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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE MAITE MURPHY
CIRCUIT COURT JUDGE

CASE NO. 2016-CP-18-1001

RECEIVED
APR 22 2019
SC Court of Appeals

Tammy C. Richardson,

v.

Halcyon Real Estate Services, LLP and
McCabe, Trotter & Beverly, P.C.

MOTION TO STAY DEPOSITIONS OF HALYEN GATLING AND STEPHANIE TROTTER
AND ALL OTHER RELIEF GRANTED

McCabe, Trotter, & Beverly, P.C. ("Appellant" or "MTB") requests this court stay the relief granted in Judge Maite Murphy's April 4, 2019 order, including the depositions scheduled to begin tomorrow morning to protect MTB's right to blunt abusive tactics by Plaintiff's counsel and prevent this appeal from becoming moot.

Tammy Richardson is a homeowner in a homeowners' association ("HOA") represented by Appellant. Ms. Richardson failed to pay assessments and penalties owed the HOA. The HOA retained Appellant to collect the debt. Ms. Richardson brought suit against Appellant alleging a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. and the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10. Plaintiff's case has been certified as a class action, and hundreds of thousands of documents have been produced thus far.

During discovery, Plaintiff's counsel sought to depose several of Appellant's current and former employees, including Haylen Gatling and Sheri Self. Plaintiff's counsel noticed these

depositions and identified “all documents produced or made available in discovery by any party” as documents to be used during the depositions. Counsel for Appellant requested Plaintiff comply with Rule 30(j)(8), SCRCF, which requires counsel to provide to opposing counsel a copy of all documents shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness.

If the documents are provided (or otherwise identified) at least two business days before the deposition, then the witness and the witness’ counsel do not have the right to discuss the documents privately before the witness answers questions about them. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to privately discuss the documents before the witness answers questions concerning the document.

Rule 30(j)(8). Through a letter, Appellant’s counsel asked Plaintiff’s counsel to properly identify the documents he planned to use prior to the deposition; however, Plaintiff’s counsel did not respond. Again, prior to the deposition beginning, Appellant’s counsel requested Plaintiff’s counsel identify the documents so Appellant’s counsel could discuss them with the witness. Plaintiff’s counsel refused.

During the deposition, Plaintiff’s counsel presented multiple documents to two witnesses. Based upon his good faith belief that Plaintiff’s counsel had not complied with the rule, Appellant’s counsel, along with MTB lawyer Stephanie Trotter, conferred with the witnesses about the documents prior to allowing Plaintiff’s counsel to ask them questions. When Plaintiff’s counsel asked the witness what they discussed with Appellant’s counsel, Appellant’s counsel instructed the witness not to answer so as not to reveal the substance of the private communications protected by Rule 30(j)(8). After the depositions concluded, Appellant’s counsel filed a motion for a protective order¹ and Plaintiffs’ counsel filed a motion for sanctions.²

The trial court heard both motions and filed its order denying Appellant’s motion and granting Plaintiff’s motion on April 4, 2019.³ The court’s order fails to provide any analysis of Appellant’s argument. Instead it merely cites the general rule prohibiting counsel from conferring

¹ Exhibit A.

² Exhibit B.

³ Exhibit C

with a witness following the start of a deposition and found the following sanctions against MTB were appropriate:

1. The depositions of the two MTB employees would be reconvened, and Appellant's counsel was ordered "not to instruct the witness not to respond to questions regarding the off the record conferences," at MTB's expense.
2. Stephanie Trotter, a partner at MTB, was instructed to sit for a deposition regarding the off-the-record conversations at MTB's expense.
3. MTB's counsel was enjoined from "the prohibited behavior discussed herein."
4. MTB was ordered to pay \$10,865 in attorneys' fees and costs along with the amount of attorneys' fees incurred during the reconvened depositions.

Immediately following entry of the court's order, Plaintiff's counsel sent notices of deposition for Haylen Gatling⁴ and Stephanie Trotter.⁵ The depositions are scheduled for April 23, 2019. MTB filed a motion for reconsideration and requested an expedited hearing on April 15, 2019.⁶ Appellant asked the court to stay the ordered discovery until the court ruled on the motion. On April 19, 2019, Appellant again asked the court to stay the depositions scheduled.⁷ On April 22, 2019, the court's clerk sent an email indicating the court would deny the motion for reconsideration and would not stay the relief granted.⁸

Appellant has appealed this order to the court of appeals pursuant to section 14-3-330(4) of the South Carolina Code, based on the trial court's prohibition against asserting the protections found in Rule 30(j)(8). Appellant is also filing a petition for writ of certiorari, or in the alternative, to certify this appeal to the South Carolina Supreme Court. Based on the depositions scheduled for tomorrow, and in order to ensure this case is not mooted, Appellant requests this court issue an order staying all relief granted in the underlying order pursuant to Rule 241(c)(2), SCACR. Appellant asserts the motion for reconsideration requesting the court stay discovery was a sufficient request pursuant to Rule 241(d)(1), SCACR. However, should this court disagree,

⁴ Exhibit D.

⁵ Exhibit E.

⁶ Exhibit F.

⁷ Exhibit G.

⁸ Exhibit H.

Appellant asserts extraordinary circumstances make it impracticable to ask the lower court to issue a stay in this case based on the depositions scheduled for tomorrow.

Based on the likelihood that private, protected information will be elicited at these depositions, Appellant requests this court expedite the consideration of this petition.

April 22, 2019

A handwritten signature in blue ink, appearing to read "R. P. Wood", is written over a horizontal line.

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Exhibit

A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

TAMMY C. RICHARDSON,

Plaintiff,

vs.

HALCYON REAL ESTATE SERVICES, LLC)
and MCCABE, TROTTER & BEVERLY,)
P.C.,)Defendants.)
_____)

) IN THE COURT OF COMMON PLEAS

) THE FIRST JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-18-1001

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**MCCABE, TROTTER & BEVERLY, P.C.'S
MOTION FOR PROTECTIVE ORDER**

Defendant McCabe, Trotter & Beverly, P.C. ("MTB"), by and through its undersigned counsel and pursuant to SCRCP 26(c), 30, 33 and 45, moves this Court for a Protective Order (1) precluding Plaintiff from serving further written discovery requests and (2) limiting the scope of the 30(b)(6) deposition of MTB as noticed on December 6, 2018, and quashing the Subpoena for the same. MTB shows this Court the following:

This is a case by a disgruntled homeowner who failed to pay money owed to her HOA against the law firm the HOA hired to pursue claims against her for that debt. Among other things, Plaintiff alleges MTB misrepresented the amount owed in violation of 15 U.S.C. § 1692, the Fair Debt Collections Practices Act ("FDCPA") by including certain attorney's fees in Plaintiff's balance that the firm generated under its fee agreement with Plaintiff's HOA. Plaintiff included class action allegations in her Complaint, and this Court agreed to certify the class.

Meanwhile, Plaintiff's lawyers filed three similar suits against MTB with identical FDCPA allegations. Those cases proceeded in federal court.¹ In each of those cases, the presiding federal

¹ Allison v. MTB; 2:17-01727-RMG; Park v. MTB; 2:17-cv-00657-RMG; and Aubrey v. MTB; 2:17-cv-00656.

judge determined on dispositive motions, that the language in the HOA's covenants determines whether MTB can rightfully include attorney's fees in a delinquent owner's balance. In short, if the covenants provide that the delinquent owner is responsible for attorney's fees the HOA incurs in the process of collecting debts from homeowners, it is not a violation of the FDCPA for MTB to include attorney's fees earned under its fee agreement with the HOA in an owner's balance. To the contrary, the federal court determined that if the HOA covenants provide an owner is responsible for attorney's fees the HOA incurs only upon when the HOA obtains a judgment, it is a misrepresentation of debt and violation of the FDCPA for MTB to include attorney's fees in an owner's balance owed prior to a judgment.

Here, the Southern Magnolias Owners' Association (Plaintiff's HOA) covenants contain language stating that delinquent owners are responsible for reasonable attorney's fees the HOA incurs in the process of attempting to collect amounts owed:

SECTION SEVEN. Creation of the Lien and Personal Obligation of Assessments

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such property at the time when the assessment fell due.

MTB has a Motion for Summary Judgment pending filed October 2, 2018.

Written Discovery

This case has been pending since 2015, as it was originally filed as C/A 2015-CP-1575. The parties have exchanged written discovery, including tens of thousands of documents MTB has produced to Plaintiff. Plaintiff has also served over 120 discovery requests to MTB. Plaintiff has

called these "interrogatories," "requests for production," and generic "discovery requests." Further written discovery requests (in any form) are and would be unreasonably cumulative, duplicative, burdensome, expensive and unnecessary pursuant to SCRCP 26(b), especially in light of the pending Motion for Summary Judgment. Additionally, the requests grossly exceed the allowable number prescribed in SCRCP 33(b)(9). Therefore, MTB asks this Court to issue an Order precluding Plaintiff from serving and protecting MTB from having to respond to any further written discovery requests in this case.

30(b)(6) Deposition

On July 19, 2018, Plaintiff filed a Motion to Compel MTB to present witnesses to testify on behalf of the firm. The topics Plaintiff included in her initial Notice of the Deposition, which was the subject of the Motion to Compel, were:

1. Explain the factual basis of each of the defenses asserted in your Answer dated December 18, 2015.
2. As to all cases or claims filed or made against McCabe, Trotter & Beverly, P.C. in the last 3 years, please explain the following:
 - a. The amount of any insurance deductible paid by you,
 - b. The amount of settlement paid, who the settlement was with, and who paid the claim (e.g. you, insurance, both, etc.)
 - c. If the matter was filed as a lawsuit or counterclaim, where was it filed, what was the basis of the claim, what is the present status, if the matter was resolved, and
 - d. If your insurance carrier sent a reservation of rights letter, what did it say?

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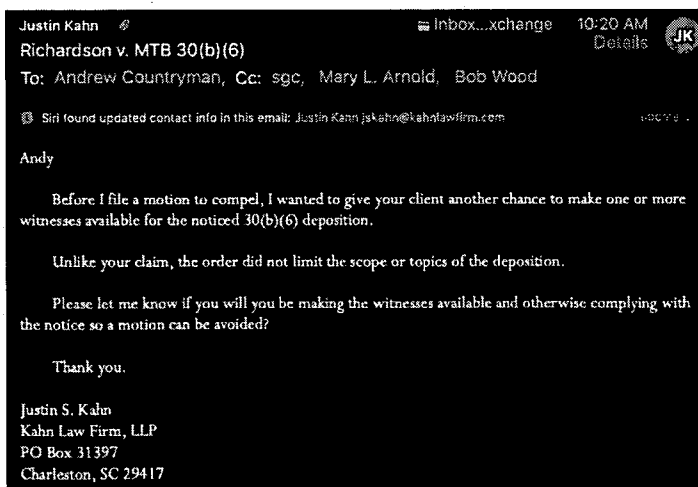
A hearing took place, and the Court granted the Motion to Compel via an Order filed October 16, 2018. In pertinent part, the Court held that MTB is to give a deposition on the topics listed in the July 19, 2018, Notice.

After the Court issued that Order, counsel for the parties discussed deposition dates. At some point in October or November, counsel for MTB offered January 29, 2019, as a potential

date. After not responding to this for weeks, Plaintiff's counsel served Exhibit 1, a Notice of Deposition of MTB and Subpoena. The documents set the deposition for January 29, 2019, at Plaintiff's counsel's office in Charleston. This date is no longer available for defense counsel, as he is serving as a mediator in another case that day. Further, the deposition needs to take place at the witnesses' location in Columbia. Counsel anticipates being able to resolve scheduling/logistical issues without the Court's intervention.

The problem is the topics included in the 30(b)(6) Notice. Again, the subject of the Motion to Compel the Deposition was the limited topics listed above. However, the list of topics included in the Notice Plaintiff issued following the Order on the Motion to Compel contains 38 topics spanning six pages. This Notice brazenly exceeds the scope of the Order on the Motion to Compel MTB to give a 30(b)(6) deposition. Its topics are also overreaching, invasive, unduly burdensome, harassing, irrelevant and not likely to lead to the discovery of admissible evidence. Counsel for MTB sent Plaintiff's counsel a letter on December 8, 2018, regarding this issue and indicating he would make MTB available for a deposition to discuss the topics in the Notice subject to the Motion to Compel, but not this new Notice that is totally different from and outside the scope of the Notice that was the subject of the Motion to Compel. Ex. 2.

Plaintiff's counsel responded with an email saying he would give MTB another "chance to make" witnesses available for the deposition and that he is not willing to limit the scope of the deposition to the topics in the original Notice:



Therefore, MTB requests an order protecting MTB from sitting for a deposition under the the December 6, 2018, Notice and quashing the corresponding Subpoena under Rules 26, 30 and 45. MTB asks the Court to limit the scope of the deposition testimony its witness(es) must give in compliance with the Court's Order on Plaintiff's Motion to Compel to the topics listed in Plaintiff's initial Notice- the one that was the subject of the Motion and resulted Order on it. MTB also requests attorney's fees associated with this Motion in light of Plaintiff's disregard of the Court's prior Order on the Motion to Compel and following *sun sponte* issuance of the Notice with 38 topics spanning 6 pages.

Counsel for MTB has addressed these issues with Plaintiff's counsel in compliance with Rule 11 and doing so further would not be fruitful. MTB may supplement this Motion with memoranda and/or affidavit(s) as appropriate.

[signature page to follow]

Respectfully submitted,

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Exhibit

B

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**COURT OF COMMON PLEAS
CASE NO. 16-CP-18-1001**

TAMMY C. RICHARDSON,

PLAINTIFF,

v.

**HALCYON REAL ESTATE SERVICES,
LLC AND McCABE, TROTTER &
BEVERLY, P.C.,**

DEFENDANTS.

**PLAINTIFF'S NOTICE AND
MOTION FOR SANCTIONS AND
MEMORANDUM IN SUPPORT THEREOF
CONCERNING IMPROPER DEPOSITION
CONDUCT OF MTB COUNSEL**

PLEASE TAKE NOTICE THAT at such time and place as may be set by the Court, Plaintiff, by and through her counsel, will move for an order seeking relief, including sanctions against Defendant and its counsel, the continuation of certain depositions, the award of attorney's fees and costs and granting such other and further relief as is deemed just and proper.

This motion is brought pursuant to Rule 37, SCRCP and other law.

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I. CONCISE SUMMARY OF THE BASIS OF THE MOTION.

This motion seeks a Court Order redressing discovery abuse and misconduct committed by defense counsel along with an MTB attorney who participated in the misconduct. Counsel for MTB has disrupted depositions, engaged in witness coaching during depositions to have impermissible off-the-record discussions with

witnesses about documents that were previously produced and improperly instructed a witness to leave a deposition before it concluded.

The relief sought includes:

1. Ordering the continuation of the depositions of MTB employee Haylen Gatling and former employee Sheri Self and paying the associated costs and attorney's fees for having to retake and continue the same;
2. Directing witnesses to testify in full as to the matters discussed with MTB Counsel during off-record conversations;
3. Ordering the deposition of Stephanie Trotter, an attorney who engaged in the improper witness coaching with counsel for MTB during the deposition of Haylen Gatling;
4. Ordering MTB's counsel to cease and desist from similar conduct in the future; and
5. Sanctions for engaging in improper conduct repeatedly during the depositions, engaging in off-the-record witness coaching, obstructive conduct and otherwise in violation of the deposition conduct rules.

II. NATURE OF THE CASE.

This is a class action Fair Debt Collection Practices Act ("FDCPA") and Unfair Trade Practices Act lawsuit brought against the law firm of McCabe, Trotter & Beverly, P.C. (MTB), whose primary practice is the collection of allegedly past due homeowners assessments on behalf of homeowners associations (HOAs). The suit claims MTB routinely misrepresents the amount of money consumers actually owe their HOAs by making up amounts of attorney's fees

claimed owed and then using the bogus numbers to threaten foreclosure, forcing homeowners to choose between paying MTB or losing their home.

This scheme impacts thousands of South Carolina residents and generates millions for MTB. Its improper debt collection practices include generating thousands of form letters falsely claiming hundreds or thousands of dollars in attorney's fees are owed to the HOAs when they are not, filing notices of liens repeating those misrepresentations, and then foreclosing on homes to collect the bogus fees. The misrepresentations begin with MTB's unsigned form letter telling homeowners they "currently" owe their HOAs hundreds of dollars in attorney's fees and failing to disclose that MTB only charges the HOA no more than \$65.

Exemplar testimony of Stephanie Trotter, Esq., who runs MTB's HOA collections efforts, succinctly makes the point:

9 Q How long has your law firm been sending out
10 letters to consumers saying that the attorney's fees
11 are greater than the amounts your law firm has been
12 billing the homeowners associations?
13 A Since August of 2012, when we opened.

Ex. 1 Dep. Trotter, p. 167.

Plaintiff Tammy C. Richardson is one of the few to successfully challenge the collection practices. Despite the false claims made by MTB about her and her alleged indebtedness, she successfully defended herself against the improper collection practices and the foreclosure action MTB brought against her. In the end, her HOA admitted she did nothing wrong, she successfully fought MTB's

attempts to take her home, and she was able to bring an action on behalf of her and others that seeks to hold this law firm to account for its acts.

The present motion is Plaintiff's attempt to combat yet one more way MTB tries to bully consumers.

III. ARGUMENT

The South Carolina deposition conduct rules boil down to "if you can't do it in front of a judge, you shouldn't do it in a deposition."

A. PROHIBITED CONDUCT DURING DEPOSITIONS

The Supreme Court has warned lawyers that their conduct in depositions can result in ethical violations and sanctions. *In the Matter of Anonymous Member of the South Carolina Bar*, 346 S.C. 177, 552 S.E.2d 10 (2001). South Carolina adopted deposition conduct rules derived from *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa 1993). Having adopted the *Hall* approach, our Court requires attorneys to operate under one of the most sweeping and comprehensive rules on deposition conduct in the nation. *In re Anonymous Member of S.C. Bar*, at 190, 16.

Prohibited conduct includes off-the record conferences, suggestive objections and interjections and instructions not to answer. There are various additional contempt powers available to the trial court when counsel violates the Rules.

In addition to their traditional contempt powers, judges may issue orders as a sanction for improper deposition conduct: (1) specifying that designated facts be taken as established for purposes of the action; (2) precluding the introduction of certain evidence at trial; (3) striking out pleadings or parts thereof; (4) staying further proceedings pending the compliance with an order that has not been followed; (5) dismissing the action in full or in part; (6) entering default judgment on some or all the claims; or

(7) an award of reasonable expenses, including attorney fees. *Id.* Among the costs a judge may deem appropriate could be those incurred for future judicial monitoring of depositions or payment for the retaking of depositions. Our judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law.

Id. at 194, 18. Attorneys who cross the line during a deposition, do not promote the “just, speedy, and inexpensive determination of every action.” *Id.*

During a deposition, the only permissible discussion between counsel and a witness that may take place if it does not involve deciding whether to assert privilege is to discuss a **previously undisclosed document**. *In re Anonymous Member of S.C. Bar*, at 190-191, 16.

MTB counsel wrongly and repeatedly stopped depositions to engaged in off-the-record witness coaching and discuss with the witness previously produced documents. MTB counsel improperly argues that if deposing counsel does not identify **the exact documents** to be used for each deposition, **even when those materials have been previously produced in discovery**, MTB counsel can stop the deposition to discuss the previously produced document off-the-record with the witness.²

The Court should not hesitate to use its power to end such conduct. MTB counsel repeatedly engaged in prohibited conduct to further its goal of disrupting

² MTB Counsel claims it is “not sufficient [for deposing counsel] to identify material he planned to use in the deposition under Rule 30(j)(8).” MTB Motion for Protective Order (Haylen Gatling) Jan. 21, 2019, p. 6.

the discovery process and impede the process. MTB counsel filed frivolous motions seeking protection from questioning about documents previously produced and off-the-record discussions with witnesses. Interestingly, defense counsel fails to cite to the Court the controlling case in this jurisdiction prohibiting such conduct in violation of Rule 3.3 Candor Toward the Tribunal.³

The law is clear: Conferences called to assist a witness in framing an answer, to calm down a nervous client, or to interrupt the flow of a deposition are improper and warrant sanctions. *In re Anonymous Member of S.C. Bar*, at 191, 17. The issues squarely before the Court relate to repeated violations of principles stated in THE case setting the bar governing attorney conduct in depositions in South Carolina.

B. OFF-THE-RECORD DISCUSSION WITH WITNESS ABOUT PREVIOUSLY PRODUCED DOCUMENTS PROHIBITED

Once a deposition begins, an attorney and a client may have an off-the-record conference *only when deciding whether to assert a privilege or to discuss a previously undisclosed document*. *In re Anonymous Member of S.C. Bar*, at 190-191, 16 (emphasis added).

Defense counsel violated the Supreme Court's deposition conduct order because when previously disclosed documents were presented to the deponent, defense counsel stopped the deposition without stating a permissible reason,

³ Rule 3.3: Candor Toward the Tribunal (a)(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

engaged in prohibited off-the-record witness coaching and then did not allow permitted inquiry into the meeting.

As discussed herein, if there is a permissible basis for meeting with a witness during a deposition, before meeting with the witness to discuss the previously produced document, counsel must state a need to discuss asserting a privilege.⁴ As this did not occur, defense counsel repeatedly engaged in prohibited witness coaching and violation of the Supreme Court deposition conduct pronouncement.

There are multiple examples of the impermissible conduct in the depositions. Below are examples after the witness was shown a previously disclosed document.

10 MR. COUNTRYMAN: And I'm going to tell her
11 not to answer that **before we discuss it.**
12 BY MR. KAHN:
13 Q Do you see that sentence?
14 MR. COUNTRYMAN: **So don't answer that.**
15 MR. KAHN: All right. I --
16 MR. COUNTRYMAN: **Come with me. We're going**
17 **to chat about it.**
18 MR. KAHN: I don't understand the basis of
19 your objection. These -- **this document has been**
20 **previously produced; right?**
21 MR. COUNTRYMAN: **Yup.**
22 MR. KAHN: All right. And **you think the**

⁴ Defense counsel acknowledges that each document at issue was previously produced. *See e.g.* Ex. 2 Self Dep. p. 94.

23 rules allow you to talk with a witness about a document
 24 that has been previously produced or identified?
 25 MR. COUNTRYMAN: Yes.

Ex. 2 Self Dep. p. 21.

9 MR. KAHN: This has been previously been
 10 marked as Trotter No. 24, which is a document we've
 11 produced and provided and been used in the past.
 12 MR. COUNTRYMAN: I'm going to talk to her
 13 about it before you ask any questions.

Ex. 2 Self Dep. p. 172.

BY MR. KAHN:
 Q And if you look at the second page -- is this
 a document that you would have printed as well?
 A Yes.
 MR. COUNTRYMAN: Sheri, I'm going to talk to
 you about this before you answer questions about it
 MR. KAHN: All right. Again, I think that
 violates the rules.

Ex. 2 Self Dep. p. 113.

There are many examples of the improper conduct in the depositions attached. *See e.g.*, Ex. 2 Self Dep. pp. 104, 122-123, 177. There was no legitimate basis to meet with the witness. Every document presented was previously produced, most by MTB. Most of the documents have been used in prior depositions or were created by the witness.

5 [MR. COUNTRYMAN] ... I'm taking a
6 brief amount of time to go over the document with the
7 witness before she discusses questions about it with
8 you.
9 MR. KAHN: And the rules specifically -- in
10 the South Carolina Supreme Court specifically prohibit
11 you from engaging in the conduct you have described.
12 And the basis of what you have asserted, which is to
13 review documents that you claim I sprung on you as a
14 surprise, is not a basis to have an off-the-record
15 conference, and you are in violation of the rules.
16 These documents have been produced throughout
17 discovery by McCabe Trotter. There's no surprise here.
18 This is a witness who prepared the documents. But
19 subject to all of that, we can let a judge deal with
20 it.

Ex. 2 Dep. Self p. 157.

Contrary to the Supreme Court's clear instruction that there are to be no off-the-record discussions about previously produced documents, MTB's counsel acts as if after a deposition begins, counsel can ignore the rules, take the witness out of the room and have off-the-record discussions about previously produced documents even when the discussions are not for the purpose of deciding whether to assert a privilege. Nothing in *In Re Anonymous* supports this.

1. Before a Conference for Limited Purpose of Asserting Privilege or Discussing Newly Produced Document, Counsel Should Note Why a Conference is Needed on the Record.

If there is a permissible basis, “[b]efore beginning such a conference, the deponent’s attorney should note for the record that a break is needed to discuss the possible assertion of a privilege or a newly produced document.” *In re Anonymous Member of S.C. Bar*, at 191, 16. MTB counsel failed to comply.

BY MR. KAHN:

6 Q Do you see on the second page where your
7 initials appear?

8 MR. COUNTRYMAN: Going to talk to her about
9 this before she answers any questions on it. If you
10 have anything else you want me to go over with her, I'm
11 happy to do that since --

12 MR. KAHN: I don't think the rules require
13 that. I think what you're doing is improper. So we
14 can --

15 MR. COUNTRYMAN: That's fine. But I'm doing
16 it. So I'm telling that ahead of time. If you want me
17 to go over them with -- with her now, I'll do that. If
18 not, then you can waste more time doing it over the
19 next 30 minutes. That's fine.

Ex. 2 Self Dep. p. 194.

MTB counsel failed to note for the record a basis allowed by the Supreme Court to meet with the witness. MTB counsel engaged in prohibited conduct.

2. *After A Conference for the Limited Purpose of Asserting Privilege or to Discuss a Newly Produced Document, Counsel Should Note the Decision Reached.*

After a permissible conference, the conferencing attorney should state on the record why the conference occurred, and the decision reached. If the party decides to assert a privilege, the basis for the privilege should be clearly stated. *In re Anonymous Member of S.C. Bar*, at 191, 16.

There was no permissible basis and Defense counsel failed to state a one. The documents were not newly produced and there was no discussion of the possible assertion of privilege. Instead, MTB counsel decided to interrupt the deposition, engage in improper witness coaching and ignore the Supreme Court.

3. *Following a Conference, Counsel May Inquire Into the Subject to Determine if There Was Witness Coaching.*

When there is an off-the-record conference, whether or not a privilege is asserted, deposing counsel may inquire on the record into the subject of the conference to determine if there has been any witness coaching. *In re Anonymous Member of S.C. Bar*, at 191, 16. Attempts were made to learn what happened between the witness and counsel during the breaks to review the previously produced documents.

22 Q And what -- what did you all talk about?

23 MR. COUNTRYMAN: Don't answer that question.

Ex. 2 Self Dep. pp. 22.

Defense counsel repeatedly blocked similar inquiry into the improper discussions that took place. *See e.g.*, Ex. 2 Self Dep. pp. 95, 113, 118, 123, 148, 151, 156, 161, 172, 183, 186, 205.

The impermissible conferences and witness coaching repeatedly took place and permitted inquiry was blocked. The truth seeking function of the depositions and witnesses became tainted by the improper conduct. Sanctions are justified.

C. THERE IS NO PRIVILEGE TO CLAIM; THUS, A LAWYER CANNOT DISCUSS PREVIOUSLY DISCLOSED DOCUMENTS WITH A WITNESS DURING A DEPOSITION.

As to Haylen Gatling, defense counsel does not argue there was an attempt made to decide whether to assert a privilege. Instead, it is argued he “took a reasonable amount of time (approximately 15 minutes) under Rule 30(j)(8) *to review the exhibits with the witness.*” MTB Motion for Protective Order (Gatling) Jan. 21, 2019, p. 7. (emphasis added). *See e.g.* Ex. 3 Gatling Dep. pp. 182-186 where defense counsel stopped the deposition repeatedly and talked with the witness about previously produced documents (Ex. 4).

5 MR. KAHN: I think that absolutely violates
6 the rule. We'll let the judge deal with it.
7 MR. COUNTRYMAN: And I don't really care what
8 you think.
9 MR. KAHN: I understand. That's why we have
10 judges.

Ex. 3 Gatling Dep. p. 185.

The Supreme Court and rules do not support the actions and contention by defense counsel of an entitlement to know with certainty before the deposition *each document to be used, regardless of whether they had been produced or identified.*

This Court should sanction defense counsel, the defendant and deny the requested protection and sanctions sought by MTB.

**D. MULTIPLE OFF-THE-RECORD WITNESS COACHING
DISCUSSIONS ABOUT PREVIOUSLY PRODUCED DOCUMENTS
ARE IMPROPER.**

An example of the effects of the improper witness coaching include Haylen Gatling's change of testimony following a meeting with defense counsel and Stephanie Trotter, Esq. of MTB. Ms. Gatling testified she printed documents, including various pieces of a form letter package and "would pull two of the pages, the notice of lien and the witness page" and put those in a box with others for Attorney Trotter to review. Ex. 3 Dep. Gatling p. 175, 17-23; p. 176, 2-6.

After meeting with defense counsel and MTB attorney Trotter to discuss the documents, the witness testified she had suddenly "misremembered" the way documents were put in the box for the attorney (Stephanie Trotter) to sign. Ex. 3 Gatling Dep. pp. 199-200. The impropriety of the meetings was noted. *See. e.g.* Ex. 3 Gatling Dep. pp. 182-187. When asked what was discussed, the witness was improperly instructed not to answer.

6 Q All right. So after your having a meeting
7 with your lawyer and Stephanie Trotter, your testimony
8 has now changed; is that what you're telling us?

9 A I misremembered. I can't remember exactly
10 what I said earlier, but —

11 Q You misremember after having a meeting with
12 your lawyer and Stephanie Trotter; is that what you're
13 telling us?

14 MR. COUNTRYMAN: Object to the form.

15 A (Continuing) I now remember.

16 Q Okay. And you now remember something

17 different than what you've been testifying about after
 18 meeting with your lawyer and Stephanie Trotter; right?

19 MR. COUNTRYMAN: Object to the form.

20 A (Continuing) Yes.

Ex. 3 Gatling Dep. p. 200.

This reprehensible conduct should be sanctioned and include: ordering the witnesses to continue the deposition promptly at the offices of Plaintiff's counsel at a date and time convenient to Plaintiff's counsel, having the defendant pay the costs of the deposition taken and the one to be continued, including the costs and time that will be needed by the witness to travel to Charleston, the time spent by Plaintiff's counsel to travel back and forth to Columbia for the first deposition and the costs associated with that. Further relief should include having a different defense attorney attend the deposition and award a monetary sanction for wasting so much time. Inquiry into all the discussions should also be ordered.

Further, as Stephanie Trotter, a South Carolina attorney with the defendant MTB, actively participated in the improper conduct of witness coaching, her deposition should be allowed to inquire into her improper conduct and any other matter concerning this lawsuit.

E. IMPROPER OBSTRUCTIVE BEHAVIOR BY DEFENSE COUNSEL.

1. *Instructing Deponent to Leave a Deposition that Was Not Concluded is Improper.*

Defense counsel's improper behavior included ending a deposition for no reason. The out of state deposition of a paralegal Sheri Self, a former MTB employee, was agreed to by she and her boss, a Georgia attorney. Ex. 4 Email July 18, 2018. Her boss preferred to conduct the deposition during office hours but "did

not wish to imply that we (or Mrs. Self) would seek to limit the length of any deposition.” Ex. 4 Email of D. Nelson July 18, 2018.

After Mrs. Self agreed to be deposed, MTB took about 6 months to set a date. The deposition began around 10:45 a.m. After about fifteen improper interruptions and delays of about an hour by defense counsel to discuss off-the-record previously produced documents with the witness, defense counsel announced the termination of the deposition at 3:00 p.m. No reason was given. Due to the improper objections and lunch time taken by the witness, the actual deposition time was only about 3 hours. There were many documents brought to the deposition to go through with this witness as she was an integral part of the team used to create and process the form letters. However, defense counsel would not allow the examination to occur.

MR. COUNTRYMAN: Justin, I'm sorry to interrupt, but it is 3:00, and I got to get on the road. So I'm going to have to end the deposition.

In violation of the Rules and agreement reached with Mrs. Self's attorney boss, Mr. Nelson, defense counsel told the witness “You don't have to stay here.”

Ex. 2 Self Dep. p. 223, 4-12.

When an attempt was made to continue questioning the witness by Plaintiff's counsel, defense counsel interrupted and began asking his own questions.

19 MR. COUNTRYMAN: When we talked yesterday and
20 talked before, it was with the understanding that what
21 we said was privileged and confidential; correct?
22 THE WITNESS: Yes.
23 MR. KAHN: Objection.
24 Hold on a second, now. You can't -- I'm

25 still asking questions. You don't get to ask
1 questions. And if you're going to ask about it, then
2 I'm going to ask you about these conversations you had
3 since he just opened the door.

4 BY MR. KAHN:

Q So when did you meet with Mr. Countryman?

6 MR. COUNTRYMAN: This deposition is over.

20 MR. COUNTRYMAN: Sheri, you don't have to
21 stay here.

3 MR. COUNTRYMAN: You can get up, and you
4 don't have to answer that question.

Ex. 2 Self Dep. pp. 223-225.

The conduct is reprehensible. Sanctions should snuff out such conduct in the future. The sanctions should include ordering that the deposition of Sheri Self will continue at offices of Plaintiff's counsel at a date and time convenient to Plaintiff's counsel, the defendant pay the costs of the depositions taken and the ones to be continued as well as the costs and time that will be needed by the witness to travel to Charleston, reasonable attorney's fees for the time spent by Plaintiff's counsel to travel back and forth to Macon, Georgia for the first deposition and the costs associated with that. Further, relief should include having a different defense attorney attend the deposition and award attorney's fees, costs and a monetary sanction for wasting so much time. Inquiry into the off-the-record discussions should also be ordered.

2. Assertion of Privilege Despite Witness Stating Defense Counsel Was Not Her Lawyer is Improper.

During the deposition of Sheri Self, the witness testified that she had not hired defense counsel to be her attorney.

3 Q Have you signed any kind of legal retainer
4 agreement with him?

5 A No.

6 Q Have you hired him to be your lawyer?

7 A No.

Ex.2 Self Dep. pp. 23-24.

Defense counsel claimed multiple off-the-record discussions with the witness about previously produced documents were “privileged.” When inquiry was made as to how, defense counsel stated that *he* was asserting privilege, *not the witness*.

10 MR. KAHN: What privilege could you all have
11 been discussing that relates to a document produced to
12 us from McCabe Trotter as part of this litigation?

13 MR. COUNTRYMAN: I'm the one asserting the
14 privilege, not the witness. And I'm happy to talk to
15 you about it, if you would like.

Ex. 2 Self Dep. p. 206.

There is no known privilege for an attorney to invoke after prohibited off-the-record conferences with a witness about previously produced documents. This conduct is neither privileged nor protected. It is forbidden.

Succinctly, during multiple depositions, MTB's counsel repeatedly engaged in off-the-record witness coaching, obstructive and disruptive behavior including instructing a witness to leave a deposition that had not concluded and otherwise failing to comply with the clearly defined deposition conduct rules.

3. *Speaking Objections to Clarify are Improper.*

A witness's attorney cannot object to a question just because the attorney does not understand the question. *See Hall*, 150 F.R.D. at 530 n. 10 adopted and approved by *In re Anonymous Member of S.C. Bar*. Furthermore, it is improper for counsel to state for the record their interpretations of questions, since such interpretations are completely irrelevant and improperly suggestive to the deponent. *Id.* A witness's attorney must also refrain from rephrasing questions for the witness. *In re Anonymous Member of S.C. Bar*, at 192, 17. Despite the clear pronouncement, defense counsel did not hesitate to engage in improper behavior.

6 Q -- the law firm did not generate another
7 invoice for the homeowner's association for any
8 additional legal fees related to this work; right?
9 MR. COUNTRYMAN: Object to the form.
10 A (Continuing) I mean --
11 MR. COUNTRYMAN: You're talking about this
12 specific one or --
13 MR. KAHN: Andy, please stop.
14 MR. COUNTRYMAN: I just had a question about
15 clarification so the witness could answer.
16 MR. KAHN: That's completely improper.
17 MR. COUNTRYMAN: Sounds good.

Ex. 2 Self Dep. p. 178.

Defense counsel repeatedly improperly interposed.

3 MR. KAHN: I've asked her a question, and you
4 are interrupting and stating things improperly, which
5 are in clear violations of the rules.
6 MR. COUNTRYMAN: Sounds good.
7 MR. KAHN: If you have an objection, then
8 state it, and I'll go from there.
9 MR. COUNTRYMAN: I object to the question you
10 asked her because it mischaracterized what she said,
11 and you slid words in there that she didn't say. I
12 think that's misleading, unfair, and deceptive.
13 MR. KAHN: Your extraneous comments are
14 specifically prohibited by the South Carolina Supreme
15 Court and under the rules.
16 MR. COUNTRYMAN: Then call somebody. Take
17 somebody up. That's fine.
18 MR. KAHN: I would ask you to refrain from
19 engaging in that conduct. I'm just asking as nice as I
20 can be and as civil as I can.

Ex. 2 Self Dep. p. 143.

In the deposition of Sheri Self, MTB counsel instructed the witness about 24 times not to answer questions related to documents previously produced. Ex. 2 Self Dep. p. 21, 11, p. 22, 23, p. 23, 3-4, p. 24, 9-10, p. 94, 9-11, p. 95, 14-15, p. 104, 17-

18, p. 113, 17-18, 21-22, p. 114, 3-4, p. 118, 2-4, 20-21, p. 123, 15-16, p. 148, 6-7, 15-16, p. 150, 20-22, 25, p. 151, 9-10, p. 156, 16-17, p. 161, 2-3, 12-13, p. 172, 21-22, p. 183, 11-12, 20-21, p. 185, 18-19, p. 186, 10-11, 21-23, p. 194, p. 195, 5-7, p. 204, 21-23, p. 205, 13-14, 22-23, p. 206, 8-9.

During the deposition, MTB counsel repeatedly met with the witness about 15 times to discuss previously produced documents and engage in witness coaching.

The above is but a sampling of the improper conduct contained within the depositions referenced and attached.

F. RELIEF REQUESTED AND SANCTIONS WARRANTED.

As to discovery abuse, the Washington State Supreme Court aptly noted:

Misconduct, once tolerated, will breed more misconduct...

Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wash. 2d 299, 355, 858 P.2d 1054, 1084 (1993). Actions taken in a deposition designed to prevent justice, delay the process, or drive up costs are improper and warrant sanctions. *In re Anonymous Member of S.C. Bar*, at 194, 18.

Depositions are widely recognized as one of the “most powerful and productive” devices used in discovery. *See* A. Darby Dickerson, *The Law and Ethics of Civil Depositions*, 57 Md. L. Rev. 273, 277 (1998). Since depositions are so important in litigation, attorneys face great temptation to cross the limits of acceptable behavior in order to win the case at the expense of their ethical responsibilities to the court and their fellow attorneys. Claiming that any such improper behavior was merely “zealous advocacy” will not justify discovery abuse. When attorneys cross the line during a deposition, their actions do not promote the

“just, speedy, and inexpensive determination of every action.” *See* Rule 1, SCRCP. *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001).

This Court should prevent the spread of this misconduct with a clear order.

IV. CONCLUSION

The facts show that the opposing party and its counsel acted intentionally and in bad faith. The prejudice to the Plaintiff includes conduct designed to witness coach, change testimony and block the search for the truth via proper inquiry. There is a clear need to deter this conduct in the future. The Court should, at a minimum, order and award relief and sanctions including the following:

1. The depositions of Haylen Gatling, Sheri Self and Stephanie Trotter reconvene at Plaintiff’s counsel’s office promptly at dates and times of Plaintiff’s counsel’s choosing and MTB be required to pay the witnesses for their time, costs and travel;
2. MTB promptly pay the reasonable attorney’s fees for Plaintiff’s counsel time to travel and attend the prior depositions and associated costs, to include the deposition costs already incurred and to be incurred;
3. Monetary sanctions for the reprehensible conduct of defense counsel in an amount sufficient to deter such future behavior;
4. The costs and reasonable attorney’s fees for having to prepare and file this motion;
5. MTB counsel should be sanctioned for engaging in the improper conduct and prohibited from engaging in such improper conduct in the future;

6. Striking of MTB's answer and that MTB engaged in conduct in violation of the FDCPA and UTPA resulting in damage to the Plaintiff and the class in the amount of the attorney's fees claimed owed by MTB is deemed as fact; and

7. Such further and relief as is just, equitable and proper.

Counsel certifies that consultation would serve no useful purpose.

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/s/ JUSTIN S. KAHN [SC BAR NO. 65100]

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ATTORNEYS FOR PLAINTIFF

February 7, 2019

Exhibit

C

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**COURT OF COMMON PLEAS
CASE NO. 16-CP-18-1001**

TAMMY C. RICHARDSON,

PLAINTIFF,

v.

**HALCYON REAL ESTATE SERVICES, LLC AND
McCABE, TROTTER & BEVERLY, P.C.,**

DEFENDANTS.

**ORDER
GRANTING PLAINTIFF'S MOTION FOR
SANCTIONS FOR DEPOSITION
MISCONDUCT
AND
DENYING DEFENDANT'S MOTIONS FOR
PROTECTION (SELF AND GATLING)**

On March 4, 2019, multiple motions came before the Court for a hearing, three of which concern conduct that occurred during two depositions.¹ Counsel for the parties were present at the hearing. Defendant McCabe Trotter & Beverly P.C. ("MTB") filed two motions seeking protection after defense counsel instructed the witnesses not to answer questions during their depositions: (1) Motion for Protective Order (Deposition of Haylen Gatling) filed January 21, 2019; and (2) Motion for Protective Order (Deposition of Sheri Self) filed January 31, 2019. Plaintiff filed a Motion and Memorandum in Support of Sanctions on February 7, 2019 concerning the conduct of MTB's counsel during those same depositions.

After carefully listening to the oral arguments of counsel, thoroughly reading all of the filings, including the relevant deposition transcripts and testimony cited, and after due consideration, the Court grants Plaintiff's Motion for Sanctions because of the conduct shown and the reasons stated in Plaintiff's Memorandum. This Court grants the relief sought and listed on page three of Plaintiff's Memorandum as explained herein and denies MTB's Motions for

¹ The other motions have been resolved by separate Order filed March 21, 2019.

Protection (Self and Gatling). In addition, attorney's fees and costs incurred by Plaintiff for the prior depositions (Self and Gatling) and the subsequent depositions to take place (Sheri Self, Haylen Gatling and Stephanie Trotter, Esq.) are awarded to Plaintiff. The Court's decision is based on its findings of fact and conclusions of law as follows:

I. PRESCRIBED CONDUCT DURING DEPOSITIONS.

The conduct of attorneys during the course of depositions is set forth in SCRCP, Rule 30, and particularly in *In the Matter of Anonymous Member of the South Carolina Bar*, 346 S.C. 177, 552 S.E.2d 10 (2001).

The South Carolina deposition conduct rules boil down to "if you can't do it in front of a judge, you shouldn't do it in a deposition." The Supreme Court has warned lawyers their conduct in depositions can result in ethical violations and sanctions. *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 552 S.E.2d 10 (2001). South Carolina adopted deposition conduct rules derived from *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993). Having adopted the *Hall* approach, our Court requires attorneys to operate under one of the most sweeping and comprehensive rules on deposition conduct in the nation. *In re Anonymous Member of S.C. Bar*, at 190, 16.

Prohibited conduct includes off-the record conferences, suggestive objections and interjections and unauthorized instructions not to answer. There are various additional contempt powers available to the trial court when counsel violates the Rules.

In addition to their traditional contempt powers, judges may issue orders as a sanction for improper deposition conduct: (1) specifying that designated facts be taken as established for purposes of the action; (2) precluding the introduction of certain evidence at trial; (3) striking out pleadings or parts thereof; (4) staying further proceedings pending the compliance with an order that has not been followed; (5) dismissing the action in full or in part; (6) entering default judgment on some or all the claims; or (7) an award of reasonable expenses, including attorney fees. *Id.* Among the costs a

judge may deem appropriate could be those incurred for future judicial monitoring of depositions or payment for the retaking of depositions. Our judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law.

Id. at 194, 18. Attorneys who cross the line during a deposition, do not promote the “just, speedy, and inexpensive determination of every action.” *Id.*

During a deposition, the only permissible discussion between counsel and a witness that may take place *if it does not involve deciding whether to assert privilege* is to discuss a previously undisclosed document. *In re Anonymous Member of S.C. Bar*, at 190-191, 16. (emphasis added).

The law is clear: Conferences called to assist a witness in framing an answer, to calm down a nervous client, or to interrupt the flow of a deposition are improper and warrant sanctions. *In re Anonymous Member of S.C. Bar*, at 191, 17. If there is a permissible basis for meeting with the witness, “[b]efore beginning such a conference, the deponent’s attorney should note for the record that a break is needed to discuss the possible assertion of a privilege or a newly produced document.” *In re Anonymous Member of S.C. Bar*, at 191, 16. When there is an off-the-record conference, whether or not a privilege is asserted, deposing counsel may inquire on the record into the subject of the conference to determine if there has been any witness coaching. *In re Anonymous Member of S.C. Bar*, at 191, 16.

Further, an attorney cannot object to a question just because the attorney does not understand the question. *See Hall*, 150 F.R.D. at 530 n. 10 adopted and approved by *In re Anonymous Member of S.C. Bar*. It is improper for counsel to state for the record their interpretations of questions, since such interpretations are completely irrelevant and improperly suggestive to the deponent. *Id.* A

witness's attorney must also refrain from rephrasing questions for the witness. *In re Anonymous Member of S.C. Bar*, at 192, 17.

II. IMPROPER OBSTRUCTIVE BEHAVIOR OCCURRED DURING THE DEPOSITIONS.

During the depositions of Haylen Gatling (Gatling) and Sheri Self (Self), MTB counsel repeatedly interrupted the flow of the deposition and stopped to engage in prohibited off-the-record discussions with the witnesses regarding previously produced documents. When the witness was presented with a previously produced document, MTB counsel would stop the deposition and take the witness outside the room to discuss the document off the record. Neither before leaving nor after returning did MTB counsel state a valid privilege was being asserted as to the document. There was no valid reason as to why the off-the-record conferences occurred. When the witness returned, Plaintiff's counsel, as is allowed, would inquire of the witness what transpired off the record. MTB's counsel would instruct the witness not to answer. During the Self deposition, MTB counsel stopped the deposition for off the record conferences approximately 15 times and instructed the witness not to answer questions approximately 24 times. An example of the improper conduct appears in the deposition of Self on page 194. (emphasis added)

5 **BY MR. KAHN:**

6 Q Do you see on the second page where your
7 initials appear?

8 **MR. COUNTRYMAN: Going to talk to her about**

9 **this before she answers any questions on it.** If you
10 have anything else you want me to go over with her, I'm
11 happy to do that since --

12 **MR. KAHN:** I don't think the rules require
13 that. I think what you're doing is improper. So we
14 can --

15 **MR. COUNTRYMAN:** That's fine. But I'm doing

16 it. So I'm telling that ahead of time. If you want me
17 to go over them with -- with her now, I'll do that. If
18 not, **then you can waste more time doing it over the**
19 **next 30 minutes. That's fine.**

An example of the effects of the improper off-the-record discussions and witness coaching involve the change in testimony of Gatling after meeting with defense counsel and Stephanie Trotter, Esq. (Trotter) of MTB who attended Gatling's deposition. Prior to an off the record meeting, as to the MTB collection process, Gatling testified she printed documents, including various parts of a form letter package and "would pull two of the pages, the notice of lien and the witness page" and put those in a box with others for Trotter to review. Dep. Gatling p. 175, 17-23; p. 176, 2-6. After improperly meeting with MTB counsel and Trotter to discuss documents, the witness returned and testified she had suddenly "misremembered" the way documents were put in the box for the MTB attorney Trotter to sign. Gatling Dep. pp. 199-200. The impropriety of the meetings was noted on the record. *See. e.g.* Gatling Dep. pp. 182-187. When Plaintiff's counsel asked what was discussed, the witness was improperly instructed not to answer by MTB counsel.

Other portions of the depositions in Plaintiff's Motion further illustrate improper conduct.

It is clear to the Court that MTB counsel repeatedly violated the standards for deposition conduct and engaged in prohibited conduct to further the goal of disrupting and impeding the discovery process in at least the following ways:

1. Repeatedly stopping the depositions to engage in off-the-record discussions that involved witness coaching;
2. Repeatedly stopping the depositions to discuss documents with the witnesses even though the documents had been previously identified or produced in discovery;

3. Failing to state a permissible reason for interrupting the depositions such as whether a privilege would be asserted for a particular document and the results of such discussion; and
4. Instructing the witnesses not to testify as to what was discussed during the prohibited off the record meetings.

These actions are prohibited and cannot be tolerated. Defense counsel's conduct frustrated the truth seeking function of the depositions and tainted the witnesses.

III. IMPROPER INSTRUCTION FOR DEPONENT TO LEAVE UNCONCLUDED DEPOSITION.

Another example of improper conduct involves MTB's counsel improperly ending the out of state deposition of Self, a former employee of MTB, for no legitimate reason. Plaintiff's counsel travelled to Macon, Georgia and was in the middle of questioning the witness about documents she created and MTB's collection process. MTB's counsel announced, "This deposition is over." Self Dep. p. 224. Plaintiff's counsel objected. MTB's counsel instructed the witness to leave. Self Dep. pp. 224-225. This conduct clearly interfered with the deposition and frustrated the truth seeking function of the discovery process. This behavior should not and will not be tolerated. Thus, MTB and its counsel will make Sheri Self available for the continuation of her deposition.

IV. IMPROPER CONDUCT CANNOT BE ALLOWED AND SANCTIONS ARE WARRANTED.

Actions taken in a deposition designed to prevent justice, delay the process, or drive up costs are improper and warrant sanctions. *In re Anonymous Member of S.C. Bar*, at 194, 18. Depositions are widely recognized as one of the "most powerful and productive" devices used in discovery. *See A. Darby Dickerson, The Law and Ethics of Civil Depositions*, 57 Md. L. Rev. 273, 277 (1998). "Depositions are the factual battleground where the vast majority of litigation actually takes place." *Hall*, 150 F.R.D. at 531. Since depositions are so important in litigation, attorneys face great temptation to cross the limits of acceptable behavior in order to win the case at the expense of their ethical responsibilities to the court and their fellow attorneys. When attorneys

cross the line during a deposition, their actions do not promote the “just, speedy, and inexpensive determination of every action.” *See* Rule 1, SCRCP and *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001).

It has been shown that MTB’s counsel acted willfully and in bad faith. Their conduct is prejudicial to the Plaintiff as it would be to any other party in that it promotes witness coaching, the alteration of free and voluntary testimony and blocks the search for the truth via proper inquiry. Further prejudice has been shown in the form of expenditure of costs and wasted time of deposing counsel and the witnesses. There is a clear need to deter this conduct in the future and to protect against discovery abuse.

V. ORDERED RELIEF - SANCTIONS

Based on the determinations and findings herein, the Court orders the following relief:

1. The depositions of MTB employees Gatling and former employee Self are to be reconvened and continue so the depositions can be conducted and completed unimpeded. Further, the witnesses are to answer questions concerning the matters discussed during off the record conferences with MTB’s counsel and Stephanie Trotter. MTB’s counsel is not to instruct the witnesses not to respond to questions regarding the off the record conferences. MTB shall make the witnesses available at a time, place and date convenient to Plaintiff’s counsel within 20 days of the date of this Order or at such other date, time and place as may be agreed upon by Plaintiff’s counsel. MTB is required to pay the costs of these depositions to be taken.
2. Stephanie Trotter’s deposition will be conducted and completed unimpeded. Further, she is to answer questions concerning discussions during the improper off the record conferences with MTB’s counsel. The deposition will take place at a time, place and date convenient to Plaintiff’s counsel within 20 days of the date of this Order or at such other date, time and place

as may be agreed upon by Plaintiff's counsel. MTB is required to pay the costs of this deposition.

3. MTB's counsel shall cease and desist from the prohibited behavior discussed herein.
4. MTB is to pay attorney's fees and costs of the depositions taken and to be taken as follows:
 - a) As to the prior depositions of Gatling and Self, based on the times set forth in the filed depositions, the Court notes that Gatling's deposition took approximately 8 hours 25 minutes. Self's deposition took approximately 4 hours and 45 minutes. The record further reflects that both Mr. Kahn and Ms. Arnold attended and participated in those depositions. The total time of the depositions was approximately 13.20 hours.
 - b) The Court has reviewed the affidavits of Plaintiff's counsel submitted concerning their qualifications, experience in litigation and in handling various legal matters. The Court finds that the nature, extent and difficulty of the legal services rendered in coordinating, preparing and taking the depositions in this class action matter warrant the amount of attorney's fees stated herein. The professional standing of counsel is known to the Court and reflected in the affidavits submitted. Both Mary Leigh Arnold and Justin S. Kahn have handled various kinds of complex civil litigation and appeals in state and federal courts for more than 25 years each. As to the contingency of compensation, in this dispute, the Court finds that the rate stated herein to take the depositions of these witnesses in the context of this class action lawsuit is proper. As to the fee charged in the locality for similar services, the Court is aware of and of the opinion that this hourly rate is in line for attorneys of similar background and experience. Last, the attorneys have obtained beneficial results by successfully arguing and prevailing on the motions before the Court. As to these depositions, the Court finds Plaintiff's counsel are entitled to be compensated at the reasonable hourly rate stated below.
 - c) MTB is to pay Plaintiff's counsel at the rate of \$ 250 per hour for a total of \$ 6,600. This is calculated as follows: 13.20 hours x 2 attorneys x \$ 250 per hour. These fees are to be paid to Plaintiff's counsel within fifteen (15) days of the filing of this Order (time spent in travel and preparation of those depositions is neither being requested nor awarded).

- d) As to the depositions of Gatling, Self and Trotter to be reconvened pursuant to this Order, Plaintiff's counsel shall file with the Court within fourteen (14) days of the completion of those depositions an affidavit stating the total time expended for taking those depositions. Defendant shall then have fifteen (15) days after the filing of the affidavit to pay the total time of the depositions for each of Plaintiff's counsel at the rate per hour stated herein (again preparation and travel time for those depositions is neither being requested or awarded).
- e) The Court has reviewed the affidavits of Plaintiff's counsel. It shows the costs of the depositions of Self and Gatling are \$4,265.50. These costs are to be paid by MTB to Plaintiff's counsel within fifteen (15) days of the filing of this Order.

AND IT IS SO ORDERED!

Maite Murphy
Judge, First Judicial Circuit

April __, 2019



Dorchester Common Pleas

Case Caption: Tammy C Richardson , plaintiff, et al VS Halcyon Real Estate
Services LLC , defendant, et al
Case Number: 2016CP1801001
Type: Order/Sanctions

So Ordered

s/ Maite Murphy 2166

Exhibit

D

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April 9, 2019

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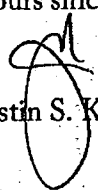
**RE: Tammy C. Richardson v. McCabe Trotter & Beverly, PC
Case No.: 2016-CP-18-01001**

Dear Andy and Bob:

Enclosed for service is Plaintiff's Amended Notice of Videotaped Deposition of Haylen Gatling as well as Plaintiff's Amended Notice of Videotaped Deposition of Stephanie Trotter.

With kind regards, I am

Yours sincerely,


Justin S. Kahn

JSK/pm
Encl.

cc: Mary Leigh Arnold, Esq.

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. No. 16-CP-18-1001**

TAMMY C. RICHARDSON,

PLAINTIFF,

v.

**HALCYON REAL ESTATE
SERVICES, LLC AND MCCABE,
TROTTER & BEVERLY, P.C.,**

DEFENDANTS.

**PLAINTIFF'S AMENDED NOTICE OF
VIDEOTAPED DEPOSITION OF
HAYLEN GATLING**

**TO: ANDREW W. COUNTRYMAN, ESQ. AND ROBERT P. WOOD, ESQ.,
ATTORNEYS FOR DEFENDANT MCCABE TROTTER & BEVERLY, P.C.:**

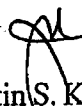
PLEASE TAKE NOTICE that Plaintiff, pursuant to the South Carolina Rules of Civil Procedure and other law, will take the video deposition of the witness described below, at the date, time and place stated, before a person authorized to administer oaths. This deposition may be used for all purposes allowed by the rules.

Name of Witness:	Haylen Gatling
Time and Date:	10:00 a.m., April 23, 2019
Place:	Kahn Law Firm, LLP 562 Savannah Highway Charleston, SC 29407

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRCP, counsel for the Plaintiff hereby identifies and reserves the right to use any documents produced or made available in discovery by any party during this deposition, and hereby gives notice of the Plaintiff's intent to question the witness regarding all documents produced, identified or made available by

any party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

KAHN LAW FIRM, LLP


Justin S. Kahn
SC Bar No. 65100
PO Box 31397
Charleston, SC 29417-1397
p. 843.577.2128
f. 843.577.3538
jskahn@kahnlawfirm.com

MARY LEIGH ARNOLD, PA

Mary Leigh Arnold
SC Bar No. 419
Sammie@maryarnoldlaw.com
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, SC 29464
p. 843.971.6053
f. 843.971.6055

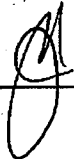
**ATTORNEYS FOR TAMMY C.
RICHARDSON**

Charleston, S.C.
April 9, 2019

CERTIFICATE OF SERVICE

A copy of the foregoing was served on Defendant McCabe Trotter & Beverly through their counsel, by Email and U.S. Mail on April 9, 2019, in the manner prescribed by the applicable Rules of Civil Procedure.

Signed: _____



Exhibit

E

KAHN LAW FIRM, LLP

562 SAVANNAH HIGHWAY
CHARLESTON, SC 29407

PHONE 843.577.2128

FAX 843.577.3538

WWW.KAHNLAWFIRM.COM

ELLIS I. KAHN*[^]
JUSTIN S. KAHN*[^]
WES B. ALLISON

MAILING ADDRESS
PO Box 31397
CHARLESTON, SC 29417-1397
E-MAIL JSKAHN@KAHNLAWFIRM.COM

April 9, 2019

VIA EMAIL AND U.S. MAIL

Andrew W. Countryman, Esq.
Countryman Law Firm
321 Wingo Way, Suite 102
Mt. Pleasant, SC 29464
Email: awc@countrymanlawfirm.com

Robert P. Wood, Esq.
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202
Email: robert.wood@rtt-law.com

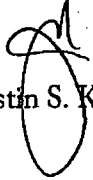
RE: Tammy C. Richardson v. McCabe Trotter & Beverly, PC
Case No.: 2016-CP-18-01001

Dear Andy and Bob:

Enclosed for service is Plaintiff's Amended Notice of Videotaped Deposition of Haylen Gatling as well as Plaintiff's Amended Notice of Videotaped Deposition of Stephanie Trotter.

With kind regards, I am

Yours sincerely,


Justin S. Kahn

JSK/pm
Encl.

cc: Mary Leigh Arnold, Esq.

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. No. 16-CP-18-1001**

**TAMMY C. RICHARDSON,
PLAINTIFF,**

V.

**HALCYON REAL ESTATE
SERVICES, LLC AND MCCABE,
TROTTER & BEVERLY, P.C.,
DEFENDANTS.**

**PLAINTIFF'S AMENDED NOTICE OF
VIDEOTAPED DEPOSITION OF
HAYLEN GATLING**

**TO: ANDREW W. COUNTRYMAN, ESQ. AND ROBERT P. WOOD, ESQ.,
ATTORNEYS FOR DEFENDANT MCCABE TROTTER & BEVERLY, P.C.:**

PLEASE TAKE NOTICE that Plaintiff, pursuant to the South Carolina Rules of Civil Procedure and other law, will take the video deposition of the witness described below, at the date, time and place stated, before a person authorized to administer oaths. This deposition may be used for all purposes allowed by the rules.

Name of Witness:	Haylen Gatling
Time and Date:	10:00 a.m., April 23, 2019
Place:	Kahn Law Firm, LLP 562 Savannah Highway Charleston, SC 29407

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRCp, counsel for the Plaintiff hereby identifies and reserves the right to use any documents produced or made available in discovery by any party during this deposition, and hereby gives notice of the Plaintiff's intent to question the witness regarding all documents produced, identified or made available by

any party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

KAHN LAW FIRM, LLP


Justin S. Kahn
SC Bar No. 65100
PO Box 31397
Charleston, SC 29417-1397
p. 843.577.2128
f. 843.577.3538
jskahn@kahnlawfirm.com

MARY LEIGH ARNOLD, PA

Mary Leigh Arnold
SC Bar No. 419
Sammie@maryarnoldlaw.com
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, SC 29464
p. 843.971.6053
f. 843.971.6055

**ATTORNEYS FOR TAMMY C.
RICHARDSON**

Charleston, S.C.
April 9, 2019

CERTIFICATE OF SERVICE

A copy of the foregoing was served on Defendant McCabe Trotter & Beverly through their counsel, by Email and U.S. Mail on April 9, 2019, in the manner prescribed by the applicable Rules of Civil Procedure.

Signed: _____



**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. No. 16-CP-18-1001**

**TAMMY C. RICHARDSON,
PLAINTIFF,**

v.

**HALCYON REAL ESTATE
SERVICES, LLC AND MCCABE,
TROTTER & BEVERLY, P.C.,
DEFENDANTS.**

**PLAINTIFF'S AMENDED
NOTICE OF VIDEOTAPED
DEPOSITION OF
STEPHANIE C. TROTTER, ESQ.**

**TO: ANDREW W. COUNTRYMAN, ESQ. AND ROBERT P. WOOD,
ESQ., ATTORNEYS FOR DEFENDANT MCCABE TROTTER &
BEVERLY, P.C.:**

PLEASE TAKE NOTICE that Plaintiff, pursuant to the South Carolina Rules of Civil Procedure and other law, will take the video deposition of the witness described below, at the date, time and place stated, before a person authorized to administer oaths. This deposition may be used for all purposes allowed under the South Carolina Rules of Civil Procedure.

Name of Witness: Stephanie C. Trotter, Esq.

Time and Date: 3:00 p.m., April 23, 2019

Place: Kahn Law Firm, LLP
562 Savannah Highway
Charleston, SC 29407

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRCF, counsel for the Plaintiff hereby identifies and reserves the right to use any and all documents produced or made available in discovery by either party during this deposition, and hereby gives notice of the Plaintiff's intent to question the witness regarding any and all documents produced or made available by either party during the course of discovery, as well as those obtained pursuant to subpoena or records request. Further, deponent is to produce and bring with her any and all documents, notes, and materials she has reviewed and/or relies upon to support the defenses asserted. This includes all documents and materials reviewed, referenced and/or relied upon in the creation of the affidavit signed by you Dated November 10, 2016 in this matter.

KAHN LAW FIRM, LLP

Justin S. Kahn
SC Bar ID 65100
PO Box 31397
Charleston, SC 29417-1397
p. 843.577.2128
f. 843.577.3538
jskahn@kahnlawfirm.com

MARY LEIGH ARNOLD, PA

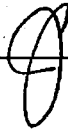
Mary Leigh Arnold
SC Bar No.: 419
Sammie@maryarnoldlaw.com
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 971-6053
(843) 971-6055 - Fax
ATTORNEYS FOR PLAINTIFF

Charleston, S.C.
April 9, 2019

CERTIFICATE OF SERVICE

On this date a copy of the foregoing was served on Defendant McCabe Trotter & Beverly, PC through its counsel, by Email and U.S. Mail on April 9, 2019 in the manner prescribed by the applicable Rules of Civil Procedure.

Signed: _____



Exhibit

F

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS

Case No. 16-CP-18-1001

Tammy C. Richardson,

Plaintiff,

v.

McCabe, Trotter & Beverly, P.C., and
Halcyon Real Estate Services, LLC,

Defendants.

Motion to Reconsider Order Entered April 4,
2019, and to Stay Relief Granted in Order
(Expedited Hearing Requested)

TO JUSTIN KAHN, ESQ. AND MARY LEIGH ARNOLD, ESQ., ATTORNEYS FOR THE
PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that at such time and place as set by the court Defendant
McCabe, Trotter & Beverly, P.C. ("MTB") will move the court to reconsider its order entered
April 4, 2019, and it will move the court to stay the relief granted in the order until such time as
the matters raised in this motion have been finally determined. MTB requests an expedited
hearing on the request for a stay.

The specific grounds are:

1) MTB did not in fact violate the South Carolina Rules of Civil Procedure during the
depositions in question, and it properly relied on Rule 30(j)(8) to engage in private conferences
with witnesses during their depositions.

2) The court failed to recognize MTB's argument that Rule 30(j)(8) provides an
exception to Rule 30(j)(5), limiting the circumstances during which counsel can have off-the-
record conversations with a witness.

3) Even if the court were to decide MTB violated Rule 30, MTB's position was reasonable and not at all willful or in bad faith.

4) Language in the order purporting to require Sheri Self to do anything should be stricken because the court does not have jurisdiction over her; and to the extent the order requires MTB to take actions it has no power to take, it should be vacated.

5) The court's conclusion that MTB's counsel interfered with the deposition by instructing the witness to leave at 3PM ignores the fact that deposing counsel himself caused a significant delay in the start of the deposition because he did not provide a Georgia notary to take the deposition. It also ignores the fact that Ms. Self stated during the deposition that she had work to complete that afternoon; it ignores the fact that Plaintiffs' counsel would not give an estimate as to how much longer the deposition would take; it ignores the fact that counsel for MTB stated during the deposition that he was needed at home to help with his newborn child (two months old at the time); and it ignores the fact that Plaintiff's counsel wasted 30 - 45 minutes by declining MTB's counsel's offer to review documents over lunch.

6) The court's conclusion that MTB's counsel engaged in witness coaching is unsupported by the evidence and ignores the fact that when Plaintiff's counsel violated Rule 30(j)(8) by not identifying documents before the deposition, MTB's counsel had the right to confer with the witness about the document and such conferences can result in the witness's recollection being refreshed without any coaching.

7) The order fails to define the scope of the reconvened depositions.

8) Since counsel for MTB had the absolute right to engage in private discussions with witnesses where documents had not been properly identified before the deposition, and since the court's sanctions order improperly prohibits counsel from benefiting from the protections of Rule 30(j)(8), the court should stay all relief granted in its order until it has reconsidered its order.

MTB requests an expedited hearing on the motion for a stay since Plaintiffs' counsel has noticed the depositions of Haylen Gatling and Stephanie Trotter, Esq. for April 23, 2019, and MTB will be prejudiced because this court's order allows Plaintiffs' counsel to inquire about attorney-client protected communications and this court's order could be read to allow Plaintiffs' counsel to introduce additional documents without the protection of Rule 30(j)(8), as this court's order has enjoined MTB's counsel from raising objections pursuant to the rule.

This motion is based on the memorandum of law filed herewith, the pleadings, the laws of the State of South Carolina, the letters, emails, and memoranda previously submitted to this court, and upon such other and further matters as may be properly presented to the court.

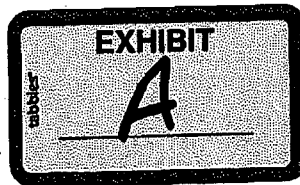
April 15, 2019

s/ Robert P. Wood

Robert P. Wood (6206)
Rogers Townsend & Thomas, PC
1221 Main Street, 14th Floor (29201)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
wood@rtt-law.com

Andrew W. Countryman
Countryman Law Firm
321 Wingo Way, Ste. 102
Mt. Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com

Attorneys for Defendant McCabe, Trotter &
Beverly, P.C.



From: Justin Kahn jskahn@kahnlawfirm.com
Subject: Richardson v. MTB Supplemental Discovery Responses
Date: February 18, 2019 at 3:54 PM
To: Andrew Countryman awc@countrymanlawfirm.com
Cc: Bob Wood bob.wood@rti-law.com, Pattie H Michel pmichel@kahnlawfirm.com, sgc sgc@countrymanlawfirm.com, Mary L. Arnold sammie@maryarnoldlaw.com

Andy and Bob

Plaintiff supplements her discovery responses in this case to include the following:

The attachments to Andy's Feb. 12, 2018 letter in Allison with bates numbers MTB 000704 - MTB 006348.
(Generally, misc. liens and fee agreements)

To the extent not previously produced, the letter from HOA President Robert Groce dated Nov. 21, 2016 is attached.

Separately, in going through the class production of materials reproduced by you on Feb. 1, 2019, it appears that there are inconsistencies. There are items that were produced in the prior production that are now not appearing in the "new" production folder.

We thought that the Feb. 1 folder was to represent a comprehensive production based on the memo we sent showing you missing documents from the prior folder.

Was the new folder (Feb 1) that we were provided as a download to contain everything?

Why are documents still not present in the latest production that we thought was to include everything? Can you please check with your client about why that is?

If we have a misunderstanding as to what the Feb. 1 materials are to represent, please let us know.

A partial list of documents that appears not be present in this Feb. 1 production includes:

MTB Class Production 00039499 not in new

MTB Class Production 00040881 not in new

MTB Class Production 00050185 not in new

MTB Class Production 00054779 not in new

MTB Class Production 00055848 not in new

MTB Class Production 00057830 not in new

MTB Class Production 00069293 not in new

MTB Class Production 00071687 not in new

MTB Class Production 00073757 not in new

MTB Class Production 00075395 not in new

MTB Class Production 00076778 not in new

MTB Class Production 00081669 not in new

MTB Class Production 00088198 not in new

MTB Class Production 00097559 not in new

MTB Class Production 00098978 not in new

MTB Class Production 00102094 not in new

MTB Class Production 00108391 not in new

MTB Class Production 00116349 not in new

MTB Class Production 00119299 not in new

MTB Class Production 00120056 not in new

MTB Class Production 00120668 not in new

MTB Class Production 00039488 not in new

MTB Class Production 00041208 not in new

MTB Class Production 00045530 not in new

MTB Class Production 00050344 not in new

MTB Class Production 00070886 not in new

MTB Class Production 00089756 not in new

MTB Class Production 00106588 not in new

MTB Class Production 00038772 not in new

MTB Class Production 00049300 not in new

MTB Class Production 00052813 not in new

MTB Class Production 00054687 not in new

MTB Class Production 00058400 not in new

MTB Class Production 00063021 not in new

MTB Class Production 00065660 not in new

MTB Class Production 00070965 not in new

MTB Class Production 00071441 not in new

MTB Class Production 00075879 not in new

MTB Class Production 00079851 not in new

MTB Class Production 00092671 not in new

MTB Class Production 00094936 not in new

MTB Class Production 00095074 not in new

MTB Class Production 00109370 not in new

MTB Class Production 00118364 not in new

MTB Class Production 00123471 not in new

MTB Class Production 00123471 not in new

MTB Class Production 00125835 not in new

MTB Class Production 00040400 not in new

MTB Class Production 00040433 not in new

MTB Class Production 00087985 not in new

MTB Class Production 00040391 not in new

MTB Class Production 00044317 not in new

MTB Class Production 00047786 not in new

MTB Class Production 00056987 not in new

MTB Class Production 00065643 not in new

MTB Class Production 00070325 not in new

MTB Class Production 00071079 not in new

MTB Class Production 00072214 not in new

MTB Class Production 00073398 not in new

MTB Class Production 00076289 not in new

MTB Class Production 00079044 not in new

MTB Class Production 00083979 not in new

MTB Class Production 00100211 not in new

MTB Class Production 00040357 not in new

MTB Class Production 00049155 not in new

MTB Class Production 0007155 not in new

MTB Class Production 00056864 not in new

MTB Class Production 00079009 not in new

MTB Class Production 00042812 not in new

MTB Class Production 00080435 not in new

MTB Class Production 00108253 not in new

MTB Class Production 00117299 not in new

MTB Class Production 00083701 not in new

MTB Class Production 00119126 not in new

MTB Class Production 00038530 not in new

MTB Class Production 00041027 not in new

Thank you.

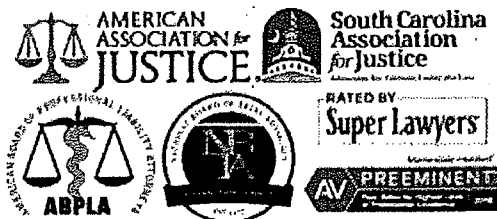
Justin S. Kahn
Kahn Law Firm, LLP
PO Box 31397
Charleston, SC 29417

p. 843.577.2128

web kahnlawfirm.com
blog ipadnotebook.com

Adjunct Professor Charleston School of Law
Board Certified

- American Board of Professional Liability Attorneys (Medical)
 - National Board of Trial Advocacy (Civil Trial, Practice)
- NCA and AAJ Diplomate
SC Supreme Court Certified Mediator





KAHN LAW FIRM, LLP

562 SAVANNAH HIGHWAY
CHARLESTON, SC 29407

PHONE 843.577.2128

FAX 843.577.3538

WWW.KAHNLAWFIRM.COM

ELLIS I. KAHN**
JUSTIN S. KAHN**
WES B. ALLISON

PO BOX 31397
CHARLESTON, SC 29417-1397

E-MAIL JSKAHN@KAHNLAWFIRM.COM

December 22, 2016

Kevin W. Mims, Esq.
Randall C. Stoney, III, Esq.
Luzuriaga Mims, LLP
50 Immigration Street, Ste. 200
Charleston, SC 29403

RE: Tammy C. Richardson v. Halcyon Real Estate Services, LLC, et al.
Case No.: 2016-CP-18-1001

Dear Kevin:

Enclosed is Plaintiff's Responses to Defendant Halcyon's Interrogatories and Requests for Production. I have also enclosed a disc containing the documents being produced which are referenced in these responses.

With kindest regards, I am

Yours sincerely,

A handwritten signature in dark ink, appearing to read "J. Kahn".

Justin S. Kahn

JSK/pm
Encl.

cc: Andrew W. Countryman, Esq. (via U.S. Mail)
Robert P. Wood, Esq. (via U.S. Mail)
Mary Leigh Arnold, Esq. (via email)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
) CASE NO. 2016-CP-18-1001

Tammy C. Richardson,)

Plaintiff,)

v.)

Halcyon Real Estate Services, LLC and)
McCabe, Trotter & Beverly, P.C.,)

Defendants.)

**PLAINTIFF'S RESPONSES TO
DEFENDANT HALCYON REAL ESTATE
SERVICES, LLC'S FIRST SET OF
INTERROGATORIES**

TO: KEVIN W. MIMS, ESQ. AND RANDELL C. STONEY, ESQ., ATTORNEYS FOR
DEFENDANT HALCYON REAL ESTATE SERVICES, LLC.

The Plaintiff, Tammy C. Richardson, hereby responses to Defendant's Halcyon Real
Estate Services, LLC (hereinafter "Defendant"), Interrogatories as follows:

GENERAL OBJECTIONS

A. Plaintiff objects to each of Defendant's Interrogatories to the extent that they seek the discovery of information regarding communications between Plaintiff and her legal counsel on the grounds that such communications are privileged and not subject to discovery. Plaintiff further objects to each of Defendant's Interrogatories to the extent each seeks information regarding materials or documents prepared by or on behalf of Plaintiff or her counsel in anticipation of litigation, on the grounds that Defendant is not entitled to discovery of such work product under Rule 33 of the South Carolina Rules of Civil Procedure. Any intentional production or revelation of information within the attorney/client privilege or attorney work-product doctrine shall constitute a waiver of privilege or immunity only for that document or information; it shall not constitute or be deemed evidence of a general waiver of the privilege or claim of immunity. Any inadvertent production or revelation of information within the

attorney/client privilege or attorney work-product doctrine shall not constitute any waiver of privilege or immunity.

B. Discovery in this case is ongoing and Plaintiff's responses to these discovery requests are based on currently available information. Subject to all objections raised herein, Defendant intends to seek and provide responsive information to the extent possible.

C. Plaintiff objects to these Interrogatories to the extent that they call for production of documents or information which constitutes confidential, personal information of Plaintiff, which is not relevant to the subject litigation.

D. Plaintiff objects to each of Defendant's Interrogatories to the extent that they seek discovery of information relating to issues which have been tried and upheld by the Appellate Courts of the State of South Carolina.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

1. Tammy Richardson
c/o Mary Leigh Arnold P.A.
749 Johnnie Dodds Blvd, Suite B
Mount Pleasant, S.C. 20464.
No recorded statement has been taken.
Ms. Richardson is expected to testify as to her personal knowledge of her claims including the communication and collection efforts by the Defendants.
2. Rhonda Cumbee
c/o Mary Leigh Arnold P.A.
749 Johnnie Dodds Blvd, Suite B
Mount Pleasant, S.C. 20464
No recorded statement has been taken.

Ms. Cumbee is expected to testify as to her personal knowledge of the liens and claims asserted by Halcyon against her and her property and collection efforts by McCabe Trotter.

3. Eddie Michael Young Jr. and Julie Lynn Young
134 Cotillion Crescent
Summerville, S.C.
No recorded statement has been taken.
Mr. and Mrs. Young may testify as to their personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.
4. Carl E. Bunch Jr. and Margaret Bunch
115 Cotillion Crescent
Summerville, S.C.
No recorded statement has been taken.
Mr. and Mrs. Bunch may testify as to their personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.
5. Chris M. Primiano and Jennifer S. Primiano
166 Cotillion Crescent
Summerville, S.C.
No recorded statement has been taken.
Mr. and Mrs. Primiano may testify as to their personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.
6. Alexander P. Desousa
158 Cotillion Crescent
Summerville, S.C.
No recorded statement has been taken.
Mr. Desousa may testify as to his personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.
7. Daryl B. Bounds
175 Antebellum Ways
Summerville, S.C.
No recorded statement has been taken.
Mr. Bounds may testify as to his personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.
8. Joshua L. Canies and Amanda E. Caines
163 Cotillion Crescent

Summerville, S.C.

No recorded statement has been taken.

Mr. and Mrs. Caines may testify as to their personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.

9. Phillip G. Tobin and Teresa B. Tobin
176 Antebellum Way
Summerville, S.C.

No recorded statement has been taken.

Mr. and Mrs. Tobin may testify as to their personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.

10. Lakisha Butler and Trad L. Butler
127 Cotillion Crescent
Summerville, S.C.

No recorded statement has been taken.

Mr. and Mrs. Butler may testify as to their personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.

11. Sharon White
157 Antebellum Way
Summerville, S.C.

No recorded statement has been taken.

Ms. White may testify as to her personal knowledge of the liens and claims asserted by Halcyon against their property and collection efforts by McCabe Trotter.

12. David Peterson
Jeff Cuberly
Sherry Boggs
Sage Riley
Bre Henry or any other representative of
Halcyon Real Estate Services, LLC
c/o Kevin Mims, Esquire
50 Immigration Street
Suite 200
Charleston, S.C. 29403

No recorded statement has been taken except for the deposition of David Peterson which was taken on December 19, 2016. There are documents that have been produced by both sides which were authored by or one or more employees of Halcyon including Sage Riley and David Peterson.

The representatives of Halcyon are expected to testify about the contacts they made with Plaintiff and those similarly situated attempting to collect amounts claimed due and owing to Southern Magnolia's Homeowner Association as well as the contents of the writings created, sent and/or received by them that have been produced in discovery.

13. Rob Groce
113 Antebellum Ways
Summerville, S.C. 29483
No recorded statements have been taken.
Mr. Groce or other representative of SMHOA may testify as to the amounts paid for the collection services rendered by McCabe Trotter as well as the action taken by the board as reflected in the minutes produced.

14. Joe Garza
157 Cotillion Court
Summerville S.C. 29483
No recorded statements have been taken.
Mr. Garza or other representative of SMHOA may testify as to the amounts paid for the collection services rendered by McCabe Trotter as well as the action taken by the board as reflected in the minutes produced.

15. Ryan McCabe
Stephanie Trotter
c/o Andrew Countryman
40 Calhoun Street, Suite 400
Charleston, S.C. 29401
No recorded statements have been taken.

Mr. McCabe and Ms. Trotter are expected to testify as to actions taken by them, their staff and the collection practices of their firm.

Their may be additional staff members of McCabe Trotter that have information about the actions of McCabe Trotter and its employees.

Richardson reserves the right to call any witness identified by any party in this matter or in the related matter of Rhonda Cumbee or whose names appear in response to discovery requests or documents produced herein.

2. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: See response to Interrogatory Number 1.

3. Set forth a list of any written or recorded statements, photographs, drawings, records, correspondence, memoranda, notes, emails, bank statements, credit card statements, copies of checks or money orders, or other documents that relate to the claims or defenses in the case and indicate who has possession of such documents.

RESPONSE: Plaintiff objects to this Interrogatory to the extent it seeks privileged material and/or attorney work product such as the communications with counsel. Without waiving said objection Plaintiff refers Defendant to the documents produced herein and previously provided and specifically references Richardson 000000001-3412 and Plaintiff's Supplemental Production dated December 15, 2016. Plaintiff also refers Defendant to any documents produced by any party herein or made exhibits to depositions or filings with the Court.

4. Set forth an itemized statement of all damages, including attorney's fees, claimed to have been sustained by the party.

RESPONSE:

A. Unfair Trade Practices.

(i) Actual damages are not fully determined at this time but include and are not limited to the balanced claimed owed by Defendants, assessments sought outside the statute of limitations, improper liens, improper and unsupported fines and interest imposed, attorneys' fees and costs imposed or charged, and prejudgment interest, costs incurred in having to defend the underlying action initiated to collect alleged HOA fees and costs claimed due and owing;

(ii) Treble damages; and

(iii) Attorneys' fees and costs.

B. Federal Debt Collection Practices Act 15. U.S.C. § 1692 *et. seq.*

(i) Actual damages are undetermined at this time but include and are not limited to the

balance claimed owed, interest charged, any amounts paid by a consumer relating an action on time barred debt; attorneys' fees expended in responding to complaint on time barred debt; and emotional distress.

(ii) Attorney fees: Attorney fees in the matter will be awarded in the Court's discretion which could include a common fund approach. Nonetheless attorneys' fees have accrued and will continue to accrue as the matter proceeds. Counsel will move at the appropriate time before the court for approval of attorneys' fees and costs which will be supported by affidavits averring of the time and costs spent in the matter;

(iii) Costs: Costs continue to accrue and will include motion fees, expert fees, photocopies, deposition costs, postage, notice administration and every other costs allowed by the court.

(iv) Statutory Damages; 15 U.S.C. §1692k.

Such other actual damages as may be allowed by governing documents and the law that include prejudgment interest. This would include amounts for attorneys fees from the defendants for participating in and asserting violations which were not in fact shown and dismissed with prejudice by the homeowners association.

5. Identify all expert witness(es) you propose to use in this case, and set forth for each:

- a. The expert's area of expertise and expected testimony;
- b. The basis of the expert's opinion;
- c. Information, observations, tests and/or research conducted by the expert;
- d. Tests, studies, treatises upon which the expert will rely and/or finds authoritative; and;
- e. The expert's fee schedule.

RESPONSE: Plaintiff has not yet determined if an expert is not needed to testify at trial nor has Plaintiff retained an expert to testify at trial. Plaintiff reserves the right to supplement this response if she feels an expert's testimony is need to assist the trier of fact with the alleged violation of the Fair Debt Collection Practices Act.

6. Identify all documents or other materials supply by you to, or received from, any expert witness listed by you in answer to any of the Interrogatories.

RESPONSE: See response to Interrogatory Number 5 above.

7. Identify all facts and evidence supporting or relating to any allegation and/or defense set forth in any pleading filed by you in this matter.

RESPONSE: Plaintiff objects to this Request as overly broad, vague, unclear, seeking attorney work product, as well as irrelevant information not likely to lead to the discovery of admissible evidence. Further, no facts are known which support the defense.

Without waiving these objections, Plaintiffs would refer Defendant to the Complaint herein, the documents produced by the parties and the deposition testimony and exhibits attached to the deposition testimony of David Peterson. These documents show, by way of example, that charging for assessments not yet due is improper. This was done repeatedly. Mr. Peterson further testified that McCabe Trotter's fee agreement did not obligate a homeowners association to pay more than \$465 and that Ms. Richardson's account did not have more than \$465 in attorneys fees and costs which means that McCabe Trotter was repeatedly misrepresenting the amount of attorneys fees and other amounts owed. The board minutes support the idea that Ms. Richardson did not violate the covenants and that she should not have been charged for any alleged violations as claimed by the Defendants. The claimed attorneys fees contract never authorized McCabe Trotter to make up bogus amounts of attorneys fees and other amounts and claim them as owed when they were not. Further, improper liens were filed asserting amounts not owed.

This response may be supplemented after additional discovery and depositions are taken of employees of McCabe Trotter and other witnesses.

8. Provide an explanation for any allegations and/or defenses that you assert as grounds for not paying any assessment, charge or cost.

RESPONSE: The homeowners' association has already agreed that such amounts were not due when it paid Ms. Richardson money after suing her and dismissed the claims against her with prejudice. No one ever determined that violations of the covenants took place. Further, the defendants made up improper fees, costs and charges which Mr. Peterson has already agreed were not properly identified and were nonetheless charged. These include "admin fees", "lockout service" and others.

9. Provide an explanation for any allegations and/or defenses you assert as grounds for a setoff against any assessments, charges or costs.

RESPONSE: See response to Interrogatory number 8.

10. Identify all documents, including, but not limited to, statements, correspondence, financial records, contracts, invoices, ledgers, checks, and notes of conversations, supporting or related to any facts, claim, or defense raised by any party to this action or evidencing or memorializing conversations regarding the same.

RESPONSE: See responses to interrogatories above and the documents produced or identified by Richardson and the other parties to this matter.

11. Identify all assets belonging to you of any kind, its current location, and the amount of any encumbrance.

RESPONSE: Plaintiff objects to the interrogatory on the grounds it is irrelevant, overly broad, vague, and unclear.

12. Set forth a detailed list of any and all payments made by you, or on your behalf, to any party or entity related to this matter, including your attorneys. Include in this list:

- a. Amount of each payment
- b. Number of each check used to make payment
- c. Bank and account number on which each check was drawn;
- d. Address where each check was mailed;
- e. Invoice number allegedly being paid;
- f. Any receipts for any payments allegedly made; and
- g. Copies of cancelled checks written by you to related to any party or entity related to this matter showing the checks were negotiated.

RESPONSE: Plaintiff objects to this Interrogatory as irrelevant, overly broad, unlimited in time and seek information not likely to lead to discovery of admissible evidence as well as to the extent it seeks privileged information protected by attorney client work product, Confidential Order or confidentiality provision. Without waiving said objection, Plaintiff states she has paid no amounts to the Defendants. Plaintiff to date has paid her attorneys the sum of \$4,125 for attorney's fees and costs.

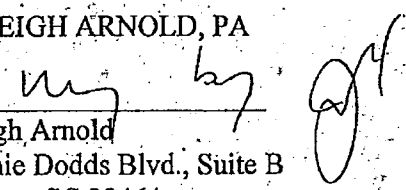
13. Set forth a detailed explanation of any and all facts in support of your claims for Violation of Unfair Trade Practices Act.

RESPONSE: Defendants sent letters and otherwise communicated to Plaintiff in an effort to collect an alleged debt. The communications are deceptive for a number of reasons including: They seek to collect amounts Plaintiff did not owe. They sought to collect amounts outside the statute of limitations. They used in a confusing fashion its name and the name of the Homeowner's Association. They sought to collect interest that it did not verify was accurate. They sought to collect for "violations" that had never been determined to be violations. Defendants misrepresented the nature of alleged debt. Defendants misrepresented the amount of the alleged debt. This includes claiming

amounts for "lockout service" and "admin fees" when no such amounts were due and claiming assessments as being owed when they were not.

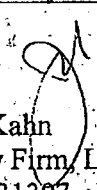
RESPECTFULLY SUBMITTED:

MARY LEIGH ARNOLD, PA



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
Phone: 843-971-6053
Facsimile 843-971-6055
sammie@maryarnoldlaw.com

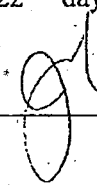
and


Justin S. Kahn
Kahn Law Firm, LLP
P.O. Box 31397
Charleston, S.C. 29417
SC Bar No.: 65100
Attorneys for Tammy Richardson

Charleston, South Carolina
December 22, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record by U.S. Mail in the manner prescribed by the applicable Rules of Civil Procedure in this proceeding this 22ND day of December, 2016.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2016-CP-18-1001
Tammy C. Richardson,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S RESPONSES TO
	)	DEFENDANT HALCYON REAL ESTATE
Halcyon Real Estate Services, LLC and	)	SERVICES, LLC'S FIRST REQUESTS
McCabe, Trotter & Beverly, P.C.,	)	FOR PRODUCTION
	)	
Defendants.	)	

TO: KEVIN W. MIMS, ESQ. AND RANDELL C. STONEY, ESQ., ATTORNEYS FOR
DEFENDANT HALCYON REAL ESTATE SERVICES, LLC.

The Plaintiff, Tammy C. Richardson, hereby responses to Defendant's Halcyon Real Estate Services, LLC (hereinafter "Defendant"), Request for Production as follows:

REQUESTS FOR PRODUCTION

1. Copies of any and all documents identified by Plaintiff in Answers to Interrogatories.

RESPONSE: Richardson 000000001-3353 and Plaintiff's Supplemental Production dated December 15, 2016.

2. Copies of any and all documents or items that constitute or contain evidence concerning the allegations and/or defenses that are the subject of this litigation.

RESPONSE: Richardson 000000001-3353 and Plaintiff's Supplemental Production dated December 15, 2016. Plaintiff also refers Defendant to all documents produced by any other party in the within matter.

3. Copies of any and all statements given by either eyewitnesses or other witnesses to the incidents and matters complained of herein which are in the possession of Plaintiff or her attorneys, whether written or recorded or on a tape recorder or otherwise.

RESPONSE: None. David Peterson's deposition has been taken however the transcript has not yet been finalized.

4. Copies of any and all documents that evidence damages claimed to have been sustained by the party.

RESPONSE: Richardson 000000001-3353 and Plaintiff's Supplemental Production dated December 15, 2016. *See also* Richardson 003354-3552 which is being provided simultaneously herein.

5. Copies of any and all written or recorded statements, photographs, drawings, records, correspondence, memoranda, notes, emails, bank statements, credit card statements, copies of checks or money orders, or other documents that relate to the claims or defenses in the case.

RESPONSE: Richardson 000000001-3353 and Plaintiff's Supplemental Production dated December 15, 2016. *See also* Richardson 003354-3552 which is being provided simultaneously herein.

6. Copies of any and all statements, memoranda, bills, invoices, or other materials which tend to substantiate or relate to damages claimed by you.

RESPONSE: Richardson 000000001-3353 and Plaintiff's Supplemental Production dated December 15, 2016. *See also* Richardson 003354-3552 which is being provided simultaneously herein.

7. Copies of any and all correspondence, statements, memoranda, reports, or other materials which in any other way might relate to Plaintiff's claims which are in you or your attorney's possession, whether written or recorded or otherwise.

RESPONSE: Richardson 000000001-3353 and Plaintiff's Supplemental Production dated December 15, 2016. *See also* Richardson 003354-3552 which is being provided simultaneously herein.

8. Any and all fee agreements entered into between the Defendant and any and all attorneys and law firms retained to represent the Plaintiff in the referenced lawsuit.

RESPONSE: Plaintiff refers Defendant to documents produced by it and McCabe Trotter & Beverly, P.C under Confidentiality Order and specifically MTB000236-243.

9. Any and all fee agreements or fee arrangements entered into between and among any attorneys and/or law firms associated to represent the Plaintiff in the referenced lawsuit.

RESPONSE: See Richardson 003354-3552 which is being provided simultaneously herein.

10. A complete breakdown of all time worked by any attorney or paralegal in connection with the prosecution of the captioned lawsuit, to include a description of the work performed and the amount of time for each described item of work.

RESPONSE: Plaintiff objections to the request on the grounds that it seeks attorney client privileged materials and work product. Plaintiff's counsel will submit to the Court at the appropriate time a motion for the approval of attorneys' fees. Without waiving said objection Plaintiff states that the total time has been expended on her behalf:

Defense of Foreclosure Matter: at least 500 hours by attorneys

Prosecution of the within matter: at least 400 hours by attorneys

11. A copy of all invoices for legal fees, as well as expenses, and any documentation of payment of legal fees and expenses for the prosecution of the case.

RESPONSE: Plaintiff objections to the request on the grounds that it seeks attorney client privileged materials and work product. Plaintiff's counsel will submit to the Court at the appropriate time a motion for the approval of attorneys' fees.

12. A complete list of all expenses incurred in prosecution of the case with any supporting documentation.

RESPONSE: Motion filing Fee: \$75.00

Postage, photo copies, mileage: 278.78

Additional materials have been purchased to assist with the case. Those costs are being incurred and calculated.

13. Any and all reports prepared by any witness concerning this litigation and, specifically, any expert witnesses' reports and curriculum vitae.

RESPONSE: None.

14. Copies of any and all documents provided to any expert witness retained by the party in this litigation.

RESPONSE: None.

15. Copies of any and all documents, statements, invoices, evidence of payments, and any other tangible evidence of any kind or type that you may and/or intend to use at the trial of this case.

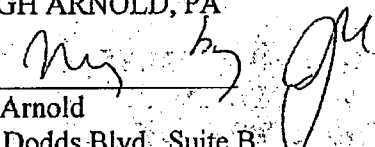
RESPONSE: Plaintiff does not know what documents she will use at trial at this time but refers Defendant to all documents produced in the within matter.

16. Any documents you intend to introduce or reference in the trial of this case.

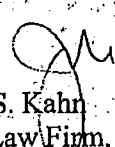
RESPONSE: Plaintiff does not know what documents she will use at trial at this time but refers Defendant to all documents produced or identified.

RESPECTFULLY SUBMITTED:

MARY LEIGH ARNOLD, PA


Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
Phone: 843-971-6053
Facsimile 843-971-6055
sammie@maryarnoldlaw.com

and

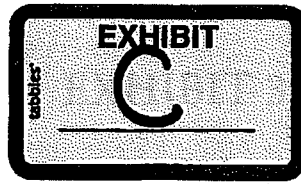

Justin S. Kahn
Kahn Law Firm, LLP
P.O. Box 31397
Charleston, S.C. 29417
SC Bar No.: 65100
Attorneys for Tammy Richardson

Charleston, South Carolina
December 22, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record by U.S. Mail in the manner prescribed by the applicable Rules of Civil Procedure in this proceeding this 22nd day of December, 2016.





STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. No. 16-CP-18-1001

TAMMY C. RICHARDSON,
PLAINTIFF,

v.

HALCYON REAL ESTATE
SERVICES, LLC AND MCCABE,
TROTTER & BEVERLY, P.C.,
DEFENDANTS.

PLAINTIFF'S NOTICE OF
VIDEOTAPED DEPOSITION OF
HAYLEN GATLING

TO: ANDREW W. COUNTRYMAN, ESQ. AND ROBERT P. WOOD, ESQ.,
ATTORNEYS FOR DEFENDANT MCCABE TROTTER & BEVERLY, P.C.:

PLEASE TAKE NOTICE that Plaintiff, pursuant to the South Carolina Rules of Civil Procedure and other law, will take the video deposition of the witness described below, at the date, time and place stated or at such other time and place as may be agreed upon, before a person authorized to administer oaths. This deposition may be used for all purposes allowed by the rules.

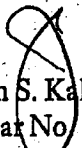
Name of Witness:	Haylen Gatling
Time and Date:	10:00 a.m., January 15, 2019
Place:	Rogers Townsend & Thomas, PC 1221 Main Street, 14 th Floor Columbia, SC 29202

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRCP, counsel for the Plaintiff hereby identifies and reserves the right to use any documents produced or made available in discovery by any party during this deposition, and hereby gives notice of the Plaintiff's intent to question the witness regarding all documents produced, identified or made available by

any party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

Further, pursuant to Rule 45, the witness is commanded to produce all documents or materials reviewed by her to prepare for the deposition by January 10, 2019 as set forth in the attached subpoena.

KAHN LAW FIRM, LLP


Justin S. Kahn
SC Bar No. 65100
PO Box 31397
Charleston, SC 29417-1397
p. 843.577.2128
f. 843.577.3538
jskahn@kahnlawfirm.com

MARY LEIGH ARNOLD, PA

Mary Leigh Arnold
SC Bar No. 419
Sammie@maryarnoldlaw.com
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Ste. B
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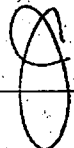
**ATTORNEYS FOR TAMMY C.
RICHARDSON**

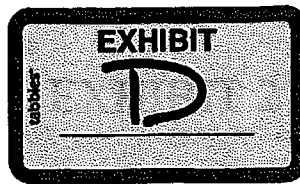
Charleston, S.C.
November 9, 2018

CERTIFICATE OF SERVICE

A copy of the foregoing was served on Defendant McCabe Trotter & Beverly through their counsel, by Email and U.S. Mail on November 9, 2018, in the manner prescribed by the applicable Rules of Civil Procedure.

Signed: _____





**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. No. 16-CP-18-1001**

TAMMY C. RICHARDSON,

PLAINTIFF,

V.

**HALCYON REAL ESTATE
SERVICES, LLC AND MCCABE,
TROTTER & BEVERLY, P.C.,**

DEFENDANTS.

**PLAINTIFF'S NOTICE OF
VIDEOTAPED DEPOSITION OF
SHERI SELF**

**TO: ANDREW W. COUNTRYMAN, ESQ. AND ROBERT P. WOOD, ESQ.,
ATTORNEYS FOR DEFENDANT MCCABE TROTTER & BEVERLY, P.C.:**

PLEASE TAKE NOTICE that Plaintiff, pursuant to the South Carolina Rules of Civil Procedure and other law, will take the video deposition of the witness described below, at the date, time and place stated or at such other time and place as may be agreed upon, before a person authorized to administer oaths. This deposition may be used for all purposes allowed by the rules.

Name of Witness:	Sheri Self
Time and Date:	10:30 a.m., January 24, 2019
Place:	Chambless Higdon Richardson Katz & Griggs, LLP Highridge Centre 3920 Arkwright Rd., Ste. 405 Macon, GA 31210

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRCP, counsel for the Plaintiff hereby identifies and reserves the right to use any documents produced or made available in discovery by any party during this deposition, and hereby gives notice of the Plaintiff's

intent to question the witness regarding all documents produced, identified or made available by any party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

Further, the witness is requested to produce all documents or materials reviewed by her to prepare for the deposition by January 18, 2019.

KAHN LAW FIRM, LLP


Justin S. Kahn
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PO Box 31397
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MARY LEIGH ARNOLD, PA

Mary Leigh Arnold
SC Bar No. 419
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**ATTORNEYS FOR TAMMY C.
RICHARDSON**

Charleston, S.C.
November 13, 2018

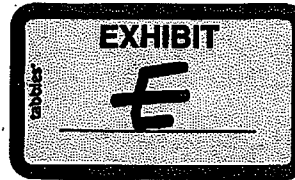
CERTIFICATE OF SERVICE

A copy of the foregoing was served on Defendant McCabe Trotter & Beverly through her counsel, by Email and U.S. Mail on November 13, 2018, in the manner prescribed by the applicable Rules of Civil Procedure.

Signed: _____



From: Andrew W. Countryman awc@countrymanlawfirm.com
Subject: Richardson v. MTB; letter
Date: November 14, 2018 at 12:35 PM
To: Justin S. Kahn jskahn@kahnlawfirm.com
Cc: sammie maryarnoldlaw.com sammie@maryarnoldlaw.com, Robert P. Wood robert.wood@rtl-law.com, Pattie H Michel pmichel@kahnlawfirm.com, Tabitha.Emanuelli@rtl-law.com



C

Please see the attached letter.

Andy
Andrew Countryman
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com
*Certified South Carolina Circuit Court Mediator

COUNTRYMAN LAW FIRM
LITIGATION ♦ MEDIATION

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843.253.4477 office
843.644.3165 fax

November 14, 2018

Via Email Only

Justin S. Kahn
Kahn Law Firm, LLP
562 Savannah Hwy
Charleston, SC 29407
jskahn@kahnlawfirm.com

Re: *Richardson v. McCabe, Trotter & Beverly, P.C., et al.*
C/A No.: 2016-CP-18-1001
CLF File: 00006 - 00008

Dear Justin:

The Notices for the depositions you recently set all refer to any documents produced and made available in discovery as documents you might use in the depositions under SCRCP 30(j)(8). This Rule states that if deposing counsel provides or otherwise identifies the documents to be used during the deposition at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If deposing counsel does not provide or identify the documents ahead of time, then counsel and the witness may have a reasonable amount of time to discuss the document before the witness answers questions concerning it.

The purpose of the Rule is to avoid surprise and wasting time during a deposition. Thousands and thousands of documents have been produced in discovery in this case. Blanketly referring to all of them does not comport with the letter or spirit of the Rule. Unless you identify or produce specific material you

ELECTRONICALLY FILED - 2019 Apr 15 4:22 PM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801001
ELECTRONICALLY FILED - 2019 Mar 01 1:48 PM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801001

actually plan to use in the depositions two days beforehand, I reserve the right to discuss material presented to the witnesses privately during the deposition(s).

Sincerely,



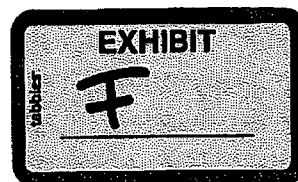
Andrew W. Countryman

AWC/sgc

cc (via e-mail): Bob Wund, Pattie Michel, Sammie Arnold

Joshua R. Hinson

From: Justin Kahn <jskahn@kahnlawfirm.com>
Sent: Friday, January 11, 2019 6:31 PM
To: Andrew Countryman
Cc: Mary L. Arnold; sgc; Robert P. Wood
Subject: Richardson v. MTB
Attachments: HKG-HKG.pdf



Andy and Bob

These are some of the documents we may use in addition to those previously identified for the depositions next week. Thanks.

Justin S. Kahn
Kahn Law Firm, LLP
PO Box 31397
Charleston, SC 29417

p. 843.577.2128

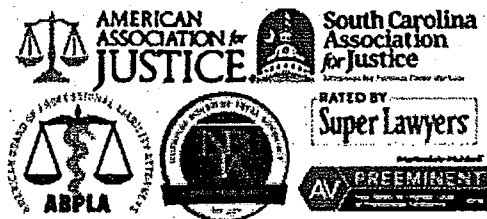
web kahnlawfirm.com
blog ipadnotebook.com

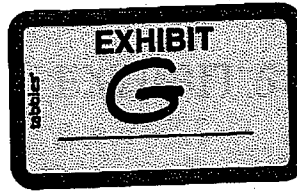
Adjunct Professor Charleston School of Law
Board Certified

- American Board of Professional Liability Attorneys (Medical)
- National Board of Trial Advocacy (Civil Trial, Practice)

NCA and AAJ Diplomate

SC Supreme Court Certified Mediator





Documents and Beginning Bates
Trotter, Staphanie Depo and Exhibits
Richardson, Tammy Depo and Exhibits
Peterson, David Depo and Exhibits
McCabe, Ryan Depo and Exhibits
Discovery Responses by MTB
Answer of MTB
MTB 8
MTB 220
MTB 244
MTB 248 -262
MTB Supp 62
MTB Supp 70
MTB Supp 2183
MTB Supp. 000003
MTB Supp. 000008
MTB Supp. 000009
MTB Supp. 000016
MTB Supp. 000042
MTB Supp. 000053
MTB Supp. 000059
MTB Supp. 000062
MTB Supp. 000950
MTB Supp. 001330
MTB Supp. 002103
MTB Supp. 002110
MTB Supp. 002139
MTB Supp. 002161
MTB Supp. 008466
MTB Supp. 008474
MTB Supp. 008482
MTB Supp. 008802
MTB Supp. 008810

Documents and Beginning Bates
MTB Supp. 008818
MTB Supp. 008826
MTB Supp. 008834
MTB Supp. 008842
MTB Supp. 008850
MTB Supp. 008930
MTB Supp. 008938
MTB Supp. 008946
MTB Supp. 008954
MTB Supp. 008970
MTB Supp. 008978
MTB Supp. 008986
MTB Supp. 008994
MTB Supp. 009002
MTB Supp. 009010
MTB Supp. 009018
MTB Supp. 009026
MTB Supp. 009162
MTB Supp. 009170
MTB Supp. 009194
MTB Supp. 009810
MTB Supp. 009866
MTB Supp. 011367
MTB Supp. 011375
MTB Supp. 011383
MTB Supp. 011399
MTB Supp. 011617
MTB Supp. 011636
MTB Supp. 011644
MTB Supp. 011652
MTB Supp. 011660
MTB Supp. 011676
MTB Supp. 011684
MTB Supp. 011692
MTB Supp. 011700
MTB Supp. 011709
MTB Supp. 011721
MTB Supp. 012131
MTB Supp. 012145
MTB Supp. 012158
MTB Supp. 012173
MTB Supp. 012205

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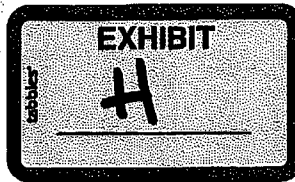
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) THE FIRST JUDICIAL CIRCUIT
TAMMY C. RICHARDSON,) CASE NO.: 2016-CP-18-1001
Plaintiff,)
vs.) **MTB'S BRIEF IN OPPOSITION TO**
HALCYON REAL ESTATE SERVICES, LLC) **PLAINTIFF'S MOTION FOR SANCTIONS**
and MCCABE, TROTTER & BEVERLY,)
P.C.,)
Defendants.)

Defendant McCabe, Trotter & Beverly, P.C. ("MTB") submits this brief in opposition to Plaintiff's Motion for Sanctions of February 7, 2019.

Bottom Line

It is not my practice to write briefs in the first person. However, given the outlandish personal nature of accusations of improper conduct (when nothing could be further from the truth), it is warranted here. This issue is before the Court because of Plaintiff's counsel's refusal to abide by the discovery rules in attempts to avoid disclosing deposition material so he could surprise witnesses and get answers that help his case.

Unfortunately, I have come to expect these sorts of tactics from him through defending at four lawsuits he has brought against MTB on the same theory as this the one in this case (since 2015). In all of those cases, I have invoked SCRCP 30(j)(8), which provides that if a lawyer deposing a witness fails to provide or identify material he plans to use in the deposition two days ahead of time, the witness' lawyer may privately discuss the document with the witness before she

answers questions about it. In my over thirteen years of practice, I have never had another lawyer challenge the Rule 30(j)(8) issue. Everyone understands the witness is entitled to review deposition exhibits (with their lawyer) before the deposition, or during it if the deposing lawyer has not produced the material ahead of time.

The objective of discovery (and in fact, litigation) is to get to the truth. Lawyers are supposed to be zealous advocates for their clients but must do so within the framework of the Rules of Civil Procedure and Rules of Professional Conduct. Justin Kahn disregards these tenants in favor of trying to win. He does this by refusing to disclose what material he will use with witnesses in depositions, then trying to get soundbite answers to questions about material with which the witnesses are unfamiliar.

Mr. Kahn continually refused to provide any indication of what material he actually planned to use with the witnesses prior to the depositions even after multiple letters, warnings and discussions about the issue. I appropriately invoked Rule 30(j)(8) during the depositions and briefly discussed the material with the witnesses before they answered questions about them. To have Mr. Kahn turn around and seek sanctions against me in this manner is outrageous and offensive.

Background

MTB is a law firm that represents various HOAs in South Carolina. Part of the firm's work includes pursuing claims against homeowners who owe money to their HOAs (MTB's clients). Plaintiff Tammy Richardson lives in the Southern Magnolia neighborhood in Summerville. Her property is subject to governing documents that form an HOA, provide for payment of annual assessments and include restrictions on what owners may do with their property. MTB represented her HOA, which asked the firm to pursue collections against her in 2015 after Ms. Richardson had

failed to pay her HOA assessments for years and incurred a significant balance in fines for use restriction violates she ignored for years.

Instead of paying what she owed (she had zero excuse for failing to pay other than she just did not feel like it), Mrs. Richardson hired counsel who filed this action on the theory that MTB misrepresented the amount she owed to the HOA in violation of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 ("FDCPA") by including certain attorney's fees in the balance. MTB has a fee agreement with the HOA providing for a flat fee structure for HOA lien claims.

The fee agreement provides that MTB handles actions to pursue unpaid assessments on a flat fee basis. Upon beginning an action to recover delinquent amounts, the fee agreement identifies two sets of fees. MTB initially charges the HOA a small upfront retainer. The agreement identifies specific amounts for each step in the collections process. The total for taking a lien claim from beginning through a foreclosure hearing is around \$2,000.

Under the agreement, the attorney's fees accrue when the firm performs the work. However, the firm does not require payment from the HOA until the firm recovers from the owner: "the fees will not be invoiced until collected from the owner." Therefore, the HOA never owes MTB more than the upfront retainer out of pocket, and all of the HOA's costs are reimbursed upon collection from the owner defendant. This allows the HOA to function without having to pay a law firm hourly to pursue claims against delinquent owners.

Mr. Kahn filed this action (and three others) against MTB alleging violation of the FDCPA based on MTB's inclusion of attorney's fees earned under this fee arrangement. Those cases are: (1) Allison v. MTB, 2:17-cv-01727-RMG; (2) Aubrey v. MTB, 2:17-cv-00656-RMG and (3) Park v. MTB, 2:17-cv-01727. Judge Gergel granted MTB's Motion for Summary Judgment in Allison on

August 11, 2018. *See* Order granting SJ, Ex. 1. In a nutshell, he held that whether MTB can properly include attorney's fees in an owner's balance in a situation like this depends on whether the governing documents for the owner's neighborhood provide that the delinquent owner is responsible for the attorney's fees the HOA incurs in the process of pursuing a claim against the owner. The Plaintiffs in Allison lived in Charleston National, and its governing documents contained that sort of language.

Judge Gergel granted summary judgment in favor of the Plaintiffs in Aubrey and Park because he found the governing documents for their neighborhood (Crowfield) did not make the delinquent owner responsible for the HOA's attorney's fees unless and until the HOA prevailed on its lien claim. The Southern Magnolia governing documents contain language similar to those for Charleston National as it relates to the owner's responsibility for the HOA's attorney's fees incurred. In short, the delinquent owner is responsible for the reasonable attorney's fees the HOA incurs in the course of pursuing payment from the owner. This is an excerpt of the Southern Magnolia restrictive covenants:

SECTION FOURTEEN. Effect of Nonpayment of Assessments/Dues, Covenant Violations and/or Failure to Follow Bylaws: Remedies of the Association.

- (c) Whether the Association is enforcing these covenants, the Bylaws and/or the rules/regulations of the Association, in any, by virtue of a violation of these documents and/or by virtue of actions taken to enforce the obligations of the Owner, the Association may protect their rights by taking any type of legal action for any type of relief allowed by law, including, but not limited to, an action at (for damages and other relief), and action in equity (for injunctive relief or otherwise), filing a notice of lien, filing a lis pendens, suing for specific performance, foreclosing the lien and/or making a claim for

(and suing necessary) those reasonable attorney's fees/ costs/ expenses incurred in handling/ enforcing the above -referenced documents in subsection. The Association's decision to use one or more of these remedies shall not prejudice their right to use one or more of the other remedies stated in this herein. Also, no Owner may waive or otherwise escape liability for the assessments/ charges/ dues/ fines/ sanctions provided herein by non-use of the Common Area or abandonment of their property.

If one applies Judge Gergel's analysis in Allison, Aubrey and Park to this case, Plaintiff's claim that MTB misrepresents the amount owed by including attorney's fees in the owner's balance fails.

Since Judge Gergel dismissed Allison, Mr. Kahn has focused on showing other alleged problems with MTB's collections process (than the attorney's fee issue). To do this, he has recently deposed various witnesses, including former MTB employee Sheri self and current MTB employees Theron Coetzee and Haylen Gatling. Mr. Kahn went through me to schedule the depositions of Ms. Gatling and Ms. Coetzee.

Unbeknownst to me, Mr. Kahn contacted Ms. Self, who is now a legal assistant at a law firm in Macon, Georgia, directly to discuss the case and her deposition. He did not ask if I represented Ms. Self or involve me in the discussions with her until after her boss agreed that she would give a deposition.

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From: Justin Kahn <jskahn@kahnlawfirm.com>
Sent: Wednesday, July 18, 2018 11:31 AM
To: David Nelson <DNelson@chikelaw.com>
Cc: Andrew Wesley Countryman <awc@countrymanlawfirm.com>; sgc <sgc@countrymanlawfirm.com>; Robert P. Wood <Robert.Wood@rt-law.com>; Mary L. Arnold <saumic@maryarnoldlaw.com>;
Pattie H Michel <pmichel@kahnlawfirm.com>
Subject: McCabe Trotter & Beverly, PC - Sheri Self Deposition

Dear David,

Thanks so much for speaking with me. As was discussed, we wish to depose Sheri Self, a former employee of McCabe Trotter and Beverly PC related to litigation currently pending in South Carolina. She is a witness, not a party and has no personal exposure.

Her name appears in various documents and her name has come up in depositions.

You have kindly offered to allow us to use your law office to take her deposition and waive the various technical requirements for issuing an out of state subpoena. We are glad to pay a witness fee for her time.

We understand that she is generally available during business hours over the next few weeks.

You wanted me to let you know who opposing counsel was. Andy Countryman and Bob Woods are counsel for McCabe Trotter. Their phone numbers are as follows: Andy (843) 253-4477. Bob Wood (803) 744-1275.

They are copied on this email.

By this email, I am requesting they provide us with dates that work for them for her deposition so we can coordinate it.

The deposition location will be 3920 Arkwright Road, Suite 405 Macon, GA 31210 at Chambliss Higdon Richardson Katz & Griggs, LLP. You have kindly offered a conference room at your office.

Please let me know if you have any other questions.

Thank you.

Justin S. Kahn
Kahn Law Firm, LLP
PO Box 31397
Charleston, SC 29417

Did this *ex parte* contact violate Rule of Professional Conduct 4.2, which precludes a lawyer from talking with a represented party or someone who the lawyer knows to be represented? See Rule 4.3 and comments, including [8]:

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(h). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

I had a talk with Mr. Kahn on July 19, 2018, to discuss some of these issues. During that conversation, I indicated I would be representing Ms. Self for her deposition since she was a former MTB employee. From there, Mr. Kahn worked with me to nail down a date.

Justin Kahn @
Richardson v. MTB

August 27, 2018 at 4:17 PM
Details

To: Andrew Countryman, Cc: Bob Wood, Pattie H Michel, Mary L. Arnold, sgc

Andy and Bob

Please provide dates for the 30(b)(6), Sheri Self, and Ms. Coetzee's depositions so we can get those going. Also, we will be deposing CPA so, please provide dates for him too.
Thanks.

Justin S. Kahn
Kahn Law Firm, LLP
PO Box 31397
Charleston, SC 29417

I agreed to present Ms. Self voluntarily without a subpoena and set her deposition for on January 24, 2019. Mr. Kahn sent a deposition Notice on November 13, 2018, to that effect. Ex. 2. The Notice identified *all documents produced or made available in discovery by any party* as documents Mr. Kahn might use in the deposition under Rule 30(j)(8). The parties have exchanged thousands of documents in this case, which the court has certified as a class action. This material includes every document MTB sent class members who were defendants in HOA lien collections matters for a period of over a year.

We also scheduled, by agreement, the deposition of MTB employee Haylen Gatling to take place on January 15, 2019. Mr. Kahn issued a deposition Notice to that effect on November 9, 2018. Ex. 3. Like the Notice for Ms. Self's deposition, Mr. Kahn identified *all documents produced by any party in discovery* as material he might use in the deposition under Rule 30(j)(8).

On November 14, 2018, I sent a letter to Mr. Kahn indicating this blanket identification of all material exchanged in discovery as material to use in the depositions of Ms. Gatling and Ms. Self under Rule 30(j)(8) was insufficient because it provided no real indication of which of the thousands of documents produced in discovery he actually planned to use with the witnesses. Ex. 4. I also indicated that if he did not provide a genuine identification of the material he planned to use with the witnesses, I planned to discuss the material with the witnesses in the depositions. Id. Here is the body of that letter:

Dear Justin:

The Notices for the depositions you recently set all refer to any documents produced and made available in discovery as documents you might use in the depositions under SCRCP 30(j)(8). This Rule states that if deposing counsel provides or otherwise identifies the documents to be used during the deposition at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If deposing counsel does not provide or identify the documents ahead of time, then counsel and the witness may have a reasonable amount of time to discuss the document before the witness answers questions concerning it.

The purpose of the Rule is to avoid surprise and wasting time during a deposition. Thousands and thousands of documents have been produced in discovery in this case. Blanketly referring to all of them does not comport with the letter or spirit of the Rule. Unless you identify or produce specific material you actually plan to use in the depositions two days beforehand, I reserve the right to discuss material presented to the witnesses privately during the deposition(s).

Mr. Kahn did not respond.

At 6:31 p.m. on Friday, January 11, 2019, Mr. Kahn sent an email including a 68-page spreadsheet listing more material he may use in Ms. Gatling's deposition under Rule 30(j)(8). The email is below, and the spreadsheet is Ex. 5 to this brief. The spreadsheet listed over 2,500 more documents as potential deposition fodder.

Justin Kahn @
Richardson v. MTB

To: Andrew Countryman, Cc: Mary L. Arnold, sgc, Bob Wood

Andy and Bob

These are some of the documents we may use in addition to those previously identified for the depositions next week. Thanks.

Justin S. Kahn
Kahn Law Firm, LLP
PO Box 31397
Charleston, SC 29417

January 11, 2019 at 6:31 PM
Details

I spoke with Mr. Kahn about these issues the morning of Ms. Gatling's deposition and said his identification of thousands of pages of material was insufficient to give me any idea as to what he actually planned to use with the witness. I also said I would be happy to review the actual exhibits with her shortly before the deposition started to avoid interrupting the deposition to review the

documents with her. Mr. Kahn refused to provide documents, provide an explanation or discuss the issue further.

Ms. Gatling's deposition broke for lunch before Mr. Kahn introduced any substantive exhibits. The excerpt below shows the parties took an hour lunch break and is taken from Ex. 3 to the Motion for Sanctions.

17 VIDEOGRAPHER: We are now back on the record.

18 The time is approximately 12:08 p.m. This concludes

19 Video No. 1 in the video deposition of Haylen Gatling.

20 The time is approximately 12:08 p.m. We are now off

21 the record.

22 (The deposition recessed for a lunch break.)

23 VIDEOGRAPHER: We are now back on the record.

24 Today's date is January 15th, 2019. The time is

25 approximately 1:07 p.m. This is Video No. 2 in the

Before leaving for lunch, I raised the exhibit issue with Mr. Kahn again. I indicated I would be happy to review exhibits with the witness during the lunch break. Otherwise, I reserved the right to review the material with her during the deposition. I also presented Mr. Kahn with another letter regarding the issue. The letter specifically said the identification of documents by producing a 68-page spreadsheet the Friday evening before the Tuesday deposition did not sufficiently identify material under Rule 30(j)(8). Mr. Kahn refused to provide material or discuss the issue further. A copy of the letter is Ex. 6 to this brief.

Among other things, it said that Mr. Kahn's refusal to provide or identify the actual material he planned to use in the deposition was an attempt to trick the witness with documents with which she was unfamiliar into giving soundbite answers:

It would be objectively impossible for anyone to use that many documents in either of or both of these deposition. I still have no idea what material you truly plan to use in the depositions. This appears to be a sad attempt to obtain soundbites from unsophisticated (non-lawyer) using documents with which they are unfamiliar. It is certainly not a good faith effort to identify documents under the Rule.

Upon commencing the deposition after lunch, Mr. Kahn showed the witness the Notice of Right to Cure letter for Ms. Richardson's case. I did not object since the witness was familiar with it. See pages 170 — 181 of transcr. of Ms. Gatling's deposition, Ex. 3 to the Motion for Sanctions. Mr. Kahn then showed the witness a document with which she was not familiar. I objected and indicated my intent to discuss it with her under Rule 30(j)(8).

At this point, Mr. Kahn provided me with the majority of material he planned to use with the witness. The deposition broke briefly during which time I reviewed the proposed exhibits with the witness. Stephanie Trotter, a principal of MTB who attended the deposition on behalf of MTB, attended the meeting too. Mr. Kahn then asked Ms. Gatling what we discussed in the private meeting. I objected on grounds of attorney-client privilege and instructed her not to answer. Below are excerpts from the condensed version of the transcript showing this exchange, the full version of which is Ex. 3 to the Motion for Sanctions.

[remainder of page intentionally blank]

Haylen Gatling - 1/15/2019

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Q Okay. But that was after you all already had the box, and Stephanie would be in her office doing whatever, and you all were somewhere else, right?

A Yes.

Q Okay. And the -- in terms of an account statement, this is a -- we've had multiple copies of this, but --

MR. COUNTRYMAN: I'm going to have to talk to her about that.

MR. KAHN: I haven't even shown her what it is, yet, so hold on. Let me figure out what it is.

BY MR. KAHN:

Q There's one that's been marked as Stephanie Trotter No. 22. Let me double-check something. Right. So this is a document from Stephanie Trotter's deposition that's been Bates -- I'm sorry, that's been marked as Exhibit No. -- I'm sorry, did I read the number right? Yeah, 22. Do you see where it says Trotter 22?

A Yes.

MR. COUNTRYMAN: I want to talk to her about this under 30(j)(8).

MR. KAHN: I haven't finished my question, and let me at least finish my question.

MR. COUNTRYMAN: I'm going to talk to her

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about it under 30(j)(8). You're giving it to her, and I told you --

MR. KAHN: I have previously identified this document in an email. I specifically stated the document --

MR. COUNTRYMAN: Justin, you --

MR. KAHN: Andy, let me just put on the record -- let me just put it on the record.

MR. COUNTRYMAN: Just give me the chance to do the same. All right? That's all --

MR. KAHN: I got no problem with that. I specifically stated to you last Friday, and before as part of the notice, that we may review with the witness documents previously produced in this case. On Friday, I specifically stated that we may review documents with this witness that were exhibits to Stephanie Trotter's deposition, along with other people's deposition.

I have handed her one of those documents from her deposition, and I don't even believe I finished asking her a question, and you have -- somehow now taking the position that you're allowed to speak with the witness about it. I think that violates the rules. You have a different position. We can let a judge take it up. And if you want to say anything about that, that's fine, but that's my position. I don't think you

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should be allowed to talk with her, but you do what you want.

MR. COUNTRYMAN: May I?

MR. KAHN: And we'll let the judge deal with it.

MR. COUNTRYMAN: All right. You noticed this deposition I think in the first week of November of 2018. The week after that, I sent you a letter indicating that the notice was insufficient to identify documents under 30(j)(8) as the rule is intended to identify documents that you'll use in a deposition so that a witness won't be surprised. Instead, your notice identified basically everything that had been exchanged in discovery. I didn't get any response to that letter.

I then received an email Friday at 6:30, again referencing every document in discovery, and including a 68-page spreadsheet of different -- a list of different documents. I don't think that's sufficient under the rule. I talked to you about that this morning before the deposition and invited you to provide me with documents so I could go over them with her. You didn't.

You did that again before lunch, and I gave you a letter at lunch. We had about an hour lunch, and

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I gave you that same opportunity, which you declined. So I'm going to talk to the witness about this within a reasonable period of time as the rule provides. And if --

MR. KAHN: I think that absolutely violates the rule. We'll let the judge deal with it.

MR. COUNTRYMAN: And I don't really care what you think.

MR. KAHN: I understand. That's why we have judges.

VIDEOGRAPHER: This concludes Video No. 2 in the video deposition of Haylen Gatling. The time is approximately 2:52 p.m. We are now off the record. (The deposition recessed briefly.)

MR. KAHN: Mr. Countryman and the witness have come back into the room. Although we have different positions on what the rule, whether or not there's been compliance with the rule, I'm now going to hand Mr. Countryman and the witness a document entitled "History Report," which has been Bates stamped marked as MTB000220, which I believe is also an exhibit to Miss Trotter's and the other depositions.

Although I believe I should be allowed to ask the witness questions immediately about this document, Mr. Countryman has a different position, and we can

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1 take that up with the judge. 2 MR. COUNTRYMAN: We will. And just for the 3 record, this case involves tens of thousands, if not 4 hundreds of thousands, of documents. I had no idea 5 what documents would be used in this deposition. 6 Identification beforehand didn't give me that idea. 7 That's all I've been asking for. I'm not trying to be 8 unreasonable. I'm not trying to be obtuse, or delay 9 things. Take a reasonable amount of time and look at 10 this with her and we'll... 11 (STATEMENT OF ACCOUNT MARKED AS PLAINTIFFS 12 EXHIBIT NO. 3 FOR I.D.) 13 (HISTORY REPORT MARKED AS PLAINTIFFS EXHIBIT 14 NO. 4 FOR I.D.) 15 (INVOICE MARKED AS PLAINTIFF'S EXHIBIT NO. 5 16 FOR I.D.) 17 VIDEOGRAPHER: We are now back on the record. 18 Today's date is January 15th, 2019. The time is 19 approximately 3:37 p.m. This is Video No. 3 in the 20 video deposition of Haylen Gatling. 21 BY MR. KAHN: 22 Q What did you all talk about? 23 MR. COUNTRYMAN: Don't answer that. 24 MR. KAHN: Okay. We'll let the judge take it 25 up.	1 BY MR. KAHN: 2 Q I want to hand you what I've marked as 3 Plaintiff's Exhibit No. 3, which is a document at the 4 top that says "Statement of Account as of 2/24/15, a 5 document, Plaintiff's Exhibit No. 4, which is something 6 called "History Report," and Plaintiff's Exhibit No. 5, 7 which is a 65-dollar invoice. 8 MR. COUNTRYMAN: Can I make a quick statement 9 for the record before you ask your question? He asked 10 what you talked about. I directed you not to answer on 11 the grounds of attorney-client privilege. We discussed 12 the documents that you were given just a few minutes 13 ago. Those are the ones that were not, in my view, 14 previously properly identified under Rule 30(j)(8). 15 That's something that he and I can discuss at another 16 time. But I'm directing you not to answer that 17 question under attorney-client privilege grounds. 18 MR. KAHN: I have a different perspective; 19 but, again, we'll go -- 20 MR. COUNTRYMAN: I just wanted it to be -- 21 MR. KAHN: I understand. We'll go forward. 22 BY MR. KAHN: 23 Q The -- have you seen these documents before? 24 A Yes. 25 Q And in terms of going back to talk about the

Later in the deposition, Mr. Kahn presented the witness with another document that he had not provided earlier. I did not object or discuss the document with the witness. See p. 231 of Ms. Gatling's transcr., Ex. 3 to the Motion for Sanctions. Also, as a professional courtesy, I did not object to Sammie Arnold (also counsel for the Plaintiff) to question the witness. See pp. 236, *et seq.* of the transcript of Ms. Gatling's deposition, Ex. 3 to the Motion for Sanctions). The deposition concluded at 6:25 p.m. See p. 293 of the transcript to Ms. Gatling's deposition, Ex. 3 to the Motion for Sanctions. On January 21, 2019, I filed a Motion for a Protective Order under Rule 30(j)(3), which I incorporate by reference here.

On January 21, 2019, Mr. Kahn sent an email with a 67-page spreadsheet identifying material he may use in Sheri Self's upcoming deposition. The email is below, and the spreadsheet is Ex. 7 to this brief.

Justin Kahn @
Richardson v. MTB Self Depo Documents
To: Andrew Countryman, Cc: Bob Wood, Mary L. Arnold, Pattie H Michel

January 21, 2019 at 4:59 PM
Details



Andy

This is a further list of documents I may use in the deposition of Shert Self. Although I do not believe such a further list is required, you seem to think it is. The bates numbers listed are the beginning numbers of the PDF Files you named or assigned to the PDF documents produced. The deposition exhibits to the prior depositions should be self explanatory.
I look forward to seeing you Thursday.

Justin S. Kahn
Kahn Law Firm, LLP
PO Box 31397
Charleston, SC 29417

This identification of thousands of pages of material gave no indication of what Mr. Kahn actually planned to show the witness.

Ms. Self's deposition took place in Macon, Georgia on January 24, 2019. Again, I produced her as a courtesy without a subpoena and after Mr. Kahn got her boss to agree to the deposition before talking to me. The deposition started late because Mr. Kahn brought a court reporter who was not a Georgia notary public. SCRCP 30(f)(1) provides that the court reporter is the one to swear the witness and create the transcript, which the court reporter ("officer transcribing the deposition") must certify is an accurate record of the testimony:

(f) Certification and Delivery by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer transcribing a deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (herein insert name of witness)" and shall promptly deliver it or send it by registered or certified mail to the party taking the deposition who shall retain the original and become the custodian. The custodian shall promptly file the original deposition with the clerk of court when the same is to be used at a hearing or at trial.

After it was clear no Georgia court reporter could get to the deposition location in a reasonable amount of time to allow it to proceed that day, I agreed (to the extent that is possible) to waive objections under Rule 30(f)(1) and allow a Georgia notary in the office to swear in the witness and the South Carolina court reporter to transcribe the deposition. The excerpt below is a

condensed version of the subject pages from the transcript of Ms. Self's deposition (the full version of which is Ex. 2 to the Motion for Sanctions).

Sheri Self - 1/24/2019

Page 6	Page 7
10:45:17 1 MACON, GEORGIA, THURSDAY, JANUARY 24, 2019 10:45:17 2 10:46 AM 10:45:17 3 PROCEEDINGS 10:45:17 4 ----- 10:45:20 5 VIDEOGRAPHER: Good morning. We are now on 10:45:21 6 the record. Today's date is January 24th, 2019. The 10:45:22 7 time is approximately 10:46 a.m. 10:45:23 8 This is the video deposition of 10:45:24 9 Sheri L. Self, taken by counsel for the plaintiff. The 10:45:25 10 location today is 3920 Arkwright Road in Macon, 10:45:26 11 Georgia. 10:45:27 12 My name is Douglas Browne, legal videographer 10:45:28 13 representing VidSouth Production. I am familiar with 10:45:29 14 the provisions of Rule 30(h) pertaining to videotaped 10:45:30 15 depositions. 10:45:31 16 This deposition is taken in the matter of 10:45:32 17 Tammy C. Richardson versus McCabe, Trotter & Beverly, 10:45:33 18 P.C., Case No. 16-CP-18-1001. 10:45:34 19 Counsel present and remotely, please 10:45:35 20 introduce yourselves for the record. 10:45:36 21 MR. KAHN: My name is Justin Kahn. Myself 10:45:37 22 and Mary Leigh Arnold, who's on phone, are representing 10:45:38 23 the plaintiffs - the plaintiff in this matter. 10:45:39 24 MR. COUNTRYMAN: I'm Andy Countryman. I 10:45:40 25 represent McCabe, Trotter & Beverly.	10:46:10 1 VIDEOGRAPHER: In accordance with Rule 10:46:11 2 30(b)(3), the witness has the right to be shown the 10:46:12 3 videotaped deposition unless waived by the witness and 10:46:13 4 the parties. 10:46:14 5 The court reporter today is Teri Sampson of 10:46:15 6 Magnolia Reporting. 10:46:16 7 Would the notary public present in the room 10:46:17 8 please swear in the witness, and we may begin. 10:46:18 9 WHEREUPON, 10:46:19 10 SHERI SELF, 10:46:20 11 being first duly sworn by Wanda Walford, a Jones 10:46:21 12 County, Georgia, notary, testified as follows: 10:46:22 13 MR. KAHN: An issue was - or a question was 10:46:23 14 raised by defense counsel, prior to the deposition 10:46:24 15 starting, about the fact that the court reporter, who's 10:46:25 16 been involved with many of the depositions in this 10:46:26 17 case, is not a notary in the state of Georgia. 10:46:27 18 We have - he has kindly agreed to allow us 10:46:28 19 to have a Georgia notary swear the witness in, which 10:46:29 20 has just taken place, and Teri will transcribe and 10:46:30 21 prepare the deposition. So any issue about that is not 10:46:31 22 an issue or has been waived. 10:46:32 23 EXAMINATION 10:46:33 24 BY MR. KAHN: 10:46:34 25 Q Can you tell us, please, your full name.

Mr. Kahn then began using documents with the witness. When he showed her the first one, I privately discussed the document with the witness for three minutes under Rule 30(j)(8). Mr. Kahn then asked the witness what we discussed, and I instructed her not to answer on the basis of attorney-client privilege. Here is that exchange:

[remainder of page intentionally blank]

Page 20	Page 21
10:57:00 1 the homeowner association was told that should the law	10:58:03 1 unsuccessful in collecting?"
10:57:02 2 firm not collect money from the homeowner, then the	10:58:04 2 Do you see that?
10:57:04 3 homeowner association would not owe any attorney's	10:58:05 3 A "No fee will be charged" -
10:57:10 4 fees?	10:58:06 4 MR. COUNTRYMAN: I'm going to have to talk
10:57:12 5 A I don't recall.	10:58:08 5 to her about this. I don't think this was properly
10:57:13 6 Q Okay. I'll give you an example of a fee	10:58:09 6 identified under 30(j)(8).
10:57:15 7 proposal. All right. Well, I'll -- if you don't	10:58:10 7 MR. KAHN: I'm just asking if --
10:57:20 8 recall, you don't recall.	10:58:11 8 BY MR. KAHN:
10:57:21 9 Do you remember when you came -- when you	10:58:12 9 Q Did you see that sentence?
10:57:23 10 started working at McCabe Trotter, whether or not you	10:58:13 10 MR. COUNTRYMAN: And I'm going to tell her
10:57:27 11 had seen any HOA fee proposals?	10:58:14 11 not to answer that before we discuss it.
10:57:29 12 And I'll show you --	10:58:15 12 BY MR. KAHN:
10:57:32 13 A No. I--	10:58:16 13 Q Do you see that sentence?
10:57:34 14 Q Let me just -- well, you say you don't -- let	10:58:17 14 MR. COUNTRYMAN: So don't answer that.
10:57:36 15 me just show you one before I mark it.	10:58:18 15 MR. KAHN: All right. I--
10:57:38 16 This is -- previously been marked as an	10:58:19 16 MR. COUNTRYMAN: Come with me. We're going
10:57:39 17 exhibit to Stephanie Trotter's deposition -- No. 7.	10:58:20 17 to chat about it.
10:57:41 18 This is an example of a fee proposal.	10:58:21 18 MR. KAHN: I don't understand the basis of
10:57:44 19 A I had no part of this.	10:58:22 19 your objection. These -- this document has been
10:57:45 20 Q All right. Having no part of this is	10:58:23 20 previously produced; right?
10:57:47 21 slightly different.	10:58:24 21 MR. COUNTRYMAN: Yup.
10:57:48 22 What I'm asking you is you see the second	10:58:25 22 MR. KAHN: All right. And you think the
10:57:50 23 paragraph, where it says -- the last sentence: "No fee	10:58:26 23 rules allow you to talk with a witness about a document
10:57:51 24 will be charged to the HOA" -- being homeowner	10:58:27 24 that has been previously produced or identified?
10:58:00 25 association -- "if McCabe, Trotter & Beverly, P.C., is	10:58:28 25 MR. COUNTRYMAN: Yes.

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10:58:00 1 MR. KAHN: All right. I disagree, and I	11:02:01 1 MR. COUNTRYMAN: -- privileged.
10:58:02 2 think you're not allowed to talk with her, but --	11:02:02 2 THE WITNESS: Right?
10:58:03 3 MR. COUNTRYMAN: Okay. Fair enough.	11:02:03 3 MR. COUNTRYMAN: I'm telling you not to
10:58:04 4 Come with me.	11:02:04 4 answer it because it's attorney-client privileged.
10:58:07 5 VIDEOGRAPHER: We will now go off the record.	11:02:05 5 THE WITNESS: Right.
10:58:07 6 The time is approximately 10:59 a.m.	11:02:06 6 MR. COUNTRYMAN: The document was not
10:58:09 7 (The deposition recessed briefly.)	11:02:07 7 properly identified under Rule 30(j)(8), two days or
11:01:00 8 VIDEOGRAPHER: We are now back on the record.	11:02:08 8 more ahead of the deposition.
11:01:00 9 The time is approximately 11:02 a.m.	11:02:09 9 And, Justin, we've talked about this issue at
11:01:02 10 BY MR. KAHN:	11:02:10 10 length. I sent you multiple letters on the issue.
11:01:02 11 Q All right. I want to -- the document that	11:02:11 11 Providing a 67-page spreadsheet identifying probably a
11:01:04 12 you walked out of the -- you walked out of the room	11:02:12 12 100,000 documents, in my view, does not sufficiently
11:01:04 13 with that document; right?	11:02:13 13 identify this document under 30(j)(8).
11:01:06 14 A Right.	11:02:14 14 MR. KAHN: I understand that we disagree
11:01:08 15 Q And had a discussion with Mr. Countryman?	11:02:15 15 about that. I -- this document was produced and
11:01:10 16 A Yup.	11:02:16 16 identified way before two days ago. And under the
11:01:12 17 MR. KAHN: I just -- I want to mark it as	11:02:17 17 rules, you're not allowed to talk with the
11:01:13 18 Plaintiff's Exhibit No. 1. Let me just --	11:02:18 18 witness is --
11:01:14 19 (HOA FEE PROPOSAL MARKED PLAINTIFF'S EXHIBIT	11:02:19 19 MR. COUNTRYMAN: When was it identified more
11:01:16 20 NO. 1 FOR ID.)	11:02:20 20 than two days ago?
11:01:18 21 BY MR. KAHN:	11:02:21 21 MR. KAHN: -- is my position. And I
11:01:19 22 Q And what -- what did you all talk about?	11:02:22 22 understand you disagree, and we're just going to move
11:01:20 23 MR. COUNTRYMAN: Don't answer that question.	11:02:23 23 forward and let a judge deal with your conduct.
11:01:21 24 That's --	11:02:24 24 BY MR. KAHN:
11:01:22 25 A (Continuing) It's client privileged.	11:02:25 25 Q When did -- what kind of retainer did you

The deposition broke for lunch at 11:59 a.m. and reconvened at 12:22 p.m. I discussed the need to complete the deposition by 3:00 p.m. if possible and asked Mr. Kahn how long he

expected to be. The witness had work she needed to complete that afternoon, and I was needed at home to help with my newborn child (two months old at the time). Mr. Kahn refused to give any indication of how much time he might need to finish his questions. I told him I would need to end the deposition at 3:00 p.m. to make the 5-hour trek home from Macon and allow the witness time to complete her tasks. Mr. Kahn refused to respond or discuss the issue. I then made a statement on the record regarding the deposition needing to be over by 3:00 p.m.

11:58:44	9	VIDEOGRAPHER: We will now -- we will now go
11:58:44	9	off the record. The time is approximately 11:59 a.m.
11:58:47	10	(The deposition recessed briefly.)
12:22:11	11	VIDEOGRAPHER: We are now back on the record.
12:22:12	12	The time is approximately 12:22 p.m.
12:22:15	13	MR. COUNTRYMAN: Real quick, I just want to
12:22:16	14	make a quick statement for the record. I've talked to
12:22:18	15	plaintiff's counsel and the deposition is going to be
12:22:21	16	ended at 3:00. The witness has things she needs to do
12:22:23	17	at work, and I need to get home.
12:22:25	18	We're here by agreement, and we've agreed to
12:22:26	19	be here without a subpoena, and that's what's
12:22:29	20	happening.
12:22:32	21	MR. KAHN: I don't agree with that, and you
12:22:33	22	didn't inform me to the -- of the fact that you said
12:22:35	23	you needed to leave at 3:00 until just a few moments
12:22:36	24	ago during the break.
12:22:39	25	We'll go forward, and the judge can deal with

After the short lunch break, Mr. Kahn showed the witness another document. I took from 12:25 p.m. to 12:27 p.m. to review the document with the witness under Rule 30(j)(8). I then directed the witness not to answer the question on grounds of attorney-client privilege. Here is the exchange (condensed version of pp. 93 -- 95 of S. Self transcript, Ex. 2 to Motion for Sanctions)

12:23:16	19	I'll give you -- I'm going to show you a
12:23:20	19	document I'm marking as Plaintiff's Exhibit No. 2,
12:23:23	20	which is a two-page document.
12:23:26	21	(NOTICE OF CONSUMER'S RIGHT TO CURE LETTER
12:23:26	22	MARKED PLAINTIFF'S EXHIBIT NO. 2 FOR I.D.)
12:23:28	23	MR. KAHN: It's MTB Supplemental -- here you
12:23:32	24	go, sir.
12:23:32	25	BY MR. KAHN:

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12:23:32	1	12:24:09	1
12:23:36	2	12:24:10	2
12:23:39	3	12:24:10	3
12:23:41	4	12:24:12	4
12:23:42	5	12:24:13	5
12:23:43	6	12:24:13	6
12:23:43	7	12:24:13	7
12:23:43	8	12:24:13	8
12:23:44	9	12:26:56	9
12:23:44	10	12:26:56	10
12:23:46	11	12:26:57	11
12:23:48	12	12:27:00	12
12:23:49	13	12:27:00	13
12:23:51	14	12:27:02	14
12:23:51	15	12:27:03	15
12:23:53	16	12:27:06	16
12:23:54	17	12:27:06	17
12:23:57	18	12:27:09	18
12:23:58	19	12:27:13	19
12:23:59	20	12:27:13	20
12:24:00	21	12:27:16	21
12:24:01	22	12:27:17	22
12:24:03	23	12:27:19	23
12:24:04	24	12:27:20	24
12:24:06	25	12:27:22	25

This happened over and over again for thirteen exhibits. Mr. Kahn would show the witness a document. I would take 2-4 minutes to review it with her privately under Rule 30(j)(8), after which he would ask her what we discussed. I would direct her not to answer on grounds of attorney-client privilege.

At any time before or during the deposition, Mr. Kahn could have provided the all the documents to review with the witness at once. He refused despite Rule 30(j)(8) and the expressed need to complete the deposition by 3:00 p.m. This led to the following brief additional breaks in the deposition for me to review the material with the witness:

- (a) 12:35 – 12:37 to review Ex. 3 (p. 105 of Self transcr.)¹
- (b) 12:45 – 12:48 to review Ex. 4 (p. 113 of Self transcr.)

- (c) 12:52 – 12:54 to review Ex. 5 (p. 118 of Self transcr.)
- (d) 12:59 – 1:02 to review Ex. 6 (p. 123 of Self. transcr.)
- (e) 1:23 – 1:26 to review Ex. 8 (p. 148 of Self transcr.)
- (f) 1:28 – 1:30 to review Ex. 9 (p. 151 of Self transcr.)
- (g) 1:35 – 1:37 to review Ex. 10 (pp. 155 – 156 of Self transcr.)
- (h) 1:42 – 1:51 to review Ex. 11 (p. 161 of Self transcr.)
- (i) 2:01 – 2:04 to review Ex. 12 (p. 172 of Self transcr.)
- (j) 2:14 – 2:16 to review Ex. 13 (p. 183 of Self transcr.)
- (k) 2:18 – 2:10 to review Ex. 14 (pp. 185 – 186 of Self transcr.)
- (l) 2:29 – 2:32 to review Ex. 15 (p. 194 of Self transcr.)
- (m) 2:43 – 2:45 to review Ex. 16 (pp. 204 – 205 of Self transcr.)

After Mr. Kahn refused to give any indication of how long he planned to depose the witness or produce documents to review with her ahead of time (causing us to waste nearly an hour during the deposition), I ended the deposition at 3:00 p.m. I then filed a Motion for Protective Order regarding Ms. Self's deposition on January 31, 2019, under Rule 30(j)(3).

Argument

"The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." In re Anonymous Member of the S.C. Bar, Opinion 25346 (Aug. 20, 2001) *citing* In re Alford Chevrolet-Geo, 997 S.W.2d 173, 180 (TX 1999). The entire thrust of our discovery rules involves full and fair disclosure, to prevent a trial from becoming a

¹I did not direct the witness to refuse to answer the question "what did you talk about with respect to this document." Of course, the answer was "the document."

guessing game or one of surprise for either party. Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). In this respect, the discovery process is designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." In re Anonymous Member of the S.C. Bar, Opinion 25346 (Aug. 20, 2001) *see also* U.S. v. Procter & Gamble Co., 356 U.S. 677, 682, 78 S.Ct. 983, 986-87, 2 L.Ed.2d 1077 (1958). Simply put, the core purpose of discovery is to obtain the *truth*. *See, e.g., Samples, supra*. The rights of discovery the Rules provide give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice is assumed. Downey v. Dixon, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987).

Rule 30 discusses the conduct of lawyers during depositions. Our Supreme Court provided some guidance on how Rule 30 applies. "A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." In re Anonymous referring to Rule 407, SCACR pmbl. In depositions, lawyers may face the greatest conflict between their obligations to the court and opposing counsel under Rule 3.4, and their obligations to their own client under Rule 1.3.

Because depositions usually occur without direct judicial supervision, lawyers must regulate themselves during this highly critical stage of litigation. The Supreme Court has sanctioned lawyers who have failed to properly conduct themselves during depositions. In re Anonymous referencing Matter of Golden, 329 S.C. 335, 496 S.E.2d 619 (1998). In addition to subjecting themselves to possible ethical sanctions, attorneys who engage in misconduct during depositions may find themselves sanctioned by the trial court as well. *See* Rule 37, SCRCp.

SCRCP 30(j)(8) provides:

(8) Deposing counsel shall provide to opposing counsel a copy of all documents shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents are provided (or otherwise identified) at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to privately discuss the documents before the witness answers questions concerning the document.

The plain and obvious intent of Rule 30(j)(8) is to allow witnesses to review material and be familiar with it prior to answering questions about it, i.e., avoid surprise. Whether a document was produced in discovery has nothing to do with whether a witness is familiar with the document. That is particularly true in a case like this where thousands of documents have been exchanged. The only possible explanation for Mr. Kahn's refusal to provide this material prior to the depositions (despite numerous requests that he do so) is that he wanted to surprise the witness and *not* give them a chance to review material before discussing it.

Haylen Gatling Deposition

Mr. Kahn's identification of material to use in Ms. Gatling's deposition in the Notice referred to all of the thousands of pages of material exchanged in discovery did not provide any genuine indication of what material he actually planned to show the witness in her deposition. I told him as much in writing two months before the deposition. Mr. Kahn ignored two letters on the topic and instead sent a 68-page spreadsheet referencing thousands more pages of material as potential deposition exhibits.

This did nothing to clarify what material he actually planned to use with the witness either. To the contrary, Mr. Kahn was actually attempting to *preclude* me from knowing ahead of time what material he would use with the witness. This is directly contrary to the discovery rules, as well as the Rules of Professional Conduct (*see* i.e., SCRPC 3.3, Candor Towards the Tribunal).

This was insufficient to identify material he planned to use in the deposition under Rule 30(j)(8).

Under the Rule, I had the right to discuss exhibits with the witness privately during the deposition.

I also had the right to discuss the material privately with Ms. Gatling during the deposition under Rule 30(j)(8) because Mr. Kahn's production of the 68-page spreadsheet was untimely. The Rule has a two-day time period for providing material. Under Rule 5(a), weekends do not count when computing time under the Rules. The deposition was at 10:00 a.m. on Tuesday, January 25th. Producing the 68-page spreadsheet at 6:31 p.m. the Friday before the Tuesday deposition was not two days before the deposition. I had the right under Rule 30(j)(8) to privately discuss the deposition exhibits with the witness during the deposition. Those conversations were privileged.

Upon the presentation of the second exhibit, I exercised that right. At that point, Mr. Kahn provided me with copies of the material he planned to use in the deposition moving forward. I appropriately took a reasonable amount of time to discuss the material with the witness privately. I then appropriately instructed the witness not to answer a question asking what we discussed based on attorney-client privilege. I then properly filed a Motion for Protective Order under Rule 30(j)(3).

Mr. Kahn had every opportunity to provide or identify the material he actually planned to use at any time prior to the deposition. He ignored *two* letters about the issue and refused to discuss it with me at the deposition. I even implored him to let me review the exhibits with the witness the morning of the deposition and during the lunch break (waiving the two-day requirement in Rule 30(j)(8)). He failed and refused to provide the material at any time before the deposition.

Mr. Kahn argues that Rule 30(j)(8) does not require identification or production of material if the material was previously produced in discovery. He would prefer to surprise non-lawyer witnesses with documents cherry-picked from thousands of pages of material they have not previously reviewed so he can get the answers he wants regardless of whether the answers are accurate or help find the truth in the case. Of course, the fact that something was previously produced in discovery, or even that the person being deposed created the document, is completely irrelevant. The Rule is intended to enable the witness to be familiar with the documents she is going to be questioned about during the deposition so she can accurately answer questions about them. Mr. Kahn's aimed to utilize the element of surprise with these lay witnesses and obtain answers that help his case by showing them isolated documents out of thousands produced in discovery with no opportunity to review the material beforehand. These are attempts to evade the very protections Rule 30(j)(8) imposes and the spirit and intent of the discovery rules in general.

Rule of Professional Conduct 3.4 also has bearing here. It discusses duties of lawyers to act in fairness to opposing parties and counsel. A lawyer may not unlawfully obstruct another party's access to evidence or conceal material. "Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery, and the like." Comment [1] to SCRPC 3.4. Refusing to produce or identify what a lawyer plans to use as deposition exhibits is an attempt to conceal and gain an unfair advantage through the element of surprise.

Sheri Self Deposition

I voluntarily produced Ms. Self, a Georgia witness, without a subpoena even after Mr. Kahn sneakily contacted her directly without going through me. I extended another professional courtesy

and allowed the deposition to proceed even though the court reporter Mr. Kahn hired was not a notary in Georgia. Mr. Kahn refused to produce or identify material before the deposition or at any time during it. He also refused to provide any indication of how long he expected the deposition to take despite being asked multiple times.

Mr. Kahn has sued MTB in four cases, including this one. He has deposed Stephanie Trotter four times and Ryan McCabe twice. He has now deposed two current MTB legal assistants and one former assistant as well. There is no dispute at all as to what MTB's process is. That has been established over and over again through the various witnesses. Mr. Kahn believes MTB's process is wrong, MTB disagrees. Obtaining more testimony about what the process is (the only possible explanation for wanting to depose MTB legal assistants) will do nothing to develop the claims or defenses in the case. In fact, I have even stipulated to many of these "facts" that Mr. Kahn thinks are bad.

Mr. Kahn still decided to spend much of Ms. Self's deposition attempting to reinforce already established facts in the case by asking the witness questions about old material with which she was unfamiliar. He also tried to get "gotcha" answers from her by misstating what she said and changing key words he hoped the unsophisticated witness would not detect.

The Rules prevent witness coaching during depositions, as well as lengthy speaking objections and brief suggestive interjections. In re Anonymous. Therefore, interjections during a deposition by the witness' lawyer such as "if you remember" and "don't speculate" are improper because they suggest to the witness how to answer the question. Id. A plain reading of the transcript shows I made no such suggestive statement or objection to influence the witness'

answers. I objected to the form of certain questions, and on select occasions, concisely stated the basis of the objection. Here is an example:

Page 140	Page 141
13:16:04 1 A Yes. 13:16:07 2 Q Do you understand, when you look at the 13:16:10 3 homeowner association statement account of the 13:16:13 4 homeowner -- 13:16:16 5 A Uh-huh. 13:16:19 6 Q -- that the \$250 in attorney's fees would not 13:16:22 7 appear there? 13:16:25 8 A Right. 13:16:28 9 Q Okay. So the law firm is stating an amount 13:16:31 10 of attorney's fees as being owed. It does not appear 13:16:34 11 on the homeowner association account statement. 13:16:37 12 Is that right? 13:16:40 13 A No. 13:16:43 14 Q That's not right, or that is right? 13:16:46 15 A That is right. 13:16:49 16 Q Okay. 13:16:52 17 A That it's not -- it doesn't appear on the 13:16:55 18 statement. 13:16:58 19 Q Okay. So the law firm is telling the 13:17:01 20 homeowner they owe attorney's fees and amounts that do 13:17:04 21 not appear on the homeowner account statement? 13:17:07 22 A Right. At that time. 13:17:10 23 Q Okay. You said "at that time"? 13:17:13 24 A I think so. I don't know. 13:17:16 25 Q Okay. Well, we'll get to some.	13:16:59 1 A I think. I don't remember. 13:17:02 2 Q All right. Well, typically, when you got the 13:17:05 3 email from the homeowner association -- 13:17:08 4 A Right. 13:17:11 5 Q -- it would not have on it an amount for -- 13:17:14 6 A What we charge. 13:17:17 7 Q -- an amount for attorney's fees; right? 13:17:20 8 A Right. That's correct. 13:17:23 9 Q So when the law firm is sending out a letter 13:17:26 10 like this to the homeowner, you're telling the consumer 13:17:29 11 that there are attorney's fees that appear on their 13:17:32 12 account. Right? 13:17:35 13 MR. COUNTRYMAN: Object to the form. 13:17:38 14 A (Continuing) There's attorney's fees, yep. 13:17:41 15 Q Okay. Even though those attorney's fees do 13:17:44 16 not appear on the homeowner account, is that right? 13:17:47 17 A On their statement, no. 13:17:50 18 Q Is that -- am I right? 13:17:53 19 A Right. 13:17:56 20 Q All right. So -- because there's been a 13:17:59 21 bunch of no's and yes's. Let's make sure we're on the 13:18:02 22 same page. 13:18:05 23 A Okay. 13:18:08 24 Q The law firm at the time it is sending a 13:18:11 25 letter to the consumer stating that there is \$250 owed

Page 142	Page 143
13:17:57 1 because it's on the homeowner account, that amount does 13:18:00 2 not appear on the homeowner account; is that right? 13:18:03 3 MR. COUNTRYMAN: Object to the form. That's 13:18:06 4 not what she said. 13:18:09 5 A (Continuing) It's -- right. It's not on the 13:18:12 6 statement. 13:18:15 7 MR. KAHN: Hold on. The rules are very 13:18:18 8 clear. That's an instruction -- 13:18:21 9 MR. COUNTRYMAN: Just a, we've already 13:18:24 10 stipulated that the attorney -- 13:18:27 11 MR. KAHN: No, sir. Stop it. 13:18:30 12 MR. COUNTRYMAN: -- I don't care what you 13:18:33 13 say, man. 13:18:36 14 MR. KAHN: The rules do not allow you -- 13:18:39 15 MR. COUNTRYMAN: You can talk over me all you 13:18:42 16 want. That's fine. 13:18:45 17 MR. KAHN: It's not -- 13:18:48 18 MR. COUNTRYMAN: You're mischaracterizing 13:18:51 19 what she said and slipping words in there and making it 13:18:54 20 different than what she actually said. 13:18:57 21 Just conduct a fair deposition. 13:19:00 22 MR. KAHN: The rule -- I asked you -- 13:19:03 23 MR. COUNTRYMAN: I don't need you to tell me 13:19:06 24 what the rules say. 13:19:09 25 MR. KAHN: -- to not violate --	13:18:55 1 MR. COUNTRYMAN: You can ask her a question 13:18:58 2 if you want to. 13:19:01 3 MR. KAHN: I've asked her a question, and you 13:19:04 4 are interrupting and stating things improperly, which 13:19:07 5 are in clear violations of the rules. 13:19:10 6 MR. COUNTRYMAN: Sounds good. 13:19:13 7 MR. KAHN: If you have an objection, then 13:19:16 8 state it, and I'll go from there. 13:19:19 9 MR. COUNTRYMAN: I object to the question you 13:19:22 10 asked her because it mischaracterized what she said, 13:19:25 11 and you slid words in there that she didn't say. I 13:19:28 12 think that's misleading, unfair, and deceptive. 13:19:31 13 MR. KAHN: Your extraneous comments are 13:19:34 14 specifically prohibited by the South Carolina Supreme 13:19:37 15 Court and under the rules. 13:19:40 16 MR. COUNTRYMAN: Then call somebody. Take 13:19:43 17 somebody up. That's fine. 13:19:46 18 MR. KAHN: I would ask you to refrain from 13:19:49 19 engaging in that conduct. I'm just asking as nice as I 13:19:52 20 can be and as civil as I can. 13:19:55 21 BY MR. KAHN: 13:19:58 22 Q In terms of Plaintiff's Exhibit No. 6, when 13:20:01 23 you get in the homeowner account statement that is used 13:20:04 24 to generate these form letters, that statement would 13:20:07 25 not contain an amount for attorney's fees; right?

The above exchange relates to Plaintiff's argument that MTB's inclusion of attorney's fees the HOA has not yet paid in the owner's balance is a misrepresentation of the amount the owner

owes. It is a well-established fact in this case that MTB typically receives a statement from the HOA of the amount the owner owes. MTB then begins a collections action and includes attorney's fees generated under its agreement with the HOA in the amount the owner owes. Those amounts do not appear on the HOA's account statement for the owner because the HOA has not yet paid it.

The witness plainly testified that the firm includes attorney's fees in the owner's balance, and those are fees that do not appear on the owner's account ledger with the HOA (because the HOA has not paid them yet). This is a well-established fact in the case. In rephrasing her testimony, Mr. Kahn tried to trick the witness into admitting the firm intends the owner to believe the attorney's fees appear on the owner's account with the HOA, which is not what she said. I objected to the form of the question and stated my basis for the objection ("that's not what she said."). Mr. Kahn asked me to state my objection further, so I did and asked him to conduct a fair deposition. This was all proper and appropriate.

Mr. Kahn also says that I did not represent Ms. Self, and thus no privilege attaches to conversations between us. This is also wrong. The provision of legal advice, consultation, explanations and recommendations on matters of law constitute the practice of law. State v. Robinson, 321 S.C. 286, 468 S.E.2d 290 (1996). Whether the lawyer receives payment is irrelevant to whether he/she is practicing or if an attorney-client relationship exists. State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). An attorney-client relationship does not depend on the existence of a formal agreement of payment of a legal fee. S.C. Bar Ethics Opinion # 91-03 citing N.C. State Bar v. Sheffield, 326 S.E.2d 320 (N.C. App. 1985). A client for purposes of applying the attorney-client privilege is a person who "seeks legal advice by communicating in confidence with an attorney for the purpose of obtaining such advice." Marshall

v. Marshall, 320 S.E. 2d 44 (S.C. Ct. App. 1984). "Whether an attorney-client relationship exists in a particular situation is a question of fact...." S.C. Bar Ethics Advisory Opinion #91-03 *citing Chavez v. State*, 604 P.2d 1341, 1346 (Wyo. 1980).

I represented Ms. Self at the deposition. I operated with this understanding throughout the deposition scheduling and preparation process. This included meeting with her before the deposition to prepare. I did not have a formal retainer agreement or require payment outside of what I am already being paid for my work as counsel for MTB in this case, but this has no bearing here. When asked directly if I was her lawyer, Ms. Self said "yes." She also said that when we had pre-deposition discussions, it was with the understanding they were privileged and confidential. p. 223 transcr. Self depo., Ex. 2 to Motion for Sanctions). There is zero basis to the argument that I did not represent Ms. Self at her deposition.

My discussion of material with Ms. Self during the deposition was appropriate under Rule 30(j)(8) because the identification of all material exchanged in discovery and a 67-page spreadsheet of more material failed to provide any indication of what material Mr. Kahn planned to use in the deposition. Under the Rule, I took a very brief amount of time (around 3 minutes each) to review the exhibits with the witness. My instructions to the witness to not answer questions asking what we discussed in those brief private meetings to review the material were appropriate because the attorney-client privilege applies to those conversations.

I presented the witness to give the deposition without a subpoena and by agreement. I agreed to allow a non-Georgia court reporter to transcribe the witness' testimony. Despite extending these courtesies, Plaintiff's counsel refused to disclose material he planned to use with the witness with the full knowledge this would cause breaks and delays in the deposition. I took a

brief amount of time (around three minutes per document) to review the exhibits with the witness as they were presented to her. This time totaled almost an hour, which could have been spent questioning the witness had counsel provided the exhibits before the deposition. I expressed a need to have the deposition end at a certain time for multiple reasons related to me and the witness. Mr. Kahn refused to even provide any indication of how long he expected the deposition to take.

Under these circumstances, it was completely reasonable to end the deposition at 3:00 p.m. It certainly was not done in bad faith. This is not a basis for sanctions.

Stephanie Trotter

Plaintiff's motion seeks to depose Stephanie Trotter for what would be a fifth time because she was present for the brief meeting with Ms. Gatling to review Plaintiff's deposition exhibits that he refused to provide before the deposition. Ms. Trotter is a representative of MTB, the named Defendant in this case. She had the right to attend the meeting, which was clearly privileged. Again, the meeting would not have been necessary had Plaintiff's counsel followed the Rules and produced or identified the deposition exhibits beforehand.

Conclusion

Plaintiff's counsel's conduct shows a pattern of attempting to gain a tactical advantage by maintaining the element of surprise with respect to the use of deposition exhibits. This blatantly abusive of the discovery Rules. The Court should deny Plaintiff's Motion for Sanctions and award sanctions to MTB against Plaintiff and her counsel as requested in MTB's pending Motions for Protective Order(s), as well as attorney's fees and costs associated with preparing this brief and arguing the Motion.

[signature page to follow]

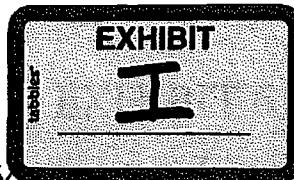
Respectfully submitted,

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January 15, 2019

Justin S. Kahn
Kahn Law Firm, LLP
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jskahn@kahnlawfirm.com

Re: *Richardson v. McCabe, Trotter & Beverly, P.C., et al.*
C/A No.: 2016-CP-18-1001
CLF File: 00006 – 00008

Dear Justin:

I received your email sent at 6:31 p.m. Friday regarding documents you may use during the upcoming depositions of Haylen Gatling and Theron Coetzee this week. If this was your attempt to identify documents in compliance with SCRCP 30(j)(8), you failed. The Rule provides that if a deposing lawyer provides or otherwise identifies documents he/she plans to use in a deposition two days ahead of time, then the lawyer for the witness may not discuss the document privately with the witness during the deposition. If the deposing lawyer fails to so identify or produce documents, the witness and her lawyer may discuss the material privately before the witness answers questions about them.

The parties have exchanged tens of thousands of documents in discovery in this case. You noticed these depositions (by agreement) on November 9, 2018. I sent you a letter on November 14th regarding identification of documents and Rule 30(j)(8). You then sent a bizarre email December 13, 2018, demanding dates for Ms. Coetzee's deposition before the end of the year and threatening to file a contempt motion against me. I figured you must've had a bad day and kindly ignored this.

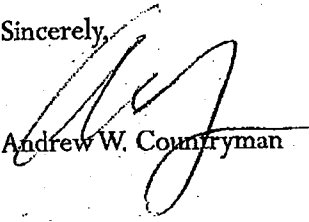
You then sent the 1/11/19 email regarding deposition documents, which is insufficient under SCRCP 30(j)(8). The Rule is meant to prevent surprise and allow witnesses to properly prepare for depositions. You sent a 68-page spreadsheet referencing the "beginning" bates numbers of approximately 3,000 documents. You also referred to "documents previously identified." The only documents you identified before included everything exchanged in discovery. As noted in my

ELECTRONICALLY FILED - 2019 Apr 15 4:22 PM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801001
ELECTRONICALLY FILED - 2019 Mar 01 1:48 PM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801001

11/14/18 letter, this is insufficient to identify documents under Rule 30(j)(8). Referencing over 3,000 pages of material in a spreadsheet is no better.

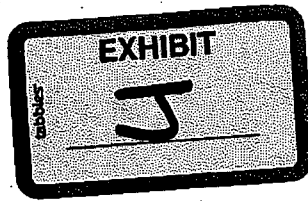
It would be objectively impossible for anyone to use that many documents in either of or both of these deposition. I still have no idea what material you truly plan to use in the depositions. This appears to be a sad attempt to obtain soundbites from unsophisticated (non-lawyer) using documents with which they are unfamiliar. It is certainly not a good faith effort to identify documents under the Rule.

Sincerely,


Andrew W. Countryman

AWC/sgc

cc: Robert Wood, Pattie Michel, Sammie Arnold



STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

TAMMY C. RICHARDSON,

Plaintiff,

vs.

HALCYON REAL ESTATE SERVICES, LLC
and MCCABE, TROTTER & BEVERLY,
P.C.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THE FIRST JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-18-1001

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**MCCABE, TROTTER & BEVERLY, P.C.'S
MOTION FOR PROTECTIVE ORDER
(DEPOSITION OF SHERI SELF)**

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Defendant McCabe, Trotter & Beverly, P.C. ("MTB"), by and through its undersigned counsel, submits this Motion for a Protective Order pursuant to SCRCP 26(c), 30(d) and 30(j) prohibiting Plaintiff's counsel from questioning Sheri Self regarding attorney-client privileged information. MTB also seeks sanctions under Rule 37. MTB shows the Court the following:

Background

MTB is a law firm that, among other things, performs collections actions for HOAs. Plaintiff was a defendant in a lien collections action that MTB pursued for her HOA after she failed to pay HOA assessments for many years without reason. Instead of paying what she owed, Plaintiff sought counsel and sued MTB for violation of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 ("FDCPA").

Sheri Self used to work at MTB as a paralegal and now works as a legal assistant at a law firm in Macon, Georgia. Without going through MTB's counsel, Plaintiff's counsel contacted Ms. Self directly to discuss the case. Plaintiff's counsel decided to take her deposition. The deposition was set

by agreement and without requiring domestication of a subpoena to take place in Macon, Georgia on January 24, 2019, via a deposition Notice served on November 13, 2018. Ex. 1. The Notice "identified" and "reserved the right" to any documents produced or made available in discovery by any party during the deposition under SCRCP 30(j)(8):

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRCP, counsel for the Plaintiff hereby identifies and reserves the right to use any documents produced or made available in discovery by any party during this deposition, and hereby gives notice of the Plaintiff's intent to question the witness regarding all documents produced, identified or made available by any party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

The court has certified this case as a class action, and the parties have exchanged thousands of documents in discovery to date.

The next day (and two months before the deposition was to take place), counsel for MTB sent Plaintiff's counsel a letter regarding the documents and Rule 30(j)(8):

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November 14, 2018

Via Email Only:
Justin S. Kahn
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Charleston, SC 29407
jskahn@kahnlawfirm.com

Re: *Richardson v. McCabe, Trotter & Bernal, P.C., et al.*
C/A No.: 2016-CP-18-1001
CLF File: 00006 - 00008

Dear Justin:

The Notices for the depositions you recently set all refer to any documents produced and made available in discovery as documents you might use in the depositions under SCRCP 30(j)(8). This Rule states that if deposing counsel provides or otherwise identifies the documents to be used during the deposition at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If deposing counsel does not provide or identify the documents ahead of time, then counsel and the witness may have a reasonable amount of time to discuss the document before the witness answers questions concerning it.

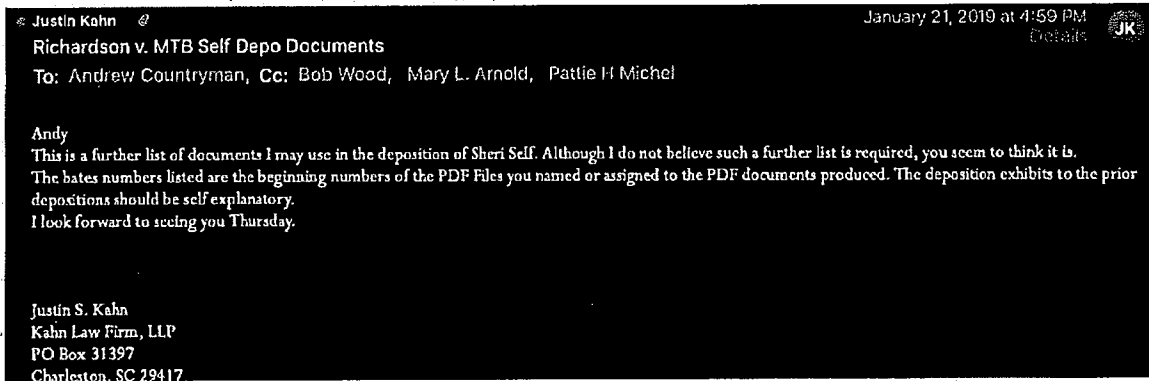
The purpose of the Rule is to avoid surprise and wasting time during a deposition. Thousands and thousands of documents have been produced in discovery in this case. Blanketly referring to all of them does not comport with the letter or spirit of the Rule. Unless you identify or produce specific material you actually plan to use in the depositions two days beforehand, I reserve the right to discuss material presented to the witnesses privately during the deposition(s).

Sincerely,


Andrew W. Countryman

The letter explained that naming all the thousands of documents produced in discovery was insufficient to identify documents to be used during the deposition under SCRCP 30(j)(8). Further, it specified that if Plaintiff's counsel failed to produce or identify the documents he really planned to use two days prior to the deposition (something other than merely referencing all material exchanged in discovery) MTB's counsel reserved the right and planned to discuss the material with the witness under Rule 30(j)(8). Plaintiff's counsel never responded to the letter.

At 4:59 p.m., January 21, 2019, Plaintiff's counsel sent an email with a 67-page spreadsheet (Ex. 2) he characterized as a "further list of documents" he "may use" in the deposition:



The spreadsheet referenced all the exhibits used in depositions taken previously in the case, all discovery responses of MTB, MTB's Answer and referenced thousands and thousands of pages of material produced in discovery.

Counsel for MTB represented the witness regarding the deposition, as she was a former MTB employee being deposed about her work at MTB. The undersigned met with the witness to prepare for the deposition. The undersigned had no clue what material Plaintiff's counsel planned to use during the deposition with the witness based on his identification of all material exchanged in discovery. This is not a new issue in this case. Plaintiff's counsel has exhibited a continued practice of refusing to produce or identify material he actually plans to use in depositions prior to them other

than referencing all material produced in discovery. The undersigned has made it very clear this does not give counsel or the witness any idea what material might actually be used in the deposition and actually creates a situation where Plaintiff's counsel surprises the witness with documents with which they are not familiar.

For almost all of the approximately 15 exhibits used in Ms. Self's deposition, the undersigned took a brief recess to discuss the document privately with the witness under SCRCP 30(j)(8). Upon information and belief, no break was longer than 3-4 minutes. Every time they returned from break, Plaintiff's counsel asked the witness what she discussed with counsel. Every time, the undersigned instructed the witness not to answer based on attorney-client privilege pursuant to Rule 30(j)(8).

Argument

"The entire thrust of South Carolina's discovery rules involves full and fair disclosure, 'to prevent a trial from becoming a guessing game or one of surprise for either party.'" Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), quoting Hodge v. Meyers, 255 S.C. 542, 180 S.E.2d 203 (1971). In simple terms, the core purpose of discovery is to obtain the truth. See, e.g., Samples, *supra*. The rights of discovery the Rules provide give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice is assumed. Downey v. Dixon, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987).

SCRCP 30(j)(8) is in place to prevent surprises during depositions and allow witnesses to testify knowledgeably regarding material presented to them. The Rule says that if a lawyer conducting a deposition provides or identifies material he plans to use with the witness two days ahead of the deposition, the witness and her lawyer may not discuss the material during the deposition. Otherwise, the witness and her lawyer may.

(8) Deposing counsel shall provide to opposing counsel a copy of all documents shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents are provided (or otherwise identified) at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to privately discuss the documents before the witness answers questions concerning the document.

Identifying or producing documents under Rule 30(j)(8) prevents surprise and allows witnesses to testify knowledgeably regarding material presented to them in a deposition.

a. Plaintiff's identification of all material produced in discovery does not comply with the Rule.

More than two months prior to Ms. Self's deposition, counsel for MTB plainly and in writing told Plaintiff's counsel that referencing all material produced in discovery was not sufficient to identify material he planned to use in the deposition under Rule 30(j)(8). Counsel for MTB indicated that unless Plaintiff's counsel made a real effort to identify or produce material he actually planned to use, MTB's counsel reserved the right and planned to discuss material presented to the witness during the deposition.

Plaintiff's counsel ignored the November 14, 2018, letter. Instead of responding to it, he sent an email the Monday evening before the Thursday deposition (again) identifying everything produced in discovery, including a 67-page spreadsheet listing thousands of documents and referencing all material used in prior depositions. This was not an attempt to provide documents he planned to use during the deposition so the witness could knowledgeably testify about them. This was an attempt to hide what he actually planned to use and surprise the witness.

Plaintiff's counsel refused to address the issue substantively during the deposition. MTB's counsel indicated he did not consider the identification of all material produced in discovery or the 67-page spreadsheet as sufficient identification of material under SCRCP 30(b)(6). Plaintiff's counsel never would have a substantive discussion with counsel for MTB about the issue. He refused

to address how his tactics were anything other than efforts to surprise the witness and keep what material he planned to use with her secret. Counsel for MTB offered to quickly review all material Plaintiff's counsel planned to use during the deposition with the witness as once. Plaintiff's counsel refused. This caused significant and unnecessary delay in the deposition.

Plaintiff's counsel's blanket identification of all material exchanged in discovery, his 67-page spreadsheet listing various material produced in the case and referencing all deposition exhibits used in the case to date did not to comply with Rule 30(j)(8). Plaintiff's counsel never intended to use all material exchanged in discovery or all exhibits to every prior deposition in the case, and in fact, he only used a small select portion of material with the witness. He refused to provide any good faith indication prior to the deposition of what specific documents he planned to use and instead only referred to the thousands of documents exchanged in discovery. Plaintiff's counsel clearly intended to surprise the witness and use documents with her with which she was unfamiliar get soundbites and "gotcha" answers from her.

Counsel for MTB, after stating his position on the record (and after two letters and at least two attempts to discuss the issue to prevent interrupting the deposition), appropriately took a reasonable amount of time (approximately 15 minutes) under Rule 30(j)(8) to review the exhibits with the witness. Under the Rule, the conversation between counsel and the witness during this time was confidential and privileged. Counsel for MTB therefore appropriately directed the witness not to answer the question, "What did you talk about?" following the private meeting.

b. Sanctions

SCRCP Rule 37 provides for sanctions against a lawyer whose conduct necessitates a discovery motion. Such sanctions shall include attorney's fees and reasonable expenses incurred obtaining the order. Such sanctions are appropriate here.

Plaintiff's counsel refused to make any good faith effort to provide material he actually planned to use in the deposition prior to it. Instead, he hid his material he planned to use by referring to all material exchanged in discovery and then sending a 67-page spreadsheet listing thousands more documents shortly before the deposition. Plaintiff's counsel only used a select number of exhibits, which upon information and belief, was around 15 (the transcript has not been produced yet).

Plaintiff's counsel's intent was clearly to conceal what he truly planned to use as deposition exhibits and surprise the witness to obtain soundbite answers. This has been a continuing problem during depositions in this case. Plaintiff's counsel's pattern of behavior is to: (a) identify all material exchanged in discovery as potential deposition exhibits, (b) ignore MTB's counsel's contention that identifying material in that manner is insufficient under SCRCP 30(j)(8), then (c) try to surprise witnesses in depositions with documents they have not reviewed and with which they are not familiar in attempts to get "gotcha" answers. This is actually the second Motion for Protective Order pending before the Court on this very issue.

Conclusion

From the beginning, MTB's counsel has only sought to obtain material prior to the deposition that may be used in the deposition as the Rules provide so the witness can be familiar with it prior to the deposition. This would allow the witness to testify knowledgeably regarding the exhibits. However, Plaintiff's counsel's objective is not to obtain the truth or properly identify material so the witness could be familiar with it during the deposition. It is to hide the true documents he planned to use by identifying thousands and thousands of documents exchanged and otherwise used in discovery with the plan of obtaining soundbites he could use to benefit his case.

Plaintiff's identification of material under Rule 30(j)(8) did not comply with the Rule. Because Plaintiff's counsel did not provide or identify material he actually planned to use with the witness two days prior to the deposition, MTB's counsel had the right under Rule 30(j)(8) to discuss the material with the witness privately during the deposition. Therefore, the Court should protect the witness from having to answer the questions asking what she discussed with counsel during the meeting regarding the documents during the deposition. Additionally, Plaintiff's counsel's tactics were contrary to the the discovery rules, which are designed to prevent surprise and find the truth. The Court should award sanctions in the form of costs and attorney's fees in favor of MTB for having to file and argue this Motion. MTB may supplement this Motion with affidavit(s) and/or briefs as appropriate.

Respectfully submitted,

By: /s/ Andrew W. Countryman
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**Counsel for McCabe, Trotter &
Beverly, P.C.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-18-1001
	)	
TAMMY C. RICHARDSON,	)	
	)	
Plaintiff,	)	MCCABE, TROTTER & BEVERLY, P.C.'S
	)	MOTION FOR PROTECTIVE ORDER
vs.	)	(DEPOSITION OF HAYLEN GATLING)
	)	
HALCYON REAL ESTATE SERVICES, LLC	)	
and MCCABE, TROTTER & BEVERLY,	)	
P.C.,	)	
	)	
Defendants.	)	
	)	

Defendant McCabe, Trotter & Beverly, P.C. ("MTB"), by and through its undersigned counsel, submits this Motion for a Protective Order pursuant to SCRCP 26(c), 30(d) and 30(j) prohibiting Plaintiff's counsel from questioning Haylen Gatling regarding attorney-client privileged information. MTB also seeks sanctions under Rule 37. MTB shows the Court the following:

Background

MTB is a law firm that, among other things, performs collections actions for HOAs. Plaintiff was a defendant in a lien collections action that MTB pursued for her HOA after she failed to pay HOA assessments for many years without reason. Instead of paying what she owed, Plaintiff sought counsel and sued MTB for violation of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 ("FDCPA").

Haylen Gatling is a paralegal at MTB, and Plaintiff's counsel decided to take her deposition. Plaintiff's counsel noticed the deposition to take place on January 15, 2019, via a deposition Notice served November 9, 2018. Ex. 1. The Notice contained a statement purporting to identify all

documents exchanged, produced, and received in discovery as material during the deposition under SCRPC 30(j)(8):

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(j)(8), SCRPC, counsel for the Plaintiff hereby identifies and reserves the right to use any documents produced or made available in discovery by any party during this deposition, and hereby gives notice of the Plaintiff's intent to question the witness regarding all documents produced, identified or made available by any party during the course of discovery, as well as those obtained pursuant to subpoena or records request.

Less than a week later (and two months before the deposition was to take place) counsel for MTB sent Plaintiff's counsel a letter regarding the documents and Rule 30(j)(8) (full copy attached as Ex. 2):

COUNTRYMAN LAW FIRM
LITIGATION • MEDIATION

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
*Certified S.C. Circuit Court Mediator

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November 14, 2018

Via Email Only
Justin S. Kahn
Kahn Law Firm, LLP
562 Savannah Hwy
Charleston, SC 29407
jskahn@kahnlawfirm.com

Re: Richardson v. McCabe, Trotter & Beverly, P.C., et al.
C/A No.: 2016-CP-18-1001
CLF File: 00006 - 00008

Dear Justin:

The Notices for the depositions you recently set all refer to any documents produced and made available in discovery as documents you might use in the depositions under SCRPC 30(j)(8). This Rule states that if deposing counsel provides or otherwise identifies the documents to be used during the deposition at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If deposing counsel does not provide or identify the documents ahead of time, then counsel and the witness may have a reasonable amount of time to discuss the document before the witness answers questions concerning it.

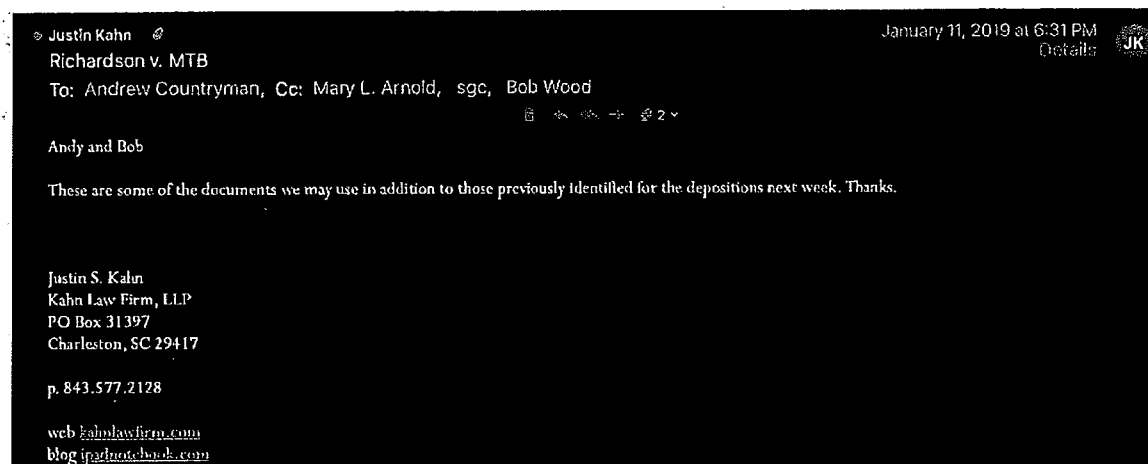
The purpose of the Rule is to avoid surprise and wasting time during a deposition. Thousands and thousands of documents have been produced in discovery in this case. Blanketly referring to all of them does not comport with the letter or spirit of the Rule. Unless you identify or produce specific material you actually plan to use in the depositions two days beforehand, I reserve the right to discuss material presented to the witnesses privately during the deposition(s).

Sincerely,

Andrew W. Countryman

The letter explained that naming all the many thousands of documents produced in discovery was insufficient to identify documents to be used during the deposition under SCRCP 30(j)(8). Further, it specified that if Plaintiff's counsel failed to produce or identify the documents he really planned to use two days prior to the deposition (something other than merely referencing all material exchanged in discovery) MTB's counsel reserved the right and planned to discuss the material with the witness under Rule 30(j)(8). Plaintiff's counsel never responded to the letter.

At 6:31 p.m. Friday, January 11, 2019, Plaintiff's counsel sent an email with a 68-page spreadsheet (Ex. 3) listing thousands of documents he "may use" in the deposition(s) "in addition to those previously identified. . ."



The spreadsheet referenced all the exhibits used in the depositions taken previously in the case, all discovery responses of MTB, MTB's Answer and referenced thousands and thousands of pages of material produced in discovery.

The morning of Ms. Gatling's deposition (Tuesday, January 15th), counsel for MTB attempted to discuss the issue with Plaintiff's counsel. Counsel for MTB reiterated that the identification of all documents exchange in the case did not comply with Rule 30(j)(8) and asked if Plaintiff's counsel had documents he planned to use in the deposition so that counsel for MTB could

review with the witness before to the deposition. Otherwise, MTB's counsel indicated he planned to review material presented to the witness during he deposition under Rule 30(j)(8). Plaintiff's counsel refused to provide documents and, without providing and reason or explanation, maintained that his identification of many thousands of documents was sufficient. The deposition broke for lunch shortly after noon. Plaintiff's counsel did not not use documents other than the deposition Notice before the lunch break.

Counsel for MTB again addressed the issue with Plaintiff's counsel at the lunch break. MTB's counsel said that if Plaintiff's counsel planned to use documents with the witness after the break, the undersigned could review them with the witness over lunch and avoid having to interrupt the deposition to do so later. Plaintiff's counsel ignored this request. Counsel for MTB then presented a letter to Plaintiff's counsel that went over (yet another time) why the identification of thousands of documents in the 1/11/19 email was insufficient under 30(j)(8) and again asking Plaintiff's counsel to provide any documents he planned to use with the witness so the undersigned could review them with her over the lunch break and avoid interrupting the deposition. Ex. 4. Plaintiff's counsel refused to even address the issue further and left the room.

After the lunch break, Plaintiff's counsel presented a document to the witness. Counsel for MTB objected and said he planned to review the document with the witness because it had not been previously appropriately identified or produced under Rule 30(j)(8). Plaintiff's counsel then gave all the material he planned to use with the witness to counsel for MTB to discuss with the witness. Counsel for MTB and the witness privately discussed the material for approximately 15 minutes before returning to the deposition.

After that break, Plaintiff's counsel asked the witness what she had discussed privately with counsel. Counsel for MTB directed the witness not to answer on grounds of attorney-client

privilege. Counsel for each party put a statement on the record regarding the issue. Ex. 5, Depo. Excerpt. MTB's counsel explained how he had told Plaintiff's counsel numerous times that identifying all documents in discovery was insufficient to comply with Rule 30(j)(8) and that as far back as November 2018, counsel for MTB had warned Plaintiff's counsel that he would discuss material presented to the witness during the deposition if he did not make a good faith effort to identify documents he actually planned to use with the witness. The deposition proceeded uninterrupted. Of the thousands and thousands of documents produced in discovery, Plaintiff's counsel used ten documents as exhibits with the witness in the deposition.

Argument

"The entire thrust of South Carolina's discovery rules involves full and fair disclosure, 'to prevent a trial from becoming a guessing game or one of surprise for either party.'" Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997); *quoting* Hodge v. Meyers, 255 S.C. 542, 180 S.E.2d 203 (1971). Simply put, the core purpose of discovery is to obtain the *truth*. *See, e.g., Samples, supra*. The rights of discovery the Rules provide give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice is assumed. Downey v. Dixon, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987).

SCRCP 30(j)(8) is in place to prevent surprises during depositions and allow witnesses to testify knowledgeably regarding material presented to them. The Rule says that if a lawyers conducting a deposition provides or identifies material she plans to use with the witness two days ahead of the deposition, the witness and her lawyer may not discuss the material during the deposition. Otherwise, the witness and her lawyer may.

Deposing counsel shall provide to opposing counsel a copy of all documents shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents

are provided (or otherwise identified) at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to privately discuss the documents before the witness answers questions concerning the document.

Identifying or producing documents under Rule 30(j)(8) prevents surprise and allows witnesses to testify knowledgeably regarding material presented to them in a deposition.

a. Plaintiff's identification of all material produced in discovery does not comply with the Rule.

More than two months prior to Ms. Gatling's deposition, counsel for MTB plainly and in writing told Plaintiff's counsel that referencing all material produced in discovery was not sufficient to identify material he planned to use in the deposition under Rule 30(j)(8). Counsel for MTB indicated that unless Plaintiff's counsel made a real effort to identify or produce material he actually planned to use, MTB's counsel reserved the right and planned to discuss material presented to the witness during the deposition.

Plaintiff's counsel ignored the November 14, 2018, letter. Instead of responding to it, he sent an email the Friday evening before the Tuesday deposition (again) identifying everything produced in discovery, including a 68-page spreadsheet listing thousands of documents and referencing all material used in prior depositions. This was not an attempt to provide documents he planned to use during the deposition so the witness could knowledgeably testify about them. This was an attempt to hide what he actually planned to use and surprise the witness.

Plaintiff's counsel refused to address the issue substantively the morning of the deposition and at the lunch break, which were two more chances for him to present documents he actually planned to use in the deposition so counsel for MTB could review them with the witness. Plaintiff's counsel refused to present documents or even discuss the issue.

Plaintiff's counsel's blanket identification of all material exchanged in discovery, his 68-page spreadsheet listing various material produced in the case and referencing all deposition exhibits used in the case to date was did not to comply with Rule 30(j)(8). Plaintiff's counsel never intended to use all material exchanged in discovery or all exhibits to every prior deposition in the case, and in fact, he only used a small select portion of material with the witness. He provided zero indication prior to the deposition of what specific documents he planned to use, as opposed to the thousands and thousands of documents exchanged in discovery and used in prior depositions. Plaintiff's counsel clearly wanted to surprise the witness and use documents with her with which she was unfamiliar. Plaintiff's did not endeavor to obtain the truth (as is the purpose of discovery), but instead wanted to get soundbites from the witness to support his case.

Counsel for MTB, after stating his position on the record (and after two letters and at least two attempts to discuss the issue to prevent interrupting the deposition), appropriately took a reasonable amount of time (approximately 15 minutes) under Rule 30(j)(8) to review the exhibits with the witness. Under the Rule, the conversation between counsel and the witness during this time was confidential and privileged. Counsel for MTB therefore appropriately directed the witness not to answer the question, "What did you talk about?" following the private meeting.

b. Plaintiff's identification of material was not timely under the Rule.

In addition to being substantively insufficient under Rule 30(j)(8), Plaintiff's counsel's identification of material was not timely. SCRCP 6(a) provides that "[W]hen the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation." That means the two-day period addressed in Rule 30(j)(8) does not include weekends.

Ms. Gatling's deposition was set for 10:00 a.m., Tuesday, January 15th. Two business days prior to this would have been 10:00 a.m., Friday, January 11th. Sending the material at 6:31 p.m., the very end of the day on Friday the 11th, did not constitute sending it "two business days" prior to the deposition. Therefore, counsel for MTB had the right to privately review deposition exhibits with the witness under Rule 30(j)(8).

c. Sanctions

Plaintiff's counsel only used ten exhibits in the deposition totaling less than thirty pages. Sending a 68-page spreadsheet identifying all material produced in discovery the Friday prior to the deposition was not a good faith effort to comply with Rule 30(j)(8). It was, in fact, just the opposite- an effort to conceal what he truly planned to use and surprise the witness to obtain soundbites. Anticipating this, counsel for MTB time and time again attempted to address the issue with Plaintiff's counsel, and he refused.

SCRCP Rule 37 provides for sanctions against a lawyer whose conduct necessitates a discovery motion. Such sanctions shall include attorney's fees and reasonable expenses incurred obtaining the order. Such sanctions are appropriate here. This situation was completely avoidable, and in fact, counsel for MTB tried to avoid the situation. This included multiple letters to and conversations with Plaintiff's counsel about the issue. Instead of substantively responding or providing material to review prior to the deposition, Plaintiff's counsel refused to discuss the issue other than to say he disagreed with MTB's counsel's position.

Conclusion

From the beginning, MTB's counsel only sought to obtain material prior to the deposition that may be used in the deposition as the Rules provide. This would allow the witness to be familiar with the material and testify knowledgeably regarding it. However, Plaintiff's counsel's objective

was not to obtain the truth or properly identify material so the witness could be familiar with it during the deposition. It was to hide the true documents he planned to use by identifying thousands and thousands of documents exchanged and otherwise used in discovery with the plan of obtaining soundbites he could use to benefit his case.

Plaintiff's identification of material under Rule 30(j)(8) did not substantively comply with the Rule, nor was it timely under it. Because Plaintiff's counsel did not provide or identify material he planned to use with the witness two days prior to the deposition, MTB's counsel had the right under Rule 30(j)(8) to discuss the material with the witness privately. Therefore, the Court should protect the witness from having to answer the questions asking what she discussed with counsel during the meeting regarding the documents during the deposition. Additionally, Plaintiff's counsel's tactics were contrary to the the discovery rules, which are designed to prevent surprise and find the truth. The Court should also award sanctions in the form of costs and attorney's fees in favor of MTB for having to file and argue this Motion.

[signature page to follow]

Respectfully submitted,

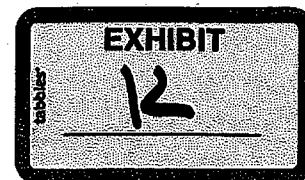
By: /s/ Andrew W. Countryman
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803-771-7900

**Counsel for McCabe, Trotter &
Beverly, P.C.**

Joshua R. Hinson

From: Justin Kahn <jskahn@kahnlawfirm.com>
Sent: Monday, January 21, 2019 4:59 PM
To: Andrew Countryman
Cc: Robert P. Wood; Mary L. Arnold; Pattie H Michel
Subject: Richardson v. MTB Self Depo Documents
Attachments: Microsoft Word - SLS Depo Exhibits List.docx.pdf



Andy

This is a further list of documents I may use in the deposition of Sheri Self. Although I do not believe such a further list is required, you seem to think it is.

The bates numbers listed are the beginning numbers of the PDF Files you named or assigned to the PDF documents produced. The deposition exhibits to the prior depositions should be self explanatory.

I look forward to seeing you Thursday.

Justin S. Kahn
 Kahn Law Firm, LLP
 PO Box 31397
 Charleston, SC 29417

p. 843.577.2128

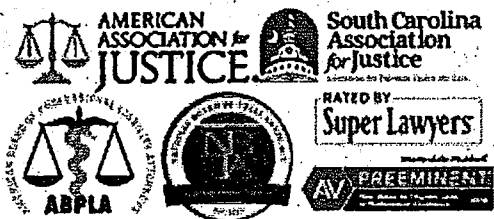
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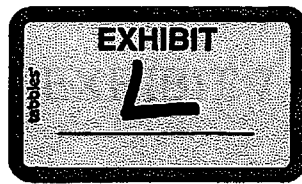
Adjunct Professor Charleston School of Law
 Board Certified

- American Board of Professional Liability Attorneys (Medical)
- National Board of Trial Advocacy (Civil Trial, Practice)

NCA and AAJ Diplomate

SC Supreme Court Certified Mediator





Stephanie Trotter Depo Exhibits
Ryan McCabe Depo Exhibits
Haylen Gatling Depo Exhibits
Theron Coetzee Depo Exhibits
Tammy Richardson Depo Exhibits

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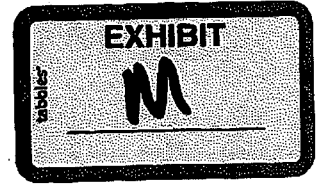
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION



Cheryl Hammond Hoskins,
individually and as personal
representative of the Estate of
Thomas R. Hoskins,

Plaintiff,

v.

Sharon Snipes King, and Siemens
Medical Solutions USA, Inc.,

Defendants.

C/A No. 3:08-2442-JFA

**ORDER ON DISCOVERY
MOTIONS**

This case is before the court on six (6) discovery motions. The court will address the motions in turn.

I. *Plaintiff's Motion To Prevent Discovery Of Insurance Proceeds, Death Benefits, And Other Collateral Source Benefits She Has Received* [dkt. # 78]

As this motion points out, defendant Sharon Snipes King sought information in written discovery as to collateral benefits plaintiff received as a result of her husband's death. Plaintiff objected to the discovery, and no motion to compel was ever filed. The issue arose instead at plaintiff's deposition. When defendant King's lawyer asked about such payments, plaintiff's counsel objected and instructed the plaintiff not to answer the question. This motion followed.

Rule 30(c)(2) of the Federal Rules of Civil Procedure provides that a person may instruct a deponent not to answer a question in a deposition only when necessary to preserve

a privilege, to enforce a limitation ordered by the court, or to present a motion to terminate or limit a deposition. The motion to terminate or limit the deposition is properly made on the ground that the deposition is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. Fed. R. Civ P. 30(d)(3)(A).

This discovery does not involve the application of a privilege, nor does it involve an area where the court has ordered that there be a limitation. Instead, plaintiff argues that because evidence of collateral benefits will not be admissible at trial, defendant King's questions regarding collateral source payments are needlessly oppressive, harassing, and intrusive.

The court disagrees. "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense" Fed. R. Civ. P. 26(b)(1). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* In this case, evidence of collateral payments to plaintiff could lead to the discovery of admissible impeachment evidence regarding plaintiff's financial condition. *See 22 Am. Jur. 2d Damages § 763.* There is no indication that the purpose of the question was to harass plaintiff. The court will therefore not make the jump of assigning that purpose to the question simply because the evidence might be inadmissible in the mine-run of cases.

This motion [dkt. #78] is accordingly denied.

II. *Plaintiff's Motion To Exclude Dr. Oliver G. Wood, Jr. As An Expert*
[dkt. # 81]

Plaintiff requests that the court prevent Dr. Oliver G. Wood, Jr. from being offered as an expert in this case by the defendants. Plaintiff makes this request on the grounds that defendants have failed to provide plaintiff with a report from Dr. Wood which sets forth Dr. Wood's opinions and the bases for them. To counter, defendants offer that Dr. Wood has not been able to prepare a final report due to plaintiff's refusal to provide defendants with certain categories of specific information. In support of this contention, defendants point the court to their motion requesting that the court compel plaintiff to provide them with discovery responses related to this issue. This motion was filed after the deadline for providing an expert's report.

The motion to exclude Dr. Wood's testimony is denied. The court is cognizant of the fact that the parties delayed much of the formal discovery in this case while they explored settlement negotiations. Throughout the life of this case, it appears that plaintiff has provided defendants with detailed information which an economic loss expert would use in preparing expert testimony. But it also appears that defendants were not provided with all of the information that such an expert might require or that their expert requested. The motion to compel that the defendants referenced in their response has since been resolved. *See* [dkt. # 110]. The court therefore expects that defendants will provide plaintiff with Dr. Wood's final report as soon as possible, if they have not done so already.

This motion [dkt. # 81] is accordingly denied.

III & IV. *Motions Relating To Siemens' Potential Liability* [dkt. #'s 83 & 87]

The parties have competing motions on this issue. The gist of the dispute is that plaintiff seeks a great deal of information regarding, in general, defendant Siemens' practices and procedures for monitoring employee compliance with company policies on the use of company automobiles. The requested information includes information about Siemens' enforcement of its company policies and training Siemens may have provided to its employees. Plaintiff is seeking information she believes will support claims of both direct and vicarious liability against Siemens for the accident at issue. Siemens contends that there is no basis in law for its direct liability and no reasonable basis, on the facts of this case, for its vicarious liability.

The court finds that ruling on these motions may be premature at this time. The court instead directs that the briefing on Siemens' motion for summary judgment should proceed according to the current schedule. *See* [dkt. #84]. Should the court determine that additional discovery is needed from Siemens, the court may order that discovery be reopened on that limited issue.

The court accordingly holds these motions [dkt. #'s 83 & 87] under advisement. The court will consider these arguments in conjunction with Siemens' motion for summary judgment as soon as that motion is ripe for a ruling.

V. *Plaintiff's Motion To Compel Answers To Requests To Admit Regarding Punitive Damages/Economic Bankruptcy And Facts Of The Accident At Issue* [dkt. #101].

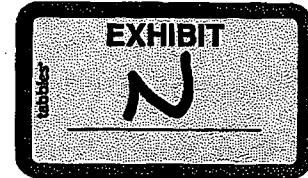
In this motion, plaintiff requests that the court compel the defendants to respond fully to several requests to admit. The court will take them in turn.

Request to admit number 1 appears fully and completely responded to.

Requests to admit numbers 2 through 7 fall in together. These requests to admit seek information regarding the defendants' abilities to satisfy a verdict of several million dollars. Plaintiff seeks this information on the grounds that a defendant's ability to pay is a factor for consideration in determining whether to award punitive damages and to what extent. Defendants object to the requests on the grounds that they are vague, may violate the rule prohibiting evidence of liability insurance, lack foundation, and are irrelevant. Defendants semantic objections are that no one "satisfies" a "verdict"—a jury renders a verdict and the court issues a "judgment" which may then be satisfied. Defendants also contends that it is not possible to know how to answer a request to admit directed to "defendant" when there are two defendants. This despite the fact that the requests to admit asked "each Defendant" to make a response. [dkt. # 101-2, p.1]

Punitive damages may be an issue in this case, ability to pay appears to be a proper issue in determining punitive damages, and there has been no showing that this discovery is sought to oppress or harass. The defendants should provide full and complete answers to requests to admit number 2 through 7. As providing these answers would not seem to impose

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION



Cheryl Hammond Hoskins, individually) C/A No. 3:08-2442-JFA
and as personal representative of the)
Estate of Thomas R. Hoskins,)

Plaintiff,) ORDER

vs.)

Sharon Snipes-King, Wheels, Inc., and)
Siemens Medical Solutions USA, Inc.,)

Defendants.)

This is before the court on a discovery dispute. The plaintiff in the case is the wife of a deceased bicyclist, and defendant Sharon King was driving the automobile that struck and killed the bicyclist. King's deposition is scheduled for tomorrow, and a disagreement has arisen between the parties in advance of the deposition. King's lawyer contends that the plaintiff has failed to provide sufficient identification of the documents to be shown to King at her deposition. Plaintiff disagrees and filed a motion raising the topic to the court's attention. [dkt. # 102].

Under the Local Rules of this court, a deposing attorney is required to provide opposing counsel with a copy of all documents to be shown to the deponent during the deposition. See D.S.C. Local Rule 30.04(H). The rules provide that if these documents are identified at least three business days before the deposition, the deponent and his or her

V. *Plaintiff's Motion To Compel Answers To Requests To Admit Regarding Punitive Damages/Economic Bankruptcy And Facts Of The Accident At Issue* [dkt. # 101].

In this motion, plaintiff requests that the court compel the defendants to respond fully to several requests to admit. The court will take them in turn.

Request to admit number 1 appears fully and completely responded to.

Requests to admit numbers 2 through 7 fall in together. These requests to admit seek information regarding the defendants' abilities to satisfy a verdict of several million dollars. Plaintiff seeks this information on the grounds that a defendant's ability to pay is a factor for consideration in determining whether to award punitive damages and to what extent. Defendants object to the requests on the grounds that they are vague, may violate the rule prohibiting evidence of liability insurance, lack foundation, and are irrelevant. Defendants semantic objections are that no one "satisfies" a "verdict"—a jury renders a verdict and the court issues a "judgment" which may then be satisfied. Defendants also contends that it is not possible to know how to answer a request to admit directed to "defendant" when there are two defendants. This despite the fact that the requests to admit asked "each Defendant" to make a response. [dkt. # 101-2, p.1]

Punitive damages may be an issue in this case, ability to pay appears to be a proper issue in determining punitive damages, and there has been no showing that this discovery is sought to oppress or harass. The defendants should provide full and complete answers to requests to admit number 2 through 7. As providing these answers would not seem to impose

a substantial hardship to Siemens, the court sees no reason why Siemens should not go ahead and provide this information despite its holding of the other matters related to Siemens' discovery in abeyance.

The court takes this opportunity to advise the parties that its practice at trial is to limit this type of evidence to the net worth of each defendant. Accordingly, the only economic evidence related to the defendants that the court would allow at the punitive damages phase of a trial in this case would be that defendant King's net worth is \$xx, and that Siemens' net worth is \$yy.

Requests to admit numbers 8 and 9 appear to have been fully and completely responded to.

This motion [dkt. # 101] is accordingly granted in part and denied in part.

VI. *Defendant King's Request For Protection Arising Out Of Her Deposition*
[dkt. # 107]

In this motion, defendant King requests that the court prevent inquiry by plaintiff's counsel into the substance of off-the-record conferences between her and her counsel during her deposition. King also requests that the court protect her from answering plaintiff's counsel's question as to why King recently amended the answer she filed in this case to admit simple negligence.

The court previously dealt with the issue of intra-deposition document review in this case. That order came about due to the voluminous number of documents plaintiff sought, perhaps understandably, to review with King during her deposition. Plaintiff was entitled

to conduct a thorough deposition in accordance with the rules governing discovery, and the court's last order on this topic was an attempt to set a tone of modest accommodation that might carry over into the deposition. This attempt appears to have sadly failed. The court will not allow plaintiff to inquire into the subject of the off-the-record conferences between King and her attorney.

As to King's request for protection concerning the amendment of her answer, the contention is that the answer to that question would disclose privileged matters. There does not seem to be any dispute about this contention.

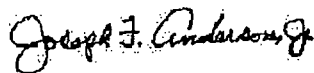
This motion [dkt. # 107] is accordingly granted.

VII. *Conclusion*

The motions are denied [dkt. #'s 78 & 81], taken under advisement [dkt. #'s 83 & 87], granted in part and denied in part [dkt. # 101], and granted [dkt. # 107]. The parties shall bear their own costs.

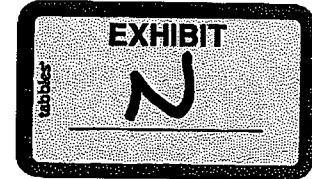
IT IS SO ORDERED.

August 6, 2009
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION



Cheryl Hammond Hoskins, individually)	C/A No. 3:08-2442-JFA
and as personal representative of the)	
Estate of Thomas R. Hoskins,)	
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Sharon Snipes-King, Wheels, Inc., and)	
Siemens Medical Solutions USA, Inc.,)	
)	
Defendants.)	
_____)	

This is before the court on a discovery dispute. The plaintiff in the case is the wife of a deceased bicyclist, and defendant Sharon King was driving the automobile that struck and killed the bicyclist. King's deposition is scheduled for tomorrow, and a disagreement has arisen between the parties in advance of the deposition. King's lawyer contends that the plaintiff has failed to provide sufficient identification of the documents to be shown to King at her deposition. Plaintiff disagrees and filed a motion raising the topic to the court's attention. [dkt. # 102].

Under the Local Rules of this court, a deposing attorney is required to provide opposing counsel with a copy of all documents to be shown to the deponent during the deposition. See D.S.C. Local Rule 30.04(H). The rules provide that if these documents are identified at least three business days before the deposition, the deponent and his or her

counsel do not have the right to discuss these documents privately during the deposition. Plaintiff has identified roughly 3,220 documents to be shown to King during her deposition. These documents constitute the bulk of the documents produced during discovery in this case. King's counsel has taken the position that this identification is insufficient and that if necessary, he intends to privately discuss any previously unidentified documents with King, during the deposition, for a reasonable amount of time.

While it appears that the plaintiff is in technical compliance with the local rule by identifying the over 3,000 documents prior to King's deposition, the court finds such a voluminous identification does not fulfill the spirit of the local rule. The discovery rules contemplate a deponent having a reasonable opportunity to review relevant documents that will be shown to him, with counsel, prior to a deposition; and under the circumstances of this case, preparing within the limits of Fed. R. Civ. P. 30 to be questioned on over 3,000 documents is unworkable. It is not possible, in the court's view, for King's counsel to review 3,000 documents with her in the week's time which elapsed between plaintiff's identification of documents and King's deposition. Time would not allow even a cursory review of each document to determine the application of a privilege or any other of the grounds which justify a witness's failure to answer a deposition question. Regrettably, this problem has left the parties' hands and ended up in court. The court's ability to craft a nuanced solution to such a problem is not substantial.

The court finds that in light of the voluminous number of documents identified for the

deposition, it is reasonable for King and her counsel to be afforded a reasonable amount of time to review any document as necessary to determine whether the document or whether King's answers to questions on the document would be protected by a privilege. The court expects that this process should go relatively smoothly. Counsel should communicate as each document is presented during the deposition, and any off-the-record conference King may need to have with her attorney may be accommodated in a number of ways. It may be that the parties can break the deposition into a number of sections and that before each section, King and her counsel can briefly confer as to the documents to be used therein. It may also be that King and her counsel will have reviewed many of the identified documents prior to the deposition and that this limited ability to confer privately will not be necessary across the board. The parties' ability to work through these problems creatively far exceeds this court's capacity to craft detailed solutions. The court expects the principles set forth in this order to guide the parties smoothly through tomorrow's deposition and, for that matter, through the remainder of discovery. The court urges the parties and their counsel to honorably and reasonably discharge their discovery obligations and to not abuse the process in an effort to gain any tactical advantage.

The plaintiff's motion is therefore granted insofar as the motion asserted that plaintiff has technically complied with the identification requirement of Local Rule 30.04(H), but denied insofar as it sought an order preventing King's counsel from having off-the-record conferences to discuss the over 3,000 documents identified for use in King's deposition.

IT IS SO ORDERED.

July 6, 2009
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

ELECTRONICALLY FILED - 2019 Apr 15 4:22 PM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801001
ELECTRONICALLY FILED - 2019 Apr 01 8:45 PM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801001

EXHIBIT
0

Plaintiff,

VS.

MCCABE, TROTTER & BEVERLY, P.C.,

Defendant.

* * * * *

VIDEOTAPED

DEPOSITION OF:

SHERI SELF

DATE TAKEN:

Thursday, January 24, 2019

TIME:

10:30 a.m.

PLACE :

Chambless Higdon Richardson

Katz & Griggs, LLP

Highridge Centre

3920 Arkwright Rd., Suite 405

Macon, GA 31210

REPORTED BY:

TERI L. SAMPSON, RPR,

Notary Public and Certified

Live Note Reporter

* * * * *

10:45:17

POST OFFICE BOX 61011
NORTH CHARLESTON, SOUTH CAROLINA 29419

10:45:17 1

A P P E A R A N C E S

10:45:17 2

REPRESENTING THE PLAINTIFF:

10:45:17 3

10:45:17 4

JUSTIN S. KAHN, ESQUIRE

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email: jskahn@kahnlawfirm.com

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MARY LEIGH ARNOLD, ESQUIRE (via telephone)

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10:45:17 12

REPRESENTING THE DEFENDANT:

10:45:17 13

ANDREW W. COUNTRYMAN, ESQUIRE

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10:45:17 17

ALSO PRESENT:

10:45:17 18

10:45:17 19

DOUGLAS A. BROWNE - VIDEOGRAPHER

VidSouth Production

10:45:17 20

(843) 751-2285

email: vidsouthproduction@gmail.com

10:45:17 21

10:45:17 22

10:45:17 23

10:45:17 24

10:45:17 25

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10:45:17 1

S T I P U L A T I O N S

10:45:17 2

It is hereby stipulated and agreed by and

10:45:17 3

between the parties hereto, through their respective

10:45:17 4

counsel, that the reading and signing of the

10:45:17 5

transcript is reserved by the Deponent.

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10:45:17 1 MACON, GEORGIA, THURSDAY, JANUARY 24, 2019

10:45:17 2 10:46 A.M.

10:45:17 3 P R O C E E D I N G S

10:45:17 4 - - - - -

10:45:20 5 VIDEOGRAPHER: Good morning. We are now on

10:45:21 6 the record. Today's date is January 24th, 2019. The

10:45:26 7 time is approximately 10:46 a.m.

10:45:28 8 This is the video deposition of

10:45:31 9 Sheri L. Self, taken by counsel for the plaintiff. The

10:45:34 10 location today is 3920 Arkwright Road in Macon,

10:45:40 11 Georgia.

10:45:41 12 My name is Douglas Browne, legal videographer

10:45:43 13 representing VidSouth Production. I am familiar with

10:45:46 14 the provisions of Rule 30(h) pertaining to videotaped

10:45:49 15 depositions.

10:45:49 16 This deposition is taken in the matter of

10:45:52 17 Tammy C. Richardson versus McCabe, Trotter & Beverly,

10:45:56 18 P.C., Case No. 16-CP-18-1001.

10:46:03 19 Counsel present and remotely, please

10:46:05 20 introduce yourselves for the record.

10:46:07 21 MR. KAHN: My name is Justin Kahn. Myself

10:46:09 22 and Mary Leigh Arnold, who's on phone, are representing

10:46:14 23 the plaintiffs -- the plaintiff in this matter.

10:46:17 24 MR. COUNTRYMAN: I'm Andy Countryman. I

10:46:18 25 represent McCabe, Trotter & Beverly.

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10:46:20 1 VIDEOGRAPHER: In accordance with Rule
10:46:23 2 30(h)(3), the witness has the right to be shown the
10:46:25 3 videotaped deposition unless waived by the witness and
10:46:27 4 the parties.

10:46:28 5 The court reporter today is Teri Sampson of
10:46:31 6 Magnolia Reporting.

10:46:33 7 Would the notary public present in the room
10:46:34 8 please swear in the witness, and we may begin.

10:46:37 9 WHEREUPON,

10:46:37 10 SHERI SELF,
10:46:37 11 being first duly sworn by Wanda Watford, a Jones
10:46:37 12 County, Georgia, notary, testified as follows:

10:46:51 13 MR. KAHN: An issue was -- or a question was
10:46:52 14 raised by defense counsel, prior to the deposition
10:46:53 15 starting, about the fact that the court reporter, who's
10:46:55 16 been involved with many of the depositions in this
10:46:57 17 case, is not a notary in the state of Georgia.

10:47:03 18 We have -- he has kindly agreed to allow us
10:47:05 19 to have a Georgia notary swear the witness in, which
10:47:08 20 has just taken place, and Teri will transcribe and
10:47:12 21 prepare the deposition. So any issue about that is not
10:47:16 22 an issue or has been waived.

10:47:21 23 EXAMINATION

10:47:21 24 BY MR. KAHN:

10:47:21 25 Q Can you tell us, please, your full name.

10:47:22 1 A Sheri Lee Self.

10:47:24 2 Q And where do you currently live, please?

10:47:27 3 A Where I live?

10:47:28 4 Q Yes, ma'am.

10:47:29 5 A In Warner Robins.

10:47:30 6 Q Where?

10:47:31 7 A Georgia.

10:47:31 8 Q Georgia. All right.

10:47:32 9 And how long have you lived here

10:47:33 10 approximately?

10:47:38 11 A When -- since I left South Carolina.

10:47:40 12 Q I just -- I just don't know when that is.

10:47:42 13 A I don't either. I don't remember.

10:47:44 14 Q Okay.

10:47:45 15 A 2016 possibly.

10:47:45 16 Q Okay. All right. So you lived here at least

10:47:47 17 a couple of years or so?

10:47:49 18 A Yeah.

10:47:52 19 Q All right. In -- under the rules, one of the

10:47:54 20 things I'm supposed to tell you is that at any time

10:47:57 21 during the deposition, if you don't hear me or

10:48:01 22 understand me or have difficulty understanding any of

10:48:03 23 the words I'm using, if you'd stop and let me know.

10:48:06 24 Okay?

10:48:07 25 A Yup.

10:55:58 1 Q Okay. And you do that because the clients --
10:56:01 2 that -- that's how you all get paid. You are billing
10:56:04 3 with -- those clients by the hour for --
10:56:07 4 A Right.
10:56:06 5 Q -- work done.
10:56:07 6 A Yeah. For their --
10:56:08 7 Q And the billing records are designed to show
10:56:11 8 the clients who is doing which work for what amount of
10:56:15 9 time.
10:56:16 10 A Right. Exactly.
10:56:18 11 Q Okay. And those bills are then sent to the
10:56:20 12 client for the client to look at and then determine --
10:56:25 13 A Right. If they are going -- right.
10:56:27 14 Q -- to pay their money.
10:56:27 15 A Yeah. Exactly. Yes.
10:56:28 16 Q And -- and I'm not asking you what the rate
10:56:31 17 is, but I assume some lawyers in the firm have certain
10:56:35 18 hourly rates and certain -- and other -- is that right?
10:56:37 19 A Yeah.
10:56:38 20 Q And paralegals --
10:56:40 21 A Right.
10:56:40 22 Q -- are set up the same way?
10:56:41 23 A Exactly.
10:56:47 24 Q While working for Rodgers Townsend, did you
10:56:51 25 ever see or hear about any HOA proposals made in which

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10:57:00 1 the homeowner association was told that should the law
10:57:03 2 firm not collect money from the homeowner, then the
10:57:06 3 homeowner association would not owe any attorney's
10:57:10 4 fees?

10:57:12 5 A I don't recall.

10:57:13 6 Q Okay. I'll give you an example of a fee
10:57:18 7 proposal. All right. Well, I'll -- if you don't
10:57:20 8 recall, you don't recall.

10:57:21 9 Do you remember when you came -- when you
10:57:23 10 started working at McCabe Trotter, whether or not you
10:57:27 11 had seen any HOA fee proposals?

10:57:29 12 And I'll show you --

10:57:32 13 A No. I --

10:57:32 14 Q Let me just -- well, you say you don't -- let
10:57:34 15 me just show you one before I mark it.

10:57:36 16 This is -- previously been marked as an
10:57:38 17 exhibit to Stephanie Trotter's deposition -- No. 7.
10:57:41 18 This is an example of a fee proposal.

10:57:44 19 A I had no part of this.

10:57:45 20 Q All right. Having no part of this is
10:57:47 21 slightly different.

10:57:48 22 What I'm asking you is you see the second
10:57:50 23 paragraph, where it says -- the last sentence: "No fee
10:57:55 24 will be charged to the HOA" -- being homeowner
10:58:00 25 association -- "if McCabe, Trotter & Beverly, P.C., is

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10:58:03 1 unsuccessful in collecting"?
10:58:04 2 Do you see that?
10:58:05 3 A "No fee will be charged" --
10:58:05 4 MR. COUNTRYMAN: I'm going to have to talk
10:58:06 5 to her about this. I don't think this was properly
10:58:08 6 identified under 30(j)(8).
10:58:10 7 MR. KAHN: I'm just asking if --
10:58:11 8 BY MR. KAHN:
10:58:11 9 Q Did you see that sentence?
10:58:12 10 MR. COUNTRYMAN: And I'm going to tell her
10:58:13 11 not to answer that before we discuss it.
10:58:15 12 BY MR. KAHN:
10:58:15 13 Q Do you see that sentence?
10:58:17 14 MR. COUNTRYMAN: So don't answer that.
10:58:18 15 MR. KAHN: All right. I --
10:58:18 16 MR. COUNTRYMAN: Come with me. We're going
10:58:19 17 to chat about it.
10:58:21 18 MR. KAHN: I don't understand the basis of
10:58:21 19 your objection. These -- this document has been
10:58:22 20 previously produced; right?
10:58:24 21 MR. COUNTRYMAN: Yup.
10:58:25 22 MR. KAHN: All right. And you think the
10:58:25 23 rules allow you to talk with a witness about a document
10:58:29 24 that has been previously produced or identified?
10:58:31 25 MR. COUNTRYMAN: Yes.

10:58:32 1 MR. KAHN: All right. I disagree, and I
10:58:33 2 think you're not allowed to talk with her, but --
10:58:35 3 MR. COUNTRYMAN: Okay. Fair enough.
10:58:36 4 Come with me.
10:58:37 5 VIDEOGRAPHER: We will now go off the record.
10:58:37 6 The time is approximately 10:59 a.m.
10:58:40 7 (The deposition recessed briefly.)
11:01:39 8 VIDEOGRAPHER: We are now back on the record.
11:01:40 9 The time is approximately 11:02 a.m.
11:01:42 10 BY MR. KAHN:
11:01:42 11 Q All right. I want to -- the document that
11:01:45 12 you walked out of the -- you walked out of the room
11:01:46 13 with that document; right?
11:01:48 14 A Right.
11:01:48 15 Q And had a discussion with Mr. Countryman?
11:01:52 16 A Yup.
11:01:52 17 MR. KAHN: I just -- I want to mark it as
11:01:53 18 Plaintiff's Exhibit No. 1. Let me just --
11:01:56 19 (HOA FEE PROPOSAL MARKED PLAINTIFF'S EXHIBIT
11:01:56 20 NO. 1 FOR I.D.)
11:01:56 21 BY MR. KAHN:
11:01:56 22 Q And what -- what did you all talk about?
11:01:58 23 MR. COUNTRYMAN: Don't answer that question.
11:01:59 24 That's --
11:01:59 25 A (Continuing) It's client privileged.

11:02:01 1 MR. COUNTRYMAN: -- privileged.
11:02:01 2 THE WITNESS: Right?
11:02:01 3 MR. COUNTRYMAN: I'm telling you not to
11:02:02 4 answer it because it's attorney-client privileged.
11:02:03 5 THE WITNESS: Right.
11:02:03 6 MR. COUNTRYMAN: The document was not
11:02:04 7 properly identified under Rule 30(j)(8), two days or
11:02:08 8 more ahead of the deposition.
11:02:10 9 And, Justin, we've talked about this issue at
11:02:12 10 length. I sent you multiple letters on the issue.
11:02:15 11 Providing a 67-page spreadsheet identifying probably a
11:02:18 12 100,000 documents, in my view, does not sufficiently
11:02:22 13 identify this document under 30(j)(8).
11:02:24 14 MR. KAHN: I understand that we disagree
11:02:26 15 about that. I -- this document was produced and
11:02:28 16 identified way before two days ago. And under the
11:02:32 17 rules, you're not allowed to talk with the
11:02:34 18 witness is --
11:02:35 19 MR. COUNTRYMAN: When was it identified more
11:02:36 20 than two days ago?
11:02:37 21 MR. KAHN: -- is my position. And I
11:02:38 22 understand you disagree, and we're just going to move
11:02:39 23 forward and let a judge deal with your conduct.
11:02:42 24 BY MR. KAHN:
11:02:42 25 Q When did -- what kind of retainer did you

11:58:39 1 A That would be good because --

11:58:40 2 Q No problem.

11:58:40 3 A -- it's noon.

11:58:42 4 MR. KAHN: We'll take a quick break.

11:58:43 5 THE WITNESS: Wow. It's noon?

11:58:43 6 VIDEOGRAPHER: We will now --

11:58:44 7 MR. KAHN: Take a quick break.

11:58:44 8 VIDEOGRAPHER: We will now -- we will now go

11:58:44 9 off the record. The time is approximately 11:59 a.m.

11:58:47 10 (The deposition recessed briefly.)

12:22:11 11 VIDEOGRAPHER: We are now back on the record.

12:22:12 12 The time is approximately 12:22 p.m.

12:22:15 13 MR. COUNTRYMAN: Real quick, I just want to

12:22:16 14 make a quick statement for the record. I've talked to

12:22:18 15 plaintiff's counsel and the deposition is going to be

12:22:21 16 ended at 3:00. The witness has things she needs to do

12:22:23 17 at work, and I need to get home.

12:22:25 18 We're here by agreement, and we've agreed to

12:22:26 19 be here without a subpoena, and that's what's

12:22:29 20 happening.

12:22:32 21 MR. KAHN: I don't agree with that, and you

12:22:33 22 didn't inform me to the -- of the fact that you said

12:22:35 23 you needed to leave at 3:00 until just a few moments

12:22:38 24 ago during the break.

12:22:39 25 We'll go forward, and the judge can deal with

12:22:41 1 it.

12:22:42 2 BY MR. KAHN:

12:22:42 3 Q The -- in terms of the overall process, we've
12:22:46 4 talked about the general sort of process of these
12:22:51 5 notice of lien letters. Were you responsible for
12:22:56 6 entering the amount of attorney's fees into the system,
12:22:59 7 or how did that work?

12:23:03 8 A Oh, goodness.

12:23:04 9 Q Do you know what I'm talking about?

12:23:05 10 A I don't remember if it was already
12:23:07 11 automatically generated or -- or what.

12:23:10 12 Q Okay.

12:23:11 13 A Unfortunately.

12:23:12 14 Q No problem. I want to --

12:23:15 15 A If I had the system in front of me, I could
12:23:17 16 tell you.

12:23:18 17 Q Well, no problem. That's all right.

12:23:19 18 I'll give you -- I'm going to show you a
12:23:20 19 document I'm marking as Plaintiff's Exhibit No. 2,
12:23:22 20 which is a two-page document.

12:23:26 21 (NOTICE OF CONSUMER'S RIGHT TO CURE LETTER

12:23:26 22 MARKED PLAINTIFF'S EXHIBIT NO. 2 FOR I.D.)

12:23:26 23 MR. KAHN: It's MTB Supplemental -- here you
12:23:32 24 go, sir.

12:23:32 25 BY MR. KAHN:

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12:23:32 1 Q It's 012455. And if you'd look on the second
12:23:36 2 page, you see where -- do you see where it says
12:23:39 3 "SCT/SLS"?

12:23:41 4 MR. COUNTRYMAN: All right. Hold on one
12:23:42 5 second. You can come talk to me about this.

12:23:43 6 MR. KAHN: Hold on.

12:23:43 7 BY MR. KAHN:

12:23:43 8 Q Do you see that document?

12:23:44 9 MR. COUNTRYMAN: No. Don't answer that
12:23:44 10 question right now. I'm going to talk to you about
12:23:46 11 this document.

12:23:48 12 MR. KAHN: Andy, this document was produced.
12:23:48 13 You agree it was produced in discovery; right? You all
12:23:51 14 produced it to us.

12:23:51 15 MR. COUNTRYMAN: Yeah, it was produced in
12:23:53 16 discovery. It wasn't identified under the rules. I
12:23:54 17 had no idea this was one of the hundreds of thousands
12:23:57 18 of documents produced in discovery that you would be
12:23:58 19 using in this deposition.

12:23:59 20 MR. KAHN: That would be a false statement.
12:24:00 21 This document was produced --

12:24:01 22 MR. COUNTRYMAN: Yeah, it was produced.

12:24:03 23 MR. KAHN: -- and it was identified and --

12:24:04 24 MR. COUNTRYMAN: You can make your argument.
12:24:06 25 I'm talking with her about it.

12:24:08 1 MR. KAHN: I think that violates the rule.
12:24:10 2 MR. COUNTRYMAN: C'mon, Sheri.
12:24:10 3 MR. KAHN: I would ask you not to violate the
12:24:12 4 rule.
12:24:13 5 MR. COUNTRYMAN: Okay.
12:24:13 6 MR. KAHN: All right.
12:24:13 7 VIDEOGRAPHER: We will now go off the record.
12:24:13 8 The time is approximately 12:25 p.m.
12:26:56 9 (The deposition recessed briefly.)
12:26:56 10 VIDEOGRAPHER: We are now back on the record.
12:26:57 11 The time is approximately 12:27 p.m.
12:27:00 12 BY MR. KAHN:
12:27:00 13 Q What did you all talk about?
12:27:02 14 MR. COUNTRYMAN: Don't answer that. It's
12:27:03 15 attorney-client privileged.
12:27:06 16 BY MR. KAHN:
12:27:06 17 Q On the second page of page -- of Exhibit
12:27:09 18 No. 2, you see where it says "SCT/SLS"?
12:27:13 19 A Yes.
12:27:13 20 Q Do you recognize this -- those initials "SLS"
12:27:16 21 as being your initials?
12:27:17 22 A Yeah.
12:27:18 23 Q And therefore this is a document that you
12:27:20 24 would have prepared or printed?
12:27:22 25 A I printed it, yup. I didn't -- yeah. I

14:28:12 1 produced in this case. It's dated April 22nd, 2015.

14:28:18 2 MR. KAHN: There you go.

14:28:20 3 (NOTICE OF CONSUMER'S RIGHT TO CURE MARKED
14:28:20 4 PLAINTIFF'S EXHIBIT NO. 15 FOR I.D.)

14:28:20 5 BY MR. KAHN:

14:28:20 6 Q Do you see on the second page where your
14:28:22 7 initials appear?

14:28:23 8 MR. COUNTRYMAN: Going to talk to her about
14:28:24 9 this before she answers any questions on it. If you
14:28:31 10 have anything else you want me to go over with her, I'm
14:28:33 11 happy to do that since --

14:28:34 12 MR. KAHN: I don't think the rules require
14:28:35 13 that. I think what you're doing is improper. So we
14:28:37 14 can --

14:28:37 15 MR. COUNTRYMAN: That's fine. But I'm doing
14:28:38 16 it. So I'm telling that ahead of time. If you want me
14:28:40 17 to go over them with -- with her now, I'll do that. If
14:28:42 18 not, then you can waste more time doing it over the
14:28:44 19 next 30 minutes. That's fine.

14:28:47 20 VIDEOGRAPHER: We will now go off the record.
14:28:47 21 The time is approximately 2:29 p.m.

14:31:22 22 (The deposition recessed briefly.)

14:31:31 23 VIDEOGRAPHER: We are now back on the record.
14:31:33 24 The time is approximately 2:32 p.m.

14:31:39 25 BY MR. KAHN:

14:45:41 1 Q Did you ask him about whether or not he's
14:45:42 2 your attorney?

14:45:47 3 A Do what?

14:45:48 4 Q Did you ask him whether or not he is your
14:45:49 5 attorney?

14:45:49 6 A When?

14:45:51 7 Q Just now.

14:45:51 8 MR. COUNTRYMAN: Don't answer any question
14:45:52 9 that deals with what you and I discussed.

14:45:55 10 MR. KAHN: What privilege could you all have
14:45:57 11 been discussing that relates to a document produced to
14:46:01 12 us from McCabe Trotter as part of this litigation?

14:46:04 13 MR. COUNTRYMAN: I'm the one asserting the
14:46:06 14 privilege, not the witness. And I'm happy to talk to
14:46:08 15 you about it, if you would like.

14:46:10 16 If you want to continue wasting the 15
14:46:11 17 minutes left that you have, we can do that. If you
14:46:13 18 want to ask her questions, I'd urge you to proceed and
14:46:16 19 do so.

14:46:23 20 MR. KAHN: Well, I don't know where you're
14:46:24 21 getting the 15 minutes from but whatever.

14:46:25 22 MR. COUNTRYMAN: I told you I'm ending the
14:46:29 23 deposition at 3:00.

14:46:31 24 BY MR. KAHN:

14:46:31 25 Q In terms of the third page of this document,

15:01:53 1 A Right.

15:01:54 2 Q Okay. Now, in terms of -- I'm going to show
15:01:56 3 you what I've marked as Plaintiff's --

15:01:57 4 MR. COUNTRYMAN: Justin, I'm sorry to
15:01:57 5 interrupt, but it is 3:00, and I got to get on the
15:01:59 6 road. So I'm going to have to end the deposition.

15:02:02 7 MR. KAHN: All right. Well, I don't agree to
15:02:05 8 that.

15:02:06 9 MR. COUNTRYMAN: Okay. That's fine.

15:02:08 10 MR. KAHN: So I'll continue.

15:02:10 11 MR. COUNTRYMAN: No. You don't have to stay
15:02:11 12 here.

15:02:12 13 Sheri, I'm your lawyer, correct, for this
15:02:14 14 deposition?

15:02:15 15 THE WITNESS: Yes.

15:02:15 16 MR. KAHN: No. That's objection. She --
15:02:16 17 the witness has asked and answered -- has answered that
15:02:17 18 as "No."

15:02:18 19 MR. COUNTRYMAN: When we talked yesterday and
15:02:19 20 talked before, it was with the understanding that what
15:02:21 21 we said was privileged and confidential; correct?

15:02:25 22 THE WITNESS: Yes.

15:02:25 23 MR. KAHN: Objection.

15:02:26 24 Hold on a second, now. You can't -- I'm
15:02:27 25 still asking questions. You don't get to ask

15:02:30 1 questions. And if you're going to ask about it, then
15:02:32 2 I'm going to ask you about these conversations you had
15:02:34 3 since he just opened the door.
15:02:36 4 BY MR. KAHN:
15:02:36 5 Q So when did you meet with Mr. Countryman?
15:02:38 6 MR. COUNTRYMAN: This deposition is over.
15:02:42 7 MR. KAHN: All right. Well, I'm staying
15:02:42 8 here.
15:02:43 9 MR. COUNTRYMAN: Okay.
15:02:43 10 MR. KAHN: All right. Well --
15:02:44 11 BY MR. KAHN:
15:02:44 12 Q I'm going to show you what --
15:02:44 13 MR. COUNTRYMAN: The witness is not. The
15:02:46 14 witness is going to --
15:02:47 15 (DEMAND PACKAGE MARKED PLAINTIFF'S EXHIBIT
15:02:47 16 NO. 17 FOR I.D.)
15:02:47 17 BY MR. KAHN:
15:02:47 18 Q I'm going to show you what I've marked as
15:02:49 19 Plaintiff's Exhibit No. 17.
15:02:50 20 MR. COUNTRYMAN: Sheri, you don't have to
15:02:52 21 stay here.
15:02:53 22 THE WITNESS: I've got stuff to do.
15:02:58 23 BY MR. KAHN:
15:02:58 24 Q If the attorney told you not to leave, would
15:03:04 25 you stay? The attorney just told you, you don't have

15:03:06 1 to stay here. If he said you did have to stay
15:03:08 2 here would you stay here?
15:03:08 3 MR. COUNTRYMAN: You can get up, and you
15:03:10 4 don't have to answer that question.
15:03:11 5 THE WITNESS: Yeah. I'm going to go.
15:03:14 6 MR. KAHN: Okay.
15:03:14 7 THE WITNESS: I'm going on my free will.
15:03:16 8 BY MR. KAHN:
15:03:16 9 Q Well, you're -- it sounds like you're going
15:03:18 10 on the instruction of Mr. Countryman.
15:03:20 11 Do you agree that both you and the lawyer you
15:03:23 12 work for agreed to appear at this deposition a long
15:03:26 13 time ago when I talked with you all?
15:03:31 14 A I can go get him.
15:03:33 15 Q He is not here to be deposed, as far as I
15:03:36 16 know.
15:03:36 17 A Yeah.
15:03:40 18 MR. KAHN: All right. Well, I guess this
15:03:41 19 deposition will be continued based on a court order,
15:03:42 20 and we can deal with that later on.
15:03:47 21 MR. COUNTRYMAN: As far as I'm concerned,
15:03:48 22 the deposition is terminated.
15:03:50 23 MR. KAHN: I don't agree, and we can deal
15:03:52 24 with the Court on that.
15:03:54 25 MR. COUNTRYMAN: Okay.

15:03:58 1 VIDEOGRAPHER: This concludes the video
15:03:59 2 deposition of Sheri L. Self for today, January 24th,
15:04:04 3 2019. The time is approximately 3:04 p.m. We are now
15:04:07 4 off the record.
15:07:32 5 (The deposition recessed briefly.)
15:07:33 6 MR. KAHN: Opposing counsel has walked out of
15:07:34 7 this deposition, I believe, in violation of the rules,
15:07:39 8 and we can take the matter up with the Court.
15:07:45 9 During the deposition, the witness marked on
15:07:48 10 a piece of paper that I handed her, and I'm going to
15:07:51 11 mark that document as Plaintiff's Exhibit No. 18.
15:07:55 12 (HANDWRITTEN NOTES MARKED PLAINTIFF'S EXHIBIT
15:07:55 13 NO. 18 FOR I.D.)
15:07:55 14 MR. KAHN: I think her testimony generally
15:07:57 15 related to some kind of checklist, or something like
15:07:59 16 that, earlier on in the deposition. So I've marked a
15:08:01 17 piece of paper that the witness had written on as
15:08:04 18 Plaintiff's Exhibit No. 18.
15:08:08 19 Off the record.
15:09:06 20 (The deposition recessed briefly.)
15:09:06 21 (PLAINTIFF'S NOTICE OF VIDEOTAPED DEPOSITION
15:09:06 22 OF SHERI SELF MARKED PLAINTIFF'S EXHIBIT NO.
15:09:07 23 19 FOR I.D.)
15:09:12 24 MR. KAHN: Further -- further, I'm going to
15:09:15 25 mark as Plaintiff's Exhibit No. 19, the deposition

15:09:19 1 notice that was provided to opposing counsel, and he
15:09:25 2 accepted, by consent, as correspondence would reflect.

15:09:32 3 But this is the deposition notice that this
15:09:34 4 deposition took place pursuant to -- by agreement of
15:09:40 5 the witness, the attorney she works for in this office,
15:09:43 6 and Mr. Countryman.

15:09:46 7 And at no place in this deposition does it
15:09:51 8 limit the time, scope of the deposition, and at no time
15:09:56 9 before -- and the record will reflect -- it was
15:10:00 10 sometime around noon today that Mr. Countryman
15:10:02 11 indicated that this deposition would have to end by or
15:10:06 12 around 3:00.

15:10:08 13 Instead, he simply stated that on the -- I
15:10:13 14 can't remember if it was on the record, but simply told
15:10:16 15 us that it would be ending around 3:00. I don't know
15:10:20 16 that he stated a reason. The record will reflect that
15:10:24 17 one way or another.

15:10:24 18 But, again, this deposition has been ended
15:10:30 19 without my consent, permission, or -- and I think in
15:10:35 20 violation of the rules, and I think I've preserved what
15:10:39 21 I can for the Court to look at the various issues of --
15:10:42 22 that have arisen in this deposition that, I think,
15:10:44 23 violate the rules.

15:10:46 24 Off the record.

15:12:23 25 (The deposition recessed briefly.)

Exhibit

G

Lauren C. Hubbard

From: Robert P. Wood
Sent: Friday, April 19, 2019 2:02 PM
To: mmurphysc@sccourts.org; mmurphylc@sccourts.org
Cc: Ryan McCabe; Andy Countryman; Dawes Cooke (mdc@Barnwell-Whaley.com); sammie@maryarnoldlaw.com; Justin S. Kahn (jskahn@kahnlawfirm.com); Sarah B. Prince; Lauren C. Hubbard; Joshua R. Hinson
Subject: Richardson v. McCabe Trotter & Beverly case no: 2016-cp-18-1001

Judge Murphy,

I represent McCabe Trotter & Beverly, PC (MTB) in the lawsuit brought against them by Tammy Richardson. On April 4, 2019, the Court issued an order sanctioning MTB for violations of certain discovery rules, including Rule 30(j)(5)'s prohibition against off-the-record conferences with deposition witnesses. On April 15, 2019, MTB filed a motion asking this Court to reconsider its order and stay the relief granted until such time as the Court rules on the motion to reconsider.

Plaintiffs have noticed two of the depositions provided for in the order for April 23, 2019. In order to prevent the motion to reconsider from becoming moot, MTB again requests the Court grant its motion to stay the relief granted at its earliest convenience.

Sincerely,

Bob



Robert P. Wood
Shareholder

Rogers Townsend & Thomas,
PC
1221 Main Street 14th Floor
Columbia, SC 29201

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com

Exhibit

H

Lauren C. Hubbard

From: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Sent: Monday, April 22, 2019 11:15 AM
To: Robert P. Wood
Cc: Ryan McCabe; Andy Countryman; Dawes Cooke (mdc@Barnwell-Whaley.com); sammie@maryarnoldlaw.com; Justin S. Kahn (jskahn@kahnlawfirm.com); Sarah B. Prince; Lauren C. Hubbard; Joshua R. Hinson
Subject: RE: Richardson v. McCabe Trotter & Beverly case no: 2016-cp-18-1001

****External Email****

Good Morning,

I hope everyone had a wonderful weekend. While MTB disagrees, all arguments raised in the motion to reconsider were sufficiently ruled upon in the original order, and for this reason, the stay as well as the relief sought therein will be denied without the need for an additional hearing. An order will be filed shortly, but I just wanted to inform everyone beforehand, so they can proceed accordingly.

Best,

Chandler

From: Robert P. Wood <Robert.Wood@rtt-law.com>
Sent: Friday, April 19, 2019 2:02 PM
To: Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: Ryan McCabe <Ryan.McCabe@mccabetrotter.com>; Andy Countryman <awc@countrymanlawfirm.com>; Dawes Cooke (mdc@Barnwell-Whaley.com) <mdc@Barnwell-Whaley.com>; sammie@maryarnoldlaw.com; Justin S. Kahn (jskahn@kahnlawfirm.com) <jskahn@kahnlawfirm.com>; Sarah B. Prince <Sarah.Prince@rtt-law.com>; Lauren C. Hubbard <Lauren.Hubbard@rtt-law.com>; Joshua R. Hinson <Joshua.Hinson@rtt-law.com>
Subject: Richardson v. McCabe Trotter & Beverly case no: 2016-cp-18-1001

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Sincerely,

Bob



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Shareholder

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