIGNIFIES RECEIPT OF THE LISTED MATERIALS AND KNOWLEDGE OF AND AGREEMENT TO THE TERMS, CONDITIONS, AND WARNINGS ON THIS TICKET (FRONT AND BACK)

SIGNATURE *L. A. Yates* (CUSTOMER OR CUSTOMER'S AGENT)

SEE BACK FOR IMPORTANT INFORMATION

393

CUSTOMER

141



**Plaintiff's Exhibit No. 8**

**Consists of Invoices from Cripple Creek Construction, Carolina Ceramics and Hardaway Concrete Company for Construction Materials for work on Partnership Property and Paid for by Partnership Funds as per Affidavit Testimony of Partner Larry Yates.**

143 11 1990 10 11 11 11 11

Plaintiff's Exhibit No. 8

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 8**

8. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of purchasing various other materials for the preparation of brick and block foundation, which included the following: 20.93 tons of stone costing \$329.65 and one load of masonry sand costing \$150.00, from Cripple Creek Corporation with respective payments by way of "Al Yates & Larry Yates Construction Account" checks No. 10099 & 1001; and invoice "Acknowledgement" from Carolina Ceramics for brick & mortar costing \$1,057.77; and Hardaway Concrete Company for pre-mixed concrete costing \$926.10 and paid by "Al Yates & Larry Yates Construction Account" check No. 1027, each of which I certify to be true copies which are attached hereto, as Plaintiff's Exhibit No. 8.

Yates





# Carolina Ceramics COURT'S RECORD ON APPEAL

9931 Two Notch Road  
Columbia, SC 29223

Telephone: 803-788-1916

FAX: 803-736-5218

E-Mail: carolinaceramics@carolinaceramics.com

# Acknowledgement

Distributor Copy

Date	Order#	Customer #
7/30/03	5955	999
O/E #	Ship Date	Page #
		1

**S  
O  
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D  
T  
O**

Cash Customer  
9931 Two Notch Road  
Columbia, SC 29223

**S  
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I  
P  
T  
O**

L.A. Yates & Associates  
400 Grover Wilson Road  
(803) 917-6224 Larry Yates  
Blythewood, SC

Customer Order No.	Shipping Ticket No.	Shipped VIA	Region	Terms		
	541514300703		House Account	2 % 15 Net 30		
Inventory #	Description	UOM	Quantity	Price	Amount	
Triangle Brick	Northampton Modular	M	3,570 7 Cubes	220.00	785.40	
Portar	Lafarge Buff	M Ea	30 30 Bags	7.40	222.00	
	State Sales Tax					50.37
<b>Total:</b>						1,057.77

Take I-77 to Exit 34  
South on 21 about 1 mile  
Left onto \_\_\_\_\_  
about 3 miles take a right onto Grover Wilson

*place sparsically around foundation*

Limited Warranty as stated on Carolina Ceramics' Price Sheet will apply to all orders.

# HARDAWAY CONCRETE COMPANY INC.

P.O. BOX 41200 COLLEGE AVENUE STREET COLUMBIA, SC 29240  
DISPATCH 256-7106 • OFFICE 254-4350

D 837174

## CAUTION: CONCRETE BURNS! READ THIS WARNING BEFORE USING

WITH WET (UNHARDENED) CONCRETE, MORTAR, CEMENT, OR CEMENT MIXTURES CAN CAUSE SKIN IRRITATION, SEVERE CHEMICAL, OR SERIOUS EYE DAMAGE. Wear waterproof gloves, a long-sleeved shirt, full-length trousers, and proper eye protection when working with concrete. If you have to stand in wet concrete, use waterproof boots that are high enough to keep concrete from flowing into them. Wash wet concrete, mortar, or cement mixtures from your skin immediately after contact. Indirect contact through clothing can be as serious as direct contact, so promptly remove clothing that has been in contact with concrete, mortar, cement, or cement mixtures from clothing. Seek immediate medical attention if you have persistent or severe discomfort. In the event of contact, flush with plenty of water for at least 15 minutes. Consult a physician immediately. KEEP OUT OF THE REACH OF CHILDREN. USER MUST READ AND UNDERSTAND THIS WARNING TO ALL PERSONS WHO MAY PURCHASE, USE OR COME IN CONTACT WITH WET (UNHARDENED) CONCRETE, MORTAR, OR CEMENT MIXTURES.

10-1 Leave Plant	10-2 Leave Plant	10-3 Arrive Job Site	10-5 Start Discharge	10-6 Finish Disch.	10-9 Leave Job Site	10-10 Arrive Plant
	9:46	10:07	10:28	11:00	:	:

WATER ADDED ON JOB AT CUSTOMER'S REQUEST 25 GAL  
WATER ADDED TO THIS LOAD BY AUTHORITY OF \_\_\_\_\_  
ORDER TAKEN \_\_\_\_\_

- ADDITIONAL WATER ADDED TO THIS CONCRETE WILL REDUCE ITS STRENGTH. ANY WATER ADDED IS AT CUSTOMER'S RISK.
- PURCHASER ASSUMES RESPONSIBILITY AFTER TRUCK REACHES CURBLINE.
- A MINIMUM AMOUNT OF CLEANUP IS REQUIRED BEFORE VEHICLE CAN RETURN TO THE PUBLIC HIGHWAY SYSTEM. CUSTOMER MUST PROVIDE SUITABLE AREA FOR THAT PURPOSE.

Received 09/26/10

No.	Truck	Load Size	Stamp	Use	Date
1007	100	100			
Sold To			Tx Cd	Driver	
H. H. HITS				PH	
P.O. No.			Order No.	Time Typed	
					Time Due

CUMULATIVE QUANTITY	ORDERED QUANTITY	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	AMOUNT
		6.000 57 STONE	cy	6.30	37.80
		<i>Hand ch 7</i>	<i>100</i>		
SUBTOTAL					37.80
TAX					3.15
TOTAL					40.95

CUSTOMER COPY (AT DELIVERY)

**Plaintiff's Exhibit No. 9**

**Consists of Invoices from White Crane Company for Construction Work on Partnership Property and Paid for by Partnership Funds as per Affidavit Testimony of Partner Larry Yates.**

**ENST AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 9**

9. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Crane Rental" from White Crane Company for unloading and setting various sections of the pre-fabricated home that the partnership purchased from Signature Building Systems as evidenced by White Crane Company Work Order No. 002034, Revised Invoice #6293 dated August 22, 2003, for an adjusted price of \$900.00; and payment by "Al Yates & Larry Yates Construction Account" check No. 1020, dated August 29, which I certify to be true copies of the "Work Order", "Revised Invoice" and "Check No. 1020", all of which are attached hereto, as Plaintiff's Exhibit No. 9.

TRIAL COURT'S RECORD ON APPEAL

**WHITE CRANE COMPANY, INC.**

3414 AUGUSTA ROAD  
WEST COLUMBIA, S.C. 29169  
794-7194 • 794-1620 FAX

5369 JEFFERSON DAVIS HWY.  
N. AUGUSTA, SC 29841  
(803) 278-6780

CUSTOMER NAME & ADDRESS:

L.A. Yates + ASS.

**Nº 002034**

Date: 8-19-03

JOBSITE: 400 Grover Williams - Bl, th...

P.O. #: \_\_\_\_\_

CRANE #: TC-110

OPERATOR: ah

TIME OUT: \_\_\_\_\_

TIME IN: \_\_\_\_\_

TOTAL HOURS: 9 hrs x 185<sup>00</sup> = 1,665<sup>00</sup>

ACCESSORY EQUIPMENT:  
9 1/2 Aerial wire x \_\_\_\_\_ = \_\_\_\_\_  
\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_  
\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

TOTAL

\$1,665<sup>00</sup>

SPECIAL INSTRUCTIONS: 26 hrs @ 55'

RECEIVED/ACCEPTED BY: [Signature]

COMPANY: \_\_\_\_\_

TRIAL COURT'S RECORD ON APPEAL

WHITE CRANE COMPANY, INC.

3414 AUGUSTA ROAD  
WEST COLUMBIA, SC 29169  
PH. (803) 794-7194

INVOICE

DATE	INVOICE #
8/22/2003	6293

BILL TO:

Real Estate Services  
PO Box 11008  
Columbia, SC 29211



P.O. NUMBER	TERMS	PROJECT
400 Grover		

QUANTITY	DESCRIPTION	RATE	AMOUNT
9	110 Ton Crane Service	185.00	1,665.00
	Sales Tax	5.00%	0.00
6	75 TON CRANE Service	150.00	900.00

*6 MV.*  
*Per Mr. MEON*

ALVIN YATES  
LARRY YATES  
CONSTRUCTION ACCOUNT  
3504 Sidney Road  
Columbia, SC 29210

August 29, 2003

1020

67-778/532  
BRANCH 58008

Pay to the Order of **White Crane Company, Inc.**

\$ 900.00

Nine Hundred

Dollars



Security Features Details on Back

**WACHOVIA**  
Wachovia Bank, N.A.  
ACH R/T 053207768

For **Revised Invoice 6293**

⑆053 207766⑆ ⑆01008 2248400⑆ 1020

TOTAL

\$ 900

TOTAL

\$1,665.00

**Plaintiff's Exhibit No. 10**

**Consists of Statement of Earnings  
for Steve McAteer and Partnership  
Check for \$212.00 as payment for  
Construction Labor on Partnership  
Property and Paid for by Partnership  
Funds as per Affidavit Testimony of  
Partner, Larry Yates.**

Plaintiff's Exhibit No. 10

Construction Report on Partnership  
Check for \$212.00 as payment for  
partnership's intended purpose of  
Wachovia Bank for the intended purpose

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 10**  
10. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of Vinyl Siding Installation by Steve McAtee as evidenced by Fax Message from Larry A. Yates, L.A. Yates & Associates accounting for labor amount due and payment thereof by "Al Yates & Larry Yates Construction Account" check No. 1025, dated September 6, 2003, in the amount of \$212.00, which I certify to be true copies of the "Fax Message" & "Check No. 1025", both of which are attached hereto, as Plaintiff's Exhibit No. 10.

TRIAL COURT'S RECORD ON APPEAL  
Real Estate Services Company  
PO Box 11008, Columbia, SC 29211

**Fax Message:**

DATE: September 1, 2003

TO: Steve McAteer  
109 Foxglove Lane

PHONE:  
FAX: 749-8764

FROM: Larry A. Yates  
L.A. Yates & Associates

PHONE: 917-6224  
FAX: 750-9673

RE: New Residence for:  
400 Grover Wilson Rd  
Blythewood, SC 29016

Number of pages including cover sheet: [ 1 ]

MESSAGE

Dear Steve,

I have not heard from you about your pay for last week. I owe you for the equipment for one week, \$100.00. Plus, I assume you worked Tuesday to put siding on garage front. You made a mistake and got the panels one-half 10" to low. I don't know how we will fix your mistake, but Dean will figure out something. I guess you and a helper worked maybe 3 hours then and about 4 hours when we were pouring concrete the other day. If so I owe you 7 hours X \$16 / hr = \$112.00 + \$100 = \$212.00.

I am out of town until Friday but I came by your house today to pay you, but you nor Debbie was home. Here is a check for this amount.

Thanks,  
Larry Yates

ALVIN YATES  
LARRY YATES  
CONSTRUCTION ACCOUNT  
3504 Sidney Road  
Columbia, SC 29210

1025  
67-776/532  
BRANCH 08008

*Sept 6, 2003*  
Date

Pay to the Order of: STEVE MCATEER \$ 212.00

TWO HUNDRED TWELVE Dollars

WACHOVIA  
Wachovia Bank, N.A.  
ACH/EFT 053207768

For: Siding work 9/2 & 9/4 *Larry Yates*

151

Plaintiff's Exhibit No. 11

Consists of a Ledger of all Partnership Expenditures for "On Site Construction" of Partnership Property, Including an Itemized Summary of all Accounts showing Budget Items, Estimated Cost, Spent to Date, Yet to Spend, Percent Complete, and Over (Under) Balances through June 28, 2004.

Also, Affidavit Testimony of Partner Larry Yates, Certifying Exhibit No. 11 to be a true Accounting of use of Partnership Funds and applicable Case Law that "Partnership books shall be kept, subject to any Agreement between the Partners."

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 11**

(11) That as required by Item No. 6 of the Partnership Agreement, partner L. Yates did keep a full and accurate accounting of all project expenditures as evidenced by Plaintiff's Exhibit No. 11 which includes a summary sheet with 25 itemized account estimates and spent totals as calculated from lists of individual invoices, all of which I hereby certify to be a true accounting of use of partnership funds which are attached hereto, as Plaintiff's Exhibit No. 11.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 11**

Under the Uniform Partnership Act of the State of South Carolina, Code Section 33-41-520 "The partnership books shall be kept, subject to any agreement between the partners, ..... and every partner shall at all times have access to and may inspect and copy any of them."

**TRIAL COURT'S RECORD ON APPEAL**

<b>400 GROVER WILSON RD SPEC HOUSE</b>					<b>28-Jun-04</b>	
<b>CODE</b>	<b>ON-SITE CONSTRUCTION</b>	<b>EST.</b>	<b>SPENT</b>	<b>YET TO</b>	<b>PERCENT</b>	<b>OVER</b>
<b>NO.</b>	<b>BUDGET ITEMS</b>	<b>COST</b>	<b>TO DATE</b>	<b>SPEND</b>	<b>COMPLETE</b>	<b>(UNDER)</b>
1	License, Permits & Bonds	\$ 750	\$ 727	\$ 23	100%	(\$23)
2	Clearing & Grubbing	\$ 1,000	\$ 1,150	\$ -	100%	\$150
3	Water Well, Pump, Tank & Piping	\$ 3,500	\$ 6,231	\$ -	100%	\$2,731
4	Septic Tank & Tile Field	\$ 1,000	\$ 2,624	\$ -	100%	\$1,624
5	Highway Access & Driveway	\$ 1,000	\$ 2,484	\$ -	100%	\$1,484
6	Foundation Layout	\$ 250	\$ 435	\$ -	100%	\$185
7	Foundation Footings	\$ 500	\$ 900	\$ -	100%	\$400
8	Foundation Walls +\$2,000 for Brick	\$ 4,000	\$ 5,185	\$ -	100%	\$1,185
9	Porch & Garage Floor	\$ 500	\$ 645	\$ -	100%	\$145
10	Set Crane & Set Labor	\$ 1,000	\$ 900	\$ 100	100%	(\$100)
11	Interior House Finish	\$ 2,000	\$ 4,501	\$ -	100%	\$2,501
12	Exterior House Finish	\$ 2,000	\$ 3,617	\$ -	100%	\$1,617
13	Panelized Garage Set & Finish	\$ 2,225	\$ 7,380	\$ -	100%	\$5,155
14	Automatic Garage Door	\$ 1,000	\$ 1,247	\$ -	100%	\$247
15	Front Porch Framing	\$ 750	\$ 2,018	\$ -	100%	\$1,268
16	Rear Deck & Banisters	\$ 1,000	\$ 1,481	\$ -	100%	\$481
17	Heating & Air Conditioning	\$ 5,000	\$ 5,500	\$ -	100%	\$500
18	Plumbing, Electrical & Range	\$ 1,500	\$ 4,267	\$ -	100%	\$2,767
19	Cleaning & Painting	\$ 1,000	\$ 1,379	\$ -	100%	\$379
20	Carpet, Vinyl & Tile	\$ 5,500	\$ 4,812	\$ 688	100%	(\$688)
21	Walks & Steps	\$ 500	\$ 1,117	\$ -	100%	\$617
22	Landscaping Shrubbery & Grass	\$ 1,000	\$ 2,123	\$ -	100%	\$1,123
23	Miscellaneous Job Cost +\$1,000	\$ 2,000	\$ 6,274	\$ -	100%	\$4,274
24	Alvin Yates Miscellaneous	\$ 1,000	\$ 3,925	\$ -	100%	\$2,925
25	Larry Yates Miscellaneous	\$ 1,000	\$ 3,536	\$ -	100%	\$2,536
<b>TOTAL ON-SITE COST</b>		<b>\$ 38,975</b>	<b>\$ 66,997</b>	<b>\$ 811</b>	<b>172%</b>	<b>\$28,022</b>

**TRIAL COURT'S RECORD ON APPEAL**

INVOICES THRU 28-Jun-04						
CODE	ON-SITE CONSTRUCTION		INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS		AMOUNT	PAYMENTS	CARD ACT	DATE
	DEPOSITS	\$ 65,500	B/A CASH	\$ 5,168	\$ 5,168	B/A CASH
	CHECKS	\$ 64,896	W/B CASH	\$ 12,132	\$ 11,552	B/A CHGS
	INVOICES	BALANCE	\$603.58	\$ 54,819	\$ 10,147	\$ 12,386
1	Richland County (Building Permit)	#95	\$627.00	\$0.00	\$0.00	9-Jul-03
1	Richland County (Septic Tank Permit)		\$100.00	\$100.00	\$0.00	10-Jul-03
2	Bob Hildreth (Land Clearing & Grubbing) #94		\$850.00	\$0.00	\$0.00	16-Jul-03
2	Ace Hdw		\$20.00	\$0.00	\$0.00	17-Apr-04
2	Labor (Dean Yates) Week of 3/28		\$280.00	\$0.00	\$0.00	17-Apr-04
3	Rentx Trencher 736-7360		\$173.25	\$173.25	\$173.25	3-Jan-04
3	Home Depot		\$41.98	\$0.00	\$0.00	17-Apr-04
3	Home Depot		\$66.00	\$0.00	\$0.00	17-Apr-04
3	Labor (Dean Yates) Week of 2/23		\$280.00	\$0.00	\$0.00	17-Apr-04
3	DHEC Well Permit		\$70.00	\$0.00	\$0.00	25-May-04
3	Morrison Well Drilling, Inc	#1067	\$5,600.00	\$0.00	\$0.00	4-Jun-04
4	Rock (Loogolf Sand) 20.93 Tons	#1001	\$329.65	\$0.00	\$0.00	30-Jul-03
4	L&N Enterprises	#1019	\$750.00	\$0.00	\$0.00	29-Aug-03
4	Lowe's (Septic Tank)		\$40.74	\$40.74	\$40.74	1-Sep-03
4	Lowe's (Septic Tank)		\$25.41	\$25.41	\$25.41	1-Sep-03
4	Cripple Creek (Rock)	#1022	\$324.61	\$0.00	\$0.00	4-Sep-03
4	Lucas Septic Tank Service	#1024	\$341.25	\$0.00	\$0.00	8-Sep-03
4	Labor (Wallace Edwards) Week of 9/8		\$100.00	\$100.00	\$0.00	12-Sep-03
4	Labor (Randy Edwards) Week of 9/8		\$65.00	\$65.00	\$0.00	12-Sep-03
4	Sharp Shoppe (Diesel LEY)		\$7.00	\$7.00	\$7.00	14-Sep-03
4	Cripple Creek (Rock)	#1027	\$329.65	\$0.00	\$0.00	15-Sep-03
4	Lowe's (Tile Field Pipe & Fittings)		\$71.33	\$71.33	\$71.33	15-Sep-03
4	Lowe's (Tile Field Pipe & Fittings)		\$59.72	\$59.72	\$59.72	15-Sep-03
4	Hughes (Tile Field Pipe)		\$117.18	\$117.18	\$117.18	19-Sep-03
4	Labor (Randy Edwards) Week of 9/15		\$36.00	\$36.00	\$0.00	19-Sep-03
4	Blythewood Hdw (Rake)		\$26.51	\$26.51	\$26.51	22-Sep-03
5	Bob Hildreth (Driveway Grading) #94		\$50.00	\$0.00	\$0.00	16-Jul-03
5	Lowe's (Garage Floor)		\$41.35	\$41.35	\$41.35	31-Aug-03
5	Lowe's (Driveway)		\$102.60	\$102.60	\$102.60	3-Sep-03
5	Lowe's (Garage Floor)		\$102.60	\$102.60	\$102.60	3-Sep-03
5	Hardaway Concrete	#1023	\$661.50	\$0.00	\$0.00	4-Sep-03
5	HSS Rentx #85		\$75.60	\$75.60	\$75.60	4-Sep-03
5	Hardaway Concrete		\$130.00	\$130.00	\$130.00	7-Nov-03

**TRIAL COURT'S RECORD ON APPEAL**

INVOICES THRU 28-Jun-04					
CODE	ON-SITE CONSTRUCTION	INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS	AMOUNT	PAYMENTS	CARD ACT	DATE
5	Hardaway Concrete	\$750.00	\$0.00	\$0.00	17-Apr-04
5	Cripple Creek (Crush & Run)	\$233.95	\$0.00	\$0.00	17-Jun-04
6	Lowe's (Nails, Stakes, String & Supplies)	\$49.31	\$49.31	\$49.31	16-Jul-03
6	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	17-Jul-03
6	Bob Hildreth (Digging Footings)	\$120.00	\$120.00	\$0.00	18-Jul-03
6	Labor (Dean Yates)	\$36.00	\$60.00	\$0.00	18-Jul-03
6	Lowe's (Grade Stakes)	\$6.27	\$6.27	\$0.00	19-Jul-03
6	Lowe's (Batter Boards Materials)	\$77.91	\$77.91	\$77.91	21-Jul-03
6	Lumber Lowe's (Grade Stakes)	\$15.71	\$15.71	\$15.71	21-Jul-03
6	Lowe's (Grade Stakes)	\$12.73	\$12.73	\$12.73	22-Jul-03
6	Lumber (Lowe's)	\$44.60	\$44.60	\$44.60	25-Jul-03
6	Labor (Dean Yates)	\$36.00	\$100.00	\$0.00	25-Jul-03
7	Martha Davis (Rally Tiller)	\$75.00	\$75.00	\$0.00	16-Jul-03
7	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	20-Jul-03
7	Labor (Dean Yates)	\$36.00	\$45.00	\$0.00	21-Jul-03
7	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	22-Jul-03
7	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	23-Jul-03
7	Labor (Wallace Edwards)	\$10.00	\$20.00	\$0.00	23-Jul-03
7	Concrete (Hardaway - 9 Yards) #98	\$595.35	\$0.00	\$0.00	24-Jul-03
7	Labor (Wallace Edwards)	\$40.00	\$20.00	\$0.00	24-Jul-03
7	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	24-Jul-03
7	Labor (Wallace Edwards)	\$0.00	\$30.00	\$0.00	25-Jul-03
8	Concrete (Hardaway - 3 Yards) #97	\$198.45	\$0.00	\$0.00	24-Jul-03
8	Block (Southeastern Concrete) #98	\$642.60	\$0.00	\$0.00	28-Jul-03
8	Lowe's (Wheel Borrow & Cement)	\$122.87	\$122.87	\$122.87	28-Jul-03
8	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	28-Jul-03
8	Sand (Loogolf Sand) 22Tons #99	\$157.50	\$0.00	\$0.00	29-Jul-03
8	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	29-Jul-03
8	Labor (Wallace Edwards)	\$0.00	\$20.00	\$0.00	29-Jul-03
8	Brick & Mortar (Carolina Ceramics) #1002	\$1,057.77	\$0.00	\$0.00	30-Jul-03
8	Labor (Wallace Edwards)	\$60.00	\$60.00	\$0.00	30-Jul-03
8	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	30-Jul-03
8	Blythwood Hardware (Wall Ties)	\$13.13	\$13.13	\$13.13	30-Jul-03
8	Blythwood Hardware (Mixer Parts)	\$4.83	\$4.83	\$0.00	30-Jul-03
8	Block Labor (Jasper Tucker 319-0358) #1003	\$437.50	\$0.00	\$0.00	1-Aug-03
8	Labor (Wallace Edwards)	\$60.00	\$60.00	\$0.00	1-Aug-03
8	Lowe's (Cement & Trowel)	\$59.09	\$59.09	\$59.09	1-Aug-03

**TRIAL COURT'S RECORD ON APPEAL**

		<b>INVOICES THRU 28-Jun-04</b>			
CODE	ON-SITE CONSTRUCTION	INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS	AMOUNT	PAYMENTS	CARD ACT	DATE
8	New South Supply	\$30.98	\$30.98	\$30.98	5-Aug-03
8	Lowe's (Brick Vents)	\$40.27	\$40.27	\$40.27	7-Aug-03
8	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	7-Aug-03
8	Brick Labor (Jasper Tucker 319-0358) #1008	\$400.00	\$0.00	\$0.00	8-Aug-03
8	Labor (Dean Yates)	\$36.00	\$80.00	\$0.00	8-Aug-03
8	Brick Labor (Jasper Tucker 319-0358) #1011	\$325.00	\$0.00	\$0.00	14-Aug-03
8	Labor (Dean Yates) Week of 8/11	\$180.00	\$180.00	\$0.00	15-Aug-03
8	Brick Labor (King Murphy 337-8639) #1013	\$220.00	\$0.00	\$0.00	16-Aug-03
8	Brick Labor (King Murphy 337-8639)	\$200.00	\$200.00	\$0.00	16-Aug-03
8	Brick Labor (James Simons 353-3809)	\$100.00	\$100.00	\$0.00	16-Aug-03
8	Labor (Wallace Edwards)	\$70.00	\$70.00	\$0.00	16-Aug-03
8	Labor (Randy Edwards)	\$42.00	\$42.00	\$0.00	16-Aug-03
8	Labor (Dean Yates)	\$36.00	\$15.00	\$0.00	16-Aug-03
8	Blythewood Hardware (Cut Nails)	\$12.67	\$12.67	\$12.67	16-Aug-03
8	Lowe's (Cement & Treated Plates)	\$212.68	\$212.68	\$212.68	17-Aug-03
8	Brick Labor (Jasper Tucker 319-0358) #1014	\$150.00	\$0.00	\$0.00	17-Aug-03
8	Labor (Dean Yates)	\$36.00	\$25.00	\$0.00	17-Aug-03
8	Labor (Wallace Edwards)	\$30.00	\$30.00	\$0.00	18-Aug-03
8	Labor (Randy Edwards)	\$18.00	\$18.00	\$0.00	18-Aug-03
9	New South Supply (700 SF Reinforcing Wire)	\$39.90	\$39.90	\$39.90	27-Aug-03
9	Lowe's (Garage Floor)	\$110.86	\$110.86	\$110.86	3-Sep-03
9	Hardaway Concrete #1023	\$264.60	\$0.00	\$0.00	4-Sep-03
9	Home Depot	\$51.14	\$51.14	\$51.14	4-Sep-03
9	Labor (Wallace Edwards) Week of 9/1	\$110.00	\$110.00	\$0.00	5-Sep-03
9	Home Depot	\$68.19	\$0.00	\$0.00	17-Apr-04
10	White Crane Service #1020	\$900.00	\$0.00	\$0.00	29-Aug-03
10	White Crane Service (Set Trusses) \$225 Due	\$0.00	\$0.00	\$0.00	17-Sep-03
11	Labor (Dean Yates) Week of 9/8	\$140.00	\$140.00	\$0.00	12-Sep-03
11	Labor (Wallace Edwards) Week of 9/8	\$110.00	\$110.00	\$0.00	12-Sep-03
11	Labor (Randy Edwards) Week of 9/8	\$65.00	\$65.00	\$0.00	12-Sep-03
11	Lowe's (Sand Paper & Sheet Rock)	\$24.57	\$24.57	\$24.57	15-Sep-03
11	Labor (Wallace Edwards) Week of 9/15	\$350.00	\$350.00	\$0.00	19-Sep-03
11	Labor (Dean Yates) Week of 9/15	\$140.00	\$140.00	\$0.00	19-Sep-03
11	84 Lumber (Sheet Rock Corners)	\$4.16	\$4.16	\$0.00	19-Sep-03
11	Lowe's (Sheet Rock & Mud, Paper)	\$52.78	\$52.78	\$52.78	23-Sep-03
11	Labor (Wallace Edwards) Week of 9/22	\$185.00	\$185.00	\$0.00	26-Sep-03
11	Labor (Randy Edwards) Week of 9/22	\$65.00	\$65.00	\$0.00	26-Sep-03

**TRIAL COURT'S RECORD ON APPEAL**

		<b>INVOICES THRU</b>		<b>28-Jun-04</b>		
CODE	ON-SITE CONSTRUCTION		INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS		AMOUNT	PAYMENTS	CARD ACT	DATE
11	Labor (Dean Yates) Week of 10/20	Lay-Check	\$100.00	\$100.00	\$0.00	24-Oct-03
11	Labor (Patty Smith) Week of 10/27	Lay-Check	\$35.00	\$35.00	\$0.00	31-Oct-03
11	Labor (Patty Smith) Week of 11/3	Lay-Check	\$65.00	\$65.00	\$0.00	7-Nov-03
11	Labor (Patty Smith) Week of 11/11		\$35.00	\$35.00	\$0.00	14-Nov-03
11	Labor (Dean Yates) Week of 2/9		\$280.00	\$280.00	\$0.00	13-Feb-04
11	Home Depot (April Invoices)		\$172.00	\$0.00	\$0.00	7-Apr-04
11	Labor (Dean Yates) Week of 4/12		\$280.00	\$0.00	\$0.00	16-Apr-04
11	Home Depot		\$39.93	\$0.00	\$0.00	17-Apr-04
11	Labor (Dean Yates) Week of 4/19		\$280.00	\$0.00	\$0.00	23-Apr-04
11	Labor (Dean Yates) Week of 4/26		\$280.00	\$0.00	\$0.00	30-Apr-04
11	Labor (Mike Sullivan) Week of 4/26		\$200.00	\$0.00	\$0.00	30-Apr-04
11	Labor (Dean Yates) Week of 5/3		\$280.00	\$0.00	\$0.00	7-May-04
11	Labor (Mike Sullivan) Week of 5/3		\$200.00	\$0.00	\$0.00	7-May-04
11	Labor (Mitch Mitchell) Week of 5/10		\$200.00	\$0.00	\$0.00	14-May-04
11	Labor (Mitch Mitchell) Week of 5/17		\$200.00	\$0.00	\$0.00	21-May-04
11	Labor (Mitch Mitchell) Week of 5/24		\$200.00	\$0.00	\$0.00	28-May-04
11	Labor (Mitch Mitchell) Week of 5/31		\$200.00	\$0.00	\$0.00	4-Jun-04
12	Labor (Dean Yates)		\$405.00	\$0.00	\$0.00	4-Aug-03
12	Lowe's (Cement & Treated Plates)		\$151.88	\$151.88	\$151.88	13-Aug-03
12	Lowe's (Sheeting for Signature)		\$53.73	\$53.73	\$53.73	19-Aug-03
12	First Cash Pawn		\$210.00	\$210.00	\$210.00	22-Aug-03
12	Labor (Dean Yates) Week of 8/18	#1015 >	\$180.00	\$180.00	\$0.00	22-Aug-03
12	First Cash Pawn	>Signature	-\$40.00	-\$40.00	-\$40.00	22-Aug-03
12	ABC Supply Company		\$6.81	\$6.81	\$0.00	28-Aug-03
12	Labor (Dean Yates) Week of 8/25		\$180.00	\$180.00	\$0.00	29-Aug-03
12	Labor (Steve McAteer & Helper) Week of 8/25		\$115.00	\$115.00	\$0.00	29-Aug-03
12	Labor (Steve McAteer & Helper) Week of 9/1		\$228.00	\$228.00	\$0.00	5-Sep-03
12	Labor (Dean Yates) Week of 9/1		\$180.00	\$180.00	\$0.00	5-Sep-03
12	Labor (Wallace Edwards) Week of 9/1		\$100.00	\$100.00	\$0.00	5-Sep-03
12	Steve McAteer Siding Work	#1025	\$212.00	\$0.00	\$0.00	8-Sep-03
12	Labor (Dean Yates) Week of 9/8		\$140.00	\$140.00	\$0.00	12-Sep-03
12	Labor (Dean Yates) Week of 9/22		\$140.00	\$140.00	\$0.00	26-Sep-03
12	Steve McAteer Siding Work	#1035	\$175.00	\$0.00	\$0.00	3-Oct-03
12	Steve McAteer Siding Work	#1038	\$400.00	\$0.00	\$0.00	10-Oct-03
12	Steve McAteer Siding Work		\$200.00	\$200.00	\$0.00	20-Oct-03
12	Labor (Dean Yates) Week of 6/7		\$280.00	\$0.00	\$0.00	11-Jun-04
12	Labor (Kenny Sims) Week of 6/7		\$100.00	\$0.00	\$0.00	11-Jun-04

**TRIAL COURT'S RECORD ON APPEAL**

		<b>INVOICES THRU</b>		<b>28-Jun-04</b>		
CODE	ON-SITE CONSTRUCTION	INVOICE	CASH	CREDIT	INVOICE	
NO.	COST ITEMS	AMOUNT	PAYMENTS	CARD ACT	DATE	
12	Steve McAteer Siding Work	\$200.00	\$0.00	\$0.00	23-Jun-04	
13	Home Depot (Garage Wall Bracing)	\$84.31	\$84.31	\$84.31	25-Aug-03	
13	Lowe's (Plates for Garage)	\$76.23	\$76.23	\$76.23	26-Aug-03	
13	Hoover Trusses	\$1,338.75	\$0.00	\$0.00	4-Sep-03	
13	Lowe's (Garage Set)	\$33.24	\$33.24	\$33.24	5-Sep-03	
13	Columbia Lumber (Garage Sheeting)	\$518.18	\$518.18	\$518.18	17-Sep-03	
13	Lowe's (Lumber Garage)	\$247.70	\$247.70	\$247.70	17-Sep-03	
13	Lowe's (Roof Felt)	\$44.04	\$44.04	\$44.04	17-Sep-03	
13	Wachovia Cash (Garage Framing)	#1028 \$600.00	\$0.00	\$0.00	18-Sep-03	
13	Labor (Dean Yates) Week of 9/15	\$140.00	\$140.00	\$0.00	19-Sep-03	
13	Lowe's (Lumber)	\$69.51	\$69.51	\$69.51	22-Sep-03	
13	ABC Supply Company (Roofing)	\$247.01	\$247.01	\$247.01	22-Sep-03	
13	Lowe's (Lumber, Nails & Sheathing)	\$56.20	\$56.20	\$56.20	24-Sep-03	
13	Labor (Dean Yates) Week of 9/22	\$140.00	\$140.00	\$0.00	26-Sep-03	
13	Fernando Rosas (Roofer)	#1034 \$285.00	\$0.00	\$0.00	2-Oct-03	
13	Labor (Dean Yates) Week of 9/29	\$140.00	\$140.00	\$0.00	3-Oct-03	
13	Lowe's (Lumber)(Lowe's Card)	\$48.68	\$48.68	\$0.00	5-Oct-03	
13	Labor (Dean Yates) Week of 10/6	\$140.00	\$140.00	\$0.00	10-Oct-03	
13	Lowe's (Vinyl Brick Mold)(Visa-2)	\$59.00	\$59.00	\$59.00	15-Oct-03	
13	Labor (Dean Yates) Week of 10/13	\$140.00	\$140.00	\$0.00	17-Oct-03	
13	Lowe's (FROG Floor)	\$103.11	\$103.11	\$103.11	4-Nov-03	
13	Lowe's (FROG Floor)	\$242.00	\$242.00	\$242.00	13-Nov-03	
13	Lowe's (FROG Rm Insulation)	\$310.24	\$0.00	\$0.00	13-Nov-03	
13	Lowe's (Truck Rental)	\$19.95	\$0.00	\$0.00	14-Nov-03	
13	Lowe's (FROG Rm Dry Wall)	\$100.88	\$0.00	\$0.00	14-Nov-03	
13	Lowe's (FROG Rm Dry Wall)	\$519.23	\$0.00	\$0.00	14-Nov-03	
13	Labor (Dean Yates) Week of 11/11	\$140.00	\$140.00	\$0.00	14-Nov-03	
13	Labor (James Addison) Week of 11/11	\$72.00	\$72.00	\$0.00	14-Nov-03	
13	Lowe's (FROG Rm Screws & Elect)	\$43.79	\$43.79	\$43.79	19-Nov-03	
13	Lowe's (FROG Rm Paint)	\$20.46	\$0.00	\$0.00	20-Nov-03	
13	Labor (Dean Yates) Week of 11/17	Lay Cash \$140.00	\$140.00	\$0.00	21-Nov-03	
13	Labor (Randy Edwards) Week of 11/17	\$165.00	\$165.00	\$0.00	21-Nov-03	
13	Lowe's (Room Over Door)	\$35.00	\$35.00	\$35.00	23-Dec-03	
13	Labor (Dean Yates) Week of 4/5	\$215.19	\$0.00	\$0.00	17-Apr-04	
13	Home Depot	\$117.41	\$0.00	\$0.00	17-Apr-04	
13	Labor (Dean Yates) Week of 4/12	\$280.00	\$0.00	\$0.00	17-Apr-04	
13	Home Depot	\$142.42	\$0.00	\$0.00	17-Apr-04	

**TRIAL COURT'S RECORD ON APPEAL**

INVOICES THRU		28-Jun-04			
CODE	ON-SITE CONSTRUCTION	INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS	AMOUNT	PAYMENTS	CARD ACT	DATE
13	Home Depot	\$25.87	\$0.00	\$0.00	17-Apr-04
13	Labor (Dean Yates) Week of 3/7	\$280.00	\$0.00	\$0.00	17-Apr-04
14	Garage Door, Opener & Installation	\$1,246.67	\$1,246.67	\$1,246.67	28-Jun-04
15	Lowe's (Nails, Screws & Flashing)(Visa-2)	\$90.25	\$90.25	\$90.25	27-Sep-03
15	Blythewood Ace Hdw	\$19.35	\$19.35	\$19.35	29-Sep-03
15	Lowe's (Lumber)(Visa-2)	\$251.15	\$251.15	\$251.15	29-Sep-03
15	Blythewood Hardware (Visa 2)	\$7.77	\$7.77	\$7.77	29-Sep-03
15	Lowe's (Joist Hangers)(Visa-2)	\$9.08	\$9.08	\$9.08	30-Sep-03
15	Lowe's (Lumber)(Visa-2)	\$46.14	\$46.14	\$46.14	30-Sep-03
15	Lowe's (Lumber)(Visa-2)	\$167.24	\$167.24	\$167.24	30-Sep-03
15	Lowe's (Lumber, Nails & Sheathing)(Visa-2)	\$154.21	\$154.21	\$154.21	1-Oct-03
15	Labor (Dean Yates) Week of 9/29	\$140.00	\$140.00	\$0.00	3-Oct-03
15	ABC Supply Company (Roofing)	\$39.60	\$39.60	\$39.60	9-Oct-03
15	Fernando Rosas (Roofer) #1036 Void	\$50.00	\$50.00	\$0.00	10-Oct-03
15	Labor (Dean Yates) Week of 10/6	\$140.00	\$140.00	\$0.00	10-Oct-03
15	Home Depot (Banisters)	\$441.33	\$441.33	\$441.33	16-Oct-03
15	Labor (Dean Yates) Week of 10/13	\$140.00	\$140.00	\$0.00	17-Oct-03
15	Home Depot (Front Porch Post)	\$44.00	\$44.00	\$44.00	21-Oct-03
15	Home Depot	\$188.06	\$188.06	\$188.06	30-Jan-04
15	Willis Fittry 518-5861 Week of 2/2	\$90.00	\$0.00	\$0.00	6-Feb-04
16	Lowe's (Meter to Box Wiring)	\$53.66	\$53.66	\$53.66	15-Sep-03
16	Lowe's (Plumbing Material)	\$81.03	\$81.03	\$81.03	18-Sep-03
16	Lowe's (Deck Nails) (Brent Lewis)	\$66.36	\$66.36	\$66.36	5-Dec-03
16	Lowe's (Deck Lumber) (Brent Lewis)	\$810.30	\$810.30	\$810.30	5-Dec-03
16	Lowe's (Truck Rental)	\$19.95	\$0.00	\$0.00	5-Dec-03
16	Brent Lewis Deck Contract	\$450.00	\$0.00	\$0.00	6-Dec-03
17	L&N Enterprises #1032	\$2,000.00	\$0.00	\$0.00	1-Oct-03
17	L&N Enterprises #1037	\$2,000.00	\$0.00	\$0.00	10-Oct-03
17	L & N Enterprises	\$1,500.00	\$0.00	\$0.00	9-Jun-04
18	Lowe's (Electrical Wire & Supplies)	\$82.03	\$82.03	\$82.03	16-Jul-03
18	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	16-Jul-03
18	Labor (Dean Yates)	\$36.00	\$20.00	\$0.00	4-Aug-03
18	Home Depot (Elect Range)	\$417.48	\$417.48	\$417.48	20-Aug-03
18	Lowe's (Saw Pole Electric)	\$68.58	\$68.58	\$68.58	27-Aug-03
18	Lowe's (Craw Space Access Door)	\$19.73	\$19.73	\$19.73	28-Aug-03
18	Lowe's (Plumbing Material)(Visa-2)	\$138.77	\$138.77	\$213.77	1-Oct-03
18	Lowe's (Electrical Materials & Fixtures)	\$111.16	\$111.16	\$111.16	21-Oct-03

**TRIAL COURT'S RECORD ON APPEAL**

<b>INVOICES THRU 28-Jun-04</b>					
CODE	ON-SITE CONSTRUCTION	INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS	AMOUNT	PAYMENTS	CARD ACT	DATE
18	Labor (Dean Yates) Week of 10/20	\$100.00	\$100.00	\$0.00	24-Oct-03
18	Labor (Dean Yates) Week of 10/27 Lay-Check	\$100.00	\$100.00	\$0.00	31-Oct-03
18	Fairfield Electric (Underground Serv)	\$96.00	\$0.00	\$0.00	5-Dec-03
18	Fairfield Electric (Underground Serv)	\$255.00	\$0.00	\$0.00	10-Dec-03
18	Fairfield Electric	\$255.00	\$0.00	\$0.00	10-Dec-03
18	Home Depot	\$70.75	\$70.75	\$70.75	2-Feb-04
18	Blythewood Ace Hdw	\$154.21	\$154.21	\$154.21	2-Feb-04
18	Home Depot	\$82.60	\$82.60	\$82.60	6-Feb-04
18	Home Depot (April Invoices)	\$426.00	\$0.00	\$0.00	7-Apr-04
18	Lowe's	\$12.14	\$0.00	\$0.00	17-Apr-04
18	Home Depot	\$185.27	\$0.00	\$0.00	17-Apr-04
18	Ace Hdw	\$2.78	\$0.00	\$0.00	17-Apr-04
18	Fairfield Electric	\$15.90	\$0.00	\$0.00	17-Apr-04
18	Home Depot	\$137.27	\$0.00	\$0.00	17-Apr-04
18	Home Depot	\$107.14	\$0.00	\$0.00	17-Apr-04
18	Lowe's	\$16.87	\$0.00	\$0.00	17-Apr-04
18	Labor (Dean Yates) Week of 3/14	\$280.00	\$0.00	\$0.00	17-Apr-04
18	Labor (Dean Yates) Week of 5/10	\$280.00	\$0.00	\$0.00	14-May-04
18	Labor (Mike Sullivan) Week of 5/10	\$200.00	\$0.00	\$0.00	14-May-04
18	Labor (Dean Yates) Week of 5/17	\$280.00	\$0.00	\$0.00	21-May-04
18	Labor (Kenny Sims) Week of 5/17	\$100.00	\$0.00	\$0.00	21-May-04
18	Labor (Mike Sullivan) Week of 5/17	\$200.00	\$0.00	\$0.00	21-May-04
19	Labor (Patty Smith)	\$10.00	\$10.00	\$0.00	22-Jul-03
19	Labor (Randy Edwards) Week of 9/1	\$100.00	\$100.00	\$0.00	5-Sep-03
19	Labor (Randy Edwards) Week of 9/1	\$65.00	\$65.00	\$0.00	5-Sep-03
19	Lowe's (Trim Paint )	\$47.76	\$47.76	\$47.76	5-Sep-03
19	Labor (Randy Edwards) Week of 9/15	\$164.00	\$164.00	\$0.00	19-Sep-03
19	Labor (Randy Edwards) Week of 9/22	\$50.00	\$50.00	\$0.00	26-Sep-03
19	Labor (Randy Edwards) Week of 9/29	\$126.00	\$126.00	\$0.00	3-Oct-03
19	Labor (Dean Yates) Week of 2/16	\$280.00	\$280.00	\$0.00	20-Feb-04
19	Home Depot (April Invoices)	\$220.32	\$0.00	\$0.00	7-Apr-04
19	Home Depot (April Invoices)	\$316.00	\$0.00	\$0.00	7-Apr-04
20	Creative Tile Distributors	\$220.00	\$220.00	\$0.00	23-Aug-03
20	The Floor Club (Laminate @ \$1.29) #1018	\$492.44	\$0.00	\$0.00	27-Aug-03
20	The Floor Club (Laminate @ \$1.29)	\$514.69	\$514.69	\$514.69	10-Oct-03
20	Home Depot (Thin Set)	\$33.54	\$33.54	\$0.00	24-Oct-03
20	Lowe's (Tile Instulation Supplies) Lay-AX	\$57.88	\$57.88	\$57.88	27-Oct-03

**TRIAL COURT'S RECORD ON APPEAL**

INVOICES THRU			28-Jun-04			
CODE	ON-SITE CONSTRUCTION		INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS		AMOUNT	PAYMENTS	CARD ACT	DATE
20	Labor (Dean Yates) Week of 10/27	Lay-Check	\$100.00	\$100.00	\$0.00	31-Oct-03
20	Labor (Dean Yates) Week of 11/3	Lay-Check	\$100.00	\$100.00	\$0.00	7-Nov-03
20	The Floor Club (Carpet & Pad)		\$1,633.28	\$0.00	\$0.00	26-May-04
20	Labor (Dean Yates) Week of 5/24		\$280.00	\$0.00	\$0.00	28-May-04
20	Labor (Kenny Sims) Week of 5/24		\$100.00	\$0.00	\$0.00	28-May-04
20	Labor (Mike Sullivan) Week of 5/24		\$200.00	\$0.00	\$0.00	28-May-04
20	Labor (Dean Yates) Week of 5/31		\$280.00	\$0.00	\$0.00	4-Jun-04
20	Labor (Kenny Sims) Week of 5/31		\$100.00	\$0.00	\$0.00	4-Jun-04
20	Southeastern Carpet Installations	#1069	\$522.00	\$0.00	\$0.00	7-Jun-04
20	The Floor Club (Carpet & Pad)		\$178.44	\$0.00	\$0.00	8-Jun-04
21	Hardaway Concrete		\$661.50	\$0.00	\$0.00	14-Dec-03
21	Labor (Dean Yates) Week of 3/21		\$280.00	\$0.00	\$0.00	17-Apr-04
21	Jasper Tucker Concret Labor		\$175.00	\$0.00	\$0.00	17-Apr-04
22	Diesel Fuel (Sharp)		\$13.99	\$13.99	\$13.99	14-Oct-03
22	Spring Valley Ace Hdw		\$52.47	\$52.47	\$52.47	2-Feb-04
22	Haskle Able Landscaping (Sprig Grass)		\$550.00	\$0.00	\$0.00	18-Feb-04
22	Yard Store		\$19.95	\$0.00	\$0.00	17-Apr-04
22	Yard Store		\$15.75	\$0.00	\$0.00	17-Apr-04
22	Labor (Kenny Sims) Week of 6/21		\$100.00	\$0.00	\$0.00	4-Jun-04
22	Labor (Dean Yates) Week of 6/14		\$280.00	\$0.00	\$0.00	18-Jun-04
22	Turbiville Sod Company		\$714.44	\$0.00	\$0.00	23-Jun-04
22	Lowe's Shrubbery		\$96.34	\$0.00	\$0.00	23-Jun-04
22	Labor (Dean Yates) Week of 6/21		\$280.00	\$0.00	\$0.00	25-Jun-04
23	Pep Boys 750-0294 (Van Starter)		\$55.64	\$55.64	\$55.64	15-Jul-03
23	Lowe's (Water Hose & Supplies)		\$98.82	\$98.82	\$148.13	16-Jul-03
23	Labor (Wallace Edwards)		\$40.00	\$40.00	\$0.00	16-Jul-03
23	Blythewood Hardware (Locks & Chain)		\$24.31	\$24.31	\$24.31	16-Jul-03
23	Gas Blazer (Exxon)		\$16.88	\$16.88	\$16.88	16-Jul-03
23	McDonalds		\$6.42	\$6.42	\$0.00	16-Jul-03
23	Blythewood IGA		\$3.25	\$3.25	\$0.00	16-Jul-03
23	Pep Boys Auto Parts (Van Brake Parts)		\$13.61	\$13.61	\$0.00	19-Jul-03
23	Advanced Auto Parts (S-10 Brake Shoes)		\$11.79	\$11.79	\$0.00	19-Jul-03
23	Advanced Auto Parts (S-10 Oil & Treatment)		\$9.96	\$9.96	\$0.00	19-Jul-03
23	Bank of America July Fees		\$61.58	\$61.58	\$61.58	24-Jul-03
23	Lunch (BoJangles)		\$15.00	\$15.00	\$0.00	24-Jul-03
23	Gas Blazer (Piney Grove Speedway)		\$20.00	\$20.00	\$20.00	25-Jul-03
23	Auto Maint. (Advanced Auto)		\$17.72	\$17.72	\$17.72	25-Jul-03

**TRIAL COURT'S RECORD ON APPEAL**

INVOICES THRU 28-Jun-04					
CODE	ON-SITE CONSTRUCTION	INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS	AMOUNT	PAYMENTS	CARD ACT	DATE
23	Shell (Ice & Drinks)	\$9.32	\$9.32	\$0.00	30-Jul-03
23	Ice & Lunch Week of 7/28	\$70.84	\$70.84	\$0.00	1-Aug-03
23	Midlands Tech Book Store #1005	\$48.00	\$0.00	\$0.00	5-Aug-03
23	Gas Blazer (Clamson Rd)	\$25.00	\$25.00	\$25.00	7-Aug-03
23	Ice & Lunch Week of 8/4	\$67.36	\$67.36	\$0.00	8-Aug-03
23	Bank of America July Payment #1006	\$150.00	\$0.00	\$0.00	12-Aug-03
23	Gas Blazer (Parklane Rd) #1009 Void	\$22.50	\$22.50	\$22.50	13-Aug-03
23	Insurance (Nationwide) #1021	\$200.00	\$0.00	\$0.00	14-Aug-03
23	Ice & Lunch Week of 8/11	\$82.10	\$82.10	\$0.00	15-Aug-03
23	Bojangles & Misc.	\$20.69	\$20.69	\$0.00	16-Aug-03
23	Columbia Cookery	\$25.09	\$25.09	\$25.09	18-Aug-03
23	Gas Blazer (Sharp Shop Blythewood)	\$26.58	\$26.58	\$26.58	19-Aug-03
23	Verizon Office Phone #1016	\$125.00	\$0.00	\$0.00	22-Aug-03
23	Eckerd (Pictures)	\$42.02	\$0.00	\$0.00	22-Aug-03
23	Ice & Lunch Week of 8/18	\$94.78	\$94.78	\$0.00	22-Aug-03
23	Columbia Cookery	\$16.86	\$16.86	\$16.86	23-Aug-03
23	Gas Blazer (Sharp Shop Blythewood)	\$24.00	\$24.00	\$24.00	25-Aug-03
23	Pep Boys (Valve Treatment Mazda)	\$8.99	\$8.99	\$0.00	27-Aug-03
23	Ice & Lunch Week of 8/25	\$90.45	\$90.45	\$0.00	29-Aug-03
23	Hardies	\$7.93	\$7.93	\$0.00	4-Sep-03
23	Ice & Lunch Week of 9/1	\$87.48	\$87.48	\$0.00	5-Sep-03
23	Ice & Lunch Week of 9/08	\$118.05	\$118.05	\$0.00	12-Sep-03
23	Fairfield Electric #1026	\$25.00	\$0.00	\$0.00	15-Sep-03
23	Bojangles (Lunch)	\$7.48	\$7.48	\$0.00	15-Sep-03
23	Sharp Shoppe (Ice & Drinks)	\$13.70	\$13.70	\$0.00	16-Sep-03
23	Sharp Shoppe (Ice & Drinks)	\$13.70	\$13.70	\$0.00	16-Sep-03
23	Sub Station II (Lunch)	\$10.54	\$10.54	\$0.00	16-Sep-03
23	Gas Blazer (Sharp Shop Blythewood)	\$21.91	\$21.91	\$21.91	17-Sep-03
23	Bojangles (Lunch)	\$13.90	\$13.90	\$0.00	17-Sep-03
23	Pitt Stop #3 (Ice & Drinks)	\$3.22	\$3.22	\$0.00	19-Sep-03
23	Ice & Lunch Week of 9/15	\$94.12	\$94.12	\$0.00	19-Sep-03
23	Office Depot (File Supplies)	\$10.56	\$10.56	\$0.00	20-Sep-03
23	Wachovia Bank Interest Pmt #1030	\$461.57	\$0.00	\$0.00	22-Sep-03
23	MannTool & Supply (Charger)	\$10.19	\$10.19	\$0.00	25-Sep-03
23	Ice & Lunch Week of 9/22	\$62.57	\$62.57	\$0.00	26-Sep-03
23	Gas Blazer (Sharp Shop)	\$23.25	\$23.25	\$23.25	30-Sep-03
23	Mid Carolina Elect #1033	\$100.00	\$0.00	\$0.00	1-Oct-03

**TRIAL COURT'S RECORD ON APPEAL**

INVOICES THRU 28-Jun-04						
CODE	ON-SITE CONSTRUCTION		INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS		AMOUNT	PAYMENTS	CARD ACT	DATE
23	Ice & Lunch Week of 9/29		\$56.70	\$56.70	\$0.00	3-Oct-03
23	Lowe's (Tools) (Lowe's Card)		\$23.86	\$23.86	\$0.00	5-Oct-03
23	Gas Blazer (Two Notch)		\$10.00	\$10.00	\$10.00	10-Oct-03
23	Gas Van (Two Notch)		\$35.10	\$35.10	\$35.10	10-Oct-03
23	Ice & Lunch Week of 10/6		\$32.10	\$32.10	\$0.00	10-Oct-03
23	Ice & Lunch Week of 10/13		\$25.47	\$25.47	\$0.00	10-Oct-03
23	Bank of America Payment	AI-Check	\$108.45	\$108.45	\$0.00	18-Oct-03
23	Nationwide Insurance	#1039	\$78.45	\$0.00	\$0.00	24-Oct-03
23	Gas Van (Broad River Race Track)		\$22.50	\$22.50	\$22.50	28-Oct-03
23	Lunch (IHOP)(DLW Deed)		\$21.69	\$21.69	\$0.00	28-Oct-03
23	Nationwide Insurance	#1041	\$102.00	\$0.00	\$0.00	30-Oct-03
23	Ice & Lunch Week of 10/27		\$15.00	\$15.00	\$0.00	31-Oct-03
23	Attorney Beth Bernsteen	#1044	\$125.00	\$0.00	\$0.00	3-Nov-03
23	Carolina Trader (Picture Ad)		\$136.00	\$0.00	\$0.00	10-Nov-03
23	Fairfield Electric	#1047	\$200.00	\$0.00	\$0.00	11-Nov-03
23	Lunch, Ice & Misc		\$25.00	\$25.00	\$0.00	14-Nov-03
23	Lunch, Ice & Misc Week of 11/17		\$100.00	\$100.00	\$0.00	21-Nov-03
23	Carolina Trader		\$112.50	\$0.00	\$0.00	1-Dec-03
23	Fairfield Electric	#1113	\$96.00	\$0.00	\$0.00	5-Dec-03
23	Nationwide Insurance		\$75.91	\$75.91	\$75.91	12-Dec-03
23	Master Tire & Auto 714-6773		\$69.95	\$69.95	\$69.95	19-Dec-03
23	Dennis G. Branham	#1127	\$250.00	\$0.00	\$0.00	24-Dec-03
23	Appraisal First Citizens		\$250.00	\$0.00	\$0.00	16-Jan-04
23	Circle K		\$34.27	\$34.27	\$34.27	10-Feb-04
23	Fairfield Electric		\$21.77	\$0.00	\$0.00	20-Feb-04
23	Bell South		\$71.57	\$0.00	\$0.00	14-Mar-04
23	Misc Expenses Week of 4/12		\$50.00	\$0.00	\$0.00	16-Apr-04
23	Nationwide Insurance		\$459.48	\$0.00	\$0.00	17-Apr-04
23	Circle K		\$25.00	\$0.00	\$0.00	17-Apr-04
23	Publix		\$21.06	\$0.00	\$0.00	17-Apr-04
23	Alpine Rd Amoco		\$26.00	\$0.00	\$0.00	17-Apr-04
23	Fairfield Electric		\$61.99	\$0.00	\$0.00	17-Apr-04
23	Lowe's		\$68.22	\$0.00	\$0.00	17-Apr-04
23	Car Quest		\$8.39	\$0.00	\$0.00	17-Apr-04
23	Fairfield Electric		\$21.77	\$0.00	\$0.00	17-Apr-04
23	Sharp Shoppe (Ice & Drinks)		\$10.00	\$0.00	\$0.00	17-Apr-04
23	Misc Expenses Week of 4/19		\$50.00	\$0.00	\$0.00	23-Apr-04

**Plaintiff's Exhibit No.12**

**Consists of a Ledger of all of Partner Alvin Yates Expenditures for "On Site Construction" of Partnership Property, Including a Summary of Code No. 24, Alvin Yates Miscellaneous Accounts showing Estimated Cost (\$1,000), Spent to Date(\$3,925), Yet to Spend (\$0.00), Percent Complete (100%), and Over (\$2,925) Balances through June 28, 2004.**

**Also, Affidavit Testimony Certifying Exhibit No. 12 to be true Accounting of use of Partnership Funds and applicable Case Law.**

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 12**

12. That Partner A. Yates did take an active part in the day to day operation of the partnership as evidences be invoice charges to "Alvin Yates Miscellaneous" under Code No. 24 and individual invoices listed under Code No 24, including expenses for breakfast meetings held at the Lizard's Thicket Restaurants and Dinner meetings held at the Macaroni Grill for the purpose of discussing partnership business and various charges for gas for traveling to and from the job site at 400 Grover Wilson Road in Blythewood, South Carolina which I hereby certify to have been true business expenses which are attached hereto as Plaintiff's Exhibit No. 12.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 12**

Under the Uniform Partnership Act of the State of South Carolina, Code Section 33-41-520 "The partnership books shall be kept, subject to any agreement between the partners, ..... and every partner shall at all times have access to and may inspect and copy any of them"

**TRIAL COURT'S RECORD ON APPEAL**

<b>400 GROVER WILSON RD SPEC HOUSE</b>					<b>28-Jun-04</b>	
<b>CODE</b>	<b>ON-SITE CONSTRUCTION</b>	<b>EST.</b>	<b>SPENT</b>	<b>YET TO</b>	<b>PERCENT</b>	<b>OVER</b>
<b>NO.</b>	<b>BUDGET ITEMS</b>	<b>COST</b>	<b>TO DATE</b>	<b>SPEND</b>	<b>COMPLETE</b>	<b>(UNDER)</b>
1	License, Permits & Bonds	\$ 750	\$ 727	\$ 23	100%	(\$23)
2	Clearing & Grubbing	\$ 1,000	\$ 1,150	\$ -	100%	\$150
3	Water Well, Pump, Tank & Piping	\$ 3,500	\$ 6,231	\$ -	100%	\$2,731
4	Septic Tank & Tile Field	\$ 1,000	\$ 2,624	\$ -	100%	\$1,624
5	Highway Access & Driveway	\$ 1,000	\$ 2,484	\$ -	100%	\$1,484
6	Foundation Layout	\$ 250	\$ 435	\$ -	100%	\$185
7	Foundation Footings	\$ 500	\$ 900	\$ -	100%	\$400
8	Foundation Walls +\$2,000 for Brick	\$ 4,000	\$ 5,185	\$ -	100%	\$1,185
9	Porch & Garage Floor	\$ 500	\$ 645	\$ -	100%	\$145
10	Set Crane & Set Labor	\$ 1,000	\$ 900	\$ 100	100%	(\$100)
11	Interior House Finish	\$ 2,000	\$ 4,501	\$ -	100%	\$2,501
12	Exterior House Finish	\$ 2,000	\$ 3,617	\$ -	100%	\$1,617
13	Panelized Garage Set & Finish	\$ 2,225	\$ 7,380	\$ -	100%	\$5,155
14	Automatic Garage Door	\$ 1,000	\$ 1,247	\$ -	100%	\$247
15	Front Porch Framing	\$ 750	\$ 2,018	\$ -	100%	\$1,268
16	Rear Deck & Banisters	\$ 1,000	\$ 1,481	\$ -	100%	\$481
17	Heating & Air Conditioning	\$ 5,000	\$ 5,500	\$ -	100%	\$500
18	Plumbing, Electrical & Range	\$ 1,500	\$ 4,267	\$ -	100%	\$2,767
19	Cleaning & Painting	\$ 1,000	\$ 1,379	\$ -	100%	\$379
20	Carpet, Vinyl & Tile	\$ 5,500	\$ 4,812	\$ 688	100%	(\$688)
21	Walks & Steps	\$ 500	\$ 1,117	\$ -	100%	\$617
22	Landscaping Shrubbery & Grass	\$ 1,000	\$ 2,123	\$ -	100%	\$1,123
23	Miscellaneous Job Cost +\$1,000	\$ 2,000	\$ 6,274	\$ -	100%	\$4,274
24	Alvin Yates Miscellaneous	\$ 1,000	\$ 3,925	\$ -	100%	\$2,925
25	Larry Yates Miscellaneous	\$ 1,000	\$ 3,536	\$ -	100%	\$2,536
<b>TOTAL ON-SITE COST</b>		<b>\$ 38,975</b>	<b>\$ 66,997</b>	<b>\$ 811</b>	<b>172%</b>	<b>\$28,022</b>

**TRIAL COURT'S RECORD ON APPEAL**

<b>INVOICES THRU 28-Jun-04</b>						
CODE	ON-SITE CONSTRUCTION		INVOICE	CASH	CREDIT	INVOICE
NO.	COST ITEMS		AMOUNT	PAYMENTS	CARD ACT	DATE
23	Misc Expenses Week of 4/26		\$50.00	\$0.00	\$0.00	30-Apr-04
23	Misc Expenses Week of 5/3		\$50.00	\$0.00	\$0.00	7-May-04
23	Misc Expenses Week of 5/10		\$50.00	\$0.00	\$0.00	14-May-04
23	Misc Expenses Week of 5/17		\$50.00	\$0.00	\$0.00	21-May-04
23	Fairfield Electric		\$178.00	\$0.00	\$0.00	25-May-04
23	Misc Expenses Week of 5/24		\$50.00	\$0.00	\$0.00	28-May-04
23	Misc Expenses Week of 5/31		\$50.00	\$0.00	\$0.00	4-Jun-04
23	Misc Expenses Week of 6/7		\$50.00	\$0.00	\$0.00	11-Jun-04
23	Bell South		\$115.28	\$0.00	\$0.00	14-Jun-04
23	Misc Expenses Week of 6/14		\$50.00	\$0.00	\$0.00	18-Jun-04
23	Misc Expenses Week of 6/21		\$50.00	\$0.00	\$0.00	25-Jun-04
24	Gas AY (Union 76)		\$19.25	\$19.25	\$19.25	11-Jul-03
24	Gas AY (Exxon)		\$18.07	\$18.07	\$18.07	16-Jul-03
24	Macaroni Grill Dinner Meeting		\$24.50	\$24.50	\$24.50	19-Jul-03
24	Office Depot (File Supplies)		\$11.35	\$11.35	\$0.00	19-Jul-03
24	Breakfast Meeting		\$10.00	\$10.00	\$0.00	27-Jul-03
24	Gas AY (Sharp Shoppe)		\$20.00	\$20.00	\$20.00	28-Jul-03
24	Gas AY (Sharp Shoppe)		\$21.66	\$21.66	\$21.66	2-Aug-03
24	Alvin Yates	#1007	\$2,500.00	\$0.00	\$0.00	13-Aug-03
24	Alvin Yates	#1010	\$1,000.00	\$0.00	\$0.00	13-Aug-03
24	Gas AY (Circle K 76)	#1012 Void	\$17.50	\$17.50	\$17.50	14-Aug-03
24	Gas AY (Sharp Shop Blythewood)		\$18.00	\$18.00	\$18.00	27-Aug-03
24	Lizard's Thicket (Breakfast Meeting)		\$12.36	\$12.36	\$0.00	20-Sep-03
24	Built Rite Garage Doors		\$196.25	\$0.00	\$0.00	23-Sep-03
24	Gas AY (Cromer Rd Amoco)		\$20.22	\$20.22	\$20.22	31-Oct-03
24	Gas AY (Alpine Rd Amoco)		\$18.04	\$18.04	\$18.04	7-Nov-03
24	Gas AY (Sharp Shoppe)		\$18.23	\$18.23	\$18.23	10-Nov-03
25	Boyle Vaughn BB&T (Permit Bond)		\$100.00	\$100.00	\$0.00	1-Jul-03
25	Gas LAY (/shell)		\$10.00	\$10.00	\$10.00	15-Jul-03
25	Gas LAY (Gaz-Bah)		\$10.75	\$10.75	\$10.75	16-Jul-03
25	Gas LAY (Gaz-Bah)		\$17.53	\$17.53	\$17.53	18-Jul-03
25	Macaroni Grill Dinner Meeting		\$24.50	\$24.50	\$24.50	19-Jul-03
25	Office Depot (File Supplies)		\$11.35	\$11.35	\$0.00	19-Jul-03
25	Gas LAY (Gaz Bah)		\$17.75	\$17.75	\$17.75	21-Jul-03
25	Gas LAY (76 Circle K)		\$17.75	\$17.75	\$17.75	23-Jul-03
25	Gas LAY (Gaz Bah)		\$10.00	\$10.00	\$10.00	25-Jul-03
25	Labor (Dean Yates)		\$36.00	\$20.00	\$0.00	27-Jul-03

Plaintiff's Exhibit No. 13

Consists of an Itemized Accounting of and Reimbursement Adjustments of Partnership Expenses paid from Alvin Yates' Personal Account or Alvin Yates' Personal Expenses paid from Partnership's Construction Account.

Also, a Partnership's Construction Account Check made payable to Alvin Yates in an Amount of \$4,566.81.

Also, Affidavit Testimony and Applicable Case Law.

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 13**

13. That the partnership did use partnership funds secured from Wachovia Bank, for reimbursing partner A. Yates for personal money's that he had contributed to the partnership construction account, as evidenced by partner Larry Yates' April 29, 2004 letter of accounting which itemizes various contributions totaling \$4,566.81 and payment of same by "Al Yates & Larry Yates Construction Account" check No. 1053, which I certify to be true copies of the April 29, 2004 "Letter of Accounting" & Al Yates & Larry Yates Construction Account Check No. 1053, and which I now move to be entered into evidence as Plaintiff's Exhibit No. 13.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 13**

Under the Uniform Partnership Act of the State of South Carolina, Code Section 33-41-520 "The partnership books shall be kept, subject to any agreement between the partners, ..... and every partner shall at all times have access to and may inspect and copy any of them.

**TRIAL COURT RECORD ON APPEAL**

**L.A. Yates & Associates**

**PO Box 11008, Columbia, SC 29211**

**Phone: 800-831-1885 - Fax: 803-750-9673**

April 29, 2004

Mr. Alvin Yates  
612 Ashwood Cir  
West Columbia, SC 29169

Dear Al:

Please find enclosed a check in the amount of \$4,566.81 as reimbursement for the personal moneys you have contributed to our construction account. The contributions are itemized for your records as follows:

Check No	Date	Payment to:	Amount
BOA #2037	09/23/03	Construction Acct from GM Card \$6,000 Loan.	\$ 3,000.00
Deposit	11/15/03	GM Card Credit from Providian Credit Card.	(\$ 2,000.00)
BOA #2050	09/30/03	Wachovia Equity Line Payment.	\$ 1,000.00
BOA #2054	09/30/03	Bank of America Credit Card Payment.	\$ 300.00
BOA #2066	12/03/03	Contribution to Mid-Atlantic \$20,000 Payment.	\$ 1,000.00
Online Pmt	12/16/03	Bank of America Credit Card Payment.	\$ 150.00
Deposit	12/17/03	Construction Acct Reimbursement Payment.	(\$ 1,150.00)
BOA #2091	02/28/04	First Citizens Equity Line Payment.	\$ 1,000.00
Online Pmt	02/28/04	Bank of America Credit Card Payment.	\$ 100.00
Online Pmt	03/19/04	Bank of America Credit Card Payment.	\$ 500.00
BOA #2112	04/12/04	First Citizens Equity Line Payment.	\$ 89.81
BOA Phone	04/15/04	Providian Credit Card Payment.	\$ 152.00
Online Pmt	04/19/04	Bank of America Credit Card Payment.	\$ 425.00
<b>TOTAL REIMBURSEMENT AMOUNT</b>			<b>\$ 4,566.81</b>

Please update your records to reflect this reimbursement payment.

Sincerely,  
L.A. Yates & Associates

**ALVIN YATES  
LARRY YATES  
CONSTRUCTION ACCOUNT  
3504 Sidney Road  
Columbia, SC 29210**

April 29, 2004

1053

87-778/532  
BRANCH 58005

Date

Pay to the Order of Alvin Yates

\$ 4,566.81

Four Thousand Five Hundred Sixty Six and 81/100



**WACHOVIA**  
Wachovia Construction Account  
ACH/PAY POSSESSOR

For Reimbursement

⑆053207766⑆ ⑆010082248400⑆ 1053

168

Larry A. Yates

803-917-6224

**Plaintiff's Exhibit No. 14**

**Consists of a Property Appraisal of the Partnership's Property by Certified Appraisal Services, estimating the value of the Partnership Property to be \$235,000 as of July 20, 2004.**

**Also, Affidavit Testimony and Applicable Case Law.**

17 1912 401-3301 331 18 11 12 13

**AFFIDAVIT TESTIMONY AS TO PLAINTIFF'S EXHIBIT NO. 14**

14. That the partnership did receive an evaluation appraisal of the partnership property, as of July 20, 2004, from "Certified Appraisal Services, Inc." which gave an evaluation of the value for the house and lot at 400 Grover Wilson Road, Blythewood, SC to be \$235,000. I move that this appraisal be entered into evidence as Plaintiff's Exhibit No. 14. as evidenced by a copy of the Certified Appraisal which is attached hereto, as Plaintiff's Exhibit No. 14.

**CASE LAW AS TO PLAINTIFF'S EXHIBIT NO. 14**

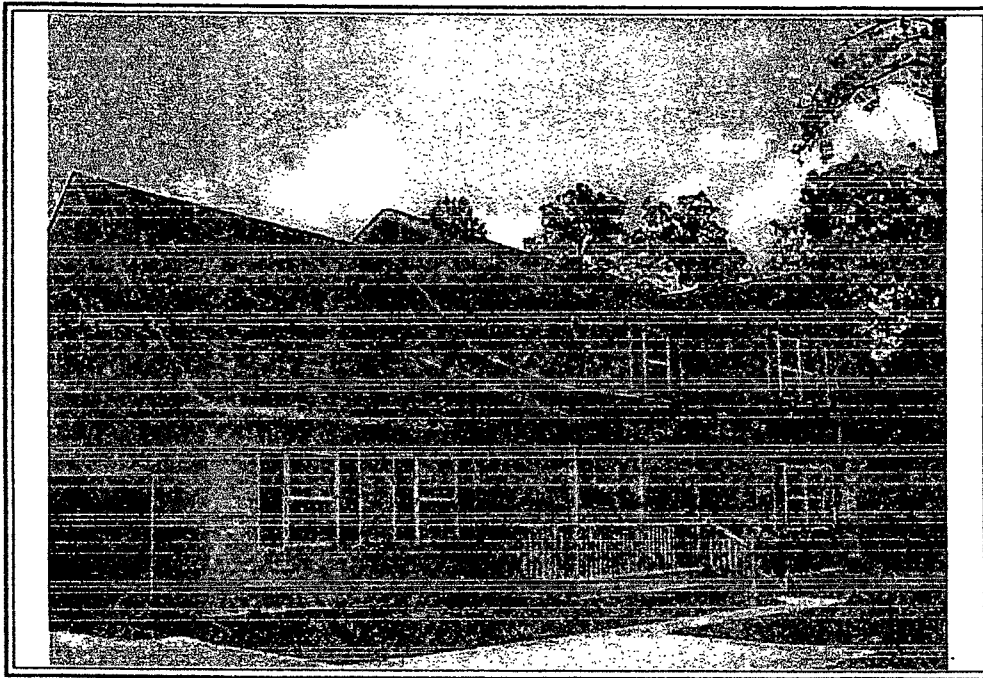
Under the Uniform Partnership Act of the State of South Carolina Code Section 33-41-230 paragraph (1) reads that "All property originally brought into the partnership ... or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property."

And paragraph (2) reads that "Unless the contrary intention appears property acquired with partnership funds is partnership property."

In Stephens v. Stephens, *property bought with partnership funds, belongs to partnership.* (Stephens v. Stephens, 50 S.E.2<sup>nd</sup> 577, 213 S.C. 1525)

Also, in a North Carolina case of Jones v. Shoji, "all property purchased on account of partnership is partnership property unless contrary intentions appears. (Jones v. Shoji, 428 S.E.2d 865, 110 N.C.App. 48)

**APPRAISAL OF**



**LOCATED AT:**

400 Grover Wilson Road  
Blythewood, SC 29016

**AS OF:**

July 20, 2004

**BY:**

John W. Buckley, AREA

**TRIAL COURT RECORD ON APPEAL**

**Certified Appraisal Services, Inc.  
154 Wilcox Road Blythewood, SC 29016**

**Yates  
File No. CA-7196**

**First Citizens Bank  
201 Blythewood Rd  
Blythewood, SC 29016**

**File Number: CA-7196**

**In accordance with your request, I have personally inspected and appraised the real property at:**

**400 Grover Wilson Road  
Blythewood, SC 29016**

**The purpose of this appraisal is to estimate the market value of the subject property, as improved.  
The property rights appraised are the fee simple interest in the site and improvements.**

**In my opinion, the estimated market value of the property as of July 20, 2004 is:**

**\$235,000  
Two Hundred Thirty-Five Thousand Dollars**

**The attached report contains the description, analysis and supportive data for the conclusions,  
final estimate of value, descriptive photographs, limiting conditions and appropriate certifications.**

**John W. Buckley, AREA**

**154 Wilcox Road, Blythewood, SC 29016 803 - 714-9911 - 803 - 714-1188**

**UNIFORM RESIDENTIAL APPRAISAL REPORT**

Valuation Section

ESTIMATED SITE VALUE	= \$	20,000	Comments on Cost Approach (such as, source of cost estimate, site value, square foot calculation and for HUD, VA and FmHA, the estimated remaining economic life of the property): <b>Cost Approach taken from current Marshall and Swift Cost Guide. Some amenities from local trade rates. Site value interpolated from tax records and site offerings in area.</b>
ESTIMATED REPRODUCTION COST-NEW OF IMPROVEMENTS:			
Dwelling 2,572 Sq. Ft. @ \$ 74.33	= \$	191,177	
Bsmnt. 0 Sq. Ft. @ \$	=	0	
CPO, Deck	=	3,643	
Garage/Carport 568 Sq. Ft. @ \$ 24.63	=	13,990	
Total Estimated Cost New	= \$	208,810	

ITEM	SUBJECT	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
400 Grover Wilson Road Address Blythewood		113 Locklier Blythewood		111 Michael Road Blythewood		6 Black Oak Court Blythewood	
Proximity to Subject		6.0-6.5 Miles South West		4.0-4.5 Miles West		7.5 - 7.8 Mi. Southwest	
Sales Price	\$ N/A	\$ 232,500		\$ 190,000		\$ 249,100	
Price/Gross Liv. Area	\$ 0.00 /sq ft	\$ 98.31 /sq ft		\$ 91.17 /sq ft		\$ 108.98 /sq ft	
Date and/or Verification Sources	Inspection Public Records	MLS# 112527 Public Records		MLS# 105629 Public Records		MLS#100432/Curbside Insp. Public Records	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(+) \$ Adjustment	DESCRIPTION	+(+) \$ Adjustment	DESCRIPTION	+(+) \$ Adjustment
Sales or Financing Concessions	0.00 N/A	Conv, Unk CC DOM 77		Conv, Unk CC DOM 213		Conv, CC Buyer DOM 41	
Date of Sale/Time	N/A	06/15/2004		05/27/2004		10/08/2003	
Location	Suburban	Suburban		Suburban		Suburban	
Leasehold/Fee Simple	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Site	1.53 Acres +/-	2.07 Acres +/-	-2,700	2.38 Acres +/-	-4,250	1.37 Acres +/-	+800
View	Resident/Woods	Resident/Pond	-5,000	Resident/Woods		Resident/Woods	
Design and Appeal	2-Story/Avg	1-Story/Avg		2-Story/Avg		Traditional/Avg	
Quality of Construction	Good/Vinyl	Good/Vinyl		Good/Vinyl		Good/Brick	-4,658
Age	0 Years	6-12	+1,800	13-20	+3,900	New	
Condition	New	Good	+11,625	Average	+19,000	New/Very Good	-12,455
Above Grade Room Count	Total: 35 Bdrms: 7 Baths: 4 3F1H	Total: 7 Bdrms: 4 3F	+1,500	Total: 7 Bdrms: 3 2F1H	+3,000	Total: 7 Bdrms: 3 2F1H	+3,000
Gross Living Area	2,572 Sq.Ft.	2,385 Sq.Ft.	7,200	2,084 Sq.Ft.	17,100	2,329 Sq.Ft.	8,500
Basement & Finished Rooms Below Grade	0 Sq.Ft. 0	0 0		0 0		0 0	0 0
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	FWA C/Air	FWA C/Air		FWA C/Air		FWA C/Air	
Energy Efficient Items	IGlass/Fans	IGlass/Fans		IGlass/Fans		IGlass/Fans	
Garage/Carport	2 Att. Garage	2 Att. Garage		2 Att. Garage		2 Att. Garage	
Porch, Patio, Deck, Fireplace(s), etc.	Porch, Deck None	CPO, SPOR 1 Fireplace	-3,000 -1,500	CPO, Deck, SPOR 1 Fireplace	-4,000 -1,500	CPO, Deck, SPOR 1 Fireplace	-4,000 -1,500
Fence, Pool, etc.	None	None		Shed	-800	None	
Net Adj. (total)		[X] + [ ] - \$ 9,925		[X] + [ ] - \$ 32,450		[ ] + [X] - \$ 10,313	
Adjusted Sales Price of Comparable		Gross: 14.8% Net: 4.3% \$ 242,425		Gross: 28.2% Net: 17.1% \$ 222,450		Gross: 14.0% Net: -4.1% \$ 238,787	

Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal:  
**Subject is currently listed on the market for \$234,950 listed 06/11/2004 with seller paying \$3,000 in closing cost - with one withdrawn listing of \$218,900 with 2,550 sq ft listed 08/29/2003.**

INDICATED VALUE BY SALES COMPARISON APPROACH ..... \$ 235,000  
 INDICATED VALUE BY INCOME APPROACH (if Applicable) Estimated Market Rent \$ N/A Mo. x Gross Rent Multiplier N/A = \$ 0

This appraisal is made  "as is"  subject to the repairs, alterations, inspections or conditions listed below  subject to completion per plans and specifications.  
 Conditions of Appraisal: **The market value contained herein assumes that the owner has clear and marketable title to the subject property and that construction will continue in a timely manner.**  
 Final Reconciliation: **See Attached Addendum**

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report, based on the above conditions and the certification, contingent and limiting conditions, and market value definition that are stated in the attached Freddie Mac Form 4381/Fannie Mae Form 1004B (Revised 06/30/93).  
**I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF 07/20/2004 (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 235,000**

APPRaiser: Signature **John W. Buckley, AREA**  
 Name **John W. Buckley, AREA**  
 Date Report Signed \_\_\_\_\_  
 State Certification # \_\_\_\_\_ State **SC**  
 Or State License # **AA 4621** State **SC**

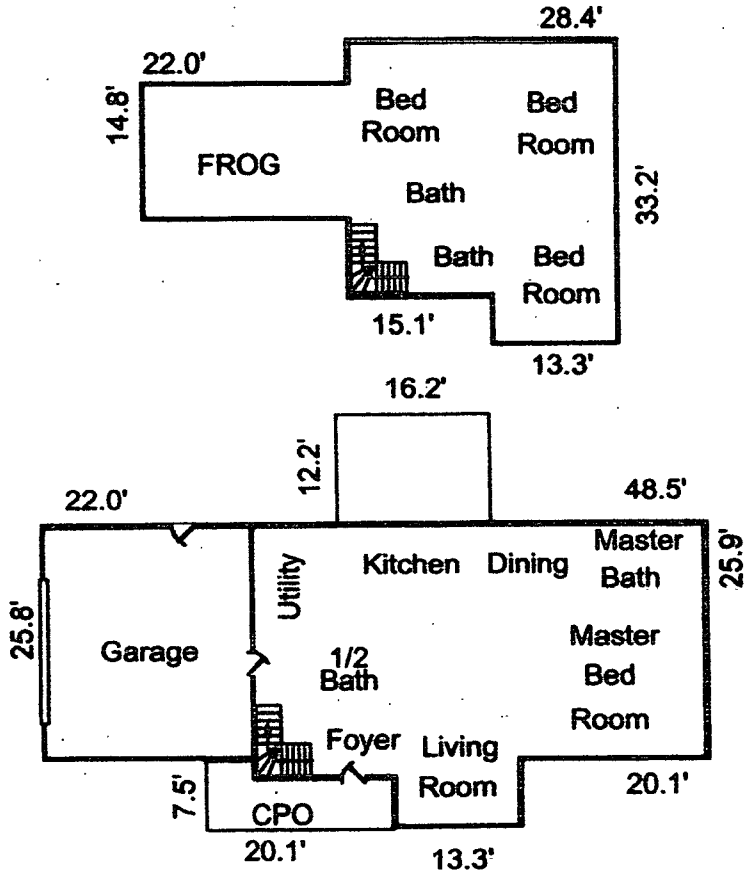
SUPERVISORY APPRAISER (ONLY IF REQUIRED):  
 Signature \_\_\_\_\_  
 Name **William D. Plunkett**  
 Date Report Signed \_\_\_\_\_  
 State Certification # **CR 3123** State **SC**  
 Or State License # \_\_\_\_\_ State \_\_\_\_\_

Did  Did Not Inspect Property



**FLOORPLAN**  
**TRIAL COURT RECORD ON APPEAL**

Borrower: Alvin Yates File No.: CA-7196  
 Property Address: 400 Grover Wilson Road Case No.: Yates  
 City: Blythewood State: SC Zip: 29016  
 Lender: First Citizens Bank



Sketch by Apex IV Windows™

AREA CALCULATIONS SUMMARY			
Code	Description	Size	Totals
GLA1	First Floor	1383.44	1383.44
GLA2	Second Floor	1188.45	1188.45
P/P	CPO	117.28	
	Deck	197.64	314.92
GAR	Garage	567.60	567.60
<b>TOTAL LIVABLE (rounded)</b>			<b>2572</b>

LIVING AREA BREAKDOWN		
Breakdown		Subtotals
<b>First Floor</b>		
13.3 x	33.2	441.56
20.1 x	25.9	520.59
15.1 x	27.9	421.29
<b>Second Floor</b>		
14.8 x	22.0	325.60
13.3 x	33.2	441.56
15.1 x	27.9	421.29
<b>6 Areas Total (rounded)</b>		<b>2572</b>

**SUBJECT PROPERTY PHOTO ADDENDUM**

Borrower: Alvin Yates

Property Address: 400 Grover Wilson Road

City: Blythewood

Lender: First Citizens Bank

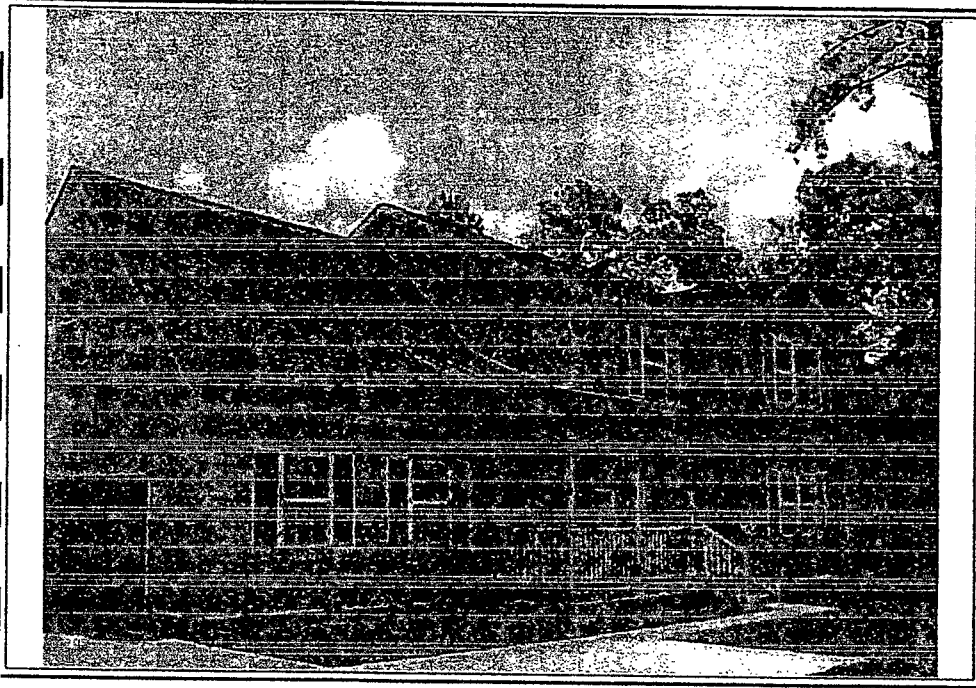
**TRIAL COURT RECORD ON APPEAL**

File No.: CA-7196

Case No.: Yates

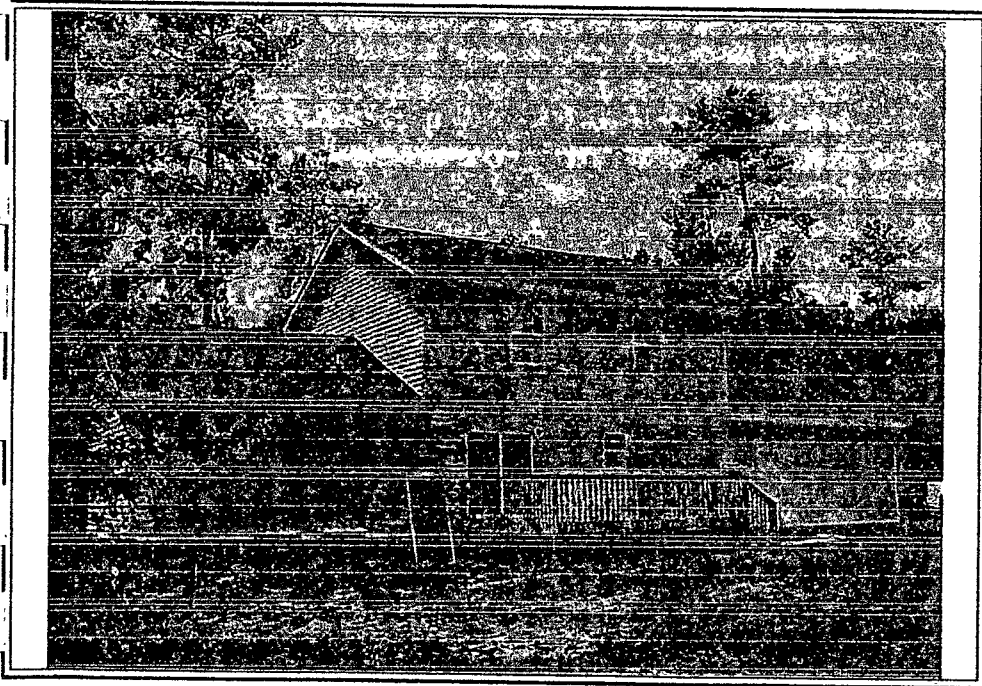
State: SC

Zip: 29016



**FRONT VIEW OF  
SUBJECT PROPERTY**

Appraised Date: July 20, 2004  
Appraised Value: \$ 235,000



**REAR VIEW OF  
SUBJECT PROPERTY**

**Plaintiff's Exhibit No. 15**

**Consists of a Photograph of the  
Partnership Property as it Appeared in  
2009.**

**Also, Affidavit Testimony pertaining to  
all Plaintiff's Exhibits 1 – 14.**

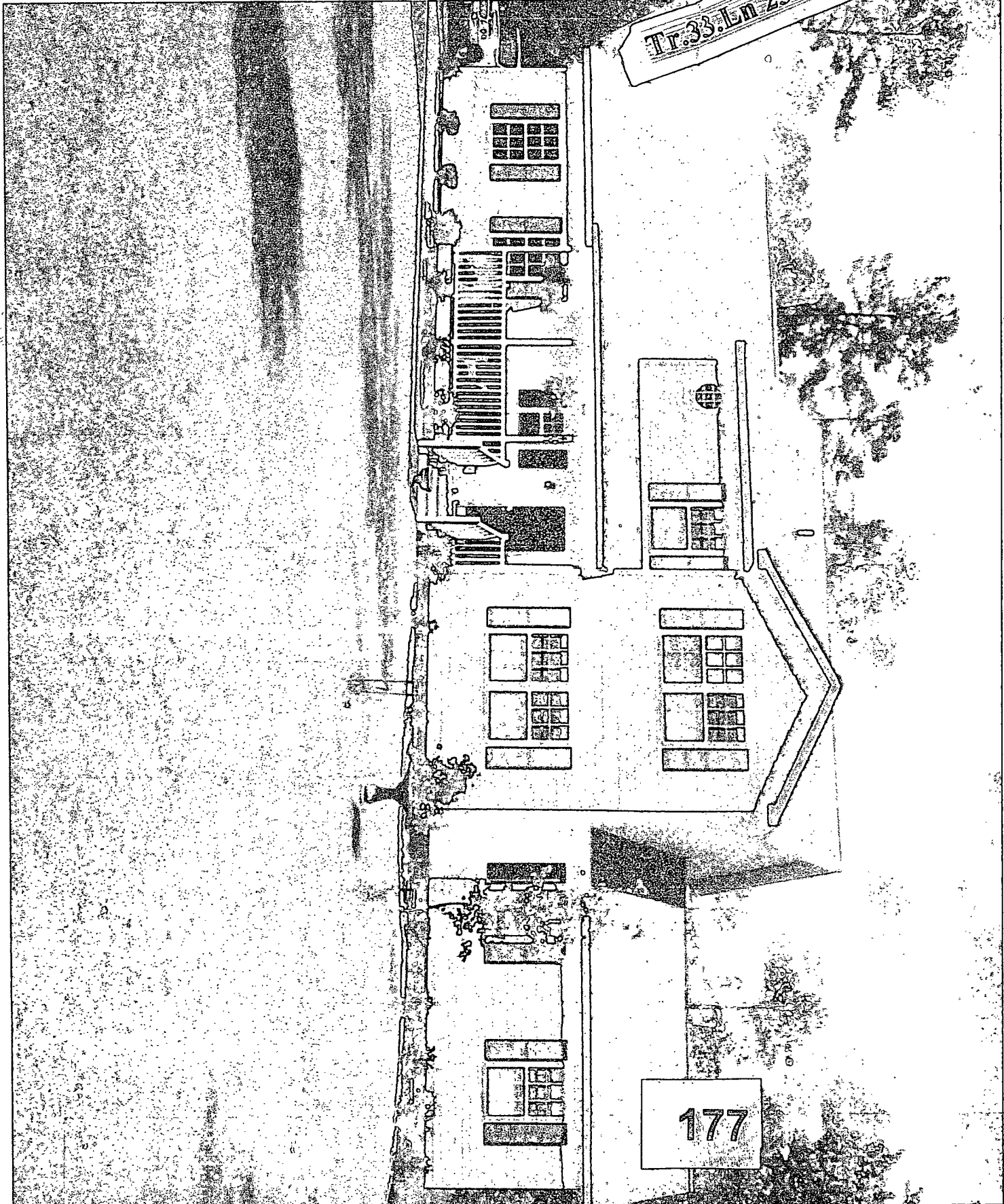
Case No: 2008CP4000009

FILE

Affidavit Testimony of Plaintiff, Larry A. Yates  
Plaintiff's Exhibit No's 1 thru 14

Tr. 33:Ln 23

Exhibit No. 15



177

**TRIAL COURT RECORD ON APPEAL**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Case No: 2008CP4000009

Larry A. Yates, as sole surviving )  
Partner of a Partnership with )  
Alvin Yates, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
The Estate of Alvin Yates, )  
 )  
Defendant. )

AFFIDAVIT TESTIMONY OF  
SOLE SURVIVING PARTNER  
LARRY A. YATES  
IN REFERENCE TO:  
PROJECT PARTNERSHIP AGREEMENT

PERSONALLY appeared before me, Larry A. Yates, who upon being duly sworn, deposes and says as follows:

PLAINTIFF'S EXHIBIT NO. 1

1. I am familiar with the facts and circumstances involving the Partnership that existed between partners Larry A. Yates and Alvin Yates and with the financing and construction of the partnership property located at 400 Grover Wilson Road, in Blythewood, South Carolina, a picture of which is shown on the cover sheet of this document, as it was in 2007, and I hereby certify that the copy of the "Project Partnership Agreement" under which the home was constructed and which is attached hereto as Plaintiff's Exhibit No. 1, is a true copy of the Partnership Agreement that was entered into on July 5, 2003, between Alvin Yates and Larry A. Yates.

PLAINTIFF'S EXHIBIT NO. 2

2. That the partners did apply for and receive a "Prime Equity Line of Credit" secured by residential property, belonging to Alvin Yates, located at 612 Ashwood Circle, in West Columbia, South Carolina, in an amount of \$139,100 from Wachovia Bank, for the expressed purpose of purchasing partnership property, that would become 400 Grover Wilson Road home and property. That the Note securing this Prime Equity Line of Credit was executed and signed by both partners, Larry A. Yates and Alvin Yates, on July 21, 2003, as evidenced by Plaintiff's Exhibit No. 2, which I hereby certify to be a true copy of the "Wachovia Bank, National Association's Prime Equity Line of Credit Agreement & Disclosure Statement," which is also attached hereto as Plaintiff's Exhibit No. 2.

~~TRIAL COURT RECORD ON APPEAL~~  
**PLAINTIFF'S EXHIBIT NO. 3**

3. That the partnership did use the partnership funds secured from Wachovia Bank, for the intended purpose of purchasing partnership property consisting of a 4BR / 3-1/2 Bath modular building systems home, from Signature Building Systems, Inc, of St. George, South Carolina, as evidenced by Plaintiff's Exhibit No. 3, which I hereby certify to be a true copy of the "Final Invoice" dated August 5, 2003, from Signature Building Systems, in the amount of \$75,762.29, which is attached hereto as Plaintiff's Exhibit No.3.

**PLAINTIFF'S EXHIBIT NO. 4**

4. That the partnership did use the partnership funds secured from Wachovia Bank, for the payment of Signature Building Systems' "Final Invoice" by way of a wire transfer advance payment of \$8,000 as a production deposit and by way of a \$67,762.29 Wachovia Bank, Official Check No. 354081369 made payable to Signature Building Systems, Inc., with remitter as Larry and Alvin Yates, as evidenced by Plaintiff's Exhibit No. 4, which I hereby certify to be a true copy of Wachovia Bank's Official Check, dated August 18, 2003, in the amount of \$67,762.29, which is attached hereto as Plaintiff's Exhibit No.4.

**PLAINTIFF'S EXHIBIT NO. 5**

5. That the partnership did use partnership funds secured from Wachovia Bank, for the purchase of a parcel of land containing 1.217 acres, from D.L. Wilson, daughter of partner Larry A. Yates, for which the partnership paid \$5,000 for the transfer of the property into partner Alvin Yates' name in exchange for cash payment of \$5,000 and promise of payment of an additional \$16,200 from the proceeds of the sale of the partnership property, as evidenced by Plaintiff's Exhibit No. 5, which I certify to be a true copy of the Title To Real Estate where D.L. Wilson transferred title to 400 Grover Wilson Road Property to Alvin Yates even though she had not been paid the balance of the \$16,200, which still remains unpaid.

**PLAINTIFF'S EXHIBIT NO. 6**

6. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Clearing of Land for House and Yard" by Robert Hildreth Land Clearing Company as evidenced by Plaintiff's Exhibit No. 6, which I certify to be a true copy of "Service Contract and Invoice" of July 14, 2003 in the amount of \$900.00 and of payment of same by "Al Yates & Larry Yates Construction Account" check No. 0093, dated July 17, 2003, and made payable to Robert Hildreth Land Clearing Company in the amount of \$900.00, both of which are attached hereto, as Plaintiff's Exhibit No. 6.

~~PLAINTIFF'S EXHIBIT NO. 7~~  
**TRIAL COURT RECORD ON APPEAL**

7. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of purchasing "Concrete Block Products" as evidenced by Plaintiff's Exhibit No. 7, which I certify to be a true copy of "Sales Ticket" of Southeastern Concrete Products, July 29, 2003, in the amount of \$642.60 and of "Payment Receipt" of same by "Al Yates & Larry Yates Construction Account" check No. 0098, dated July 28, 2003, and made payable to Southeastern Concrete Products in the amount of \$642.60, both of which are attached hereto, as Plaintiff's Exhibit No. 7.

**PLAINTIFF'S EXHIBIT NO. 8**

8. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of purchasing various other materials for the preparation of brick and block foundation, which included the following; 20.93 tons of stone costing \$329.65 and one load of masonry sand costing \$150.00, from Cripple Creek Corporation with respective payments by way of "Al Yates & Larry Yates Construction Account" checks No. 0099 & 1001; and invoice "Acknowledgement" from Carolina Ceramics for brick & mortar costing \$1,057.77; and Hardaway Concrete Company for pre-mixed concrete costing \$926.10 and paid by "Al Yates & Larry Yates Construction Account" check No. 1027, each of which I certify to be true copies which are attached hereto, as Plaintiff's Exhibit No. 8.

**PLAINTIFF'S EXHIBIT NO. 9**

9. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Crane Rental" from White Crane Company for unloading and setting various sections of the pre-fabricated home that the partnership purchased from Signature Building Systems as evidenced by White Crane Company Work Order No. 002034, Revised Invoice #6293 dated August 22, 2003, for an adjusted price of \$900.00; and payment by "Al Yates & Larry Yates Construction Account" check No. 1020, dated August 29, which I certify to be true copies of the "Work Order", "Revised Invoice" and "Check No. 1020", all of which are attached hereto, as Plaintiff's Exhibit No. 9.

**PLAINTIFF'S EXHIBIT NO. 10**

10. That the partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Vinyl Siding Installation" by Steve McAtee as evidenced by Fax Message from Larry A. Yates, L.A. Yates & Associates accounting for labor amount due and payment thereof by "Al Yates & Larry Yates Construction Account" check No. 1025, dated September 6, 2003, in the amount of \$212.00, which I certify to be true copies of the "Fax Message" & "Check No. 1025", both of which are attached hereto, as Plaintiff's Exhibit No. 10.

~~PLAINTIFF'S EXHIBIT NO. 11~~  
TRIAL COURT RECORD ON APPEAL

11. That as required by Item No. 6 of the Partnership Agreement, partner L. Yates did keep a full and accurate accounting of all project expenditures as evidenced by Plaintiff's Exhibit No. 11 which includes a summary sheet with 25 itemized account estimates and spent totals as calculated from lists of individual invoices, all of which I hereby certify to be a true accounting of use of partnership funds which are attached hereto, as Plaintiff's Exhibit No. 11.

PLAINTIFF'S EXHIBIT NO. 12

12. That Partner A. Yates did take an active part in the day to day operation of the partnership as evidences be invoice charges to "Alvin Yates Miscellaneous" under Code No. 24 and individual invoices listed under Code No 24, including expenses for breakfast meetings held at the Lizard's Thicket Restaurants and Dinner meetings held at the Macaroni Grill for the purpose of discussing partnership business and various charges for gas for traveling to and from the job site at 400 Grover Wilson Road in Blythewood, South Carolina which I hereby certify to have been true business expenses which are attached hereto, as Plaintiff's Exhibit No. 12.

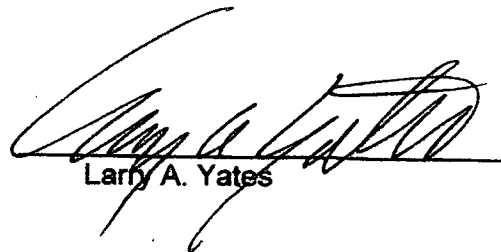
PLAINTIFF'S EXHIBIT NO. 13

13. That the partnership did use partnership funds secured from Wachovia Bank, for reimbursing partner A. Yates for personal money's that he had contributed to the partnership construction account, as evidenced by partner Larry Yates' April 29, 2004 letter of accounting which itemizes various contributions totaling \$4,566.81 and payment of same by "Al Yates & Larry Yates Construction Account" check No. 1053, which I certify to be true copies of the "Letter" & "Check No. 1053", both of which are attached hereto, as Plaintiff's Exhibit No. 10.

PLAINTIFF'S EXHIBIT NO. 14

14. That the partnership did receive an evaluation appraisal of the partnership property, as of July 20, 2004, from "Certified Appraisal Services, Inc." which gave an evaluation of the value for the house and lot at 400 Grover Wilson Road, Blythewood, SC to be \$235,000 as evidenced by a copy of the Certified Appraisal which is attached hereto, as Plaintiff's Exhibit No. 14.

Further the Affiant sayeth not.

  
Larry A. Yates

Sworn to before me this

This the 7th day April, 2009

Paula M Flake  
Notary Public for South Carolina  
My Commission Expires: 9/3/12

**Answer**

**Defendant's January 15, 2008, Answer  
to Plaintiff's Complaint.**



## TRIAL COURT RECORD ON APPEAL

8. Paragraph 8 is denied and strict proof demanded thereof.
9. Paragraph 9 is denied and strict proof demanded thereof.
10. So much of Paragraph 10 is admitted as alleges Alvin Yates executed a Note and Mortgage with First Citizens Bank and Trust Company, Inc. The remainder of said Paragraph is denied and strict proof demanded thereof.
11. Paragraph 11 is denied and strict proof demanded thereof.
12. Defendant lacks sufficient information to admit the allegations of Paragraph 12 and therefore denies the same and demands strict proof thereof.
13. Paragraph 13 is denied and strict proof demanded thereof.
14. Paragraph 14 is denied and strict proof demanded thereof.
15. So much of Paragraph 15 is admitted as alleges Alvin Yates died April 16, 2005. The remainder of said Paragraph is denied and strict proof demanded thereof.
16. Paragraph 16 is admitted.
17. So much of Paragraph 17 is admitted as alleges there is certain real property listed as an asset in the documents filed with the Probate Court in Lexington County. The remainder of said Paragraph is denied and strict proof demanded thereof.
18. Paragraph 18 is denied and strict proof demanded thereof.
19. Paragraph 19 is denied and strict proof demanded thereof.
20. Paragraph 20 is denied and strict proof demanded thereof.
21. Paragraph 21 is denied and strict proof demanded thereof.
22. Paragraph 22 is denied and strict proof demanded thereof.

**WHEREFORE**, having fully answered the Summons and Complaint in this action,

**TRIAL COURT RECORD ON APPEAL**

Defendant prays the same be dismissed with costs, and judgement entered in favor of the Defendant, Estate of Alvin Yates; and for such other and further relief as the Court shall deem just and equitable.



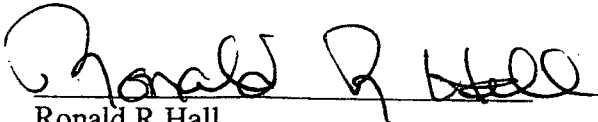
January 15, 2008

Ronald R. Hall  
Attorney for Defendant  
Hall & Hall Attorney's at Law  
1055 Sunset Blvd  
West Columbia, SC 29169  
TEL: 803-791-3196  
FAX: 803-791-8754  
E-Mail: [ronh311@ix.netcom.com](mailto:ronh311@ix.netcom.com)

\*\*\*\*\*

THE UNDERSIGNED herewith certifies he did on the 15 Day of January, 2008, deliver a copy of the foregoing ANSWER to the Plaintiff, Larry A Yates, *pro se*, by depositing a copy fo the same in the U.S. Mail, postage prepaid, Return Address clearly shown on the outside of the envelope, addressed to:

Larry A Yates  
612 Ashwood Circle  
West Columbia, SC 29169



Ronald R Hall  
Attorney for Defendant

**Complaint**

**Plaintiff's January 2, 2008, Complaint.**

TRIAL COURT RECORD ON APPEAL

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Larry A. Yates, as sole surviving )  
Partner of a Partnership with )  
Alvin Yates, )

**2008CP4000009**

Plaintiff, )

vs. )

COMPLAINT

The Estate of Alvin Yates, )  
Wachovia Bank, N.A., and )  
First Citizens Bank & Trust )

(NON-JURY MATTER IN EQUITY)

Defendants. )

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a resident of Lexington County, State of South Carolina.
2. That the Estate of Alvin Yates is a Defendant that, upon information and belief, is an active case for the probate of Alvin Yates' estate filed in the Probate Court for Lexington County, South Carolina under Case No 2005-ES-32-01050 .
3. That Defendant, Wachovia Bank, N.A. is, upon information and belief, federally chartered financial institutions operating in the State of South Carolina.
4. That Defendant, First Citizens Bank, is upon information and belief, a state chartered financial institution operating in the State of South Carolina.
5. That the real property which is the subject of this action, is situated and located in the County of Richland, State of South Carolina and is further identified by its property Tax Map Number: R-020900-04-10.
6. That on or about July 5, 2003, Alvin Yates & Larry Yates enter into a "Project Partnership Agreement" with intentions to share their property, labor, skill and experience for constructing a residential property for resale and for sharing in the profits and losses or expenses that may be incurred.
7. That by executing a note and mortgage with Defendant, Wachovia Bank, each of the partners did jointly secure a \$139,100.00 line of credit with Account No. 4386540410250733 for drawing partnership funds for construction of the partnership's residential property.

8. That during the time of construction, more than \$75,000 of partnership funds were drawn from Wachovia Bank Account No. 4386540410250733 by way of a single wire transfer for \$8,000.00 and by way of an Official Check # 354081369 in the amount of \$67,762.29 made payable to Signature Building Systems, Inc. for the purchase of partnership property, consisting of a prefabricated house and garage package.
9. That during the course of construction, more than \$60,000 of additional partnership funds were drawn from Wachovia Bank Account No. 4386540410250733 by way of multiple checks, debits, and transfers and used to pay for constructing the partnership property.
10. That by executing a note and mortgage with Defendant, First Citizens Bank, partner Alvin Yates, did secure a secondary line of credit with Account No. 891015324908 for drawing partnership funds for completing the construction of the partnership's residential property.
11. That during the time of completing construction, more than \$80,000 of partnership funds were drawn from First Citizens Bank Account No. 891015324908 by way of multiple transfers and used to pay for completing construction of the partnership residential property.
12. That following the completion of construction, the partnership property was appraised for a value of \$235,000.00.
13. That based on good business principals, the partners agreed that partner Alvin Yates would take and hold title to the partnership's property, in his name only.
14. That on or about March 18, 2005, the partners entered into an "Installment Contract of Sale for Real Estate" for the sale of the partnership property for a price of \$229,000.
15. That on or about April 16, 2005, partner Alvin Yates died and thereby left partner Larry Yates as the sole surviving partner of the partnership.
16. That on or about October 27, 2005, an order for the informal probate of will was granted and personal representative appointed for the administration of the Estate of Alvin Yates in Probate Court of Lexington County, under Case No: 2005-ES-32-1050.
17. That the Estate of Alvin Yates has erroneously listed the partnership's property as a \$150,000.00 parcel of real property on its inventory and appraisal documents, and has ever since claimed it as real property belonging to the estate.
18. That as of the July 10, 2007, the "Installment Contract of Sale for Real Estate" is in default, in that the purchasers are in arrears with payments for principal and interest of more than \$6,000.00, have refused to pay county property taxes when due, and have failed to maintain fire and casualty insurance on the property, as required.
19. That more than \$4,000.00 of the above arrearage is due and payable toward the partnership's line-of-credit with Wachovia Bank, Account No. 4386540410250733.

**TRIAL COURT RECORD ON APPEAL**

20. That more than \$2,000.00 of the above arrearage is due and payable toward the partnership's line-of-credit with First Citizens Bank, Account No. 891015324908

21. That the Estate of Alvin Yates has interfered with the partnership in that it has prevented the sole surviving partner from foreclosing on the defaulted purchasers' interest in the partnership property and thereby selling the property and paying the partnership debts to Wachovia Bank and to First Citizens Bank and thereby effectively winding up the business of the partnership.

22. That the Estate of Alvin Yates is intending on converting the property belonging to the partnership for its own benefit, without regard to payment of the partnership debts that are owed to Wachovia Bank, and to First Citizens Bank.

WHEREFORE, having fully set forth his complaint, the Plaintiff prays that this Honorable Court inquire into matters set forth herein and make the following declarations:

a) That the Partnership Agreement of July 5, 2003, together with the acts and conduct of the parties thereto, constitute a valid partnership according to the laws of the State of South Carolina.

b) That partnerships funds secured from Wachovia Bank were used to purchase partnership property, thereby created a partnership debt.

c) That property bought with partnership funds, and titled in name of a single partner, belongs to the partnership.

d) That partnership funds secured from First Citizens Bank were used to purchase partnership property, thereby created a partnership debt.

e) That the Plaintiff, as a sole surviving partner of the partnership, has a partner's lien right to have the partnership property applied to payment of, or to a first lien security of the Wachovia Bank's partnership debt, in order to relieve him from personal liability.

f) That the Plaintiff, as a sole surviving partner of the partnership, has a partner's lien right to have the partnership property applied to payment of, or to a second lien security of First Citizens Bank's partnership debt, in order to relieve him from personal liability.

g) That the Plaintiff, upon the dissolution of the partnership by the death of partner, Alvin Yates, became a trustee of the partnership property for the purpose of possession and liquidating the partnership affairs and as expeditiously as the circumstances will permit to convert the assets into cash, pay partnership debts, adjust the equities between the partners, and distribute the remainder of the partnership assets, if any, between himself, as the surviving partner, and the representative of the deceased partner's estate.

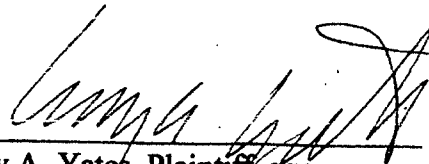
h) That the Plaintiff, as the surviving partner, has the power to possess and sell the partnership's real property, and pay the partnership's debts, for the purpose of liquidation.

**TRIAL COURT RECORD ON APPEAL**

i) That the Plaintiff, as the surviving partner, can carry on the partnership's business, possess the partnership property and wind up the affairs of the partnership, without the authority from the personal representative of the deceased partner.

AND, for further relief as determined by the Court to be fair and equitable.

Respectfully submitted,



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Larry A. Yates, Plaintiff, *pro se*  
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Email: laycom@sc.rr.com

Columbia, South Carolina

January 2, 2008

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

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Docket No: 08-CP-40-0009

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Larry A. Yates.....Appellant,

v.

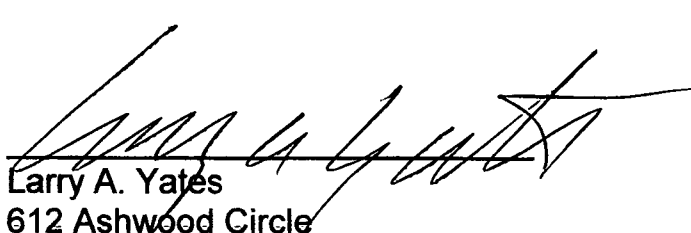
The Estate of Alvin Yates.....Respondent.

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**CERTIFICATE OF COUNSEL**

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I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Larry A. Yates  
612 Ashwood Circle  
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Appellant, Pro Se

July 4, 2013

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JUL 05 2013

**SC Court of Appeals**

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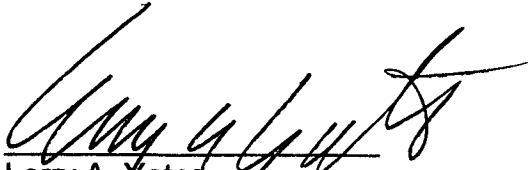
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**PROOF OF SERVICE**

I certify that I have served the Record on Appeal on the Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on July 4, 2013, to the attorney of record, addressed as follows:

Ronald R. Hall, Esquire  
Hall & Hall Attorney's at Law  
1055 Sunset Blvd  
West Columbia, SC 29169

July 4, 2013

  
Larry A. Yates  
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Appellant, Pro Se

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**SC Court of Appeals**