

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson Jr., Circuit Court Judge

Case No. 2015-CP-10-3325 & Case No. 2017-CP-10-05055
Appellate Case No. 2018-001413

Phillip DeClemente, a/k/a Alec Rochford, Appellant,

v.

Assistive Technology Medical Equipment
Services, LLC; Jeffrey Reed; Murrell G. Smith, Respondents,

And

Phillip DeClemente, a/k/a Phillip Goodpaster, Appellant,

v.

Assistive Technology Medical Equipment
Services, LLC (ATMES); Jeffrey Reed; Murrell G. Smith, Respondents.

RECEIVED
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SC Court of Appeals

RECORD ON APPEAL
Volume 2 of 2, Pages 497-653

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-10- 5055

PHILLIP DECLEMENTE, a/k/a)
PHILLIP GOODPASTER)

Plaintiff,)

v.)

ASSISTIVE TECHNOLOGY MEDICAL)
EQUIPMENT SERVICES, LLC;)
JEFFERY REED; MURRELL G SMITH,)

Defendants.)

SUMMONS

2017 OCT -3 PM 4:33
JULIE J. MORTON
CLERK OF COURT

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve your Answer to said Complaint upon the subscriber at his office at 7 Gamecock Avenue, Suite 707, Charleston, South Carolina, 29407, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.



Cameron L. Marshall
SC Bar # 64192
7 Gamecock Ave, Suite 707
Charleston, SC 29407
(843) 795-2298
(843) 795-5081 (fax)
cameron@attorneymarshall.com
Attorney for Plaintiff

October 3, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 PHILLIP DECLEMENTE,)
 a/k/a PHILLIP GOODPASTER)
 Plaintiff,)
)
 v.)
)
 ASSISTIVE TECHNOLOGY)
 MEDICAL EQUIPMENT)
 SERVICES, LLC (ATMES);)
 JEFFERY REED; MURRELL G.)
 SMITH)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-10- 5055

2017 OCT -3 PM 4:33
 JULIE A. WATSON
 CLERK OF COURT

COMPLAINT

**DECLARATORY JUDGMENT
 JURY TRIAL**

Phillip DeClemente brings this action seeking judgment declaring enforceability of the Full and Final Release the Parties endorsed in 2009. This action is in compliance with Rule 57 of the South Carolina Rules of Civil Procedure and Sections 15-53-10, 15-53-30 and 15-53-140 of the South Carolina Code of Laws.

FACTS

1. This Court has previously found venue and jurisdiction to be proper as to these Parties and this subject matter.
2. A Full and Final Release was signed by both Plaintiff and Defendants on July 10, 2009.
 (Exhibit 1)
3. The Release is a mutually binding promise to never file a legal action against one another.
4. Defendants violated the Full and Final Release by filing suit against Plaintiff in Charleston County Court of Common Pleas on October 31, 2011 in case 2011-CP-10-8011, *Assistive Technology Medical Equipment Services, LLC v Hood & Selander, CPAS, LLC; Donna C. Cash, as Representative of the Estate of Dorothy*

Connelly; W.E.Applegate, III, as Personal Representative of the Estate of James B.

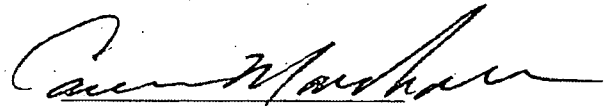
Connelly; Kimberly Cuce; Phillip DeClemente

5. The Full and Final Release contains the words "signed, sealed and delivered," is witnessed, contains the letters "L.S.", is notarized and is a sealed instrument as defined by S.C. Code § 15-3-520 and 19-1-160.
6. Plaintiff has previously moved the Court for a ruling on the enforceability of the Full and Final Release, but no ruling has been issued.
7. The Full and Final Release signed by Plaintiff and Defendants provides, in relevant part:

[t]he undersigned do intend to and do hereby individually and for their heirs, executors, administrators, successors and assigns, **release, acquit and forever discharge Phillip L. DeClemente** as well as his agents, servants, successors, heirs, executors, administrators, personal representatives and all other persons, firms, corporations and associations or partnerships of **and from any and all claims, actions, causes of action, demands, rights, damages, cost, loss of services, expenses and compensation** whatsoever which the undersigned now has or which may have hereinafter accrue on account of or in any way growing out of any and all ownership interest or employment in any of the entities set forth above **whether known or unknown, foreseen or unforeseen and any consequences thereof**, resulting or to result from ownership of any of the Companies referenced-above, employment in or with any of the entities referenced-above, business relationship with any of the businesses or individuals referenced-above as well as any negotiation contracts or documents executed as a result of the sale of the business as referenced herein. (Emphasis added).

WHEREFORE, Plaintiff seeks the following relief:

- (a) Entry of declaratory judgment finding enforceable the Full and Final Release signed by Plaintiff and Defendants, and such other relief as the Court finds just and proper.
- (b) In the event the Court finds declaratory judgment to be improper relief, Plaintiff requests the Court convert the action to a renewed motion for ruling on the enforceability of the Full and Final Release.



CAMERON L. MARSHALL
7 Gamecock Avenue, Suite 707
Charleston, SC 29407
(p) (843) 795-2298
(f) (843) 795-5081

This 3 day of October, 2017.

Full and Final Release of DeClemente

Dated July 10, 2009, appears in this Record on Appeal at pages 122-124

STATE OF SOUTH CAROLINA)

FULL AND FINAL RELEASE

COUNTY OF SUMTER)

WHEREAS, Phillip L. DeClemente, (hereinafter referred to as "DeClemente") is one of four (4) members of a Company known as Assistive Technology Medical Equipment Services, LLC (ATMES) a South Carolina Limited Liability Company (hereinafter referred to as "ATMES").

WHEREAS, the other members include G. Murrell Smith, Jr. (Smith), Jeffrey J. Reed (Reed) and Kimberly L. Cuce (Cuce). Each member owns a twenty-five percent (25%) interest in ATMES.

WHEREAS, a dispute and disagreement arose between DeClemente and the remaining members of ATMES and, as a result DeClemente has agreed to sell, transfer and assign his interest in ATMES and his interest in all other associated Companies, and certain documents have been prepared and are being executed simultaneously with this Release, including, but not limited to a Bill of Sale and a Confidentiality Agreement and Non-Competition Agreement. In addition, a promissory note was executed by ATMES and the promissory note was executed with certain restrictive personal guarantees, by Smith and Reed simultaneously with the Bill of Sale and Confidentiality Agreement and Non-Competition Agreement.

WHEREAS, during the period in which all members operated under ATMES and during the period of negotiation and preparation of the closing documents and other documents referenced hereinabove, certain disputes were referenced, certain allegations were made and certain claims were referenced and the undersigned, in consideration of the mutual promises, covenants and payments to be made pursuant to the Bill of Sale, Confidentiality Agreement and Non-Competition Agreement, the undersigned does intend to and does hereby individually and for his heirs, executors, administrators, successors and assigns, release, acquit and forever discharge G. Murrell Smith, Jr., Jeffrey J. Reed, Kimberly L. Cuce, Assistive Technology Medical Services, LLC, Reliable Medical Equipment of South Carolina, LLC, Abacare Home Medical, Inc., Reliable Prosthetics and Orthotics, LLC, Medical Management Company and Adaptive Total Care including all of the members and Shareholders of the Companies or entities set forth above as well as their agents, servants, successors, heirs, executors, administrators, personal representatives and all other persons, firms, corporations and associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, cost, loss of services, expenses and compensation whatsoever which the undersigned now has or which may have hereinafter accrue on account of or in any way growing out of any and all ownership interest or employment in any of the entities set forth above whether known or unknown, foreseen or unforeseen and any consequences thereof, resulting or to result from ownership of any of the Companies referenced-above, employment in or with any of the entities referenced-above, business relationship with any of the businesses or individuals referenced-above as well as

Exhibit 1

page 4 of 6

any negotiation contracts or documents executed as a result of the sale of the business as referenced herein.

It is understood and agreed that this is a settlement or a compromised of a doubtful and disputed claim and that the execution of this Release is not to be construed as an admission of liability on the part of the party or parties hereby released and that said Releasees deny liability therefore and the execution of this Release is merely to avoid litigation and buy the peace of all involved.

The undersigned hereby declares and represents that all documents executed including the Bill of Sale, Confidentiality Agreement and Non-Competition Agreement and this Release were entered into freely and voluntarily without any threat, coercion or otherwise on the part of the Releasees and the undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned and that this Release contains the entire Agreement between the parties and that the terms of this Release are contractual and not a mere recital.

The undersigned further acknowledges that the payments and benefits he is to receive as a result of the Bill of Sale and Transfer of Ownership, which shall be executed simultaneously with this Release, shall represent the only payment and benefit to the undersigned as a result of any ownership interest in any of the businesses referenced herein.

The undersigned has read this forgoing Release and fully understands same.

Signed, sealed and delivered this 8th day of July, 2009.

WITNESSES:

[Signature]
[Signature]

CAUTION! READ BEFORE SIGNING.

[Signature] (LS)

PHILLIP L. DeCLEMENTE

Individually and as former member of ATMES

Exhibit

1

page 5 of 6

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

ACKNOWLEDGMENT

On the 8th day of July, 2009, personally appeared before me,
Phillip L. DeClemente, to me being the person named herein and who executed the
foregoing release and that he acknowledged to me that he voluntarily executed same.

[Signature] (LS)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

MICHAEL P. FRANCIS, MBA
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION AND APPOINTMENT
TO EXPIRE ON DECEMBER 5, 2018

Exhibit 1

page 6 of 6

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PHILLIP DECLEMENTE a/k/a,
PHILLIP GOODPASTER,
Petitioner,

v.

ASSISTIVE TECHNOLOGY
MEDICAL EQUIPMENT
SERVICES, LLC (ATMES);
JEFFERY REED; MURRELL G.
SMITH,
Respondents.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-10- 5055

**MEMORANDUM IN SUPPORT OF
PHILLIP DECLEMENTE'S
DECLARATORY JUDGMENT
ACTION**

FILED
CLERK OF COURT
2017 OCT -3 PM 4:33

By and through his undersigned counsel, Petitioner Phillip DeClemente submits this Memorandum in support of his declaratory judgment action.

Factual & Procedural History

The underlying issue in this declaratory judgment action commenced when Defendants filed suit against Mr. DeClemente and others on October 31, 2011. The case is 2011-CP-10-8011, *Assistive Technology Medical Equipment Services, LLC v Hood & Selander, CPAS, LLC; Donna C. Cash, as Representative of the Estate of Dorothy Connelly; W.E. Applegate, III, as Personal Representative of the Estate of James B. Connelly; Kimberly Cuce; Phillip DeClemente*. Mr. DeClemente was held in default on April 24, 2014.

In this declaratory judgment action, Mr. DeClemente seeks to have the Court rule upon the enforceability of the Full and Final Release of liability signed by the Parties to this declaratory judgment action (Exhibit 1). The Full and Final Release is an enforceable contract.

which not only prevents Defendants from suing Plaintiff, but also makes Defendants liable for payment of any judgment which may be rendered against Mr. DeClemente in suit 2011-CP-10-8011. The declaratory judgment Plaintiff seeks will end the controversy which Defendants initiated by filing suit in 2011.

Issues

- 1) Is declaratory relief proper despite Mr. DeClemente having been held in default?
- 2) Is the Parties' Full and Final Release enforceable?

Standard of Review

Declaratory judgment actions are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues. *Doe v. South Carolina Medical Malpractice Liability Joint Underwriting*, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001). Since this action requests interpretation of a contract, the action is legal.

Law/Analysis

Despite having been held in default, Mr. DeClemente retains the right to bring a declaratory judgment action. In *Loadholt v State Budget*, 339 S.C. 165, 528 S.E. 2d 670 (Ct.App 2000), Loadholt entered default judgment and thereafter was permitted to bring a declaratory judgment action to determine the enforceability of a contract.

The South Carolina Code of Laws states "Any person interested under written contract or other writings constituting a contract or whose rights....are affected by a....

contract... may have determined any question of construction or validity arising under the instrument...(or) contract... (and) obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. 15-53-30. An individual has a right under the South Carolina Code of Laws to have a court determine whether or not a contract or any other instrument is legally enforceable. In the case at bar, Plaintiff seeks to have the court determine enforceability of the Full and Final Release signed by both Plaintiff and Defendants.

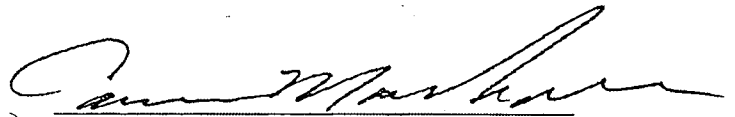
Pursuant to *Power v. McNair*, 255 S.C. 150, 153-54 (1970), if there is ' 1) a concrete issue present and, 2) a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action.' *Power v. McNair*, 255 S.C. 150, 153-54 (1970). A petitioner may bring a declaratory judgment action if he is seeking to assert his legal rights when the opposing party rejects the assertion, so long as there is a justiciable controversy which petitioner desires to resolve.

In this case, Mr. DeClemente seeks to have his legal rights declared pursuant to the Full and Final Release signed by both Petitioner and Respondents. "Case 2011-CP-10-8011" still exists only because the Court has not yet ruled upon Mr. DeClemente's assertion that the Full and Final Release is a complete bar to Defendants collecting any damages from him. The Release requires that in the event damages are awarded against Mr. DeClemente, the judgment must be satisfied by Defendants. The Full and Final Release the parties executed on July 10, 2009 is Defendants' legally binding promise to never sue Plaintiff and to satisfy any judgment against him in case 2011-CP-10-8011. Because it contains the words "signed, sealed and delivered", is witnessed, contains the letters "L.S.", and is notarized, the Full and Final Release is a fully enforceable sealed instrument as defined by S.C. Code 15-3-520 and 19-1-160.

Conclusion

Mr. DeClemente requests that the Court grant his petition for declaratory judgment because he desires to have his legal rights declared pursuant to the Full and Final Release.

Respectfully submitted,



Cameron L. Marshall
7 Gamecock Ave, Suite 707
Charleston, SC 29407
(843) 795-2298
attorneymarshall@gmail.com
Attorney for Plaintiff

Charleston, South Carolina.

October 3, 2017.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHALRESTON)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

PHILLIP DECLEMENTE, a/k/a PHILLIP)
GOODPASTER,)

Civil Action No. 2017-CP-10-05055

Plaintiff,)

vs.)

ASSISTIVE TECHNOLOGY MEDICAL)
EQUIPMENT SERVICES, LLC (ATMES))
and JEFFERY REED; MURRELL G.)
SMITH,)

Defendants.)

DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS, FOR
SANCTIONS AND REQUEST FOR A
SPEEDY HEARING

FILED
2017 NOV -8 PM 12:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAMERON MARSHALL, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned counsel, pursuant to Rules 12(b)(3), 12(b)(6), 57 and 11(a) SCRPC will move before the Presiding Judge on the tenth (10th) day after service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard, for immediate dismissal of the Plaintiff's Complaint filed in this case.

Plaintiff's Complaint was filed in the wrong venue. All the Defendants are residents of the County of Sumter. The document that is the subject of the action was executed in Sumter. Plaintiff's Complaint should be dismissed pursuant to SCRPC 12(b)(3).

Plaintiff brings this Complaint "seeking judgment declaring enforceability of the Full and Final Release..." (hereinafter "Release") (Complaint Page 1). In Civil Action No. 2011-CP-10-8011 this same Plaintiff is a Defendant in that action represented by the same counsel wherein he attempted to assert the Release as an affirmative defense. Mr.

DeClemente was held in default in that action and his Answer to include the Defense of the Release was stricken. Notwithstanding the fact that Mr. Declemente was in default on all the actions asserted in Civil Action No. 2011-CP-10-8011, he through the same counsel files another action, Civil Action No. 2015-CP-10-3325 bringing as claims the exact same claims that was stricken in the earlier action. Plaintiff facing a substantial Judgment more than \$800,000.00 in Civil Action No. 2011-CP-10-8011 and Plaintiff understanding that the pending Defendant's Motion for Summary Judgment will likely be granted in Civil Action No. 2015-CP-10-3325, Plaintiff takes the desperate step of filing this action for Declaratory Judgment.

Plaintiff Complaint fails to assert facts sufficient to constitute an action pursuant to the declaratory judgment statute. The Complaint fails to assert any facts to establish a justiciable issue before the Court. The Complaint seeks the Court declare the Release to be enforceable, yet fails to assert as to what it might be enforced. To state a cause of action under South Carolina's Declaratory Judgment Act, a party must demonstrate a justiciable controversy. Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 705 S.E.2d 73 (S.C. Ct. App. 2010). The Complaint in this action should be summarily dismissed pursuant to Rule 12(b)(6).

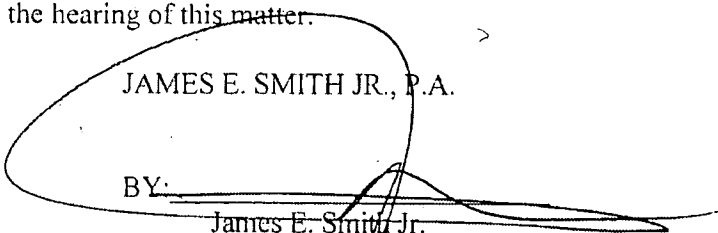
Pursuant to Rule 57 of the South Carolina Rules of Civil Procedure, the Defendants respectfully request that this matter be set for a speedy hearing so that this matter can be concluded without additional expense of Court and counsel.

Plaintiff's use of the Declaratory Judgment statute in this instance is improper and without merit. Plaintiff's continuing the litigation of a position that has no merit by the filing of successive pleadings is an abusive use of the judicial process. Defendants have

served notice upon the Plaintiff's counsel of their conduct and the reluctance to pursue sanctions in this matter, but the Defendants have exhausted their efforts to get the Plaintiff and Plaintiff's counsel to understand reason. (Exhibit A.) Pursuant to SCRCP Rule 11, the Defendants seek the Court's assistance in hearing this matter, dismissing the Plaintiff's Complaint and ordering attorney's fees costs for Plaintiff and Plaintiff's counsel's conduct herein.

This motion is based upon South Carolina statutory and case law, the pleadings filed in this action and such other further affidavits, depositions, pleadings and memoranda as the Defendants may file prior to the hearing of this matter.

JAMES E. SMITH JR., P.A.

BY: 

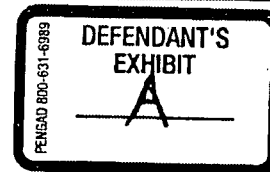
James E. Smith Jr.
1422 Laurel Street
Columbia, South Carolina 29201
(803) 933-9800

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina
November 5, 2017

James Smith

From: Laura Diaz
Sent: Thursday, October 12, 2017 10:28 AM
To: cameron@attorneymarshall.com
Cc: James Smith
Subject: RE: Acceptance of Service/ Deposition Dates



Please see the below on behalf of James:

Cameron:

I cannot accept service of this lawsuit. Instead, I must demand that you take an immediate voluntary dismissal of this Complaint. It is completely devoid of any merit whatsoever. Your signature on it violates Rule 11 of the SCRPC and the filing of it gives grounds for a Complaint pursuant to the South Carolina Civil Proceedings Act. Please understand that I make this demand after careful consideration. I do not relish in doing so but you have simply gone too far. Given the status of the other two cases and your previous attempts to bring the identical claims which have failed, you and your client have no conceivable basis upon which to file this Complaint. In doing so, you are maliciously causing harm to my clients. I expect a response no later than noon Friday, October 13 that you have withdrawn this specious complaint. Otherwise, I will have no alternative than to seek an immediate dismissal and sanctions.

Sincerely, James

Laura Diaz, Paralegal
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
Telephone (803) 933-9800
Facsimile (803) 933-9801
Email: Laura@JamesSmithPA.com

JAMES E. SMITH JR., P.A.
DEDICATED TO EXCELLENCE. COMMITTED TO SUCCESS

www.JamesSmithPA.com

=====
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To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

=====

From: attorneymarshall@gmail.com On Behalf Of Cameron Marshall
Sent: Wednesday, October 11, 2017 10:47:56 AM (UTC-05:00) Eastern Time (US & Canada)
To: James Smith
Cc: Phillip DeClemente
Subject: Acceptance of Service/ Deposition Dates

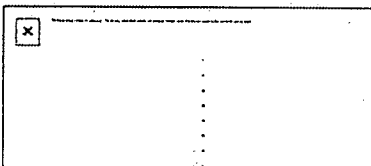
Dear James,

Please let me know in writing whether you have permission to accept service of the Declaratory Judgment Action on behalf of Mr. Reed and Mr. Smith. We served it upon you by mail last week, but need to make sure that we are not required to served them personally.

I would like to depose Mr. Smith, Mr. Reed and Mr. Bradham for the 2015 case. Please let me know which of the following dates are best for everyone: **Wednesday, November 1; Friday, November 3; Monday, November 6; or Wednesday, November 8.** I am aware that Mr. Smith has Judicial Hearings beginning the week of November 13th.

Best regards,

Cameron



7 Gamecock Ave., Suite 707
Charleston, SC 29407
P (843) 795-2298
F (843) 795-5081
www.attorneymarshall.com

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD WITHOUT PERMISSION.

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2015-CP-10-3325

Phillip Declemente, a/k/a Alec Rochford,)
Plaintiff(s),)

Vs.)

AFFIDAVIT OF MARTHA JO JOHNSON

Assistive Technology Medical Equipment)
Services, LLC; Jeffery Reed; Murrell G.)
Smith; Art Bradham, CPA, PC; and Art)
Bradham,)
Defendants.)

FILED
2017 DEC -1 PM 12:15
JULIE A. JOHNSON
CLERK OF COURT
BY 

1. My name is Martha Jo Johnson and I have been and continue to be, the General Manager of Assistive Technology Medical Equipment Services, LLC (hereinafter "ATMES") since March of 2009. I also manage Reliable Medial Equipment of South Carolina since the same date.
2. I am the person responsible for payment of bills and checks written by ATMES. I was responsible for processing a check to Phillip DeClemente per the terms and conditions of the Bill of Sale and Transfer of ownership interest in ATMES dated June 30, 2009, as well as the Promissory Note dated June 30, 2009. (A copy of which is attached hereto and incorporated herein by reference as Exhibit #1).
3. Pursuant to the terms of the two aforementioned documents, Phillip DeClemente was to be paid \$7,341.84 per month.
4. Pursuant to Paragraph 4 of the Bill of Sale, Phillip DeClemente was entitled to the sole and exclusive use, right and ownership in a 2008 Chevrolet Silverado vehicle that he was to transfer all the debt and costs associated with the 2008 Chevrolet Silverado into his name. He was further to be responsible for all costs associated with the truck and to hold the Company harmless and indemnify them from any liability whatsoever. He never transferred the debt from the Company to himself.
5. Paragraph 4 of the Bill of Sale also stated "if any liability is created by the cell phone or truck, then buyers have the right, at their discretion, in addition to any other remedy, to withhold said liability from sellers for monthly payment.
6. Shortly after the Bill of Sale was entered, Phillip DeClemente advised that he desired for the truck payment and insurance payments related to the truck to be deducted from his monthly payment. We also made the property tax payments on the truck.
7. I enclose herewith a spreadsheet (attached hereto and incorporated herein as Exhibit #2) which shows the truck payments that were made each month on the 2008 Chevrolet Silverado per the request of Mr. DeClemente.

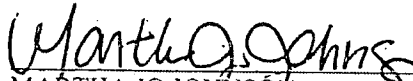
8. After the deduction of the monthly payment and insurance costs for the Chevrolet Silverado, I paid the remaining amount. I enclose herewith and incorporate as Exhibit #3, a copy of the Quickbooks spreadsheet of payments to Mr. DeClemente. The payments began on July 9, 2009 and continued until December 30, 2011. These payments until the time we sued, along with the Silverado and insurance payments, were mostly equal to \$7,341.84 per month. The entire amount of those were paid for the first twelve (12) months of the length of the Note.

9. There were no further payments made to Phillip DeClemente after December 30, 2011. In fact, we served him shortly thereafter with a lawsuit which he has been held in default and damages are under advisement by Judge Jefferson as to the amount of damages.

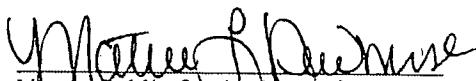
10. There have been no further payments made to Phillip DeClemente since the December 30, 2011 payment. Also, nobody within our corporation promised to make any further payments to him due to the lawsuit that is still pending.

11. I enclose herewith a copy of the cancelled checks of the first twelve (12) payments that were made to Mr. DeClemente. This, in addition to the Silverado payments and insurance payments, demonstrates that the first twelve (12) months of payments were made to Mr. DeClemente. (Said cancelled checks are attached hereto and incorporated herein as Exhibit #4).

Further the Deponent sayeth not:


MARTHA JO JOHNSON

Sworn to before me this 21st day of
November, 2017.

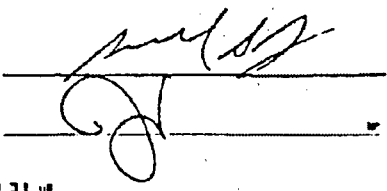

Notary Public for the State of S.C.
My Commission Expires: 11/15/19

4

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-068532	1707 7/9/2009
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$6,463.85	
Six Thousand Four Hundred Sixty-Three and 85/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464		 	
877.99 Credit Applied to Check (July 09-Truck Paym)			
⑆001707⑆ ⑆053200666⑆ ⑆01000285724⑆			

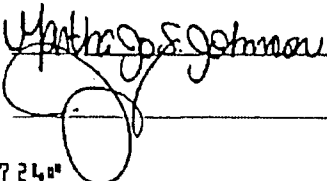
SOUTHAMPTON 482 SC FEDERAL CREDIT CU N. CHARLESTON SC >253278401<		1126918 Savings deposit DeClemente
198383968⑆ 87182889⑆ >253278401⑆		

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-834-2912		NATIONAL BANK OF SC Columbia, SC 67-066/532	1810 7/24/2009
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$6,463.85	
Six Thousand Four Hundred Sixty-Three and 85/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464			
MEMO \$7,341.84 MINUS Aug GMAC PaymentL 877.99			
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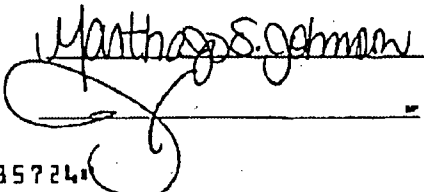
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-066/532	1964 8/28/2009
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$5,955.62	
Five Thousand Nine Hundred Fifty-Five and 62/100		DOLLARS	
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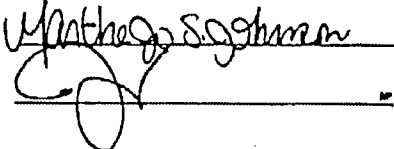
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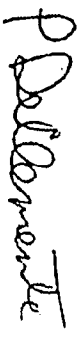
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-008532	2124 9/25/2009
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$**6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct Mt. Pleasant, SC 29464			
877.99 (GMAC) 123.20 (Insurance)-Deducted			
002124 053200666011000285724			

ENDORSE HERE 11/26/18 Deposit to checking DO NOT WRITE STAMP OR SIGN BELOW THIS LINE		HAMPTON #482 FEDERAL CU CHARLESTON SC 253278401
198782683-69292889-253278401-SC-FEDERAL CU		

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 67-000/532	2361 10/23/2009
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ **6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
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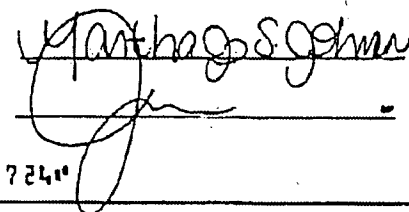
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418 South Hampton N. Charleston, SC 295278401					
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE					
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Assiatiye Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-006/532	2526 11/24/2009
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ **6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct Mt. Pleasant, SC 29464		<i>Martha S. S. German</i> <i>[Signature]</i>	
MFM0			
@002526 @053200666 @011000285724			

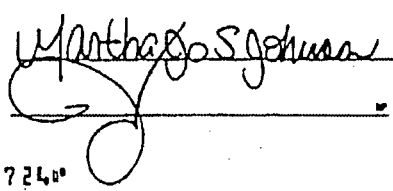
SC 11/24/2009 152 N.C. 11/24/2009 >2009/11/24<	ENDORSE HERE X Phillip DeClemente 11/24/2009 Deposit check DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-006532	2678 12/28/2009
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ 6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464			
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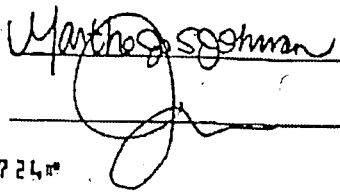
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PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ **6,340.65	
Six Thousand Three Hundred Forty and 65/100 *****		DOLLARS	
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464			
MEMO			
⑈002849⑈ ⑈053200666⑈ ⑈011000285724⑈			

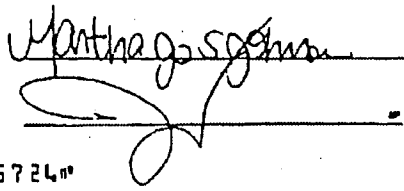
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-069/532	3010 2/25/2010
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ 6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
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⑈003010⑈ ⑆053200666⑆011000285724⑈			

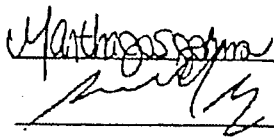
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-066532	3138
		3/31/2010	
PAY TO THE ORDER OF <u>Philip DeClemente</u>		\$**6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	☐ ☐
Philip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464			
MEMO			
@003138 @053200666 @011000285724			

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Asseltive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-006532	3322
		4/29/2010	
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct Mt. Pleasant, SC 29464			
MEMO			
⑈003322⑈ ⑆053200666⑆011000285724⑈			

DO NOT WRITE STAMP OR SIGN BELOW THIS LINE	
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Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-834-2912

NATIONAL BANK OF SC
Columbia, SC
87-008/532

3414

5/27/2010

PAY TO THE ORDER OF Phillip DeClemente \$ **5,772.78

Five Thousand Seven Hundred Seventy-Two and 78/100 DOLLARS

Phillip DeClemente
1342 River Otter Ct
Mt. Pleasant, SC 29464

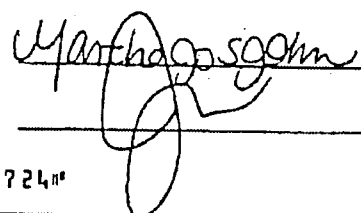
Matthew S. Johns

MEMO

⑈003414⑈ ⑆053200666⑆011000285724⑈

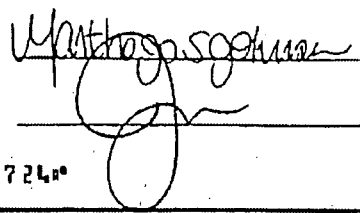
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-066532	3527
		6/28/2010	
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ 6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464			
MEMO			
⑈003527⑈ ⑈053200666⑈ ⑈01000285724⑈			

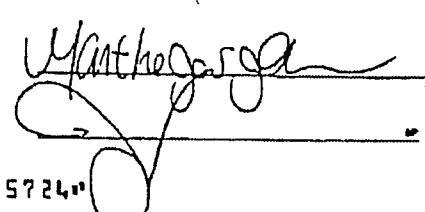
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Asslative Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-066532	3632 7/30/2010
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$**6,340.65	
Six Thousand Three Hundred Forty and 65/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464			
MEMO			
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412 South Hampton SC Federal FCU N. Charleston, SC		
DO NOT WRITE STAMP OR SIGN BELOW THIS LINE		
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912	NATIONAL BANK OF SC Columbia, SC 87-088532	3800 8/20/2010
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$6,340.65
Six Thousand Three Hundred Forty and 65/100		DOLLARS
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464		
MIMO		
⑈003800⑈ ⑆053200666⑆ ⑆011000285724⑈		

Southampton #475 SC Federal CU Charleston SC 253278401	DO NOT WRITE STAMP OR SIGN BELOW THIS LINE 340-08 D on file 1304342 X Phillip DeClemente
190783364 89922810 > 253278401	

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 MIAppID:2

Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
67-066/532

3931

10/7/2010

PAY TO THE ORDER OF Phillip DeClemente \$**6,324.71

Six Thousand Three Hundred Twenty-Four and 71/100 DOLLARS

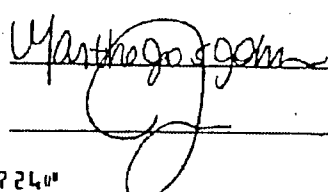
Phillip DeClemente
1342 River Otter Ct.
Mt. Pleasant, SC 29464

W. Anthony Spence

⑆003931⑈ ⑆053200666⑆011000285724⑈

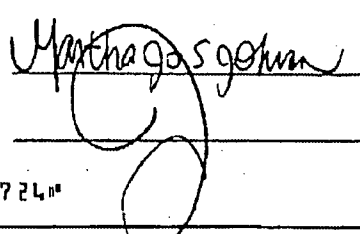
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10/12/2010MDR

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-000/532		4118
		11/12/2010		
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ **6,332.68		
Six Thousand Three Hundred Thirty-Two and 68/100		DOLLARS		
Phillip DeClemente 1342 River Otter Ct Mt. Pleasant, SC 29464				
MICR: ⑈004118⑈ ⑆053200666⑆011000285724⑈				

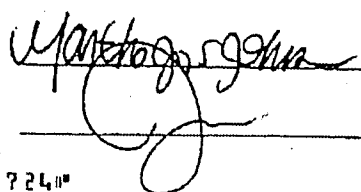
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 MIAppID:2

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-834-2912		NATIONAL BANK OF SC Columbia, SC 87-069/532	4217 11/25/2010
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ 6,332.68	
Six Thousand Three Hundred Thirty-Two and 68/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct Mt. Pleasant, SC 29464			
MEMO			
⑈004217⑈ ⑆053200666⑆011000285724⑈			

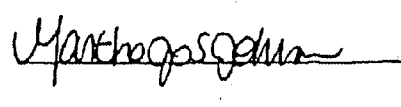
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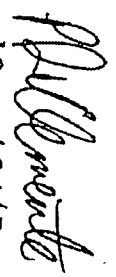
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-834-2912		NATIONAL BANK OF SC Columbia, SC 87-086/532		4359
		1/13/2011		
PAY TO THE ORDER OF: <u>Phillip DeClemente</u>		\$ **6,332.68		
Six Thousand Three Hundred Thirty-Two and 68/100		DOLLARS		
Phillip DeClemente 1342 River Otter Ct. Mt. Pleasant, SC 29464				
MEMO				
@004359@ @053200666@011000285724@				

SOUTH CAROLINA FCU 253278401 1/14/2011BMM0011		P. DeClemente # 1304342 SCOL#007365128 4/28/15 1600 C.B. 5/15/15
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Date:01-18-2011 Sequence:5075167590 Serial:4359 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$6,332.68 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-834-2812		NATIONAL BANK OF SC Columbia, SC 87-066/532	4466 2/10/2011
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ 3,500.00	
Three Thousand Five Hundred and 00/100		DOLLARS	
Phillip DeClemente 1342 River Otter Ct Mt. Pleasant, SC 29464			
MEMO			
@004466@ :053200666:011000285724			

SOUTH CAROLINA FCU 253278401 2/11/2011DJC0011	 1304342-71
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Date:02-14-2011 Sequence:5024818180 Serial:4466 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$3,500.00 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
87-066532

4536

2/28/2011

FAY TO THE ORDER OF Phillip DeClemente \$ **2,832.68

Two Thousand Eight Hundred Thirty-Two and 68/100..... DOLLARS

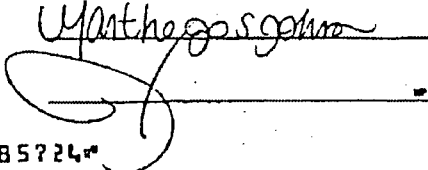
Phillip DeClemente
1342 River Otter Ct.
Mt. Pleasant, SC 29464

MEMO

004536 053200666 011000285724

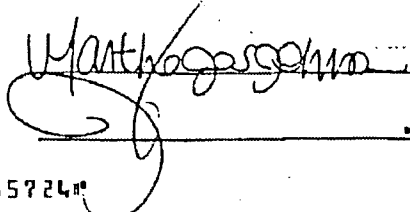
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Date:03-02-2011 Sequence:29176430 Serial:4536 TR:53200666 Account:11000285724 TranCode:0
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MIAppID:2

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-066532	4572 3/11/2011
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$7,341.84	
Seven Thousand Three Hundred Forty-One and 84/100		DOLLARS	
Phillip DeClemente P.O Box 722 Mt Pleasant, SC 29465			
MEMO			
⑈004572⑈ ⑈053200666⑈011000285724⑈			

END X P DeClemente	
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Date:03-15-2011 Sequence:5202115155 Serial:4572 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$7,341.84 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-066/532	4682 4/8/2011
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ 7,341.84	
Seven Thousand Three Hundred Forty-One and 84/100		DOLLARS	
Phillip DeClemente P.O Box 722 Mt Pleasant, SC 29465			
MEMO			
⑈004682⑈ ⑆053200666⑆011000285724⑈			

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE IN ANY MANNER OTHER THAN AS DIRECTED		X Phillip DeClemente
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Date:04-12-2011 Sequence:5605329435 Serial:4682 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$7,341.84 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
COLUMBIA, SC
67-066532

4762

5/11/2011

PAY TO THE ORDER OF Phillip DeClemente \$ 7,341.84

Seven Thousand Three Hundred Forty-One and 84/100

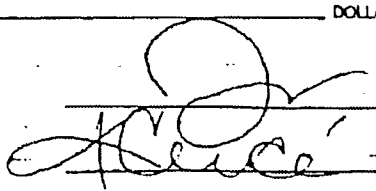
Phillip DeClemente
P.O Box 722
Mt. Pleasant, SC 29465

MEMO

004762 05320066601000285724

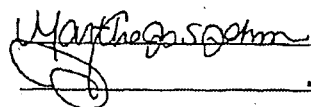
X
FIDELITY UNION TRUST CO.
Pollara
deposits
1000136303731
FIDELITY UNION TRUST CO. NEW YORK CITY
NEW YORK CITY

Date:05-16-2011 Sequence:5209509355 Serial:4762 TR:53200666 Account:11000285724 TranCode:0
Amount:\$7,341.84 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
MIAppID:2

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 67-066/532	4864 6/17/2011
PAY TO THE ORDER OF <u>Phillip DeClemente</u>		\$ 7,341.84	
Seven Thousand Three Hundred Forty-One and 84/100		DOLLARS	
Phillip DeClemente P.O Box 722 Mt. Pleasant, SC 29465			
MEMO			
⑆004864⑆ ⑆053200666⑆011000285724⑆			

P. DeClemente	
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Date:06-22-2011 Sequence:5313372250 Serial:4864 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$7,341.84 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-9212		NATIONAL BANK OF SC Columbia, SC 67-06532	5656
		3/1/2012	
PAY TO THE ORDER OF <u>GMAC</u>		\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
NEW 024912483351			
⑈005656⑈ ⑆053200666⑆011000285724⑈			

ICL Deposit to JPMorgan Chase			
Regulus LVL		222222222222	
00000462	02	RobertMeye	1111111111
056067	132354		03/06/12
⑈00002102 2200 240950 2 294			

Date:03-07-2012 Sequence:5642126510 Serial:5656 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$877.99 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-9212		NATIONAL BANK OF SC Columbia, SC 67-62532	5451
		12/1/2011	
PAY TO THE ORDER OF	GMAC	\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948		<i>Montherg Spahn</i>	
MEMO 024912483351			
⑈00545⑈ ⑆053200666⑆01100028572⑆			

ICL Deposit to JPMorgan Chase			
Regulus LVL			222222222222
00000462	02	Danny Russe	1111111111
084649	180808		12/06/11
⑆00211102 0010 646480 2 29⑆			

Date: 12-06-2011 Sequence: 5551793585 Serial: 5451 TR: 53200666 Account: 11000285724 TranCode: 0
Amount: \$877.99 DbCr: D InstID: 831 MInstID: 831 MIFromInstID: 165 MIAccount: 1000285724 MICostCenter: 8888
MIAppID: 2

http://pwinapp102/miswebproxy/afswweb.dll?MfcISAPICCommand=Process&_application... 11/22/2016

(CASH ONLY. ALL OTHERS - SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPIES)

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-9212	NATIONAL BANK OF SC Columbia, SC 87-66532
--	--

5332

10/21/2011

PAY TO THE ORDER OF GMAC \$ 877.99

Eight Hundred Seventy-Seven and 99/100 DOLLARS

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

MEMO 024812483351

0053320 053200666011000285724

Martha G. Sgamm

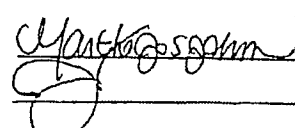
ICL Deposit to JPMorgan Chase

Regulus LVL	222222222222
00C00462 02 MaryVander	1111111111
063386 055452	11/06/11

00111102 5200 900000 2 28+

Date: 11-07-2011 Sequence: 5548710940 Serial: 5332 TR: 53200666 Account: 11000283724 TranCode: 0
 Amount: \$877.99 DbCr: D InstID: 831 MIInstID: 831 MIFromInstID: 165 MIAccount: 1000283724 MICostCenter: 8888
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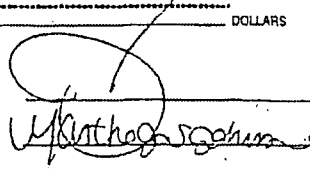
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-9212		NATIONAL BANK OF SC Columbia, SC 67-66532	5240 9/16/2011
PAY TO THE ORDER OF <u>GMAC</u>		\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
MICR (024912483351)		MICR 005240 0532006660 1000285724	

ICL Deposit to JPMorgan Chase			
Regulus LVL			222222222222
00000462	02	MaryVander	1111111111
073052	094813		09/25/11
222222222222 0000 000000 0000			

Date:09-26-2011 Sequence:5544548660 Serial:5240 TR:53200666 Account:11000285724 TranCode:0
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 MIAppID:2

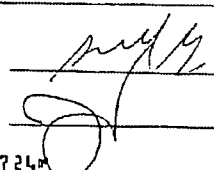
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-9212		NATIONAL BANK OF SC Columbia, SC 07-06-332	5168
		8/29/2011	
PAY TO THE ORDER OF GMAC		\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
MEMO 024912483351			
005158 10532006661011000285724*			

ICL Deposit to JPMorgan Chase			
Regulus LVL			22222222222
00000462	02	LillianWar	111111111
072775	075415		09/03/11
80601103 0500 511310 3 394			

Date:09-06-2011 Sequence:5222403695 Serial:5168 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$877.99 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 67-066/532	4783 5/20/2011
PAY TO THE ORDER OF <u>GMAC</u>		\$**877.99	
Eight Hundred Seventy-Seven and 99/100 *****			
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
024912483351		0004783 05320066601000285724	

ICL Deposit to JPMorgan Chase			
Regulus LVL			22222222222
00000462	04	MaryVander	111111111
066026	093245		05/28/11

Date:05-31-2011 Sequence:5532037810 Serial:4783 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$877.99 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

http://pwinapp102/miswebproxy/afswweb.dll?MfcISAPICommand=Process&_application... 11/22/2016

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-000-000	4941 5/17/2011
PAY TO THE ORDER OF <u>GMAC</u>		\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
024912483351		004911 053200666 0000285724	

ICL Deposit to JPMorgan Chase			
Regulus LVL			222222222222
00000462	03	tercolebri	1111111111
081507	134329		06/30/11

08001102 1000 205190 5 386

Date:07-01-2011 Sequence:5215014675 Serial:4941 TR:53200666 Account:11000285724 TranCode:0
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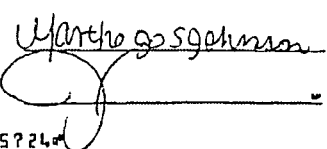
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 67-06/532	4749
		5/10/2011	
PAY TO THE ORDER OF GMAC		\$ 921.88	
Nine Hundred Twenty-One and 88/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948		<i>Walter J. Sogham</i>	
024912483351			
⑈004749⑈ ⑆053200666⑆011000285724⑈			

ICL Deposit to JPMorgan Chase			
Regulus LVL			222222222222
00000462	02	josedeoagra	1111111111
058396	135747		05/14/11
⑆150110Z 0800 968850 Z 29⑆			

Date:05-16-2011 Sequence:5209474045 Serial:4749 TR:53200666 Account:11000285724 TranCode:0
Amount:\$921.88 DbCr:D InstID:831 MInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
MIAppID:2

http://pwinapp102/miswebproxy/afswweb.dll?MfcISAPICCommand=Process&_application... 11/22/2016

Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 216-665-5332	4635 3/25/2011
PAY TO THE ORDER OF <u>GMAC</u>		\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
MICR 024912483351		⑈004635⑈ ⑆053200666⑆ ⑆011000285724⑈	

ICL Deposit to JPMorgan Chase			
Regulus LVL			222222222222
00000462	03	LillianWar	1111111111
029028	110507		04/01/11

10801104 6150 8200 00 9 294

Date:04-04-2011 Sequence:5204868615 Serial:4635 TR:53200666 Account:11000285724 TranCode:0
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 MIAppID:2

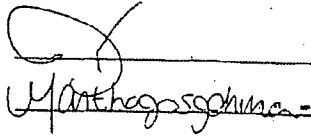
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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC GT-000-532	4487
		2/18/2011	
PAY TO THE ORDER OF GMAC		\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948		<i>[Signature]</i>	
MEMO 024912483351			
⑈004487⑈ ⑆053200666⑆ ⑆011000285724⑈			

FOR DEPOSIT ONLY

Date:03-02-2011 Sequence:5600525910 Serial:4487 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$877.99 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 67-006532	4316
		12/29/2010	
PAY TO THE ORDER OF GMAC		\$ 921.88	
Nine Hundred Twenty-One and 88/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
MEMO 024912483351			
⑈004316⑈ ⑆053200666⑆011000285724⑈			

⑈004316⑈ ⑆053200666⑆011000285724⑈	
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Date:01-10-2011 Sequence:5066021340 Serial:4316 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$921.88 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

http://pwinapp102/miswebproxy/afswweb.dll?MfcISAPICommand=Process&_application... 11/22/2016

Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-834-2312

NATIONAL BANK OF SC
Columbia, SC
67-0667532

4174

11/24/2010

PAY TO THE ORDER OF GMAC \$ 921.88

Nine Hundred Twenty-One and 88/100

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

WIND 024912483351

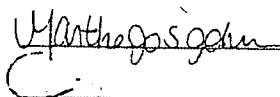
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Martha G. G. G. G.

CR to Name Page.
011 NIS News Service.
10676 0085

Date:12-01-2010 Sequence:5009811600 Serial:4174 TR:53200666 Account:11000285724 TranCode:0
Amount:\$921.88 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
MIAppID:2

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 87-006532	3957 10/15/2010
PAY TO THE ORDER OF <u>GMAC</u>		\$-1,755.98	
One Thousand Seven Hundred Fifty-Five and 98/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
MEMO 024912483351			
003957 053200666 011000285724			

101722 0035 101722 101

Date:10-27-2010 Sequence:5050551200 Serial:3957 TR:53200666 Account:11000285724 TranCode:0
 Amount:\$1,755.98 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
 MIAppID:2

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Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
87-062532

3368

5/14/2010

PAY TO THE ORDER OF GMAC \$ 877.99

Eight Hundred Seventy-Seven and 99/100 ***** DOLLARS ☒ ☐

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

MEMO 024912483351

Winters, S. John
[Signature]

⑈003368⑈ ⑆053200666⑆011000285724⑈

101135 0301
CR to Home Force,
511 Rte Road Building
Louisville 111501831:463 00100531

Date:05-21-2010 Sequence:568801280 Serial:3368 TR:53200666 Account:11000285724 TranCode:0
Amount:\$877.99 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
MIAppID:2

http://pwinapp102/miswebproxy/afswweb.dll?MfcISAPICommand=Process&_application... 11/22/2016

Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
67-055532

3298

4/22/2010

PAY TO THE ORDER OF GMAC \$ **877.99

Eight Hundred Seventy-Seven and 99/100 *****

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

024912483351

003298 053200666 001000285724

CR to Naga Police, 072558 0000
SIL RT - RAG HILL
FROM: 071600Z APR 69
TO: 071600Z

Date:04-29-2010 Sequence:5358071510 Serial:3298 TR:53200666 Account:11000285724 TranCode:0
Amount:\$877.99 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:888
MIAppID:2

http://pwinapp102/miswebproxy/afswweb.dll?MfcISAPICommand=Process&_application... 11/22/2016

Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
67-066-332

3/19/2010

PAY TO THE ORDER OF GMAC \$ 877.99

Eight Hundred Seventy-Seven and 99/100 DOLLARS

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

MEMO 024912483351

⑈003083⑈ ⑆053200666⑆01000285724⑈

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Date:03-29-2010 Sequence:5345450760 Serial:3083 TR:53200666 Account:11000285724 TranCode:0
Amount:\$877.99 DbCr:D InstID:831 MIInstID:831 MIFromInstID:165 MIAccount:1000285724 MICostCenter:8888
MIAppID:2

http://pwinapp102/miswebproxy/afswweb.dll?MfcISAPICommand=Process&_application... 11/22/2016

Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
67-066532

2/12/2010

PAY TO THE ORDER OF GMAC

\$ 877.99

Eight Hundred Seventy-Seven and 99/100

DOLLARS

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

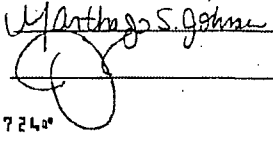
024912483351

⑈002963⑈ ⑆053200666⑆01000265724⑈

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Assistive Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-834-2912		NATIONAL BANK OF SC Columbia, SC 87-066532	2781 1/7/2010
PAY TO THE ORDER OF GMAC		\$ 877.99	
Eight Hundred Seventy-Seven and 99/100		DOLLARS	
GMAC PO BOX 9001948 LOUISVILLE, KY 40290-1948			
MICR 024912483351			
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 MIAppID:2

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ASSISTIVE TECHNOLOGY MEDICAL EQUIPMENT SERVICES
 418 Broad Street
 Sumter, SC 29150
 803-934-2912

NATIONAL BANK OF SC
 Columbia, SC
 87-066332

2636

12/11/2009

PAY TO THE ORDER OF GMAC \$ 877.99

Eight Hundred Seventy-Seven and 99/100

GMAC
 PO BOX 9001948
 LOUISVILLE, KY 40290-1948

DOLLARS

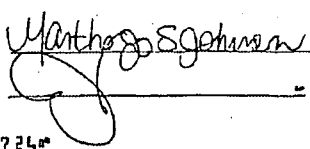
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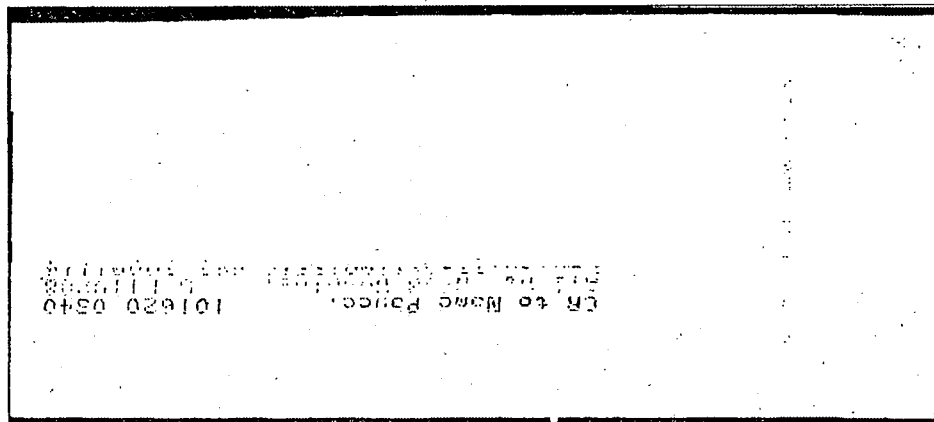
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		11/6/2009		
PAY TO THE ORDER OF <u>GMAC</u>		\$ **877.99		
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Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
87-086532

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10/9/2009

PAY TO THE ORDER OF GMAC

\$ 877.99

Eight Hundred Seventy-Seven and 99/100 *****

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Assistive Technology Medical Equipment Services
416 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
67-066532

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PAY TO THE ORDER OF GMAC \$ 777.99

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Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
67-066532

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7/24/2009

PAY TO THE ORDER OF GMAC \$877.99

Eight Hundred Seventy-Seven and 99/100 DOLLARS

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

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Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
87-066-532

1658

6/23/2009

PAY TO THE ORDER OF GMAC \$ 877.99

Eight Hundred Seventy-Seven and 99/100 DOLLARS

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

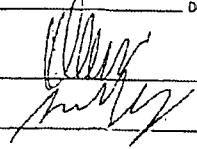
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		5/29/2009	
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Eight Hundred Seventy-Seven and 99/100			DOLLARS
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Assistive Technology Medical Equipment Services
418 Broad Street
Sumter, SC 29150
803-934-2912

NATIONAL BANK OF SC
Columbia, SC
67-089532

1658

6/23/2009

PAY TO THE ORDER OF GMAC \$ 877.99

Eight Hundred Seventy-Seven and 99/100 DOLLARS

GMAC
PO BOX 9001948
LOUISVILLE, KY 40290-1948

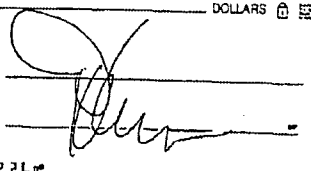
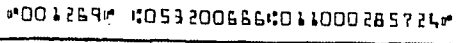
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Assiative Technology Medical Equipment Services 418 Broad Street Sumter, SC 29150 803-934-2912		NATIONAL BANK OF SC Columbia, SC 67-000532	1269 5/14/2009
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-3325

Phillip DeClemente,

Appellant,

v.

Assistive Technology Medical Equipment Services, LLC (ATMES);
Jeffery Reed and Murrell G. Smith,

Respondents.

NOTICE OF APPEAL

Phillip DeClemente appeals the Summary Judgment Order of Judge J.C. Nicholson, Jr., dated July 2, 2018. Appellant received written notice of entry of this order on July 5, 2018.

July 26, 2018



Cameron L. Marshall
7 Gamecock Ave., Suite 707
Charleston, South Carolina 29407
(843) 795-2298
Attorney for Appellant Phillip DeClemente

Counsel of Record:
James E. Smith, Jr.
1422 Laurel Street
Columbia, South Carolina, 29201
(803) 933-9800
Attorney for Respondents

2018 JUL 27 AM 11:53
JULIE J. ARNSTRONG
CLERK OF COURT
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-3325

Phillip DeClemente,

Appellant,

v.

Assistive Technology Medical Equipment Services, LLC (ATMES);
Jeffery Reed and Murrell G. Smith,

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for the Respondents, Assistive Technology Medical Equipment Services, LLC, Jeffery Reed, and Murrell G. Smith with a copy of the *Notice of Appeal* by emailing and mailing copies of the same by United States Mail with first class postage to the following address:

James E. Smith, Jr.
1422 Laurel Street
Columbia, SC 29201
james@jamessmithpa.com

July 26, 2018



Cameron L. Marshall

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2018 JUL 27 AM 11:53

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CLERK OF COURT

BY 

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

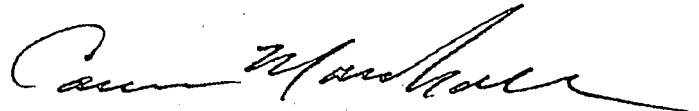
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-3325

CERTIFICATE OF MAILING

The undersigned hereby certifies that a copy of the Notice of Appeal, Proof of Service, correspondence with South Carolina Court Administration and various court reporters affiliated with this case was served upon the parties to this action by both emailing and depositing a copy of the same in the U.S. Mail, first class postage pre-paid and addressed to James E. Smith, Jr., P.A., james@jamesmithpa.com, 1422 Laurel Street, Columbia, SC 29201, Hon. Julie J. Armstrong, 100 Broad Street, Suite 106 Charleston, SC 29401, Hon. Jenny A. Kitchings, P.O. Box 11629, Columbia, SC 29211, Ruth Weese, ruthcweese@gmail.com, 5808 Orchard Trail Drive, Pearland, TX 77581, Joyce Rueger, jrueger@sccourts.org, P.O. Box 1472, John's Island, SC 29457, and Phyllis Norton, pnorton@sccourts.org, 636 Long Point Road, Unit G, #74, Mt. Pleasant, SC 29464 on this, the 26th day of July 2018, in Charleston, South Carolina.

July 26, 2018



Cameron L. Marshall

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2017-CP-10-5055

Phillip DeClemente,

Appellant,

v.

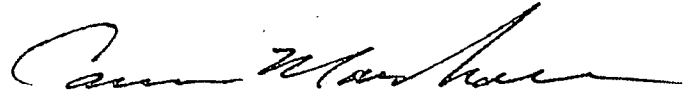
Assistive Technology Medical Equipment Services, LLC (ATMES);
Jeffery Reed and Murrell G. Smith,

Respondents.

NOTICE OF APPEAL

Phillip DeClemente appeals the Order of Judge J.C. Nicholson, Jr., granting the Defendants' Motion to Dismiss, dated July 2, 2018. Appellant received written notice of entry of this order on July 5, 2018.

July 26, 2018



Cameron L. Marshall
7 Gamecock Ave., Suite 707
Charleston, South Carolina 29407
(843) 795-2298
Attorney for Appellant Phillip DeClemente

Counsel of Record:
James E. Smith, Jr.
1422 Laurel Street
Columbia, South Carolina, 29201
(803) 933-9800
Attorney for Respondents

BY SS

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2018 JUL 27 AM 11:57

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2017-CP-10-5055

Phillip DeClemente,

Appellant,

v.

Assistive Technology Medical Equipment Services, LLC (ATMES);
Jeffery Reed and Murrell G. Smith,

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for the Respondents, Assistive Technology Medical Equipment Services, LLC, Jeffery Reed, and Murrell G. Smith with a copy of the *Notice of Appeal* by emailing and mailing copies of the same by United States Mail with first class postage to the following address:

James E. Smith, Jr.
1422 Laurel Street
Columbia, SC 29201
james@jamessmithpa.com

July 26, 2018



Cameron L. Marshall

2018 JUL 27 AM 11:57
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CLERK OF COURT
BY 

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

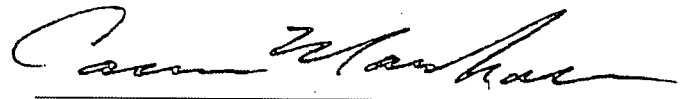
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2017-CP-10-5055

CERTIFICATE OF MAILING

The undersigned hereby certifies that a copy of the Notice of Appeal, Proof of Service, correspondence with South Carolina Court Administration and various court reporters affiliated with this case was served upon the parties to this action by both emailing and depositing a copy of the same in the U.S. Mail, first class postage pre-paid and addressed to James E. Smith, Jr., P.A., james@jamesmithpa.com, 1422 Laurel Street, Columbia, SC 29201, Hon. Julie J. Armstrong, 100 Broad Street, Suite 106 Charleston, SC 29401, Hon. Jenny A. Kitchings, P.O. Box 11629, Columbia, SC 29211, Ruth Weese, ruthweese@gmail.com, 5808 Orchard Trail Drive, Pearland, TX 77581, Joyce Rueger, jrueger@sccourts.org, P.O. Box 1472, John's Island, SC 29457, and Phyllis Norton, pnorton@sccourts.org, 636 Long Point Road, Unit G, #74, Mt. Pleasant, SC 29464 on this, the 26th day of July 2018, in Charleston, South Carolina.

July 26, 2018



Cameron L. Marshall

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JULIE J. ARMSTRONG
CLERK OF COURT

BY

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Phillip DeClemente, et al.,	)	CASE NO. 2015-CP-10-03325
	)	
PLAINTIFFS,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Assistive Technology Medical	)	
Equipment Services, LLC	)	
(A.T.M.E.S), et al,	)	
	)	
DEFENDANTS.	)	
	)	

January 7, 2016

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis

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

Cameron Lee Marshall, Esquire
For the Plaintiff

James Emerson Smith, Esquire
For the Defense

Certified Transcript Provided For: Cameron Marshall

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter

636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464

PNorton@sccourts.org

I N D E XHEARING

-- 03

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

-- 25

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1

1 THE COURT: The next one is DeClemente versus Assistive
2 Technology.

3 (WHEREUPON, parties enter courtroom.)

4 THE COURT: If you will each identify yourselves and
5 the party you are representing, please.

6 MR. SMITH: Thank you, Your Honor. My name is James
7 Smith, and I am privileged to represent all of the named
8 defendants in this matter.

9 THE COURT: Very good.

10 MR. MARSHALL: And I am Cameron Marshall. I represent
11 the plaintiff, Phillip DeClemente.

12 THE COURT: Okay. This is interesting. We have a
13 motion to change venue and a motion to dismiss. Do you want
14 to hear the motion to change venue first because ---

15 MR. SMITH: I think the motion to dismiss, Your Honor.
16 Because I think it is pretty clear for what I would like to
17 do. And then ---

18 THE COURT: Okay.

19 MR. SMITH: And then -- what I'm -- whatever the
20 court ---

21 THE COURT: The only -- the only concern that I have is
22 this ---

23 MR. SMITH: Waiving venue because we argued it? Yes ---

24 THE COURT: But if you are comfortable going forward.

25 MR. SMITH: Well ---

1 THE COURT: I am not ruling. I am not prematurely
2 ruling because I haven't heard it yet.

3 MR. SMITH: I think that is an excellent point. I will
4 do that -- I will -- I understand, Your Honor. Well, let's
5 do this. I will argue the motion to change venue.

6 THE COURT: All right. And I am not trying to pass --
7 I am not trying to avoid addressing the motion to dismiss.
8 I just I know what I have done in the past when persons have
9 taken -- used the court and then said, oh, by the way we
10 want it moved somewhere else.

11 MR. SMITH: I understand that.

12 THE COURT: Okay.

13 MR. SMITH: And we would be happy to be in this ---

14 THE COURT: Well ---

15 MR. SMITH: --- in this courtroom certainly.

16 THE COURT: Thank you.

17 MR. SMITH: It is Mr. Smith in his prerogative to ask
18 to be sued in his own county. And if I may -- may it please
19 the court, Your Honor.

20 THE COURT: You certainly may, sir.

21 MR. SMITH: So we have filed a motion to change venue.

22 THE COURT: Yes, sir, you have.

23 MR. SMITH: And the -- all of the named defendants
24 reside in Sumter County.

25 THE COURT: Okay.

1 MR. SMITH: And it is even within the complaint that it
2 is identified that they are residents in fact of Sumter
3 County.

4 The two corporations which are named as defendants, you
5 know, are one is the corporation of Mr. Art Bradham who has
6 his business in Sumter County. And I have the Secretary of
7 State's records which indicate that both of these
8 corporations were created with their registered office ---

9 THE COURT: And they own no property or have any
10 offices here in this county?

11 MR. SMITH: No, Your Honor. None.

12 THE COURT: Okay.

13 MR. SMITH: None at all. And it is ---

14 THE COURT: Thank you.

15 MR. SMITH: The plaintiff tries -- you know, the
16 complaint talks about doing a substantial, you know, amount
17 of business in Charleston County. And the reality is that
18 is just not a part of the rule.

19 The section cited in our motion really talked about,
20 you know, it is a substantial right that the defendant has
21 to be -- to -- to be -- you know, the case brought in the
22 county in which they reside. And I have cited the two
23 statutes to that effect.

24 The only alternative is where a substantial part of the
25 acts of, you know, of an omission or commission which gave

1 rise to the cause of action. Well, this is a breach of
2 contract case and there really it arises out of some work
3 done by some CPA's actually in Columbia. And so Burkett --
4 Burkett.

5 So there is really no substantial ties to these. All
6 of the witness are on the defense side are in Sumter County.
7 We would ask respectfully that we have the case there, Your
8 Honor.

9 THE COURT: Thank you so much.

10 Mr. Marshall.

11 MR. MARSHALL: Judge, thank you. Let me point out that
12 when this, the transaction, the sale of my client's
13 ownership interest in a company called Abacare was made
14 there was an -- there is a choice of forum provision in that
15 document and it is Paragraph 14.

16 And I don't know -- let me give -- if I may, Judge, I
17 will hand up to the court a copy. I know that I had emailed
18 to Your Honor and to Mr. Smith this memorandum. But if I
19 might hand this up. Because this I think that I neglected
20 to include ---

21 THE COURT: Sure.

22 MR. MARSHALL: --- that document ---

23 THE COURT: Okay.

24 MR. MARSHALL: --- which is in here. If I might. And
25 now I have got -- I'm sorry, Judge. Let me find it.

1 THE COURT: Take your time. That's all right.

2 MR. MARSHALL: It is there. And I don't think Mr.
3 Smith disputes that. But that is -- that is the sales
4 document. And so that is number one that ---

5 THE COURT: What paragraph is it?

6 MR. MARSHALL: It was agreed between the parties that
7 Charleston County is the proper venue. And ---

8 THE COURT: Oh, I see it is 14.

9 MR. MARSHALL: Fourteen.

10 THE COURT: Paragraph 14.

11 MR. MARSHALL: Right. Right. Right. That is it,
12 Judge. And there is ongoing litigation here. And this case
13 has been set. I believe it has got a date certain in May.
14 And Mr. Smith can correct me if I am wrong. I am pretty
15 sure that is right.

16 There is -- it has been going on for several years now.
17 And my client's allegations pertain to all of the same
18 issues that are going to be tried here in Charleston in May.

19 When Mr. Smith's client originally brought suit of
20 course he did so here involving the sale of this Charleston
21 County company Abacare that is located over in Mt. Pleasant.

22 So but when I look at this -- and maybe I am reading it
23 wrong, Judge. It wouldn't surprise me. But when I look at
24 it 15-7-30(E) talks about a civil action tried pursuant to
25 this section against a domestic corporation or an LLC must

1 be brought and tried in the county in which, number one, the
2 corporation or limited partnership or LLC has its ---

3 THE COURT: I am familiar with this section. We don't
4 need to read it.

5 MR. MARSHALL: Right. Okay. So, you know, I think
6 that that makes it clearer as well under the statute
7 that ---

8 THE COURT: Well, they are not a resident though. I
9 mean the only thing you are arguing is they have done
10 business here really. Correct? I mean there is no way they
11 are residents.

12 MR. MARSHALL: No, that is true.

13 THE COURT: I mean the only connection you have is the
14 argument that they have done some business here. I mean
15 really. I mean you don't have any offices here. You don't
16 have any offices here.

17 I mean I have used the section before. People have had
18 offices or they have had some employee there. And that I
19 think creates the possibility. But your argument is, well,
20 they transact business here and therefore they are subject
21 to being sued here; correct?

22 MR. MARSHALL: That is right. And that the physical
23 business was located in this county and that there is this
24 agreement from the outset of this transaction that this is
25 where any disputes would be ---

1 THE COURT: Okay.

2 MR. MARSHALL: --- would be handled, Judge. So I guess
3 that is the gist of ---

4 THE COURT: All right. Well, how about address this;
5 because this is one of these peculiar situations where --
6 and I am going -- I want this on the record because I for
7 20 -- almost 22 years now I still don't understand why we
8 have to change -- for instance, let's just -- let's assume
9 for the purpose of review that they understand my thought
10 process. Let's reverse the situation. You have venue in
11 Sumter by this agreement and you have brought it in Sumter
12 and everybody lives in Charleston. Well, technically I
13 would have to send it to Sumter and then you go to Sumter
14 and say we -- but for the convenience of the witnesses you
15 have got to go back to Charleston where it was originally.

16 That has never made any sense to me. It is added work.
17 It doesn't -- there is no logic to that why on a motion to
18 change venue we don't deal with all of the issues
19 potentially involved.

20 I am going to do that today. So I -- because --
21 because of this. Address for me now -- because he mentioned
22 it in his argument. And I read his motion. He said all of
23 the residents, all of the defendants, live in Sumter. Why
24 then for the convenience of witnesses do we not go to
25 Sumter?

1 MR. MARSHALL: Well, and Mr. DeClemente -- and I
2 apologize he couldn't be here today.

3 THE COURT: Oh, I understand. He doesn't -- he doesn't
4 live in Charleston.

5 MR. MARSHALL: No, he doesn't now.

6 THE COURT: The only one I know that lives in
7 Charleston I think is Mr. Marshall.

8 MR. MARSHALL: Well, now there's about 10 or 12
9 witnesses.

10 THE COURT: Okay.

11 MR. MARSHALL: So I told Mr. DeClemente yesterday.

12 THE COURT: Who are you -- all right.

13 MR. MARSHALL: And I apologize.

14 THE COURT: How many witnesses ---

15 MR. MARSHALL: Got them on my cell phone in the email.
16 But there's 10 or 12. He said these are people that I am
17 going to want to call. And he says that they are all in
18 this -- in this area. So that addresses that point, Judge.

19 THE COURT: Okay. All right.

20 Do you wish to respond?

21 MR. SMITH: Just briefly, Your Honor. A couple of
22 things. You know, this citation to venue provision I
23 actually don't have that and understood there was none. And
24 all of the portions I have of documents don't have a
25 Paragraph 14. So I am not sure what that references.

1 But I believe there is no -- under the disputes between
2 these parties there -- the agreements were with A.T.M.E.S.,
3 Your Honor. And A.T.M.E.S. purchased a Charleston company
4 which no longer exists and is now a different company based
5 in Sumter.

6 So the fact that there was a nexus in the transaction
7 of what was purchased which doesn't exist anymore doesn't
8 give venue in Charleston.

9 And we would just respectfully say that there is
10 everything to indicate that the appropriate venue should be
11 Sumter. And the parties originally to these agreements of
12 course is just A.T.M.E.S..

13 Now Mr. DeClemente sued a number of other parties all
14 of whom are in Sumter. So even if there was this venue
15 provision, which I have not seen yet, but it is within just
16 one of the many defendants. All of the remaining defendants
17 aren't parties to that necessarily. They are individual
18 defendants. They are parties involved in the transaction.
19 But not -- not parties to that document.

20 THE COURT: Well, let me -- Assistive -- because this
21 agreement is dealing with the acquisition apparently of
22 Assistive Technology Medical Equipment Services which is a
23 named defendant. That company doesn't exist anymore?

24 MR. SMITH: No, it does exist anymore. And it is a
25 Sumter company. But it was a company acquiring another

1 company in which Mr. DeClemente had an interest which does
2 not exist anymore.

3 THE COURT: Well, that is the agreement -- that is
4 where I have this where it has in Paragraph 14 this
5 agreement shall be construed and enforced in accordance with
6 the laws of the State of South Carolina, venue shall lie in
7 Charleston County.

8 MR. SMITH: Maybe a page of mine didn't get copied or
9 provided.

10 THE COURT: I guess -- it is shown as Exhibit 6 to the
11 Bradham -- is it Bradham deposition? Yeah, Art Bradham's
12 deposition.

13 (WHEREUPON, document provided by plaintiff to defendant.)

14 MR. SMITH: Your Honor, I would just add that the stock
15 purchase agreement is not the subject of any of the causes
16 of action. There is a cause of action relating to a bill of
17 sale. Let me make sure I am correct about this.

18 THE COURT: Okay. So this -- this -- this action
19 doesn't have a thing to do with enforcing the agreement?

20 MR. SMITH: I don't believe it is about a -- the bill
21 of sale is the document in which the cases and the cause of
22 action are brought.

23 The first one deals with a -- and I need to point out,
24 Your Honor, both of these -- all of these causes of action
25 were brought and then dismissed beyond the statute of

1 limitations. So this has already been here and it has
2 already gone away more than three years ago. Which is
3 my ---

4 THE COURT: That is your second ---

5 MR. SMITH: --- statute of limitations argument. But
6 the point being here is he is relying on a provision of a
7 document in which is not the subject of this litigation.

8 THE COURT: All right, let's do this. So this is --
9 this is the second round of actions then?

10 MR. SMITH: It is, Your Honor. This -- we have been
11 here before, Your Honor, yes.

12 THE COURT: Is that true, Mr. Marshall?

13 MR. MARSHALL: Well, I will say that as I pointed out
14 in the memo, my client was found in default because he
15 didn't respond within the 30 days. So at that point Judge
16 Nicholson struck his answer and counterclaims but left
17 open - and I have reviewed the transcript of that hearing -
18 the possibility of him bringing those causes of action
19 again. Which is what we have done.

20 THE COURT: So the action was stricken. And now he
21 files another summons -- kind of sort of like what happens
22 when you restore -- it is like it really is a double first
23 cousin to a restoration of a 40 -- of 40(J).

24 The -- but the problem you have with that the only
25 thing is you didn't have many protections for whether the

1 statute -- when the statute of limitation may have run
2 during the filing of that action.

3 I am going to deny your motion to change venue based on
4 the fact that there's been some litigation on this here and
5 just out of an abundance of caution the agreement. I don't
6 disagree with your argument.

7 Your motion to dismiss is based on the statute of
8 limitations as I read it.

9 MR. SMITH: Yes, it is, Your Honor.

10 THE COURT: Do you want to be heard on that?

11 MR. SMITH: I would very much, Your Honor.

12 THE COURT: Yes, sir.

13 MR. SMITH: Thank you. May it please the court. On
14 the face, the four corners of this complaint, it cannot
15 survive ---

16 THE COURT: No.

17 MR. SMITH: --- on a statute of limitations. Just
18 absolutely no way.

19 And so going through the complaint and getting the
20 appropriate dates here, Your Honor, on Paragraph 22 of the
21 complaint it identifies -- exactly says this but -- date of
22 the filing A.T.M.E.S. has not made payment to Mr. DeClemente
23 since September of 2011.

24 And I think in some of the records that Mr. Marshall
25 has provided my client even sent a letter and said we are

1 not paying them. So it was made very clear in 2011 we are
2 not paying them.

3 So we then later filed suit against a number of parties
4 that were involved in the transaction of which one of those
5 was Mr. DeClemente. That suit was filed on Halloween
6 October 31st, 2011. The answers were due about January 1st
7 and as was stated earlier by Mr. Marshall.

8 And if I might just so the court will have it
9 available -- I am not really arguing outside of the
10 complaint at all, Your Honor. But I just want the court to
11 have these documents. It is not necessary for granting the
12 relief.

13 THE COURT: Okay.

14 MR. SMITH: But if I may, Your Honor.

15 THE COURT: Sure.

16 (WHEREUPON, document provided to the court.)

17 MR. SMITH: What I have provided the court is the order
18 of Judge Nicholson dismissing those -- that counterclaim and
19 that answer and a copy ---

20 THE COURT: Which would obviously have been a
21 compulsory counterclaim.

22 MR. SMITH: All of these would have been compulsory
23 counters, yes, Your Honor, including the ones that were
24 actually brought in the answer and counterclaim which you
25 have, Your Honor. But all of the additional cause of action

1 in here with the exception maybe of the defamation cause of
2 action would have been compulsory counterclaims.

3 So looking at the plaintiff's complaint each one of
4 these -- the first two causes of action were -- are
5 virtually identical to the ones that were previously
6 brought. And we think those would have -- the time would
7 have begun running in September of 2011 which would have
8 realized a statute of limitations date of roughly October of
9 2014 on the contract cases causes of action. And of course
10 this action was filed June 11th, 2015.

11 Continuing through the relative, you know, the cause of
12 action cited, so the first two are breach of contract cases
13 which would have been, you know, well -- we are well beyond
14 the statute on those.

15 Next -- the next cause of action, Your Honor, is a
16 civil conspiracy cause of action also which is based all on
17 allegations arising out of the same transaction or
18 occurrence which should have been brought previously and
19 also stated it asserts liability for Mr. Bradham
20 professionally and there has been no affidavit as required
21 within our professional ---

22 THE COURT: That will have to go outside the ---

23 MR. SMITH: Yes, Your Honor. And then the next cause
24 of action is a breach of contract, a company with fraudulent
25 act.

1 That, Your Honor, is also it is the same contract case,
2 also beyond the statute of limitations. Added to that is
3 the requirement that fraud be pleaded with specificity, and
4 it is -- it is not in the complaint.

5 The next cause of action, breach of fiduciary duty, it
6 is all again all based on the same facts as cited in the
7 complaint. They are just referencing the earlier
8 allegations.

9 Professional negligence against Mr. R. Bradham for CPA
10 work, again no affidavit provided. It should be dismissed.
11 But also beyond the statute of limitations.

12 Lastly is a slander cause of action against Mr. Murrell
13 Smith. And in the allegations, Your Honor, it says -- it
14 really doesn't even identify what the alleged statements are
15 as far as I can tell.

16 But it does clearly say that whatever the statements
17 were they were published in the Post and Courier in
18 February 4th, 2012. And as we know, there is no discovery
19 rule for defamation; and so we are well beyond the two-year
20 statute of limitations for that defamation claim whatever it
21 might be.

22 And lastly is an abuse of process claim, the allegation
23 that somehow our bringing a lawsuit was an abuse of process.
24 And again that is all based upon the same fact
25 circumstances.

1 And lastly there is a negligence claim. And I am not
2 really -- at least it was -- the allegation is that we were
3 somehow negligent or reckless and grossly negligent in
4 filing our civil action against the plaintiff.

5 And I am not -- I don't know that that is a cause of
6 action anyway. But if it is, it is beyond the statute of
7 limitations.

8 THE COURT: Okay.

9 MR. SMITH: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Mr. Marshall.

12 MR. MARSHALL: Judge, thank you. As we laid out in the
13 memo we submitted, we are basing the statute of limitations
14 in this case on this date of June the 15th of 2012. And
15 that is based on the letter we submitted to the court from
16 Mr. Smith's client Murrell Smith stating that he was not
17 going to at that point -- he had decided not to make anymore
18 payments. These were payments of roughly \$7,500 a month.

19 When the regular \$7,500-a-month payments stopped there
20 were a lot of discussions between my client and Mr. Smith
21 and Mr. Reed about getting them back on track and there were
22 assurances that that would happen. There were then some
23 partial payments made.

24 So when we allege in the complaint that no payments
25 were made what we are meaning is that no full payments were

1 made.

2 So it is our contention, Judge, that Mr. DeClemente was
3 reasonably on notice of the defendant's intent to breach the
4 contract when he got that letter on June the 15th of two
5 thousand ---

6 THE COURT: Well, doesn't -- I mean when was the -- I
7 am trying to find when -- did you allege when -- when the
8 last payment was made?

9 MR. MARSHALL: I think Mr. Smith just referenced that,
10 and he said it was in 2011 is I think what we wrote in the
11 complaint. And what we mean there was no ---

12 THE COURT: Well, I understand.

13 MR. MARSHALL: --- full payments.

14 THE COURT: Well, I understand. But it was the last
15 payment that was made?

16 MR. MARSHALL: No, the last payment, Judge, according
17 to my client was in 2012.

18 THE COURT: Well, where is that in the pleadings?

19 MR. MARSHALL: I don't believe that that is in there.

20 THE COURT: What -- I have as of the date of this
21 filing A-T-M-E-S has not made a payment to Mr. DeClemente
22 since September 2011. That is what I am reading. Is that
23 the payment you are talking about?

24 MR. MARSHALL: A payment pursuant to the contract.

25 THE COURT: Okay. So September 2011 that is what is

1 alleged.

2 MR. MARSHALL: Well, if we are going to -- Judge, I
3 guess then I would need to ask the court if I could have
4 permission to have Mr. DeClemente address that issue. I
5 wish he were here.

6 THE COURT: I appreciate that. The motion is based on
7 the pleadings. And that is what -- that is what I am seeing
8 right there.

9 And the letter that you are referring to Mr. Smith just
10 simply is confirmatory of that fact that two thousand --
11 September of 2011 that is the last payment. And he is just
12 saying there ain't going to be anymore, period.

13 MR. MARSHALL: Right. And prior to that I don't
14 believe that Mr. DeClemente could have reasonably expected
15 that to be his position.

16 THE COURT: Okay. All right.

17 Any reply?

18 MR. SMITH: Nothing, Your Honor. Thank you.

19 THE COURT: Based on the pleadings the statute of
20 limitation has run. Thank you.

21 MR. SMITH: Thank you, Judge.

22 THE COURT: Okay. Thank you very much. The matter is
23 dismissed.

24 MR. MARSHALL: But, Judge, that -- okay, so that
25 addresses Mr. ---

1 THE COURT: Addresses everything. The statute of
2 limitations ran.

3 MR. MARSHALL: Well, may I address Mr. Bradham, Judge,
4 because he is the CPA and that is completely separate.

5 THE COURT: Well, what did he do after 2012?

6 MR. MARSHALL: Well, he came and testified at a
7 deposition as an expert ---

8 THE COURT: I know but what did ---

9 MR. MARSHALL: --- witness.

10 THE COURT: What did he do; what services did he render
11 that you are claiming that he violated not after the filing
12 of the complaint but before -- before 2012 -- or after 2012?

13 MR. MARSHALL: Well, that is when his deposition was
14 given.

15 THE COURT: Huh-uh. I am not asking you about his
16 deposition. I am saying what do you -- you are saying that
17 he testified and that is the basis of your lawsuit what he
18 testified to?

19 MR. MARSHALL: Yes, sir.

20 THE COURT: Well, let me look at that cause of action.
21 Everything that I have said incorporates everything else
22 above that. So I was just -
23 (WHEREUOPN, court reviews file.)

24 MR. MARSHALL: Because Mr. Bradham obviously wasn't
25 involved in the breach of the sales contract. That is

1 completely separate.

2 THE COURT: Well, let me look at Mr. Bradham.

3 (WHEREUPON, pause for court's review of file.)

4 THE COURT: All right, technically it is not -- there
5 is nothing alleged as to when that was.

6 There is another reason for that, but I have got to go
7 outside of the pleadings to grant that one.

8 MR. SMITH: Would it even because there -- the failure
9 to provide an affidavit would be outside of the pleadings?

10 THE COURT: No question. But I think you have got to
11 go outside of the pleadings.

12 MR. SMITH: File a separate motion for that, Your
13 Honor?

14 THE COURT: Yes, I think you do.

15 MR. SMITH: Okay.

16 THE COURT: Summary judgment based on the fact there is
17 no affidavit filed.

18 MR. SMITH: I understand, Your Honor.

19 THE COURT: Okay.

20 MR. SMITH: We will do that.

21 THE COURT: So the motion -- the motion is granted for
22 all causes of action except for six cause -- for a sixth
23 cause of action, professional negligence as to Art Bradham.

24 MR. SMITH: Thank you, Your Honor, very much.

25 THE COURT: Okay. Thank you.

1 MR. MARSHALL: Judge, I don't know if you are willing
2 to hear that issue on the affidavit today or not or if Mr.
3 Smith ---

4 THE COURT: There is no reason -- I will be -- listen,
5 if y'all don't want to come back and you are not going to
6 raise the issue that I am going outside of the pleading I
7 will be delighted to hear it.

8 MR. MARSHALL: That's ---

9 THE COURT: Because I think you lose. But I don't
10 think you -- because you didn't file -- you have got to do
11 it simul- -- you have got to do it contemporaneously. He is
12 a -- he is a professional.

13 MR. MARSHALL: Well, I understand that, Judge. But
14 I believe that the violations of the professional
15 standards ---

16 THE COURT: Mr. Marshall, we don't need to argue that,
17 sir, because we can't get there. You are going -- I just
18 wanted -- if you want to -- if you want to save yourself a
19 trip back I will be happy to rule on that. But ---

20 MR. MARSHALL: I will defer on it.

21 THE COURT: But I -- I mean I don't mind doing that.
22 To accommodate a lawyer I will be happy to do so. But I
23 don't want to create an issue for an appeal that said, oh,
24 no, you went outside of the pleadings, Judge, you can't do
25 that and therefore reverse me on that.

1 So we will have another hearing since you are not
2 willing to waive that. And I wouldn't blame you for not
3 doing it either. Thank you.

4 MR. MARSHALL: Thank you, Judge.

5 MR. SMITH: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (WHEREUPON, document returned to Mr. Marshall.)

8 THE COURT: We are going to do a form that says motion
9 to dismiss is granted as to all causes of action except
10 Cause of Action Number 6.

11 MR. MARSHALL: Thank you very much.

12 THE COURT: Thank you. Based on the statute of
13 limitations argument.

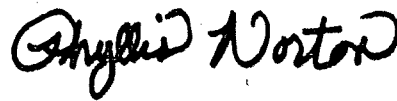
14 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on January 7, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR

Date: July 25, 2018

Certified Transcript Provided For: Cameron Marshall
Certification Reference #2018-0725 Original

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON 2015-CP-10-3325
3
4

5 PHILLIP DECLEMENTE,)
6 PLAINTIFF,) TRANSCRIPT OF RECORD
7 VS.)
8)
9 ATMES, ET AL.,) FEBRUARY 19, 2016
10 DEFENDANTS.) CHARLESTON, SC

11
12 B E F O R E:

13 HONORABLE R. MARKLEY DENNIS

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

15 CAMERON MARSHALL, ESQUIRE
Attorney for the Plaintiff

16 JAMES E. SMITH, JR., ESQUIRE
17 Attorney for the Defendants

18
19 Ruth C. Weese, RDR
Ninth Judicial Circuit
20 Common Pleas
21
22
23
24
25

1 (The following proceedings were held
2 February 19, 2016, Charleston County, South
3 Carolina, @ 1:55 p.m.)

4 THE COURT: How are y'all? Basically I
5 was going to do this without bringing you all back,
6 but I thought in looking at what I said and reading
7 my form, I think the whole thing needs to be
8 modified what I did. And it's basically this.

9 I agree with you, Mr. Marshall, as to
10 cause of action one because I think the fact that
11 there was a maturity date is the issue, the problem
12 I have with granting the dismissal. Now, I don't
13 quarrel with there may be a basis, that this is
14 based on the pleadings solely. I don't know what's
15 happened by testimony that would be outside the
16 pleadings that may say no, you can't sit and rely
17 on the maturity date when it was made known to you
18 that -- for instance, I think there was some
19 discussion, some letter that said I'm not going to
20 pay you any more. Don't know about that, but
21 insofar as that part, I'm not relying on that
22 because I'm doing it strictly on the pleadings
23 themselves.

24 Now, having said that, looking at the
25 pleadings, I think I got caught off with the breach

1 of contract and fraudulent intent and all of those
2 things as being related to the note. They really
3 aren't. They are related to the breach of contract
4 -- alleged breach of contract for bringing the
5 lawsuit. That's what clearly the breach of
6 contract deals with. That was triggered clearly
7 when that lawsuit was filed.

8 So there's no question with the
9 exception of cause of action one which deals with
10 the note that was subsequently signed, all other
11 causes of action are clearly violative of the
12 statute of limitations, including the defamation
13 action. So I don't have any problem with that
14 ruling at all. And I understand you don't agree
15 with that, Mr. Marshall, but that's going to be my
16 ruling: That all causes of actions are dismissed
17 pursuant to your motion to dismiss with the
18 exception of the note.

19 Now, please understand we will put that
20 this is based solely on the pleadings because that
21 would not prevent if you choose to, I'm not
22 suggesting you would, but if counsel wishes to, you
23 all wish to make a motion on a summary judgment
24 based on something else, that wouldn't be a second
25 bite at the apple so to speak because I'm not

1 converting this motion to dismiss to a summary
2 judgment motion which I probably could have, but
3 that would have to be by agreement and that was
4 never what I saw. It was strictly argued on the
5 pleadings themselves.

6 So my failure to do that to start with
7 and saying I wasn't going to grant it on these
8 causes of action really was -- my brain was not
9 wrapped around the incorporation because clearly
10 after reading the complaint, and I understand your
11 client's position, I mean he's claiming that that
12 -- he was told he wasn't going to be sued. And I
13 understand that, but everything including the
14 accounting, all of those things were triggered by
15 that lawsuit. And therein lies the issue that
16 forms that basis of each one of those causes of
17 action in my opinion.

18 And so for that reason, I do modify my
19 order denying the motion to dismiss as to cause of
20 action one and granting it as to all other causes
21 of action. Okay? Anything else you want to place
22 on the record? Because the record -- I will be
23 happy to, but I am incorporating all pleadings that
24 have been submitted and filed in conjunction with
25 this motion and responses in asking for this, your

1 motion to amend the judgment that you filed, the
2 bases set forth are incorporated fully. But if you
3 wish to supplement anything, either side, I will be
4 happy to give you an opportunity.

5 MR. MARSHALL: Just briefly. Thank
6 you, Your Honor. I brought this up previously, but
7 just for clarification, we do allege that these
8 other causes of action, not talking about the
9 defamation, but the others which allege civil
10 conspiracy and those related causes of action, that
11 the statute of limitations should not have been to
12 run until Mr. Bradham gave his deposition. We
13 allege that that's when we became on notice of
14 that, and I understand the Court's rejecting that.
15 But, Judge, I would like to get your ruling,
16 please, on our motion to amend the pleadings.

17 THE COURT: As it pertains to the first
18 cause of action if you want to amend your pleadings
19 I will be happy to do that. But you can amend the
20 pleadings any way you want, although I don't know
21 what you would amend because you have alleged that
22 they didn't pay it and that the maturity date was X
23 date. And I have already denied the motion for
24 summary judgment on the maturity date. I have not
25 addressed, however, the statute of limitations as

1 we all know can be triggered by some action or
2 action that would put you on notice that says you
3 have to take some affirmative steps. Not
4 withstanding the maturity date, because clearly
5 there's some case law that obviously says you don't
6 have to bring it on the first default to protect
7 your right to bring it at a later date. You can
8 forgive that and allow it if you choose to.

9 But if somebody says and takes action
10 and does other things that puts you on notice I am
11 never going to pay that, maybe you can, I don't
12 know, we will see. I don't know what evidence that
13 would be. I would have to hear that. I can't rule
14 on that in a vacuum, nor am I going to rule on it
15 in a vacuum. But I just want to be clear that I
16 don't want that raised at a later date and said no,
17 no, you have ruled on the summary judgment basis,
18 there is no other basis for the summary judgment.
19 I'm not ruling on the summary judgment. I am
20 ruling strictly dismissing that cause and denying
21 your motion to dismiss on the pleadings alone.

22 MR. MARSHALL: And that does play into
23 my request that we be allowed to amend that cause
24 of action one, because what I had written in
25 paragraph 22 of the complaint was as of the date of

1 this filing ATMES has not made a payment to Mr.
2 DeClemente since September 2011. And what I should
3 have written and what's correct is had not made a
4 full payment so...

5 THE COURT: The fact of the matter is
6 that may or -- what's the objection to that? I
7 don't know it changes anything.

8 MR. SMITH: A couple things. If I may,
9 Your Honor, just the standard for good cause. We
10 filed this motion back in July. It's already
11 posted judgment on his decision -- on your
12 decision. It seems kind of a way to backdoor. You
13 obviously ruled that cause of action continues and
14 through discovery all manner of things might occur,
15 but there's no good cause articulated for any
16 amendment, Your Honor.

17 THE COURT: Well, let me just say this
18 to you: This has sort of been my -- I adopted
19 this. I wish I could remember the case. I
20 remember the Judge Barber case. It was tried in
21 Columbia. But it went to the jury, or it was about
22 to go to the jury and there was a motion to direct
23 the verdict, but based on the pleadings they didn't
24 have a basis to go. And he denied it. The Court
25 said no, no, no. You can still -- you could have

1 formed the proof. I was thinking would there ever
2 be a prejudice.

3 MR. SMITH: Apparently not.

4 THE COURT: I mean that's just my
5 feeling about it. I don't think this prejudices or
6 changes anything that would be the basis for your
7 -- any subsequent motion because you're obviously
8 not relying on instrument. You are relying on the
9 actions. Whether or not a payment triggers a date,
10 again, I can't imagine any payment before that date
11 that would create an issue unless it was two days
12 before the maturity date maybe because obviously
13 it's a close call even on the maturity date, but
14 it's still there. It's within the three years, the
15 day it was filed.

16 MR. SMITH: Just, you know, accepting
17 the Court's ruling, just wanted to provide the
18 Court with some additional information.

19 THE COURT: Sure.

20 MR. SMITH: Two things. If I may
21 approach, Your Honor.

22 THE COURT: You may.

23 MR. SMITH: I understand we can raise
24 this at summary judgment and we are certainly
25 prepared to do that. Your Honor, just a brief memo

1 that's been provided to opposing counsel.

2 THE COURT: Is this the original?

3 MR. SMITH: Yes, it is.

4 THE COURT: We will make sure it is
5 filed. And, again, all memorandum is incorporated
6 fully for purposes of the review.

7 MR. SMITH: And I will just note if the
8 Court would consider there is no -- of the
9 individual Defendants, Mr. Reed and Mr. Smith,
10 there's really no allegation on the face against
11 them. I don't know if the Court would consider
12 dismissing them individually because there is no
13 allegation within the complaint against them for
14 that conduct specifically. But understanding if
15 the Court doesn't rule that way we can certainly
16 come back.

17 THE COURT: Well, what they brought it
18 -- that's the note that -- which they have
19 guaranteed?

20 MR. SMITH: It was for only 12 months,
21 Your Honor, the first 12 months.

22 THE COURT: And I think that therein
23 lies something where we get into some factual
24 issues that I would feel more comfortable at this
25 juncture -- I understand that and it may well be

1 that you're -- I am concerned about the
2 possible conflict again.

3 MR. SMITH: I understand, Your Honor.

4 THE COURT: We used it earlier this
5 week. And I made this statement tongue in cheek, I
6 hope the record would say it's tongue in cheek,
7 about my conversations with what used to be my
8 colleague and now he has left me twice removed.
9 But Justice Few and I have had conversations about
10 scintilla and I have said will y'all please define
11 that for us. The trial bench would be very --
12 would be helped tremendously if someone could
13 define the term. He said we are working on it.

14 But I had a lawyer who practiced law in
15 Alabama, I don't know whether this is accurate or
16 not because I haven't researched it, he said
17 Alabama has had the scintilla rule for years and
18 nobody in Alabama knows what it means either.

19 So that being said, at this point the
20 scintilla issue would give me concern about I mean
21 I can't just say on the pleadings whether it meets
22 everything I need. Different ball game when we get
23 into summary judgment because we are now starting
24 to frame some things by testimony. So I note your
25 objection and I understand it. And I don't quarrel

1 with the fact at the time, frankly there's always a
2 prejudice for that in my opinion, especially when
3 it has gone on as long as this case has, but be
4 that as it may, I'm going to, again, grant your
5 motion to amend. You have a right to respond fully
6 once it is served on you. The only amendment,
7 though, pertains only to the first cause of action.

8 MR. SMITH: Thank you, Your Honor. As
9 an aside I recall another circuit judge telling me
10 a scintilla meant if you have filed anything larger
11 than a note pad then you had a scintilla.

12 THE COURT: He's probably right.

13 MR. SMITH: But one thing if the Court
14 would consider allowing us to revisit given the
15 circumstances. The venue issue is one that we
16 believe would not necessarily be waived at this
17 point. No connections to Charleston here at all
18 still with none of the parties, none of the
19 witnesses, none of the documents.

20 THE COURT: Given this part now, of
21 course it probably was all one time, but these are
22 suits now against individuals and everything took
23 place apparently in Sumpter County.

24 MR. SMITH: It did. All the documents
25 referred there as well.

1 THE COURT: I denied your motion for
2 change of venue without prejudice because I don't
3 know, again, that would be something that's another
4 one of those crazy things that we have and I love
5 them, I say that again tongue in cheek so the court
6 doesn't get angry with me, I have done this --
7 blessed to do this for 22 years and I still don't
8 know why I have to change venue for residency and
9 then we go there and we have another motion for
10 change of witnesses to come back to the place that
11 I just changed. Why can't it be argued all at one
12 time and deal with that? It makes no sense to me.
13 That's the way, that's the law as I know it, but
14 clearly all that to say I think motions of change
15 of venue are moving targets most of the time anyway
16 so I will allow that. I don't think there is any
17 prejudice for you filing another motion for change
18 in venue.

19 MR. SMITH: Thank you, Your Honor.

20 MR. MARSHALL: Judge, one more thing.
21 Would you let us know, please, whether you'll allow
22 us to amend our pleadings as to cause of action
23 six, professional negligence regarding Mr.
24 Bradham --

25 THE COURT: Absolutely not.

1 MR. MARSHALL: -- to include an
2 affidavit.

3 THE COURT: Absolutely not. The motion
4 -- because that action -- I am granting the motion
5 to dismiss on the statute of limitations. Can't
6 amend it. It doesn't have a thing to do with --
7 frankly, it doesn't have anything to do with the
8 affidavit so much as it has to do with the fact
9 that statute of limitations, you should have filed
10 long before in my opinion. And I understand your
11 argument about whether or not it was a compulsory
12 counterclaim. And I read the transcript. I don't
13 ever see Judge Nicholson ever ruling on that
14 particular issue one way or the other. But
15 clearly, clearly for the purposes of that there is
16 no question in my mind that's when it would be
17 triggered and so therefore it clearly has run so I
18 deny that.

19 MR. MARSHALL: Yes, sir, thank you. So
20 cause of action one is the one that survives.

21 THE COURT: Only one that survives
22 because I believe frankly and I'm not -- I can't
23 rule on that at this point because I am denying it
24 based on the motion that the statute of litigations
25 ran, but if it were to come to me on that I would

1 throw it out as an additional ground that I think
2 it's a compulsory counterclaim.

3 MR. SMITH: Yes, sir, I would agree.
4 And shall we prepare an order?

5 THE COURT: You may do so.

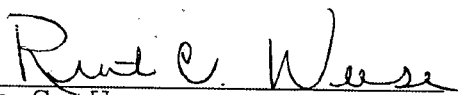
6 (These proceedings were concluded at
7 2:07 p.m., February 19, 2016, Charleston County,
8 South Carolina.)
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CERTIFICATE OF REPORTER.

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 4th day of March, 2016 at
Charleston, Charleston County, South Carolina.


Ruth C. Weese
Registered Diplomat Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
)
)
COUNTY OF CHARLESTON) C/A NO.: 15-CP-10-3325

Phillip Declemente a/k/a Alec)
Rochford,)
)
)
Plaintiff,) **PHILLIP DECLEMENTE**
)
)
)
vs.) September 29, 2017
)
)
)
Assistive Technology Medical)
Equipment Services, LLC;)
Jeffery Reed; Murrell G. Smith,)
)
)
Defendants.)
_____)

COPY

Deposition on oral examination of **PHILLIP DECLEMENTE**,
reported by Diane Grubowski, Court Reporter and Notary Public
in and for the State of South Carolina; Said deposition taken
pursuant to Notice and in accordance with the South Carolina
Rules of Civil Procedure, at Law Office of Cameron Marshall,
7 Gamecock Avenue, Charleston, South Carolina, on Friday, the
29th day of September 2017, scheduled for 10:00 a.m. and
commencing at the hour of 10:40 a.m.

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(803) 463-3526

1 it was cashed on June 22, 2011. I want you to
2 confirm that.

3 **(OFF THE RECORD CONVERSATION)**

4 Q June the 22nd was the day you cashed that final
5 check there, right?

6 A The checks from the date range of 8-20-2010 through
7 June 17, 2011 with a check missing from the month
8 of September in this stack, are payments that I
9 received, yes. The June 22, 2011, is the right --

10 Q Right.

11 A -- date that I cashed it.

12 Q So that was the last check you received pursuant to
13 the promissory note from the defendants?

14 A Incorrect.

15 Q When was another check received by you?

16 A I received a check the day that -- I received a
17 check from the private investigator that served me
18 with the lawsuit. I received checks from Jeffery
19 Reed directly for payments and I don't see those in
20 there.

21 Q Okay. So let's talk about the lawsuit payment.

22 You say the date you received that was the day you
23 were served with the lawsuit, is that correct?

24 A I received a partial payment of \$2,000 that day.

25 Q It's your testimony -- and that was a payment

- 1 pursuant to this Agreement, is that correct?
- 2 A I was told that they were going to catch up and
3 make payments and to meet this guy to get the
4 payment. And when I did, your clients handed me
5 the lawsuit.
- 6 Q Right. So my clients sued you and that was in
7 2011, correct?
- 8 A Correct.
- 9 Q And so you were served with a separate lawsuit, not
10 this lawsuit that we are holding this deposition
11 under, but a separate lawsuit in 2011?
- 12 A Correct.
- 13 Q And you maintain on that date you received a
14 payment on the day you were served?
- 15 A I received a partial payment of some sort.
- 16 Q Some amount. And you were being sued by the
17 defendants?
- 18 A Correct.
- 19 Q Since that date, did you ever receive any further
20 payments?
- 21 A Not to my knowledge.
- 22 Q Do you have any evidence of receiving any payments
23 past being served with the 2011 lawsuit?
- 24 A If they made payments on my truck, then there would
25 be partial payments after that date.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Phillip DeClemente, a/k/a	)	
Alec Rochford,	)	CASE NO. 2015-CP-10-03325
	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Assistive Technology Medical	)	
Equipment Services, LLC	)	
(A.T.M.E.S), et al.,	)	
	)	
DEFENDANTS.	)	

December 11, 2017
Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson

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

Cameron Lee Marshall, Esquire
For the Plaintiff

James Emerson Smith, Esquire
For the Defendants

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PNorton@sccourts.org

I N D E X

HEARING - 2015-CP-10-03325

Page 3

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT

Page 20

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: Who is here representing who?

2 MR. SMITH: Good morning. Your Honor, James Smith
3 here for the defendants.

4 MR. MARSHALL: Cameron Marshall for Phillip
5 DeClemente, Judge.

6 THE COURT: All right. And it is a motion for
7 summary judgment, correct?

8 MR. MARSHALL: That is correct, Your Honor.

9 THE COURT: All right. I assume it is your motion,
10 Mr. Smith?

11 MR. SMITH: It is, Your Honor.

12 THE COURT: Be glad to hear you.

13 MR. SMITH: Thank you, Your Honor. May it please
14 the court. To give the court a little bit of history in
15 this case, this case was originally brought with nine
16 causes of action.

17 Our initial response was a 12(b)(6) motion which was
18 granted based upon the statute of limitations on seven of
19 the nine causes of action, were dismissed on statute of
20 limitations. Based upon the four corners of the document
21 it was clear that those seven causes of actions were
22 outside of the statute of limitations.

23 What remained, Your Honor, was a breach of contract
24 action on a promissory note because there was no dates on
25 the four corners of the document in that cause of action

1 and what also was a professional negligence claim against
2 Art Bradham and his firm.

3 Art's case was later dismissed on summary judgment
4 grounds. And that order is in the file. What remains is
5 that sole breach of contract action. And we are here on
6 the summary judgment for that.

7 The grounds for that continue to be the statute of
8 limitations. And I am going to focus on the date in
9 which since we have completed discovery the last payment
10 was made.

11 This case, Your Honor, was filed on June 11th, 2015.
12 It is our contention that the statute of limitations
13 provided for breach of contracts under 15-3-530 is three
14 years, and in this case was brought out to the three-year
15 statute of limitations.

16 The basis for that date -- I am going to provide the
17 court with several documents that show what the date was.
18 One is Mr. DeClemente in his own affidavit, Your Honor --
19 may I approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, document presented to the court.)

22 MR. SMITH: In his own affidavit he says the last
23 payment was September -- September 2011.

24 THE COURT: September 2011?

25 MR. SMITH: Yes, Your Honor. So the second page of

1 that affidavit in his -- his own sworn testimony says he
2 got the last payment -- hasn't made a payment since
3 September of 2011. Well, June 11, 2015, would be
4 beyond -- would be beyond a three-year statute of
5 limitations.

6 And as the court might recall, Your Honor, we had
7 brought an action -- and I have provided the court with a
8 copy. Your Honor issued an order -- may I approach
9 again, Your Honor?

10 THE COURT: Yes, sir.

11 MR. SMITH: This is in the 2011 case, Your Honor.
12 And that is an order that you signed holding the
13 defendant in default in that 2011 case.

14 And in that 2011 case the court might recall there
15 was an answer and counterclaim filed.

16 THE COURT: I don't recall. I'm sorry.

17 MR. SMITH: I thought it might be the case, but that
18 is why I brought the document so you ---

19 THE COURT: Okay.

20 MR. SMITH: Yes. So in that case, Your Honor, it
21 was this defendant Mr. DeClemente was held in default.
22 He attempted to file an answer and counterclaim to that
23 case, which that order was struck because he didn't have
24 relief from the court to file his answer and
25 counterclaims. And in that answer and counterclaims was

1 essentially this breach of contract, the promissory note
2 claim.

3 So he knew back in 2011 when that case was litigated
4 that he needed to bring these claims. And he attempted
5 to bring this very claim and a counterclaim in that 2011
6 lawsuit, which Your Honor struck from the case. And that
7 default status still remains.

8 So he tried to bring it as a counterclaim, and then
9 later in 2015 he filed -- he tried to file all of those
10 claims again.

11 They have all been struck, all eight with the
12 exception of this one remaining claim, because the court
13 at the time didn't have the dates within the confines of
14 the complaint to dismiss it at the time.

15 So we have completed some discovery, Your Honor.
16 And I am going to provide the court with some deposition
17 transcript excerpts of Mr. DeClemente. And I will walk
18 the court through these.

19 (WHEREUPON, document provided to the court.)

20 THE COURT: Thank you, sir.

21 MR. SMITH: So in trying to discover about Mr.
22 DeClemente's claims against my clients and when this
23 cause of action would have arisen -- let me try to get to
24 the exact point here. If the court could turn to Page
25 44.

1 THE COURT: Okay.

2 MR. SMITH: And ---

3 THE COURT: Line 9?

4 MR. SMITH: Yes. So I asked him if the last
5 payment - there were some checks that I presented to
6 him - was on June 22nd 2011; is that right. And that was
7 the day he had cashed it.

8 And I questioned: So the last check you received
9 pursuant to the promissory note for the defendants?

10 And he said: No, that wasn't correct.

11 And I said: Well, when was another check received
12 by you?

13 He said: I received a check the day that -- I
14 received a check from the private investigator that
15 served me with the lawsuit. I received checks from
16 Jeffrey Reed directly for payments. I don't see those in
17 there.

18 Your Honor, from the order, the default order, on
19 the second page of the default order, it indicates that
20 he was served on December 1st, 2011.

21 And of course the reason we sent that final check
22 was we were having a tough time finding him to serve him.
23 And we thought with the notion of him might receiving
24 some money we could finally serve him with this lawsuit
25 and tell him we were not going to pay him any money

1 because of the facts and the basis for the way in which
2 we were pursuing our claim.

3 So the last check he ever received according to his
4 own testimony was the date he received the lawsuit in the
5 2011 case by my clients in this case telling him we are
6 not paying him another penny and as a matter of fact you
7 owe us over \$800,000.

8 So he was on notice of our intent not to pay in fact
9 by us by suing him on December 1st, 2011. He attempted
10 to bring this very claim although after he was in default
11 in the 2011 case. That case is still -- he is still
12 under the false status in that case.

13 He then later attempted to file all of the same
14 counterclaims as claims in this 2015 case. And they are
15 all stricken except for the -- this breach of contract
16 claim.

17 So you have the defendants own affidavit saying the
18 last check he got was in September of 2011. He had his
19 deposition testimony saying the last payment was when he
20 received the lawsuit on December 1, 2011. All of those
21 are past the three-year and outside of the three-year
22 statute of limitations from when this 2015 claim was
23 brought.

24 But if that wasn't enough, Your Honor, although I
25 think it is pretty clear and sufficient to dismiss the

1 case entirely on that basis, I will add that if the court
2 looks to the deposition transcript on the final page,
3 Page 49.

4 And I ask Mr. DeClemente on Page 49. I said: So
5 the answer and counterclaim that is listed in Exhibits 8
6 and 9 - which is the 2011 case he was looking at - you
7 seek payment from the defendants in this case based upon
8 the promissory note and the bill of sale, and the
9 complaint you brought in 2015 you seek also payments from
10 my clients on the bill of sale in the promissory note.
11 Can you tell me what is different about the counterclaims
12 here in 2011 and the claims brought by you in 2015?

13 Answer: No, I can't.

14 Is there a difference to the claims?

15 I don't know.

16 My question: Other than the promissory note and the
17 bill of sale and the personal guarantee what other basis
18 do you have to assert that my clients are liable to you
19 for anything?

20 Answer: I do not know at this time.

21 Your Honor, the fact is the default in the original
22 case, the 2011 case, all surrounds these acts. And the
23 default has the effect of precluding any assertion to
24 anything different. It is the law of the case.

25 Everything we have asserted about his fraudulent

1 conduct, his deceitful conduct, and the conduct of the
2 sale of this business, we have won those issues entirely
3 and he is precluded from raising them even if he was
4 within the statute of limitations because all of those
5 facts were determined in our favor to a conclusion.

6 And so if it is not sufficient -- although I think
7 it is clearly on its face if he brought this claim even
8 if he could have outside of the three-year statute of
9 limitations, even if this case were to go forward, all of
10 the facts surrounding this have already been determined
11 in our favor in the 2011 case.

12 This claim would be a compulsory counterclaim in
13 this 2011 case. He would be required to bring that
14 because it is all part of the same transaction and
15 occurrence. And they have lost that case, Your Honor.
16 It is concluded.

17 And if that lastly is not sufficient, Your Honor --
18 although I believe it should be more than adequately
19 sufficient, but I have here additional affidavits which
20 have been provided plaintiff's counsel.

21 And to save the court from having to go through all
22 of this there is a copy I know in the file but I will
23 provide the court with another copy.

24 These are two affidavits and a bunch of exhibits.
25 There are three remaining defendants in this case, Your

1 Honor. There is A.T.M.E.S, the company. There is a Mr.
2 Jeffrey Reed and a Mr. Murrell Smith.

3 The only reason Mr. Jeffrey Reed and Mr. Murrell
4 Smith are defendants in this case is based upon a
5 personal guarantee. The personal guarantee only requires
6 that they are responsible for 12 payments.

7 Those affidavits - and there is no material facts or
8 dispute at all as to any of this. Those payments are in
9 excess of the 12 payments that were due under the
10 personal guarantee.

11 So that if the court couldn't see to find that the
12 entire case should be dismissed based upon the statute of
13 limitations because it is far out beyond the three years
14 required to bring the entire case and the court can't
15 find that this 2011 case would preclude the bringing of
16 this case now because all of those issues have been
17 determined in the defendant's failure lastly I would
18 offer that we would be entitled to summary judgment as to
19 Mr. Reed and Mr. Smith because the requirement under the
20 personal guarantee has been completely satisfied.

21 And the defendant, Mr. DeClemente, has essentially
22 agreed with all of that in his deposition testimony and
23 which I have provided to the court in those excerpts.

24 I won't go through it. But he indicated that he had
25 in fact received all of those checks, had in fact cashed

1 all of those checks and that those checks were made
2 pursuant to the promissory note and that they in fact
3 exceed the 12 months within the personal guarantee. So
4 that that personal guarantee is satisfied.

5 And then, Your Honor, there is no dispute of
6 material fact as to any of our position in this case. As
7 a matter of fact it is much corroborated by the
8 defendant's own affidavit, by the defendant's testimony
9 in the deposition; and we are entitled to a judgment as a
10 matter of law under the three-year statute of limitations
11 and under the fact that the promissory note has been
12 satisfied.

13 Thank you, Your Honor.

14 THE COURT: Okay. Thank you, Mr. Smith.

15 Mr. Marshall, ---

16 MR. MARSHALL: Yes, sir.

17 THE COURT: --- be glad to hear you.

18 MR. MARSHALL: Thank you, Judge.

19 Your Honor, I had submitted some documents by e-mail
20 last week. I just wanted to make sure that y'all got
21 them. We were having some computer problems. Did y'all
22 get that? I can pass up another copy now just in case.

23 THE COURT: I think they -- somebody -- did they
24 send them Saturday morning?

25 (WHEREUPON, court confers with law clerk.)

1 MR. MARSHALL: Okay. All right, Judge. So at any
2 rate I wish Mr. Smith had told me that was the basis of
3 his motion because I think I would have reminded him that
4 that has already been resolved by Judge Dennis.

5 I think he has probably already forgotten because
6 the litigation has been going on for six-and-a-half
7 years.

8 But when you struck Mr. DeClemente's counterclaims
9 initially based on your ruling that he was in default,
10 you struck his counterclaims not with prejudice; and he
11 then brought them again later.

12 Judge Dennis ruled that out of those nine, seven of
13 them were untimely because of the statute of limitations.
14 Well, he initially, Judge, actually ruled that the breach
15 of contract was untimely as well. I made a motion and
16 asked him to reconsider.

17 He did. Reconvened and said that he had changed his
18 decision based upon the maturity date of the promissory
19 note. The maturity date which is March the 1st of '13.
20 The suit was filed in '15. So I mean that issue has
21 already been decided. It is the law of the case. Judge
22 Dennis so ruled.

23 Now in terms of asking ---

24 THE COURT: You said the maturity date was when?

25 MR. MARSHALL: March the 1st of '13.

1 THE COURT: Do you have a copy of Judge Dennis'
2 order?

3 MR. MARSHALL: I don't have it with me, Judge. If I
4 had known that that was the basis of his motion I would
5 have brought it. But it is on ---

6 THE COURT: Yes, it would be on Court Plus.

7 MR. MARSHALL: Yes, sir. Regarding the second issue
8 of his request that Murrell Smith and Jeffrey be
9 dismissed, I didn't know that he was going to make that
10 argument either.

11 But we had initially filed a motion to amend and
12 then withdrew it, Judge, by a letter sent to your office
13 stating that we felt that the basis of the motion would
14 be better addressed pursuant to a motion that pierced the
15 corporate veil.

16 The evidence of intermingling of private and
17 corporate funds in the case is overwhelming. And if you
18 are inclined to grant Mr. Smith's motion to dismiss,
19 Murrell Smith and Jeff Reed, I would ask for some time to
20 submit to the court evidence of that because I don't
21 think there is any corporate protection. And I think
22 that the lawsuits against them personally are proper,
23 acknowledging that they did sign personal guarantees on
24 the first 12 payments to my client and acknowledging that
25 those were the only payments that were made to my client.

1 But the evidence of intermingling and treating those
2 corporate funds of A.T.M.E.S. as their own funds is
3 overwhelming. So I think it would be improper to dismiss
4 those two gentlemen.

5 THE COURT: Okay. Mr. Smith, do you have a copy of
6 Judge ---

7 MR. SMITH: I do not, Your Honor.

8 THE COURT: --- Dennis' order? What -- was that a
9 summary judgment, a 12(b) or ---

10 MR. SMITH: It was not a summary judgment, Your
11 Honor. That is the point is that I would just ---

12 THE COURT: 12(b) whether ---

13 MR. SMITH: Just 12(b)(6), Your Honor.

14 THE COURT: Okay.

15 MR. SMITH: And what happened and I think is
16 reflected in the record is he looked back over the
17 complaint and the only cause of action that didn't
18 identify a date sufficient ---

19 THE COURT: Was a breach of contract?

20 MR. SMITH: That is. And so since that time we have
21 gone forward with discovery on that one cause of action.
22 And it has revealed multiple resources of a date.

23 I don't know that -- I don't know that -- I have
24 some Form 4's on it. I don't have anything that would
25 flush out any significant decision.

1 It was I think an order in the plaintiff's favor
2 granting his motion to reconsider. I have a couple of
3 the judge's, you know, Form 4's. But I don't know that a
4 formal order has ever been ---

5 THE COURT: Did he do a Form 4 on the motion to
6 reconsider? To the best knowledge do y'all remember if
7 he did a Form 4?

8 MR. SMITH: He did a form -- yes, he did.

9 THE COURT: Mr. Marshall, do y'all remember if is it
10 a Form 4 where ---

11 MR. SMITH: It is a Form 4. I think I have a copy
12 of it.

13 MR. MARSHALL: I think -- Mr. Smith, tell me if I am
14 wrong; but I think that is the one that despite the fact
15 that the judge ruled in our favor you had said that you
16 would draft an order. And I think it took some time
17 because you were busy.

18 THE COURT: Well, I will find it on Court Plus. It
19 is on there. I just want to take a look at that before I
20 make a final ruling, okay.

21 MR. SMITH: I understand, Your Honor.

22 THE COURT: Give me a chance to find it on Court
23 Plus. I am sure it is there. And see what he actually
24 put it in writing on it, the 12(b) motion. And I will
25 read the complaint and see if there's anything concerning

1 statute of limitation date. ,

2 Mr. Smith, what the argument I believe he is making
3 irrespective of what Judge Dennis did is that the
4 maturity date is the date when the statutes should have
5 started running, not the missed payment.

6 MR. SMITH: Well, that would be the case if there
7 was any indication that we were going to continue to pay,
8 right.

9 We gave a -- you know, told them ahead of time we
10 are not paying you anything more ever on this because we
11 are suing you because you owe us three or four times any
12 amount that we might owe you on this.

13 So if we deliver a clear intent and anticipatory
14 breach we said we are not going to -- you know, and so we
15 told them at that point regardless of any future payments
16 or when any payment was due that we are not paying you,
17 period. And it is our position that it ran from, you
18 know, when we sued them.

19 And so even if that isn't sufficient, you know, then
20 if the court does look at the maturity date, well, all of
21 those facts, the entire case, I believe it was a
22 compulsory counterclaim in the 2011 case because it was
23 all surrounding the same transaction.

24 And they were never got -- they never were able to
25 bring because they were in default.

1 And so I believe all of those facts, the question of
2 his conduct and his deceit of my clients, cost them
3 \$800,000, all relating to his alleged claims, we have
4 already won that case. It is over.

5 And then what is completely clear -- and I do take a
6 little exception to Mr. Marshall's comment. We sent him
7 our affidavits, the packet that the court has, on
8 November 28th, 2017, where we said that the two, Mr. Reed
9 and Mr. Smith, have satisfied the personal guarantee with
10 no dispute of that at all.

11 His client agrees to that fact in the deposition.
12 And you have those materials. And individually those
13 defendants they should be certainly granted summary
14 judgment because there is no other basis to hold them
15 accountable other than the personal guarantee.

16 THE COURT: Okay. All right. Thank y'all very
17 much. Give me an opportunity to find the order. And I
18 will give you a decision just as soon as I read that
19 order.

20 MR. MARSHALL: Your Honor, ---

21 THE COURT: Thank you very much.

22 MR. MARSHALL: --- may I make one last point
23 quickly?

24 THE COURT: No. Thank you very much, okay.

25 MR. MARSHALL: There is another order that is

1 relevant, Judge, which is the denial of my summary
2 judgment motion which Judge Cooper issued in which he
3 found genuine issues of material fact. I just wanted to
4 call that to the court's attention as well.

5 THE COURT: I'm sorry, your summary judgment motion?

6 MR. MARSHALL: That is correct.

7 THE COURT: How would that affect this summary
8 judgment motion?

9 MR. MARSHALL: Well, I wanted -- I just wanted ---

10 THE COURT: Your summary judgment motion how would
11 that possibly affect this summary judgment motion?

12 MR. MARSHALL: No, I see the distinction; but I
13 wanted the court to be aware that the issue of summary
14 judgment has been heard previously on this case.

15 THE COURT: Not from the plaintiff's standpoint.

16 MR. MARSHALL: Correct.

17 THE COURT: But on --- from the defendant's
18 standpoint, right?

19 MR. MARSHALL: That is right.

20 THE COURT: Okay. All right.

21 MR. SMITH: Thank you, Your Honor.

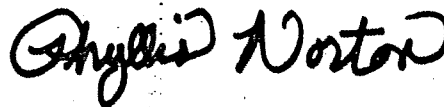
22 (WHEREUPON, the hearing for Case No. 2015-CP-10-03325
23 adjourned.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on December 11, 2017. Court reporter in attendance, Joyce Rueger. Court reporter transcribing, Phyllis Norton.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in black ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: April 19, 2018

Certified Transcript Provided For: *Bluestein*
Certification Reference #041818A ORIG.

Promissory Note

Dated June 30, 2009, appears in this Record on Appeal at pages 107-109

Bill of Sale & Transfer

Dated June 30, 2009, appears in this Record on Appeal at pages 112-116.

Full and Final Release of DeClemente

Dated July 10, 2009, appears in this Record on Appeal at pages 122-124



P DeClemente <pdeclemente@gmail.com>

stockholder letter

6 messages

Phillip DeClemente <pdeclemente@gmail.com>

Tue, Aug 10, 2010 at 12:42 PM

To: Murrell Smith <murrell@leeandmoise.com>, Murrell Smith <murrellsmith@leeandmoise.com>

Murrell,

I waited to hear from you and didnt get a response. I did find a stockholder letter that David Selander produced on 7/31/2007. In this letter, there is a paragraph that addresses the sales tax issue and his understanding that the tax amount are not equal to what was being reported. He also makes the recommendation that we set up a reserve fund to cover any audit, that would result in a substantial amount of tax, penalties and interest. Obvious this is proof that his current claim of having no knowledge is false. I will be glad to help you guys as I stated before but I ask that Im treated fairly. Let me know what you want me to do. Just FYI, I have been receiving calls from Jay Connelly, Lou's mother, but I have been ignoring them and I am not returning them currently until I understand where we are going with this.

--
Phillip DeClemente

Murrell Smith <murrellsmith@leeandmoise.com>

Tue, Aug 10, 2010 at 1:27 PM

To: Phillip DeClemente <pdeclemente@gmail.com>

Please send me the letter. Phillip we will honor our agreement. I only want you to tell the truth with this tax situation. Thanks

G. Murrell Smith Jr.

Lee, Erter, Wilson, Holler & Smith LLC

126 North Main Street

P. O. Box 580(mailing address)

Sumter S.C. 29151

(803)778-2471 (voice)

(803)778-1643(fax)

murrell@leeandmoise.com



Please consider whether it is absolutely necessary to print this email: save resources and paper costs.

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Phillip DeClemente <pdeclemente@gmail.com>

SMS with Jeffrey

Jeffrey <jjreed@organicpointl.com>
To: pdeclemente@gmail.com

Wed, Dec 14, 2011 at 6:04 AM

Got your text. Please give me the address again? I am sorry that laird has ruined your life, ours has been turned upside down as well. It is not that we are not paying on purpose its that the conolleys have killed us. We have tax liens and they are not taking their fair share of responsibility. It is damaging our credit and our ability to borrow. We are working to borrow and get you on your way. The company has nothing that is why I am sending out of my personal. However I am flat broke as well. I am sending the three, we are gathering info to the bank to borrow, but the state will not release us from debts even though our attorney has shown it happened before. We bought. Anyway send me the address again and I will put in today

Letter from Attorney Marshall

Dated June 8, 2012, appears in this Record on Appeal at page 152

Letter from Respondent Smith

Dated June 12, 2012, appears in this Record on Appeal at page 154

CERTIFICATE OF COUNSEL

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

April 30, 2019
Charleston, South Carolina



Cameron Marshall – S.C. Bar #64192
7 Gamecock Avenue, Suite 707
Charleston, SC, 29407
Telephone: (843) 795-2298
cameron@attorneymarshall.com
Attorney for Appellant

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