

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

The Honorable Mikell Scarborough
Master in Equity

RECEIVED

APR 15 2016

Case No. 2010-CP-10-7241

SC Court of Appeals

JOHN M. ENGLISH

Appellant

v.

ELLEN SEXTON and JOHN E.
WHITE, JR.

Respondents

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

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22762

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-10-7241

JOHN M. ENGLISH,)
)
PLAINTIFF,)
)
-versus-)
)
ELLEN SEXTON,)
)
DEFENDANT.)

MASTER'S ORDER

FILED
2014 OCT 15 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Date of Hearing: August 25, 2014, 10:00 A.M.
Master in Equity: Honorable Mikell R. Scarborough
Plaintiff's Attorney: David A. Collins
Defendant's Attorney: G. Thomas Hill

THIS MATTER came before the jurisdiction of the Master in Equity for Charleston County by Order of Reference. The case was arbitrated by the Honorable Richard Fields and now comes before the court for a final hearing. Plaintiff John M. English appeared at the hearing with his attorney, David A. Collins. Defendant Ellen Sexton appeared at the hearing with her attorney, G. Thomas Hill. At the hearing the parties confirmed that all matters between them had been resolved, except for the issues concerning the distribution of proceeds from the sale of a property hereinafter referred to as the Furman Home and the disposition of a Ford Explorer vehicle. It was undisputed that the sale proceeds from the Furman Home were to be divided on a 60/40 split, with 60% to the Plaintiff and 40% to the Defendant. The attorneys for the parties each presented oral statements of their respective positions on the disputed issues. The parties were directed to submit legal briefs regarding the matter of the Ford Explorer vehicle and to produce any evidence regarding the same to the court. Upon reviewing the all the evidence, affidavits, the briefs, and hearing the arguments presented by all parties, I hereby find as follows:



FINDINGS

1. I find that the Arbitration Agreement and Award executed by the Honorable Richard Fields has been approved by all parties and confirmed by the Court and has been entered into by all parties and has been made a part of the court record.
2. I find that all divisions/distributions of funds/property as delineated in the Arbitration Agreement and Award have been completed as the date of this hearing; except for the division/distribution of the sale proceeds from the sale of the Furman Home (60% to Plaintiff and 40% to Defendant), and, disposition of Ford Explorer vehicle.
3. I find that the Plaintiff has used and possessed the Ford Explorer vehicle since the date of purchase almost exclusively as the primary driver of said vehicle and that said vehicle was purchased Defendant for Plaintiff due to Defendant's ability at the time of purchase to obtain a loan.
4. I find that the Arbitration Agreement and Award provides that at the time of distribution of the sales proceeds from the sale real estate that Plaintiff is to reimburse Defendant all sums paid by Defendant to purchase said Ford Explorer, and that the Defendant is to sign over the Title to the Ford Explorer to the Plaintiff.
5. I find that Defendant has made all the payments (*down payment and loan payments*) associated with the purchase the Ford Explorer vehicle through Defendant's testimony, a reading of Arbitration Agreement and Award, and, the submission of Defendant's Exhibit 1 which includes the following: Title to Ford Explorer, a \$2,000.00 down payment check for Ford Explorer made by Ellen B. Sexton, the Checking Account History of Ellen B. Sexton Account #0000107395 showing monthly Automatic Transfer of Funds in the amount of \$293.78 beginning June 2006 and ending May 2011 for Ford Explorer, and Heritage Trust Vehicle Loan Documentation regarding Ford Explorer.
6. I find that the Plaintiff is required to reimburse the Defendant the funds she expended for



the purchase of said Ford Explorer due to his predominant exclusive use and possession of said vehicle since June 2006, and due to the wear and tear on the vehicle that Plaintiff has put on said vehicle which is now located on the west coast of the United States of America; and, that Defendant is to sign over the Title to the Ford Explorer to the Plaintiff.

7. I find that the total amount paid by Defendant towards the purchase of the Ford Explorer vehicle totals \$19,626.80 (i.e., \$2000.00 down payment and \$17,626.80 in loan payments).

8. I find that the sum of \$72,000.00 from the sale of the Furman Home is being held in Escrow by Attorney David A. Collins.

9. I find that 40% of \$72,000.00 equals \$28,800.00, and, 60% of \$72,000.00 equals 43,200.00.

10. I find that the Plaintiff has entered into a fee agreement with Attorney John White.

CONCLUSIONS OF LAW

First: I hereby conclude, pursuant to the law and equity, that the Defendant is entitled to 40% of the proceeds from the sale of the Furman Home which amounts to \$28,800.00 plus the sum of \$19,626.80 for the Ford Explorer which is to be deducted out of the Plaintiff's share of the proceeds from the sale of the Furman Home.

 **Second:** I hereby conclude, pursuant to contract law, that attorney fees in the amount of \$ 18,112.69 is to be awarded to John White attorney for Plaintiff, and that said sum is to be deducted out of the Plaintiff's share of the proceeds from the sale of the Furman Home.

Third: I hereby conclude, pursuant to the law and equity, that Plaintiff is to receive all remaining proceeds from the sale of the Furman Home.

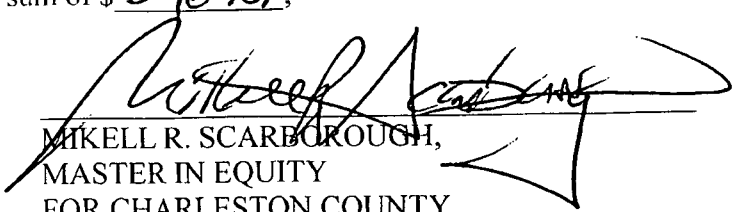
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED,

a) that Defendant is to receive the sum of \$48,426.80, it is further

b) that Attorney John White is to receive the sum of \$ 18,112.69 in attorney fees; it is further

c) that John English shall receive the sum of \$ 5460.51;

IT IS SO ORDERED!


MIKELL R. SCARBOROUGH,
MASTER IN EQUITY
FOR CHARLESTON COUNTY

Charleston, South Carolina

Oct 7, 2014

** This Net Sum to Mr. English does not
account for any fee owed to Mr. Collins or Mrs. de Long,
his current and prior counsel in this matter.*



BEFORE THE ARBITRATOR

CIVIL ACTION NO. 2010-CP-10-7241
CIVIL ACTION NO. 2010-CP-15-923

JOHN M. ENGLISH,
PLAINTIFF,
vs.
ELLEN SEXTON,
DEFENDANT.

ARBITRATION AGREEMENT AND AWARD

ARBITRATOR:
DATE OF HEARING:
PLAINTIFF'S ATTORNEYS:

DEFENDANT'S ATTORNEYS:

Honorable Richard E. Fields
June 23, 2011
Karen DeJong, Esquire
John E. White, Jr., Esquire
Grady Query, Esquire
Bentley D. Price, Esquire

FILED
2011 AUG -4 AM 9:4
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

These matters came before the undersigned Arbitrator on June 23, 2011 by Consent Orders of the Charleston County and Colleton County Courts of Common Pleas.

By Consent Order filed in Charleston County in the matter of John M. English vs. Ellen Sexton, 2010-CP-10-7241, said case and controversy was submitted for final determination to the undersigned Arbitrator to be decided without necessity of any explanation for the ruling.

By Consent Order filed in Colleton County in the matter of John M. English vs. Ellen Sexton, 2010-CP-15-923, said case and controversy was submitted for final determination to the undersigned Arbitrator to be decided without necessity of any explanation for the ruling.

These cases were, by said Consent Orders, to be heard together by this Arbitrator no later than June 23, 2011. Proper notice of the hearing was given, and these matters came before the Arbitrator on June 23, 2011. The parties and their attorneys were present.

Prior to the beginning of the hearing by the encouragement of the Arbitrator, the parties and their attorneys agreed to engage in a final attempt to settle their disputes. This attempt resulted in successfully resolving the issues regarding ownership and possession of the real estate and some of the personal property. Issues regarding certain personal property which were not resolved by agreement were submitted to the Arbitrator.

The issues raised in the case before the Arbitrator involved the following:

- 1) ownership and rights to two parcels of real estate, one in Charleston County and one in Colleton County,
- 2) ownership of certain items of personal property,
- 3) payment of a Mediator's fee to the Honorable Gerald C. Smoak, and
- 4) payment of the Arbitrator's fee in this process.

The parcel whose ownership was at issue in the Charleston County action was the former joint residence of the parties, a home and lot located at 2399 Furman Drive, Charleston, South Carolina. A copy of the legal description of this tract is attached hereto as Exhibit "A" and incorporated herein by reference.

The parties agreed, and I so find, that the Plaintiff or his nominee is entitled to an ownership interest of sixty (60%) percent as evidenced by a general warranty deed in and to the home and lot located at 2399 Furman Drive, Charleston, South Carolina; and the Defendant shall be entitled to retain a forty (40%) percent ownership interest in this home and lot.

The parcel or real estate in the Colleton County action is a tract of 13.5 acres, more or less. A copy of the legal description of this tract is attached hereto as Exhibit "B" and incorporated herein by reference.

The parties agreed, and I so find, that the Plaintiff or his nominee is entitled to an ownership interest of sixty five (65%) percent as evidenced by a general warranty deed in and to the tract of land located in Colleton County, South Carolina; and the Defendant shall be entitled to retain a thirty five (35%) percent ownership interest in this tract.

The Defendant is directed to convey the Plaintiff's interest in the above two parcels of real estate to his nominee, Clayton G. English, by deed to be executed and recorded forthwith.

The parties agreed, and I so find, that both parcels of real estate shall be listed by Beth Byrd, a realtor with Colwell Banker Real Estate, and sold for fair market value as soon as possible with the net proceeds to be distributed at closing to the parties or counsel for the parties according to the respective ownership interests. I direct that the aforesaid two parcels of property be listed at a price which would encourage timely sales, and I further direct the parties to cooperate in the marketing efforts by the realtor. Notwithstanding the foregoing, the parties are directed to withhold listing the Colleton County property with a realtor for thirty (30) days to allow the parents of the Defendant to make a reasonable offer consistent with the true market value to purchase the said property and thereby save a realtor's commission.

The parties agreed, and I so find, that the Defendant shall remain in temporary possession of the residence and the land in Colleton County but is required to keep the mortgage payments upon the residence and the Colleton County land current until the closing of the sales of these properties.

I find that the Defendant has proven the payment of two thousand (\$2,000.00) dollars toward the purchase of the Ford Explorer automobile now in possession of the Plaintiff. I find that the Plaintiff acknowledges that all payments on the said vehicle were made by the

Defendant. I find that the Plaintiff shall be entitled to continue in possession of the said automobile until the residence is sold and shall be entitled to the title and ownership of the Ford Explorer automobile upon reimbursement to the Defendant of the two thousand (\$2,000.00) dollars down payment and all the payments made by the Defendant at two hundred ninety three and 78/100 (\$293.78) dollars which was financed for five (5) years for a sum total of seventeen thousand six hundred twenty six and 80/100 (\$17,626.80) dollars. The Plaintiff may reduce the total by the amount of any checks written to the Defendant in the exact amount of the payment or specifying that the check or money order is for the payment.

The parties agreed, and I so find, that the following personal property shall be returned by the Plaintiff to the Defendant:

- 1) portable heater (John testified that it is broken)
- 2) coffee table and end table
- 3) green sofa and recliner
- 4) Frank's GPS
- 5) Defendant's father's Dremel tools
- 6) sleigh bed
- 7) pub table and four (4) chairs

The parties agreed, and I so find, that the following personal property shall be returned by the Defendant to the Plaintiff :

- 1) 1972 16' Starcraft Supersport boat title #WAA835431, ID # 994142, registration # SC-8069-BN, with 1984 Evinrude 70 HP motor, model E70TLC, title # MAA271379, ID # J0434755, and trailer
- 2) grandfather clock
- 3) model sailboat (Jimmy Buffet store)
- 4) two (2) drawer mahogany lateral cabinet and mahogany desk with glass top
(agreed that this personal property will be removed after the sale of Furman Drive)
- 5) round end table and matching armoire
- 6) armoire
- 7) Grandmother's mahogany bed frames
- 8) red four (4') foot tool box
- 9) GE profile black refrigerator
- 10) Port of London (dresser) bought in Beaufort
- 11) four (4) drawer dresser

The above listed personal property shall be exchanged between the two (2) parties prior to the sale of Furman Drive but after the Contract for Sale has been signed. Testimony was taken regarding the remaining items of personalty claimed by the Defendant, but this Arbitrator determined that the evidence did not make a convincing case for relief as to such.

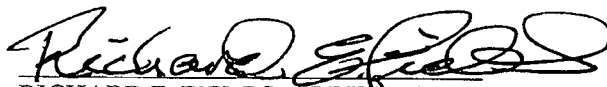
The Agreement between the parties and the rulings of the Arbitrator are hereinafter agreed upon by the parties and enforceable upon application of either party for and by

subsequent Order(s) of the Arbitrator, who retains jurisdiction for the purpose of enforcement or clarification of this Agreement and his rulings.

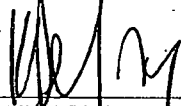
I find that the sum of one thousand (~~\$~~⁰⁰⁰000.00) dollars represents the reasonable mediation fee, said mediation conducted by the Honorable Gerald C. Smoak; and that this amount should be divided equally between the Plaintiff and the Defendant.

The total fee of the Arbitrator in this process will be determined after the sale of the properties and the full conclusion of this matter.

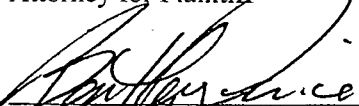
August 3rd
2011


RICHARD E. FIELDS, ARBITRATOR

AGREED AND CONSENTED TO:


KAREN M. DEJONG, ESQUIRE
Attorney for Plaintiff


JOHN E. WHITE, JR., ESQUIRE
Attorney for Plaintiff


BENTLEY D. PRICE, ESQUIRE
Attorney for Defendant


GRADY QUERY, ESQUIRE
Attorney for Defendant

Exhibit "A"

All that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, known and designated as Lot 5, Block H, Drayton on the Ashley, as shown on a plat made by S&S Engineering, Inc., recorded November 30, 1971 in the RMC office for Charleston County, in Plat Book Q, page 50.

This being the same property conveyed to Ellen Sexton by undated deed of Clayton G. English (Probated July 24, 2001), filed on September 16, 2002 in Deed Book O 418, page 276 on the Office of the RMC for Charleston County.

Property address: 2399 Furman Drive, Charleston, SC 29414

TMS# 358-12-00-214

Exhibit "B"

All that certain piece, parcel or lot of land, located in the Red Oak Community, Colleton county, South Carolina, measuring and containing approximately 14.44 acres, more or less, being shown and designated as a 13.54 acre tract and a 0.090 acre tract on that certain plat prepared for Christopher Scott Grooms by Robert L. Hines, No. 4551, dated November 6, 2001. Said plat recorded in the office of the Clerk of Court for Colleton County in Plat book 33 at page 650. For further descriptions reference should be made to the above referenced plat which is incorporated herein.

This being the same property conveyed to Ellen Sexton by deed of John English dated august 13, 2004 and filed September 24, 2004 in Volume 1077, page 48 in the RMC Office for Colleton County

AKA: 3093 Pierce Road, Cottageville, S.C. 29435

Parcel # 120-00-00-118.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-10-7241

John M. English,)
Plaintiff,)
vs.)
Ellen Sexton)
Defendant.)

CONSENT ORDER

FILED
2013 APR 29 AM 9:47
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before me on March 22, 2013 for a Status Conference. Present were G. Thomas Hill, Esquire, counsel for the Defendant, David A. Collins, Esquire, counsel for the Plaintiff, and the parties. Counsel advised the Court the parties would be submitting a Consent Order outlining certain agreed upon parameters for the sale of the home involved herein. Based upon the representations of counsel and the pleadings on file

IT IS HEREBY ORDERED:

1. That the home be marketed by the appointed realtors with all due haste. This Court has extended the marketing period to July 2, 2013. *
2. If home should sell and there are proceeds from the closing, all proceeds shall be placed in an escrow account until such time as the parties can agree in writing as to the distribution of the proceeds of the Court shall determine distribution of the proceeds. *MRB and*
3. That the Court shall issue a scheduling order after the sale to provide for some minimal discovery and a hearing date to determine the distribution of the sale proceeds.

[Signature]
The Honorable Mikel Scarborough
Master in Equity for Charleston County

Charleston, SC
4/26 2013

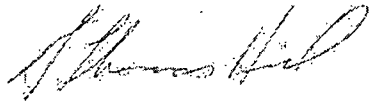
** In the event the property does not close by May 1, 2013, the court shall be empowered to execute the seller's deed.*
R-11

I so move,

A handwritten signature in dark ink, appearing to read 'D. Collins', written over a horizontal line.

David A. Collins, Esq.
Attorney for the Plaintiff

I consent,

A handwritten signature in dark ink, appearing to read 'G. Thomas Hill', written over a horizontal line.

G. Thomas Hill, Esq.
Attorney for the Defendant

1 1 STATE OF SOUTH CAROLINA 2 COURT OF COMMON PLEAS 3 COUNTY OF CHARLESTON 4 John M. English, 5 Plaintiff, 6 vs. CASE NO. 2010-CP-10-7241 7 Ellen Sexton, 8 Defendant. 9 10 11 12 Hearing before the Honorable Mikell R. 13 Scarborough, reported by Christine A. Smith, Court 14 Reporter and Notary Public, at 2:14 p.m. on November 15 10, 2014, at 100 Broad Street, Charleston, South 16 Carolina. 17 18 19 20 21 CHRISTINE A. SMITH, Court Reporter 22 P.O. Box 30276 23 Charleston, SC 29417 24 (843) 367-9596 25 casmith@charlestoncounty.org	3 1 PROCEEDINGS 2 3 THE COURT: This is the case captioned Joe 4 English versus Ellen Sexton, and the case number is 5 2010-CP-10-7241, and then there was a Colleton 6 County case, 2010-CP-15-923; is that correct? 7 MS. DeJONG: Judge, I think so. I was not 8 involved in the case at that time. 9 MR. WHITE: Yes, sir, I was the attorney in 10 that, Your Honor. 11 THE COURT: And then Mr. White, you were 12 originally Plaintiff's counsel? 13 MR. WHITE: After that case was commenced 14 and Ms. DeJong was associated there was a dispute 15 that she -- it resolved in her being removed as 16 counsel. Mr. English then -- as co-counsel -- 17 employed Mr. Collins. So I am the only one that's 18 been here from start to finish. Thank you. 19 THE COURT: Very good. Thank you very much. 20 And then, of course, Mr. Hill was 21 representing the Defendant, correct? 22 MR. HILL: Correct, Your Honor. 23 THE COURT: And then there's a B. Price in 24 here. Is that Bentley? Was he in this case at one 25 time?
2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR THE PLAINTIFF: 3 David A. Collins, Esq. 4 Law Office of David A. Collins 5 P.O. Box 40578 6 Charleston, SC 29423 7 8 John Evander White, Esq. 9 Law Office of John Evander White 10 5305 Sumters Run 11 North Charleston, SC 29418 12 13 ATTORNEYS FOR THE DEFENDANT: 14 G. Thomas Hill, Esq. 15 Hill & Hill, LLC 16 6209 Savannah Highway 17 Ravenel, SC 29470 18 19 Karen Marie DeJong, Esq. 20 Law Office of Karen DeJong 21 940 Johnnie Dodds Boulevard 22 Mt. Pleasant, SC 29464 23 24 25	4 1 MS. DeJONG: Yes. 2 MR. WHITE: Originally Bentley Price was 3 Defendant's counsel. Mr. Hill -- 4 MR. HILL: My predecessor. 5 MR. COLLINS: Judge, I believe half of the 6 Charleston County Bar has been involved in this. 7 THE COURT: Well, the other half is sitting 8 out there. 9 MR. COLLINS: There have to be some members 10 of Dorchester County. 11 THE COURT: So I think we're in the last 12 stages of this matter. I got a notice of a motion 13 to alter/amend, a motion to reconsider. I think, 14 Mr. White, you've had some health issues. I 15 appreciate your being here today. I wanted to do 16 this when you could be here. 17 MR. WHITE: Thank you, Your Honor. One 18 issue on my Motion to Amend that may or may not be 19 considered moot after it hit the Court -- well, 20 quite a bit of it was at least, when the Court 21 ruled -- my attorney's fees I was entitled to -- is 22 my motion to be relieved as counsel. I would be 23 more comfortable today arguing the case if that 24 motion were heard first. 25 THE COURT: Okay. Do you have any objection



1 to that?

2 MR. COLLINS: Judge, I don't know whether
3 Van wants to be relieved. If he wants to be
4 relieved I'll consent to that. If he doesn't want
5 to be relieved in order to argue this motion I'll
6 consent to that. I really don't have any
7 preference or any care about what his standing is
8 with regard to representation as far as his
9 argument is concerned. So whatever, you know.

10 THE COURT: I'm assuming because of the
11 nature of the case you-all never got formal relief
12 and then it sort of moved into this status of this
13 mediation-type program that got into it; is that
14 right?

15 MR. WHITE: Yes, sir.

16 THE COURT: Mr. Collins, bring me up to
17 speed. Refresh my memory on where we are with this
18 case.

19 MR. WHITE: Where we are -- this case was
20 scheduled for an evidentiary hearing a month ago,
21 six weeks ago. After some arm twisting in chambers
22 by Your Honor, Tommy and I reached a consensus that
23 we would just put Judge Fields' arbitration award
24 into your hands to give us a ruling as to the
25 certain language regarding the automobile which is

1 at the bottom of Page 2 of the arbitration order.
2 I didn't like what you decided so I filed a motion
3 to reconsider which of course is my first step to
4 appeal. I think that's the first motion.

5 The second motion, I think -- you already
6 ruled on Van's motion, so I think the other motion
7 that is pending here today is Karen's motion for
8 payment of attorney's fees. I don't think that
9 that is right to be heard. I just got it on
10 Thursday. To be honest with you I haven't even
11 perused or studied the whole thing.

12 I understand that the rules are that I'm
13 supposed to get ten days to respond to it. I also
14 understand that there's leeway in there for the
15 Court; if you want to hear it you can hear it, so I
16 recognize that.

17 Judge, this is kind of where I think we are.
18 I know you're going to rule on my motion for
19 reconsideration today. I'm 99 percent sure, like
20 every other one I've ever filed, I'm going to lose,
21 but that's okay.

22 THE COURT: I think it's closer to
23 100 percent.

24 MR. COLLINS: Well, I saw a pig flying down
25 Interstate 26 today, so maybe. Anyway, it's my

1 contention that the language used by Judge Fields
2 clearly gives my client the right to choose whether
3 or not he wants to turn this automobile back in.

4 THE COURT: Which he did not do, right?

5 MR. COLLINS: Pardon me, sir?

6 THE COURT: Which he did not do, correct?

7 MR. COLLINS: Well, he hasn't had a ruling
8 that says he can. If Your Honor were to look at
9 the language and say, well, you're right, David,
10 this language doesn't necessarily mean anything.
11 He's got to keep it. He can turn it back in or pay
12 the money. Then he's got the choice of what he can
13 do. You just ruled in your order saying, well, I'm
14 not going to give you that choice. You've got to
15 pay the money. We don't think it's a mandatory
16 paragraph. So I would like for you to revisit
17 that.

18 The other thing we've got is all this
19 attorneys' fee mess. By the way, on the
20 reconsideration Tommy and I are going to get this
21 resolved regardless of the way you rule. Tommy and
22 I have known each other -- we're going on like 24
23 years or something like that. This may be the
24 first one that's ever gone this far for us. We're
25 going to have lunch, and we're going to get it

1 resolved.

2 This thing with the attorneys' fees is
3 problematic. My client has filed an application to
4 the Fee Resolution Dispute Board. As you know that
5 concerns Mr. White's fees, not Karen's, because we
6 didn't really know of hers until Thursday or
7 Friday. What I would like to see happen with this
8 is that these attorneys' fee applications be put
9 into the Resolution Dispute Board. I sit on that
10 board. I know how it works. It doesn't take long
11 to get a ruling. That way we don't have a judicial
12 order that's backing me up against some appellate
13 court timeline.

14 Now, I'm not naive enough to think that the
15 Fee Resolution Dispute Board is going to rule next
16 week, but I will tell you, and I'll represent to
17 the Court because I've been involved in it, it does
18 take a lot less time than the Court of Appeals does
19 and costs a lot less money. So I throw that out
20 there. I'm never one to argue against legal fees
21 with another lawyer. I do think that my client's
22 got the right to be here to test those allegations,
23 to test whether or not these lawyers are entitled
24 to be paid under their contract.

25 He's on the west coast. Laura did her best

1 to get this thing scheduled. I know that she was
2 sick and tired of hearing from all of us as to
3 January 15th. Yeah, you can say it.

4 MS. BECK: No.

00:07:58 5 MR. COLLINS: But quite frankly, given the
6 amount of time I had I couldn't get my client here
7 to present his side of the attorneys' fee dispute.
8 I really don't know where that leaves us. I think
9 the bar has a mechanism for ferreting out these
00:08:17 10 issues and resolving these things. Any of the ones
11 that I've ever been involved with have always been
12 resolved for what it's worth. So I guess to
13 summarize it I want to reconsider the argument that
14 I made and I'm also on Judge Field's order. I'd
00:08:38 15 like you to send this to the Fee Resolution Dispute
16 Board since it's already started.

17 In the alternative I want some time to
18 respond to these motions and have my client here.
19 He wanted to be here. With the timing on it it
00:08:49 20 just wouldn't work. I could have had him here on
21 January 15th, but I just couldn't -- the timing and
22 all that, I just couldn't get it done.

23 THE COURT: Well, he could have either
24 hopped on a plane or gotten in the car he could
00:08:59 25 have driven here, couldn't he, if he really needed

1 to?

2 MR. COLLINS: Well, Your Honor --

3 THE COURT: It's not a criminal case in
4 which he's required to be here or anything.

00:09:08 5 MR. COLLINS: No, sir. But he is an
6 employee of the federal government. He's got a job
7 just like the rest of us. If I had some notice I
8 could have gotten him here. Does that fairly
9 summarize where we are? Tommy?

00:09:28 10 THE COURT: Very good. Let me first ask
11 Mr. Hill. Mr. Hill, as to the motion to
12 reconsider, let's address that.

13 MR. HILL: Well, Your Honor, we are opposed
14 to the granting of this motion, and of course we
00:09:31 15 agree with your ruling and the order that you
16 signed. It's our opinion that the language
17 regarding the vehicle was mandatory, and I also
18 made an argument at the hearing that it was an
19 equitable issue, too, because Mr. English was the
00:09:52 20 only one that ever drove the car. He had it for
21 eight years. He's over on the west coast with it.
22 She's hardly ever even driven it. She just paid
23 for it. Now, it would be unfair to bring that car
24 back from the west coast with however many -- with
00:10:06 25 a 100,000 or more miles on it and give it to her

1 and say, well, you know, here's your ragged out car
2 back. So whatever rationale the Court made its
3 decision on or based its decision on I think is
4 correct. Either the language is mandatory or also
00:10:27 5 there is an equitable issue.

6 THE COURT: The reality of the matter is
7 that he's had possession of the car all this time,
8 and she's paid for it. He's had the use of it.
9 It's what, eight years down the road? Is that
00:10:40 10 where we are now?

11 MR. HILL: Yes, sir.

12 MR. COLLINS: Maybe longer.

13 THE COURT: And it was a used car to start
14 with as I recall, so I figure it's probably worth
00:10:50 15 very little today, so I'm not going to change my
16 ruling as it relates to the automobile. Let's then
17 turn to the other two matters.

18 Mr. White, let's start with your motion.
19 You have a motion for fees, and Ms. DeJong, I just
00:11:06 20 got yours in.

21 MR. WHITE: Yes, Your Honor. Thank you very
22 much. Your Honor, on September 4th I filed or
23 served a motion to have the Court protect my fees
24 and set forth a pretty detailed affidavit and
00:11:29 25 served it on both parties and counsel. I have not

1 gotten a rebuttal affidavit, and this has been two
2 months plus.

3 The Court gave a ruling without a hearing as
4 to entitlement in the last order. A motion to
00:11:54 5 reconsider was filed by Mr. Collins, however the
6 motion to reconsider was not in conformity, I would
7 say, with Rule 7(b)(1) which requires that the
8 grounds be stated with particularity. In fact,
9 they weren't stated whatsoever the way I see it.

00:12:11 10 In so far as the grounds were -- good cause shown,
11 there was no identification in the motion of what
12 the good cause was, no affidavit either rebutting
13 what I had to say or setting forth any affirmative
14 defense, so as far as I can tell there is no
00:12:30 15 meritorious defense being claimed by Mr. English to
16 payment and fees.

17 Now, these are fees that should have been
18 paid off -- the majority of them, off the
19 settlement statement on the sale of the Colleton
00:12:46 20 County property back in March of 2013, which is
21 approaching two years ago. Due to the fact that
22 Mr. English concealed, as you'll see from my
23 affidavits, the closing from me until after it
24 happened and to this date has concealed where the
00:13:07 25 money went, although the HUD said it was payable to

13 1 him (his daughter's name) because he had gone to 2 another attorney and gotten a deed to his daughter. 3 Whether it's in his pocket or under his control I 4 think is irrelevant. I believe we've waited long 00:13:24 5 enough for me to get paid for something I should 6 have been paid for in March of 2013 particularly 7 when no meritorious defense has been noticed. 8 I don't know what defense I'm arguing 9 against. Again, it's been two months and I've 00:13:39 10 gotten no rebuttal affidavit, so I think the Court 11 can take the affidavit as true and have notice of 12 no defense, affirmative defenses. 13 It is true that four days after he was 14 served with my motion -- on September 4th I served 00:14:06 15 him by e-mail and by mail to his attorney since he 16 had not disclosed his current address to me despite 17 requests. I served him with the motion and with 18 the affidavit requesting protection of the money 19 that was still due me. Four days later I take the 00:14:28 20 retaliatory move. He filed a request for a 21 return -- contesting the \$5,000 that I had already 22 credited him with that he paid, back in, I believe, 23 May -- March or April, shortly after the closing of 24 Colleton. He paid \$5,000 with the representation 00:14:52 25 that he hadn't received any money yet. He had to	15 1 MR. COLLINS: I would be glad to find that 2 out. I'm glad to do it. I take responsibility. 3 MR. WHITE: Your Honor, I don't believe 4 Mr. Chard has been authorized to tell me. From my 00:16:15 5 conversations with him that's my understanding. 6 THE COURT: All right. 7 MR. COLLINS: Judge, again, I can find that 8 out. 9 THE COURT: In my order, Mr. White, I've 00:16:25 10 provided a number for you; did you see that? 11 MR. WHITE: Yes, I did, Your Honor. 12 THE COURT: And your motion to reconsider, 13 does it take that into consideration as well? 14 MR. WHITE: Mr. Collins' motion to 00:16:37 15 reconsider? 16 THE COURT: No, your motion. 17 MR. WHITE: My motion? I did a motion to 18 protect rather than a motion to reconsider. 19 THE COURT: Okay. I found 18,112.69 to be 00:16:46 20 awarded to you in attorney's fees? 21 MR. WHITE: Yes, sir, Your Honor. 22 THE COURT: And yours comes out of the 23 Colleton County sale, correct? 24 MR. WHITE: Well, the figure is what I 00:17:03 25 considered the net that -- the retainer said the
14 1 scrape that up. 2 So I think that to delay it and give 3 additional time for Mr. English to get rid of 4 whatever funds he still has would be an injustice. 00:15:10 5 I would think the thing to do would be to make a 6 payment at minimum of the proceeds from the 7 Colleton sale that we're due and if the Court -- if 8 we want to argue about the \$5,000 and the proceeds 9 at the Furman sale we can do that. At this point I 00:15:37 10 have no notice of any defense, and I just wanted to 11 bring that to the Court's attention that I'm 12 arguing against something that hasn't been made an 13 argument to me yet. 14 THE COURT: I understand. Where are the 00:15:45 15 funds today? 16 MR. COLLINS: I'm holding the Furman sale 17 proceeds. 18 THE COURT: Okay. 19 MR. COLLINS: David Chard closed it for 00:15:56 20 Colleton County. 21 THE COURT: Is he still holding those, or do 22 we know? 23 MR. COLLINS: They're gone as far as I know. 24 MR. HILL: I believe those were dispersed. 00:16:02 25 I'm not 100 percent sure, but I'm pretty sure.	16 1 gross recovery, but I had figured that on the net 2 recovery that Mr. English received from the two 3 HUDs. The question to me as to which it comes out 4 of -- I would ask that it be paid from the funds 00:17:30 5 still that we can identify where they are. 6 Mr. Collins holds money in his trust 7 account. I don't know where the funds are from 8 Colleton, but the litigation had to do with both 9 parcels. As long as I'm paid what's due me I don't 00:17:52 10 care if it comes out of the Furman or the Colleton 11 County proceeds as long as I'm paid for the work 12 that I did. He may have already spent the Colleton 13 County proceeds. I have no clue. 14 THE COURT: Okay. I'm with you. Do you 00:18:19 15 want to respond to that? Let me hear from you on 16 what Mr. White said. 17 MR. COLLINS: Your Honor, again, I know that 18 my client had the intention to putting this fee 19 resolution dispute behind him. My client has told 00:18:31 20 me that he has got problems with the amounts he's 21 being charged by both of these attorneys. Quite 22 frankly -- 23 THE COURT: He's had problems -- 24 MR. COLLINS: In all sincerity I don't like 00:18:43 25 to get between somebody and their lawyer. I've

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1 been on both sides of that argument, and I don't
2 want to insert myself. That's why I sent him to
3 the Fee Resolution Dispute Board because it's
4 basically mediation between the client and his
00:18:56 5 lawyer and it doesn't necessitate my involvement.

6 THE COURT: What's the amount of the funds
7 that you're now holding?

8 MR. COLLINS: \$72,438.

9 THE COURT: That was the figure from here,
00:19:04 10 was it not?

11 MR. COLLINS: Yes, sir. I don't know --
12 other than what Van says about the HUD -- I don't
13 know where the Colleton County funds are. I know
14 it closed some time ago.

00:19:26 15 MR. WHITE: Your Honor, there is an attached
16 copy of the HUDs that are attached to my motion.
17 That's what I'm referring to, Your Honor.

18 THE COURT: All right. And then based upon
19 that I do want to hear from Ms. DeJong. To what
00:19:45 20 extent was you-all's fee arrangement together, you
21 and Mr. White, or was yours separate from his?
22 That's what I'm trying to figure out.

23 MS. DeJONG: Well, when they first came to
24 me in January of 2011 the three of us sat down and
00:19:57 25 discussed the fee arrangement. I drew up the

1 retainer letter. Everybody read it and signed it
2 and understood what the fee arrangement would be.
3 They hired me because I'm the experienced
4 litigation attorney where Van at the time was just
00:20:08 5 doing real estate closings.

6 So I got involved and I took discovery
7 depositions, mediations. I did it quick, like in
8 six months, and we had final resolution before
9 Judge Fields. Thereafter both parties decided they
00:20:24 10 didn't want to honor the mediation agreement. I
11 got out in December of 2012 because my job was
12 done.

13 I was hired to resolve the two lawsuits and
14 I did. It wasn't so much a disagreement with
00:20:37 15 Mr. English. I had earned my percentage, and now
16 I'm here to ask for it. I don't understand this
17 fee dispute resolution. I don't know what there is
18 to dispute. It was a binding retainer agreement.
19 If Mr. English --

00:20:53 20 THE COURT: Let me stop you and let me go
21 back to my question. What is your fee agreement,
22 and is it separate and distinct from Mr. White's
23 fee agreement? That's my question to you.

24 MS. DeJONG: Well, it's together.

00:21:04 25 THE COURT: That's what I'm trying to figure

1 out. Okay. So you-all are asking for the same
2 number, right? So that means you're not piling on.
3 You're just asking for the same thing Mr. White's
4 asking for.

00:21:15 5 MS. DeJONG: Yes, we've agreed.

6 MR. WHITE: Your Honor, it was a total fee
7 of 40 percent: 20 percent to Ms. DeJong and
8 20 percent to me.

9 MR. COLLINS: So am I to understand that
00:21:24 10 you're saying that the money that you have awarded
11 is to be split among them, or they're both to
12 receive like amounts?

13 THE COURT: Well, that's what I've got to
14 figure out now. I think the fee that I awarded was
00:21:39 15 based upon -- if I'm not mistaken, it was based
16 upon actual work that was performed; was it not?

17 MR. WHITE: Your Honor, the fee that you
18 awarded -- my application for my fee did not
19 include anything due to Ms. DeJong. That's
00:21:51 20 20 percent.

21 THE COURT: A 20 percent calculation?

22 MR. WHITE: Because he has netted over
23 115,000, so 40 percent of that would be
24 considerably more than 18. I based it on the net
00:22:10 25 which was cutting him a break of more than 4,000 on

1 my side.

2 THE COURT: Right. I saw in yours it was a
3 gross figure?

4 MS. DeJONG: That's what the retainer letter
5 said, but that was wrong. I forgot to times it by
6 60 percent which was his share with Furman
7 properties because the Defendant gets a portion of
8 it substituted as well. She gets 40 percent,
9 correct?

00:22:20 10 MR. HILL: That's \$48,000 that we're getting
11 out of the 72, Your Honor. A little over 40. It's
12 28,800 for our 40 percent of 72 and then the 19,000
13 for the car.

14 THE COURT: Defendant's share was 40
00:23:11 15 percent, right? Have I got that right?

16 MR. COLLINS: It was different on the
17 Colleton --

18 MR. HILL: It was 35 in Colleton and 40 for
19 my client on the Furman property in Charleston.

00:23:32 20 THE COURT: I think that's my recollection
21 on that. So of the funds that are being held,
22 60 percent of that belongs to the Plaintiff, and
23 that figure is 43,200, right?

24 MR. WHITE: I think that's right.

00:26:14 25 THE COURT: I'm reading directly from the

1 order to get that. So counsel's position is that
2 you-all are entitled to 40 percent of those
3 funds -- 40 percent of the Plaintiff's take, right?

4 MR. WHITE: And 40 percent of the Colleton.

00:26:30 5 THE COURT: And 40 percent of Colleton?

6 MR. WHITE: Yes, sir, Your Honor.

7 THE COURT: All right. That's not lost on
8 me yet. I don't have those funds. I don't have
9 those in front of me.

00:26:36 10 MR. WHITE: Those funds --

11 THE COURT: Let me deal with one at a time,
12 all right? It will be a lot easier mathematically
13 for me to figure out where we are here. So 40
14 percent of 43,200 -- I've got 17,280. All right?

00:26:51 15 So I'm trying to figure out how I came up with the
16 18,112.69, but I think that came off of an
17 affidavit that you submitted, did it not?

18 MR. WHITE: Yes, Your Honor. 18,112.69 was
19 equal to the following formula: 20 percent, which
00:27:09 20 is my portion, of the net proceeds out of the
21 Colleton County sale minus \$5,000 that was paid by
22 Mr. English, plus 20 percent of the net proceeds to
23 Mr. English out of the Furman sale, and that would
24 equal the 18,112.69. So the total 20 percent -- in
00:27:43 25 other words what he netted -- again netted -- out

1 of those would have been 5 times 23,112.69 whatever
2 that was. So I came up with 23,112.69 total minus
3 5,000 paid which leaves 18,112.69 for my portion.

4 THE COURT: That's what I'm trying to figure
00:28:08 5 out. Does the 18 represent only the Colleton
6 County, or does that represent the full amount?

7 MR. WHITE: It represents my unpaid portion
8 of the two sales.

9 THE COURT: Just your portion, right?

00:28:21 10 MR. WHITE: My portion, yes, sir. It
11 doesn't reflect on Ms. DeJong's at all.

12 THE COURT: I'm with you. And so
13 Ms. DeJong, your number should be the same then,
14 should it not, if you-all use the same math?

00:28:35 15 MR. DeJONG: Well, he was doing it based on
16 the net. I was doing it based upon the gross since
17 it's in the retainer letter. According to your
18 calculation is John English going to walk away
19 today with a check?

00:28:49 20 THE COURT: It doesn't look like it, but I'm
21 going to do that math before I get you-all out of
22 here. That's why he wants to go to the Fee Dispute
23 Board.

24 MR. COLLINS: Well, there's only so much
00:29:00 25 meat left on the carcass.

1 THE COURT: Correct. I fully understand
2 that. That's what I fully understand. Okay?

3 MR. WHITE: Your Honor, that's assuming that
4 the proceeds from the Colleton County sale have not
00:29:13 5 been spent.

6 THE COURT: I understand that. I think I'm
7 entitled to find out where those are. The net from
8 Colleton was over 100,000?

9 MR. WHITE: The net for the two was over
00:29:26 10 100,000 of which he got 65 percent.

11 MR. HILL: On one. Colleton --

12 THE COURT: We've got different math.
13 That's why I only want to do one at a time because
14 number one, I only know where one of the set of
00:29:41 15 funds is and that's at Mr. Collins' office. The
16 other one I want to know where they are. If
17 they're at Mr. Chard's office I want Mr. Chard in
18 here.

19 MR. COLLINS: They're not at Mr. Chard's
20 office.

21 MR. HILL: I want to tell you why I don't
22 think they're at Mr. Chard's office. Bentley Price
23 was proactive. He got out of this case. They went
24 to, I think, fee dispute resolution. He had it set
00:30:00 25 up where his money was going to come out of that

1 Colleton closing, and it did. He was paid. That's
2 according to my recollection. He has his money
3 from that. I don't think my client walked away
4 with hardly anything, which I know you're not
00:30:19 5 concerned with what my client walked from that
6 closing with, but I believe John English obtained
7 that money.

8 I don't think the Court's leaning this way,
9 but I think John English's net proceeds have to
00:30:40 10 be -- or gross proceeds have to be calculated after
11 the money for the car is taken out, too. So even
12 though he got \$43,200 out of the 72 it's actually
13 minus the 19 also, so then his share is only, you
14 know, 22,000 and some odd dollars. I believe
00:31:07 15 that's in the court order.

16 MR. COLLINS: Well, Van, didn't you submit
17 an affidavit based upon the HUD statement from
18 Colleton County and from the sale/HUD of Furman?

19 MR. WHITE: I did submit an affidavit based
00:31:22 20 upon those two. In response to what Mr. Hill has
21 to say if you take the price of the Explorer out of
22 it you also have to take his use of the Explorer
23 and add that back into it, which I believe the
24 Court kind of -- I mean because he did get the use
00:31:44 25 of the Explorer as a result of this, so that's a

1 benefit to him, and how do you value that? I don't
2 know. I think the Explorer is best left out of the
3 equation because we're talking about net/cash
4 proceeds.

00:31:56 5 THE COURT: I'm going to get to it. What
6 was the net figure that you used off of the
7 Colleton County sale to determine your fee?

8 MR. WHITE: Your Honor, if I go here to
9 Page 5 of the addendum to the HUD that's attached.
00:32:06 10 It says, balance payable to John English, (Meredith
11 Palin) \$71,633.51. For purposes of the calculation
12 I used the \$500 in costs that was also paid because
13 costs and fees are in addition to each other.

14 THE COURT: Okay. And then back again,
00:33:04 15 Mr. White, on your claim, do you have an issue with
16 18,112.69 with that award? Any issue with that,
17 the amount?

18 MR. WHITE: Your Honor, I would be satisfied
19 with being paid that. I think I'm entitled to more
00:33:25 20 under the agreement, but the practice of law is the
21 practice of compromise.

22 THE COURT: I understand. I just want to
23 know -- all I'm doing right now is trying to figure
24 out some math. Okay? I'm just trying to figure
00:33:37 25 out what it is. I don't know if we have enough

1 math to go around. I'm not sure if we have enough
2 dollars to go around. That's what I'm not sure if
3 we've got. Anyway, that's what I'm doing right
4 now.

00:34:24 5 Once I get the two attorneys' fees roughed
6 out I come up with about \$41,000 and we're only
7 holding 43,200, right? Isn't that the problem?

8 MR. HILL: You're only holding 22,000.

9 THE COURT: Has the car already been paid
00:34:38 10 for?

11 MR. HILL: No, sir. It comes out of the 72.
12 When he says they grossed 115 out of the Colleton
13 and -- they really only grossed like 96,000 because
14 you have to take my 19,000 off the 115. So when
00:34:59 15 you take the case in its totality the gross is
16 right around \$95,000 after the sale and, you know,
17 the disbursements.

18 MR. WHITE: Your Honor, I would say that
19 those figures are net figures, not gross figures.
00:35:27 20 The gross figures, of course, would have been prior
21 to the Realtor's 30,600 for the sale of Furman and
22 all that. It would have been considerably more --
23 well over 27,000 apiece for Ms. DeJong and I. So
24 those were net figures rather than gross.

00:35:45 25 MR. HILL: Minus the 19,000 for the car.

1 THE COURT: I can't fix this problem today.
2 Everybody submit their own order as to what you're
3 entitled to. I'll pick one and I'll fill it out,
4 and I'm going to make a decision. This case needs
00:36:03 5 to be brought to some conclusion. If you-all can
6 find me where the money is -- I'm assuming
7 Mr. English has already been paid, so Mr. English's
8 likelihood to get any of this money is close to
9 nil, all right? I want you to know that.

00:36:16 10 I'm concerned for you because that is
11 probably where your payment is coming from, but
12 that's another story for another day. I don't need
13 to worry about that one.

14 MR. COLLINS: No, sir. Please don't.

00:36:22 15 THE COURT: I can see that there's not
16 enough money to go around if the car gets paid for.
17 I've already issued that order. Then the question
18 is: How do I get these people paid that have done
19 work on the case. So you-all can submit what it
00:36:36 20 is. I need a mathematical calculation to get me to
21 the number I've gotten to.

22 I've already entered one order. I'm just
23 going to do a Form 4 denying the motion to
24 reconsider. You can take that up if you like. I
00:36:50 25 think you're okay on yours.

1 I've already provided for an attorney fee
2 for you. I would expect that to be provided.
3 Ms. DeJong, yours is relatively new. You just need
4 to submit something. If you want some additional
00:37:01 5 consideration outside of what's already been
6 ordered then submit an order, and I'll take a look
7 at it.

8 MR. COLLINS: Judge, we're going to be
9 talking a lot in the next couple of weeks.

00:37:13 10 THE COURT: That's fine. Okay?

11 MR. WHITE: If I may ask the Court for a
12 point of clarification?

13 THE COURT: Yes.

14 MR. WHITE: In the proposed order to be
00:37:18 15 submitted the Court is saying that out of the
16 Furman money the car will be paid for first, right?
17 Is that correct?

18 THE COURT: I'm not saying that, but I'm
19 telling you that I have already ordered X-number of
00:37:32 20 dollars to be paid. That I have said. I need to
21 figure out -- if you're going to submit an order in
22 here I need to know where you're getting your money
23 from? What the gross is? Are you calculating on
24 the gross? Are you calculating on the net? Where
00:37:41 25 is it coming from? Establish what the basis for

1 the fee is. Okay? I'll go from there.
 2 MR. WHITE: Thank you, Your Honor.
 3 (The proceedings were concluded at
 4 2:55 p.m.)
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1 State of South Carolina)
 2 County of Charleston) C E R T I F I C A T E
 3
 4 I, Christine A. Smith, Court Reporter
 5 and Notary Public for the State of South Carolina at
 6 Large, do hereby certify that the foregoing
 7 transcript is a true, accurate, and complete record.
 8 I further certify that I am neither
 9 related to nor counsel for any party to the cause
 10 pending or interested in the events thereof.
 11 Witness my hand, I have hereunto affixed
 12 my official seal this 12th day of February, 2015 at
 13 Charleston, Charleston County, South Carolina.
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Christine A. Smith
 Notary Public
 My Commission Expires
 May 12, 2021

Errata Sheet

1

1. ERRATA SHEET

2

3. I, the undersigned, JOHN WHITE, do
4 hereby certify that I have read the foregoing
5 proceedings and find it to be a true and accurate
6 transcription of my testimony, with the following
7 corrections, if any:

8

9	PAGE	LINE	CHANGE	REASON
10	5	19	"Mr. white:" should read "Mr. Collins"	The speaker was Mr

Collins

11

12

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24

25

JOHN WHITE

Date

Apr 17 2015

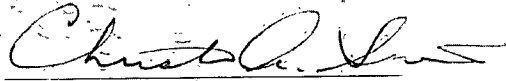
A: WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

AFFIDAVIT

I, Christine A. Smith, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the following errors occurred in my transcript.

P. 5, Line 1, "Mr. White" should have read "Mr. Collins"

I apologize for any problems this may have caused.



Christine A. Smith, Court Reporter
My Commission Expires: May 12, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Mikell Scarborough
Master in Equity

Case No. 2010-CP-10-7241

RECEIVED

APR 15 2016

JOHN M. ENGLISH

Appellant

SC Court of Appeals

v.

ELLEN SEXTON and JOHN E.
WHITE, JR

Respondents

CERTIFICATE OF COUNSEL

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



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