

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2016-CP-26-1961
Appellate Case No. 2018-000852

S. Scott Porter, Individually and as Co-Trustee of The Stanley
Scott Porter Trust UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC Respondent,

v.

Kenneth Hucks, Individually and as a member and formerly
designated manager of Peaceful Lane MHP, LLC Appellant

RECORD ON APPEAL

Richard R. Gleissner, Esquire
Luke R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellant

Thomas C. Brittain, Esquire
Mary Madison Brittain Langway, Esquire
Brittain Law Firm, PA
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
(843) 449-8562
Attorneys for Respondent

RECEIVED
APR 08 2019
SC Court of Appeals

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Mary Madison Brittain Langway, Esquire
Brittain Law Firm, PA
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
(843) 449-8562
Attorneys for Respondent

INDEX

Jury Verdict dated February 21, 2018	1
Order Denying Plaintiff's Motion for New Trial and Judgment Notwithstanding the Verdict dated April 23, 2018	4
Form 4 Order Denying Defendant's Motion for Summary Judgment dated February 27, 2017	7
Summons and Complaint dated March 21, 2016	9
Answer and Counterclaim dated June 14, 2016	22
Plaintiff's Reply to Counterclaim of Defendants dated July 13, 2016	30
Defendant's Motion for Summary Judgment dated October 24, 2016	38
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment dated February 17, 2017	60
Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment dated February 27, 2017	88
Defendants' Motion for New Trial and Judgment Notwithstanding the Verdict dated March 2, 2018	91
Plaintiff's Memorandum in Opposition to Defendants' Motion for New Trial and Judgment Notwithstanding the Verdict dated March 8, 2018	106
Affidavit of Plaintiff Scott Porter dated February 16, 2017	110
Transcript of Trial dated February 20-21, 2018	115
Defendant's Jury Instructions	281
Plaintiff's Exhibit 1	287
Plaintiff's Exhibit 2	293
Defendant's Exhibit 1	294
Transcript of Hearing on Post-Trial Motions dated March 27, 2018	295
Notice of Appeal dated May 2, 2018	318
Certificate of Counsel	323

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2601961

S Scott Porter
Peaceful Lane MHP LLC

Stanley Scott Porter
Trust UA

Kenneth Hucks

Peaceful Lane MHP LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CLERK OF COURT

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

WE THE JURY, FIND FOR THE PLAINTIFF IN THE AMOUNT OF \$218,000.00.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
S. SCOTT PORTER	KENNETH A. HUCKS	\$218,000.00

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge-LARRY B. HYMAN JR

Judge Code

2/21/2018
Date

For Clerk of Court Office Use Only

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

Thomas C. Brittain 4614 Oleander Dr. Myrtle Beach, SC
29577

Richard R. Gleissner 1237 Gadsden Street, Suite 200A
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - Clerk of Court

Court Reporter: -NATALIE DAHL

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-26-01961

S. Scott Porter, Individually and as Co-)
Trustee of the Stanley Scott Porter Trust)
UA dated January 2, 1991, a member of)
Peaceful Lane MHP, LLC)

Plaintiff,)

vs.)

Kenneth A. Hucks, Individually and as a)
member and formerly designated)
manager of Peaceful Lane MHP, LLC,)

Defendant.)

VERDICT FORM

We the jury unanimously find for the: (Circle One)

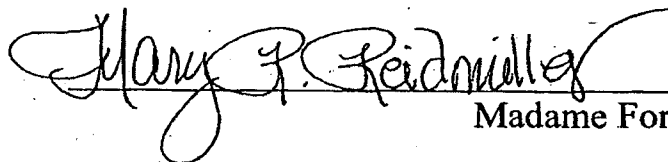
PLAINTIFF

DEFENDANT

In the amount of

\$

218,000.00



Madame Foreperson

February 21, 2018
Date

WHEN YOU HAVE COMPLETED THE QUESTIONS,
NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC,

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A No. 16-CP-26-1961

RECEIVED

MAY 02 2018

SC Court of Appeals

**ORDER DENYING DEFENDANT'S
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
OR, IN THE ALTERNATIVE,
FOR NEW TRIAL**

This matter was heard before The Honorable Larry B. Hyman on March 27, 2018 upon Defendant Kenneth Hucks, Individually and as a member and formerly designated manager of Peaceful Lane MHP, LLC's (hereinafter "Defendant") Motion for Judgment Notwithstanding the Verdict or, in the Alternative, For a New Trial.

Present at the hearing were Thomas C. Brittain, counsel for Plaintiff S. Scott Porter, Individually and as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC (hereinafter "Plaintiff") and Richard R. Gleissner, counsel for Defendant.

Defendant's counsel argued two points: that Plaintiff failed to comply with the Universal Commercial Code ("UCC") guidelines when beginning the process of taking control of Defendant's 50% interest in Peaceful Lane Mobile Home Park ("PLMHP") as a result of Defendant's failure to comply with the terms of the Promissory Note entered into between the parties. The Defendant failed to include this allegation in the pleadings and first brought up the

subject of UCC compliance during the trial. There was no amendment to the Defendant's pleading. Further, Defendant did not establish sufficient grounds for amendment nor evidence to substantiate such an amendment.

Defendant's counsel argued that the Court had allowed an improper document, in the form of an email, to be entered into evidence during the trial and that Plaintiff relied upon this inadmissible evidence in support of his cause of action. Counsel for Defendant read from the email and marked it as a Court exhibit. Further, it was a communication between the parties, a business record and admissible for among other reasons notice; this email was cumulative evidence as to Plaintiff's calculations and in Court testimony.

Defendant's motions are therefore denied.

ORDERED, ADJUDGED AND DECREED, that Defendant's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, For a New Trial is denied.

Date

The Honorable Larry B. Hyman, Jr.
Fifteenth Judicial Circuit, Court of Common Pleas



Horry Common Pleas

Case Caption: S Scott Porter , plaintiff, et al VS Kenneth Hucks , defendant, et al

Case Number: 2016CP2601961

Type: Order/JNOV

So Ordered

s/ Larry-B. Hyman 2152

Electronically signed on 2018-04-23 14:03:28 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2601961

S Scott Porter

Stanley Scott Porter
Trust UA

Kenneth Hucks

Peaceful Lane MHP LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);

☐ Rule 43(k), SCRPC (Settled);☐ Other: _____

- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ STAYED DUE TO BANKRUPTCY☒ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Defendant's Motion for Summary Judgment is Denied.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 2/17)

Benjamin H. Culbertson
Circuit Court Judge - Hon. Benjamin H. Culbertson

2148
Judge Code

2/27/2017
Date

For Clerk of Court Office Use Only

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

Thomas C. Brittain 4614 Oleander Dr. Myrtle Beach, SC
29577

Richard R. Gleissner 1237 Gadsden Street, Suite 200A
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Natalie Dahl

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCPP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED
HORRY COUNTY
17 MAR -2 AM 8:19
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Copy of Order/_____
filed 3/2/17 mailed to all,
parties not in default on 3/2/17
Initials RS

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee of
The Stanley Scott Porter Trust UA dated January 2,
1991, a member of Peaceful Lane MHP, LLC

Plaintiff(s)

vs.

Kenneth Hucks, et al

Defendant(s)

Submitted By: Thomas C. Brittain
Address: 4614 Oleander Drive
Myrtle Beach, SC 29577

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

COPY

14-CP-26-1961

SC Bar #: 00893
Telephone #: 843.449.8562
Fax #: 843.497.6124
Other:
E-mail: tommyb@brittainlawfirm.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☒ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (686) ☐ Sexual Predator (510)		

Submitting Party Signature:

Date: March 15, 2016

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

TO: THE DEFENDANT ABOVE NAMED:

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No.

COPY

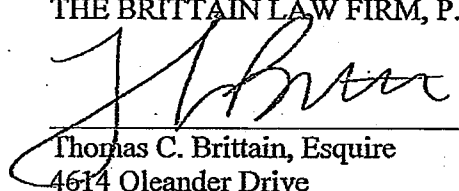
SUMMONS
(Debt Collection)
Jury Trial Demanded

HORRY COUNTY
2016 MAR 21 PM 2:35
CLERK OF COURT
MELANIE HUGHES-WARD

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiffs' attorney, Thomas C. Brittain, at The Brittain Law Firm, P.A., 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the date of such service and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina on the 15th day of March, 2016.

THE BRITTAIN LAW FIRM, P.A.


Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No.

COMPLAINT
(Debt Collection)
Jury Trial Demand

HORRY COUNTY
2016 MAR 21 PM 2:35
MELANIE HUGHES, CLERK

The Plaintiffs, S. Scott Porter, Individually and as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC, complaining of the Defendant Kenneth Hucks, Individually and as a member and designated manager of Peaceful Lane MHP, LLC, by and through their undersigned attorney, would respectfully show and allege unto this Honorable Court as follows:

1. That S. Scott Porter (hereinafter referred to as "Plaintiff Porter") is a citizen and resident of the State of North Carolina, County of Watauga.

2. That S. Scott Porter as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC (hereinafter referred to as "Plaintiff Trust") is, upon information and belief, is situate and present in the State of North Carolina, County of Watauga.

3. That Kenneth Hucks, Individually and as a member and designated manager of Peaceful Lane MHP, LLC (hereinafter referred to as "Defendant") is a citizen and resident of the State of South Carolina, County of Horry.

4. That though the parties may have diverse citizenship, jurisdiction for the resolution of these matters is in the State of South Carolina, County of Horry.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

5. That on or about May 6, 2011, these parties entered into a legally binding contract by and through the Promissory Note attached hereto as Exhibit A wherein Plaintiffs agreed to loan to Defendant One Hundred Fifty-Five Thousand and no/100 Dollars (\$155,000.00).

6. That this Promissory Note was entered into for monies advanced from time to time commencing in September 26, 2006 pursuant to a note and security agreement dated September 26, 2006 and was secured by a pledge of 50% membership interest in Peaceful Lane MHP, LLC pursuant to a Pledge and Amendment Agreement (also included as part of Exhibit A).

7. That the terms of the loan required Defendant to make monthly interest only payments on the principal balance beginning June 6, 2011 and continuing on the same day each calendar month until the loan was paid in full.

8. Further, that the entire principal balance was due and payable on Demand or, if not sooner paid, the entire remaining balance of the indebtedness was due and payable on November 5, 2011.

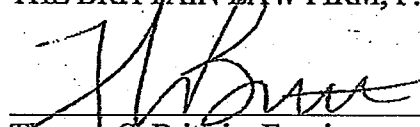
9. That Defendant has breached the parties' contract in that Defendant has only paid to the Plaintiffs One Thousand and no/100 Dollars (\$1,000.00) of the full loan amount.

10. That Plaintiffs have been damaged by the Defendant in the amount of the loan, plus interest, due to Defendant's failure to repay the loan pursuant to the terms and conditions of the parties' May 6, 2011 legally binding agreement.

WHEREFORE, the Plaintiffs, having complained of the Defendant, pray to this Honorable Court as follows:

- a. That Plaintiffs be awarded damages for the breach of contract in the amount of One Hundred Fifty Four Thousand and no/100 Dollars (\$154,000.00), plus all applicable interest charges and fees in compliance with the terms and conditions of the loan;
- b. That Plaintiffs be awarded reasonable court costs and attorney's fees associated with the collection of this debt; and
- c. For such other and further relief as this Court may deem just and proper.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)
Attorney for the Plaintiffs

Myrtle Beach, South Carolina
March 15, 2016

EXHIBIT A

SATISFACTION: The debt evidenced by this Note has been satisfied in full this ____ day of _____, 20__.

DEMAND PROMISSORY NOTE

Boone, NC
May 8, 2011
DATE

\$ 155,000.00

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the Stanley Scott Porter Trust UA dated January 2, 1991, or order, the principal sum of One Hundred Fifty-Five Thousand and 00/100 DOLLARS (\$155,000.00) with interest from May 6, 2011, at the rate of BB&T Prime Rate plus One Percent, as said rate shall change from time to time,

per annum on the unpaid principal balance until paid or until default, both principal and interest payable in lawful money of the United States of America, at the following address: 1846 US Hwy 421 South Boone, NC 28607

or at such place as the legal holder hereof may designate in writing. It is understood and agreed that additional amounts may be advanced by the holder hereof as provided in the Instruments, if any, securing this Note and such advances will be added to the principal of this Note and will accrue interest at the above specified rate of interest from the date of advance until paid. The principal and interest shall be due and payable as follows:

Interest:

Interest only payments on the outstanding principal balance shall be due monthly beginning June 6, 2011 and continuing on the same day of each calendar month until this note is paid in full.

Principal:

The entire principal balance is due and payable on Demand.

If not sooner paid, the entire remaining indebtedness shall be due and payable on November 5, 2011.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity.

In the event of default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date, or (b) default under the terms of any instrument securing this Note, and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the holder may without further notice, declare the remainder of the principal sum, together with all interest accrued thereon and the repayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of eighteen percent (18%) per annum after default until paid.

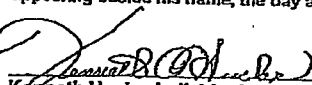
All parties to this Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest, and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies and the maker, principal, surety, guarantor and endorsers of this Note hereby agree to pay to the holder reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of the holder's right and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given for monies advanced from time to time commencing in September 26, 2006 pursuant to a note and security agreement dated September 26, 2006, and is secured by a Pledge of 50% membership interest in Peaceful Lane MHP, LLC pursuant to a Pledge and Amendment Agreement of even date herewith.

IN TESTIMONY WHEREOF, each individual maker has hereunto set his hand and adopted as his seal the word "SEAL" appearing beside his name, the day and year first above written.


Kenneth Hucks, individual and as a member of Peaceful Lane MHP, LLC

Date: 5/26/11

PLEDGE AND AMENDMENT AGREEMENT

THIS PLEDGE AGREEMENT, made and entered into as of the 6th day of May, 2011, by and between Kenneth Hucks ("Pledgor") and the Stanley Scott Porter Trust UA dated January 2, 1991 ("Secured Party").

WITNESSETH:

WHEREAS, Pledgor has previously borrowed \$80,000 plus accrued interest of \$20,000 pursuant to a note and pledge agreement entered into on September 29, 2006 and is on this date borrowing the additional sum of \$55,000.00 from Secured Party as evidenced by that certain Demand Promissory Note of even date herewith, and

WHEREAS, to induce Secured Party to make said loan to Pledgor and to accept Pledgor's Demand Promissory Note in payment therefor, Pledgor and Secured Party have agreed to enter into this Pledge and Amendment Agreement and;

WHEREAS, Pledgor and Secured Party are the sole members of Peaceful Lane MHP, LLC, and Pledgor is the member/manager of said LLC; and

WHEREAS, Pledgor and Secured Party do hereby desire to affirm the prior amendment to the terms and provisions of the operating agreement of the LLC that permitted the pledge of the Membership Interest of Pledgor in the LLC to Secured Party and to provide that Secured Party shall be the sole manager of the LLC until the Demand Promissory Note is paid and satisfied in full.

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. Definitions.

- (a) The term "Membership Interest" shall mean and refer to the fifty percent (50%) interest of Pledgor in Peaceful Lane MHP, LLC.
- (b) The term "Obligations" shall mean and refer to all indebtedness, obligations and liabilities of Pledgor under the Demand Promissory Note (as herein defined).
- (c) The term "Demand Promissory Note" shall mean and refer to that certain demand Demand Promissory Note of even date herewith, in the original principal amount of \$155,000.00, payable by Pledgor to Secured Party, and all amendments, modifications, deferrals, renewals or refinancings of said Demand Promissory Note.

2. Pledge of Membership Interest. As security for the payment and performance by Pledgor of the Obligations of Pledgor under the Demand Promissory Note, including, without

limitation the due and punctual payment of the full amount of principal and interest due under the Demand Promissory Note as and when the same shall become due and payable, or any other obligations and liabilities of the Pledgor with respect to, or in any way arising out of the Demand Promissory Note, or performable in accordance with the terms thereof, Pledgor hereby sets over, transfers, hypothecates, grants, assigns, pledges and conveys to Secured Party, his heirs, successors and assigns, a pledge and continuing security interest in and to the Membership Interest and all proceeds thereof, including without limitation, all distributions (whether profits, capital or otherwise) paid with respect to such Membership Interest and all proceeds from the sale or other disposition thereof (the "Collateral").

3. **Amendment of Operating Agreement.** The undersigned Pledgor and Secured Party, being the sole members of the LLC, and the undersigned Pledgor as its manager, do hereby covenant and agree that, notwithstanding any provision of the operating agreement of the LLC to the contrary, the operating agreement is hereby amended (i) to permit Pledgor to pledge all his right, title and interest in and to the LLC, including without limitation, his 50% ownership interest as a member thereof, to Secured Party as collateral security for the repayment of the Demand Promissory Note; and (ii) to provide that from the date hereof until said Demand Promissory Note has been paid and satisfied in full, Secured Party and not Pledgor shall be the sole manager of the LLC.

4. **Events of Default.** The occurrence of any one or more of the following events (herein an "Event of Default") shall constitute a default hereunder:

(a) Failure of Pledgor to perform or observe any obligation, covenant, condition or term of this Agreement; or

(b) The occurrence of any event of default specified in the Demand Promissory Note or any of the other Obligations if such default is not cured within any grace period applicable thereto.

5. **Remedies Upon Default.** If an Event of Default shall occur and be continuing, Secured Party, in addition to its right to recover at law all sums due under the Demand Promissory Note, shall be entitled without liability for any diminution in price which may have occurred, sell all of the Membership Interest in such manner (including to himself, his designee or any affiliates) at such price as Secured Party may determine or as required by law. Further, Secured Party shall then have all the rights and remedies with respect to the Membership Interest of a secured party under the UCC as it is enacted in the State of North Carolina, and under any other applicable law.

All rights, powers and remedies specified in this Agreement are cumulative and are in addition to, and not in limitation of, such other rights, powers and remedies as may be available to Secured Party under applicable law, by agreement between the parties or otherwise.

6. **Application of Proceeds.** The proceeds from any sale or other realization on the Membership Interest or other Collateral pursuant to this Agreement, together with all other

monies received by Secured Party hereunder, shall be applied as follows:

(a) First, to the payment of all costs and expenses incurred by Secured Party in connection with such sale or other realization, including, without limitation, reasonable attorneys' fees and all court costs, and to the repayment of all other costs and expenses paid or incurred by Secured Party in the exercise of its rights, powers and remedies hereunder;

(b) Second, to the payment in full of the Obligations, in such manner as Secured Party may in its discretion determine; and

(c) Third, Pledgor shall be entitled to any surplus.

It is understood that Pledgor shall be liable for any deficiency which may remain after the exercise by the Secured Party of its rights, powers and remedies pursuant to this Agreement.

7. Pledgor's Obligations Absolute. The obligations of Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated, reduced or impaired or otherwise affected by (a) any amendment, change or modification of the Demand Promissory Note; (b) any waiver, consent, extension, deferral, indulgence or other action or inaction under or in respect of the Obligations; (c) the furnishing of any additional collateral or security to Secured Party or any release of any collateral or security in whole or in part by Secured Party under this Agreement or otherwise; (d) any limitation of any party's liability or obligations under the Obligations; or (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding by or affecting Pledgor.

8. Further Assurances. Pledgor agrees to execute and deliver, at his expense, such other documents and instruments, and to take from time to time such other and further action, as may be reasonably requested by Secured Party to create, preserve, renew and keep in full force and effect the first and prior security interest in the Collateral hereby granted to Secured Party.

9. Power of Attorney. Pledgor hereby irrevocably makes, constitutes and appoints Secured Party, or any of its designees, its true and lawful attorney-in-fact, with full power and authority, in the name and on behalf of Pledgor, to execute such documents and instruments and to take such other action, as may be necessary or appropriate in order to carry out the terms, covenants and conditions of this Agreement. Pledgor hereby ratifies and confirms all that Secured Party, or its designees, as such attorney-in-fact, may do by virtue of this Power of Attorney, which power is coupled with an interest and is irrevocable until Pledgor has paid in full the Obligations and this Agreement is terminated.

10. Expenses. On or before the due date of the Note, Pledgor will pay to Secured Party its attorneys fees incurred for the preparation of these documents. Pledgor will pay to Secured Party such costs and expenses, including reasonable attorneys' fees, as Secured Party may incur in enforcing the rights, powers and remedies of Secured Party hereunder; provided, however, that this provision shall not apply with respect to an action or proceeding instituted by

Secured Party if Pledgor is the prevailing party therein.

11. Termination and Release. Upon payment in full of the Obligations in accordance with the terms and conditions thereof, and upon the payment of such sums as may be due and payable to Secured Party hereunder, this Agreement shall terminate, and Secured Party will transfer and deliver to Pledgor the Pledged Membership Interest and other Collateral as has not theretofore been sold or otherwise applied or released pursuant to this Agreement, together with any monies at that time held by Secured Party hereunder.

12. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be delivered in person or by registered or certified mail, postage prepaid, and addressed as follows:

If to Secured Party:

S. Scott Porter, Trustee
1846 US Hwy 421 South
Boone, NC 28607

If to Pledgor:

Kenneth Hucks
5790 dick Pond Rd.
Myrtle Beach, SC 29575

Any party hereto may change his or its address for notice purposes by notice to the other parties as specified herein.

13. Miscellaneous.

(a) No delay or failure on the part of Secured Party in the exercise of any right, power or privilege under this Agreement; shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid against Secured Party unless made in writing and signed by Secured Party, and then only to the extent expressly specified therein.

(b) If any provision contained in this Agreement shall be invalid or unenforceable under applicable law or regulations, this Agreement shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining provisions hereof.

(c) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and it may not be changed, modified or amended except by an instrument in writing signed by the party against whom enforcement of such change, modification or amendment is asserted.

(d) This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that Pledgor shall have no right to assign its rights or obligations hereunder to any person or entity.

(e) This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, under seal, as of the 6th day of May, 2011.

PLEDGOR:

 (SEAL)

Kenneth Hucks, individually and as member and designated manager of Peaceful Lane MHP, LLC

SECURED PARTY:

 (SEAL)

S. Scott Porter, as Trustee

The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

S. Scott Porter, Individually and as Co-
Trustee of the Stanley Scott Porter Trust
UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC

Case No.: 2016-CP-26-01961

Plaintiff,

ANSWER AND COUNTERCLAIM
(Jury Trial Demanded)

vs.

Kenneth A. Hucks, Individually and as a
member and formerly designated manager
of Peaceful Lane MHP, LLC,

Defendants.

2016 JUN 14 PM 2:06
CLERK OF COURT

Now comes Kenneth A. Hucks, individually and as a member and the designated manager of Peaceful Lane MHP, LLC ("Hucks" or the "Defendant"), and responds to the complaint against him by S. Scott Porter ("Porter") and S. Scott Porter as Co-Trustee of the Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC (the "Porter Trust") (collectively, Porter and the Porter Trust will be designated as the "Plaintiffs") and would show as his counterclaims, as follows:

FOR A FIRST DEFENSE
(General Denial)

1. All allegations of the Complaint are denied unless otherwise admitted herein.
2. The Defendant lacks sufficient information to admit or deny the allegations of paragraphs 1 and 2 and would therefore deny the same and demand strict proof thereof.
3. The allegations of Paragraph 3 are admitted to the extent that it alleges that Hucks is a citizen and resident of Horry County, State of South Carolina.

COPY

4. The Defendant admits the allegation of paragraph 4.
5. The Defendant denies the allegations of paragraph 5 through 10.
6. The Defendant denies the allegations contained in the Plaintiff prayer for relief.

**SECOND DEFENSE
(Statute of Limitations)**

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

7. The Plaintiffs' action against the Defendants is for breach of contract. Specifically, the alleged breach of a demand note (the "Demand Note").
8. Breach of contract has a three year statute of limitations.
9. The Demand Note was allegedly executed on May 6, 2011.
10. Demand notes have a three year statute of limitations.
11. The cause of action on the alleged Demand Note begins upon the day of execution, here May 6, 2011. Any cause of action based upon the Demand Note must be brought within three years of that date, here, May 6, 2014.
12. This action was brought almost two years after the statute of limitations expired.
13. In the alternative, the alleged demand note specifically states that it is "due and payable on November 5, 2011." If this is the appropriate date, the cause of action would need to have been brought by November 5, 2014. Again, the cause of action has expired.
14. This action was brought one and a half years after the statute of limitations expired.
15. Wherefore, the Plaintiffs' action against the Defendant is barred by the applicable Statute of limitations.

THIRD DEFENSE
(Failure to State a Cause of Action)

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

16. The contract alleged to be breached is allegedly between the Porter Trust and Hucks.
17. No where in the alleged contract is Porter named individually.
18. Porter individually has alleged no cause of action against Hucks.
19. Wherefore, Porter must be dismissed as a party Plaintiff.

FOURTH DEFENSE
(Accord and Satisfaction)

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

20. In the Fall of 2011, Cypress Camping Resort, LLC ("Cypress") was seeking to develop property into a camp ground in Horry County, State of South Carolina.
21. In December 2011, the Porter Trust became a member of Cypress.
22. The alleged obligation of Hucks to the Porter Trust was satisfied by allowing Porter Trust to become a member of Cypress.
23. The alleged obligation was fully satisfied between the parties by allowing the Porter Trust to have a membership interest in Cypress.

FOR A FIFTH DEFENSE AND FIRST COUNTERCLAIM
(Breach of Contract)

The Defendants reassert the prior allegations of this pleading as if included herein verbatim.

24. Pursuant to the operating agreement, the Porter Trust has designated as the tax matters member. As the tax matter member, the Porter Trust is responsible for all tax matters

involving Peaceful Lane MHP, LLC ("Peaceful Lane").

25. Included in the requirement for Porter Trust to handle all tax matters is the requirement that Porter Trust insure that the Peaceful Lane timely issue K-1 forms to the respective members of Peaceful Lane.
26. Peaceful Lane has not issued a K-1 to Kenneth Hucks for the past several years.
27. The Porter Trust has breached its contract, duties and responsibilities as the tax matters member by failing to provide the required tax documents to Hucks.
28. As a result, Hucks is damaged by any interest or penalties that may result from the issuance of the K-1s. In the alternative, Hucks is damaged by the inability of Hucks to deduct from his taxes his share of the losses of Peaceful Lane.
29. Wherefore, as a direct and proximate result of Porter Trust's breach of contract, Hucks is entitled to damages in the amount to be shown at trial.

**FOR A SIXTH DEFENSE AND
BY WAY OF SECOND COUNTERCLAIM
(Breach of Contract)**

The Defendants reassert the prior allegations of this pleading as if included herein verbatim.

30. The pledge agreement attached to the complaint alleges that Hucks pledged to the Porter Trust his 50% interest in Peaceful Lane for a total loan of \$155,000.
31. The assets of Peaceful Lane are worth in excess of \$375,000.
32. Hucks 50% interest in Peaceful Lane is worth in excess of \$187,500.
33. The Porter Trust must account to Hucks and be required to pay Hucks for the difference between the value of Hucks' 50% interest and the amount of the alleged debt.
34. The Porter Trust has failed to pay Hucks the difference between the value of Hucks' 50%

interest and the amount of the alleged debt.

35. Under the Pledge Agreement, the Porter Trust has a duty to pay the difference between the value of Hucks' 50% interest and the amount of the debt.
36. The Porter Trust's failure to pay constitutes a breach of contract.
37. Hucks has been damaged by the Porter Trust's failure to pay in the amount of at least \$22,500.

**FOR A SEVENTH DEFENSE AND
BY WAY OF THIRD COUNTERCLAIM
(Breach of Fiduciary Duty)**

The Defendants reassert the prior allegations of this pleading as if included herein verbatim.

38. The Porter Trust is a member of Peaceful Lane. Hucks is a member of Peaceful Lane.
39. The members of Peaceful Lane owe each other a fiduciary duty to act in the best interests of Peaceful Lane and refrain from doing any harm to Peaceful Lane.
40. The Porter Trust has breached that fiduciary duty. The Porter Trust has acted against the best interests of Peaceful Lane.
41. The Porter Trust's actions have been willful, wanton and grossly negligent.
42. Wherefore, Hucks is entitled to damages for the Porter Trust's breach of fiduciary duty, including punitive damages.

**FOR A EIGHTH DEFENSE
(Unclean Hands)**

The Defendant reasserts the prior allegations of this pleading as if included herein verbatim.

43. Plaintiffs have not acted in a manner consistent with equitable principles, and should be barred from obtaining any relief against Defendant.

FOR A SEVENTH DEFENSE
(Failure to Mitigate)

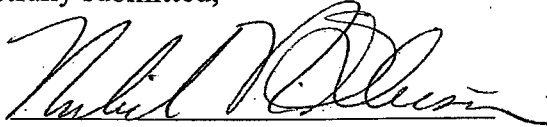
The Defendant reasserts the prior allegations of this pleading as if included herein verbatim.

44. Plaintiff failed to mitigate its damages, and therefore all claims asserted by Plaintiff should be either barred or reduced to the extent that Plaintiff could have taken prompt and reasonable action to avoid the occurrence of the alleged damages.

WHEREFORE, the Defendant, having fully responded to the Complaint of the Plaintiffs would respectfully pray that this Court issue its order:

- a. Dismissing this Complaint;
- b. Dismissing the Complaint as barred by the Statute of Limitation;
- c. Awarding the Defendant the damages for the Plaintiff's breaches of contract and breach of the covenant of good faith and fair dealing;
- d. Awarding the Defendant the damages for the Plaintiff's breach of fiduciary duty;
- e. Awarding the Defendant the costs of defending this action including reasonable attorney fees;
- f. Awarding the Defendant punitive damages for the Plaintiff's willful, wanton and grossly negligent actions, and
- g. Award such other and further relief as the court deems just and proper.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Richard R. Gleissner', written over a horizontal line.

Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Defendants
Kenneth A. Hucks

June 9, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-
Trustee of the Stanley Scott Porter Trust
UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC

Case No.: 2016-CP-26-01961

Plaintiff,

CERTIFICATE OF SERVICE

vs.

Kenneth A. Hucks, Individually and as a
member and formerly designated manager
of Peaceful Lane MHP, LLC,

Defendants.

2016 JUN 14 PM 2:06
CLERK OF COURT

I, the undersigned employee of the Gleissner Law Firm, LLC, hereby certifies that on June 10, 2016, I have served Defendants, Kenneth A. Hucks, Individually and as a member and formerly designated manager of Peaceful Lane MHP, LLC's Answer and Counterclaim in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to the following:

Thomas C. Brittain, Esquire
The Brittain Law Firm, PA
4614 Oleander Drive
Myrtle Beach, South Carolina 29577

Anissa Terpstra

Anissa Terpstra, Paralegal to
Richard R. Gleissner, Esquire
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505

Facsimile (803) 712-4283

Attorneys for Defendants, Kenneth A. Hucks,
Individually and as a member and formerly designated
manager of Peaceful Lane MHP, LLC

Dated: June 10, 2016

copy

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 16-CP-26-1961

**PLAINTIFF'S REPLY TO
DEFENDANT'S COUNTERCLAIM**

The Plaintiff, by and through his undersigned attorney, respectfully replies to Defendant Kenneth Hucks, Individually and as a member and formerly designated manager of Peaceful Lane MHP, LLC's ("Defendant") Counterclaims as follows:

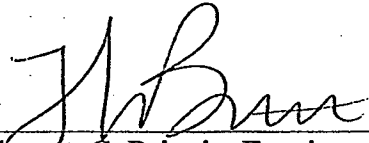
As a First Reply

1. Plaintiff denies each and every allegation of Defendant's Counterclaims not herein expressly admitted.
2. Plaintiff generally denies each and every allegation contained within Defendant's Counterclaims and Affirmative Defenses.
3. Further replying to the Counterclaims herein and as an additional defense, Plaintiff re-alleges and expressly incorporates the defenses above as fully as if repeated verbatim herein.
4. Plaintiff denies each and every allegation of Defendant's Counterclaims (contained in Paragraphs 24-29) of Defendant's Answer and demands strict proof thereof.
5. Further, upon information and belief, prior to May 2013 Defendant had complete control of Peaceful Lane MP, LLC ("PLMHP") and was using his accountant to prepare all required tax documents.
6. Upon information and belief, after May 2013 Plaintiff took over management responsibilities of PLMHP once it became evident that Defendant had

misappropriated funds at which time he discovered that Defendant had lost all of the banking records and most of the accounting records for PLMHP during his time as manager.

7. As a direct result of Defendant's negligent actions, Plaintiff incurred significant expense in an effort to recreate the missing documents and determine the extent of Defendant's defalcation as well as prepare all necessary tax documents.
8. Further, upon information and belief, Plaintiff received Defendant's 50% ownership in PLMHP on or around March 31, 2014 as collateral for the Promissory Note upon which Defendant was in default. The appraised value of this asset, upon information and belief, only partially covered the total amount due to Plaintiff under the terms and conditions of the Promissory Note.
9. Further, once that ownership in PLMHP was transferred, Defendant no longer had an interest in the corporation and, therefore, was not eligible to receive any tax documents relating thereto.
10. Plaintiff, upon information and belief, admits the allegation of Defendant's Counterclaim (contained in Paragraph 30) of Defendant's Answer.
11. Plaintiff denies each and every allegation of Defendant's Counterclaims (contained in Paragraphs 31-37) of Defendant's Answer and demands strict proof thereof.
12. Plaintiff, upon information and belief, admits the allegation of Defendant's Counterclaim (contained in Paragraph 38) inasmuch as Plaintiff is a member of Peaceful Lane; as to all remaining allegations, denied with strict proof required thereof. Further, Defendant's 50% interest in PLMHP was transferred to Plaintiff on or around March 31, 2014 as a direct result of his default on the Promissory Note described in Plaintiff's Complaint.
13. Plaintiff denies each and every allegation of Defendant's Counterclaims (contained in Paragraphs 39-42) of Defendant's Answer and demands strict proof thereof.
14. Further, Plaintiff alleges that Defendant fraudulently induced Plaintiff to delay collection once he defaulted on the Promissory Note by falsely leading Plaintiff to believe he was selling his stock in Apache Family Campground (as indicated by the emails attached hereto as Exhibit A) to obtain funds necessary to repay the Promissory Note in full.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449-8562 (*telephone*)
(843) 497-6124 (*facsimile*)
Attorney for Plaintiff

July 12, 2016
Myrtle Beach, South Carolina

EXHIBIT A

Scott Porter

From: huckstable@juno.com
Sent: Tuesday, July 10, 2012 9:09 AM
To: scott@carefree-service.com
Subject: Fw: letter of intent

Scott,

you could use this info to do a letter of intent too, you could just bump the offer 10K- no need to be to extreme. Thanks. The other members are suppose to be meeting today.

Kenneth

----- Forwarded Message -----

From: "huckstable@juno.com" <huckstable@juno.com>
To: ejb62@AOL.com
Subject: letter of intent
Date: Mon, 9 Jul 2012 18:09:39 GMT

Kenneth Hucks
5790 Dick Pond Road
Myrtle Beach , S.C. 29588

Date: July 8th, 2012

Re: Letter of Intent to purchase
- Apache Family Campground Stock
- Remainder of % of membership Hucks Limited Partnership, LLC

Mr. Hucks

This letter is for the sole pupose of expressing my intent to purchase: 66.67 shares of Apache Family Campground , Inc in the amount of \$592,266.000 and your remaining interest in Hucks Limited Partnership, LLC in the amount of \$474,000.00. Please notify within 10 days of reciept your acceptance of this offer.

Contact info :

P.O. Box 9269, Myrtle Beach, S.C. 29578
215 Sandy Lane, Surfside Beach, S.C. 29575
843-238-0317

53 Year Old Mom Looks 33

The Stunning Results of Her Wrinkle Trick Has Botox Doctors Worried
consumerproducts.com

Scott Porter

From: huckstable@juno.com
Sent: Wednesday, August 8, 2012 1:57 PM
To: charles@wacclt.com; Cloud-dancer@prodigy.net; CokerFrance@yahoo.com; Brbellamy011@comcast.net
Cc: scott@carefree-service.com; Fredv20@comcast.net
Subject: Fw: Letter from Brandt
Attachments: Letter from Brandt.PDF

For your viewing.

Kenneth

Please note: forwarded message attached

From: Ejb62@aol.com
To: huckstable@juno.com
Subject: Letter from Brandt
Date: Wed, 8 Aug 2012 09:58:42 -0400 (EDT)

53 Year Old Mom Looks 33

The Stunning Results of Her Wrinkle Trick Has Botox Doctors Worried
consumerproducts.com

EARL J. BRANDT
P O BOX 9269
MYRTLE BEACH SC 29578

August 8, 2012

Mr. Kenneth Hucks
P O Box 31299
Myrtle Beach SC 29588

Re: Apache Campground

Dear Mr. Hucks:

I am in receipt of the stock appraisal. It appears to place a higher value on the Apache Family Campground, Inc. stock than what you estimated. I would recognize this as a fair value.

Pursuant to my intent to purchase, please let me know the position the board of directors are taking with regard to their right of refusal by August 17th. At that time if I do not have a satisfactory position I will withdraw my intent.

Sincerely,



Earl J. Brandt

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

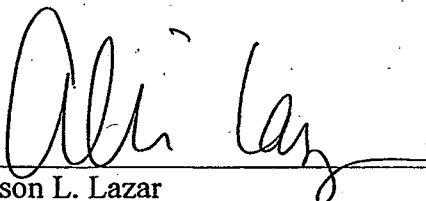
) C/A No. 16-CP-26-1961

CERTIFICATE OF SERVICE

Allison L. Lazar hereby certifies that she is an employee of The Brittain Law Firm, P.A., attorneys for Plaintiff S. Scott Porter, Individually and as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC and that she caused to be mailed this day, July 12, 2016, the documents listed below in the above-entitled action to the parties set out below:

DOCUMENTS: Plaintiff's Reply to Defendant's Counterclaim

PARTIES: Richard R. Gleissner, Esquire
Gleissner Law
1237 Gadsden Street, Suite 200A
Columbia, SC 29201


Allison L. Lazar

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee of the Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC,

☐ Plaintiff

v.

Kenneth A. Hucks, Individually as a member and formerly designated manager of Peaceful Lane MHP

☒ Defendant.

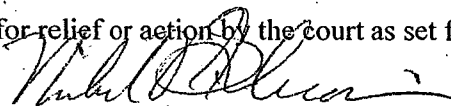
IN THE COURT OF COMMON PLEAS

CASE NO.

2016-CP-26-01961

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

HORRY COUNTY
2016 OCT 26 PM 2:00
CLERK OF COURT
MELANIE HUGHES

Plaintiff's Attorney: Thomas C. Brittain, Esquire, Bar No. Address: 4614 Oleander Drive Myrtle Beach, SC 29577 phone: 843-449-8562 fax: 843-497-6124 e-mail: tommyb@brittainlawfirm.com other:	Defendant's Attorney: Richard R. Gleissner, Bar No. 15139 Address: 1237 Gadsden Street, Suite 200A Columbia, SC 29201 phone: 803-787-0505 fax: 803-712-4283 e-mail: Rick@Gleissnerlaw.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant October 24, 2016 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____	

SCCA/233 (11-03)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

S. Scott Porter, Individually and as Co-
Trustee of the Stanley Scott Porter Trust
UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC

Case No.: 2016-CP-26-01961

Plaintiff,

**MOTION FOR SUMMARY
JUDGMENT**

vs.

Kenneth A. Hucks, Individually and as a
member and formerly designated manager
of Peaceful Lane MHP, LLC,

Defendants.

HORRY COUNTY
2016 OCT 26 PM 2:00
MELANIE HUGS-EMC-MIND
CLERK OF COURT

TO: THOMAS C. BRITTAIN, ESQUIRE AS ATTORNEY FOR THE PLAINTIFFS AND TO
THE PLAINTIFF ABOVE NAMED:

The Defendant, Kenneth A. Hucks, Individually and as a member and formerly designated manager of Peaceful Lane MHP, LLC, (the "Defendant" or "Hucks"), by and through his undersigned attorney, does hereby provide notice that they will move on the tenth (10th) day after service hereof or as soon as thereafter as counsel can be heard before the Court of Common Pleas for Horry County for an order granting summary judgment in favor of the Defendants and against the Plaintiff S. Scott Porter, Individually and as Co-Trustee of the Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC (the "Plaintiff" or "Porter"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. More specifically, this motion is based on the pleadings in this case, discovery conducted to date and such documents and affidavits which may be submitted prior to the hearing.

The Undisputed Facts

The Plaintiff's action against the Defendant is for breach of contract alleging that the Defendant failed to honor the terms of certain promissory note. The contract is a demand promissory note dated May 6, 2011 and is attached to this motion as Exhibit 1. Although styled as a demand promissory note, the note actually requires interest only payments on a monthly basis starting in June 2011. It is undisputed that Hucks defaulted on this note in June 2011 and did not pay the interest payment due that month.

Attached hereto as Exhibit 2 is a copy of the Plaintiff's Answers to the Defendants Interrogatories. In the Answers, the Plaintiff admits that the Defendant defaulted more than three years prior to bringing this action and state that the Defendant only made a single payment on the note, more than three (3) years prior to the bringing of this suit.

The Law

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Under Rule 56(c), SCRCP: "summary judgment is proper when there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law. " See *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Id.* at 115, 410 S.E.2d at 545. Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* at 112, 410 S.E.2d at 543. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional

relevant evidence. *Id.* at 112, 410 S.E.2d at 544. In this case, the Defendants support their motion with the Promissory Note and with the Plaintiffs Responses to the Defendant's Interrogatories. These documents unequivocally determine the facts relating to the running of the statute of limitations. The Defendant has carried his burden.

It is well settled that the non-moving party may not rely on mere allegations to resist summary judgment but must present some evidence in the form of affidavits or otherwise in support of its proposition. *Woodson v. DLI Props., LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014). Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations of its pleadings. *See SSI Medical Services, supra*; *Moody v. McLellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988).

Under South Carolina law, the Plaintiff's action cannot survive summary judgment. Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. *See Anonymous Taxpayer v. South Carolina Dept. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008). The period of time for commencing an action involving contracts is prescribed by S.C. Code Ann. § 15-3-530. It provides for a three-year statute of limitations for a cause of action accruing on or after April 5, 1988. A cause of action is barred if it is not brought within the appropriate period. South Carolina law holds that the statute of limitations begins to run at the time the cause of action accrues. *Harvey v. S.C. Dep't. of Corr.*, 338 S.C. 500, 527 S.E.2d 765 (S.C. Ct. App. 2000). The fundamental test for determining whether a cause of action has

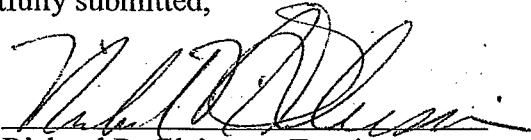
accrued is whether the party asserting the claim can maintain an action to enforce it. Id. Thus, a particular cause of action accrues “ at the moment when the plaintiff has a legal right to sue on it.” Id. 388 S.C. at 508, 527 S.E.2d at 769. Under contract law, the terms of the agreement determines the moment the plaintiff has a legal right to sue. *See State v. McClinton*, 369 S.C. 167, 631 S.E.2d 895 (2006)(The court held that a breach of contract action *usually* accrues at the time a contract is breached or broken). Thus, a court looks to the contract terms in determining when the cause of action accrues. Id.

The law is well settled that a promissory note payable on demand is due immediately, and that, thus, the statute of limitations runs in favor of the maker from the date of the execution of the instrument. *Coleman v. Page's Estate*, 202 S.C. 486, 25 S.E.2d 559, 559-60 (1943), *See also Cammer v. Harrison*, 1822 WL 1826, 13 S.C.L. 246 (Nov. 99, 1822).

As the contract in dispute were breached in 2011, Plaintiff's action was brought more than three years after this action accrued. The action is barred under South Carolina Law. South Carolina law on this issue is clear and has been clear for a long time.

WHEREFORE the Defendant requests that the Court issue an Order granting him summary judgment as a matter of law based upon the running of the statute of limitations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard R. Gleissner', written over a horizontal line.

Richard R. Gleissner, Esquire

S.C. Bar Number 15139

Gleissner Law Firm, L.L.C.

1237 Gadsden Street, Suite 200A

Columbia, South Carolina 29201

(803) 787-0505

Attorneys for the Defendants

Kenneth A. Hucks

October 24, 2016

EXHIBIT 1

SATISFACTION: The debt evidenced by this Note has been satisfied in full this ___ day of ___, 20__.

DEMAND PROMISSORY NOTE

Boone, NC
May 8, 2011
DATE

\$ 155,000.00

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the Stanley Scott Porter Trust UA dated January 2, 1991, or order, the principal sum of One Hundred Fifty-Five Thousand and 00/100 DOLLARS (\$ 155,000.00) with interest from May 6, 2011, at the rate of BB&T Prime Rate plus One Percent, as said rate shall change from time to time,

per annum on the unpaid principal balance until paid or until default, both principal and interest payable in lawful money of the United States of America, at the following address: 1848 US Hwy 421 South Boone, NC 28607

or at such place as the legal holder hereof may designate in writing. It is understood and agreed that additional amounts may be advanced by the holder hereof as provided in the Instruments, if any, securing this Note and such advances will be added to the principal of this Note and will accrue interest at the above specified rate of interest from the date of advance until paid. The principal and interest shall be due and payable as follows:

Interest:

Interest only payments on the outstanding principal balance shall be due monthly beginning June 8, 2011 and continuing on the same day of each calendar month until this note is paid in full.

Principal:

The entire principal balance is due and payable on Demand.

If not sooner paid, the entire remaining indebtedness shall be due and payable on November 5, 2011.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity.

In the event of default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date, or (b) default under the terms of any instrument securing this Note, and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the holder may without further notice, declare the remainder of the principal sum, together with all interest accrued thereon and the repayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of eighteen percent (18%) per annum after default until paid.

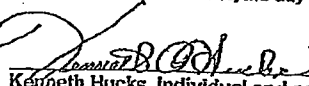
All parties to this Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies and the maker, principal, surety, guarantor and endorsers of this Note hereby agree to pay to the holder reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of the holder's right and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given for monies advanced from time to time commencing in September 26, 2006 pursuant to a note and security agreement dated September 26, 2006, and is secured by a Pledge of 50% membership interest in Peaceful Lane MHP, LLC pursuant to a Pledge and Amendment Agreement of even date herewith.

IN TESTIMONY WHEREOF, each individual maker has hereunto set his hand and adopted as his seal the word "SEAL" appearing beside his name, the day and year first above written.


Kenneth Hicks, Individual and as a member of Peaceful Lane MHP, LLC

Date: 5/26/11

PLEDGE AND AMENDMENT AGREEMENT

THIS PLEDGE AGREEMENT, made and entered into as of the 6th day of May, 2011, by and between Kenneth Hucks ("Pledgor") and the Stanley Scott Porter Trust UA dated January 2, 1991 ("Secured Party").

WITNESSETH:

WHEREAS, Pledgor has previously borrowed \$80,000 plus accrued interest of \$20,000 pursuant to a note and pledge agreement entered into on September 29, 2006 and is on this date borrowing the additional sum of \$55,000.00 from Secured Party as evidenced by that certain Demand Promissory Note of even date herewith, and

WHEREAS, to induce Secured Party to make said loan to Pledgor and to accept Pledgor's Demand Promissory Note in payment therefor, Pledgor and Secured Party have agreed to enter into this Pledge and Amendment Agreement and;

WHEREAS, Pledgor and Secured Party are the sole members of Peaceful Lane MHP, LLC, and Pledgor is the member/manager of said LLC; and

WHEREAS, Pledgor and Secured Party do hereby desire to affirm the prior amendment to the terms and provisions of the operating agreement of the LLC that permitted the pledge of the Membership Interest of Pledgor in the LLC to Secured Party and to provide that Secured Party shall be the sole manager of the LLC until the Demand Promissory Note is paid and satisfied in full.

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. Definitions.

(a) The term "Membership Interest" shall mean and refer to the fifty percent (50%) interest of Pledgor in Peaceful Lane MHP, LLC.

(b) The term "Obligations" shall mean and refer to all indebtedness, obligations and liabilities of Pledgor under the Demand Promissory Note (as herein defined).

(c) The term "Demand Promissory Note" shall mean and refer to that certain demand Demand Promissory Note of even date herewith, in the original principal amount of \$155,000.00, payable by Pledgor to Secured Party, and all amendments, modifications, deferrals, renewals or refinancings of said Demand Promissory Note.

2. Pledge of Membership Interest. As security for the payment and performance by Pledgor of the Obligations of Pledgor under the Demand Promissory Note, including, without

limitation the due and punctual payment of the full amount of principal and interest due under the Demand Promissory Note as and when the same shall become due and payable, or any other obligations and liabilities of the Pledgor with respect to, or in any way arising out of the Demand Promissory Note, or performable in accordance with the terms thereof, Pledgor hereby sets over, transfers, hypothecates, grants, assigns, pledges and conveys to Secured Party, his heirs, successors and assigns, a pledge and continuing security interest in and to the Membership Interest and all proceeds thereof, including without limitation, all distributions (whether profits, capital or otherwise) paid with respect to such Membership Interest and all proceeds from the sale or other disposition thereof (the "Collateral").

3. **Amendment of Operating Agreement.** The undersigned Pledgor and Secured Party, being the sole members of the LLC, and the undersigned Pledgor as its manager, do hereby covenant and agree that, notwithstanding any provision of the operating agreement of the LLC to the contrary, the operating agreement is hereby amended (i) to permit Pledgor to pledge all his right, title and interest in and to the LLC, including without limitation, his 50% ownership interest as a member thereof, to Secured Party as collateral security for the repayment of the Demand Promissory Note; and (ii) to provide that from the date hereof until said Demand Promissory Note has been paid and satisfied in full, Secured Party and not Pledgor shall be the sole manager of the LLC.

4. **Events of Default.** The occurrence of any one or more of the following events (herein an "Event of Default") shall constitute a default hereunder:

(a) Failure of Pledgor to perform or observe any obligation, covenant, condition or term of this Agreement; or

(b) The occurrence of any event of default specified in the Demand Promissory Note or any of the other Obligations if such default is not cured within any grace period applicable thereto.

5. **Remedies Upon Default.** If an Event of Default shall occur and be continuing, Secured Party, in addition to its right to recover at law all sums due under the Demand Promissory Note, shall be entitled without liability for any diminution in price which may have occurred, sell all of the Membership Interest in such manner (including to himself, his designee or any affiliates) at such price as Secured Party may determine or as required by law. Further, Secured Party shall then have all the rights and remedies with respect to the Membership Interest of a secured party under the UCC as it is enacted in the State of North Carolina, and under any other applicable law.

All rights, powers and remedies specified in this Agreement are cumulative and are in addition to, and not in limitation of, such other rights, powers and remedies as may be available to Secured Party under applicable law, by agreement between the parties or otherwise.

6. **Application of Proceeds.** The proceeds from any sale or other realization on the Membership Interest or other Collateral pursuant to this Agreement, together with all other

monies received by Secured Party hereunder, shall be applied as follows:

(a) First, to the payment of all costs and expenses incurred by Secured Party in connection with such sale or other realization, including, without limitation, reasonable attorneys' fees and all court costs, and to the repayment of all other costs and expenses paid or incurred by Secured Party in the exercise of its rights, powers and remedies hereunder;

(b) Second, to the payment in full of the Obligations, in such manner as Secured Party may in its discretion determine; and

(c) Third, Pledgor shall be entitled to any surplus.

It is understood that Pledgor shall be liable for any deficiency which may remain after the exercise by the Secured Party of its rights, powers and remedies pursuant to this Agreement.

7. Pledgor's Obligations Absolute. The obligations of Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated, reduced or impaired or otherwise affected by (a) any amendment, change or modification of the Demand Promissory Note; (b) any waiver, consent, extension, deferral, indulgence or other action or inaction under or in respect of the Obligations; (c) the furnishing of any additional collateral or security to Secured Party or any release of any collateral or security in whole or in part by Secured Party under this Agreement or otherwise; (d) any limitation of any party's liability or obligations under the Obligations; or (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding by or affecting Pledgor.

8. Further Assurances. Pledgor agrees to execute and deliver, at his expense, such other documents and instruments, and to take from time to time such other and further action, as may be reasonably requested by Secured Party to create, preserve, renew and keep in full force and effect the first and prior security interest in the Collateral hereby granted to Secured Party.

9. Power of Attorney. Pledgor hereby irrevocably makes, constitutes and appoints Secured Party, or any of its designees, its true and lawful attorney-in-fact, with full power and authority, in the name and on behalf of Pledgor, to execute such documents and instruments and to take such other action, as may be necessary or appropriate in order to carry out the terms, covenants and conditions of this Agreement. Pledgor hereby ratifies and confirms all that Secured Party, or its designees, as such attorney-in-fact, may do by virtue of this Power of Attorney, which power is coupled with an interest and is irrevocable until Pledgor has paid in full the Obligations and this Agreement is terminated.

10. Expenses. On or before the due date of the Note, Pledgor will pay to Secured Party its attorneys fees incurred for the preparation of these documents. Pledgor will pay to Secured Party such costs and expenses, including reasonable attorneys' fees, as Secured Party may incur in enforcing the rights, powers and remedies of Secured Party hereunder; provided, however, that this provision shall not apply with respect to an action or proceeding instituted by

Secured Party if Pledgor is the prevailing party therein.

11. Termination and Release. Upon payment in full of the Obligations in accordance with the terms and conditions thereof, and upon the payment of such sums as may be due and payable to Secured Party hereunder, this Agreement shall terminate, and Secured Party will transfer and deliver to Pledgor the Pledged Membership Interest and other Collateral as has not theretofore been sold or otherwise applied or released pursuant to this Agreement, together with any monies at that time held by Secured Party hereunder.

12. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be delivered in person or by registered or certified mail, postage prepaid, and addressed as follows:

If to Secured Party:
S. Scott Porter, Trustee
1846 US Hwy 421 South
Boone, NC 28607

If to Pledgor:
Kenneth Hucks
5790 dick Pond Rd.
Myrtle Beach, SC 29575

Any party hereto may change his or its address for notice purposes by notice to the other parties as specified herein.

13. Miscellaneous.

(a) No delay or failure on the part of Secured Party in the exercise of any right, power or privilege under this Agreement; shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid against Secured Party unless made in writing and signed by Secured Party, and then only to the extent expressly specified therein.

(b) If any provision contained in this Agreement shall be invalid or unenforceable under applicable law or regulations, this Agreement shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining provisions hereof.

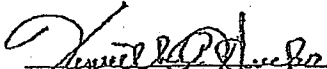
(c) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and it may not be changed, modified or amended except by an instrument in writing signed by the party against whom enforcement of such change, modification or amendment is asserted.

(d) This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that Pledgor shall have no right to assign its rights or obligations hereunder to any person or entity.

(e) This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

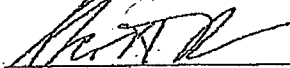
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, under seal, as of the 6th day of May, 2011.

PLEDGOR:

 (SEAL)

Kenneth Hucks, individually and as member and designated manager of Peaceful Lane MHP, LLC

SECURED PARTY:

 (SEAL)

S. Scott Porter, as Trustee

The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC

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EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 16-CP-26-1961

**PLAINTIFF'S ANSWERS TO
INTERROGATORIES FROM
DEFENDANT**

TO: THE ABOVE-NAMED DEFENDANT AND ATTORNEY, RICHARD R. GLEISSNER,
ESQ.:

1. Identify all persons known to the Plaintiffs to be witnesses concerning the facts of this case. Please indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Stanley Scott Porter
1846 US Hwy 421 S
Boone, NC 28607

Mr. Porter is a Plaintiff in this action and is expected to testify according to facts known surrounding this incident and damages sustained.

Kenneth Hucks
2421 River Road
Myrtle Beach, SC 29588

Mr. Hucks is a Defendant in this action and his testimony is unknown to Plaintiff at this time.

Bill Benson
Conway National Bank
Conway, SC

Mr. Benson is a loan officer at Conway National Bank and is expected to testify according to fact known surrounding this incident and the loan documents that is the

subject of this action.

Emerson Treffer
Treffer Appraisal & Advisory
43 Aberdeen Way
Pawleys Island, SC 29585

Mr. Treffer is an appraiser and is expected to testify according to facts known surrounding this incident and his knowledge as to the value of PLMHP at all times relevant to this action.

To the best of Plaintiff's knowledge, no recorded or written statements have been taken from any of the above-listed witnesses at this time. Any non-privileged statements received by the Plaintiff will be produced to Defendant upon receipt. Plaintiff reserves the right to amend this answer up until the trial of this action.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or the defense in the case.

ANSWER:

Plaintiff is in possession of the following documents relevant to this action:

- a. Promissory Note between Plaintiff and Defendant dated May 6, 2011 with Pledge and Amendment Agreement;
- b. Promissory Note between Plaintiff and Defendant Dated September 29, 2006 with Pledge and Amendment Agreement;
- c. Operating Agreement of PLMHP between Plaintiff and Defendant dated December 7, 2005;
- d. Email communications between Plaintiff and Defendant pertaining to PLMHP (with attachments);
- e. Spreadsheets created by Plaintiff pertaining to PLMHP (including calculation of current balance due to Plaintiff by Defendant in accordance with the 2011 Note);
- f. PLMHP Tax Returns from 2011-2014;
- g. April 11, 2011 appraisal of PLMHP prepared by Alliance Appraisal Group, LLC;
- h. February 8, 2012 appraisal of PLMHP prepared by Cox, Beall & Associates, LLC;
- i. February 20, 2014 appraisal of PLMHP prepared by Treffer Appraisal & Advisory Group;
- j. Horry County tax payment history records and market value of PLMHP;
- k. Letter from TD Bank dated August 26, 2016, with attachments, in response to a subpoena received from Plaintiff's counsel in this action

Plaintiff reserves the right to amend this answer up to the trial of this action.

3. Identify any expert witnesses whom the Plaintiffs propose to use as a witness at

the trial of the case, and for each expert listed, identify the area of expertise and subject matter on which each is expected to testify, identify all documents reviewed by the expert, identify all persons spoken to by the expert in this case and set forth in detail all opinions held by such experts as they relate to the issues in this case.

ANSWER: None at this time. Plaintiff reserves the right to amend this answer up to the trial of this action.

4. For each person known to the Plaintiffs 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 witness.

ANSWER: Refer to Plaintiff's answer to Interrogatory Number 1. Plaintiff reserves the right to amend this answer up to the trial of this action.

5. State with particularity each and every damages sought by the Plaintiffs against the Defendant in this action. Include in this list of damages (a) the basis for any obligation associated with this action, (b) the work performed pursuant to the obligation, (b) any interest charges associated with the obligation, (c) an itemized statement of any other charges incurred and sought to be collected in this action, (d) the identity of any document associated with charges or the obligations sought to be collected in this action and (e) the identity of any witness with knowledge of any charge sought to be collected in this action.

ANSWER: Plaintiff seeks from the Defendant in this action all money due and payable to him, including all applicable interest, in compliance with the terms and conditions of the Promissory Note entered into between the parties on May 6, 2011 (see also Plaintiff's spreadsheet providing current amount due attached hereto). Plaintiff reserves the right to amend this answer up to the trial of this action.

6. Set forth an itemized statement of all extensions of credit given from the Plaintiffs to the Defendant, the date of each extension of credit, the date of any payment against

the obligation, the amount of any payment against the obligation, the date of any credit against the obligations owed, and amount of any credit against the obligations owed, identify all documents associated with the itemized statement of the alleged obligation from the Defendant to the Plaintiffs, and identify all witnesses with knowledge of each payment or extension of credit associated with the alleged obligation.

ANSWER: On or about September 29, 2006, Plaintiff loaned to Defendant approximately \$100,000.00. This loan was subsequently repaid in full.

In February 2008, Plaintiff loaned Defendant \$80,000.00 and in May 2011 loaned Defendant an additional \$55,000.00. These two loans were combined into the Promissory Note and Pledge and Amendment Agreement entered into between the parties to this action on May 6, 2011, for a total loan amount of \$155,000.00 (which included \$20,000.00 of accrued interest on the initial loan of \$80,000.00). Defendant has made one payment in the amount of \$1,000.00 on August 8, 2011 on this Note.

Refer to Plaintiff's answers to Interrogatory Numbers 1 and 2 for relevant documents and witnesses. Plaintiff reserves the right to amend this answer up to the trial of this action.

7. State with particularity the process used to divest the Defendant of his interest in Peaceful Lane MHP, LLC ("Peaceful Lane"), as alleged in the Plaintiffs' Reply to the Defendant's counterclaims, identify all documents associated with the process used to divest the Defendant of his interest, and identify all witnesses with knowledge of this alleged divesting of the Defendant's interest.

ANSWER: Defendant's 50% ownership/interest in PLMHP was transferred to Plaintiff on or around March 31, 2014 as a direct result of Defendant's default on the Note and Pledge and Amendment Agreement dated May 6, 2011 which states, in part, "This Note...is secured by a Pledge of 50% membership interest in Peaceful Lane MHP, LLC pursuant to a Pledge and Amendment Agreement of even date herewith." Plaintiff reserves the right to amend this answer up to the trial of this action.

8. State with particularity all discussions between the Plaintiffs and the Defendant for the period of time from two months prior to the extension of the loan to the Defendant until the date that this law suit was initiated concerning the obligations sought to be collected on

behalf of the Plaintiffs in this action including but not limited to (a) the identity of the person involved in each discussion, (b) the date of each discussion, (c) the subject matter of each discussion, (d) the identity of any documents associated with each discussion and (e) the identity of any witness with knowledge of each discussion.

ANSWER: Plaintiff objects to this Interrogatory as being vague, overly broad and unduly burdensome. Notwithstanding said objection, refer to the documents identified in Plaintiff's answer to Interrogatory Number 2. Plaintiff reserves the right to amend this answer up to the trial of this action.

9. Identify all documents between Plaintiffs and Defendant relating to the alleged obligation sought to be collected in this matter.

ANSWER: Refer to the documents identified in Plaintiff's answer to Interrogatory Number 2. Plaintiff reserves the right to amend this answer up to the trial of this action.

10. Identify all documents between the Plaintiffs and Defendant relating to Peaceful Lane.

ANSWER: Refer to the documents identified in Plaintiff's answer to Interrogatory Number 2. Plaintiff reserves the right to amend this answer up to the trial of this action.

11. State with particularity all debits and credits associated with the Plaintiff's calculation of damages.

ANSWER: Refer to Plaintiff's spreadsheet attached hereto detailing the current amount due under the Note. Plaintiff reserves the right to supplement this answer up to the trial of this action.

12. State with particularity all actions taken by the Plaintiffs in an effort to mitigate their alleged damages.

ANSWER: Refer to the documents outlined in Plaintiff's answer to Interrogatory Number 2. Plaintiff reserves the right to amend this answer up to the trial of this action.

13. State with particularity the value of Peaceful Lane in each calendar year since its inception, include the identification of all documents used in determining the value of

Peaceful Lane in each calendar year since its inception, and identify all witnesses with knowledge of the value of Peaceful Lane in each year of its existence.

ANSWER: Plaintiff objects to this Interrogatory as being overly broad and unduly burdensome. Notwithstanding said objection, refer to the appraisals of PLMHP from 2011, 2012 and 2014 attached hereto along with the printouts from Horry County regarding the County's assessed parcel and market values of PLMHP. Please note that these are not appraisals of Defendant's interest in PLMHP (transferred to Plaintiff in 2014) and do not reflect the related debt and/or other assets and liabilities of PLMHP which would be considered a part of any valuation. Plaintiff reserves the right to amend this answer up to the trial of this action.

14. State with particularity the tax value given for the real property owned by Peaceful lane in each calendar since its inception, include the identification of all documents used in determining the tax value for the real property owned by Peaceful Lane in each calendar year since its inception, and identify all witnesses with knowledge of the value for the real property owned by Peaceful Lane in each year of its existence.

ANSWER: Attached hereto please find PLMHP's current parcel and market value (as assessed by the county of Horry) as well as past values from 2006-2015, with amount of taxes paid each year. Plaintiff reserves the right to amend this answer up to the trial of this action.

THE BRITTAI LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)
Attorney for the Plaintiff

Myrtle Beach, South Carolina
Sept. 19, 2016

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-
Trustee of the Stanley Scott Porter Trust
UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC

Plaintiff,

vs.

Kenneth A. Hucks, Individually and as a
member and formerly designated manager
of Peaceful Lane MHP, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

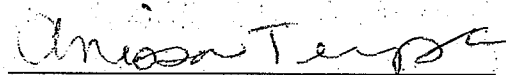
Case No.: 2016-CP-26-01961

CERTIFICATE OF SERVICE

HORRY COUNTY
2016 OCT 26 PM 2:00
MELANIE HOSKINS-WARD
CLERK OF COURT

I, the undersigned employee of the Gleissner Law Firm, LLC, hereby certifies that on October 24, 2016, I have served Defendants, Kenneth A. Hucks, Individually and as a member and formerly designated manager of Peaceful Lane MHP, LLC's Motion for Summary Judgment in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to the following:

Thomas C. Brittain, Esquire
The Brittain Law Firm, PA
4614 Oleander Drive
Myrtle Beach, South Carolina 29577



Anissa Terpstra, Paralegal to
Richard R. Gleissner, Esquire
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505

Facsimile (803) 712-4283
Attorneys for Defendants, Kenneth A. Hucks,
Individually and as a member and formerly designated
manager of Peaceful Lane MHP, LLC

Dated: October 24, 2016

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 16-CP-26-1961

**MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

**TO: THIS HONORABLE COURT AND RICHARD R. GLEISSNER, ESQUIRE,
ATTORNEY FOR DEFENDANT:**

The Plaintiff, S. Scott Porter, Individually and as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC ("Plaintiff") by and through his undersigned attorney, hereby submits this Memorandum in Opposition to Defendant's Motion for Summary Judgment, and in support thereof, would show the following:

STATEMENT OF THE FACTS

On May 26, 2011, a note was entered into between Plaintiff and Defendant based upon outstanding debt owed to Plaintiff by Defendant together with additional money Plaintiff agreed to loan to him. This note was secured by Defendant's pledge of his 50% interest in Peaceful Lane MHP, LLC ("PLMHP"), which he owned 50/50 with Plaintiff.

This note was a demand note, not a typical promissory note with a beginning and an end date, in which Plaintiff could demand payment at any time without being subject to the typical contractual provisions found in a promissory note.

Defendant made only one payment on the note but, over the next few years, continually induced Plaintiff to delay demanding payment on the note and/or taking his 50% interest in PLMHP which he had pledged as collateral on the note. Defendant repeatedly assured Plaintiff that he would pay the loan and interest as soon as he sold some of his assets and would send Defendant documentation as to these assets including his Apache Family Campground stock, interest in Hucks Limited Partnership and Conway National Bank stock.

Plaintiff, believing Defendant's assurances, agreed to deferment on the note. However, after enduring multiple failed promises by Defendant to repay the note, Plaintiff began the process of taking control of Defendant's 50% interest in PLMHP. This process was successfully completed on March 31, 2014, however, Defendant still owed additional money on the note at that time, including interest. Further, the valuation of Defendant's 50% interest in PLMHP became clouded as a result of Defendant losing all PLMHP accounting and bank records prior to September 2012, failing to deposit funds from the sales of some PLMHP's mobile homes, missing rental income, and other issues.

On March 21, 2016, Plaintiff filed this action to collect all monies remaining due on the demand promissory note, including interest, and to determine the valuation of Defendant's 50% PLMHP interest that Plaintiff took control of on or about March 31, 2014.

STANDARD OF REVIEW

I. Motion for Summary Judgment

To grant a motion for summary judgment, the court must find that "there is no genuine issue as to any material fact." *Fed.R.Civ.P.* 56(c). Summary Judgment is appropriate "when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." *Garvin v. Bi-Lo*, 343 S.C. 625, 541 S.E. 2d (2001). Summary

judgment is not appropriate “when further inquiry into the facts of the case is desirable to clarify the application of the law.” *Doe v. Batson*, 338 S.C. 291, 525 S.E. 2d 909 (Ct. App. 1999). Since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. Further, “the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Vermeer Carolina’s, Inc. v. Wood Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E. 2d 301 (Ct. App. 1999). Further, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Management Co., Inc.*, 673 S.E. 2d 801 (S.C. 2009).

ARGUMENT

I. The Defendant is not entitled to summary judgment based upon the fact Plaintiff has filed this action within the applicable statute of limitations.

Pursuant to *S.C. Code Ann.* §15-3-520, there is a twenty-year statute of limitations on the demand promissory note in question.

S.C. Code Ann. §15-3-520(a) states that, “an action upon a bond or other contract in writing secured by a mortgage of real property” must be brought within twenty years. The note in question satisfies the requirements of this statute in that it is secured by a pledge of Defendant’s 50% membership interest in PLMHP. By using an interest in real property to secure his outstanding debt to Plaintiff, Defendant made this legally binding contract subject to a much broader statute of limitations than is allowed under *S.C. Code Ann.* §15-3-530. Therefore, Plaintiff has filed this action well within the allowed twenty-year time period.

Furthermore, the promissory note in question is not a traditional contract with a begin date and an end date, but is instead a demand note, creating a situation where at any time, Scott Porter,

on behalf of the trust could demand payment of the note. There was no automatic ending date. It renewed based on the nature of it as a demand note as opposed to a standard promissory note with a beginning and an end date.

Further, the parties conducted themselves throughout the course of their business interest as if this note was due and payable much later than the date Defendant now claims (see email communications between Defendant to Plaintiff and Plaintiff's Affidavit attached hereto), all of which indicate that there was a meeting of the minds as to the parties that this note was due and payable at the request of Plaintiff, past the November 6, 2011 date. The conduct of the parties establishes the understanding and meeting of the minds of the parties.

II. The Defendant is not entitled to summary judgment based upon Forbearance and Consideration

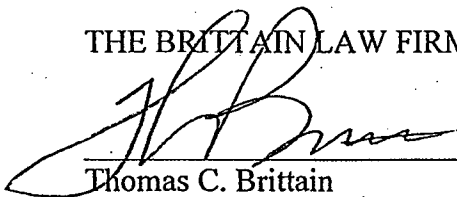
Based on the Affidavit of Plaintiff, not only did he forebear with an understanding that the note be paid and many promises made thereto at the request of Defendant but additionally, made contributions into another business endeavor of the parties, all with an understanding as to make it necessary and appropriate to pay at his demand. Further, should Plaintiff's "version" of the matter be accepted by the Court Plaintiff shall move to amend the pleadings to allege fraud on behalf of Defendant by seeking an extension by promising to sell his Apache stock and provide it to Plaintiff only in an effort to induce him to continue extending the time and delay making a demand on the note.

As such, Plaintiff has more than met his burden to produce a mere scintilla of evidence in order to withstand a motion for summary judgment in this matter.

CONCLUSION

Plaintiff, respectfully requests that this Court deny, in full, Defendants' Motion for Summary Judgment, and in doing so, any further action as this Court deems necessary, just, and proper.

THE BRITTAIN LAW FIRM



Thomas C. Brittain
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
843-449-8562 (Telephone)
843-497-6124 (Facsimile)
Attorney for Plaintiff

February 17, 2017
Myrtle Beach, South Carolina

Allison Lazar

Subject: FW: RE: Proceeding
Attachments: Peaceful Lane Pro-forma.xls; Huckspledgeagr.doc; Hucks.Note.doc

From: Scott Porter [<mailto:scottp@carefree-service.com>]
Sent: Monday, March 28, 2011 11:07 AM
To: 'huckstable@juno.com'
Subject: RE: RE: Proceeding

Not surprised by their demand to show funds. They should reimburse for all items you can document and submit as a billing to CCR with the backup. You may even be able to recover interest on those funds for the period they were out, but probably not – and it may not be enough to ask about. Documentation and doing things the way the bank wants are something you will have to get used to, and Heather will need some guidance since she lacks experience if she is going to handle your accounting.

Regarding PLMHP and your previous email. I will send you a demand for payment for the principal and interest. I will pay for an appraisal to be done, if you can arrange it for us. Let's get a realistic valuation so we can decide the best way to deal with this. Attached is my pro forma income statement and valuation worksheet. Also attached are our note and pledge agreements. The signed ones are in my safe, but these should be good enough for your review.

S. Scott Porter
CEO
The Carefree Companies
Boone's Business of the Year

From: huckstable@juno.com [<mailto:huckstable@juno.com>]
Sent: Thursday, March 24, 2011 6:28 PM
To: scottp@carefree-service.com
Subject: Fw: RE: Proceeding

Scott,

This is the answer I got from one of my consultants from Carolina First. This is the injection request, aminly the expenses that I have incurred up to this point were not all pay out of Cypress Camping Resorts chking acct(it was just opened in Nov.)

So any invoice that might have been paid from Cypress Park mhp or Hucks Family Partnership does not qualify to be counted as a contribution. So they are asking for the full cash injection to reimburse myself, basically.

Meeting with the sitework company to see how much of an adjustment can be done on the road situation. I amy still need to sell something, I have work a deal with my brother to accomplish the rest needed and to make it through the winter. I just got to get started some how.

Kenneth

----- Forwarded Message -----

From: "Rice, Roxana J" <Roxana.Rice@carolinafirst.com>
To: "huckstable@juno.com" <huckstable@juno.com>, "Wardell, Robert F" <Robert.Wardell@carolinafirst.com>, "Collins, Karin K" <Karin.Collins@carolinafirst.com>, "Phillips, Jeffrey L" <Jeffrey.Phillips@carolinafirst.com>

Allison Lazar

Subject: FW: Advance on note
Attachments: Hucks Note int 5 10 11.xls

From: Scott Porter [<mailto:scottp@carefree-service.com>]
Sent: Monday, May 9, 2011 11:25 AM
To: 'Kenneth'
Cc: 'biggs porter'
Subject: Advance on note

As we discussed this week, the amount due on your existing note, that is secured by your membership interest in Peaceful Lane MHP, LLC, has accrued interest as indicated on the attached worksheet, resulting in a total due of \$95,704.56 through Friday May 6, 2011. On that date we advanced you an additional \$55,000.00 under the additional advances provisions of the Note, bringing the total due to \$150,704.56 on that date. It is our understanding that you will be repaying the additional advance of \$55,000.00 plus interest within 60 days. The remaining balance shall be due upon demand. Please respond in the affirmative, if you agree with these statements.

S. Scott Porter
Co-Trustee
Stanley Scott Porter Trust

Date of Advance		Date of Change	Prime Rate	Note Rate	Number 1% Days	Interest	New Principal
2/1/2008	80,000.00	30-Jan-08	6.00%	7.00%	46	705.75	
		18-Mar-08	5.25%	6.25%	43	589.04	
		30-Apr-08	5.00%	6.00%	161	2,117.26	
		8-Oct-08	4.50%	5.50%	21	253.15	
		29-Oct-08	4.00%	5.00%	48	526.03	
		16-Dec-08	3.25%	4.25%	47	437.81	
2/1/2009	84,629.04		3.25%	4.25%	365	3,400.00	
2/1/2010	88,029.04		3.25%	4.25%	365	3,400.00	
2/1/2011	91,429.04		3.25%	4.25%	365	3,400.00	
5/6/2011	94,829.04		3.25%	4.25%	94	875.62	
Balance including int.	95,704.66						

Allison Lazar

Subject:

FW: Note and Agreement

Attachments:

Huckspledgeagr 2011.doc; Hucks.Note 2011.doc

From: Scott Porter [<mailto:scottp@carefree-service.com>]

Sent: Thursday, May 26, 2011 11:08 AM

To: 'kennethhucks@gmail.com'; 'huckstable@juno.com'

Subject: Note and Agreement

I have updated our agreement to reflect our recent advance and confirm our arrangement. Please sign two copies and return them to me. I will sign one set and send it back to you so we will both have an original.

Thanks

S. Scott Porter
CEO

The Carefree Companies
Boone's Business of the Year

Allison Lazar

Subject: FW: Keith and land
Attachments: PLMHP 2012 Pro Forma.xls

From: Scott Porter [mailto:scottp@carefree-service.com]
Sent: Tuesday, August 2, 2011 12:08 PM
To: 'huckstable@juno.com'
Subject: Keith and land

I have a lot to cover here and it is not easy to explain or understand, but I am going to take a shot at doing this in writing and then we can talk through it to make sure we both understand. This is a very direct analysis and I hope you will take it in the right context. You really need to evaluate all of this and see if you believe it is worth it to go forward with CCR. Once you have read through it and thought about it, give me a call and we can go over it. Some of this I can't change, and some I can, so we can talk about it. Here goes.

PLMHP needs to be refinanced and probably at a reduced amount, requiring an additional investment for the pay-down. In this market I don't think it is worth more than \$400,000. Based on your ownership, 50% of the debt is \$130,000 and the current loan to you is \$155,000 giving a value for 50% of \$285,000 or \$570,000 for the entire property. I can't justify converting the debt into ownership at that level. It is a reach but given that you contributed some trailers and deserve some credit for that, I can take over your interest for release of your guaranty on the debt at CNB and forgiveness of \$100k of the debt, valuing your interest at \$230,000 and the property at \$460,000. See attached worksheet on PLMHP. This means you will have to find a way to repay the \$55k advance – I presume if the CNB loan is paid off the stock will be freed up and the payment can be made from that.

CCR:
The loan commitment now has total project funding at \$5,540,000 with the land value at \$2,315,000. We should reduce the project cost from the bank by \$315,000 to reflect the land value at \$2MM, based on Keith getting \$1MM for 50%. The revised project cost is \$5,225,000 which consists of \$3,725,000 debt, \$1,000,000 land contributed and \$500,000 cash. One thing I realized is that the repayment of the CNB loan is an additional payment not related to the project and is essentially an additional payment for the land. The CNB loan should be paid outside of the project or the land values/payments should be reduced. This would reduce the payment to Keith by half the \$245k and the value attributed to you should be reduced by the half the amount of the CNB loan. Therefore Keith payment should be equal to \$1MM minus one half of \$245k, or \$875,000. This same amount would be the value assigned to your contribution. So if you reduce the land values/payments by the \$245k CNB loan, then our project cost/investment is \$4,980,000. The appraised value was \$4,900,000. Assuming the commercial site is too high in the appraisal at \$600k, and should be \$300,000 then the appraisal value should be \$4,600,000. Then our investment exceeds the revised appraised value by \$380,000. We need to save on development costs or working capital investment to keep the total project below the revised appraised value. The only way to save on working capital is to achieve the stabilized income or break even cash flow quicker.

Assuming I have made myself clear and you agree with my analysis, then 1) you and Keith have to agree that if the CNB loan is repaid out of the project funds, then your land values/payments would be reduced, AND 2) we need to find \$380k in project cost savings somewhere. I suggest we ask Keith to take \$125,000 as an 8.34% ownership interest. Then if we can save the contingency money or reduce our working capital needs, then we will have saved enough for this to make sense. If we reduce the loan by \$380k and take the interest rate to 6% our payment would be \$21,500 +/- At 6.5% it goes up \$1,000 monthly.

Now the bank is requiring a \$500,000 cash investment. I assume you are not in a position to make any, so I would be required to make that investment. My original deal was based on a \$400k cash investment and an additional \$100k investment by cancelation of the PLMHP note. As mentioned above, the note cancelation will now have to be for the purchase of your interest in PLMHP to retire the debt. I will have to work with you and the bank to allow me to purchase the park models and place them at Apache before year end and contribute them, rather than cash. Since I am the only cash investor and "cash is king", I will still need to receive the preferred return, etc. which I outlined in the original proposal. If we can agree on all these terms, then I can go forward with the final arrangements with the bank to get this done. You really need to decide if this is what you want to do. I don't want you to do it because of some sense of duress from your financial situation or your family's needs, you need to make sure this business deal makes sense for you.

If my analysis is correct and your investment is really \$875,000, Keith agrees to hold back \$125,000, then the combined capital would be:

Kenneth Hucks	\$ 875,000	58.33%
Porter entities	\$ 500,000	33.33%
Keith Hucks	<u>\$ 125,000</u>	<u>8.34%</u>
Total	\$1,500,000	100.00%

As I said before, you could structure your deal with Keith to provide for a put or a call on his interest. I would not think you would want to do that before five years have passed.

S. Scott Porter
CEO
The Carefree Companies
Boone's Business of the Year

Allison Lazar

Subject: FW: FW: Charleston Housing

From: Scott Porter [mailto:scottp@carefree-service.com]

Sent: Friday, December 2, 2011 2:42 PM

To: 'Kenneth Hucks'

Subject: RE: FW: Charleston Housing

I have no problem with you seeing what else can be done on the commercial stuff. What we have spec'd out now is different than where we started. Some changes were due to code changes, some we changed the spec and some you and they were looking at different drawings for the original bids. Remember that we have some design and engineering costs incurred to date with Nationwide that we will have to pay if we cancel, so the differences will have to be more than a few thousand dollars.

Sure I would sell it but I need to know what the current balance is on the CNB note. It is going to take that plus \$155,000 you owe the trust plus \$155,000 to match for my interest, just for you to breakeven. So if the balance is \$260,000 at CNB, then we need \$570,000 net, just for you to walk away.

S. Scott Porter

CEO

The Carefree Companies

Boone's Business of the Year

From: Kenneth Hucks [mailto:kennethhucks@gmail.com]

Sent: Friday, December 02, 2011 10:58 AM

To: Scott Porter

Subject: Re: FW: Charleston Housing

Did not mean to be crude or rude. I have had difficulty with NCB being the only provider. My nature is to shop for the best quality and quantity. I have had my experience. The office we are probably at our limit. The bath houses are costing right at 100. per ft. That doesn't include 8000. Allowed for fixtures.

I just feel that now that the time is available I need to see what else is out there price wise.

To change topics. Would you consider selling PLMHP at this time. If so what price. Have a very interested party that probably would act before we had to do anything with CNB in January. Let me know. I am meeting with them again on Monday, they also would buy the rest of the wz2 units we could not use at CCR. Headed to another appt. I will be in touch later today.

Kenneth

On Nov 29, 2011 11:14 AM, "Scott Porter" <scottp@carefree-service.com> wrote:

See below regarding three trailers coming to PLMHP

S. Scott Porter

CEO

The Carefree Companies

Boone's Business of the Year

Scott Porter

From: huckstable@juno.com
Sent: Tuesday, July 10, 2012 9:09 AM
To: scott@carefree-service.com
Subject: Fw: letter of intent

Scott,

you could use this info to do a letter of intent too, you could just bump the offer 10K- no need to be to extreme. Thanks. The other members are suppose to be meeting today.

Kenneth

----- Forwarded Message -----

From: "huckstable@juno.com" <huckstable@juno.com>
To: ejb62@AOL.com
Subject: letter of intent
Date: Mon, 9 Jul 2012 18:09:39 GMT

Kenneth Hucks
5790 Dick Pond Road
Myrtle Beach , S.C. 29588

Date: July 8th, 2012

Re: Letter of Intent to purchase
- Apache Family Campground Stock
- Remainder of % of membership Hucks Limited Partenership. LLC

Mr. Hucks

This letter is for the sole pupose of expressing my intent to purchase: 66.67 shares of Apache Family Campground , Inc in the amount of \$592,266.000 and your remaining interest in Hucks Limited Partnership, LLC in the amount of \$474,000.00. Please notify within 10 days of reciept your acceptance of this offer.

Contact info :

P.O. Box 9269, Myrtle Beach, S.C. 29578
215 Sandy Lane, Surfside Beach, S.C. 29575
843-238-0317

53 Year Old Mom Looks 33

The Stunning Results of Her Wrinkle Trick Has Botox Doctors Worried
consumerproducts.com

Scott Porter

From: huckstable@juno.com
Sent: Wednesday, August 8, 2012 1:57 PM
To: charles@wacclt.com; Cloud-dancer@prodigy.net; CokerFrance@yahoo.com; Brbellamy011@comcast.net
Cc: scottp@carefree-service.com; Fredv20@comcast.net
Subject: Fw: Letter from Brandt
Attachments: Letter from Brandt.PDF

For your viewing.

Kenneth

Please note: forwarded message attached

From: Ejb62@aol.com
To: huckstable@juno.com
Subject: Letter from Brandt
Date: Wed, 8 Aug 2012 09:58:42 -0400 (EDT)

53 Year Old Mom Looks 33
The Stunning Results of Her Wrinkle Trick Has Botox Doctors Worried
consumerproducts.com

EARL J. BRANDT
P O BOX 9269
MYRTLE BEACH SC 29578

August 8, 2012

Mr. Kenneth Hucks
P O Box 31299
Myrtle Beach SC 29588

Re: Apache Campground

Dear Mr. Hucks:

I am in receipt of the stock appraisal. It appears to place a higher value on the Apache Family Campground, Inc. stock than what you estimated. I would recognize this as a fair value.

Pursuant to my intent to purchase, please let me know the position the board of directors are taking with regard to their right of refusal by August 17th. At that time if I do not have a satisfactory position I will withdraw my intent.

Sincerely,



Earl J. Brandt

Allison Lazar

To: Marilyn McCormick
Subject: RE: The proposal

From: Scott Porter [mailto:scottp@highcountry4rent.com]
Sent: Wednesday, October 09, 2013 9:28 AM
To: Bret Davis (bdavis@davislawfirm.us)
Cc: kenneth@cypresscampingresort.com; laura@cypresscampingresort.com; Biggs Porter bcporter@msn.com
Subject: The proposal

A month ago, after Heather proved she was willing to falsify accounting records to cover up her errors or misappropriation at Peaceful Lane MHP, I informed my brother who is co-trustee and he was adamant that we take immediate action. Therefore, I insisted on a members meeting (Kenneth Laura and me) and provided notice that we wanted to form the management board as provided in the operating agreement, so we could resolve any disagreements about how to handle Heather and protect the company from potential deadlock.

At that meeting, I made the offer that Kenneth could 1) acquire my interest in CCR if he got me back all that was invested (\$818,000 in CCR) or owed by him personally (\$165,000 note*); or 2) I would go forward with CCR as planned if (a) he would terminate Heather, (b) modify the operating agreement to provide for a buyout (instead of the plan to have our kids in business together), (c) fund his share of the \$310,000 needed to repay the line of credit (approximately \$200,000), (d) repay the personal loan of \$165,000 and (e) demonstrate he had sufficient liquidity to continue to fund the cash shortfalls of CCR, say \$200,000. Kenneth has been unable to find anyone else who will liquefy his assets. I indicated my willingness to consider exchanging some of his illiquid assets to satisfy these obligations. So Kenneth would need to come up with cash or assets worth either 1) \$983,000 or 2) \$565,000, more or less. Shortly thereafter, I discovered that Heather had been insubordinate, ignored my direct instructions and knowingly violated federal criminal law. I asked for her immediate resignation and to turn herself in. Kenneth asked if she could stay for 5-10 days to train her replacement. I agreed. She and Kenneth both turned themselves in, indicating that Kenneth was knowledgeable and violated the same law.

S. Scott Porter
Member/CEO
Carefree Property Co.
d/b/a High Country 4 Rent
828-263-9076

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR., ****
DAVID R. GRAVELY**
EDWARD B. BOWERS, JR., *****
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER**

*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO MEMBER OF NORTH CAROLINA BAR
***CERTIFIED MEDIATOR
****RETIRED
*****LLM TAXATION
*****MEMBER OF NC BAR ONLY

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DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*****
ROBERT S. SHELTON***
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III**
BENJAMIN A. BAROODY**
PHILLIP H. ALBERGOTTI*****
HAYES K. STANTON**
JAMES E. HILL, III*****
KIERSTEN M. GORDON*****

January 15, 2014

VIA FAX AND U.S. MAIL

Mr. Thomas C. Brittain
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577

Re: Cypress Camping Resort, LLC

Dear Tommy:

Our client, Kenneth A. Hucks, proposes the following to settle all claims regarding Cypress Camping Resort, LLC ("Cypress").

- (1) The members of Cypress will make a total capital contribution to Cypress of an amount equal to the outstanding balance of the Conway National Bank loan inclusive of accrued and unpaid interest. The members would contribute in proportion to their membership interest in Cypress. Immediately following contribution, Cypress shall pay the Conway National Bank loan in full.
- (2) Cypress shall assume liability for all accounts payable of Cypress as indicated in correspondence from Stephanie Chassion on January 9, 2014 and indemnify and hold harmless Carefree Property Company, LLC ("Carefree") and the Stanley Scott Porter Trust (the "Porter Trust") from any and all liability associated with such accounts payable.
- (3) Kenlar Investments, LLC (Kenlar") will purchase the membership interest of Carefree and the Porter Trust in Cypress for a total sum of Three Hundred Nineteen Thousand (\$319,000.00) Dollars. Contemporaneously

January 15, 2014

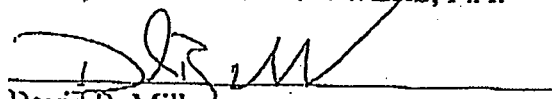
Page 2

with the purchase of membership, all parties shall execute mutual releases regarding any and all matters related to Cypress and Cypress and Kenlar shall agree to indemnify and hold harmless Carefree and the Porter Trust from any and all matters related to Kenlar.

Please let us know within ten (10) days if your client is agreeable with the above terms. If you have any questions or concerns please feel free to give us call.

Very truly yours,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


David B. Miller

DBM:ptm

cc: Client

Allison Lazar

From: Marilyn McCormick <marilyn@brittainlawfirm.com>
Sent: Monday, January 20, 2014 10:24 AM
To: Allison Lazar
Subject: FW: Offer

From: Scott Porter [mailto:scottp@highcountry4rent.com]
Sent: Sunday, January 19, 2014 7:22 PM
To: Huckstable@juno.com
Subject: RE: Offer

So we both put in our share of \$310k, which is \$112k+ for me, which means I then have \$612k+ in CCR, and you want meet to sell you my interest for \$319k. That won't work. The accounts payables don't affect me, we are not liable for them anyway, especially if I don't have any more ownership – they are all yours. If I were to fund a share of the A/P then I would have more invested and we arrive at the same math. Am I being clear or am I missing something in your equation?

S. Scott Porter
Member/CEO
Carefree Property Co.
d/b/a High Country 4 Rent
828-263-9076

From: Huckstable@juno.com [mailto:Huckstable@juno.com]
Sent: Sunday, January 19, 2014 7:11 PM
To: Scott Porter, CEO
Subject: RE: Offer

Scott, that is in addition to \$k for CNB and A ccts payable s. Give or take a dollar or two.
Kenneth

Sent from my T-Mobile 4G LTE Device

----- Original message -----

From: "Scott Porter, CEO" <scottp@highcountry4rent.com>
Date: 01/19/2014 4:59 PM (GMT-05:00)
To: Kenneth Hucks <huckstable@juno.com>, Kenneth A Hucks <kenneth@cypresscampingresort.com>
Subject: Offer

Before I unleash the dogs, I should make sure I understood your offer. Did you intend to offer \$319k for my \$612k investment? That's what it says.

Sent from my Verizon Wireless 4G LTE smartphone

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

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JOHN K. RUTENBERG (1939-2012)
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*****LLM TAXATION
*****MEMBER OF NC BAR ONLY

Writer's Direct Line: 843-916-7168
E-Mail: DMiller@BellamyLaw.com

January 21, 2014

Via Electronic and U.S. Mail

Mr. Thomas C. Brittain
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577

Re: Cypress Camping Resort, LLC

Dear Tommy:

Our clients have exchanged several emails following my letter to you of January 15, 2014. Hucks now proposes the following alternatives to settle all claims regarding Cypress Camping Resort, LLC ("Cypress").

Alternative 1

- (1) Kenlar Investments, LLC shall pay the outstanding balance of the Conway National Bank loan (\$310,000.00), together with all accrued and unpaid interest.
- (2) Cypress shall retain responsibility for all accounts payable of Cypress including any share allocable to Carefree Property Company, LLC and the Stanley Scott Porter Trust. The amount allocable to Carefree and Porter Trust is Seventy Thousand, Six Hundred Eighty Six (\$70,686.00) Dollars.
- (3) Hucks has made three mortgage payments (August 13 through October 14). Additionally, Hucks has caused Cypress to make three mortgage payments (November 13 through January 14). The payment amounts allocable to Carefree and Porter Trust (37.4%) total Forty Six Thousand, Three Hundred

Two and 70/100 (\$46,302.70) Dollars. Carefree and Porter Trust will not be required to pay in their respective shares.

- (4) Kenlar will purchase the membership interest of Carefree and the Porter Trust for a total sum of Three Hundred Eighty Three Thousand Eleven (\$383,011.00) Dollars. Contemporaneously with the purchase of membership, all parties shall execute mutual releases regarding any and all matters related to Cypress and Cypress and Kenlar shall agree to indemnify and hold harmless Carefree and the Porter Trust from any and all matters related to Cypress.
- (5) Cypress shall allocate losses from the 2013 and 2014 tax year in accordance with ownership through the date of purchase of the membership of Carefree and the Porter Trust by Kenlar.

Alternative 2

- (1) Kenlar shall pay the outstanding balance of the Conway National Bank loan, together with all accrued and unpaid interest.
- (2) Cypress shall retain responsibility for all accounts payable of Cypress including any share allocable to Carefree Property Company, L.L.C and the Stanley Scott Porter Trust. The amount allocable to Carefree and Porter Trust is Seventy Thousand, Six Hundred Eighty Six (\$70,686.00) Dollars.
- (3) Hucks has caused six mortgage payments to be made (August 13 through January 14). The payment amounts allocable to Carefree and Porter Trust (37.4%) total Forty Six Thousand, Three Hundred Two and 70/100 (\$46,302.70) Dollars. Carefree and Porter Trust will not be required to pay in their respective shares.
- (4) Kenlar will purchase the membership interest of Carefree and the Porter Trust for a total sum of Five Hundred Thousand (\$500,000.00) Dollars. Contemporaneously with the purchase of membership, all parties shall execute mutual releases regarding any and all matters related to Cypress and Cypress and Kenlar shall agree to indemnify and hold harmless Carefree and the Porter Trust from any and all matters related to Kenlar.
- (5) Cypress shall allocate losses from the 2013 and 2014 tax years to Kenlar.

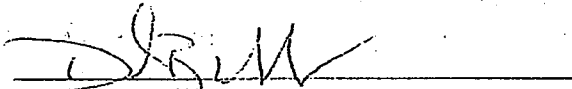
January 21, 2014

Page 3

Please let us know within ten (10) days if your client is agreeable with the above terms. If you have any questions or concerns please feel free to give us call.

Very truly yours,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.



David B. Miller

DBM:ptm

cc: Client

Phillip H. Albergotti, Esq.

Allison Lazar

Subject: FW: Revised agreement
Attachments: CCR Buy Sell agreement (Revised PHA 2-2-14) SSP markup 2.docx; Assignment with Sale SSP markup.docx; Prommissory Note SSP 2.docx

From: Scott Porter [<mailto:scottp@highcountry4rent.com>]
Sent: Monday, February 3, 2014 4:04 PM
To: 'Miller, David B.'; 'tommy@brittainlawfirm.com'; 'huckstable@juno.com'
Cc: 'Albergotti, Phillip H.'; preston@brittainlawfirm.com
Subject: RE: Revised agreement

I have revised the agreements to the best of my ability with phone conference with Tommy. I am sending a copy with changes marked. I am not the best drafter, so please review my language and clean it up as necessary. Tommy will be drafting some revision to paragraph 9 to provide for indemnity for Seller equal to those provided to Buyers.

S. Scott Porter
Member/CEO
Carefree Property Co.
d/b/a High Country 4 Rent
828-263-9076

From: Scott Porter [<mailto:scottp@highcountry4rent.com>]
Sent: Monday, February 03, 2014 12:24 PM
To: 'Miller, David B.'; 'tommy@brittainlawfirm.com'; 'huckstable@juno.com'
Cc: 'Albergotti, Phillip H.'; preston@brittainlawfirm.com
Subject: RE: Revised agreement

Just to give everyone a heads up. We do have some issues that I am discussing with Tommy. Unfortunately he is on his way to federal court and has limited time to look over the agreements and respond to my questions. He won't be available before late this afternoon, although he is trying to find time while at the courthouse to complete his review. I will be traveling tomorrow but should be able to have signed documents scanned and sent to Tommy in the morning before I leave.

S. Scott Porter
Member/CEO
Carefree Property Co.
d/b/a High Country 4 Rent
828-263-9076

From: Miller, David B. [<mailto:DMiller@bellamylaw.com>]
Sent: Monday, February 03, 2014 10:20 AM
To: tommy@brittainlawfirm.com; huckstable@juno.com; scottp@highcountry4rent.com
Cc: Albergotti, Phillip H.
Subject: FW: Revised agreement

Forwarded are what should be the final documents. My clients are coming in at 2:30 to sign. Mr. Porter will need to sign today also, the earlier the better. You all saw the communication from Bill Benson at CNB. We are very short on time to make this work. Mr. Porter will need to sign in blue ink, scan and e-mail to all above addressees. Additionally he will need to Fed-X the originals to my attention at my Myrtle Beach office.

Thanks to all for working through this and we look forward to wrapping it up, hopefully today.

From: Albergotti, Phillip H.

Sent: Monday, February 03, 2014 9:26 AM

To: Miller, David B.

Subject: Revised agreement

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copy, distribution, or any action taken or omitted to be taken in reliance on it is prohibited and may be unlawful.

TREASURY DEPARTMENT CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the Treasury Department, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

Allison Lazar

Subject: FW: PLMHP

From: Scott Porter [mailto:scottp@highcountry4rent.com]
Sent: Thursday, November 13, 2014 9:51 PM
To: 'Kenneth A Hucks'
Subject: RE: PLMHP

You don't have any interest after 3/31/14, so you can't have it.

S. Scott Porter
Owner/CEO
High Country 4 Rent
Boone, NC

From: Kenneth A Hucks [mailto:kenneth@cypresscampingresort.com]
Sent: Thursday, November 13, 2014 8:18 PM
To: Scott Porter
Cc: <laura@cypresscampingresort.com>
Subject: Re: PLMHP

If you would please forward a cash flow analysis for 2014 to date I will forward to Phillip for an advised settlement.

Kenneth

On Nov 13, 2014, at 5:44 PM, "Scott Porter" <scottp@highcountry4rent.com> wrote:

Attached is a worksheet with the balance sheet (PLMHP BS tab) with market values and valuation of your interest in PLMHP on 3/31/14, the date you forfeited it in partial payment of the note. Also included in the worksheet tab "Hucks NP" is the calculation showing the balance of the note as of today after giving credit for the deemed payment on 3/31.

These amounts have been adjusted based on the results of your meeting with me and John Ray and our subsequent discussion about the amounts you believe you received for the mobile homes that were sold in 2011 and 2012.

In summary, on 3/31/14 I took your interest in PLMHP which you had pledged to secure the \$155,000 N/P to my trust and I refinanced the LLC property to remove you from the guaranty. The bank prepared an appraisal of the property as of that date which was \$280,000. It was subsequently determined that you had retained proceeds of \$31,985 from sales of mobile homes which belonged to PLMHP which are reflected as a receivable from you on the books of the LLC as of 12/31/13 and remains outstanding as of 3/31/14 and as of this date. The balance sheet as of 3/31/14 indicates that each of our interest in PLMHP was worth \$48,458 on 3/31 based on the bank's appraisal prepared for the refinance where I took you off the guaranty as of that date. Since you owe the LLC for the MH sales proceeds I reduced the value of your interest by that amount, resulting in \$16,473 which I credited as a reduction of the note amount due on that date in the note calculations.

The \$155,000 note was signed on 5/26/11 and was due on 11/5/11 after which it was in default and earning the default rate of 18% interest. One payment was made for \$1,000 on 8/8/11 when Heather informed me that PLMHP was going to make each of us a \$1,000 distribution and I suggested that any distribution to you should be applied by you to reduce your note. No other payments have been made. As you can see from the attached calculations, the amount due on 3/31/14 was \$234,362.74 before application of the value of your forfeited PLMHP, LLC interest. Once that forfeiture is applied, the balance is \$217,889.73. The balance due as of 11/12/14 is \$242,173.98.

I submit this information for your review and will tell you that I have not included in the above the amounts of any additional recovery that PLMHP may be entitled to were it to pursue recovery from you of other monies or the cost of restoring the LLC books and records, since the original books and records were lost by Properties Unlimited. This is intended to form the basis for a conversation about reaching an agreement about the amount that is owed by you so that we can develop a means and method for repayment.

S. Scott Porter

<Final PLMHP 3-31-14 FS and FMV.xlsx>

Frenzy Over New Diet Pill

Stores Across U.S. Sold Out of This New 'Miracle' Weight Loss Pill.

HLifestyles.com

	Date	Balance Due on Date		Prime	Note Rate	# Days	Interest Thru Next Date
Balance	5/26/2011	155,000.00	Beginning balance	3.25%	4.25%	74	1,335.55
	8/8/2011	155,335.55		3.25%	4.25%	89	1,609.74
Maturity	11/5/2011	156,945.29	Default Rate		18.00%	366	28,327.55
	11/5/2012	185,272.84		3.25%	18.00%	365	33,349.11
	11/5/2013	218,621.95		3.25%	18.00%	146	15,740.78
	3/31/2014	234,362.74		3.25%	18.00%	0	-
	3/31/2014	217,889.73		3.25%	18.00%	226	24,284.26
	11/12/2014	242,173.98		3.25%	18.00%	Balance due this date	
	11/13/2014	242,293.41		3.25%	18.00%	1	119.43

Payment
Received

NOTES

New Note executed.
(1,000) payment applied 8/8/11

(16,473.01) PLMHP Value applied

Daily Interest

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 16-CP-26-1961

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

**TO: THIS HONORABLE COURT AND RICHARD R. GLEISSNER, ESQUIRE,
ATTORNEY FOR DEFENDANT:**

The Plaintiff, S. Scott Porter, Individually and as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC ("Plaintiff") by and through his undersigned attorney, hereby submits this Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment.

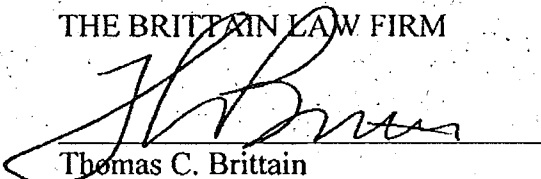
On February 21, 2017, Plaintiff received Defendant's Supplemental Memorandum in Support of his Motion for Summary Judgment in which he argues that the twenty-year statute of limitations provided under *S.C. Code Ann. §15-3-520* does not apply to this action since there is no mortgage involved in Defendant's pledge of his 50% membership interest in PLMHP as collateral on the note in question.

Plaintiff disagrees. Black's Law Dictionary defines a mortgage as, "a conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms". When Defendant defaulted on the note Plaintiff moved forward with taking his 50% interest in the

PLMHP and, at that time, refinanced the property and removed Defendant from the guaranty. Had Defendant not conveyed his interest in this property as collateral on the note this action would fall under *S.C. Code Ann.* §15-3-530, which has a three-year statute of limitations rather than the much broader statute allowed under §15-3-520.

However, even in the event the Court determines that *S.C. Code Ann.* §15-3-530 does apply to this action and is therefore limited to a three-year statute of limitations, Plaintiff is still within his time to bring this action. Plaintiff moved forward with taking Defendant's 50% interest in PLMHP, in compliance with the terms and conditions of the note, on March 31, 2014. Therefore, Plaintiff would have three years from that date to bring forth this action to collect all monies remaining due on the demand promissory, including interest, as well as to determine the valuation of Defendant's 50% PLMHP interest that Plaintiff took control of on or about March 31, 2014.

THE BRITTAIN LAW FIRM



Thomas C. Brittain
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
843-449-8562 (Telephone)
843-497-6124 (Facsimile)
Attorney for Plaintiff

Feb 24, 2017
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 16-CP-26-1961

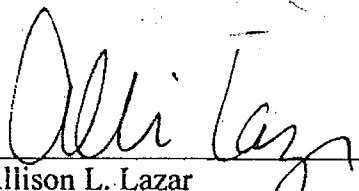
CERTIFICATE OF SERVICE

2017 FEB 27 AM 8:37

Allison L. Lazar hereby certifies that she is an employee of The Brittain Law Firm, P.A., attorneys for Plaintiff S. Scott Porter, Individually and as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC and that she caused to be served this day, February 24, 2017, by email and U.S. First Class Mail the documents listed below in the above-entitled action to the parties set out below:

DOCUMENTS: Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment

PARTIES: Richard R. Gleissner, Esquire
Gleissner Law
1237 Gadsden Street, Suite 200A
Columbia, SC 29201


Allison L. Lazar

 ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	
S. Scott Porter, Individually and as Co-	)	
Trustee of the Stanley Scott Porter Trust	)	Case No.: 2016-CP-26-01961
UA dated January 2, 1991, a member of	)	
Peaceful Lane MHP, LLC	)	
	)	
Plaintiff,	)	MOTION FOR JUDGMENT
	)	NOTWITHSTANDING THE VERDICT
vs.	)	OR, IN THE ALTERNATIVE, FOR
	)	NEW TRIAL
	)	
Kenneth A. Hucks, Individually and as a	)	
member and formerly designated manager	)	
of Peaceful Lane MHP, LLC,	)	
	)	
Defendants.	)	
	)	

Now comes Kenneth A. Hucks, individually and as a member and the designated manager of Peaceful Lane MHP, LLC ("Hucks" or the "Defendant"), and hereby moves, pursuant to the South Carolina Rules of Civil Procedure (SCRPC), for judgment notwithstanding the verdict, or in the alternative a new trial. After the verdict was read, the Court granted ten days to file post judgment motions and their supporting arguments. In support of his motion, the Defendants states as follows:

Defendant, having previously at the close of testimony at the trial of this action moved the court to direct a verdict in his favor, which motion was denied, and subsequently a verdict having been returned by the jury in favor of plaintiff against defendant, is entitled to judgment notwithstanding the verdict in light of the facts, evidence, and witness testimony. If this Court deems a judgment notwithstanding the verdict in the Defendant's favor inappropriate, the facts, the evidence, the witnesses, the trial circumstances, and the verdict support the granting of a new

trial.

I. STANDARD OF REVIEW

Rule 50(b) of the SCRPC provides that if a party files a motion for judgment as a matter of law under Rule 50(a), “may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative.” SCRPC 50(b). In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002) (citing *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999)). “[T]he trial judge is concerned with the existence of evidence, not its weight.” *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003).

Under Rule 59(a) of the SCRPC, “A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State” SCRPC 59(a). Where there has been a judicial error in the charge, which might influence the verdict, this gives a right to a new trial. *Whatley v. Murrell*, 32 S.C.L. 389 (S.C. App. L. 1847). “[T]he court possesses broad, inherent authority to grant a new trial for any prejudicial errors committed during the trial as a matter of fundamental fairness.” *Ex parte Kent*, 379 S.C. 633, 640–41, 666 S.E.2d 921, 925 (Ct. App. 2008); See *Howard v. State Farm Mut.*

Auto. Ins. Co., 316 S.C. 445, 449, 450 S.E.2d 582, 584–85 (1994) (holding the court may order a new trial based upon the erroneous admission of testimony when the record shows error and prejudice). “The inadequacy of the amount of damages awarded by a verdict of the jury does not, as a general rule, entitle the party litigant against whom the verdict was rendered to a new trial, although the inadequacy may be so great as to furnish good ground for new trial at the instance of the party in whose favor the verdict was returned.” *Scott v. Little*, 263 S.C. 261, 266–67, 210 S.E.2d 132, 134–35 (1974). “One cannot secure a new trial upon the ground that his opponent ought to have recovered either a greater amount or nothing.” *Id.*

II. ARGUMENT

The Defendant is entitled to a judgment notwithstanding the verdict as (1) the Plaintiff failed to present admissible evidence relating to the damages he suffered; (2) any evidence presented, whether admissible or not, failed to meet the burden necessary to prevail in its breach of contract action; and (3) the Plaintiff failed to present evidence his claim was not barred by statute of limitations. Pursuant to Rule 50 (b) of SCRPC, the Defendant renews his Rule 50 Motion for Judgment as a Matter of Law, restates and incorporates by reference all arguments set forth in his motion for directed verdict made at the close of the Plaintiff’s case and chief and renewed at the close of the presentation of all evidence as if fully set forth herein. The Defendant is similarly entitled to a new trial in light of (1) the evidence erroneously allowed into evidence by the Court; and (2) the Court’s erroneous charges to the jury.

A. The Defendant is entitled to judgment as a matter of law notwithstanding the verdict.

The finding in favor of the Plaintiff by the jury was against the manifest weight of the

evidence. Moreover, the jury's verdict is inconsistent and contrary to the law. Judgment as a matter of law should be entered on behalf of the Defendant because the sufficiency of the evidence cannot sustain a verdict for Plaintiff, and there was no evidence submitted that the Plaintiff suffered any damages as a result of the alleged breach of contract by Defendant. Further, the Plaintiff was precluded from judgment for his action under the South Carolina Commercial Code. Finally, the Plaintiff failed to present the necessary evidence to show that his action was not precluded by the statute of limitations. Therefore, this Court should grant the Defendant judgment notwithstanding the verdict.

i. The only evidence relied upon by the Plaintiff was inadmissible.

In determining whether there is sufficient evidence to support a verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Sabb*, Supra. The evidence relied upon by the Plaintiff in support of his cause of action was erroneously admitted into evidence. At the hearing, Plaintiff testified on redirect by Plaintiff's counsel and the only evidence admitted as to the principal balance due on the note and the value of the collateral he had taken from Defendant and applied against that balance. The Plaintiff's evidence regarding these numbers was based upon the information contained in an email he sent on November 13, 2014 to the Defendant. The Defendant objected on the basis that Plaintiff's testimony regarding the principal balance and the value of the collateral was based upon hearsay. The Plaintiff then sought to introduce into evidence as Plaintiff's exhibit 2, the email. The Defendant then objected based upon the email's own reliance upon hearsay therein. The numbers relied upon therein are explicitly based upon "balance sheets" and the "banks appraisal prepared for the refinance," which were not included

within the exhibit. The Court allowed the Plaintiff to testify as to the remaining balance and collateral value and similarly allowed the admission of the email into evidence based solely upon the business records exception. Plaintiff's exhibit 2 is the only evidence that as of March 31, 2014 the remaining balance of the principal and interest was \$234,362.74 and the Defendant's interest in the collateral as being worth \$16,473.00.

This testimony and email are the very definition of hearsay. See Rule 801 South Carolina Rules of Evidence. Plaintiff had no personal knowledge of any of the calculations used in the email. Plaintiff had no personal knowledge regarding the details of the appraisal. His testimony and statements within the email demonstrate his knowledge was based exclusively on those documents referenced that purport to show amounts owed and a valuation of the collateral. By testifying to a conclusion based only on statements he read in documents and by submitting the email that similarly relied upon these documents, Plaintiff and the email necessarily testified to the truth of those statements. His testimony and the email, therefore, was offered to prove the truth of the statements and was hearsay.

The Court relied exclusively upon the business records exception to admit the testimony and email into evidence. According to Rule 803(6), the following is not excluded by the rule against hearsay:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness....

See also § 19-5-510 ("A record of an act, condition or event shall, insofar as relevant, be

competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.”); *Ex parte Dep't of Health & Env'tl. Control*, 350 S.C. 243, 249–50, 565 S.E.2d 293, 297 (2002) (explaining business records are admissible under Rule 803(6) and section 19–5–510 “as long[] as they are (1) prepared near the time of the event recorded; (2) prepared by someone with or from information transmitted by a person with knowledge; (3) prepared in the regular course of business; (4) identified by a qualified witness who can testify regarding the mode of preparation of the record; and (5) found to be trustworthy by the court”).

For clarity, the Defendant’s objection was not to the admission of the email into evidence as hearsay, but rather the admission of the information contained within the email that relied upon the “balance sheets” and “appraisal” that were hearsay within hearsay. The email itself, likely falls within a number of exceptions to the hearsay exception, including an out of court statement made by a party. See Rule 803. It is the hearsay within both the testimony of Plaintiff and the email that must be addressed and to which the Court erroneously ruled was permitted under the business records exception.

First, the business records exception does not apply in this case because the records that were hearsay were not actually offered into evidence. The email purports to demonstrate that Plaintiff reviewed the “balance sheets” and “appraisal” that showed the balance due on the note and the value of the collateral, but these records were never offered into evidence at the hearing. The plain language of Rule 803(6) allows for the admission of “[a] memorandum, report, record,

or data compilation,” not testimony describing such a document. Rule 803(6) does not apply to admit live testimony offered to prove the contents of a record containing hearsay, nor does it apply to admit out of court statements offered to prove the contents of a record when that record is not offered in evidence. *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 72, 773 S.E.2d 607, 614 (Ct. App. 2015)(citing *Thompson v. State*, 705 So.2d 1046, 1048 (Fla. Dist. Ct. App. 1998) (“While the business-records exception to the hearsay rule allows the admission of ‘[a] memorandum, report, record, or data compilation,’ it does not authorize hearsay testimony concerning the contents of business records which have not been admitted into evidence.”); *State v. Watkins*, 148 Idaho 418, 224 P.3d 485, 492 (2009) (finding written notes relied on by the witness “were not offered into evidence” and “[i]n the absence of any document ... there was simply no ‘business record’ that might fall within this hearsay exception”); and *Bass v. Washington Kinney Co.*, 119 Ill. App. 3d 713, 75 Ill. Dec. 295, 457 N.E.2d 85, 96 (1983) (“[I]t is only the business record itself which is admissible, and not the testimony of a witness who makes reference to the record.”)).

Secondly, the Plaintiff failed to lay the foundation of the “balance sheet” and “appraisal” so as to meet the requirements of Rule 803(6) and section 19–5–510. See *State v. Davis*, 371 S.C. 170, 178–79, 638 S.E.2d 57, 62 (2006) (stating the proponent of evidence has the burden of establishing that a record falls within a hearsay exception). There are numerous elements to the foundation for a business record to which Plaintiff did not testify in this case. See *Deep Keel*, 413 S.C. at 72, 773 S.E.2d at 614. Because the business records exception applies only to the admission of business records themselves, the exception does not apply to Plaintiff’s hearsay testimony, nor can it apply to the “balance sheets” and “appraisal” relied upon the Plaintiff in its

case in chief. The Court did not hold or find that any other hearsay exception applies. Thus, the Court abused its discretion by erroneously admitting the testimony and email. The Plaintiff, therefore, should not be permitted to rely upon this testimony and evidence. Without such evidence the Plaintiff fails to present any evidence supporting his alleged damages and a directed verdict should be granted in favor of the Defendant. Moreover, the error in permitting this testimony and email into evidence was not harmless and would have changed the outcome of the trial.

ii. The evidence presented failed to support the Plaintiff's action.

The Court erred in not granting a directed verdict based upon the failure to present the necessary evidence of the damages to the Plaintiff and should grant judgment to the Defendant notwithstanding the verdict. First, the South Carolina Commercial Code precludes a judgment in favor of the Plaintiff, and second, on the record before it, neither the Court nor the Jury could have awarded damages without impermissibly resorting to speculation.

The Plaintiff failed to present evidence in support of the fact that he either conducted the sale of collateral in a commercially reasonable manner or provided the necessary notice to the Defendant as required by the South Carolina Uniform Commercial Code (the "UCC"). See S.C. Code Ann. §§ 36-9-610 et. seq. The Plaintiff testified that after the alleged default he disposed of collateral securing the alleged contract between the Plaintiff and the Defendant and that any value of the collateral he received should have been credited to the amount owed under the terms of the alleged contract. See also S.C. Code Ann. § 36-9-615. Under South Carolina law, the Plaintiff "has the burden of establishing that the collection, enforcement, disposition, or acceptance" was conducted in accordance with the UCC. S.C. Code Ann. § 36-9-626. Unless the

Plaintiff “proves that compliance [...] would have yielded a smaller amount, [...] the amount that a complying collection, enforcement, or disposition would have yielded is deemed to be equal to the amount of the secured obligation, together with expenses and attorney’s fees.” *Id.* (Comments therein). Thus, the Plaintiff was not permitted to recover any deficiency unless it proved that (1) it met the requirements of disposing of the collateral and (2) the amount rightly credited to the amount allegedly owed left a deficiency.

The Plaintiff testified that he neither provided the required notice under the UCC, nor did he conduct the sale of the collateral as required by the UCC. Thus, the Plaintiff admitted that his disposal of the collateral was not in accordance with the UCC. The Plaintiff failed to present any evidence that he either conducted the sale in a commercially reasonable manner or provide the necessary notice to the Defendant. Thus, this Court is required to assume the amount rightly credited to the Defendant under the alleged contract was satisfied.

Further, the Plaintiff failed to present the necessary supporting evidence as to the harm he suffered as a result of the alleged breach of contract. The measure of damages for breach of contract is the loss actually suffered as the result of the breach. *South Carolina Finance Corporation of Anderson v. West Side Finance Company*, 236 S.C. 109, 113 S.E.2d 329 (1960). To recover damages, the evidence must enable the jury to determine the amount of damages with reasonable certainty or accuracy. *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). The Respondent was required, under South Carolina law, to present evidence that would allow a reasonably close estimate as to the harm the Plaintiff suffered as a result of the alleged breach of contract by a preponderance of the evidence.

In this case, the Plaintiff failed to testify what amount was owed, and how such amount

was calculated. In his testimony on redirect, the Plaintiff swore that he was not seeking the amounts he previously swore to as being owed to him in the email improperly admitted into evidence. Instead he stated he had no proof regarding certain amounts he deducted from the credit he believed was owed to the Defendant in light of his taking the collateral. He surmised that because he had no proof he would simply not seek those amounts as damages. If asked to itemize the damages to the Plaintiff one could surmise without speculation the amount of principal perhaps owed, but one could in no way divine the amount Plaintiff swore was rightfully credited to the Defendant.

The confusing and speculative nature of the testimony proffered in support of his damages can be clearly seen in the verdict returned by the jury. The number they used appears to be the very number the Plaintiff stated he was not seeking. The determination of damages may depend to some extent on the consideration of contingent events if a reasonable basis of computation is provided, allowing a reasonably close estimate of the loss. *Piggy Park Enter., Inc. v. Schofield*, 251 S.C. 385, 391-92, 162 S.E.2d 705, 708 (1968). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.* Thus, the Court is permitted to rely, to an extent, on reasonably close estimates as to the value of the harm to Plaintiff as a result of the alleged breach, but it is not permitted to derive such an amount based purely upon speculation. *Id.* In this case, the jury was left to speculate as to the damages and picked an amount that is stated in Plaintiff's Exhibit 2 as the amount owed.

iii. The Plaintiff's action was barred by the statute of limitations.

The Plaintiff failed to present the evidence necessary to not have his claim barred by the

applicable statute of limitations. The applicable statute of limitations on actions involving contracts is three years. S.C. Code Ann. § 15-3-530. The statute of limitations commences running against a contract from the date when it is breached or broken. Thus, in this action, the Plaintiff is precluded from bringing an action more than three years from the date from which the Plaintiff action accrued. An acknowledgment or promise contained in a writing signed by the party to be charged is considered sufficient evidence of a new or continuing contract so as to remove the case from the operation of the statute of limitations. S.C. Code Ann. § 15-3-120. Any payment of principal or interest is considered equivalent to a written promise. *Id.* Thus, the plaintiff was required to bring this action within three years of the date from which the contract was first alleged to have been breached by the defendant or within three years of a written acknowledgment or promise by the Defendant to make future payments.

The Plaintiff produced no evidence supporting the statute of limitations not having run more than three years prior to the bringing of his action. The Plaintiff relied upon an assertion that his taking of the Defendants property, which acted as collateral under the terms of the alleged contract, without the consent of the Defendant was adequate to prove the statute had not run. This is contrary to South Carolina law. The Supreme Court in *Wolfe v. Brannon*, explicitly held that while it is not necessary that a payment on the debt be made in actual money so as to toll the running of the statute,

[a]n agreement between the payee and maker to apply as a credit on the note a debt owing by the payee to the maker, or an agreement to credit the note on account of goods delivered by the maker to the payee or services rendered to him, is sufficient for the purpose of interrupting the running of the statute of limitations.

211 S.C. 282, 287, 44 S.E.2d 833, 835 (1947)(citations ommitted). Further, the Supreme Court in

S.C. Tax Comm'n v. Metro. Life Ins. Co., held that statements that “constitute an *unequivocal* acknowledgment of a liability” may be held to constitute the waiver of the statute contemplated by S.C. Code Ann. § 15-3-120. 266 S.C. 34, 39, 221 S.E.2d 522, 523 (1975)(emphasis added). Thus, South Carolina requires an explicit written agreement between the parties of a contract for the application of a credit based upon something other than payment of money to toll the statute of limitations. At best, the plaintiff testified that the only thing the Plaintiff did in regards to the transfer of the collateral and the application of credit to the amount allegedly owed by Defendant was to make what is best described as a book entry. Such an act has been held to not qualify as the type of payment or writing necessary to toll the statute. See *Bulcken v. Rhode*, 81 S.C. 503, 62 S.E. 786, 787 (1908).

This is in fact how the Fourth Circuit Court of Appeals in *Zaks v. Elliott*, ruled, a case in which the Fourth Circuit reversed the U.S. District Court for the District of South Carolina. 106 F.2d 425, 427 (4th Cir. 1939). The Fourth Circuit ruled that “the application of the proceeds from the sale of the remaining collateral” did not amount to “voluntary payments” by the obligor sufficient to toll the period of limitations on the note. The court went on to state:

It is established in South Carolina that partial payment on a note within the six year period immediately preceding the bringing of an action therein will remove the bar of the statute. But, apparently, the question of whether application to the debt by the creditor of the proceeds from the sale of collateral deposited with a note is such a payment as will toll the statute has never been decided in South Carolina. According to the great weight of authority, an application to the debt by the creditor of the proceeds from the sale of collateral will not have this effect because the payment is not voluntary on the part of the debtor. ‘The principle on which part payment takes a case out of the statute is, that the party paying intended by it to acknowledge and admit the greater debt to be due. If it was not in the mind of the debtor to do this, then the statute, having begun to run, will not be stopped by reason of such payment.’ We think that the reasoning of these decisions is to be preferred to that of the North Carolina and Nebraska cases on

which the District Judge relied.

Id. (Citations omitted). Thus, the Plaintiff's reliance upon any such application of credit to toll the statute of limitations was misplaced and this Court should grant judgment in favor of the Defendant.

C. The Defendant is entitled to a new trial.

The Court should grant a new trial in light of the erroneous charges to the jury which both failed to provide the legal requirements regarding the Plaintiff's burdens under South Carolina law and for charging an erroneous statement regarding the statute of limitations. Under South Carolina law, the Court was required to instruct the jury as to the law regarding the South Carolina Commercial Code and the applicable statutes relating to the actions at issue in this matter. In South Carolina, a trial judge must "declare the law" to the jury. *In re Estate of Pallister*, 363 S.C. 437, 451, 611 S.E.2d 250, 258 (2005); See S.C. Const. art. V, § 17 (1895). "Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." *Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct.App.2000). Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error. Id. Instructions to the jury, however, should be confined to the issues made by the pleadings and supported by the evidence. *Tucker v. Reynolds*, 268 S.C. 330, 233 S.E.2d 402 (1977); *Kelly v. Brazell*, 253 S.C. 564, 172 S.E.2d 304 (1970). The Court erroneously precluded charges to the jury addressing the inferences that must be drawn regarding the Plaintiff's action on the alleged contract.

The requirement that charges be confined to issues made by the pleadings and supported

by the evidence supports a finding that the jury charge was erroneous. The Supreme Court in *Tucker*, a case wherein the defendant argued a charge regarding punitive damages was improper in light of the failure of the plaintiff to plead the right to such damages, held that specifically pleading matters of law is not required to have such a charge be given to the jury if the issue has been generally raised in the pleadings. *Id.* The Supreme Court held that the complaint gave adequate notice to the other party of the issue. *Id.* at 335-336, 233 S.E.2d at 404. Here, the Defendant specifically raised the defense that there had been an accord and satisfaction as well as the Plaintiff's breach of contract by failing to provide the equity remaining in the collateral taken by the Plaintiff. S.C. Code Ann. § 36-9-626 applies to actions in which deficiency or surplus is in issue. This is true regardless as to whether the statute is specifically plead. The Supreme Court has been clear in this regard as well. In *Lawrimore v. Am. Health & Life Ins. Co.*, the Supreme Court held that, along with dismissing an argument that specific terms encompassing a defense be used in the pleading, the sufficiency of a pleading in asserting a defense cannot be argued after the complaining party has itself raised the issue. 276 S.C. 112, 276 S.E.2d 296 (1981). In such circumstances, the party cannot demonstrate "unfairness or surprise" when the other party seeks to rely upon the defense. *Id.* Here, the Plaintiff raised the issue of the application of certain amounts against the amount allegedly owed due to the collection of collateral in its direct and case in chief. It cannot later argue that it is somehow surprised that the Defendant would require that such issues be controlled by South Carolina law. Similarly, the Defendant cannot rely upon some failure for the specific code sections of the law to have been plead.

The failure to include the charges requested by the Defendant regarding the South Carolina commercial code was erroneous and is grounds for a new trial. In *Bums v. South*

Carolina Commission for Blind, the Court of Appeals held:

If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error.

Id. at 323 S.C. 77, 80,448 S.E.2d 589, 591 (Ct. App. 1994). Similarly, the Court's inclusion of language regarding the application of amounts to an outstanding obligation as tolling the statute of limitations was erroneous. The charge was a misstatement of South Carolina law and grounds for a new trial.

Similarly, as previously discussed, the erroneous admission of Plaintiff's Exhibit 2, with its hearsay upon hearsay, requires the court to grant a new trial.

IV. CONCLUSION

WHEREFORE, Defendant respectfully requests this Honorable Court grant his motion for Judgment as a Matter of Law pursuant to SCRCP 50(b) because Plaintiff failed to provide sufficient evidence to support the verdict. In the alternative, Defendant requests that this Court grant his motion for a new trial pursuant to SCRCP 59 for each of the foregoing reasons and because the cumulative impact of all trial irregularities made the trial unfair to the Defendant.

Respectfully submitted,

/s/ Richard R. Gleissner
 Richard R. Gleissner, Esquire
 S.C. Bar Number 15139
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 1237 Gadsden Street, Suite 200A
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 (803) 787-0505
 Attorneys for the Defendants,

March 2, 2018

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 16-CP-26-1961

**MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION
FOR JUDGMENT NOTWITHSTANDING
THE VERDICT OR, IN THE
ALTERNATIVE, FOR NEW TRIAL**

**TO: THIS HONORABLE COURT AND RICHARD R. GLEISSNER, ESQUIRE,
ATTORNEY FOR DEFENDANT:**

The Plaintiff, S. Scott Porter, Individually and as Co-Trustee of The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC ("Plaintiff") by and through his undersigned attorney, hereby submits this Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial, and in support thereof, would show the following:

STATEMENT OF THE FACTS

On May 26, 2011, a note was entered into between Plaintiff and Defendant based upon outstanding debt owed to Plaintiff by Defendant together with additional money Plaintiff agreed to loan to him. This note was secured by Defendant's pledge of his 50% interest in Peaceful Lane MHP, LLC ("PLMHP"), which he owned 50/50 with Plaintiff.

This note was a demand note, not a typical promissory note with a beginning and an end date, in which Plaintiff could demand payment at any time without being subject to the typical contractual provisions found in a promissory note.

Defendant made only one payment on the note but, over the next few years, continually induced Plaintiff to delay demanding payment on the note and/or taking his 50% interest in PLMHP which he had pledged as collateral on the note. Defendant repeatedly assured Plaintiff that he would pay the loan and interest as soon as he sold some of his assets and would send Defendant documentation as to these assets including his Apache Family Campground stock, interest in Hucks Limited Partnership and Conway National Bank stock.

Plaintiff, believing Defendant's assurances, agreed to deferment on the note. However, after enduring multiple failed promises by Defendant to repay the note, Plaintiff began the process of taking control of Defendant's 50% interest in PLMHP. This process was successfully completed on March 31, 2014, however, Defendant still owed additional money on the note at that time, including interest. Further, the valuation of Defendant's 50% interest in PLMHP became clouded as a result of Defendant losing all PLMHP accounting and bank records prior to September 2012, failing to deposit funds from the sales of some PLMHP's mobile homes, missing rental income, and other issues.

On March 21, 2016, Plaintiff filed this action to collect all monies remaining due on the demand promissory note, including interest, and to determine the valuation of Defendant's 50% PLMHP interest that Plaintiff took control of on or about March 31, 2014.

This case was tried before the Honorable Larry B. Hyman, Jr. during the February 20, 2018 term of court in the Horry County Court of Common Pleas. The jury, after deliberating, returned a verdict for the Plaintiff.

STANDARD OF REVIEW

Plaintiff agrees with the Standard of Review contained in Defendant's Motion inasmuch as Rule 50 SCRPC governs acceptable practices in this Court for filing a Motion for

Notwithstanding a Verdict. However, Plaintiff denies that this case meets the necessary criteria required for this Court to grant such a Motion.

Further, Plaintiff agrees that Rule 59(a) SCRP provides the criteria required for a new trial to be granted, however, Plaintiff denies that this case meets said criteria.

ARGUMENT

I. The Defendant is not entitled to a judgment notwithstanding the verdict

Plaintiff introduced previously prepared calculations leaving the jury to decide what interest rate to apply and when, as is proper.

Further, jury question was present based on Defendant's partial payment of the Promissory Note which was agreed to during the trial by all parties without objection.

II. The Defendant is not entitled to judgment as a matter of law notwithstanding the verdict

The evidentiary matters presented to the Court during the trial of this action were all proper for the jury to resolve.

III. The evidence relied upon by the Plaintiff was admissible

In his Motion, Defendant alleges that the evidence relied upon by the Plaintiff during the trial of this action was erroneously admitted into evidence. This is not accurate. Counsel for Defendant read from the document, an email, during the trial of this action thereby allowing Plaintiff's attorney to inquire and introduce the document into evidence.

Further, it was admissible as to notice. Furthermore, Plaintiff testified as to damages, interest rate and non-payment.

Defendant further alleges in his Motion that the email and testimony regarding the email are hearsay. This is not accurate. The document in question was introduced due to Plaintiff's use

of a portion of the document; the completeness rule allows the entire document into evidence at the request of opposing counsel. The document was also a business record of Defendant.

Defendant later alleges in his Motion that Plaintiff failed to lay the foundation of the "balance sheet" and "appraisal". This is an argument which, if it were appropriate, counsel for Defendant should have pursued on cross-examination but failed to do. Instead, counsel for Defendant argued to the jury weight of the evidence question, which was appropriate.

CONCLUSION

Plaintiff, respectfully requests that this Court deny, in full, Defendants' Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial, and in doing so, any further action as this Court deems necessary, just, and proper.

THE BRITTAIN LAW FIRM

s/Thomas C. Brittain
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March 8, 2018
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

S. Scott Porter, Individually and as Co-Trustee
of The Stanley Scott Porter Trust UA dated
January 2, 1991, a member of Peaceful Lane
MHP, LLC,

Plaintiffs,

v.

Kenneth Hucks, Individually and as a member
and formerly designated manager of Peaceful
Lane MHP, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 16-CP-26-1961

**AFFIDAVIT OF PLAINTIFF
S. SCOTT PORTER**

I, Scott Porter, the Plaintiff in the above entitled action, do hereby state, declare and affirm as follows:

1. That I am the Co-Trustee and beneficiary of the Stanley Scott Porter Trust UA dated January 2, 1991.

2. That from 2001 – 2013 I enjoyed a close personal relationship with Kenneth Hucks ("Defendant"), including golf and vacations together to Charleston and Alaska, conventions in Las Vegas and duck hunts in Louisiana.

3. That Defendant frequently sought my financial advice when his financial situation became dire, his debts to myself and others were a topic of regular conversation with many requests to defer to his benefit.

4. That my business relationship and the business relationship of the Trust began in 2000, when my company became his largest tenant.

5. In 2005, Defendant informed me that he had sold his mobile home park and that my company would have to vacate. At that time I suggested we find a mobile home park to purchase together and we formed Peaceful Lane MHP, LLC ("PLMHP") with 50/50 ownership. PLMHP bought the property on Socastee Boulevard where my company would rent 68% of the property and Defendant and his real estate company would manage it.

6. In February 2008, Defendant came to me stating he was in financial trouble, unable to make debt service payments to BB&T and had liens on so much of his family's property, his parents and brother included. He assured me that he was working on the sale of properties to repay the loan. I, on behalf of the trust, made the loan that is the subject to this action.

7. In 2008, Defendant continued to communicate to me about his financial situation, always promising to pay the loan and interest as soon as he sold some assets and seeking my counsel, advice and affirmance as necessary. I was aware that Defendant was not able to pay that loan, which was accruing interest, and chose not to pursue collection by demanding payment in full on said note or by taking Defendant's interest in PLMHP to give him the time he requested over and over.

8. Further, the debt was secured by an interest in real estate and was a demand note, not a typical promissory note with a beginning and an end but a demand note in which I could demand payment at any time without subject to the typical contractual provisions in a promissory note.

9. In May 2011, Defendant had not paid the note or interest over the loan and came to request an additional \$55,000.00, which would be used to pay off the loan to Conway National Bank secured by CNB stock. Defendant stated he would sell the stock and be able to repay the \$80,000.00 loan and accrued interest plus the new loan and interest thereon. He said they would accomplish this by November 2011. Defendant also informed me that he was trying to sell his stock in Apache Camp Ground to raise funds for the development of Cypress Camping Resort and as an additional potential source of repayment.

10. So a new \$155,000.00 demand note, as set forth hereinabove, along the same terms was provided with a due date but not to affect the demand nature of the note. The note called for monthly payments of interest but during regular conversation, Defendant acknowledged his debt to me, asked for deferments and that I hold off on taking his property interest in PLMHP. So, at this request, based on forbearance and consideration, I did not call default for non-payment of the interest or principal of the note because Defendant expressed his intentions to continue to make sales and other financial adjustments which would allow him to pay the note upon demand.

11. In November 2011, Defendant informed me that CNB would not release the stock and they had retained it as collateral for other loans. Defendant then promised he would pay the interest and principal on the note as soon as he could sell his Apache stock and asked for deferment until such time as that took place. I, who could have demanded payment at any time, agreed to extend this forbearance based on the request of Defendant.

12. That Defendant asked me to consider investing funds in CCR with the concept being that I would put in approximately \$350,000.00 in new money and would receive additional ownership for the \$155,000.00 note. Defendant made arrangements with TD Bank for an SBA loan but the bank insisted that a \$500,000.00 cash infusion had to be made by Defendant, which he was unable to do. I agreed to make the \$500,000.00 cash investment in CCR and the \$155,000.00 note if an obligation by Defendant to me on demand remained. Defendant promised he would pay the note and accrued interest once he sold his Apache stock and asked that I defer demand on the note until such was done.

13. That Defendant provided me with a copy of the Apache financial statements and operating information to persuade me of the value of the stock. Defendant also arranged a series of meetings with his attorney, Brett Davis, and me over the course of 2011-2013 where the discussions included Defendant selling his Apache stock as a source of funds for the repayment of my note and to fund his investment in CCR. Meetings took place on December 15, 2011, December 10, 2012 and October 3, 2013. At all times a deferment of the collection of the note was requested by Defendant and/or his counsel.

14. In July 2012, Defendant sent me an email with an offer from a third party to purchase the Apache stock and suggested I could make an offer to buy it as well, in accordance with his previous promises that if extended he would pay the note in question.

15. In December 2012, CCR needed \$300,000.00 to survive another year and Defendant did not have his \$200,000.00 share to contribute. Defendant induced me to lend \$300,000.00 to CCR and the December 10, 2012 meeting with Brett Davis specifically addressed the sale of Apache stock as a means of ultimate repayment of the note that is a question of this action. I, once again, based on a renewed promise to make payments on the note that is the basis of this action, lent \$300,000.00 to CCR, as consideration of a renewed promise.

16. That when that loan came due in 2013, Defendant had not sold the Apache stocks, saying that he could not sell it because of the restrictions that were placed on it. I offered to buy

it, regardless of the restrictions and Defendant said he would not sell it because it was financial suicide.

17. That I began the process of taking control of PLMHP and taking Defendant's 50% interest in PLMHP, which served as collateral for the \$155,000.00 note. I arranged for the refinancing of the property to obtain a release of Defendant's guarantee of the PLMHP note. When that was completed on March 31, 2014, I took Defendant's 50% interest in PLMHP.

18. That in taking over management, Defendant informed me he had lost all accounting and bank records for periods prior to September 2012. My investigation revealed that funds from the sale of PLMHP mobile homes had not been deposited in the company's bank account, as well as missing rental income and other issues, which created an amount which Plaintiff owed PLMHP and which therefore clouded the valuation of Defendant's 50% interest in the LLC for purposes of giving credit against the amount which Defendant owed me. Further, Defendant accepted this accord and satisfaction. Defendant has not disputed the funds from sales of PLMHP mobile homes were not deposited. He has disputed the amounts and disagrees about the other issues which cloud valuation of the interest which has been taken.

19. That I believe a deficiency judgment is in order based on the devaluation of the stock. This combined with Defendant's unwillingness to sell the Apache stock, following years of promising that he would, caused me to pursue collection of the demand note through the courts.

20. Further, that on August 2, 2011, I emailed Defendant discussing the loan and possible release from the loan under specific conditions.

21. On December 2, 2011, I received an email from Defendant asking if I would consider selling PLMHP. I responded that I would need to know the balance on the CNB note because that together with the money Defendant owed on the note may make it hard to break even.

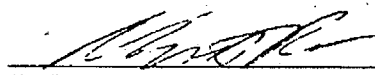
22. On July 9, 2012, I received an email from Defendant forwarding a letter of intent to purchase he received from an interested buyer for his stock in Apache Family Campground and remaining interest in Hucks Limited Partnership for \$1,066,266.00. I believe Defendant used this to induce me to agree to a deferment and grant him additional time to repay the note.

23. On October 9, 2013, I emailed Defendant discussing proposals for him to pay back all the money he owed, including the note.

24. On January 15, 2014 and January 21, 2014, my attorney Thomas C. Brittain received correspondence from David Miller discussing Defendant's proposals to settle all claims regarding CCR.

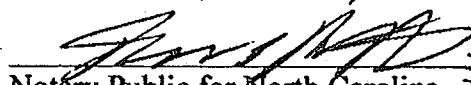
25. On November 13, 2014, I emailed to Defendant a balance sheet for PLMHP and advised him that on March 31, 2014, I took the 50% interest in PLMHP that he pledged on the \$155,000.00 note as real estate interest and then refinanced the property to remove him from the guarantee. I also discussed money still due on the note including interest. At the end of this email, I stated that "This is intended to form the basis for a conversation about reaching an agreement about the amount that is owed by you so that we can development a means and method of repayment", all of which is included as addendums to this Affidavit.

FURTHER, AFFIANT SAYETH NOT.

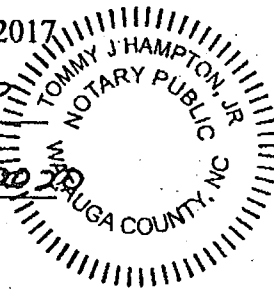

S. Scott Porter

SWORN TO BEFORE ME this

16 day of February, 2017


Notary Public for North Carolina

My Commission Expires: 6-1-2020



 ORIGINAL

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO.: 2016-CP-26-1961

3 -----

4 February 20-21, 2018

5 BEFORE: The Honorable Larry Hyman

6 -----

7 S. SCOTT PORTER, et al.,

8 Plaintiff,

9 vs.

10 KENNETH A. HUCKS, et al.,

11 Defendant.

12 -----

13

14 APPEARANCES:

15 Thomas Brittain, Esq.
16 Attorney for the Plaintiff.

17 Richard Gleissner, Esq.
18 Attorney for the Defendant.

19

20

21

22 Natalie Dahl, RPR.
23 Court Reporter

24

25

 ORIGINAL

I N D E X

PLAINTIFF'S WITNESSES

PAGE

S. SCOTT PORTER

Direct Examination by Mr. Brittain..... 43

Cross-Examination by Mr. Gleissner..... 59

Redirect Examination by Mr. Brittain..... 73

DEFENDANT'S WITNESSES

KENNETH HUCKS

Direct Examination by Mr. Gleissner..... 87

Cross-Examination by Mr. Brittain..... 97

Redirect Examination by Mr. Gleissner..... 107

EXHIBITS

PLAINTIFF'S EXHIBITS

MARKED

ADMITTED

1 Demand promissory note

47

52

2 E-mail (11-13-14)

75

75

DEFENDANT'S EXHIBITS

1 E-mail (redacted)

68

68

COURT'S EXHIBITS

1 Email (same as Plf's 2)

64

2 Jury charge

162

1
2
3
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7
8
9
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P-R-O-C-E-E-D-I-N-G-S

THE COURT: I understand this is Porter versus Hucks; is that correct?

MR. BRITTAIN: Yes, sir.

THE COURT: Mr. Brittain, you are the plaintiff's attorney. Before the jury comes in, tell me about this case.

MR. BRITTAIN: All right, Your Honor. This case involves two -- a business association. There was a note that was signed by the defendant over -- for Porter and the Porter trust for \$155,000 with certain terms. It provided for certain actions that could be taken, et cetera, et cetera. So on March 31, 2014 -- this note was created in May of 2011 -- the Porter trust took advantage of its rights under the note because it was in default and took 50 percent of the collateral, took their collateral for that note. It was in default, took it and promised to pay -- give me more time to get the rest of it, et cetera, et cetera. That never came, so then a lawsuit was brought to collect what is lost.

THE COURT: So it is a claim on --

MR. BRITTAIN: They filed an answer alleging statute of limitations and several other defenses.

1 Those were heard by Judge Culbertson and summary
2 judgment motion. He ruled for the plaintiff for the
3 case to go forward for a hearing with respect to those
4 issues with a jury.

5 So we're here to -- we have two witnesses,
6 Mr. Porter for me and Mr. Hucks for Mr. Gleissner.

7 THE COURT: Good to see you again, Mr. Gleissner.
8 How have you been?

9 MR. GLEISSNER: He had me worried when he said he
10 had two witnesses, I knew he had me and him. Your
11 Honor, here is a copy of the defendant's pretrial
12 brief. Basically, like Mr. Brittain said, this is a
13 suit under a contract to collect money. There was
14 collateral pledged. The note matured in 2011. The
15 lawsuit was not brought until 2016. We think the
16 statute of limitations is three years in that it
17 expired. As Mr. Brittain mentioned, we received
18 notice of the taking of the collateral that was
19 pledged under a security agreement. The notice was
20 given to us in November and the taking was done in
21 March of 2014. So the notice was giving us some eight
22 months after the note. We believe the notice is
23 defective. We believe it is an improper execution of
24 collateral. So there is issues relating to the proper
25 exercise of the collateral and, therefore, Your

1 Honor -- and as Mr. Brittain mentioned, we think there
2 is a statute of limitations issue. We filed a motion
3 for summary judgment, and Judge Culbertson denied it
4 believing there was an issue of material fact. So
5 we're here to try the case.

6 THE COURT: Okay. The note was dated, when? May
7 of?

8 MR. GLEISSNER: 2011. And it matured in November
9 of 2011.

10 THE COURT: Mr. Brittain, do you have a witness
11 list? I have Mr. Gleissner's witnesses as S. Scott
12 Porter and Kenneth Hucks.

13 MR. BRITTAIN: Scott Porter is my only witness.

14 THE COURT: And then you would have just
15 Mr. Hucks?

16 MR. GLEISSNER: That's correct. And do you want
17 voir dire questions?

18 THE COURT: Yes. If you have some, that is fine.

19 MR. GLEISSNER: They are short. There is only
20 three of them, and that includes if they know any of
21 the witnesses. There you go, Your Honor. Can I give
22 you the original or copy? Here is the original, Your
23 Honor. That one is for your clerk, how about that.

24 MR. BRITTAIN: We do have two jurors whose last
25 names is Hucks on our list.

1 MR. GLEISSNER: I noticed that, too.

2 THE COURT: That is a common name here.

3 MR. BRITTAIN: Sure.

4 THE COURT: I remember back when I was practicing
5 law in a deposition and an attorney asked me, Are you
6 related to many people in Horry County, and I said my
7 family names are Johnson, Jordan, Hardwick, Martin,
8 Hucks too by marriage. There was a Hucks in there
9 too, now that I think about it.

10 At any rate. Let's see. I certainly would ask
11 about any relationship to either of the parties, the
12 trust or the company. The only thing else you ask is
13 if any member of the jury panel, any immediate family
14 worked in the field of real estate appraisal; is that
15 correct?

16 MR. GLEISSNER: That's correct.

17 THE COURT: Any else?

18 MR. BRITTAIN: No, sir. We just -- we discussed
19 those, and I don't have any additional questions.

20 THE COURT: All right. I'll ask the regular
21 stuff. Well, okay. I had 30 come up. Gentlemen,
22 would you agree to try with 12 or less? That avoids
23 having to do an alternate.

24 MR. BRITTAIN: Yes, Your Honor.

25 THE COURT: Mr. Gleissner? I would give you an

1 alternate, but looks like it will be tried today.

2 MR. GLEISSNER: I don't have a problem with 12 or
3 less.

4 THE COURT: I can give you one if you feel more
5 comfortable, that is fine.

6 MR. GLEISSNER: I thought we would get three
7 strikes; does that work?

8 THE COURT: The strikes are five and five on the
9 selection of the jury; isn't that right -- four,
10 excuse me. Excuse me. I'm still trying the murder
11 case I had last week. Four. I'll give you one each
12 on the alternate, okay?

13 MR. GLEISSNER: Fair enough.

14 THE COURT: The way I do it is if anybody --
15 anyway, the first 18 qualified jurors are the --
16 excuse me, first 20 qualified jurors are the ones that
17 we strike the jury from. The next three we strike an
18 alternate, each having one strike, okay? All right.
19 Jerry, if you would, bring the jury in.

20 DEPUTY: Absolutely.

21 (Whereupon, the jury pool enters at 11:49
22 a.m.)

23 MR. ROPP: Yes, sir.

24 THE COURT: Good. My name is Larry Hyman. I'm a
25 circuit court judge here in South Carolina, just like

1 my colleague and dear friend, Judge Seals, who you had
2 an opportunity to meet this morning. We're charged
3 with holding court all over the state. We have to
4 travel about, and sooner or later we'll in be every
5 county. I haven't made that quite yet, but I'm from
6 Horry County, from here in Conway. It is always a
7 pleasure to get assigned to Horry County, primarily
8 because it means I'm not spending the night in some
9 motel. It is good to be at home with my family, as
10 I'm sure you can all appreciate.

11 This morning you met with Judge Seals. That was
12 the first phase of our jury qualification process.
13 You'll note he didn't tell you anything about any case
14 you might be hearing this week, and you probably felt
15 like that was a little strange, wondering what you
16 might be called upon to do. It is my understanding
17 that this week we only have common pleas. Judge Seals
18 probably told you that. Is that right, Rhonda? Only
19 common pleas?

20 THE CLERK: Yes, sir.

21 THE COURT: Good. Well, the court is broken into
22 two parts. Judges in many states are either civil
23 judges or criminal judges, I refer to them as that.
24 Here in South Carolina judges are required to try
25 either one depending how you are assigned to a

1 particular week. Judge Seals and I are both assigned
2 to what we call common pleas, common pleas side of the
3 court. If this were a criminal case, we would call it
4 the general sessions side of the court, but we don't
5 have general sessions term this particular week.
6 Horry County is a pretty busy county. We can usually
7 expect to have four, as many as six judges assigned to
8 this county almost every week out of the month, but
9 this week we only have -- as far as jurors -- we only
10 have two judges, Judge Seals and myself. We are both
11 assigned to handle civil cases.

12 A civil case is a case that arises between
13 individuals. Under the law, as you will hear in this
14 case, a company, a corporation, LLC is an individual.
15 It has -- it takes the same position as a person, a
16 natural person. Civil cases involve disputes that
17 arise between persons and individuals under the law,
18 and it can be anything from -- might be an automobile
19 wreck case, might be a contract case. It could be
20 some sort of personal jury. Any type of dispute that
21 arises between individuals. That is what we'll be
22 trying this week, both Judge Seals and I.

23 The case that we have before us is S. Scott
24 Porter, individually, and as company trustee of the
25 Stanley Scott -- I misspoke -- it is Porter Trust

1 dated January 2, 1991, and as a member of the Peaceful
2 Lane Mobile Home Park, LLC. That is the plaintiff.
3 That is the plaintiff, the person who brings the claim
4 in this particular case. The defendant is Mr. Keith
5 A. Hucks, individually, and is a member and formerly
6 designated manager of Peaceful Lane Mobile Home Park,
7 LLC.

8 MR. GLEISSNER: Sorry, Your Honor, you said Keith
9 Hucks, it is Kenneth.

10 THE COURT: Kenneth Hucks. Kenneth A. Hucks.
11 Now, this is an action -- I'm told by the attorneys --
12 that arises from the signing or giving of a note. A
13 note is a promise or contract to borrow certain monies
14 and pay those back under certain terms. A dispute has
15 arisen between the parties as to whether or not the
16 terms of the note were complied with. You will hear a
17 lot more about that from these attorneys as we go
18 along. The reason that I tell you that is because
19 we're now at that second part or second phase of the
20 jury qualifications, jury selection process. Judge
21 Seals qualified you. That is, he determined which
22 among the people who were brought in for jury duty
23 were qualified jurors. This phase that we're in, or
24 part that we're undertaking, is to determine whether
25 or not you might have any interest in this particular

1 case. The selection of a jury, whether it be a
2 criminal case or a civil case, is the most important
3 thing that we do because everyone who comes into this
4 courtroom should and we strive to make sure they do
5 have a fair and impartial jury, a jury that has
6 absolutely no interest whatsoever in the case. That
7 is the cornerstone of our jurisprudence in the state.

8 I think it is a testimony to how important jurors
9 are if you just look at the process you go through
10 before you sit on the jury panel. You have to take an
11 oath three times to sit as a juror, before you ever
12 make it to that jury box. You know, if this were a
13 murder case, capital case and you were the key witness
14 in that case, a case that involved a person's life,
15 you only have to take that oath one time. I think
16 that sort of tell us how important it is that we have
17 a fair and impartial jury.

18 Now, this morning I'm going to ask you questions
19 that are relevant to any interest that you might have
20 in the case. I'm going to ask you to consider these
21 questions and give us a full and truthful answer to
22 the questions that I'm going to put to you.

23 If you would, swear this jury again.

24 THE CLERK: Please stand and raise your right
25 hands.

1 (Whereupon, the jury pool was duly sworn.)

2 THE COURT: Is there anyone that is not willing
3 to take the oath?

4 Let the record reflect that there is no response.

5 You might hear me say that, "let the record
6 reflect," several times because the circuit court is
7 what we call a court of record. Everything that is
8 said has to be taken down. We have Ms. Dahl, she's my
9 court reporter this week. Even when you were
10 downstairs with Judge Seals, everything that was being
11 said was being transcribed, taken down. So whenever
12 you are asked to respond nonverbally, I'm required to
13 tell the court reporter put on the record that there
14 was no response. That is, again, something very
15 important to our process.

16 Listen carefully to these questions.

17 Is there any member of this jury panel who is
18 related by blood or marriage, are you close personal
19 friends of, do you have any social relationship with
20 either S. Scott Porter or Kenneth A. Hucks? Do you go
21 to church with them? Are you in a civil club with
22 them? Did you go to high school with them? Do you
23 know anything about these particular individuals?

24 All right. There is a lady here on the front.
25 Will you stand and give us your name.

1 JUROR: Jessica Hucks.

2 THE COURT: And your number?

3 JUROR: 183.

4 THE COURT: Tell me who you know and why.

5 JUROR: I want it known that my husband is
6 related to a bunch of Hucks. I could not verify
7 whether or not I may or may not know the defendant, I
8 don't know if that matters.

9 THE COURT: As far as you know, you have never
10 met him?

11 JUROR: No, sir.

12 THE COURT: Would that affect your ability to be
13 a fair and impartial juror in this case?

14 JUROR: No, sir.

15 THE COURT: Could you give both sides a fair
16 trial in this matter?

17 JUROR: Yes, sir.

18 THE COURT: And set aside any possibility that
19 you might be remotely through your husband related to
20 him? You could set that aside?

21 JUROR: Yes, sir.

22 THE COURT: Thank you. I thought I -- there you
23 go, on the back row. Yes, sir?

24 JUROR: Joe Gordon, 138.

25 THE COURT: Mr. Gordon, who do you know?

1 JUROR: I knew years ago, in another life, a
2 Kenneth or Kenny Hucks, but I don't --

3 THE COURT: Stand up and let him see if it is
4 you, Mr. Hucks.

5 JUROR: I don't believe so. We're good.

6 THE COURT: Could you be a fair and impartial
7 juror?

8 JUROR: Yes, sir.

9 THE COURT: Anyone on this jury panel associated
10 in any way with the Stanley Scott Porter Trust or
11 Peaceful Lane Mobile Home Park? Do you do business
12 with them? Are you employed with them? Are you a
13 member of the LLC? Are you a beneficiary under the
14 trust? Do you know anything about these two legal
15 entities?

16 And there is no response to that.

17 I'll give you the names of the witnesses in this
18 case. I don't have a lot of witnesses listed. As far
19 as I know, the only two witnesses who will testify in
20 this case are Mr. S. Scott Porter, seated with Mr.
21 Brittain, his attorney, and Mr. Hucks, who stood just
22 a moment ago. Was there another witness list? Those
23 are the only two witnesses we'll hear from in this
24 case. Is anyone -- can you think of any reason why
25 you might have any interest, prejudice or bias for or

1 against either of these individuals? I named them
2 earlier as the plaintiff and the defendant, and I'm
3 sure you may think this is repetition, but I want to
4 know is there anything I left off or didn't mention
5 that you think may be relevant to your relationship
6 with either of these potential witnesses in this case?

7 And there is no response.

8 Now, let me tell you about the attorneys. The
9 plaintiff is represented by Mr. Tommy Brittain. Mr.
10 Brittain, stand up and let them see how you are
11 looking these days.

12 MR. BRITTAIN: 65 and feeling every bit of it.

13 THE COURT: He is with Brittain Law Firm over in
14 Myrtle Beach. He, like Mr. Gleissner, have been
15 around for quite a while. Any member of the jury
16 panel who is related by blood or marriage, close
17 personal friends, any kind of social relationship or
18 are you represented presently or been represented in
19 the past by Mr. Brittain?

20 And there is no response.

21 Now, Mr. Richard Gleissner is here and he
22 represents Mr. Hucks, who you have met. He, like Mr.
23 Brittain, has been around for a while. Is there any
24 member of the jury panel who is related to him either
25 by blood or marriage? Have you been represented by

1 him in the past? Are you presently represented by
2 him? Do you have any kind of social relationship with
3 him?

4 And there is no response to that question.

5 Is there any member of this jury panel that would
6 have any bias or prejudice against either of these
7 parties in this matter, for or against them? Can any
8 of you think of any reason, whatsoever, why you should
9 not serve as juror on this case with particular
10 emphasis being placed upon your ability to be fair and
11 impartial?

12 And there is no response.

13 Do any of you, your spouse or members of your
14 immediate family work for a company that does real
15 estate appraisals?

16 And there is no response to that question.

17 Okay. Now, anything further, Mr. Brittain?

18 MR. BRITTAIN: Nothing, Your Honor.

19 THE COURT: Mr. Gleissner?

20 MR. GLEISSNER: Nothing, Your Honor.

21 THE COURT: All right. Now, let me tell you how
22 we go about selecting a jury. I don't know if Judge
23 Seals told you this or not. If this were a criminal
24 case, we would call your names one at a time.
25 Actually, the clerk has gotten your names from

1 downstairs. We just brought up 30 of you, and she has
2 jumbled all of those names up and put them in random
3 order. She would go right down the list and she would
4 call your name and you would have to come up here and
5 stand in front of everybody and look at the attorneys
6 and the parties and the other jurors. It would begin
7 something like this: The prosecutor would be sitting
8 where Mr. Brittain is and he would say, Excuse the
9 witness. That means he has used a strike. If he
10 said, Present the witness, that witness is then
11 presented to the defense. If it is a criminal case
12 and Mr. Gleissner was the defendant's attorney, he
13 would then say, Excuse me the juror, which would be
14 the exercise of his strike, and you would just go back
15 to your seat. Or he would say, Swear the juror. A
16 lot of people find that process to be intimidating,
17 embarrassing if they got struck.

18 On the civil side, we are kinder. As I said, you
19 are all given new numbers. You were put in random
20 order and all given a new number, and that list is
21 given to the attorneys. The attorneys have it in
22 advance. What they will do is we'll begin with the
23 plaintiff and he will say, Plaintiff strikes juror
24 whatever. The number he calls is not the number that
25 you think you are. It is a different number. Then

1 the defense has an opportunity to strike. So it will
2 go until we have a jury of 12 people. We will select
3 one alternate in this matter. Isn't that kinder? You
4 don't even know if you are struck.

5 I practiced law for a long time before I became a
6 judge, about 32 years. I've been doing this longer
7 than most of you -- I've been doing this 42 years.
8 You can look at these lawyers and they'll make faces,
9 scratch their heads, frown, giving an appearance of
10 knowing what they are doing, but they do not. I can
11 promise you they do not. Mr. Brittain, isn't that the
12 hardest thing in the world?

13 MR. BRITTAIN: It is.

14 THE COURT: These are fine lawyers and they have
15 lots of experience, but there is nothing that a lawyer
16 has to do that is more difficult than selecting a jury
17 because they don't know you. You know, when I first
18 started practicing law they would bring the jury
19 panel, and if you weren't kin to me, I knew you, your
20 people for sure. But that is not how it is anymore.
21 Our demographics has changed dramatically and it is
22 very rare that I know anyone that is on the jury
23 panel.

24 My friend, Judge Floyd, used to say, Don't be
25 upset if you are struck because that attorney may have

1 struck you because you part your hair on the left or
2 you part your hair on the right or you have no hair to
3 part. It is just a gut reaction.

4 Now, I tell you this so you won't feel hurt if
5 you are not selected on the jury. In reality, you are
6 probably thinking I hope I don't get pulled so I can
7 go home. Let me say this. Most jurors seem to come
8 to court with some dread. They see jury service as an
9 obligation, a civil duty that they have to comply
10 with. But when they leave, oftentimes they recognize
11 the fact that it is a right. You know, what goes on
12 in this courtroom determines some of the most
13 important things, questions, that we have in our
14 society. Things are decided here that can mean life
15 or death to some people. There are things that
16 greatly impact people's lives, and very few of the
17 cases that we actually have filed actually come to
18 this point. Sometimes cases can't be settled. We
19 have all sorts of devices we use now to help settle
20 cases, mediations, arbitrations, all sorts of things
21 that we do, but when a case can't be settled, you have
22 the right to be one of those people that says this is
23 what is right, this is what we are going to have in
24 this society, we're going to make the decision. You
25 become solemn. You are kings and queens for a day,

1 and that is a right that you have to make those
2 decisions. I hope when you leave your jury service
3 this week that you will understand that.

4 With that said, we are about to begin the strike
5 process. Mr. Brittain, you have your list?

6 MR. BRITTAIN: I do.

7 THE COURT: Mr. Gleissner, you have yours?

8 MR. GLEISSNER: I have.

9 THE COURT: Have you had an opportunity to look
10 over them?

11 MR. BRITTAIN: Yes.

12 THE COURT: Do you want to begin to strike, Mr.
13 Brittain?

14 MR. BRITTAIN: 7, please.

15 MR. GLEISSNER: Number 9, Your Honor.

16 THE CLERK: Defendant strikes 9.

17 MR. BRITTAIN: 10.

18 THE CLERK: Plaintiff strikes 10.

19 MR. GLEISSNER: 4.

20 THE CLERK: Defendant strikes Number 4.

21 MR. BRITTAIN: 11.

22 THE CLERK: Plaintiff strikes 11.

23 MR. GLEISSNER: 22.

24 THE COURT: Yes. There is no one that was set
25 aside by the Court, so strikes for the jury must be in

1 the first 20.

2 MR. GLEISSNER: Oh, I apologize, Your Honor.

3 THE COURT: You were in the alternate section.

4 MR. GLEISSNER: I apologize. No. 20.

5 THE CLERK: Defendant strikes 20.

6 MR. BRITTAIN: 12.

7 THE CLERK: Plaintiff strikes 12.

8 MR. GLEISSNER: No. 3, Your Honor.

9 THE CLERK: Defendant strikes No. 3. Alternate?

10 MR. BRITTAIN: I'm sorry?

11 THE COURT: 21 through 23.

12 MR. BRITTAIN: 23.

13 THE CLERK: Plaintiff strikes 23.

14 MR. GLEISSNER: Now, Your Honor, 22.

15 THE COURT: There you go.

16 THE CLERK: Defendant 22. Plaintiff strikes No.

17 7, 10, 11, 12 and 23.

18 MR. BRITTAIN: Yes, ma'am.

19 THE CLERK: Defendant strikes numbers 3, 4, 9, 20

20 and 22.

21 MR. GLEISSNER: That's correct.

22 THE COURT: Seat the jury, please.

23 THE CLERK: When I call your name have a seat in
24 the jury box.

25 THE COURT: And please bring any personal effects

1 with you so you don't have to return to your seat.

2 THE CLERK: Judith Brown No. 52. Myra
3 Littlejohn, 222. Bobby Dunn, No. 94. Chad Graff, No.
4 141. Tonja Black, No. 32. Grant Richardson, 299.
5 Angela Hucks, 181. Mary Reidmiller, 295. Christopher
6 Jones, 197. Joseph Vertucci, 370. Michael Center,
7 64. Jessica Hucks, 183. Dawn Hensley, 169,
8 alternate.

9 THE COURT: Mr. Brittain, is there any challenge
10 to the panel?

11 MR. BRITTAIN: I do not, Your Honor.

12 MR. GLEISSNER: I do not challenge the panel.

13 MR. BRITTAIN: Could we approach one second?

14 THE COURT: Yes.

15 (Whereupon, a bench conference was had.)

16 THE COURT: All right, we have our jury panel,
17 that means we will not require the attendance of the
18 balance of the jury panel. When does Judge Seals have
19 them --

20 THE CLERK: Call back after 6:00.

21 THE COURT: Call back that number after 6 o'clock
22 and there is instructions for you, okay. Thank you
23 very much.

24 (The balance of the jury pool exits at
25 12:16 p.m.)

1 THE COURT: Ladies and gentlemen, you will serve
2 as our jury panel on this particular case.
3 Ms. Reidmiller, I'll ask you to serve as foreperson.
4 Ms. Hensley, you will be our alternate. I would ask
5 you two ladies to always occupy those two seats so
6 I'll know where you are. The rest of you can sit
7 anywhere you would like as we come and go from the
8 courtroom to the jury room.

9 I want to take a few minutes to talk to you about
10 what you might expect, and then I'll let you have
11 lunch. I might have things to take up with the
12 attorneys. We will begin the testimony in the case
13 right after you return from lunch.

14 You know, it seems like every time I turn on the
15 TV there is some kind of trial going on. If it is not
16 on the news or some -- you know, you can't look at
17 anything and you get old Perry Masons or something.
18 Every one of those cases seem to be action-packed. In
19 reality, that is just not how it happens. It does
20 sometimes, but the typical case is not about
21 entertainment. What a case is about is looking for
22 the truth, looking for the right resolution of the
23 matter presented to a jury. You know, a trial is
24 nothing more than an orderly presentation of
25 information to you. During that process, these

1 attorneys have taken an oath to conduct ourselves
2 professionally and ethically in the presentation of
3 information or evidence to you. With the quality of
4 the attorneys we have here, I'm sure that that will
5 not be a problem, but you, as jurors, also are going
6 to take an oath one more time, and that is a little
7 different. What that oath will ask you to do is well
8 and truly try the issues before you, fairly and truly
9 try the case. Because at the end of the trial, you
10 are going to be asked to deliberate and that process
11 -- it is a term of art we have. That process involves
12 really three things. First of all, and most
13 importantly, you, the jury, are going to be asked to
14 determine what the facts are in this case, what
15 transpired. Whenever we get to this level, there is
16 always some dispute as to what the facts are, what the
17 truth of the case is. That is the purpose of a jury.

18 All during the presentation of evidence you will
19 be given information and you are going to have to sort
20 through that information and determine what the facts
21 are. That is your job exclusively. I cannot even
22 comment on the facts. The law doesn't even give me
23 the right to have an opinion about the facts.
24 100 percent of that is up to you, to sort through the
25 evidence. I know you are thinking, How do we do that?

1 You said we would have these witnesses, we don't know
2 them. How do we know how to determine what the truth
3 is? You have to judge the creditability of the
4 witnesses and the evidence presented to you. Your
5 methodology in doing that is absolutely no different
6 than what you use in your daily lives. The truth in
7 this courtroom is no different than the truth on
8 Second Avenue. You apply the same process,
9 commonsense that you have. You can consider things
10 like whether a witness had the opportunity to see or
11 hear what he says he saw or heard, whether a witness
12 has any interest, prejudice, bias in the outcome of
13 the case. You can believe one witness over many, many
14 witnesses over one. You can apply what a witness says
15 and reject the balance. You can believe everything he
16 says, or nothing of what he says based on your view of
17 that testimony and how much sense it makes to you.
18 You can consider even how a witness looks, how he
19 appears, his demeanor on the witness stand. All of
20 those things are tools you can use in determining the
21 creditability of the witness, the truth of what he
22 testifies to or what the evidence would show in this
23 particular case. That is the first step, determine
24 what the facts are.

25 The second step is to determine what the law is,

1 and that is very easy because I will give it to you.
2 Just like it is your duty to determine the facts, it
3 is my duty to determine the law applicable.

4 At the end of the trial, I'll give you a written
5 charge. That is something that most judges don't do.
6 I don't know if anyone else does it, but I've done it
7 in every other trial. I do a transcript of my charge,
8 and I'll let you take it in the jury room so you can
9 refer to it, so you will have the law. You might not
10 agree with it, might think it should be something
11 else, but under your oath you will follow the law.

12 Then you get to the final part, important part.
13 The third part is you take the law as I give it to you
14 and the facts as you find them. Think, if you would,
15 about a mill with great big gears. You will build one
16 gear, that is the facts, and I build one gear, and
17 that it is the law. The process is to bring them
18 together and see how they fit. That is how you, as a
19 jury, will reach a verdict in this particular case.

20 Now, let me stay one other thing about the
21 presentation of information to you. Before this case
22 is over, you are going to want to jump over the bar
23 and choke the daylights out of Mr. Gleissner or Mr.
24 Brittain. You are going to say, Why is he asking
25 three questions when he could ask one? I know where

1 he is going. I know what he is going to ask. That is
2 because these are good lawyers. They are trained.
3 They are taught how to present evidence. They follow
4 the rules.

5 In a court of law, you have to lay a foundation
6 for a particular question. You just can't ask
7 anything. You have to be able to show how the witness
8 might know or have the particular information that you
9 want. They are doing that because they are doing what
10 they are supposed to do. You might even hear one of
11 them object during the course of the presentation of
12 evidence. Your Honor, we have to take up something
13 outside of the presence of the jury. They are doing
14 that because they are good lawyers. They are doing
15 that because that is what they should do. It usually
16 involves how something is presented or the method.
17 The reason you are sent out is not because anyone is
18 trying to hide anything from you, it is because during
19 my ruling on how it might be presented, sometimes I
20 have to comment on a piece of evidence, whether it is
21 relevant, whether it is important or not, and you
22 should not hear my opinion about that. It might
23 include how you look at it, and that is why we take
24 you outside of the courtroom whenever we're doing
25 things like that. So be patient with these lawyers.

1 They do these things because it is necessary.

2 When I was a young lawyer I would come in and try
3 a case and I would run up on one of these rules and I
4 would think that is so antiquated. That is 200 years
5 rules old, why in the world do we have that rule? The
6 more I try these cases, even today, a light bulb will
7 come on. All of a sudden a situation will occur and I
8 say, Now I know why the rule is there. I can see what
9 it is about. It is a learning process. These are
10 good lawyers and they'll follow the rules.

11 Let me tell you how the case will go. It is a
12 civil case. It will begin with Mr. Brittain making
13 what we call an opening remark. That is where he gets
14 to explain to you in much greater detail than I have
15 about the plaintiff's position in the case, why the
16 plaintiff has brought this action, why the plaintiff
17 feels that he is entitled to a judgment in his favor
18 in this case. Nothing Mr. Brittain says during that
19 remark is evidence. You can only judge this case by
20 what you hear from the witness stand, but it is proper
21 for Mr. Brittain to lay it out.

22 Mr. Gleissner has the opportunity to do the same
23 thing. What he says is not evidence, but he has an
24 opportunity to set out the defendant's position in the
25 case. He'll explain why they feel that the plaintiff

1 is not entitled to judgment in this case. He will put
2 up his witness and direct examine them. Then
3 Mr. Gleissner cross-examines. If you are direct
4 examining your witness, there is rules that you can
5 ask that are different from the cross-examining
6 attorney does.

7 As soon as the plaintiff rests, we'll take a
8 break. Then the defense has an opportunity to do the
9 same thing, put up witnesses. Then Mr. Brittain --
10 after Mr. Gleissner direct examines, Mr. Brittain will
11 have an opportunity to cross-examine those same
12 witnesses. When the defense rests, then Mr. Brittain
13 will have an opportunity to make what we call a
14 closing argument where he sums up -- speaks to you
15 about the law, about the evidence. He can't
16 supplement, add to it. And then Mr. Gleissner has an
17 opportunity -- sometimes that changes -- but he'll do
18 a brief rebuttal. Following that, I'll instruct you
19 on the law, and you will have the case for your
20 consideration. That is how it will proceed.

21 Let me tell you something. There is nothing more
22 important than you being able to hear and see
23 everything that takes place in the courtroom. There
24 is nothing like having to sit in that jury where you
25 are very uncomfortable. If you need to refresh

1 yourself, raise your hand. I promise you, just put up
2 your hand and we'll take a break. If any time outside
3 of the courtroom, Mr. Ropp will be with you. If you
4 need anything, tell him and he'll get it back to me
5 and we'll make sure you have anything you need.

6 The Horry County County Council stepped up to the
7 plate when they built this courthouse. When you get
8 back there, you'll see we have very comfortable jury
9 rooms for your use. One other thing. I don't -- I
10 tell every jury this. It is the attorney's disease.
11 We all do it. We can't help ourselves. I don't know
12 if -- well, I do, I see charts over here. I think
13 that might be exhibits that Mr. Gleissner has, I don't
14 know. We have a tendency to put them up on an easel
15 and ask a witness about it and we'll stand right in
16 front of it. I call that the attorney's disease. You
17 get wrapped up in what you are doing. Or you stand in
18 front of the witness and you block the witness from
19 the jury. You don't mean to, but you do it. If you
20 can't see or hear, raise your hand. That attorney is
21 not going to be upset for doing that. I promise you.
22 He wants you to see and hear what he is presenting.
23 If he wandered around in front of the witness and you
24 can't hear the witness or blocking the exhibit, raise
25 your hand and let him let me know so that you can hear

1 and see everything that is going on. It is all
2 important..

3 I'll ask Ms. Lilly to put you under oath. It is
4 12:30. You can go to lunch until about 1:15 -- we'll
5 go into 2 o'clock. That is an hour and a half. That
6 math thing, it messes me up. I'll give you extra time
7 because you might not be familiar with Conway and
8 where to get lunch and how to get in and out of the
9 courthouse. Ms. Lilly will place you under oath. One
10 other thing. You don't need to ask Siri how to handle
11 this case. You are perfectly capable of it. We have
12 to do that because those smart phones made everyone a
13 genius now. If this were a wreck case or something, I
14 know some of you will want to take it out and Google,
15 look how it is and measure feet, that sort of thing.
16 You might want to look up Mr. Brittain on Facebook and
17 see what his marital status is. Don't do any of that.
18 Relax. You are going to get enough from this witness
19 stand here to decide this case, and that is all you
20 are supposed to use. So don't do any of that and
21 don't discuss the case.

22 Ms. Lilly, place them under oath.

23 THE CLERK: Please stand and raise your right
24 hands.

25 (The jury was duly sworn.)

1 THE COURT: Did everyone take the oath? Everyone
2 did. Thank you very much.

3 Mr. Ropp, take them back to their jury room and
4 show them how to come in and out, help them,
5 Mr. Ropp.

6 MR. ROPP: Let them go ahead and go to lunch?

7 THE COURT: Yes.

8 (The jury exits at 12:33 p.m., and the
9 following is heard out of the presence of the jury.)

10 THE COURT: Okay. Anything I can help you with,
11 gentlemen?

12 MR. BRITTAIN: Not that I'm aware of.

13 MR. GLEISSNER: Do you want jury instructions
14 now, later? When?

15 THE COURT: Pass them up. Elizabeth is working
16 on it as we speak, I can tell you. Mr. Brittain
17 knows, and Mr. Gleissner you may hear me tell the
18 jury, I always give the jury a transcript of my jury
19 charge.

20 MR. GLEISSNER: I heard you say that.

21 MR. BRITTAIN: I know that, Judge. What I want
22 are the standard charges that you have given in
23 contract cases and part performance.

24 THE COURT: Okay. We'll see you at 2 o'clock.

25 (A lunch recess was taken.)

1 THE COURT: Do we need to do anything before the
2 jury? Everyone good?

3 MR. BRITTAIN: Yes.

4 MR. GLEISSNER: Yes, sir.

5 (The jury enters at 2:11 p.m., and the
6 following is heard in the presence of the jury.)

7 THE COURT: We have everyone in the courtroom.
8 Mr. Brittain.

9 MR. BRITTAIN: Thank you. Ladies and gentlemen,
10 this is a rare thing to promise that this will not
11 take very long. Most of the time we're in here they
12 go on and on. The last one I tried here in December
13 lasted for like 11 days, and everyone was just
14 exhausted. We have two witnesses in this case, Mr.
15 Porter, my client, and Mr. Hucks, Mr. Gleissner's
16 client, so we should be able to finish up this
17 afternoon.

18 Let me tell you what this case is about.
19 Mr. Porter became a friend of Mr. Hucks'. Mr. Hucks
20 had a couple of businesses and one of them was a
21 mobile home park. They became friends, and somewhere
22 along the line, Mr. Hucks needed money to help with
23 one of the businesses. So there was a financial
24 arrangement between these two. What we're here today
25 to talk about is their mutual interest in Peaceful

1 Lane. There is other troubled businesses that these
2 two are associated with, but they are not a subject in
3 this action. We're talking about a loan for \$155,000
4 made by the Porter Trust. He comes from North
5 Carolina and his family had a Porter Trust. He was
6 beneficiary trustee. He made a loan for \$155,000, and
7 it is contained on this document, which is Plaintiff's
8 Exhibit No. 1, signed by Mr. Porter, signed by
9 Mr. Hucks. This is pretty open and shut. It is not
10 very many pages. You'll have an opportunity to look
11 at it.

12 So we haven't been paid our money for this note.
13 Now, we expect juries to hear everything and do
14 everything, and when you get to the bottom of it, if
15 you promise to pay someone back, then you're supposed
16 to pay them back. If you don't, it is not the end of
17 the world. You don't go to jail or anything, but it
18 goes down that you owe them that money. So that is
19 what we're looking for here today.

20 You don't have the power to give us the money,
21 but you can determine whether or not the Porter Trust
22 is entitled to a judgment against Mr. Hucks for a
23 certain amount of money. All right. That is the
24 complaint. Very basic. That is the note. You won't
25 see this back there, but this says who he is, what

1 happened between them and the fact has it hadn't been
2 paid and, therefore, it is a breach of contract. I
3 promise to pay you or I don't. The jury says I should
4 have paid you, you owe me.

5 This is an answer and counterclaim, and this is
6 what Mr. Gleissner filed on behalf of Mr. Hucks. The
7 first thing he said is you waited too long. Huh-huh,
8 you waited too long to bring this lawsuit. But your
9 man kept telling us to wait, he was going to tell you.
10 Don't want to hear that. You waited too long to bring
11 a lawsuit. Statute of limitations got you, Mr.
12 Brittain, Mr. Porter. You should not have been so
13 kind and generous. You should have brought it sooner
14 than you did. That is their first defense. Very
15 technical legal defense. All right.

16 So what is our response to that? He did what he
17 was supposed to do within the time frame. He had a
18 collateral, 50 percent ownership in Peaceful Lane. He
19 took that on March 31st, 2014, within the original
20 statute of limitations from the note. All right. He
21 took it. That is completed. That action has taken
22 place. We're now just trying to collect the
23 difference between what that number was, its value,
24 and what we're owed on the note when you take the
25 amount that was borrowed and the interest. So our

1 response is you don't win on that, especially when you
2 didn't want us to do it. You kept saying, I'll pay
3 you. Hey, hold off, I'll pay you.

4 So, legally, we have partially performed under
5 this contract, default is established and we're trying
6 to collect a debt, which is contained on the
7 complaint. That is our response to a technical
8 statute of limitations. They'll say, hey, we didn't
9 borrow the money. They are saying we are using a
10 legal argument, but since you didn't sue us sooner, we
11 won't pay you now. They want you to buy that despite
12 what he did on March 31, 2014 to begin the process of
13 collecting his obligation.

14 Now, they also said in here that I didn't -- I,
15 as a lawyer, I didn't say enough. I didn't state a
16 cause of action. You didn't state -- you didn't make
17 it clear. What you say isn't it a cause of action. I
18 went over it with you. I said, We have this
19 document -- I referred to that document -- you signed
20 it, you promised to pay us and you didn't pay it. So
21 our response is that we have stated cause of action.
22 That is why we're here before you today, for you to
23 hear everything and decide whether we're entitled to a
24 judgment. You can't go in his pocket and get out
25 money and hand it to us. All you can give us is a

1 judgment.

2 The fourth defense now -- fourth defense --
3 according to satisfaction. He says that in the fall
4 of 2011 another business, Cypress Camping Resort,
5 sought to develop property into a campground in Horry
6 County, State of South Carolina, and that the Porter
7 Trust became a member of Cypress, and that any
8 obligation of Hucks to Porter Trust was satisfied by
9 allowing Porter Trust to become a member of Cypress.
10 It is underwater. If we get into that, ask them both.
11 They will tell you it is not worth anything. The bank
12 is foreclosing on it. The alleged obligation was
13 fully satisfied, and that is no answer. That is not
14 the solution to this case, that is just put in here.

15 Sixth cause of action. This one is rich. Hucks
16 wants money from Porter. Tell you what, you took my
17 50 percent collateral, that property was worth X.
18 When I take 50 percent of that and do the math, you
19 owe me \$22,000. Well, that doesn't figure in that the
20 property wasn't both \$208,000 and \$200,000 was owed on
21 it. So how you do get this defense? So he's out.
22 He's out even if he owns it because it is,
23 essentially, owned by a bank.

24 Seventh defense. Maybe we'll be here longer than
25 I thought. The Porter Trust is a member of Peaceful

1 Lane. They owed each other fiduciary duty. The
2 Porter Trust breached that fiduciary duty. We didn't
3 act in the best interest of Peaceful Lane. We're
4 trying to get our note paid back. We worked with him
5 for months. This is what gets you in this world. On
6 one cause of action we didn't do anything quick enough
7 and weren't mean enough. In this cause of action, we
8 were too hard. We didn't act in the best interest of
9 Peaceful Lane. So for that reason they don't want to
10 pay the money that they owe us.

11 Eighth defense is the plaintiff has not acted in
12 a manner consistent with equitable principals and we
13 should be barred from getting any relief, barred from
14 getting paid back because his hands are unclean. They
15 don't say how they are uncleaned or what he did to
16 make his hands unclean, but for that reason we should
17 not recover our money, which we're entitled to a
18 simple note like you would sign, anyone would sign,
19 when they are borrowing money from a bank or anywhere
20 else.

21 So we claim it is a simple case. Take a look at
22 that the document about his exercise of his rights
23 within the three-year timeframe, if there is a
24 three-year timeframe. Then he was asked not to get
25 the rest of the money now, let me work hard and make

1 it go and give it to you, which he did for a long
2 time. He finally now is trying to collect the
3 difference.

4 There is a high interest rate on this note. If
5 you go to a bank and get a certain interest rate. If
6 you go to an individual you might get a higher
7 interest rate. We can talk about those things, but
8 basically it is because of the risk involved. So that
9 is for you to determine. There has been nothing paid
10 on this note. The only thing that came to
11 Mr. Porter's trust from this note is the collateral,
12 the real estate which had an encumbrance, almost a
13 \$4 million encumbrance. So when you calculate it,
14 we're asking for interest, too.

15 So in fairness, you would take off the value of
16 Peaceful Lane, 50 percent, and if he owed more than
17 that, which is still an issue, more than that, take
18 that off of a number once you calculate the amount and
19 the interest based on the terms of the note. So we're
20 looking for a substantial judgment to protect us
21 against other people claiming money from Mr. Hucks.

22 Let me bring one other point up to you. I have
23 been advised that the defendant is going to raise with
24 you the fact that my client has a federal criminal
25 conviction. So I want to raise it. Scott Porter has

1 many businesses, one that was a landscaping business
2 for golf courses. It was determined that some people
3 in that business worked all over North Carolina golf
4 courses were illegal immigrants, aliens. He took the
5 responsibility for that as owner of that company. No
6 other officers in that company pled guilty or accepted
7 any responsibility for it. He did. The reason we get
8 into those sorts of things in court is to use them to
9 prove that that person is not honest, you can't trust
10 them. Ironically, in this case, how that happened and
11 what he did proves just the opposite. Thank you.

12 THE COURT: Mr. Gleissner.

13 MR. GLEISSNER: Ladies and gentlemen of the jury,
14 as the judge mentioned in his instructions to you,
15 what I'm saying to you is not evidence and what Mr.
16 Brittain just said to you is not evidence. What the
17 evidence is going to come from is this witness chair,
18 that is where the evidence will come from. He
19 mentioned to you that I had these bulletin boards. I
20 want you to know that as it relates to these, they are
21 blank. There is nothing on them. From time to time
22 when I hear something come from that witness stand
23 that I think is important, what I'll do is -- I taught
24 in law school. I write on boards to try to emphasize
25 things. So it is from my teaching background that I

1 have the boards. I might write on them, but that is
2 not evidence either. What is evidence is what you
3 will hear from this witness stand. I think the first
4 thing you'll hear from the witness stand is Mr. Porter
5 taking the stand, and as Mr. Brittain just mentioned,
6 he was convicted criminally of defrauding the federal
7 government. So I don't know what he will testify to.
8 We took depositions in this case, but I just don't
9 know what he'll testify to.

10 I do know what Mr. Hucks will testify to, at
11 least I think so. I think what Mr. Hucks is going to
12 testify to is that he and Mr. Porter went together and
13 bought a mobile home park called Peaceful Lane. I
14 like that, it just sounds nice. They both put a
15 little over \$400,000, that includes about \$40,000
16 worth of improvements. So about \$400,000 into the
17 mobile home park. It was 2008 and 2009. We know what
18 was going on in 2008. People that owned property,
19 developers, they had a lot of financial problems. One
20 of the things that Mr. Hucks had, he had attorney's
21 fees, problems, he needed cash. Mr. Porter had cash,
22 so he borrowed money from Mr. Porter. As part of
23 that, he pledged his 50 percent interest in the mobile
24 home park. Pledging an interest in the mobile home
25 park at 50 percent interest, it is like buying a new

1 car, you pledge that car as collateral for a loan.
2 That is what Mr. Hucks did, he pledged his interest in
3 the mobile home park, okay. That was is 2011. The
4 note was to be paid back in 2011. The note matured in
5 2011. This lawsuit was brought in 2016. As Mr.
6 Brittain said in his opening, I'm going to claim there
7 is a three-year statute of limitations, and there is
8 more than three years between 2011 and 2016 and,
9 therefore, statute of limitations ran and he shouldn't
10 be allowed to collect on the promissory note.

11 Another defense relates to that collateral. As
12 it relates to that collateral in Peaceful Lane, what
13 Mr. Brittain said happened to that collateral is that
14 Mr. Porter took it. He just took it. I don't think
15 you could just take the collateral. You can't just
16 take the car. You have to sell the car and the
17 proceeds of that sale are supposed to go against the
18 debt. That ain't what happened. What happened is he
19 just took the collateral, okay. And as it relates to
20 taking the collateral, we think that the difference
21 between the value of that collateral and the balance
22 due on the note, Mr. Hucks is entitled to it.

23 Now, it ain't going to be much. It won't be
24 \$400,000 or \$900,000, but there is a little difference
25 between this property they spent \$400,000 on and the

1 debt. We think that as it relates to that little
2 difference -- and the testimony will show -- we think
3 Mr. Hucks is entitled to it. So that is what we think
4 this case is about: Did they wait too long, and
5 should Mr. Hucks get a credit on his loss of a
6 50 percent interest in Peaceful Lane. Thank you.

7 MR. BRITTAIN: I call Mr. Porter to the stand.

8 (STANLEY SCOTT PORTER, having been duly sworn,
9 testified as follows:)

10 THE WITNESS: Stanley Scott Porter.

11 DIRECT-EXAMINATION

12 BY MR. BRITTAIN:

13 Q Where are you from?

14 A Boone, North Carolina.

15 Q How long have you lived in Boone?

16 A 25 years.

17 Q Who are your mama and daddy?

18 A Stanley and Bruce Porter. My mother's name was
19 Bruce. She was from Rottingham. My dad was from
20 Oklahoma, so I grew up in Oklahoma.

21 Q When did you go back to Boone?

22 A When do I go back?

23 Q How long have you been living there?

24 A Since '91.

25 Q 1991?

1 A '91.

2 Q What business are you in?

3 A Well, I'm semiretired, but I have rental property
4 that I own in Boone and some here.

5 Q How old are you?

6 A 67.

7 Q And tell me about Porter Trust.

8 A It was formed by my father. He had a trust for
9 me and a trust for my brother formed in 1991.

10 Q Was Porter Trust involved in this litigation?

11 A It is.

12 Q Do you know Kenneth Hucks?

13 A I do.

14 Q How do you know Kenneth Hucks?

15 A I met Kenneth Hucks in 2000 when I came here to
16 start a golf course maintenance operation with
17 Burroughs and Chapin.

18 Q And tell us about how that -- your meeting him
19 and how your relationship developed.

20 A Well, I called him up and told him that I worked
21 with golf courses. We did work with legal migrant
22 workers. We had to house them, and I needed a place to
23 house them. He had a mobile home park in Socastee and
24 he was willing to become landlord. So we became
25 landlord and tenant, and became friends. My business

1 was growing. He kept providing more space for us, and
2 then he decided to sell Peaceful Lane.

3 MR. BRITTAIN: Look at them.

4 A Sell the mobile home park and vacate it. So we
5 needed a place for my guys to live. So we went
6 together and bought Peaceful Lane Mobile Home on
7 Socastee Boulevard.

8 Q (MR. BRITTAIN) When you said we weren't
9 together, who is "we"?

10 A Kenneth and the Stanley Scott Porter Trust.

11 Q Which is a trust you are the beneficiary of?

12 A That's right, and company trustee.

13 Q And company trustee. So how was the contribution
14 made to purchase Peaceful Lane?

15 A We each put in \$200,000. I put in another
16 \$25,000 to purchase mobile homes, and Kenneth
17 contributed some mobile homes.

18 Q Who operated Peaceful Lane?

19 A Kenneth was the managing member of the LLC and he
20 operated it. He had his management company, Properties
21 Unlimited, manage the property.

22 Q What problems, if any, occurred as a result of
23 that management?

24 A Well, none initially. But ultimately we --

25 MR. BRITTAIN: Can you hear him?

1 A Can you hear me? I have allergies going on this
2 time of year, so forgive me. We had difficulty. We
3 discovered that.

4 MR. GLEISSNER: I'm going to object. I think
5 they are trying to put in improper character evidence.
6 I don't know if it is proper.

7 MR. BRITTAIN: I'm not asking -- I'm asking him
8 what happened to the management of the company, not
9 character evidence.

10 MR. GLEISSNER: Can we approach, Your Honor?

11 THE COURT: Yes.

12 (Whereupon, a bench conference was had.)

13 Q (MR. BRITTAIN) As part of the operation of
14 Peaceful Lane, did some management problems develop
15 with respect to the loss of records and money and that
16 sort of thing?

17 A Yes.

18 Q And at any point in time did Mr. Hucks ask you
19 for additional money?

20 A From the time of inception of the mobile home
21 park?

22 Q Yes.

23 A Yes. He asked for a personal loan twice.

24 Q He asked you for a personal loan. Both of you
25 had a interest in Peaceful Lane?

1 A That's correct.

2 Q And Peaceful Lane was creating problems there?

3 A Yes.

4 Q Was it making any money?

5 A No. We weren't getting any distributions outside
6 of it once I -- my tenancy stopped.

7 Q So at some point in time Mr. Hucks came to you
8 and asked you to loan him money?

9 A That's correct.

10 Q I'll show you what is marked as Plaintiff's 1.

11 (Plaintiff's Exhibit 1 marked.)

12 Q (MR. BRITTAIN) That is the note and pledge
13 agreement?

14 THE COURT: Are you familiar with it,
15 Mr. Gleissner?

16 MR. BRITTAIN: Let me show it to Mr. Gleissner.
17 Hold on a second.

18 (A brief pause in the proceedings.)

19 MR. BRITTAIN: He lost the business records. All
20 I have is a copy.

21 THE COURT: Who had the original?

22 MR. BRITTAIN: Do what now?

23 THE COURT: Who had the original?

24 MR. BRITTAIN: I don't know.

25 THE COURT: I'm allow it if he can identify it.

1 Q (MR. BRITTAIN) What is marked as Plaintiff's 1;
2 do you recognize that?

3 A I do.

4 Q What is that a copy of?

5 A Copy of a promissory note and pledge agreement.

6 Q Look at the first page of it here. There is
7 handwriting; what is that?

8 A Kenneth's signature and a date.

9 Q Were you present when that was signed?

10 A I don't recall whether I was there at the time.

11 Q Do you recognize that signature?

12 A I do.

13 Q Any question that he signed it?

14 A No, sir.

15 Q Turn over to the second page, pages -- take a
16 look at these next five pages, Plaintiff's 1, and look
17 and see if you recognize those.

18 A I do.

19 Q And what are those?

20 A That is the pledge agreement that pledged his
21 interest in Peaceful Lane Mobile Home Park.

22 Q Explain that. Explain what -- Kenneth Hucks is
23 pledging what?

24 A He's pledging his interest in this partnership we
25 had.

1 Q In Peaceful Lane?

2 A Peaceful Lane Mobile Home Park.

3 Q In exchange for -- what are you doing?

4 A Loaning him \$155,000.

5 Q Okay. And who signed the last page of that
6 document?

7 A Both he and I.

8 Q Did you see him sign that document?

9 A I don't recall.

10 Q Do you recognize his signature?

11 A I do.

12 Q At any time did he claim he didn't sign it or you
13 didn't loan him the money, anything like that?

14 A No.

15 Q Were you with him from time to time during this
16 period of time immediately after the signing of the
17 document?

18 A We were together a lot. We were close friends.
19 We went to Alaska together, Louisiana every year. We
20 played golf. We were in pretty much constant contact.

21 Q Were there ever any suggestions that you hadn't
22 loaned him the money, he didn't owe you the money or
23 that sort of thing?

24 A No.

25 Q Any objection that he pledged his part of

1 Peaceful Lane?

2 A No.

3 MR. BRITTAIN: I move to introduce Plaintiff's 1
4 into evidence.

5 MR. GLEISSNER: We object. We believe that under
6 Rule 1002 there is a requirement that there is an
7 original if you want to prove contents of a document.

8 THE COURT: Let's take the jury out for a minute.

9 (The jury exits at 2:37 p.m., and the
10 following is heard out of the presence of the jury.)

11 THE COURT: Mr. Brittain, he is citing 1002.

12 MR. BRITTAIN: I'm trying to get over to that.
13 Do you know what page?

14 MR. GLEISSNER: Your court rules may be different
15 than mine. I don't know what your page number would
16 be, sorry about that.

17 THE COURT: How about 1003? Flip to 1003.

18 MR. GLEISSNER: As it relates to 1003,
19 admissibility to duplicates, Your Honor, the question
20 is whether or not we are seeking to have it admitted
21 for the contents of the writing recording and
22 photograph, and whether or not there is a question as
23 to the authenticity of the original, but we don't have
24 that.

25 THE COURT: You haven't denied it in your

1 complaint.

2 MR. GLEISSNER: I believe I did, Your Honor.

3 THE COURT: I mean, do you deny the existence of
4 the document? I saw seven defenses, but.

5 MR. GLEISSNER: I think we denied all affirmative
6 allegations of the complaint. I believe we admitted
7 to --

8 THE COURT: Well, do you have your copy of the
9 note and pledge agreement that would cast doubt on the
10 genuineness of this document?

11 MR. GLEISSNER: Well, the only copy that we have
12 is the copy that the plaintiff produced in discovery,
13 so the answer to your question is -- I don't know if
14 this particular document is, in fact, an accurate copy
15 of the original because I don't have the original.

16 THE COURT: Is your client in a position to deny
17 that this is a duplicate of the original agreement?

18 MR. GLEISSNER: I believe my client doesn't know
19 if this is a duplicate.

20 THE COURT: Sure he does, Mr. Gleissner. I mean,
21 is there -- you can look at the signatures. I mean,
22 this has been ongoing for 15 years.

23 MR. GLEISSNER: It is a 2011 document.

24 THE COURT: I'm sorry, not 15. Seven years. Now
25 you are telling me that your client -- there is a

1 question as to whether this is the document that we
2 talked about in the complaint and answers? I think it
3 is admissible under 1003. I'll admit it.

4 (Plaintiff's Exhibit 1 was admitted.)

5 THE COURT: Of course you can challenge it as
6 any other exhibit that might be introduced

7 (The jury enters at 2:42 p.m., and the
8 following is heard in the presence of the jury.)

9 Q (MR. BRITTAIN) Few questions about Exhibit 1.

10 THE COURT: Was it admitted?

11 MR. BRITTAIN: Yes. I made a motion --

12 THE COURT: Yes. Yes. It is admitted. Go
13 ahead.

14 Q (MR. BRITTAIN) Now, Plaintiff's Exhibit No. 1,
15 which we've been going over until the jury was -- have
16 you in any way come up with a fake document to put
17 forth in this court?

18 A No, sir.

19 Q Is the document that is Plaintiff's Exhibit No. 1
20 the one that you and Kenneth Hucks signed back in the
21 day, at least a copy of it?

22 A Yes, sir.

23 Q Any question in your mind?

24 A None.

25 Q And you haven't been involved in any kind of

1 subterfuge or something to produce a different document
2 here today?

3 A No, sir.

4 Q Have you ever heard any objection about the
5 document until today?

6 A No, sir.

7 Q Let's talk about how this document, Plaintiff's
8 1, was acted on. What, if anything, did you do
9 concerning Plaintiff's 1 and Mr. Hucks? Did he pay
10 like he was supposed to pay on his document?

11 A No, he did not.

12 Q So at some point in time you took what action?

13 A I talked to him constantly about his financial
14 situation and how he was going to repay it. He
15 continued to promise that he would repay it when he
16 sold his interest in a campground. So I continued to
17 allow time for him to do that to solve financial
18 issues, including our other business issues. Then at a
19 point in time when he told me he was unwilling to sell
20 it and wouldn't sell --

21 Q Sell what?

22 A Apache, his interest in Apache. At that point in
23 time I realized he would not pay me, so I took his
24 interest, informed him I was going to take his interest
25 and took it in Peaceful Lane and let him know I would

1 work with Conway National Bank to get him off of the
2 \$204,000 loan that he guaranteed.

3 Q How much of a loan was there on Peaceful Lane?

4 A \$204,000.

5 Q Who guaranteed that?

6 A Kenneth and I both.

7 Q And so you got him off of the note?

8 A Correct.

9 Q No responsibility for it?

10 A No more.

11 Q But \$200,000 was owed on Peaceful Lane when you
12 took it back?

13 A That's correct.

14 Q And that happened on what day?

15 A March 31st of 2014.

16 Q Any question in your mind about that?

17 A No.

18 Q And what conversations took place between you and
19 Kenneth Hucks about that transaction?

20 A I told him I was going to take it. I had taken
21 over management. We were in the midst of trying to
22 determine how much money had been lost from the
23 partnership. Mobile homes had been sold. Not all the
24 proceeds had been deposited into the partnership bank
25 account. Records were lost by Kenneth's management

1 company for the entire period of his management, so I
2 was trying to reconstruct those records and determine
3 how much he might owe the partnership if he did or
4 didn't so that we could determine the final analysis of
5 how much credit he would get for his partnership
6 interest that I took.

7 Q Okay. And what were those calculations? Take us
8 through those calculations as of March the 31st,
9 2014, what was done and what you obtained pursuant to
10 plaintiff's Exhibit No. 1.

11 A Okay. Well, it is not like you take a car,
12 you're taking a security -- piece of paper that
13 entitles you to 50 percent ownership in this business.
14 So I took this piece of paper. So then I had a hundred
15 percent interest of the business as to that point in
16 time in the trust. So I go to Conway National Bank and
17 say, I need to get Kenneth off the guarantee. I need
18 you to lend to just the Peaceful Lane Mobile Home Park
19 and I'll guarantee it. We work through that process.
20 They have an appraisal done. The appraisal comes in at
21 \$288,000.

22 MR. GLEISSNER: Hearsay. Move to strike.

23 THE COURT: He hadn't given a figure -- take the
24 jury out again.

25 MR. BRITTAIN: I can come at it a different way.

1 THE COURT: All right.

2 Q (MR. BRITTAIN) Based on these activities, what
3 was your evaluation of your property interest, your
4 evaluation of your property interest at the end of
5 this transaction? How much had you gained?

6 A The property was worth, in my opinion, \$280,000.

7 Q Right.

8 A We owed \$204,000. So there was essentially a
9 \$76,000 net value of the property in 100 percent
10 ownership of the LLC. When I got 50 percent, that is
11 \$38,000 I would receive as a benefit.

12 Q So that benefit should be taken off from the
13 \$155,000, correct?

14 A That's correct.

15 Q Let's talk about interest calculation. Give him
16 credit -- the way that happened, he gets some credit
17 for that transaction, correct?

18 A Correct.

19 Q \$38,000 is his entitlement, correct?

20 A Correct.

21 Q So \$38,000 comes off of any debt he has to you of
22 the 155, right?

23 A Yes. Except I would argue he has already taken
24 money from the partnership.

25 Q But we can't prove that. Let's not talk about

1 that. So go back to being fair..

2 A Yep. 38.

3 Q He's entitled to \$38,000?

4 A Yes, sir.

5 Q So that 38,000 comes off the principal of the
6 note, 2014?

7 A Right, March 31st.

8 Q What about the interest calculation? (If has a
9 18-percent interest, which is high interest?

10 A Well, the original interest amount was prime plus
11 1 percent, which is a very low rate. And until he
12 defaulted, the interest rate was prime plus 1 percent,
13 which was a four-and-a-quarter, which was a low rate
14 for personal loan. So it was a bargain rate. Once he
15 defaulted and failed to pay, it went to 18 percent,
16 just like your credit card charges you when you don't
17 pay.

18 Q So as he sat there on March 31st, how would you
19 calculate what Kenneth Hucks owed you based on
20 Plaintiff's 1 and your exercise of the option to pay
21 50 percent of his ownership and credit him \$38,000?
22 How would that be calculated?

23 A You would take the interest rate for the period
24 of time until the default on November 5th, so that is
25 four-and-a-quarter percent. And then take 18 percent

1 from that point until I took \$38,000. At that point,
2 that total calculation would be about \$170,000.

3 Q So that is March 31 when you acted on that note
4 and claimed your entitlements?

5 A Yes.

6 Q But none of that has been paid to you except the
7 \$38,000?

8 A That's right.

9 Q So the remainder of that part has continued to
10 accumulate interest over the time?

11 A That's right.

12 Q And you see where they object to that. They are
13 claiming, wait a minute, that has gone on since an
14 earlier time, but as of 2014, you are talking about
15 178,000?

16 A Roughly, yes, sir.

17 Q But you never were paid that; is that correct?

18 A No. No, sir.

19 Q And you gave him credit for the \$38,000 in that
20 calculation?

21 A I just did that in my head to the best of my
22 ability.

23 Q Let's talk about your training, education. What
24 education do you have?

25 A Master's in accounting.

1 Q Master's in accounting. And what type of work
2 experience do you have in that field?

3 A I worked for Pricewaterhouse and big CPA firms in
4 Atlanta for about eight years, worked at the manager
5 level.

6 Q Let's talk about the North Carolina charge. You
7 were charged having illegal immigrants that worked in
8 your business; is that fair to encapsulate?

9 A I had legal immigrants. The federal government
10 took the position that I misused visas I obtained to
11 get legal workers, and I pled to it.

12 Q No other officer of your organization had any
13 plea associated with that?

14 A No. No.

15 Q You took responsibility for all of the mistakes
16 made?

17 A That's correct.

18 MR. BRITTAIN: That is all I have, Your Honor. I
19 move to move Plaintiff's 1.

20 MR. GLEISSNER: I thought he did.

21 THE COURT: I thought we had it in.

22 COURT REPORTER: Yes..

23 CROSS-EXAMINATION

24 BY MR. GLEISSNER:

25 Q Let's start with the criminal situation.

1 Basically, you lied to the federal government about
2 where these workers are going to go to work; is that
3 correct?

4 A No, sir. What caused me to plea is that I signed
5 a request for more workers than I had contracts to
6 support.

7 Q Didn't have anything to do with the fact you told
8 the federal government you were going to bring these
9 workers to work as snowmakers?

10 A What I pled guilty to was improper use of a visa.
11 I pled because I was guilty of that. Now, they charged
12 me with a lot of stuff -- there recited a lot of stuff,
13 but I had workers that were coming to work in the ski
14 resorts.

15 Q And you also had workers that you had coming in
16 for golf courses?

17 MR. BRITTAIN: I object. He's not allowed to go
18 beyond the conviction and --

19 THE COURT: Extrinsic evidence once admitted is
20 not admissible.

21 MR. GLEISSNER: I want to be sure, Your Honor. I
22 can't go into the indictment and --

23 THE COURT: Ask him what he was convicted of, and
24 if he admits it, that is it.

25 MR. GLEISSNER: Fair enough. Thank you, Your

1 Honor.

2 Q (MR. GLEISSNER) Let's get to the reason why
3 we're here, which is the loan. Let's start off with
4 -- do you have Exhibit 1 in front of you?

5 A I do.

6 Q That is the note, the alleged note, right?

7 A Yes.

8 Q Let's look at a copy of this note. It does not
9 appear to be -- note does not appear to be sealed; is
10 that right?

11 A I don't see a seal on it, no.

12 Q And the maturity date on this note -- well --
13 make sure I have it right. We start with the note
14 dated May 6 of 2011, right?

15 A 26th, I believe.

16 Q It matures November 5, 2011; is that right?

17 A Let me correct. The note has a date May 6th at
18 the top, and Kenneth's signature is May 26th. So to
19 clarify, interest started on May 6th. It is a demand
20 note.

21 Q It does say demand note on it, and it also
22 says --

23 A It says if he hadn't paid it, he needs to pay it
24 by November 5th of 2011.

25 Q So you could have demanded it before November 5,

1 2011, but it matured on November 5, 2011; is that
2 right?

3 A It was all due and payable on November 5th,
4 yeah.

5 Q November 5th, 2011. Okay. As it relates to
6 the default interest rate, which you calculated off the
7 top of your head, you started that calculation on
8 November -- default interest on November 6th?

9 A Yes.

10 Q So we're in agreement that the default was
11 November 5th, 2011?

12 A Yes.

13 Q You have to say out loud your answers so she can
14 hear you and they can hear you. This lawsuit was
15 brought on March 21, 2016; is that right?

16 A I don't know. You tell me. I mean, I don't
17 recall.

18 Q Sometime in March 2016. March 2016 complaint,
19 right?

20 A Yep.

21 Q And we will agree between the two of us that more
22 than three years runs between November 5, 2011 and
23 March match 2016?

24 A That is more than two years, yes, undoubtedly.

25 Q Now, something happened in March of 2014; is that

1 what your direct testimony was?

2 A Yes.

3 Q And that is when you took the 50 percent in
4 Peaceful Lane?

5 A Yes.

6 Q That was in March?

7 A Uh-huh.

8 Q 2014, took 50 percent interest. When did you let
9 Kenneth -- Mr. Hucks -- know that you took his interest
10 in March of 2014?

11 A I told him I was going to take it in January, and
12 I told him I took it when I got him off the note in
13 March of 2014. I asked Conway to provide him with a
14 release of his guarantee.

15 Q Let me have you look at an e-mail to refresh your
16 memory as when you gave him notice that you took his
17 interest.

18 A This was an e-mail about my efforts to collect
19 the balance. It is not the notice that I took it.
20 This is a notice that says you forfeited on March 31,
21 which I already informed him about, as it says in the
22 first sentence. And then it goes on to say we've been
23 trying to sort out what happened to all of these
24 missing funds and you owe us money, I would like to be
25 paid. Now that we know what that balance is, and I

1 make a suggestion how much is collateral worth and how
2 much he should receive credit for.

3 Q So what you are telling me is this isn't the
4 notice you took his interest?

5 A No.

6 Q Do you have a written notice that you took his
7 interest?

8 A No, I do not.

9 Q So you have no written notice -- this one says
10 that you took his interest?

11 A Yeah. It confirms something --

12 MR. BRITTAIN: We need to mark it if we're
13 referring to it because --

14 THE COURT: Yes. Mark it at least for
15 identification so we'll know what we're talking about,
16 and if you want to introduce it, that is fine, or Mr.
17 Brittain.

18 MR. GLEISSNER: I won't introduce it.

19 MR. BRITTAIN: I'm going to use the document. I
20 want the document introduced into evidence. You
21 quoted from it, sir, I have a right to --

22 THE COURT: Let's mark it as a Court's exhibit.

23 (Court's Exhibit 1 marked.)

24 Q (MR. GLEISSNER) The 50 percent interest of Mr.
25 Hucks', it is not like General Motors stock where you

1 can look at the stock exchange and find out what the
2 price is?

3 A Right.

4 Q So there is no generally accepted market?

5 A No public market for it at all.

6 Q Did you try to sell the 50 percent interest?

7 A No, sir. I thought that would do him a
8 disservice.

9 Q But you didn't try to sell it?

10 A No, I did not.

11 Q So there was no public sale of Mr. Hucks'
12 50 percent interest?

13 A No.

14 Q There is no market that we can look at to
15 determine what the 50 percent was worth?

16 A In my past life I've testified as an expert
17 witness about the valuation of such things, but I don't
18 think you want to do that. But, no, there is no public
19 market.

20 Q There is no public market, okay. No public
21 market, no advertising, no offer to sell, none of that
22 stuff, you just took the interest?

23 A That's right, with his consent.

24 Q You believe it was with his consent?

25 A He asked me if we needed to put papers together

1 and I said I don't need any if you don't, and he said
2 okay.

3 Q Did he offer his interest in exchange for a full
4 satisfaction of the debt?

5 A No.

6 Q He didn't offer you his interest in exchange for
7 full satisfaction of the debt?

8 A No.

9 Q No?

10 A I know what you are going to refer to, I think.
11 He suggested that we can sell it and that that would
12 satisfy the debt, and I told him I don't think it
13 would.

14 Q Let me have you look at that document.

15 A Yeah, this is the one I was referring to.

16 Q I'll have that marked.

17 THE COURT: It needs to be identified. The
18 record doesn't reflect what we're talking about.

19 MR. GLEISSNER: Fair enough.

20 Q (MR. GLEISSNER) Is this an e-mail from you to
21 Mr. Hucks dated August 2, 2011?

22 A Part of it is blacked out, so I don't know, I
23 mean, if this is a document that was created or what.

24 Q Let me have you look at the entire document so
25 that you -- here is the entire document. If you look

1 at the part that is blacked out.

2 MR. BRITTAIN: I need to see that, too.

3 THE COURT: We're going to. See if he can
4 identify it.

5 A Yes, I remember this.

6 Q (MR. GLEISSNER) Okay. Let me have Mr. Brittain
7 look at this.

8 MR. BRITTAIN: I want to see.

9 MR. GLEISSNER: I asked if I could give it to
10 you. Sorry. Sorry.

11 MR. BRITTAIN: Sorry, I can't hear. I'll have to
12 move over here, my hearing must be going bad. My wife
13 says it's bad (laughing).

14 MR. GLEISSNER: I did say it gently, I have to
15 admit.

16 THE WITNESS: August 2 of 2011.

17 THE COURT: You identified the document as what?

18 THE WITNESS: E-mail from me to Kenneth.

19 THE COURT: Dated?

20 THE WITNESS: August 2, 2011.

21 THE COURT: Very well. Show it to Mr. Brittain.

22 MR. GLEISSNER: Here is the entire e-mail.

23 (Mr. Gleissner and Mr. Brittain confer.)

24 MR. BRITTAIN: I think it has been handled
25 correctly, Your Honor. I think that black part

1 involves a whole other thing. I think you did that,
2 right. Thank you.

3 (Defendant's Exhibit 1 marked.)

4 THE COURT: Without objection Defendant's 1 is
5 introduced, redacted copy.

6 MR. BRITTAIN: Yes.

7 (Defendant's Exhibit 1 admitted.)

8 Q (MR. GLEISSNER) Mr. Porter, it looks like in the
9 second paragraph it says, I can't justify converting
10 the debt into ownership at that level.

11 So it looks like Kenneth did make an offer to you
12 that you would take back the 50 percent interest in
13 exchange for the debt, and you rejected that offer?

14 A This was part of a larger communication about
15 over a million dollars in funds and his need for
16 financing for another project. In context of providing
17 a million dollars of funds, that didn't solve that
18 problem with regard to his debt in Peaceful Lane Mobile
19 Home Park or his ability to access the additional
20 \$500,000 he was seeking at the time. This came about
21 because, originally, I was going to -- and we wanted to
22 -- convert that debt into an investment in another
23 business, and then the bank did not allow us to do
24 that. They wanted more cash. So that option was no
25 longer viable. So I was explaining that in the context

1 of this \$500,000 financing we were going to have to
2 find another solution for the amount he owed me. He
3 didn't offer -- I said I couldn't convert it. This
4 doesn't say that he offered. It says my math shows
5 that that is not a way to satisfy his debt and he would
6 still owe me.

7 Q And at the time he was going to owe you \$55,000?

8 A If we did the conversion, it would still -- still
9 have to repay \$55,000, repayment advance.

10 Q So that wasn't agreed to?

11 A No. We were exploring how to come up with enough
12 money to close this -- get this other business
13 financed, and that is what it says in this context.
14 There is a whole lot here to cover. It is not easy to
15 understand, and I'll try, but we have to decide whether
16 it is worth to go forward with the other business, and
17 this piece of the puzzle doesn't work, is what that
18 says. I didn't consider that an offer to pay. That
19 was me trying to work out how to solve all of our
20 issues.

21 Q Did I understand that you felt in 2014 that the
22 property was only worth \$280,000; did I understand
23 that?

24 A That's correct.

25 Q And when you bought the property, you paid

1 \$360,000 for the property; didn't you?

2 A That's correct.

3 Q You put another \$40,000 into the property in
4 improvements; is that correct?

5 A That's correct. And we sold the mobile homes,
6 which was a portion of the value between that time and
7 March of '14.

8 Q So you are saying the \$40,000 was improvements of
9 the mobile homes, or to the real property?

10 A Improvements to both.

11 Q Well, I mean --

12 A \$40,000 doesn't relate to the value of the mobile
13 homes.

14 Q The 40,000 relates to the mobile homes?

15 A No. It does not necessarily relate to the mobile
16 homes. It was \$40,000 of improvements to the assets of
17 the business, which included mobile homes and land.

18 Q You put in 17 water taps, right?

19 A I don't recall. Yes, there is 17 water taps, but
20 I don't think we put them all in. There were some
21 already there. I think there were eight, but I don't.

22 Q So you put in water taps, sewer taps, pads -- you
23 didn't -- yeah, you did put in pads for mobile homes
24 because you had to have something to put the mobile
25 homes on top of?

1 A There were already mobile homes there. There
2 were already approved lots and water service, but I
3 don't remember precisely how many of what we had at the
4 time. But at the time we bought it, the mobile homes
5 had rental income. They produced rental income. We
6 put more mobile homes on it, which my company rented,
7 which was the major source of income for the business
8 while we owned it together. So he got the benefit of
9 our rental income for trailers that I had to use to
10 house my guys working at the Burroughs Chapin golf
11 courses.

12 Q At some point, you took over management of
13 Peaceful Lane?

14 A That's correct.

15 Q And after you took over management of Peaceful
16 Lane, did you provide Kenneth with an accounting loss
17 for Peaceful Lane?

18 A Yes.

19 Q You did?

20 A When I furnished -- when we did this conclusion
21 of ownership interest referred to in the November
22 e-mail you produced earlier, he got a tax return
23 following that that shows what the income and loss was.
24 It was attributable to the operation during his
25 ownership period.

1 Q And his share of the income was -- do you have
2 any idea?

3 A No idea. There wasn't income. There was never
4 any income.

5 Q Never any income?

6 A Not from the time that my business stopped being
7 the tenant and paying excessive rent and went to market
8 rent, there was not taxable income generated of any
9 significance.

10 Q We know there is a difference between taxable
11 income and regular income, right?

12 A I don't know what that means, "regular income".

13 Q I mean you can make money and through
14 depreciation there is no taxable income, right?

15 A That's correct.

16 Q So was there any regular income as opposed to
17 taxable income?

18 A There was during the period of time that I was a
19 tenant and we were paying most of the rent in the park,
20 there was money distributed. Subsequent to that time,
21 there was one distribution of \$1,000 that was money
22 made and distributed to us as partners.

23 Q And that thousand dollars was applied to?

24 A On my insistence, it was applied to the payment
25 of the note.

1 Q No other income from this property?

2 A No distributions.

3 MR. GLEISSNER: Nothing further, Your Honor.

4 MR. BRITTAIN: Let me look at the documents we
5 were talking about. As to Defendant's 1, have you
6 introduced that into evidence? I want to.

7 MR. GLEISSNER: I believe I have.

8 MR. BRITTAIN: I move to introduce Court's 1.
9 And let me explain my theory for its admissibility.

10 MR. GLEISSNER: I don't think he needs to explain
11 his theory.

12 MR. BRITTAIN: He has quoted from the document
13 and put it in front of my client. The completeness
14 rule allows this document --

15 THE COURT: You can examine him on the document
16 on cross and you can introduce it.

17 MR. BRITTAIN: Okay. That's what I want to do.

18 THE COURT: Certainly.

19 REDIRECT-EXAMINATION

20 BY MR. BRITTAIN:

21 Q Take a look at Court's Exhibit No. 1 handed to
22 you by Mr. Gleissner; what is that?

23 A That is an e-mail from me to Kenneth about the
24 winding up of our joint ownership of Peaceful Lane
25 Mobile Home Park and the amount he owes on the debt to

1 me.

2 Q And it was sent at what time?

3 A November 13, 2014.

4 Q And this was after March 31, 2014; is that
5 correct?

6 A That's correct.

7 Q And does it contain figures and numbers you made
8 him available to as far as information is concerned?

9 A It does, and there were attachments to it as
10 well.

11 Q And so is there any question in your mind you
12 gave him this information about the appraisal values,
13 et cetera?

14 A No. No.

15 Q So this -- he received this in the normal course
16 of business as far as you are concerned?

17 A Yes.

18 MR. BRITTAIN: Move to introduce it as
19 Plaintiff's 2.

20 MR. GLEISSNER: The only objection that I have is
21 that it does contain hearsay testimony in it,
22 specifically as it relates to an alleged appraisal.

23 THE COURT: Well, there again, if it is a
24 business record, it was between the parties, I think
25 there is no hearsay there. It is something that is

1 discussed in the normal course of business, so I'm
2 going to allow it.

3 MR. BRITTAIN: Thank you, sir. That is all I
4 have.

5 (Plaintiff's Exhibit 2 marked and admitted.)

6 THE COURT: Is that the plaintiff's case? All
7 right. If you would, take the jury out.

8 (The jury exits at 3:19 p.m., and the
9 following is heard out of the presence of the jury.)

10 MR. GLEISSNER: I move for a directed verdict at
11 this time. I make that motion on two grounds. First
12 ground is the statute of limitations. It is
13 undisputed that --

14 THE COURT: Weren't the parties into 2014
15 negotiating back and forth the payment of this note?
16 I mean, doesn't that extend the statute of limitations
17 beyond what it would be on a demand note? Doesn't it
18 do that, like an open account? You know, you go from
19 last payment or someone comes in and pays another
20 payment, you begin the statute again. I mean, tell me
21 about that.

22 MR. GLEISSNER: Well, no, Your Honor, the statute
23 of limitations does not run -- does not get tolled
24 unless there is some writing that provides for the
25 defendant promising to make the payment on the note.

1 In this case, we don't have any writing being offered
2 into evidence after the default in November of 2011
3 where Mr. Hucks says, in writing, I promise to pay
4 that obligation, and because of that, the statute of
5 limitations continues to run and expired three years
6 after November 5, 2011.

7 THE COURT: Don't they in some sense negotiate
8 evidence by the e-mail of a partial payment? Let me
9 hear from Mr. Brittain.

10 MR. BRITTAIN: Your Honor, like I said, Judge,
11 Culbertson visited this issue. The Court -- the
12 argument that Judge Culbertson hit on was that parties
13 to an open note that are negotiating its repayment,
14 even if it is written, creates a new obligation. What
15 is more telling here is you don't have a cause of
16 action that forms unless you know what your damages
17 are. It is not simply a breach. We understand in
18 this case he had a right to do an action to obtain and
19 partly perform this agreement, which was necessary as
20 an agreement between the parties, which he did. It
21 was only at that moment, March 31, 2014, that he knew
22 how much to seek in way of damages from this
23 defendant. There are two theories here for the
24 statute of limitations not to apply and for there been
25 to be an issue of fact to the jury and that is

1 discussions of negotiation, conduct of parties, which
2 imposes on both based on the requests of additional
3 obligation in the future. And, simply, this is a
4 collection of an obligation that already has been
5 established and it is just giving benefit to the
6 defendant in terms of what the ultimate amount of
7 damages are.

8 THE COURT: Mr. Gleissner, what is your authority
9 for the fact that it must and can only be tolled if
10 there is an offer in writing?

11 MR. GLEISSNER: Your Honor, the statute that
12 deals with the writing requirement is 15-3-530. The
13 statute of limitations is 15-3-120.

14 THE COURT: How do the two play together, two
15 correlate?

16 MR. GLEISSNER: 15-3-120 is a three-year statute
17 of limitations. Then 15-3-530 says that if there is
18 an -- in order for there to be a tolling of the
19 statute, it has to be in writing. So that is how
20 those two interplay. And the only provision for the
21 tolling of a statute is I believe 15-3-530. Let me
22 make sure I'm quoting the right statute. I thought I
23 was.

24 THE COURT: I don't see anything about tolling.

25 MR. GLEISSNER: Am I reading the wrong statute,

1 Your Honor? I apologize if I am. Sorry. It is
2 15-3-120 is the statute that says it has to be in
3 writing. For the Court, here is a copy of that
4 statute. 15-3-530 is the three-year statute. I
5 apologize, I had them reversed. I'm sorry, Your
6 Honor. Let me give you a copy of that statute.

7 MR. BRITTAIN: Your Honor, this establishes our
8 point. Payment of any part or principal or interest
9 is equivalent to a promise in writing. That's what
10 happened here. He paid his 50 percent interest in
11 Peaceful Lane. So something took place on March 14
12 that extended the time. That is why we all understand
13 that. It says -- there is no other way to explain
14 what happened there other than payment was made. We
15 took it. Payment was made based on a pledge, so that
16 is a promise in writing. The charge on contract
17 modification is clear. A party to a contract can
18 change its terms and under no obligation to respond to
19 the order. It can be modified by an oral agreement
20 even where the written contract explicitly states all
21 changes must be in writing. So, really, under two
22 theories: Number one, this payment was made, this
23 action taken within the statute, so that it is tolled
24 until these parties have reached a complete accounting
25 of any duties and responsibilities one for the other,

1 and that by the nature of this process, the
2 conversation back and forth that Mr. Porter
3 testified --

4 THE COURT: Let me ask you this.. Isn't the
5 taking -- isn't the taking a calling of a contract?
6 When your client took that -- I mean, isn't he at that
7 point beginning the process?

8 MR. BRITTAIN: Yes. That is what we say, the
9 action was within the statute of limitations. It was
10 done, and what this is is a completion of the damages,
11 amount of damages that are attributable once there has
12 been an evaluation of the property entered.

13 THE COURT: What do you say about that?

14 MR. GLEISSNER: Well, Your Honor, I'm going to
15 hand up to the Court the case of Zax versus Elliott.
16 That says that the repossession and sale of collateral
17 doesn't toll the statute of limitations as it relates
18 to the obligor. I will tell the Court that it is a
19 Fourth Circuit case, but, Your Honor, that
20 Fourth Circuit case has been cited with approval by
21 the court of appeals. If you want, I'll hand up the
22 case of Molnar versus Molnar, a case out of South
23 Carolina Court of Appeals. It also is cited with
24 approval out -- for the case in Nandwani versus Queens
25 Inn Motel. So although it is a Fourth Circuit case,

1 it is cited by a couple of opinions of the South
2 Carolina Court of Appeals.

3 MR. BRITTAIN: Your Honor, I'm immediately
4 concerned when they talk about bales of cotton. This
5 is a 19 --

6 THE COURT: '39.

7 MR. BRITTAIN: Right. Here is where the
8 significant difference is, and you can read it in the
9 first three, four paragraphs. We have an agreement
10 here, no objection there to the taking of this
11 interest pursuant. That is where we get into what we
12 seem to understand, that something happened here to
13 allow this case to proceed. This farmer objected and
14 they sold it anyway with interest. There was no
15 objection because he signed onto it when it happened,
16 and it was the taking without an objection. Here you
17 have a timely objection that was made.

18 So it is a big difference. What that tends to do
19 is indicate there was an understanding and agreement,
20 something happened and they continued to work on it.
21 He continued to acknowledge the obligation to it. So
22 there is a significant distinction from the 1939 case.
23 I don't know, Mr. Gleissner maybe knows more than I do
24 about this, but I don't know that this case was cited
25 all that much by any of the courts.

1 THE COURT: What is your other point, Mr.
2 Gleissner?

3 MR. GLEISSNER: I do have two, Your Honor. The
4 second point relates to liquidation of collateral.
5 Your Honor, under 36-9-626, if a secured party fails
6 to prove that the collection enforcement disposition
7 and acceptance was conducted in accordance with the
8 provisions of the articles -- you know, commercial
9 code --

10 THE COURT: I know UCC, and it says if it is not
11 -- basically, if it is not done in a commercial
12 reasonable fashion, that you can't seek efficiency.

13 MR. GLEISSNER: Exactly right, Your Honor.
14 Exactly what it says.

15 THE COURT: What do you say about that, Mr.
16 Brittain? I'm concerned there wasn't a sale. But I
17 think that is different if we see where the
18 ownership -- and I think the whole case turns on where
19 if this ownership was given as a payment towards the
20 outstanding balance. Normally in a UCC situation we
21 see where a property has been the subject of some sort
22 of enforcement of a security agreement against a
23 chattel. Just like if you go out and buy an
24 automobile and they have a security agreement. It is
25 the culmination of a legal process. That process

1 could be nothing more than having a repo man go out
2 and get that car. Happens that way, too. But here,
3 it would seem more, to me, that it all has been this
4 voluntarily thing. Control of the company is passed
5 to Mr. Potter (sic) without objection. Mr. Potter
6 (sic) then goes and has your client relieved from a
7 \$200,000 debt, which certainly tells me that there was
8 some kind of understanding, some kind of an agreement.

9 So what occurs -- what occurs when I have a debt
10 and I may be in default. I may be not paying it like
11 I'm supposed to be, but I come back and I'm making
12 payments. I make a payment, and then I stop making
13 payments. Doesn't the statute run from the time I
14 made that payment, the last one?

15 MR. BRITTAIN: It does. And that is one of the
16 theories we have for this payment made on March 2014.

17 THE COURT: It would seem to me that Mr. Hucks
18 acquiesced and accepted the benefit and, thereby, has
19 applied his interest. He could have made some effort
20 to stop it.

21 MR. BRITTAIN: That's right.

22 THE COURT: He could have come to me and say this
23 guy is trying to take over my company, I want a TRO,
24 Mr. Gleissner. You could have done that. I would say
25 we can't be having this, we need a hearing, or it has

1 to be some legal process. But, Mr. Gleissner, what if
2 your client within the statute of limitation had come
3 up and said, you know, here is -- how much credit was
4 it?

5 MR. BRITTAIN: 200,000 -- or afterwards it was
6 \$38,000.

7 THE COURT: So here is \$40,000.

8 MR. BRITTAIN: Court Exhibit -- Plaintiff's 2
9 sets it out.

10 THE COURT: Doesn't that revive the agreement
11 that the parties had? How does that work? Help me
12 here.

13 MR. GLEISSNER: All right.

14 THE COURT: Let's just say everything I said is
15 correct, and I'm not asking you to agree, just asking
16 you -- let's take that and put it in a nutshell and
17 say Mr. Hucks came up with \$40,000 in November of
18 2014.

19 MR. BRITTAIN: March 2014.

20 THE COURT: Here is \$40,000 on your note.

21 MR. GLEISSNER: If he would paid \$40,000 on the
22 note, I think the tolling would have occurred and the
23 statute of limitations would have run that, but he
24 didn't. There is a difference what occurred --

25 THE COURT: Isn't that what happened? Because

1 there is nothing about -- there is nothing about the
2 acquisition of Mr. Hucks' interest and subsequent
3 release of his obligations under the note and
4 crediting. There is nothing about that that even
5 smells of the UCC. I mean, you've even indicated you
6 can't just do that, in your opening. You said to the
7 jury, you just can't do that. I mean, Mr. Porter had
8 no authority to unilaterally do that without
9 Mr. Hucks' acquisition -- I mean agreement to do it.

10 MR. GLEISSNER: Mr. Hucks -- there is no evidence
11 Mr. Hucks agreed to do that.

12 THE COURT: Couldn't it be certainly inferred
13 from what has happened here, Mr. Hucks took the
14 benefit of being released from a \$200,000 note? I
15 would like to be -- you know, if I had a \$200,000
16 obligation I want to be off of it, especially if I'm
17 being distressed.

18 MR. GLEISSNER: If what we're saying is he's
19 released from the \$200,000 debt, which I think is the
20 result under the Uniform Commercial Code.

21 THE COURT: I'm talking about the bank debt. The
22 bank debt. The one at Conway National Bank. Maybe I
23 missed something. I was under the impression these
24 gentlemen bought a mobile home park, they did some
25 financing with Conway National Bank. Conway National

1 Bank held a note?

2 MR. GLEISSNER: Right.

3 THE COURT: On the assets?

4 MR. GLEISSNER: Right.

5 THE COURT: The chattel agreement on the mobile
6 homes probably and then the mortgage on the real
7 estate, and as part of this arrangement, Mr. Porter
8 goes and gets Mr. Hucks released from that joint
9 obligation at Conway National Bank, assumes that debt
10 position, is what I heard.

11 MR. BRITTAIN: Yes.

12 THE COURT: Assumed that debt himself. He tells
13 Mr. Hucks what he's doing. I don't know how you do it
14 in an LLC. I guess he becomes managing partner
15 voluntarily, I guess, but Mr. Hucks had to acquiesce
16 in it. All the sudden, he's a managing partner and
17 sole partner; is that right? Is that what I heard?

18 MR. BRITTAIN: That's correct. That is what
19 happened.

20 THE COURT: And then he credits Mr. Hucks with
21 \$38,000 of what he, in his mind, thought to be
22 50 percent of the equities in the business. Do I have
23 a clear picture?

24 MR. BRITTAIN: That is what happened, and that is
25 what he testified to.

1 THE COURT: Well, then, none of this was done in
2 a way that even would have remotely been appropriate
3 under UCC. So it was a voluntary thing, which in my
4 mind amounts to a voluntary payment, pay down of the
5 debt. Isn't that what it is in the simplest form when
6 you look at it very simply? Isn't that the most
7 logical thing that occurred? Without his
8 acquiescences, Mr. Porter couldn't do that.

9 MR. GLEISSNER: But we sued him. I mean, we
10 counterclaimed him. I don't know if you can call a
11 counterclaim acquiescence.

12 THE COURT: A lot of people take a lot of
13 different views, you know. What I'm looking for here
14 is, is there any evidence -- is there any evidence
15 that supports the analysis I just made that was
16 presented through Mr. Porter's testimony? Is there
17 any evidence of that? Could a jury look at that? Is
18 there any evidence to support a finding that that is
19 exactly what happened, there is no running of the
20 statute of the limitations? That is where we are on a
21 directed verdict, not the weight, but whether there is
22 any.

23 MR. GLEISSNER: I understand your argument, Your
24 Honor. I understand.

25 THE COURT: It is not an argument, I'm just....

1 MR. GLEISSNER: I don't believe there is, but I
2 understand.

3 THE COURT: Well, I would think we survived the
4 directed verdict.

5 Let's take a break. I need a break.

6 (A recess was taken.)

7 THE COURT: Our jury is ready, so let's bring
8 them in.

9 (The jury enters at 3:53 p.m., and the
10 following is heard in the presence of the jury.)

11 THE COURT: Mr. Gleissner, you may call your
12 witness.

13 MR. GLEISSNER: I call Kenneth Hucks.

14 (KENNETH HUCKS, having been duly sworn,
15 testified as follows:)

16 THE WITNESS: Kenneth A. Hucks.

17 DIRECT-EXAMINATION

18 BY MR. GLEISSNER:

19 Q Mr. Hucks, what is Peaceful Lane?

20 A Peaceful Lane is a 17-site mobile home park.

21 Q How did you become involved in Peaceful Lane?

22 A Mr. Porter was our tenant at Cypress Mobile Home
23 Park from 2001 to about 2006. We had an opportunity to
24 sell the mobile home park at that time, and we did --
25 or thought we had. We were under contract. Part of

1 that contract was that we had to remove all of the
2 mobile homes from the park. So the relationship that
3 Mr. Porter and I had, in knowing that he had an ongoing
4 business in Myrtle Beach and needed housing for his
5 workers, I went to look for another mobile home park or
6 another area. We looked at two, actually. One got
7 bought out from under us. Anyway, we found Peaceful
8 Lane and we were able to purchase it, and that is how
9 we became partners.

10 Q About how much did you pay for Peaceful Lane?

11 A We paid \$360,000 for the dirt. We put a little
12 over \$40,000 in field dirt and five sites to improve
13 the water and sewer. In that sale, there was also
14 included five mobile homes on the property, but they
15 were unoccupied at the time, and two of them were
16 actually burned out. So that was part of the
17 improvement money; we repaired the mobile homes.

18 Q At first, who managed Peaceful Lane?

19 A I did in my property management company.

20 Q Is that something you do for a living?

21 A We at one time managed a little over 450 mobile
22 home sites in the Socastee area.

23 Q Was Peaceful Lane profitable?

24 A Once we got through 2006 to 2008, we started --
25 or paid dividends, and I think we paid that for -- I

1 know one year, possibly two.

2 Q What dividends are you talking about?

3 A About \$2,000 a month. Mr. Porter was getting a
4 thousand dollars a month, and I was getting a thousand
5 a month.

6 Q So you made enough money to make payments to the
7 members?

8 A Correct.

9 Q When did Mr. Porter take over the management of
10 Peaceful Lane?

11 A It was actually in 2013.

12 Q And at 2013, were there still mobile homes on the
13 property?

14 A There were still mobile homes. Part of what
15 happened in the end of 2011, 2012, Mr. Porter's workers
16 would come in in February and have to go home in
17 November, as part of the program. An incident occurred
18 to where the workers were not going to be able to come
19 back to Peaceful Lane. They were the majority of the
20 occupants in Peaceful Lane that Mr. Porter's company
21 was paying rent for, which was market rent for two-,
22 three-bedroom mobile homes at the time. But it was an
23 established income for the mobile home park. When that
24 occurred, when the boys couldn't come back, we were
25 going to lose the rent in those particular mobile homes

1 that they occupied, which they probably occupied 14 out
2 of the 17 that were there, somewhere in there. So what
3 we started doing was renting the mobile homes to other
4 people, families.

5 In 2012, we made a decision, or thought we made a
6 decision -- Mr. Porter had to have space for other
7 mobile homes that he had in other parts of the state.
8 So we sold five -- or four of the mobile homes that
9 were there to make room for the ones he was bringing
10 from another part of the state. We started renting
11 those. We also started seeing -- in 2013, Mr. Porter
12 brought his son into the picture, allowed him to come
13 in and live at the mobile home park managing it as
14 well. So the management changed in 2013.

15 Q And as it relates to the mobile homes themselves,
16 was a decision made to sell mobile homes?

17 A There were five mobile homes that we had moved
18 that my brother and I had owned from Cypress Mobile
19 Home Park and put them into -- that was part of the
20 improvement as well. We had to fix those sites for
21 those mobile homes to go on, pour driveways and that
22 sort of thing. They were older mobile homes, and we
23 had been in the mobile home business for 28 years, so
24 they were probably 18, 19 years old. So instead of us
25 taking on the liability of fixing them up or repairing

1 them or to constantly go, we decided that we would sell
2 them and let the people that bought them to repair them
3 and maintain them, and part of those were on a lease
4 option to buy. They were paying ground lease and then
5 lease the mobile so they could assume ownership of the
6 mobile home. Initially, we did that with five of them
7 that my brother and I had previously owned.

8 Q Was there a decision made as it relates to the
9 pads at Peaceful Lane?

10 A Ask me that again.

11 Q As it relates to the mobile home the -- what used
12 to be mobile homes, you move them off, what did you do
13 with the pads?

14 A Well, the mobile homes stayed there. There was
15 only two, I think, that were removed. Sammy brought
16 one in, and maybe one other one, down on the end. The
17 five that were sold previously were from Mr. Porter's
18 mobile homes, were sold to one person that had a mobile
19 home park on 814.

20 Q Did you borrow money from Mr. Porter?

21 A Yes.

22 Q Tell the jury about the money you borrowed from
23 Mr. Porter.

24 A This was actually the second note or second time
25 that I borrowed money from Mr. Porter. With us

1 thinking we sold the mobile home park, and it didn't
2 sell, it didn't consummate, I lost that income. At the
3 same time, we were trying to do a development on the
4 other side of the swing bridge that took the hit in
5 2007 as well. So I was trying to support my part of
6 Peaceful Lane, my household and my loss of income on
7 half of what it used to be, so it was quite difficult.

8 There were opportunities for me to make money,
9 and that was the way I paid back the first note to
10 Mr. Porter. The second note and third note are the
11 ones we're actually talking about now. Second one was
12 rolled into the third. That is when the 50 percent
13 interest of Peaceful Lane was pledged for that.

14 Q In 2011, when you pledged your interest in
15 Peaceful Lane, what did you think the value of Peaceful
16 Lane was?

17 A At that time we turned down a \$450,000 offer from
18 the people that had bought the previously five mobile
19 homes from us.

20 Q So you thought it was worth more than 450?

21 A Well, we thought it was worth a lot.

22 Q How much did you think it was worth?

23 A Special plot with 17 water and sewer taps on it,
24 in that neighborhood, at that time, was probably going
25 anywhere from -- between 500- and \$600,000.

1 Q We heard Mr. Porter testify there was \$240,000
2 debt on the property; is that right?

3 A I wouldn't know.

4 Q Do you know how much your equity in the property
5 was worth?

6 A If you do it based on the calculation of rental
7 property, 17 sites at 325 a month, brings you a little
8 over \$5,400 a month in income, if managed
9 appropriately, which gives you about a little over
10 \$60,000 a year in net income -- not net, excuse me. If
11 you use 35 percent debt expense that would normally
12 cost an operation of a mobile home park, between 475
13 and \$500,000 based on that type of income generated on
14 a cap rate of 10 percent. If you are -- that was if it
15 was fully occupied and rent was fully paid, which it
16 had been previously.

17 Q What was your equity?

18 A I figured at about \$250,000.

19 Q All right. \$250,000. That was in 2011. When
20 did this note mature?

21 A It appears to be November 2011.

22 Q Did Mr. Porter sue you in 2011?

23 A No.

24 Q 2012?

25 A No.

1 Q Did he sue you in 2013?

2 A No.

3 Q Did he sue you in 2014?

4 A No.

5 Q Did he sue you in 2015?

6 A No.

7 Q During this period of time, Mr. Porter said there
8 was negotiations. Was there any negotiations
9 concerning the payment of this note?

10 A No. There may have been -- that would have been
11 in 2011. The alternatives in how to arrive at equal
12 and equitable settlement -- I didn't find out that
13 Mr. Porter had taken my interest. It is when I asked
14 him in 2014 for the 2013 financials so I could do my
15 income tax, and he told me I was not entitled to any
16 financial information anymore because I no longer had a
17 percent ownership in the property.

18 Q So during 2011 to 2016, did you make any promises
19 you would pay this note?

20 A No.

21 Q As it relates to the security agreement, you
22 pledged your interest in Peaceful Lane as collateral;
23 is that correct?

24 A Yes.

25 Q And what did you think would happen if you

1 defaulted?

2 A Part of my recollection of the agreement is that
3 I would have an opportunity to sell or get some kind of
4 payment from my 50 percent equity, but apparently I
5 never got that opportunity. It was -- I can't remember
6 the agreement totally, but there was -- if there was an
7 outside sale that Mr. Porter would have the opportunity
8 to meet it or match it, so he wouldn't lose total
9 interest in the property. I was thinking there would
10 have been a way for me to get some kind of compensation
11 for 50 of what it was worth.

12 Q I'll hand you Plaintiff's 2.

13 A Okay.

14 Q All right. Can you tell us what that document
15 is?

16 A It is an e-mail from Mr. Porter to me. It says
17 attached was a worksheet, balance sheet, market values
18 and valuation of my interest.

19 Q Is that the first notification you had that he
20 took your interest in Peaceful Lane?

21 A Written notice, yes.

22 Q You received verbal notice before that?

23 A In March of 2014, when I asked for the
24 financials.

25 Q So at the same time he took your interest in

1 March of 2014, he told you he was taking your interest
2 in a --

3 A He told me he already had done it.

4 Q So your first notification was after the fact?

5 A Correct.

6 Q Did you agree with him taking your interest?

7 A No.

8 Q Did you acquiesce in any way, shape or form as it
9 relates to him taking your interest?

10 A I'm quite sure I asked him how I could have done
11 it without me having the opportunity to realize what
12 that 50 percent ownership was valued at.

13 Q If you look at that e-mail that is Plaintiff's
14 Exhibit No. 2, it has a valuation as it relates to
15 Peaceful Lane; do you see that?

16 A Correct.

17 Q Do you agree with that valuation?

18 A No.

19 Q Highly undervalued?

20 A Yes.

21 Q You thought your interest was around \$250,000?

22 A Yes.

23 Q How much was the debt?

24 A I didn't know at that time.

25 Q How much was the debt to Mr. Porter? Sorry.

1 A 155.

2 Q So what do you want this jury to do as it relates
3 to him taking your interest at Peaceful Lane?

4 A Ask him for a fair value of what that 50 percent
5 is worth.

6 Q What do you think that fair value is?

7 A Between 225- and \$250,000.

8 Q Is that over and above the debt -- I'm trying to
9 get the difference --

10 A No. No.

11 Q What is the difference between what you think is
12 the value of your interest and the amount of the debt
13 to Mr. Porter?

14 A \$8,000.

15 MR. GLEISSNER: Thank you. Mr. Hucks, nothing
16 further.

17 CROSS-EXAMINATION

18 BY MR. BRITTAIN:

19 Q Mr. Porter helped you out by lending you money on
20 numerous occasions; isn't that true?

21 A Three.

22 Q Three occasions at your request, right? You
23 wanted him to loan you the money?

24 A Yes.

25 Q And no one came up and said, hey, why don't I

1 loan you some money? That is something you needed, you
2 wanted, so you went to Scott Porter and asked him for
3 money?

4 A Yes.

5 Q On all three of those occasions; is that correct?

6 A Correct.

7 Q On the occasion we're talking about here today,
8 two notes, two obligations, you understand what an
9 obligation is, don't you?

10 A Yes, sir.

11 Q When you sign a note, like Plaintiff's 1, you are
12 saying, I agree to pay you back 155,000 plus interest;
13 is that right?

14 A (Witness examines document.)

15 Q Right here. See right there (indicates)?

16 A (Witness examines document.) Yes.

17 Q So we're looking at Plaintiff's Exhibit 1,
18 left-hand side. Above the line is a figure of
19 \$155,000, right?

20 A Correct.

21 Q That constituted 80, 20 and 55. You owed a
22 hundred thousand on previous notes; is that correct?
23 You combined those, two and three, to come up with
24 155,000?

25 A I guess. I'm not doing math that fast.

1 Q What is 80 and 20?
2 A A hundred.
3 Q And what is 100 and 55,000?
4 A \$255,000.
5 Q 80 and 20 is a hundred?
6 A Uh-huh.
7 Q And add 55,000.
8 A That is 155.
9 Q That is what this note is for, correct?
10 A Correct.
11 Q You see the interest provision?
12 A Yes, sir.
13 Q What was it?
14 A Prime plus one.
15 Q The interest rate on this note is the -- you're
16 talking about the other notes, aren't you?
17 A If I may, can I read it?
18 Q Please, sir. Absolutely.
19 A Interest statement says, Interest only payments
20 on outstanding payment balance shall be due monthly
21 beginning June 6th. Entire principal balance due
22 payable on demand. If not paid, entire remaining
23 indebtedness will be due November 5th, 2011. In the
24 event of default, in payment installment after 10 days,
25 default interest will be 18 percent.

1 Q Let me show you a document. First, is this your
2 signature (indicates)?

3 A It appears.

4 Q Do you remember this document?

5 A It's been a long time. Almost eight years.

6 Q And this last page?

7 A It appears.

8 Q You also agreed in an effort to get this money
9 that if you didn't pay it back to him, he could take
10 your interest in Peaceful Lane Mobile Home Park? That
11 is what a pledge is, right?

12 A That is what I was trying to read, because I
13 haven't seen that document in a long time.

14 Q We have all the time in the world. There is no
15 hurry. I want you to read it and understand it before
16 I ask questions about it. I'm not trying to railroad
17 you, Mr. Hucks.

18 A Page 2, No. 5. Page 2, No. 6. Pretty much all
19 of that. The remedy in event of default shall occur by
20 continuing in addition to the right shall be entitled
21 without liability to sell all of membership interest in
22 such manner, including to himself, his designees or
23 affiliates, which means people affiliated with
24 Mr. Porter, they would have a right to buy my interest.

25 Q That is what it says. He can sell it to himself,

1 that's what it says? You can always do that. You sign
2 this so he could do that; isn't that true?

3 A The proceeds from any sell -- membership interest
4 or collateral together with all other monies -- payment
5 of costs or expense, realization -- third, pledgor
6 shall be entitled to any surplus. That is me.

7 Q That's right. And I guess that is the \$8,000 you
8 are talking about based on your calculations?

9 A Correct.

10 Q But in this document that your attorney
11 introduced originally, which was Court's Exhibit 1, and
12 which we have introduced as Plaintiff's 2. He tells
13 you in here the value of the properties he testified
14 to -- and this is in November of 2014 -- according to
15 the bank, \$280,000. He told you that, didn't he?

16 A He sent it to me in an E-mail, yes.

17 Q What is your e-mail back saying, oh, no, it is
18 \$500,000? You don't have one, do you?

19 A No, because my e-mail -- that particular e-mail
20 was hacked and I hadn't used it in over two years.

21 Q You didn't really believe it was worth \$500,000.

22 A Yes, I did.

23 Q Let me show you your answer and counterclaim.
24 You know what that is?

25 A Sure. Yeah.

1 Q You have one of those in this case, don't you?

2 A I should.

3 Q Your lawyer filed one for you. Did you read it?

4 A I should have, yes.

5 Q Page 4. See what number you put on assets of
6 Peaceful Lane worth in excess of \$375,000?

7 A Excess, correct.

8 Q But your interest was worth 187,000, right?

9 A In excess, correct.

10 Q Minus what?

11 A Minus what I owed him.

12 Q Now, you didn't put \$500,000. You picked -- you
13 said in excess of, but if it was around 500,000, you
14 would have said 500,000, said in excess of 500,000.
15 That is a number you decided in your complaint. But
16 when you came here today, instead of saying 375,000,
17 you decided to say \$500,000, but the bank said
18 \$280,000; didn't they, Mr. Hucks?

19 A I hadn't seen it.

20 Q You were given that information in November and
21 did nothing about it?

22 A I hadn't seen an appraisal.

23 Q Not an appraisal. I'm saying that -- this jury
24 will get to see what you saw. They will see and you
25 saw that the property was valued at \$280,000 in an

1 e-mail sent to you where he calculated up what you owed
2 him; isn't that correct?

3 A Sure.

4 Q Did you tell him, no, I don't owe you that? Or
5 do you have an e-mail or anything showing you objected
6 to him that you owed him that amount of money?

7 A I objected to him taking my 50 percent interest
8 without process.

9 Q He took it based on the document you just read
10 from, didn't he, sir?

11 A Did not give me the opportunity to sell and
12 collect any equity interest.

13 Q I understand that. Because you signed a document
14 giving him the authority to sell; did you not? That
15 document we were looking at, you signed that document,
16 right? No question about it?

17 A It appeared.

18 Q Well, you said that wasn't it. Do you have
19 another document out there that is the document that
20 controls between you and Mr. Porter?

21 A I don't.

22 Q You don't?

23 A No.

24 Q And that looks like your signature; is that
25 correct?

1 A It appears.

2 Q So do you remember that you of borrowed \$155,000
3 for him?

4 A Yes.

5 Q So no question about that, right?

6 A Correct.

7 Q And you don't have another note that you are
8 going to show the jury with different terms than the
9 one I introduced into evidence; is that correct?

10 A No. I do not have the information.

11 Q I'm saying, You don't have another document that
12 you are going to introduce concerning this arrangement
13 between you and Mr. Porter?

14 A No.

15 Q So no question you owe him \$155,000?

16 A Correct.

17 Q And the only thing he ever got was one-half of
18 your interest in Peaceful Lane?

19 A No, he got all of my interest.

20 Q Okay.

21 A Which is 50 percent.

22 Q 50 percent of the entire value?

23 A Correct.

24 Q And you understood from the start that you would
25 have to pay him anything that you owed him based on a

1 fair calculation of what that interest was? In other
2 words, if Peaceful Lane was enough to pay for it, you
3 don't owe nothing. If it is not enough to pay for it,
4 you owed him a difference. That's the way it was set
5 up, correct?

6 A Correct.

7 Q So it boils down to the evaluation of your
8 one-half interest in Peaceful Lane at the time it was
9 taken in March of 2014; isn't that correct?

10 A Correct.

11 Q And somewhere, thereafter, you had oral
12 discussions with Mr. Porter about what happened in
13 March of 2014?

14 A No.

15 Q He took over the management in 2013/2014 of
16 Peaceful Lane?

17 A Yes.

18 Q And he told you why, you had no interest anymore,
19 that is why he was taking over?

20 A The management of Peaceful Lane had changed
21 before then.

22 Q It was changed in 2013?

23 A Correct.

24 Q This occurred in the beginning of 2014 in
25 January?

1 A Correct. The management had been changed.

2 Q My point is: It was changed because it was not
3 doing well, the business records had been lost, you had
4 problems with employees?

5 A His son was managing the mobile home park.

6 Q Your daughter was stealing from the company?

7 A No, she wasn't.

8 MR. GLEISSNER: Objection, Your Honor. Sorry,
9 Your Honor, I object to the allegations that his
10 daughter was stealing. I mean there is a complete
11 lack of any evidence.

12 THE COURT: All he has to do is deny it.

13 Q (MR. BRITTAIN) What was her job at the mobile
14 home park?

15 A Collecting rent.

16 Q Did you fire her?

17 A Making deposits.

18 Q Did you fire her?

19 A No.

20 Q Is she still doing it?

21 A No. Mr. Porter fired her.

22 Q When?

23 A When his son came in to manage the mobile home
24 park.

25 Q Why?

1 A His son needed a job.

2 Q What about the accountability of collecting the
3 rent, was that never an issue between you and
4 Mr. Porter?

5 A Not with me, no.

6 Q It wasn't with you because you were keeping them;
7 isn't that correct?

8 A Don't understand the question.

9 Q Do you deny borrowing \$155,000 from that man?

10 A No.

11 Q Have you paid him one dollar cash back ever for
12 it?

13 A \$1,000.

14 Q So you agree you owe him \$154,000 plus interest,
15 minus what your interest in one-half of Peaceful Lane
16 is, minus the debt on it; you owe him that, correct?

17 A Correct.

18 Q Plus interest?

19 A Correct.

20 MR. BRITTAIN: Thank you. Nothing further.

21 REDIRECT-EXAMINATION

22 BY MR. GLESSINER:

23 Q Just a couple brief question. You were looking
24 at the security agreement, that allowed Mr. Porter to
25 sell your interest in Peaceful Lane; isn't that right?

1 A The way it read in that document, yes.

2 Q It didn't allow him to take your interest in
3 Peaceful Lane, did it?

4 A No.

5 Q And the answer to the complaint in this case, you
6 used the number of \$375,000. Was that the equity that
7 you thought after the debt to the bank, or is that your
8 total value of the property that you thought at the
9 time you answered the complaint?

10 A I'm not sure.

11 MR. GLEISSNER: Nothing further.

12 THE COURT: Anything further?

13 MR. BRITTAIN: Nothing.

14 THE COURT: You may step down. Thank you, sir.
15 Let me put a question to you. I apologize for herding
16 you around like that. I don't mean to. It is 4:30
17 and you heard all of the evidence in this case. As I
18 explained to you at the very beginning of this case,
19 you know how it would progress. There will be an
20 argument from each side, final argument, and I'll
21 charge on the law. It is 4:30. We can stay here and
22 work longer, be done and you'll be done for the week,
23 because I'll release you. Or we could part that and
24 bring you back and let you work tomorrow. Now, it is
25 entirely -- I see a head shake. It is entirely up to

1 you. I'll let you decide what you want to do. I will
2 be happy to stay, do whatever you want. We understand
3 it is inconvenient for you. As I said, if you would
4 stay with us, we could conclude this case tonight.
5 You would not have to come back, be done for the week;
6 otherwise, we have to come back in the morning and we
7 can finish up the case.

8 Now, Mr. Ropp will take you back now and when you
9 come back, we'll talk about it, okay. You decide.

10 (The jury exits at 4:31 p.m., and the
11 following is heard out of the presence of the jury.)

12 THE COURT: Okay. You want to renew your
13 motions, obviously?

14 MR. GLEISSNER: I do, Your Honor.

15 THE COURT: Mr. Brittain, you have a motion?

16 MR. BRITTAIN: Your Honor --

17 THE COURT: Let me just talk to you fellows a
18 minute. I'm sorry, but I've been doing it a long time
19 and sometimes I get a sense, and I may been totally
20 off base, but sometimes it saves time. There is
21 several offenses raised, and I'm working with
22 Elizabeth to craft the charges. I appreciate your
23 charges, thank you very much. There are things that
24 give me problems. First of all, commercial and
25 reasonable sale. Has there been a sale of any kind?

1 MR. BRITTAIN: His testimony is that he assumed
2 responsibility for the debt.

3 THE COURT: I mean, I don't see a sale. I don't
4 see where that comes to -- help me, Mr. Gleissner.
5 Has there been a sale? I mean, the way I see it your
6 client could sue him for the interest back.

7 MR. GLEISSNER: Your Honor, we're suing him for
8 the taking of our interest.

9 THE COURT: In which counterclaim have you done
10 that?

11 MR. GLEISSNER: Breach of contract claim, Your
12 Honor. So we're suing him for --

13 THE COURT: I'm trying to figure out how many I
14 have. Alleging that they have caused your client to
15 incur permits, a suit for an accounting, essentially;
16 isn't that right?

17 MR. GLEISSNER: That is the first breach of
18 contract.

19 THE COURT: I think it is the second.

20 MR. GLEISSNER: The second is pledge agreement
21 contained a pledge of 50 percent, 155, in excess of
22 375. Hucks, 50 percent interest --

23 THE COURT: That is your sixth defense.

24 MR. GLEISSNER: Yes.

25 THE COURT: Your fifth defense and

1 counterclaim -- first counterclaim alleges that he
2 suffered damages because of incurring penalty. Been
3 no evidence of that.

4 MR. GLEISSNER: Correct, and I believe that cause
5 of action should be dismissed.

6 THE COURT: Okay. And then we go to the
7 sixth defense and second counterclaim. It says it is
8 for an accounting that they require to pay the
9 difference. Is there another counterclaim?

10 MR. GLEISSNER: There is a seventh defense and
11 third counterclaim, breach of fiduciary duty.

12 THE COURT: Let's talk about that, fiduciary
13 duty. Fiduciary duty, as contemplated under the
14 common law, is creating a cause. It is not the duty
15 created by contracting parties. It is more than that.
16 It has to be a situation where someone has placed a
17 trust, reasonably placed or reposed a trust in a
18 person, maybe someone who had a POA and you gave them
19 that and they were in a position of fiduciary to not
20 dispose your property for their own use or benefit.
21 But what evidence has there been that the defendant
22 has established that that duty that gives rise to a
23 fiduciary duty, that sort of relationship, what have
24 we heard about that other than this is just two men in
25 a business deal? What do we have other than two men

1 and a business deal; is there a special relationship?

2 MR. GLEISSNER: Your Honor, I believe when you
3 take possession of collateral that you owe a fiduciary
4 duty associated with treating that collateral in a
5 reasonable way. I'm looking at my breach of fiduciary
6 duty cause of action, Your Honor, and I believe that
7 is -- I mean, it's not what the evidence has shown.
8 So I believe that as it relates to breach of fiduciary
9 duty that I have in my answer and counterclaim, I
10 believe that should be dismissed.

11 THE COURT: That is where I was going with that.
12 Okay. Now, I want to go back -- gentlemen, I guess
13 what I'm saying is it boils down to two issues. The
14 first issue involves the offense of statute of
15 limitations and whether this action survives the
16 statute of limitations depends on whether or not the
17 defendant gave this -- there was no legal proceeding.
18 There was no legal proceeding. Whether he voluntarily
19 just turned over this property to the plaintiff and
20 that constitutes a payment, which under the statute
21 does not require a writing, okay. It doesn't. I
22 think that is a jury issue. I think that is a jury
23 issue. That is the first issue the jury must be
24 concerned with. Then, I think the jury can look at
25 the value of the property that was applied to debt and

1 reach -- reasonably reach a conclusion that it was the
2 parties intent that the equity that the defendant had
3 in those properties will be applied to the debt. I
4 think that is a reasonable assumption.

5 But when we look at the UCC, I have a problem,
6 because there was no legal process by which this was
7 taken and there is no sale that could not have been --
8 that would have been an unreasonable sale. The
9 plaintiff still is in possession. There is no sale.
10 This is one where I'll give you credit, not I'm going
11 to sell it to some third party and give you -- I mean,
12 the UCC is designed to prevent collusion in that
13 regard. Collusion, where the plaintiff comes in and
14 says I sold it to my brother-in-law over here for \$50,
15 and that is all I got out of it, here is his check.
16 UCC says, no, you have to look at that and determine
17 whether it is reasonable.

18 In this case, there is no sale. So I think that
19 the jury looks at it and says is Mr. Hucks entitled to
20 more credit, if they get past the statute of
21 limitations question. Now, the reason I was concerned
22 about the counterclaim is whether there is a
23 counterclaim or return of the property. I don't see
24 that claim and delivery, so to speak. Replevin, if
25 you will. But does the fifth or sixth counterclaim

1 make a claim back for the difference or the value of
2 that property if, in fact, the statute has run.
3 That's the issue I have.

4 What if the jury finds that the statute has run,
5 is Mr. Hucks entitled to the value of his property
6 back? That is where I see the issues in this case.
7 Now that I said it, let me hear from you-all. Nobody
8 wants to talk?

9 MR. BRITTAIN: I was going to go through and make
10 motions to dismiss a lot of the --

11 THE COURT: He voluntarily dismissed --

12 MR. BRITTAIN: I think we got there really just
13 you discussing it. I don't like the sound of some of
14 it, but I think that is what we have. I think a
15 charge along with those lines is going to give the
16 jury the proper instruction to put in whatever
17 information has been presented to them and come up
18 with the right answer. If we can come up with a way
19 of -- only thing I didn't like -- it seemed a little
20 specific oriented, a little contextual, in terms of
21 just reading that charge, but most of what he said in
22 there, to the extent it applies to the remaining cause
23 of action, is encompassed in the normal charges.

24 THE COURT: We have to consider his accounting.
25 One, the jury could find -- even though the statute

1 had run, he made a voluntary payment back. Or he
2 could say -- they could find that there was no
3 voluntary payment back and that Mr. Hucks is entitled
4 to the full value of his interest. If they find that
5 he made a voluntary payment -- you can make a payment
6 on a debt that -- upon which the statute has run, an
7 obligation. You can do that. There is no law against
8 it. The jury could still find that the statute ran,
9 but he made a voluntary payment to it. Say that he is
10 entitled to nothing or the difference, or the jury
11 could say, hey, they can't take his stuff, the time
12 ran, he is entitled to all of it. You know, that is
13 what I'm seeing here. What you do think, Mr.
14 Gleissner?

15 MR. GLEISSNER: Well, as much as I would like to
16 say that I think it would be reasonable for the jury
17 to say that the statute of limitations ran and,
18 therefore, the promissory note is discharged and,
19 therefore, Mr. Hucks is entitled to the full value of
20 his equity in the property without deducting any of
21 Mr. Porter's obligation, as much as I would like to
22 say that, I don't think that that is correct.

23 THE COURT: Well, good. We have an agreement
24 because you and Mr. Brittain agree with that.

25 MR. BRITTAIN: Told you I like him..

1 MR. GLEISSNER: I think there has to be a -- even
2 if the statutes of limitations has run, there still
3 would be a netting. However, if the statute of
4 limitation runs, there can be no award to the
5 plaintiff. Does that make sense? In other words,
6 the --

7 THE COURT: I understand that.

8 MR. GLEISSNER: There is zero verdict or --

9 THE COURT: No longer has an obligation to pay,
10 although he may pay.

11 MR. GLEISSNER: Right. So I think that is the
12 issue. Now, Your Honor, as it relates to the --

13 THE COURT: I'm reminded of a client I had one
14 time filed bankruptcy, got in a bad way, was a
15 contractor, went back and paid every discharged debt.
16 No obligation to do so, but did it.

17 MR. GLEISSNER: I've seen it done. I agree, it
18 has happened. But now as it relates to the issue, as
19 it relates to the sale of the property, and the
20 uniform commercial code issue, it says if the transfer
21 of the collateral doesn't occur pursuant to this
22 section, that the debt is discharged. That's what UCC
23 says. It doesn't require a sale. It could be a
24 taking. It says if you don't do it the way we say you
25 should do it, the debt is discharged. It further says

1 that the burden is on the plaintiff to show that if it
2 -- if there was a commercial reasonable sale, that the
3 value of that sale, amount recovered under that sale,
4 would have been less than the debt.

5 Now, the plaintiff hadn't met that burden. The
6 plaintiff hasn't shown, right, if there was a
7 commercially reasonable sale that the amount that was
8 covered would have been less than.

9 THE COURT: Tell me about it, Mr. Brittain. Do
10 you think the commercial code applies to this
11 transaction?

12 MR. BRITTAIN: I don't see how it would apply to
13 it because of the -- the whole testimony has been
14 concerning the value of this asset as peaceful home --
15 Peaceful Lane Mobile Home Park. Now, I don't see that
16 in his pleadings, and I might be missing that. I
17 mean, there was no sale. You talked about UCC, and I
18 got nervous.

19 THE COURT: You talked about it, but did you
20 plead it? I mean, is it pled?

21 MR. GLEISSNER: I pled failure to mitigate
22 damages on Paragraph 44.

23 MR. BRITTAIN: But that doesn't put me on notice,
24 Judge.

25 THE COURT: Is that a defense in a contract case?

1 MR. BRITTAIN: Not in a contract case, but in
2 tort damages case.

3 THE COURT: Yeah. But, Mr. Gleissner, I don't
4 even see it. We've been talking about it -- I assumed
5 it was in there. But if you haven't pled it, he
6 doesn't have to respond to it.

7 MR. GLEISSNER: I think it was fully explored in
8 the testimony before the Court.

9 THE COURT: But we haven't had any testimony
10 about it.

11 MR. BRITTAIN: No, not at all. There is nothing
12 in the record. It hadn't occurred.

13 THE COURT: Because there hasn't been a sale and
14 no one has talked about it.

15 MR. BRITTAIN: You can't say that puts me on
16 notice of a UCC issue in the pleading if it is not in
17 there.

18 THE COURT: I have to agree with him on that, Mr.
19 Gleissner. What I'll do is I'll charge -- let me see
20 it. She has been working on this and whispering back
21 and forth and telling me what I need to do.
22 Mr. Gleissner, you asked for a charge on breach of a
23 separate agreement. I'm sure you have a theory on
24 that. It is one of the charges you asked me to give,
25 breach of separate agreement.

1 Defendant alleged that the Plaintiff breached a
2 separate agreement between the parties regarding the
3 governance of their relationship in the company.

4 I really haven't heard anything about that.

5 MR. GLEISSNER: There was testimony about the
6 requirement under the operating agreement to have --

7 THE COURT: What was the agreement?

8 MR. GLEISSNER: Operating agreement.

9 THE COURT: Operating agreement?

10 MR. GLEISSNER: It requires the sale -- if there
11 is a sale of membership interest --

12 THE COURT: Isn't that the same contract we're
13 talking about? I mean, that is not a separate one.

14 MR. BRITTAIN: It was not even in the record. I
15 mean, there is no mention of the operating agreement
16 until right now. No one introduced any obligation of
17 how to dispose of the property. In fact, it is all
18 waived. If you read the document he admitted to
19 signing, anything the taker of the property does to
20 sell it, everything is waived. No liability. I mean,
21 look, commercial reasonable doesn't come up in
22 pleadings --

23 THE COURT: We're past it.

24 MR. BRITTAIN: Were back arguing here about the
25 commercially reasonable manner.

1 THE COURT: No. No. We're back to where we're
2 talking about....

3 MR. GLEISSNER: Whether or not there was
4 testimony -- a separate agreement. The only testimony
5 I can think of is when Mr. Hucks testified that he
6 believed that under the agreement of the parties that
7 in the event that an interest was sold, that he would
8 be given the opportunity to -- that Mr. Porter would
9 be given the opportunity --

10 THE COURT: Isn't that in the security agreement.

11 MR. GLEISSNER: No, Your Honor.

12 MR. BRITTAIN: Well, yeah. It says he'll take
13 off the thing, it's in there -- credit -- netting --
14 netting. A netting of the proceeds, yeah.

15 THE COURT: I'm not going to charge that. We
16 have one agreement. One agreement. It sets out the
17 intentions of the parties, and that is what we'll look
18 at.

19 Okay, Elizabeth, what else do you have?

20 THE CLERK: Nothing.

21 THE COURT: Send that to them. Let them look at
22 it.

23 MR. BRITTAIN: It says here in Plaintiff's
24 Exhibit No. 1 how the money would be distributed.

25 THE COURT: Understand. I was listening to

1 testimony -- I don't see another agreement..

2 Well, the jury just sent a note that one of the
3 jurors has an issue with a child. They want to come
4 in the morning, but not until 9:45. That is fine. It
5 will give you a chance to look over this charge that
6 Elizabeth will send you electronically. Does anyone
7 have any objection to my going in the back hall and
8 letting the jury go rather than bringing them back in?

9 MR. BRITTAIN: Oh, no objection.

10 MR. GLEISSNER: No objection.

11 THE COURT: We'll be here about 9:15. Elizabeth
12 will send you what she's got, and you can look at it
13 and we'll continue this discussion about 9:15 and kind
14 of clean it up, okay? All right. See you then.

15 (WHEREUPON, THE PROCEEDINGS FOR FEBRUARY 20, 2018
16 CONCLUDED. THE FOLLOWING WAS HAD ON FEBRUARY 21, 2018
17 OUT OF THE PRESENCE OF THE JURY.)

18 THE COURT: I wanted an opportunity to talk about
19 this charge, so thank you for being here before the
20 jury. It is complex, but can be simple, but I don't
21 want to oversimplify it. I had Elizabeth send you
22 copied of what you had yesterday electronically.
23 Let's talk about it.

24 Mr. Brittain, you are the plaintiff, tell me what
25 you want added or deleted or what you want to talk

1 about as far as the charge is concerned.

2 MR. BRITTAIN: I believe it is a fair charge and
3 I don't have any recommendations or changes.

4 THE COURT: All right. Richard -- Mr. Gleissner.

5 MR. GLEISSNER: At the end of the charge, there
6 is a statement that says -- at the very end of the
7 charge -- it says that payment of any part of the
8 principal or interest is equivalent to a promise in
9 writing.

10 THE COURT: I think that is right from the
11 statute.

12 MR. GLEISSNER: I think the case law says it has
13 to be a voluntary payment.

14 THE COURT: I don't mind adding that word. I
15 think it goes to it.

16 MR. GLEISSNER: This is all I want, just one
17 word, "voluntary."

18 MR. BRITTAIN: I object. Let me explain my
19 position. There is no question about -- it doesn't --
20 there is nothing in there that says "voluntary."
21 There is no case on it. The charge -- you may have
22 gotten this from the statute.

23 THE COURT: I did.

24 MR. BRITTAIN: But it comes from the charge in
25 the Cottingham Anderson book. There are some matters

1 which you -- let's see. Payment of any part of the
2 principal or interest is equivalent to a promise in
3 writing. That is both from the statute. It doesn't
4 say in the statute "voluntary," and it doesn't say in
5 the charge "voluntary."

6 Now, this was clearly voluntary because he signed
7 a document, which he admitted, giving this person the
8 right to take. So that is when he volunteered this.
9 You don't have to go back and have another acceptance
10 of it. He gave that up and volunteered that when he
11 signed this document. So to add that and give Mr. --

12 THE COURT: The only reason -- I'll tell you, I
13 thought about this, whether to put some language like
14 that in it because the question, to me, for the jury,
15 is whether or not there was a legal taking of the
16 collateral and application of the collateral to the
17 debt. I told you I had concerns about charging on the
18 UCC and whether a sale took place. Mr. Gleissner,
19 even in his opening said they can't do what they did,
20 you know. Is that construed as a payment? Or did --
21 and this is something for the jury to answer -- did
22 Mr. Hucks acquiesce, adopt, the application of this
23 credit, this credit towards his debt as a payment. I
24 think that is a question that the jury has to answer.
25 And maybe I'm wrong, but I see a payment is where you

1 voluntarily transfer or acquiesce in a transfer
2 usually money, but can be other things, in
3 satisfaction or partial satisfaction of a debt. You
4 have to be part of it for it to be a payment. I mean,
5 that is -- help me here. You guys know more about
6 your case than I do, but I think there has to be --
7 the jury will have to make a determination as to
8 whether or not this was an unlawful and improper just
9 taking and applying it to the debt, or was it -- was
10 it more than that? Was it something that the debtor
11 acquiesced in, adopted, was a part of. In that case,
12 I think it is a payment. So tell me what some kind of
13 common ground here? Do we have a definition of
14 "payment"? Do you see where I'm going?

15 MR. GLEISSNER: I do, and I agree that a payment
16 has to be voluntary, especially talking about tolling
17 the statute of limitations. The writing is to be
18 signed by the debtor in order for it to toll statute
19 of limitations. So the person responsible for the
20 debt has to take affirmative action in order for the
21 tolling to occur. I believe the payment is the same
22 way. I think it is the debtor that has to take some
23 affirmative action. Again, the case he cited and
24 handed to the Court, Zack (phonetic) versus Elliott
25 case, and that case clearly stands for the proposition

1 that if it is involuntary, it doesn't continue to toll
2 the statute of limitations. So I think it is right, I
3 think it needs to be voluntary and we need some
4 language.

5 THE COURT: What if we were to put in there --
6 just change that and say, If you find that the
7 defendant voluntarily paid or acquiesced in the
8 payment of part of the principal or interest, it is
9 the equivalent of a promise in writing; how about
10 that, Mr. Brittain?

11 MR. BRITTAIN: I think if we're headed in that
12 direction, I suggest this language: The payment of
13 any part of the principal or interest is equivalent to
14 a promise in writing unless the debtor timely
15 objected. That is --

16 THE COURT: What if I just say, Unless it was
17 involuntary?

18 MR. BRITTAIN: Then I have to go back and argue
19 -- I mean, I think he has to do something, you know.

20 THE COURT: I mean, what is offensive about the
21 language that says it can be voluntary or one that he
22 acquiesced.

23 MR. BRITTAIN: I'm okay with acquiesced.

24 THE COURT: Voluntary or acquiesce. Could be
25 either one, he voluntarily did it or acquiesced in it.

1 Mr. Gleissner, is that okay?

2 MR. GLEISSNER: I'm okay with that, Your Honor.
3 Judge, just so I can preserve the record, you didn't
4 charge my request to charge on the statutes requiring
5 that a sale of collateral be commercial or reasonable
6 or the effect that the charge -- the effect of not
7 engaging in a commercial reasonable sale.

8 THE COURT: I thought we went through that
9 yesterday?

10 MR. GLEISSNER: We did, but I want to preserve
11 the record.

12 THE COURT: I mean, I thought you withdrew it
13 yesterday. I thought. That is what Elizabeth is
14 punching me and saying he withdrew that yesterday, so
15 I don't know. I know we had a discussion about, well,
16 there has been no sale. The property has not been
17 disposed of, and even in your opening you said they
18 took this improperly, that this was not through the
19 process it would be available through UCC,
20 essentially.

21 MR. GLEISSNER: Right. And I think --

22 THE COURT: That is part of your argument?

23 MR. GLEISSNER: Right. And I think that the
24 contract, the security agreement, requires a sale and,
25 therefore, that is the reason why I didn't know,

1 didn't think I pulled out, because it does require a
2 sale of --

3 THE COURT: All right. I just -- I'm -- I
4 misunderstood. I don't think that it is appropriate
5 in that. There seems to be no judicial process begun.
6 There seems to have been no sale of the property.
7 Now, that may be a breach of the contract.

8 MR. GLEISSNER: Right.

9 THE COURT: But that is different from the UCC,
10 as I see it.

11 MR. BRITTAIN: It wasn't pled. It never was
12 pled.

13 THE COURT: And you're right, Mr. Brittain. Now
14 I recall we talked that that wasn't pled. But he
15 still -- still -- I anticipate that Mr. Gleissner is
16 going to argue to the jury that, you know, under the
17 agreement, he was going to sell it, and he didn't.
18 You know, you can certainly do that. That is up to
19 you.

20 So what we'll do is on Page 15, the payment of
21 any part of the principal or interest is equivalent of
22 a promise in writing if the defendant made the payment
23 voluntary or acquiesced in the payment, right?

24 MR. BRITTAIN: Yes, sir.

25 THE COURT: So, Elizabeth, if you would add that

1 same sentence, okay, Page 15. Everybody else, we're
2 on the same page with everything else?

3 MR. BRITTAIN: Here is my point -- going back to
4 what we said. There is nothing in these documents
5 requiring him to sell it.

6 THE COURT: I understand, and we're past that
7 now.

8 MR. BRITTAIN: I thought he was arguing that he
9 should have sold it.

10 THE COURT: No. No. I think he can argue that
11 he breached -- the plaintiff breached their contract.
12 We're talking about two different things here. One,
13 the UCC says that if you go through a legal process
14 and you obtain a secured -- a chattel that was given
15 as security and you sell it unreasonably and without
16 notice to the defendant, then the balance of the debt
17 is forgiven. That is what the UCC says. That is
18 different from what Mr. Gleissner is probably going --
19 I don't want to tell him what to do with his case, but
20 I think what he is telling me is that that is
21 different from being able to argue to the jury, Well,
22 the plaintiff breached the contract that we had by not
23 selling this thing. He kept it for himself. He
24 should have sold it to somebody and applied it, but
25 because -- and we've talked about it. It is in the

1 record and in the agreement, and that is what we've
2 talked about. So I think that it is fair, okay.

3 This is the charge I'll give, we understand that?
4 So you can depend on it when you argue to the jury.
5 All objections have been made on the record. The
6 reason I say that is I want to have it.

7 MR. BRITTAIN: Your Honor, let me ask you -- and
8 of course I'll do it however Ms. Gleissner wants to.
9 It is such a short case, I'm going to let him open and
10 me close, but if he insists on me opening and him
11 close, I'll be happy to do that.

12 THE COURT: He'll probably -- I don't know. You
13 want first shot, or do you want him to open in full?
14 What do you want?

15 MR. GLEISSNER: I would like him to open in full.

16 THE COURT: All right. Good. Mr. Brittain,
17 you'll have a brief reply.

18 Our jury is here and ready to go. Verdict form,
19 I think we can do a simple verdict form. If we simply
20 say: We, the jury, unanimously find for -- and put
21 plaintiff/defendant, and then under that an amount.
22 Okay. And that way they can drift through it all and
23 determine who owes who, okay?

24 MR. GLEISSNER: Okay.

25 THE COURT: If you would, grab that for me.

1 We're ready.

2 (The jury enters at 9:58 a.m., and the following
3 is heard in the presence of the jury.)

4 THE COURT: We have our jurors and the alternate.
5 Thank you for being with us. As I told you yesterday,
6 you heard all of the evidence in this case. It is a
7 rather short, but still an important case. Now we are
8 at that point of the trial where the attorneys will do
9 their summations, final arguments to you. Just like
10 opening remarks, as I told you, they may not
11 supplement the evidence. I'm sure the attorneys
12 won't, but you may only consider the evidence that
13 you've heard from the witness stand or evidence that
14 might be in the form of exhibits, which have been
15 presented for your use. The attorneys will comment on
16 the evidence that has been presented, and that is
17 appropriate. They will talk to you about the evidence
18 from their perspective and tell you why they feel they
19 are entitled to prevail in this particular case. They
20 will also discuss with you the law. I have, as I said
21 yesterday, prepared a transcript of the charge that I
22 will be giving you so they will know in advance the
23 law that I will charge.

24 Again, if they interpret the law differently than
25 I do, you must disregard that and disregard any prior

1 ideas you may have about the law. You must apply the
2 law exactly as I give it to you, because just as you
3 are the sole judges of the facts, I'm the sole judge
4 of the law. Again, I want to be sure that you
5 understand while I'm providing you with a written copy
6 or transcript of my charge, you should not just
7 consider one part, one sentence, one paragraph. All
8 parts of the charge are important and you should look
9 at the charge as a whole document and consider all
10 parts of it because they affect each other in your
11 ultimate deliberation of the case.

12 Now, Mr. Brittain, he will open in full. That
13 will be followed by Mr. Gleissner, and Mr. Brittain
14 will have an opportunity to speak to you in rebuttal
15 briefly.

16 Mr. Brittain, are you prepared?

17 MR. BRITTAIN: Yes, thank you, sir. - Ladies and
18 gentlemen, madam forelady, we shouldn't be very long
19 today. I'm going to open on the law and the facts,
20 and that is what we basically have here and seeking a
21 judgment, which is a breach of contract. We
22 introduced evidence, Plaintiff's 1, which you'll back
23 there with you in the jury room, which is a demand
24 promissory note. This sets out Mr. Hucks' obligation
25 to repay Mr. Porter, just like you would in any other

1 bank or anyone you borrowed money from. There is
2 writing, an amount on there, interest calculations.
3 So you'll have this in your jury room. That is our
4 legal basis. Once you sign this, in a society like
5 ours, we have to have the ability to count on each
6 other to do what we say we will do. If we don't live
7 by those rules, everything breaks down.

8 When there is a writing and promise made,
9 everyone has a right that if that promise is not
10 fulfilled to require that person to accept the
11 responsibility, and that is what this is about here
12 today. You have Mr. Hucks said it appeared to be his
13 signature. You heard Mr. Porter's testimony. You
14 will be able to look at this note. Mr. Hucks doesn't
15 deny they borrowed \$155,000 from him. He doesn't deny
16 he only paid \$1,000 on it. He doesn't deny this
17 document, and there has been no other document
18 produced. So I suggest to you that the evidence in
19 the case is that this is the agreement between the
20 parties.

21 Now, the last two or three pages -- four, five
22 pages of it -- will tell you exactly what Mr. Porter
23 had a right to do if these funds weren't forthcoming,
24 and part of that was to take to himself an interest in
25 Peaceful Lane Mobile Home, which the two of them owned

1 together. You heard them say they paid about \$400,000
2 for it, and it had fallen on hard times, wasn't very
3 successful.

4 So on March 31, 2014, Mr. Porter took a
5 50 percent interest. He became full owner of Peaceful
6 Lane Mobile Home Park. It had \$200,000 worth of debt,
7 \$204,000. Mr. Hucks said he doesn't really know, but
8 he doesn't deny it. So the evidence before you is
9 that is what was owned on that piece of property. So
10 Mr. Porter calculated what the net value was of each
11 50 percent ownership, and he made those deductions and
12 explained to Mr. Hucks what he owned. Mr. Hucks said
13 he didn't remember any of the conversations, but he
14 received something in November of that year.

15 It is interesting how this comes to us in this
16 case. Very interesting. Mr. Gleissner picked up this
17 piece of paper and started asking questions about it.
18 Then, he went up to the thing and he had it marked as
19 a Court's Exhibit No. 1, which means you don't see it.
20 That is something that goes in the record, and if
21 someone does something else with this case, it's for
22 the judge to see. But I wanted you to see this
23 document once it was mentioned so you would be able to
24 see what kind of conversation was taking place, what
25 kind of communication was taking place between these

1 two men.

2 So when you go back, you'll see from Scott Porter
3 to Mr. Hucks. Here is a worksheet with a balance on
4 Peaceful Lane Mobile Home Park with market values and
5 valuations of your interest the date you forfeited it
6 in partial payment of the note. So he is telling
7 him -- he testified that he talked to him about it and
8 told him that. Mr. Hucks said he wasn't sure he did
9 that, but he is telling him at this point in time.

10 Also included in the worksheet taps is a
11 calculation showing the balance of the note as of
12 today after giving credit for the deemed payment on
13 3/31. So this document sets forth what had taken
14 place. In it you will see that he says the bank
15 prepared an appraisal of the property as of that date,
16 which is \$280,000. Now he testified to it. It was
17 challenged. Then their document shows that that is
18 what it was, \$280,000. He sent that to him. This was
19 years ago. This is not something we prepared for
20 trial. This is an honest exchange during the time
21 frame that it is going on, \$280,000.

22 It was subsequently determined that you have
23 retained proceeds of \$31,985 from mobile home sales
24 which belong to the mobile home park, which was
25 receivable from you, et cetera, et cetera. The

1 balance sheet indicates that each fair interest to
2 \$48,458 on March 31st. So that would be their
3 interest at that time.

4 Porter explains where the deduction from that
5 figure comes from. Then he goes into explaining the
6 \$155,000 note when it was signed, when payment was
7 made and what the final calculation on it is. This
8 number is a little different than some of the numbers.
9 We don't have to prove it to a mathematical certainty.
10 You have some freedom to make these decisions, but
11 there was a portion of money that showed it wasn't
12 there. We can't prove any of that, so that is not in
13 there. But there was calculations with that money
14 that is not in here.

15 As of this date, the calculation show that
16 Mr. Hucks owed \$242,173.98. Back on March 31st,
17 giving him every benefit of the doubt, which
18 Mr. Porter has done, his testimony is that it was
19 \$170,000 that he was due at that point in time. The
20 irony of it is that it was a great sacrifice to
21 himself and a benefit to Mr. Hucks because he took him
22 off the \$200,000 note on a mobile home park that no
23 one wants. So this is -- you can sit here for a year
24 on a jury and you wouldn't see a document like this
25 that the other side brought up showing that your

1 client had written him and told him exactly what he is
2 telling you today. There is your guidepost to
3 returning a verdict for the plaintiff.

4 Now, you probably will hear conversation about
5 whether this payment was voluntary or not. He
6 certainly made a thousand dollar payment. He
7 testified that was voluntary. This payment, he agreed
8 to at the initiation of borrowing the money. He said,
9 look, if I don't do what I'm supposed to do, I
10 voluntarily let you take this. That is voluntary.
11 Mr. Porter didn't have to go to court or anything.
12 How do we know that -- the key word here is was there
13 acquiescence in this? Was there non-action in this?
14 Certainly the answer to that is, yes. This is written
15 to him. You heard me ask him, Where is your E-mail
16 objecting to it? It got hacked. Did you send him
17 something objecting to it? I don't know. Do you have
18 anything objecting? I don't know.

19 Even in their pleading, which is not before you
20 as part of the evidence, but in their pleadings they
21 assume all interest was correct. They say you owe us
22 more credit than what you are giving us, leaving out
23 \$200,000, which had been absorbed. His valuation is
24 from 375 to just pick \$500,000 out of the sky. Well,
25 fully running, fully functioning with everyone on

1 sites. The testimony is that no one wanted it. Mr.
2 Gleissner said he couldn't sell it. There is nothing
3 in the document that says he has to sell it. Like he
4 said, there is no market for this. No one wants a
5 failing mobile home park. So he already has lost it
6 all. All he is trying to do is recapture a written
7 obligation from Mr. Hucks to him.

8 Like I said, you can't reach into his pocket and
9 make him give us money. All we're looking for is a
10 judgment that says, hey, look, the agreement between
11 these two parties, the way it worked out, Mr. Hucks,
12 you still owe him \$170,000, \$242,000, however you
13 calculate it. What we have not asked for is interest
14 up until today. That seems unfair. So, you know, no
15 good deed goes unpunished, but the logical dates are
16 March 14 -- 31st, 2014, and as of this calculation
17 provided to the defendant.

18 They have a counterclaim saying you owe us money.
19 If you are going to disagree with the bank's number,
20 which we have before you, if you are going to disagree
21 with the bank's number, then you bring someone in to
22 testify. We know you are not real estate appraisers,
23 because that question was asked. There has been a
24 real estate appraisal. What is unchallenged in this
25 case is the bank. Normal course of business, had an

1 appraisal that said this piece of property is worth
2 \$280,000. So what we've done is the math to determine
3 how much he is owed, how much the judgment is for.

4 So Judge Hyman, as is his practice, prepared a
5 written charge for you. We all had our discussions
6 about it, and I think that you will find in here
7 that -- one of the things he will go over with you is
8 my burden of proof as a lawyer for the Porter Trust.
9 You know, I try a lot of criminal cases. In criminal
10 cases, we have a burden of proof, which is beyond a
11 reasonable doubt. That means you be pretty sure. It
12 is way on up there somewhere. In here, we have what
13 is call a preponderance of the evidence. That means
14 that Mr. Porter has to prove his case ever so
15 slightly. Judge Floyd -- who Judge Hyman mentioned
16 earlier -- would describe the scales of justice and he
17 would say it just has to barely move in this direction
18 and he proved his case.

19 So the judge will explain to you what the burden
20 of proof is. I'm sure he will discuss with you that
21 it is a preponderance, like I said, 50 and point 1
22 percent, however you want to figure it out. Just
23 slightly more than all things being even. He will
24 discuss with you the types of evidence, and you have
25 several types of evidence. You have testimony and

1 circumstances. The failure of Mr. Hucks to object,
2 failure to have him writing a letter complaining,
3 failure to do any of those things in and around this
4 time frame is acquiesce. He knows he acquiesced
5 because he agreed to start with. It was a voluntary
6 payment that was made on March 31, 2014. Well within
7 the statute of limitations.

8 I believe the Judge will charge you that if a
9 payment is made and is somehow acquiesced, then there
10 is not a statute of limitations issue. That tolls the
11 statute of limitations. It is sure that way because
12 here is a man trying to give the other a chance to pay
13 it. So he shouldn't be punished by being generous in
14 terms of letting the person pay what is owed.

15 You determine the creditability of the witnesses,
16 who you believe and not believe. There is a lot of
17 ways to do that. One is to listen to what they said
18 and look at the documents that you have. So you can
19 put those together and make your determinations. I've
20 explained to you the law in this case is one of
21 contract, promissory note. Mr. Porter did what he was
22 supposed to do by loaning the money and then acted in
23 accordance with the terms of the agreement, which is
24 part of the Plaintiff's Exhibit 1.

25 Those damages we discussed with you previously,

1 what they are, how we got there. I believe
2 Plaintiff's Exhibit 2, Court's 1, should be your guide
3 in that regard. It is certainly within contemplation
4 of the parties that Mr. Hucks owed Porter Trust the
5 difference between the value of his 50 percent
6 interest, loan amount plus interest, and that is all
7 we're seeking.

8 Ladies and gentlemen, I appreciate your patience.
9 We ask you to review all of the evidence, consider it
10 carefully and determine that a judgment between 170
11 and \$242,000 be awarded for Mr. Scott Porter in this
12 matter. Thank you.

13 THE COURT: Mr. Gleissner.

14 MR. GLEISSNER: Thank you, Your Honor. Ladies
15 and gentlemen of the jury, what I say, what Mr.
16 Brittain says isn't testimony, not evidence. The
17 evidence is what is said here on the stand. Mr.
18 Brittain said a lot of things in his closing argument
19 and, frankly, I didn't hear on the stand. I didn't
20 hear anything about \$170,000 of the amount of money
21 owed. If you heard it, okay, but I didn't hear it. I
22 didn't hear that testimony. Other things that Mr.
23 Brittain said during his closing arguments, I didn't
24 hear. But I look at this case, and I say what are the
25 key issues in this case. The first issue is

1 believability, and one of the things that the Judge is
2 going to -- he is going to say is the use of Mr.
3 Porter's criminal record is, quote, only considered by
4 you, if at all, in determining the witness'
5 believability. That is how you consider his criminal
6 record, just on the issue of whether or not to believe
7 him or not.

8 Now, there are some things in this case that I
9 don't believe turn on believability, okay. I think
10 there is some things that are more or less undisputed.
11 We know that the note is dated May 26. We know it
12 matured on November 5, 2011, and we know that the
13 lawsuit wasn't brought March 2016. So we know more
14 than three years ran from when the note matured and
15 when this lawsuit was brought.

16 So the judge is going to instruct you that the
17 plaintiff is required to bring an action within three
18 years of the date from which the contract was first
19 alleged to have been breached. We know more than
20 three years lapsed. He will instruct you if the
21 defendant later acknowledged a payment to make future
22 payments in a writing, signed by the defendant, the
23 statute of limitations commences from that day. We
24 know we don't have before you any writing by
25 Mr. Hucks, signed by Mr. Hucks, that acknowledges that

1 payment or acknowledges that he'll make future
2 payments. We know that. So those things don't turn
3 on believability.

4 Where does believability fall into this statute
5 of limitations question? The judge is going to say a
6 payment of principal or interest is equivalent to a
7 promise in writing if the defendant made the payment
8 voluntarily or acquiesced in the payment. That is
9 what the judge is going to instruct you. So the
10 writing could be substituted if Mr. Hucks voluntarily
11 made the payment. So that is where believability
12 comes in. Do you believe Mr. Porter when he says,
13 well, we agreed he was going to allow me to set off,
14 or do you believe Mr. Hucks when he says I didn't
15 agree to that? Let's look at that issue.

16 The first document that we have on that issue is
17 Defendant's No. 1. Defendant's Exhibit No. 1 you are
18 going to have with you in the courtroom. This is an
19 e-mail from Mr. Porter, a self-serving statement of
20 Mr. Porter. This is what he said at the time. It
21 wasn't what Mr. Hucks said at the time, it is what
22 Mr. Porter said at the time. What he says at the
23 time, In this market, I don't think it is worth more
24 than \$400,000.

25 So at the time the number was \$400,000 in 2011.

1 You heard Mr. Hucks testify that they had the
2 opportunity to sell this property for \$450,000. So
3 now in 2011 we're talking about a property worth more
4 than \$450,000. Is it believable that Mr. Hucks would
5 then agree, a few years later, that this property was
6 now only worth \$280,000? That is not believable.
7 Mr. Porter says they have an appraisal of \$280,000. I
8 didn't see a bank appraisal. There is no bank
9 appraisal in evidence. There was no bank appraiser in
10 evidence. All we have, again, Plaintiff's Exhibit No.
11 2, right, another self-serving statement by Mr. Porter
12 that says, oh, it is only worth \$280,000. Well,
13 property that is worth 450 -- more than 450 in 2011,
14 it didn't decline in value that much.

15 So this self-serving statement about someone else
16 said this is how much it is worth, that is not
17 believable. And then as part of this statement he
18 talks about, oh, you take proceeds from this. And
19 then during Mr. Porter's examination, right, they
20 admit it, We can't prove that. Well, they can't prove
21 any part of this e-mail. So nothing in this e-mail is
22 believable. The thought that Mr. Hucks agreed to this
23 e-mail is equally not believable.

24 Now, if you think in 2014 that someone -- and it
25 is over \$200,000 -- is going to wait another two years

1 before he brings a lawsuit, how unbelievable is that?
2 Now, what did Mr. Hucks say? Mr. Hucks said, well, I
3 think my property after giving credit for the
4 promissory note, I think I'm due \$8,000. \$8,000.
5 You have to think long and hard before you engage
6 attorneys and go through this process to try to
7 collect on \$8,000.

8 Now, when someone sues you, okay, you
9 counterclaim for the \$8,000, but you have to think
10 long and hard before you bring a lawsuit for \$8,000.
11 So how believable is it and that Mr. Hucks waited
12 until he got sued to try to collect the \$8,000?
13 Pretty believable. Mr. Porter waiting two years to
14 collect \$200,000, that's not very believable. Now, do
15 we hear -- and, again, I heard from Mr. Brittain, but
16 I don't remember hearing from the stand, Mr. Brittain
17 says, well, we think the real amount of money owed is
18 \$107,000. Well, okay. This e-mail says one number,
19 Mr. Brittain now says a different number; how
20 believable is that story? The story isn't believable.

21 What the judge is going to charge you is that an
22 agreement is legally enforceable when there is an
23 offer to enter an agreement by one party and
24 acceptance of this offer by the other. So we have an
25 offer. Maybe this Plaintiff's Exhibit 2 is an offer,

1 but there is no acceptance. There is nothing that
2 says Mr. Hucks agreed to it. So I think that the
3 evidence shows that the taking was not voluntary and
4 that the statute ran, and if the statute ran, then
5 Mr. Porter is entitled to zero dollars, zero cents.

6 Now, we have a counterclaim in this action, and
7 that counterclaim relates to Exhibit No. 1. Mr.
8 Brittain talked to you about it, and he talked to you
9 about the first page of Exhibit 1, which is the
10 promissory note. Our counterclaim is for a breach of
11 contract, and it relates to the second document that
12 is part of Exhibit No. 1, the pledge and amended
13 agreement. Now, Mr. Brittain says he had the absolute
14 right to take it. Well, I'll read for you and you can
15 read for yourself back in chambers No. 5. In
16 Paragraph No. 5 says: In the event default shall
17 occur and be continuing, secured party, in addition to
18 its rights to recover due under the demand of the
19 promissory note, shall be entitled without liability
20 of any diminution of price which may have occurred,
21 sell -- sell all of the member's interest in such
22 manner, including to himself, his designee or
23 affiliates, at such price as secured party may
24 determine or as required by law.

25 So he's got to sell it. Nowhere does it say he

1 gets to take it. We all know what the process is for
2 trying to sell something. You offer it for sale.
3 Maybe you hire a broker, do something, put it in the
4 newspaper, something. None of that was done. There
5 was no sale. There was no attempted sale. Because
6 there was no attempted sale, we believe he breached
7 this contract. You don't get to just take the
8 collateral. You don't get to buy a \$50,000 Mercedes,
9 have the bank take it back, have the bank's president
10 start driving around the Mercedes and say it was only
11 worth \$500 bucks. You don't get to do that. He
12 doesn't get to just take the property, and because of
13 that, we think he breached a contract. Because he
14 breached the contract, Mr. Hucks' damages are \$8,000.
15 For the value of his interest was worth, he believes,
16 \$8,000 more than the note, and he should be entitled
17 to that.

18 So you are going to be given a verdict form. A
19 jury verdict form is going to say, Do you find for the
20 plaintiff, or do you find for the defendant, and then
21 it will give you an amount. What we would like you to
22 do is check the box to the defendant and put in \$8,000
23 finding for the defendant the amount of money for the
24 assets that Mr. Porter took. Thank you.

25 MR. BRITTAIN: Ladies and gentlemen, this is

1 Peaceful Lane, not a Mercedes. It is a clunker. You
2 can't sell Peaceful Lane. Let's get reasonable and
3 have commonsense. He took \$200,000 worth of liability
4 off of Mr. Hucks and took it on himself. There is no
5 market for it. We don't have a Mercedes. We have a
6 broken down used car that nobody wants. Entitled to
7 sell it, read the whole document. That document is
8 written strictly in his favor because of the need of
9 Mr. Hucks. He doesn't have to sell that piece of
10 property. He can't sell it. It takes a lot of gull
11 to refuse to pay a man what you promised to pay him in
12 writing and come in this courtroom and ask for \$8,000.
13 But that is the world we live in. You look at those
14 documents, use your commonsense about how justice is
15 supposed to work. You give life and breath to those
16 documents.

17 Now, are there any differences with respect to
18 the value of this property from time to time? Of
19 course, there are. When Mr. Gleissner was reading
20 from that document, that is back when everything is
21 good, when they have people in the mobile home park.
22 By the time it matters here, there is no one in there.
23 Like I said, talk about independent proof, he can run
24 down Court's Exhibit 1, Plaintiff's 2 all he wants to.
25 That is his document. He brought this into the

1 courtroom. He put it before the witness. He didn't
2 want you to see it because it lays out there exactly
3 what the bank appraisal was for, \$280,000. You can do
4 your calculations when you get back into the courtroom
5 (sic) and accept whatever view with respect to the
6 timing.

7 Was this a voluntary payment? Of course it was.
8 He signed a document saying if I don't do what I said,
9 I'll volunteer this. This is what you can do. He
10 signed it. Signature is there. It was voluntary from
11 day one. You can't sign a document like that and say
12 I didn't let you take my stuff. Sure you did. You
13 said right here if you didn't pay you would let me
14 take your interest. Didn't you sign that? Yeah, that
15 appears to be my signature. So you signed it? Yeah,
16 appears to be. So I can take it. Sure. That is
17 voluntary. He had a right to not put it up for
18 collateral, but he put it up. It is obviously
19 voluntary acquiescence is clear. The Judge will tell
20 you on Page 15, Payment of any part of the principal
21 or interest is equivalent to a promise in writing if
22 it was voluntary or there was acquiescence.

23 When he gets that e-mail, he starts objecting.
24 He does something. He said, Wait a minute, 280? I
25 think it is worth 360. I object to this. This isn't

1 right. You should do something different. He doesn't
2 do that. He doesn't do any of that. Scott Porter
3 gives him time to pay off what he is supposed to,
4 which he does not do. So the long and short of it is
5 we have a case.

6 Now, this day and time, practicing law, I've been
7 doing it for 40 years. I swear, the simplest thing is
8 made complicated. Use your commonsense and be fair.
9 We suggest to you an appropriate decision is between
10 \$170- and \$242,000. Yeah, I'm not going to come in
11 here if I can't prove how that \$32,000 got missing.
12 May have suspicions, can't prove it. I won't bring
13 that to you-all. That is not, right. I thin I know
14 what happened, but that is not a part of this case.
15 Giving it to him. We are giving that money to him
16 because we couldn't prove it. We can prove this, and
17 we proved what we're owed. Thank you.

18 THE COURT: All right. Ladies and gentlemen, let
19 me remind you that during this trial you and I have
20 certain duties to perform. As the trial judge, it is
21 my responsibility to preside over the trial of the
22 case. I also have the duty to rule on the
23 admissibility of the evidence offered during this
24 trial. You are to consider only the evidence before
25 you. If there was any testimony ordered stricken from

1 the record during this trial, you must disregard that
2 testimony. You are to consider only the testimony
3 which has been presented from this witness stand, any
4 exhibits which had been made a part of the record in
5 this case and any stipulations or agreements of
6 counsel.

7 I have the additional duty to charge you the law
8 applicable to this case, and it is your duty as jurors
9 to accept and apply the law as I now state it to you.
10 If you think you have an idea as to what the law is or
11 what the lawsuit ought to be and it does not agree
12 with what I tell you the law is, you must forget that
13 idea because you are sworn to accept the law and apply
14 the law exactly as I state it to you.

15 In every case tried in this court before a jury,
16 the jury becomes the sole and exclusive judge of the
17 facts. A trial judge cannot comment on or make any
18 statement about the facts in a case. Since you are
19 the sole judges of the facts, do not think by anything
20 I have said during the trial that I have any opinion
21 about the facts in this case. The law does not allow
22 me to have an opinion about the facts.

23 Now, the burden of proof in this case is by a
24 preponderance of the evidence. A preponderance of the
25 evidence simply means the greater weight of the

1 evidence. It is evidence which, as a whole, shows
2 that the facts sought to be proved is more likely true
3 than not true. This can be illustrated by imagining a
4 set of scales, balanced scales. When the case begins,
5 the scales are even, and after all of the evidence has
6 been presented, if the scales remain even or if they
7 tip even slightly in favor of the defendant, then the
8 plaintiff has failed to meet the burden of proof and
9 would not be entitled to recover in this case. If, on
10 the other hand, the scales tip even slightly in favor
11 of the plaintiff, the plaintiff will have met the
12 burden of proof and you should return a verdict for
13 the plaintiff.

14 The preponderance of the evidence is not
15 determined by the number of witnesses; instead, it
16 must be determined by the greater weight of all of the
17 evidence. There are two types of evidence generally
18 presenting during the trial, direct and circumstantial
19 evidence. Direct evidence is the testimony of a
20 person who claims to have actual knowledge of a fact,
21 such as an eyewitness. It is evidence which
22 immediately establishes the main fact to be proved.
23 Circumstantial evidence is proof of a chain of facts
24 and circumstances indicating the existence of a fact.
25 It is evidence which immediately establishes

1 collateral facts from which the main fact may be
2 inferred. Circumstantial evidence is not based on
3 inference -- excuse me. Circumstantial evidence is
4 based on inference and not on personal knowledge or
5 observation. It is proof that does not actually
6 establish the fact in question, but that asserts or
7 describes something else from which you may either
8 reasonably infer the truth of the fact, or at least
9 reasonably infer an increase in the probability that
10 the fact is true.

11 For circumstantial evidence to be sufficient to
12 warrant a finding of fact, the circumstances must lead
13 to that fact with reasonable certainty. The facts and
14 circumstances should be considered in the light of
15 ordinary experience and commonsense. The existence of
16 a fact cannot be based on speculation, surmise or
17 conjecture. The law makes absolutely no distinction
18 between the weight or value to be given either direct
19 or circumstantial evidence, nor is there a greater
20 degree of certainty required of circumstantial
21 evidence than of direct evidence.

22 Now, necessarily, you must determine the
23 creditability of witnesses who have testified in this
24 case. Creditability simply means believability. It
25 becomes your duty as jurors to evaluate the evidence

1 and determine which evidence convinces you it is true.
2 In determining the believability of witnesses who have
3 testified in this case, you may believe one witness
4 over several witnesses, or several witnesses over one
5 witness. You may believe a part of the testimony of a
6 witness and reject the remaining part of the testimony
7 of that same witness. You may believe the testimony
8 of a witness in its entirety, or reject the testimony
9 of a witness in its entirety. You may consider
10 whether the witness has an interest in the result of
11 the trial, whether the witness is prejudiced towards
12 either the plaintiff or defendant, the opportunity for
13 the witness to have seen the matters and things
14 about which the witness says or may testify, and the
15 way the witness acts on the witness stand.

16 A person who has a past criminal record is
17 competent to testify during a trial. A past record
18 does not affect the ability of that witness to
19 testify. The past record may only be considered by
20 you, if at all, in determining into witness'
21 believability. Remember, you are the sole judges of
22 the facts of this case and of the believability of any
23 and all of the witnesses.

24 Now, the plaintiff alleges he and the defendant
25 had a contract, which the defendant breached. The

1 plaintiff must first prove by a preponderance or
2 greater weight of the evidence that the parties
3 entered into a binding contract. A contract is an
4 obligation which arises from mutual agreement of the
5 parties manifested by words, oral or written, or by
6 conduct. A contract exists where there is an
7 agreement between two or more persons upon sufficient
8 consideration either to do or not to do a particular
9 act.

10 Stated another way: There must be an offer and
11 an acceptance accompanied by valuable consideration.
12 In South Carolina, a contract may be in writing or may
13 be oral, that is by word of mouth or a combination of
14 those, type some things, in writing in some things or
15 some things oral. For an agreement to be legally
16 enforceable, the parties must manifest by way of an
17 offer to enter into an agreement by one party and an
18 acceptance of this offer by the other, an intention to
19 enter a contract under terms which are completely
20 understood by each party. This is sometimes referred
21 to as a "meeting of the minds." The meeting of the
22 minds required to make a contract is not based on
23 secret purpose or intention on the part of the parties
24 stored away in his mind and not brought to the
25 attention of the other, but must be based on purpose

1 and intention which has been made known or which from
2 all of the circumstances should be known.

3 The plaintiff must also show by a preponderance
4 or greater weight of the evidence that the defendant
5 unjustifiably breached the contract. The word
6 "breach" as it applies to contract is defined as a
7 failure without legal excuse to perform any promise
8 which forms a whole or a part of the contract,
9 including the refusal of a party to recognize the
10 existence of the contract or the doing of something
11 inconsistent with his existence. When performance of
12 a duty under a contract is due, any non-performance is
13 a breach. In other words, a party breaches a contract
14 when he doesn't perform as he agreed to perform under
15 the contract. A party's contractual duty is found in
16 the obligation assumed by the party to the contract.
17 A party's failure to comply with the contractual duty
18 constitutes a breach. Non-performance of a valid
19 contract is a breach of it. A contract -- a breach
20 occurs when a party refuses or neglects to perform
21 some duty required by the terms of the contract. A
22 breach of contract is any unjustified failure to
23 perform any promise, expressed or implied, that is a
24 part of the contract or in violation or
25 non-fulfillment of the obligations, agreements or

1 duties imposed by the contract or the commission or
2 omission of some act that violates the expressed or
3 implied undertaking contained in the contract. A
4 breach may occur when a person without legal excuse
5 fails to perform any promise that is all or part of
6 the contract or knowingly prevents, hinders or makes
7 more costly the other party's performance or in
8 advance of the due date of his performance repudiates
9 dates his promise to perform that, that is repudiates
10 or renounces the contract. The plaintiff is entitled
11 to recover only if you find that he has proved by the
12 preponderance of the evidence that the defendant did,
13 in fact, breach the contract between the parties.

14 Now, damages are recoverable for breach --
15 damages which are recoverable for a breach of contract
16 are those which flow -- or follow as a natural
17 consequence of the breach, or those damages which may
18 reasonably be supposed to have been within the
19 contemplation of the parties at the time the contract
20 was entered into. Generally, the damages to which one
21 is entitled for breach of contract are those which
22 arise naturally from the breach, or those which
23 reasonably may be supposed to have been within the
24 contemplation of the parties at the time the contract
25 was entered into.

1 One who seeks to recover damages for a breach of
2 contract, which he was a party, must show that the
3 contract has been performed on his part or at least
4 that he was at the appropriate time ready, able and
5 willing to perform it. A party who has been injured
6 by the breach of a contract is entitled to recover the
7 amount of the loss; that is to say, he is entitled
8 insofar as can be done by a monetary award be placed
9 in the same position he would have occupied if the
10 contract had been performed. Where two parties have
11 made a contract, which one of them is broken, the
12 damages which the other party ought to receive in
13 respect to such breach of contract should be such as
14 may fairly and reasonably be considered to arise
15 naturally according to the usual course of things from
16 the breach of the contract itself or such damages as
17 may reasonably be supposed to have been within the
18 contemplation of the parties at the time they made it
19 as the probable result of the breach.

20 The defendant alleged that the plaintiff brought
21 this action after the date by which the plaintiff is
22 required to bring his action against the defendant.
23 You are instructed that the statute of limitation
24 commences running against a contract from the date
25 when it is breached or broken. In this action, the

1 plaintiff is precluded from bringing an action more
2 than three years from the date from which the action
3 accrued, thus the plaintiff was required to bring this
4 action within three years of the date from which the
5 contract was first alleged to have been breached by
6 the defendant.

7 If the defendant later acknowledges or promises
8 to make future payments in writing -- in a writing
9 signed by the defendant, the statute of limitation
10 commences from the date of that latter promise --
11 later promise, thus, the plaintiff was required to
12 bring there action: A, less than three years after
13 the first time the defendant breached the contract; or
14 B, less than three years after the last time the
15 defendant promised to make a payment in writing.

16 If you find that the defendant did not
17 acknowledge the obligation to the plaintiff or promise
18 to make future payments less than three years prior to
19 the plaintiff having brought this action, you should
20 find for the defendant. No acknowledgment or promise
21 shall be sufficient evidence of a new or continuing
22 contract whereby to take the case out of the operation
23 of the statute of limitations, unless it be contained
24 in some writing, signed by the party to be charged.
25 But payment of any part of the principal or interest

1 is the equivalent to a promise in writing if the
2 defendant made the payment voluntarily or acquiesced
3 in the payment.

4 Now, all 12 of you must agree on the verdict.
5 Your verdict must be unanimous. Your verdict can't be
6 based on sympathy, passion, prejudice, emotion or any
7 other consideration not in evidence in this case.
8 Madam foreperson, when your jury agrees on a verdict,
9 sign your name as foreperson on the line underneath
10 the verdict, knock on the jury room door and inform
11 the bailiff that you reached a verdict. At that time,
12 we'll receive you back into the courtroom. I'm going
13 to ask the attorneys if I have, in fact, charged you
14 as I have informed them I would. So I will ask you
15 not to begin your deliberations until such time as I
16 either bring you back in the courtroom and recharge
17 you, or I send in my charge and I send in the
18 exhibits. That is a signal to begin. I have prepared
19 the verdict form to help you in returning your
20 verdict. It is a very simple verdict form. It says,
21 We, the jury, unanimously find for the -- and I have
22 written "plaintiff" and "defendant." There is no
23 significance to the order I put those, it is just that
24 we have to put one before the other. You circle the
25 one you find for. Defendant, circle the defendant.

1 If you find for the plaintiff, circle the plaintiff.
2 Under that, the amount, if any, that you find to be
3 due. Then, the forelady will sign it and date it. If
4 you have any questions please inform Mr. Ropp you have
5 a question and I'll bring you back into the courtroom
6 and we'll address those issues. Remember that we are
7 not able now to supplement this record. You must
8 decide this case on what you have at this point in
9 time, okay. All right. Mr. Ropp.

10 (The jury exits at 10:50 a.m., and the following
11 is had out of the presence of the jury.)

12 THE COURT: Anything further?

13 MR. BRITTAIN: Nothing.

14 THE COURT: Mr. Gleissner?

15 MR. GLEISSNER: I'm concerned that some of the
16 statements made during closing were not in the record.
17 They weren't testified to.

18 THE COURT: You addressed that. It is hard to go
19 back and fix it now.

20 MR. GLEISSNER: I did address it, Your Honor, but
21 I'm wondering whether it would be appropriate -- as
22 you instructed at the beginning of the testimony,
23 whether we would could have an additional instruction
24 on the lines of what the attorneys say is not
25 evidence.

1 THE COURT: I went through all of that again. I
2 did it at the beginning of this trial and on yesterday
3 afternoon, before. We talked about -- or was it this
4 morning? I told the jury again that closing arguments
5 are not evidence. I specifically said the lawyers
6 cannot supplement the record, they cannot, you must
7 not consider it. In my charge I said they can only
8 consider what came from that witness stand. I think
9 they understand that.

10 MR. GLEISSNER: All right.

11 THE COURT: It is just the third or fourth time I
12 would have done it. I think it is clear.

13 MR. BRITTAIN: Let me put on the record, Mr.
14 Gleissner came to me and said that Mr. Porter never
15 testified to \$170,000. I recall that having been
16 testified to. I went and asked Mr. Porter if he
17 remembered that testimony. He said he did. Now, what
18 I did not do is go to the trouble of having the
19 transcript printed out for me.

20 THE COURT: I thought I heard it. I know someone
21 said \$178,000.

22 MR. BRITTAIN: I mean.

23 THE COURT: I don't know who.

24 MR. BRITTAIN: You've covered it. They have been
25 told what they have been told. We can go back and say

1 tell them what I want them to hear, but that is not
2 fair.

3 THE COURT: I've charged them those issues and I
4 think they understand it. I'm always careful at the
5 beginning of the trial, before closing telling them
6 the record is what it is. At the end, I think you
7 will remember the last time I said the record cannot
8 be supplemented, they have to decide just what came
9 from the witness stand.

10 Make sure that Ms. Dahl has all of your exhibits.
11 I'm going to have her mark the charges as Court's 2.

12 (Court's Exhibit 2 marked.)

13 THE COURT: Sandra, give those to the jury and
14 tell them they can commence deliberation. Thank you.

15 (The jury starts deliberations at 10:54 a.m.)

16 THE COURT: Okay. You may be seated. The
17 alternate was released as soon as deliberations
18 started, if you could put that on the record.

19 (Whereupon, the jury enters at 1:37 p.m., and
20 the following was had in the presence of the jury.)

21 THE COURT: I understand you have reached a
22 verdict; is that correct?

23 FOREPERSON: Yes, sir, we have.

24 THE COURT: Would you give it to Mr. Ropp there.
25 Okay.

1 THE CLERK: State of South Carolina, County of
2 Horry, in the Court of Common Pleas, Civil Action
3 2016-CP-26-1961, S. Scott Porter, individually and as
4 co-trustee Porter Trust, dated January 2nd, 1991, a
5 member of Peaceful Lane Mobile Home Park, Plaintiff,
6 versus Kenneth A. Hucks, individually and as a member
7 and former designated manager of Peaceful Lane Mobile
8 Home Park, LLC, defendant.

9 Verdict: We, the jury, find for the plaintiff in
10 the amount of \$218,000.

11 Mary R. Reidmiller, foreperson. Dated
12 February 21, 2018.

13 THE COURT: Madam forelady, ladies and gentlemen,
14 is this your verdict, and is it unanimous?

15 FOREPERSON: Yes, it is.

16 THE COURT: If you would answer that question in
17 the negative, I'll ask you to raise your hand.

18 And there is no one. They all answered
19 affirmatively.

20 I want to thank you for your service. You are
21 done for the week. This was a rather short week. You
22 know, we have a lot more to do than what this week
23 would evidence. I wish you would have been with me
24 for the last four weeks. We usually try to put about
25 35 matters on the civil docket for each week. As I

1 told you when we started this week, having a jury
2 here, whether you actually serve or not, really helps
3 move cases. I mentioned to you that we have many
4 devices to help move cases like mediation,
5 arbitration, things that are mandatory that they
6 didn't even have when I first started practicing law.
7 But I would ask you to consider this, think about
8 this, our clerk tells me we have about 12,000 civil
9 matters filed in Horry County each year. If we reduce
10 that number down to 10,000, and if I were able to try
11 and complete a case every two days and I never missed
12 a day, never took a vacation, I was never sick, it
13 would take me 80 years to try the cases that are filed
14 in Horry County in one year. So it is very important
15 that we do all that we can to move civil cases short
16 of trial, but when we do have to have a trial, it's
17 good that we have a conscious jury who is willing, as
18 you were, to give up your time to sit through a trial
19 and to bring these matters to conclusion. We all
20 thank you for your service.

21 As I said, although you only had one trial this
22 week -- I think Judge Seals also had something going
23 on in the other courtroom, but it counts as your
24 service for the next three years. You would use it or
25 could use it as an exemption if you chose to. Thank

1 you so much for being in my courtroom. It was a
2 pleasure to have you. I hope to see some of you in
3 the future. I can't remember all my jurors, but if
4 you see me out and about, please don't hesitate to
5 stop me and tell me you were on my jury. I'd love to
6 talk with you, hear from my jurors. I'm the guy that
7 you will run into in the hardware store on the
8 weekend, Lowe's. That is kind of the things I like to
9 do.

10 Again, thank you for your service and I hope to
11 see you again. Bobby, take them to their jury room.
12 Let them -- is there a request for individual polling?

13 MR. GLEISSNER: I don't think so.

14 THE COURT: Then you are dismissed. Bobby, if
15 you would, take them to the jury room and let them get
16 their things. Thank you again.

17 (The jury exits at 1:41 p.m., and the
18 following is heard out of the presence of the jury.)

19 THE COURT: You want 10 days?

20 MR. GLEISSNER: Yes. I would request 10 days for
21 a judgment notwithstanding the verdict, motion for a
22 new trial.

23 THE COURT: You don't have to state them all.
24 You have 10 days blanket to make any motion.

25 MR. GLEISSNER: Thank you, Your Honor.

(The proceedings for this trial concluded.)

CERTIFICATE OF REPORTER

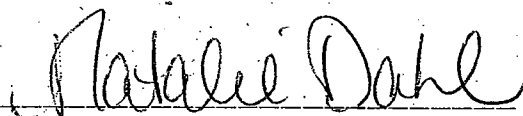
State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial proceedings and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 20th through 21st days of February, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 17, 2018



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY)

S. Scott Porter, Individually and as Co-)
Trustee of the Stanley Scott Porter Trust) Case No.: 2016-CP-26-01961
UA dated January 2, 1991, a member of)
Peaceful Lane MHP, LLC)

Plaintiff,)

vs.)

Kenneth A. Hucks, Individually and as a)
member and formerly designated manager)
of Peaceful Lane MHP, LLC,)

Defendants.)
_____)

JURY INSTRUCTIONS

I. Plaintiff's Action

The plaintiff has brought an action for breach of contract.

In order for the plaintiff to recover damages from the defendant for breach of contract, the plaintiff must prove all of the following factual elements:

1. That the plaintiff and the defendant entered into a contract;
2. That the plaintiff did all, or substantially all of the significant things that the contract required him to do;
3. That all conditions required for the defendant's performance had occurred;
4. That the defendant failed to do something that the contract required him to do; **and**
5. That the plaintiff was harmed by that failure.

In construing a contract, you shall use the following rules of construction. All contracts should receive a sensible and reasonable construction and not such a construction as will lead to an absurd consequence. An interpretation which involves the more reasonable and probable contract should be adopted. The rights of the parties must be measured by the contract which the parties themselves made, regardless of its wisdom, reasonableness, or failure of the parties to guard their rights carefully. A contract should be construed so as to give, if possible, full force and effect to every part of it.

When a provision is ambiguous, the intent of the parties controls. The intent of the parties is a

question of fact to be resolved by you, the jury, when the contract is ambiguous. In attempting to ascertain the parties' intention, the situation of the parties, as well as their purposes at the time the contract was entered, must be determined.

A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation. A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity.

In other words, where a contract is susceptible of more than one interpretation, a doubt shall be resolved against the party whose business it was to speak without ambiguity. Where a party to a contract adopts a reasonable interpretation of documents furnished by another and relies upon it, that reliance is due to be protected notwithstanding that the other party's interpretation may also be reasonable.

You are instructed that if you find from a preponderance of the evidence, under the instructions given you, that a valid contract was entered into, you must determine its nature and terms and conditions, and further determine whether or not its terms and conditions have been fully performed by the parties.

If you find that the contract was actually entered into, as alleged by the plaintiff in the complaint, that the defendant has failed or refused to perform what was required of him under its terms and conditions, and that the plaintiff has fully performed all that was required of him, then your finding shall be for the plaintiff.

If you find that the contract was actually entered into as alleged by the plaintiff in his complaint but that the plaintiff has not performed, then your finding should be for the defendant.

See *Grich v. Mantelco, LLC*, 228 N.C. App. 587, 746 S.E.2d 316 (2013); *Claggett v. Wake Forest Univ.*, 126 N.C.App. 602, 486 S.E.2d 443 (1997); *Emerald Portfolio, LLC v. Outer Banks/Kinnakeet Associates, LLC*, 790 S.E.2d 721, 726 (2016); *Novacare Orthotics & Prosthetics E., Inc. v. Speelman*, 137 N.C.App. 471, 528 S.E.2d 918, 921 (2000); *Station Assoc. Inc. v. Dare County*, 130 N.C.App. 56, 501 S.E.2d 705 (1998), rev'd on other grounds, 350 N.C. 367, 513 S.E.2d 789 (1999).

II. Defenses of Defendant

The defendant has alleged that the plaintiff has brought this action after the date by which the plaintiff is required to bring his action against the defendant.

The jury is instructed that the statute of limitations commences running against a contract from the date when it is breached or broken. In this action, the plaintiff is precluded from bringing an action more than three years from the date from which the action accrued. Thus, the plaintiff was required to bring this action within three years of the date from which the contract was first alleged to have been breached by the defendant.

If the defendant later acknowledges or promises to make future payments in a writing signed by the defendant, the statute of limitations commences from the date of that later promise. Thus, the plaintiff was required to bring this action:

- (a) Less than three years after the first time the defendant breached the contract; or
- (b) Less than three years after the last time the defendant promised to make a payment in writing.

If you find that the defendant did not acknowledge the obligation to the plaintiff or promised to make future payments less than three years prior to the plaintiff having brought this action, your finding should be for the defendant.

See S.C. Code Ann. § 15-3-530; and S.C. Code Ann. § 15-3-120.

The defendant has alleged that the sale of his interest in the company by plaintiff was not conducted in a commercially reasonable manner and was made without the proper notice to the defendant.

If you find that the Plaintiff failed to either conduct the sale of collateral in a commercially reasonable manner or provide the necessary notice to the defendant, the Plaintiff must prove by a preponderance of the evidence that the value of the defendant's interest in the company was less than any amount you find was still owed under the alleged contract.

You are instructed that the plaintiff is required to give reasonable notice of the sale of the defendants interest in the company. It is the burden of the plaintiff to show that:

- (a) the notification must be sent at a reasonable time in advance of the date of a public disposition or the date after which a private disposition is to be made; and
- (b) The contents of a notification include (1) a description of the debtor and the secured party; (2) a description of the collateral that is the subject of the intended disposition; (3) a description of the method of intended disposition; (4) a description that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and (5) a description of the time and place of a public disposition or the time after which any other disposition is to be made.

A notification that is sent so near to the disposition date that a notified person could not be expected to act on or take account of the notification would be unreasonable. A notification that lacks some of the information required nevertheless may be sufficient if you find it to still be reasonable.

Further, you are instructed that the sale of the collateral by the plaintiff must have been made in a commercially reasonable manner. It is the burden of the plaintiff to show that the sale was made in a commercially reasonable manner. Whether it was or was not "commercially reasonable" is a question of fact that you must determine. The relevant test is whether every aspect of the sale is commercially reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner on any recognized market, at the price current in any recognized market at the time of the disposition, or otherwise in conformity with reasonable

commercial practices among dealers in the type of property that was the subject of the disposition.

If you find that the Plaintiff failed to either conduct the sale in a commercially reasonable manner or provide the necessary notice to the defendant, the Plaintiff must prove by a preponderance of the evidence that the value of the defendant's interest in the company was less than any amount you find was still owed under the alleged contract. Thus, if the plaintiff fails to prove that the value of the collateral taken by the plaintiff was less than the amount of any debt owed, you must find in favor of the defendant.

See S.C. Code Ann. §§ 36-9-610 through 36-9-615 (and the comments therein); and S.C. Code Ann. §§ 36-9-625 through 36-9-629 (and the comments therein); Republic National Bank v. DLP Industries, Inc., 314 S.C. 108, 441 S.E. 2d 827 (1994); and Andrews v. Von Elton and Walker, Inc., 315 S.C. 199, 432 S.C. 2d 500 (Ct. App. 1993).

III. Defendant's Actions

The defendant has alleged that the sale of his interest in the company by plaintiff was not conducted in a commercially reasonable manner and was made without the proper notice to the defendant in breach of the agreement between the parties.

If you find that the plaintiff failed to give the defendant proper notice, the defendant is entitled to an amount reasonably calculated to put the defendant in the position that he would have been had he received proper notice.

Similarly, if you find that the plaintiff failed to sell the defendant's interest in the company in a commercially reasonable manner, the defendant is entitled to an amount reasonably calculated to put the defendant in the position that he would have been had such a commercially reasonable sale taken place.

See S.C. Code Ann. §§ 36-9-610 through 36-9-615 (and the comments therein); and S.C. Code Ann. §§ 36-9-625 through 36-9-629 (and the comments therein).

The defendant has alleged that the plaintiff breached a separate agreement between the parties regarding the governance of their relationship to the company.

In order for the defendant to recover damages from the plaintiff for breach of contract, the defendant must prove all of the following factual elements:

1. That the plaintiff and the defendant entered into a contract;
2. That the plaintiff did all, or substantially all of the significant things that the contract required him to do;
3. That all conditions required for the defendant's performance had occurred;
4. That the defendant failed to do something that the contract required him to do; **and**
5. That the plaintiff was harmed by that failure.

You are instructed that if you find from a preponderance of the evidence, under the instructions given you, that a valid contract was entered into, you must determine its nature and terms and conditions, and further determine whether or not its terms and conditions have been fully performed by the parties.

If you find that the contract was actually entered into, as alleged by the defendant in his answer, that the plaintiff has failed or refused to perform what was required of him under its terms and conditions, and that the defendant has fully performed all that was required of him, then your finding shall be for the defendant.

If you find that the contract was actually entered into as alleged by the defendant in his answer but that the defendant has not performed, then your finding should be for the plaintiff.

See *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962); *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 514 S.E.2d 126 (1999); and *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015).

The defendant has alleged that the plaintiff has breached a fiduciary duty he owed to the defendant.

You are instructed that a fiduciary relationship is created and established where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith, and with due regard to the interest of the one reposing the confidence. The relationship arises when a person reposes trust in another with respect to the former's property or business affairs. For a fiduciary duty to exist, the defendant must have placed trust and confidence in plaintiff that goes beyond that reposed in the usual business relationship.

The relationship between company manager and a member is a fiduciary one. Included among the duties the manager owes the members of a company are the obligation to keep the members fully informed of all facts pertinent to all transactions in which the manager is representing the company, to make full disclosure of all facts that materially affect the company, and to exercise reasonable care and diligence in the performance of the manager's duties. These duties are limited to the extent the demands made by the member or the information demanded is unreasonable or otherwise improper under the circumstances. A manager is liable for a violation of these duties if they engage in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law.

Similarly, members owe a fiduciary duty to other members. These duties include the duties of loyalty and duty of care. The duty of care requires that a manager of a limited liability company is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." Under South Carolina law, gross negligence is "the failure to exercise slight care" or "the absence of care that is necessary under the circumstances." "Recklessness implies the doing of a negligent act knowingly"; it is a 'conscious failure to exercise due care.' A member is liable for a violation of these duties if they engage in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law.

If you find that plaintiff was a manager of the company and acted in a way that violated one of these

duties, you must find in favor of the defendant. Similarly, if you find that plaintiff was a member of the company and violated one of these duties, you must find in favor of the defendant.

If you find that the plaintiff was neither a member or manager or that the plaintiff did not violate any of these duties, you must find in favor of the plaintiff.

See S.C. Code Ann. §§ 33-44-408 through 33-44-409; *Etheredge v. Richland School Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (2000); *Berberich v. Jack*, 392 S.C. 278, 709 S.E.2d 607 (2011).

SATISFACTION: The debt evidenced by this Note has been satisfied in full this ___ day of ___, 20__.

DEMAND PROMISSORY NOTE

Boone, NC
May 6, 2011
DATE

\$ 155,000.00

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the Stanley Scott Porter Trust UA dated January 2, 1991, or order, the principal sum of One Hundred Fifty-Five Thousand and 00/100 DOLLARS (\$ 155,000.00) with interest from May 6, 2011, at the rate of BB&T Prime Rate plus One Percent, as said rate shall change from time to time,

per annum on the unpaid principal balance until paid or until default, both principal and interest payable in lawful money of the United States of America, at the following address: 1846 US Hwy 421 South Boone, NC 28607

or at such place as the legal holder hereof may designate in writing. It is understood and agreed that additional amounts may be advanced by the holder hereof as provided in the instruments, if any, securing this Note and such advances will be added to the principal of this Note and will accrue interest at the above specified rate of interest from the date of advance until paid. The principal and interest shall be due and payable as follows:

Interest:

Interest only payments on the outstanding principal balance shall be due monthly beginning June 6, 2011 and continuing on the same day of each calendar month until this note is paid in full.

Principal:

The entire principal balance is due and payable on Demand.

If not sooner paid, the entire remaining indebtedness shall be due and payable on November 5, 2011.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity.

In the event of default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date, or (b) default under the terms of any instrument securing this Note, and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the holder may without further notice, declare the remainder of the principal sum, together with all interest accrued thereon and the repayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of eighteen percent (18%) per annum after default until paid.

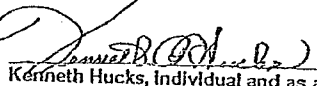
All parties to this Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies and the maker, principal, surety, guarantor and endorsers of this Note hereby agree to pay to the holder reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of the holder's right and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given for monies advanced from time to time commencing in September 25, 2006 pursuant to a note and security agreement dated September 28, 2006, and is secured by a Pledge of 50% membership interest in Peaceful Lane MHP, LLC pursuant to a Pledge and Amendment Agreement of even date herewith.

IN TESTIMONY WHEREOF, each individual maker has hereunto set his hand and adopted as his seal the word "SEAL" appearing beside his name, the day and year first above written.


Kenneth Hicks, Individual and as a member of Peaceful Lane MHP, LLC

Date: 5/26/11

PLEDGE AND AMENDMENT AGREEMENT

THIS PLEDGE AGREEMENT, made and entered into as of the 6th day of May, 2011, by and between Kenneth Hucks ("Pledgor") and the Stanley Scott Porter Trust UA dated January 2, 1991 ("Secured Party").

WITNESSETH:

WHEREAS, Pledgor has previously borrowed \$80,000 plus accrued interest of \$20,000 pursuant to a note and pledge agreement entered into on September 29, 2006 and is on this date borrowing the additional sum of \$55,000.00 from Secured Party as evidenced by that certain Demand Promissory Note of even date herewith, and

WHEREAS, to induce Secured Party to make said loan to Pledgor and to accept Pledgor's Demand Promissory Note in payment therefor, Pledgor and Secured Party have agreed to enter into this Pledge and Amendment Agreement and;

WHEREAS, Pledgor and Secured Party are the sole members of Peaceful Lane MHP, LLC, and Pledgor is the member/manager of said LLC; and

WHEREAS, Pledgor and Secured Party do hereby desire to affirm the prior amendment to the terms and provisions of the operating agreement of the LLC that permitted the pledge of the Membership Interest of Pledgor in the LLC to Secured Party and to provide that Secured Party shall be the sole manager of the LLC until the Demand Promissory Note is paid and satisfied in full.

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. Definitions.

- (a) The term "Membership Interest" shall mean and refer to the fifty percent (50%) interest of Pledgor in Peaceful Lane MHP, LLC.
- (b) The term "Obligations" shall mean and refer to all indebtedness, obligations and liabilities of Pledgor under the Demand Promissory Note (as herein defined).
- (c) The term "Demand Promissory Note" shall mean and refer to that certain demand Demand Promissory Note of even date herewith, in the original principal amount of \$155,000.00, payable by Pledgor to Secured Party, and all amendments, modifications, deferrals, renewals or refinancings of said Demand Promissory Note.

2. Pledge of Membership Interest. As security for the payment and performance by Pledgor of the Obligations of Pledgor under the Demand Promissory Note, including, without

limitation the due and punctual payment of the full amount of principal and interest due under the Demand Promissory Note as and when the same shall become due and payable, or any other obligations and liabilities of the Pledgor with respect to, or in any way arising out of the Demand Promissory Note, or performable in accordance with the terms thereof, Pledgor hereby sets over, transfers, hypothecates, grants, assigns, pledges and conveys to Secured Party, his heirs, successors and assigns, a pledge and continuing security interest in and to the Membership Interest and all proceeds thereof, including without limitation, all distributions (whether profits, capital or otherwise) paid with respect to such Membership Interest and all proceeds from the sale or other disposition thereof (the "Collateral").

3. Amendment of Operating Agreement. The undersigned Pledgor and Secured Party, being the sole members of the LLC, and the undersigned Pledgor as its manager, do hereby covenant and agree that, notwithstanding any provision of the operating agreement of the LLC to the contrary, the operating agreement is hereby amended (i) to permit Pledgor to pledge all his right, title and interest in and to the LLC, including without limitation, his 50% ownership interest as a member thereof, to Secured Party as collateral security for the repayment of the Demand Promissory Note; and (ii) to provide that from the date hereof until said Demand Promissory Note has been paid and satisfied in full, Secured Party and not Pledgor shall be the sole manager of the LLC.

4. Events of Default. The occurrence of any one or more of the following events (herein an "Event of Default") shall constitute a default hereunder:

(a) Failure of Pledgor to perform or observe any obligation, covenant, condition or term of this Agreement; or

(b) The occurrence of any event of default specified in the Demand Promissory Note or any of the other Obligations if such default is not cured within any grace period applicable thereto.

5. Remedies Upon Default. If an Event of Default shall occur and be continuing, Secured Party, in addition to its right to recover at law all sums due under the Demand Promissory Note, shall be entitled without liability for any diminution in price which may have occurred, sell all of the Membership Interest in such manner (including to himself, his designee or any affiliates) at such price as Secured Party may determine or as required by law. Further, Secured Party shall then have all the rights and remedies with respect to the Membership Interest of a secured party under the UCC as it is enacted in the State of North Carolina, and under any other applicable law.

All rights, powers and remedies specified in this Agreement are cumulative and are in addition to, and not in limitation of, such other rights, powers and remedies as may be available to Secured Party under applicable law, by agreement between the parties or otherwise.

6. Application of Proceeds. The proceeds from any sale or other realization on the Membership Interest or other Collateral pursuant to this Agreement, together with all other

monies received by Secured Party hereunder, shall be applied as follows:

(a) First, to the payment of all costs and expenses incurred by Secured Party in connection with such sale or other realization, including, without limitation, reasonable attorneys' fees and all court costs, and to the repayment of all other costs and expenses paid or incurred by Secured Party in the exercise of its rights, powers and remedies hereunder;

(b) Second, to the payment in full of the Obligations, in such manner as Secured Party may in its discretion determine; and

(c) Third, Pledgor shall be entitled to any surplus.

It is understood that Pledgor shall be liable for any deficiency which may remain after the exercise by the Secured Party of its rights, powers and remedies pursuant to this Agreement.

7. Pledgor's Obligations Absolute. The obligations of Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated, reduced or impaired or otherwise affected by (a) any amendment, change or modification of the Demand Promissory Note; (b) any waiver, consent, extension, deferral, indulgence or other action or inaction under or in respect of the Obligations; (c) the furnishing of any additional collateral or security to Secured Party or any release of any collateral or security in whole or in part by Secured Party under this Agreement or otherwise; (d) any limitation of any party's liability or obligations under the Obligations; or (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding by or affecting Pledgor.

8. Further Assurances. Pledgor agrees to execute and deliver, at his expense, such other documents and instruments, and to take from time to time such other and further action, as may be reasonably requested by Secured Party to create, preserve, renew and keep in full force and effect the first and prior security interest in the Collateral hereby granted to Secured Party.

9. Power of Attorney. Pledgor hereby irrevocably makes, constitutes and appoints Secured Party, or any of its designees, its true and lawful attorney-in-fact, with full power and authority, in the name and on behalf of Pledgor, to execute such documents and instruments and to take such other action, as may be necessary or appropriate in order to carry out the terms, covenants and conditions of this Agreement. Pledgor hereby ratifies and confirms all that Secured Party, or its designees, as such attorney-in-fact, may do by virtue of this Power of Attorney, which power is coupled with an interest and is irrevocable until Pledgor has paid in full the Obligations and this Agreement is terminated.

10. Expenses. On or before the due date of the Note, Pledgor will pay to Secured Party its attorneys fees incurred for the preparation of these documents. Pledgor will pay to Secured Party such costs and expenses, including reasonable attorneys' fees, as Secured Party may incur in enforcing the rights, powers and remedies of Secured Party hereunder; provided, however, that this provision shall not apply with respect to an action or proceeding instituted by

Secured Party if Pledgor is the prevailing party therein.

11. Termination and Release. Upon payment in full of the Obligations in accordance with the terms and conditions thereof, and upon the payment of such sums as may be due and payable to Secured Party hereunder, this Agreement shall terminate, and Secured Party will transfer and deliver to Pledgor the Pledged Membership Interest and other Collateral as has not theretofore been sold or otherwise applied or released pursuant to this Agreement, together with any monies at that time held by Secured Party hereunder.

12. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be delivered in person or by registered or certified mail, postage prepaid, and addressed as follows:

If to Secured Party:
S. Scott Porter, Trustee
1846 US Hwy 421 South
Boone, NC 28607

If to Pledgor:
Kenneth Hucks
5790 Dick Pond Rd.
Myrtle Beach, SC 29575

Any party hereto may change his or its address for notice purposes by notice to the other parties as specified herein.

13. Miscellaneous.

(a) No delay or failure on the part of Secured Party in the exercise of any right, power or privilege under this Agreement; shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid against Secured Party unless made in writing and signed by Secured Party, and then only to the extent expressly specified therein.

(b) If any provision contained in this Agreement shall be invalid or unenforceable under applicable law or regulations, this Agreement shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining provisions hereof.

(c) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and it may not be changed, modified or amended except by an instrument in writing signed by the party against whom enforcement of such change, modification or amendment is asserted.

(d) This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that Pledgor shall have no right to assign its rights or obligations hereunder to any person or entity.

(e) This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

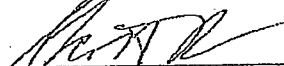
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, under seal, as of the 6th day of May, 2011.

PLEDGOR:

 (SEAL)

Kenneth Hucks, individually and as member and designated manager of Peaceful Lane MHP, LLC

SECURED PARTY:

 (SEAL)

S. Scott Porter, as Trustee
The Stanley Scott Porter Trust UA dated January 2, 1991, a member of Peaceful Lane MHP, LLC

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From: Scott Porter [<mailto:scottp@highcountry4rent.com>]
Sent: Thursday, November 13, 2014 5:44 PM
To: kenneth@cypresscampingresort.com; laura@cypresscampingresort.com
Subject: PLMHP

Attached is a worksheet with the balance sheet (PLMHP BS tab) with market values and valuation of your interest in PLMHP on 3/31/14, the date you forfeited it in partial payment of the note. Also included in the worksheet tab "Hucks NP" is the calculation showing the balance of the note as of today after giving credit for the deemed payment on 3/31.

These amounts have been adjusted based on the results of your meeting with me and John Ray and our subsequent discussion about the amounts you believe you received for the mobile homes that were sold in 2011 and 2012.

In summary, on 3/31/14 I took your interest in PLMHP which you had pledged to secure the \$155,000 N/P to my trust and I refinanced the LLC property to remove you from the guaranty. The bank prepared an appraisal of the property as of that date which was \$280,000. It was subsequently determined that you had retained proceeds of \$31,985 from sales of mobile homes which belonged to PLMHP which are reflected as a receivable from you on the books of the LLC as of 12/31/13 and remains outstanding as of 3/31/14 and as of this date. The balance sheet as of 3/31/14 indicates that each of our interest in PLMHP was worth \$48,458 on 3/31 based on the bank's appraisal prepared for the refinance where I took you off the guaranty as of that date. Since you owe the LLC for the MH sales proceeds I reduced the value of your interest by that amount, resulting in \$16,473 which I credited as a reduction of the note amount due on that date in the note calculations.

The \$155,000 note was signed on 5/26/11 and was due on 11/5/11 after which it was in default and earning the default rate of 18% interest. One payment was made for \$1,000 on 8/8/11 when Heather informed me that PLMHP was going to make each of us a \$1,000 distribution and I suggested that any distribution to you should be applied by you to reduce your note. No other payments have been made. As you can see from the attached calculations, the amount due on 3/31/14 was \$234,362.74 before application of the value of your forfeited PLMHP, LLC interest. Once that forfeiture is applied, the balance is \$217,889.73. The balance due as of 11/12/14 is \$242,173.98.

I submit this information for your review and will tell you that I have not included in the above the amounts of any additional recovery that PLMHP may be entitled to were it to pursue recovery from you of other monies or the cost of restoring the LLC books and records, since the original books and records were lost by Properties Unlimited. This is intended to form the basis for a conversation about reaching an agreement about the amount that is owed by you so that we can develop a means and method for repayment.

S. Scott Porter

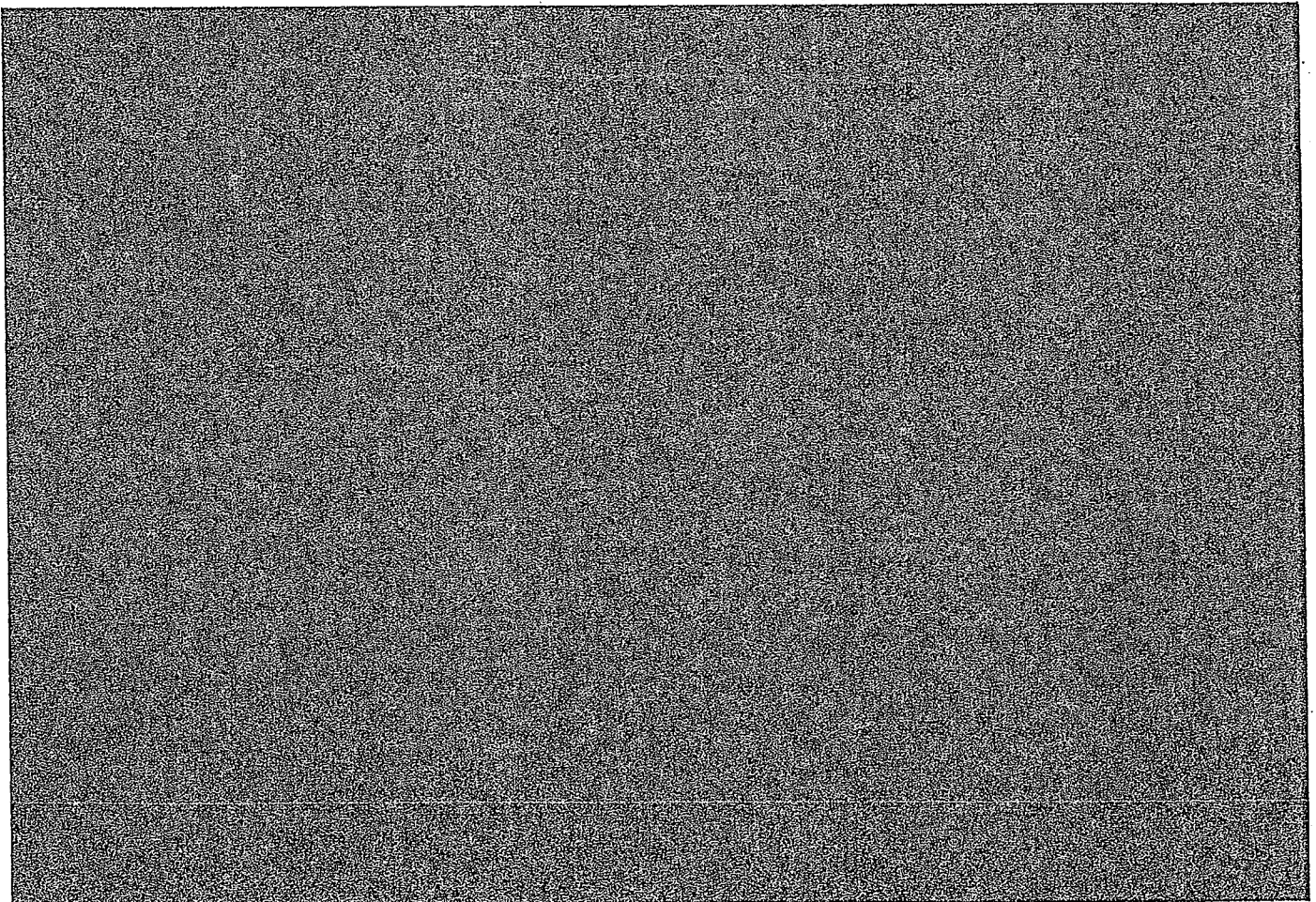
Allison Lazar

Subject: FW: Keith and land
Attachments: PLMHP 2012 Pro Forma.xls

From: Scott Porter [mailto:scottp@carefree-service.com]
Sent: Tuesday, August 2, 2011 12:08 PM
To: 'huckstable@juno.com'
Subject: Keith and land

I have a lot to cover here and it is not easy to explain or understand, but I am going to take a shot at doing this in writing and then we can talk through it to make sure we both understand. This is a very direct analysis and I hope you will take it in the right context. You really need to evaluate all of this and see if you believe it is worth it to go forward with CCR. Once you have read through it and thought about it, give me a call and we can go over it. Some of this I can't change, and some I can, so we can talk about it. Here goes.

PLMHP needs to be refinanced and probably at a reduced amount, requiring an additional investment for the pay-down. In this market I don't think it is worth more than \$400,000. Based on your ownership, 50% of the debt is \$130,000 and the current loan to you is \$155,000 giving a value for 50% of \$285,000 or \$570,000 for the entire property. I can't justify converting the debt into ownership at that level. It is a reach but given that you contributed some trailers and deserve some credit for that, I can take over your interest for release of your guaranty on the debt at CNB and forgiveness of \$100k of the debt, valuing your interest at \$230,000 and the property at \$460,000. See attached worksheet on PLMHP. This means you will have to find a way to repay the \$55k advance – I presume if the CNB loan is paid off the stock will be freed up and the payment can be made from that.



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State of South Carolina) Court of Common Pleas
County of Horry) 2016-CP-26-01961

S. Scott Porter)
vs.) Transcript of Record
Kenneth Hucks)

March 27, 2018
Conway, South Carolina

BEFORE:
Honorable Larry-B. Hyman, Jr., Judge.

APPEARANCES:
Thomas C. Brittain, Esq.
Attorney for the Plaintiff

Richard R. Gleissner, Esq.
Attorney for the Defendant

Teresa J. F. Bautz, RPR
Official Court Reporter

E X H I B I T S

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NO.

DESCRIPTION

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No exhibits submitted.

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Exhibits retained by Clerk of Court.

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1 (WHEREUPON, the hearing commenced at approximately
2 1:19 p.m.)

3 THE COURT: All right, Porter versus Hucks. Mr.
4 Brittain and Mr. Gleissner, okay. Did I hear something
5 recently on that?

6 MR. BRITTAIN: You heard the trial.

7 MR. GLEISSNER: You were the trial judge.

8 THE COURT: Oh, I did. Well, what was it about?

9 MR. GLEISSNER: It was attempted collection on a
10 note and sale and collateral.

11 THE COURT: Okay, all right. Yes. All right,
12 what's this about? The motion for judgment not --
13 okay.

14 MR. GLEISSNER: That's correct, Your Honor. It's
15 our post-trial motions. And with the Court's
16 permission, I'll hand up a copy of our post-trial
17 motions.

18 THE COURT: All right. And I gave you time to do
19 that?

20 MR. GLEISSNER: Yes, Your Honor. You gave me ten
21 days, and I filed it on the tenth day.

22 THE COURT: Okay, good for you, okay. All right.
23 All right, I remember this case. It involved a mobile
24 home park and a failed mobile home park, loaning some
25 money back and forth among friends and business

1 associates and that sort of thing. Okay. And the
2 verdict returned was in favor of the Plaintiff, as I
3 recall, and there was a verdict for...

4 MR. GLEISSNER: \$218,000, Your Honor.

5 THE COURT: All right, very well. I could not
6 remember the amount, but now I remember the case.
7 Okay. Let me hear from you, Mr. Gleissner.

8 MR. GLEISSNER: All right, Your Honor. I --
9 generally, Your Honor, I don't like to read my motion.

10 THE COURT: I'd rather you not.

11 MR. GLEISSNER: Yeah. I --

12 THE COURT: I like when people just kind of talk
13 to me, okay.

14 MR. GLEISSNER: That's fair enough, Your Honor.
15 And basically what I'd like to do is I'd like to focus
16 on two things that I think are critical to
17 understanding the motion for judgment notwithstanding
18 the verdict, or in the alternative a new trial, the
19 first of which is the introduction of what I believe is
20 hearsay testimony.

21 And you may recall at one point during the trial
22 an e-mail was offered into evidence. Your Honor, I
23 don't have the original e-mail that was proffered as an
24 exhibit. I do have my copy.

25 THE COURT: That's fine.

1 MR. GLEISSNER: My copy, Your Honor, has just
2 some -- has my notes on it, or a note on it actually.
3 And so here's a copy of the e-mail that was entered
4 into evidence.

5 THE COURT: Yes, I recall this. And this was from
6 the Plaintiff to the Defendant some year or two or
7 longer before filing the action in which he explains
8 some actions he took where he took an interest in a
9 mobile home park, applied some -- applied it to the
10 debt, took an evaluation that he had arrived at
11 somewhere anyway. Yes, he sent that to the Defendant.

12 MR. GLEISSNER: That's correct. And I objected
13 based upon the contents, including hearsay. And
14 specifically the hearsay that I'm referring to is the
15 statement that the bank prepared an appraisal of the
16 property as of that date, which was \$280,000. So
17 basically the document contains a statement that some
18 bank officers said we got an appraisal. And then the
19 appraiser said the value of the property was \$280,000.
20 So we've got hearsay within hearsay within hearsay.

21 THE COURT: But let me ask you this. Is that
22 offered for the truth of those appraisers --
23 appraisals, or was it offered for some other purpose,
24 primarily by Mr. Porter to say, this is how I came up
25 with the balance that you owed me. Wasn't that what it

1 was offered for, this is how I got to the final -- this
2 is the process I used, this is how I got to my final
3 result; wasn't that why it was actually offered?

4 MR. GLEISSNER: Actually, Your Honor, I believe it
5 was offered and used for the purpose of stating that
6 the value of the property at the time was \$280,000.

7 THE COURT: All right.

8 MR. GLEISSNER: I believe in closing arguments --
9 and Your Honor, please understand, we don't have a
10 transcript at this time.

11 THE COURT: I understand.

12 MR. GLEISSNER: I'm just, you know, basing my
13 stuff off recollection.

14 THE COURT: I understand.

15 MR. GLEISSNER: And so, you know, my recollection
16 may be right and may be wrong, but my recollection was
17 that during closing arguments Mr. Brittain said to the
18 jury, we have a bank appraisal, says the value of the
19 property is \$280,000, so we know how much the value of
20 the property is. So I think it was clearly offered and
21 used for the truth of the matter asserted.

22 And, Your Honor, I didn't have an opportunity to
23 cross-examine the banker, and I didn't have an
24 opportunity to cross-examine the appraiser. And that's
25 the reason why we have hearsay testimony is it's unfair

1 to us to have this statement that the bank prepared in,
2 an appraisal of the property on that date which was
3 \$280,000. And we think that that significantly
4 impacted this trial and was prejudicial to the
5 Plaintiff.

6 In fact, we think that's the only testimony -- I
7 mean, we think that this document here is the only
8 testimony as it relates to how much was actually owed.
9 And that's the reason why we think we should be
10 entitled to a judgment notwithstanding verdict is
11 because the jury came back with the exact number --
12 well, not the exact number but an approximate number of
13 the number that's included in this e-mail.

14 The e-mail says 217,889.73. The jury came back
15 with 218,000.. This is the only testimony that suggests
16 that the amount owed was anywhere near that amount.

17 THE COURT: Well, let me ask you this. Isn't it
18 firmly established that the owner of a property may
19 testify as to its value in this state; isn't that true?

20 MR. GLEISSNER: That is true.

21 THE COURT: And wasn't that the theory by which
22 Mr. Hucks was able to testify as to his opinion of the
23 value?

24 MR. GLEISSNER: That's correct.

25 THE COURT: And wouldn't it also follow, then,

1 that Mr. Porter would likewise be able to testify as to
2 his opinion of the value of the property?

3 MR. GLEISSNER: Yes, that's correct again, Your
4 Honor.

5 THE COURT: All right.

6 MR. GLEISSNER: So I think both of them could have
7 testified. But the fact that we had a bank officer who
8 wasn't present testifying that he had an appraisal and
9 the appraisal was \$280,000 was clearly prejudicial. It
10 gave the jury a, quote, unquote, "impartial valuation."
11 You had Mr. Hucks saying one thing, you had Mr. Porter
12 saying another thing, and you had this bank officer
13 with an appraiser, and you had those two saying the
14 property was worth \$280,000. And that's the reason why
15 we think it's prejudicial, and we think it's hearsay,
16 Your Honor.

17 THE COURT: All right.

18 MR. GLEISSNER: And then, so -- and you also
19 notice that included in here it talks about the fact
20 that \$31,000 retained proceeds. And during the
21 testimony Mr. Porter said he can't prove that. And
22 even though he said he can't prove that, the jury still
23 came back with that net number of \$218,000.

24 So Your Honor, the jury even disregarded
25 Mr. Porter's own testimony as it relates to, we can't

1 prove this and instead relied exclusively upon this
2 e-mail in rendering its verdict.

3 THE COURT: I mean, how do you know that that's
4 the jury's thought process?

5 MR. GLEISSNER: Well, the only place --

6 THE COURT: I mean, there were no special
7 interrogatories submitted; were there?

8 MR. GLEISSNER: Well, no, there weren't, Your
9 Honor. But the only place that a number close to
10 \$218,000 was ever mentioned is in this e-mail. That's
11 the only place.

12 THE COURT: Okay. Well, in the e-mail does he say
13 that he's due \$31,000?

14 MR. GLEISSNER: Yes, it does, Your Honor. Even
15 though during his testimony he said he can't prove
16 that.

17 THE COURT: I was looking at the e-mail and just
18 trying to find that part. I'm not saying it's not
19 there, I'm just trying to...

20 MR. GLEISSNER: Well, Your Honor, actually you see
21 where it says; we can't prove that it --

22 THE COURT: Okay, you retain proceeds. Okay. And
23 what else?

24 MR. GLEISSNER: So that's one thing I would like
25 to focus on. And then the second thing I would like to

1 focus on is the application of the Uniform Commercial
2 Code. I think it's clear that under the Uniform
3 Commercial Code the Plaintiff has the burden of
4 establishing that the collection forced the disposition
5 and acceptance of the collateral was conducted in
6 accordance with the Uniform Commercial Code. And he's
7 also required to prove that if he had complied with the
8 Uniform Commercial Code, it would have yielded a
9 smaller amount, an amount that would still render a
10 deficiency. And I believe that no such evidence --

11 THE COURT: Well, wasn't this a contractual right
12 that he had to take Mr. Hucks' interest? I mean, isn't
13 that what they agreed upon, that I'll just give you my
14 interest in this?

15 MR. GLEISSNER: I don't believe so, Your Honor. I
16 believe that the Uniform Commercial Code applies. And
17 I believe that upon the default, one has to move
18 forward with the appropriate sale of the collateral.
19 And because there was no sale of the collateral, you
20 have to provide evidence that if there was a proper
21 sale of collateral the sale would have resulted in less
22 than the amount of debt.

23 And, therefore, because there was no commercial
24 sale and there was no evidence that would have yielded
25 an amount less than the amount sufficient to pay the

1 debt, I believe that would require us to have a
2 judgment notwithstanding verdict as well. And you
3 recall we had some questions about whether or not to
4 include the Uniform Commercial Code charges that I
5 proposed to the jury. I believe that the question was
6 asked whether or not the Uniform Commercial Code was
7 actually specifically pled in my complaint.

8 And I admitted that it was not specifically pled
9 in the complaint but that I didn't think, and I still
10 don't think, that you actually have to plead the
11 statutes in order to have a jury charge based upon
12 those statutes. And so, therefore, Your Honor, I think
13 that because it wasn't included, the Uniform Commercial
14 Code wasn't included in the jury charges, I think we're
15 entitled to a new trial.

16 So Your Honor, as it relates to judgment
17 notwithstanding verdict, we believe that the only
18 evidence presented was inadmissible hearsay testimony
19 as it relates to the amount of damages. Thereby we
20 think we should get a judgment notwithstanding the
21 verdict. We think that the failure to follow the
22 Uniform Commercial Code requires us to get a judgment
23 notwithstanding the verdict.

24 We think that the inclusion of the hearsay
25 testimony was significantly prejudiced, therefore

1 entitles us to a new trial. And then, Your Honor, we
2 feel that the failure to include the charges on the
3 Uniform Commercial Code allow us to also get a new
4 trial.

5 THE COURT: All right.

6 MR. GLEISSNER: Thank you, Your Honor.

7 THE COURT: Mr. Brittain.

8 MR. BRITTAIN: Yes, Your Honor. We filed a brief
9 memorandum, which I'm assuming you and Liz have a copy
10 of. First, the issue about the UCC, it's clearly not a
11 UCC case. I don't do much with UCC, but we never had
12 any conversations about it, there were never any
13 motions about it. It was never even in the pleadings.

14 Somewhere along the line in the middle of the
15 trial, not even the first day, he came up. This is --
16 we have a lot of these in Horry County, this is a
17 mobile home park, owned real estate. And they had a
18 demand note associated with it. And that was clear
19 from the outset, that's what this case was about.

20 THE COURT: Mr. Gleissner, do you believe that the
21 UCC applies to real estate transactions?

22 MR. GLEISSNER: Oh, I'm sorry, you are asking me a
23 question. Well, Your Honor, as it relates to real
24 estate transactions, the answer is no. But this isn't
25 a real estate transaction. This particular transaction

1 is the collateral pledged is the un-certificated
2 interest in the limited liability company. As it
3 relates to an un-certificated interest in a limited
4 liability company, the Uniform Commercial Code clearly
5 does apply.

6 THE COURT: Okay, all right. Mr. Brittain, I cut
7 you off there, I'm sorry.

8 MR. GLEISSNER: I'm sorry, Your Honor. I
9 apologize.

10 THE COURT: Mr. Brittain, I'm sorry I cut you off.

11 MR. BRITTAIN: As I said, none of that was even
12 pled or proved. The testimony from the witness stand
13 was about the business association between these two
14 individuals. And, you know, we have amendments in the
15 trial. But you wouldn't have an amendment that in the
16 middle of the trial created a brand new cause of
17 action.

18 Like I said, Mr. Gleissner wanted to try this case
19 on the UCC theory through the obscure business
20 association characterization he's choosing to take now.
21 He should have notified Mr. Porter and this Court of
22 that much sooner. This is not an amendment conforming
23 to evidence that we often see. This would be an
24 amendment to take the evidence that we all knew was
25 there and completely reorganize it in terms of a whole

1 other set of legal theories.

2 Now, he and Mr. Hucks had choices to make when
3 they decided to answer these pleadings. And then they
4 had an incredible amount of time to add anything to it
5 if they felt like, for whatever reason, something they
6 learned should have changed the nature of the
7 proceeding. And none of that was done.

8 So we don't really know what the underlying
9 factual bases are at this point in time, because there
10 is no testimony. It's just Mr. Gleissner talking about
11 things. If he wanted to prove this was a UCC case, he
12 should have done it a long time ago and put the
13 Plaintiff on notice that that's where he was going.

14 So his request to try the case on something that
15 was never pled, no amendment made until the middle of
16 the trial comes too late. This Court has no way to
17 know whether that would be an accurate legal theory or
18 not except for the discussions he's having with the
19 Court.

20 Now, keep in mind, the basic summary judgment on
21 this case was heard by Judge Culbertson, so even though
22 we don't have a two-judge rule. Everything except this
23 UCC business and the e-mail was, to the extent it's
24 been argued as a legal theory for dismissal of the
25 case, was decided by Judge Culbertson. He ruled this

1 case should go forward, there were issues of fact to be
2 determined by a jury.

3 We also had motions for directed verdict in front
4 of His Honor who had reviewed these claims. So we're
5 now looking at them for the third time. The document
6 in question, just so we go back and review, is an
7 e-mail from Scott Porter, who is the Plaintiff, to
8 Kenneth Hucks, who is the Defendant.

9 Now, that document was taken up to the podium by
10 Mr. Gleissner, and he said, didn't you say so and so
11 and such and such and such a such a document. He kept
12 talking, kept talking. And he put the document down on
13 his desk. And then, I took the position that since he
14 had chosen to elicit a portion of the document, that I
15 was entitled to under the rules to have the context
16 introduced into evidence. And the Court --

17 THE COURT: And that was the e-mail that we talked
18 about?

19 MR. BRITTAIN: That was the e-mail.

20 THE COURT: Yes. I recall that now.

21 MR. BRITTAIN: Okay. Now, the e-mail was
22 cumulative testimony to Mr. Porter's. Mr. Porter
23 discussed how he arrived at what he was entitled to.
24 We gave a range to the jury depending on what they
25 decided about triggering interests, etcetera. When

1 this -- this side note obviously refers to the \$31,985
2 of retained proceeds that because, if you recall, they
3 destroyed or lost all of the business records, could
4 not be established. So this was a note that he was
5 making where that couldn't be done.

6 So the jury had an opportunity to pick and choose
7 between the \$155,000 of the original note, the interest
8 that would have applied, the timing of the triggering
9 of the partial performance, and it was well within
10 their discretion to determine that. Just because they
11 didn't bring back the exact amount we were looking for
12 doesn't mean that they didn't make a competent
13 decision.

14 They were given evidence that was appropriate,
15 they took it back. And you told them, you're the
16 jurors of the fact, you can figure out what's
17 appropriate here under all the facts and circumstances.

18 THE COURT: And the range given was a high -- for
19 the value of the property of Mr. Hucks, I remember it
20 was 400,000, somewhere in that range.

21 MR. BRITTAIN: Yes, sir.

22 THE COURT: Significant.

23 MR. BRITTAIN: Yeah, his opinion.

24 THE COURT: His opinion. And the lower range was
25 250, somewhere in that range.

1 MR. BRITTAIN: Yes.

2 THE COURT: Without looking at the transcript.

3 And so the jury really could go anywhere in between;
4 could it not?

5 MR. BRITTAIN: They could. And here's the other
6 point I want to make, I think. You know, when an owner
7 is allowed to give their opinion as to the property
8 value of real estate, let's think what that means for a
9 minute. Because not all property owners are real
10 estate experts; in fact, most of them probably aren't.

11 So the rules contemplate that that owner has had
12 some type of interaction, comparable sales, done a
13 little checking, knows what he paid for it, knows how
14 long he paid for it, to come into his mind just like an
15 expert witness, they get information from a variety of
16 sources. So here we have Porter testifying to it from
17 his opinion. We happen to have, based on Mr. Gleissner
18 trying to introduce a portion of the document, an
19 otherwise admissible document based on exchange between
20 the parties, notice to Mr. Hucks of what the
21 calculations were and why, the absence of a response
22 from Mr. Hucks, an admission from Mr. Hucks that he
23 received it, looks like it did. That's my e-mail
24 address.

25 So when you put all those things together, we say

1 not only hasn't there been any kind of improper
2 testimony, this is testimony that was admissible for
3 several different reasons. And let me tell you
4 something. Mr. Gleissner is a fine lawyer, he did a
5 super job, and -- but he's had his shot, and the trial
6 was conducted fairly. And there's no reason for the
7 Court to undo what Judge Culbertson did, undo what you
8 did at directed verdict and now at the final stages of
9 the trial.

10 THE COURT: All right, Mr. Gleissner. Brief
11 response.

12 MR. GLEISSNER: Well, Your Honor, briefly, the
13 only thing that was before Judge Culbertson was the
14 statute of limitations issue. That was it. That was
15 the full motion for summary judgment based upon the
16 statute of limitations. Didn't have anything to do
17 with any other -- the rest of the case.

18 So as it relates to the owner and the value that
19 an owner can testify, well, I agree an owner can
20 testify. But that wasn't the argument to the jury.
21 The argument to the jury was, Mr. Brittain closed
22 saying, we have it, we know the value, we have a bank's
23 appraisal that gives an objective opinion as it relates
24 to the value.

25 THE COURT: Did you object to that?

1 MR. GLEISSNER: On many occasions, Your Honor.

2 THE COURT: His closing arguments, I don't recall
3 that.

4 MR. GLEISSNER: I believe I objected. I believe I
5 asked for a special charge after the argument was made,
6 Your Honor, that Mr. Brittain wasn't --

7 THE COURT: But Mr. Gleissner, I mean, didn't you
8 open the door to this by putting in this exchange where
9 Mr. -- on cross when you examined Mr. Porter you
10 said -- you asked him about how he reached this number
11 and how he reached that number.

12 MR. GLEISSNER: No, Your Honor.

13 THE COURT: And I remember you put in a portion of
14 the document or read portions of it. And then
15 Mr. Brittain just simply picked it up and said, is this
16 the document we're talking to, essentially?

17 MR. GLEISSNER: I'm sorry, Your Honor. That is
18 not my recollection. My recollection was I wanted -- I
19 asked Mr. Porter when he first notified Mr. Hucks that
20 he had taken the interest in the property. Mr. Porter
21 did not remember. I said, let me let you look at this
22 e-mail. Does this refresh your recollection as it
23 relates to when you provided notice, to which he said,
24 well, this is when I provided written notice. But I
25 provided oral notice earlier. And that was the extent

1 of my discussion of this particular document.

2 THE COURT: Okay.

3 MR. GLEISSNER: So, Your Honor, no, I didn't enter
4 any portion of this into evidence, I didn't read any
5 portion of this into evidence. And, Your Honor, as it
6 relates to the specific hearsay testimony that's
7 included in this document, Your Honor, that's what I
8 objected to as it relates to these documents.

9 THE COURT: Okay.

10 MR. GLEISSNER: All right. And so, Your Honor,
11 again, we would ask for judgment notwithstanding the
12 verdict or a new trial. I appreciate your
13 understanding and consideration, Your Honor.

14 THE COURT: Okay. All right. And Mr. Gleissner,
15 you know, I considered this, all these matters at the
16 directed verdict stage and following the case. I just
17 believe that the jury was given information from which
18 there was a broad range of testimony concerning what
19 the value of this property was.

20 They obviously rejected Mr. Hucks' valuation. His
21 was significantly higher than Mr. Porter's. I think
22 the document on its face was admissible. I also
23 believe it is an exception to the hearsay rule in that
24 it's not offered for the proof of the matter asserted.
25 What it was offered for on redirect was to establish

1 how Mr. Porter reached his number of what the property
2 was worth, how much credit Mr. Hucks was due and what
3 the balance was. This document apparently had been out
4 there for some time, since 2014. Obviously Mr. Hucks
5 got it because you had it.

6 I'm going to deny your motions for JNOV or a new
7 trial. Okay. Thank you.

8 MR. GLEISSNER: Your Honor, just to clarify, don't
9 mean to argue, just to clarify, Your Honor, we got this
10 document in discovery. If you -- I just wanted you to
11 clarify, we got it in discovery from Mr. Brittain, so
12 that's --

13 THE COURT: Obviously, it was pretrial.

14 MR. GLEISSNER: Right, I got it pretrial, that's
15 correct.

16 THE COURT: And Mr. Porter's testimony was that
17 he'd sent it back in November of 2014.

18 MR. GLEISSNER: That's right. I didn't want to
19 argue again.

20 THE COURT: All right, thank you. Mr. Brittain,
21 if you would prepare an order for me.

22 MR. BRITTAIN: I will. Thank you, Your Honor.

23 THE COURT: All right. Thank you, gentlemen.

24 MR. GLEISSNER: Thank you, Your Honor.

25 THE COURT: Always a pleasure.

1 (WHEREUPON, the hearing concluded at approximately
2 1:46 p.m.)

3 (End of Transcript of Record)
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1 CERTIFICATE OF REPORTER
23 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)
56 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 5th day of September,
14 2018.
1516 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.
18
1920 *S/Teresa J. F. Bautz*21 TERESA J.F. BAUTZ, RPR.
22 Official Court Reporter
23
24
25

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No: 2016-CP-26-1961

RECEIVED

MAY 02 2018

SC Court of Appeals

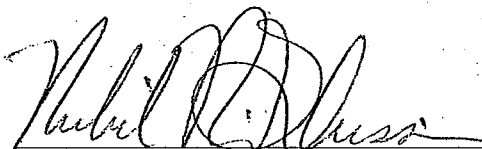
Kenneth Hucks, Individually and as a member and formerly
designated manager of Peaceful Lane MHP, LLC Appellant,

v.

S. Scott Porter, Individually and as Co-Trustee of The Stanley
Scott Porter Trust UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC, ... Respondent.

NOTICE OF APPEAL

Defendant/Appellant files this Notice of Appeal in regard to the attached Orders received on or about February 26, 2018 and April 23, 2018. The first attached Order appears to be finalized version of the Jury Verdict signed by Judge Larry B. Hyman, Jr., on February 21, 2018 and filed with the court on February 26, 2018. The second attached Order appears to be finalized version of the Order Denying Defendant's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, For a New Trial signed by Judge Larry B. Hyman, Jr., on April 23, 2018 and filed with the court on April 23, 2018.



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Columbia, South Carolina 29201
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Attorneys for Appellant

Columbia, South Carolina
May 2, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No: 2016-CP-26-1961

RECEIVED

MAY 02 2018

SC Court of Appeals

Kenneth Hucks, Individually and as a member and formerly
designated manager of Peaceful Lane MHP, LLC Appellant,

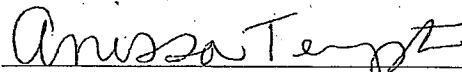
v.

S. Scott Porter, Individually and as Co-Trustee of The Stanley
Scott Porter Trust UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy
of it in the United States Mail, postage prepaid, on May 2, 2018, addressed to its attorneys of
record as follows:

Thomas C. Brittain, Esquire
The Brittain Law Firm, PA
4614 Oleander Drive
Myrtle Beach, South Carolina 29577



Anissa Terpstra, Paralegal to
Richard R. Gleissner
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Appellant

Dated: May 2, 2018

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2601961

S Scott Porter Peaceful Lane MHP LLC	Stanley Scott Porter Trust UA	Kenneth Hucks	Peaceful Lane MHP LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CLERK OF COURT

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

WE THE JURY, FIND FOR THE PLAINTIFF IN THE AMOUNT OF \$218,000.00.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

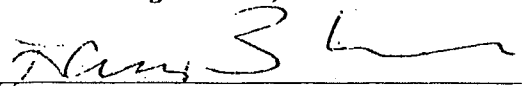
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
S. SCOTT PORTER	KENNETH A. HUCKS	\$218,000.00

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge-LARRY B. HYMAN JR

2152
Judge Code

2/21/2018
Date

For Clerk of Court Office Use Only

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

Thomas C. Brittain 4614 Oleander Dr. Myrtle Beach, SC
29577

Richard R. Gleissner 1237 Gadsden Street, Suite 200A
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - Clerk of Court

Court Reporter: -NATALIE DAHL

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-26-01961

S. Scott Porter, Individually and as Co-)
Trustee of the Stanley Scott Porter Trust)
UA dated January 2, 1991, a member of)
Peaceful Lane MHP, LLC)

Plaintiff,)

vs.)

Kenneth A. Hucks, Individually and as a)
member and formerly designated)
manager of Peaceful Lane MHP, LLC,)

Defendant.)

VERDICT FORM

We the jury unanimously find for the: (Circle One)

PLAINTIFF

DEFENDANT

In the amount of

\$ 218,000.00



Madame Foreperson

February 21, 2018
Date

WHEN YOU HAVE COMPLETED THE QUESTIONS,
NOTIFY THE BAILIFF.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case No: 2016-CP-26-1961

RECEIVED
APR 08 2019
SC Court of Appeals

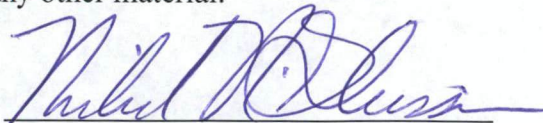
S. Scott Porter, Individually and as Co-Trustee of The Stanley
Scott Porter Trust UA dated January 2, 1991, a member of
Peaceful Lane MHP, LLC Respondent,

v.

Kenneth Hucks, Individually and as a member and formerly
designated manager of Peaceful Lane MHP, LLC Appellant

CERTIFICATE OF COUNSEL

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



Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellant

Columbia, South Carolina
March 18, 2019