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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

RECEIVED

AUG 07 2014

Case No. 2008-CP-11-1038

SC Court of Appeals

Christopher Drye, d/b/a Drye's Auto Crushing Respondent,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc. Defendants,

Of whom,

Mike Gault is Appellant.

RECORD ON APPEAL

William G. Rhoden, Esq.
WINTER & RHODEN, LLC
221 E. Floyd Baker Blvd
Gaffney, SC 29340
ATTORNEY FOR RESPONDENT

D. Alan Lazenby
Ginger D. Goforth
LAZENBY LAW FIRM, LLC
PO Box 6099
Spartanburg, SC 29304
Phone: (864) 804-5050
Fax: (864) 804-5051
ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE)

Case No.: 2008-CP-11-1038

Christopher Drye, d/b/a Drye's Auto
Crushing,)

Plaintiff,)

v.)

Mike Gault and Mary T. Gault, d/b/a
Gault's Used Cars, Total Inc., Edward
Keith Potter individually and as President
of Total Inc.,)

Defendants.)

ORDER

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRADY W. MCBEE

This matter came before the Court as a civil contempt matter related to the filing of false and misleading discovery by the defendant Mike Gault. After receiving the testimony of the witnesses and hearing the arguments of counsel, this Court found the defendant, Mike Gault, in willful contempt and ordered a civil sanction of 10 days of incarceration in the local detention center. Based on the information provided during the hearing the Court also directed that an additional hearing be set to determine if the defendant's conduct, beyond the present discovery issue, warranted additional sanctions since the Court was concerned that other assets may have been owned by the defendant, and not disclosed, at the time the discovery response were issued.

The present finding of contempt was made after this Court granted a prior motion filed by the plaintiff's attorney to compel the present responses to discovery. At the time of the prior ruling to require compliance with Rule 37 of the South Carolina Rules of Civil Procedure, the Court expressed its concern about the defendant's conduct, motivation, and inadequate good faith compliance. However, this Court made no finding of contempt and no

sanctions issued at that time. The Court took the opportunity to address the defendant at the end of the prior hearing so that the defendant was aware of the Court's requirements so that a future hearing, such as the present one, would not be necessary.

At the present hearing, the attorney previously employed by the defendant was called as witness to dispel prior accusations made by his newly hired counsel that the prior attorney was the reason the defendant had failed to comply with the Court's directive. From the prior attorney's testimony it was clear that the information concerning the assets, or lack thereof, came from the defendant. The Court can find no fault with the prior attorney's conduct when the defendant's lawyer did not independently verify the information, or lack thereof, about the defendant's assets.

At the hearing the Court was presented with discovery responses which basically represent the defendant as a pauper. Information was also presented that represented the defendant as not earning sufficient income to even require him to file a federal income tax form. The Court was repeatedly reminded during the hearing that the defendant runs several businesses and operates a racing car venture where vehicles worth thousands of dollars are used; but no substantial, if any, paperwork is maintained to memorialize the operation of the venture.

It was also not contested at the hearing that the defendant failed to disclose in his discovery responses several items which in fact were assets in his possession and owned by him when the discovery responses were filed. Even though the argument was presented that these items were not of great value, these items do appear to be of significant value in relationship to the apparent lack of value of the disclosed assets.

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BRANDY W. MCBEE

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CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07

ROA 000002

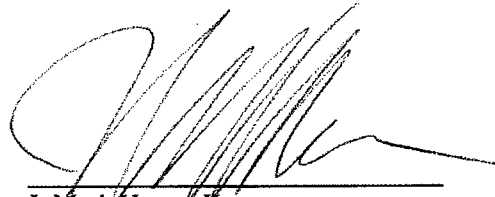
A factor in the finding of willful contempt was this Court's ability to observe the witnesses when they testified as well as the substance of their testimony about their business arrangement. The defendant and his uncle did not present themselves as credible to the Court. After listening to the defendant and his uncle, and viewing their demeanor, this Court, again, does not view them as credible. The manner in which the defendant conducts his business affairs is concerning. It gives the appearance of being conducted in a way that minimizes, if not completely eliminates, the possibility of any accountability by any authorized governmental official or unknowing individual who may do business with the venture. The Court was repeatedly reminded that the racing venture remains very active and the defendant appears to be rather successful having made some impressive finishes. However, given the limited purpose of the present hearing and given the probability or possibility that other assets existed at the time of the filing of the discovery, a subsequent hearing is ordered. Nevertheless, it does appear to the Court that there exists a pattern of business and personal conduct that is meant to prevent a reasonable level of accountability by an outsider. This pattern is reflected in the failure to comply with this Court's prior directive when responding to the discovery requests.

Thus based on the totality of circumstances, the court exercises its discretion to find the defendant in willful contempt. The immediate sanction of 10 days of detention is the result of the fact that no other viable remedy appeared to the court. Neither party offered any other remedy. Also given the representation made by the defendant that he is basically a pauper, the Court is uncertain that any other remedy would be practical other than to issue another judgment or fine which would inevitably end up like the judgment obtained in the underlying litigation—uncollectable.

2 

FILED IN OFFICE OF
CLERK OF COURT
ONEOKEE COUNTY, S.C.
2013 JUN 6 AM 11 07
BRANDY W. MCBEE

IT IS SO ORDERED,



J. Mark Hayes, II
Circuit Judge, Seventh Judicial Circuit

August 2, 2013
Spartanburg, South Carolina

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRANDY W. MCBEE

Hayes, J. Mark

From: Ginger Goforth <ginger@lazenbylawfirm.com>
Sent: Thursday, August 01, 2013 4:47 PM
To: Hayes, J. Mark
Cc: Jessica Holmen; Alan Lazenby; Weatherford, Wade S.; Hayes, J. Mark Law Clerk (Brad Maxwell)
Subject: Re: Drye v. Gault et al, CA No: 2008-CP-11-1038
Attachments: Doe v Berkeley Publishers.pdf; Court of Appeals Clerk from GDG re filing Order 8.1.13.pdf

Judge Hayes,

Thank you for your response, and I appreciate your sound reasoning. I still must respond to the Court of Appeals' request, and want to do so in a manner that respects everyone involved. I apologize for not researching the issue more thoroughly before making my request for the order. In doing some further research, I have found that the Court of Appeals has noted that the trial court has the authority to sign a written order confirming an oral order even after a Notice of Appeal has been filed, especially if the court indicated that a formal order was to follow. Doe v. Berkeley Publishers, 322 S.C. 307, 471 S.E.2d 731 (Ct. App. 1996) (rev'd on other grounds). I am attaching a full copy of the case.

I need to respond to the Court of Appeals by tomorrow, and have prepared the attached letter. If you are at all inclined to change your position based on this case, please let me know. If not, and if you would rather let the Court of Appeals sort out this point of procedure, I understand that as well.

Thank you for continuing to shepherd us through this litigation, and I again apologize for not being more specific in my request earlier this week.

Sincerely,

Ginger Goforth

On Wed, Jul 31, 2013 at 10:49 AM, Hayes, J. Mark <mhayesj@sccourts.org> wrote:

Everyone

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRANDY W. MOBEE

An appeal in the above referenced case was filed and the Court of Appeals has already issued a formal order in the case. My understanding is that, with only a few exceptions, once a notice of intent to appeal is filed, the circuit court is divested of jurisdiction. The ruling I made in the case which I believe prompted the filing of notice of appeal was my oral announcement to find Mr. Gault in contempt. Prior to the filing of the notice of appeal, the only ruling was from the bench.

Since a notice of intent to appeal was filed and given that the Court of Appeals has already issued an opinion involving the case, my thought is that the record is now closed for purposes of the present appeal. I would not wish any

subsequent order issued at this time to be seen as promoting or prejudicing either party nor would I wish it to be seen as disrespecting the rules related to matters on appeals.

In advance thank you all for your attention to this matter.

Mark Hayes

From: Jessica Holmen [mailto:jessica@lazenbylawfirm.com]
Sent: Monday, July 29, 2013 12:02 PM
To: Hayes, J. Mark
Cc: Alan Lazenby; Ginger Goforth; Weatherford, Wade S.
Subject: Drye v. Gault et al, CA No: 2008-CP-11-1038

Judge Hayes,

Please see attached correspondence from Attorney Goforth.

All the best,

--

Jessica Holmen
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2013 JUL 6 AM 11 07
BRANDY W. MCBEE

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FILED IN OFFICE OF
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2013 AUG 6 AM 11 07
BRANDY W. MCBEE

LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D. ALAN LAZENBY
GINGER D. GOFORTHPOST OFFICE BOX 6099 (29304)
340 E. MAIN ST., SUITE 240
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

(DRAFT)

August 2, 2013

The Honorable Jenny Abbott Kitchings
SC Court of Appeals Clerk
PO Box 11629
Columbia, SC 29211FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUN 6 PM 11 07
BRANDY W. MOORE

Re: Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter individually and as President of Total Inc., Defendants
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

Dear Ms. Kitchings:

Please accept this letter in response to the July 23, 2013 correspondence requesting that Appellant Mike Gault file a copy of the order appealed from in this case.

Mr. Gault was jailed on June 19, 2013 immediately after the conclusion of a contempt hearing before the Honorable J. Mark Hayes, II. Judge Hayes issued an oral ruling, and ordered Mr. Gault to be taken into custody. As part of this ruling, Judge Hayes indicated as follows: "I will provide the Cherokee County sheriff's office with a more expressed order tomorrow so that you may have that for your people." (Transcript of Judge Hayes's Ruling, p. 8, lines 6-8, attached hereto). Our client went directly to jail.

I inquired of Judge Hayes's law clerk by email on June 21, 2013 about getting a copy of the referenced order. He indicated that an order had not yet been prepared. Out of an abundance of caution, and in my client's interest, I filed a Notice of Appeal and Petition for Writ of Supersedeas with the Court of Appeals, since immediate appeal is available from a finding of contempt, and time was of the essence given the sentence imposed. I filed the Booking Report with the notation of Judge Hayes's ruling along with these pleadings.

I have since inquired about obtaining a written order. Judge Hayes does not believe that he has the jurisdiction to enter one at this point, because the Court of Appeals has taken jurisdiction of this case, and issued a ruling. I am therefore requesting the further instruction of the Court of Appeals on this issue. In an attempt to follow the Court's request of July 23, 2013, I am enclosing a transcript of the oral ruling.

ROA 000008

The Honorable Jenny Abbott Kitchings - 2 -

August 2, 2013

Thank you in advance for your guidance.

Sincerely,

Ginger D. Goforth
ginger@lazenbylawfirm.com

GDG: jeh
Enclosures

cc: Wade Weatherford, III, Esq. (via email & US Mail)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRANDY W. MCBEE

Wade S. Weatherford, III
Attorney at Law
915 N. Limestone Street
Gaffney, South Carolina

Mailing Address:

P.O. Box 2207

Gaffney, SC 29342-2207

July 29, 2013

Office: 864-489-1500

Fax: 864-488-2590

VIA FAX @ 1-864-804-5051

Ginger D. Goforth, Esquire
P.O. Box 6099
Spartanburg, SC 29304

Re: Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and
Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total, Inc., Defendants
Case No.: 2008-CP-11-1038

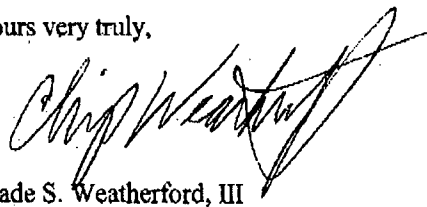
Dear Ginger:

Prior to leaving the courtroom when Mr. Gault was found in contempt, I ordered a transcript of the Judge's ruling. I am in possession of that 10 page ruling from the bench, by Judge Hayes.

It is clear from the transcript that this was not a final ruling and therefore, not appealable. I was going to make a motion to dismiss the appeal on that ground, as soon as you filed the transcript.

I will copy Judge Hayes with this communication.

Yours very truly,



Wade S. Weatherford, III

WSW,III:vw

cc: Honorable J. Mark Hayes (via fax only @ 864-562-4142)

LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D. ALAN LAZENBY
GINGER D. GOFORTH

POST OFFICE BOX 6099 (29304)
340 E. MAIN ST., SUITE 240
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

July 29, 2013

VIA EMAIL & US MAIL

The Honorable J. Mark Hayes, II
180 Magnolia Street
Spartanburg, SC 29306

**Re: Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. ~~Mike Gault and~~
Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc., Defendants
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUL 30 AM 11 07
BRIAN W. MCBEE

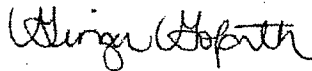
Dear Judge Hayes:

I need to obtain a copy of the order formalizing your June 19, 2013 oral finding of contempt in this case. On June 21, 2013, the date I filed Mr. Gault's appeal, no formal order had yet been prepared. Mr. Kozak indicated that he would send the order to all counsel when and if one was prepared.

I therefore filed with the June 21, 2013 Notice of Appeal a copy of the Booking Report with the notation "Hold for Contempt Order per Judge Hayes." On July 24, 2013, I received a notice from the Court of Appeals requiring me to file the written order formalizing your June 19, 2013 oral contempt order. I would very much appreciate you letting me know when I can obtain a copy of the order to file with the Court of Appeals.

Thank you in advance for your consideration, and please do not hesitate to contact me with any questions.

Sincerely,



Ginger D. Goforth
ginger@lazenbylawfirm.com

GDG:jeh

cc: D. Alan Lazenby, Esq. (via email only)
Wade Weatherford, III, Esq. (via email only)

ROA 000011

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye, d/b/a Drye's Auto
Crushing,

Plaintiff,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's
Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No: 2008-CP-11-1038

**ORDER FOR BOND AND
DISCHARGE**

CLERK OF COURT
JUNE 21 2013 11:00 AM
CHEROKEE COUNTY

On June 19, 2013, the undersigned ordered Defendant Mike Gault to be confined at the Cherokee County Detention Center for contempt of court. On June 21, 2013, Defendant appealed this order. The Honorable Jasper M. Cureton, Judge of the South Carolina Court of Appeals, issued an order on June 21, 2013 finding that Defendant's confinement was stayed by the filing of the appeal. The undersigned has been request to issue a Bond so that Court of Appeal's order may become effective and the Defendant be discharged and relaeased from the Cherokee County Detention Center.

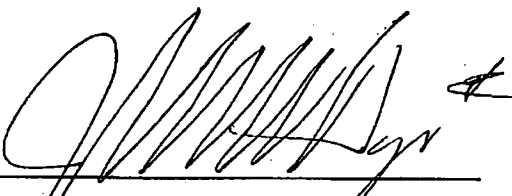
After a conference with counsel for Plaintiff and Defendant, it is this Court's determination that Mike Gault be released and discharged immediately from the Cherokee County Detention Center upon signing a personal recognizance bond (PR Bond) in the amount of \$10,000.00. Any further service of the contempt sanction will wait upon further review by the Court of Appeals.



ROA 000012

IT IS SO ORDERED.

June 24, 2013


The Honorable J. Mark Hayes, II
Judge, Seventh Judicial Circuit

2013 JUN 24 PM 3 01
BRANDY W. HOBEE

The South Carolina Court of Appeals

Chrisopher Drye, d/b/a Drye's Auto Crushing,
Respondent,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars,
Total Inc., Edward Keith Potter individually and as
President of Total Inc, Defendants,

Of whom Mike Gault is the Appellant.

Appellate Case No. 2013-001347

ORDER

Post-It Fax Note	7671	Date	6/21/13	# of Pages	1
To	Lazenby/Goforth	From	SC Court of Appeals		
Co/Dept		Co.			
Phone #	804 804 5051	Phone #	734-1890 (803)		
Fax #		Fax #			

Appellant has filed an emergency petition for writ of supersedeas, seeking to stay Appellant's sentence for criminal contempt. Because the service of the notice of appeal acts to automatically stay the matter on appeal, this court need not issue a writ of supersedeas. See Rule 241, SCACR.


FOR THE COURT

Columbia, South Carolina

FILED

LG 6-21-13

cc:

Duane Alan Lazenby

Ginger D. Goforth

Wade S. Weatherford, III

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Christopher Drye, d/b/a Drye's Auto
Crushing,)

Plaintiff,)

v.)

Mike Gault and Mary T. Gault, d/b/a
Gault's Used Cars, Total Inc., Edward
Keith Potter individually and as President
of Total Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-11-1038

ORDER

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRADY W. MCBEE

This matter came before the Court as a civil contempt matter related to the filing of false and misleading discovery by the defendant Mike Gault. After receiving the testimony of the witnesses and hearing the arguments of counsel, this Court found the defendant, Mike Gault, in willful contempt and ordered a civil sanction of 10 days of incarceration in the local detention center. Based on the information provided during the hearing the Court also directed that an additional hearing be set to determine if the defendant's conduct, beyond the present discovery issue, warranted additional sanctions since the Court was concerned that other assets may have been owned by the defendant, and not disclosed, at the time the discovery response were issued.

The present finding of contempt was made after this Court granted a prior motion filed by the plaintiff's attorney to compel the present responses to discovery. At the time of the prior ruling to require compliance with Rule 37 of the South Carolina Rules of Civil Procedure, the Court expressed its concern about the defendant's conduct, motivation, and inadequate good faith compliance. However, this Court made no finding of contempt and no



ROA 000015

sanctions issued at that time. The Court took the opportunity to address the defendant at the end of the prior hearing so that the defendant was aware of the Court's requirements so that a future hearing, such as the present one, would not be necessary.

At the present hearing, the attorney previously employed by the defendant was called as witness to dispel prior accusations made by his newly hired counsel that the prior attorney was the reason the defendant had failed to comply with the Court's directive. From the prior attorney's testimony it was clear that the information concerning the assets, or lack thereof, came from the defendant. The Court can find no fault with the prior attorney's conduct when the defendant's lawyer did not independently verify the information, or lack thereof, about the defendant's assets.

At the hearing the Court was presented with discovery responses which basically represent the defendant as a pauper. Information was also presented that represented the defendant as not earning sufficient income to even require him to file a federal income tax form. The Court was repeatedly reminded during the hearing that the defendant runs several businesses and operates a racing car venture where vehicles worth thousands of dollars are used; but no substantial, if any, paperwork is maintained to memorialize the operation of the venture.

It was also not contested at the hearing that the defendant failed to disclose in his discovery responses several items which in fact were assets in his possession and owned by him when the discovery responses were filed. Even though the argument was presented that these items were not of great value, these items do appear to be of significant value in relationship to the apparent lack of value of the disclosed assets.

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BRANDY W. MCBEE

FILED IN OFFICE OF
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2013 JUN 6 AM 11 07

ROA 000016

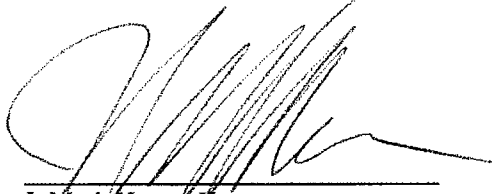
A factor in the finding of willful contempt was this Court's ability to observe the witnesses when they testified as well as the substance of their testimony about their business arrangement. The defendant and his uncle did not present themselves as credible to the Court. After listening to the defendant and his uncle, and viewing their demeanor, this Court, again, does not view them as credible. The manner in which the defendant conducts his business affairs is concerning. It gives the appearance of being conducted in a way that minimizes, if not completely eliminates, the possibility of any accountability by any authorized governmental official or unknowing individual who may do business with the venture. The Court was repeatedly reminded that the racing venture remains very active and the defendant appears to be rather successful having made some impressive finishes. However, given the limited purpose of the present hearing and given the probability or possibility that other assets existed at the time of the filing of the discovery, a subsequent hearing is ordered. Nevertheless, it does appear to the Court that there exists a pattern of business and personal conduct that is meant to prevent a reasonable level of accountability by an outsider. This pattern is reflected in the failure to comply with this Court's prior directive when responding to the discovery requests.

Thus based on the totality of circumstances, the court exercises its discretion to find the defendant in willful contempt. The immediate sanction of 10 days of detention is the result of the fact that no other viable remedy appeared to the court. Neither party offered any other remedy. Also given the representation made by the defendant that he is basically a pauper, the Court is uncertain that any other remedy would be practical other than to issue another judgment or fine which would inevitably end up like the judgment obtained in the underlying litigation—uncollectable.

2 

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JEROME COUNTY, S.C.
2008 AUG 6 AM 11 07
BRANDY W. MCBEE

IT IS SO ORDERED,



J. Mark Hayes, II
Circuit Judge, Seventh Judicial Circuit

August 2, 2013
Spartanburg, South Carolina

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Hayes, J. Mark

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I need to respond to the Court of Appeals by tomorrow, and have prepared the attached letter. If you are at all inclined to change your position based on this case, please let me know. If not, and if you would rather let the Court of Appeals sort out this point of procedure, I understand that as well.

Thank you for continuing to shepherd us through this litigation, and I again apologize for not being more specific in my request earlier this week.

Sincerely,

Ginger Goforth

On Wed, Jul 31, 2013 at 10:49 AM, Hayes, J. Mark <mhayesj@sccourts.org> wrote:

Everyone

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Since a notice of intent to appeal was filed and given that the Court of Appeals has already issued an opinion involving the case, my thought is that the record is now closed for purposes of the present appeal. I would not wish any

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In advance thank you all for your attention to this matter.

Mark Hayes

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Sent: Monday, July 29, 2013 12:02 PM
To: Hayes, J. Mark
Cc: Alan Lazenby; Ginger Goforth; Weatherford, Wade S.
Subject: Drye v. Gault et al, CA No: 2008-CP-11-1038

Judge Hayes,

Please see attached correspondence from Attorney Goforth.

All the best,

--

Jessica Holmen
Paralegal
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Office: 864-804-5050
Fax: 864-804-5051

--

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Spartanburg, SC 29302

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Office: (864) 804-5050
Mobile: (864) 316-6499
Fax: (864) 804-5051

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRANDY W. MCBEE

LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D. ALAN LAZENBY
GINGER D. GOFORTH

POST OFFICE BOX 6099 (29304)
340 E. MAIN ST., SUITE 240
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

(DRAFT)

August 2, 2013

The Honorable Jenny Abbott Kitchings
SC Court of Appeals Clerk
PO Box 11629
Columbia, SC 29211

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 PM 1:07
BRANDY W. ROBE

Re: Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter individually and as President of Total Inc., Defendants
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

Dear Ms. Kitchings:

Please accept this letter in response to the July 23, 2013 correspondence requesting that Appellant Mike Gault file a copy of the order appealed from in this case.

Mr. Gault was jailed on June 19, 2013 immediately after the conclusion of a contempt hearing before the Honorable J. Mark Hayes, II. Judge Hayes issued an oral ruling, and ordered Mr. Gault to be taken into custody. As part of this ruling, Judge Hayes indicated as follows: "I will provide the Cherokee County sheriff's office with a more expressed order tomorrow so that you may have that for your people." (Transcript of Judge Hayes's Ruling, p. 8, lines 6-8, attached hereto). Our client went directly to jail.

I inquired of Judge Hayes's law clerk by email on June 21, 2013 about getting a copy of the referenced order. He indicated that an order had not yet been prepared. Out of an abundance of caution, and in my client's interest, I filed a Notice of Appeal and Petition for Writ of Supersedeas with the Court of Appeals, since immediate appeal is available from a finding of contempt, and time was of the essence given the sentence imposed. I filed the Booking Report with the notation of Judge Hayes's ruling along with these pleadings.

I have since inquired about obtaining a written order. Judge Hayes does not believe that he has the jurisdiction to enter one at this point, because the Court of Appeals has taken jurisdiction of this case, and issued a ruling. I am therefore requesting the further instruction of the Court of Appeals on this issue. In an attempt to follow the Court's request of July 23, 2013, I am enclosing a transcript of the oral ruling.

ROA 000022

The Honorable Jenny Abbott Kitchings - 2 -

August 2, 2013

Thank you in advance for your guidance.

Sincerely,

Ginger D. Goforth
ginger@lazenbylawfirm.com

GDG: jeh
Enclosures

cc: Wade Weatherford, III, Esq. (via email & US Mail)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRANDY W. MCBEE

Wade S. Weatherford, III
Attorney at Law
915 N. Limestone Street
Gaffney, South Carolina

Mailing Address:

P.O. Box 2207

Gaffney, SC 29342-2207

July 29, 2013

Office: 864-489-1500

Fax: 864-488-2590

VIA FAX @ 1-864-804-5051

Ginger D. Goforth, Esquire
P.O. Box 6099
Spartanburg, SC 29304

Re: Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and
Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total, Inc., Defendants
Case No.: 2008-CP-11-1038

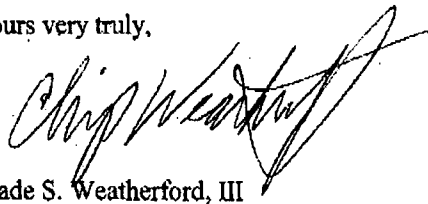
Dear Ginger:

Prior to leaving the courtroom when Mr. Gault was found in contempt, I ordered a transcript of the Judge's ruling. I am in possession of that 10 page ruling from the bench, by Judge Hayes.

It is clear from the transcript that this was not a final ruling and therefore, not appealable. I was going to make a motion to dismiss the appeal on that ground, as soon as you filed the transcript.

I will copy Judge Hayes with this communication.

Yours very truly,


Wade S. Weatherford, III

WSW,III:vw

cc: Honorable J. Mark Hayes (via fax only @ 864-562-4142)

LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D. ALAN LAZENBY
GINGER D. GOFORTH

POST OFFICE BOX 6099 (29304)
340 E. MAIN ST., SUITE 240
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

July 29, 2013

VIA EMAIL & US MAIL

The Honorable J. Mark Hayes, II
180 Magnolia Street
Spartanburg, SC 29306

**Re: Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. ~~Mike Gault and~~
Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc., Defendants
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 11 AM 11:07
BRAND W. MCBE

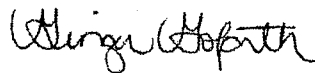
Dear Judge Hayes:

I need to obtain a copy of the order formalizing your June 19, 2013 oral finding of contempt in this case. On June 21, 2013, the date I filed Mr. Gault's appeal, no formal order had yet been prepared. Mr. Kozak indicated that he would send the order to all counsel when and if one was prepared.

I therefore filed with the June 21, 2013 Notice of Appeal a copy of the Booking Report with the notation "Hold for Contempt Order per Judge Hayes." On July 24, 2013, I received a notice from the Court of Appeals requiring me to file the written order formalizing your June 19, 2013 oral contempt order. I would very much appreciate you letting me know when I can obtain a copy of the order to file with the Court of Appeals.

Thank you in advance for your consideration, and please do not hesitate to contact me with any questions.

Sincerely,



Ginger D. Goforth
ginger@lazenbylawfirm.com

GDG:jeh

cc: D. Alan Lazenby, Esq. (via email only)
Wade Weatherford, III, Esq. (via email only)

ROA 000025

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
Christopher Drye d/b/a Drye's)
Auto Crushing,)
Plaintiff,)
vs.)
Mike Gault and Mary T. Gault)
d/b/a Gault's Used Cars, Total, Inc.)
and Edward Keith Potter,)
individually and as President of)
Total, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

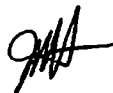
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 14 PM 4 13
BRANDY W. MCBEE

**ORDER
ON MOTION FOR CONTEMPT**

This matter comes before the court on Plaintiff's Motion for Contempt filed on August 1, 2012. The Plaintiff moved for an Order holding Mike Gault, General Manager, Total, Inc., d/b/a Gault's Used Cars, in Contempt of Court for moving, hiding, selling, transferring and/or otherwise disposing of assets of the judgment Debtor, Total, Inc., d/b/a Gault's Used Cars, thereby preventing the Receiver from taking possession of said property which could be used to satisfy the debt of judgment Debtor.

After fully hearing the matter, the court finds that there is reason to believe that assets of the judgment Debtor have been moved to a location at 199 Speedway Road in Cherokee County. The location is owned by Mary Gault, mother of Mike Gault.

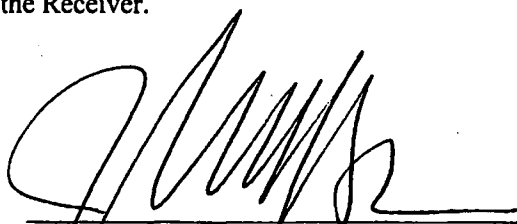
Therefore, the court Ordered the Receiver, along with a Sheriff's Deputy to proceed, immediately to said location and inventory property found at that location and to report back to the court.



Based on the Affidavit of the Receiver, with the list of property found, that the Receiver is hereby vested with the possession of all of the said property and that no one can move and/or remove any of that property, except the Receiver, accompanied by a Cherokee County Sheriff's Deputy.

The court withholds a Ruling on Contempt of Court at this time. However, the court does find that Mike Gault, as General Manager of Total, Inc., d/b/a Gault's Used Cars has not made a good faith effort to cooperate with the Receiver.

August 14, 2012
Spartanburg, South Carolina



J. Mark Hayes
Presiding Judge

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.)
and Edward Keith Potter,)
individually and as President of)
Total, Inc.,)

Defendants.)

**AMENDED
ORDER TO APPOINT RECEIVER**

CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 JUN 19 AM 11 21
BRANDY H. MCBEE

This matter comes before the court on Plaintiff's Motion for Contempt on June 11, 2012. The Plaintiff moved for an Order holding Mike Gault, General Manager, Total, Inc., d/b/a Gault's Used Cars, in Contempt of Court for interfering with and preventing the Receiver from taking property of the judgment Debtor to sell and apply the proceeds to the debt of Total, Inc., d/b/a Gault's Used Cars.

After fully hearing the matter the court finds that Mike Gault is not in Contempt of Court. However, Mr. Gault did prevent the Receiver from taking property of the judgment Debtor. This was caused by the wording of this court's prior Order of February 28, 2012, which allowed the judgment Debtor to conduct its normal business. The court finds that this language should be removed and the Order should read, in pertinent part, as follows:

The court finds that it would be proper to appoint Ben D. Kochenower, CPA as

-1-



A TRUE COPY
Brandy H. McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.

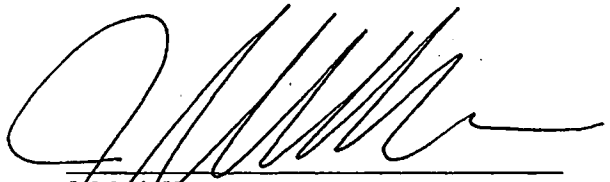
ROA 000028

Receiver, the Defendant had no objection. The Receiver shall have full power and authority over any and all property of Total, Inc. d/b/a Gault's Used Cars and to take said property, sell if necessary and apply to the debt of the judgment Debtor until the judgment is paid in full. The receiver shall be allowed a commission 15% plus any costs.

The judgment Debtor, Total, Inc. d/b/a Gault's Used Cars, any of its officers, agents or employees are hereby restrained and enjoined from making any transfer or other dispositions of any of its property.

June 12, 2012

Gaffney, South Carolina


J. Mark Hayes
Presiding Judge

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

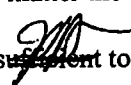
Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.)
and Edward Keith Potter,)
individually and as President of)
Total, Inc.,)

Defendants.)

ORDER TO APPOINT RECEIVER

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 FEB 29 PM 8 24
BRANDY H. MCREE

This matter comes before the court on Plaintiff's Motion to appoint a Receiver pursuant to §15-39-430 et.sq. S.C. Code of Laws (1976).

A hearing was held before me on February 28, 2012. After hearing the matter the court finds that the judgment debtor, Total, Inc. d/b/a Gault's Used Cars, has assets  sufficient to satisfy the debt to Plaintiff and has failed to apply said assets to the judgment. The court also finds that there are no other supplementary proceedings pending against this debtor.

The court finds that it would be proper to appoint Ben D. Kochenower, CPA as Receiver, the Defendant had no objection. The Receiver shall have full power and authority over any and all property of Total, Inc. d/b/a Gault's Used Cars and to take said property, sell if necessary and apply to the debt of the judgment debtor until the judgment is paid in full. The receiver shall be

 allowed a commission of 15% plus any costs.

The judgment debtor, Total, Inc. d/b/a Gault's Used Cars, any of its officers, agents or employees are hereby restrained and enjoined from making any transfer or other dispositions of any of its property. However, the judgment debtor, Total, Inc. d/b/a Gault's Used Cars shall be allowed to conduct its normal business.

February 28, 2012
Gaffney, South Carolina



J. Mark Hayes
Presiding Judge

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.)
and Edward Keith Potter,)
individually and as President of)
Total, Inc.,)

Defendants.)

**ORDER FOR JUDGMENT
AGAINST**

TOTAL, INC. D/B/A GAULT'S USED CARS

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 SEP -1 P 2:33
RANDY W. MOORE

Plaintiff instituted this action with a Summons and Complaint against Defendants, in which he alleged three (3) Causes of Action, to wit: Breach of Contract, Piercing the Corporate Veil of Total, Inc. and Civil Conspiracy.

Prior to the trial, the court ruled that Piercing the Corporate Veil was an equitable cause of action and that the trial would have to be bifurcated. A trial on that Cause of Action is preserved against the individual Defendants and is to be held at a later date and be held by the court without a jury. Both parties agreed.

A jury trial began on August 1, 2011 on the remaining Causes of Action.

During the trial, Plaintiff agreed to a voluntary non-suit, with prejudice, on the Cause of Action of Civil Conspiracy. The trial proceeded to the jury on the Breach of Contract Cause of Action against the Corporate Defendant, Total, Inc., d/b/a Gault's Used Cars. The jury returned a

verdict in favor of the Plaintiff, Christopher Drye against the Defendant, Total, Inc., d/b/a Gault's Used Cars in the amount of forty nine thousand eight hundred sixty nine dollars and twenty cents (\$49,869.20), on August 2, 2011.

The Plaintiff submitted an Affidavit for Costs and Defendant's attorney advised the court that there was no objection to the costs. Now therefore, it is

ORDERED, that the Plaintiff, Christopher Drye is granted judgment against the Defendant, Total, Inc., d/b/a Gault's Used Cars in the amount of \$49,869.20 plus costs of \$340.00 and interest at the rate of 7.25%.

_____, 9/1, 2011

_____, SC



Roger L. Couch
Presiding Judge

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.
and Edward Keith Potter,
individually and as President of
Total, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

JUN 24 A 10:48

GRANDY W. MCBEE

**ORDER ON
MOTION TO COMPEL**

VOICED
CLOCK
2011 JUN 7 PM 10:01
CHEROKEE COUNTY
CLERK OF COURT
ERROFACKLEY

This matter came to be heard on May 23, 2011, pursuant to a Motion to Compel discovery. After hearing from both parties, the court finds that while the Defendants have produced substantial discovery material, there remains other materials that should be produced to Plaintiff before trial. The items are enumerated in two letters to Defendant's attorney from Plaintiff's attorney, dated April 19, 2011 and May 11, 2011.

Therefore, the court finds that the requested discovery items should be produced to Plaintiff's attorney within 30 days from the date of this Order.

And it is so ORDERED.

June 15th, 2011



J. Mark Hayes
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye d/b/a Drye's Auto Crushing

Plaintiff(s)

vs.

Mike Gault and Mary T. Gault d/b/a Gault's Used Cars

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

- CP -

008CP-11038

(Please Print)

Submitted By: Wade S. Weatherford, III

Address: P.O. Box 2207, Gaffney, SC 29342

SC Bar #: 5978

Telephone #: 864-489-1500

Fax #: 864-488-9640

Other:

E-mail: chiplaw@bellsouth.net

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

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☒ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Other (799)	☐ Other (899)	☐ Worker's Comp (960)
-
Special/Complex /Other			
☐ Environmental (600)	☐ Pharmaceuticals (630)		
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		
☐ Medical (620)	☐ Out-of State Depositions (650)		
☐ Other (699)	☐ Sexual Predator (510)		
-
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)

Submitting Party Signature:

Wade S. Weatherford, III

Date: 12/01/08

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.:

008CP-11038

Christopher Drye)
d/b/a Drye's Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault)
d/b/a Gault's Used Cars,)

Defendants.)

SUMMONS

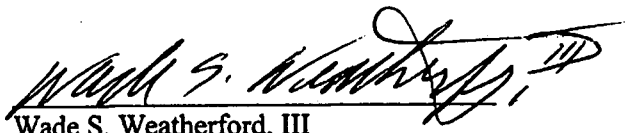
2008 DEC -2 P 2:58
BRADY W. MCBEE

TO: MIKE GAULT AND MARY T. GAULT D/B/A GAULT'S USED CARS,
DEFENDANTS:

You are hereby summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the said subscriber at his office in Gaffney, South Carolina, within thirty (30) days after the service hereof, exclusive of the date of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the Complaint.

December 1, 2008

Gaffney, South Carolina


Wade S. Weatherford, III
S.C. Bar#: 5978
P.O. Box 2207
915 N. Limestone Street
Gaffney, SC 29342-2207
864-489-1500
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye
d/b/a Drye's Auto Crushing,

Plaintiff,

vs.

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.:

008CP-11038

COMPLAINT

BRANDY W. MCBEE

2008 DEC -2 P 2:58

CLERK OF
COURT
CHEROKEE COUNTY, S.C.

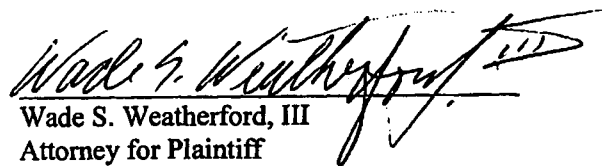
1. Defendants are residents of Cherokee County and doing business in Cherokee County as Gault's Used Cars.
2. That from, on or about March 25, 2008 to, on or about April 29, 2008 Plaintiff sent and entrusted to Gault's Used Cars the sum of one hundred thousand (\$100,000) dollars.
3. That the money was an advance to Gault's Used Cars to purchase junk cars to be delivered to Plaintiff for crushing on May 6, 2008.
4. That Defendant furnished approximately one half (½) of the junk cars but has failed and refused to furnish the balance of the cars due and/or has refused to return the balance of the money to Plaintiff.
5. That the amount due to Plaintiff is forty nine thousand eight hundred sixty nine dollars and twenty cents (\$49,869.20) plus interest from May 6, 2008.
6. That Plaintiff has done similar transactions with Gault's Used Cars in the past and Gault's has furnished the agreed amount of cars.

7. That therefore, Defendants owe Plaintiff the sum of \$49,869.20 plus interest and costs.

Wherefore, Plaintiff prays for judgment against the Defendants for \$49,869.20 plus interest from May 6, 2008 and costs.

December 1, 2008

Gaffney, South Carolina


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2008-CP-11-1038

Christopher Drye,
d/b/a Drye's Auto Crushing,)

)
Plaintiff,)

)
vs.)

)
Mike Gault and Mary T. Gault,
d/b/a Gault's Used Cars,)

)
Defendants.)
_____)

ANSWER OF DEFENDANTS
MIKE GAULT AND MARY T. GAULT
(JURY TRIAL DEMANDED)

2008 DEC 24 12:10
BRANDY
CHEROKEE

Mike Gault and Mary T. Gault, answering Plaintiff's Complaint, allege that:

1. The allegations of the Complaint are denied and strict proof demanded.
2. These Defendants are informed and believe that any business done by the Plaintiff concerning crushed junk cars was done with Total, Inc., a corporation organized and doing business under the laws of South Carolina, and these Defendants bear no individual liability for any transaction whatsoever with the Plaintiff.
3. The Defendant Mary T. Gault has never, individually or in any capacity, done any business with or engaged in any transaction whatsoever with the Plaintiff.

WHEREFORE, Mike Gault and Mary T. Gault, pray that the Complaint be dismissed with costs taxed against the Plaintiff, and for such further relief as may be just and proper.

KENNETH L. HOLLAND, P.A.

A handwritten signature in black ink, appearing to read "Kenneth L. Holland", is written over a horizontal line.

Kenneth L. Holland
212 East Floyd Baker Boulevard
Gaffney, South Carolina 29340
Telephone: (864) 487-3366
Fax: (864) 487-3930

ATTORNEY FOR THE DEFENDANTS

Gaffney, S.C.
December 23, 2008

A JURY TRIAL IS DEMANDED

ROA 000040

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye d/b/a Drye's Auto Crushing,

Plaintiff,

vs.

Total, Inc. d/b/a Gault's Used Cars,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-11-1038

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Wade S. Weatherford, III</u> , Bar No. <u>5978</u> Address: <u>P.O. Box 2207, Gaffney, SC 29342</u> Phone: <u>864-489-1500</u> Fax <u>864-488-2590</u> E-mail: <u>chiplaw@bellsouth.net</u> Other: _____		Defendant's Attorney: <u>Kenneth L. Holland</u> , Bar No. _____ Address: <u>212 E. Floyd Baker Blvd., Gaffney, SC 29340</u> Phone: <u>864-487-3366</u> Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Contempt</u>		Court Reporter Needed: ☒ YES / ☐ NO	
Estimated Time Needed: <u>30 minutes</u>			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		Date submitted <u>5/7/12</u>	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 MAY 7 PM 12 49
BRANDY L. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.
and Edward Keith Potter,
individually and as President of
Total, Inc.,)

Defendants.)

**NOTICE OF MOTION
AND MOTION**

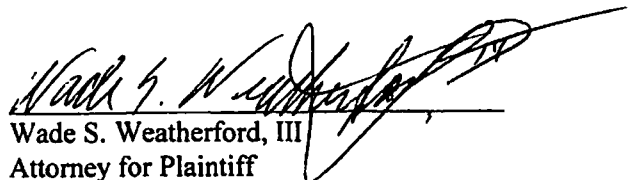
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 MAY 7 PM 12 50
BRANDY A. MCBEE

**TO: MIKE GAULT, GENERAL MANAGER, TOTAL, INC., D/B/A GAULT'S
USED CARS**

PLEASE TAKE NOTICE that the above Plaintiff will move before the Presiding Judge on June 11, 2012 at 9:30 a.m. at the Cherokee County Court of Common Pleas, 3rd Floor courtroom for an Order holding Mike Gault, General Manager, Total, Inc., d/b/a Gault's Used Cars, in Contempt of Court for interfering with and preventing the Receiver from taking property of the judgment Debtor to sell and apply the proceeds to the debt of Total, Inc., d/b/a Gault's Used Cars.

The Motion is based on the attached Affidavits.

I SO MOVE:


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE) AFFIDAVIT

I, BEN D. KOCHENOWER, AFTER BEING SWORN, SAYS:

On March 13, 2012 at approximately 9:42 am my secretary and I arrived at the Blacksburg location and called Mike on his cell phone and left a message that we were there. As we arrived, I observed no activity to be evident and no individuals visible.

I then entered the office building and presented a copy of the court order to the office employee who sat at the desk on the left and explained why I was there. While I was inside talking with the office employee Michael Crow from Blanton's Wrecker arrived. When I came out of the office, I saw another employee blocking the driveway at the Railroad track with a Case lift. This prevented anyone from entering or exiting the property. I observed 2 individuals in the yard in front of the office and shop. I approached one individual & inquired if he could move the Case lift. He said he was not the driver and pointed to the other individual. I inquired of that individual and he indicated he did not have a key and that he only worked there.

I walked toward the lift and wrote down what ID that I could see, I then spoke with Michael Crow and asked if he had anything that could move the lift. He said he did and that it was on the way.

I then proceeded to observe and document certain equipment on the yard:

4 separate roll back trucks, 1 white tractor truck. As I was writing the DOT number of the truck I observed Mike Gault near the Blanton Wrecker rollback truck on the driver's side (the truck was facing North - toward the exit to the property). He walked toward me, and as he did so, I observed several individuals / employees in the yard.

Mike approached me and came very close to me. As he did so, he appeared agitated and threatening. He came very close to me and asked, "Just what (the H___) do you think you're doing?" I told him I was doing my job. I moved out from between the vehicles I was observing and into the open yard. He said that I had no idea who I was messing with, that I had no business, no right to be there on his property, that I was interfering with his business in violation of the judge's order. Twice he told me, "You're messing with the wrong person" and that I needed to leave immediately. I asked if he was threatening me. He said "No". One of his employees with him said, "He is just telling you the truth."

I explained I had a court order to seize the property and Mike went to get a copy of the court order and stated that if I took rollbacks it would be interfering with the operation of his business and I suggested to him could rent a rollback. He said he wasn't renting S ____.

Mike made it clear that he did not believe it was at all appropriate that I was there, or that Michael Crow was there with a rollback truck. He stated clearly that as he understood the court order I was not to interfere in any way with his business, and that my presence and intended removal of any equipment constituted a violation of the court order as he clearly understood it.

I asked Mike Gault if he was going to move the Case Lift which was blocking the exit, and once it was removed, I then got in my vehicle and left, realizing that I would not be allowed to remove any equipment from the property.

March 21, 2012

Ben D. Kochenower

Ben D. Kochenower
Receiver

SWORN TO AND SUBSCRIBED BEFORE ME

this 21 day of March, 2012.

Walter L. Winkler, Jr.

Notary of Public for South Carolina

My Commission Expires 5/2/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE) AFFIDAVIT

I, TAMMY M. WARD, AFTER BEING SWORN, SAYS:

I accompanied Ben Kochenower to 853 Blacksburg Hwy, Blacksburg SC on March 13, 2012 and arrived at approximately 9:40 am.

Ben called Mike Gault on his cell phone and left a message that we were there. No one was outside at the location.

Ben went in to the office of the business and I stayed in Ben's truck but could see him clearly inside the business. During that time Michael Crow from Blanton's Wrecker arrived and sat in his rollback.

I noticed an employee moving a loader and he actually blocked the driveway at the Railroad track which prevented anyone entering or exiting. At this time I became a little uneasy and wanted to keep my eye on Ben as he was walking around listing information about the equipment. The employee that moved the loader whose name appeared be "Joe" from his shirt kept walking in and out of the shop area.

Shortly, employees began swarming the yard and I locked the truck doors and got ready to call 911 if needed.

During this time I saw Mike Gault walking across the yard behind Ben's truck and approached him as he was listing the equipment. During that time two other men approached Michael Crow as he sat in his vehicle. I saw them talking to him and I saw Michael throw up his hands and then shut his truck door and roll up his window. He clearly appeared to be uncomfortable with the men who had approached him at his vehicle. The men then walked away.

Several employees continued to walk around the yard and back and forth into the shop and office. Ben and Mike Gault walked back to Ben's truck and I heard them discussing the court order. Ben then walked over to Michael Crow's rollback and as he left we did also.

March 21, 2012

Tammy M. Ward
Tammy M. Ward

SWORN TO AND SUBSCRIBED BEFORE ME
this 21st day of March, 2012.

W. S. W.
Notary of Public for South Carolina
My Commission Expires 5/2/13

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
2008-CP-11-1038

Christopher Drye, d/b/a Drye's Auto
Crushing,

Plaintiff,

vs.

Mike Gault and Mary T. Gault, d/b/a
Gault's Used Cars, Total, Inc., and
Edward Keith Potter, Individually
and as President of Total, Inc.,

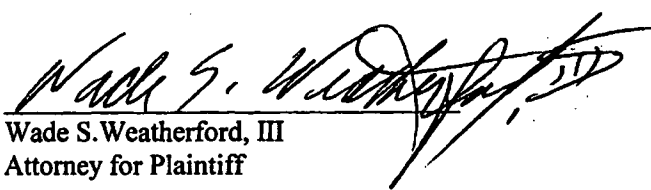
Defendants.

CERTIFICATE OF SERVICE BY MAIL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 MAY 7 PM 2 30
BRANDY W. MCBEE

I, the undersigned attorney, do hereby certify that I have served a copy of Notice of Motion and Motion upon Kenneth L. Holland, Attorney for Defendants by U.S. Mail addressed as follows:

Kenneth L. Holland, Esquire
212 E. Floyd Baker Blvd.
Gaffney, SC 29340


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye d/b/a Drye's Auto Crushing

Plaintiff,

vs.

Total, Inc. d/b/a Gault's Used Cars,

Defendant.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-11-1038

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Wade S. Weatherford, III, Bar No. 5978</u> Address: <u>P.O. Box 2207, Gaffney, SC 29342</u> Phone: <u>864-489-1500</u> Fax <u>864-488-2590</u> E-mail: <u>chiplaw@bellsouth.net</u> Other: _____		Defendant's Attorney: <u>Kenneth L. Holland, Bar No. _____</u> Address: <u>212 E. Floyd Baker Blvd., Gaffney, SC 29340</u> Phone: <u>864-487-3366</u> Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Contempt</u>		Court Reporter Needed: ☒ YES / ☐ NO	
Estimated Time Needed: <u>1 hour</u>			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		Date submitted: <u>8/1/12</u>	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, S.C.R.) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

ROA 000047

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.
and Edward Keith Potter,
individually and as President of
Total, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

**NOTICE OF MOTION
AND MOTION**

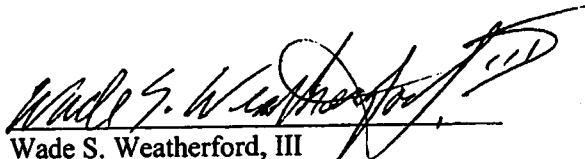
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 1 PM 3 56
BRANDON W. MCBEE

**TO: MIKE GAULT, GENERAL MANAGER, TOTAL, INC., D/B/A GAULT'S
USED CARS AND KEN HOLLAND, ATTORNEY**

PLEASE TAKE NOTICE that the above Plaintiff will move before the Presiding Judge on August 13, 2012 at 9:30 a.m. at the Cherokee County Court of Common Pleas, 3rd Floor courtroom for an Order holding Mike Gault, General Manager, Total, Inc., d/b/a Gault's Used Cars, in Contempt of Court for moving, hiding, selling, transferring and/or otherwise disposing of assets of the judgment Debtor, Total, Inc., d/b/a Gault's Used Cars, thereby preventing the Receiver from taking possession of said property which could be used to satisfy the debt of judgment Debtor.

The Motion is based on the attached Affidavit.

I SO MOVE:


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

AFFIDAVIT

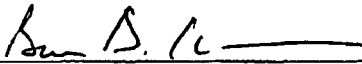
I, BEN D. KOCHENOWER, AFTER BEING DULY SWORN, SAY THAT AS
RECEIVER:

On March 13, 2012, I went to the location of Total, Inc. in Blacksburg. While there, I
observed four (4) rollback trucks. I was not able to obtain possession of the said property at that
time;

I returned to that location on July 30, 2012, ready and able to take possession of the above
property and none of the rollback trucks were there;

Mr. Gault told me that two (2) of the rollbacks were at the Union Highway location. I
went directly there and there were no rollbacks there;

I have other evidence that Mr. Gault has moved, hidden, sold, transferred and/or
otherwise disposed of assets of the judgment Debtor.



Ben D. Kochenower
Receiver

SWORN TO AND SUBSCRIBED BEFORE ME
this 1st day of August, 2012.



Notary Public for South Carolina
My Commission Expires: 03/02/2015

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 1 PM 3 56
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
2008-CP-11-1038

Christopher Drye, d/b/a Drye's Auto
Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault, d/b/a)
Gault's Used Cars, Total, Inc., and)
Edward Keith Potter, Individually)
and as President of Total, Inc.,)

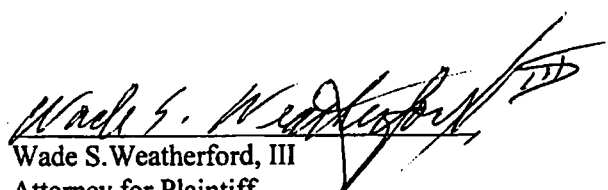
Defendants.)

CERTIFICATE OF SERVICE BY MAIL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 1 PM 4 20
BRANDY W. MCBEE

I, the undersigned attorney, do hereby certify that I have served a copy of Notice of Motion and Motion upon Kenneth L. Holland, Attorney for Defendants on August 1, 2012 by U.S. Mail addressed as follows:

Kenneth L. Holland, Esquire
212 E. Floyd Baker Blvd.
Gaffney, SC 29340


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye, d/b/a Drye's Auto Crushing

☐ Plaintiff

v.

Mike Gault And Mary T. Gault, Et Al.

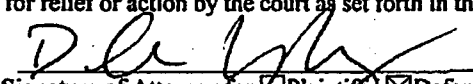
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-11-1038

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ phone: _____ fax: _____ e-mail: _____ other: _____		Defendant's Attorney: D. Alan Lazenby, Bar No. 13906 Address: _____ PO Box 6099, Spartanburg, SC 29304 phone: 864-804-5050 fax: 864-804-5051 e-mail: alan@lazenbylawfirm.com other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Terminate Receivership and Return Personal Property Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant October 24, 2012 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

ROA 000051

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye, d/b/a Drye's Auto
Crushing,

Plaintiff,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's
Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No: 2008-CP-11-1038

**NOTICE AND MOTION TO
TERMINATE RECEIVERSHIP AND
RETURN PERSONAL PROPERTY**

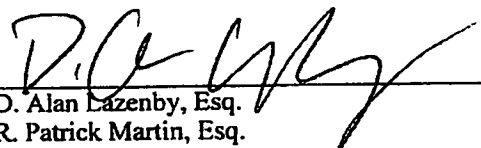
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY
OCT 24 PM 5 00
HONORARY W. ROBERT

**TO: WADE WEATHERFORD, ATTORNEY FOR THE PLAINTIFF AND BEN
KOCKENOWER, RECEIVER**

YOU WILL PLEASE TAKE NOTICE THAT ten (10) days after the service hereof, or as soon as counsel for the Defendants Mike Gault and Mary Gault may be heard, the Defendants Gault will move before the presiding judge of Cherokee County for an Order Returning Personal Property improperly confiscated by the present receiver. The grounds for this motion are more fully set forth in the attached memorandum of law.

October 24, 2012

By:


D. Alan Lazenby, Esq.
R. Patrick Martin, Esq.

LAZENBY LAW FIRM, LLC
Post Office Box 6099
Spartanburg, SC 29304
Phone: (864) 804-5050
Email: alan@lazenbylawfirm.com
Email: patrick@lazenbylawfirm.com

**ATTORNEYS FOR DEFENDANTS
MIKE GAULT, MARTY T. GAULT,
D/B/A GAULT'S USED CARS AND
EDWARD KEITH POTTER**

IN THE COURT OF COMMON PLEAS

C.A. No: 2008-CP-11-1038

Plaintiff,

**MEMORANDUM IN SUPPORT OF
DEFENDANTS GAULTS MOTION
TO TERMINATE RECEIVERSHIP
AND RETURN PERSONAL
PROPERTY--**

PROPERTY

Defendants.

PROCEDURAL BACKGROUND

On August 15, 2012 Defendant Total, Inc. filed for Chapter 11 bankruptcy. As part of that bankruptcy, the Receiver has been ordered to and has returned all property of Total, Inc. The schedule of property was set forth in the Bankruptcy Court. The Receiver has retained six (6) pieces of property that he seized which do not belong to Total, Inc., instead, this property belongs to the Defendants Gault and is more thoroughly defined:

- 1. Toyota Forklift - Seized July 30, 2012**

2. Blue Ford Tractor with Woods RM 990 Mower - Seized August 15, 2012
3. 8000 Watt Generator - Seized August 15, 2012
4. Millermatic 250 Welder - Seized August 15, 2012
5. Mitsubishi Forklift - Seized July 30, 2012
6. Racecar - Seized August 15, 2012

See Affidavit of Mike Gault (Exhibit A) and Affidavit of Mary Gault (Exhibit B).

Defendants Gault has made numerous demands to return this property. Despite this, Ben Kochenower has refused to turn over the remaining property, claiming that he has no proof to whom the property belongs and that it may belong to Total, Inc. He has also asserted that he is retaining the property because there is a pending action that may result in a judgment against Defendants Gault personally. No such judgment exists at this time.

**THE RECEIVER HAS EXCEEDED THE SCOPE OF THE FEBRUARY 29, 2012
ORDER APPOINTING HIM AND CONFISCATED PERSONAL PROPERTY OTHER
THAN THAT OF THE JUDGMENT DEBTOR, WHICH SHOULD BE RETURNED TO
THE RIGHTFUL OWNER.**

The Receiver has exceeded the scope of the February 28, 2012 Order appointing him and confiscated personal property other than that of the judgment debtor, which should be returned to the rightful owners. The Order Appointing Receiver issued on February 29 provides:

The court finds that it would be proper to appoint Ben D. Kochenower, CPA as Receiver, the Defendant had no objection. The Receiver shall have full power and authority over any and all property of Total, Inc. d/b/a Gault's Used Cars and to take said property, sell if necessary and apply to the debt of the judgment debtor until the judgment is paid in full.

The Order specifies that the Receiver has power over any and all property of Total, Inc. In the Chapter 11 Bankruptcy, the Receiver turned over all property of Total, Inc. See Attached Exhibit C (Two consent Orders returning property of the bankruptcy debtor). The Receiver has

retained six (6) items of property not belonging to the judgment debtor and retained by the Receiver. Pursuant to telephone conversations with the Receiver, the Receiver has refused to turn over the property because there is a pending lawsuit against the owners of the property and the property may belong to Total, Inc. Such a pre-judgment attachment is pre-empted by S.C. Code Ann. § 15-19-10. The form required by S.C. Code Ann. §15-19-10 has not been followed in this case, and accordingly the Receiver's continued possession is unlawful and improper. Accordingly, the Defendants Gault pray for the return of their personal property.

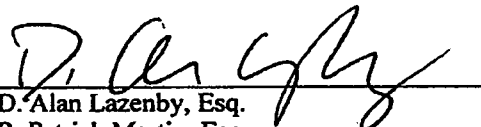
Furthermore, because Total, Inc. has filed for bankruptcy, any right that Plaintiff has to recover sums will necessarily be determined in bankruptcy and the receivership should be terminated.

CONCLUSION

For the above reasons, the Defendants Gault pray that this Court would inquire into the matters alleged and grant them the return of their personal property.

October 24, 2012

By:


D. Alan Lazenby, Esq.
R. Patrick Martin, Esq.

LAZENBY LAW FIRM, LLC
Post Office Box 6099
Spartanburg, SC 29304
Phone: (864) 804-5050
Email: alan@lazenbylawfirm.com
Email: patrick@lazenbylawfirm.com

ATTORNEYS FOR DEFENDANTS

EXHIBIT A

***Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and Mary T. Gault,
d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter individually and as President of
Total Inc., Defendants***
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye, d/b/a Drye's Auto
Crushing,

Plaintiff,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's
Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No: 2008-CP-11-1038

AFFIDAVIT OF MICHAEL GAULT

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 OCT 24 PM 4 59
RANDY W. HOBEE

PERSONALLY APPEARED BEFORE ME, Michael Gault, Defendant in the above referenced case who did state under oath:

1. My name is Michael Gault.
2. I am a resident of Cherokee County, South Carolina.
3. I am a defendant in the above referenced action.
4. At this time, there has been no judgment issued against me.
5. Certain items of personal property have been taken and withheld from me by the receiver in the above referenced action, namely:
 - a. Millermatic 250 Welder – Seized August 15, 2012
 - b. Mitsubishi Forklift – Seized July 30, 2012
 - c. Racecar– Seized August 15, 2012
 - d. 8000 watt Power Generator – Seized August 15, 2012
6. The Racecar listed above contains a motor owned by J.L. Thompson, but the chassis belongs to me personally.

7. I have made a demand upon the receiver, Ben Kochenower for the return of this property.
8. Mr. Kochenower refused to return the property because there is a case pending against me.

Further the affiant sayeth not.


Michael Gault

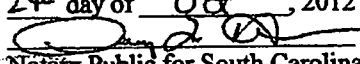
Sworn and subscribed to me this
24th day of Oct, 2012

Notary Public for South Carolina
My commission expires 1-12-22



EXHIBIT B

*Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and Mary T. Gault,
d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter individually and as President of
Total Inc., Defendants*

**In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038**

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye, d/b/a Drye's Auto
Crushing,

Plaintiff,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's
Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No: 2008-CP-11-1038

AFFIDAVIT OF MARY GAULT

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 OCT 24 PM 4 59
BRANDY W. MCBEE

PERSONALLY APPEARED BEFORE ME, Mary Gault, Defendant in the above referenced case
who did state under oath:

1. My name is Mary Gault.
2. I am a resident of Cherokee County, South Carolina.
3. I am a defendant in the above referenced action.
4. At this time, there has been no judgment issued against me.
5. Certain items of personal property have been taken and withheld from me by
the receiver in the above referenced action, namely:
 - a. Toyota Forklift - Seized July 30, 2012
 - b. Blue Ford Tractor - Seized August 15, 2012
 - c. Woods RM 990 Mower - Seized August 15, 2012
6. The Blue Ford Tractor, in particular, has a great sentimental value to me
because it was the most cherished asset of my deceased husband, Edgar Gault.
7. I want the property listed above returned to me.

Further the affiant sayeth not.

Mary S Gault
Mary Gault

Sworn and subscribed to me this
24th day of October, 2012
[Signature]
Notary Public for South Carolina
My commission expires 4-4-21

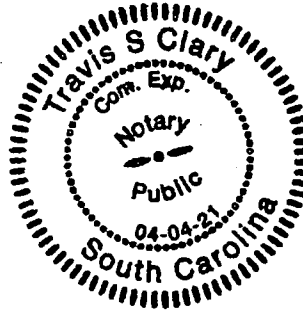


EXHIBIT C

***Christopher Drye, d/b/a Drye's Auto Crushing, Plaintiff v. Mike Gault and Mary T. Gault,
d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter individually and as President of
Total Inc., Defendants***
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

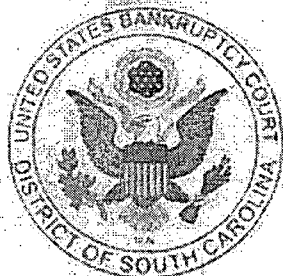
**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

Case Number: 12-05055-JW

CONSENT AGREEMENT TO TURNOVER PROPERTY OF THE ESTATE

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby
ORDERED.

**FILED BY THE COURT
09/26/2012**



Entered: 09/26/2012

John E. Waites

Chief US Bankruptcy Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:	)	Case no. 12-05055-jw
TOTAL, INC.	)	
2015 Union Highway	)	
Gaffney, SC 29340	)	Chapter 11
Tax ID/EIN: 20-5604530	)	
Debtor-in-possession	)	

CONSENT AGREEMENT TO TURNOVER PROPERTY OF THE ESTATE

This matter came before the Court on the motion of the debtor-in-possession asking the Court to compel the pre-petition court-ordered receiver to release property of the debtor and property of the bankruptcy estate as such property is necessary to an effective reorganization of the debtor. In its motion the debtor pled as follows:

The motion of Total, Inc., the debtor-in-possession respectfully represents:

1. The debtor-in-possession filed its chapter 11 petition on August 15, 2012.
2. Prior to the filing of the current chapter 11 case, the debtor corporation was involved in litigation with a judgment creditor named Christopher Drye, d/b/a Drye's Auto Crushing. The matter was being litigated in the Court of Common Pleas in Cherokee County, South Carolina in case number 2008-CP-11-1038. On February 28, 2012, the Honorable J. Mark Hayes, Presiding Judge entered his order appointing a receiver in the matter. The receiver was Ben D. Kochenower, CPA, whose address is 1225 W. Floyd Baker Blvd., Gaffney, SC 29342.
3. The debtor as debtor-in-possession has certain rights and duties as those of a trustee. See 11 USC section 1107(a).
4. One of those duties is to compel the turnover of property and property of the estate. See 11 USC section 542 and 543.

11 USC section 543 states as follows:

- (a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, offspring, rents or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.
- (b) A custodian shall (1) deliver to the trustee (or debtor-in-possession) any property of

the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and (2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

(c) The court, after notice and a hearing, shall (1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property; (2) provide for payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian, and (3) surcharge such custodian for any improper or excessive disbursement (other than that approved after notice and a hearing by a court of competent jurisdiction prior to the bankruptcy case having been filed).

A "custodian" is defined in 11 USC section 101 (11) to include all persons or entities appointed pursuant to nonbankruptcy law to care for a debtor's property. A state court appointed receiver is generally included in such definition per case law.

5. The debtor's sole officer and shareholder, Edward Keith Potter, its president, has submitted an affidavit to the undersigned counsel for the debtor, stating that he is the individual authorized to make decisions pertaining to the corporation, and as such has given authority for the undersigned attorney to enter into this consent agreement. Further, Mr. Potter confirms in said affidavit that certain parties are holding property of the debtor's bankruptcy estate, and that such is necessary to effectuate a successful chapter 11 reorganization. Further, the property is property that may be used, sold or leased by the debtor-in-possession under 11 U.S.C. section 363.

6. The property of the debtor and this bankruptcy estate which is subject to this order for turnover is described as follows:

2004 Pace enclosed car hauler (serial number ending in 4281)
2001 3 car hauler (serial number ending in 0132)
2002 Ford F-350 (serial number ending in 8037)
CAT 955L loader (serial number ending in 5343)
1996 Chevy 2500 (serial number ending in 8071)
821 Case Loader with set of forks (serial number ending in 4237)

7. The property described in paragraph 5 of this complaint is being stored at the direction of the custodian at Blanton's Wrecker Service, 1901 Cherokee Avenue, Gaffney, SC 29340.

8. In addition to the list of assets identified above, certain pre-petition funds of the debtor on deposit with American Community Bank in the approximate amount of \$7,500, which constitute cash collateral of another creditor of this bankruptcy estate, were frozen at the behest of the receiver. Such funds shall be released by the receiver and as cash collateral

shall be treated as appropriate under existing or future orders of the Court governing the same.

WHEREFORE, the parties now come before this Honorable Court to advise the Court that they have resolved the matter as follows:

RESOLUTION OF ISSUES

The undersigned parties, who hereby give their consents, have agreed that the receiver as custodian, will release to the debtor-in-possession or its designee all property of the debtor, including property of the estate, and by so doing, said receiver is hereby relieved of all future responsibilities pertaining to said property.

Having affixed their signatures of consent to this agreement, the undersigned parties ask this Honorable Court to enter its Order Approving the Settlement.

WE CONSENT:

/s/Robert H. Cooper
Robert H. Cooper
The Cooper Law Firm
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 Phone
(864) 232-5236 Facsimile
rhcooper@thecooperlawfirm.com

/s/ Dana Wilkinson
Dana Wilkinson
Attorney for Christopher Drye, d/b/a Drye's Auto Crushing
District Court I.D. No. 4663
365-C East Blackstock Road
Spartanburg, SC 29301
864-574-7944
864-574-7531 FAX
danawilkinson@danawilkinsonlaw.com

September 25, 2012

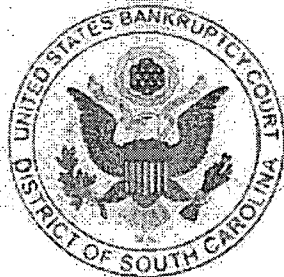
U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 12-05055

CONSENT AGREEMENT TO TURNOVER PROPERTY OF THE ESTATE

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby **ORDERED**.

FILED BY THE COURT
10/05/2012



Entered: 10/05/2012

John E. Waites
Chief US Bankruptcy Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:	)	Case no. 12-05055-jw
TOTAL, INC.	)	
2015 Union Highway	)	
Gaffney, SC 29340	)	Chapter 11
Tax ID/EIN: 20-5604530	)	
Debtor-in-possession	)	

CONSENT AGREEMENT TO TURNOVER PROPERTY OF THE ESTATE

This matter came before the Court on the motion of the debtor-in-possession asking the Court to compel the pre-petition court ordered receiver to release property of the debtor, and property of the bankruptcy estate, as such property is necessary to an effective reorganization of the debtor. In its motion filed August 21, 2012, the debtor pled as follows:

The motion of Total, Inc., the debtor-in-possession respectfully represents:

1. The debtor-in-possession filed its chapter 11 petition on August 15, 2012.
2. Prior to the filing of the current chapter 11 case, the debtor corporation was involved in litigation with a judgment creditor named Christopher Drye, d/b/a Drye's Auto Crushing. The matter was being litigated in the Court of Common Pleas in Cherokee County, South Carolina in case number 2008-CP-11-1038. On February 28, 2012, the Honorable J. Mark Hayes, Presiding Judge entered his order appointing a receiver in the matter. The receiver was Ben D. Kochenower, CPA, whose address is 1225 W. Floyd Baker Blvd., Gaffney, SC 29342.
2. The debtor as debtor-in-possession has certain rights and duties as those of a trustee. See 11 USC section 1107(a).
3. One of those duties is to compel the turnover of property and property of the estate. See 11 USC section 542 and 543.

11 USC section 543 states as follows:

- (a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, offspring, rents or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.
- (b) A custodian shall (1) deliver to the trustee (or debtor-in-possession) any property of

the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and (2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

(c) The court, after notice and a hearing, shall (1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property; (2) provide for payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian, and (3) surcharge such custodian for any improper or excessive disbursement (other than that approved after notice and a hearing by a court of competent jurisdiction prior to the bankruptcy case having been filed).

A "custodian" is defined in 11 USC section 101 (11) to include all persons or entities appointed pursuant to nonbankruptcy law to care for a debtor's property.

A state court appointed receiver is generally included in such definition per case law.

4. The debtor's sole officer and shareholder, Edward Keith Potter, its president, has submitted an affidavit to the undersigned counsel for the debtor stating that he is the individual authorized to make decisions pertaining to the corporation, and as such has given authority for the undersigned attorney to file this motion. Further, Mr. Potter confirms in said affidavit that certain parties are holding property of the debtor's bankruptcy estate, and that such is necessary to effectuate a successful chapter 11 reorganization. Further, the property is property that may be used, sold or leased by the debtor-in-possession under 11 U.S.C. section 363.

5. The following is a description of the corporate property, being currently stored at the direction of the pre-petition appointed receiver that the debtor-in-possession requests the Court direct released:

1999 Ford F350 truck bearing VIN #1fdwe37fxxhb07054;

A 4 in 1 hydraulic bucket that fits the 821 Case Loader, previously released to the debtor; and

A boom extension that fits the same Case Loader.

6. The property described in paragraph 5 above is being stored at the direction of the custodian at Blanton's Wrecker Service, 1901 Cherokee Avenue, Gaffney, SC 29340.

RESOLUTION OF ISSUES

The undersigned parties, who hereby give their consents, have agreed that the receiver as custodian, will release to the debtor-in-possession or its designee the above-described property of the debtor, which is property of the estate, and by so doing, said receiver is hereby relieved of all

future responsibilities pertaining to said property. The parties agree that this resolution resolves the debtor's motion to compel turnover.

Having affixed their signatures of consent to this agreement, the undersigned parties ask this Honorable Court to enter its Order Approving the Settlement.

WE CONSENT:

/s/Robert H. Cooper
Robert H. Cooper
The Cooper Law Firm
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 Phone
(864) 232-5236 Facsimile
rhcooper@thecooperlawfirm.com

/s/Dana E. Wilkinson
Dana E. Wilkinson
365 C E. Blackstock Road
Spartanburg, SC 29301
(864) 574-7944 Phone
(864) 574-7531 Facsimile
danawilkinson@danawilkinsonlaw.com

Dated this 5th day of October, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars Total, Inc.)
and Edward Keith Potter,)
individually and as President of)
Total, Inc.,)

Defendants.)

**REPLY OF PLAINTIFF TO
MOTION TO TERMINATE RECEIVERSHIP
AND RETURN PERSONAL PROPERTY**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 DEC 13 PM 2:44
BRANDY WINBEE

TO: D. ALAN LAZENBY, ATTORNEY FOR DEFENDANTS:

The Plaintiff moves for the court to retain the appointed Receiver pursuant to
S.C. Code §15-65-10 et sq.

That now, Mike Gault and Mary Gault claim, by Affidavits dated October 24, 2012, to be
the owners of certain property in the possession of the Receiver. However, the Defendants
furnished pre-trial discovery, under court Order, to Plaintiff, on July 11, 2011 with lists of
personal property owned by Total, Inc. and Mike Gault. (See Exhibit #1) that these lists are
substantially different from the aforementioned Affidavits. None of the items listed in Mike
Gault's Affidavit were listed in his pre-trial discovery response. In addition, none of the items
claimed by Mary Gault in her Affidavit were listed in the inventory and appraisal of her
husband's estate, with the possible exception of a Ford tractor. (See Exhibit #2)

The Defendants have also provided conflicting information regarding the race cars and their ownership. A Rocket (race car) was listed in the pre-trial discovery as being owned by Total, Inc. and an invoice was produced. (See Exhibit #3) Now, Mike Gault claims that he owns the race car in the possession of the Receiver and he has produced an invoice dated April 20, 2012 for a rocket chassis. That on August 13, 2012 the court ordered the Receiver and a Deputy Sheriff to leave the courtroom and go to 199 Speedway Road and inventory the property located there. At the same time Mike Gault was ordered not to have anything removed from that location. The Receiver located, among other things, two (2) almost identical race cars and took photos of them. One of them was trimmed in red and the other in blue. (See Exhibits #4 & 5) When the Receiver and the Deputy Sheriff returned to take possession of property pursuant to court order dated August 14, 2012, the race car (Exhibit #4) was gone. On information and belief, Mike Gault is now racing that race car. (See Exhibit #6)

On April 12, 2012 the Receiver sent a letter to Mike Gault and to Total, Inc., asking for all assets to be listed along with any debts the property secured. (See Exhibit #7) This was prior to the Receiver taking any property. No response was ever made to that letter.

At the August 13, 2012, hearing before this court, Terry Wright testified that he was a former employee of Mike Gault's and that Mike Gault told him that he would do whatever it took to keep from paying this judgment. That he ordered all of his employees to move everything of value from his business location in Blacksburg to his shop at 199 Speedway Road in Gaffney. The reason was because his mother, Mary Gault, owned that property and that the Receiver could not go there. He even said that he would file bankruptcy, immediately start another company and never miss a beat. (See Affidavit Exhibit #8)

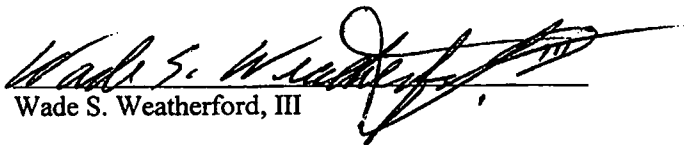
For the above reason, Plaintiff asks for the following:

1. That the Receiver be allowed to retain possession of all property that he now has until the true ownership is proved in court;
2. That the Receiver be allowed to proceed with his duties under S.C. Code §15-65-10 et sq since Mike Gault, individually, is still a Defendant in this case;
3. That Mike Gault be required to return possession, to the Receiver, of the race car that he took in violation of the courts verbal order in court on August 13, 2012; and
4. That Mike Gault be held in contempt of court for furnishing false, fraudulent, misleading and conflicting information to Plaintiff and to the court and that he be required to pay all of the costs and expenses of Plaintiff and Receiver because of this false information.

Respectfully Submitted.

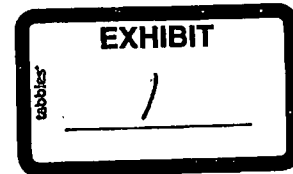
December 13, 2012

Gaffney, South Carolina


Wade S. Weatherford, III

**KENNETH L. HOLLAND, P.A.
ATTORNEY AT LAW
A PROFESSIONAL ASSOCIATION**

JULY 11, 2011



Wade S. Weatherford, III, Esquire
Attorney at Law
Post Office Box 2207
Gaffney, SC 29342

RE: Christopher Drye, d/b/a Drye's Auto Crushing vs.
Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total, Inc.,
and Edward Keith Potter, Individually and as President of Total, Inc.
Civil Action No.: 2008-CP-11-1038

Dear Chip:

Pursuant to the Order of Honorable J. Mark Hayes which was signed on June 15, 2011, filed on June 24, 2011, and forwarded to me on June 24, 2011, via fax, I am pleased to provide you with the following:

AS TO TOTAL, INC.

1. A list of all equipment and/or personal property owned by Total, Inc.;
2. Copies of all checks for cash or withdrawals for cash on the bank account of Total, Inc. number 111006245. (This information is taken entirely from the records of check account number 111006245 which, I understand, has been in your possession pursuant to subpoena for an extended period of time.)
3. Copies of all checks written to employees for work done. (Again, these copies of checks are taken from the above-referenced account, which has been in your possession.)

AS TO MIKE GAULT

4. Copies of all checks written to cash and/or withdrawals for cash by Mike Gault.
5. As I have repeatedly informed you, Mr. Gault has not filed any income tax returns in the last seven (7) years because his income does not reach a taxable level, according to the information he has given me.
6. Copies of all checks written to employees. (This information is identical to that referred to in number 3 above.)
7. A list of all personal property and/or vehicles owned.

ROA 000074

Wade S. Weatherford, III, Esquire
Attorney at Law
July 11, 2011
Page 2

AS TO MARY T. GAULT

8. Any and all checks written to Mike Gault, Gault's Used Cars and Auto Parts, Total, Inc., and Edward Keith Potter have been examined by you, apparently, in that paragraph 35 of your Amended Complaint refers to a total of checks written by Mary Gault of Two Hundred Fifty Thousand (\$250,000) Dollars. You allege that all these checks were deposited into the bank account of Total, Inc., numbered 111006245. Additionally you claimed that Loan was written in the Memo blank on these checks.

Since you already have the information referred to in your Requests to Produce letter number 8, I respectfully and formally request that you provide me with copies of whatever documentation for this allegation you have in your possession.

A close inspection of the 2009 checks indicates that a number of those checks are missing. (This information was included in the large amount of documents previously examined by you in my office.) If you have these 2009 checks, I would appreciate your providing me copies for the company's records.

In your letter of April 19, 2011, you mentioned tax returns. I include herewith a copy of my letter to you dated July 14, 2009, stating that I enclose copies of three (3) years of the tax returns of Mary Gault. If you need additional copies of these returns, I will be happy to provide them to you upon request.

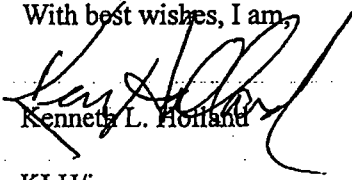
In addition I enclose a copy of my letter to you dated August 4, 20010, transmitting documents in compliance with your Request to Produce. Among those items number 2 refers to copies of tax returns for the years 2006 thru 2008. As I advised you previously Total, Inc., has not yet filed additional tax returns and has requested and obtained permission from the Internal Revenue Service to file later.

In addition to the above, I have located a document in my file relating to a late model race car which was sold to Total, Inc., Gault's Used Cars for the amount of Thirteen Thousand Nine Hundred (\$13,900.00) Dollars. This document appears to be dated October 9, 2009, and I submit it herewith in the interest of being complete and full in the attached responses.

Wade S. Weatherford, III, Esquire
Attorney at Law
July 11, 2011
Page 3

In the event I might have over looked some document in my responses, I will be happy to
cure any such lapse upon request from you.

With best wishes, I am,



Kenneth L. Holland

KLH/jgg

Enclosure

cc: Honorable J. Mark Hayes, II
Presiding Judge
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306

212 E. FLOYD BAKER BLVD. • GAFFNEY, S.C. 29340
TELEPHONE (864) 487-3366 FAX (864) 487-3366

ROA 000076

Total Inc. Equipment and Personal Property Owned

General Office Equipment: Desks, copy/fax machines, computers, file cabinets, chairs, paper shredder, telephones, etc...

Tools: sockets, wrench, screwdrivers etc...

Shop equipment: Engine hoists, motor stands, etc...

~~Approximately 75 cars on car lot~~

Approximately 200 cars in salvage yard

2 Front end loaders

1 Tractor

1 Rocket

2005 Freightliner

2001 Trailer

Clothes, Shoes, TV, DVD player, DVD's,
Bedroom Furniture, Refrigerator,
Microwave,

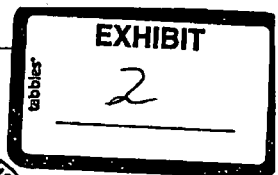
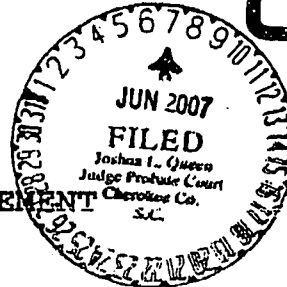
Clothes, Shoes, TV, DVD player, DVD's,
Bedroom Furniture, Refrigerator,
Microwave,

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE MATTER OF ESTATE OF EDGAR GAULT, JR., DECEASED
CASE NUMBER 2006ES1100356

INVENTORY AND APPRAISEMENT

☒ ORIGINAL
☐ SUPPLEMENTAL #



PROBATE COURT

Personal Representative(s): Mary T. Gault
Decedent's Social Security No.: 247-42-0975
Decedent's Date of Death: 10/10/06

Was there a will? ☒ YES ☐ NO
Domicile at death:
Cherokee, SC
(county) (state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this
5th day of June, 2007

Signature: Mary T. Gault
Name: Mary T. Gault
Address: 2016 Union Highway
Gaffney, SC 29340

Telephone (O):
(H): 489-1301

Notary Public for S.C.
My Commission Expires: 2/10/2010

Signature:
Name:
Address:

Attorney: James B. Drennan III
Address: P.O. Box 891
Spartanburg, SC 29304
Telephone: (864) 582-0708

Telephone (O):

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Out-of-state	In-state
Schedule A - Real Estate	\$	659,000.00
Schedule B - Stocks and Bonds		0.00
Schedule C - Mortgages, Notes and Cash		714,586.91
Schedule D - Insurance on Decedent's Life		
Part 1 - Payable to Estate.....		0.00
Part 2 - Payable to Beneficiary.....		0.00
Schedule E - Jointly Owned Property.....		62,000.00
Schedule F - Other Miscellaneous.....		97,500.00
Schedule G - Transfers during Decedent's Life.....		0.00
Schedule H - Powers of Appointment.....		0.00
Schedule I - Annuities.....		0.00
TOTAL GROSS VALUE	\$	1,533,086.91
ENCUMBRANCES	(	0.00)
TOTAL NET VALUE		1,533,086.91

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

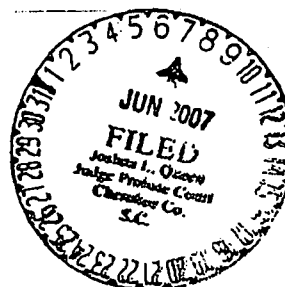
**INVENTORY AND APPRAISEMENT
ESTATE OF EDGAR GAULT, JR.**

SCHEDULE A: REAL ESTATE:

1. One-half interest in 2.9 acre tract and building on Speedway Road (Map ref. 116-00-00-39.000)	\$54,950.00
2. One-half interest in 81.17 acres on Speedway Road (Map ref. 116-00-00-037.002)	\$272,500.00
3. One-half interest in 0.95 acre lot and building at intersection of First Avenue, Fourth Street and Cherokee Avenue (Map ref. 099-06-00-162.000)	\$24,950.00
4. 4.61 acre tract on Frederick Street (Map ref. 101-0-00-036.000)	\$44,500.00
5. Residence at 2016 Union Highway, on 2.60 acre tract (Map ref. 101-00-00-039.000)	\$134,000.00
6. 0.37 acre tract on Wind Hill Drive (Map ref. 116-00-00-045.000)	\$7,400.00
7. One acre parcel on Frederick Street (Map ref. 101-00-00-107.000)	\$1,500.00
8. 5.69 acre tract at 192 Speedway Road (Map ref. 116-00-00-038.000)	\$113,300.00
10. 1.08 acre tract with no improvements (Map ref. 105-00-00-009.000)	<u>\$6,000.00</u>
Total	\$659,100.00

SCHEDULE F: MISCELLANEOUS PERSONAL PROPERTY:

1. Miscellaneous hand tools and equipment	4,000.00
2. Junk motor and truck	500.00
3. Sixteen foot enclosed trailer	2,500.00
4. 2002 GMC rollback	25,000.00
5. 1486 International tractork	5,000.00
6. 1086 IH Tractor	5,000.00
7. Sixteen foot enclosed trailer, white	3,000.00
8. 1997 Ford backhoe	25,000.00
9. 3600 Ford tractor	4,500.00
10. D6 Caterpillar dozer	10,000.00
11. Caterpillar motor grader	3,500.00
12. Caterpillar 21 yard pan	<u>9,500.00</u>
Total	97,500.00



ROA 000080

Aug 16 10 12:09p

Gault's Auto Parts

864-839-2778

p.1



403 Interstate Drive
Archdale, NC 27263
Phone 336-434-1800 Fax 336-434-1808
TO:
Total Inc., Gault's Used Cars

FUK:



INVOICE

INVOICE #1001
DATE: OCTOBER 9, 2009

DESCRIPTION	AMOUNT
Bill of Sale: Paid in full with cash on October 9, 2009 (1) Dirt Late Model race car	
Amount Paid	\$13,900.00
TOTAL DUE	\$0.00

Thank you for your business!

ROA 000081

12:09p

Gault's Auto Parts

864-839-2778

p.2

16-2010 10:00A FROM: CLEMENTS RACING

8645761634

TO: 18648392778

P.1



CLEMENTS AUTOMOTIVE

6011 MELVIN DRIVE • SPARTANBURG, SC 29303 • PHONE (864) 576-8082

Clements Automotive, Inc. is leasing Total Incorporated DBA Gaults Used Cars a 430 cubic inch 11* engine for 40% of the winning proceeds. As of 8/13/10, the winning proceeds are \$8,675.00.

A handwritten signature in cursive script, appearing to read "Tony Clements".

Thank you,

ROA 000082

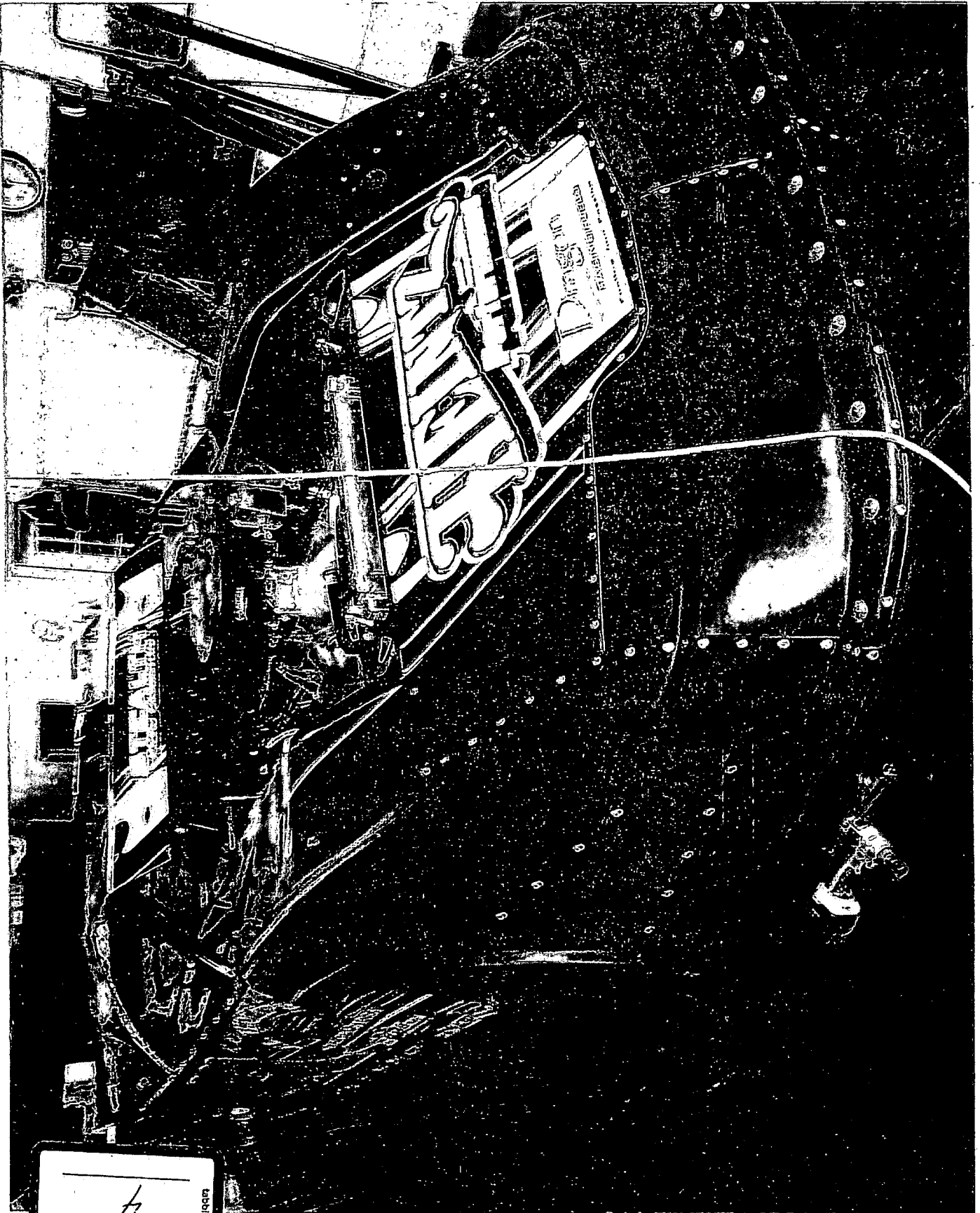
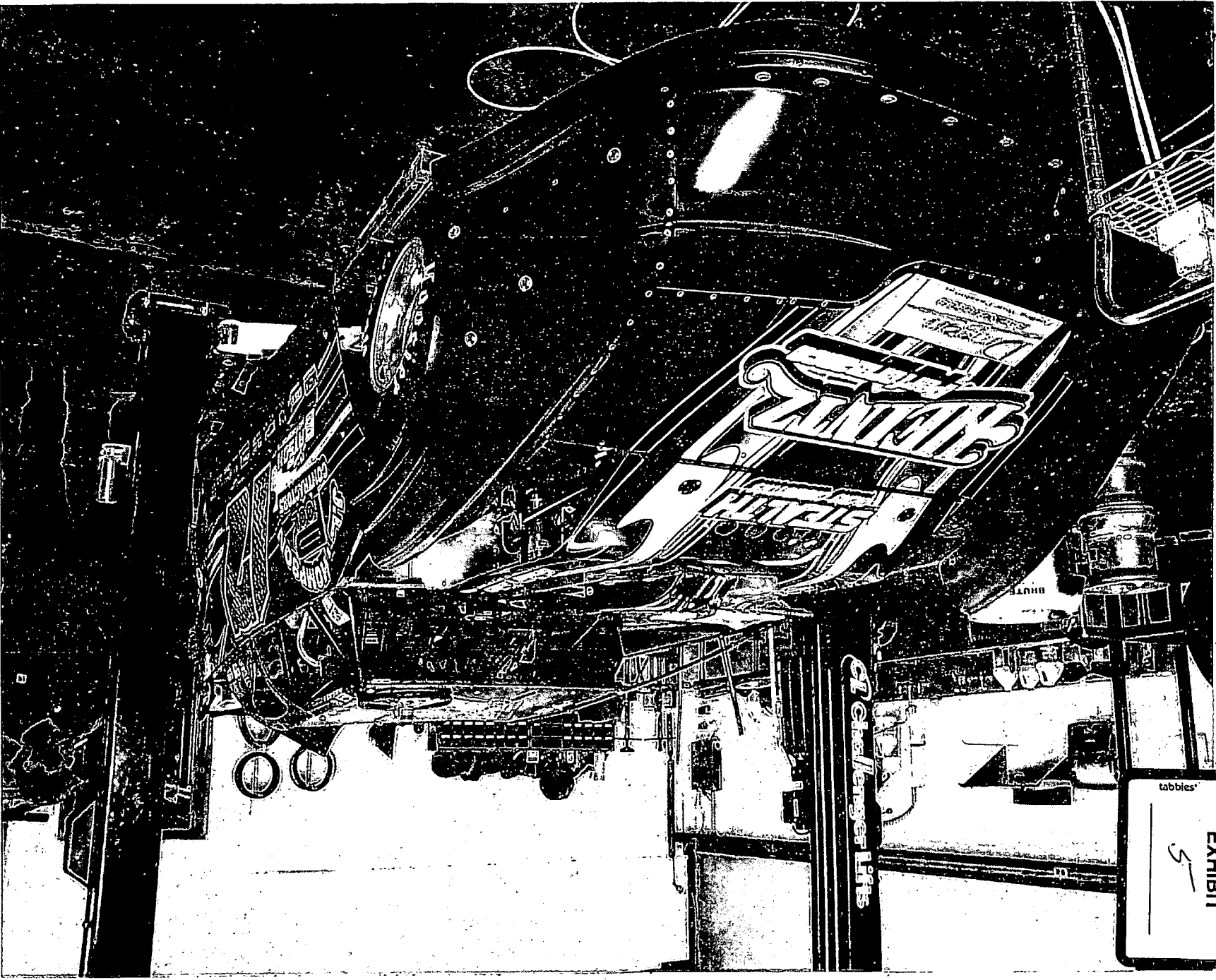


EXHIBIT 4



tabbies®
EXHIBIT
5

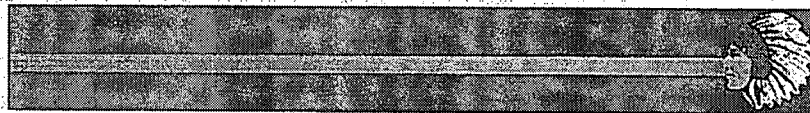
ROA 000084

EXHIBIT

6



HOME
SPONSORS
TRACK INFO.
DIRECTIONS
RULES
NEWS
SCHEDULE
RESULTS
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VIDEOS
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HALL OF FAME
CONTACT
FORUM
LINKS
FlashVortex.com



November 17th & 18th Race Results

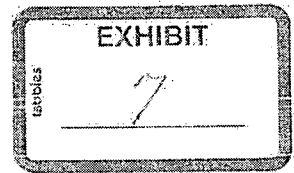
Blue Gray 100 (SAS)

- 1) Mike Marlar
- 2) Jared Landers
- 3) Dennis Franklin
- 4) Casey Roberts
- 5) Ivendent Lloyd Jr.
- 6) Chris Madden
- 7) Chris Ferguson
- 8) Jamie Lathroum
- 9) Petey Ivey
- 10) Ricky Weeks
- 11) Jeff Smith
- 12) Dale Hammond
- 13) Doug Sanders
- 14) Johnny Pursley
- 15) Randy Weaver
- 16) Steve Francis
- 17) Josh Henry
- 18) Mike Gault
- 19) Jonathan Davenport
- 20) Steve Shaver
- 21) Billy Workman
- 22) Bret Holmes
- 23) Bubba Russell

Crate Late Model

- 1) Justin Labonte #44
- 2) Corey Gordon #23
- 3) Jeff Cooke #99
- 4) David Smith #11
- 5) Owen Osteen #20





BEN D. KOCHENOWER, CPA

P.O. BOX 848
1225 W. FLOYD BAKER BLVD.
GAFFNEY, SC 29342

April 12, 2011

Mike Gault
Edward Keith Potter
Total, Inc. d/b/a Gault's Used Cars
2015 Union Highway
Gaffney, SC 29340

As Receiver for Total, Inc. d/b/a Gault's Used Cars, I hereby request the following:

Please furnish the following information relative to Total, Inc. d/b/a Gault's Used Cars as of August 2, 2011 and April 10, 2011, with regard to assets owned, used in the business or idle, and all related debt obligations that assets are pledged to secure, along with documentation:

1. Listing of all amounts and how used in the business
2. Listing of all assets owned and not used in the business
3. Notes Payable and all related collateral pledged
4. Floor Plan Statements and listing of all collateral pledged

Please furnish this information for me within 10 days of the date of this letter.

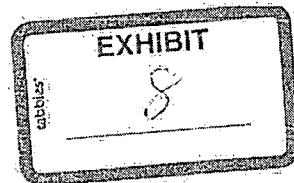
Ben D. Kochenower, Receiver

Via Facsimile with Copy by US Mail
Wade S. Weatherford III, Esq.
P.O. Box 2207
Gaffney, SC 29342
Fax: 864-488-2590

Via Facsimile with Copy by U. S. Mail
Kenneth E. Holland, Esq.
212 E. Floyd Baker Blvd.
Gaffney, SC 29340
Fax: 864-487-3930

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
1. Article Addressed to: 2015 University Hwy Gaffney, SC 29340		A. Signature X. <i>[Signature]</i> ☐ Agent ☐ Addressee	
		B. Received by (Printed Name)	C. Date of Delivery 4-16-12
		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
		3. Service Type: ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label)		91 7108 2133 3933 7694 5390	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
1. Article Addressed to: 853 B Blackhawk Hwy		A. Signature X. <i>[Signature]</i> ☐ Agent ☐ Addressee	
		B. Received by (Printed Name) M. [Signature]	C. Date of Delivery 4/16/12
		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
		3. Service Type: ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label)		91 7108 2133 3933 7694 5363	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	



STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

AFFIDAVIT

I, Terry Wright, after being duly sworn, says:

That I am a former employee of Mike Gault and Gault's Used Cars and/or Total, Inc. I talked to Mike Gault a number of times about the judgment of Chris Drye. Mike said that he did not think that he owed the judgment and that he would do whatever it took to keep from paying it.

The Receiver came to Gault's Blacksburg, SC location on or about July 30, 2012 and took some of Gault's equipment. Thereafter, Mike Gault told all of his employees to move everything of value to 199 Speedway Road, Gaffney, SC, to his race shop. He told me that the reason was because that location was in his mother, Mary Gault's name and that the Receiver could not come onto that property and take anything else.

He told me that if he had to, that he would file for Bankruptcy, immediately start up a new company, and never miss a beat.

I testified to the above in the Court of Common Pleas, Cherokee County, SC on August 13, 2012.

Terry Wright

SWORN TO AND SUBSCRIBED BEFORE ME
this 4th day of December, 2012.

Vicki L. Neathup
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03/02/2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
2008-CP-11-1038

Christopher Drye, d/b/a Drye's Auto)
Crushing,)

Plaintiff,)

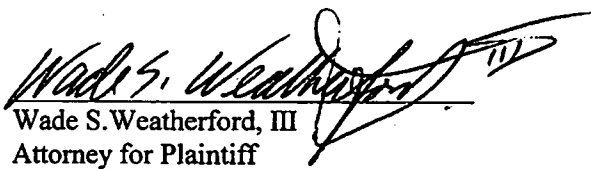
vs.)

CERTIFICATE OF SERVICE BY MAIL

Mike Gault and Mary T. Gault, d/b/a)
Gault's Used Cars, Total, Inc., and)
Edward Keith Potter, Individually)
and as President of Total, Inc.,)
Defendants.)

I, the undersigned attorney, do hereby certify that I have served on December 13, 2012 a Reply of Plaintiff to Motion to Terminate Receivership and Return Personal Property on D. Alan Lazenby, Esq., attorney for Defendants, by U.S. Mail addressed as follows:

D. Alan Lazenby, Esq.
P.O. Box 6099
Spartanburg, SC 29304


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye, d/b/a Drye's Auto Crushing

☐ Plaintiff

v.

Mike Gault And Mary T. Gault, Et Al.

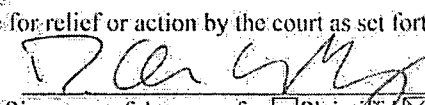
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-11-1038

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ phone: _____ fax: _____ e-mail: _____ other: _____		Defendant's Attorney: D. Alan Lazenby, Bar No. 13906 Address: _____ PO Box 6099, Spartanburg, SC 29304 phone: 864-804-5050 fax: 864-804-5051 e-mail: alan@lazenbylawfirm.com other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Dismiss Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: February 19, 2013			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

ROA 000090

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE)

Christopher Drye, d/b/a Drye's Auto)
Crushing,) C.A. No: 2008-CP-11-1038

Plaintiff,)

v.)

DEFENDANT MIKE GAULT'S
MOTION TO DISMISS PURSUANT
TO SCRPC RULE 12(b)(1)

Mike Gault and Mary T. Gault, d/b/a Gault's
Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc.)

Defendants.)

INTRODUCTION

Defendant Mike Gault hereby submits this Motion to Dismiss pursuant to Rule 12(b)(1).

Despite the fact that Plaintiff obtained a verdict on the breach of contract action in this case, Plaintiff seeks to pursue Mike Gault, individually, for breach of contract, a claim which should be precluded as the facts and issues relevant to any claim against Mike Gault have already been litigated and adjudicated.

PROCEDURAL BACKGROUND

Christopher Drye d/b/a Drye's Auto Crushing ("Plaintiff") brought against Mike Gault ("Mike Gault") and Mary T. Gault ("Mary Gault") d/b/a Gault's Used Cars, Total, Inc. ("Total") and Edward Keith Potter ("Potter") individually and as president of Total, Inc. (together "Defendants"), actions for Breach of Contract, Piercing the Corporate Veil of Total, Inc., and Civil Conspiracy. This case went to trial on August 1, 2011.

At trial, Plaintiff's Counsel requested a voluntary non-suit as to the civil conspiracy cause of action based upon a lack of evidence which the court granted but indicated he planned to retain the cause of action concerning the piercing of the corporate veil as to Potter, Mary Gault, and perhaps Mike Gault. (See Exhibit A: Excerpt of Transcript of Record, Page 160, Lines 4-9) (See Exhibit A: Excerpt of Transcript of Record, Page 161, Lines 17-18). The Court expressed its concern and clarified that Plaintiff wished to possibly pursue a later bifurcated case regarding the piercing of the corporate veil which Plaintiff agreed with and acknowledged as correct. (See Exhibit A: Excerpt of Transcript of Record, Page 161, Lines 10-15).

Plaintiff's Counsel then stated he thought his only cause of action on the breach of contract cause of action was either against Mike Gault and/or Total, Inc. The Court indicated it would keep the caption the same on the jury form but would explain to the jury that the only issues were for the defendants still in the case and then held a bench conference as to the jury form. (See Exhibit A: Excerpt of Transcript of Record, Page 203, Lines 11-14 and 22-24).

The Court then presented the jury with a jury form whereupon the first question gave the jury an option to find for the Plaintiff or Defendant as to the cause of action for breach of contract against Total, Inc., and Total Inc., d/b/a Gault's Used Cars. (See Exhibit A: Excerpt of Transcript of Record, Page 203-204, Lines 25-3 and Page 204, Lines 17-24). The Plaintiff indicated he had no objections related to the jury form. (See Exhibit A: Excerpt of Transcript of Record, Page 206, Lines 20-21).

The jury found in favor of Plaintiff as to the breach of contract claim and an Order for Judgment against Total Inc, d/b/a Gault's Used Cars was entered on September 1, 2011. (See Exhibit A: Excerpt of Transcript of Record, Page 208-209, Lines 24-3) (See: Exhibit B: Order for Judgment).

On August 28, 2012, Plaintiff's Counsel, in Correspondence to this Court stated that since his cause of action for piercing the corporate veil had been a non-jury matter, it had been bifurcated as described hereinabove and indicated his desire to pursue the piercing of the veil claim and asked to be placed on the non-jury roster. (See Exhibit C: Correspondence from Wade S. Weatherford, III, Esq. to the Cherokee County Clerk of Court dated August 28, 2012).

On January 14, 2013, the United States Bankruptcy Court for the District of South Carolina, in Case Number: 12-05055-jw related to the Chapter 11 bankruptcy filed by Total, Inc., held the veil piercing claim to be an asset of the estate and held in place an automatic stay as related to that claim, leaving Plaintiff free to address litigation concerning individuals who are not in bankruptcy. (See Exhibit D: Consent Order).

This leaves the claim for civil conspiracy dismissed, the claim for breach of contract adjudicated, and the claim for veil piercing as to Total Inc. protected by an automatic stay. Plaintiff, disappointed by the ruling of the bankruptcy court, has now indicated his intent to pursue in this Court an individual claim against Mike Gault for breach of contract which would amount to an end-run pass around the rulings of the Court.

Plaintiffs are estopped from this action *in pais* by virtue of silence, by the doctrine of laches, and by the record. Plaintiffs are also barred from this action based upon the doctrines of res judicata and collateral estoppel.

STATEMENT OF LAW

The Court has described estoppel as "a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled by the acts and proceedings of judicial or legislative officers, or by the act of the party himself, either by conventional writing or by representations, express or implied, in pais." *Southern Ry. Co. v Day*, 138 S.E. 870, 873 (S.C.

1926)(Citing to 21 C.J. 1059). Where a party has, by his silence, induced another party to believe certain facts, particularly where he has had an opportunity to speak and has not done so, thus inducing another party to believe certain facts and act upon them in such a way as to have been prejudiced if the initial party is allowed to deny the existence of such facts, the party who did not speak is conclusively estopped from denying those facts. *Southern Ry. Co. v Day, Id.*, 873. Further, “the conduct of a party, sought to be made against him by silence, must be viewed in the light of the understanding he then had of his rights, and not in the light of such rights as they may be thereafter determined by the ultimate and conclusive adjudications of the courts.” *Southern Ry. Co. v Day, Id.*, 873.

Under the doctrine of laches, where a party who knows his right, has been afforded opportunity for diligence, and does not assert it in a reasonable time, thereby causing his adversary prejudice, equity will not ordinarily allow such a party to enforce his rights. *Robinson v Estate of Harris*, 698 S.E.2d 801, 806 (S.C. 2010).

An estoppel by record, which is binding on the parties, “is the preclusion to deny the truth of matters set forth in a record, whether judicial or legislative, and also to deny the facts adjudicated by a court of competent jurisdiction.” *Watson v Goldsmith*, 31 S.E.2d 317, 320 (S.C. 1944).

While judicial estoppel is not intended to protect parties from dishonest conduct by their adversary, it does prevent a litigant from “asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding” and is intended to ensure the integrity of the judicial process. *Cothran v Brown*, 592 S.E.2d 629, 631(S.C. 2004).

South Carolina courts have held that “ ‘*res judicata*’ bars relitigation of the same cause of action while ‘collateral estoppel’ bars relitigation of the same facts or issues necessarily

determined in the former proceeding.” *Liberty Mutual Insurance Company v Employers Insurance of Wausau*, 325 S.E.2d 566, 568 (S.C. Ct. App. 1985).

APPLICATION

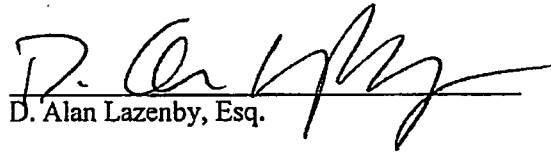
As outlined hereinabove, the breach of contract claim against all Defendants was litigated and settled by way of a judgment against Total, Inc. Plaintiff had opportunity during the trial to respond to the Court with any objections to the absence of Mike Gault individually either in the jury charges or the verdict form. The Court clarified Plaintiff’s position verbally and gave Plaintiff opportunity to review the verdict form and object. Plaintiff expressly and by his silence declined this opportunity leading Mike Gault to understand and rely upon this representation to mean he was not being charged in the breach of contract claim.

It is clear Plaintiff understood, at that time, that he was reserving his rights to a bifurcated trial as to the piercing the veil claim both based upon the transcript and upon his correspondence to this Court. The record is clear as to the adjudication of this issue and the Plaintiff’s failure to object to the relevant issues and documents. Because of his current position in this litigation, which he finds to be less than advantageous, the Plaintiff now takes the inconsistent position that he is entitled to pursue Mike Gault individually related to the breach of contract claim previously litigated. The breach of contract cause of action as well as the facts and issues relevant to any alleged claim against Mike Gault have been previously litigated and decided.

For the above reasons, Defendant moves this Honorable Court to dismiss any claims of breach of contract to be made by Plaintiff against Mike Gault, or, in the alternative, to enter a protective order which would protect Mike Gault from any proceedings initiated in the future by Plaintiff against Mike Gault related to the breach of contract claim at issue in this litigation.

February 19, 2013

By:


D. Alan Lazenby, Esq.

LAZENBY LAW FIRM, LLC
Post Office Box 6099
Spartanburg, SC 29304
Phone: (864) 804-5050
Email: alan@lazenbylawfirm.com

ATTORNEYS FOR DEFENDANTS

EXHIBIT A

Christopher Drye, d/b/a Drye's Auto Crushing v. Mike Gault and Mary T. Gault
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 FEB 27 PM 1 51
BRANDY W. MOORE

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS

CHRISTOPHER DRYE d/b/a
DRYE'S AUTO CRUSHING,

PLAINTIFF,

-VS-

MIKE GAULT AND
MARY T. GAULT d/b/a
GAULT'S USED CARS,
TOTAL, INC., AND
EDWARD POTTER, INDIVIDUALLY
AND AS PRESIDENT OF
TOTAL, INC., OF WHOM
TOTAL, INC., d/b/a
GAULT'S USED CARS,

DEFENDANTS.

2008-GS-23-7370
EXCERPT OF
TRANSCRIPT OF RECORD

AUGUST 1 & 2, 2011
GAFFNEY, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROGER L. COUCH

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

WADE S. WEATHERFORD, III, ESQUIRE

ATTORNEY FOR DEFENDANTS:

KENNETH L. HOLLAND, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 you on that.

2 MR. WEATHERFORD: Your Honor, we decided to go forward
3 only on the breach of contract cause of action, that we did
4 not -- after consideration and further research I decided we
5 were not going to be able to prove the elements necessary
6 for criminal -- civil conspiracy. So I voluntarily did not
7 present any additional evidence on that cause of action and
8 am willing to take a voluntary non-suit on that cause of
9 action.

10 THE COURT: I believe you indicated, however, that as
11 to the defendants that were named in that part of the case,
12 that would have been Mr. Potter, individually, Mrs. Gault,
13 individually, and, perhaps, Mr. Mike Gault, individually,
14 you did wish to retain the cause of action that you'll seek
15 in a bifurcated trial concerning a piercing of the corporate
16 veil, is that correct?

17 MR. WEATHERFORD: Yes, sir.

18 THE COURT: All right. Is that your understanding of
19 our discussion, Mr. Holland?

20 MR. HOLLAND: Yes, sir. My understanding is that
21 they're not going to testify in this particular part of the
22 case, not going to be called.

23 THE COURT: Well, as far as whether they testified or
24 not, that -- I don't know. I'm just mainly concerned about
25 whether or not the cause of action for conspiracy would go

1 to the jury and whether or not Mr. Weatherford would
2 preserve his right later to claim a piercing of the
3 corporate veil in a separate action if he chooses to pursue
4 that.

5 MR. HOLLAND: Well, he's made a voluntary non-suit
6 motion about the conspiracy.

7 THE COURT: That's correct.

8 MR. HOLLAND: And I would urge the court to grant that
9 motion.

10 THE COURT: I will grant that. And the only concern I
11 have after that is that Mr. Weatherford did indicate though
12 that he would wish to perhaps pursue a later bifurcated case
13 as to whether or not the corporate veil in this case should
14 be pierced. And, of course, that's not a jury question.
15 That's not before this trial. Is that your understanding?

16 MR. HOLLAND: Yes, sir.

17 THE COURT: Okay, sir. So I'll grant that motion for a
18 non-suit as to the conspiracy cause of action. Any other
19 motions that need to be considered at this time?

20 MR. HOLLAND: Yes, sir, Your Honor. I would move for a
21 directed verdict on behalf of the individual defendants in
22 this case, Mary Gault and Keith Potter, because the
23 testimony of all plaintiff's witnesses mentioned that there
24 were no dealings of either of these people individually.

25 THE COURT: That's on the breach of contract case?

1 MR. HOLLAND: Right, sir.

2 MR. WEATHERFORD: Your Honor, I agree. I think my only
3 cause of action on the breach of contract is either against
4 Mike Gault and/or Total, Inc. so far as this cause of
5 action.

6 THE COURT: Well, I would agree too. So it'll be
7 granted as to the breach of contract cause of action.

8 MR. HOLLAND: All right, sir.

9 THE COURT: In favor of Keith Potter and Mary Gault.

10 MR. HOLLAND: Thank you, sir.

11 THE COURT: Yes, sir. Anything else at this time?

12 MR. HOLLAND: At this point, for the record, a motion
13 for a directed verdict on behalf of all defendants as to the
14 claim under a contract and/or a debt claim on the grounds
15 that the evidence indicates at this point that there was
16 money transferred, that there were cars delivered and the
17 dispute appears to be about the number of cars delivered ---

18 THE COURT: I'm going to deny that motion.

19 MR. HOLLAND: Well, I kind of expected that, just for
20 the record.

21 THE COURT: All right. I understand. All right. Are
22 you ready to proceed?

23 MR. HOLLAND: Yes, sir.

24 THE COURT: Bring the jury in. Let's bring the jury
25 back.

CHARGE OF THE COURT

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1 presently before the Court.

2 THE COURT: All right. And the Court would make the
3 same ruling as made earlier. They're denied. Specific
4 requests to charge? Any from the plaintiff?

5 MR. WEATHERFORD: No, sir.

6 THE COURT: Any from the defense?

7 MR. HOLLAND: No, sir.

8 THE COURT: All right. I do intend to charge, of
9 course, breach of contract and other standard charges that
10 would go along with that including corporations and
11 respondeat superior. All right. We'll be back at a quarter
12 til one. Is the plaintiff intending to open and then close?
13 You are?

14 MR. WEATHERFORD: Yes, sir.

15 THE COURT: Okay, sir. So we'll be calling on you
16 first.

17 MR. WEATHERFORD: Yes, sir.

18 THE COURT: All right. Thank you very much. Court's
19 in recess.

20 (Whereupon court was in recess at 11:34 am)

21 (Whereupon court resumed at 12:46 pm)

22 (Whereupon the jury entered the courtroom at 12:46 pm)

23 (Closing arguments of attorneys were omitted from this
24 transcript)

25 THE COURT: Ladies and gentlemen of the jury, that

CHARGE OF THE COURT

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1 THE COURT: Any objections from the plaintiff to the
2 charge?

3 MR. WEATHERFORD: No, sir.

4 THE COURT: Any from the defense?

5 MR. HOLLAND: No, sir.

6 THE COURT: I'll ask you to step up and agree upon the
7 exhibits to be sure that only proper exhibits go back. All
8 right. We're getting ready to print out a verdict form. I
9 want you to look at that before I submit it. So as soon as
10 that's ready, we'll take a look at that.

11 While we're doing that let's -- I'm going to leave the
12 caption exactly as it is. I'll explain to the jury that the
13 only issues are for these defendants that are in this case
14 still.

15 So I'll instruct them on that, but I'm going to leave
16 the caption as it is because technically your claim for
17 piercing the corporate veil still exists, they're still
18 defendants in the case for that purpose. I'll explain they
19 don't have any role in the verdict in this matter. So I'll
20 leave the caption as it is.

21 (Pause)

22 THE COURT: All right. Gentlemen, if you want to step
23 up and take a look at this and see if you have an objection.

24 (Whereupon a bench conference was held off the record)

25 THE COURT: All right. Gentleman, the first question

CHARGE OF THE COURT

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1 says as to cause of action for breach of contract against
2 Total, Inc., and -- Total, Inc., d/b/a Gault's Used Cars,
3 we, the jury, find in favor of the plaintiff or defendant.
4 If found in favor of the plaintiff, answer the damages
5 question below. Please state the amount of damages, if any,
6 sustained by the plaintiff. Is that satisfactory?

7 MR. WEATHERFORD: Yes, sir.

8 MR. HOLLAND: Yes, sir.

9 THE COURT: All right. Bring the jury in.

10 (Whereupon the jury entered the courtroom at 1:45 pm)

11 THE COURT: All right. The record will reflect the
12 jury has returned to the courtroom. Mr. Bailiff, pass this
13 over to the foreman for me.

14 Mr. Robbins, that is the verdict form we'll be using in
15 this case. And at the top it has the caption of the case
16 and the County and State that we're in.

17 The first question has to do with the issue concerning
18 whether or not you find that a contract was breached against
19 -- and the issue is whether or not the breach -- whether the
20 defendant, Total, Inc., doing business as Gault's Used Cars
21 breached the contract in this case.

22 Below that you can find either for the plaintiff or for
23 the defendant. And you'll check the line by the appropriate
24 verdict.

25 Now please don't take from the fact that I've placed

CHARGE OF THE COURT

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1 those choices in any order on the form, don't think that
2 indicates preference on my part. It does not. There's only
3 two choices, and that's the order that I put them in, but
4 doesn't indicate any preference on my part.

5 Now if you find for the plaintiff it would be your
6 responsibility then to answer the second question. And that
7 is to set the appropriate amount of damages that might be
8 due as a result of that breach of contract.

9 Now I realize that the caption indicates that there are
10 other defendants involved in the case. And I would just
11 inform you that because of agreements of the parties and
12 rulings by this Court, those defendants are not involved in
13 the verdict in this case. So they're no longer mentioned.

14 So, again, the verdict is concerning the issue of
15 breach of contract against Total, Incorporated doing
16 business as Gault's Used Cars. You would either find for
17 the plaintiff or for the defendant. And if you find for the
18 plaintiff, then you would assess the appropriate amount of
19 damages. All right.

20 I'm going to ask then that the jury retire to begin
21 your deliberations. They'll deliver the exhibits to you so
22 that you'll have a chance to look at those in the jury room.
23 I'm going to ask the alternate to remain seated at this
24 time. You may retire and begin your deliberations. Thank
25 you very much.

1 (Whereupon the jury exited the courtroom at 1:47 pm)

2 THE COURT: Mr. Arce, you're the alternate in this
3 case. And you've been patiently listening to the case, but
4 I tell alternates that you're kind of like the person that
5 went to the dance, you're not going to get to dance, but you
6 got to come. This -- since we don't have other cases to try
7 here this week, this will end your service on the jury
8 panel.

9 And I've told you not to discuss the case throughout
10 the trial. I'll tell you now that you have the right to do
11 so. You have the right not to do so as well.

12 If anybody were to bother you about your service on the
13 jury, you let the Clerk's Office know, they'll report it to
14 us, and we'll take the appropriate actions. You don't owe
15 anyone an explanation for anything you do serving on a jury.

16 Now, do you have something for him?

17 MADAME CLERK: Yes, sir.

18 THE COURT: Okay. The Clerk's going to take care of
19 you. Thank you, sir. And you're free to go at this time.

20 Any objection to final instruction from the plaintiff?

21 MR. WEATHERFORD: None, Your Honor.

22 THE COURT: Any from the defense?

23 MR. HOLLAND: No, sir.

24 THE COURT: All right. We're in recess then until such
25 time as a verdict's reached. Thank you very much.

1 the inquiry from the plaintiff?

2 MR. WEATHERFORD: No, sir.

3 THE COURT: Any from the defense?

4 MR. HOLLAND: No, sir.

5 THE COURT: All right. The inquiry will be made a
6 court's exhibit and part of the record. And we'll be in
7 recess until a verdict's reached.

8 (Whereupon court's exhibit 1 was marked)

9 (Whereupon court was in recess at 2:21 pm)

10 (Whereupon court resumed at 2:26 pm)

11 THE COURT: All right. You can be seated. All right.
12 I've been informed by the bailiff that a verdict has been
13 reached. Is the plaintiff ready to receive the verdict?

14 MR. WEATHERFORD: Yes, sir.

15 THE COURT: Defense ready to receive the verdict?

16 MR. HOLLAND: Yes, sir.

17 THE COURT: Bring the jury in.

18 (Whereupon the jury entered the courtroom at 2:27 pm)

19 THE COURT: All right. Mr. Foreman, the bailiff has
20 informed me a verdict's been reached. Is that true?

21 MR. FOREMAN: Yes, sir, that's true.

22 THE COURT: Pass the form to the bailiff, please. The
23 Clerk may publish the verdict.

24 MADAME CLERK: 2008-CP-11-1038, Christopher Dye versus
25 Mike Gault, et al., as to the cause of action for breach of

1 contract against the defendant, Total, Inc., doing business
2 as Gault's Used Cars, we, the jury, find in favor of the
3 plaintiff.

4 As to question two, the jury responds forty-nine
5 thousand, eight hundred and sixty-nine dollars and twenty
6 cent (\$49,869.20) as to damages. Signed by Foreperson,
7 Charles Robbins. Ladies and gentlemen of the jury, if this
8 is the verdict of you all, please indicate by raising your
9 right hand.

10 (Whereupon all jurors raised their right hand)

11 MADAME CLERK: Thank you.

12 THE COURT: Anything further from the plaintiff before
13 I release the jury?

14 MR. WEATHERFORD: No, sir.

15 THE COURT: Anything further from the defense?

16 MR. HOLLAND: No, sir.

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, this completes your service in this case. And as I
19 indicated yesterday, the other cases on our docket have
20 resolved themselves. So this is your service on the jury
21 for this week.

22 I want to thank you very much for your willingness to
23 serve and your assistance in resolving this matter for us.
24 At this time we're going to release you from service.

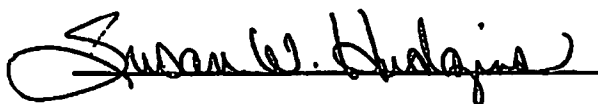
25 I will tell you throughout the trial I've told you not

1
2 CERTIFICATE OF REPORTER

3 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
4 REPORTER FOR THE SEVENTH JUDICIAL CIRCUIT OF THE STATE OF
5 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
6 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
7 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
8 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
9 COURT FOR CHEROKEE COUNTY, SOUTH CAROLINA, ON THE 1ST - 2ND
10 DAY OF AUGUST 2011.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
12 NOR INTEREST TO ANY PARTY HERETO.

13 NOVEMBER 19, 2011

14
15 
16

CIRCUIT COURT REPORTER

EXHIBIT B

Christopher Drye, d/b/a Drye's Auto Crushing v. Mike Gault and Mary T. Gault
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 FEB 27 PM 1 51
BRANDY M. MOORE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,

Plaintiff,

vs.

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.
and Edward Keith Potter,
individually and as President of
Total, Inc.,

Defendants.

**ORDER FOR JUDGMENT
AGAINST
TOTAL, INC. D/B/A GAULT'S USED CARS**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 SEP - 1 P 2:33
RANDY W. MCREE

Plaintiff instituted this action with a Summons and Complaint against Defendants, in which he alleged three (3) Causes of Action, to wit: Breach of Contract, Piercing the Corporate Veil of Total, Inc. and Civil Conspiracy.

Prior to the trial, the court ruled that Piercing the Corporate Veil was an equitable cause of action and that the trial would have to be bifurcated. A trial on that Cause of Action is preserved against the individual Defendants and is to be held at a later date and be held by the court without a jury. Both parties agreed.

A jury trial began on August 1, 2011 on the remaining Causes of Action.

During the trial, Plaintiff agreed to a voluntary non-suit, with prejudice, on the Cause of Action of Civil Conspiracy. The trial proceeded to the jury on the Breach of Contract Cause of Action against the Corporate Defendant, Total, Inc., d/b/a Gault's Used Cars. The jury returned a

Del
P1

verdict in favor of the Plaintiff, Christopher Drye against the Defendant, Total, Inc., d/b/a Gault's Used Cars in the amount of forty nine thousand eight hundred sixty nine dollars and twenty cents (\$49,869.20), on August 2, 2011.

The Plaintiff submitted an Affidavit for Costs and Defendant's attorney advised the court that there was no objection to the costs. Now therefore, it is

ORDERED, that the Plaintiff, Christopher Drye is granted judgment against the Defendant, Total, Inc., d/b/a Gault's Used Cars in the amount of \$49,869.20 plus costs of \$340.00 and interest at the rate of 7.25%.

_____, 9/1, 2011

_____, SC



Roger L. Couch
Presiding Judge

EXHIBIT C

Christopher Drye, d/b/a Drye's Auto Crushing v. Mike Gault and Mary T. Gault
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, E.C.
2013 FEB 27 PM 1 51
BRANDY W. MOBEE

Wade S. Weatherford, III
Attorney at Law
915 N. Limestone Street
Gaffney, South Carolina

Mailing Address:
P.O. Box 2207
Gaffney, SC 29342-2207

Office: 864-489-1500
Fax: 864-488-2590

August 28, 2012

HAND DELIVERED

Ms. Brandy W. McBee
Cherokee County Clerk of Court
P.O. Drawer 2289
Gaffney, SC 29342-2289

Re: Drye vs. Gault
Case No.: 2208-CP-11-1038

2008

Dear Brandy:

Prior to trial in this case, Judge Couch ruled that Plaintiff's Second Cause of Action, to Pierce the Corporate Veil of Total, Inc., was a non-jury matter. Therefore, he bifurcated the trial. I have enclosed relevant portions of the transcript.

The Plaintiff now wishes to proceed with that portion of the trial. Please place this case on the next non-jury roster and notify all parties.

I think this will take about one (1) day to try.

Yours very truly,



Wade S. Weatherford, III

WSW,III:vw

Enclosures

cc: Chris Drye (w/o enclosures)
Ken Holland, Esquire (w/enclosures)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 28 PM 1 17
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS

CHRISTOPHER DRYE d/b/a
DRYE'S AUTO CRUSHING,

PLAINTIFF,

-VS-

MIKE GAULT AND
MARY T. GAULT d/b/a
GAULT'S USED CARS,
TOTAL, INC., AND
EDWARD POTTER, INDIVIDUALLY
AND AS PRESIDENT OF
TOTAL, INC., OF WHOM
TOTAL, INC., d/b/a
GAULT'S USED CARS,

DEFENDANTS.

2008-CP-11-01038
EXCERPT OF
TRANSCRIPT OF RECORD

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 28 PM 1 17
BRADY W. MCSEE

AUGUST 1 & 2, 2011
GAFFNEY, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROGER L. COUCH

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

WADE S. WEATHERFORD, III, ESQUIRE

ATTORNEY FOR DEFENDANTS:

KENNETH L. HOLLAND, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 THE COURT: Thank you. Mr. Weatherford, you wish to
2 respond in any way?

3 MR. WEATHERFORD: Well, Your Honor, I think the verdict
4 is totally supported by the evidence.

5 THE COURT: All right. The Court does find the verdict
6 to be within the evidence presented. And I do not find it
7 to be the product of any undue influence on the part of the
8 jury. And motions are heard, considered and denied.

9 MR. HOLLAND: Thank you.

10 THE COURT: Thank you very much, gentlemen. And I'll
11 direct the Clerk, I believe you'll probably want this placed
12 on the next non-jury docket ---

13 MR. WEATHERFORD: Yes, sir.

14 THE COURT: --- concerning the other issues. So this
15 does not end the case. This case will be placed on the non-
16 jury docket for determination of the non-jury matter. Thank
17 you very much.

18 (Whereupon hearing ended at 2:32 pm)

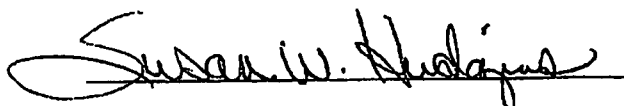
19 (End of Requested Excerpt of Transcript of Record)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE SEVENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR CHEROKEE COUNTY, SOUTH CAROLINA, ON THE 1ST - 2ND
9 DAY OF AUGUST 2011.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

12 NOVEMBER 19, 2011
13

14 
15

16 CIRCUIT COURT REPORTER

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP1101038

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
SEP - 2 A 11: 00
MANDY W. MCBEE

Christopher Drye DbA vs. Mike Gault DbA

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Order for Judgment Against Total, Inc. d/b/a Gault's Used Cars

Dated at Gaffney, South Carolina, this the 1st day of September, 2011.

Court Reporter:

Roger L. Couch

PRESIDING JUDGE - Roger L. Couch

This judgment was entered on the the 1st day of September, 2011, and a copy mailed first class this the 2nd day of September, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Wade S. Weatherford III Attorney at Law P.O. Box
2207 Gaffney, SC 29342-2207

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kenneth L. Holland Attorney at Law 212 E. Floyd
Baker Blvd. Gaffney, SC 29340

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,
Plaintiff,

vs.

Mike Gault and Mary T. Gault
d/b/a Gault's Used Cars, Total, Inc.
and Edward Keith Potter,
individually and as President of
Total, Inc.,
Defendants.

**ORDER FOR JUDGMENT
AGAINST
TOTAL, INC. D/B/A GAULT'S USED CARS**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 SEP - 1 P 2:33
GRANDY W. MCREE

Plaintiff instituted this action with a Summons and Complaint against Defendants, in which he alleged three (3) Causes of Action, to wit: Breach of Contract, Piercing the Corporate Veil of Total, Inc. and Civil Conspiracy.

Prior to the trial, the court ruled that Piercing the Corporate Veil was an equitable cause of action and that the trial would have to be bifurcated. A trial on that Cause of Action is preserved against the individual Defendants and is to be held at a later date and be held by the court without a jury. Both parties agreed.

A jury trial began on August 1, 2011 on the remaining Causes of Action.

During the trial, Plaintiff agreed to a voluntary non-suit, with prejudice, on the Cause of Action of Civil Conspiracy. The trial proceeded to the jury on the Breach of Contract Cause of Action against the Corporate Defendant, Total, Inc., d/b/a Gault's Used Cars. The jury returned a

verdict in favor of the Plaintiff, Christopher Drye against the Defendant, Total, Inc., d/b/a Gault's Used Cars in the amount of forty nine thousand eight hundred sixty nine dollars and twenty cents (\$49,869.20), on August 2, 2011.

The Plaintiff submitted an Affidavit for Costs and Defendant's attorney advised the court that there was no objection to the costs. Now therefore, it is

ORDERED, that the Plaintiff, Christopher Drye is granted judgment against the Defendant, Total, Inc., d/b/a Gault's Used Cars in the amount of \$49,869.20 plus costs of \$340.00 and interest at the rate of 7.25%.

9/1, 2011

Chaffey, SC



Roger L. Couch
Presiding Judge

EXHIBIT D

Christopher Drye, d/b/a Drye's Auto Crushing v. Mike Gault and Mary T. Gault
In the Court of Common Pleas for Cherokee County
C.A. No: 2008-CP-11-1038

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2008 FEB 27 PM 1 52
BRANDY W. MOORE

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 12-05055-jw

Consent Order

The relief set forth on the following pages, for a total of 3 pages including this page, is hereby ORDERED.

FILED BY THE COURT
01/14/2013



Entered: 01/14/2013

Chief US Bankruptcy Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Total, Inc.,

Debtor.

Case No. 12-05055

Chapter 11

CONSENT ORDER

This matter is before the court on the motion of Christopher Drye, d/b/a Drye's Auto Crushing, seeking relief from the automatic stay in order to pursue a cause of action for piercing the corporate veil, or an alter ego theory, against the principals of the debtor corporation in state court. Prior to the filing of the within Chapter 11 case, Drye filed a civil action in the Court of Common Pleas in Cherokee County, South Carolina, denominated as case number 2008-CP-11-1038, against the debtor and related individuals. The state court bifurcated the trial against the corporation and the individuals. The trial against the corporation resulted in a judgment against the debtor corporation. There remain issues for trial against the individual defendants, who are not debtors in the bankruptcy proceedings.

The debtor has objected to the relief sought as such relief may affect the corporate debtor. However, the debtor does not contend that the automatic stay herein stays actions against the individuals, who are defendants in that action. Therefore, with the consent of the parties herein, it is

ORDERED that the motion for relief from the automatic stay is conditionally denied. It is further ordered, and this Court finds, that the automatic stay does not operate to stay actions against the individual defendants in the underlying state court action, who are not debtors in bankruptcy. Therefore, the state court is free to address litigation concerning the individual defendants as the "automatic stay" of 11 USC § 362 does not protect those individuals, who are not in bankruptcy.

IT IS SO ORDERED.

Signatures continued on following page.

I CONSENT:

s/ Däna Wilkinson
Däna Wilkinson
District Court I.D. No. 4663
365-C East Blackstock Road
Spartanburg, SC 29301
864-574-7944
864-574-7531 FAX
danawilkinson@danawilkinsonlaw.com

Attorney for Christopher Drye

I CONSENT:

/s/Robert H. Cooper
Robert H. Cooper, DCID#5670
The Cooper Law Firm
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 Phone
(864) 232-5236 Facsimile
rhcooper@thecooperlawfirm.com
Attorney for Debtor

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Dye d/b/a Dye's
Auto Crushing,)

Plaintiff,)

vs.)

Mike Gault and Mary T. Gault)
d/b/a Gault's Used Cars, Total, Inc.)
and Edward Keith Potter,)
individually and as President of)
Total, Inc.,)

Defendants.)

PLAINTIFF'S REPLY TO
DEFENDANT MIKE GAULT'S
MOTION TO DISMISS PURSUANT
TO SCRPC RULE 12(b)(1)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 APR 11 12:37
BRANDY

The Defendant's Motion should be denied for the following reasons:

1. That Plaintiff's First Cause of Action in his Amended Complaint was for Breach of Contract against Mike Gault, only. This Cause of Action has never been ruled on and/or dismissed. (Exhibit A);
2. That Plaintiff maintained that the Breach of Contract Cause of Action was against Mike Gault and/or Total, Inc., to which the court agreed. (See TR.P. 162 L. 2-6);
3. That when the court prepared the verdict form on the Breach of Contract Cause of Action, Mike Gault, as a Defendant, was left off. Only the trial judge can explain why that was done. (See TR.P. 205 L. 9-L. 10);
4. That the Plaintiff did not object to the verdict form because of the false and fraudulent discovery reply and testimony of Mike Gault that he owned nothing of value prior to

trial. (See Exhibit B) (Also See Exhibit C - P. 174 L. 12 - P. 176 L. 5). Now Mike Gault claims by Affidavit that owns most of the valuable property held by the Receiver. Had the Plaintiff known what Mike Gault truly owned, he could have argued that. Mike Gault, as the controlling person of the corporation, would have been personally liable for the debts incurred.

(Neslee Bottling, Inc. d/b/a Fireworks Supermarket vs. Willard Long d/b/a Fox's Fireworks Superstore (S.C. Ct. App., Case # 5094, February 27, 2013). The Defendant, Mike Gault should not be allowed to profit from his false and fraudulent assertions in various courts as to what he owned and/or did not own. He should be estopped from asserting any defense based on such statements.

April 11, 2013

Gaffney, South Carolina


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2008-CP-11-1038

Christopher Drye d/b/a Drye's
Auto Crushing,)

Plaintiff,)

vs.)

**NOTICE OF
RULE TO SHOW CAUSE FOR CONTEMPT**

Mike Gault and Mary T. Gault)
d/b/a Gault's Used Cars, Total, Inc.)
and Edward Keith Potter,)
individually and as President of)
Total, Inc.,)

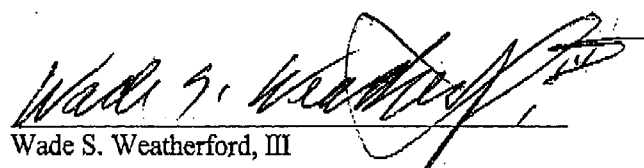
Defendants.)

TO: MIKE GAULT AND HIS ATTORNEY ALAN LAZENBY:

PLEASE TAKE NOTICE that the Plaintiff will move before Judge J. Mark Hayes,
Presiding Judge on June 3, 2013 at 9:30 a.m. or as soon thereafter that the matter may be
heard, at the third floor courtroom, Cherokee County Courthouse for an Order holding Mike
Gault in contempt of court for filing false and fraudulent answers to interrogatories to
Plaintiff prior to the trial of this case. This motion will be based on the attached Affidavits.

May 22, 2013

Gaffney, South Carolina


Wade S. Weatherford, III
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

**AFFIDAVIT OF
WADE S. WEATHERFORD, III
ATTORNEY FOR PLAINTIFF**

I, Wade S. Weatherford, III, after being sworn says:

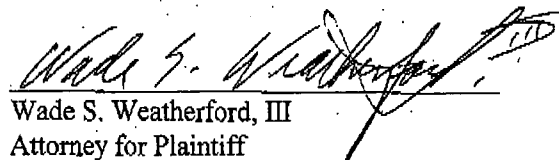
That I am the attorney for Chris Drye, Plaintiff in Civil Action 2008-CP-11-1038. That I was given answers to interrogatories by Ken Holland, Attorney for Defendant. The said answers were to furnish a list of all property owned by Total, Inc. and Mike Gault. (A copy is attached as Exhibit #1) That these answers to interrogatories were relied on by Plaintiff to make certain decisions during the trial.

That after the trial, verdict and judgment, Mike Gault filed several Affidavits, with the court, that he owned certain property listed.

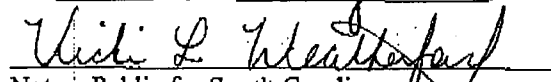
That on information and belief, the items listed in the Affidavits plus the missing race car would have a sufficient value to satisfy the judgment that Plaintiff obtained.

May 22, 2013

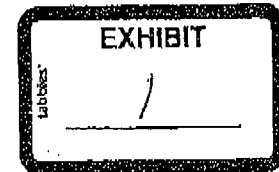
Gaffney, South Carolina


Wade S. Weatherford, III
Attorney for Plaintiff

SWORN TO AND SUBSCRIBED BEFORE ME
this 22nd day of May, 2013.


Vicki L. Weatherford
Notary Public for South Carolina
My Commission Expires: 03/02/2015

KENNETH L. HOLLAND, P.A.
ATTORNEY AT LAW
A PROFESSIONAL ASSOCIATION



JULY 11, 2011

Wade S. Weatherford, III, Esquire
Attorney at Law
Post Office Box 2207
Gaffney, SC 29342

RE: Christopher Drye, d/b/a Drye's Auto Crushing vs.
Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total, Inc.,
and Edward Keith Potter, Individually and as President of Total, Inc.
Civil Action No.: 2008-CP-11-1038

Dear Chip:

Pursuant to the Order of Honorable J. Mark Hayes which was signed on June 15, 2011, filed on June 24, 2011, and forwarded to me on June 24, 2011, via fax, I am pleased to provide you with the following:

AS TO TOTAL, INC.

1. A list of all equipment and/or personal property owned by Total, Inc.;
2. Copies of all checks for cash or withdrawals for cash on the bank account of Total, Inc. number 111006245. (This information is taken entirely from the records of check account number 111006245 which, I understand, has been in your possession pursuant to subpoena for an extended period of time.)
3. Copies of all checks written to employees for work done. (Again, these copies of checks are taken from the above-referenced account, which has been in your possession.)

AS TO MIKE GAULT

4. Copies of all checks written to cash and/or withdrawals for cash by Mike Gault.
5. As I have repeatedly informed you, Mr. Gault has not filed any income tax returns in the last seven (7) years because his income does not reach a taxable level, according to the information he has given me.
6. Copies of all checks written to employees. (This information is identical to that referred to in number 3 above.)
7. A list of all personal property and/or vehicles owned.

Wade S. Weatherford, III, Esquire
Attorney at Law
July 11, 2011
Page 2

AS TO MARY T. GAULT

8. Any and all checks written to Mike Gault, Gault's Used Cars and Auto Parts, Total, Inc., and Edward Keith Potter have been examined by you, apparently, in that paragraph 35 of your Amended Complaint refers to a total of checks written by Mary Gault of Two Hundred Fifty Thousand (\$250,000) Dollars. You allege that all these checks were deposited into the bank account of Total, Inc., numbered 111006245. Additionally you claimed that Loan was written in the Memo blank on these checks.

Since you already have the information referred to in your Requests to Produce letter number 8, I respectfully and formally request that you provide me with copies of whatever documentation for this allegation you have in your possession.

A close inspection of the 2009 checks indicates that a number of those checks are missing. (This information was included in the large amount of documents previously examined by you in my office.) If you have these 2009 checks, I would appreciate your providing me copies for the company's records.

In your letter of April 19, 2011, you mentioned tax returns. I include herewith a copy of my letter to you dated July 14, 2009, stating that I enclose copies of three (3) years of the tax returns of Mary Gault. If you need additional copies of these returns, I will be happy to provide them to you upon request.

In addition, I enclose a copy of my letter to you dated August 4, 2010, transmitting documents in compliance with your Request to Produce. Among those items number 2 refers to copies of tax returns for the years 2006 thru 2008. As I advised you previously Total, Inc., has not yet filed additional tax returns and has requested and obtained permission from the Internal Revenue Service to file later.

~~In addition to the above, I have located a document in my file relating to a late model race car which was sold to Total, Inc., Gault's Used Cars for the amount of Thirteen Thousand Nine Hundred (\$13,900.00) Dollars. This document appears to be dated October 9, 2009, and I submit it herewith in the interest of being complete and full in the attached responses.~~

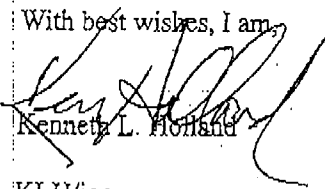
Wade S. Weatherford, III, Esquire
Attorney at Law

July 11, 2011

Page 3

In the event I might have over looked some document in my responses, I will be happy to
cure any such lapse upon request from you.

With best wishes, I am,



Kenneth L. Highland

KLH/jgg

Enclosure

cc: Honorable J. Mark Hayes, II
Presiding Judge
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306

212 E. FLOYD BAKER BLVD. • GAFFNEY, S.C. 29340
TELEPHONE (864) 487-3366 FAX (864) 487-3366

ROA 000131

Total Inc. Equipment and Personal Property Owned

General Office Equipment: Desks, copy/tax machines, computers, file cabinets, chairs, paper shredder, telephones, etc...

Tools: sockets, wrench, screwdrivers etc...

Shop equipment: Engine hoists, motor stands, etc...

Approximately 75 cars on car lot

Approximately 200 cars in salvage yard

2 Front end loaders

1 Tractor

1 Rocket

2005 Freightliner

2001 Trailer

Mike Gault Personal Property Owned

Clothes, Shoes, TV, DVD player, DVD's,
Bedroom Furniture. Refrigerator,
Microwave,



STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Christopher Drye, d/b/a Drye's Auto
Crushing,

Plaintiff,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's
Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No: 2008-CP-11-1038

AFFIDAVIT OF MICHAEL GAULT

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 OCT 24 PM 4 59
RANDY W. MCDEE

PERSONALLY APPEARED BEFORE ME, Michael Gault, Defendant in the above referenced case who did state under oath:

1. My name is Michael Gault.
2. I am a resident of Cherokee County, South Carolina.
3. I am a defendant in the above referenced action.
4. At this time, there has been no judgment issued against me.
5. Certain items of personal property have been taken and withheld from me by the receiver in the above referenced action, namely:
 - a. Millermatic 250 Welder - Seized August 15, 2012
 - b. Mitsubishi Forklift - Seized July 30, 2012
 - c. Racecar - Seized August 15, 2012
 - d. 8000 watt Power Generator - Seized August 15, 2012
6. The Racecar listed above contains a motor owned by J.L. Thompson, but the chassis belongs to me personally.

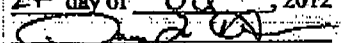
7. I have made a demand upon the receiver, Ben Kochenower for the return of this property.

8. Mr. Kochenower refused to return the property because there is a case pending against me.

Further the affiant sayeth not.


Michael Gault

Sworn and subscribed to me this
24th day of Oct., 2012


Notary Public for South Carolina

My commission expires 1-12-22

EXHIBIT

3

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

AFFIDAVIT

I, MIKE KENNEDY, OF 609 LAURENS RD. GREENVILLE,
SC, 29607, DO TESTIFY THAT:

I sold Mike Gault this Mitsubishi Forklift (Model # 2C15A43)
October 15, 2008. See attached picture.

If you need any further information, I can be reached at the address
listed above.


Mike Kennedy

10/16/12
Date

SWORN TO AND SUBSCRIBED BEFORE ME

This 11th day of October, 2012.



Notary Public of South Carolina

My Commission Expires

12/18/2016



AFFIDAVIT

I, DAVID ABSHER, TESTIFY THAT:

While working for Smox over 20 years ago, I (David Absher), of 410
Costner School Rd., Bessmer City, NC, 28016, sold to Mike Gault a Miller
Millermatic 250 Welder. If you have any other questions, please contact me
at the address listed above, or by phone at 704-201-1402.

David Absher

David Absher

9-16-12

Date

SWORN TO AND SUBSCRIBED BEFORE ME

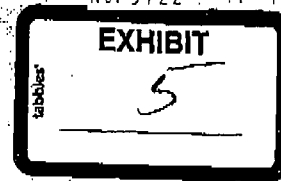
This *16th* day of *September*, 2012

Cathy Buss

Notary Public for *Gaston County*

My Commission Expires *09-15-15*





STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

AFFIDAVIT

I, DONNIE THOMAS, OF 192 SPEEDWAY RD., GAFFNEY, SC, 29340, DO TESTIFY THAT;

I sold Mike Gault the 8000 Watt Generator (picture attached) around the year of 2005. I can also testify that the Miller Matic Welder (picture attached), that was also seized from Mary Gault's property at 199 Speedway Rd., Gaffney, SC, 29340, was the property of Mike Gault. I have lived across from the 199 Speedway Rd. address for over fifteen years and can testify that the welder and generator that are in the attached pictures belong to Mike Gault.

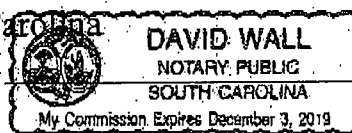
If you need any further information, I can be reached at the address listed above.

Donnie Thomas
Donnie Thomas

10/11/12
Date

SWORN TO AND SUBSCRIBED BEFORE ME
This 11 day of October, 2012.

David Wall
Notary Public of South Carolina
My Commission Expires



STATE OF SOUTH CAROLINA)

AFFIDAVIT OF

BEN D. KOCHENOWER

COUNTY OF CHEROKEE)

RECEIVER

I, Ben D. Kochenower, Receiver, after being sworn, says:

That While I was taking possession of certain property from Total, Inc.'s property at the Blacksburg location, Mike Gault claimed that he personally owned the Mitsubishi forklift for seven (7) years. I had him write his claim on a piece of paper and sign it. (Exhibit #1)

At that time, Mike Gault told me that he owned two (2) race cars. This was on or about July 30, 2012.

I later located the two (2) race cars at a shop on Racetrack Road and photographed them, on August 14, 2012. (See Exhibit 4 & 5 attached to Reply of Plaintiff to Motion to Terminate Receivership)

I returned to that location on August 15, 2012 and took control of numerous items including the blue race car (Exhibit #5 above), Millermatic 250 welder and an 800 watt power generator.

The red car (Exhibit #4 above) was missing.

May ____, 2013

Gaffney, South Carolina

Ben D. Kochenower
Receiver

SWORN TO AND SUBSCRIBED BEFORE ME

this ____ day of _____, 2013.

Notary Public for South Carolina

My Commission Expires: _____

I own the Toyota Fork
Lift 10 years

May 22nd

I own the Mitsubishi
Fork Lift has it
seen years
in the past

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF COMMON PLEAS
3
4 CHRISTOPHER DRYE, D/B/A)
5 DRYE'S AUTO CRUSHING)
6 PLAINTIFF,) TRANSCRIPT OF RECORD
7 -vs-) 2008-CP-11-01038
8 MIKE GAULT AND MARY T.) JUNE 19, 2013
9 GAULT, D/B/A GAULT'S) GAFFNEY, SOUTH CAROLINA
10 USED CARS, TOTAL, INC.,)
11 EDWARD KEITH POTTER,)
12 INDIVIDUALLY AND AS A)
13 PRESIDENT OF TOTAL,)
14 INC.,)
15 DEFENDANTS.

16 B E F O R E:

17 THE HONORABLE J. MARK HAYES, II, JUDGE.

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

19 WADE S. WEATHERFORD, III, ESQUIRE
20 ATTORNEY FOR THE PLAINTIFF

21 D. ALAN LAZENBY, ESQUIRE
22 ATTORNEY FOR THE DEFENDANTS

23 MICHAEL R. WATTS
24 CIRCUIT COURT REPORTER
25

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EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
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3	P-1	LETTER		6
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1 (PROCEEDING, JUNE 19, 2013)

2 THE COURT: All right. Mr. Weatherford, I'm going
3 to let you be the moving party.

4 MR. WEATHERFORD: All right.

5 THE COURT: This is a followup from a hearing that
6 was conducted previously by this court where this court was
7 informed that through the process of litigation information
8 as to assets were disclosed, that subsequently Mr.
9 Weatherford and his client believed the information
10 disclosed through discovery was false and that they have
11 relied upon information, or lack of information, provided to
12 them in making or conducting their attempt to be able to
13 collect a judgment that the jury has given Mr. Weatherford's
14 client, so I would be more than happy to hear from you.

15 MR. WEATHERFORD: All right. We would call Ken
16 Holland.

17 THE COURT: Mr. Holland, come right up here by the
18 Clerk of Court to have the opportunity to swear you in.

19 KENNETH HOLLAND, ESQUIRE, having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. WEATHERFORD:

22 Q. All right. State your name and residence for the
23 record.

24 A. Kenneth L. Holland. I live in Gaffney, in Cherokee
25 County, in South Carolina.

1 Q. All right, Mr. Holland, I believe it would be fair to
2 say that you practiced law here in Gaffney for a long time?

3 A. Thirty years.

4 Q. And there is a case by the name of Christopher Drye,
5 doing business as Drye's Auto Crushing versus Mike Gault and
6 Mary Gault, doing business as Gault's Used Cars, Total,
7 Inc., Edward Keith Potter, individually and as President of
8 Total, Inc., civil action 2008-CP-11-1038.

9 Are you familiar with that case?

10 A. I am.

11 Q. And did you represent anybody in that case?

12 A. I represented all the defendants.

13 Q. All right. And as a result of discovery requests and I
14 believe even a court order to provide discovery information,
15 can you tell me what that is?

16 A. It's a letter on my letterhead dated July the 11th,
17 2011, and it's in reference to a case that you just
18 mentioned.

19 Q. All right.

20 A. It's directed to you.

21 Q. All right.

22 MR. WEATHERFORD: I think this is already Exhibit
23 1 in my rule to show cause, but I would like to introduce
24 this particular --

25 MR. LAZENBY: No objection.

1 THE COURT: Without objection, it would be
2 Plaintiff's 1.

3 (Letter, dated July 11, 2011, marked and received
4 into evidence as Plaintiff's Exhibit No. 1)

5 MR. WEATHERFORD: For the purpose of this hearing.

6 BY MR. WEATHERFORD:

7 Q. And what is your understanding of the nature of that
8 exhibit?

9 A. It's pursuant to the order of Judge Hayes here. I have
10 no file and I have no recollection when the order of June
11 15th, 2011 was, but it's referred -- I refer to that and say
12 that this information is provided pursuant to the judge's
13 order.

14 Q. All right. And item one there, would you list what --

15 A. The item one as to Total, Inc.?

16 Q. Uh-huh.

17 A. Do you want me to state --

18 Q. Just read that number one.

19 A. Okay. "Number one, a list of all equipment and/or
20 personal property owned by Total, Inc.."

21 Q. All equipment.

22 A. I'm just stating what I'm told to provide to you.

23 Q. Right.

24 And read number seven.

25 A. Seven, that gets down to where it's as to Mike Gault.

1 Q. Right.

2 A. Number seven says "a list of all personal property
3 and/or vehicles owned."

4 Q. All right. Now, would you go to the last page? What
5 is on that page?

6 A. The signature page?

7 Q. No, no, the page before that, I'm sorry.

8 No, the last page after the signature page.

9 A. After the signature, okay.

10 Q. That's next to the last page.

11 A. "Total, Inc. Equipment and personal property owned."

12 Q. You made a list of that?

13 A. A list of it.

14 Q. Then go to the next page.

15 A. "Mike Gault personal property owned."

16 Q. Would you read what he's got there?

17 A. It the says "clothes, shoes, TV, DVD player, DVD's,
18 bedroom furniture, refrigerator, microwave."

19 Q. And where did you get that information?

20 A. I got that from Mike Gault.

21 Q. Did you impress upon him the importance of being
22 truthful and honest in the answers to those interrogatories?

23 A. I usually do, yes.

24 Q. Okay. And --

25 A. And I remember specifically gaining this information

1 and the circumstances of it.

2 Q. All right. And would you agree in all your experience
3 as an attorney that the items listed there is property owned
4 by Mike Gault would pretty much make him judgment proof?

5 MR. LAZENBY: Object to the leading, Your Honor.

6 THE COURT: All right. I'm going to -- I'm going
7 to let him proceed. It's not -- Ken is not -- Mr. Holland
8 is not really his client, because Mr. Holland actually
9 represented Mr. Gault at one time. I will -- if it gets to
10 be a substantial questioning, I think I can direct Mr.
11 Weatherford not to lead.

12 Go ahead.

13 A. This information I got by sitting Mike down at my
14 conference table and asking him, explaining to him what an
15 interrogatory was and what it was about and why we were
16 getting it. And this is -- he gave me this information as
17 to his personal property.

18 BY MR. WEATHERFORD:

19 Q. And the date on that is June 11th of 2011?

20 A. July the 11th.

21 Q. July the 11th?

22 A. 2011.

23 Q. 2011.

24 We actually went to trial August the 1st and 2nd. I
25 think a verdict was returned August the 2nd.

1 A. I -- I presume you are correct. I have no way --

2 Q. All right. Well, it's a matter of record. I'm not
3 going to mislead you.

4 But was that ever supplemented, or added to, or
5 anything in any way by you, based on any --

6 A. Mr. Weatherford, we had a conference back here one time
7 concerning this, the Mike Gault property, and you were
8 asking, and rightly so, if there was anything else, as I
9 remember it. This was not on the record. It was back here
10 in chambers. And that was -- it was after the trial, wasn't
11 it, after the verdict was in. A different judge, in fact,
12 wasn't it?

13 Q. I don't remember, but was that in any way ever --

14 A. Now, you understand my problem. I don't either.

15 Q. But do you remember ever supplementing that list of
16 property owned by Mike Gault?

17 A. Never.

18 Q. Okay. And so that -- would it be fair to say that's
19 what -- when we went to trial, that's as far as I knew
20 information you had provided to me about what he owned?

21 A. Let me -- I don't want to leave anything out here.

22 This is what was put on the interrogatory responses
23 after obtaining this information from Mike Gault.

24 In addition to this, though, at some point we had
25 everything in the files put in boxes and brought up to my

1 office, put on my conference table, and you were given
2 access to it when, and if, you saw fit. So I don't know
3 what you got out of there. You had my secretary, she says,
4 make some copies of some limited amount of information, so I
5 honestly can't say what all I provided you.

6 Q. Let me rephrase that. Did you ever supplement those
7 answers to interrogatories?

8 A. No.

9 Q. Okay. And at any time did Mike Gault ever tell you
10 that he owned a Milematic 250 welder?

11 A. At some point in the history of all this I learned
12 that, but I can't say it was before, during, or after the
13 trial.

14 Q. Okay.

15 A. I'm pretty sure it wasn't before the trial.

16 Q. Well, if it was before the trial, your duty as a lawyer
17 would be to supplement that in writing, wouldn't it?

18 A. Yes.

19 Q. Okay. And --

20 A. You know, unless he found another pair of shoes, or a
21 bathrobe, or something, you know. Come on.

22 Q. Did he ever tell you he owned an 8000 watt generator?

23 A. I don't think so. I probably would remember 8000.

24 Q. All right. Did he ever tell you he owned a Mitsubishi
25 forklift?

1 A. There is a couple of forklifts in this case, and I
2 don't know Mitsubishi from Yamaha, but there were two
3 forklifts involved. I recall that.

4 Q. But none owned by Mike Gault, according to that
5 exhibit?

6 A. No, it wasn't put on here in response to this, though.

7 Q. All right. Was it ever provided that -- information
8 provided that he owned a Mitsubishi forklift?

9 A. I don't think so. We had forklifts all over the place,
10 from what it seems like. You know, Ben went out and found
11 one or two somewhere out here at Blacksburg, I think. You
12 know, it's hard to keep up with. There was a lot of
13 activity and I wasn't keeping notes or record on it, but I
14 know there were two forklifts involved.

15 As far as me placing them on the record that they were
16 owned or not owned by Mike Gault, I don't think so.

17 Q. Okay. And there was some discussion about race cars.
18 Do you remember anything about that?

19 A. Oh, yeah. Yeah.

20 Q. What do you remember about that?

21 Now, there is a -- in that exhibit -- in that exhibit
22 there, turn over to Total, Inc., I believe it lists one race
23 car, doesn't it? Sometimes referred to as --

24 A. I don't see a race car listed on here.

25 Q. Sometimes referred to as the Rocket?

1 A. Oh, Rocket. I see Rocket down here.

2 Q. One Rocket?

3 A. It's listed here as Total, Inc.'s property, yes.

4 Q. But nothing on Mike Gault's property?

5 A. No Rockets on Mike's list, no.

6 Q. Okay. Do you remember him discussing race cars with
7 you?

8 A. There was a race car that was -- that they -- it came
9 up sometime later that it was a race -- I think it was after
10 y'all had somebody go out and -- Ben and some people went
11 out there and seized a bunch of stuff and --

12 Q. But that was --

13 A. Was there a race car taken in that process?

14 Q. But I'm talking about prior to trial.

15 A. Before trial?

16 Q. Yes.

17 A. I think this listed here for Total, Inc. Would be --
18 the only race car before trial, yes.

19 Q. Okay.

20 A. I don't -- to get back to the direct answer to your
21 question, no, I didn't put a second race car on there owned
22 by anybody.

23 Q. All right.

24 MR. WEATHERFORD: Just a second, Your Honor.

25 (Off the record)

1 (Back on the record)

2 MR. WEATHERFORD: I think that's all the questions
3 that I have.

4 MR. LAZENBY: May it please the court?

5 CROSS EXAMINATION BY MR. LAZENBY:

6 Q. Mr. Holland, this was a very contentious litigation,
7 wasn't it?

8 A. Sir, I didn't understand you.

9 Q. I said this was contentious litigation, wasn't it?

10 A. Contentious?

11 Q. Y'all were -- the parties were fighting, hotly disputed
12 issues?

13 A. I would have to say yes to that.

14 Q. Okay. And was Mike Gault the representative for Total,
15 Inc. During the process of responding to discovery?

16 A. It wouldn't have been anybody else. There were other
17 people involved, but I didn't work with any of them, as
18 obtaining information or providing it, about Total, Inc.,
19 but Mike. He was the chief operator.

20 Q. How would you characterize Mike's actions in providing
21 you information to respond to interrogatories and requests
22 for production?

23 A. He was quite immediately responsive.

24 Q. Did he answer questions that you asked of him?

25 A. He did.

1 Q. Did he provide you documents that you asked of him?

2 A. Like I told Mr. Weatherford, it was about nine cases of
3 them that were sitting on my conference room table.

4 Q. I'm sorry, you said nine cases?

5 A. Nine boxes.

6 Q. Like banker boxes?

7 A. Boxes full of them that were the records and papers of
8 I understood it was mostly Total, Inc..

9 Q. And was that all supplied to you by Mr. Gault?

10 A. Yes.

11 Q. So do you feel like Mr. Gault was cooperative during
12 discovery?

13 A. Oh, I don't think I ever had any problem getting
14 whatever I asked him for, he delivered it up, yeah.

15 Q. Anything during your representation of Mr. Gault to
16 think that he would willfully or intentionally withhold
17 information from you?

18 A. No. No, I'm pretty hard to withhold information from,
19 I'm told.

20 Q. Okay. And you actually you had a -- you had a sit-down
21 meeting with Mr. Gault to go over the answers provided in
22 Plaintiff's Exhibit No. 1?

23 A. Yeah, we were sitting at my conference room table and I
24 went over the information that wound up in this letter here.

25 Q. Did you believe that he was being truthful?

1 A. Yeah.

2 Q. I want to talk about the trial of the case actually
3 after closing arguments. It's my understanding that
4 originally the plaintiff, Mr. Drye, sued Mary Gault, Keith
5 Potter and Mike Gault individually, as well as the company
6 Total, Inc.?

7 A. I would have to look at the caption. I believe that's
8 correct.

9 Q. Do you recall a discussion in chambers when Mr.
10 Weatherford agreed to dismiss Mr. And Mrs. Gault and Mr.
11 Potter from the case individually?

12 A. That was in chambers and it was virtually Judge Couch's
13 suggestion and --

14 THE COURT: Hang on.

15 MR. WEATHERFORD: I would object to that being a
16 mischaracterization.

17 THE COURT: All right. Yeah, it would be hearsay
18 of something that somebody else said, especially a judge
19 saying something in chambers that's not on the record, but
20 if he could testify as to what his understanding was.

21 BY MR. LAZENBY:

22 Q. And your understanding was that Mrs. Gault and Mr. --

23 THE COURT: I wouldn't want you to lead on that
24 type of question.

25 MR. LAZENBY: Thank you.

1 BY MR. LAZENBY:

2 Q. What was your understanding as far as what individuals
3 were dismissed from the case after the in-chambers?

4 A. All individual defendants were dismissed.

5 It was left -- the only defendant left, and I'm sure
6 somebody will correct me if I'm wrong, was Total, Inc..
7 When the case went to the jury, that was the only party that
8 was left.

9 Q. Do you believe that Mr. Weatherford relied on the
10 assets listed in Plaintiff's Exhibit 1 in not pursuing
11 individual claims against Mr. Gault?

12 A. I -- I wouldn't judge anybody's approach to handling a
13 case.

14 Q. Well, Mr. Weatherford --

15 A. I don't know if Mr. Gault had --

16 Now, I'm not here voluntarily, do you understand? In
17 fact, you gave me a subpoena.

18 Q. Okay.

19 A. I want to be very correct, because in the record
20 previously it was suggested that I had done something
21 fraudulently, and I lay forty years of law practice on you
22 that that didn't sit well with me at all.

23 Q. I apologize if anything I said may have --

24 A. Well --

25 Q. -- implied that. I certainly didn't intend that.

1 A. Okay.

2 Q. The question asked is whether you believe Mr.
3 Weatherford relied upon Plaintiff's Exhibit 1 in dismissing
4 Mr. Gault individually from the case?

5 A. Unless he had told me that, I wouldn't --

6 MR. WEATHERFORD: I still object to the question
7 as being inaccurate.

8 THE COURT: Well, I would --

9 Mr. Weatherford, if you are going to make
10 objection, you need to be more spontaneous and timely,
11 because I do believe it is an inappropriate question,
12 because it requires this witness to speculate as to what was
13 going on in Mr. Weatherford's mind. I don't know we have
14 ever met anybody that can actually do that.

15 BY MR. LAZENBY:

16 Q. Mr. Holland --

17 MR. LAZENBY: I'll move on, Your Honor.

18 THE COURT: Yes.

19 BY MR. LAZENBY:

20 Q. Mr. Holland, you were asked whether the assets listed
21 by Mr. Gault made Mr. Gault judgment proof, correct? Do you
22 recall that testimony?

23 A. Yeah, I heard that.

24 Q. Okay. Now, one of the individual defendants in the
25 case was not judgment proof, correct?

1 A. Yes, that's very correct.

2 Q. Okay. Tell me which defendant had assets in that case.

3 A. The only one I have ever found that had any assets was
4 Mary Gault, Mike Gault's mother.

5 Q. And she was the defendant in this case?

6 A. She was.

7 Q. And was she dismissed as a party in the case?

8 A. She was.

9 Q. And, to your knowledge, based on your representation of
10 her, did she have assets sufficient to -- collectable assets
11 sufficient to cover any judgment Mr. Drye got?

12 A. I believe Ms. Mary could have scraped it up, yes.

13 THE COURT: I'm sorry, could you ask that question
14 one more time?

15 BY MR. LAZENBY:

16 Q. Do you -- based upon your representation of Ms. Gault,
17 do you believe that she individually had sufficient assets
18 to satisfy any judgment that Drye would have received?

19 A. I believe that, yes.

20 Q. I want to talk about the -- there was a hearing on
21 contempt August 13th, 2012. Do you recall that?

22 A. I really don't. I had a lot of cases in forty years
23 and I really didn't commit them all to memory. I'm sorry.

24 Q. That's okay.

25 A. I know it's somewhere back there.

1 (Judge's Order marked as Defendant's Exhibit No. 1
2 for identification)

3 BY MR. LAZENBY:

4 Q. Mr. Holland, I'm showing you what's been marked as
5 Defendant's Exhibit No. 1. Do you recognize this?

6 A. Yes.

7 Q. And take your time and read it, please, sir.

8 (Off the record)

9 (Back on the record)

10 BY MR. LAZENBY:

11 Q. Mr. Holland, do you recognize that as an order --

12 A. I do.

13 Q. -- from a hearing on October 13th, 2012?

14 A. I do.

15 Q. Does that order refresh your recollection of the
16 hearing?

17 A. This was done in chambers, I thought, with the judge
18 wanting I think Mr. Kochenower and the deputy sheriff to go
19 out to Race Car Drive, or whatever that is out there, where
20 there was a building.

21 Q. And make an inventory?

22 THE COURT: And for the record, that the court did
23 as part of a regular record did conduct a hearing. And the
24 court's foundation having first announced its rulings in
25 chambers was due to the fact that the court was convinced,

1 as stated in the written order, that the defendant had not
2 acted in good faith in cooperating with the receiver. And
3 so the court did take extraordinary efforts in first
4 announcing his decision in chambers, because the court
5 lacked confidence that Mr. Gault, or anyone acting on his
6 behalf, would not, in fact, try to hide assets.

7 BY MR. LAZENBY:

8 Q. And Mr. Holland, the question that I want to ask, do
9 you remember receiving a copy of that order?

10 A. In the course of the following days I'm sure I did,
11 yeah.

12 Q. Okay. Would it have been after -- on or after August
13 14th, 2012?

14 A. Well, let's see. Well, the order is dated August 14th.

15 Q. I'm sorry?

16 A. I would have seen it before then, I'm sure.

17 Q. There is a stamp on it. What time is that order
18 stamped?

19 A. 4:13 p.m..

20 Q. Do you recall the court --

21 MR. LAZENBY: And, judge, I have a copy of the
22 transcript. If -- I don't know if you want me to mark it
23 and put it into evidence, but --

24 THE COURT: You're representing your client. You
25 can do whatever you feel like would be appropriate. If Mr.

1 Weatherford objects to it, I'll address it.

2 MR. LAZENBY: Well, I just have a few questions
3 about what happened at the hearing, so I don't want to
4 misrepresent the actual transcript, but I want --

5 BY MR. LAZENBY:

6 Q. Mr. Holland, do you recall that the court -- and I
7 believe it was Judge Hayes. He did announce in court that
8 the receiver was going to go conduct an inventory of the
9 property at 199 Speedway?

10 A. Yes. As I recall, we came back out here and the judge
11 announced from the bench what was being done. Ben and a
12 deputy, whose name I have forgotten, went out there while we
13 stayed here. Everybody stayed right here.

14 Q. And did the court say that there would be -- that
15 thereafter you would meet with Mr. Kochenower and Mr.
16 Weatherford to review the list of property that was located
17 at that location?

18 A. I got a list of the property by some means. It had to
19 have been the day after the 14th, I would think. At least
20 that long.

21 Q. Do you recall --

22 A. And, yeah, I got a list. And how it got to me, I
23 honestly can't recall.

24 Q. Do you recall believing that some of the property on
25 that list did not belong to Total, Inc.?

1 A. I knew some property on there didn't belong to Total,
2 Inc..

3 Q. Did you voice your concerns to the court or to Mr.
4 Kochenower?

5 A. I called Mr. Kochenower while he was out there. They
6 were trying to collect up all this stuff, and the major
7 concern was Mary Gault's tractor, her dead husband's
8 tractor. And they were told -- and I tried to talk to Ben,
9 but he wouldn't talk to me, that I think everybody knew,
10 including the guys with the wreckers and such loaded it up
11 and hauling it off, but that was Rock Gault's tractor, not
12 Mike Gault's or not Total, Inc.'s. It was --

13 Q. Before -- did you have an occasion to discuss that
14 list, which is attached to the order, before it became --

15 I'm sorry, did you have an occasion to discuss that
16 list with Mr. Kochenower before it became part of the order?

17 A. No.

18 Q. Okay.

19 A. No. I don't know why I would have.

20 Q. And when you left the courthouse on August 13th, the
21 only judgment in the case was against Total, Inc.?

22 A. That's correct.

23 Q. Okay. And the receiver had been appointed, correct?

24 A. That's correct.

25 I'm sorry, judge, I can't remember if this court

1 appointed a receiver, or Judge Couch, because, you know,
2 details escape me.

3 Q. And the authority of that receiver was to obtain
4 property belonging to what entity or person?

5 A. Total, Inc. Was the only defendant. Total, Inc..

6 Q. Did the receiver have any authority to seize property
7 belonging to Mary Gault?

8 A. No.

9 Q. Did it have authority to seize property belonging to
10 Mike Gault individually?

11 A. No, it was Total, Inc.. That was pretty clear to me.
12 I mean --

13 Q. And at the hearing did the court order on August 13th
14 order that no property was to be removed from 199 Speedway?

15 A. If that's what it says here, that's what is stated.

16 Q. Does the order say anything about not removing any
17 property from 199 Speedway?

18 A. "No one can remove any property except the receiver,
19 accompanied by a Cherokee County sheriff's deputy."

20 Q. And that's an order that was --

21 A. It says no one.

22 Q. That's an order that was clocked at 4:15 p.m. on August
23 14th?

24 A. Right.

25 Q. Okay.

1 (Court Transcript marked as Defendant's Exhibit
2 No. 2 for identification)

3 BY MR. LAZENBY:

4 Q. I'm showing you what's been marked as Defendant's
5 Exhibit 2. This is a portion of the transcript of the
6 August 13th hearing. And you can review that, if you need
7 to, to refresh your recollection, but when the parties and
8 counsel left the courtroom on August 13th, did the court
9 issue a verbal order ordering no property to be removed from
10 199 Speedway?

11 A. You will have to indulge me while I read this.

12 Q. Yes, sir.

13 THE COURT: Do you know what line and page it's
14 on, counsel?

15 MR. LAZENBY: Your Honor, I don't believe it's in
16 there.

17 THE COURT: Oh.

18 (Off the record)

19 (Back on the record)

20 A. Okay.

21 BY MR. LAZENBY:

22 Q. Do you see any reference in that transcript where the
23 court verbally ordered that no property was to be removed
24 from 199 Speedway?

25 A. There is a -- the court stated back here --

1 Q. The court ordered that an inventory was to be
2 completed.

3 A. That's correct, an inventory was to be done and given
4 to Mr. Weatherford and me, as I understand.

5 Q. And my question is did the court order on the record
6 that no property was to be removed at any time from 199
7 Speedway?

8 A. I don't see that specific statement, but I thought it
9 was pretty clear that that was what the court meant.

10 Q. Well, do you recall the court ordering that?

11 A. As I said, that appeared to me to be the intent of the
12 court, but it's not specifically stated here.

13 MR. LAZENBY: Thank you, Your Honor. Those are
14 all the questions that I have.

15 REDIRECT EXAMINATION BY MR. WEATHERFORD:

16 Q. All right. Let me show you Defendant's Exhibit No. 1,
17 order on motion for contempt, and would you read the first
18 paragraph on page two?

19 A. Do you want me to read it into the record?

20 Q. Yes.

21 A. "Based on the affidavit of the receiver, with the list
22 of property found, that the receiver is hereby vested with
23 the possession of all of the said property and that no one
24 can move and/or remove any of that property, except the
25 receiver, accompanied by a Cherokee County sheriff's

1 deputy."

2 Q. Thank you, sir.

3 MR. LAZENBY: Just briefly, Your Honor.

4 RECROSS EXAMINATION BY MR. LAZENBY:

5 Q. Mr. Holland, you don't recall when you received that
6 order?

7 A. I -- I can presume when I received it. I probably got
8 it somewhere like on the 15th of August. I can't say
9 definitely, though.

10 Q. Thank you.

11 A. I did get that list of the property. I have more
12 recollection of it than I do the actual order.

13 Q. Thank you.

14 MR. LAZENBY: Those are all the questions.

15 THE COURT: Let me ask it, and I'll ask -- do you
16 mind if I ask the witness a question?

17 MR. LAZENBY: No, Your Honor.

18 MR. WEATHERFORD: No, sir.

19 THE COURT: All right. Mr. Holland, I need to ask
20 you a question. Whenever a receiver is appointed, doesn't
21 that mean that the receiver takes the property of whoever it
22 is the receiver is being appointed for?

23 THE WITNESS: That's my understanding.

24 THE COURT: Yeah. I mean, doesn't that come from
25 the statute somewhere? I don't know that statute off the

1 top of my head.

2 THE WITNESS: Section 15-60, or something, isn't
3 it?

4 Chip, you would have it there?

5 There is a statute that sets it out.

6 MR. WEATHERFORD: 15-39-450 says "the receiver
7 shall be vested with the property and effects of the
8 judgment debtor."

9 THE COURT: Okay.

10 Any other questions of this witness as to that
11 question from the court?

12 MR. LAZENBY: No, Your Honor.

13 THE COURT: Not hearing anything, thank you Mr.
14 Holland.

15 THE WITNESS: May I state something for the
16 record?

17 THE COURT: Any objection to him stating anything
18 on the record?

19 MR. LAZENBY: No, Your Honor.

20 MR. WEATHERFORD: No, sir.

21 THE COURT: Yes, sir.

22 THE WITNESS: I obtained a transcript of that
23 previous hearing you had wherein it's implied by somebody, I
24 wasn't quite sure who, that I had filed a fraudulent
25 document with the court, and that document being answers to

1 these interrogatories we have been talking about. I haven't
2 seen or heard anything by anybody to support that claim, and
3 it is a pretty bad thing to have it on an attorney's record
4 that he's going around defrauding the court. And I want to
5 state it in this record that there is no such thing done by
6 me. There was no intent to withhold any information, and
7 every effort was made to provide everything that the rules
8 require, and then some, I think. So I just don't like that
9 little cloud. I consider it a cloud on anybody's
10 reputation.

11 THE COURT: Thank you for sharing that with us.

12 THE WITNESS: Thank you very much.

13 May I be excused?

14 THE COURT: Any objection to him being excused?

15 MR. LAZENBY: No objection.

16 MR. WEATHERFORD: No objection.

17 THE COURT: Yes, sir.

18 THE WITNESS: Thank you very much, judge.

19 THE COURT: Watch your step when you step down.

20 Yes, sir, Mr. Weatherford.

21 MR. WEATHERFORD: I call Ben Kochenower.

22 THE COURT: Come on around, sir, if you would and
23 let the Clerk of Court swear you in.

24 BEN KOCHENOWER, having been first duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION BY MR. WEATHERFORD:

2 Q. All right. State your name for the record.

3 A. Ben Kochenower, and I practice accounting in Cherokee
4 County, South Carolina, Gaffney.

5 Q. And you were appointed the receiver after the sheriff
6 returned the nulla bono return, as far as collecting
7 property owned by the defendant judgment debtor?

8 A. That's my understanding I believe in February or early
9 March of 2011, sir.

10 Q. All right. And you made numerous efforts to collect
11 property?

12 A. Yes.

13 Q. And did you meet with resistance?

14 A. Yes, I did.

15 Q. All right. After finally getting to the location of
16 near Blacksburg, which is formerly Al Tessner's location?

17 A. Yes.

18 Q. And you took a couple of forklifts?

19 A. Yes, I did.

20 Q. And what was the conversation between you and Mr. Gault
21 and Mrs. Gault about those forklifts?

22 A. Mike Gault and Mrs. Mary Gault spoke with me and
23 claimed that each of them owned one of those forklifts.

24 Q. So what did you do?

25 A. Well, I asked them to -- gave them a piece of paper and

1 asked them to write that out and to sign their name.

2 Q. And is that an accurate copy of what they did?

3 A. Yes, it is.

4 Q. Okay. All right.

5 MR. WEATHERFORD: I think that is already attached
6 on it, but I want to get it marked again for the record of
7 this hearing.

8 (Written Note marked as Plaintiff's Exhibit No. 2
9 for identification)

10 THE COURT: Any objection?

11 MR. LAZENBY: No, Your Honor.

12 THE COURT: It would be Plaintiff's 2.

13 A. He also claimed that he owned the two forks on the big
14 case lift as it was being loaded.

15 BY MR. WEATHERFORD:

16 Q. All right. And what did he tell you about the
17 Mitsubishi? What did he write? Read what he wrote on the
18 thing.

19 A. "I own the Mitsubishi forklift. Has it seven years.
20 Mike Gault." He said he had it for seven years.

21 Q. Okay. And you have seen -- have you seen Plaintiff's
22 Exhibit No. 1 previously?

23 A. I believe I have seen this. I don't immediately
24 recognize it, but --

25 Q. All right. Let's go back to the third page -- I mean

1 the last page.

2 A. Yes.

3 Q. And just read the top line.

4 A. "Mike Gault personal property owned. Clothes, shoes,
5 TV, DVD player, DVD's, bedroom furniture, refrigerator,
6 microwave." Yes, I have seen this.

7 Q. Any forklifts on that list?

8 A. No forklifts.

9 Q. Okay. What about race cars? Did you have some
10 conversation with him about race cars?

11 A. Yes, I did.

12 Q. What was that conversation?

13 A. Well, I inquired where the race cars were and he
14 indicated that he had a couple of them. There was one
15 listed on the interrogatories that I was attempting to
16 locate.

17 Q. That would be the one designated as The Rocket on?

18 A. The Rocket, yes.

19 Q. Equipment owned by Total, Inc.?

20 A. That's correct.

21 Q. All right.

22 A. And, you know -- and he said he -- I believe he said he
23 owned one or two himself, but that that one there was at the
24 shop, at the race track being repaired.

25 Q. Did he make any statement about any race cars he owned

1 personally?

2 A. He said he owned one personally, yeah.

3 Q. One or two?

4 A. At one time he said one. Another time he said two, I
5 believe.

6 Q. Did you ask him where they were?

7 Now, this was before the August hearing when he was
8 held in here, but this was back in July or something.

9 A. That's correct.

10 MR. LAZENBY: Your Honor, I'm going to object to
11 this question. It has to deal with Mr. Gault's personal
12 property, which wouldn't be the proper subject of Mr.
13 Kochenower's duties or authority as receiver.

14 THE COURT: All right. I'm going to allow him to
15 answer, because I believe that for purposes of this hearing
16 it is benefit to the court to know what Mr. Gault has
17 stated.

18 BY MR. WEATHERFORD:

19 Q. All right. Did you ask him where the race cars were?

20 A. Yes.

21 Q. And what did he tell you?

22 A. I believe he told me they were at the race track, at
23 the shop.

24 Q. Did you go looking for them?

25 A. I went looking for them when we went -- when we were

1 allowed to go to the race track, yes.

2 Q. And you went -- that would be, what, August 13th you
3 went out there?

4 A. Yes.

5 Q. And did you make an inventory and take photographs of
6 what was out there?

7 A. We took pictures of everything we could see, and then
8 we took an inventory of everything that we had reason to
9 believe might be owned by Total, Inc., yes.

10 Q. And have you got pictures with you?

11 A. Yes, I do.

12 Q. Let me ask you if these are accurate enlargements of
13 some of the pictures that you took when you were out there
14 on the 13th?

15 A. Yes, they are. These are the two race cars that were
16 in the shop.

17 Q. And what condition would you describe those cars as
18 being in?

19 MR. LAZENBY: I'm going to object. Your Honor, I
20 don't think he's qualified to say what condition the race
21 cars, unless he's a race car driver or mechanic that I don't
22 know about.

23 THE COURT: Do you want to maybe clarify your
24 question?

25 BY MR. WEATHERFORD:

1 Q. I mean were they clean or dirty?

2 THE COURT: Okay.

3 A. They appeared to be outwardly very clean and very dent
4 and scratch free, let me say.

5 BY MR. WEATHERFORD:

6 Q. Okay. So for all intents and purposes what you could
7 see there looked like they were new?

8 A. They appeared to be in good shape, either new or
9 cleaned up.

10 Q. All right. And these photographs --

11 MR. WEATHERFORD: Let me have them marked.

12 We are going to mark these as one exhibit, a group
13 of four pictures.

14 THE COURT: Are you sure you want to mark them as
15 one?

16 MR. WEATHERFORD: You better just mark them
17 consecutive.

18 (Photograph marked as Plaintiff's Exhibit No. 3
19 for identification)

20 (Photograph marked as Plaintiff's Exhibit No. 4
21 for identification)

22 (Photograph marked as Plaintiff's Exhibit No. 5
23 for identification)

24 (Photograph marked as Plaintiff's Exhibit No. 6
25 for identification)

1 THE COURT: Plaintiff's 3, 4, 5 and 6 are
2 photographs of the race cars. Any objection to the
3 photographs coming in?

4 MR. LAZENBY: I assume he's going to identify
5 them, and I have no objection, Your Honor.

6 THE COURT: Provided he identifies them.

7 BY MR. WEATHERFORD:

8 Q. Now, tell me when these pictures were taken, this group
9 of them. You had more stuff too.

10 A. Yes, it's down here.

11 These pictures were taken the same day of the hearing
12 in August of 2012, when we were here in the courtroom.

13 Deputy Duckett and I went, along with a photographer by the
14 way, and we went over and went through an inventory of
15 everything on Race Track Road.

16 Q. All right. And this Exhibit No. 3 was there at that
17 shop?

18 A. Yes. There were two race cars. When you walk in the
19 main bay, this was on the left, and the other one was on the
20 right. This was the black with the blue trim.

21 Q. That's No. 3.

22 And then No. 4 is?

23 A. The black with the red trim, and it was the one on the
24 right. They were both sitting actually together side by
25 side.

1 Q. All right. And Exhibit No. 6 was?

2 A. Is the -- we raised the hoods and took a picture of the
3 engine and this is the engine for the one on the left, No.

4 3.

5 Q. And does that engine have oil and stuff all over it, or
6 is it clean?

7 A. It looks very clean.

8 Q. All right. And then --

9 A. Appears very clean.

10 Q. -- you raised the lid on the other car. Now, that's
11 Exhibit 5?

12 A. And this was the engine. This was under the hood of
13 the second vehicle.

14 Q. The red one?

15 A. The black with red trim, yes.

16 Q. And does that motor appear to be clean --

17 A. Yes, it does.

18 Q. -- or dirty?

19 A. Clean.

20 Q. All right. And you made your list and then I believe
21 you signed that over to the judge's chambers on the 14th to
22 have the order signed?

23 A. Yes, sir.

24 Q. And when you went back on the 15th -- you went back
25 with Officer Duckett on the 15th?

1 A. Yes, sir.

2 Q. Were both those race cars still there?

3 A. They were not.

4 Q. Which one was there?

5 A. The one I believe on the right with the red trim.

6 Q. Which one do you have now?

7 A. We have the one that has the red trim, I believe.

8 THE COURT: Would you identify those vehicles by
9 the number of the exhibit?

10 BY MR. WEATHERFORD:

11 Q. All right. Exhibit number -- let's see, 3 and 6, is
12 that the one that you have possession of now?

13 A. I don't believe so, no, sir.

14 Is that right? I don't know.

15 MR. LAZENBY: Your Honor --

16 A. We have one of the cars.

17 BY MR. WEATHERFORD:

18 Q. Let me -- okay, you have got one --

19 A. We have one of the cars..

20 Q. Regardless of which one it is?

21 A. Regardless of which one it is.

22 And right now I didn't -- I don't know which one it is.
23 I believe it was the -- they told us it was the one that
24 didn't have the good engine in it.

25 MR. LAZENBY: Your Honor, I'll stipulate that he

1 has possession of the blue car.

2 THE COURT: And the blue car is number?

3 MR. LAZENBY: 3.

4 A. No. 3 and 6.

5 THE COURT: Thank you, sir.

6 BY MR. WEATHERFORD:

7 Q. And then No. 5 and 4?

8 A. That's the one that was not there when we --

9 Q. The next morning?

10 A. -- came back, that's correct.

11 Q. All right. And do you know where that car is now?

12 A. No, I don't know where it is now.

13 Q. All right. Okay.

14 MR. WEATHERFORD: That's all the questions that I
15 have.

16 MR. LAZENBY: If it please the court. Thank you,
17 Your Honor.

18 CROSS EXAMINATION BY MR. LAZENBY:

19 Q. Mr. Kochenower, just so I'm clear, you went to Total,
20 Inc. Property on July 15th, 2012, and had a conversation
21 with Mike Gault, correct, about race cars?

22 A. I don't recall the exact date that I was there.

23 Q. You don't recall the date that you took the forklifts?

24 A. It was the day that -- the forklifts was taken was the
25 day that I had a conversation with Mike Gault.

1 Q. And do you recall that being July 15th?

2 A. Approximately July 15th, yeah, whatever day that was.

3 Q. And Mr. Gault told you he had one -- he owned one or
4 two race cars, correct?

5 A. He had two race cars, yes.

6 Q. Did you ask him if they belonged to Total, or if they
7 belonged to him?

8 A. I asked him and he said they belonged to him.

9 Q. Okay.

10 A. He confirmed that in a telephone conversation
11 subsequent to that.

12 Q. And you didn't have any authority to get any property
13 belonging to him, correct?

14 A. I did not.

15 Q. Okay. And you waited a month and went back to -- you
16 went to 199 Speedway on August 13th, a month after Mr. Gault
17 told you his two cars were there, and his cars were still
18 there, correct?

19 A. I didn't know which cars they were and he had said that
20 Total, Inc. Owned the race cars.

21 Q. I thought you said that he told you that he owned the
22 race cars and then confirmed that in a telephone conference?

23 A. He told me that Total, Inc. Owned two and that he owned
24 two.

25 Q. So there were four cars?

- 1 A. Well, I have heard from other people that he had
2 several.
- 3 Q. Okay. I'm not asking what other people told you who
4 aren't here to testify.
- 5 A. That's right.
- 6 Q. You testified that Mike told you that he had one or two
7 cars, correct?
- 8 A. That's correct.
- 9 Q. He told you he owned them, correct?
- 10 A. He told me that he owned them, and then he told me that
11 Total, Inc. Owned them.
- 12 Q. Well, in a subsequent telephone conversation didn't you
13 just say that he confirmed again that he owned them?
- 14 A. He said that he had owned a couple of cars, yes.
- 15 Q. And then in Plaintiff's Exhibit 1 there was an
16 indication that Total owned a race car, correct?
- 17 A. In initial conversations Total owned the race car and
18 it was being repaired at his shop.
- 19 Q. And my question is, even though almost a month elapsed
20 between the time that you -- that Mike Gault told you he had
21 two race cars at 199 Speedway, until you went out there, you
22 found two race cars at 199 Speedway, correct?
- 23 A. Yes, and I had reason to believe that they were both
24 owned by Total, Inc. At that time.
- 25 Q. Okay. Well, my first point is that those two cars were

1 there. He didn't move them, right? They were there on
2 August 13th?

3 A. I didn't see race cars in July.

4 Q. At Total, Inc.'s property?

5 A. No.

6 Q. But you saw them on August 13th at 199 Speedway?

7 A. Correct.

8 Q. And you said that you had reason to believe that Total,
9 Inc. Owned them?

10 A. Yes.

11 Q. What was that? What was the basis for your believing
12 that?

13 A. Well, based on the original interrogatories there was a
14 race car and -- I don't recall what my reasoning was at that
15 time.

16 Q. When you inventoried this property at 199 Speedway,
17 what did you do to confirm that the property was owned by
18 Total, Inc.?

19 A. I had a list that I had compiled of everything that had
20 been listed on interrogatories and everything that was in
21 the records from the bank and from other sources that Mr.
22 Weatherford had gone through and found, and I had a
23 composite list from two or three places that -- bank records
24 had listed some properties and I used that to identify what
25 might be owned, what I might be looking for over there.

1 Q. And just to be clear, I'm showing you Plaintiff's
2 Exhibit 1. The only description for property owned by Total
3 regarding race car, it says one Rocket?

4 A. It says one Rocket, yes, sir.

5 Q. What did you do, if anything, to verify that one Rocket
6 on Plaintiff's Exhibit No. 1 was one of these two vehicles
7 shown in Plaintiff's 3, 4, 5 and 6?

8 A. I had not -- at that point in time I didn't. My
9 recollection was -- my job was to acquire the property and
10 sort it out there.

11 Q. And you still haven't sorted it out, have you?

12 A. We have some documentation in our file, yes. We have
13 some documentation --

14 Q. You don't have any -- I'm sorry.

15 A. -- that you provided, yes.

16 Q. I have provided you documentation that vehicle 3 and 6,
17 on Plaintiff's 3 and 6, belonged to Mr. Gault --

18 A. Okay, sir.

19 Q. -- did I not?

20 A. I have an invoice to that effect, yes.

21 Q. Do you recall the -- well, let me just get the document
22 for you.

23 A. Okay.

24 (Invoice marked as Defendant's Exhibit No. 3 for
25 identification)

1 THE COURT: Any objection?

2 MR. WEATHERFORD: No objection.

3 THE COURT: Without objection, Defendant's 3,
4 later identified, would be admitted into evidence.

5 MR. LAZENBY: Thank you.

6 BY MR. LAZENBY:

7 Q. If you would, look over that document and tell me if
8 you recognize it.

9 A. (Witness reviewing document).

10 Q. Do you recognize that document?

11 A. I recognize seeing something like this, yes, but I
12 don't -- I didn't memorize it, but I recognize something
13 like this.

14 Q. Can you -- do you recognize that as an invoice for one
15 of the vehicles -- or for the race car that you seized?

16 A. I recognize this as an invoice for a race car, yes.

17 Q. An invoice for a race car.

18 Do you recall that I sent you that invoice back in
19 September of 2012?

20 A. You sent me this, yes.

21 Q. In the fall of 2012?

22 A. Yes, sir.

23 Q. Did I represent to you that that was the invoice for
24 the vehicle that you had seized?

25 A. Yes, you did. I believe you did.

1 Q. Did I ask you to inquire into the matter and determine
2 whether, in fact, that invoice reflected the same property
3 that you had in your possession?

4 A. Yes.

5 Q. Okay. Now, race cars don't have vehicle identification
6 numbers, do they?

7 A. I believe some of the chassis have.

8 Q. They have chassis numbers?

9 A. Yes.

10 Q. And every chassis has an identifying number on it,
11 correct?

12 A. As I understand, yes.

13 Q. Did you look at the chassis number on Defendant's
14 Exhibit 3 and compare it to the chassis number which is on
15 the race car that you seized, Plaintiff's 3 and 4?

16 A. I recall attempting to find a chassis number and not
17 being able to. We had somebody look for it and I don't
18 believe that we were able to identify the chassis number on
19 it.

20 Q. Have you ever seen a chassis number?

21 A. Not personally, no.

22 Q. So you don't know if they are eight inches long, or if
23 they are just an inch long?

24 A. No.

25 Q. Did you who -- did you -- did you have anybody look at

1 the chassis to see if they could identify it?

2 A. We had some mechanics there that were looking at it,
3 yes.

4 Q. Who looked at it?

5 A. I don't recall. Somebody there at -- I believe we got
6 somebody that runs race cars to look at it. One of the
7 mechanics there at Blanton's Wrecker Service.

8 Q. You don't recall the name?

9 A. No.

10 Q. Okay. Because I want to meet the person who can't
11 identify -- a mechanic who can't identify a chassis number.

12 A. Okay.

13 Q. That invoice that I sent to you, did you do anything to
14 follow up with the seller to verify the veracity of that
15 invoice?

16 A. I had called Mark Richards Racing Enterprises in
17 Shinnston, West Virginia, yes, sir.

18 Q. Did they confirm that that was an authentic invoice?

19 A. They said that they had sold a car to Mike Gault, yes.

20 Q. Okay. And on this invoice it indicates the car is
21 being sold to Mike Gault, correct?

22 A. Yes.

23 Q. And the date of that invoice is April 20, 2012,
24 correct?

25 A. This is April -- yes, it is.

1 Q. And that is some nine months after the date of the
2 interrogatories listed on Plaintiff's Exhibit No. 1,
3 correct?

4 A. Yes.

5 Q. So would it surprise you then that there would be no
6 mention in Plaintiff's Exhibit 1 of a race car, if it was
7 purchased nine months later?

8 A. That's correct. You know, no, that doesn't surprise
9 me.

10 Q. You had one mechanic at Blanton's look for the chassis
11 number?

12 A. Yes.

13 Q. Did you ask anyone else?

14 A. No.

15 Q. You gave up?

16 A. I didn't pursue it further at that time, no.

17 Q. Did I repeatedly ask you to verify this, because this
18 chassis, this vehicle, belonged to Mr. Gault individually?

19 A. I believe you did, sir.

20 Q. And you didn't do anything else to verify that?

21 A. Not at that time.

22 Q. And the vehicle now is at Blanton's?

23 A. Yes.

24 Q. You have never raced cars before, have you?

25 A. I have had a couple of state troopers say I was racing

1 mine, but other than mine, no, sir, I have never raced cars.

2 Q. You have actually no idea what a car engine is supposed
3 to look like after a race or before a race, is it fair to
4 say?

5 A. Other than I suspect it would be a little bit muddier
6 after a race than before.

7 Q. Do you know whether they clean the cars after the
8 races?

9 A. I suspect they would, yes.

10 Q. 199 Speedway, that is property that was owned by Mary
11 Gault, is that correct?

12 A. It's my understanding that's correct, yes.

13 Q. And do you recall what's been marked into evidence as
14 Defendant's Exhibit No. 1.

15 MR. LAZENBY: And by the way, Your Honor, if I
16 haven't, I would like to move Defendant's 1 and 2 into
17 evidence.

18 THE COURT: I think you have, but let's let Mr.
19 Weatherford take a look at that.

20 MR. WEATHERFORD: No objection.

21 THE COURT: Without objection, Defense 1 is in.
22 Tell us for the record what Defense 1 is what.

23 MR. LAZENBY: Yes, Defense 1 is the order of
24 Cherokee County Court of Common Pleas in this litigation
25 signed August 14th, 2012.

1 THE COURT: Okay.

2 MR. LAZENBY: Stamped August 14th, 2012, at 4:13
3 p.m..

4 THE COURT: And 2.

5 MR. LAZENBY: 2012.

6 THE COURT: No, Defendant's 2.

7 MR. LAZENBY: Oh, Defendant's 2, Your Honor, is
8 pages 193 through 97 of a transcript of record for the
9 August 13th, 2012 contempt hearing.

10 THE COURT: All right, Defendant's 1 and 2 is in.

11 BY MR. LAZENBY:

12 Q. Have you seen -- I'm showing you Defendant's Exhibit 1.
13 Do you recognize that document?

14 A. Yes.

15 Q. I believe it's been testified to, but you went out to
16 199 Speedway?

17 A. Yes. With a deputy, yes.

18 Q. On August 13th?

19 A. We would have gone out the day before this, so it was
20 August 13th, in the late afternoon.

21 Q. Describe that building for me, if you would.

22 A. Just a metal building, steel structure.

23 Q. Would you characterize it as a large structure?

24 A. It's one story and it's fairly large.

25 Q. How high is the -- is it a ten foot ceiling, or twenty,

1 or thirty foot ceiling?

2 A. Probably fifteen, eighteen foot ceilings inside.

3 Twelve to fourteen foot ceilings inside.

4 Q. Are there rooms inside?

5 A. Some, yes.

6 Q. Looking at Exhibit 1, Defendant's Exhibit 1, there is a
7 list of property.

8 I'm sorry, Defendant's Exhibit 1.

9 A. This?

10 Q. No, no, no, defendant's.

11 A. I got you.

12 Q. The last page of that there is a list of property?

13 A. Yes, sir.

14 Q. Is that property that you found inside the structure at
15 199 Speedway?

16 A. Not all of it, no.

17 Q. What was found outside?

18 A. The Ford box van. The car hauler -- the two car
19 haulers. Al's rollback truck. Ford F-350 dually. Two-car
20 closed trailer. One lift, I believe. Caterpillar
21 bulldozer. A motor grader. A welder was inside.

22 The steel trusses. The blue Chevy extended cab pickup.
23 The Ford tractor with dual rear wheels, the blue one. The
24 motor grader. Winnebago. The backhoe. The white Chevy
25 panel truck. White Chevy extended cab work truck, and all

1 the automobiles.

2 Q. Okay. Is it fair to say that these vehicles were all
3 over the property of 199 Speedway?

4 A. Yes.

5 Q. They weren't --

6 A. Yes, from -- yes. I don't know all over the property.
7 We didn't go all over the property.

8 Q. All around the building?

9 A. Yes.

10 Q. Okay.

11 A. Yes.

12 Q. And that still leaves a lot of equipment that was
13 inside of 199 Speedway?

14 A. Excuse me?

15 Q. Inside the building, the structure at 199 Speedway.

16 Do you agree that there was a lot of property inside
17 199 Speedway?

18 A. Yes.

19 Q. Did you understand that that was being used as a race
20 shop to work on race cars?

21 A. I understood that that was part of it, yes. A lot of
22 that was being -- it looked like it was being stored there.
23 And we had heard testimony in an earlier hearing that a lot
24 of that had been moved there from his shop.

25 Q. Well, I didn't ask you --

1 A. At Tessner's, but not all of that was being used as to
2 work on race cars.

3 Q. Just because you mentioned that, that was testimony of
4 a disgruntled former employee, is that right?

5 A. It was testimony of an employee, a former employee.

6 Q. And then you put a witness on the stand who was an
7 investigator who was watching Mr. Gault in the month of July
8 and said he never saw Mr. Gault take stuff from Total and
9 hide it at 199 Speedway, is that right?

10 A. I don't recall his testimony, but I did have -- we did
11 have a --

12 Q. It was something to that effect?

13 A. I don't recall his testimony.

14 Q. Okay.

15 A. No.

16 Q. All right. But there was a lot of -- my point is there
17 is a lot of stuff there?

18 A. There was a lot of stuff in there.

19 Q. How long did it take you to catalog it all?

20 A. We didn't catalog a hundred percent of it. It took us
21 an hour and a half, two hours to -- we took pictures of it
22 all.

23 Q. Okay.

24 A. And listed it, what -- yeah.

25 Q. Was Mr. Gault present?

1 A. No, he was not.

2 Q. Was anybody who appeared to be working at that location
3 there?

4 A. There was several of his employees there, yes.

5 Q. Okay. Did you notice employees taking pictures of
6 everything that was brought out of the shop?

7 A. I didn't notice that, no.

8 Q. Now, you did not seize every piece of property that
9 was --

10 I'm sorry, when you went back on the 15th --

11 A. Yes.

12 Q. -- were there employees of Mr. Gault's there at that
13 time?

14 A. I believe there was one employee outside.

15 Q. Was there someone taking -- was he taking pictures of
16 everything that was removed from the building?

17 A. I don't recall. I didn't specifically look for that,
18 and I didn't -- I don't recall specifically seeing anybody
19 do that.

20 Q. Okay. You did not seize everything that's listed on
21 the last page of Defendant's Exhibit 1, did you?

22 A. That's correct.

23 Q. In fact, just a small portion of that, correct?

24 A. We didn't take any of the automobiles.

25 Q. Did you give an affidavit to the court where you

1 affirmed that everything on that list belonged to Total,
2 Inc.?

3 A. I believe it to be.

4 Q. Now, that was a statement under oath?

5 A. Yes.

6 Q. And based upon that statement you gave under oath, the
7 court issued an order allowing you to seize it, correct?

8 A. Yes.

9 Q. What did you do, if anything, to determine what
10 property was owned by Total, Inc. On that list there?

11 A. Prior to this time --

12 Q. Prior to signing the affidavit.

13 A. Prior to signing the affidavit, which says "I believe",
14 I compared this stuff with a list of things that we had from
15 the bank records, that we had from interrogatories, that we
16 had from other records that Mr. Weatherford was able to come
17 up with, and from some things that we were told were taken
18 from and conveyed, the types of things that were conveyed
19 from Mr. -- from the one location to the other.

20 Q. What bank records did you rely upon?

21 A. American Community Bank --

22 Q. Okay.

23 A. -- were the only bank records that we had.

24 Q. And what property did that describe?

25 A. Trucks. I believe a Harley Davidson. A Tahoe, which

1 we didn't see there, but some -- some vehicles.

2 Q. Okay. On that list are welders, correct?

3 A. That's correct.

4 Q. Generator?

5 A. Correct.

6 Q. Forklift?

7 A. Yes.

8 Q. Tractors?

9 A. Yes.

10 Q. Did you have any bank records indicating that those

11 belonged to Total, Inc.?

12 A. I believe there was a tractor that was owned, yes. It

13 was on the records.

14 Q. One tractor?

15 A. I believe there was a tractor, yes.

16 Q. And how many tractors did you seize?

17 A. We seized one.

18 Q. How many did you seize from the other location?

19 A. We didn't seize any tractors from the other location,

20 that I recall.

21 Q. Did I provide you information that the tractor that you

22 seized was a family heirloom?

23 A. You did. You made that assertion, yes, sir.

24 Q. And did you look at the estate of Rock Gault where Rock

25 Gault specifically mentions leaving a blue Ford tractor to

1 his wife?

2 A. Yes.

3 Q. Did you determine that that was the same tractor you
4 are now holding?

5 A. Well, I determined that the serial number that you
6 provided me did not match the serial number that was on the
7 mower deck and -- so -- I mean, I do have that.

8 Q. Well, the mower -- I'm asking about the tractor. The
9 mower deck was separate, correct?

10 A. No, the mower deck is connected to the tractor.

11 Q. Let me ask you -- let me ask you this. Do you believe
12 that you are holding Mary Gault's blue Ford tractor?

13 A. I very well could be. I very well could be, but just
14 because I inherit something does not mean that I still own
15 it. And so my original order was to obtain anything that
16 was on the property that was being used in the business, and
17 she could have conveyed to it her son. And I --

18 Q. Do you have any evidence that she conveyed it to him?

19 A. I haven't sold it, but --

20 Q. Do you have any evidence -- I'm sorry, I'm not meaning
21 to talk on top of you.

22 A. No, that's fine, but that was my original intent was to
23 seize it and to find out, but I haven't seen any evidence,
24 other than an assertion that -- and I see it in the -- it's
25 true it's in the estate.

1 Q. It said a blue Ford tractor?

2 A. It's in the estate.

3 Q. I'm asking you, does it say blue Ford tractor in the
4 estate?

5 A. I believe it may say blue Ford tractor.

6 Q. And on Plaintiff's Exhibit No. 1 it says property owned
7 by Total is one tractor?

8 A. One tractor.

9 Q. Okay. Now, you have been ordered to return everything
10 that belonged to Total, Inc., correct?

11 A. That's correct.

12 Q. And you have done so?

13 A. To the best of my knowledge and belief I have done so,
14 and that's my assertion.

15 Q. Well, you would be in contempt of court in bankruptcy
16 court if you did not return everything that belonged to --

17 A. And I have no intention of being in that kind of shape,
18 sir.

19 Q. Okay. So do you agree with me that you are holding
20 Mary Gault's blue Ford tractor?

21 A. No, sir, I don't have evidence to that effect.

22 Q. Do you have any evidence that belongs to --

23 A. To Total.

24 Q. -- Total, other than this list on Plaintiff's Exhibit 1
25 that says one tractor?

1 A. No.

2 Q. Did you ever find any bill of sales or transfers from
3 Mary Gault to Mr. Gault?

4 A. No.

5 Q. And would it really matter if Mr. Gault owned the
6 tractor, for your purposes?

7 A. At this point, when the court tells me to give it back,
8 I will give it back.

9 Q. You don't believe you have a duty to determine who owns
10 the property?

11 A. Yes, I do, and I haven't seen anything yet that's
12 conclusive, because it looks like it was being used in his
13 trade or business, and things can be gifted and being
14 used -- and be given to somebody else, but --

15 Q. The blue Ford tractor looked like it was being used in
16 the business?

17 A. It was in the shop there.

18 Q. Well, there is no -- Total, Inc. Doesn't run a business
19 out of 199 Speedway, does it?

20 A. It was my understanding that they were going to move
21 their operation over there for a while because they closed
22 the other location down.

23 Q. So you honestly believe that this tractor does not
24 belong to Mary Gault?

25 A. I don't have a belief about that right now.

1 Q. Defendant's Exhibit 2, which is the order, when did you
2 first receive it? Is that Defendant's -- I'm sorry,
3 Defendant's Exhibit 3.

4 Defendant's Exhibit 1, which is the order, when do you
5 recall first receiving that?

6 A. I believe I received it on the 14th, or early on the
7 15th.

8 Q. Did you ever give a copy of that to Mr. Gault?

9 A. I carried a copy out to the location when I went.

10 Q. Did you give a copy to Mr. Gault?

11 A. No, I didn't see him then.

12 Q. Thank you.

13 MR. LAZENBY: Those are all the questions.

14 MR. WEATHERFORD: Just briefly.

15 REDIRECT EXAMINATION BY MR. WEATHERFORD:

16 Q. Mr. Kochenower, of all the property that you have
17 obtained, and especially those that you still retain, has
18 anybody provided you with a certificate of title of
19 ownership for any of that property?

20 A. No, sir.

21 Q. The tractor, now there is a blue tractor listed on the
22 inventory in Probate Court?

23 A. Yes, sir.

24 Q. And there is a tractor listed on Total, Inc. Property?

25 A. Yes, sir.

1 Q. Do you know how many blue Ford tractors have been made
2 by Ford?

3 A. I don't. I wouldn't have any idea how many. Probably
4 a few.

5 Q. All right. You were provided through an affidavit by
6 Mr. Lazenby about the blue Ford tractor and it gave you a
7 serial number for the mower deck that went with the tractor?

8 A. Yes.

9 Q. And did you have somebody check the serial number on
10 the mower deck that went with the tractor against the serial
11 number given to you by Mr. Lazenby?

12 A. Yes.

13 Q. And did they match?

14 A. No, sir.

15 Q. So do you have any real knowledge or information who
16 owns that tractor now?

17 A. I do not.

18 Q. All right. I'm going to refer you to Defendant's
19 Exhibit 3, the Rocket chassis.

20 A. Yes, sir.

21 Q. Do you have a general idea of what a chassis is?

22 A. Generally, yes.

23 Q. What?

24 A. Well, it would be the drive train, the frame I believe
25 of the vehicle.

1 Q. Does that have anything in there about a motor?

2 A. I don't see anything about a motor.

3 Q. Does it have anything in there about tires?

4 A. No, sir.

5 Q. Does it have anything in there about hoods and trunks
6 and side panels and other body work? Anything in there
7 about that?

8 A. It says it has a roof, five star roof.

9 Q. Anything else?

10 A. No. Nothing else, no.

11 Q. Do you know -- do you know if that chassis is either in
12 either Defendant's No. 3, the blue -- the black with blue
13 trim race car, or Defendant's No. 4, the red -- the black
14 with red trim race car?

15 A. No.

16 Q. And did you try to check out the serial number on that
17 invoice?

18 A. Yes.

19 Q. And have you been able to find that serial number on
20 the car that you had that was left before?

21 A. No, they -- they said it was down -- we had to take the
22 body off to find it. That's what I was told.

23 Q. They didn't find the number listed there?

24 A. No, sir.

25 Q. And do you know if that chassis might be in this

1 missing car?

2 A. Well, not -- not knowing whether or not it's on this
3 one, I don't know what car.

4 Q. You don't -- in fact, you don't know if it's in either
5 one of these cars?

6 A. No, sir.

7 Q. All right. Thank you.

8 MR. LAZENBY: Your Honor, just very briefly.

9 THE COURT: Briefly, limited to what he just went
10 into.

11 MR. LAZENBY: Yes, sir.

12 RECROSS EXAMINATION BY MR. LAZENBY:

13 Q. You were asked about whether you have been presented
14 with any titles to a welder, correct? You were just asked
15 that question?

16 A. Whatever -- yes.

17 Q. Okay. To your knowledge, does the State of South
18 Carolina issue titles for welders?

19 A. Well, there would be a bill of sale, an invoice.

20 Q. What about the generators? Does the State of South
21 Carolina issue --

22 A. It would be an invoice, a bill of sale.

23 Q. What about a forklift, do they issue a certificate of
24 title for that?

25 A. Possibly not. Not that I know of, no.

1 Q. What about tractors? Do they issue certificates of
2 title for that?

3 A. Off road, I mean, non-licensed, I'm not sure.

4 Q. Okay. So the fact that you were never shown any
5 certificate of titles, is that really important?

6 A. What's important is the evidence of ownership.

7 Q. Did I show you affidavits from people who claim to have
8 sold the property specifically seized by you that we claim
9 are owned by Mrs. Gault and Mr. Gault?

10 A. You have furnished affidavits, yes, and so have they.

11 Q. And bills of sale?

12 A. In some cases, not all.

13 Q. Do you know Mr. Crow at Blanton's Wrecker Service?

14 A. Who?

15 Q. Mr. Crow?

16 A. Mr. Crow?

17 Q. Yes, sir.

18 A. That would be Michael -- there is -- there is two Mr.
19 Crows. Which one are you referring to?

20 Q. Okay. Tell me which two are there.

21 A. Which one are you asking me about?

22 Q. Well, I don't know either of them.

23 THE COURT: Obviously not one of you knows who the
24 other is talking about, so the question cannot be answered,
25 okay?

1 BY MR. LAZENBY:

2 Q. Have you ever spoken to either Mr. Crow at Blanton's
3 Wrecker?

4 A. Yes.

5 Q. Have you asked them how to find the chassis number?

6 A. Yes.

7 Q. Okay. And is it your testimony that you cannot find
8 the chassis number without removing the body?

9 A. No. Well, I was told that they couldn't find the
10 chassis number.

11 Q. That -- when you say they, who do you mean?

12 A. I don't believe it was either Mr. Crow. I believe it
13 was one of the other people there. I don't recall who it
14 was at this point specifically.

15 Q. Okay. So I thought you testified that it was
16 impossible to determine the chassis number without removing
17 the body. Is that your testimony?

18 A. No, I said they told me that they would have to remove
19 the body. It was down under the floorboard somewhere.

20 Q. Okay. So you were told that the only way to determine
21 the chassis number of this vehicle that you have got, that's
22 stored at Blanton's, is by removing the body?

23 A. No, I was told that they couldn't do it. They couldn't
24 find the chassis number.

25 Q. Okay. Do you know whether they ever put the vehicle on

1 a lift and looked underneath?

2 A. It is up on an elevated platform.

3 THE COURT: I believe that you have covered what
4 Mr. Weatherford has gone into. If you feel like you need to
5 ask him any other questions and I'm incorrect, please
6 proceed.

7 MR. LAZENBY: Just very briefly.

8 BY MR. LAZENBY:

9 Q. Have you personally looked underneath the vehicle that
10 is depicted in Plaintiff's 3 and 6?

11 A. I have personally inspected it, but I haven't crawled
12 up underneath it, no, sir.

13 Q. I'm sorry, but --

14 A. No, but it wasn't high enough for me to get underneath
15 it to see. I have not personally looked up underneath the
16 vehicle, no, sir.

17 MR. LAZENBY: Okay, those are all the questions
18 that I have. Thank you.

19 MR. WEATHERFORD: That's all.

20 THE COURT: Thank you, sir. You may step down.
21 Watch your step.

22 MR. WEATHERFORD: That's our showing, Your Honor.

23 THE COURT: Let me ask this before, Mr.
24 Weatherford where are the answers to the interrogatories
25 that were --

1 MR. LAZENBY: Plaintiff's No. 1.

2 THE COURT: Plaintiff's 1. Let me see them,
3 please.

4 (Off the record)

5 (Back on the record)

6 THE COURT: May I see Defendant's 3 as well?

7 Just let me have them all. Thank you.

8 (Off the record)

9 (Back on the record)

10 THE COURT: Yes, sir, Mr. Lazenby.

11 MR. LAZENBY: Thank you, Your Honor.

12 We would like to call Mike Kennedy to the stand.

13 MICHAEL KENNEDY, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. LAZENBY:

16 Q. Can you state your name for the record?

17 A. Michael Kennedy.

18 Q. And where are you employed?

19 A. Auto Max.

20 Q. And you heard testimony from Mr. Kochenower, I believe,
21 about Mr. Gault claiming to have owned a Mitsubishi
22 tractor -- or a Mitsubishi forklift at Total, Inc.?

23 A. Yes, sir.

24 Q. Are you familiar with that tractor?

25 A. Forklift, yes, sir.

1 Q. I'm sorry, forklift?

2 A. Yes, sir.

3 Q. Did you sell him that forklift?

4 A. Yes, sir.

5 MR. LAZENBY: Your Honor, could I see Plaintiff's

6 Exhibit 2?

7 BY MR. LAZENBY:

8 Q. I'm showing you Plaintiff's Exhibit 2. Did you hear
9 testimony about the Mitsubishi forklift that Mike signed a
10 statement saying he purchased about seven years ago?

11 A. Yes, sir.

12 Q. Did you sell him that forklift?

13 A. Yes, sir.

14 Q. How much did you sell it to him for?

15 A. It's been a long time, but three, four hundred dollars.

16 It was kind of out in the yard deal. It was sitting out
17 there, didn't run. He had a rollback. He said how much and
18 I said three or four hundred. And, of course, he probably
19 said three hundred, you know, to beat me down.

20 Q. So the tractor was not operational?

21 A. No, sir.

22 Q. Do you know if he intended to buy it for scrap?

23 A. I don't know. I saw it was to me. We had three
24 forklifts. That one stopped working. We used the other two
25 and just never bothered messing with it, so I don't know

1 what he was going to do with it.

2 MR. LAZENBY: Your Honor, I'm trying to find an
3 affidavit which shows the picture of this forklift to verify
4 that this is the same forklift. I have got it on my I-pad,
5 but I don't want to mark my I-pad.

6 THE COURT: Well, the reporter ought to be happy
7 to mark that.

8 MR. WEATHERFORD: It's in your motion.

9 MR. LAZENBY: My motion to terminate?

10 MR. WEATHERFORD: I don't know which one, but it's
11 in one of them.

12 (Off the record)

13 (Back on the record)

14 BY MR. LAZENBY:

15 Q. Do you recall signing an affidavit in this case?

16 A. No, I don't recall.

17 Q. I'm going to show you --

18 A. Yeah, that is my signature.

19 Q. Did you sign an affidavit on October 11th, 2012?

20 A. Yes, sir.

21 Q. Okay. Can you describe the model forklift that you
22 sold to Mr. Gault?

23 A. It's a Mitsubishi. It was just a rough -- the model
24 number I don't know.

25 Q. Attached to that affidavit is a picture of a forklift?

1 A. Yes, sir.

2 Q. Okay. Is that forklift the forklift that you sold Mike
3 Gault?

4 A. Yes, sir.

5 Q. Okay. And you sold it to him for a two or three
6 hundred dollars?

7 A. Yes, sir.

8 Q. Thank you.

9 MR. LAZENBY: Those are all the questions that I
10 have.

11 CROSS EXAMINATION BY MR. WEATHERFORD:

12 Q. Now, you -- Plaintiff's Exhibit No. 2, the statement "I
13 own the Mitsubishi forklift. Has it seven years. Mike
14 Gault." That's Plaintiff's No. 2. That's the one that you
15 sold to him?

16 A. Yes, sir. Yes, sir.

17 Q. So when it was taken by the receiver, he still owned
18 it?

19 A. As far as I know, yes, sir.

20 Q. All right. Well, he wrote a statement when the
21 receiver got it saying that he owned it and that he had
22 owned it for seven or eight years.

23 A. Okay.

24 Q. Do you agree with that time frame?

25 A. It was in 2008.

1 Q. But it was still in his possession when the receiver
2 took it?

3 A. I don't have any idea. I guess it was.

4 Q. Well, according to this statement that was signed by
5 Mike Gault --

6 A. According to that, yes, sir.

7 Q. That's Exhibit 2?

8 A. Yes, sir.

9 Q. Now, on Exhibit 1, the last page, property owned by
10 Mike Gault, do you see anything there about a Mitsubishi
11 forklift?

12 A. No, sir.

13 Q. Okay. Thank you.

14 A. Yes, sir.

15 MR. WEATHERFORD: No further questions.

16 MR. LAZENBY: No questions of the witness.

17 Can he be released?

18 THE COURT: Any objection, Mr. Weatherford?

19 MR. WEATHERFORD: No, sir.

20 THE COURT: Sir, watch your step when you step
21 down, but you can be released and leave the courtroom.

22 THE WITNESS: Thank you.

23 MR. LAZENBY: Your Honor, I would like to call
24 Mike Gault to the stand.

25 THE COURT: Come on around, please.

1 MIKE GAULT, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. LAZENBY:

4 Q. Can you state your name for the record?

5 A. Mike Gault.

6 Q. And you were involved in this litigation as to Total,
7 Inc.?

8 A. Yes, sir.

9 Q. You heard Mr. Holland testify earlier about the
10 discovery in this case?

11 A. Yes, sir.

12 Q. Tell me about the discovery that you produced, the
13 documents that you produced in this case.

14 A. Well, we went to his office and he just asked me all
15 the stuff that I owned. And, like I said, I mentioned what
16 I had thought about at the time.

17 Q. Well, did you provide to him nine banker boxes of
18 documents?

19 A. Yes, sir, it was a whole truckload.

20 Q. And did Mr. Holland ask you to list all the property,
21 personal property, that you owned?

22 A. Yes, sir.

23 Q. And did he ask you to list all the personal property
24 that Total owned?

25 A. Yes, sir.

1 Q. Did you do that to the best of your ability?

2 A. To be best of my ability at the time I did, yes, sir.

3 Q. Did you intentionally try to withhold property?

4 A. No, sir.

5 Q. Okay. Look at Plaintiff's Exhibit No. 1. That's --

6 I'm sorry.

7 I'm going to ask you to look at the listing of property

8 owned by Total, Inc. And owned by you on Plaintiff's 1.

9 Just read it to yourself.

10 A. (Witness reviewing document).

11 Okay.

12 Q. To the best of your recollection, is that the

13 information that you provided Mr. Holland?

14 A. Yes, sir.

15 Q. And at the time you believed it to be correct?

16 A. Yes, sir.

17 Q. There has been mention of four items of personal

18 property that you are alleged to have withheld from that

19 document dated July 11th, 2011. I want to talk about each

20 one.

21 First, the race car that you have asserted an affidavit

22 that you own. Why didn't you list that on July the 11th

23 responses?

24 A. I hadn't bought it at the time.

25 Q. Okay. Do you see Defendant's Exhibit 3 here?

1 A. Yes, sir.

2 Q. Do you recognize what that is?

3 A. Yes, it's the invoice for the Rocket.

4 Q. Does it indicate that you purchased the vehicle, or
5 that vehicle, on February 20th, 2012?

6 A. April 20th, 2012.

7 Q. April 20th.

8 And is that the same vehicle that is depicted in
9 Plaintiff's Exhibit 3 and 6?

10 A. Yes, sir.

11 Q. All right. Let's talk about the forklift.

12 Did you own the forklift on July 11th, 2011?

13 A. Yes, sir.

14 Q. Why wasn't that listed under your list of property that
15 you owned?

16 A. Because I didn't even think about it because that was
17 just junk. It was sitting out in the field forever.

18 Q. You had it for -- how many years had you had it for?

19 A. Oh, I have had it for six or seven.

20 Q. Do you recall how much you paid for it?

21 A. It's like two or three hundred bucks. I mean, it was
22 just junk.

23 Q. What were you going to use it for?

24 A. I was just going to piddle with it and try to get it
25 running and use it around the shop.

1 Q. I want to talk about the welder. When did you acquire
2 the welder?

3 A. The welder is probably twenty years old, or so.

4 Q. And where was it taken from?

5 A. They said he had it in the back of the shop out there.
6 I don't really know. I wasn't there.

7 Q. Now, how did you -- or when did you first realize that
8 this was your welder?

9 A. When I seen the picture of it.

10 Q. Did you have a man taking pictures of everything that
11 was seized?

12 A. Yes, sir.

13 Q. Did you go through those pictures?

14 A. Yes, sir.

15 Q. And that that's when you first saw the welder?

16 A. Yes, sir.

17 Q. Did that refresh your recollection that that was, in
18 fact, a welder that you had purchased?

19 A. It was a given to me as a gift, yes, sir.

20 Q. And how many years ago was that?

21 A. It was twenty, twenty-five. I mean, it's probably
22 twenty years old.

23 Q. When was the last time that you personally used it?

24 A. I haven't. I don't weld.

25 Q. Do you know how much that welder was worth?

- 1 A. A hundred and fifty bucks, maybe.
- 2 Q. I want to talk about the generator.
- 3 When did you first obtain the generator?
- 4 A. We have had it forever.
- 5 Q. Do you recall how much you paid for it?
- 6 A. I think we give three hundred dollars for it.
- 7 Q. Do you -- and I guess -- what size and type is that
- 8 generator?
- 9 A. It's like an 8000 watt, but it ain't -- it's no brand
- 10 name.
- 11 Q. Have the price of generators come down over the years?
- 12 A. For the good ones they are about the same, but for the
- 13 what we call after-market they are cheap.
- 14 Q. What's your best estimate as to the value of this
- 15 generator?
- 16 A. I don't know. It ain't worth fifty dollars.
- 17 Q. All right. I want to -- there has been lots of talk
- 18 about race cars. I want to go over the race cars.
- 19 First of all, if you will look at Plaintiff's Exhibit
- 20 No. 4. Do you recognize that race car?
- 21 A. Yes, sir.
- 22 Q. Okay. Who, to your knowledge, first owned that race
- 23 car?
- 24 A. Who first owned it?
- 25 Q. Yes.

1 A. Total, Inc. First owned it.

2 Q. What model race car is that?

3 A. It's '09.

4 Q. And is that the race car that is referenced in
5 Plaintiff's Exhibit No. 1 as a -- there is a list of
6 property owned by Total.

7 A. No, sir.

8 Q. Okay. You said Total owned that race car. Did Total
9 sell that race car?

10 A. Yes, sir.

11 (Bill of Sale marked as Defendant's Exhibit No. 4
12 for identification)

13 BY MR. LAZENBY:

14 Q. I'm showing you what's been marked as Defendant's
15 Exhibit No. 4. Do you recognize that document?

16 A. Yes, sir.

17 Q. And what is it?

18 A. It's a bill of sale.

19 Q. Is it a bill of sale for the vehicle that's depicted in
20 Plaintiff's Exhibit No. 4?

21 A. Yes, sir.

22 MR. LAZENBY: Your Honor, I would move this into
23 evidence as Defendant's 4.

24 MR. WEATHERFORD: No objection.

25 THE COURT: Without objection.

1 BY MR. LAZENBY:

2 Q. So this is a 2009 race car. Why did you sell that
3 to --

4 I'm sorry, does that indicate that you sold the
5 vehicle?

6 A. Total, Inc. Sold this.

7 Q. I'm sorry, Total, Inc. Sold the vehicle. And to whom
8 did Total, Inc. Sell the vehicle?

9 A. To J.L. Thompson.

10 Q. Who is J.L. Thompson?

11 A. He's the guy sitting in back right back there.

12 Q. Is he related to you?

13 A. Yes, sir, he's my uncle.

14 Q. Is he involved in racing?

15 A. Oh, yes, sir.

16 Q. Has he supported your racing?

17 A. Since I was seventeen years old.

18 Q. And how old are you?

19 A. Forty-five.

20 Q. Did you sell this vehicle, this 2009 vehicle, to
21 purchase a newer vehicle?

22 A. Yes, sir, we bought a new 2012.

23 Q. Okay. When you say we, do you mean Total?

24 A. Yes.

25 (Photograph marked as Defendant's Exhibit No. 5

1 for identification)

2 MR. WEATHERFORD: Does that go with the prior
3 exhibit, which is the bill of sale?

4 MR. LAZENBY: It doesn't, but I'll clarify this.

5 MR. WEATHERFORD: All right. I'm confused right
6 now.

7 MR. LAZENBY: I believe the bill of sale went with
8 Plaintiff's 4.

9 MR. WEATHERFORD: The red trim race car?

10 MR. LAZENBY: Yes.

11 THE COURT: So Defendant's 4 is the bill of sale
12 for Plaintiff's 4?

13 MR. LAZENBY: Correct.

14 THE COURT: Okay.

15 BY MR. LAZENBY:

16 Q. Do you recognize the vehicle shown in Defendant's 5?

17 A. Very well.

18 Q. What is it?

19 A. It's a 2012 car that we bought and wrecked at Lancaster
20 and totaled it.

21 Q. And when you say --

22 A. In the pine trees.

23 Q. When you say we, do you mean --

24 THE COURT: I wish you would not lead him on that
25 type of question.

1 MR. LAZENBY: Okay.

2 BY MR. LAZENBY:

3 Q. Who purchased the car?

4 A. Total, Incorporated.

5 Q. And is that the car that is referenced in Plaintiff's
6 1?

7 A. Yes.

8 Q. Okay. So Total, Inc. At one time did own a race car?

9 A. Yes, sir.

10 Q. What happened to that race car?

11 A. It got destroyed.

12 Q. Tell me what happened.

13 A. Well, there is a picture of it. It's where we went
14 over the wall at Lancaster down there at a big race they had
15 and it knocked down about five or six pine trees and
16 destroyed it.

17 Q. So that's a picture of you actually wrecking the
18 vehicle?

19 A. Yes, sir.

20 (Internet Sheet marked as Defendant's Exhibit No.
21 6 for identification)

22 BY MR. LAZENBY:

23 Q. I'm showing you what's been marked as Defendant's
24 Exhibit No. 6. Do you recognize this?

25 A. Yes, sir.

1 Q. And what is that document?

2 A. It's the race results from that particular race right
3 there.

4 Q. You are referring to Defendant's Exhibit 5?

5 A. Yes, sir.

6 Q. And that's -- is that the one where you wrecked the --

7 A. That's the one that we wrecked.

8 Q. What was the date of that accident?

9 A. I think it was April the 7th, 2012.

10 Q. Was -- and what does that document -- is that a
11 printout?

12 A. Yes, sir, it's a printout of the race results from that
13 night.

14 Q. Did you personally download that document?

15 A. I did.

16 Q. Okay.

17 MR. LAZENBY: Your Honor, I would move Defendant's
18 Exhibit 6 into evidence.

19 MR. WEATHERFORD: No objection.

20 THE COURT: Without objection.

21 You call that a race result?

22 MR. LAZENBY: Race result.

23 BY MR. LAZENBY:

24 Q. What do those race results indicate for you?

25 A. That we finished in the rear that night. It says on

1 here finished in the parking lot. That means when we
2 knocked down pine trees and I was outside the parking lot
3 and destroyed this race car.

4 Q. So that was April 7th, 2012?

5 A. Yes, sir.

6 Q. Okay. Did you buy a car to replace the car that was
7 destroyed in Defense Exhibit 5?

8 A. Yes, sir, I did personally.

9 Q. And is that the vehicle that we discussed, that
10 invoice, Defendant's Exhibit 3?

11 A. Yes, sir, it sure is.

12 Q. Okay. And is this the vehicle that's depicted in
13 Plaintiff's Exhibit 3 and 6?

14 A. Are you asking if this is this car?

15 Q. I'm asking if invoice -- Defendant's Exhibit 3, which
16 is an invoice, is for the vehicle in photos Plaintiff's 3
17 and Plaintiff's 6?

18 A. Yes, sir, it sure is.

19 Q. And where is that vehicle now?

20 A. Mr. Kochenower is holding it.

21 Q. Is that owned by Total, Inc.?

22 A. No, sir.

23 Q. And when did you acquire that vehicle?

24 A. I acquired it April the 20th. Me and Mr. Larry Coyle
25 went to Mike Morris in Tennessee to pick it up from his race

1 shop.

2 Q. Now, the other vehicle --

3 MR. WEATHERFORD: April 20th of what year?

4 THE WITNESS: 2012.

5 BY MR. LAZENBY:

6 Q. The other -- I want to talk about now the other
7 vehicle, Plaintiff's Exhibit 4. What type of vehicle is
8 that?

9 A. It's a super late model.

10 Q. And super meaning?

11 A. It's all aluminum engines.

12 Q. I'm sorry?

13 A. All aluminum engines.

14 Q. Is that more expensive than the regular late model?

15 A. Yes, sir.

16 Q. Is this the vehicle that you sold to Mr. Thompson?

17 A. Yes, sir. This '09, yes.

18 Q. Where is that vehicle right now?

19 A. It's at the race shop.

20 Q. What's being done with it?

21 A. Getting ready to go to the next race.

22 Q. So while you were putting --

23 When you purchased the race car that is depicted in
24 Defendant's 3, was it ready to be raced?

25 A. No, sir.

1 Q. What do you have to do to it to get it ready to race?

2 A. You have to bring it back and put all the components on
3 it, put a body on it, interior, put an engine in it.

4 Q. Did Mr. Thompson allow you to drive that race car in
5 Plaintiff's Exhibit 4, the red race car, while you were
6 preparing the new race car?

7 A. Yes, sir.

8 (Invoice marked as Defendant's Exhibit No. 7 for
9 identification)

10 MR. WEATHERFORD: Yes, sir, I object to this
11 document. The person who made this out, I don't know -- if
12 they are not here, I object. It's hearsay.

13 MR. LAZENBY: If I can lay the foundation?

14 THE COURT: All right. We'll see what Mr. Lazenby
15 does, if he has any --

16 BY MR. LAZENBY:

17 Q. I'm showing you what's been marked as Defendant's
18 Exhibit No. 7 for identification purposes. Do you recognize
19 this?

20 A. Yes, sir.

21 Q. And what is that?

22 A. That's an invoice where Mr. Thompson had new bodies put
23 on Exhibit 4 and Exhibit 3.

24 Q. That is Plaintiff's 4 and Plaintiff's 3?

25 A. Yeah, put the car bodies on.

1 Q. Where did you receive this document?

2 A. I got it from Lee who runs Excel Racing Solutions. He
3 does the aluminum work and puts bodies on.

4 Q. Did you obtain those invoices from Lee?

5 A. Yes, sir.

6 MR. LAZENBY: Your Honor, I would move that into
7 evidence as Defendant's 7.

8 MR. WEATHERFORD: I object, unless the person that
9 wrote that invoice is here for me to cross-examine.

10 THE COURT: What purpose are you offering the
11 document?

12 MR. LAZENBY: I'm offering it to show that as of
13 July 25, 2012, Mr. Gault was still preparing Plaintiff's 3
14 to be raced.

15 THE COURT: All right. I will not allow it
16 because I do not see any relevance of that for the issues
17 that we are here today. Maybe for some other issue involved
18 in the dispute between the parties that might be relevant,
19 but not for what we are here today.

20 MR. LAZENBY: Okay, Your Honor, do I just leave it
21 with the court reporter as being marked for identification?

22 THE COURT: Yes, sir.

23 BY MR. LAZENBY:

24 Q. I want to get the time line straight again. August --
25 I'm sorry, April of 2012 you wrecked the vehicle that was

1 owned by Total, Inc.?

2 A. Yes, sir, April 7th.

3 Q. And then you individually purchased a vehicle as a
4 replacement?

5 A. Yes, sir.

6 Q. And when did you first start driving Plaintiff's 4, the
7 vehicle owned by J.L. Thompson?

8 A. I don't recollect the exact date, but it was somewhere
9 around that time.

10 Q. In April?

11 A. Yes, sir.

12 Q. And was the new body put on it at some point?

13 A. Yes, sir.

14 Q. When was that?

15 A. It's had a couple of new bodies put on it, because when
16 you race on the weekly basis you tend to tear up sheet
17 metal.

18 Q. You have heard discussion today about a court hearing
19 on August 13th, 2012. Do you recall that hearing?

20 A. Yes, sir.

21 Q. Were you ordered to stay in the courtroom while the
22 receiver took an inventory of the property?

23 A. Yes, sir.

24 Q. Did the court order you at that time not to remove any
25 property at 199 Speedway?

1 A. No, sir.

2 Q. Did your attorney tell you that you were not allowed to
3 remove any property at 199 Speedway?

4 A. No, sir.

5 Q. At the time who all owned property that was at 199
6 Speedway?

7 A. Several people. I mean, Mr. Thompson, my mother Mary,
8 Larry Coyle, Donnie Thomas, Roger Terry. There was a lot of
9 stuff in there that belongs to different people.

10 Q. So after you left the courtroom you did not have an
11 understanding that you were prohibited from removing
12 property from that location?

13 A. No, sir.

14 Q. What did you do the next morning?

15 A. Well, the next morning we loaded up and headed to the
16 Shrine race. It was the Shrine race on August 14th.

17 Q. And what vehicle did you load up?

18 A. Mr. Thompson's '09 car, which is Exhibit 4.

19 (Internet Sheet marked as Defendant's Exhibit No.
20 8 for identification)

21 MR. WEATHERFORD: It's for what year?

22 MR. LAZENBY: I'll ask him.

23 MR. WEATHERFORD: All right. No objection to
24 that.

25 BY MR. LAZENBY:

1 Q. I'm going to show you what's been marked as Defendant's
2 Exhibit 8. Do you recognize that?

3 A. Yes, sir.

4 Q. What is it?

5 A. It's the race results from August the 14th, Shrine 40,
6 Annual Shriner's Race at Carolina Speedway.

7 Q. And did you download and print that off the internet?

8 A. Yes.

9 MR. LAZENBY: Your Honor, I would move this into
10 evidence as Defendant's 8.

11 MR. WEATHERFORD: Without objection.

12 THE COURT: Without objection, Defense 8.

13 BY MR. LAZENBY:

14 Q. So does this document verify that the Shrine race was
15 on August 14th, 2012?

16 A. Yes, sir.

17 Q. What time did you load up the vehicle that morning?

18 A. Seven o'clock.

19 Q. Seven o'clock a.m., or p.m.?

20 A. A.m., because I have to be there early for the Shrine
21 race just to get my place.

22 Q. And who helped you load that up?

23 A. Mr. Larry Coyle.

24 Q. Is there preparation that goes into preparing for a
25 race?

1 A. Yes, sir.

2 Q. Okay. At the time that you loaded the race car owned
3 by Mr. Thompson, had you seen a copy of Defendant's Exhibit
4 No. 1, the order?

5 A. No, sir.

6 Q. And, in fact, this appears to be clocked 4:15 in the
7 afternoon?

8 A. Correct.

9 Q. Did you understand that Mr. Kochenower had authority to
10 seize property belonging to Total, Inc.?

11 A. I understood he had the authority to seize Total, Inc.
12 Property, yes, sir.

13 Q. So did you think that you were doing anything wrong by
14 taking the vehicle owned by J.L. Thompson, shown in
15 Plaintiff's Exhibit 4?

16 A. No, sir.

17 Q. What did you do with the vehicle --

18 Well, when did the race conclude?

19 A. It was over probably about one o'clock that night.

20 Q. Okay. And where did you take the vehicle after that?

21 A. Back to Mr. Thompson.

22 Q. Why did you take it to Mr. Thompson's place?

23 A. Because we was going to leave it there and go to
24 another race on Friday night.

25 Q. Was it more convenient to leave it at Mr. Thompson's

1 place?

2 A. Yeah, fuel economy.

3 Q. Thank you, Mr. Gault.

4 MR. LAZENBY: These are all the questions that I
5 have.

6 CROSS EXAMINATION BY MR. WEATHERFORD:

7 Q. All right. I'm going to show you Exhibit No. 1,
8 Plaintiff's No. 1. Read me -- Mr. Holland (sic), read this
9 out loud, paragraph number five.

10 A. "As I have repeatedly informed you, Mr. Gault has not
11 filed any income tax returns in the last seven years because
12 his income does not reach taxable level, according to the --

13 MR. LAZENBY: Your Honor, I'm going to object.
14 This question is not relevant to the issues here in court.

15 THE COURT: I believe it is.

16 You may ask it.

17 BY MR. WEATHERFORD:

18 Q. It says you hadn't filed any income tax in seven years
19 because you hadn't made enough money to even file?

20 A. Correct.

21 Q. Yet you are going out here and buying and selling race
22 cars. With what money?

23 A. This car has never been paid for. It was picked up,
24 but never been paid for, and we take sponsorship money and
25 buy things like that.

1 Q. Those are valuable cars. Aren't they worth fifty,
2 seventy-five, hundred thousand dollars?

3 A. No, sir.

4 Q. Racing is an expensive business, isn't it?

5 A. If you are running a series it is.

6 Q. Well, you are running a series, aren't you?

7 A. Correct.

8 Q. And, in fact, this is Exhibit 6 attached to my reply to
9 the plaintiff's motion to terminate receivership. It shows
10 that November 17-18, Cherokee Speedway, you raced and
11 finished 18th, is that right?

12 A. Yes, sir.

13 Q. And whose car was that?

14 A. What date did you say this was?

15 Q. Well, it says November 17th and 18th, special race.
16 Shriner's. What was it, some kind of special race?

17 A. What year was this in?

18 Q. It says it right there. 2012.

19 A. Okay.

20 Q. Whose car was that?

21 A. This was Total, Inc.'s.

22 Q. And then you were racing -- this was just in the
23 Spartanburg paper Friday. It says that you raised at the --
24 "Bailes dominates Shrine Race" in Laurens.

25 A. Yes, sir.

1 Q. Whose car was that?

2 A. Mr. Thompson.

3 Q. That's your uncle, isn't it?

4 A. Yes, it is.

5 Q. And is that receipt there where you said that you sold
6 him something, it's not notarized or anything, is it?

7 A. Which one? What are you talking about?

8 Q. All right.

9 MR. WEATHERFORD: Any objection to this most
10 recent race?

11 MR. LAZENBY: No.

12 (Newspaper Article marked as State's Exhibit No. 7
13 for identification)

14 THE COURT: No objection to No. 7?

15 MR. LAZENBY: No, sir, Your Honor.

16 THE COURT: What is Plaintiff's 7, Mr.
17 Weatherford?

18 A. The race results from the Shriner's Race, Laurens
19 Speedway.

20 BY MR. WEATHERFORD:

21 Q. Last week?

22 A. Last week.

23 THE COURT: Thank you.

24 A. Yes, sir.

25 BY MR. WEATHERFORD:

1 Q. Whose car did you say that was?

2 A. Mr. Thompson's.

3 Q. This bill of sale that was Defendant's No. 4, it's got
4 your signature and Mr. Thompson's signature, right?

5 A. Yes, sir.

6 Q. Today is the first time that you have ever given me a
7 copy of that, isn't it?

8 A. I didn't give you a copy.

9 Q. Have you ever given me a copy?

10 A. I have always given my stuff to my attorney.

11 Q. All right. And it's not notarized by anybody?

12 A. In the State of South Carolina you don't got to
13 notarize.

14 Q. Well, it helps determine if somebody is making up
15 something or not. It makes the things more believable.

16 What's to say that you and Mr. Thompson didn't make
17 this up yesterday?

18 A. Because Mr. Thompson has helped us over the years.

19 Q. Nobody but you or Mr. Thompson could testify that y'all
20 didn't just make this up yesterday? No notary publics
21 saying that y'all swore that this was a true bill of sale,
22 is it?

23 A. No notary republic, but somebody there when I bought
24 it.

25 Q. Have you got a copy of the check, the \$6,500 check,

1 that you say that he paid for it?

2 A. He paid cash.

3 Q. He paid cash?

4 A. Uh-huh.

5 Q. On what date?

6 A. I think it was around June, or something.

7 Q. 2011? No, that's 2011 --

8 A. Yeah, it was 2011, because we bought our new car right

9 there at the end of 2011.

10 Q. And you say there is no cash receipt, no check, no

11 nothing?

12 A. There is a bill of sale.

13 Q. Other than that --

14 A. No, sir, that's all I have.

15 Q. -- document you don't have any cash receipt, or

16 cancelled check, or anything like that?

17 A. No, sir.

18 Q. Now, how did you describe that welder you said you

19 don't use?

20 A. Repeat that, please.

21 Q. You made a description of the welder that sounded like

22 it was sitting out in the field. How did you describe it?

23 I'm asking you to re-describe it.

24 A. No, I said it was sitting out in the back of the

25 building.

1 Q. And don't you have to have a welder to build race cars?

2 A. No, sir. I don't build them. We buy them like that.

3 Q. Do you agree that's a picture of the welder that we are
4 talking about?

5 A. It looks like it.

6 Q. All right.

7 MR. WEATHERFORD: Any objection?

8 MR. LAZENBY: He's identified that. No objection.

9 (Photograph marked as Plaintiff's Exhibit No. 8
10 for identification).

11 THE COURT: What is the number?

12 MR. WEATHERFORD: No. 8.

13 THE COURT: No. 8, without objection.

14 BY MR. WEATHERFORD:

15 Q. And would it be fair to say from that picture that's a
16 nice clean floor and everything is spic and span right
17 there, not sitting out in the back?

18 A. No, when I meant sitting in the back, in the back of
19 the building where there is a lot of stuff stored.

20 Q. But that's nice cleaned up welder, isn't it? It looks
21 good?

22 A. It looks good from the picture there.

23 Q. Okay. And what is that?

24 A. That's a picture of a pair of hand trucks and looks
25 like a generator.

1 Q. A generator.

2 Is that the generator that you talking about that you
3 own?

4 A. Yes, sir.

5 Q. Okay. What size is it?

6 A. I think it's an 800 or 8000 something.

7 Q. What do you use it for?

8 A. I don't use it.

9 Q. Okay. You just buy it and store it with the money that
10 you don't make tax returns on?

11 A. No, my daddy actually bought that and he give it to me.

12 Q. Okay. I'm going to go back to Defendant's 4, which is
13 that bill of sale.

14 The books from Total, Inc. Should show a cash payment
15 from Mr. Thompson for \$6,500, shouldn't they?

16 A. They should show what now?

17 Q. Well, this says -- Exhibit 4 says Total, Inc. Sold this
18 race car to Mr. Thompson for \$6,500. You say it was cash.

19 A. Yeah.

20 Q. But the books of Total, Inc. Should show \$6,500 being
21 deposited in their account, or a receipt for the \$6,500, or
22 something.

23 A. All we ever use is the bill of sales.

24 Q. Okay.

25 MR. WEATHERFORD: Excuse me a minute, Your Honor.

1 (Off the record)

2 (Back on the record)

3 BY MR. WEATHERFORD:

4 Q. Seller's signature, what's written down there as
5 seller's signature?

6 A. Mike Gault.

7 Q. Do you have -- and who does it say sold the car?

8 A. Total, Inc..

9 Q. Do you own anything to do with Total, Inc.?

10 A. I'm the representative for it.

11 Q. Are you an owner of Total, Inc.?

12 A. No, sir.

13 Q. Are you listed as an officer of Total, Inc. On the
14 papers in Columbia?

15 A. No, sir.

16 Q. So what gives you authority to sell stuff that belongs
17 to Total, Inc.?

18 A. Because I'm the general manager.

19 Q. Where does it say that?

20 A. (No response).

21 Q. Have you got any papers that say that you are the
22 general manager?

23 A. I mean, I sign all the documents. I'm on the thing
24 when you sell, you put DMV and all that on it.

25 Q. You sign everything, because that's really your

1 company, isn't it?

2 A. No, sir.

3 MR. WEATHERFORD: That's all.

4 THE COURT: Any redirect into what he went into?

5 MR. LAZENBY: Briefly, Your Honor.

6 REDIRECT EXAMINATION BY MR. LAZENBY:

7 Q. So Mr. Gault, do you sign documents in an official
8 capacity as a representative of Total, Inc.?

9 A. Sir, I didn't hear you.

10 Q. Do you sign documents as a representative of Total,
11 Inc.?

12 A. Yes, sir.

13 Q. And what types of documents do you sign?

14 A. I mean, bill of sales where we sell cars, or where we
15 buy stuff.

16 Q. Are those documents that are filed with the State of
17 South Carolina?

18 A. Yes, sir.

19 Q. Those are official documents?

20 A. Yes, sir.

21 Q. Race car driving is an expensive hobby?

22 A. Yes, sir.

23 Q. Do you write off the money that you spend on race car
24 driving against other gains?

25 A. My sponsors usually do.

1 Q. Okay. So when Total, Inc. Owned a vehicle, would
2 Total, Inc. Write off the amount that was paid?

3 A. Yes, sir, they do all the stuff like that.

4 Q. When you --

5 Look at Defendant's Exhibit 3. I don't know if I heard
6 you correctly. The invoice for the chassis.

7 We have made a mess up here.

8 Okay. This invoice indicates that it was COD, meaning
9 charge on delivery?

10 A. Yes, sir.

11 Q. So I thought I heard you say that you haven't paid for
12 that yet?

13 A. No, sir, we picked this car up from, like I said, Mike
14 Morris place in Tennessee. It was one of his cars and it's
15 one they had available at the time that we could get in our
16 area, so we could pick it up and race, but, no, this car has
17 not been paid for.

18 Q. Okay. And we are talking about the chassis?

19 A. Correct.

20 Q. What about the other parts of that car, the body and
21 the engine and all that?

22 A. Yes, sir, the engine, Mr. Thompson bought a brand new
23 engine for it from Kenny Lambs and that paper awhile ago
24 that the court reporter is holding there. That's where
25 Excel Racing Solutions put the body on and all that and Mr.

1 Thompson paid for that.

2 Q. Okay. Have you talked to Mr. Richards about paying?

3 How much is it that you owe him?

4 A. Oh, yeah, he knows that this car is being held by Mr.

5 Kochenower over there and he knows the whole deal what's

6 going on, yes, sir.

7 Q. So you -- you explained to him why you can't -- why you

8 haven't paid for it?

9 A. Correct.

10 MR. LAZENBY: Those are all the questions that I

11 have, Your Honor.

12 THE COURT: Going into what he went into.

13 RECROSS EXAMINATION BY MR. WEATHERFORD:

14 Q. COD, doesn't that mean cash on delivery?

15 A. Like I said, that car has never been paid for. It was

16 picked up from another location. It wasn't picked up at

17 Rocket. It was picked up in Tennessee.

18 Q. Have you got any of your sponsors in court to verify a

19 word that you have testified to?

20 A. Yes, sir.

21 Q. Where?

22 A. Sitting back there in the room.

23 Q. Not your uncle, not J.L. Thompson, but these other

24 people that are financing your racing.

25 A. He pays most of it. He's been with us for, like I

1 said, twenty-five years.

2 Q. Okay.

3 MR. WEATHERFORD: That's all.

4 MR. LAZENBY: No.

5 THE COURT: Thank you, sir. You may step down.

6 Please watch your step as you are stepping down.

7 THE WITNESS: Thank you, sir.

8 MR. LAZENBY: Your Honor, I would like to call
9 J.L. Thompson to the stand.

10 THE COURT: Okay. Mr. Thompson, just come right
11 up here, if you would, please, sir.

12 J.L. THOMPSON, having been first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION BY MR. LAZENBY:

15 Q. Can you please state your name for the record, please,
16 sir?

17 A. Excuse me?

18 Q. Can you state your name, please?

19 A. I'm J.L. Thompson.

20 Q. And where are you employed?

21 A. I'm self-employed. I'm general contracting in Mt.
22 Holly, North Carolina, and also a general contractor in
23 South Carolina.

24 Q. And you are related to Mr. Mike Gault?

25 A. He's my nephew.

1 Q. Is it through his -- you are his mother's brother?

2 A. His mother.

3 Q. Through his mother's side.

4 A. Yes.

5 Q. Tell me about your involvement in dirt track racing.

6 A. I have been dirt track racing from the mid-seventies.

7 I have been all over the country racing. I got pictures of
8 race cars over there that are mine, you know. Like I say, I
9 have been racing, had several drivers, you know; Mike Duval,
10 Buddy Smith, Doug Sanders.

11 Q. I mean, these are drivers who race your cars?

12 A. Yeah.

13 Q. Did you also drive?

14 A. No, sir.

15 Q. You have been in it from an owner's standpoint?

16 A. Right. Now my son drives now.

17 Q. What's his name?

18 A. Brian Thompson.

19 Q. Were you close to your nephew Mike Gault growing up,
20 when he was growing up?

21 A. Oh, yeah.

22 Q. Did you -- did you introduce him or bring him into the
23 racing --

24 A. Yes, sir.

25 Q. -- hobby?

1 A. I bought the first race car he ever sit in, the second
2 race car he ever sit in, and on and on.

3 You know, I have helped him. I have helped him ever
4 since he's been racing.

5 Q. How old was he when he got his first race car?

6 A. I'm going to say he was probably sixteen, I would
7 think. I don't know. It's been so long.

8 Q. And that's one that you purchased for him?

9 A. Yes, sir. You get the old cars -- you go out here and
10 buy one off the street and put a roll bar in it and you can
11 buy it for three or four hundred dollars back in them days,
12 and that's what he started in.

13 Q. And in the past five years have you been a sponsor of
14 Mr. Gault?

15 A. Oh, yeah, I have been helping him, you know,
16 considerably.

17 Q. Supporting him financially in his racing?

18 A. Yes, sir, in the racing.

19 Q. Do you get anything out of that?

20 A. Nothing but, you know, just sponsorship. And, you
21 know, in some of the cars, like I say, I own, but now you
22 can win every race car there are and you ain't going to win
23 no money. You have got to have sponsors, you know, to help
24 you with it. And, of course, I have carried most of his,
25 you know, on account, like I say, he's my nephew.

1 Q. I'm going to show you what's been marked as Defendant's
2 Exhibit No. 4. It's been previously entered into evidence
3 as a bill of sale. Do you recognize that?

4 A. Yes, sir.

5 Q. What is that?

6 A. That's a car that I bought for him and he had wrecked
7 and he had ordered a new one. And at the time I was looking
8 for another car for my son for a backup car and I told him,
9 I said "well, I will just buy this one from you for my son,"
10 but then we had to send it back and get it re-worked and put
11 new bodies on it and all that. Then right after that that's
12 when we went over that wall down there at Lancaster. Then
13 he says "well, I need, you know, to go back in your car."

14 Q. And that's -- does the bill of sale in Defendant's 4,
15 does that reference the car on Plaintiff's No. 4?

16 A. Yes, sir.

17 Q. Does it have a new body on it?

18 A. Yes, it does. I put a new body on both of them. The
19 ones they got now, I put a body on both of them.

20 Q. Okay.

21 A. Now, this -- this car here was -- I own. I don't own
22 the motor I got. He's on a motor deal.

23 Q. I'm sorry, the car -- you are referring to Plaintiff's

24 4. You are saying that you don't own the motor?

25 A. No, sir. He is on a motor deal.

1 Q. What does that mean?

2 A. The motor man gets a percentage of what it wins.

3 Q. Okay.

4 A. You know, and they will -- fifty percent of your front
5 runners are on motor deals. Okay. These motors are so
6 ridiculously high. Of course, the motor man, they make
7 money on it, you know.

8 Q. I was going to ask you that. Does the motor man make
9 money from a top driver?

10 A. Oh, yeah. Yeah, definitely.

11 Q. How much does the motor that's in Plaintiff's Exhibit
12 4, how much does it cost brand new?

13 A. A motor like what he's got in there now, you are
14 probably anywhere from thirty to forty thousand dollars.

15 Q. Okay. And is that -- now, you own this car,
16 Plaintiff's 4, is that right?

17 A. Correct.

18 Q. Is there some kind of document that verifies the
19 interests that the motor man has in the motor?

20 A. You know, I know -- I mean, you know, I know the motor
21 man, been knowing him for years. I know him when he went
22 into business, you know.

23 And also the other cars, like Mike Duval, he's on the
24 same motor deal back when me and him run together.

25 Q. And going back to Defendant's 4, do you recognize that

1 document?

2 A. Oh, yeah.

3 Q. Did you sign that document?

4 A. Yes, sir.

5 Q. When did you sign that document?

6 A. Up there in my office. 6-20-11.

7 Q. And did you pay Mr. Gault cash?

8 A. Yeah. Yeah, I deal in a lot of cash and I paid him
9 cash for it, yeah.

10 Q. And --

11 A. And I got a lot of checks, you know, that -- that -- in
12 the past that I wrote Mr. Gault.

13 Q. The vehicle that's depicted in Plaintiff's Exhibit 3
14 and 6, this is the vehicle that is currently being held by
15 the receiver, do you own any part of those?

16 A. Yes, sir.

17 Q. What do you own?

18 A. I own the motor in it. I own the wheels on it, the
19 spindles. And I have to look it up, you know, to be honest
20 with you, but definitely the motor and the wheels and things
21 like that.

22 Q. So were you putting together this car, Plaintiff's 3
23 and 6, putting this together for Mike to race?

24 A. It was -- that one there that was going to be what's
25 called a crate car. It's not a super late model. It's a

1 crate position, a lower class, and he was -- you know, you
2 got a lot of drivers now they run both classes. They run,
3 you know, the crate too. And so he bought that new Rocket
4 and he said he needed a motor for it, and so we bought the
5 motor, four aluminum wheels, and things like that.

6 Q. Did you get -- did you get J.L. Thompson put in big
7 letters on the side?

8 A. Yes, sir. As far as I know, yes, sir.

9 Q. Thank you. Please answer any questions that Mr.
10 Weatherford has.

11 A. Yes, sir.

12 CROSS EXAMINATION BY MR. WEATHERFORD:

13 Q. Mr. Thompson, this is the first time that you have ever
14 testified in this case, isn't it?

15 A. Yes, sir.

16 Q. And this bill of sale here, Defendant's No. 4 --

17 A. Right.

18 Q. -- said that you paid Total, Inc. \$6,500?

19 A. How much did you say?

20 Q. \$6,500 --

21 A. Yeah.

22 Q. -- is what this paper says.

23 A. Yeah, I gave it to Mike.

24 Q. Yeah.

25 A. Yeah.

1 Q. And did he give it to Total, Inc.?

2 A. As far as I know he did. I honestly don't know that
3 now. Now, I can't testify to that.

4 Q. You got a checking account that you use in your
5 business?

6 A. Of course.

7 Q. And did you write a check to Total, Inc. For \$6,500 --

8 A. No, sir.

9 Q. -- to make sure they would get it?

10 A. No, sir.

11 Q. You just gave Mike Gault \$6,500 cash?

12 A. That particular day I wrote a check probably \$10,000
13 cash that I was making some payroll for some of the stuff.

14 Q. You pay payroll in cash?

15 A. No, no, I -- it was spare help, you know. No.

16 Q. You agree that these race cars, like Plaintiff's No. 3
17 and Plaintiff's No. 4, they are expensive deals, aren't
18 they?

19 A. If you own them, especially if you own the motor. Now,
20 the cars are not that bad, but the motors is your biggest
21 cost.

22 Q. That's the top of the line series they race?

23 A. That one is.

24 Q. Which one? The red one or the blue one?

25 A. The red one that's got the super motor in it.

1 Q. Okay.

2 A. And that's the one you got an engine deal on.

3 Q. That's the one that was taken away from the race track
4 after this picture was taken, Race Track Road?

5 A. Yeah, that's the one he --

6 Q. He has been racing that one?

7 MR. LAZENBY: Your Honor, if he would let him
8 finish answering the question.

9 BY MR. WEATHERFORD:

10 Q. Well, were you or not? I'm sorry.

11 A. Excuse me.

12 THE COURT: Just go ahead and give a complete
13 answer. Mr. Weatherford is going to wait until you finish.

14 A. I'm sorry, repeat the question.

15 BY MR. WEATHERFORD:

16 Q. Well, I just asked you if this one here, red -- the
17 black trimmed in red, Plaintiff's No. 4, that's the one he
18 was racing?

19 A. Yeah. Okay, he done tore the other one up. The -- he
20 went over the wall down there with it.

21 Q. And who pays for all the expenses in this racing
22 business? Now, you said it was expensive. Motors are worth
23 thirty, forty thousand dollars.

24 A. Well, there again, a thirty or forty thousand dollar
25 motor is on the engine deal. I think it -- to the best of

1 my knowledge, I think it's 60/40.

2 Q. I have seen an engine deal from Clemens where they get
3 a percentage. They make some of them engines. Are any of
4 them involved with these engines?

5 A. Yeah.

6 Q. You got any paperwork to prove any of that?

7 A. I don't, but he has the engine deal, I don't.

8 Q. Okay. So you hadn't seen or heard about any engine
9 deals then --

10 A. I don't know anything about that.

11 Q. -- while you have been sitting here today?

12 A. Excuse me?

13 Q. While you have been sitting here today, have you seen a
14 piece of paper or anybody describe a piece of paper as being
15 an engine deal for either one of those cars?

16 A. Well, I haven't been in here the whole time. I got
17 here and I was in the back and I had to go out to the
18 bathroom. But since I come back I haven't heard anything,
19 no.

20 Q. Well, who's got the engine deals on those cars?

21 A. Like I say -- I'm sorry, I apologize, I have a hard
22 time speaking.

23 Tony I think his name is, Clemens.

24 Q. Well, where is he?

25 A. On the one car, the super late model.

1 Q. Where is he, Mr. Clemens?

2 A. He's over in Spartanburg.

3 Q. I mean, not here today?

4 A. No. And he's got all kind of engines now. He
5 probably --

6 Q. You say that you sponsor some of Mike Gault Racing,
7 Mike Gault's racing?

8 A. Yes, sir.

9 Q. How much does it cost you a year?

10 A. I got no idea.

11 Q. Well, how much money are you spending on his racing
12 habits per year, per month, per week?

13 A. That's -- that would be hard to say, you know. He will
14 call me, you know, and -- but a lot of times in the past he
15 has been lucky enough to win enough to carry his own way,
16 but --

17 Q. I don't see anything in these records here. 10th is
18 the best he's ever finished. The other one he was 18th, and
19 the other one he introduced he wrecked. You don't make any
20 money doing that, do you?

21 A. No, does not.

22 Q. He hadn't won a race in Lord knows when, has he?

23 A. It's been a while, yeah.

24 Q. And that's only way that you make any money.

25 A. Well, to be honest with you, I ain't going to make no

1 money then.

2 Like I said, it ain't nothing but a hobby.

3 Q. Well, what I can't figure out is who is all this racing
4 costing people? It costs a lot of money. We know that.

5 A. Yeah.

6 Q. The engines cost a lot of money. We know that.

7 A. But there again --

8 Q. Where does the money come from?

9 A. To go back to the engine deal, it don't cost you
10 nothing for that motor.

11 Q. All right. Have you heard of any or you see any
12 evidence up there about any engine deals?

13 A. I don't -- I have been around racing long enough, I
14 know other drivers I have had that had the same deal. They
15 had what's called the engine deal.

16 Q. And they are written deals, aren't they?

17 A. I honestly don't know about that, on account of --

18 Q. You hadn't ever seen a written engine deal?

19 A. No, I haven't, on account of I have never been involved
20 with engines, except the ones I buy.

21 Q. So you just buy them yourself?

22 A. I bought the one for the car that y'all got
23 confiscated. That engine there -- that engine there belongs
24 to Tony Clemens.

25 Q. How much did you pay for the ones that you bought?

1 A. That was what they all a crate motor. At least
2 thirty-five, four thousand dollars, somewhere like that.

3 MR. LAZENBY: I'm sorry, did you say thirty-five
4 to forty thousand?

5 THE WITNESS: No, thirty-five hundred to four
6 thousand.

7 MR. LAZENBY: I'm sorry.

8 BY MR. WEATHERFORD:

9 Q. Now, do you have any checks that you brought here today
10 to show that you spent money supporting these race deals?

11 A. No, sir, I don't have them here today.

12 Q. Okay. Well, how long have you known we were going to
13 have a hearing today?

14 A. As far as this race car and things, last week, and I
15 have been -- I have been out of work for the last two weeks.
16 I have had pneumonia.

17 Q. All right.

18 MR. WEATHERFORD: I have no further questions.

19 REDIRECT EXAMINATION BY MR. LAZENBY:

20 Q. Mr. Thompson, did I ask you to bring racing
21 documentation with you?

22 A. Did I do what now?

23 Q. Did I ask you to bring any motor deals or anything like
24 that?

25 A. No, sir.

1 Q. Okay. But I subpoenaed you to be here?

2 A. Excuse me?

3 Q. I subpoenaed you to be here?

4 A. No, sir.

5 Q. Okay.

6 MR. LAZENBY: Those are all the questions that I
7 have, judge.

8 THE COURT: Any?

9 MR. WEATHERFORD: No.

10 THE COURT: Mr. Thompson, watch your step when you
11 are stepping down, okay?

12 THE WITNESS: Okay.

13 THE COURT: But you can step down.

14 THE WITNESS: All right.

15 THE COURT: Thank you.

16 MR. LAZENBY: Your Honor, we have no further
17 witnesses or evidence.

18 THE COURT: Are you going to put anybody up in
19 reply?

20 MR. WEATHERFORD: No, sir.

21 THE COURT: Let me step down just for one second
22 and let's give everybody a break.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: All right. Thank you for your

1 patience while I went back and reviewed my notes.

2 This court, being me, I have heard this case on
3 several occasions and have conducted hearings similar to
4 this one, where we dealt with assets and issues of prior
5 order requiring that discovery, that answers be given under
6 the Rules of Procedure. When the court orders something to
7 be done, that goes just beyond -- in my humble opinion, it
8 goes just beyond a party's obligation to comply with the
9 Rules of Discovery.

10 I have been asked and I had to order that the
11 responses be provided. It has been established at this
12 hearing that those responses are not accurate.

13 Those responses that were provided would lead this
14 court, as well as I think the plaintiff concluded, that
15 basically Mike Gault was penniless, judgment proof, and any
16 further legal proceeding that would have involved him would
17 have been a waste of time, because he had nothing.

18 It's been established at this hearing that there
19 were at least three, if not four, different items of
20 property that was owned by Mike Gault that was not
21 disclosed.

22 Mr. Gault's attorney wishes this court to conclude
23 that, well, simply because these values of property were
24 insignificant, one I think they asserted was \$50, maybe one
25 was \$150, that then it really doesn't matter. But when you

1 take a look at the property items that were disclosed, that
2 is probably worth more than what was disclosed.

3 This court, based upon the other testimony that
4 was received at this hearing, believes that this court, as
5 well as the plaintiff, was purposely misled, and this court
6 has reached that conclusion by overwhelming evidence.

7 This court has to craft a sanction.

8 This court is concerned, as it sat here today,
9 that it has heard testimony of thousands of dollars of
10 transactions that were taking place at a time when Mr.
11 Weatherford, in representing his client, was trying to
12 collect a judgment, and thousands of dollars of transactions
13 have taken place which cannot be documented, as well as Mr.
14 Gault asserts in his answers to interrogatories that he has
15 not even made enough money to have to file income taxes.

16 Unfortunately this court, and I believe any court,
17 sees too frequently that compliance with the Rules of Civil
18 Procedure that relate to discovery, as well as court orders
19 that relate to discovery, that for some reason litigants and
20 parties do not attend to making appropriate responses and
21 think that, well, there will be no consequences in making
22 those responses because we know the system better than the
23 lawyers do and we can get around the system and not comply
24 with providing accurate and truthful and meaningful answers.
25 This court believed that is what has happened here.

1 I do not exercise my contempt authority lightly.
2 I believe that I have established a record where I have
3 given the defendant that benefit.

4 I withheld a determination of contempt previously
5 involving this defendant and said, okay, I'm not even going
6 to go there with that. We're going to give him another
7 chance to be able to comply, with not only the letter of
8 what's required of him, but the spirit of what was required
9 of him. And I cannot, as I searched, and as I viewed, and
10 as I listened to the testimony, searched for a way for me
11 not to conclude that I should not hold him in contempt and I
12 cannot come to that conclusion.

13 I have no remedy. If what he has asserted and the
14 documentation is true, there is no remedy that I can issue,
15 other than have him locked up. I have no other remedy, and
16 that's going to be my decision today.

17 I'm going to instruct the sheriff's department of
18 Cherokee County to take the defendant into custody and hold
19 him until we have further proceedings.

20 I intend to conduct further proceedings within the
21 next ten days. I would like some clarity as to what is
22 exactly going on in these businesses.

23 Why are we able -- or why do these parties feel
24 like they can engage in transactions where thousands and
25 thousands and thousands of dollars sit around and be able to

1 take possession of property that is owned by someone else
2 that's into the forty and fifty thousand dollar range, go
3 out and compete in a race, and then all of the sudden have
4 some type of arrangement so that then other people can be
5 paid money and there is no documentation that documents any
6 of it? It reeks of pure fraud.

7 I may be wrong and I'm willing to again give the
8 defendant that benefit to show me, but based upon what I
9 hear in this case, what I have heard in this case, this is a
10 fraud. And this court, and I don't think any court, can sit
11 back and sanction and say we will allow this to occur, when
12 it is brought by such clear and convincing evidence that
13 this court believed that its order has been purposely
14 violated by not complying with the discovery order that I
15 have previously issued.

16 What I would like to do, I would like to do it
17 within the next ten days, physically I'm in Spartanburg. I
18 would like to be able to consult with the lawyers to see
19 what their schedule is like to see when might be convenient
20 for y'all, to let me know what, if anything, maybe y'all
21 need to do to address my concerns to do that, and so that we
22 can move forward. If y'all want to talk while -- you know,
23 after I step down and tomorrow sometime get back with me as
24 to maybe an alternative resolution to it, I will be more
25 than happy to entertain that as well, but for our limited

1 purpose for which we are gathered here today, my finding is
2 that Mike Gault is in contempt of this court and I'm going
3 to ask that he be taken into custody.

4 I will provide the Cherokee County sheriff's
5 office with a more expressed order tomorrow so that you may
6 have that for your people.

7 MR. LAZENBY: Your Honor, may -- may we -- can we
8 stay the enforcement of the contempt finding until this
9 additional hearing that you speak of, or pending some type
10 of appeal?

11 THE COURT: Well -- no, you can't. Let me tell
12 you why. I am moving cautiously. I am moving very slowly.
13 I have moved slowly towards finding your client in contempt
14 for many, many months, and I don't reach this decision
15 lightly. And I think that I -- and I believe that it is now
16 time for this court to use its powers and authority that it
17 has, when such a clear and blatant violation of what I have
18 ordered has been established by clear and convincing
19 evidence to me.

20 MR. LAZENBY: And, Your Honor, we -- obviously we
21 did not have an opportunity to argue before you, not that it
22 would have changed your mind, but can -- can -- can we have
23 some clarification?

24 The allegation was that the -- that the race car
25 he did not disclose, which was his testimony that it was

1 clearly purchased after --

2 THE COURT: Mr. Lazenby, I have made my ruling. I
3 have established on this record, and your client has
4 acknowledged, that there were at least three or four items
5 that he did not disclose that he now says he did have.

6 Your client filed an interrogatory response and
7 the order that I issued indicates that had he not filed
8 income tax in seven years that he had nothing of value to
9 disclose, except a microwave, bedroom furniture, DVD's, and
10 a DVD player, and maybe one or two other items.

11 I have already said on the record that I come to
12 the same conclusion that Mr. Weatherford did that he was
13 basically judgment proof.

14 His failure to disclose the items that have been
15 acknowledged here today is clear and convincing evidence
16 that he violated my order; clear and convincing evidence,
17 based upon what you assert the value of those items are,
18 that those items would constitute a significant part of his
19 assets that were disclosed, if they had been included as
20 being disclosed, because he wanted this court and the
21 plaintiff to believe that he was judgment proof. And when
22 someone wants someone or a third person to believe that they
23 are judgment proof, then they need to disclose what they do
24 have. That in and of itself is a violation of my order,
25 especially when I have already withheld a finding of

1 contempt against your client, but yet I have already
2 documented through a written order that your client has
3 acted in bad faith. I believe that this record is
4 sufficient.

5 If y'all would like to get together and talk about
6 what else that needs to be disclosed to me, talk about the
7 operations of how he conducted this business, these past
8 transactions that do not have any documentation to it, y'all
9 talk. My work for today is finished, okay?

10 (END OF REQUESTED TRANSCRIPT OF RECORD)

11 (END OF REQUESTED TRANSCRIPT OF RECORD)

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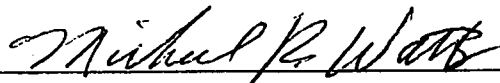
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for CHEROKEE County, South Carolina, on the 19TH day of June, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

AUGUST 15, 2013



Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF COMMON PLEAS
3
4 CHRISTOPHER DRYE, D/B/A)
5 DRYE'S AUTO CRUSHING)
6 PLAINTIFF,) TRANSCRIPT OF RECORD
7 -vs-) 2008-CP-11-01038
8 MIKE GAULT AND MARY T.)
9 GAULT, D/B/A GAULT'S)
10 USED CARS, TOTAL INC.,)
11 EDWARD KEITH POTTER)
12 INDIVIDUALLY AND AS)
13 PRESIDENT OF TOTAL)
14 INC.,)
15 DEFENDANTS.
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19 B E F O R E :
20 THE HONORABLE J. MARK HAYES, JUDGE.
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MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, April 18, 2013)

2 THE COURT: I have got down that this is the Drye
3 versus Gault matter. Judge Couch asked me to work this in
4 for today.

5 All right, I have got down that this is the
6 defendant's motion to terminate the receivership and
7 requesting that the personal property be returned, and also
8 a motion to dismiss.

9 I will be more than happy to hear from you.

10 MR. LAZENBY: Thank you, Your Honor, and we
11 appreciate you working us into your schedule this morning.
12 I will be brief.

13 If I can first address the motion to dismiss
14 pursuant to 12(b)(1).

15 Okay, Your Honor, just by way of brief background,
16 this is a breach of contract, a civil conspiracy case, and
17 there was also a veil piercing case filed by Mr.
18 Weatherford's client against Mike Gault, Mary Gault, and the
19 company Total Inc., which is doing business as Gault's Used
20 Cars. It was a breach of contract action whether Total Inc.
21 Had paid for or had provided sufficient salvage vehicles in
22 an oral contract, to provide salvage vehicles in exchange
23 for payment.

24 The jury returned a verdict in favor of the
25 plaintiff against Total Inc. Only.

1 Before the case was sent to the jury, Your Honor,
2 the plaintiff voluntarily dismissed the civil conspiracy
3 cause of action.

4 The plaintiff also dismissed the individual claim
5 against Mary Gault and Keith Potter for breach of contract.

6 And it was expressly stated on the record that the
7 cause of action against Mike Gault individually for breach
8 of contract and Total Inc. For breach of contract would be
9 the only claims going to the jury.

10 Your Honor, I have detailed this in my -- in the
11 motion that was filed. I have got an attachment, a
12 transcript of record, which has this back and forth talking
13 about what claims are going to remain and what claims are
14 not.

15 Exhibit A, the motion to dismiss contains the
16 transcript of record, the relevant portion.

17 And, Your Honor, ultimately what happened was the
18 trial judge, who was Judge Couch, submitted a verdict form
19 to the jury which omitted any reference to Mike Gault
20 individually. It was a simple verdict form. "As to the
21 breach of contract cause of action against Total, Inc., we,
22 the jury, find for the plaintiff" with a line, or for the
23 defendant. There was no special interrogatory. There was
24 nothing to clarify whether judgment was being rendered
25 against Mr. Gault individually or Total Inc.. The verdict

1 form was prepared by Judge Couch.

2 At the time I was not representing Total Inc. And
3 Mr. Gault, so I don't know what may have been said off the
4 record. All I can tell you is what was said on the record,
5 and what was said on the record was that Judge Couch
6 prepared the verdict form, gave it to the parties to review
7 and there were no objections by either side. There were no
8 objections to the charge.

9 The case came back. The jury found for Total
10 Inc. -- I'm sorry, found for the plaintiff against Total
11 Inc..

12 And so, Your Honor, our position is is that any
13 claims against --

14 Oh, and, I'm sorry, just to back up, there were no
15 exceptions to the jury verdict; no exceptions to the form;
16 no appeal taken by the plaintiff; and so we would argue,
17 judge, that operates as a res judicata and that any claims
18 against Mr. Gault individually for breach of contract should
19 be dismissed pursuant to 12(b)(1).

20 Thank you, Your Honor.

21 THE COURT: Did your client appeal?

22 MR. LAZENBY: The client, Total Inc., filed a
23 notice of appeal and later withdrew it.

24 MR. WEATHERFORD: Your Honor, may it please the
25 court, in our conversations with the judge --

1 Now, to understand my position, you have to go
2 back to my reply to his motion to terminate the receiver.

3 THE COURT: Well, why don't we go ahead and let
4 Mr. Lazenby argue that and then you can argue all yours and
5 he can close.

6 MR. WEATHERFORD: Okay.

7 MR. LAZENBY: Thank you, Your Honor.

8 The second motion I filed is a motion to terminate
9 the receiver and a motion to return personal property.

10 After -- after the jury verdict was rendered,
11 Judge Couch entered the judgment. The judgment was executed
12 by the sheriff's return of nulla bona. The plaintiff
13 pursued recovery efforts against Total Inc., and those were
14 unsuccessful, and then ultimately applied to the court to
15 have a receiver appointed, and that is Mr. Kochenower, who
16 is seated at counsel's table next to Mr. Weatherford.

17 The timeline of events. But ultimately, Your
18 Honor, what happened was Mr. Kochenower claimed -- had
19 evidence -- claimed that he had evidence that Total Inc. Was
20 hiding property and had taken property to 199 Speedway Road
21 here in Cherokee County, which is a warehouse on property
22 owned by Mrs. Mary Gault.

23 Mr. Kochenower undertook to get an inventory of
24 all of the property that was out there, represented that
25 that was property owned by Total Inc., and submitted that to

1 the court. I think Your Honor was the one that heard this
2 motion, and based upon Mr. Kochenower's representations
3 issued an order allowing Mr. Kochenower to receive that
4 property, and that was approximately August 13th, or 14th,
5 of 2012.

6 The very next day the corporation, Total Inc.,
7 filed for bankruptcy protection under Chapter 11. And the
8 bankruptcy court -- the bankruptcy court ordered the return
9 of all of the property that belonged to Total Inc.,
10 because -- of course, although I try to stay away from
11 bankruptcy court, I know a little bit about it, and I know
12 that once -- once a corporation is in bankruptcy, that the
13 bankruptcy trustee and the bankruptcy court has jurisdiction
14 over all the assets of the debtor corporation, who is Total
15 Inc. In this case.

16 It's important, Your Honor, to keep in mind that
17 the only authority that the receiver had was to take
18 property belonging to Total Inc. In order to satisfy the
19 judgment entered against Total Inc.. The receiver exceeded
20 that authority and took a lot of other property.

21 I can certainly understand why he took all that
22 property at that time. However, he has made absolutely no
23 attempt to try to determine whether he took the property of
24 Total Inc., or took the property of innocent individuals
25 instead.

1 On August 20th Mr. Gault and Mrs. Gault, his
2 mother Mary T. Gault, sent Mr. Kochenower a certified letter
3 certifying that they owned I think it was six items of
4 personal property out of the 20, or 30, or 40 that had been
5 taken that was actually belonging to them individually and
6 not to Total Inc.. He ignored those -- he ignored that
7 letter.

8 The bankruptcy court on three separate occasions
9 ordered that Mr. Kochenower release property that belonged
10 to Total Inc.. That was done I think in September, or
11 October, November of 2012.

12 Mr. Kochenower was still retaining these six items
13 that are the subject of this motion, and I sent Mr.
14 Kochenower correspondence, if I could hand this to the
15 court, explaining that these items did not belong to Total
16 Inc., but belonged to Mike Gault and Mary Gault
17 individually. I provided affidavits.

18 This is all property, Your Honor, that is not
19 titled. This involves a forklift, a race car, a generator,
20 a welder. These are items that all don't have titles. So
21 we provided affidavits of the individuals who sold this
22 property either to Mr. Gault or to Mrs. Gault's late
23 husband, Rock Gault, which Mrs. Gault took by inheritance.
24 And so it's my understanding that Mr. Kochenower was going
25 to be investigating this to determine whether this is

1 property that should be released.

2 The fact of the matter is is that the bankruptcy
3 court has ordered him to turn over all property belonging to
4 Total Inc., and he has no authority to retain any property
5 of any corporation under this court's order, other than
6 Total Inc.. So to the extent that he has personal property,
7 he's not holding that properly and -- or he's not holding
8 that with proper authority. I was on the phone with him. I
9 tried to, you know, get him to release this property,
10 providing him invoices and these affidavits. This is back
11 in October and November. That gave him five or six months
12 ago I gave him this information.

13 We had a -- well, and then on the phone he told
14 me, Mr. Kochenower, that he was holding the property because
15 there was a case still pending against Mike Gault, and,
16 therefore, he was going to hold onto the property, and that
17 I think Mr. Weatherford had advised him to hold onto the
18 property.

19 And, Your Honor, we have a specific procedure for
20 seizing property and holding property of an individual
21 prejudgment and that has not been followed and that has not
22 been done and I would argue that that is just not proper to
23 hold property that Mr. Kochenower knows does not belong to
24 the corporation.

25 We had a hearing in bankruptcy court a few months

1 ago. Mr. Kochenower testified. I don't think there is any
2 dispute that this property does not belong to Total Inc..
3 Mr. Kochenower admitted that on the stand. It doesn't
4 belong to Total Inc.. We have made a claim for the
5 property. We believe that property should be returned, at
6 least returned back to 199 Speedway Road where the property
7 was taken.

8 Your Honor, I also requested that the receivership
9 be terminated. The reason for that is that this case is
10 pending in bankruptcy court and the bankruptcy trustee has
11 basically taken the role of the receiver. The bankruptcy
12 court is better situated to determine who has a claim to
13 this property of Total Inc. Than the receiver. And there is
14 authority for terminating receivership when -- you know,
15 when a judgment debtor enters bankruptcy. If at some
16 point -- this is going to be decided in bankruptcy court and
17 so there is really no need to have Mr. Kochenower present
18 and active in this case.

19 Thank you, Your Honor.

20 MR. WEATHERFORD: Your Honor, to begin with, prior
21 to trial you ordered Mr. Gault to answer interrogatories,
22 and his answer to those interrogatories is contained in
23 Exhibit 1 to my reply to motion to terminate the receiver.
24 And if you will look, the -- Mr. Holland says "a list of all
25 equipment and personal property owned by Total Inc. And a

1 list of personal property and vehicles owned by Mike Gault."
2 And when you get back to those lists, first of all, you find
3 the list of Total Inc.. Now, this was provided prior to
4 trial and we went to trial based on the truthfulness of
5 these statements.

6 Now, I would ask you to compare that list of what
7 they said Total Inc. Owned to the list that the -- if you
8 will remember, we had a hearing for contempt for Mike Gault
9 interfering with the receiver's ability to obtain property
10 of Total Inc.. And finally at the hearing you held Mike
11 Gault incommunicado and allowed the receiver and a sheriff's
12 deputy to go to the location on 199 Speedway Road, and
13 attached to your order dated August the 14th is a list of
14 items that they found out there and it's substantially
15 different than the answers provided to on the
16 interrogatories.

17 Now, in addition to that, the next page, the
18 property owned by Mike Gault, and this is what we proceeded
19 to trial on. Basically he's made himself, or alleged or
20 answered in his interrogatories that he's basically judgment
21 proof. All he owns is clothes, shoes, TV, DVD players,
22 bedroom furniture, refrigerator and microwave. Now, that
23 was his answer to interrogatories.

24 Now when the case is over with he's starts filing
25 these affidavits that he owns all this other stuff that the

1 receiver now has possession of. So you can see that the
2 receiver has more than ample doubt about who owns what, and
3 until the -- providing an affidavit from some unknown third
4 person, or from Mike Gault himself, after he's provided
5 these answers under court order to the interrogatories, now
6 claiming he owns this stuff that this receiver has, until
7 somebody is in court and produces evidence and subject to
8 cross-examination, I don't think the receiver has any
9 obligation to determine the ownership. And I think the
10 receiver took this property under court order, and I think
11 it will take a court order for him to turn over the
12 property, or whoever the court decides owns the property.
13 And I think Mike Gault, based on his answers to
14 interrogatories, should be estopped from claiming ownership
15 to anything else.

16 Now, in addition to that, I have attached the
17 inventory and appraisal of Mrs. Gault's husband's estate
18 and the things that she's claiming in her affidavits now are
19 not listed on this estate of her husband, with the possible
20 exception of a Ford tractor. We don't know. All we do know
21 is that in one of the affidavits they listed the mower deck
22 that was attached to the tractor and they gave a serial
23 number for it, and receiver has been able to compare the
24 serial numbers that they gave us, that's supposed to be Mrs.
25 Gault's property, it does not match the ~~property~~ that we

1 have now. So we don't have any idea who owns that property
2 right now, without some kind of testimony in court.

3 Also when the receiver and the deputy went out to
4 199 Speedway Road, they found two race cars, brand new
5 looking. I have got them attached as Exhibit 4 and 5. A
6 black with red trim and a black with blue trim.

7 Exhibit 3 they provided prior to court as part of
8 discovery where it says Total Inc. Owns a dirt late model
9 race car and they had a receipt for it. And something from
10 Clement's Automative saying Clement's owns the engine of
11 that particular race car.

12 In any event, they went out there and they took
13 pictures and made that list. And then we took that list and
14 came over to your office, got you to sign the order. You
15 had ordered Mr. Gault in court not to remove a single thing.
16 By the time you signed the order and the receiver and the
17 deputy got back out there, one of those race cars was
18 missing, and Mike Gault is currently racing a race car. I
19 have attached in one of my things a newspaper article, which
20 I have here, where he raced in November of this year,
21 finished 16th in the March Madness race. So apparently he's
22 the one that has that race car that turned up missing.

23 But as you can see, the reason the receiver still
24 has that property is that nobody has proven anything in
25 court as to the ownership of that property.

1 I have gone on -- Mike Gault has been released by
2 the bankruptcy court as an individual. I'm allowed to
3 proceed against him individually.

4 My first cause of action, which is Exhibit No. 1
5 to the reply to the motion to dismiss, is a breach of
6 contract action against Mike Gault only.

7 Now, during the trial when -- and I stated during
8 the trial, at the end of the plaintiff's case, that I only
9 had a contract action against Mike Gault and/or Total Inc..
10 and when it came down to the verdict form, the judge only
11 had Total Inc. On there.

12 Now, there was -- there has never been any ruling
13 or dismissal of that cause of action that I pled. I can
14 only assume that maybe Judge Couch thought that the only way
15 to get to Mike Gault was through piercing the corporate
16 veil, which cause is action is still open and pending in
17 Federal Court. If I want to pursue that, I can go on into
18 Federal Court and pursue that Federal Court rule that that
19 was an asset of the corporation, and so I wouldn't be able
20 to pursue piercing the corporate veil in state court, but
21 there is another --

22 And I'll hand up a copy of the case, but there is
23 another way to get to an officer or controlling person of a
24 corporation individually, and this case that I'm handing up
25 basically says that it concludes that because of what the

1 master did in that case is basically, just like we did in
2 this case, they sued the individual. The answer for the
3 individual was that the property was of a corporation, so
4 the master changed the defendant from the individual to the
5 corporation.

6 Now, they did a direct appeal from that and
7 basically the court ruled that the plaintiff has a right to
8 sue whoever they wanted to and they shouldn't have changed
9 the -- substituted the corporation for the individual,
10 because if a controlling person of a corporation may be
11 individually liable if they participate in the activity.

12 But because of Mike Gault's answers to
13 interrogatories, it would have been useless to pursue a
14 judgment or an action against him personally, because he
15 didn't own anything, according to what we were relying on at
16 the time. To now come into court and say "my answers to
17 interrogatories were not true, that I really owned this
18 stuff and that you should give it back to me," how about
19 anybody could expect to be rewarded for filing false answers
20 to interrogatories and then come into court and ask for
21 property back that he now says that he owns and has owned
22 for a long time is -- I don't know, I would be afraid to do
23 that myself. I would be afraid I would be put in jail for
24 contempt of court.

25 But I think I do have a right to, number one,

1 amend the action against Mike Gault. It was still within
2 time to allege another cause of action for fraud, because of
3 these fraudulent answers to interrogatories.

4 I think you have every right under Section
5 15-65-10 appointment of a receiver before judgment on the
6 application of either party when he establishes an apparent
7 right to the property which is the subject of the action and
8 which is in possession of an adverse party and the profits
9 or rents of profits are in danger of being lost or
10 materially injured or impaired. And we know from the
11 actions of Mike Gault in the past, if he gets his hand on
12 the property, we will never see it again.

13 The footnotes of that section -- the receiver was
14 originally appointed under Section 15-39-430, but this
15 footnote to this 15-65-10 say "this section provides a
16 remedy for the prosecution of a civil action in the
17 procurement of a judgment as distinguished from a remedy
18 towards the execution of the judgment," which is now. So
19 what I have asked in my reply to his motion about the
20 receiver was that you continue the receiver under Section
21 15-65-10 while we continue to pursue actions against Mike
22 Gault.

23 I basically did not object to the verdict form,
24 because of the -- apparently under his affidavits now, false
25 answers to interrogatories that he provided to us at the

1 trial and that we went to trial on, based on his answers to
2 interrogatories, and there was no need for me to object
3 because they made it look like Total Inc. Owned everything
4 and Mike Gault didn't own anything, and so I think that's
5 fraud. I think I'm entitled to amend the cause of action
6 against him for fraud and continue the breach of contract
7 cause of action, because that cause of action has never
8 really been ruled on. It was just Judge Couch for some
9 reason left it out and I didn't object for that very reason.
10 But now to come into court and say "I own this property and
11 that you ought to give it back to me and I lied on my
12 answers to interrogatories when you went to court trying to
13 get something from me" I think is ridiculous and I think
14 actually he should be sanctioned for doing that, because we
15 went through the whole trial based on their answers to these
16 interrogatories. And, of course, we found out since a lot
17 of difference in those answers to interrogatories and the
18 real truth. And so if Mike Gault owns that stuff, we still
19 have actions pending against him. I still have a right I
20 think to amend, based on what he's done since then, to amend
21 and then include an additional cause of action against Mike
22 Gault personally. And that's why we are asking that the
23 receiver continue under that other section prior to
24 judgment. And we certainly don't think Mike Gault should be
25 allowed to come into court, this court, and tell lies about

1 what he owns, then go into bankruptcy court. In order to
2 get things away from the bankruptcy court he files
3 affidavits said he owns some other stuff, and now he's
4 coming into this court again saying "I own that stuff and
5 you should give it back to me." I think that's ridiculous
6 and I think we have the right to keep it and to continue to
7 pursue actions against Mike Gault, which we have been
8 allowed to do, and that's what we are asking the court to
9 do.

10 MR. LAZENBY: Briefly, Your Honor, Mr. Weatherford
11 is speaking in general terms Mr. Gault has lied, but he's
12 not giving you any specifics.

13 And, Your Honor, if I could point to one specific.
14 In my letter to Mr. Kochenower, by far the most significant
15 or the most valuable piece of property that Mr. Kochenower
16 is holding is a race car. If you look at the invoice, which
17 I have provided to them six months ago, the invoice on that
18 race car is April 20th, 2012. That was -- that was well
19 after these interrogatories were answered, well after the
20 trial, well after anything. So to suggest that Mike Gault
21 is lying, that's just a flat out lie that he's lying about
22 this race car. He's not. He purchased this race car after
23 the trial.

24 The other two -- there are two other items that
25 Mr. Gault claims to own and one is a forklift that's worth

1 about \$500 and the other one is a welder worth a couple
2 hundred dollars. And, Your Honor, I would just point out
3 that what Mr. Weatherford is citing to you is evidence that
4 Mr. Gault lied is an interrogatory answer provided by Mr.
5 Gault's former attorney, Ken Holland, that was not verified.
6 So there is nothing in -- there is nothing sworn to by Mike
7 Gault stating that he doesn't own all this stuff. So it's
8 just misleading to suggest that Mike Gault is somehow
9 perpetrating a fraud on the court.

10 THE COURT: Okay.

11 MR. LAZENBY: And then, secondly, Your Honor, as
12 to the motion to dismiss, Mr. Weatherford had pending a veil
13 piercing cause of action against Mike Gault and Keith Potter
14 at the time of the trial. It doesn't make any sense to
15 claim that he somehow relied upon -- that he somehow relied
16 upon these interrogatory answers not to pursue a breach of
17 contract claim against Mr. Gault. He had individual claims
18 against Mr. Gault and he chose to pursue those later.

19 The fact of the matter is that he messed up and
20 didn't get this -- didn't get Mr. Gault's name put on the
21 verdict form. The issue was tried. No verdict found
22 against Mr. Gault. Therefore, the breach of contract
23 against Mr. Gault should be dismissed.

24 To the extent that he now is trying to assert
25 another cause of action against Mr. Gault, Your Honor, any

1 cause of action that has to do with veil piercing, whether
2 it's alter ego, piercing the corporate veil, instrumentality
3 theory, there are several different ways that the courts
4 have allowed this, that is an asset of the bankruptcy state.
5 That is an asset of the bankruptcy court and the bankruptcy
6 court has ruled on and said that, and they can pursue that
7 claim in bankruptcy court. There are no individual causes
8 of action or claims to pursue against Mr. Gault in this
9 court.

10 MR. WEATHERFORD: Your Honor, the two most
11 valuable assets that I think Mr. Gault has are these two
12 race cars. I have information they are expensive pieces of
13 machinery. According to the answers to interrogatories,
14 Total Inc. Owned one of the race cars, but none of the race
15 cars are in bankruptcy court. I don't understand that how
16 that has occurred.

17 MR. LAZENBY: That's an issue for bankruptcy
18 court.

19 MR. WEATHERFORD: I didn't interrupt you.

20 And then the second one is he is claiming now that
21 he purchased the new car after we had judgment, after we had
22 executed on his property, after the receiver had been
23 appointed, and then so he goes out and buys a new race car,
24 and there were actually two race cars there when the
25 receiver went out in August. Now one is missing. We don't

1 know where it is. We still have one of the race cars. We
2 are interested in getting that other race car back that got
3 missing overnight after we had the order signed. But, you
4 know, it's just -- I don't see how he can talk out of both
5 sides of his mouth and expect to be rewarded in court.

6 THE COURT: Okay. All right, this is what we are
7 going to do. I'll take the motion under advisement, the two
8 motions, but I will also ask Mr. Weatherford and Mr.
9 Lazenby, I'm going to need for you to get back together. We
10 are going to schedule a hearing.

11 At a prior hearing before this court I was very
12 kind in the remarks that I made in regards to Mr. Gault, in
13 the rulings that I made.

14 Mr. Weatherford cites the fact that parties
15 engaged in discovery as part of the underlying litigation.
16 Discovery that is produced as part of that litigation in
17 order to make decisions on how to handle cases, but a part
18 of what is allowed to be discovered are assets. Assets are
19 required to be disclosed so that lawyers in courts and
20 jurors in the judicial system as a whole runs more
21 efficiently and wise and appropriate decisions, based upon
22 facts can be made.

23 It has been stated to this court that Mr. Gault in
24 the underlying lawsuit made a representation of facts as to
25 assets. That, in my humble opinion, is a material

1 misrepresentation, if it is a misrepresentation. That type
2 of representation that's made is civil litigation, when you
3 are disclosing information through interrogatories, can be
4 appropriately relied on by lawyers, like Mr. Weatherford, in
5 deciding what to do with a case. I unfortunately -- this
6 practice of improperly giving information as part of
7 interrogatories in civil litigation, I see it unfortunately
8 too often. I find that that is not only contemptible, if it
9 is true, contemptible acts on the part of a party,
10 contemptible to the other side out of disrespect, but it
11 also shows a gross amount of disrespect for the judicial
12 system.

13 We have rules that have to be followed when you
14 engage in civil litigation. Those rules are meant not only
15 to be sure that both sides have a fair playing field, but
16 also to ensure that the judicial system is respected and not
17 abused.

18 I intend to conduct a further hearing, Mr.
19 Weatherford. I would like to receive what information you
20 have in regards to the allegations of fraud that you believe
21 that Mr. Gault and his lawyers have engaged in.

22 Mr. Lazenby, I suggest that you contact Mr.
23 Holland, because you have now made a representation that Mr.
24 Holland would have purposely filed a document with this
25 court that he would have known was false. Mr. Holland is an

1 officer of this court and I would like for Mr. Holland to
2 answer that to know where he came up with that information,
3 because I doubt -- I have yet in my dealings with Mr.
4 Holland to run across an occasion where Mr. Holland would
5 make a material misstatement of fact by way of affidavit, or
6 otherwise, to a court that he had not been given by a
7 client. So that probably needs to be clarified.

8 I will take the motions under advisement, but I
9 look forward to seeing you gentlemen in the very near
10 future.

11 I'll step down.

12 Mr. Lazenby, you probably need to let Mr. Gault
13 know of the possible sanctions the court could impose, as
14 far as contempt is concerned.

15 MR. LAZENBY: Thank you.

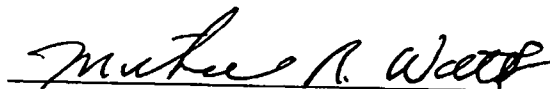
16 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for CHEROKEE County, South Carolina, on the 18th day of April, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

MAY 19, 2013



Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF COMMON PLEAS
3 Christopher Drye, d/b/a)
4 Drye's Auto Crushing,) TRANSCRIPT OF RECORD
5 Plaintiff,) 2008-CP-11-1038
6 -vs-)
7 Mike Gault and Mary T.)
8 Gault, d/b/a Gault's Used)
9 Cars, Total Inc., Edward)
10 Keith Potter individually)
11 and as President of Total)
12 Inc.,)
13 Defendants.) August 13, 2012
14 Gaffney, South Carolina

15
16
17 B E F O R E:

18 HONORABLE J. MARK HAYES, II, JUDGE

19
20
21 A P P E A R A N C E S:

22 WADE S. WEATHERFORD, III, ESQUIRE
23 Attorney for the Plaintiff

24 KENNETH L. HOLLAND, ESQUIRE
25 Attorney for the Defendants

Margaret A. Woods
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Photograph	16	22
P-2	Blowup of photograph	17	
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MOTIONS AND MATTERS

1 THE COURT: I've got down that this is Dyer [sic] vs.
2 Gault. Mr. Weatherford, I believe that we're here on your
3 motion, is that correct?

4 MR. WEATHERFORD: Yes.

5 THE COURT: Alright. We have -- we gonna be able to do
6 this today?

7 MR. WEATHERFORD: I think so.

8 THE COURT: Alright. Okay, ---

9 MR. HOLLAND: Your Honor, ---

10 THE COURT: Yes, sir.

11 MR. HOLLAND: Can I be heard as we begin?

12 THE COURT: Yes.

13 MR. HOLLAND: We object to this proceeding, Your Honor,
14 on the grounds that we have had inadequate notice. The
15 affidavit given by Mr. Kochenower over here said that he had
16 other evidence that Mr. Gault here had secretively or disposed
17 of whatever of some property and I asked Mr. Kochenower last
18 week if he would mind enumerating for me what that, quote,
19 other evidence was and on Wednesday I believe he agreed to
20 give it to me but on Thursday or Friday he backed off of that
21 and I have haven't been able to figure out what, quote, other
22 evidence. He he mentions it in his affidavit to the motion
23 and I feel like somebody should have submitted somethin' about
24 whatever evidence he's talkin' about because I've honestly
25 haven't had any real opportunity to study what this is all

MOTIONS AND MATTERS

1 about except the same old thing, we're back on a contempt
2 motion that has been done before and I I think my client
3 Mr. Gault is entitled to adequate notice of what this is all
4 about and we don't have it.

5 THE COURT: Alright. Um, ---

6 MR. WEATHERFORD: If I may. Your Honor, all we have is a
7 couple a witnesses in addition to the receiver that will
8 document problems he's havin' collectin' property that we
9 believe belongs to the debtor. All we have are couple
10 witnesses that are going to tell you what Mr. Gault's been up
11 to and if Mr. Holland wants to know what Mr. Gault's been up
12 to, all he's gotta do is ask Mr. Gault. He may not know which
13 witnesses we have that could prove what about what Mr. Gault's
14 done but we have some and all they're gonna tell ya is what
15 he's been doin' to avoid this lettin' the receiver have
16 property which is what this motion is about. Now ---

17 THE COURT: Alright, your ---

18 MR. WEATHERFORD: --- I think we're passed the discovery
19 stage, we've already got the judgment, we're just simply
20 tryin' to collect. Mr. Gault's interferin' with the
21 receiver's ability to do that, we just got some proof that
22 he's doin' it. He knows what he's been doin'.

23 THE COURT: Alright. Now I've got, I'm looking at a
24 motion, notice of motion motion that is clocked in the clerk's
25 office on August the 1st. Um, ---

MOTIONS AND MATTERS

1 MR. WEATHERFORD: Yes, sir.

2 THE COURT: Alright, yes, sir?

3 MR. HOLLAND: Your Honor, I believe Mr. Kochenower will
4 confirm that I called him and went to his office requesting
5 this information and at the outset he agreed to give it to me
6 and I think until I get that he's got a vague statement in his
7 affidavit that he has, quote, other evidence that will confirm
8 what he's sayin' and I, Your Honor, I don't see how you can
9 defend somebody with -- in the dark without havin' some kind
10 of notice about what these witnesses I know Mr. Kochenower ---

11 MR. WEATHERFORD: All ya gotta do is ask him what he's
12 been ---

13 MR. HOLLAND: I'm ---

14 MR. WEATHERFORD: --- doin'.

15 THE COURT: Alright.

16 MR. HOLLAND: --- I'm try ---

17 THE COURT: Go ahead, Mr. Holland.

18 MR. HOLLAND: May I go ahead? I don't know who these
19 other two witnesses are but I don't even have an identity for
20 'em, Judge, and I believe this this motion is to hold the man
21 in contempt of court and I think it requires more than just a
22 suggestion of sumtin' he may have done by some unidentified
23 evidence and so I ask the Court as strongly as I can to give
24 us an opportunity to check in, maybe Mr. Kochenower be willin'
25 to give us this information, he was at the outset and ---

MOTIONS AND MATTERS

1 MR. WEATHERFORD: What's he gonna do ---

2 MR. HOLLAND: --- as far as this being ---

3 MR. WEATHERFORD: --- make a deposition?

4 THE COURT: Mr. Weatherford, let Mr. Holland ---

5 MR. WEATHERFORD: I'm sorry.

6 THE COURT: --- finish.

7 MR. WEATHERFORD: I'm sorry.

8 MR. HOLLAND: Far as this being a discovery period, this
9 is supplemental proceedings which as I understand it
10 encompasses all the civil rules of civil procedure as far as
11 notice and information, that I've got an affidavit that says I
12 have other evidence. Judge, I don't see how that can meet the
13 test under any circumstances and I respectfully again urge the
14 Court that at least give this man an opportunity to find out
15 what it's about and give him a chance to respond.

16 THE COURT: Alright, what we'll do is we're gonna proceed
17 on I I think as far as the notice is sufficient to tell people
18 what we're doing here today the notice and then the witness
19 will be able to testify as to what that information is and
20 then whether or not the Court finds anyone in contempt, the
21 Court will take or the Court will make that determination but
22 we'll proceed on.

23 MR. WEATHERFORD: Alright. Your Honor, I just before we
24 begin went through the Court file and wrote down kind of a
25 little time line which may be helpful as we hear some this

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 testimony. I call Terry Wright.

2 (Whereupon, the witness came forward.)

3 TERRY WRIGHT, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. WEATHERFORD:

6 Q. Alright, would you state your name for the record.

7 A. Terry Wright.

8 Q. Where do ya live, Mr. Wright?

9 A. South Carolina.

10 Q. And what do ya do for a livin'?

11 A. I used to work for Mike Gault.

12 Q. Alright, speak up now, you talk softly so I need to make
13 sure I can hear everything you're sayin'. How long did you
14 work for Mike Gault?

15 A. Almost two years.

16 Q. And what what di -- were your duties?

17 A. Delivery driver.

18 Q. Alright, and ju -- just give us, give us a few examples
19 of what that means.

20 A. I would deliver parts to other junkyards, customers, far
21 as motors, transmissions, starters, any kinda parts off a
22 car.

23 Q. What location did you come and go from?

24 A. Shelby, Greenville and Charlotte.

25 Q. I mean, in in Cherokee County ---

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 A. Cherokee County.

2 Q. --- startin' in where?

3 A. Carolina Collision here in Gaffney.

4 Q. No, no. What what -- when you went to work with Mike
5 Gault, where did you go?

6 A. I went and talk to Tim.

7 Q. No, no, what location?

8 A. Blacksburg.

9 Q. Where where was his business?

10 A. Blacksburg.

11 Q. Blacksburg, the one that was formally Al's Junkyard?

12 A. Right.

13 Q. Al Tessner?

14 A. Right.

15 Q. Alright. That's the location on, well it's Blacksburg
16 Highway, used to be Number 5.

17 A. Right.

18 Q. Okay, and I believe there's a photograph a that location
19 already in the file. Would you, would you look at that,
20 identify that.

21 A. Yeah, that's it.

22 Q. Alright, what what kinda business is transpired there?

23 A. Sellin' of parts, uh, paintin' cars, workin' on cars.

24 THE COURT: Let the record reflect that the witness was
25 looking at what's marked as Plaintiff's Exhibit 2 to the

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 Kochenower deposition.

2 BY MR. WEATHERFORD:

3 Q. Alright, and -- alright, did you know about Mr. Gault's
4 problems with Chris Drye?

5 A. Yeah.

6 Q. How'd you know about 'em?

7 A. Hearin' him talk about it.

8 Q. Hear Mr. Gault talk about?

9 A. Yeah.

10 Q. Okay. Did ya know from listenin' to him that he owed or
11 at least there was a judgment said he owed Mr. Drye money?

12 A. Right.

13 Q. Did you notice anything particular or peculiar about his
14 businesses? Do you -- what kinda business -- did he have
15 other businesses other than that one at Blacksburg?

16 A. Yeah, he's got two car lots that sell car.

17 Q. Alright, he operate under the names a what?

18 A. Motormaxx and Total Inc.

19 Q. Alright, what about Gault's used cars?

20 A. Gault's used cars, Total Inc.

21 Q. Alright, who was the boss of all those businesses?

22 A. Mike.

23 Q. Alright. Did ya -- what -- say first a this year did he
24 have used cars on a location in Cherokee County?

25 A. Yeah.

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 Q. What -- is that -- what address is that, do you know?

2 A. It's on Highway 18.

3 Q. Union Highway?

4 A. Right.

5 Q. And what was down there?

6 A. About 35 cars.

7 Q. Alright. Used cars?

8 A. Right.

9 Q. And and what about there's another ma -- location you
10 mentioned?

11 A. In Greer, Motormaxx.

12 Q. And did you know how many cars were usually on that
13 lot?

14 A. Roughly around 40.

15 Q. Alright, and did ya notice anything peculiar at some
16 point in time?

17 A. Uh, ---

18 MR. HOLLAND: Your Honor, I don't think this witness is
19 qualified to express that kind of opinion.

20 MR. WEATHERFORD: Well I'll I'll I'll rephrase it.

21 THE COURT: Alright, he's gonna rephrase it.

22 BY MR. WEATHERFORD:

23 Q. Alright, did the car lots seem to change at some
24 particular time? Did you, did you go back and forth to each
25 one a the car lots on a regular basis?

1 A. Yeah.

2 Q. Alright. And did you begin to notice anything different
3 about either one or both of the car lots?

4 A. Yeah, around last of April, 1st of May all the good cars,
5 the newer vehicles disappeared and ---

6 Q. Did you help load some of 'em up?

7 A. Yeah.

8 Q. And so all the, all the new cars that would normally be
9 sold just start loadin' up on the rollbacks and leavin'?

10 A. Right.

11 Q. And and how did -- and Greer got down to what?

12 A. Five.

13 Q. And on -- and cho -- and Gaffney got down to what?

14 A. Four or five.

15 Q. Alright, and and was there an -- what was unusual about
16 the way that was goin' on?

17 A. All the good stuff was bein' took to the sale on auction
18 and the older junky stuff was on the car lot left to be
19 sold.

20 Q. And is that the way it normally worked or ---

21 A. It's usually the opposite.

22 Q. Opposite. Usually you sell the good cars and take the
23 junk to the sales after they trade 'em in.

24 A. Right.

25 Q. And and all of a sudden all his good cars started leavin'

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 long about, uh, ---
2 MR. HOLLAND: Your Honor, I ---
3 MR. WEATHERFORD: --- Ju ---
4 MR. HOLLAND: --- think he's leadin' his own witness ---
5 MR. WEATHERFORD: Alright, ---
6 MR. HOLLAND: --- here.
7 MR. WEATHERFORD: --- alright, I'm right, you got it.
8 I'll rephrase that, just looking for somethin'.
9 THE COURT: He'll rephrase the question.
10 BY MR. WEATHERFORD:
11 Q. Okay. Now other than that you don't have any idea what
12 happened to the cars except what the lots look like now.
13 A. No.
14 Q. Do you know what the lots look like now?
15 A. Yeah.
16 Q. What?
17 A. Like there's four on Gaffney and five in Greer.
18 Q. Alright, did you, uh, were you -- do you still work for
19 Mr. Gault?
20 A. No.
21 Q. Why not?
22 A. I got terminated about four weeks ago.
23 Q. Alright, and was that anything that you knew was
24 comin'?
25 A. No.

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 Q. Alright. So he just terminated.

2 A. Right.

3 Q. And you you got any feelin's about -- how were ya
4 terminated?

5 A. I had the cops called on me and was terminated and took
6 off the premises and then put on to no trespass notice.

7 Q. Okay. Did you know that was comin'?

8 A. No.

9 Q. Alright. And after that you you knew that there was a
10 receiver or sumtin', ---

11 A. Yeah.

12 Q. --- that was tryin' to get property?

13 A. Right.

14 Q. Did you get in touch with the receiver?

15 A. I did.

16 Q. And did you tell him what you knew?

17 A. I did.

18 Q. And as a result a that is that what you're doin' here?

19 A. That's right.

20 Q. Alright. At sometime around June did all the -- did
21 anything happen peculiar with the equipment and so forth that
22 was at the Blacksburg location?

23 A. Yeah, Mike ordered that the workers take it to the race
24 car shop on Raceway Road here in Gaffney to take everything
25 over there: rollbacks, the big tr -- bigger trucks,

1 equipment.

2 Q. What all kindsa things did -- did did you help take it
3 over there?

4 A. Yeah.

5 Q. How many rollbacks did he have access to?

6 A. Four.

7 Q. And so they were all taken to the racetrack property?

8 A. Yeah.

9 Q. What else kinda things were taken over there?

10 A. There's a big Chevrolet specside (phonetic) truck, a big
11 flatbed Ford truck, a two-wheeler and forklift, two welders, a
12 a chip moldin' machine, air compressor, just different tools
13 and stuff.

14 Q. Anyth --- a lotta the stuff had value, did that stuff
15 have value?

16 A. Yeah.

17 Q. Okay, and and do you know why it was taken to the
18 racetrack accordin' -- did Mr. Gault tell you why it was -- he
19 was takin' it over there?

20 A. He said if we took it over there it it would be over
21 there on his momma's property and that couldn't nobody get
22 it.

23 Q. And while you were workin' for him did you know anything
24 about that race place where you took the property, what
25 normally goes on over there?

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 A. That's where he keeps his race cars and where they work
2 on the race cars.

3 Q. Alright, let me ask you, excuse me a second, Your Honor,
4 let me find ---

5 (Whereupon, a discussion was held off the record.)

6 Where is that, where is that racetrack shop located?

7 A. It's in here in Gaffney on Raceway Road.

8 (Whereupon, a discussion was held off the record.)

9 Q. Okay, let me show ya, I've got a little one and a big one
10 I'm gonna start with the little one.

11 (Whereupon, a discussion was held off the record.)

12 MR. WEATHERFORD: Alright, let's get this marked.

13 (Photograph marked Plaintiff's Exhibit No. 1 for
14 identification.)

15 BY MR. WEATHERFORD:

16 Q. Alright, can you identify the racetrack?

17 A. Yeah, ---

18 Q. Looks ---

19 A. --- yeah, this (indicating) is the racetrack, this
20 (indicating) is the race car shop.

21 THE COURT: I'm sorry, I didn't hear you.

22 THE WITNESS: This (indicating) is the racetrack and this
23 (indicating) is the race car shop where it's ---

24 BY MR. WEATHERFORD:

25 Q. Well it might be better -- for purposes a illustration,

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 why don't you mark this for identification instead of puttin'
2 this big thing.

3 (Blowup of photograph marked Plaintiff's Exhibit No. 2
4 for identification.)

5 Alright, now as I hold it up point to where the the
6 actual racetrack is.

7 A. This (indicating) is the new racetrack, that's
8 (indicating) the old one, this (indicating) is the race car
9 shop.

10 Q. Alright. Now what's, uh, what all's at the race car
11 shop?

12 A. Got several race cars, uh, stuff for his race cars, some
13 tires, tools in the front. In the back he's got 4-wheelers,
14 ATVs, anything you imagine back there and that's where stuff
15 was took to behind the race car shop towards
16 the ---

17 Q. Taken from Blacksburg over to there?

18 A. Right.

19 Q. And how many race cars are in there?

20 A. Last time I was in there it's six.

21 Q. What what kind of -- are they cars that race on that dirt
22 track?

23 A. Yeah.

24 Q. Are they -- do you know anything about the expense of
25 those cars?

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 A. It's expensive from what I know of.

2 Q. Well, I mean, do you have any personal knowledge of
3 gettin' parts or doin' anything like that?

4 A. Yeah, I picked up parts and took parts for him.

5 Q. Go get money for him or money orders or...

6 A. I have a time or two.

7 Q. And what do ya know about the the cost a those parts?

8 A. Real expensive.

9 Q. You've mentioned you -- have you taken anything to other
10 parts like a the engine or the rear end or anything like that
11 anywhere?

12 A. Yeah, I took rear ends to Moore of course before.

13 Q. And what do they do up there?

14 A. They work on 'em, he tears 'em out, pulls, pins and
15 whatever it needs.

16 Q. You got any idea of the expenses just the rear end?

17 A. It's thousands a dollars.

18 Q. Alright. And does anybody ever come over there to that
19 racetrack and give anybody any orders other than Mike Gault?

20 A. No.

21 Q. Has anybody ever been to the Blacksburg the two years you
22 worked there and given anybody any orders other than Mike
23 Gault?

24 A. No.

25 Q. Do ya know anything about him racin'?

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

- 1 A. Yeah, he races usually about every weekend.
- 2 Q. Do you keep track a that racin' other than knowin' he
- 3 does it every weekend?
- 4 A. No.
- 5 Q. What about do you know anything about Mr. Gault's
- 6 personal vehicles that he drives?
- 7 A. Yeah, he's got a white Tahoe, a blue Chevrolet pickup
- 8 truck, a black Nissan Xterra and he's got a new one that he
- 9 pulls the race car trailer with.
- 10 Q. A Dually now what's that?
- 11 A. It's a a dual, you know, dual wheel big truck to pull
- 12 heavy loads with.
- 13 Q. Extra duty pickup truck?
- 14 A. Yeah.
- 15 Q. And what about the trailer, do you -- you mentioned a
- 16 trailer, what -- tell me what that is.
- 17 A. It's a completely enclosed trailer, he hauls the race
- 18 cars in 'em.
- 19 Q. How many cars will go in there?
- 20 A. Two.
- 21 Q. What else goes in there?
- 22 A. Like carryin' their tools that they may need, it's hot
- 23 they carry a fan, anything ---
- 24 Q. Tires?
- 25 A. --- they ever need, tires.

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 Q. How many tires has he got out there on Racetrack Road?

2 A. There's probly a couple hundred in that race car shop.

3 Q. You know how much they cost?

4 A. I think a hundred fifty, hundred sixty a piece.

5 Q. How many people were workin' out there for Mr. Gault?

6 A. There was eight of us at one time.

7 Q. Alright. And did Mr. Gault tell you anything about why
8 he was takin' the stuff to the racetrack?

9 A. Yeah, he said if it was over there that nobody could come
10 and repossess it down at the shop in Blacksburg 'cuz it
11 wouldn't be on his property in Blacksburg. If he had it on
12 that property, nobody could get it.

13 Q. Wha'd he tell you about his in -- his intent to pay the
14 money that's owed? He make any statements to you about it?

15 A. Yeah, he personally told me with a couple other people in
16 the office he said, I don't -- I'm not gonna pay it, I don't
17 think I deserved it, he said, I'll shut it down and five
18 minutes later open it back up in somebody else's name or I can
19 file bankruptcy and never sweat it.

20 Q. Alright, um, answer any -- let me see, one second, Your
21 Honor. Do you, do you have any knowledge of how much those
22 those race car bodies or chassis cost? Has Mike told ya?

23 A. Mike hadn't told me but he took a co-worker with him to
24 pick up a frame and all I know is what he told me it cost.

25 Q. What the co-worker told ya.

TERRY WRIGHT - DIRECT EXAMINATION BY MR. WEATHERFORD

1 A. Yeah ---

2 MR. HOLLAND: That's hearsay, Your Honor, ---

3 MR. WEATHERFORD: Okay, I'm not, -- nah, I wasn't
4 elicitin' that. Okay, now answer Mr. Holland ---

5 THE COURT: You intend to introduce that into evidence
6 the picture ---

7 MR. WEATHERFORD: The small photo. I don't need that
8 great big one.

9 THE COURT: Any objection to that being ---

10 MR. WEATHERFORD: I I think she's already marked it
11 without ---

12 THE COURT: Yeah, but Mr. ---

13 MR. WEATHERFORD: --- objection.

14 THE COURT: --- Holland has not said whether he objects
15 to it or not.

16 MR. WEATHERFORD: The picture.

17 MR. HOLLAND: I don't know the difference, Judge. I
18 guess that one is a bigger ---

19 MR. WEATHERFORD: This ---

20 MR. HOLLAND: --- copy a that one?

21 MR. WEATHERFORD: Yeah, but all I di -- all I wanted to
22 introduce was the little one.

23 MR. HOLLAND: Okay, no problem. Alright, without
24 objection be ---

25 MR. WEATHERFORD: It's it's marked.

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

1 THE COURT: But what's the number?

2 MR. WEATHERFORD: One.

3 THE COURT: Plaintiff's 1.

4 (Plaintiff's Exhibit No. 1, photograph, admitted into
5 evidence.)

6 THE COURT: Okay.

7 MR. WEATHERFORD: Okay. Alright, now answer any
8 Mr. Holland's questions, please.

9 MR. HOLLAND: Thank you, sir.

10 CROSS-EXAMINATION BY MR. HOLLAND:

11 Q. Mr. Wright, where do you work now?

12 A. Nowhere.

13 Q. Nowhere?

14 A. No.

15 Q. What kinda work you lookin' for?

16 A. It's whatever I may find.

17 Q. Wha'd ya do before you came to work for the Total Inc.
18 company?

19 A. I was delivery driver.

20 Q. You was a delivery driver for who?

21 A. Building Depot.

22 Q. Buil what?

23 A. Building Depot.

24 Q. It like Chip said, you gonna have to speak up a little,
25 you got nice soft voice but I can't hear ya.

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

- 1 A. Okay.
- 2 Q. Builders Depot.
- 3 A. Yeah.
- 4 Q. Is that the one right up here on Highway 11?
- 5 A. Yeah.
- 6 Q. Okay. Deliverin' little buildings and such ---
- 7 A. Yeah.
- 8 Q. --- as that?
- 9 A. Yeah.
- 10 Q. Okay. And you live in Blacksburg, correct?
- 11 A. Yeah.
- 12 Q. And ya never worked for Al Tessneer [sic].
- 13 A. No.
- 14 Q. Where'd you work back then?
- 15 A. Do do what now?
- 16 Q. Where did you work back at that time before you came to
- 17 work after Mr. Tessneer [sic] sold or leased it to Mr. Gault
- 18 where'd you work?
- 19 A. Buildin' Depot.
- 20 Q. How long?
- 21 A. Five years.
- 22 Q. Okay. Who was your supervisor out there?
- 23 A. Mark.
- 24 Q. Mark who?
- 25 A. Heatherly.

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

1 Q. Okay, you worked you said a couple a years for
2 Mr. Gault?

3 A. Yeah.

4 Q. And you were fired?

5 A. Right.

6 Q. Fact, you weren't only fired you were forcibly removed
7 from the premises, were you not?

8 A. Pretty much.

9 Q. And you were fired for the use of foul language, were you
10 not?

11 A. No.

12 Q. No. Why were you fired then?

13 A. I was fired 'cuz I carry a pistol when I did my delivery
14 which he told me was fine, I got a permit to carry it and for
15 some odd reason he got on me about it that day and told me I
16 had to get rid of it and I refused to do it because he done
17 told me I could, that's why he fired me.

18 Q. You were a good worker I guess, weren't ya?

19 A. I suppose.

20 Q. Did ya go to work every day?

21 A. Yeah.

22 Q. Do what you were asked to do?

23 A. Right.

24 Q. Okay, do you know of any other reason you mighta been
25 fired?

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

- 1 A. Not that I can think of.
- 2 Q. And you say it's because you had a concealed weapon
- 3 permit.
- 4 A. Right.
- 5 Q. Okay. The inventory I call it, these used cars that are
- 6 sold by Gault's Used Cars and all a that, do you know what a
- 7 floor plan is?
- 8 A. Not really.
- 9 Q. You worked there two years and you never found out what a
- 10 floor plan is?
- 11 A. I didn't work in the office, I I delivered parts. I
- 12 don't, I don't know nothin' about selling vehicles.
- 13 Q. But you -- well you knew enough to go lookin' up
- 14 Mr. Kochenower, didn't ya?
- 15 A. That's right.
- 16 Q. When'd you decide to do that?
- 17 A. When a co-worker gave me his card.
- 18 Q. A who worker?
- 19 A. A co-worker of mine.
- 20 Q. What's his name?
- 21 A. I ain't tellin' ya.
- 22 Q. You don't know the co-worker's name?
- 23 A. I do.
- 24 Q. What is it?
- 25 A. I'm not sayin'.

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

1 MR. HOLLAND: Your Honor, I ask the Court to direct this
2 man wi -- answer the question.

3 THE COURT: Sir, if you know the name of a witness, you
4 need to answer Mr. Holland's question.

5 THE WITNESS: Joe.

6 BY MR. HOLLAND:

7 Q. Joe? Joe who?

8 A. I don't know his last name.

9 Q. Where's Joe live?

10 A. Blacksburg.

11 Q. How long have you known Joe?

12 A. 'Bout two or three years.

13 Q. Okay, and he told you to get, you might wanna get in
14 touch with Mr. Kochenower.

15 A. Right.

16 Q. And did you call Mr. Kochenower on the telephone?

17 A. Yeah.

18 Q. When was that?

19 A. About four weeks ago.

20 Q. Four weeks ago.

21 A. Yeah.

22 Q. Alright. When did you learn anything about you may be
23 here today to testify?

24 A. About three weeks ago maybe.

25 Q. 'Bout three weeks ago? And did anybody ask you to give a

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

1 written statement?

2 A. No.

3 Q. Did any investigator ask you, did any investigator
4 interview you about what you're gonna say today?

5 A. No.

6 Q. Nobody talked to ya. Mr. Kochenower didn't talk to ya?

7 A. Yeah, he did.

8 Q. Okay, what did you tell him?

9 A. What Mr. Weatherford asked me. I told him the same thing
10 what went out on, how the stuff was took out and hid.

11 Q. Okay, you know I presume, about this case that we're
12 talkin' about Total Inc., do ya understand that?

13 A. Yeah.

14 Q. And you worked for Total Inc.

15 A. Right.

16 Q. Did ya happen to keep a copy a your paycheck ---

17 A. No.

18 Q. --- to prove that you worked for 'em?

19 A. No, I don't.

20 Q. You don't have any record of anything that might show you
21 worked for that company?

22 A. Pictures a time cards.

23 Q. Did you know the difference in property owned over at the
24 racetrack by Mr. Gault, the race cars for instance, and Total
25 Inc.?

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

- 1 A. He owned all of it.
- 2 Q. Who owned all of it?
- 3 A. Mike Gault.
- 4 Q. Okay, so none a the stuff you're talkin' about was owned
- 5 by Total Inc.
- 6 A. It's the same same thing. He runs Total Inc.
- 7 Q. That's why I asked you. You understand that we're here
- 8 about Total Inc. today, do you not, ---
- 9 A. Yeah, yeah.
- 10 Q. --- and not Mike Gault.
- 11 A. Right.
- 12 Q. Okay, the property you talked about where they sold the
- 13 good stuff you mean the used cars, ---
- 14 A. Yeah.
- 15 Q. --- the good ones, and the junk stuff what they do with
- 16 it?
- 17 A. That's remained on the lot.
- 18 Q. Okay, when people go and buy cars they they usually
- 19 lookin' for sumtin' good, aren't they?
- 20 A. Pretty much.
- 21 Q. You are, aren't ya, when you go ---
- 22 A. Yeah.
- 23 Q. And so the junk stuff you kinda pass over.
- 24 A. Right.
- 25 Q. Well where do you get from that the idea that Mr. Gault

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

1 was hiding anything?

2 A. Because I helped him move the stuff to the race car
3 shop.

4 Q. You helped him move stuff to the race car shop.

5 A. Right.

6 Q. Now the race scar shop was somethin' known to you
7 throughout the whole time you worked for Total Inc. ---

8 A. Yeah.

9 Q. --- and it was right over there, what, about five minutes
10 away, isn't it?

11 A. Right.

12 Q. And some a the stuff you were asked to move over there.

13 A. Yeah.

14 Q. When ya moved it over there, where'd ya put it?

15 A. Behind the race car shop.

16 Q. Behind the shop. Outdoors?

17 A. Yeah.

18 Q. So if somebody drove by there and took a look, they
19 coulda seen that stuff, couldn't they?

20 A. No.

21 Q. Why?

22 A. You can't see behind the race car shop the road.

23 Q. If you go look, you can see it, can't ya?

24 A. No.

25 Q. It's right outdoors.

TERRY WRIGHT - CROSS-EXAMINATION BY MR. HOLLAND

1 A. Can't see it.

2 Q. Or did you say that? You said it was outdoors I thought.

3 A. Yeah.

4 Q. Okay, but you say you can't see it.

5 A. No, you can't.

6 Q. Okay. So you got fired and why did the police have to
7 remove you from the premises?

8 A. All I know is I was in the shop when the cops pulled up
9 and they called me in the office and told me I was fired and
10 not to come back and I was put on no trespass notice.

11 Q. Do you happen to remember who those cops were?

12 A. No, I don't.

13 Q. What do you have in the way of knowledge or information
14 that any of the things you talked about were owned by anything
15 other than Total Inc.?

16 A. I don't.

17 Q. Okay. Did you talk about that with Mr. Kochenower while
18 you were over at hi -- did you go to his office talk to him?

19 A. Yeah.

20 Q. How'd you know to get there?

21 A. He told me how to get there.

22 Q. He told ya. You you just called him up and he had never
23 heard a you before.

24 A. That's right.

25 Q. And you told him that you had some stuff you wanted to

TERRY WRIGHT - REDIRECT EXAMINATION BY MR. WEATHERFORD

1 say about Mike Gault.

2 A. No, I told him if they was still lookin' for the stuff
3 that he had hid I know where it was.

4 Q. Okay, how did you know they were lookin' for stuff?

5 A. They done been down there tryin' to get it.

6 Q. Oh, you were there when they came back in March ---

7 A. Right.

8 Q. --- this year? You were there that day?

9 A. Yeah, I was there but yeah, I was there too.

10 Q. Okay, and so back as far as March you've you've known
11 about this situation.

12 A. Yeah.

13 Q. But you didn't say anything about it till after you got
14 fired.

15 A. That's right.

16 MR. HOLLAND: Thank you.

17 THE COURT: Any redirect limited to what he went into?

18 MR. WEATHERFORD: Yes, just briefly.

19 REDIRECT EXAMINATION BY MR. WEATHERFORD:

20 Q. On on the big map which is the reproduction of the
21 Exhibit No. 1, can you ---

22 MR. HOLLAND: Your Honor, ---

23 MR. WEATHERFORD: --- point ---

24 MR. HOLLAND: --- I I've missed something or another. Is
25 that the one in evidence?

1 THE COURT: That that that's been marked for
2 identification the big one.

3 MR. HOLLAND: If it's, if it's identified in the record
4 as identical to that one, that's fine, I just don't know that.

5 MR. WEATHERFORD: Well it is. That's jus ---

6 MR. HOLLAND: I'll take your ---

7 MR. WEATHERFORD: --- it comes from the solic ---

8 MR. HOLLAND: --- word for that.

9 MR. WEATHERFORD: --- it comes from the assessor's office
10 and you can get a little one and a big one of the same thing
11 and that's what we did and as a officer a the Court it's
12 public record, anybody could go over there and get a copy of
13 it and it's got ---

14 MR. HOLLAND: If I'd known it was gonna be used, I mighta
15 done that, Mr. Weatherford.

16 MR. WEATHERFORD: Well all ya had to do was ask Mike.

17 BY MR. WEATHERFORD:

18 Q. Alright, show, I want you to show me where you were
19 hidin' the stuff when ya took it from Blacksburg over to the
20 race car shop.

21 A. This (indicating) is the race car shop ---

22 Q. Now where is the road?

23 A. Here's (indicating) the road.

24 Q. Alright, now ---

25 A. Here's (indicating) the race car shop. That's

TERRY WRIGHT - RECROSS-EXAMINATION BY MR. HOLLAND

1 (indicating) his race car trailer and that (indicating)
2 dually, it's at the front the shop and we took the rollbacks
3 and the big trucks around back here (indicating) and parked
4 all this in between these big tractor trailers and those other
5 vehicles and you cannot see this stuff goin' down the road.

6 Q. Can you see it from the road?

7 A. No.

8 Q. Okay, so it was hidden behind the shop.

9 A. Right and the forklift and the the welders and stuff was
10 took inside the shop.

11 Q. Alright. Alright, that's all I have for this witness.

12 THE COURT: Any cross limited to what he went into?

13 RECROSS-EXAMINATION BY MR. HOLLAND:

14 Q. Mr. Wright, you know this young lady seated by me here
15 (indicating)?

16 A. Yeah.

17 Q. Who is that?

18 A. That's Mike's girlfriend Darlene.

19 Q. Mike's girlfriend?

20 A. Yeah.

21 Q. And and sometime after you were fired you sent her some
22 text messages, didn't you?

23 A. No, I didn't, I called her.

24 Q. You called her. Wha'd you call to tell her?

25 A. I called and told her about him runnin' around on his

1 ex-wife.

2 Q. That he's runnin' around with his ex-wife.

3 A. Yeah.

4 Q. That was how long ago?

5 A. About four weeks.

6 Q. Four weeks ago ---

7 A. Yeah.

8 Q. --- when you called her?

9 A. Yeah.

10 Q. When was the, quote, runnin' around goin' on?

11 A. It's been goin' on for months.

12 Q. For months.

13 A. Right.

14 Q. Again, you can't say exactly when, correct?

15 A. I found out probly ---

16 Q. So you ---

17 A. --- nine, ten months ---

18 Q. --- were tryin', were you not, you were tryin' to get
19 back at Mr. Gault 'cuz you were fired.

20 A. Well, ya know, me and Joe have talked about callin' her
21 but when you work with somebody and somethin' gets back, you
22 just can't go runnin' your mouth too much.

23 Q. Yeah, is that me and Joe the one you couldn't remember
24 his name?

25 A. Yeah, I don't know his last name.

TERRY WRIGHT - RECROSS-EXAMINATION BY MR. HOLLAND

- 1 Q. Okay, and you called this young lady.
- 2 A. I sure did.
- 3 Q. And you told her that Mike had been runnin' around on
- 4 Mike's wife. Let me get that straight.
- 5 A. Mike has been cheatin' on Darlene with his ex-wife for
- 6 months, ---
- 7 Q. Okay, and ---
- 8 A. --- that's what I ---
- 9 Q. --- why would it occur to you to call somebody up with
- 10 some kinda information like that?
- 11 A. Just thought she needed to know.
- 12 Q. You tryin' to get revenge on Mr. Gault, weren't ya?
- 13 A. Well, you know, you can call it what you want, ---
- 14 Q. The answer would be yes or no, sir.
- 15 A. --- you can call it what you want but there's nothin' you
- 16 can do or say when you get up here and lie.
- 17 Q. You were tryin' to get back at Mr. Gault, were you
- 18 not, ---
- 19 A. I didn't like the way he done things.
- 20 Q. --- because you'd been fired.
- 21 A. I thought Darlene needed to know.
- 22 Q. Well you thought Mr. Kochenower needed to know too.
- 23 A. Yeah, I did.
- 24 Q. And it's like -- is there anybody else you've called to
- 25 try to get back at Mr. Mike Mike Gault for firing you?

TERRY WRIGHT - RECROSS-EXAMINATION BY MR. HOLLAND

1 A. Not that I can think of.

2 Q. Is there any question in your mind that he fired you?

3 A. No.

4 Q. Okay, thank you, sir.

5 THE COURT: Anything else, Mr. Weatherford?

6 MR. WEATHERFORD: Nothin' from that witness.

7 THE COURT: Thank you, sir, you may step down.

8 (Whereupon, the witness left the stand.)

9 MR. WEATHERFORD: Your Honor, I'd I'd like at this time
10 to introduce the tax assessor's tax map number showin'
11 Mrs. Gault owns that property, it coincides with numbers on
12 this exhibit, this 81-acre tract where the race track shop
13 is.

14 MR. HOLLAND: This is showin' that Ms. Mary Gault owns
15 it?

16 MR. WEATHERFORD: Yes.

17 MR. HOLLAND: Well I don't know what the dispute about
18 that is, ---

19 MR. WEATHERFORD: Well, ---

20 MR. HOLLAND: --- she's ---

21 MR. WEATHERFORD: --- I I just wanted to show that she
22 owns the property ---

23 MR. HOLLAND: I object ---

24 MR. WEATHERFORD: --- where he took the stuff ---

25 MR. HOLLAND: --- because it is not relevant, Judge, to

JIMMY CASH - DIRECT EXAMINATION BY MR. WEATHERFORD

1 anything we're talkin' about here today.

2 MR. WEATHERFORD: I offer it for the purpose to show that
3 she owns the property where he took the stuff and hid it, his
4 mother.

5 THE COURT: Alright, I, unless you have a witness that
6 can lay the foundation for the document I think his objection
7 is proper but I also don't think that he disputes what you're
8 telling me that the mother owns that property.

9 MR. WEATHERFORD: Okay. I call Jimmy Cash.

10 JIMMY CASH, having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. WEATHERFORD:

13 Q. Alright, state your name and residence for the record.

14 A. Jimmy Cash, 585 McGraw Road, Cowpens, South Carolina.

15 Q. And what is your occupation?

16 A. I'm a private investigator now, Mr. Weatherford.

17 Q. And what is your background pire -- prior to that?

18 A. I retired from Cherokee County Sheriff's Office after
19 22 1/2 years service in 2006

20 Q. And how long have you -- are you a licensed private
21 investigator?

22 A. Yes, sir, I am.

23 Q. By the State of South Carolina?

24 A. Yes, sir, I am.

25 Q. And were you contacted by Mr. Kochenower?

JIMMY CASH - DIRECT EXAMINATION BY MR. WEATHERFORD

1 A. Yes, sir, I was.

2 Q. And one of the things -- what is one of the things he
3 asked you to do this weekend?

4 A. This weekend he wanted us to document whether Mr. Gault
5 went to the race this weekend and, uh, ---

6 Q. So wha'd you do?

7 A. We went over and conducted surveillance of his shop on
8 Speedway Road.

9 Q. And what did you do find?

10 A. Seen a white F Ford 350 come in ---

11 Q. Now what what day and time was this?

12 A. Okay, this was October the 11th, it was approximately
13 10:20 ---

14 Q. You mean August.

15 A. August the 11th.

16 Q. Saturday, this past Saturday, okay.

17 A. We set up surveillance about 10:20 in the mornin' or in
18 the af -- yeah, in the mornin', stayed till the afternoon.

19 Q. What -- did you see anything with regard to a race car
20 leavin' the shop there?

21 A. I did.

22 Q. Wha'd you see?

23 A. About ten minutes till two I seen some guys pushin' a
24 race car outta the shop onto an enclosed trailer.

25 Q. What the trailer look like?

JIMMY CASH - DIRECT EXAMINATION BY MR. WEATHERFORD

- 1 A. It was a white enclosed trailer.
- 2 Q. And what was pullin' the trailer?
- 3 A. A white Ford F-350.
- 4 Q. Alright, while you were doin' that did you take some
- 5 photographs?
- 6 A. Yes, sir, I did, I actually videoed.
- 7 Q. Okay, and did you get some still photographs made from
- 8 the video?
- 9 A. Yes, sir, I did, ---
- 10 Q. Did you ---
- 11 A. --- I pulled some stills on the video.
- 12 Q. This this white truck and trailer did you see it come
- 13 in?
- 14 A. Yes, sir, I did.
- 15 Q. And and what did it do?
- 16 A. It came in, pulled through the yard, drive, whatever you
- 17 call it and then backed up to to the shop.
- 18 Q. Alright, and then what did you observe occurring?
- 19 A. I seen several people comin' and goin' from the shop
- 20 hauling equipment, I seen several people rolling tires up onto
- 21 it, at one point I seen a black tool box being pushed up onto
- 22 the trailer.
- 23 Q. Alright, did you see 'em push the race car on -- into the
- 24 trailer?
- 25 A. Yes, sir, actually whenever they pushed it out it stayed

1 momentarily, by the time I got the camera set up they pushed
2 it up onto the ramp, they set there momentarily and then they
3 pushed it onto the trailer.

4 Q. Alright, but you visually saw that?

5 A. Yes, sir, I did.

6 Q. Alright, and then what happened?

7 A. They stayed there for a few minutes, uh, everybody seemed
8 to get in different vehicles. Several people got into the
9 F-350, they departed, pulled over to the Kangaroo, fueled up
10 and went north on Interstate 85.

11 Q. Okay, let me ask you to identify some photographs, I'll
12 show 'em to Mr. Holland. Tell me what that (indicating) is.

13 A. That's the shop that I was asked to conduct surveillance
14 of.

15 Q. Okay. From what location is that taken?

16 A. My understanding is 199 Speedway Road.

17 Q. Were you on the property or across the street or where?

18 A. No, sir, I was across the street Meadow Creek Industrial
19 Park.

20 (Whereupon, a discussion was held off the record.)

21 MR. HOLLAND: We don't object.

22 MR. WEATHERFORD: Alright.

23 (Photograph marked Plaintiff's Exhibit No. 3 for
24 identification.)

25 BY MR. WEATHERFORD:

JIMMY CASH - DIRECT EXAMINATION BY MR. WEATHERFORD

1 Q. Alright, then tell me what this (indicating) photograph
2 is.

3 THE COURT: Alright, without objection that'll be
4 Plaintiff's 2?

5 THE COURT REPORTER: Three.

6 MR. WEATHERFORD: Okay.

7 THE COURT: Three?

8 (Plaintiff's Exhibit No. 3, photograph, admitted into
9 evidence.)

10 THE WITNESS: That's a photo that I took Saturday
11 afternoon.

12 BY MR. WEATHERFORD:

13 Q. Alright, what's it showin'?

14 A. A white F-350 with the white enclosed trailer.

15 Q. And and where is that located? in front the shop?

16 A. Yes, sir.

17 (Whereupon, defense counsel examined a photograph.)

18 (Whereupon, a discussion was held off the record.)

19 MR. HOLLAND: No objections to it.

20 THE COURT: Without objection be Plaintiff's 4.

21 (Photograph marked Plaintiff's Exhibit No. 4 and admitted
22 into evidence.)

23 BY MR. WEATHERFORD:

24 Q. Alright, tell me what this (indicating) one is.

25 A. That photo shows a individual and Mike Gault's in the

JIMMY CASH - DIRECT EXAMINATION BY MR. WEATHERFORD

1 blue by the, by -- on the backside a the race car, they were
2 pushin' it up onto the ramp to the trailer.

3 (Whereupon, defense counsel examined a photograph.)

4 (Whereupon, a discussion was held off the record.)

5 MR. HOLLAND: Your Honor, this witness has identified two
6 persons and there appear to be two persons on the photo but
7 unless he's got better eyes or glasses than me they're not
8 distinguishable from the background really.

9 THE COURT: Alright, you can -- that goes to the
10 credibility of the document not to admissibility so that'll be
11 Plaintiff's 5.

12 (Photograph marked Plaintiff's Exhibit No. 5 for
13 identification.)

14 BY MR. WEATHERFORD:

15 Q. Alright, did you, did you on Exhibit 5 ab -- are you able
16 to recognize Mr. Gault there?

17 A. I did. I pulled him up on binoculars several times. At
18 one time he had on a tan shirt with a holograph, drab green
19 sleeves. He left momentarily, stayed gone probly 15 to 20
20 minutes, came back in the blue t-shirt.

21 Q. Alright, so that's already been marked. In that
22 photograph looks like a top of a red truck and a little yellow
23 4-wheeler.

24 A. Yes, sir, that red Chevrolet truck had backed up just
25 before the, uh, the utility trailer came in and they loaded

1 the 4-wheeler up onto that red Chevrolet pickup.

2 Q. Alright, and did you get another photograph a that? Let
3 me show what this -- tell me what this (indicating) is

4 A. Yes, sir, that's that's the truck.

5 Q. Where are they? That's the red truck?

6 A. Yes, sir, they're turning up onto 18, fixin' to get on
7 the interstate.

8 Q. And the, uh, those I haven't introduced. And and what's
9 in front of the red truck?

10 A. The white enclosed truck.

11 Q. Alright, so that apparently the red truck's followin' the
12 trailer and the race car.

13 A. Yes, sir.

14 Q. Alright.

15 MR. HOLLAND: You don't -- you didn't offer these, did
16 you?

17 MR. WEATHERFORD: No, same thing, it's just duplicates.

18 MR. HOLLAND: I thought so. Thank you.

19 MR. WEATHERFORD: Just same shot.

20 MR. HOLLAND: And there's a red truck, okay.

21 MR. WEATHERFORD: Any objection?

22 MR. HOLLAND: To that red truck? No, ---

23 MR. WEATHERFORD: To this photograph.

24 MR. HOLLAND: No, no, sir.

25 THE COURT: Without objection be Plaintiff's 6.

JIMMY CASH - DIRECT EXAMINATION BY MR. WEATHERFORD

1 THE COURT REPORTER: Is it 5? Oh, this one's 6.

2 MR. WEATHERFORD: This'll be 6.

3 THE COURT REPORTER: Gotcha.

4 (Photograph marked Plaintiff's Exhibit No. 6 and admitted
5 into evidence.)

6 BY MR. WEATHERFORD:

7 Q. Alright, and where did, where did they all go?

8 A. You mean after they got on the interstate,
9 Mr. Weatherford?

10 Q. No, before when they just after that first picture there.

11 A. Well they left and pulled across the street to the
12 Kangaroo local mini-mart, truck stop, fuel stop, whatever.

13 Q. Alright, and they -- wha'd they do there?

14 A. Stayed there I don't know roughly 10, 15 minutes and they
15 fueled up the white white pickup truck. I observed Mr. Gault
16 puttin' fuel in, talkin' on the phone.

17 Q. Alright, tell me what this (indicating) photograph is.

18 A. Yes, sir, that's the photo I took of the rear of that
19 trailer we drew the tag off of.

20 MR. WEATHERFORD: Alright.

21 (Whereupon, defense counsel examined the photograph.)

22 (Whereupon, a discussion was held off the record.)

23 MR. HOLLAND: No objection.

24 MR. WEATHERFORD: Alright, without objection.

25 THE COURT: Without objection be Plaintiff's 7.

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

1 (Photograph marked Plaintiff's Exhibit No. 7 and admitted
2 into evidence.)

3 BY MR. WEATHERFORD:

4 Q. Did you run that tag number?

5 A. Yes, sir.

6 Q. Do you know who it came back to?

7 A. Yes, sir, it came back to I believe it was a Timothy
8 Cooper Parris Bridge Road in Spartanburg.

9 Q. Okay. And that was the this Satur -- two days ago.

10 A. Yes, sir, that's correct.

11 Q. Okay. And after they got on 85 do you know where they
12 went?

13 A. No, sir, I didn't follow 'em any further.

14 Q. Okay. Alright, your witness.

15 CROSS-EXAMINATION BY MR. HOLLAND:

16 Q. Alright, Mr. Jimmy Cash.

17 A. Yes, sir, Mr. Holland.

18 Q. I hadn't seen you around lately, I wondered where you
19 went. You're a hired hand in this case I guess.

20 A. Yes, sir.

21 Q. You're not a private investigator for your health, are
22 you?

23 A. Tryin' to make a livin'.

24 Q. Tryin' to make a livin'. How much a livin' did ya make
25 this Saturday out there?

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

1 A. No, we hadn't came to a conclusion yet.

2 Q. Was it that much, gotta count it up?

3 A. Well we gotta run an invoice.

4 Q. I got ya. How much an hour do you charge?

5 A. Seventy-five dollar.

6 Q. And you're out there how many hours?

7 A. We accumulated a good bit, Mr. Holland. I don't recall
8 right off.

9 Q. A good bit. Is a 10-hour workin' day a good bit?

10 A. Yeah, that's a good bit.

11 Q. And you spent the entire time out there at the
12 racetrack ---

13 A. No, sir.

14 Q. --- observing these things you photographed here.

15 A. No, sir.

16 Q. No? Where'd ya spend the rest of it?

17 A. We were actually hired originally to document the
18 activities of the seizure back whenever we went over to
19 Highway 5 to Hal's old place and it just kinda grew legs from
20 there. We would document by video and photos of equipment was
21 there or was not there and so it just kinda took off from
22 there.

23 Q. It just kinda grew legs, huh?

24 A. Yes, sir.

25 Q. And still walkin', isn't it?

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

1 A. Yes, sir.

2 Q. Are you continuing your investigation in this case?

3 A. It's it's whatever Kochenower and Mr. Weatherford would
4 like.

5 Q. Okay, but you you're just hired to do what they tell
6 ya ---

7 A. Yes.

8 Q. --- and they have closely directed you about what to do,
9 have they not?

10 A. Not necessarily. They just pointed me in some directions
11 that they think I might need to go.

12 Q. Well let me get specific with you. Who told you to go
13 out to the racetrack this past Saturday?

14 A. Mr. Kochenower.

15 Q. Okay, and so you were specifically directed, that that's
16 lawyer talk for just told, ---

17 A. Basically.

18 Q. --- you know. But so you are still on the payroll.

19 A. Yes.

20 Q. Did you in the course of all this surveillance, that's a
21 good investigative word, isn't it, ---

22 A. Yes.

23 Q. --- surveillance see Mr. Gault hide anything?

24 A. No, sir.

25 Q. No.

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

1 A. No.

2 Q. And that big old building out there that is the car
3 shop ---

4 A. Yes.

5 Q. --- there's plenty a room to hide sumtin' if you wanted
6 to, isn't there?

7 A. Yes.

8 Q. That's a big buildin'.

9 A. Um-hum, yes.

10 Q. You didn't see him hidin' anything in there.

11 A. No, sir.

12 Q. What you saw was him bringin' stuff out.

13 A. Yes, sir.

14 Q. And the stuff you -- he brought out was not even Total
15 Inc.'s, was it?

16 A. I I couldn't confirm or deny that.

17 Q. Well you took the tag numbers of all of 'em I'm sure.

18 A. Yes, sir, we did on the rollback. There was a roll, a
19 rollback and a freightliner tractor trailer over at Danny
20 Horton's that we confirmed ---

21 Q. Well ---

22 A. --- was his or his ---

23 Q. Tractor trailer over at Danny Horton's.

24 A. Yes.

25 Q. Danny Horton's is a repair shop, isn't it?

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

- 1 A. Yes, sir, that's correct.
- 2 Q. And it was being repaired, was it not?
- 3 A. It wasn't at the time, no.
- 4 Q. Well what other reason would it been there?
- 5 A. Well ---
- 6 Q. Danny Horton is a guy that repairs trucks and trailers
7 and such, isn't he?
- 8 A. It wasn't in the repair yard.
- 9 Q. It wasn't what?
- 10 A. It wasn't in his repair yardage area ---
- 11 Q. Well which yard was it in?
- 12 A. Right next door I'm assumin' is Mr. Horton's residence.
- 13 Q. Okay, but it was at Horton's, wasn't hid, sittin' right
14 outdoors, ---
- 15 A. Yes.
- 16 Q. --- right in the open, ---
- 17 A. Yes.
- 18 Q. --- not secreted, that's lawyer language, hidden,
19 nothin', was there?
- 20 A. No, sir.
- 21 Q. And you and your entire time in this investigation which
22 began when?
- 23 A. Latter part a July.
- 24 Q. Okay, since ---
- 25 A. Mr. Holland, I can't remember the exact date.

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

1 Q. Okay, do you have a a log? Don't you keep a log about
2 your hours ---

3 A. I do ---

4 Q. --- and dates?

5 A. --- but I don't have it with me.

6 Q. Oh, you you weren't asked to bring it here.

7 A. No, sir.

8 Q. Okay. When were you licensed?

9 A. June 20th of last year 2011.

10 Q. So a little over a year and a month you've ---

11 A. Yes, sir.

12 Q. --- had your license from SLED ---

13 A. Yes.

14 Q. --- to be a private I. When you worked at the sheriff's
15 office, which sheriff's did you work for?

16 A. I worked for Billy Blanton.

17 Q. Okay, and Mr. Muller just didn't keep you on or what
18 happened to ya?

19 A. No, sir, actually I retired at the end of 2006.

20 Q. Oh, you've retired.

21 A. Yes, sir.

22 Q. With pay? I ---

23 A. Few dollars every month.

24 Q. --- I envy you, sir, don't get the wrong idea. And you
25 saw a trailer, a white trailer and them put a race car in

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

1 it?

2 A. Yes, sir.

3 Q. Do you know it was a race car or just a car?

4 A. Yes, sir, I've seen, I've seen 'em before enough to know
5 what they are.

6 Q. It's got numbers painted on it?

7 A. Yes, sir, most of 'em.

8 Q. This one didn't, did it?

9 A. I can't recall seeing the actual number from where I was
10 at but it was a black race car.

11 Q. You see a tag number ---

12 A. No, sir.

13 Q. --- on the trailer?

14 A. On the trailer, yes, sir, I did.

15 Q. On the dually truck?

16 A. Not the truck I did not.

17 Q. Who owned the trailer?

18 A. It came back to a Timothy Cooper up on ---

19 Q. Timothy Cooper again.

20 A. Yes.

21 Q. Same guy with the red truck.

22 A. I I I didn't run that tag.

23 Q. You didn't run it?

24 A. No, sir.

25 Q. And these pictures you took here they come from a video

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

1 that you ---

2 A. Yes.

3 Q. --- ran. Do you still have possession of that video?

4 A. I gave it to Mr. Weatherford this morning.

5 Q. Okay, good but these pictures you selected from the
6 video, did you not?

7 A. Yes.

8 Q. So they're what you were asked to bring here to try to
9 show sumtin'?

10 A. Yes.

11 Q. But they don't show Mike Gault hidin' anything, do
12 they?

13 A. No, sir.

14 Q. They sure don't show him sellin' anything, do they?

15 A. No, sir.

16 Q. The truck was Timothy Cooper, is that correct?

17 A. That's what, that's what the registration ---

18 Q. What the tag ---

19 A. --- came back to me, Mr. Holland.

20 Q. Did any tag show ownership on Total Inc.?

21 A. On Saturday events, Mr. Holland?

22 Q. Anywhere that you've seen?

23 A. Yes. Well not -- no, let me correct that, came back to
24 Gault's Used Cars, not Mike Gault, yeah.

25 Q. You you know better than I do what a rollback is.

JIMMY CASH - CROSS-EXAMINATION BY MR. HOLLAND

- 1 A. Yes, sir.
- 2 Q. Did you see any rollbacks at the repair shop up here?
- 3 A. No, sir, I don't recall seeing anyone there.
- 4 Q. Didn't Mr. Kochenower tell you there were some rollbacks
- 5 up there?
- 6 A. He had at one point.
- 7 Q. At what point was that?
- 8 A. Sometime during the investigation, Mr. Holland, I don't
- 9 exactly remember the time and date.
- 10 Q. That was beginning in June and ---
- 11 A. July, rather the end of July whenever we started workin'
- 12 for him.
- 13 Q. --- and comin' up till Saturday ---
- 14 A. Yes.
- 15 Q. --- and today of course. You being paid today, aren't
- 16 you?
- 17 A. I hope to be.
- 18 Q. Okay, me too. The license plates, I I believe I asked
- 19 you but let me make sure I understood ya, the license plates
- 20 that you saw, that you, quote, ran, that means you get the
- 21 highway department on on the horn and find out who owns that
- 22 license plate, isn't that correct?
- 23 A. Yes.
- 24 Q. None of 'em showed Total Inc., did they?
- 25 A. No, sir.

JIMMY CASH - REDIRECT EXAMINATION BY MR. WEATHERFORD

1 Q. Thank you.

2 THE COURT: Any redirect limited to what he went into?

3 REDIRECT EXAMINATION BY MR. WEATHERFORD:

4 Q. Just just a you mentioned sumtin' about Danny Horton in
5 Cowpens what was it you said you found over there that
6 belonged to Gault's Used Cars?

7 A. There was one rollback, it was blue in color and there
8 was a ---

9 Q. What make was it?

10 A. I believe it was a GMC, Mr. Weatherford, if I recall
11 right.

12 Q. What else?

13 A. There was a beige tan champagne looking freightliner
14 truck with a trailer hooked to it and came back to Gault Used
15 Cars.

16 Q. And anything else?

17 A. There was a black rollback there that came back not on
18 file, apparently it hadn't been registered in a while or...

19 Q. Okay. Alright, that's all.

20 THE COURT: Thank you, sir, you may step down.

21 (Whereupon, the witness left the stand.)

22 MR. HOLLAND: No questions, Judge.

23 MR. WEATHERFORD: I call Ben Kochenower.

24 (Whereupon, the witness came forward.)

25 BEN KOCHENOWER, having been

BEN KOCHENOWER - DIRECT EXAMINATION BY MR. WEATHERFORD

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. WEATHERFORD:

3 Q. Alright, state your name and occupation, please.

4 A. Ben Kochenower, I'm a CPA in public practice here in
5 Gaffney, South Carolina.

6 Q. And your connection with this case is?

7 A. This court has appointed me as a the receiver in this
8 case.

9 Q. And what do you understand your duties as a receiver are?

10 A. I understand them to be to identify and acquire property
11 and do what is necessary to sell it or otherwise dispose of it
12 to satisfy the judgment.

13 Q. Alright, and tell the Court about your efforts to do
14 that.

15 A. Well, back in March, I believe it was the 13th, I made a
16 trip to the Blacksburg location where Mike Gault has a used
17 car and a, and a salvage yard and I attempted to identify
18 certain properties there and begin the process of of of
19 acquisition.

20 Q. Have, uh, while you were there did you identify
21 property?

22 A. Yes. I did not get into the garages, I I identified some
23 some equipment behind the shop building and identified some
24 and listed some properties that were in the front yard, in the
25 front, in fronta the office and the shop.

1 Q. What did you list or was there ---

2 MR. HOLLAND: Your Honor, ---

3 MR. WEATHERFORD: --- on March 13th?

4 THE COURT: Hang on.

5 MR. HOLLAND: --- as Your Honor recalls we had a hearing
6 earlier on this same ---

7 MR. WEATHERFORD: I'm not gettin' ---

8 MR. HOLLAND: --- ques ---

9 MR. WEATHERFORD: --- into that.

10 MR. HOLLAND: --- at which time Your Honor ruled that
11 Mr. Gault was not in contempt and I understood this matter ---

12 MR. WEATHERFORD: He's anticipatin' my question.

13 THE COURT: Hang on, let -- go ahead.

14 MR. HOLLAND: I understood that we were here today
15 talkin' about stuff that had happened like beginning in July
16 up to now and so whatever he's saying has has been ruled on by
17 this court and I don't think it's relevant to this proceeding.

18 MR. WEATHERFORD: Let me rephrase.

19 THE COURT: Okay.

20 BY MR. WEATHERFORD:

21 Q. Did you see anything there on March the 13th that you
22 haven't -- that was not there when you went back after the
23 Court order was amended?

24 A. Four rollbacks ---

25 Q. And have you ---

- 1 A. --- four ---
- 2 Q. Four rollback.
- 3 A. Four.
- 4 Q. And do you want to get possession a them?
- 5 A. Yes.
- 6 Q. And have you located any of them?
- 7 A. I believe a couple of 'em.
- 8 Q. Where?
- 9 A. In in in Cowpens at at Horton's.
- 10 Q. Alright, did you try to to to get those?
- 11 A. Yes.
- 12 Q. And did Mr. Horton object to that?
- 13 A. Yes, he did.
- 14 Q. Did he tell you that he needed a court order specifyin'
- 15 what you could get?
- 16 A. Yes, he did.
- 17 Q. And now that we've specified them, Your Honor, I think
- 18 it's already been filed on the record, this is a transcript of
- 19 the judgment which has been entered in Spartanburg County so
- 20 that now the Court would have authority to order the receiver
- 21 to be allowed to go on and and obtain the property of Gault's
- 22 Used Cars in the possession of Mr. Horton, is that what you're
- 23 askin' for?
- 24 A. Yes, sir.
- 25 Q. So is as parta the order today you're asking to to be

1 specifically allowed to obtain the property that Mr. Jimmy
2 Cash just identified that's at Horton's be allowed in a court
3 order to go get it?

4 A. Yes, sir, that's correct.

5 Q. Okay. Now the other two rollbacks have you been able to
6 locate them?

7 A. No.

8 Q. Have you been askin' for 'em?

9 A. I asked Mr. Gault where they were and he told me they
10 were down at the other location and I said that's Highway 18,
11 he said, Yeah, they're down there.

12 Q. And?

13 A. And we went right down there and they were not there.

14 Q. And have you seen 'em since?

15 A. No, sir.

16 Q. You think you're entitled to them?

17 A. Yes, sir, I do.

18 Q. Did you write Mr. Gault a letter and ask him I think
19 that's in exhibits from the the March 13th hearing?

20 A. Back in June I wrote a letter to Mr. Gault and to to both
21 locations and asking for information relative to what Total
22 Inc. owned and what he owned that was not a parta Total Inc.
23 and asked him for a list of all the liens and and so on and I
24 have not heard anything back on that.

25 Q. When you went did you go back to the location in

1 Blacksburg?

2 A. Went back to the location in Blacksburg.

3 Q. And when did you do that?

4 A. That was on July 30.

5 Q. June the 12th, wasn't it? Wait a minute that's -- okay,
6 July 30th.

7 A. Monday July 30 af -- about two o'clock.

8 Q. Did you have a list of things that you had compiled ---

9 A. Yes, I did, sir.

10 Q. --- that of property from court records, bank records and
11 various and sundry things that you believe belong to the
12 debtor Total Inc. doin' business as Gault's Used Cars?

13 A. I had a li -- I compiled a list from the court records
14 from there was one letter from from Mr. Holland's office dated
15 July 11, 2011, bank records, court testimony and and my
16 personal observation and again I mailed that certified letter
17 on April 12 and did not receive a response but this list is
18 compiled from from what information was available.

19 Q. Alright, and and one a the things you mentioned, I don't
20 believe is in the record yet, was a letter from, uh, dated
21 July 11, 2011 from Mr. Holland.

22 MR. HOLLAND: Your Honor, this is a quite comprehensive
23 and accurate statement, I don't have any objections to it.

24 THE COURT: Alright, without objection that'll be
25 Plaintiff's 8?

1 (Letter with list of property marked Plaintiff's Exhibit
2 No. 8 and admitted into evidence.)

3 BY MR. WEATHERFORD:

4 Q. Alright, and from this Exhibit No. 8 here now I I believe
5 on the back it has the list of property owned by Total Inc.
6 and property owned by Mike Gault personally.

7 A. Yes, sir, I recall that, yeah.

8 Q. Wait a minute. I've got the wrong, one of the wrong
9 attachments. Bear with me a second, Your Honor. There it is,
10 think this needs to be stapled.

11 THE COURT: And you wanna show that again to Mr. Holland
12 to be sure he doesn't have any objection since you've changed
13 the attachments.

14 MR. HOLLAND: Oh, yeah.

15 MR. WEATHERFORD: All I did put that on the back. I had
16 two a these and none of 'em in.

17 MR. HOLLAND: Those aren't things I submitted.

18 MR. WEATHERFORD: Yeah.

19 (Whereupon, a discussion was held off the record.)

20 MR. WEATHERFORD: Yeah, they came with your letter.

21 MR. HOLLAND: Okay, well they're right.

22 THE COURT: Okay, without objection.

23 BY MR. WEATHERFORD:

24 Q. Alright, from the list of property on Exhibit 8 and from
25 after bein' appointed receiver, where you allowed to go review

1 bank records of Total Inc. or Gault's Used Cars?

2 A. I went to one bank that I had reason to believe had some
3 accounts with Mr. Gault and I obtained from from that bank,
4 American Community Bank, bank records and a a summary, a list
5 of the liens that they had on equipment that Total Inc. --
6 owned by Total Inc.

7 Q. Alright, so I'm tryin' to get you, uh, and then there are
8 things on this list, I've given Mr. Holland a copy of it,
9 let's get you to identify what that is.

10 A. This is the list that I made up from all those I
11 compiled, excuse me, I didn't make it up, that's a an
12 incorrect terminology but I I compiled from the records that I
13 mentioned to to identify as best I could what I would be
14 looking for ---

15 Q. Alright, now ---

16 A. --- in Total Inc.

17 Q. --- does that also include things that you had seen
18 visually from your first visit?

19 A. Yes, it did, it had the four rollbacks there, a John
20 Deere loader and it -- yes, it did.

21 Q. Alright. Now did you have that with you when you went
22 back on the 30th?

23 A. Yes, I did.

24 Q. July the 30th.

25 A. Yes, I did.

1 Q. And well while you were there did you have a conversation
2 with Mr. Gault about the whereabouts of those things?

3 A. Yes, I did. I made note on this list as to what his
4 responses were.

5 Q. Well, te -- just kinda run through 'em right quick.

6 A. Two thousand Chevy -- 2007 Chevrolet Tahoe, I asked him
7 about that, he said that was at the other place down on
8 Highway 18.

9 Q. And and was it?

10 A. No, we we did not find it there.

11 Q. You went directly from Blacksburg to Union Highway.

12 A. Yes, we did.

13 Q. And it wasn't there.

14 A. It was not there.

15 Q. The next thing.

16 A. A 1995 Harley Davidson, he told me that Larry Coyle
17 (phonetic), a a man named Larry Coyle was currently working
18 it. We have not been able to contact or or get in contact
19 with a Mr. Coyle.

20 Q. So still don't have any ---

21 A. No.

22 Q. --- Harley.

23 A. I inquired about the the 53 foot car hauler ---

24 Q. Wait a minute. Let me stop ya.

25 A. Yes, sir.

BEN KOCHENOWER - DIRECT EXAMINATION BY MR. WEATHERFORD

1 Q. Any objection to offerin' this as an exhibit?

2 THE COURT: Any objection, Mr. Holland?

3 MR. HOLLAND: Uh, to that list?

4 MR. WEATHERFORD: That list that that he compiled.

5 MR. HOLLAND: List that he made?

6 MR. WEATHERFORD: Yeah.

7 MR. HOLLAND: No objection.

8 MR. WEATHERFORD: Alright.

9 THE COURT: Without objection be Plaintiff's 9.

10 (List of property marked Plaintiff's Exhibit No. 9 and
11 admitted into evidence.)

12 BY MR. WEATHERFORD:

13 Q. Alright, now we're we're talkin' about and have been
14 about Exhibit 9 ---

15 A. Okay, sir.

16 Q. --- so just go ahead and tell us what the run down of the
17 things you were lookin' for and what what you did or didn't
18 find.

19 A. I inquired of a 53 foot car hauler and he said that was
20 in a field offa 329. Uh, ---

21 Q. Do you know ---

22 A. --- he ---

23 Q. --- anything about that?

24 A. We had not followed up on that.

25 Q. Okay.

1 A. I was -- I understand that's racetrack property and so to
2 to date we haven't gone on any ---

3 Q. Are ---

4 A. --- property.

5 Q. --- are you askin' per -- permission to enter the
6 racetrack property and obtain any personal property that might
7 be owned by the debtor?

8 A. Total Inc.? Yes, sir, I am.

9 Q. Alright.

10 A. Yes, sir, I am. We we -- I inquired of Mr. Gault about
11 the GMC C5500, he said that was at Horton's Truck Repair in
12 Cowpens bein' worked on.

13 Q. You find it there?

14 A. No, we did not.

15 A. The 85 Caterpillar loader he said Larry Coyle was workin'
16 on that. The Case 821 tractor motor he said Mason Motors had
17 a lien on it, now that was present and we we did load that up.

18 Q. You have obtained that.

19 A. We've obtained that and I've indicated on here that we
20 did seize it. A 2002 GMC truck he indicated that Mason Motors
21 has a lien on that. We did not see it there that I know of,
22 uh, and then we -- I asked about the 2005 freightliner, he
23 told me that Larry Coyle was working on that. I believe we
24 subsequently found that over at Horton's ---

25 Q. In Black ---

1 A. --- I believe ---

2 Q. Cow --

3 Q. --- in in Cowpens. I asked him about the race car, the
4 Rocket, I said, What is this Rocket, he said, That's a race
5 car, and this is listed on some of the records that you've
6 entered into evidence earlier, he said that's the race car,
7 that's a race car and I asked him about that and he said that
8 he actually indicated, he said, I own two (cough) they're both
9 beat up. He said he owns two race cars but they're both
10 pretty beat up and he said they were, uh, he said they were
11 wrecked, they were junk is what he told me. I asked about the
12 rollbacks and he told me that the GMC rollback when I asked
13 him, I said that's that's yours, that's the one with Gault's
14 on the side, he said, Yeah, that's been repossessed by Mason
15 Motors.

16 Q. You find ---

17 A. He told ---

18 Q. --- that?

19 A. I have not. Well well we've -- we found that over at
20 Horton's ---

21 Q. Okay.

22 A. --- in in his yard. Al's rollback he said Horton's was
23 working on that, he'd be bringin' it back that afternoon the
24 30th. Uh, ---

25 Q. You've seen that?

1 A. Al's rollback that I've seen was a white one. There's
2 one over there that's black, it looks like one of the ones
3 that was on the yard when I first got there ---

4 Q. First time you went did you see a white Al's rollback?

5 A. Yes.

6 Q. And since then have you seen it?

7 A. No.

8 Q. Haven't been able to find it, did ---

9 A. No.

10 Q. Okay.

11 A. And then the two 3500s, the Ram and the GMC, he said
12 those are at the other place and I said, That's Highway 18, he
13 said, Yes, that's Highway 18. He said they were, they were
14 there. We went there and couldn't -- we didn't find 'em.
15 Then there were a couple of forklifts and a pan and a a -- the
16 the Toyota forklift, uh, but but when we were, when we were
17 loading the forklifts, the sheriff's deputy, one of 'em came
18 to me and said, Mary wants to see you and I said, Well, who's
19 Mary and she -- he said, Well, Mary Gault, so I -- he pointed
20 me in the direction of the shop, I looked at down here and
21 Mike had a lady with him that was walking out toward me and I
22 walked up toward them and introduced myself or they introduced
23 themselves and she said she was Mrs. Gault, that was
24 apparently Mike Gault's mother and she said that she owned one
25 of the forklifts and she said that Mike owns the other one,

1 has owned it for a number of years and so I asked him, I I
2 told him I would need some documentation on that but that
3 that's fine if they own it. If she owned it, that's fine,
4 we -- she can have it, you know, but we went ahead and took
5 'em and they are and and, you know, bein' held this time.

6 Q. Alright, uh, alright, anything else on that list that was
7 not?

8 A. I was not able to ask him about everything on the list.
9 Two hundred cars in the salvage yard, I don't know that
10 there's that many back there. There are not -- there were not
11 75 cars on the lot, there might have been a couple a dozen at
12 the most. Shop equipment, engines, hoists, motor stands,
13 there were 4 li -- there were actually 5 lifts there. There
14 were 2 in the front sho -- 3 in the front shop, 1 in each bay
15 and there was another shop down behind on the right and there
16 were 2 lifts there, 1 of 'em was was new and I I asked Mike,
17 Do you own any of those and he said he owned the new one down
18 there in the shop, he said he owned that one so I did go down
19 and observe that lift. There were also numerous engines and
20 transmissions there on the, on the property that I observed
21 and I got pictures of.

22 Q. Alright, and Mike did he he give you a piece a paper
23 with regard to those forklifts?

24 A. He did. He gave me a piece a paper and and actually he
25 is and and I didn't see him write it up but I asked him to and

BEN KOCHENOWER - DIRECT EXAMINATION BY MR. WEATHERFORD

1 I have it here. It appears that Mary Gault signed one brief
2 statement, I own the Toyota forklift 10 years Mary Gault and
3 then another one here that says I own the Mitsubishi forklift,
4 has it 7 years and it looks like Mike Gault. I didn't see him
5 write this or sign it ---

6 Q. Who gave it to you?

7 A. Mike Gault did. Mike also told me when we were loading
8 the big front end, the big loader with the big forks on it he
9 he said that he owned the two forks that were on the front, he
10 owned 'em personally.

11 Q. Did you go ahead and take 'em anyway?

12 A. Yes, yeah.

13 MR. WEATHERFORD: Offer this.

14 MR. HOLLAND: Whose -- he said that they signed?

15 MR. WEATHERFORD: He said Mike Gault gave him that piece
16 a paper.

17 THE DEFENDANT: Were they signed?

18 MR. HOLLAND: Were they signed in his presence?

19 THE WITNESS: No, that ---

20 MR. HOLLAND: Okay.

21 THE COURT: You intend to introduce that?

22 MR. WEATHERFORD: Yes, sir, offer that one.

23 THE COURT: Without objection ---

24 MR. HOLLAND: No objection.

25 THE COURT: --- be Plaintiff's 9.

1 THE COURT REPORTER: Should be 10.

2 THE COURT: Ten, alright.

3 (Statement by Mary Gault marked Plaintiff's Exhibit
4 No. 10 and admitted into evidence.)

5 BY MR. WEATHERFORD:

6 Q. Alright, I'm gonna show ya Exhibit 8, back page there
7 Mike Gault personal property owned, do you see any forklifts
8 on that list?

9 A. No, sir.

10 Q. Do you see any Hyster forks on that list?

11 A. No, sir.

12 Q. Okay, alright. But he told ya he owned it.

13 A. He told me he owns that and he o -- told me he owned two
14 race cars.

15 Q. Did you, did you ask him about, did you ever talk to him
16 about race cars?

17 A. Yeah, yes, I did. I talked to him that day when we were
18 there on July 30th and then I called him again believe on on
19 Thursday August that woulda been August 2.

20 Q. August 2nd.

21 A. August the 2nd.

22 Q. Yeah, there was a a big race comin' up, wasn't there?

23 A. Big race. I asked him, I told him I was interested in
24 the race car, I wanted to come by and get it and he indicated
25 that he didn't own the race car he'd be racing in, that

1 somebody else owned it.

2 Q. Alright, did you, did you check the I believe this came
3 off the Cherokee Speedway website about -- di -- were ya able
4 to go get the race car before this race?

5 A. No.

6 Q. Alright. And did you check the website to see if Mike
7 Gault raced in that race?

8 A. Yes, and and it appears that he did and he came in 11th.
9 Uh, ---

10 Q. Do you still want that race car to check ---

11 A. Yes.

12 Q. --- out see who owns it?

13 A. When I talked to him on that Thursday, he indicated that
14 he still owned two race cars, he told me that again on the
15 phone that he owns two race cars.

16 Q. Alright. Alright, are you askin' the Court for help in
17 obtainin' the property apparently which is all (cough)
18 racetrack property, the race shop?

19 A. Yes, I am.

20 Q. Do you know how that should be done?

21 A. Well as I understand it if I have access to it then I can
22 determine who owns it, who has liens on it and if there's any,
23 if if I would have any interest interest in it whatsoever from
24 in -- from the standpoint of of satisfying this judgment.

25 Q. But in order to do that, stuff has to be stay put.

BEN KOCHENOWER - CROSS-EXAMINATION BY MR. HOLLAND

1 A. Yes, sir, that's correct and -- yes, sir, that's correct.
2 I would suggest that somehow we arrange for Mr. Gault to have,
3 you know, be limited in in his his access to to communications
4 or whatever so we can get over there and have time to look and
5 see just ---

6 Q. Alright ---

7 A. --- in case it might be moved before we got there.

8 Q. Alright, I think that's all. Answer Mr. Holland's
9 questions.

10 A. Okay.

11 (Whereupon, a discussion was held off the record.)

12 THE COURT: Yes, sir, Mr. Holland.

13 MR. HOLLAND: Thank you, Your Honor.

14 CROSS-EXAMINATION BY MR. HOLLAND:

15 Q. Let me understand this real good, Ben. You have been to
16 the Blacksburg place Tis -- whatever it is, Tessneers [sic]
17 twice, ---

18 A. Yes. Yes, sir.

19 Q. --- is that correct?

20 A. Yes.

21 Q. Either time you went there did you give anybody any
22 notice that you were comin'?

23 A. No, sir, did not.

24 Q. You just showed up.

25 A. As I ---

1 Q. You got there the first time I know Mr. Gault was not
2 there when you arrived, that's correct, isn't it, ---

3 A. That's correct.

4 Q. --- and he showed up later so you just drove in there and
5 proceeded to try to seize things without notice, isn't that
6 correct?

7 A. We called him when we drove on the yard.

8 Q. You were already there when you called him, that that's
9 what you said in your deposition that ---

10 A. That's correct.

11 Q. Okay, okay. So how much in advance did you know you
12 were goin' there?

13 A. About 14 hours, I decided the day before.

14 Q. Okay, and when you went there you took Blanton's Wrecker
15 Service, didn't ya?

16 A. Yes.

17 Q. And you hired them to go I take it.

18 A. That's correct.

19 Q. Did you check to see if they're insured?

20 A. Yes, they are.

21 Q. They are?

22 A. Um-hum.

23 Q. Liability insurance?

24 A. Yes, sir.

25 Q. Okay. And when you went that time did you take any of

1 these private detectives with ya?

2 A. No, sir.

3 Q. At this time it's true, isn't it, that you have hired no
4 less than three private detectives in this matter.

5 A. Three have been working, yes, I hired one and this one
6 got a couple a folks to help him.

7 Q. Do you have any reports from any of 'em?

8 A. Not at this time, that's an ongoing matter.

9 Q. Did they give you any evidence to the effect that what
10 you claimed Mr. Gault had hidden anything from 'em?

11 A. They have not, no.

12 Q. Okay. Other than what you think mighta happened, do you
13 have any other evidence that you claim proves Mr. Gault
14 consciously hid some of this property from you?

15 A. Yes, his personal testimony to me that he said it's here
16 or here and I looked and it was not so his his direction to me
17 remains fruitless in terms of finding where the stuff is.

18 Q. Just to get things in perspective here, Ben, you first
19 went over there on March 13th ---

20 A. Yes, sir.

21 Q. --- and it was July 30th when you went the next time.

22 A. That's correct.

23 Q. Did you ex -- and and in the meantime he had this court's
24 order allowing him to continue doing business, ---

25 A. Yes, ---

1 Q. --- you realize that, ---

2 A. --- that's correct.

3 Q. --- and so you have no problem that he at that time
4 continued doing his business.

5 A. I would expect him to continue to do his business.

6 Q. Let me just take these four four haulers, back, what do
7 you call those things?

8 A. I think they call 'em rollbacks.

9 Q. Rollbacks, rollbacks, alright now. Four rollbacks you
10 saw when you were there first time.

11 A. Yes.

12 Q. Went back after March 13th on July 30th again and they
13 were not there, correct?

14 A. That's correct.

15 Q. And you went over to Horton's at one time, didn't ya?

16 A. Yes.

17 Q. And he had two of 'em, didn't he?

18 A. He had two. He had two, yes.

19 Q. And he told you that he had a repair bill on 'em, didn't
20 he?

21 A. He told me he had a repair bill on 'em. He told me that
22 he was not repairing anything and that none of those were
23 there for repair, ---

24 Q. You just ---

25 A. --- that's what he told me.

BEN KOCHENOWER - CROSS-EXAMINATION BY MR. HOLLAND

1 Q. That's what he told ya. He told you also, maybe I can
2 get your memory refreshed here, that he had repair bills on
3 'em and he wasn't gonna let 'em go till that got paid.

4 A. No, sir, he told me he had repair bills on 'em that he
5 did intend, he wou -- he would hold 'em but that he realized
6 that I could take 'em but he needed a court order.

7 Q. I know you're not a lawyer or anything but you familiar
8 with the term "mechanics lien" ---

9 A. I've heard.

10 Q. --- what that is?

11 A. Yes.

12 Q. Do you realize that takes priority on possession of a
13 vehicle?

14 A. On possession?

15 Q. Right.

16 A. You're you're talkin' about a seizure?

17 Q. He can hold it ---

18 A. Are you telling me, hold on, but you're telling me that I
19 can't seize it if there's a mechanics lien?

20 Q. I'm tellin' you that's what the law tells ya if you'll
21 check on it.

22 A. Well that's fine.

23 Q. Okay. So you didn't seize 'em ---

24 A. No, sir.

25 Q. --- but ya knew they were there.

1 A. Knew they were there.

2 Q. How'd ya find out?

3 A. I don't recall. I believe one of our investigators saw
4 'em there.

5 Q. I think Mr. Cash mentioned that a while ago but he
6 mentioned a truck some kind, big white truck. Is that
7 included in your list here?

8 A. I don't know what you're referring to.

9 Q. Okay, the stuff at Horton's.

10 A. Okay.

11 Q. You found out it was at Horton's.

12 A. Yes.

13 Q. My question is real simple: How did you find out they
14 were at Horton's?

15 A. One of the investigators told me they'd seen 'em there.

16 Q. And Mr. Gault told ya also, didn't he?

17 A. Mr. Gault also told me that two rollbacks were there,
18 yes.

19 Q. Well I I thought you must have overlooked ---

20 A. Excuse me, ---

21 Q. --- what he had told ya.

22 A. --- yes, sir, you're correct, ---

23 Q. Okay.

24 A. --- Mr. Gault told me they were there, two rollbacks.

25 Q. Okay, so the previous visits were done with no advance

1 notice to the ---

2 A. Yes, ---

3 Q. --- Tessneer [sic] place.

4 A. --- that's correct.

5 Q. Two wreck cars -- race cars wrecked, have you any
6 knowledge of what those things are wrecked race cars?

7 A. I haven't seen any wrecked race cars.

8 Q. Have any of your investigators in all their
9 activity -- by the way you do have three investigators on
10 this, don't ya?

11 A. I have had from time to time.

12 Q. And they're all workin' for pay I take it.

13 A. I'm paying 'em personally so far yes, sir.

14 Q. But you expect to be paid outta this matter I expect,
15 don't ya?

16 A. I have no expectation of that whatsoever.

17 Q. Okay.

18 A. I would hope so but I -- but that'll be a matter to come
19 before the Court I'm sure.

20 Q. Okay. This list here this I think it's maybe Exhibit 8
21 8, I'm not sure.

22 A. Yes, sir.

23 Q. Right there in front of ya, what's number?

24 A. Nine it looks like.

25 Q. Exhibit 9. That list is a result of your studying

1 documents.

2 A. Yes.

3 Q. And you put it together when? It's not dated, mine
4 isn't, isn't signed either.

5 A. It's not dated or signed and it was put together over
6 about a three, four-week period.

7 Q. Okay, do you consider it to be total and complete?

8 A. No, sir.

9 Q. Would you tell the Court what is not on there that you
10 know about.

11 A. Right now I'm not sure what's on there that I don't know
12 about.

13 Q. Well been talkin' about these rollbacks, four of 'em, are
14 they on there?

15 A. Yes.

16 Q. The the bulldozers or front end loaders, whatever you
17 call those big old creatures, they're on there.

18 A. They're on here.

19 Q. Again, what are you claimin' here today that isn't on
20 there that's being hidden from you?

21 A. Some of this is being hidden from me. There are two
22 rollbacks that he said were at the other place on 18 that
23 weren't there, there's a Tahoe he said was down there that
24 wasn't there.

25 Q. Specifically, have you gone to take possession of those

1 items?

2 A. Yes.

3 Q. When?

4 A. We went to take possession of 'em on July 30th and they
5 were not where he said they were.

6 Q. Okay. Last week, wasn't it last week we talked about
7 this matter you and I?

8 A. Yes, sir.

9 Q. I brought you a document from Ms. LC Mason Enterprises.
10 Didn't I bring that document to you?

11 A. You brought me something from them, yes.

12 Q. And doesn't it establish that the LC Mason Enterprises
13 has a lien on an item that you picked up?

14 A. It does not establish that, it does not establish that at
15 all.

16 Q. Did you check with the Secretary of State on that?

17 A. I haven't yet. I've looked at the document you sent me.
18 We're still investigating that.

19 Q. We. Now you and your three investigators?

20 A. I am investigating that myself ---

21 Q. Okay, well ---

22 A. --- yes.

23 Q. --- when I gave it to ya what last Thursday, ---

24 A. Last Thursday.

25 Q. --- I told you that that little thing at the bottom was a

1 number you could use, the Secretary of State could confirm
2 that.

3 A. Sure.

4 Q. You have not bothered to do that?

5 A. I read the document, sir, and it clearly says that that
6 lien is on whatever is purchased from that company.

7 Q. Okay, and also I gave you a copy of a check.

8 A. The check is made out to Total Inc., is it not?

9 Q. Right.

10 A. Does it say that it is for a loader?

11 Q. Says floor plan number 4237 and as you know those are the
12 last four numbers of that front end loader you possessed.

13 A. I have not had a chance to check that out.

14 Q. And this lady stood right and told you before you picked
15 it up she had a lien on it, didn't she?

16 A. And I picked it up and I told her that her lien would be
17 protected.

18 Q. Yes, you told her she could go and bid on it and maybe
19 get it back or get the money or sumtin', didn't ya?

20 A. We'd had a discussion on sev -- on two or three different
21 occasions and I called her the next day and she understood and
22 I understand that her lien comes first, there was no
23 misunderstanding about that.

24 Q. Do you know how much her lien is?

25 A. No, I do not.

1 Q. It's over \$30,000 ---

2 A. I have asked her to provide that to me and she hasn't
3 yet ---

4 Q. Well I brought it to ya last week, didn't I?

5 A. Well that's the check that was written, that is not
6 the ---

7 Q. Yeah.

8 A. --- balance of the lien, sir.

9 Q. But you haven't bothered the Secretary of State about it.

10 A. I have called her and I tried to get a hold of her and
11 and I anticipate that I will.

12 Q. "Her" being ---

13 A. The lady from ---

14 Q. --- Norton?

15 A. Mason ---

16 Q. Yeah.

17 A. --- Owners, yeah.

18 Q. Okay, also, she has a a, we claim and point out to you, a
19 lien on a 2002 GMC Sierra. Are you aware a that?

20 A. No, sir, I haven't received any information from her that
21 I've asked for yet. I anticipate that she will forward that
22 to me and I'll have a chance to look at it.

23 Q. Let me ask you this: If you have the serial number on a
24 vehicle, you can call the highway department and get that,
25 can't ya, copy a the title with the lien on it?

1 A. I believe that that can be done, yes.

2 Q. And this one I think is in your possession, is it not?

3 A. What?

4 Q. This this statement from the highway department title ---

5 A. The title?

6 Q. --- on 2002 GMC Sierra.

7 A. I'm not aware of what you're just, uh, what you're
8 referring to.

9 Q. Let me just generalize it maybe for ya. Is it gonna be
10 your policy throughout this to seize property when you have
11 complete and direct knowledge that there is a lien on it?

12 A. The fact that there's a lien on it does not prevent me
13 from seizing and obtaining it. My job is to determine what is
14 owned by Total Inc. and what might have a lien on it that I
15 need to protect and then acquire the equity if there is any
16 but I do not have heretofore the quality of knowledge that you
17 have mentioned here about anything yet.

18 Q. Let's see, you were appointed when last March ---

19 A. That's correct.

20 Q. --- as receiver and you still don't know about the lien
21 situation? For instance, do you know that you should give
22 these lienholders four days notice before you seize their
23 property?

24 A. I'm unaware of that, sir.

25 Q. Okay, I thought I -- you woulda done it I know if you'd

1 known it.

2 A. Yeah.

3 Q. Okay, the property that you took that Ms. Mary Gault says
4 was hers, where is it located presently? It's a forklift says
5 here.

6 A. Presently it's located at Blanton's Wrecker Service.

7 Q. Do you have any idea what's being done to secure that
8 property out at Blanton's?

9 A. It is in their locked yard. They hold a lotta property
10 for a lotta people out there and but that is, it is secured
11 in -- on their property and it's ensured.

12 Q. You've got a copy of the policy?

13 A. Excuse me?

14 Q. Do you have a copy of the policy of insurance ---

15 A. I have ---

16 Q. --- on Blanton's?

17 A. --- a certificate of insurance, I don't have a copy of
18 the policy.

19 Q. Okay. What does it cover?

20 A. Specifically, it covers property that they hold for
21 others, that's the -- what I asked 'em to give me.

22 Q. Okay, you didn't bring that along today, did ya?

23 A. Excuse me?

24 Q. You didn't bring that with ya today, did ya?

25 A. I have a ---

1 MR. WEATHERFORD: Well here it is.

2 THE WITNESS: --- copy of it and and he has a copy of it.

3 BY MR. HOLLAND:

4 Q. Alright, thank you.

5 (Whereupon, a discussion was held off the record.)

6 Okay, did you give 'em this information, specifically the
7 equipment in this matter that's stored?

8 A. Ask that again, sir.

9 Q. This information on Blanton's Wrecker Service
10 letterhead ---

11 A. Yes.

12 Q. --- you got a list of the items they have stored.

13 A. That is the, that's a list also of the items that were
14 seized on July 30.

15 Q. Okay, I I recall asking you for this last week.

16 A. I didn't even ---

17 Q. Okay.

18 A. --- have it when you talked but ---

19 Q. Okay.

20 A. --- yeah.

21 Q. Alright, the last thing ---

22 MR. WEATHERFORD: Mr. Holland, may I have that back if
23 you're not gonna introduce it?

24 MR. HOLLAND: I guess.

25 (Whereupon, a discussion was held off the record.)

BEN KOCHENOWER - CROSS-EXAMINATION BY MR. HOLLAND

1 MR. HOLLAND: This one here.

2 MR. WEATHERFORD: Yeah. Okay.

3 (Whereupon, the document was handed to counsel.)

4 BY MR. HOLLAND:

5 Q. Do you have a copy of this agreement with Yadkin Valley
6 Bank & Trust Company? That's a copy of a note to the, to the
7 bank.

8 A. I don't believe I do, sir.

9 Q. Okay, and it's has a whole list of property on there.

10 A. Yes, sir.

11 Q. Would you take a look at it for me, ---

12 A. Yes.

13 Q. --- tell me if there's anything on there that you don't
14 know about. Thank you.

15 (Whereupon, the witness examined the document.)

16 A. Counselor, you want me to look through every piece a
17 paper in here? I I'm not -- there's there's, uh, ---

18 Q. Well that thing says copy in red on the front, uh, ---

19 A. This is a copy of the note.

20 Q. Yeah. Up at the top it has a list of items.

21 A. And it says agreement change date of March 5, 2012?

22 Q. That's it.

23 A. Chevy Tahoe, Tait 4 hauler, I haven't seen a Pace S
24 hauler or I don't believe a Ford F-350 2002, um, sir, ---

25 Q. Okay.

1 A. --- anyway.

2 Q. I just call your -- excuse me.

3 A. Yeah.

4 Q. Don't wanna interrupt you lookin' but on the Exhibit I
5 have in front of me here, I think it's No. 9, you still have
6 it right there I believe, that thing ha -- right here it
7 says ---

8 A. Yeah, I ---

9 Q. --- 2002 Ford F-350.

10 A. --- yeah, I believe it is -- I have this information from
11 the bank that lists what the -- yes, sir, yes, so I have all a
12 that.

13 Q. So all of those are subject to a lien of the Yadkin
14 Valley Bank ---

15 A. All of those I understand are in the titled in the name
16 of Total Inc. ---

17 Q. Yeah.

18 A. --- although the bank did not have the the title to the
19 Harley Davidson so they'll be lookin' for that ---

20 Q. Oh, no.

21 A. --- but they had titles to everything else in their
22 files.

23 Q. Okay. Did they deny they have a lien on it?

24 A. No, sir. No, sir.

25 Q. I thought I might, I might seize it for attorney's fees

1 or sumtin', but they don't have that Harley Davidson?

2 A. They have it, they just don't have the title to it.

3 Q. Okay. I think we about through here, Mr. Kochenower.

4 Oh, I -- you've been a CPA a long time here I think. 1974 is
5 that when you opened up here in Gaffney?

6 A. I did not open up here in Gaffney. I moved to Gaffney in
7 1975.

8 Q. Okay, I I -- sorry, I misunderstood. I gave you another
9 year here but you're not a CPA for any party to this action,
10 are ya?

11 A. No, sir. No, sir.

12 Q. No attorneys?

13 A. Not you and not Mr. Weatherford, no, sir.

14 Q. Okay. Well if you don't have Chip and you don't have me,
15 you need to work on your practice.

16 A. That's what I understand, ---

17 Q. Okay.

18 A. --- Counselor.

19 Q. Let's see now the four rollbacks do we have any dispute
20 right now about where they are? There a couple at Horton's
21 you said.

22 A. Well I'm not sure we have a dispute, I'm just, uh, don't
23 know where two of 'em are. He directed me down to Highway 18
24 to the other place, I went down there and they weren't there
25 so I still don't know where they are.

1 Q. Well the dispute is that we dispute that Mr. Gault has
2 hidden anything from you.

3 A. Well I have asked you, sir, on the phone last week when
4 we talked if if you can talk Mr. Gault into just lettin' us
5 know where that is or bring it to us and we can look at it and
6 decide whose it is and you said you'd be workin' on that with
7 him ---

8 Q. And I did ---

9 A. --- but ---

10 Q. --- work on that. Just for your information I came up
11 with a list that is not quite as comprehensive as yours so the
12 hearing is upon us and so we're havin' it. Our position is
13 that you have arrived at places where property shoulda been
14 without notice. You've not told Mr. Gault directly to put it
15 any specific place, there's been no notice, you've had three
16 detectives wandering around Cherokee County and and I don't
17 know what they all charge, I I think Mr. Jimmy Cash is probly
18 mighty reasonable but the spending that you're doin' to find
19 out what is obvious from all the documents you have and
20 everybody has is not producin' much, would you agree to
21 that?

22 A. I have spoken to Mr. Gault directly on at least two
23 occasions ---

24 Q. Right.

25 A. --- and I have asked him to bring me something so that I

1 didn't have to look for it and spend money and I have told ---
2 Q. Like ---
3 A. --- you the same thing.
4 Q. --- bring him -- bring you something ---
5 A. Bring this ---
6 Q. --- like what?
7 A. --- equipment and identify it and let me know where it is
8 so I don't have to go look for it ---
9 Q. Okay.
10 A. --- and I had sent him letters, a letter to that effect
11 certified mail to both locations on Highway 18 and in
12 Blacksburg and I had made an attempt to get him to respond and
13 I have had verbal communication with him ---
14 Q. Right.
15 A. --- and I haven't received any information relative to
16 where this is, where this property ---
17 Q. Now ---
18 A. --- is.
19 Q. --- didn't you tell me a while ago that he told you about
20 the Horton's ---
21 A. He told ---
22 Q. --- repair shop?
23 A. --- me about Horton's.
24 Q. Okay. And the three places involved as I understand are
25 the lot in Blacksburg, Tessneers [sic] that place where you

1 been twice, ---

2 A. Yes.

3 Q. --- correct, and the racetrack which is just a hop over
4 from Tessneers [sic], ---

5 A. Yes.

6 Q. --- correct?

7 A. Yes.

8 Q. And the Highway 11 used car lot, right? You're
9 very ---

10 A. Yes.

11 Q. --- familiar with those by now I'm sure.

12 A. Yes.

13 Q. Is there any other place you claim Mr. Gault has put
14 property?

15 A. So far no but we're still -- it's ongoing.

16 Q. Then your answer is you have no evidence to support that,
17 correct?

18 A. We're still investigating.

19 Q. At present and we're we're in court here today too late
20 in the afternoon right now you have no knowledge of any place
21 he might -- you you might claim that he has hidden some stuff.

22 A. We have nothing to offer in evidence today, no, to that
23 effect.

24 Q. Is this this Exhibit 9 complete ---

25 A. It's as ---

1 Q. --- as far as you have ---

2 A. --- complete as I can determine from the Court records
3 that has been identified so far. I don't know that that is
4 everything that Total Inc. owns. I do know that it's pretty
5 much everything that I have seen and observed and that you and
6 others have offered in court.

7 Q. This -- have you seen any answers to interrogatories that
8 were produced durin' the trial parta this case?

9 A. I have read some testimony of Mr. Gault relative to
10 titling in the name of Total Inc. and Gault's Used Cars and so
11 on.

12 Q. But you didn't see any lists of property owned by Total
13 Inc.?

14 A. There was one list that was in one second supplemental I
15 believe that I used as part of what I used to compile this,
16 yes.

17 Q. Okay. Thank you very much.

18 A. Yes, sir.

19 THE COURT: Any redirect limited to what he went into?

20 REDIRECT EXAMINATION BY MR. WEATHERFORD:

21 Q. Briefly, now I've showed you this previously but on on
22 the part on section 15-39-450 for the South Carolina code
23 regarding the power and authority of the receiver will you
24 read the part I have underlined in red out loud.

25 A. It says, "The receiver shall be vested with the property

1 and effects of the judgment debtor from the time of the filing
2 and recording of the order as aforesaid."

3 Q. That means it's yours.

4 A. As I understand it I have a fiduciary responsibility to
5 it, yes.

6 Q. According to Terry Wright the former employee and the
7 race schedules and so forth, Mr. Gault's just treatin' this
8 property just like it's his, just like he always did even
9 after we came and got that order amended.

10 A. It appears so, yes.

11 Q. Alright. And he has not been forthcomin' with any
12 property that you askin' for ---

13 A. No, sir.

14 Q. --- makin' it very difficult for you to obtain the
15 property to satisfy the judgment.

16 A. It has been yes.

17 Q. That's what we're doin' in court here today.

18 A. That's correct.

19 Q. You're askin' the Court to rectify that situation in some
20 manner because of the property that -- you think from what you
21 know there's enough property to satisfy this judgment,
22 personal property?

23 A. In my opinion I agree with the Court's judgment that
24 there is sufficient property to satisfy the judgment, yes.

25 Q. Alright, that's it.

1 RECROSS-EXAMINATION BY MR. HOLLAND:

2 Q. One more time, sir. You have no evidence Mike Gault has
3 attempted to hide anything from you.

4 A. I have nothing, no evidence to offer into the Court today
5 no, sir, ---

6 Q. Thank you.

7 A. --- it's ongoing.

8 THE COURT: Thank you, sir, you may step down.

9 (Whereupon, the witness left the stand.)

10 MR. WEATHERFORD: That's our showing.

11 THE COURT: Yes, sir, Mr. Holland.

12 MR. HOLLAND: Your Honor, we don't plan to call any
13 witnesses. Thank you.

14 THE COURT: Alright, see the lawyers in chambers one
15 moment.

16 (Whereupon, a discussion was held in chambers off the
17 record.)

18 THE COURT: Alright, we'll go back on the record.

19 Alright, what -- in my review of the the file as well as my
20 knowledge of the case and the other hearings, I'm left with
21 the impression that the order that set up this receiver that
22 initially Mr. Gault like anybody would did not like this idea
23 that there was a receiver be -- having to be appointed just in
24 order to try to satisfy the judgment. My impression of the
25 evidence and knowledge of the case is that there was not a a a

MOTIONS AND MATTERS

1 good faith effort to coordinate and cooperate with the
2 receiver when the receiver initially took over. What has that
3 resulted in? the receiver cannot identify property that can
4 actually be used to satisfy the judgment and fulfill that goal
5 which is to satisfy the judgment. I'm not making any
6 decisions at this time on the issue of contempt because my
7 effort still would like to be focused on satisfying the
8 judgment. I have instructed the receiver along with an
9 officer with the Sher -- Cherokee County Sheriff's Department
10 to go out to this race, I call it a racing shop and to
11 actually do an inventory of if there is property out there
12 that the receiver may think could be used to satisfy the
13 judgment. They're gonna make -- the receiver will make a
14 report to Mr. Weatherford and then that the receiver will
15 act accordingly with or act in a manner that's consistent with
16 what the authority that the receiver has. If there are
17 interests that has to be protected such as liens or or those
18 types of things, of course the receiver will act in a way that
19 will protect those interests. I wanted to come out and place
20 that on the record because they're doing that as we speak and
21 I will not reconvene to receive that report, that report will
22 be handled with the receiver through Mr. Weatherford and
23 Mr. Holland. It may very well not result in any property
24 being identified, it may result in property being being
25 identified but I think that based on the testimony I've heard

MOTIONS AND MATTERS

1 that's a reasonable request by the receiver to allow that to
2 be done. I want to encourage Mr. Gault to continue to
3 cooperate with the receiver and and you and with your lawyer
4 in providing information to the receiver, both and provide
5 information both as to the location of the property like
6 there's a question here I'm still not sure where those other
7 two haulers are located. I know everybody seems to be in
8 agreement two were over at Horton's but the other two that
9 Mr. Holland says were down and offa Highway 18 apparently were
10 not at Highway 18 yesterday so they're somewhere so please
11 provide that to Mr. Holland as soon as you can as well as any
12 other information but I will, I'll take any other issues under
13 advisement at this time and we will I'm sure I'll probly hear
14 back from the lawyers. Oh, and and, Mr. Gault, I'm gonna, I I
15 think it's the best to do is that I'm gonna ask if you could
16 when the Court steps down, I'm gonna ask if you would for
17 neither you nor the young lady who is with you to make any
18 type telephone calls to contact anybody down at the race
19 location. I think it would be best if the receiver can make
20 his inventory and report back to Mr. Weatherford in having
21 felt like that there was nobody down there that tried to get
22 in their way, that way I think it serves you, I think it
23 serves you well also not doing that because then the receiver
24 could not come back and say, Well Mr. Gault did something to
25 interfere with my ability to do this inventory so I'm

MOTIONS AND MATTERS

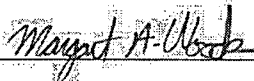
1 specifically instructing you don't make any phone calls, don't
2 leave here and go down there, just let him do his inventory
3 and and be done with it and and then, and then that way you
4 don't, you don't come under that suspicion that the receiver
5 has, that that I think has you under so don't make any contact
6 with with anyone. At this time I will step down and look
7 forward to receiving other information.

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CERTIFICATE OF REPORTER

1
2 I, Margaret A. Woods, Court Reporter in and for the State
3 of South Carolina at Large, hereby certify that I reported the
4 preceding case on August 13, 2012 at the time and place
5 heretofore set forth, and that the foregoing pages numbered
6 from 4 through 96, inclusive, constitute a true and accurate
7 transcription of my stenographic notes of the said proceeding.

8 I further certify that I am neither attorney nor counsel
9 for, nor related to or employed by any of the parties
10 connected to the action, nor am I financially interested in
11 the action.

12 November 30, 2012

13
14 

15 Margaret A. Woods, Court Reporter
16 in and for the State of South Carolina at Large.
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STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHEROKEE)

I, BEN D. KOCHENOWER, AFTER BEING SWORN, SAYS:

On March 13, 2012 at approximately 9:42 am my secretary and I arrived at the Blacksburg location and called Mike on his cell phone and left a message that we were there. As we arrived, I observed no activity to be evident and no individuals visible.

I then entered the office building and presented a copy of the court order to the office employee who sat at the desk on the left and explained why I was there. While I was inside talking with the office employee Michael Crow from Blanton's Wrecker arrived. When I came out of the office, I saw another employee blocking the driveway at the Railroad track with a Case lift. This prevented anyone from entering or exiting the property. I observed 2 individuals in the yard in front of the office and shop. I approached one individual & inquired if he could move the Case lift. He said he was not the driver and pointed to the other individual. I inquired of that individual and he indicated he did not have a key and that he only worked there.

I walked toward the lift and wrote down what ID that I could see, I then spoke with Michael Crow and asked if he had anything that could move the lift. He said he did and that it was on the way.

I then proceeded to observe and document certain equipment on the yard:

4 separate roll back trucks, 1 white tractor truck. As I was writing the DOT number of the truck I observed Mike Gault near the Blanton Wrecker rollback truck on the driver's side (the truck was facing North - toward the exit to the property). He walked toward me, and as he did so, I observed several individuals / employees in the yard.

Mike approached me and came very close to me. As he did so, he appeared agitated and threatening. He came very close to me and asked, "Just what (the H ___) do you think you're doing?" I told him I was doing my job. I moved out from between the vehicles I was observing and into the open yard. He said that I had no idea who I was messing with, that I had no business, no right to be there on his property, that I was interfering with his business in violation of the judge's order. Twice he told me, "You're messing with the wrong person" and that I needed to leave immediately. I asked if he was threatening me. He said "No". One of his employees with him said, "He is just telling you the truth."

I explained I had a court order to seize the property and Mike went to get a copy of the court order and stated that if I took rollbacks it would be interfering with the operation of his business and I suggested to him could rent a rollback. He said he wasn't renting S ____.

Mike made it clear that he did not believe it was at all appropriate that I was there, or that Michael Crow was there with a rollback truck. He stated clearly that as he understood the court order I was not to interfere in any way with his business, and that my presence and intended removal of any equipment constituted a violation of the court order as he clearly understood it.

I asked Mike Gault if he was going to move the Case Lift which was blocking the exit, and once it was removed, I then got in my vehicle and left, realizing that I would not be allowed to remove any equipment from the property.

March 21, 2012

Ben D. Kochenower
Ben D. Kochenower
Receiver

SWORN TO AND SUBSCRIBED BEFORE ME
this 21 day of March, 2012.

Wanda L. W. [Signature]
Notary of Public for South Carolina

My Commission Expires 5/2/13

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHEROKEE)

I, TAMMY M. WARD, AFTER BEING SWORN, SAYS:

I accompanied Ben Kochenower to 853 Blacksburg Hwy, Blacksburg SC on March 13, 2012 and arrived at approximately 9:40 am.

Ben called Mike Gault on his cell phone and left a message that we were there. No one was outside at the location.

Ben went in to the office of the business and I stayed in Ben's truck but could see him clearly inside the business. During that time Michael Crow from Blanton's Wrecker arrived and sat in his rollback.

I noticed an employee moving a loader and he actually blocked the driveway at the Railroad track which prevented anyone entering or exiting. At this time I became a little uneasy and wanted to keep my eye on Ben as he was walking around listing information about the equipment. The employee that moved the loader whose name appeared be "Joe" from his shirt kept walking in and out of the shop area.

Shortly, employees began swarming the yard and I locked the truck doors and got ready to call 911 if needed.

During this time I saw Mike Gault walking across the yard behind Ben's truck and approached him as he was listing the equipment. During that time two other men approached Michael Crow as he sat in his vehicle. I saw them talking to him and I saw Michael throw up his hands and then shut his truck door and roll up his window. He clearly appeared to be uncomfortable with the men who had approached him at his vehicle. The men then walked away.

Several employees continued to walk around the yard and back and forth into the shop and office. Ben and Mike Gault walked back to Ben's truck and I heard them discussing the court order. Ben then walked over to Michael Crow's rollback and as he left we did also.

March 21, 2012

Tammy M. Ward
Tammy M. Ward

SWORN TO AND SUBSCRIBED BEFORE ME
this 21st day of MARCH, 2012.

W. S. W.
Notary of Public for South Carolina
My Commission Expires 5/2/13

ROA 000387

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2008-CP-11-1038

Christopher Drye, d/b/a Drye's Auto Crushing Respondent,

v.

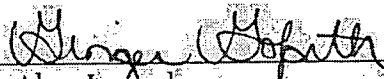
Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc. Defendants,

Of whom,

Mike Gault is Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties.


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ATTORNEYS FOR APPELLANT

July 11, 2014

19

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2008-CP-11-1038

Christopher Drye, d/b/a Drye's Auto Crushing Respondent,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc. Defendants,

Of whom,

Mike Gault is Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal upon William G. Rhoden, Esq. by
depositing in US Mail to the addresses as follows:

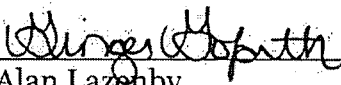
William G. Rhoden, Esq.
WINTER & RHODEN, LLC
221 E. Floyd Baker Blvd
Gaffney, SC 29340

SIGNATURE PAGE TO FOLLOW

RECEIVED

JUL 25 2014

SC Court of Appeals


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July 11, 2014