THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 26 2018
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-3919

Appellate Case No. 2017-002032

Athan Fokas.....Respondent/Appellant,

v.

Philip Ferderigos, Spiros Ferderigos,
and Jacob Ferderigos..... Defendants,

of Whom

Spiros Ferderigos and Philip Ferderigos are..... Appellants/Respondents,

And

Jacob Ferderigos is .....Respondent.

RECORD ON APPEAL (VOLUME II)

ANDREW HASELDEN, ESQUIRE
Howser, Newman & Besley, LLC
215 East Bay Street, Suite #103
Charleston, South Carolina 29401
Phone: (843) 216-6940
ATTORNEY FOR ATHAN FOKAS

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
Barnwell, Whaley, Patterson and Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402
Phone: (843) 577 – 7700
Facsimile: (843) 577 – 7708
ATTORNEYS FOR SPIROS FERDERIGOS

LESLIE S. LENHARDT, ESQUIRE
Lenhardt Law Firm, LLC
738 St. Andrews Boulevard, Suite C
Charleston, South Carolina 29407
Phone: (843) 371-5453
ATTORNEY FOR ATHAN FOKAS

IAN S. FORD, ESQUIRE
Ford Wallace Thomson, LLC
715 King Street
Charleston, South Carolina 29401
Phone: (843) 277-2011
ATTORNEY FOR PHILLIP FERDERIGOS

JOHN A. MASSALON, ESQUIRE
Wills Massalon & Allen, LLC
97 Broad Street
Charleston, South Carolina 29401
Phone: (843) 727-1144
ATTORNEY FOR JACOB FERDERIGOS

INDEX

Page

ORDERS, JUDGMENTS, DECREES, AND DECISIONS

Order Granting Plaintiff Partial Summary Judgment, filed August 31, 2017 1

Order Granting Summary Judgment to Defendants, filed September 28, 2017 10

Order Denying Plaintiff's Motion to Alter or Amend, filed October 20, 2017 33

Order Regarding Plaintiff's Motion to Strike, filed December 16, 2015 34

Order Regarding Plaintiff's Motion to Strike, filed January 28, 2016 39

Consent Order Regarding Plaintiff's Motion to Strike, filed April 15, 2016 42

PLEADINGS

Summons and Complaint, filed on July 15, 2015 48

Spiros Ferderigos' Answer and Counterclaims, filed October 1, 2015 57

Exhibit A: Tucker July 21, 2015, E-mail 92
Exhibit B: Tucker December 11, 2012 E-mail 94
Exhibit C: Fokas December 19, 2012, E-mail 95
Exhibit D: Spiros Ferderigos December 19, 2012, E-mail 97
Exhibit E: Odom January 11, 2013, E-mail 98
Exhibit F: June 17 and 18, 2014, E-mails 99
Exhibit G: February 5, 2013, Southcoast Loan Commitment Letter 100
Exhibit H: Fokas September 9, 2014, E-mail 104
Exhibit I: September 19, 2014, Text Messages 105
Exhibit J: September 24 and 25, 2014, E-mails 106
Exhibit K: October 10, 2014, Text Message 109
Exhibit L: November 21, 2014, Text Messages 110
Exhibit M: November 24 and 26, 2014, E-mails 112
Exhibit N: Closing Documents 118
Exhibit O: November 21, 2014, E-mails 172
Exhibit P: Phillip Ferderigos November 21, 2014, E-mail 174
Exhibit Q: Fokas November 21, 2014, E-mail 175
Exhibit R: November 21, 2014, E-mails 176
Exhibit S: Fokas November 24, 2014, E-mail 182
Exhibit T: December 16 and 17, 2014, Text Messages 183

Exhibit U: November 24, 2014, E-mails 184
Exhibit V: Release Communications 186
Exhibit W: Communications RE Jacob Ferderigos 193
Exhibit X: April 2015 Text Messages 195
Exhibit Y: Standard Agreement Between Owner and Contractor 196
Exhibit Z: Fanouris Ferderigos August 21, 2015, Letter 202
Exhibit AA: Fokas December 17, 2014, E-mail 203

Phillip Ferderigos' Answer and Counterclaims, filed October 1, 2015 205

Exhibit A: Tucker July 21, 2015, E-mail 241
Exhibit B: Tucker December 11, 2012 E-mail 243
Exhibit C: Fokas December 19, 2012, E-mail 244
Exhibit D: Spiros Ferderigos December 19, 2012, E-mail 246
Exhibit E: Odom January 11, 2013, E-mail 247
Exhibit F: June 17 and 18, 2014, E-mails 248
Exhibit G: February 5, 2013, Southcoast Loan Commitment Letter 249
Exhibit H: Fokas September 9, 2014, E-mail 253
Exhibit I: September 19, 2014, Text Messages 254
Exhibit J: September 24 and 25, 2014, E-mails 255
Exhibit K: October 10, 2014, Text Message 258
Exhibit L: November 21, 2014, Text Messages 259
Exhibit M: November 24 and 26, 2014, E-mails 261
Exhibit N: Closing Documents 267
Exhibit O: November 21, 2014, E-mails 319
Exhibit P: Phillip Ferderigos November 21, 2014, E-mail 321
Exhibit Q: Fokas November 21, 2014, E-mail 322
Exhibit R: November 21, 2014, E-mails 323
Exhibit S: Fokas November 24, 2014, E-mail 331
Exhibit T: December 16 and 17, 2014, Text Messages 332
Exhibit U: November 24, 2014, E-mails 333
Exhibit V: Release Communications 335
Exhibit W: Communications RE Jacob Ferderigos 342
Exhibit X: April 2015 Text Messages 344
Exhibit Y: Standard Agreement Between Owner and Contractor 345
Exhibit Z: Fanouris Ferderigos August 21, 2015, Letter 351
Exhibit AA: Fokas December 17, 2014, E-mail 352

Jacob Ferderigos' Answer and Counterclaims, filed December 29, 2015 353

Exhibit A: Tucker July 21, 2015, E-mail 384
Exhibit B: Tucker December 11, 2012 E-mail 386
Exhibit C: Fokas December 19, 2012, E-mail 387
Exhibit D: Spiros Ferderigos December 19, 2012, E-mail 389
Exhibit E: Odom January 11, 2013, E-mail 390
Exhibit F: June 17 and 18, 2014, E-mails 391

Exhibit G: February 5, 2013, Southcoast Loan Commitment Letter 392
Exhibit H: Fokas September 9, 2014, E-mail 396
Exhibit I: September 19, 2014, Text Messages 397
Exhibit J: September 24 and 25, 2014, E-mails 398
Exhibit K: October 10, 2014, Text Message 401
Exhibit L: November 21, 2014, Text Messages 402
Exhibit M: November 24 and 26, 2014, E-mails 404
Exhibit N: Closing Documents 410
Exhibit O: November 21, 2014, E-mails 463
Exhibit P: Phillip Ferderigos November 21, 2014, E-mail 465
Exhibit Q: Fokas November 21, 2014, E-mail 466
Exhibit R: November 21, 2014, E-mails 467
Exhibit S: Fokas November 24, 2014, E-mail 475
Exhibit T: December 16 and 17, 2014, Text Messages 476
Exhibit U: November 24, 2014, E-mails 477
Exhibit V: Release Communications 479
Exhibit W: Communications RE Jacob Ferderigos 486
Exhibit X: April 2015 Text Messages 488
Exhibit Y: Standard Agreement Between Owner and Contractor 489
Exhibit Z: Fanouris Ferderigos August 21, 2015, Letter 495

Plaintiff's Reply to Counterclaims of Phillip Ferderigos, filed March 31, 2016 497

Plaintiff's Reply to Counterclaims of Spiros Ferderigos, filed March 31, 2016 503

Plaintiff's Reply to Counterclaims of Jacob Ferderigos, filed April 29, 2016 509

TRANSCRIPTS

Motions Hearing Transcript, held June 8, 2017 514

OTHER MATERIALS AND DOCUMENTS

Jacob Ferderigos Motion to Dismiss, filed October 8, 2015 587

Plaintiff's Motion to Strike Against Phillip Ferderigos, filed October 26, 2015 591

Plaintiff's Motion to Strike Against Spiros Ferderigos, filed October 26, 2015 597

Phillip Ferderigos Response to Motion to Strike, filed December 3, 2015 603

Plaintiff's Memo in Support of Motion to Strike, filed December 4, 2015 621

Exhibit: CTH 1 Caregiver v. Owens 624

Jacob Ferderigos Memo in Support of Motion to Dismiss, filed December 4, 2015 632

Spiros Ferderigos Memo in Opposition to Motion to Strike, filed December 7, 2015 638

Motion to Reconsider and Alter or Amend Order, filed December 29, 2015 660

Exhibit A: Plaintiff's Proposed Order Regarding Plaintiff's Motion to Strike ... 669
Exhibit B: Defendants' Objections to Plaintiff's Proposed Order 677
Exhibit C: Court Correspondence 680
Exhibit D: Defendants' Correspondence and Proposed Order 684

Plaintiff's Motion to Strike Against Jacob Ferderigos, filed January 25, 2016 699

Exhibit: Plaintiff's Order Regarding Plaintiff's Motion to Strike 704

Jacob Ferderigos Motion for Summary Judgment, filed on February 28, 2017 710

Phillip Ferderigos Motion for Summary Judgment, filed on February 28, 2017 718

Spiros Ferderigos Motion for Summary Judgment, filed on February 28, 2017 727

Plaintiff's Motion for Partial Summary Judgment, filed on February 28, 2017 737

Exhibit A: Affidavit of Athan Fokas 740
Exhibit B: Phillip Ferderigos Answers to Interrogatories 743
Exhibit C: Portions of Phillip Ferderigos Deposition Transcript 768
Exhibit D: Portions of Irene Fokas Deposition Transcript 785
Exhibit E: Portions of Athan Fokas Deposition Transcript Volume II 795

Plaintiff's Motion for Partial Summary Judgment, filed on February 28, 2017 802

Exhibit A: Affidavit of Athan Fokas 805
Exhibit B: Spiros Ferderigos Answers to Interrogatories 808
Exhibit C: Portions of Spiros Ferderigos Deposition Transcript 826
Exhibit D: Portions of Irene Fokas Deposition Transcript 831
Exhibit E: Portions of Athan Fokas Deposition Transcript Volume II 841

Plaintiff's Memo in Support of Partial Summary Judgment, filed June 5, 2017 848

Plaintiff's Memo in Opposition to Defendants' MSJ, filed on February 28, 2017 857

Exhibit A: Fokas Deposition Transcript Volume I and Portions of Volume II ... 874
Exhibit B: Tucker E-mails 958
Exhibit C: February 5, 2013, Southcoast Loan Commitment Letter 996

Exhibit D: Fokas Spreadsheet 1000
Exhibit E: Portions of Jacob Ferderigos Deposition Transcript 1002
Exhibit F: Spiros Ferderigos and Jeffrey Odom E-mails 1004
Exhibit G: Portions of R.A. Daniel Deposition Transcript 1007
Exhibit H: Portions of Jeffrey Odom Deposition Transcript 1017
Exhibit I: Various E-mails 1036
Exhibit J: June 18, 2014, E-mails 1052
Exhibit K: Fokas September 24, 2014, E-mail and Loan Commitment 1053
Exhibit L: September 24, 2014, E-mails 1058
Exhibit M: January 9, 2014, E-mails 1062
Exhibit N: Text Messages 1064
Exhibit O: Standard Agreement Between Owner and Contractor 1081
Exhibit P: November 21, 2014, E-mails 1089
Exhibit Q: Closing Documents 1091

Phillip Ferderigos Memo in Opposition to Partial MSJ, filed June 5, 2017 1143

Exhibit 1: Text Messages 1162
Exhibit 2: Portions of Counterclaims 1163
Exhibit 3: Motion for Summary Judgment 1177
Exhibit 4: Fokas December 17, 2014, E-mail 1183
Exhibit 5: Portions of Irene Fokas Deposition Transcript 1184
Exhibit 6: Text Messages 1185
Exhibit 7: Various E-mails 1188
Exhibit 8: Fokas November 24, 2014, E-mail 1194
Exhibit 9: Text Messages 1195
Exhibit 10: Text Messages 1196
Exhibit 11: Fokas January 6, 2015, E-mail 1197
Exhibit 12: Fokas November 21, 2014, E-mail 1198
Exhibit 13: Text Messages 1199
Exhibit 14: Portions of Irene Fokas Deposition Transcript 1200
Exhibit 15: Portions of Irene Fokas Deposition Transcript 1203
Exhibit 16: Portions of Irene Fokas Deposition Transcript 1206

Spiros Ferderigos Memo in Opposition to Partial MSJ, filed June 6, 2017 1209

Exhibit 1: Fokas December 17, 2014, E-mail 1227
Exhibit 2: Portions of Irene Fokas Deposition Transcript 1228
Exhibit 3: Text Messages 1229
Exhibit 4: Text Messages 1230
Exhibit 5: Fokas November 24, 2014, E-mail 1231
Exhibit 6: Text Messages 1232
Exhibit 7: Text Messages 1233
Exhibit 8: Text Messages 1234
Exhibit 9: Fokas January 6, 2015, E-mail 1235
Exhibit 10: Portions of Irene Fokas Deposition Transcript 1236

Exhibit 11: Portions of Irene Fokas Deposition Transcript 1239
Exhibit 12: Portions of Irene Fokas Deposition Transcript 1242

Supplemental Case Law and Evidence in the Record, filed June 16, 2017 1244

Exhibit 1: 6 S.C. Juris § 41 1261
Exhibit 2: Ex Parte Johnson 1263
Exhibit 3: Z.V. Pate, Inc. v. Kollock 1292
Exhibit 4: 20 Am.Jur.2d Cotenancy and Joint Ownership § 102 1297
Exhibit 5: Portions of Athan Fokas Deposition Transcript Volume I 1299
Exhibit 6: September 19, 2014, Text Messages 1301
Exhibit 7: September 24, 2014, E-mails 1302
Exhibit 8: Portions of Athan Fokas Deposition Transcript Volume II 1303
Exhibit 9: Portions of Athan Fokas Deposition Transcript Volume I 1307
Exhibit 10: Phillip Ferderigos November 21, 2014, E-mail 1309
Exhibit 11: Haines November 24, 2014, E-mail 1310
Exhibit 12: Portions of Athan Fokas Deposition Transcript Volume I 1311
Exhibit 13: Portions of Phillip Ferderigos Deposition Transcript 1313
Exhibit 14: Phillip Ferderigos November 20, 2014, E-mail 1316
Exhibit 15: Portions of Athan Fokas Deposition Transcript Volume I 1317
Exhibit 16: Portions of Athan Fokas Deposition Transcript Volume II 1318
Exhibit 17: Portions of Athan Fokas Deposition Transcript Volume II 1320
Exhibit 18: Portions of Athan Fokas Deposition Transcript Volume I 1321
Exhibit 19: Fokas November 24, 2014, E-mail 1322
Exhibit 20: Phillip Ferderigos November 21, 2014, E-mail 1323
Exhibit 21: Portions of Athan Fokas Deposition Transcript Volume II 1324
Exhibit 22: Portions of Athan Fokas Deposition Transcript Volume I 1325
Exhibit 23: Portions of Athan Fokas Deposition Transcript Volume II 1326
Exhibit 24: Portions of Athan Fokas Deposition Transcript Volume I 1327
Exhibit 25: Portions of Athan Fokas Deposition Transcript Volume II 1331

Appendix, filed June 21, 2017 1335

Exhibit A: Portions of Athan Fokas Deposition Transcript Volume I 1338
Exhibit B: Portions of Athan Fokas Deposition Transcript Volume I 1341
Exhibit C: Tucker E-mails 1357
Exhibit D: E-mails, Text Messages, and Fokas Deposition Transcript 1361
Exhibit E: Portions of Jeffrey Odom Deposition Transcript 1379
Exhibit F: Various E-mails 1384
Exhibit G: Various E-mails and Text Messages 1388
Exhibit H: Various E-mails and Fokas Deposition Transcript 1393
Exhibit I: Complaint 1402
Exhibit J: Portions of Athan Fokas Deposition Transcript Volume I 1405
Exhibit K: Portions of Answer and Case Law 1415
Exhibit L: Portions of Athan Fokas Deposition Transcript Volume I 1441

WMA
WILLS MASSALON & ALLEN LLC

97 Broad Street • Charleston, SC 29401 • Post Office Box 859 • Charleston, SC 29402
Phone: 843-727-1144 • Fax: 843-727-7696 • www.wmalawfirm.net

December 28, 2015

Direct Dial: (843) 793-6041

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: Athan Fokas v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos
Case No.: 2015-CP-10-3919
Our File No.: 1056-1

Dear Julie:

Enclosed please find the original and one (1) copy of Jacob Ferderigos' Answer, Affirmative Defenses and Counterclaims in regard to the above-referenced matter. Please file the original, file-stamp the copy, and return the copy to me in the self-addressed, stamped envelope provided. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC

I. Ryan Neville
rneville@wmalawfirm.net

IRN/cb
Enclosures

cc: Mr. Jacob Ferderigos
Stanley E. Barnett, Esquire
Richard A. Farrier, Jr., Esquire/Jennifer H. Thiem, Esquire
M. Dawes Cooke, Jr., Esquire/Jeremy E. Bowers, Esquire
Joseph R. Weston, Esquire

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT PHILIP FERDERIGOS

FILED
2016 MAR 31 PM 1:20
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiff who for his Reply to the Counterclaims of Defendant, Philip Ferderigos, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.

2. Paragraphs 1-52, to the extent that they are merely responsive, require no answer, but to the extent there are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.

3. Paragraph 53 is admitted as to the citizenship and residence of Plaintiff and is otherwise denied.

4. Paragraphs 54-56 are admitted.

5. Paragraph 57is admitted to the extent that it alleges the address and Parcel ID number of the property and is otherwise denied.

6. Paragraph 58 is admitted to the extent that it alleges a partnership was formed and that the property was purchased on a 50/50 basis and is otherwise denied.

7. Paragraph 59 is admitted.

8. Paragraph 60 is denied.

9. The first sentence of paragraph 61 is denied and the remainder is admitted.

10. Paragraphs 62-69 are admitted.

11. Paragraphs 70-75 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

12. Paragraph 76 is admitted.

13. Paragraphs 77-124 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

14. Paragraphs 125.136, 146, 162, 167, and 170 do not require a response.

15. Paragraphs, 126-128, 130-135, 137-145, 147-161,163-166,168-169, and 171-172 are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

16. Paragraphs 1-15 are realleged herein.

17. The counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the SC Rules of Civil Procedure.

18. Specifically, as to the First Counterclaim, there is no allegation of violations of the duties specified in the referenced statutes consistent with the standards for conduct set forth in said statutes.

19. Specifically, as to the Second Counterclaim, there is no allegation of any specific reliance by this Defendant on any specific misrepresentation by Plaintiff resulting in any loss or damage suffered by this Defendant.

20. Specifically, as to the Fourth Counterclaim, the instances of alleged defamatory statements are not classified in South Carolina law as defamation and, furthermore, Defendant has alleged no communication of any "crime of moral turpitude" as alleged in paragraph 155.

21. Specifically, as to the Fifth Counterclaim, there is no allegation of any demand for a collateral advantage as a condition for not pursuing the action forming the basis of said counterclaim.

22. Specifically, as to the Sixth Counterclaim, there is no allegation of specific alleged misrepresentations on which this Defendant relied to his detriment.

23. Specifically, as to the Seventh Counterclaim, there are no allegations of what facts are plead in the Plaintiff's Complaint which this Defendant alleges were without factual support sufficient to justify commencing Plaintiff's suit.

FOR A SECOND AFFIRMATIVE DEFENSE

24. Paragraphs 1-23 are reallged herein.

25. As to the Fourth Counterclaim for Defamation, the statements Defendant falsely alleges Plaintiff published to their persons are true, except the extent that paragraph 155 of said counterclaim alleges publication of allegations of commission of a crime of moral turpitude as no such allegation is alleged and as Plaintiff made no such allegation about this Defendant.

FOR A THIRD AFFIRMATIVE DEFENSE

25. Paragraphs 1-25 are realleged herein.

26. As to the Fifth Counterclaim, the process commenced by Plaintiff is directed at proper goals and is commenced by proper methods to achieve those goals.

27. Plaintiff has made no request or demand of a collateral advantage as a condition of not filing or pursuing said legal process but has only asked for the relief set forth in said legal process, the Complaints, and such relief is proper for each cause of action stated therein.

FOR A FOURTH AFFIRMATIVE DEFENSE

28. Paragraphs 1-27 are realleged herein.

29. As to the First, Second, Third and Sixth Counterclaim, Defendant and his brothers all knew all of the facts related to the planned project, its design, its planning, its cost, its regulatory approval and its financing at every step of the process, all of which were explored and implemented by Plaintiff and Defendant's brother, Jacob, and, thus, Defendant could not be and was not misled in any way as to any particular of the project.

30. Alternatively, Defendant had every opportunity to be briefed on any and all details of the project about which he now claims to have been misled.

31. Specifically, both Defendant Philip Ferderigos and Defendant Spiros Ferderigos agreed and represented this agreement to Plaintiff to mortgage their interest in 229 King Street in order to secure financing for the project, such agreement having been so communicated after all the facts related to the project and its financing were known to both Defendants.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

Mount Pleasant, South Carolina
March 31, 2016

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2016 MAR 31 PM 1:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Replies to the Counterclaims of Philip and Spiros Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this day of , 2016, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT SPIROS FERDERIGOS

FILED
2016 MAR 31 PM 1:21
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiff who for his Reply to the Counterclaims of Defendant, Philip Ferderigos, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.

2. Paragraphs 1-52, to the extent that they are merely responsive, require no answer, but to the extent there are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.

3. Paragraph 53 is admitted as to the citizenship and residence of Plaintiff and is otherwise denied.

4. Paragraphs 54-56 are admitted.

5. Paragraph 57is admitted to the extent that it alleges the address and Parcel ID number of the property and is otherwise denied.

6. Paragraph 58 is admitted to the extent that it alleges a partnership was formed and that the property was purchased on a 50/50 basis and is otherwise denied.

7. Paragraph 59 is admitted.

8. Paragraph 60 is denied.

9. The first sentence of paragraph 61 is denied and the remainder is admitted.

10. Paragraphs 62-69 are admitted.

11. Paragraphs 70-74 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

12. Paragraph 75 is admitted.

13. Paragraphs 76-123 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

14. Paragraphs 124, 135, 145, 159, 164, and 167 do not require a response.

15. Paragraphs, 125-127, 129-134, 136-144, 146-158,160-163,165-166, and 168-169 are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

16. Paragraphs 1-15 are realleged herein.

17. The counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the SC Rules of Civil Procedure.

18. Specifically, as to the First Counterclaim, there is no allegation of violations of the duties specified in the referenced statutes consistent with the standards for conduct set forth in said statutes.

19. Specifically, as to the Second and Third Counterclaims, there is no allegation of any specific reliance by this Defendant on any specific misrepresentation by Plaintiff resulting in any loss or damage suffered by this Defendant.

20. Specifically, as to the Fourth Counterclaim, the instances of alleged defamatory statements are not classified in South Carolina law as defamation and, furthermore, Defendant has alleged no communication of any "crime of moral turpitude" as alleged in paragraph 155.

21. Specifically, as to the Fifth Counterclaim, there is no allegation of any demand for a collateral advantage as a condition for not pursuing the action forming the basis of said counterclaim.

22. Specifically, as to the Sixth Counterclaim, there is no allegation of specific alleged misrepresentations on which this Defendant relied to his detriment.

23. Specifically, as to the Seventh Counterclaim, there are no allegations of what facts are plead in the Plaintiff's Complaint which this Defendant alleges were without factual support sufficient to justify commencing Plaintiff's suit.

FOR A SECOND AFFIRMATIVE DEFENSE

24. Paragraphs 1-23 are reallged herein.

25. As to the Fourth Counterclaim for Defamation, the statements Defendant falsely alleges Plaintiff published to their persons are true, except the extent that paragraph 152 of said counterclaim alleges publication of allegations of commission of a crime of moral turpitude as no such allegation is alleged and as Plaintiff made no such allegation about this Defendant.

FOR A THIRD AFFIRMATIVE DEFENSE

25. Paragraphs 1-25 are realleged herein.

26. As to the Fifth Counterclaim, the process commenced by Plaintiff is directed at proper goals and is commenced by proper methods to achieve those goals.

27. Plaintiff has made no request or demand of a collateral advantage as a condition of not filing or pursuing said legal process but has only asked for the relief set forth in said legal process, the Complaints, and such relief is proper for each cause of action stated therein.

FOR A FOURTH AFFIRMATIVE DEFENSE

28. Paragraphs 1-27 are realleged herein.

29. As to the First, Second, Third and Sixth Counterclaim, Defendant and his brothers all knew all of the facts related to the planned project, its design, its planning, its cost, its regulatory approval and its financing at every step of the process, all of which were explored and implemented by Plaintiff and Defendant's brother, Jacob, and, thus, Defendant could not be and was not misled in any way as to any particular of the project.

30. Alternatively, Defendant had every opportunity to be briefed on any and all details of the project about which he now claims to have been misled.

31. Specifically, both Defendant Philip Ferderigos and Defendant Spiros Ferderigos agreed and represented this agreement to Plaintiff to mortgage their interest in 229 King Street in order to secure financing for the project, such agreement having been so communicated after all the facts related to the project and its financing were known to both Defendants.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

Mount Pleasant, South Carolina
March 31, 2016

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2016 MAR 31 PM 1:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Replies to the Counterclaims of Philip and Spiros Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this day of , 2016, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT JACOB FERDERIGOS

FILED
2016 APR 29 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW, the Plaintiff who for his Reply to the Counterclaims of Defendant, Jacob Ferderigos, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.

2. Paragraphs 1-52, to the extent that they are merely responsive and/or are statements of what is alleged to be the law, require no answer, but to the extent there are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.

3. Paragraph 53 is admitted as to the citizenship and residence of Plaintiff and is otherwise denied.

4. Paragraphs 54-56 are admitted.

5. Paragraph 57 is admitted to the extent that it alleges the address and Parcel ID number of the property and is otherwise denied.

6. Paragraph 58 is admitted to the extent that it alleges a partnership was formed and that the property was purchased on a 50/50 basis and is otherwise denied.

7. Paragraph 59 is admitted.

8. Paragraph 60 is denied.

9. The first sentence of paragraph 61 is denied and the remainder is admitted.

10. Paragraphs 62-69 are admitted.

11. Paragraphs 70-74 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

12. Paragraph 75 is admitted.

13. Paragraphs 76-123 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

14. Paragraphs 124, 135, 145, 150, and 153 do not require a response.

15. Paragraphs, 125-127, 129-134, 136-144, 146-149,151-152,154-155 are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

16. Paragraphs 1-15 are realleged herein.

17. The counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the SC Rules of Civil Procedure.

18. Specifically, as to the First Counterclaim, there is no allegation of violations of the duties specified in the referenced statutes consistent with the standards for conduct set forth in said statutes.

19. Specifically, as to the Second and Third Counterclaims, there is no allegation of any specific reliance by this Defendant on any specific misrepresentation by Plaintiff resulting in any loss or damage suffered by this Defendant.

20. Specifically, as to the Fourth Counterclaim, there is no allegation of any demand for a collateral advantage as a condition for not pursuing the action forming the basis of said counterclaim.

21. Specifically, as to the Sixth Counterclaim, there is no allegation of specific alleged misrepresentations on which this Defendant relied to his detriment.

22. Specifically, as to the Seventh Counterclaim, there are no allegations of what facts are plead in the Plaintiff's Complaint which this Defendant alleges were without factual support sufficient to justify commencing Plaintiff's suit.

FOR A SECOND AFFIRMATIVE DEFENSE

23. Paragraphs 1-22 are realleged herein.

24. As to the Fourth Counterclaim, the process commenced by Plaintiff is directed at proper goals and is commenced by proper methods to achieve those goals.

25. Plaintiff has made no request or demand of a collateral advantage as a condition of not filing or pursuing said legal process but has only asked for the relief set forth in said legal process, the Complaints, and such relief is proper for each cause of action stated therein.

FOR A FOURTH AFFIRMATIVE DEFENSE

26. Paragraphs 1-25 are realleged herein.

27. As to the First, Second, Third and Fifth Counterclaim, Defendant and his brothers all knew all of the facts related to the planned project, its design, its planning, its cost, its regulatory approval and its financing at every step of the process, all of which were explored and

implemented by Plaintiff and Defendant's brother, Jacob, and, thus, Defendant could not be and was not misled in any way as to any particular of the project.

28. Alternatively, Defendant had every opportunity to be briefed on any and all details of the project about which he now claims to have been misled.

29. Specifically, both Defendant Philip Ferderigos and Defendant Spiros Ferderigos agreed and represented this agreement to Plaintiff to mortgage their interest in 229 King Street in order to secure financing for the project, such agreement having been so communicated after all the facts related to the project and its financing were known to both Defendants.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

Mount Pleasant, South Carolina
April 29, 2016

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2016 APR 29 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Reply to the Counterclaims of Defendant Jacob Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 29th day of April, 2016, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2015-CP-10-03919
)
ATHAN FOKAS,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
PHILIP FERDERIGOS,)
JACOB FERDERIGOS, and)
SPIROS FERDERIGOS,)
)
Defendant.) DATE: June 8, 2017
)

B E F O R E:

THE HONORABLE J.C. NICHOLSON, JR.

A P P E A R A N C E:

STANLEY E. BARNETT and LESLIE S. LENHARDT
Attorneys for the Plaintiff

M. DAWES COOKE, JR.
Attorney for Defendant, Spiros Ferderigos

JOHN A. MASSALON
Attorney for Defendant, Jacob Ferderigos

JENNIFER HESS THIEM
Attorney for Defendant, Philip Ferderigos

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

THE CLERK: 2015-3919, Fokas vs. Ferderigos.

THE COURT: Anybody here on that? Is the whole crowd here on that?

If everybody will stand, and for the record, put on the record your name and who you represent.

MR. MASSALON: I'm John Massalon, and I represent Jacob Ferderigos. You can refer to him as Jacob. That's a lot easier to spell.

MS. THIEM: I'm Jennifer Thiem. And I represent Philip.

MR. COOKE: Dawes Cooke, representing Spiros Ferderigos.

MR. BARNETT: Stan Barnett. I represent Athan Fokas.

MS. LENHARDT Leslie Lenhardt, representing Athan Fokas.

THE COURT: Let me see. We got, what, several motions. One, plaintiff's partial summary judgment; is that right?

MR. BARNETT: Yes, sir.

THE COURT: As to claim and delivery, we have a motion to amend tax returns. And it looks like, what, two summary judgment motions?

MR. MASSALON: Your Honor, I think the motion on the tax returns has already been resolved.

THE COURT: That's been resolved?

MR. MASSALON: So I think what we got is all three of our clients have motions for summary judgment. Mr. Barnett has got a motion for partial summary judgment. And there may be a motion to quash a deposition subpoena that might not have gotten resolved yet.

THE COURT: Motion to quash by plaintiff?

MR. BARNETT: It's actually document subpoena, Your Honor; that's correct.

THE COURT: Has that been settled?

MR. BARNETT: It has not, Your Honor.

THE COURT: What do you want me to hear first?

MR. COOKE: We don't have any preference. Their motion for summary judgment is completely unrelated to our motion for summary judgment. Ours is just to the entire case by the plaintiff. And theirs is just a motion for partial summary judgment to the counterclaims.

THE COURT: Okay. So yours is -- how many causes of action do you have, Mr. Barnett?

MR. BARNETT: I believe three, Your Honor.

THE COURT: You got three? What are they?

MR. BARNETT: Breach of contract -- it's primarily breach of contract case, Your Honor. I have a cause of action for specific performance, although the motions today really on the breach of contract relate to the breach of

contract action for damages.

THE COURT: Okay. And you got specific points? What's the third cause? You said you had three.

MR. BARNETT: I believe it is for --

THE COURT: Second cause of action is breach of contract on the damages?

MR. BARNETT: Yes, sir.

THE COURT: And your first is specific performance. It looks like the third is violation of duty of care.

MR. BARNETT: Yes, the corporate statute.

THE COURT: Pardon?

MR. BARNETT: The duty under the corporation statute.

MR. COOKE: And our motion is directed all three to those causes of action.

THE COURT: Doesn't matter to me which one you want to hear first.

MR. COOKE: We are both too polite, but I'm happy to go first or let Stan go. Doesn't really matter.

THE COURT: Doesn't matter to me. I don't care. I will hear them all. I don't care what order.

MR. BARNETT: I'll dangerously volunteer.

THE COURT: Can you give me a second to read your complaint, because I know y'all have had several lawsuits. I want to see which one we are here on.

THE COURT: This was to renovate some upstairs apartments; is that correct?

MR. BARNETT: That's correct, Your Honor.

THE COURT: And refusal to move forward on the action?

MR. BARNETT: Yes, sir.

THE COURT: Go ahead. Explain it to me.

MR. BARNETT: What my motion is directed to is the counterclaims by two of the defendants, which is Philip and Spiros Ferderigos. Jacob does not have a counterclaim for this for defamation against my client related to communications.

THE COURT: That's about the burning of the building or something?

MR. BARNETT: One of their allegations for defamation claims that my client was running around telling people that they were accusing him of doing that. Their other allegations for defamation are that the defendants -- and, again, this is counterclaim by Philip and Spiros Ferderigos, not by Jacob Ferderigos -- that they did not agree to go forward with the plan to add additional rental suites at the building because Philip and Spiros were not able to eat for free at the Old Towne Restaurant, which is on the first floor of 229 King.

Another allegation is that Philip and Spiros do not

have good business sense.

Another allegation is that Philip and Spiros are bad business people.

And then the allegation, as you mentioned, that my client was telling people that they were accusing him of setting fire to the building to collect insurance proceeds.

We have concluded discovery. Discovery was over, I believe, in the middle of February in this case. And as a result of discovery, I filed these defendants' responses to interrogatories, as well as some parts of deposition testimony, and then an additional affidavit for my client and an affidavit from the manager at Old Towne Restaurant.

One of the problems with their case, I believe, is that there's no evidence of publication. There has to be, of course, publication of the defamation. And they were not able to identify anyone to whom they say my client communicated these statements. They said in their interrogatory responses they thought -- I'm paraphrasing -- that they communicated this to his mother, Irene Fokas; to Justin Hansen, who is a management at the restaurant; to Kevin Carroll, who is a contractor who did the construction of the existing rental suites and who would have been on board to do construction for the additional rental suites.

They noticed Mr. Carroll's deposition, but did not take it. And there is no affidavit from Mr. Carroll. So

Mr. Carroll is silent on this issue.

Mrs. Fokas, I believe her deposition testimony pretty clearly indicates that she did not testify that her son told her any of these things. Mr. Hansen says, without qualification, he was never told any of these things.

Mr. Carroll, of course, is silent.

In their memo that they filed on Monday, they mention an additional person, Kevin High, that they say he might have told these things to. Mr. High is silent. We have no affidavits. We have no deposition. We have nothing related to Mr. High. I will tell the Court that a subpoena to Mr. High and a companion, supplemental discovery request for my client for all communications of any kind between my client and Kevin High since some time in 2011 is what they asked for. And I objected to that. I said it was too broad.

I offered to the defendants that my client would provide whatever communications he had related to this project, to 229 King, to any communications he had, if any, with Mr. High about the defendants. But I have not had any response to that.

So as we sit here today, we have not -- they are correct -- we have not produced all communications since some time in 2011.

Mr. Fokas and Mr. High are friends. Their wives

are friends. They do family activities together. A lot of these e-mails are personal. And my position was this was overly intrusive. It's really not within the scope of discovery.

So just to give you a little more background, in their responsive memo, they say, well, we don't know what the communications are between Mr. Fokas and Mr. High. And the record is, so far, that's true. It's quiet. We don't know anything from Mr. High. They didn't ask to take his deposition. And there is no affidavit from him. So on the record as it stands now, my position is there's no evidence that Mr. Fokas said any of these things to third-parties.

What their position is, if I might take the risk of characterizing, they say, well, you have all these e-mails and some text messages which goes from Mr. Fokas out to all three of the defendants.

At the time when they were arguing about this dispute over whether there was a contract to add the floors to this building, he says: You are acting like you don't have good business sense; you are acting like you don't want to do this job because you can no longer eat for free in the restaurant, things like that.

My position is, I don't think that's publication. They are all defendants. They are all defendants in the same case. These are communications to all together. Seems

to me, that hardly constitutes publication to third-parties. And there's been no indication that any of them thought less of each other because of these communications from Mr. Fokas.

My other argument, which I believe is perhaps more compelling, is that the statements that they say he made simply do not constitute defamation. To say that within the context of this alleged agreement to build these additional floors, that it wasn't good business sense not to do this deal, that hardly constitutes a blanket accusation that the defendants don't have good business sense. It clearly was in the context of this deal. I don't think that constitutes defamation. If that's defamation, then all of us need to up our liability insurance coverage, because no one can live their lives, it seems to me, without committing daily defamation. Anytime you disagree with somebody, it's going to be defamation.

Similarly, to say that they didn't do this deal because they couldn't eat for free, well, I'm not sure -- that may not be a nice thing to say from their standpoint. May make them uncomfortable, but that is hardly defamation. It doesn't slander their honesty or their integrity or anything else. It's a critical comment.

The cases that we cited to the Court about defamation, there are a number of them that make this point,

that many things which are said, which are critical, unflattering, are not defamation.

The one case that stands out in my mind, I'll burden the Court with reading from my memo, is the case where someone says, well, he can't get bonded out. Somebody said he can't get bonded out. And that person sued the person that said that. The courts said, well, there are many people that can't get bonded out, happens every day. May not be flattering, but it's just not defamation.

And I think this is on an even lower scale than that. These people were angry with each other. They were disagreeing about this business deal. There was this arrangement that had been in place for some time where Mr. Fokas and his family could eat in the Old Towne Restaurant on the restaurant's dime. These three defendants, their families and so forth, could eat there on the restaurant's dime.

When this argument came to be, Mr. Fokas said, look, I don't have the restaurant, me and my father own half the restaurant, whatever, we shouldn't do this anymore. And they became enraged. And that's where those comments came from.

So he's saying to them, now you are not going to go through with this deal because you can't eat in the restaurant for free, that isn't an argument. It's about

something that meant something to these people. That may not mean anything to the rest of us in this room, but it meant something to them. But it's hardly defamation.

I don't think there's any evidence of publication to third-parties. And I don't think that these statements constitute defamation.

THE COURT: Are these the only two statements they are alleging?

MR. BARNETT: There are four of them, as I've broken them out from their counterclaims. One is that the defendants did not agree to go forward with the plan because Philip and Spiros could not eat for free at the restaurant; secondly, that Philip and Spiros do not have good business sense; the third one is very similar to that, that Philip and Spiros are bad business people, he is alleged to have told people.

THE COURT: What was the third one?

MR. BARNETT: That Philip and Spiros are bad business people, just not good at business; and the fourth one, that Phillip and Spiros were accusing Athan of setting fire to 229 King Street.

THE COURT: Talk to me about the fourth one.

MR. BARNETT: Fourth one, there doesn't seem to be any proof here of publication to that. Mr. Fokas has sued them for defamation, which I am not representing him. Ms.

Lenhardt is representing him in that case. Your Honor denied summary judgment in that case. So that case goes forward. But aside from the allegations in the litigation, they have not identified any publication by him to third-parties of that allegation. That's publication.

Now, that would be a -- to say that people had made this accusation, if they did so falsely, and obviously for bad purposes, that would be defamation.

THE COURT: Statement itself is defamatory?

MR. BARNETT: I think it would be defamatory. I can't argue. Particularly for lawyers, that would be defamatory. But there's no evidence of publication to that one. The other three, I think, are just angry statements. May be opinion, but they are not really defamation.

THE COURT: Okay. Anything else?

MR. BARNETT: No, sir. Thank you so very much.

MR. COOKE: Thank you, Your Honor. First of all, we did file a memorandum with exhibits. So all the statements that we are claiming are set out in there. And they are in two groups. One is things that are actionable per se. And others are statements that are not actionable per se, but the jury would have to determine the context.

THE COURT: Are there more than the sworn statements we've been talking about?

MR. COOKE: Yes, there are. Those are the four

that are actionable per se. But in our memorandum, we discuss these additional statements that would have to be determined.

THE COURT: Why do you think, "you can't eat free anymore" is actionable per se? I mean, there's a lot of people that can't eat for free. I mean, what's defamatory about that at all?

MR. COOKE: That actually -- I don't think that's the one -- I don't think that's one of the actionable per se ones. I think that's one of the actionable -- can I go through each one of them with you?

THE COURT: Please do.

MR. COOKE: So the reason that these are defamatory -- and they sound like just sort of spats, but you already heard our summary judgment motion on their claims for defamation in the other case, and I won't rehash that. But those are the statements about allegedly burning down the restaurant and committing insurance fraud. We moved for summary judgment on the basis there's literally no evidence that they had made those statements. You permitted them to amend the complaint to be more specific. And that's where that stands now.

But this all kind of centers around this ongoing dispute about building these additional apartments over the Old Towne Restaurant. And the reason that these statements

are so hurtful to the defendants in this case is because they were part of a campaign to bludgeon them into doing this deal when they had decided not to go forward with the deal.

THE COURT: But that happens in every business transaction, doesn't it? When there's a disagreement, people start, for lack of a better word, bad-mouthing each other, trying to get them to agree. What's sort of unusual about that, just because they had a business over whether to proceed or not proceed? Why does that in itself make it defamatory?

MR. COOKE: If it's false, it's defamatory. And the jury would have to listen to the evidence to determine whether this was a false statement. But to go to their family members and their business associates and say that, you know, this deal didn't go forward because you are a bad businessman, this didn't deal go forward because you are being petty because of not being able to eat, when, in fact, the reason it didn't go forward is because they couldn't reach an agreement on the way that the deal was to be financed, which we are going to get to in a few minutes on our summary judgment motion. So they harmed their reputations in the face of their closest associates, which are their family members and their business associates.

I mean, Jacob is a brother, but he's also a

business associate. Philip is a brother, but he's also a business associate. Some of these statements were made to their aunt, who is Athan's mother.

But the one statement in particular, this was in a text message that was communicated both to Spiros but also to Philip and Jacob, and it says: Speaking of fiduciary duty, I was shocked when I read in Stan Barnett's affidavit that you Spiros Ferderigos told them that it may be your fiduciary duty to inform the police, as a current solicitor, that you should tell them that I was involved in the fire at Old Towne without any proof whatsoever. That is a grave error from a solicitor. Does your boss know about that comment you made? Who exactly is your boss?

And that led to Jacob, who is not a lawyer. He's a restaurateur, but he's their brother. So I believe that a jury would be entitled to determine that --

THE COURT: So you think the publication was to the brother?

MR. COOKE: Yes, in that particular instance. Now, the statement about being a bad businessman, that was made directly to Irene. And in her deposition, we included excerpts of that in the record. She said, I heard that from Athan.

The statement about, if this deal is dead and you guys will not go forward unless you get to eat free at Old

Towne, I would like my expenses back, and so forth. And he says, I'm going to enjoy spreading the word. And says, I have cc'd my wife on this e-mail so that she will be informed of all my conversations, because we are life partners.

So that's a publication. She's not a party to this deal. That's a third-party. And a jury may listen to all of this and say, well, these are just cousins in a business dispute. But they may also say it was defamatory for him to use statements that are demonstratively false and publish those to people who are in a position to put pressure on them, specifically their very close family members. And if it's a false statement and it's not privileged, it's defamatory. And that's up to a jury to decide.

The mother testified in her deposition, she says --

THE COURT: Why is it false? They may not be good business people. I don't know.

MR. COOKE: We have to prove that.

THE COURT: You are telling me it's false. How do you know it's false?

MR. COOKE: Well, I don't think you can decide that on summary judgment.

THE COURT: I understand, but I was just asking that question. You keep saying it's false, it's false.

MR. COOKE: We are actually going to explain that

indirectly when we show you our motion for summary judgment. And you will see the reason they didn't go forward is because they couldn't agree on the terms of financing. It wasn't because they couldn't eat free. And it wasn't because they are stupid business people. But all of this --

THE COURT: They didn't use the word "stupid".

MR. COOKE: That's true. That's true. Bad business --

THE COURT: That's a lawyer add-on.

MR. COOKE: Right. Exactly. That was also --

THE COURT: Stupid may have been a different situation. Okay? Stupid is as stupid does.

MR. COOKE: That is true. Bad is as bad does.

Now, the financial point I would like to make on that is that this Kevin High subpoena is an important matter, because Kevin High was the property manager. He's the only one in this whole group that's not related somehow. But he was the property manager for the LLC. And we have a subpoena out to him for all of his communications with Athan, because they are not only close friends, but they were business associates. And so we would like to at least get a response to that subpoena and have that resolved before it's determined whether there's any publication. Because it's very likely that all of these statements were repeated probably in a more assertive form to Mr. High.

So, anyway, those are the statements. And they are all set out specifically in the brief. One of them in particular is that he told his mother, Athan, who was there, Ann, that they were going to go out and defame him by telling everybody that he had burned the restaurant down and had committed insurance fraud. And that's a pretty damaging thing to say to somebody's relative, that you are going to go out and defame them. And we've already argued about why there's no evidence whatsoever that they actually did that, but she said that Athan told her that the boys were going to go out and defame him. So that's another defamatory statement if it's false. And we believe we can prove that it's false.

Here's one. Spiros -- this was in writing: Spiros, you have already been proven to have lied in your deposition. I think that may be grounds for disbarment. Continue to lie and see where that gets you.

Again, that was copied to the brothers as well. And that's an exhibit to the memorandum.

So, anyway, we've probably all heard worse cases of slander. But in the aggregate and the way they were used and the people to whom it was published was particularly harmful to my clients. And we just feel like there's a jury issue as to whether they were false and whether there was any privilege associated with them, and what damages, if

any, they suffered as a result of those statements.

THE COURT: Okay.

MR. COOKE: Thank you.

MS. THIEM: Your Honor, I agree with everything that Dawes said. And I won't belabor and go through these statements individually, but I did want to raise a couple of points.

One of the issues that plaintiff raised was whether it could be defamation if it was published to Jacob and Philip and Spiros, who were all in this potential project together. But at the time that these statements were made, they were not all three defendants in a lawsuit. So this wasn't made in the --

THE COURT: I don't know if he said it was in the lawsuit or they were in a business deal together, or potential business deal together.

MS. THIEM: He referenced defendants. And I just want to be clear that there was no litigation privilege.

THE COURT: All in a business deal together, I think that's what he was referring to.

MS. THIEM: They were trying to --

THE COURT: Is that correct, Mr. Barnett?

MR. BARNETT: That's correct.

THE COURT: I don't think he was referring to the lawsuit. Okay? At least I interpreted it that way. Okay?

MS. THIEM: Okay. Second, in the materials, in Phillip's materials, and I will be happy to hand up a packet for Your Honor to look at it, we included e-mails and texts in which the plaintiff is confirming that he also published these things to my client, Philip and Spiros's father, and that he also published them to their uncle.

THE COURT: Said he did that. He just said he published it to somebody else, right?

MS. THIEM: Yes.

THE COURT: Did those people verify that? Did the people verify it?

MS. THIEM: We do not have an affidavit from those people, but the plaintiff does say, I just spoke to your dad --

THE COURT: I understand the plaintiff said, I'm going to tell so-and-so, but that doesn't mean that he told them.

MS. THIEM: I think that would create an issue --

THE COURT: What kind of issue would that create?

MS. THIEM: -- of there being a publication. If the plaintiff himself is saying that there's a publication, it seems to create an issue that, indeed, there was a publication sufficient to get to a jury on this. Plaintiff himself could have gotten an affidavit or deposed those two individuals to try to knock out this --

THE COURT: Did you all take their deposition?

MS. THIEM: We don't need to. Plaintiff admitted that he said these things. If we wanted to --

THE COURT: He didn't say he said it. He said, I'm going to tell someone --

MS. THIEM: No, he said he told them. He said, I just spoke to your dad and he doesn't think everyone should eat at Old Towne for free either.

And then he said, I expressed your thoughts to Uncle Fanouris, and for what it's worth, he thinks nobody should eat for free and he says it's become childish.

THE COURT: You are saying eating for free is defamatory?

MS. THIEM: I do agree it's defamatory, yes, sir. In the context of this lawsuit, I do. Because what the plaintiff is claiming is that the project did not go forward because they could not eat for free.

THE COURT: It may be an element of your lawsuit, but go ahead.

MS. THIEM: But it's not an element of his lawsuit. In his lawsuit instead, he alleges --

THE COURT: I shouldn't say an element. It should be part of the evidence that you can bring out in the lawsuit of breach of contract or whatever.

MS. THIEM: Yes. Yes. So that the final point

that I did want to add is that these -- the three brothers, the Ferderigos brothers, are not only in this Old Towne business together, but they also own properties in South Carolina and in Greece together. So it's beyond a business partnership that extends to this one deal. So the statements that were made do go deeper than things exchanged in one transaction, because these are things that could affect their relationship as partners in these other transactions.

That's all. Thank you.

THE COURT: Thank you so very much.

Yes, sir, Mr. Massalon.

MR. MASSALON: I'm going to take a pass on this one.

THE COURT: You are what?

MR. MASSALON: I'm going to take a pass. I don't have anything to add to what these lawyers are ...

THE COURT: That's unusual.

MR. MASSALON: It is unusual, but I like to surprise you every once in a while.

THE COURT: You sure did. Thank you very much.

All right, Mr. Barnett.

MR. BARNETT: First of all, the two parties that have alleged this counterclaim, which is not Mr. Massalon's client, but Philip and Spiros, they are lawyers. They do

own property. Even my wife and I own a little property. But they are lawyers. That's where they make their money. They are not business people in the sense of the normal business arrangement. And the --

THE COURT: What about the statement that the lawyer's line, he's going to have him disbarred? Isn't that illegal as a lawyer? Isn't it defamatory on its face?

MR. BARNETT: If he went to his boss and said that, that would be a different matter.

THE COURT: Why do you think the publication to the brothers is not publication? I'm not sure I understand your argument on that.

MR. BARNETT: I did look for -- I can't find any case law.

THE COURT: I mean, it says third-party. So the two brothers are third-parties. Your client is allegedly saying it to one brother, and the other two brothers hear it. Why isn't that publication? I don't follow you there.

MR. BARNETT: It just seems to me that if it's in the context of a dispute between those three people and this guy, and this guy says things to all of them, that doesn't seem to me to be in the realm of publication to third parties. But the point is, he didn't go to Spiros Ferderigos's boss. He didn't go to anybody. It was all

within the context of this group of people who had this business arrangement. That's where I'm coming from.

I couldn't find any law. And maybe I'm just not good enough, but I did look. I didn't find anything about that specific area.

THE COURT: Go ahead.

MR. BARNETT: In terms of the statements about particularly Athan's mother, her deposition transcript just simply does not say what Mr. Cooke said. What she says is, she's asked, okay, so then as a result of what your son Athan told you, do you think that Phillip and Spiros are bad business people? And she says yes. I mean, what he has told her is, you know, we have this deal, we will make a lot of money.

And elsewhere in her deposition, she talks about that: I don't know why they don't go forward with this deal. Everybody will make a lot of money and we don't have to argue.

Well, she's free to make her own conclusion, seems to me, that not going forward with that deal is a bad business judgment. But she never testifies that he said to her, mom, they are bad business people. She just doesn't say that.

And, similarly, there is nothing, absolutely nothing that indicates that Athan Fokas said to his Uncle

Steve, or Stavros, any of the things that are alleged. What he says he said to Stavros is, there's -- what he said Stavros told him: I agree, nobody should eat for free in the restaurant. And then Irene and Stavros's brother Fanouris agreed and said the same thing.

There's nothing that indicates that Athan ever said to any of these people, this deal is not going forward because these guys can't eat for free in the restaurant. The only evidence is he said that in these text messages and I think some e-mails to the defendants. But there's just not any evidence that he said it to anybody else.

THE COURT: Well, if, in fact, you are wrong about the group and the brothers, okay, why wouldn't the fact that he said he's lying and I'm going to have him disbarred affect the lawyer, per se?

MR. BARNETT: That would be --

THE COURT: And same thing about the burning or the arson. I mean, I can't see how both of these statements are not defamatory.

MR. BARNETT: I would agree. I can't with a straight face say they are not.

THE COURT: So if your theory about just the three of them is wrong, then your motion would be denied. And my problem with -- I think eating free, I want to say I think that's just sort of silly to say that's defamatory. But

that's neither here nor there. I understand what their argument is, but I can't say I agree with it.

And some of the other statements about, you are a bad businessman, I mean, that's just --

MR. BARNETT: I can't disagree with you.

THE COURT: But I don't know how you can address what's being said on your partial for trial down the road. Might be better dealt with at trial, if, in fact, your theory is wrong about publication.

MR. BARNETT: Yes, sir. I think that's correct.

THE COURT: Pardon?

MR. BARNETT: I think that is correct.

THE COURT: All right. Anything else?

MR. BARNETT: No, sir, not on that.

THE COURT: What's the next motion? I've got to decide whether his theory is right on publication.

MR. COOKE: I understand.

THE COURT: Do you all have any cases on it at all?

MR. COOKE: All they say is third person. And so if I defame you to you, that's not defamatory.

THE COURT: Right.

MR. COOKE: But if it's to a third person, and in this case, they are not agents or representatives, they are brothers and business associates. So, anyway, no, to answer your question, we don't have a specific case on that.

THE COURT: Okay.

MR. COOKE: Next one is not nearly as interesting, but it's very important.

THE COURT: It's not about eating free, huh?

MR. COOKE: It's not about that. This is a motion for summary judgment as to the entire plaintiff's case. And this is kind of what we've been circling around for a year and a half, or however long this case has been going on now.

This lawsuit has to do with -- it's a breach of contract lawsuit that the plaintiff brought against his cousins. And it's to enforce an oral agreement to build these apartments and to mortgage their respective interests in the building that houses the Old Towne Restaurant, which is at 229 King Street.

THE COURT: How many apartments were they going to have?

MR. COOKE: By the time they got down to the end, it was going to be six new apartments. They already had two.

THE COURT: So it was going to be a total of six, build four more?

MR. COOKE: No, six more.

THE COURT: So total of eight?

MR. COOKE: Right. And they were going to build and actually add a new building to the top of their existing

building, kind of right over it, to house these. And so there's -- it's a suit for a breach of an oral agreement to build this building and to mortgage their interest in 229 King Street. To remind the Court --

THE COURT: Excuse me just one second. All right. Go ahead.

MR. COOKE: This is an action to enforce an oral agreement to build this building and to mortgage their interest in 229 King Street. The building was originally owned by their fathers, who were brothers. And they handed them down to their children. So Athan owns one-half of the building. And the three brothers each own a third of the half. So, collectively, they own all of the building. There's no debt on that building. They owned it free and clear.

THE COURT: They already had two apartments?

MR. COOKE: Up on the second floor.

THE COURT: Added the third floor, or was the third floor already there?

MR. COOKE: No, they were going to build a whole new third and fourth floor.

THE COURT: So they were going to build a third and fourth floor? And Mr. Massalon said the architect review board would approve that height or that add-on?

MR. COOKE: Well, they went through -- they got

architects. They got everybody --

THE COURT: Had gone by the architect review board?

MR. COOKE: Yes.

THE COURT: Or never got that far?

MR. COOKE: No, got that far.

THE COURT: It got approved?

MR. COOKE: By the way, this was going to be a fourth and fifth floor.

THE COURT: Fourth and fifth? And they've already been approved?

MR. COOKE: Right.

THE COURT: Okay.

MR. COOKE: So the claim is that they, even though there was never a written agreement, that they orally agreed to build this building as specified and to mortgage their interest in the 229 King Street to help finance it. And so the reason that that claim fails is --

THE COURT: All of this is on an oral contract?

MR. COOKE: Yes. That's what my motion is all about.

THE COURT: I understand. Go ahead. Was there a meeting of the minds on all of this? What happened?

MR. COOKE: No, no. There was certainly a meeting of the minds on this is something we should explore, it would be a great idea for us to do it. But like so many

deals, the devil is in the details. And when it came down to actually signing the deal, they could not agree on the details in the financing.

THE COURT: Was financing it terminated, or part of what they were going to do?

MR. COOKE: No. That was -- the latter may have turned out to be a problem, because they never did come to rest on what the exact cost of all of this was going to be. But they didn't get quite that far because the deal fell apart because they couldn't agree on the financing. That's what I want to talk to Your Honor about.

The case fails because there's no meeting of the minds. And the statute of frauds is going to bar the claim. And the statute of frauds bars the claim because of two things. One is, part of this deal is that they were going to mortgage their property for 20 years to finance it. And also, it would involve an interest in the real estate.

So there are two provisions of the statute of frauds that applies. One says that it applies to any agreement which cannot be performed in less than a year. 20-year mortgage or 5-year mortgage cannot be performed in less than a year. And it does involve an interest in real estate, since a mortgage is an interest in real estate. And, thankfully, I think anybody who does real estate will say, thank goodness we don't have oral mortgages in South

Carolina, because it would make it pretty difficult to do real estate practice.

But before we even get to that, if I could, I'm going to show Your Honor some exhibits and some deposition testimony that's already in the record. The plaintiff has submitted most of the deposition of Athan Fokas. And most of these exhibits were already exhibits to our Answer and Counterclaim. So can I hand them up? And I'm going to try to go through them pretty quickly.

MR. BARNETT: Before he does that, I rarely am this picky, but this is their motion. This is their motion. They filed absolutely nothing in support of this. The Court's order said file three days in advance. I filed, even though there wasn't anything in there --

THE COURT: Let me say this. I understand. Anything they have filed today and you haven't seen, I will give you an opportunity to reply to.

MR. BARNETT: I don't like to be sandbagged.

THE COURT: I understand your objection, and I agree with it, but that's sort of the way the system works sometimes. It would be nice to get it beforehand, but that doesn't happen. And I know we put it in these orders, but nobody pays any attention to it.

MR. BARNETT: I do.

THE COURT: Some people do. And it's nice to get

it beforehand, but I will give you whatever time you need to reply. All right?

MR. BARNETT: Okay.

THE COURT: Go ahead.

MR. COOKE: First thing I'm going to hand up is an excerpt from a deposition of Mr. Fokas.

THE COURT: Can I ask Mr. Barnett a question real quick before we get into all of this?

Tell me why the statute of frauds doesn't apply on the two issues, on the one year and the mortgage? Number one, do you think the statute applies? And number two, is there an exception? How are you going to get it out of the statute of frauds?

MR. BARNETT: Strongest argument is there was strong part performance.

THE COURT: You think it does violate the statute of fraud because of partial performance?

MR. BARNETT: I don't think that it necessarily does, but I'm not sure you need to get there. They spent $89,000 after the evidence shows there was an agreement, evidence from which a jury could conclude --

THE COURT: I don't want to cut you off, but you've answered my question, partial performance.

MR. BARNETT: Part performance is the strongest argument.

THE COURT: All right. Let me hear to you.

MR. COOKE: I'm going to get to the part performance, but not until the end.

THE COURT: Why don't you get to it now while it's on the mind.

MR. COOKE: It's not partial performance because the law is that for partial performance to get you out of the statute of frauds, it has to be performance that is specific to the actual promise that you are trying to enforce. It can't be something that you were going to do anyway or you were doing anyway because of the relationship of the parties.

And there's a case -- let me get my case out here. This is *Aust v. Beard*, 1957 case, and it says: Where a party seeks to secure a parol agreement from the statute by showing possession and improvements put upon the land, he must show "acts of performance or part performance by him which relate clearly and unequivocally to such agreement, exclusive of any other relation between the parties touching said premises.

And the complaint alleges that they spent $89,000 to get all of the approvals, get the architects, engineering, drawings and so forth. In paragraph 28 of the claim, parties entered into part performance in furtherance of their agreement and the form of payment of a total of

$86,000 in fees for engineering, architectural work, planning and zoning approval and design work. So that by the time the final loan package was offered by the bank, all designs and plans and all zoning approvals for the project were complete.

And then Mr. Fokas admits in his deposition that that $89,000 was all spent not because it has anything to do with this agreement to mortgage their interest, but it was to investigate and complete the plans to construct this building. In other words, they would have had to have been done in any event. Whether they ever consummated this deal or not, those were all the things they had to do to get to the point of being able to reach an agreement on mortgaging their property.

It says at page 65 of his deposition, he's asked this question: Before I get to Exhibit 2, a couple of things I want to clarify. One is the 86,000 or 90,000 or 92,000, whatever that was spent, were those all expenditures pursuant to trying to build the project, build the new building?

Yes.

In other words, whether there was ever -- it was completely independent of their having been any agreement to mortgage their interest in the property. So that's why partial performance doesn't apply, because they all paid

their share of the investigatory work and the background work that had to be done to get to the point of trying to make a deal. All of that would have had to have been done whether or not they had an agreement to mortgage the property.

Now, here's what happened to the deal. They all -- my client doesn't deny that they wanted this project to work and that they got right up literally to the -- almost to the bank's steps to do this deal before it fell apart. There's a question of fact as to whether they agreed initially to mortgage their interest in the property. But for summary judgment purposes, I'm going to save you wading through deposition and weighing evidence. Mr. Fokas said they agreed sitting on a bench outside their church back in 2012 that they were going to go out and do this project. And they were going to get a mortgage. It was going to be a 20-year mortgage at 5 percent. That never happened.

So giving him the benefit of the doubt that that was their agreement, and I've got some exhibits that document this, but he says here in the actual note that I just handed up, he says: We discussed that we had a 5 percent note and that it was a 20-year, 5 percent note. Once we got a commitment letter, then that was our deal. And I just say, we got a deal that we wanted, five percent with a 20-year note.

And then it says: So what you told me was that you discussed with them that it was a five percent, 20-year loan?

Yes.

And then he acknowledges that there was never any agreement in writing. On the next page, pages 37, 38, he says: Well, I discussed it. I mean, it might have been at a church or one of our functions, but, you know, we mortgaged the building, the bank gives us the money, we have the income stream from the original suites to show the successful project, and that's how they gave us the loan.

So your testimony is that you told them that orally?

Yes.

Not in writing?

No.

And then what happens is that they go forward. And at some point, he believes that he has gotten this 20-year, 5 percent loan. And he says in an e-mail -- if I can hand that up. Moving forward in time, this is now in September of 2014, this is within a month of when they are supposed to close this deal. And he says --

THE COURT: Did he have a commitment from the bank before this, what you are telling me now? Did he get a letter of commitment from the bank?

MR. COOKE: He did get one.

THE COURT: Before this last one you are going to tell me now? When did the letter of commitment come?

MR. COOKE: He got a commitment letter in February 2013, but they weren't going to be signing the note at that point. All they were going to do --

THE COURT: Had all the $86,000 been spent prior to the commitment letter or after the commitment letter?

MR. COOKE: I would say right up until the closing. It was being spent up until October of 2014, because they had architects, engineers --

THE COURT: So some of the money was spent after the commitment letter?

MR. COOKE: I would say so. I would say so, yes. I think it was being spent --

THE COURT: May not make any difference, but go ahead.

MR. COOKE: So here's the problem. Mr. Fokas believed that he had secured -- and this is within weeks before the closing. He believed that he had secured a 20-year mortgage at five percent, but he didn't. And this is the testimony of the bank officer.

THE COURT: What did he secure?

MR. COOKE: He got a five-year mortgage.

THE COURT: A five-year mortgage?

MR. COOKE: Five-year mortgage.

THE COURT: Was it a rollover?

MR. COOKE: No. It was a five-year with a balloon payment.

THE COURT: Balloon at the end?

MR. COOKE: Yes, balloon at the end.

THE COURT: No provision to roll the balloon into something else at the end?

MR. COOKE: No. They could re-apply for another loan. But what the bank agreed to do was, they said, we are going to amortize it based on a 20-year schedule. In other words, the payments were set up as though it was going to be a 20-year loan, but it was a five-year loan.

THE COURT: Was this rental problem, or they were going to sell these apartments?

MR. COOKE: They were going to rent them, short-term rentals, right.

THE COURT: Short-term rentals?

MR. COOKE: Right. So it would be people coming in for vacation and that type of thing.

So the testimony of the loan officer was, he says:

"What was the term of the loan?

"The term was 60 months. So it would have matured in 60 months, but the payments would have been based on a 20-year amortization schedule.

"So where it says the monthly payments will be based on the 240-month amortization schedule, does that mean it's a 20-year loan?

"Answer, no.

"So when is the balance of the $1.8 million due under this proposal?

"It would have been six years from the closing date.

And then he was asked, "Are you in any way saying that they will have 20 years to pay off this loan?

"Answer, no. They would have five years plus one year to pay off the loan in writing.

"If I were to tell you even today Athan thinks that the loan was for a 20-year loan, would that be a misunderstanding of what you were offering?

"Yes.

"And the note that you prepared, note and mortgage and all that did not provide for 20 years, did it?

"No."

So here's an e-mail from December of 2012. Don't need to spend much time on it. But this is talking about the evolution of their financing. And this is an e-mail from Spiros, my client, to Athan. He says, "Assuming all that pans out, there will be a continuing issue of how we finance. If the bank is looking for me -- and I assume this

goes for Philip as well, but I will let him speak for himself -- to personally guarantee a loan, I am not going to do it."

He says, "There's too much that can go wrong with personal guarantee. I'm confident that Philip, Jacob and I will be able to come up with our end of the amount needed. And we can move forward without accumulating debt as we did for the first round of units."

He goes on and said, "I, for one, have plenty of money sitting in a bank account to share the additional units."

In other words, it was originally conceived they were not even going to be parties to the loan, let alone mortgaging their interest in the property. But even giving the plaintiff the benefit of all the doubt, it's clear that even though he says they made that deal back in early 2012, they have never come to terms on the essential elements of the deal. I don't think we even disagree on what the law provides.

I noticed in the plaintiff's memorandum of law on page four, he states the law very well and he says, "The essential elements of a contract for construction are typically described as the price, the method, and schedule of payment, and the scope of the work to be done."

And he also says on page 5 of this memo, and we

agree with this, "For a contract to be valid and enforceable, the parties must have a meeting of the mind as to all essential and material terms of the agreement."

So during the course of this negotiation and investigation over the course of the years, two years leading up to what was to have been the closing, they had not yet settled on the scope of the work. Originally, it was going to be four units. And then it turned into six units. Originally, it was going to be a $1,000,000 and turned into $1.8 million. And even at the time of closing, they weren't sure what the total price was going to be.

And as I probably belabored the point too much, the terms of the financing were never understood or agreed to. There's a memorandum that Athan's sent to the banker after the first aborted closing where he acknowledges, talking about Spiros, "He did not know he had to sign the paperwork on the mortgage until the closing attorney notified him." This is in October of 2000 --

THE COURT: What was this? This was an LLC or what?

MR. COOKE: They had an LLC, but they were doing this individually.

THE COURT: Why would anybody think they didn't have to sign the note individually if they were doing it individually? I mean, that's just ridiculous.

MR. COOKE: Because they weren't going to borrow the money.

THE COURT: They weren't going to borrow the money?

MR. COOKE: Originally --

THE COURT: The bank wasn't going to lend the money unless they had a mortgage on all the property, not half of it, at all.

MR. COOKE: This is not even the property that they were building. This is the restaurant that had no mortgage on it.

THE COURT: Okay.

MR. COOKE: When they got up to this October closing and they realized that he needed them to mortgage, they said, okay, that wasn't the deal, but we are willing to do it if you will sign a document that provides for what will happen if you don't pay your share. And, ultimately, Athan would not sign it. And that's why the deal never closed.

THE COURT: Okay.

MR. COOKE: So my point was, this is a quintessential oral agreement to mortgage property and to build a building that was never documented in writing. They never signed one thing to assent to mortgaging their interest in this property. And when it came down to finally sitting down and negotiating the terms of under what

circumstances would you mortgage your interest in this property, Athan wouldn't agree to sign the document that Philip was requiring that he sign.

And I've got some exhibits for that as well. This is just an e-mail that Spiros sent after the fact that summarizes the evolution of their agreement.

THE COURT: Let me understand. If the plaintiff had signed this agreement, your clients were going to still sign -- agree to sign the mortgage and the note?

MR. COOKE: Right. They were willing to change the deal, change the agreement, and mortgage their interest and participate in this financing. And they would have done it if he had agreed to sign that document. But he wouldn't do it.

And you asked the question about was there an LLC. There was LLC that owned the original apartment buildings. And the bank had put them -- even though it wasn't part of the deal, when they got the closing documents, they realized that the bank had put the LLC on the obligation as well.

THE COURT: You know the bank is going to drag in everything they can drag in.

MR. COOKE: That's why we have closings and we put things in writing, so that everybody understands what they are agreeing to.

THE COURT: There's no way they can agree to all

these -- I want to call them "nices" if the bank is going to require you to borrow the money beforehand. I mean, basically, all you can agree to is you are going to obtain reasonable financing. I mean, the bank is going to set the terms.

MR. COOKE: Except that's not what Spiros --

THE COURT: I understand what you are saying. I mean, I just don't think you can sit there and say that there was no agreement because the terms weren't spelled out as far as -- the bank sets the terms on borrowing the money.

MR. COOKE: That's true, except in this particular case, he says that his oral agreement was, we are going to get a 20-year mortgage.

THE COURT: I understand.

MR. COOKE: That's true. There are plenty of written real estate contracts that have a contingency for financing. And you can sign -- I've signed them myself, where I signed it and it's subject to satisfactory financing. This wasn't that situation.

Additional thing I wanted to show you was that the price, I think I said this, the price went from a million dollars, according to what --

THE COURT: To 1.8.

MR. COOKE: -- to 1.8. And even at the end of the 1.8, they didn't know whether that was going to cover

everything because they found out at the last minute that they had to have a sprinkler system that was going to cost somewhere between 10,000 and $100,000. He was asked --

THE COURT: Who was requiring the sprinkler system?

MR. COOKE: The city, fire marshal. Says, "What was the cost of the sprinkler system?"

He said, "I'm not sure. Like, we have to -- I'm not sure if we got a number on that.

"Okay. Can you give me a ballpark?"

He said, "I don't know. I've seen some number, 10,000 to 100,000. I have no clue what the sprinkler -- there are three or four guys out there, to play them against each other and try to figure out the best deal."

That was Athan's testimony on the sprinkler. That's further evidence that they never had a meeting of the mind. That's not to say given the fullness of time, they might have agreed to it later. But they didn't agree to it. And the deal fell apart before they reached agreement on all of these elements.

Here's another document that says -- this is Athan's testimony on page 267, "So you are saying you will sign the side agreement, but you put on that a contingency that you would like assurance from my client, correct?"

This is Mr. Farrier asking Athan. He says, "I wanted to make sure he was coming up with the money. Right.

And he never provided that to you, did he?"

In other words, when it came down to trying to do the deal, what Athan's said was that he will only sign this agreement if Philip would sign the same agreement. This is Exhibit M to the answer and counterclaim.

And this is an e-mail from Athan to the rest of them dated November 2014, after the deal had fallen through. He says, "I am not interested in you trying to bully me into signing any type of side agreement. That is unnecessary. My attorney, as I said earlier, strongly was against it."

So, Your Honor, all of this, I think, is well characterized in the fairly recent case by the Supreme Court called *Stevens & Wilkinson of South Carolina v. The City of Columbia*, decided in 2014. I have copies I can hand up. And this is one where there actually was a written agreement in this one. It was an architectural firm that was retained by the City of Columbia to do a bunch of urban renovation work for them. I think there was a civic center or something involved. And they actually had a memorandum of understanding. And they performed the things that they had to do to get to a final agreement. But the Supreme Court said, you didn't reach a meeting of the minds on the essential elements of your agreement; therefore, you don't have a contract.

And what they said is very significant. Says,

"Frequently, agreements are arrived at piecemeal, with different terms and items being discussed and agreed upon separately. However, as long as the parties know there is an essential term not yet agreed on, there is no contract. The preliminary agreements on specific items are mere preliminary negotiation building up the terms of the final offer that may or may not be made."

And it cites -- says, "From the plain language of the memorandum of understanding, it is clear the parties knew the material terms still remained to be agreed upon."

They were also, undoubtedly, aware that the payment of reimbursement was contingent upon obtaining bond financing, etc. Because the memorandum of understanding is simply comprised of segments to execute further agreements. There was no meeting of the minds on numerous material terms which have not yet been defined.

And that is the sad fact that that happens in many real estate transactions, is the parties are excited about it. They go out. They do their due diligence. They spend a lot of money. They hire professionals. But then when they get down to the details, they can't reach an agreement. But the law recognizes that as a reality. And that's why we have to put these agreements in writing. And more importantly, we have to reach a meeting of the minds on the essential elements, the price, the scope of the agreement,

and the way it's going to be paid for. And none of those were agreed upon.

So it's a shame that the deal didn't go forward, but there's no enforceable contract. For that reason, we move for summary judgment.

THE COURT: Okay.

MS. THIEM: Your Honor, I just want to add, there is a case out there -- I'm sorry I don't have it with me, I can't recall the name of it or the cite in South Carolina -- that allows for a tenant in common to mortgage his or her particular interest in property. And I can supplement with that if Your Honor would like me to do so.

THE COURT: Please do so. Anything else?

MS. THIEM: Absolutely. That's it.

THE COURT: Mr. Massalon.

MR. MASSALON: Thank you, Your Honor. I represent Jacob Ferderigos, who you heard a little bit about. And I know we've been in front of you a number of times on several of these cases. But just to give you a quick review, my client and Mr. Fokas own Old Towne Restaurant, along with Mr. Fokas's father. And we had another case that involved that. You probably recall. That's a different corporation, S & S Old Towne. That's not involved in this.

The building, as you've heard, is owned as tenants in common by Mr. Fokas and these three gentlemen. He owns

50 percent and they share 50 percent interest. And then the short-term rentals are managed by this Old Towne Suites, LLC.

THE COURT: Let me ask you this. Were they excluded under that city ordinance on short-term rentals?

MR. MASSALON: I have not looked at that issue, Your Honor.

THE COURT: They might be lucky they didn't go forward. What part of the town was excluded? I didn't mean to be picking at you on ARB, but I had to ask you that question. And you understand why.

MR. MASSALON: I do. And I have to say, I didn't come prepared to address that issue, but I will have to look into that.

But the suites, Old Towne Suites, LLC, just manages these short-term rentals. It doesn't own the building and it doesn't own the restaurant. So with that context, in addition to the arguments you've heard, I really have a couple of additional arguments I would like to make for Mr. Ferderigos.

You mentioned the complaint. And I've got a highlighted copy that I will just pass up. It's the same one that's been filed, but, if I may. And what I would like Your Honor to look at with me are just a couple of paragraphs that I believe are the only two that mention my

client. And that would be on page 3, paragraph 21. It alleges that Jacob here would not agree to go forward with this agreement unless his brothers, Philip and Spiros, agree to it as well. So it says that.

And then near the end of the complaint in paragraph 40, there's an allegation about the defendants. And that includes, I guess, all of them, including Jacob here, refused to execute the mortgage in accordance with their agreement with plaintiff and their brother Jacob. So, again, the additional ground, first additional ground I would argue for Jacob is that all of the evidence shows, and particularly the evidence that was submitted with Mr. Barnett's memorandum, that Jacob here was actually going along with Mr. Fokas and that he signed an agreement to mortgage his interest in the building. And that as the complaint alleges that when his brothers Spiros and Philip decided they would pull out of the deal, he said, I can't do the deal.

Now, I would refer you -- and Mr. Barnett submitted a lot of stuff with his memo, but this is an excerpt from his client's deposition that Mr. Barnett submitted. I'm looking here at page 456. And there's some questions that were asked. And I will just read them briefly. And I will hand this up. The question is, "Did you tell Jacob" -- this is a question of Mr. Fokas -- "that you did not want to join

in the lawsuit?" And the answer is yes.

Then the next question is, "Did you ask Jacob to enter into some sort of agreement that if his cousins agreed or required to go forward with the project" -- and I think that means his brothers, but says cousins -- "that he would go forward with the project?"

And Mr. Fokas says, "I think so. I did."

And the question was, "What did he say?"

And the answer was, "He agreed to go forward with the project."

So I will pass up one more page from the same deposition I got out of here from Mr. Barnett. And it actually just is the questions that I asked. And this is same deposition of Mr. Fokas, page 445 there in the bottom left. The question was, "The only thing you allege in here that I see is that once Philip and Spiros decided not to go forward, Jacob decided not to go forward."

And the answer was yes.

Then I ask him, "And you did the same thing, right? Once Philip and Spiros decided not to go forward, you, Mr. Fokas, decided not to go forward as well?"

And the answer was, "I always wanted to go forward and I'm ready to go forward today."

So then I ask him, "How come you haven't done it then, if you are ready to go forward even though the other

two guys are out?"

And the answer is, "Because we have to sign a mortgage."

And that's the point you made earlier:

And my question was, "And so Jacob is in the same situation, right? If Spiros and Philip aren't willing to go forward with the agreement, Jacob can't do it either, right?"

The answer is, "Yes, but we all agreed to in the beginning."

And my question is, "Jacob can't do the deal as long as Spiros and Philip are not in the deal, right?"

And he says, "That's correct."

So the additional basis for my motion, Your Honor, is there's nothing in the complaint or any evidence that shows that Jacob here did anything that is alleged to be in breach of this agreement. All he's alleged to do is, once two of the people that Mr. Fokas acknowledges are essential to this, said that they would -- were not prepared to go forward, he said that he couldn't do it either. And, again, this is actionable. That's not a cause of action. There's no facts that show he did anything in breach of this alleged agreement or in breach of his fiduciary duties or anything. All he did is just what Mr. Fokas did, which is, if these fellows are out, I'm out too.

So in addition to the reasons that you heard from Mr. Cooke and Ms. Thiem, my client is entitled to summary judgment because there's just no evidence that he did anything wrong. So on that basis, I would also ask that you grant summary judgment.

THE COURT: Thank you so very much.

Mr. Barnett.

MR. BARNETT: Yes, sir. I will take you up on your offer to respond, particularly to the law.

THE COURT: That's fine. I will give you how much time you need.

MR. BARNETT: I'll try to adjust how I would respond here today.

THE COURT: Well --

MR. BARNETT: There are a lot of things wrong, I think, with Mr. Cooke's characterization of what happened here. He glosses over the fact that there was a commitment letter from the bank, which was incredibly detailed, as you can imagine.

THE COURT: Well, did he do the five-year balloon, five years amortized over 20 with a balloon that ended five with one year to pay it?

MR. BARNETT: That is what it says from the very beginning.

THE COURT: Is that what it says from the very

beginning?

MR. BARNETT: From the very beginning. All four of these people had copies of that commitment letter. The commitment letter was updated in September of 2014 --

THE COURT: But there was never a commitment from the bank for five years to 20 years?

MR. BARNETT: No. It's clearly written as to what they were agreeing to do, what the bank was committing to do. Now, the bank officers testified, with commitment letters like that, when they came to the end of that period, they would typically extend it for another five-year period. If no conditions had changed, they would go forward. The fact that my client interpreted that to be a 20-year mortgage, I don't think changes the fact that the commitment letter they had on which they based their reliance in going forward --

THE COURT: Is there a copy of the commitment letter somewhere?

MR. BARNETT: It's in my materials, Your Honor. I think it may be in here twice.

THE COURT: The commitment letter says, we will give you a loan for five years, a balloon at the end of five, with a year to pay the balloon or roll it over or whatever?

MR. BARNETT: It's Exhibit C. And the bank

officers testified they would typically extend it, upon request, if no conditions had changed. It's Exhibit C. There was an original. It's dated February 5th of 2015. And the Exhibit C shows that the letter has been modified to increase the price of $1,8 million -- increase it to 1.8 million. That's when the parties agreed to increase the size of the addition to the building. All of this was done in concert with all four of these people.

This stuff that I have given the Court is the testimony of my client, as well as some documents that tend to verify what he's saying, that all of this was done in concert. These people got this commitment letter February 5th of 2013. Your Honor asked Mr. Cooke appropriately, did they -- when did they spend this $90,000? They spent that 89,000-some-odd dollars after they got this commitment money -- not to investigate whether it was feasible to build the building -- to design it, engineer it, get it permitted.

During the permitting process, in the summer of 2014, they learned that we can go up higher. We can get some more floors. It will cost more money, but we can do that. So Mr. Fokas and Jacob Ferderigos, since Jacob, my client's testimony, was acting on behalf of his brothers, worked with the permitting authorities to get that approval, which came in -- there's a bunch of text messages. That's Exhibit N in my materials that I submitted to the Court.

THE COURT: Did the approval come before the fire system was -- did the fire system come in after?

MR. BARNETT: When they were told they had to get a sprinkler system put in, they were told --

THE COURT: Before the approval?

MR. BARNETT: They had a building permit. They actually had a building permit. The building permit came on October the 10th of 2014. In these text messages that Mr. Fokas sends to his cousins, September the 19th, he said, we've been approved for $1,800,000. And he gets all these congratulations, oh, how wonderful this is, way to go, you the man, sort of stuff.

Then he gets -- the building permit comes in. At that point, nine days later, Spiros Fokas, on October the 19th, says, I need to hold off signing anything. And there's a string of these texts where Spiros and Athan are arguing about this. Spiros says, I'm in consideration for family court judgeship. And he says at one point, I don't want to effect my P and L. -- profit and loss statement, I assume is what that is -- by signing anything. He talks about signing, signing the bank documents, signing the bank documents, over and over again. He says, I will do that, but I've got to get through this judgeship process.

Philip weighs in and says the same thing: Philip will sign the documents, bank documents, when he gets

through the judgeship process. And saying to Athans, you should stop arguing with him about that.

Now, this comes at a time when the defendants have all had the modified commitment letter from the bank, which is what Mr. Massalon was kind enough to hand up. They have had it since September the 24th. My client e-mailed it to all of his cousins when we got it on September 24th.

THE COURT: September 24th of '14?

MR. BARNETT: Yes, sir. So they have known that everything in that document, that commitment letter, was going to have to be executed. The mortgage was going to have to be executed.

THE COURT: Because the commitment letter I'm looking at is dated February the 5th, 2013.

MR. BARNETT: Yes, sir. That's the original one, but then it was notified. You see all these handwritten modifications?

THE COURT: Okay.

MR. BARNETT: Those are dated all September 24th. The reason for that modification is just the -- it's the amount of money, because they were going to go up more floors, it was going to cost more money. The bank was looking for a mortgage, first mortgage, on 229 King Street.

And I submit to you that the text messages show there wasn't any question that Spiros and Philip Ferderigos

knew they were going to have to sign that mortgage. I mean, they are lawyers, first of all. It's incomprehensible to me for lawyers to suggest that they thought a bank was going to take a mortgage without all the signatures of the elders.

Tony Daniel had been in banking for 45 years, testified, no, banks don't take mortgages without all the owners signing it. That's just not how it works.

They also wanted an assignment of rents and leases. They wanted accounts receivable, inventory, furniture fixtures, equipment. They wanted interest on that. And the LLC is a borrower. It's listed on there. All of these points are things that, after this disagreement metastasized, that Philip and Spiros said, no, we never agreed to any of that, we didn't know about any of that.

Well, they did know about it. They had this commitment letter. Spiros Ferderigos had communicated with the bank way back in 2013. He communicated with Jeff Odom to help clarify how the ownership of the LLC should be described. So he certainly had the agreement.

Philip Ferderigos had this agreement in September, the one that was modified, because he went out looking to get a better break, better deal. There's some materials I've submitted in here about that. There wasn't any surprise. There wasn't any question about what they had to do. There was no provision in their agreement, the parties'

agreement for Philip to submit to this side agreement that says, hey, I'm going to bring my money and I want the rest of you to agree to this. This was something that he made up after the agreement was in place.

And the fact that my client wouldn't agree to it, and it is an onerous agreement, which another lawyer, evidence in the record, says his lawyer transaction lawyer, John McNeil, advised him not to sign it because it's that onerous. He wasn't going to do that.

It wasn't that they didn't form an agreement until -- never formed an agreement. They had an agreement all right. They spent almost $100,000 in carrying out that agreement. Now --

THE COURT: All of that was after the commitment letter?

MR. BARNETT: Yes, sir, after the February -- there's Exhibit D, if I remember it correctly, it's a list of the expenses and when they were incurred. $89,000 was incurred after the February 5th, 2013, commitment letter. They had spent some money beforehand.

THE COURT: What was the terms of the original commitment from the bank on February the 5th, 2013? I haven't had a chance to read it.

MR. BARNETT: It's in Exhibit C. It's the same thing. What the bank did is, they just took the original

commitment letter and they modified the amounts. They didn't change --

THE COURT: Modified from 1.8 million?

MR. BARNETT: That's right. They didn't really change any of the terms.

THE COURT: Okay.

MR. BARNETT: Mr. Cooke makes a point that this money that they spent really wasn't part performance. I didn't write down his exact words, that somehow it wasn't in furtherance of the actual agreement. Well, it was. The agreement was, after they got an acceptable financing commitment, they were going to go out and spend the money together to design, engineer, permit the building. They were going to share the costs in the same percentage of their ownership of the building, which was 50 percent by Mr. Fokas, 50 percent shared by his cousins. And that's what they did. That is exactly what they did.

They got to a point where they decided, hey, we can build more of these units. We can make even more money. So they upped the price. But by agreement, they upped the price. And the agreement is manifested in those text messages in Exhibit N, where Mr. Fokas tells him, hey, we are approved for 1.8 million. And they are all excited. They are even more excited when the building permit comes in. They are ready to go.

What went off the rails was, Spiros Fokas, and I don't necessarily fault him for that, I've never been in the process that you have been in, he has been in, to be reviewed by a judge. I don't know how sensitive that is. But he says, look, I've got to wait, I will sign these documents. He says it maybe four or five times in those messages, but I've got to wait, I've got to wait. And Mr. Fokas doesn't like that. They argue.

The first closing doesn't go forward. By the next closing, Philip Ferderigos has come up with this side agreement, which is an entirely new aspect. That would have been a modification of the agreement. I think I cited a Fourth Circuit case to Your Honor that says what I think is the obvious statement of law. Once you have a contract, the fact that somebody suggests modifying it, doesn't mean you no longer have a contract; just they are trying to change the deal. He wouldn't agree to change the deal, at which point they all refused to go forward.

Now, what these documents show is not just testimony from my client, but actions by all the parties, which are consistent with an agreement, an oral agreement and words by the defendant, which are confirming of the terms of that agreement. Is it an oral agreement? Yes. But it's supported by a writing, supported by the loan commitment by the bank. That's how they agreed to finance

the deal.

It's confirmed by the plans, which were approved by the city, which show what they were going to do. And it's confirmed by the construction contract, which is in here, where Kevin Carroll agreed to build the project for slightly under $1.8 million. To me, that's a deal. That's an agreement. Now, is it in the parol evidence rule? I actually don't think so.

Mr. Cooke says, well, a mortgage is going to be carried out over a 20-year term. That's more than a year. But the deal was not -- the agreement between these parties was not a mortgage. Mr. Fokas wasn't giving his cousins the mortgage, or vice-versa. They were all agreeing to sign a mortgage. Once that was done, the deal was consummated. And there's nothing in their agreement that limited -- that says that that deal could not have been accomplished within a year.

And the statute of frauds, the one-year part of the rule, is relatively harsh. I mean, the cases that I've read said it's got to be clear on the face of the contract that performance of the contract cannot be done in a year.

With respect to the part of the statute of frauds that says an agreement to affect an interest in land -- again, I looked for cases for something like this -- I don't think their agreement between themselves was an agreement to

affect an interest in land. It was an agreement to enter into a mortgage. But they weren't selling each other a piece of land. They weren't mortgaging a piece of land from one to the other.

THE COURT: Well, do the cases say that entering into a mortgage itself is part of statute of frauds?

MR. BARNETT: If it's between the mortgagor and mortgagee, that contract is in the statute of frauds. As Dawes correctly pointed out, we wouldn't want to have oral mortgages. They've got to be in writing. But that's not what this was. This was a deal by owners of the building to expand the building and agree to borrow money to do so, and to do that under the terms of the commitment letter that was given to them by First Citizens.

I think there was more than enough evidence to send the question of the existence of the contract to the jury. I do not believe it's subject to the statute of frauds. But I believe if it is, if Your Honor disagrees with me, as you have before, there's --

THE COURT: Not all the time.

MR. BARNETT: No. But there's part performance here. $100,000 is a lot of money. And the cases on part performance are pretty strong too. When people enter into an agreement like this and they spend that much money, one of them spends almost $50,000 of his money to do this, that

locks it in. There's obviously equitable reasons for that too, to prevent people from beginning performance and then saying, oh, well, no, we didn't have a written contract, so too bad for you. But I think the evidence is pretty strong.

THE COURT: Thank you very much. How many days do you need to send me a reply memo? You tell me.

MR. BARNETT: By next Friday.

THE COURT: That would be fine. I will give you until next Friday. And I will take it under advisement until that time.

MR. MASSALON: Your Honor, if I'm brief, can I say one thing?

THE COURT: Yes, sir.

MR. MASSALON: The contract that I passed up to you -- I'm sorry, the commitment letter I passed up to you, I would just like to highlight a couple of things. First, it's addressed to Mr. Fokas and my client as the borrows, not these other gentlemen. So Mr. Barnett does an artful job of conflating agreements with other people as if it's an agreement among these folks, and they are not. And so I would like to highlight that.

And also to note that my client signed this commitment letter. And so, again, I shouldn't be in this lawsuit because he didn't do anything they said he wasn't

supposed to do.

THE COURT: Thank you very much.

MR. COOKE: Judge --

THE COURT: I've heard enough. Okay? Thank you. Thank you for offering. Okay? I've got enough to read and I've heard enough. So thank you all so very much for being prepared and being here.

What else we got?

MR. BARNETT: Only last thing is that motion --

THE COURT: Let me ask one question while I've got all the parties here. It says Old Towne Suites, LLC. And that's signed by who on the commitment letter? I can't read the signature.

MR. BARNETT: You are talking about Exhibit C, Your Honor?

THE COURT: Yeah, the commitment letter.

MR. BARNETT: That's Mr. Massalon's client, Jacob Ferderigos and Athan Fokas. And it looks like Athan Fokas signed for the LLC, Old Towne Suites, LLC.

THE COURT: Okay. Old Towne Suites, LLC was the corporation that owned the building, the Old Towne Restaurant; is that correct?

MR. BARNETT: No, sir. That would be too sensible. That's not what they do. They own the building as tenants in common. They have an LLC, which is owned in the same

shares in which they own the building. So Mr. Fokas owns half of the LLC. His cousins own --

THE COURT: Is the LLC the one that was involved in this transaction?

MR. BARNETT: It was to be a borrow. And what it does is it manages the rental.

THE COURT: So it was going to be the borrow?

MR. BARNETT: That's right. Does not own the building at all.

THE COURT: Thank you very much. What's the next motion now?

MR. BARNETT: It's my motion to quash; perhaps -- better stated, to limit the subpoena.

THE COURT: How do you want it limited?

MR. BARNETT: I just would like them to be required to produce things that relate to this lawsuit, communication between my client and Mr. High about the defendants or about 229 King and all that, but not about their interactions between their families, which is extensive. I think that's over broad.

THE COURT: What time frame are we talking about?

MR. BARNETT: I would need to ask my client how quickly they could generate those documents? May I do that?

THE COURT: Okay. I was talking about the time frame of the communications, not how fast he could produce

it. Okay?

MR. BARNETT: I'm sorry; too literal.

THE COURT: 10 years, 20 years, or what?

MR. BARNETT: They asked for some time in 2011. I don't remember the exact -- that seems a bit long, but I am not even so particular --

THE COURT: What do you want? Who asked for it?

MR. COOKE: We served the subpoena.

THE COURT: So what time frame do you want it and what do you specifically want?

MR. COOKE: We asked for all communication --

THE COURT: Give me a time frame first.

MR. COOKE: Let's go back to 2012.

THE COURT: All right. 2012, January 2012?

MR. COOKE: Yes.

THE COURT: Why 2012?

MR. COOKE: Because they -- that's when this agreement was allegedly entered into.

THE COURT: Then you want it out until when?

MR. COOKE: We would like it up to the current time.

THE COURT: Why?

MR. COOKE: Well, because he's still the manager of their LLC. So we think that we should be entitled to that just in that capacity, even if it's not relevant to the

contract claim --

THE COURT: When was the contract rejected totally? What's the date, approximate date?

MR. COOKE: February of 2015.

THE COURT: February --

MR. COOKE: Around early 2015.

THE COURT: How about from January 20th, January '12 through 2013 for now? What are you asking for? Give me a time frame. What are you asking for?

MR. COOKE: All communications between --

THE COURT: All communications? I mean, that covers what?

MR. COOKE: Written communications between Mr. --

THE COURT: All you want is written? You don't want e-mails?

MR. COOKE: No, that's included, e-mails, texts and any written correspondences.

THE COURT: You want e-mails, texts. Who saves texts?

MR. COOKE: We've got lots of texts in this case.

THE COURT: Y'all save them?

MR. COOKE: Yes.

THE COURT: I thought you did that so you can delete them.

MR. COOKE: No, that's Snapchat.

THE COURT: So you want the texts, e-mails and written --

MR. COOKE: Yes.

THE COURT: About what now?

MR. COOKE: We want any --

THE COURT: What subject matter?

MR. COOKE: What I would be willing to do --

THE COURT: Let's narrow down what you are looking for. If you write somebody says, I love you, you don't want that, do you?

MR. COOKE: We don't want anything that's purely personal, but anything that mentions our clients or mentions their business relationship.

THE COURT: All right. Mentions the defendant or the business relationship; is that right?

MR. COOKE: Or any business relationship, yes.

THE COURT: Or any? What type of business? Are we talking about this business relationship?

MR. COOKE: Well, there are also -- there's a competing business relationship. We allege as part of our -- part of this case that Mr. Fokas has another set of these suites that Mr. High manages for him. And so we would like anything relating to that too.

THE COURT: What would that have to do with this lawsuit, your defamation defending the breach of contract in

this case?

MR. COOKE: Well, among other things, it could go to damages if they should get a jury. Because we contend that they've been competing with what these suites would have been. And he's claiming damages for the loss of revenue from this suite. So the business that they've done and their competing set of suites would be relevant to that. But what I would be willing to do would be, if there's anything that they object to producing, I would be willing for the attorneys only to review those with Mr. Barnett before the clients look at it. Because I can understand that they are concerned about these folks are related and they've got business relationships with each other and they may even be competitors.

THE COURT: Mr. Barnett, does that narrow it down for you?

MR. BARNETT: It narrows it down.

THE COURT: Four of you sit down and look at them before you produce them to see if there is anything you can weed out that's personal.

MR. BARNETT: Right.

THE COURT: How about this other LLC situation, the one with the suites where they say it's got competitive competition? Somebody needs to find out when the City started barring short-term rentals and whether or not it

applies to this property --

MR. BARNETT: It's quite some distance from 229 King. And if we get into that, maybe we are going to get into Philip Ferderigos has a rental problem that's also managed by Kevin High, which is also in competition.

MR. COOKE: We are only getting up to the beginning of 2015. So there are not going to be any current trade secrets in it. I think Mr. Barnett and I can resolve it.

THE COURT: Do you think you can work that out?

MR. BARNETT: And I don't think that business was in operation in 2015, either Philip's or Athan's. Yes, Your Honor, I think we are clear, January '12 to January '15, anything related to the defendants, anything related to --

THE COURT: I said through March of '13, that's when the contract was breached.

MR. BARNETT: It was beginning of 2015, Your Honor.

THE COURT: I'm sorry. Is that right? I'm sorry. Okay. February '15, okay.

MR. BARNETT: Any objection to anything in those categories, the lawyers will review.

THE COURT: Anything written, e-mail or text, okay, anything that mentions the defendant and the business relationship. Personal stuff comes out. Anything affecting anything business.

The last request about the LLC, I'm going to deny

you on that for now. If you come up with something later, you can request it. I am not going to bar you from requesting it at a later time, but for now, no.

Anything else?

MR. COOKE: No, sir.

MR. BARNETT: I will need to consult how long it takes. I guess if we don't agree, we will have to bother you again, but I will talk about how long it takes.

THE COURT: How fast do you want it?

MR. COOKE: Whenever they can get it.

THE COURT: 30 days?

MR. BARNETT: I think we can make it in two weeks, Your Honor.

THE COURT: I'll give him 30 days to produce it. Okay? 30 days from today, not the order.

Who is going to give me a proposed order on that issue?

MR. COOKE: We can submit one.

THE COURT: Run it by Mr. Barnett before you send it to me, please.

MR. COOKE: We will.

THE COURT: Thank you very much.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

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

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS Plaintiff, vs. PHILLIP FERDERIGOS, JACOB FERDERIGOS, JACOB FERDERIGOS, AND SPIROS FERDERIGOS Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-3919 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
STANLEY BARNETT, Bar No. _____ Address: P.O. BOX 1542 MT. PLEASANT, SC 29465 Phone: 843-881-1623 Fax 843-881-4406 E-mail: stanleyb@s3blaw.comOther: _____	I. RYAN NEVILLE, Bar No. 76513 Address: P.O BOX 859 CHARLESTON, SC 29402 Phone: 843-727-1144 Fax8433-727-7696 E-mail: rneville@wmalawfirm.net Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant Date submitted 10/5/15

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No. 2015-CP-10-3919
Athan Fokas,	)	
Plaintiff,	)	**MOTION TO DISMISS**
vs.	)	**PURSUANT TO SCRCP RULE 12(B)(6)**
Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos,	)	
Defendants.	)	

TO: STANLEY E. BARNETT, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that Defendant, Jacob Ferderigos, through his undersigned counsel, will move before the Presiding Judge of Charleston County Court of Common Pleas, at the Charleston County Judicial Center, Charleston, South Carolina, on the 10th day after service hereof or as soon thereafter as counsel may be heard, for an order pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds that Plaintiff failed to allege facts sufficient to set forth a claim of relief against this Defendant.

This motion is based upon the pleadings and other matters of record, the South Carolina Rules of Civil Procedure, applicable law, any memorandum of law to be submitted at or before a hearing on this motion, argument of counsel at a hearing on this matter, and any other matters the Court may permit to be presented at the hearing on this issue.

Please be present to defend if so minded:

FILED
2015 OCT -8 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
rneville@wmalawfirm.net

ATTORNEYS FOR DEFENDANT
JACOB FERDERIGOS

CHARLESTON, SOUTH CAROLINA

October 5, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 5, 2015, copies of the attached pleading/discovery have been served upon the following via:

XX	United States Postal Service
	Hand Delivery

Stanley E. Barnett, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
(843) 881-1623
stanleyb@s3blaw.com

Attorneys for Plaintiff

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
(843) 579-5619
richard.farrierjr@klgates.com
jennifer.thiem@klgates.com

Attorneys for Defendant Philip Ferderigos

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402
(843) 577-7700
mdc@barnwell-whaley.com
jbowers@barnwell-whaley.com

Attorneys for Defendant Spiros Ferderigos

Wills Massalon & Allen, LLC

WMA
WILLS MASSALON & ALLEN LLC

97 Broad Street • Charleston, SC 29401 • Post Office Box 859 • Charleston, SC 29402
Phone: 843-727-1144 • Fax: 843-727-7696 • www.wmalawfirm.net

October 5, 2015

Direct Dial: (843) 793-6041

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: Athan Fokas v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos
Case No.: 2015-CP-10-3919
Our File No.: 1056-1

Dear Julie:

Enclosed please find the original and one (1) copy of Defendant Jacob Ferderigos' Motion to Dismiss, Motion Slip, and our firm's check # 7249 to cover the filing fee. Please file the original, file-stamp the copy, and return the copy to me using the self-addressed, stamped envelope that is enclosed herewith. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC

I. Ryan Neville
rneville@wmalawfirm.net

Enclosures

cc: Mr. Jacob Ferderigos
Stanley E. Barnett, Esquire
Richard A. Farrier, Jr., Esquire/Jennifer H. Thiem, Esquire
M. Dawes Cooke, Jr., Esquire/Jeremy E. Bowers, Esquire

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)
)
) CASE NO.: 2015-CP-10-3919
)
Athan Fokas)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs:)
)
Phillip Ferderigos, Spiros Ferderigos and Jacob Ferderigos)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533 Address: P.O. Box 1542, Mt. Pleasant, SC 29465 Phone: 843/881-1623Fax 843/881-4406 E-mail: stanleyb@s3blaw.comOther: _____	Richard A. Farrier, Bar No. _____ Address: 134 Meeting Street, Ste.200, Charleston, SC 29401 Phone: _____ Fax_____ E-mail: _____ Other: _____

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiffs Motion to Strike Answer and Counterclaims of Philip Ferderigos
Estimated Time Needed: 15 min Court Reporter Needed: ☑ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached.
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Stan Barnett 10/26/15
Signature of Attorney for ☑ Plaintiff/☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE_____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **PLAINTIFF'S MOTION TO STRIKE ANSWER AND COUNTERCLAIMS OF DEFENDANT, PHILIP FERDERIGOS**

FILED
2015 OCT 26 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: RICHARD A. FARRIER., ESQUIRE and JENNIFER H. THIEM, ESQUIRE, Attorneys for Defendant, Philip Ferderigos:

Plaintiff hereby moves pursuant to Rule 12(f) to strike the Answer and Counterclaims filed by Defendant, Spiros Ferderigos in the above captioned matter. The defects in the Answer and Counterclaims which should be stricken as insufficient, redundant, immaterial, impertinent and/or scandalous are as follows:

1. In paragraphs 73, 74, 75, 77, 78, 80, 81, 82, 83, 86, 87, 88, 89, 90, 98, 99, 100, 101, 102, 103, 104, 106, 108, 109, 110, 111, 112, 113, 121, and 149 there are allegations of fact which are then repeated as purported quotes from documents which are also attached as exhibits A-AA. This entirely redundant. The factual allegations are sufficient. Attachment of the documents, all unauthenticated, most hearsay, and not in context is a transparent effort to permit this Defendant to read these documents to the jury without complying with the rules of evidence. There is no proper purpose served by attaching these documents to the Answer and Counterclaims or quoting them in part other than to subvert the rules of evidence.

2. There are numerous allegations of statements by Plaintiff which are completely immaterial to any issue in the case raised by either party. There are statements about a disagreement between

the parties as to whether family members could continue to eat for free at the Olde Towne Restaurant. Inclusion of these statements is not only immaterial. It is childish and improper to include such references in a pleading about a contract dispute and the related claims. These portions of the pleading are, therefore, also impertinent and scandalous within the meaning of the rule and should be stricken. The "food" references are in:

a. Paragraph 106 and 107: "I'm done paying your half of the food you so dearly like to eat..."

b. Paragraph 108: an allegation that Plaintiff complained to third parties that the contract was not being honored by this Defendant because "Philip Ferderigos couldn't eat for free..." This paragraph also includes an equally immaterial and impertinent allegation that Plaintiff insulted Phillip Ferderigos' weight and that he called Phillip "stupid" in Greek. These allegations have nothing whatsoever to do with the dispute and inclusion of them in this pleading is unprofessional and inconsistent with proper standards for pleading in this Court. The "food" allegations are repeated in paragraphs 126.y, z, aa, and jj.

4. Paragraphs 117 and 127.qq include allegations of what Plaintiff supposedly said his attorney was charging him. This is impertinent and immaterial. The supposed reason for this allegation to be included is to highlight that Plaintiff was somehow trying to convince this Defendant to honor his contractual obligations and consummate the agreement which lies at the heart of this dispute. Inclusion of these statements is, however, nothing more than petty invective of no relevance to the issues in the case.

5. Paragraphs 104 and 127.x include allegations of statements by Plaintiff that are entirely immaterial and which are also impertinent and scandalous. This Defendant alleges in paragraph 103 that Plaintiff communicated that he was at a dinner party "half drunk" and that, "I hang out

with the ultra wealthy now and play their games." A summary version of the same allegation is included in paragraph 126.x. This allegation is another example of childish, petty invective which has nothing to do with the issues in the case.

6. Paragraph 126.ff includes an allegation that Plaintiff "threatened to take Philip and Spiros Ferderigos' homes and throw their children out in the street." This is purely inflammatory invective. It is not material to any issue in the case. Quoting what one party to a dispute supposedly says may reflect the anger of that party, but unless it relates directly to a factual issue in the case, its inclusion in a pleading is immaterial and impertinent. This is exactly that type of allegation. The alleged statement is not a misrepresentation, or defamation, or fraud, or a promise, or related to any duty of care that this Defendant alleges Plaintiff violated. It is intended purely for the purpose of casting Plaintiff in a bad light should the Answer and Counterclaim be read to the jury.

7. The first counterclaim, paragraphs 125-128, is insufficient to state the cause of action of violation of a duty of care. The allegations consist primarily of 1) a restatement of this Defendant's claim that the parties did not reach an agreement; and 2) of statements allegedly made by Plaintiff that hurt this Defendant's feelings. Neither set of allegations makes out either a concrete duty owed by Plaintiff to this Defendant or a violation of such a duty.

8. The fourth counterclaims, paragraphs 146-161, is insufficient to state the cause of action of defamation. The alleged statements by Plaintiff are all either in the nature of opinion, such as "Philip and Spiros are bad business people" or his statements of his position that a contract was formed by the parties and that these defendants were not doing what they agreed to do. Neither type of statement is properly construed to be defamation.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2015 OCT 26 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Motion to Strike Answer and Counterclaims of Defendant, Philip Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 26th day of October, 2015, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Joseph R. Weston, Esquire
Weston Law Firm, P.A.
761 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464

Cindy Grooms

Mt. Pleasant, South Carolina

9. The fifth counterclaim, paragraphs 162-166, is insufficient to state the cause of action for Abuse of Process. There is no allegation of the demand for a collateral advantage, which is necessary element of this cause of action.

10. The seventh counterclaim, paragraphs 170-172, is insufficient to state the cause of action for Frivolous Proceedings. There can be no such cause of action unless and until this Defendant prevails in this case. As he has not prevailed, he cannot state this cause of action.

CONCLUSION

Due to the above improper, unprofessional, insufficient, immaterial, impertinent and scandalous portions of this Defendant's Answer and Counterclaims, the pleading should be stricken. The pleading is inconsistent with the standards set by the Rules of Civil Procedure for pleading in this Court.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

October 26, 2015
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)
)
) CASE NO.: 2015-CP-10-3919
)
Athan Fokas)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
Phillip Ferderigos, Spiros Ferderigos and Jacob Ferderigos)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533	M. Dawes Cook, Jr., Bar No. _____
Address:	Address:
P.O. Box 1542, Mt. Pleasant, SC 29465	288 Meeting Street, Charleston, SC 29401
Phone: 843/881-1623Fax 843/881-4406	Phone: _____ Fax_____
E-mail: stanleyb@s3blaw.comOther:	E-mail: _____ Other: _____

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiffs Motion to Strike Answer and Counterclaims of Spiros Ferderigos
Estimated Time Needed: 15 min Court Reporter Needed: ☑ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Stan Barnett 10/26/15
Signature of Attorney for ☑ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas,)	Case No.: 2015-CP-10-3919
Plaintiff,)	
v.)	**PLAINTIFF'S MOTION TO STRIKE ANSWER AND COUNTERCLAIMS OF DEFENDANT, SPIROS FERDERIGOS**
Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos,)	
Defendant(s).)	

FILED
2015 OCT 26 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: M. DAWES COOKE, JR., ESQUIRE and JEREMY E. BOWERS, ESQUIRE, Attorneys for Defendant, Spiros Ferderigos:

Plaintiff hereby moves pursuant to Rule 12(f) to strike the Answer and Counterclaims filed by Defendant, Spiros Ferderigos in the above captioned matter. The defects in the Answer and Counterclaims which should be stricken as insufficient, redundant, immaterial, impertinent and/or scandalous are as follows:

1. In paragraphs 72, 73, 74, 76, 77, 79, 80, 81, 82, 85 86, 87, 88, 89, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 110, 111, 112, 120 and 146, there are allegations of fact which are then repeated as purported quotes from documents which are also attached as exhibits A-AA. This entirely redundant. The factual allegations are sufficient. Attachment of the documents, all unauthenticated, most hearsay, and not in context is a transparent effort to permit this Defendant to read these documents to the jury without complying with the rules of evidence. There is no proper purpose served by attaching these documents to the Answer and Counterclaims or quoting them in part other than to subvert the rules of evidence.

2. There are numerous allegations of statements by Plaintiff which are completely immaterial to any issue in the case raised by either party. There are statements about a disagreement between

the parties as to whether family members could continue to eat for free at the Olde Towne Restaurant. Inclusion of these statements is not only immaterial. It is childish and improper to include such references in a pleading about a contract dispute and the related claims. These portions of the pleading are, therefore, also impertinent and scandalous within the meaning of the rule and should be stricken. The "food" references are in:

a. Paragraph 105 and 106: "I'm done paying your half of the food you so dearly like to eat..."

b. Paragraph 107: an allegation that Plaintiff complained to third parties that the contract was not being honored by this Defendant because "Philip Ferderigos couldn't eat for free..." This paragraph also includes an equally immaterial and impertinent allegation that Plaintiff insulted Phililp Ferderigos' weight and that he called Phillip "stupid" in Greek. These allegations have nothing whatsoever to do with the dispute and inclusion of them in this pleading is unprofessional and inconsistent with proper standards for pleading in this Court. The "food" allegations are repeated in paragraphs 126.y,, z, aa, and jj.

4. Paragraphs 116 and 126. oo include allegations of what Plaintiff supposedly said his attorney was charging him. This is impertinent and immaterial. The supposed reason for this allegation to be included is to highlight that Plaintiff was somehow trying to convince this Defendant to honor his contractual obligations and consummate the agreement which lies at the heart of this dispute. Inclusion of these statements is, however, nothing more than petty invective of no relevance to the issues in the case.

5. Paragraphs 103 and 126. x include allegations of statements by Plaintiff that are entirely immaterial and which are also impertinent and scandalous. This Defendant alleges in paragraph 103 that Plaintiff communicated that he was at a dinner party "half drunk" and that, "I hand out

with the ultra wealthy now and play their games." A summary version of the same allegation is included in paragraph 126.x. This allegation is another example of childish, petty invective which has nothing to do with the issues in the case.

6. Paragraph 126.dd includes an allegation that Plaintiff "threatened to take Philip and Spiros Federigos' homes and throw their children out in the street." This is purely inflammatory invective. It is not material to any issue in the case. Quoting what one party to a dispute supposedly says may reflect the anger of that party, but unless it relates directly to a factual issue in the case, its inclusion in a pleading is immaterial and impertinent. This is exactly that type of allegation. The alleged statement is not a misrepresentation, or defamation, or fraud, or a promise, or related to any duty of care that this Defendant alleges Plaintiff violated. It is intended purely for the purpose of casting Plaintiff in a bad light should the Answer and Counterclaim be read to the jury.

7. The first counterclaim, paragraphs 124-127, is insufficient to state the cause of action of violation of a duty of care. The allegations consist primarily of 1) a restatement of this Defendant's claim that the parties did not reach an agreement; and 2) of statements allegedly made by Plaintiff that hurt this Defendant's feelings. Neither set of allegations makes out either a concrete duty owed by Plaintiff to this Defendant or a violation of such a duty.

8. The fourth counterclaims, paragraphs 145-158, is insufficient to state the cause of action of defamation. The alleged statements by Plaintiff are all either in the nature of opinion, such as "Philip and Spiors are bad business people" or his statements of his position that a contract was formed by the parties and that these defendants were not doing what they agreed to do. Neither type of statement is properly construed to be defamation.

9. The fifth counterclaim, paragraphs 159-163, is insufficient to state the cause of action for Abuse of Process. There is no allegation of the demand for a collateral advantage, which is necessary element of this cause of action.

10. The seventh counterclaim, paragraphs 167-169, is insufficient to state the cause of action for Frivolous Proceedings. There can be no such cause of action unless and until this Defendant prevails in this case. As he has not prevailed, he cannot state this cause of action.

CONCLUSION

Due to the above improper, unprofessional, insufficient, immaterial, impertinent and scandalous portions of this Defendant's Answer and Counterclaims, the pleading should be stricken. The pleading is inconsistent with the standards set by the Rules of Civil Procedure for pleadings in this Court.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

October 26, 2015
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2015 OCT 26 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Motion to Strike Answer and Counterclaims of Defendant, Spiros Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 26th day of October, 2015, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Joseph R. Weston, Esquire
Weston Law Firm, P.A.
761 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464

Cindy Grooms
Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3919
	)	
Athan Fokas,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**PHILLIP FERDERIGOS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE ANSWER AND COUNTERCLAIMS OF DEFENDANT PHILIP FERDERIGOS**
Philip Ferderigos, Jacob Ferderigos, and Spiro Ferderigos,	)	
	)	
Defendants.	)	
	)	
	)	

FILED
2015 DEC -3 PM 3:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant Phillip Ferderigos ("Phillip"), by and through his undersigned counsel, respectfully submits this response in opposition to Plaintiff's Motion to Strike Answer and Counterclaims of Defendant Phillip Ferderigos ("Motion to Strike").

Plaintiff's Motion to Strike must be denied for four reasons. First, Phillip has included only material that is pertinent and relevant to his defenses and counterclaims. While Plaintiff urges this Court to strike certain allegations as "unprofessional," "petty invective" and "scandalous," these allegedly "unprofessional," "petty invective" and "scandalous" matters are Plaintiff's own statements and conduct, and he cannot escape them because they strike at the heart of the dispute between the parties. Second, contrary to Plaintiff's argument, Phillip's inclusion of exhibits is proper under the Rules and is not an end run to get to the jury. In fact, pleadings are not submitted to a jury so to the extent that Phillip plans to use the exhibits, he will have to go through the Rules of Evidence or reach an agreement with counsel as in any other trial. Third, Phillip has set forth adequate counterclaims under both the 12(f) "semblance" standard as well as the 12(b)(6) standard. Finally, Phillip's allegations and exhibits are relevant and necessary for his forthcoming motion for judgment on the pleadings pursuant to SCRCP 12(c). For these reasons, Plaintiff's Motion to Strike must be denied.

STATEMENT OF FACTS

The instant case arises from a series of communications and negotiations relating to a proposed business project between Plaintiff Athan Fokas ("Plaintiff"), Phillip, Jacob Ferderigos, and Spiros Ferderigos (Phillip, Jacob, and Spiros, collectively the "Ferderigos Brothers"). Plaintiff owns a fifty (50) percent interest in the real property at 229 King Street and the Ferderigos Brothers own a combined fifty (50) percent interest in 229 King Street. (Compl. ¶ 6.) In 2009, Plaintiff and the Ferderigos Brothers converted the top two floors of the 229 King Street property into short-term rental units. (Def.'s Countercl. ¶ 63.) Plaintiff and the Ferderigos Brothers created Old Towne Suites, LLC to distribute profits from these rental units. (Def.'s Countercl. ¶ 68.)[1] Plaintiff owns a fifty percent interest in the LLC and the Ferderigos Brothers own a combined fifty percent interest in the LLC. (Def.'s Countercl. ¶ 68.)

After the creation of the LLC, the parties began exploring the possibility of building a new building with additional rental units to the 229 King Street property (hereinafter "proposed project"). (Def.'s Countercl. ¶ 72.) Plaintiff approached Phillip about mortgaging 229 King Street to fund the proposed project. (Def.'s Countercl. ¶ 70.) Phillip informed Plaintiff that he would not mortgage or personally guaranty his interests for the proposed project. (Def.'s Countercl. ¶ 70.) Phillip informed Plaintiff he would use cash to fund his portion of the proposed project. (Def.'s Countercl. ¶ 71.) Specifically, when Phillip told Plaintiff he would not mortgage or personally guaranty his interest in the property, Plaintiff responded by calling Phillip a series of derogatory names. (Def.'s Countercl. ¶ 71.) Nevertheless, Phillip was very clear—he would not mortgage or personally guaranty his interest in the property for the proposed project despite these insults. Similarly, Co-

[1] Old Towne Suites, LLC owns no assets. The real property, 229 King Street, is owned in the parties' individual names; therefore, Phillip owns one-sixth of the real property itself.

Defendant Spiros advised Plaintiff in writing he would not do so. (Def.'s Countercl. ¶ 78, *Ex. D.*)

Over the next several years, Plaintiff and the Ferderigos Brothers continued to explore the possibility of, feasibility of, and interest in the proposed project. (Def.'s Countercl. ¶¶ 73–90.) During this time, Plaintiff expressly knew Phillip and Spiros would not mortgage or personally guaranty their respective interests in 229 King Street for the proposed project. During this time, Plaintiff was attempting to find financing for his own portion of the proposed project.[2] (Def.'s Countercl. ¶ 80–83.) A few days before Plaintiff's closing for his personal loan for the proposed project, Plaintiff abruptly demanded Phillip and Spiros execute a mortgage and other documents for Plaintiff to get his personal loan. (See Def.'s Countercl. ¶¶ 93-94.) Thereafter, Plaintiff also made several significant misrepresentations to Phillip, failed to disclose important terms of Plaintiff's potential loan for his portion of the proposed project, and attempted to coerce Phillip into signing several agreements with provisions that were not agreed to by the parties involved. (Def.'s Countercl. ¶¶ 86–87, 89, 98–104, 112–114, 117–118.) This misconduct resulted in increasingly hostile communications from Plaintiff to Phillip. (Def.'s Countercl. ¶¶ 99, 104, 106, 108, 110–111.) At no point during the course of these ongoing negotiations did Plaintiff or Phillip execute any written agreement or orally agree to the materials terms of the proposed project. Eventually, negotiations regarding the proposed project came to a standstill when Plaintiff demanded that Phillip sign a mortgage (and other documents) for his benefit and then proceeded to threaten Phillip in numerous instances as set forth in the Counterclaims. After threatening a frivolous lawsuit which would not cost him anything (which would cost Phillip a lot to defend), Plaintiff finally initiated the instant frivolous action in addition to another frivolous defamation action against Phillip. (Def.'s Countercl. ¶¶ 106–111, 115, 117-122.)

[2] Jacob Ferderigos was also attempting to find financing for his portion of the proposed project.

LEGAL STANDARD

Upon motion by a party, "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Rule 12(f), SCRCP.[3] Striking a party's pleadings is considered a severe remedy and should be resorted to only in cases "palpably requiring it for the administration of justice." Archambault v. Sprouse, 215 S.C. 336, 343, 55 S.E.2d 70, 73 (1949); see also Renaissance Greeting Cards, Inc. v. Dollar Tree Stores, Inc., 227 F. App'x 239, 247 (4th Cir. 2007) (noting that motions to strike under Rule 12(f) "are to be granted infrequently"). A court should not strike material pursuant to Rule 12(f) unless the matter sought to be omitted has no possible relationship to the controversy. CTH I Caregiver v. Owens, No. CA 8:11-2215-TMC, 2012 WL 2572044, at *6 (D.S.C. July 2, 2012) (referencing Tonka Corp. v. Rose Art Industries, Inc., 836 F. Supp. 200, 217 (D.N.J. 1993)). Accordingly, a motion to strike a matter from an answer will not be granted, unless the moving party demonstrates that the challenged material is "so unrelated to the plaintiff's claims as to be unworthy of any consideration." Brock v. Bowman, No. 3:10-2821-MGL, 2013 WL 5569995, at *8 (D.S.C. Oct. 9, 2013).

ARGUMENT

I. PHILLIP'S COUNTERCLAIMS ARE SUFFICIENTLY PLED.

Plaintiff seeks to strike Phillip's claims for violation of the duty of care, defamation, abuse of process, and frivolous proceedings as insufficient under Rule 12(f), SCRCP. In Archambault v. Sprouse, 215 S.C. 336, 55 S.E.2d 70 (1949), the Supreme Court of South Carolina concluded that striking a pleading is a severe remedy, and as such, a court will grant the motion only when the defect is plain, "for when there is a semblance of a cause of action or defense set up in the pleading, its sufficiency cannot be determined on motion to strike

[3] Rule 12(f), SCRCP, is almost identical to the federal rule, Fed. R. Civ. P. 12(f). Accordingly, the Court may rely on federal law to interpret the application of Rule 12(f), SCRCP. See Brown v. Leverette, 291 S.C. 364, 366–67, 353 S.E.2d 697, 698–99 (1987) (utilizing federal law to interpret a state rule with similar language).

out." Id. at 343, 55 S.E.2d at 73 (1949) (emphasis added). The court should not strike the cause of action merely because the court doubts the plaintiff will prevail in the action. Dye v. Gainey, 320 S.C. 65, 68, 463 S.E.2d 97, 99 (Ct. App. 1995).

More recently, the Court of Appeals of South Carolina has stated that a motion to strike which challenges a theory of recovery in the pleading "is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCP." McCormick v. England, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct. App. 1997). A ruling on a motion to dismiss a claim must be based solely on the allegations set forth on the face of the claim. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 114–15, 682 S.E.2d 871, 874 (Ct. App. 2009); Pinder v. Washington, No. 2006-UP-311, 2006 WL 7286057, at *2 (S.C. Ct. App. July 10, 2006). Under South Carolina law, the Court must deny Plaintiff's motion if the facts alleged and the inferences reasonably deducible from Phillip's pleading would entitle Phillip to any relief on any theory of the case. McCormick, 328 S.C. at 632–33, 494 S.E.2d at 433–34.

A. Phillip Pleaded Sufficient Facts to Support a Claim for Violation of the Duty of Care.

Plaintiff claims that Phillip's first counterclaim (paragraphs 125–128) is insufficient to state a cause of action of violation of the duty of care because it fails to allege duty and violation of duty. Pursuant to the South Carolina Uniform Limited Liability Company Act of 1996, S.C. Code Ann. §§ 33-44-101 et seq. (the "LLC Act"), a member of an LLC owes the other members a duty of loyalty and a duty of care. S.C. Code Ann. § 33-44-409. Under § 33-44-409(c), a member's duty of care to other members in the conduct of the company's business is limited to refraining from engaging in "grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." This statute is written in the disjunctive. As such, if a member's conduct meets any of the four types of conduct listed, he or she is liable for violation of the duty of care.

Interestingly, Plaintiff alleges Phillip failed to sufficiently plead a duty owed when Plaintiff himself alleged the parties owed each other a duty of care based on the LLC Act in his Complaint. (See Compl. ¶ 39.) Notwithstanding that the Complaint should obviate any analysis on this point here, in his Answer and Counterclaim, Phillip alleges that he, Plaintiff, and the other Ferderigos Brothers are owners and members of Old Towne Suites, LLC. (Def.'s Countercl. ¶¶ 5, 68.) Therefore, the LLC Act applies and imposes on Plaintiff a duty of care owed to Phillip and the other LLC members.

Next, Phillip sets forth forty-five (45) violations of this duty. (See Def.'s Answer and Countercl. ¶¶ 127.a–127.ss.) These allegations consist of repeated misrepresentations, failure to disclose important business-related information to Phillip, the use of threats and manipulation in an attempt to coerce Phillip into approving Plaintiff's nonagreed-to demands, and failure to use due care in conducting the affairs of the LLC. These incidents represent the exact conduct contemplated by § 33-44-409(c). See, e.g., Future Grp., II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996) (concluding that member breached his fiduciary duty by failing to obtain other members' consent properly).

Under these circumstances, Phillip sufficiently pleaded Plaintiff's duty of care and Plaintiff's violation of that duty. Therefore, the Court should deny Plaintiff's motion to strike this counterclaim.

B. Phillip Pleaded Sufficient Facts to Support a Claim for Defamation.

Phillip has properly pled a claim for defamation. Under South Carolina law, a claim for defamation contains the following elements: (1) a false and defamatory statement; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Murray, 344 S.C. at 139, 542 S.E.2d at 748.

In his Motion to Strike, Plaintiff claims Phillip has failed to adequately plead the first element—whether a false or defamatory statement was made. Plaintiff claims the alleged defamatory or false statements are not actionable because they are either opinion or statements based on his legal position in this case. However, if the statement of opinion reflects a factual basis, there may be liability if the factual basis is defamatory and false. See Milkovich v. Lorain Journal Co., 110 S. Ct. 2695, 497 U.S. 1 (1990) (concluding that simply couching statements in terms of opinion does not dispel implications of objective fact). In Goodwin v. Kennedy, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001), the Court of Appeals of South Carolina held that there is no "wholesale defamation exception" for statements that may be labeled as opinions. Id. at 40, 552 S.E.2d at 324–25 (referencings Milkovich, 110 S. Ct. at 2705–06, 497 U.S. at 18–19). Expressions of opinion often imply an assertion of fact; for example, "[i]f a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth." Milkovich, 110 S. Ct. at 2705–06, 497 U.S. at 18–19. Even if the speaker states facts upon which he bases his opinion, if those facts are incorrect or the speaker's assessment is flawed, the opinion may still infer a false assertion of fact. Id. at 2706, 497 U.S. at 19. Therefore, a speaker cannot shield his statements from a defamation claim simply by labeling those statements as opinions.

Phillip alleges that Plaintiff published false and defamatory statements which constitute defamation/libel/slander that are actionable per se (unfitness in one's business or profession), as well as defamation per quod. Among other statements, Plaintiff published defamatory statements to others that the proposed project did not move forward because Phillip breached his promises, was dishonest, was a liar, and that the project fell apart because of Phillip's fault. (See Def.'s Answer and Countercl. ¶ 148 (alleging that Plaintiff told others the proposed project fell apart because Phillip was upset that Plaintiff would not let him eat for free at his restaurant).) Phillip also alleges that Plaintiff published false and

defamatory statements to others that Phillip had no "business sense." (Def.'s Answer and Countercl. ¶ 149–150.) Phillip further alleges that Plaintiff published false and defamatory statements to others that the proposed project failed because Phillip refused to carry out his obligations. (Def.'s Answer and Countercl. ¶ 152.) Although Plaintiff would like to couch these comments as "opinions," he clearly implies an assertion of fact in publishing these statements to others. Following the Supreme Court's logic above, by saying "Phillip Ferderigos has no business sense," Plaintiff implies a knowledge of facts which lead to the conclusion that Phillip Ferderigos is a bad businessman. Given Plaintiff's business relationship with Phillip, Plaintiff's statements could easily be construed by others as truths, thereby causing as much damage to Phillip's reputation as a statement of plain fact. Goodwin, 347 S.C. at 40, 552 S.E.2d at 325.[4] Accordingly, even in the event that Plaintiff's statements are "opinions" as he now conveniently claims, Phillip has pleaded sufficient facts to demonstrate that Plaintiff made false and defamatory statements. As a result, Plaintiff's Motion to Strike must be denied.

C. Phillip Pleaded Sufficient Facts to Support a Claim for Abuse of Process.

Plaintiff claims that Phillip's fifth counterclaim (paragraphs 162–166) is insufficient to state a cause of action for abuse of process because Phillip failed to allege a collateral advantage. A claimant must establish the following two elements to prove abuse of process under South Carolina law: (1) an ulterior purpose; and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding. Pallares v. Seinar, 407 S.C. 359, 370, 756 S.E.2d 128, 133 (2014). "The first element, an ulterior purpose, exists if the process is used to secure an objective that is not legitimate in the use of the process." Id. at 370–71, 756 S.E.2d at 133. The improper purpose in an abuse of process claim usually

[4] This is especially true as Phillip is a member of our Bar, and his business relies solely on his reputation for honesty and fair dealing, a reputation he has developed over the last 20 years without a blemish.

takes the form of coercion, by using the process "as a threat or club." D.R. Horton, Inc. v. Wescott Land Co., 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2012). As a result, the South Carolina Supreme Court has held that the use of process to coerce or extort the defendant is an abuse. Swicegood v. Lott, 379 S.C. 346, 352, 665 S.E.2d 211, 214 (2008). Thus, "[o]ne who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability for harm caused by the abuse of process." Id. at 371, 756 S.E.2d at 133–134 (quoting Restatement (Second) of Torts § 682 (1977)).

This is exactly what Plaintiff seeks to accomplish in the instant case. As stated repeatedly in Phillip's Answer and Counterclaims and as evidenced by the exhibits incorporated therein, Plaintiff's lawsuit for breach of contract is simply a veil for his collateral objective and primary reason for bringing these claims—to coerce and strong-arm Phillip into giving Plaintiff a mortgage to guarantee Plaintiff's loan and signing incorrect, non-agreed to loan documents in favor of Plaintiff and to the detriment of Phillip. (Def.'s Countercl. ¶¶ 117, 127.qq, 165.) As the exhibits attest, in Plaintiff's own words, there was no binding agreement of material terms for the proposed project, or even for the financing of the proposed project. Rather, the parties investigated the possibilities of the proposed project. (Def.'s Countercl. ¶ 72.) From the beginning, Phillip was clear that he would not guarantee or undertake personal liability for Plaintiff's possible financing. (Def.'s Countercl. ¶ 70.) As the financing to be obtained by Plaintiff apparently was dependent on Phillip giving a mortgage, the project could not go forward. (Def.'s Countercl. ¶ 104.) Plaintiff initially tried to coerce Phillip into moving forward by taking away his family privilege of eating for free at the family restaurant. (Def.'s Countercl. ¶¶ 106–108, 127.y, 127.z, 127.aa, and 127.jj.) When this proved unsuccessful, Plaintiff threatened to defame Phillip and threatened to build a building on Phillip's property without his consent. (Def.'s Countercl. ¶¶ 108, 115, 127.o, 127.z,

127.cc, 127.jj.) Plaintiff further proceeded with taking other actions in bad faith as set forth in the counterclaims. Finally, Plaintiff filed frivolous lawsuits, even though there was no agreement between the parties at any time. (Def.'s Countercl. ¶¶ 51, 114, 116.) Based on these allegations and supporting documentation, Phillip has more than established the semblance of an action needed to survive Plaintiff's Motion to Strike.

D. Phillip Pleaded Sufficient Facts to Support a Claim for Frivolous Proceedings.

Plaintiff claims that Phillip's seventh counterclaim (paragraphs 170–172) is insufficient because a frivolous proceedings claim is not ripe until Phillip prevails in the case. Unfortunately for Plaintiff, this is not the law in South Carolina. A litigant forced to respond to and participate in frivolous proceedings is permitted to assert the claim in the underlying action. See Osprey, Inc. v. Cabana Ltd. P'ship, 340 S.C. 367, 382, 532 S.E.2d 269, 277 (2000) (stating that a party to a frivolous lawsuit has a statutory remedy in the South Carolina Frivolous Civil Proceedings Sanctions Act, §§ 15-36-10 *et seq*). South Carolina courts have consistently allowed litigants to bring counterclaims for frivolous proceedings. See, e.g. Ex parte Gregory, 378 S.C. 430, 432, 663 S.E.2d 46, 47 (2008) (allowing a claim for frivolous proceedings in violation of the South Carolina Frivolous Proceedings Sanction Act in the respondent's Answer and Counterclaims); Brown v. Li'l Cricket Food Stores, Inc., No. 2005-UP-211, 2005 WL 7083852, at *2 (S.C. Ct. App. Mar. 24, 2005) (acknowledging defendant's frivolous proceedings counterclaim); Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (2002) (same). Although the counterclaim may be dependent on the resolution of the underlying action, a litigant still has the right to assert and preserve the claim. The Court of Appeals of South Carolina echoed this principle in Pond Place Partners, Inc., concluding that while the court could not rule on the defendant's counterclaim for frivolous proceedings until the conclusion of the underlying action, the counterclaim was valid and pending. 351 S.C. at 12, 567 S.E.2d at 886–87.

Phillip recognizes that he will have to see this litigation through until the end. However, in the meantime, Phillip has the legal right to assert a claim for frivolous proceedings in his counterclaims pending resolution of the case. Based on this precedent, Phillip's frivolous proceedings claim is appropriate and must not be stricken.

II. PHILLIP'S EXHIBITS DO NOT SUBVERT THE RULES OF EVIDENCE.

Plaintiff also moves to strike the exhibits attached to Phillip's Answer and Counterclaims based on the grounds that they are unauthenticated, include hearsay, and attempt to circumvent the rules of evidence. This argument is without merit as it is well established that the jury will not see the pleadings. Rule 43(g), SCRCP ("The pleadings shall not be submitted to the jury for its deliberations." CTH 1 Caregiver, 2012 WL 2572044, at *8. Exhibits attached to pleadings are not evidence on behalf of the party to whose pleading they are attached unless that party lays the necessary foundation and formally introduces the exhibits into evidence during trial. 88 C.J.S. Trial § 160.

Furthermore, Rule 10(c), SCRCP, permits the attachment of exhibits to pleadings, as well as the incorporation of those exhibits therein. In keeping with the spirit behind Rule 10(c), South Carolina courts have consistently allowed attachments similar to Phillip's to be included as part of a pleading. See, e.g., HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 630, 699 S.E.2d 699, 702 (Ct. App. 2010) (allowing real estate document); Brazell v. Windsor, 384 S.C. 512, 515–16, 682 S.E.2d 824, 826 (2009) (same); Lee v. Kelley, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989) (concluding that the bill of sale attached to the complaint became a part and parcel of the complaint); see also McLaughlin v. Copeland, 435 F. Supp. 513 (D.C.D.MD. 1977) (denying motion to strike fourteen-page appendix, which describes the alleged facts giving rise to the suit, because the appendix is not evidence). When ruling on a party's motion to dismiss, a trial court may consider the exhibits attached to

the complaint for purposes of determining the sufficiency of the pleadings. Pinder v. Washington, No. 2006-UP-311, 2006 WL 7286057, at *2 (Ct. App. July 10, 2006).

By attaching the similar exhibits at issue, Phillip merely seeks to exercise his rights under Rule 10(c) and provide additional support for his claims in the event that the Court must consider the sufficiency of his pleadings, the exact challenge Plaintiff is making here.[5] Under the circumstances, this Court should not strike Phillip's exhibits based on Plaintiff's unfounded and incorrect contention that Phillip's exhibits subvert the rules of evidence.

III. THE ANSWER AND COUNTERCLAIMS ARE NOT REDUNDANT, IMMATERIAL, IMPERTINENT OR SCANDALOUS.

Plaintiff alleges in multiple paragraphs of his Motion to Strike that Phillip's Answer and Counterclaims include allegations of statements by Plaintiff which are immaterial, impertinent, and/or scandalous within the meaning of Rule 12(f). "Immaterial matter is that which has no essential or important relationship to the claim for relief, and impertinent material consists of statements that do not pertain to, and are not necessary to resolve, the disputed issues." CTH 1 Caregiver, 2012 WL 2572044, at *5. Scandalous matter includes "allegations that cast a cruelly derogatory light on a party to other persons." Founders Ins. Co. v. Hamilton, No. 5:15-CV-00408-JMC, 2015 WL 3458470, at *2 (D.S.C. June 1, 2015).

A. Paragraphs 117, 127.qq, 104, 127.x, and 127.ff Support Phillip's Counterclaim for Violation of the Duty of Care.

As discussed above, the instant case stems from a series of communications and negotiations relating to the proposed project between Plaintiff and Phillip. In response to Plaintiff's Complaint and in relation to the same series of communications and negotiations surrounding the proposed project, Phillip filed a counterclaim against Plaintiff for violation of

[5] Furthermore, even if Phillip does attempt to introduce certain exhibits during trial, the exhibits would likely be admissible. For example, many of the exhibits are admissions by a party opponent and therefore do not constitute hearsay under the South Carolina Rules of Evidence. (See e.g., Def.'s Countercl. Ex. H, L, and M). Regardless, this is an argument for Phillip to make before the Court in the event that he chooses to introduce the exhibits into evidence.

the duty of care pursuant to S.C. Code Ann. § 33-44-409. Under South Carolina law, a member of a member-managed LLC is liable for violation of the duty of care if he engages in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. S.C. Code Ann. § 33-44-409(c).

Among numerous breaches of duty as further set forth in Paragraphs 127.a through 127.ss of Phillip's Answer and Counterclaims, Phillip also offered the following statements to support his claim that Plaintiff violated this duty, all of which Plaintiff now seeks to strike from Phillip's Answer and Counterclaims:

- Paragraphs 117 and 127.qq: statements made by Plaintiff to the Ferderigos Brothers referencing Plaintiff's arrangement with his attorney and threatening a frivolous lawsuit if the Brothers do not agree to Plaintiff's demands regarding the proposed business expansion;
- Paragraphs 104 and 127.x: a sequence of communications between Plaintiff and the Ferderigos Brothers in which Plaintiff responds by stating that he is only interested in his own ventures and the games of the "ultra rich;"
- Paragraph 127.ff: statements made by Plaintiff threatening to take Phillip and Spiros Ferderigos' homes and throw their children out on the street if the Ferderigos Brothers do not comply with Plaintiff's demands regarding the proposed project.

The aforementioned statements provide clear examples of Plaintiff's intentional misconduct with respect to the LLC and his use of intimidation and harassment to coerce Phillip and the other Ferderigos Brothers into complying with Plaintiff's demands relating to the proposed project. As such, these statements are undoubtedly material to the instant controversy.

Moreover, because Phillip's counterclaim for violation of the duty of care arises from the same transaction and occurrence as Plaintiff's original claims, which also include a cause of action for violation of that same duty of care, by its very definition, Phillip's compulsory counterclaim has a logical relationship with Plaintiff's original claims.[6] The above statements

[6] Both Phillip's and Plaintiff's claims address a series of negotiations related to the same proposed project and the duty of care owed in those negotiations. Phillip's counterclaim is therefore compulsory because it arises out of the same transaction or occurrence as Plaintiff's claims. First–Citizens Bank & Trust Co. v. Hucks, 305 S.C. 296, 298, 408 S.E.2d

are therefore important and necessary to resolve both Plaintiff and Phillip's claims for relief. Given the statements' clear relation to the controversy, the Court should not strike the above statements as immaterial, impertinent, or scandalous.

B. Paragraphs 104 and 127.x Support Phillip's Eighth, Tenth, and Eleventh Affirmative Defenses.

In addition to supporting Phillip's claim for violation of the duty of care, the statements in paragraphs 104 and 127.x also support his eighth defense ("release"), tenth defense ("no meeting of the minds"), and eleventh defense ("no agreement to agree"). During a discussion regarding the implications of a loan for the proposed project, Plaintiff responded to the Ferderigos Brothers by stating, "[I am] not interested in an [sic] ventures but my own. I'm also working hard on a deal where I get 25% of $100,000,000.00 for just being an expert consultant. I hang out with the ultra wealthy now and play their games." Plaintiff also stated:

- "I would rather leave it in your hands now and keep me in the loop if and when you all are ready." "It's in your court now. I could care less. My Zeus deal is bringing in plenty to keep my family happy."
- "Think about the big picture talk to the bank yourselves and get things done if you like."
- "I think it's best to think of the big picture of this new project which will put us in a boutique hotel category and forget about stupid details that carry no wait in the big picture." "In the end the building is what the bank wants and none of these side agreements really matter. I suggest you forget your agreement and I will forget mine and we move forward on a very profitable venture and get it done the way the bank allows."
- "Are ya'll contacting the bank, my attorney, and the closing attorney or are we just forgetting about it?"
- "If you are intelligent you will already know that the money will be there with the original suites income to pay for the loan. Cut your pompous attitude and either get it done or not."
- "Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family."

222, 223 (1991); see, e.g., Beach Co. v. Twillman, Ltd., 351 S.C. 56, 61, 566 S.E.2d 863, 865 (2002) (concluding that the parties' respective claims for breach of contract had arisen out of the same contract and thus were logically related to one another).

- "We can discuss all options when we meet and hopefully come to a mutual agreement."

(Def.'s Countercl. ¶ 110, *Ex. V.*) These statements are necessary and material to Phillip's affirmative defenses because it proves that Plaintiff released Phillip and his brothers from pursuing the proposed project, or at the very, least demonstrated that there was no binding agreement amongst the parties.

C. Paragraphs 106, 107, 108, 127.y, z, aa, and jj Support Phillip's Counterclaim for Defamation.

Phillip also filed a counterclaim against Plaintiff for defamation. Under South Carolina law, a claim for defamation must include facts sufficient to show: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Murray v. Holnam, Inc., 344 S.C. 129, 139, 542 S.E.2d 743, 748 (Ct. App. 2001). In support of his claim for defamation, Phillip included the following statements by Plaintiff, all of which Plaintiff now seeks to strike from Phillip's Answer and Counterclaims as impertinent and scandalous:

- Paragraphs 106 and 107: statements made by Plaintiff to third parties insulting Phillip in an effort to humiliate him and gain the upper hand in negotiations;
- Paragraphs 108, 127.y, z, aa, and jj: statements made by Plaintiff to third parties insulting Phillip, spreading untruths about his involvement in the proposed project, and threatening to spread rumors about his business acumen.

As discussed above, a court should not strike a matter unless the matter has no possible relation to the controversy. CTH 1 Caregiver, 2012 WL 2572044, at *6. In keeping with this principle, courts have consistently denied motions to strike counterclaims of defamation in cases similar to Phillip's. See, e.g., Global Hub Logistics v. Tamerlane Global Services, Inc., 2013 WL 1332048 (E.D. Va. 2013) (denying plaintiff's motion to strike defendants' answer and counterclaims of breach of contract and defamation in response to the plaintiff's allegations of breach of duty of good faith and fair dealing and breach of contract).

The above statements do not cast a cruelly derogatory light on Plaintiff, nor were they intended to do so; rather, the statements clearly pertain to and are necessary to resolve the claim of defamation against Plaintiff. As is the case with all of the statements Plaintiff wishes to strike, the aforementioned statements surpass the minimal relevancy threshold and are material and pertinent to both Phillip's counterclaims and defenses. Therefore, the Court should deny Plaintiff's motion to strike the statements in Phillip's Answer and Counterclaims.

IV. PHILLIP'S ALLEGATIONS AND EXHIBITS ARE RELEVANT AND NECESSARY FOR HIS FORTHCOMING MOTION FOR JUDGMENT ON THE PLEADINGS.

The allegations and exhibits are directly relevant to establish there was no meeting of the minds, there was no agreement as to all material terms, (there was not even an agreement to agree as to all material terms), there was no written agreement or signed agreement required by the statute of frauds, and there is no statute of frauds exception applicable to the statute of frauds defense as a matter of law in regard to Phillip. The text and allegations further plead and prove Phillip's abuse of process claims and such allegations, texts, and exhibits are directly relevant to Phillip's upcoming Rule 12(c) motion for judgment on the pleadings.

CONCLUSION

Striking a party's pleading is a severe remedy and should not be granted unless the challenged material is so unrelated to the controversy as to be unworthy of consideration or fails to establish the semblance of an action. Phillip's pleading and the facts incorporated therein are absolutely material and pertinent to the resolution of this controversy.

Additionally, Phillip has certainly set forth more than a semblance of a cause of action for each counterclaim. As a result, Plaintiff's Motion to Strike must be denied.[7]

Richard A. Farrier (S.C. ID No 1962)
Email: richard.farrier@klgates.com
Jennifer H. Thiem (S.C. ID No. 73739)
Email: jennifer.thiem@klgates.com
K&L Gates LLP
134 Meeting Street, Suite 200
Charleston, SC 29401
Phone: (843) 579-5600
Fax: (843) 579-5601

ATTORNEYS FOR PHILLIP FERDERIGOS

[7] Plaintiff's Motion should be further denied because he cannot talk out of both sides of his mouth. On the one hand, he seeks to have various exhibits and allegations struck from Phillip's Answer and Counterclaims as improper and superfluous. In fact, he even states "[t]he factual allegations are sufficient." (Pl.'s Motion to Strike ¶ 1.) He then reverses course and argues that Phillip has failed to sufficiently plead various counterclaims meanwhile seeking to strike allegations and proof underpinning those counterclaims. As further set forth above, Phillip has not included inappropriate or superfluous allegations or exhibits in his Answer and Counterclaims and has sufficiently pled each of his counterclaims.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3919
	)	
Athan Fokas,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Philip Ferderigos, Jacob Ferderigos, and Spiro Ferderigos,	)	
	)	
Defendants.	)	
	)	

FILED
2015 DEC -3 PM 3:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, the undersigned, of the law office of K&L Gates LLP do hereby certify that I have served counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading(s): **PHILLIP FERDERIGOS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE ANSWER AND COUNTERCLAIMS OF DEFENDANT PHILIP FERDERIGOS**

Counsel Served:

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
Attorneys for Plaintiff

Dawes Cooke
Jeremy Bowers
BARNWELL WHALEY PATTERSON & HELMS LLC
PO Drawer H
Charleston, SC 29402

John Massalon
WILLS MASSALON & ALLEN LLC
P.O. Box 859
Charleston, SC 29402

Gwyn L. Martin
Legal Assistant

Charleston, South Carolina
December 3, 2015

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE ANSWERS OF PHILIP AND SPIROS FERDERIGOS**

FILED
2015 DEC -4 PM 1:59
JULIE J. ARMSTRONG
CLERK OF COURT

INTRODUCTION

Defendants, Phillip and Spiros Ferderigos, filed nearly identical Answers in this matter (and incorporated those Answers in their Answers to a second case filed against them by Plaintiff). Plaintiff filed a Motions to Strike pursuant to SCRCP 12(f). The Motions detail the specific portions of both Answers that should be stricken. That list is not repeated in this Memorandum, the purpose of which is summarize the law surrounding the rule as it relates to the specific types of allegations Plaintiff believes fall within the ambit of the rule.

LEGAL ANALYSIS

Rule 12(f) provides that, "Upon motion pointing out the defects complained of...the court may order stricken from any pleading, any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." The decision rests in the sound discretion of the trial judge. The federal courts have the same rule and have often spoken the scope of statements that should be stricken. In CTH1 Caregiver v. Owens, 2012 WL 2572044 (D.S.C. 2012), the District Court for the District of South Carolina said this about allegations which qualify as immaterial and/or scandalous:

"'Immaterial' matter is that which has no essential or important relationship to the claim for relief,

and 'impertinent' material consists of statements that do not pertain to, and are not necessary to resolve, the disputed issues." *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 402 F.Supp.2d 434, 437 (S.D.N.Y.2005) (*citing Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993)). "Scandalous" includes allegations that cast a cruelly derogatory light on a party to other persons. *See Skadegaard v. Farrell*, 578 F.Supp. 1209, 1221 (D.N.J.1984). "The granting of a motion to strike scandalous matter is aimed, in part, at avoiding prejudice to a party by preventing a jury from seeing the offensive matter or giving the allegations any other unnecessary notoriety inasmuch as, once filed, pleadings generally are public documents and become generally available." Wright & Miller 5C *Fed. Prac. & Proc. Civ.* § 1382 (3d ed.2011).

A copy of this Decision is attached hereto.

The purpose of the rule, as explained by the District Court, is to prevent the jury from seeing the offensive matter or giving the allegations any unnecessary notoriety, pleadings being public documents. As detailed in the Motions, most of the allegations Plaintiff seeks to have stricken are "immaterial" and /or "scandalous." They are clearly included in the Answers of these Defendants purely to cast the Plaintiff in a negative light, if read to a jury. References to the Plaintiff being drunk at a party and claiming to socialize with the super rich, for instance, has nothing to do with the issues in this case – existence of a contract and its breach, or the duties owed by LLC members or the counterclaims alleged by these Defendants. Similarly, recounting what Plaintiff is supposed to have said about what he pays is lawyer is offensive both the Plaintiff and to his counsel. Likewise, recounting what Plaintiff is supposed to have said in the course of the parties' dispute about the consequences of litigation has nothing whatever to do with the issues in the case and is alleged purely to disparage him. The allegations about an argument over what family members should continue to eat in the restaurant for free has nothing to do with the case. These allegations are not only disparaging to the point of being cruelly derogatory, they would be entirely confusing to a jury if the jury were forced to listen to them.

Other allegations in the Answers are objectionable under the Rule as they are redundant. The copious inclusion of documents, most hearsay and all unauthenticated is not only redundant

of the factual allegations, it is a transparent effort to get these documents before the jury without complying with the rules of evidence. While the trial judge may explain to the jury that pleadings are not evidence, the inclusion of documents, which will inevitably look to the jury like evidence, will subvert the purpose of evidentiary rules.

Finally, the 1st, 4th, 5th and 7th counterclaims in both Defendants' Answers (which are identical) are insufficient to state causes of action, as explained in the motions, and should be stricken for that reason.

CONCLUSION

Due to the above redundant, improper, unprofessional, insufficient, immaterial, impertinent and scandalous portions of this Defendant's Answer and Counterclaims, the pleading should be stricken. The pleading is inconsistent with the standards set by the Rules of Civil Procedure for pleadings in this Court.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

December 4, 2015
Mount Pleasant, South Carolina

2012 WL 2572044
Only the Westlaw citation is currently available.
United States District Court,
D. South Carolina,
Greenville Division.

CTH 1 CAREGIVER, Plaintiff,
v.
Fred OWENS, Andre Bauer, Ken Ard, Eugene A. Laurent, Tana Vanderbilt, and Sam Davis, Defendants.

C/A No. 8:11–2215–TMC. | July 2, 2012.

Attorneys and Law Firms

Patricia L. Harrison, Patricia Logan Harrison Law Office, Columbia, SC, for Plaintiff.

Patrick John Frawley, Nicholson, Davis, Frawley, Anderson and Ayer, Erica M. Parker, Davis, Frawley, Anderson, McCauley, Ayer, Fisher and Smith, Lexington, SC, Damon C. Wlodarczyk, Nikole H. Boland, Roy F. Laney, Riley, Pope and Laney, Kenneth Paul Woodington, Davidson, Morrison and Lindemann, William Henry Davidson, II, Davidson and Lindemann, Columbia, SC, for Defendants.

OPINION & ORDER

TIMOTHY M. CAIN, District Judge.

*1 This matter is before the court on the following motions: Defendant Fred Owens' Motion to Strike (Dkt.# 8); Defendants Sam Davis, Eugene A. Laurent, and Tana Vanderbilt's Motion to Strike (Dkt.# 14); Defendants Ken Ard and Andre Bauer's Motion to Dismiss (Dkt.# 11); Defendants Sam Davis, Eugene A. Laurent, and Tana Vanderbilt's Motion to Dismiss (Dkt.# 21); and Plaintiff CTH 1 Caregiver's Motions to Amend the Complaint (Dkt.# 45) and Seal Documents (Dkt. # 46). Responses (Dkt.# 28, 29, 35, 47, 48, 49, 51) and replies (Dkt.# 38, 39, 40, 50, 52, 53) have been filed and these motions are ripe for resolution.

I. Background/Procedural History

Pursuant to a contract with the Newberry County Disabilities and Special Needs ("DSN") Board, Plaintiff was formerly the caregiver of two severely disabled women, referred to in the Complaint as Sarah Doe and Sally Roe. (Compl.¶¶ 2, 26, 27). For approximately nine years, Plaintiff provided care and supervision in her home to Doe and Roe under a foster care program known as Community Training Home I ("CTHI"). (Compl.¶¶ 2, 4). Plaintiff's CTHI license was revoked in the fall of 2009 and Plaintiff alleges in her Complaint that it was in retaliation for her inquiries regarding the payments made to CTHI caregivers and for telling hospital personnel that Doe's scars on her arms were from the time she was in the custody and care of a state agency. (Compl.¶¶ 4–5, 6–7, 109).

Specifically, Plaintiff alleges she inquired about a raise and subsequently she asked to speak with the Newberry DSN Board about its failure to give CTHI caregivers an increase in payments, but her requests were refused. (Compl.¶¶ 139, 144). Plaintiff contends that Defendants participated in a financial scheme to prevent CTH1 caregivers from being paid a fair wage while overbilling the government for the CTH1 caregivers' services and that her inquiries inadvertently threatened to expose Defendants' fraudulent actions. (Compl. ¶ 109; Dkt. # 29 Pl.'s Mem Opp. Mots. to Strike at 4).

Plaintiff alleges that subsequently on May 11, 2009, Doe secretly retrieved a moldy hamburger bun from Plaintiff's kitchen trash can and made a sandwich with it which she took with her to a workshop run by Defendant Owens. (Compl.¶¶ 146–137). She alleges that in retaliation for her inquiries, Defendant Owens filed a report that Plaintiff had neglected Doe with law enforcement, and an investigation was initiated. (Compl.¶¶ 148, 150). Plaintiff alleges that, even though the allegations of neglect were not substantiated, Roe and Doe were removed from Plaintiff's home without notice on May 28, 2009. (Compl.¶¶ 150–154, 159). In August or September 2009, Plaintiff's CTHI license was revoked. (Compl.¶¶ 79, 241, 251).

Plaintiff filed this action against Defendants alleging the following causes of action: 1) fraudulent misrepresentation; 2) interference with a contract; 3) wrongful termination; 4) § 1983—due process and equal protection violations and conspiracy; 5) common law conspiracy; 6) defamation; and 7) intentional infliction of emotional distress.

WestlawNext © 2015 Thomson Reuters. No claim to original U.S. Government Works.

II. Discussion

A. Defendants' Motions to Dismiss and Plaintiff's Motion to Seal

*2 In their Motions to Dismiss, Defendants contend the complaint should be dismissed because Plaintiff is proceeding anonymously without permission from the court in violation of Rule 10(a), Fed.R.Civ.P. Plaintiff contends she is protecting the privacy of innocent third parties, Roe and Doe. Plaintiff contends Defendants' motions should be denied and this action should be allowed to continue anonymously because this case involves matters of an intensely personal nature regarding persons with disabilities. She specifically argues that, in light of the allegations regarding Doe's sexual assault and abortion, the identity of these nonparty disabled persons should be protected. Finally, Plaintiff contends that Defendants are aware of her identity and would not be prejudiced by this action proceeding anonymously. Alternatively, Plaintiff requests leave to file an amended complaint.

Plaintiff has also filed a motion to seal which she states is an attempt to resolve Defendants' objections to her proceeding anonymously. She has filed a separately sealed document in which she reveals her identity. In this motion, Plaintiff "requests an order approving the use of 'CTH I Caregiver' to identify the Plaintiff in the amended complaint and all documents filed with this Court." (Dkt. # 46–Pl.'s Mot. to Seal at 1). Specifically, she is seeking "(1) an order finding that it is not necessary to identify the Plaintiff's name in court records at this time, because the Defendants (sic) rights have not been violated, since they know her true identity, or, in the alternative, (2) an order sealing the attached document identifying the name of the Plaintiff." (*Id.* at 3).

Generally, the identity of the parties in an action should not be concealed. Courts have long held that the First Amendment protections of freedom of speech and press safeguard the public's right to attend trials, which must be "open to the public absent an overriding and clearly articulated interest to the contrary." *Doe I v. Marten,* 219 F.R.D. 387, 390–91 (E.D.Va.2004). (*citing Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 576, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980)). A plaintiff seeking to proceed anonymously must show that he or she has a substantial privacy right that outweighs the "customary and constitutionally-embedded presumption of openness in judicial proceedings." *Doe v. Stegall,* 653 F.2d 180, 186 (5th Cir.1981). This presumption of openness is firmly rooted in our nation's law. *Marten,* 219 F.R.D. at 390.

Embodying the presumption of openness, the Federal Rules do not provide for suits by persons using fictitious names or for anonymous plaintiffs. *Id. See also Coe v. United States Dist. Court,* 676 F.2d 411, 415 (10th Cir.1982). Rule 10(a) provides:

> Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

*3 Plaintiffs have been permitted to proceed under pseudonyms only under certain circumstances. *Doe v. Porter,* 370 F.3d 558, 560 (6th Cir.2004). It is the exceptional case in which a court allows a party to proceed anonymously. *James v. Jacobson,* 6 F.3d 233, 238 (4th Cir.1993) (allowing a party to proceed anonymously is a "rare dispensation").

As noted above, Defendants seek a dismissal of this action based upon Plaintiff's failure to seek permission to proceed anonymously. While the Fourth Circuit Court of Appeals has not ruled on this issue, some courts have held that, absent permission to proceed anonymously, if a complaint fails to comply with Rule 10(a) and does not divulge the plaintiff's identity, its filing is ineffective to commence an action and the court lacks jurisdiction over the unnamed parties. *See, e.g., Nat'l Commodity & Barter Ass'n. et al v. Gibbs,* 886 F.2d 1240 (10th Cir.1989). Plaintiff's response that Defendants know or should know Plaintiff's identity or that she will reveal her identity under seal misses the point. It is the public, not the opposing party or the court, which has an interest in the disclosure of the parties' identities. While Plaintiff did not initially seek permission to file an anonymous action, the court declines to dismiss this action at this point. Rather, the court will consider Plaintiff's argument that she should be allowed to continue anonymously.

When determining whether such an exception is justified and a party is allowed to proceed anonymously, a court should consider the following factors:

> whether the justification asserted by the requesting party is merely to

> avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; the ages of the persons whose privacy interests are sought to be protected; whether the action is against a governmental or private party; and, relatedly, the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

James v. Jacobson, 6 F.3d 233, 238 (4th Cir.1993). A final factor often taken into account in addressing the need for anonymity is whether there are other mechanisms that might suffice as well to protect all legitimate interests. *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2nd Cir.2008). Additionally, it is the litigant seeking to proceed anonymously or under pseudonym that bears the burden to demonstrate a legitimate basis for proceeding in that manner. *See Qualls v. Rumsfeld*, 228 F.R.D. 8, 13 (D.D.C.2005).

Applying the factors set forth in *James*, the court acknowledges that Plaintiff's allegations peripherally involve matters of a sensitive and personal privacy nature. However, courts have generally been reluctant to provide anonymity based on a plaintiff's fear of embarrassment over the revelation of personal matters. *See, e.g., Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir.1979). Types of cases in which plaintiffs have been permitted to proceed anonymously in other courts include birth control cases, abortion cases, welfare cases involving minors born to unmarried parents, and cases involving issues of homosexuality. *See Doe v. Deschamps*, 64 F.R.D. 652, 653 (D.Mont.1974) (*citing Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) (abortion); *Doe v. Gillman*, 347 F.Supp. 483 (N.D.Iowa 1972) (involving a child born out of wedlock); *Doe v. Commonwealth's Attorney for City of Richmond*, 403 F.Supp. 1199 (E.D.Va.1975) (challenging the constitutionality of a state sodomy statute as applied to consensual homosexual activity). Of course, these cases involve the plaintiff's privacy and identification of a plaintiff would impact a plaintiff's privacy. Here, identification of Plaintiff will not by itself impact the nonparties' privacy. While there are allegations in the complaint that one of the nonparty disabled persons was sexually assaulted and underwent an abortion over thirty years ago, Plaintiff's identity can be disclosed while the identity of the nonparty persons, Doe and Roe, can be protected through a confidentiality order.

*4 Further, while Plaintiff alleges there is evidence of retaliation by certain Defendants, the retaliation would not be prevented by allowing Plaintiff to proceed anonymously at this point. As Plaintiff notes, Defendants are, or should be, aware of the identities of the Plaintiff and the nonparty disabled persons and Plaintiff states she is willing to identify herself to any Defendant who has not determined her identity. Accordingly, identification of Plaintiff in this action will not increase any retaliation from Defendants and there is no allegation that there is any risk of retaliation from any other source.

Additionally, Plaintiff and the nonparty disabled persons are not minors. Plaintiff, however, contends that the nonparty disabled persons have the mental capacities of children and therefore should be protected. Here, however, as stated above, the nonparties can be protected through the use of a confidentiality order, rather than allowing Plaintiff to proceed anonymously. *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d at 190 (finding court should consider whether there are other mechanisms that might suffice as well to protect all legitimate interests). Finally, while this action is one against the government, "[t]he simple fact that plaintiff sues a governmental entity does not give the court more reason to grant her request for anonymity." *Doe v. Pittsylvania County*, 2012 WL 370023 (W.D.Va.2012). The balance of these factors weighs in favor of not allowing Plaintiff to proceed anonymously.

Based on the foregoing, the court denies Plaintiff's belated request to proceed anonymously set forth in her Motion to Seal. However, rather than dismiss this action as Defendants request, the court grants Plaintiff's alternative request, leave to file an amended complaint.[1] The parties are directed to also file a confidentiality order to protect the identity and privacy of Doe and Roe.

B. Defendants' Motions to Strike[2]

Defendant Owens and Defendants Davis, Laurent, and Vanderbilt have filed separate motions to strike certain paragraphs from the complaint. Together these Defendants seek to strike the following paragraphs: 49–50, 58–59, 66 in part, 67–70 (and footnote 3), 105–110 (and footnote 4), 111–118, 120–135, 137–138, 148 in part, 224, 227, and 229–231. In addition to the preceding paragraphs, Defendant Owens also seeks to strike paragraph 119 and Defendants Davis, Laurent, and Vanderbilt also seek to strike paragraphs 187–189.

Upon motion by a party, "[t]he court may strike from a pleading ... any redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f). Rule 12(f) empowers courts to strike immaterial matter to promote judicial efficiency and avoid needless expenditure of time and money. *Billips v. NC Benco Steel, Inc.*, No. 5:10CV95–V, 2011 WL 4829401, at *1 (W.D.N.C.Oct.12, 2011). Despite the broad discretion afforded to district courts under this rule, striking a party's pleadings is considered an extreme measure and thus such motions are viewed with disfavor and granted sparingly. *Stanbury Law Firm v. Internal Revenue Serv.*, 221 F.3d 1059, 1063 (8th Cir.2000) (internal quotation marks and citations omitted); *see also Renaissance Greeting Cards, Inc. v. Dollar Tree Stores, Inc.*, 227 F. App'x 239, 247 (4th Cir.2007) (noting that district court "was aware" that motions to strike under Rule 12(f) "are to be granted infrequently").

*5 " 'Immaterial' matter is that which has no essential or important relationship to the claim for relief, and 'impertinent' material consists of statements that do not pertain to, and are not necessary to resolve, the disputed issues." *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 402 F.Supp.2d 434, 437 (S.D.N.Y.2005) (*citing Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993)). "Scandalous" includes allegations that cast a cruelly derogatory light on a party to other persons. *See Skadegaard v. Farrell*, 578 F.Supp. 1209, 1221 (D.N.J.1984). "The granting of a motion to strike scandalous matter is aimed, in part, at avoiding prejudice to a party by preventing a jury from seeing the offensive matter or giving the allegations any other unnecessary notoriety inasmuch as, once filed, pleadings generally are public documents and become generally available." Wright & Miller 5C *Fed. Prac. & Proc. Civ.* § 1382 (3d ed.2011).

In paragraph 49, Plaintiff alleges that "most of Ard's campaign funds have come from the long term care industry he is charged with investigating." (Compl.¶ 49). Plaintiff then alleges that "Ard has spent these campaign funds to purchase an evening gown for his wife and, for expensive trips and to buy electronics for personal use." (Compl.¶ 50). Defendants contend these paragraphs are irrelevant to Plaintiff's claims.

Plaintiff's response is that the Defendants were in a conspiracy and the "court may take judicial notice of the fact that Defendant Ard is under investigation for matters related to the funding he has received from the long term care industry he is charged with policing." (Pl.'s Mem. Opp. Mot. to Strike at 6).[3] Alleging that most of Ard's campaign funds were from the long term care industry and then alleging he misspent campaign funds on personal items do not in any way support Plaintiff's specific allegations that Defendants were involved in a conspiracy to terminate her as a CTH1 caregiver. The court agrees with the Defendants and finds these paragraphs should be stricken. The court notes, however, that the court's decision to strike these allegations does not contemplate any ruling on the admissibility of this information at trial, if appropriate. Rather, it is simply a finding that these allegations are immaterial to Plaintiff's claims as raised in her complaint.

In paragraphs 66–70 and footnote 3, Plaintiff alleges that almost thirty years ago Defendant Vanderbilt failed to investigate whether Doe was sexually assaulted and allowed her to return to a foster home where other children were being abused.[4] Plaintiff also alleges that "Vanderbilt has had knowledge of DDSN billing Medicaid for attorney fees incurred in providing legal representation of Sarah Doe and Sally Roe by including these costs in Medicaid cost reports." (Compl.¶ 70). In footnote 3, Plaintiff alleges: "More than twenty-three years after being sexually abused by a coach, a victim of sexual abuse obtained a jury verdict in of $105 million against the school in *Doe v. Porter Gaud et al.*, Case No. C/A No. 98–CP–10–332, verdict in Charleston County Court of Common Pleas in 2000."

*6 Plaintiff alleges that these allegations are relevant and provide background information to show the motive that Defendants Vanderbilt and Owens had to terminate Plaintiff. Plaintiff contends that the expressed reasons for terminating Plaintiff as a provider, Doe's use of a moldy hamburger bun, were based on pretext.[5] Plaintiff's argument is that the jury should be allowed to consider Vanderbilt's response to a moldy hamburger bun compared to her response to Sarah Doe's sexual assault and abortion. The court finds the references in paragraphs 66–70 to incidents alleged to have occurred thirty years ago appear to be highly prejudicial and the connection to Plaintiff's claims is tenuous. However, a court should not exercise its discretion under Rule 12 to strike a pleading unless the matter sought to be omitted has no possible relationship to the controversy. *Tonka Corp. v. Rose Art Industries, Inc.*, 836 F.Supp. 200, 217 (D.N.J.1993) (holding motions to strike will generally "be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties, or if the allegations confuse the issues."). Allegations regarding the sexual assault of Doe many years ago may be relevant, if at all, to establish whether the reason for terminating Plaintiff was pretextual. Again, this ruling does not contemplate a ruling on admissibility of this

evidence and while the court is highly skeptical of the relevancy of these allegations to the present action, the court finds it would be improper to strike these allegations from the complaint at this point. *Bailey–P.V.S. Oxides, LLC, v. S & K Packaging, Inc.*, C/A No. 8–1596, 2009 WL 425605 *2 (W.D.Pa. Feb. 19, 2009) (unpublished) (holding that it was premature to strike allegations in complaint just because they might be inadmissable at trial). Accordingly, these paragraphs should not be stricken.

However, Plaintiff's citation to the *Porter Gaud* case in footnote 3 is clearly immaterial and irrelevant setting forth nothing more than an inapplicable legal conclusion and should be stricken. While Plaintiff argues that it is relevant because it shows that a person who covers up sexual abuse may be held liable decades later, the court notes that this is not an action seeking to hold anyone liable for a sexual assault.

Defendants contend that paragraphs 105–135, 137–138, and part of 148 and footnote 4 should be stricken. In these paragraphs, Plaintiff alleges that the parental rights of Sarah Doe's parents were terminated by the family court due to neglect, but a guardian was never appointed for her. Plaintiff then again sets forth the history and aftermath regarding Doe's sexual assault and abortion thirty years ago and Defendant Vanderbilt's alleged role in failing to report the sexual assault to law enforcement or the Foster Care Review Board, or of the resulting court-ordered abortion. In paragraph 148, Plaintiff alleges "Defendants' reaction to a moldy hamburger bun was very different from Vanderbilt's response to Sarah Doe being sexual assaulted: Owens immediately filed a report with law enforcement, reporting that Plaintiff had neglected Sarah Doe." Defendants seek to strike only the first part of paragraph 148, i.e. references to Doe's sexual assault. Again, for the same reasons as set forth above, the court will not strike the allegations regarding the prior sexual assault at this time.

*7 In footnote 4, Plaintiff states: "Later, in 2006, DDSN argued to the South Carolina Supreme Court that it had no duty of care to protect a person who had mental retardation in its care from sexual assault. The Supreme Court disagreed, finding that DDSN has a duty of care to persons receiving services in its facilities. *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006)." (Compl. at 18 n. 4). The court finds this footnote irrelevant to this action and finds it should be stricken.

In paragraphs 58 and 59, Plaintiff alleges that SCDDSN pays the Burton Center $46,000.00 more a year than was paid Plaintiff to care for Sarah Doe in a less restrictive setting. In paragraph 224, Plaintiff again alleges SCDDSN has a duty to place consumers in the least restrictive setting. Defendants contend Plaintiff is not a consumer and does not have standing to assert a claim for any consumers. Defendants Davis, Laurent, and Vanderbilt also seek to strike paragraphs 187–189. In these paragraphs, Plaintiff alleges that Owens and "individuals at DDSN" moved Doe without a court order to a more restrictive setting in violation of *Olmstead* and Plaintiff again alleges that SCDDSN is paying $44,000.00 more a year than was paid to Plaintiff to care for Doe. Finally, Plaintiff alleges Owens also caused Roe to be moved to a more restrictive setting operated by his agency. Defendants argue that these paragraphs are immaterial. The court disagrees and finds that these paragraphs may be relevant and should not be stricken. Additionally, the court notes that substantially the same information is set forth in paragraph 16, which Defendants have not sought to strike. While the Plaintiff does not have standing to assert any claims on behalf of Roe and Doe, the court finds these allegations should not be stricken as they could be relevant to Plaintiff's claims of retaliation and pretext.

In paragraphs 227, 229, 230, and 231, Plaintiff alleges Owen caused another disabled woman, Sue Doe, to report that her father had kicked her and Owens reported this allegation of physical abuse to SLED after the woman's guardian filed a lawsuit against SCDDSN. Plaintiff alleges the Lieutenant Governor's Ombudsman investigated Owens' allegations of abuse and found them unsubstantiated. Plaintiff alleges the Ombudsman determined that Owens had improperly discussed pending legal proceedings in violation of a court order, "but no consequences came to Owens, upon information and belief." (Compl.¶ 230). Plaintiff then alleges that "a DHHS hearing officer ordered DDSN to move Doe away from Newberry DSN because her health and safety were being jeopardized in the facility operated by Owens." (Compl.¶ 231). Plaintiff has not set forth any argument in her response as to the relevancy of these allegations. The court finds these paragraphs are irrelevant to the current action and they should be stricken.

C. Plaintiff's Motion to Amend the Complaint

*8 Plaintiff has filed a motion to amend her complaint. In this motion, Plaintiff seeks to include new allegations regarding alleged acts committed by Defendants since the filing of the original complaint. Specifically, Plaintiff asserts that the Greenwood County Probate Court has appointed an independent guardian ad litem for Doe and that Defendants have interfered with the Plaintiff's

attempt to restore her relationship with Doe. Plaintiff also seeks "leave to amend to provide the Court with the name of the Plaintiff under seal." (Pl.'s Mot. at Amend at 2).

Rule 15(a) of the Federal Rules of Civil Procedure provides that a plaintiff may amend her complaint once as a matter of course within 21 days of serving it or within 21 days of the filing of a responsive pleading. Fed.R.Civ.P. 15(a)(1). Otherwise, the plaintiff must seek consent from the defendant or leave from the Court. The latter "should [be] freely give[n] ... when justice so requires."

The court notes that Plaintiff's request for leave to amend and provide the court with her identity under seal is denied as discussed herein. However, after reviewing the proposed new allegations, court will allow Plaintiff to amend her complaint to add these new allegations as they appear relevant to her allegations of conspiracy and retaliation.[6]

In conclusion, Plaintiff is to file a new amended complaint in her own name, and not anonymously. Plaintiff may include the new allegations raised in her motion to amend. Further, because Plaintiff's proposed amended complaint includes paragraphs which are substantially similar to the ones stricken by the court, Plaintiff is directed to exclude these paragraphs.

Additionally, the court notes Plaintiff's original complaint was 54 pages long and contained 377 paragraphs along with 55 pages of exhibits. The proposed amended complaint is 59 pages long and contains 403 paragraphs along with 54 pages of exhibits. Plaintiff's complaints are unnecessarily taxing to follow as she has failed to follow Rule 8(a)(2), Fed.R.Civ.P., and provide a short and plain statement of her claims. This complaint could very well be drafted in less extensive language with equal effect. There are many repetitious and unnecessary allegations. "A complaint is not meant to persuade the court but to place the matter before the court in as clear a manner as possible. Persuasion is for the trial; the jury will not see the pleadings." *Hampton v. Hanrahan*, 522 F.Supp. 140 (D.C.Ill.1981). The court directs Plaintiff to comply with Rule 8 and invites Plaintiff to view this as an opportunity to prepare a simple, concise, and direct amended complaint.

III. Conclusion

Based on the foregoing, Defendants' Motions to Strike (Dkt. # 8, and 14) are **GRANTED in part and DENIED in part;** Defendants' Motions to Dismiss (Dkt. # 11 and 21) are **DENIED;** Plaintiff's Motion to Amend (Dkt.# 45) is **GRANTED in part and DENIED in part;** and Plaintiff's Motion to Seal (Dkt.# 46) is **DENIED.** In light of the Plaintiff's Notice of Protection (Dkt.# 57), Plaintiff shall have until July 20, 2012, to file an Amended Complaint consistent with this order. Further, the Parties' Joint Motion to Stay the Scheduling Order (Dkt.# 55) is **DENIED** as moot. The parties are to submit a new proposed joint scheduling order and confidentiality order by August 6, 2012.

***9 IT IS SO ORDERED.**

All Citations

Not Reported in F.Supp.2d, 2012 WL 2572044

Footnotes

1 Plaintiff also alleges that her decision to protect the identity of Roe and Doe is "justified by the requirements of HIPAA [Health Insurance Portability and Accountability Act], separate and apart from the issues of embarrassment to non-parties." (Dkt. # 28–Pl.'s Mem. Opp. Mot. to Dismiss at 13). Covered entities under the regulations include "a health plan," "a health care clearinghouse," and "a health care provider who tranmits any health information in electronic form ...." 45 C.F.R. § 160.102(a). Assuming Plaintiff even qualifies as a "covered entity" under HIPAA, 45 C.F.R. § 164.512(e) provides that, pursuant to a court order, a "covered entity may disclose protected health information in the course of any judicial or administrative proceeding ..." *Id.* The parties are to enter into a confidentiality agreement with respect to disclosure of documents and information regarding Doe and Roe. Accordingly, at this point, the court does not believe that the identification of only Plaintiff conflicts with any statutory confidentiality requirements.

2 While the Court may deny as moot a Rule 12 motion filed before an amended complaint, *see Ramotnik v. Fisher*, 568 F.Supp.2d 598, 599 n. 1 (D.Md.2008), the court declines to do so in this case as substantially the same objected to paragraphs are present in the proposed amended complaint. (Am. Compl. ¶¶ 60–61, 73, 82–87,127–157, 159–160, 167, 213–214, 253–255, 257–259, and footnotes 2 on page 14 and 3 on page 21).

3 The court notes that after this motion was briefed, in March 2012, Defendant Ard was indicted and pled guilty to seven counts of ethics violations.

4 In paragraph 66, Plaintiff also alleges Vanderbilt and the other Defendants have conspired "to prevent Plaintiff from returning to work at the Newberry DSN Board by denying Plaintiff due process and assisting in the removal of Sarah Doe and Sally Roe from the home of the Plaintiff without a showing of probable cause." (Compl.¶ 66). However, Defendants seek only to strike the first sentence.

5 She also contends that she "was terminated because of the risk of abuse at the workshop coming to light." (Pl.'s Mem. Opp. Mot. to Strike at 3).

6 The court notes that a supplemental complaint is the proper pleading by which a plaintiff may allege acts or events which have occurred after the filing of the original complaint. Rule 15(d), Fed.R.Civ.P. However, this distinction is of no matter as Plaintiff will need to file an amended complaint to comply with the court's directives, and within this amended complaint, she may supplement her original allegations to include the new allegations set forth in her motion to amend.

End of Document © 2015 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2015 DEC -4 PM 1:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Memorandum in Support of Motion to Strike Answers of Philip and Spiros Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 4th day of December, 2015, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Joseph R. Weston, Esquire
Weston Law Firm, P.A.
761 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464

Cindy Grooms
Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2015-CP-10-3919
Athan Fokas,	)	
Plaintiff,	)	**DEFENDANT JACOB FERDERIGOS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO SCRCP RULE 12(b)(6)**
vs.	)	
Phillip Ferderigos, Jacob Ferderigos and Spiros Ferderigos,	)	
Defendants.	)	

FILED
2015 DEC -4 PM 4:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant Jacob Ferderigos (hereinafter "Jacob") respectfully files his Memorandum in support of his Motion to Dismiss. Jacob so moves because he has been improperly added as a party Defendant in a case wherein Plaintiff fails to allege any facts setting forth any claims against him. Specifically, whereas Plaintiff purports to assert factual allegations and claims for specific performance, breach of contract, and breach of fiduciary duties against Jacob's brothers, Phillip and Spiro, who are Co-Defendants, Plaintiff fails to allege any facts alleging any claims against Jacob; therefore, Plaintiff's purported claims against Jacob should be dismissed pursuant to SCRCP Rule 12(b)(6).

STANDARD FOR MOTION TO DISMISS

Rule 12(b)(6), SCRCP, "retains the Code Pleading standard... rather than the more lenient notice pleading standard found in the federal rules." Gaskins v. Southern Farm Bureau Cas. Ins. Co., 541 S.E.2d 269, 271 (S.C. Ct. App. 2000). Each averment of a pleading shall be direct. Unisun Ins. v. Hawkins, 537 S.E.2d 559, 561 (S.C. Ct. App. 2000). Courts shall not write into the pleadings allegations that are not presented. Id. In South Carolina, a court should grant a motion to dismiss if it finds that the complaint does not allege "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Twombly, 550 U.S. at 556). The plausibility standard requires more than a sheer possibility that a

defendant is liable. Id. "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." Id. (citing Twombly, 550 U.S. at 557).

COMPLAINT ALLEGATIONS

Plaintiff's factual allegations alleged in his Complaint are as follows: "Defendants Phillip and Spiros Ferderigos agreed to execute the mortgage." *(Paragraph 13)* "A closing was scheduled by Plaintiff and Jacob Ferderigos with the bank." *(Paragraph 15)* "Defendant Spiros Ferderigos refused to sign the mortgage for the closing as he was in contention for a seat of the South Carolina Circuit Court." *(Paragraph 16)* "A second closing was set for late November 2014." *(Paragraph 17)* "Prior to the second closing, Defendant Philip Ferderigos demanded that Plaintiff execute an agreement ... If this agreement were executed, said Defendant agreed he would execute the mortgage." *(Paragraph 18)* "Initially, Plaintiff refused to sign the agreement... and the closing was canceled *due to Defendant's Philip and Spiros Ferderigos' refusal to sign the mortgage*." *(Paragraph 19)* (Emphasis added) "Plaintiff agreed to sign the agreement presented to him by Defendant Phillip Ferderigos in early 2015." *(Paragraph 20)* "Despite Plaintiff's agreement to sign the above agreement, Defendants refused to sign the mortgage and notified Plaintiff they would not go forward with the planned expansion of the building." *(Paragraph 21)* All of these allegations are asserted as to co-Defendants Phillip and Spiro. In contrast, the only factual allegation against Jacob is set forth in Paragraph 21, wherein Plaintiff alleges that "Defendant Jacob Ferderigos has maintained he would not agree to going forward unless his brothers, Philip and Spiros, agreed to do so." *(Paragraph 21)*

Accordingly, Plaintiff's claims are specifically based on the alleged failure of Phillip and Spiros Ferderigos to sign a mortgage for the Plaintiff to receive financing for the proposed project. The Complaint is void as to any allegation of a contractual offer, acceptance, or consideration between Plaintiff and Jacob sufficient to establish the existence of the contract. Furthermore, nowhere in his Complaint does Plaintiff allege that Jacob refused to sign a mortgage or any other document at any closing, or that Jacob was a reason for the closings being cancelled. To the contrary, in Paragraph 40, Plaintiff alleges that "Defendants' [Phillip and Spiros] refusal to execute the mortgage in accord with their agreement with Plaintiff *and their brother Jacob*" constitutes a breach for which Plaintiff is due

relief. In other words, Plaintiff lists Jacob, alongside with him, as a victim of Phillip and Spiros refusal to execute a mortgage.

ARGUMENT

I. Plaintiff fails to allege facts sufficient to constitute a breach of contract cause of action against Jacob.

The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. Fuller v. E. Fire & Cas. Ins. Co., 124 S.E.2d 602, 610 (S.C. 1962). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." South Glass & Plastics Co. v. Kemper, 732 S.E.2d 205, 209 (S.C. Ct. App. 2012). A valid offer identifies the bargained for exchange and creates a power of acceptance in the offeree.'" South Glass & Plastics Co. v. Kemper, 732 S.E.2d 205, 209 (S.C. Ct. App. 2012). "Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 593 S.E.2d 170, 173 (S.C. Ct. App. 2004). A typical contract contains mutual promises and is created by an acceptance constituting a return promise by the offeree. Id. Moreover, a contract only arises when there is an actual agreement by the parties in which the parties demonstrate a mutual intent to be bound. Timmons v. McCutcheon, 324 S.E.2d 319, 322 (S.C. Ct. App. 1984).

In the case at bar, the complaint is entirely void of factual allegations sufficient to form an offer, an acceptance, and consideration necessary to form a contract between Plaintiff and Jacob. If there is no contract specifically plead as required by SCRCP Rule 12(b)(6)'s fact pleading requirement, then there is no contract to be breached. Moreover, Plaintiff never alleges facts sufficient to constitute any breach of contract by Jacob. The Complaint is entirely void of factual allegations sufficient to form any claim for relief against Jacob for breach of contract. As such, this Court should dismiss any breach of contract cause of action asserted against Jacob. [1]

[1] For the same reasons, Plaintiff fails to set forth any factual allegations asserting a claim for specific performance against Jacob. There is no allegation Jacob failed to do anything or take any action; accordingly, Plaintiff's Complaint fails to set forth such claim against Jacob.

II. **Plaintiff fails to allege facts sufficient to constitute a cause of action against Jacob for breach of fiduciary duty because he does not plead facts that allege any actions by Jacob or show Jacob's actions were negligent, reckless, intentional, or unlawful.**

It is undisputed that the only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care. S.C. Code Ann. § 33-44-409(a). Likewise, it is settled that a member's duty of loyalty to a member-managed company and its other members is limited to the following:

- proper accounting during the course of winding up;
- no misuse of the company's property, including the appropriation of a company's opportunity;
- to refrain from having an interest adverse to the company; and
- to refrain from competing with the company.

S.C. Code Ann. § 33-44-409(b). Similarly, a "member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."

In the case at bar, there is no allegation as to the duty of loyalty against Jacob or any Co-Defendants. As a result, the only duty that Jacob and his brothers could have allegedly violated to the Plaintiff is that of the duty of care. Again, as with the breach of contract claim, Plaintiff fails to plead facts sufficient to demonstrate that Jacob did anything or that Jacob's conduct is grossly negligent, reckless, intentional, or in violation of the law. Accordingly, this Court should dismiss the third and final cause of action asserted against Jacob because the Plaintiff fails to allege facts to assert a claim for any breach of the duty of care by Jacob.

CONCLUSION

For the foregoing reasons, and those being presented at a hearing on this matter, Jacob is not a proper party Defendant to this action and Jacob's Motion to Dismiss should be granted.

(Signatures page to follow)

John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
rneville@wmalawfirm.net

ATTORNEYS FOR DEFENDANT
JACOB FERDERIGOS

CHARLESTON, SC
December 4, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 4, 2015, copies of the attached pleading/discovery have been served upon the following via:

XX	United States Postal Service
	Hand Delivery

FILED
2015 DEC -4 PM 4:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Stanley E. Barnett, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
(843) 881-1623
stanleyb@s3blaw.com
ATTORNEYS FOR PLAINTIFF

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
(843) 579-5619
richard.farrierjr@klgates.com
jennifer.thiem@klgates.com
ATTORNEYS FOR DEFENDANT
PHILIP FERDERIGOS

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402
(843) 577-7700
mdc@barnwell-whaley.com
jbowers@barnwell-whaley.com

and

Joseph R. Weston, Esquire
Weston Law Firm
Post Office Box 1992
Mt. Pleasant, SC 29465-1992
ATTORNEYS FOR DEFENDANT
SPIROS FERDERIGOS

WILLS MASSALON & ALLEN LLC

WMA
WILLS MASSALON & ALLEN LLC

97 Broad Street • Charleston, SC 29401 • Post Office Box 859 • Charleston, SC 29402
Phone: 843-727-1144 • Fax: 843-727-7696 • www.wmalawfirm.net

December 4, 2015

Direct Dial: (843) 793-6041

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: Athan Fokas v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos
Case No.: 2015-CP-10-3919
Our File No.: 1056-1

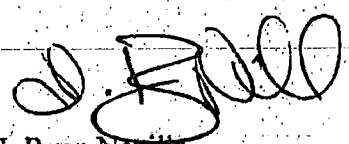
Dear Julie:

In regard to the above-referenced matter, enclosed please find the original and one (1) copy of Defendant Jacob Ferderigos' Memorandum in Support of Motion to Dismiss Pursuant to SCRCP Rule 12(b)(6). Please file the original, file-stamp the copy, and return the copy to me via the bearer of this correspondence. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC



I. Ryan Neville
rneville@wmalawfirm.net

IRN/cb
Enclosures

cc (via U.S. Mail):
Mr. Jacob Ferderigos
Stanley E. Barnett, Esquire
Richard A. Farrier, Jr., Esquire/Jennifer H. Thiem, Esquire
M. Dawes Cooke, Jr., Esquire/Jeremy E. Bowers, Esquire
Joseph R. Weston, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-10-3919

ATHAN FOKAS,

Plaintiff,

v.

PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS,

Defendants.

SPIROS FERDERIGOS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE

FILED
2015 DEC -7 PM 12:51
JULIE J. ARMSTRONG
CLERK OF COURT

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

The Defendant, SPIROS FERDERIGOS (hereinafter referred to as "Spiros"), by and through his undersigned counsel, hereby submits this memorandum of law in opposition to the Plaintiff's Motion to Strike.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

I. CIVIL ACTION NO. 2015-CP-10-3891

On July 14, 2015, Plaintiff filed an action (Civil Action No. 2015-CP-10-3891) against Spiros alleging a cause of action for defamation. In that action, Plaintiff alleges that Plaintiff and Defendants "planned to expand the suites rental business by adding three floors to the building and brought that plan to the point of securing all necessary approvals and approval for a loan." Exhibit #1: Complaint, ¶ 5 (C/A No. 2015-CP-10-3891)[1]. Plaintiff further alleges that Spiros "refused to go forward with the loan," and, as a result, there were "communications between the parties in which the possibility of a lawsuit was raised." Exhibit #1: Complaint, ¶¶ 6 - 7 (C/A

[1] The Plaintiff's Complaint filed in Civil Action No. 2015-CP-10-3891 is adopted and incorporated into this Memorandum in Opposition to Motion to Strike. Rule 10(c), SCRCP ("Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion.").

No. 2015-CP-10-3891). He then alleges that Defendants "threatened to accuse Plaintiff of various criminal acts if he pursued a lawsuit against them, said acts including: arson and the filing of various fraudulent insurance claims." Exhibit #1: Complaint, ¶ 8 (C/A No. 2015-CP-10-3891). Plaintiff alleges that the Defendants made defamatory statements that Plaintiff hired someone to set fire to the second floor of 229 King Street and that the Plaintiff filed a false workers' compensation claim. Exhibit #1: Complaint, ¶ 11(a), (b) (C/A No. 2015-CP-10-3891). Plaintiff alleges that these statements were communicated by the Defendants to their father who in turn relayed the statements to Plaintiff's mother for purposes "of intimidating Plaintiff into refraining for (sic) demanding that they go forward with the plan to expand the suites rental business." Exhibit #1: Complaint, ¶ 12 (C/A No. 2015-CP-10-3891).

On October 1, 2015, Spiros filed an Answer and Counterclaims to Plaintiff's defamation action. In the Answer, Spiros denied making any of the statements alleged by Plaintiff in his Complaint and stated that he was "without personal knowledge to know whether the alleged statements (which were never made by Defendant) in Plaintiff's Complaint are false." Exhibit #2: Answer and Counterclaims, ¶ 9 (C/A No. 2015-CP-10-3891)[2]. As a part of the Answer and Counterclaim, Spiros attached as an exhibit a letter from Dr. Fanouris Ferderigos to Plaintiff's counsel. Exhibit #2: Answer and Counterclaims (C/A No. 2015-CP-10-3891). In the letter, Dr. Ferderigos states the Plaintiff's mother denied that the Defendants' father ever discussed with her the topics of Plaintiff being involved with the fire at 229 King Street or the filing of false insurance claims. Exhibit #2: Answer and Counterclaims (C/A No. 2015-CP-10-3891). As part of his counterclaim, Spiros incorporated his Answer and Counterclaims asserted in the second

[2] Spiros' Answer and Counterclaims filed in Civil Action No. 2015-CP-10-3891 is adopted and incorporated into this Memorandum in Opposition to Motion to Strike. Rule 10(c), SCRCP ("Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion.").

lawsuit filed against him by the Plaintiff (discussed below). Specifically, Spiros asserted a cause of action for the initiation of frivolous proceedings based on the letter from Dr. Ferderigos and the lack of any other evidence to support the defamation claim.

On October 26, 2015, Plaintiff filed a Motion to Strike pursuant to Rule 12(f), SCRCP, seeking to strike the exhibits attached to the Answer and Counterclaims in the second lawsuit, the letter of Dr. Ferderigos attached as an exhibit to the Answer, certain paragraphs of the incorporated Answer and Counterclaims to the second lawsuit, and Spiros' counterclaim for initiation of frivolous proceedings. Plaintiff asserts that a claim for the initiation of frivolous proceedings cannot be instituted until Spiros prevails in the case, that the letter of Dr. Ferderigos and other exhibits are unauthenticated and constitute hearsay, and that certain paragraphs of the incorporated Answer are redundant, immaterial, or scandalous.

II. CIVIL ACTION NO. 2015-CP-10-3919

Plaintiff filed another action one day later on July 15, 2015, alleging causes of action against the Defendants for specific performance, breach of contract, and violation of S.C. Code Ann. § 33-44-409. The second lawsuit involves the parties' dispute about their underlying investigation into the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street to be used for rental units. In other words, the second lawsuit involves the events that Plaintiff claims led to the alleged defamatory statements that serve as the basis for Plaintiff's separately filed defamation action. Exhibit #1: Complaint, ¶¶ 6 - 7 (C/A No. 2015-CP-10-3891)[3]. In this second action, Plaintiff alleges that the parties entered into a "verbal contract ... to expand the building at 229 King Street for the purpose of expanding the number of

[3] The Plaintiff's Complaint filed in Civil Action No. 2015-CP-10-3919 is adopted and incorporated into this Memorandum in Opposition to Motion to Strike. Rule 10(c), SCRCP ("Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion.").

rental suites for their ongoing business." Exhibit #3: Complaint, ¶ 24 (C/A No. 2015-CP-10-3919). Plaintiff alleges that the parties agreed to divide the expenses of the expansion in shares equal to their ownership interests in the building and agreed to "mortgage the building as part of a loan to finance the building expansion." Exhibit #3: Complaint, ¶¶ 25 - 26 (C/A No. 2015-CP-10-3919). Plaintiff alleges that the parties "entered into part performance in furtherance of their agreement" by paying approximately $86,000.00 in fees for engineering, architectural work, planning and zoning approval, and design work. Exhibit #3: Complaint, ¶ 28 (C/A No. 2015-CP-10-3919). Plaintiff alleges that the Defendants breached this verbal contract by refusing to execute the mortgage on the building and other parts of the loan documentation. Exhibit #3: Complaint, ¶ 31 (C/A No. 2015-CP-10-3919).

On October 1, 2015, Spiros filed an Answer and Counterclaims to Plaintiff's breach of contract action. In short, Spiros admitted only that the parties agreed to investigate the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street to be used for rental units. Exhibit #4: Answer and Counterclaims, ¶¶ 8, 14, 28, 50 (C/A No. 2015-CP-10-3919)[4]. Further, Spiros denied the existence of any contract with Plaintiff wherein he agreed to mortgage his interest in 229 King Street. Exhibit #4: Answer and Counterclaims, ¶¶ 8, 14, 28, 50 (C/A No. 2015-CP-10-3919). Spiros also counterclaimed against Plaintiff for violation of S.C. Code Ann. § 33-44-409, negligent misrepresentation, constructive fraud, defamation, abuse of process, promissory estoppel, and initiation of frivolous proceedings. Exhibit #4: Answer and Counterclaims, ¶¶ 53 - 169 (C/A No. 2015-CP-10-3919). To support the

[4] Spiros' Answer and Counterclaims filed in Civil Action No. 2015-CP-10-3919 is adopted and incorporated into this Memorandum in Opposition to Motion to Strike. Rule 10(c), SCRCP ("Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion.").

allegations of the counterclaims, Spiros attached the documents and e-mails referred to in the counterclaims.

On October 26, 2015, Plaintiff filed a Motion to Strike pursuant to Rule 12(f), SCRCP, seeking to strike the exhibits attached to the Answer and Counterclaims, the letter of Dr. Ferderigos attached as an exhibit to the Answer in the defamation action, certain paragraphs of the Answer and Counterclaims to the breach of contract action, and Spiros' counterclaim for initiation of frivolous proceedings. Plaintiff asserts that certain paragraphs of the Answer and Counterclaims are redundant, immaterial, or scandalous. He further asserts that the exhibits and letter of Dr. Ferderigos are unauthenticated and constitute hearsay and that a claim for the initiation of frivolous proceedings cannot be instituted until Spiros prevails in the case.

STANDARD OF REVIEW

Rule 12(f), SCRCP, provides that a party may move the court to strike any insufficient defense or any redundant, immaterial, impertinent, or scandalous allegation from a pleading. Rule 12(f), SCRCP. In ruling on a motion to strike specific allegations and not complete theories of recovery, "a Court decides whether a party should be allowed to plead a defense or other matter, not whether there are facts supporting what has been pleaded." Alladin Plastics, Inc. v. Wintenna, Inc., 301 S.C. 90, 93, 390 S.E.2d 370, 372 (Ct. App. 1990). The matter of striking specific allegations, not complete theories of recovery, from a pleading is largely within the discretion of the trial judge. Brown v. Coastal States Life Ins. Co., 264 S.C. 190, 194, 213 S.E.2d 726, 728 (1975).

A motion to strike that challenges a complete theory of recovery in a complaint or counterclaim is comparable to a motion to dismiss under Rule 12(b)(6), SCRCP. McCormick v. England, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct. App. 1997). When ruling upon a motion

to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "Where a pleading is attacked for an alleged failure to state a cause of action, the pleading must be liberally construed in favor of the pleader and sustained if the facts and reasonable inferences to be drawn therefrom entitle the pleader to relief on any theory of the case." Burns v. Wannamaker, 286 S.C. 336, 339, 333 S.E.2d 358, 360 (Ct. App. 1985). If the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff, would not entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is proper. See Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). A court should not strike a cause of action merely because the court doubts the plaintiff will prevail in the action. McCormick, 328 S.C. at 633, 494 S.E.2d at 434.

ARGUMENT

This Honorable Court must deny Plaintiff's Motion to Strike for the following reasons: (1) the exhibits attached to the Answer and Counterclaims are properly attached to Spiros' pleading and incorporated by reference pursuant to the Rules of Civil Procedure; (2) the allegations from the Answer and Counterclaims in the breach of contract action can properly be incorporated into the Answer and Counterclaims in the defamation action, especially in light of the fact that Plaintiff alleges that the defamation occurred as a result of the contract dispute; (3) the specific allegations that Plaintiff seeks to strike are necessary to Spiros' counterclaims and for a future motion for judgment on the pleadings, and, as a result, they are not redundant, immaterial, or scandalous; and (4) Spiros has sufficiently pleaded causes of action for breach of fiduciary duty, defamation, abuse of process, and initiation of frivolous proceedings.

I. The exhibits attached to the Answer and Counterclaims are properly incorporated pursuant to Rule 10, SCRCP.

The South Carolina Rules of Civil Procedure allow parties to attach photographs, diagrams, documents, and other papers as exhibits to a pleading. Rule 10(c), SCRCP. "A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." Rule 10(c), SCRCP (emphasis added). By virtue of incorporating a document and attaching it to a pleading, a party makes that document "a part and parcel" of the pleading. Lee v. Kelley, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989). As a part of the pleading, a court can consider documents attached to a pleading when considering motions to dismiss, motions to strike, and motions for judgment on the pleadings without converting the motion to one for summary judgment. See Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 (2009) (holding the trial court did not convert the 12(b)(6) motion into a summary judgment motion by considering a HUD-1 statement attached to the plaintiff's complaint); see also Metal Serv. Corp. v. Industr. Elec. Co., 253 S.C. 507, 509, 171 S.E.2d 703, 704 (1970) (court can consider materials attached to complaint when deciding defendant's demurrer to the complaint).

As a part of Spiros' Answer and Counterclaims, he attached and incorporated by reference a number of exhibits, including documents related to the parties' investigation into the proposed project, the proposed loan documents, e-mails with Plaintiff, and other written communications with Plaintiff. Contrary to Plaintiff's assertion, these documents are necessary to validate and evidence the defenses and claims set forth in Spiros' Answer and Counterclaims. These exhibits clearly demonstrate that the parties never entered into an agreement wherein Spiros would mortgage his interest in 229 King Street for Plaintiff's benefit in obtaining a loan

for the proposed construction project. These exhibits further demonstrate that Plaintiff either purposefully withheld or negligently failed to disclose information related to the proposed construction project with Spiros until the time of the Plaintiff's loan closing. The exhibits evidence the timeline and sequence of events leading up to the filing of the Plaintiff's lawsuit, thereby making the exhibits relevant to the pleadings in this case.

Further, because Spiros has attached and incorporated by reference these exhibits to his Answer and Counterclaims, the Court can consider those exhibits when ruling on motion for judgment on the pleadings. See Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 (2009) (holding the trial court did not convert the 12(b)(6) motion into a summary judgment motion by considering a HUD-1 statement attached to the plaintiff's complaint); see also Metal Serv. Corp. v. Industr. Elec. Co., 253 S.C. 507, 509, 171 S.E.2d 703, 704 (1970) (court can consider materials attached to complaint when deciding defendant's demurrer to the complaint). The South Carolina Rules of Civil Procedure specifically authorize parties to attach and incorporate documents as exhibits to pleadings, and, when parties do so, those exhibits become a "part and parcel" of the pleading. Spiros has followed the procedure set forth in Rule 10(c), SCRCP, that permits incorporating documents as exhibits to an Answer and Counterclaim.

Plaintiff's main argument in seeking to strike the exhibits is that the attachment "is a transparent effort to permit this Defendant to read these documents to the jury without complying with the rules of evidence" and that there is "no proper purpose served by attaching these documents...other than to subvert the rules of evidence." Plaintiff's Motion to Strike, ¶ 1. The South Carolina Rules of Civil Procedure specifically prohibit the pleadings from being given to the jury during deliberations. "The pleadings shall not be submitted to the jury for its deliberations." Rule 43(g), SCRCP. While the rule does allow a party to read pleadings to the

jury during opening statement, it does not require a party to do so. Rather, the rule allows a party to also "make a statement to the jury of the facts alleged in the pleadings and the theory of his case." Rule 43(g), SCRCP. If counsel for Spiros attempted to read the exhibits during opening statement, counsel for the Plaintiff could object at that point on the grounds of lack of authentication and hearsay. However, the Court should not strike the exhibits from the Answer and Counterclaims because of the mere possibility that a party may attempt to read the exhibits during opening statements. Contrary to Plaintiff's assertion, the attachment of documents as exhibits to pleadings serves the useful purpose of allowing the Court to consider those documents in ruling on motions to dismiss, motions to strike, and motions for judgment on the pleadings. It is the very reason why the Rules allow a party to attach and incorporate documents to pleadings. In cases such as this one where the exhibits clearly demonstrate the frivolity of Plaintiff's claims, those exhibits can assert the Court in dispensing with Plaintiff's claims at an earlier stage of the litigation rather than requiring the parties to engage in costly, extensive discovery.

Because Spiros has attached and incorporated exhibits to pleadings, those exhibits are now a part of the pleading itself. As such, the Court can consider those exhibits when ruling on future motions based upon the pleadings. To the extent Plaintiff argues that the attachment subverts the rules of evidence by enabling a party to read unauthenticated documents to the jury during opening statements, his proper recourse is to object during that party's opening statement. To strike all the exhibits from Spiros' Answer and Counterclaims at this stage based on some uncertain future event for which Plaintiff would have other recourse would prevent this Court from considering these exhibits during other motions based upon the pleadings. For these

reasons, this Honorable Court must deny the Plaintiff's Motion to Strike to the extent it seeks to strike or remove the exhibits attached to Spiros' Answers and Counterclaims.

II. The allegations of the Answer and Counterclaims in the breach of contract action can be incorporated into Spiros' pleading in the defamation action.

Similarly, the South Carolina Rules of Civil Procedure also allow parties to adopt statements in one pleading in other pleadings or subsequent motions. "Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion." Rule 10(c), SCRCP. The South Carolina Rules of Civil Procedure do not prohibit a party from adopting and incorporating other pleadings in a subsequent pleading or a pleading in another action.

As a part of the Plaintiff's Motion to Strike, he seeks to strike Spiros' adoption and incorporation of his Answer and Counterclaims in the breach of contract action into his Answer and Counterclaims in the defamation action. However, Plaintiff fails to recognize that, based upon his own allegations, these two cases arise out of the same set of facts. Plaintiff alleges that Spiros "refused to go forward with the loan," and, as a result, there were "communications between the parties in which the possibility of a lawsuit was raised." Exhibit #1: Complaint, ¶¶ 6 - 7 (C/A No. 2015-CP-10-3891). Plaintiff further alleges that Spiros "threatened to accuse Plaintiff of various criminal acts if he pursued a lawsuit against them, said acts including: arson and the filing of various fraudulent insurance claims." Exhibit #1: Complaint, ¶ 8 (C/A No. 2015-CP-10-3891). Based upon these allegations, it is clear that these two cases involve a number of the same issues, and, as a result, the pleadings in each case are relevant to the other case. Further, it seems likely that, if the Court does not grant a motion for judgment on the pleadings, these cases will be consolidated for discovery purposes. Because the rules allow

parties to incorporate by reference other pleadings and because these two cases are so closely tied together in facts, this Honorable Court must deny Plaintiff's Motion to Strike to the extent that it seeks to strike the incorporation of Spiros' Answer and Counterclaims in one action from his Answer and Counterclaims in the other action.

III. The specific allegations that Plaintiff seeks to strike are necessary to Spiros' counterclaims and for a future motion for judgment on the pleadings.

Because the specific allegations that Plaintiff seeks to strike demonstrate the malicious lengths that the Plaintiff went in his efforts to force Spiros to mortgage in his interests in 229 King Street for the Plaintiff's benefit, the specific allegations are necessary to Spiros' counterclaims for breach of fiduciary duty, negligent misrepresentation, abuse of process, and initiation of frivolous proceedings, and, as a result, the Court should not strike those specific allegations. In ruling on a motion to strike specific allegations and not complete theories of recovery, "a Court decides whether a party should be allowed to plead a defense or other matter, not whether there are facts supporting what has been pleaded." Alladin Plastics, Inc. v. Wintenna, Inc., 301 S.C. 90, 93, 390 S.E.2d 370, 372 (Ct. App. 1990). The matter of striking specific allegations, not complete theories of recovery, from a pleading is largely within the discretion of the trial judge. Brown v. Coastal States Life Ins. Co., 264 S.C. 190, 194, 213 S.E.2d 726, 728 (1975). The Plaintiff asserts in his Motion to Strike that specific allegations related to the Plaintiff's discontinuation of a thirty year old tradition, Plaintiff's name calling and defamatory statements directed toward Spiros, and threats made by Plaintiff should be stricken because they are "petty invective of no relevance to the issues in the case."

In asserting this argument, Plaintiff fails to appreciate the nature of these allegations as they relate to Spiros' counterclaims for breach of fiduciary duty, negligent misrepresentation,

abuse of process, and initiation of frivolous proceedings. These specific allegations demonstrate the lengths that Plaintiff went in his efforts to coerce Spiros into mortgaging his interests in 229 King Street for Plaintiff's benefit in obtaining a loan for the proposed construction project. First, for approximately two years, Plaintiff either purposefully withheld from or negligently failed to disclose to Spiros information relevant to the proposed construction project in the hopes that Spiros would then be forced to agree to the previously undisclosed terms of the proposed construction project later. When that did not work and Spiros refused to agree to these previously undisclosed terms, Plaintiff then turned to other means in his efforts to coerce Spiros into mortgaging his interests in 229 King Street. Second, Plaintiff attempted to bully and intimidate Spiros into mortgaging his interests in 229 King Street and agreeing to the previously undisclosed terms of the proposed construction project. He called Spiros names, questioned and ridiculed Spiros' business sense, threatened to spread rumors and defamatory statements about Spiros, and threatened to file a frivolous lawsuit to compel Spiros to mortgage his interest in 229 King Street.

As Spiros alleges in his Counterclaims, all of these actions were undertaken by Plaintiff "for the purpose of harassing, humiliating, and attempting to coerce and gain an upper hand in negotiations against the Ferderigos Brothers." Exhibit #4: Answer and Counterclaims, ¶ 106 (C/A No. 2015-CP-10-3919). These specific allegations are necessary to Spiros' Answer and Counterclaims because these show the lengths that Plaintiff went to force this proposed construction project onto Spiros, in direct contravention of the fiduciary duties Plaintiff owed to Spiros. These specific allegations also show how Plaintiff intended to abuse the civil process and initiate frivolous proceedings against Spiros in order to get what he wanted, even though he clearly knew Spiros never agreed to mortgage his interest in 229 King Street.

Further, it seems as though Plaintiff fails to appreciate that these specific allegations include the Plaintiff's own words, often times written in e-mails and text messages. While Spiros agrees that these statements made by the Plaintiff during negotiations of the terms of the proposed construction project were petty, inappropriate, and sometimes malicious, their inclusion in Spiros' Answer and Counterclaims is entirely proper to demonstrate the Plaintiff's actions leading up to the filing of these frivolous lawsuits. Because these specific allegations advance and provide evidence to Spiros' counterclaims for breach of fiduciary duty, negligent misrepresentation, abuse of process, and initiation of frivolous proceedings, the pleadings are entirely proper and relevant to this litigation. For these reasons, this Honorable Court must deny Plaintiff's Motion to Strike to the extent it seeks to strike specific allegations related to the malicious lengths that Plaintiff went in his efforts to force Spiros to mortgage in his interests in 229 King Street for Plaintiff's benefit.

IV. Spiros has sufficiently pleaded causes of action for breach of fiduciary duty, defamation, abuse of process, and initiation of frivolous proceedings.

When viewing the allegations in the light most favorable to Spiros, his Answer and Counterclaims sufficiently plead causes of action for breach of fiduciary duty, defamation, abuse of process, and initiation of frivolous proceedings, and, as a result, Plaintiff's Motion to Strike must be denied. A motion to strike that challenges a complete theory of recovery in a complaint or counterclaim is comparable to a motion to dismiss under Rule 12(b)(6), SCRCP. McCormick v. England, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct. App. 1997). When ruling upon a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

"Where a pleading is attacked for an alleged failure to state a cause of action, the pleading must be liberally construed in favor of the pleader and sustained if the facts and reasonable inferences to be drawn therefrom entitle the pleader to relief on any theory of the case." Burns v. Wannamaker, 286 S.C. 336, 339, 333 S.E.2d 358, 360 (Ct. App. 1985). If the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff, would not entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is proper. See Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). A court should not strike a cause of action merely because the court doubts the plaintiff will prevail in the action. McCormick, 328 S.C. at 633, 494 S.E.2d at 434.

A. Spiros has pleaded facts to support a cause of action for breach of fiduciary duty.

Spiros has sufficiently alleged a breach of fiduciary duty by the Plaintiff pursuant to the South Carolina Uniform Limited Liability Company Act of 1996. Members of an LLC owe each other duties of loyalty and care. S.C. Code Ann. § 33-44-409 (1996). If a member engages in "grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law," he has violated his duty of care to the other members. Id. In viewing the allegations of the Counterclaims in the light most favorable to Spiros, he has alleged that the LLC statute bound the Plaintiff to act with a duty of care with regard to the investigation into the proposed construction project. Spiros further alleges that Plaintiff breached this fiduciary duty in forty-three (43) different ways, as set forth in subparagraphs (a) through (qq) of ¶ 127 of his Answer and Counterclaims. These allegations include misrepresentations made by Plaintiff, information withheld by Plaintiff, improper investigation into the costs of the project by Plaintiff, and threats by Plaintiff in an effort to force Spiros to mortgage in his interests in 229 King Street for

Plaintiff's benefit. These allegations sufficiently set forth facts to demonstrate a breach of fiduciary duties owed by Plaintiff to Spiros.

B. Spiros has pleaded facts to support a cause of action for defamation.

Spiros has sufficiently pleaded fact to support a cause of action for defamation. To prove defamation, a plaintiff must show "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). "A communication is defamatory if it tends to impeach the honesty, integrity, virtue, or reputation...." Hubbard and Felix, The South Carolina Law of Torts 462 (2d ed. 1997). "[A] statement may be actionable *per se*, in which case the defendant is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages." Id. Under the common law, slander is actionable *per se* only when it charges the plaintiff with one of five types of acts or characteristics, including unfitness in one's business or profession. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 511 n.5, 506 S.E.2d 497, 502 n.5 (1998).

Spiros alleges that Plaintiff published statements to third-parties that impugned his business sense, blamed Spiros for the decision not to move forward on the proposed construction project, and accused Spiros of spreading rumors about Plaintiff. Exhibit #4: Answer and Counterclaims, ¶¶ 146-48 (C/A No. 2015-CP-10-3919). Spiros further alleges that these statements caused him harm. Spiros has sufficiently pleaded a cause of action for defamation. The statements made by Plaintiff impeach Spiros' honesty, integrity, virtue, and reputation. As a result, the statements qualify as defamatory. Spiros alleges that these statements were published

by Plaintiff to third-parties, and, as a result, Spiros suffered harm. For these reasons, Spiros has sufficiently pleaded a cause of action for defamation.

C. Spiros has pleaded facts to support a cause of action for abuse of process.

Spiros has sufficiently pleaded facts to support a cause of action for abuse of process. The tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding. Hainer v. Am. Med. Int'l, Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). "The first element, an 'ulterior purpose,' exists if the process is used to secure an objective that is 'not legitimate in the use of the process.'" D.R. Horton, Inc. v. Wescott Land Co., 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2012) (citation omitted). "One who uses a legal process, whether criminal or civil, against another *primarily* to accomplish a purpose for which it is not designed, is subject to liability for harm caused by the abuse of process." Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 255-56 (Ct.App.2002) (quoting Restatement (Second) of Torts § 682 (1977)). "The improper purpose element of an abuse of process claim usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself." Swicegood v. Lott, 379 S.C. 346, 352, 665 S.E.2d 211, 214 (Ct. App. 2008). "Therefore, it is the use of the process to coerce or extort that is the abuse, and need not be accompanied by any ill will." Id.

Spiros has alleged that Plaintiff filed the frivolous breach of contract and defamation actions to serve as leverage in his efforts to force or coerce Spiros to mortgage in his interests in 229 King Street for the Plaintiff's benefit and to force him to agree to previously undisclosed and/or rejected terms of the proposed construction project. As alleged in Spiros' Answer and Counterclaims, no agreement to build the proposed construction project ever existed because the

parties were merely investigating the possibility and feasibility of the proposed project. Exhibit #4: Answer and Counterclaims, ¶¶ 8, 28 (C/A No. 2015-CP-10-3919). Further, for approximately two years, Plaintiff either purposefully withheld from or negligently failed to disclose to Spiros information relevant to the proposed construction project in the hopes that Spiros would then be forced to agree to previously undisclosed and/or rejected terms of the proposed construction project later. When that did not work and Spiros refused to agree to these previously undisclosed and/or rejected terms, Plaintiff then turned to other means in his efforts to coerce Spiros into mortgaging his interests in 229 King Street. Second, Plaintiff attempted to bully and intimidate Spiros into mortgaging his interests in 229 King Street and agreeing to the previously undisclosed and/or rejected terms of the proposed construction project. He called Spiros names, questioned and ridiculed Spiros' business sense, and threatened to spread rumors and defamatory statements about Spiros. Finally, Plaintiff threatened to file a frivolous lawsuit to compel Spiros to mortgage his interest in 229 King Street. In fact, that is what the Plaintiff ultimately did when he filed a baseless defamation action followed by a baseless breach of contract action. As Spiros alleges, Plaintiff filed these lawsuits in an effort to force or coerce Spiros to mortgage in his interests in 229 King Street for the Plaintiff's benefit and force him to agree to previously undisclosed and/or rejected terms of the proposed construction project. This misuse of the civil process is wholly improper and sufficiently sets forth facts to support a cause of action for abuse of process against Plaintiff. For these reasons, Spiros has sufficiently pleaded a cause of action for abuse of process.

D. Spiros has pleaded facts to support a cause of action for initiation of frivolous proceedings.

Spiros has sufficiently set forth reasons why Plaintiff's pleadings constitute frivolous proceedings, and, as a result, he has sufficiently pleaded a cause of action for initiation of frivolous proceedings. "At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous." S.C. Code Ann. § 15-36-10(C)(1) (2005). The court can sanction an attorney, party, or pro se litigant if "a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party." S.C. Code Ann. § 15-36-10(C)(1)(b). Plaintiff argues that Spiros' counterclaim for initiation of frivolous proceedings is premature because he has not prevailed on the merits at this time. Plaintiff's argument is misplaced.

South Carolina court have consistently allowed parties to assert counterclaims for initiation of frivolous proceedings. See, e.g., Ex parte Gregory, 378 S.C. 430, 432, 663 S.E.2d 46, 47 (2008) (allowing a defendant to proceed with a counterclaim for initiation of frivolous lawsuit by former client). While Plaintiff correctly asserts that Spiros cannot move for sanctions until the underlying litigation is tried or dismissed, it does not render Spiros' claim for initiation of frivolous proceedings premature or improper. By asserting the counterclaim, Spiros has merely preserved his claim to move for sanctions at the close of the litigation and has notified Plaintiff, and his counsel, of his intentions to move for sanctions when the time is appropriate. Similarly, a plaintiff must plead facts sufficient for an award of punitive damages and pray for

said punitive damages, but he cannot recover punitive damages until he prevails in his case in chief and proves conduct sufficient to give rise to punitive damages.

In this case, Spiros alleges a claim for initiation of frivolous proceedings against Plaintiff and prays for sanctions, and, if he prevails in his dismissal of Plaintiff's lawsuits, he can move for sanctions at the time. Spiros alleges that a reasonable attorney would not have filed these lawsuits, that the lawsuits are not supported by facts, and that these lawsuits were filed with the intent to harass, injure, or coerce Spiros. His counterclaim for initiation of frivolous proceedings is entirely proper and allowed under the rules. For these reasons, Spiros has sufficiently pleaded a cause of action for initiation of frivolous proceedings.

CONCLUSION

This Honorable Court must deny Plaintiff's Motion to Strike for the following reasons: (1) the exhibits attached to the Answer and Counterclaims are properly attached to Spiros' pleading and incorporated by reference pursuant to the Rules of Civil Procedure; (2) the allegations from the Answer and Counterclaims in the breach of contract action can properly be incorporated into the Answer and Counterclaims in the defamation action, especially in light of the fact that Plaintiff alleges that the defamation occurred as a result of the contract dispute; (3) the specific allegations that Plaintiff seeks to strike are necessary to Spiros' counterclaims and for a future motion for judgment on the pleadings, and, as a result, they are not redundant, immaterial, or scandalous; and (4) Spiros has sufficiently pleaded causes of action for breach of fiduciary duty, defamation, abuse of process, and initiation of frivolous proceedings.

[SIGNATURE BLOCK ON THE NEXT PAGE]

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR THE DEFENDANT, SPIROS FERDERIGOS

December 4, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE 15-CP-10-3919

I hereby certify that a copy of the foregoing Memorandum in Opposition to the Plaintiff's Motion to Strike on behalf of the Defendant, SPIROS FERDERIGOS, has been served via U.S. Mail, on this 4 day of December 2015, to counsel of record as follows:

Stanley E. Barnett, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
P.O. Box 1542
Mount Pleasant, SC 29465

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite #200
Charleston, SC 29401

John A. Massalon, Esquire
I. Ryan Neville, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

FILED
2015 DEC -7 PM 12:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Andrea Dick
Legal Secretary

BARNWELL WHALEY PATTERSON & HELMS LLC
75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

December 4, 2015
VIA U.S. MAIL

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3919

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Memorandum in Opposition to Plaintiff's Motion to Strike filed by Defendant, Spiros Ferderigos, in the above-referenced matter. Please file the original and return the filed stamped copy to me via the enclosed self-addressed prepaid envelope.

By copy of this letter, I am informing counsel for the Plaintiff of this communication with the Court and serving him with a copy of the Memorandum. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: Stanley E. Barnett, Esquire (via U.S. Mail and e-mail)
Richard A. Farrier, Jr., Esquire (via U.S. Mail and e-mail)
John A. Massalon, Esquire (via U.S. Mail and e-mail)

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
David S. Cox
William C. Helms, III'

* Registered patent attorney
' Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Athan Fokas, ☐ Plaintiff v. Phillip Ferderigos, Spiros Ferderigos, And Jacob Ferderigos, ☒ Defendant.	)	IN THE COURT OF COMMON PLEAS CASE NO. 2015-CP-10-03919 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Stanley F. Barnett, Bar No. Address: Smith Bundy Bybee & Barnett, P.C. P.O. Box 1542 Mt. Pleasant, SC 29465 phone: (843) 881-1623 fax: (843) 881-4406 e-mail: stanleyb@s3blaw.com other:	Jeremy E. Bowers, Esquire, Bar No. 74838 Address: Barnwell Whaley Patterson & Helms, LLC 288 Meeting Street, Suite #200 (29402) P.O. Drawer H Charleston, SC 29402 phone: (843) 577-7700 fax: (843) 577-7708 e-mail: jbowers@barnwell-whaley.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SCCA/233 (11-03)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

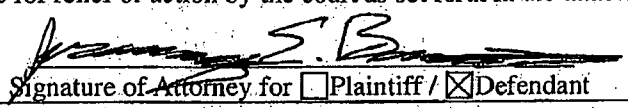
Estimated Time Needed:30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☐ Plaintiff / ☒ Defendant

December 29, 2015
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00

☐ EXEMPT: (check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO. 2015-CP-10-3919
Athan Fokas,	
Plaintiff,	
v.	**PHILLIP FERDERIGOS AND SPIROS FERDERIGOS' MOTION TO RECONSIDER AND ALTER OR AMEND ORDERS PURSUANT TO RULE 59(e)**
Phillip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos,	
Defendants.	

FILED
2015 DEC 29 PM 1:16
JULIE J. ARMSTRONG
CLERK OF COURT

TO: STANLEY F. BARNETT, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the Defendants, Phillip Ferderigos and Spiros Ferderigos, by and through their undersigned counsels, will hereby move, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, before this Honorable Court, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, to alter or amend the Orders Regarding Plaintiff's Motions to Strike Answer and Counterclaim of Defendants, Spiros Ferderigos and Phillip Ferderigos ("the Orders") filed in the two lawsuits between the parties, Civil Action No. 2015-CP-10-3891 and Civil Action No. 2015-CP-10-3919. The Orders were filed on December 16, 2015. Counsel for Defendants received notice of the entry of the Orders on December 17, 2015, and, therefore, this Motion is timely filed.[1]

FACTUAL BACKGROUND

Plaintiff Athan Fokas filed two lawsuits (Civil Action No. 2015-CP-10-3891 and Civil Action No. 2015-CP-10-3919) in his continuing effort to force the Defendants, his cousins, to participate in a construction project to build a new building pursuant to terms they

[1] The Defendants recognize that the Court has stated that it intends to review the correspondence from the parties related to the proposed Orders and amend the Orders as it sees fit. However, given the deadline to file a Motion to Reconsider, the Defendants file this Motion out of an abundance of caution to preserve their rights.

never agreed to. The parties co-own the real property located at 229 King Street, with the Plaintiff owning a fifty percent (50%) interest and his three cousins each owning a one-third share of the other fifty percent (50%). Plaintiff Athan Fokas alleges that the parties entered into a verbal contract to build new rental units above the existing physical structure at 229 King Street with the parties splitting the costs pursuant to their individual ownership interests in 229 King Street. Defendants Phillip and Spiros Ferderigos deny the existence of any agreement, whether written or verbal, to construct the new building. They admit only that the parties agreed to investigate the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street to be used for rental units. Answer and Counterclaims, ¶¶ 8, 14, 28, 50 (C/A No. 2015-CP-10-3919). More specifically, the Defendants allege that a number of essential terms for any proposed construction, including the total cost of the proposed construction, were, and continue to be, unknown. They also deny, among other things, agreeing to mortgage their interests in 229 King Street for the benefit of the Plaintiff to obtain a loan for his share of the construction costs. Even Plaintiff Athan Fokas admits that no written agreement or signed document evidences any alleged agreement as alleged in the Complaint. The statute of frauds bars Athan Fokas' claims to the existence of a verbal agreement because the part performance exception to the statute of frauds defense does not apply as a matter of law.

Defendants Phillip and Spiros Ferderigos filed Answers and Counterclaims in both lawsuits filed against them by Plaintiff Athan Fokas. In response, Plaintiff filed motions to strike pursuant to Rule 12(f), SCRCP. More specifically, Plaintiff sought to strike specific allegations contained in the Answers and Counterclaims of both Defendants, the exhibits attached to the Answers and Counterclaims, and several of the causes of action in the counterclaims. Substantively, the Answers and Counterclaims of both Defendants are similar.

This Court heard oral arguments on Plaintiff's two (2) motions to strike filed in Civil Action No. 2015-CP-10-3919 on December 9, 2015. Critically, the two (2) motions to strike filed in Civil Action No. 2015-CP-10-3891 were *not* noticed to be heard at the December 9, 2015, hearing. At the hearing, the Court denied Plaintiff's motions to strike in Civil Action No. 2015-CP-10-3919 to the extent that they sought to strike causes of action and exhibits from the Defendants' Answers and Counterclaims. The Court took under advisement the portion of Plaintiff's motions seeking to strike specific paragraphs from the Defendants' Answers and Counterclaims. The Court asked Plaintiff's counsel to prepare a proposed order denying the motions to strike to the extent they sought to strike the counterclaims and exhibits. However, the Court directed Plaintiff's counsel to include a ruling that the Answers and Counterclaims and attached exhibits could not be read to the jury. The Court did *not* give any instructions that the proposed orders should include language striking any paragraphs and instead told the parties that it would later inform them what, if any, paragraphs might need to be stricken.

On Wednesday, December 16, 2015, at approximately 11:00 a.m., without submitting the proposed orders to Defendants' counsel beforehand as directed by the Court, Plaintiff submitted his proposed orders on the motions to strike in *both* cases, which were inconsistent with the Court's rulings. In defiance of the Court's instructions at the hearing and in direct contrast to the Court's oral rulings, Plaintiff's counsel submitted proposed orders striking specific exhibits from the Answer and Counterclaims. Plaintiff's proposed orders further included language striking specific portions of the Answers and Counterclaims — arguments the Court did not rule upon at the hearing and which were still under advisement. Additionally, Plaintiff submitted a proposed order in Civil Action No. 2015-CP-10-3891, which, again, was not before the Court at the hearing. (*See* Plaintiff's proposed orders, attached as *Exhibit A*). Only several hours later at approximately 3:45 p.m., counsel for

Defendant Spiros Ferderigos alerted the Court that the proposed orders were not prepared according to the Court's instructions. Defendant Phillip Ferderigos' counsel also noted objections to the proposed orders. (*See* Defendants' objections, attached as *Exhibit B*).

On the following day, the Court responded to the parties' emails and acknowledged the disagreement surrounding the proposed orders, as well as the errors in the proposed orders. The Court also requested that Defendants submit a redlined version of the proposed order they would ask the Court to adopt. Importantly, the Court also recognized that any order adopted should not extend to cases that were not set for argument before the Court on December 9, 2015. (*See* Court's correspondence, attached as *Exhibit C.*)

As requested by the Court, Defendants submitted a proposed order for the Court's consideration on December 18, 2015. (*See* Defendants' correspondence and proposed order, attached as *Exhibit D.*) Additionally, Defendants notified the Court that the Plaintiff's proposed orders, which were in direct contrast to the Court's oral rulings and instructions to Plaintiff's counsel and were not substantively consistent with the Court's orders and included a case not before the Court, were inadvertently entered. (*Id.*) Defendants believe the Orders were inadvertently entered as they are time stamped for approximately 2:29 p.m. on December 16 — before Defendants noted their objections and before the subsequent correspondence among the parties and Court.

ARGUMENT

A party may file a motion to reconsider and alter or amend an order under Rule 59(e) when it "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A motion for reconsideration is particularly appropriate to "call the court's attention to a possible

misapprehension of an earlier argument" and to "avoid[] piecemeal appeals and foster[] informed appellate review." *Id.* at 22-23, 602 S.E.2d at 779.

Here, Defendants Phillip and Spiros Ferderigos believe that the Court inadvertently entered Plaintiff's proposed orders. As explained more fully above, this Motion is specifically based upon the following grounds:

1. The Orders are in direct contrast to the Court's oral rulings and instructions to Plaintiff's counsel and were substantively inconsistent with the Court's rulings during the hearing on December 9, 2015 as (1) they strike exhibits where the Court specifically ruled and denied Plaintiff's motion to strike exhibits at the hearing and advised Plaintiff's counsel to put such finding in his proposed orders and (2) they order that certain paragraphs in Defendants' Answers and Counterclaims be stricken, a decision the Court specifically took under advisement;

2. The Orders strike Plaintiff's own words to Defendants, some from Plaintiff's own text messages, which are asserted not only for factual support, but also to prove Defendants' counterclaims as well as their forthcoming motion for judgment on the pleadings;

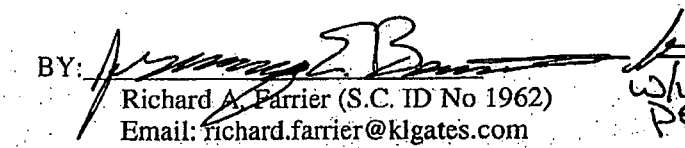
3. The Orders apply the Court's ruling on December 9, 2015, to both lawsuits, despite the lack of notice that the motions filed in Civil Action No. 2015-CP-10-3891 would be heard and decided;

4. The subsequent correspondence from the Court that it did not want its rulings to apply to Civil Action No. 2015-CP-10-3891; and

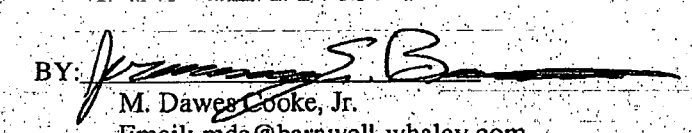
5. The subsequent correspondence from the Court acknowledging the problems with the Plaintiff's proposed orders and the Court's request for Defendants to submit redlined versions of proposed orders which accurately reflected the Court's prior rulings.

CONCLUSION

For the reasons set forth above, Defendants Phillip and Spiros Ferderigos respectfully request that the Court reconsider the Orders granting in part Plaintiff's Motions to Strike and, instead, deny Plaintiff's Motion to Strike and enter an order consistent with the decision reached during the hearing on December 9, 2015, which has been submitted by the Defendants.

BY:  JHT w/written permission

Richard A. Farrier (S.C. ID No 1962)
Email: richard.farrier@klgates.com
Jennifer H. Thiem (S.C. ID No. 73739)
Email: jennifer.thiem@klgates.com
K&L Gates LLP
134 Meeting Street, Suite 200
Charleston, SC 29401
Phone: (843) 579-5600
Fax: (843) 579-5601
ATTORNEYS FOR PHILLIP FERDERIGOS

BY: 

M. Dawes Cooke, Jr.
Email: mdc@barnwell-whaley.com
Jeremy E. Bowers
Email: jbowers@barnwell-whaley.com
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401
Phone: (843) 577-7700
Fax: (843) 577-7708
ATTORNEYS FOR SPIROS FERDERIGOS

15-3919

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reconsider and Alter or Amend Orders Pursuant to Rule 59(e) on behalf of the Defendants, PHILLIP FERDERIGOS and SPIROS FERDERIGOS, has been served via U.S. Mail, on this 29th day of December 2015, to counsel of record as follows:

Stanley E. Barnett, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
P.O. Box 1542
Mount Pleasant, SC 29465

John A. Massalon, Esquire
I. Ryan Neville, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

Cheryl D. Legland
Legal Secretary

FILED
2015 DEC 29 PM 1:16
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendants.	)	Case No.: 2015-CP-10-3919 **ORDER REGARDING PLAINTIFF'S MOTION TO STRIKE ANSWERS AND COUNTERCLAIMS OF DEFENDANTS, SPIROS FERDERIGOS AND PHILIP FERDERIGOS**

This action was filed by Plaintiff alleging a breach of a contract between the parties to add floors to the building they own together at 229 King Street, the bottom floor of which houses the Old Towne Restaurant. Plaintiff alleges the same facts he has plead also make out a cause of action for breach of the duties owed by Defendants as members of the LLC through which they own the building. Two of the Defendants have answered, Spiros and Philip Ferderigos, and they alleged a number of counterclaims. Plaintiff has moved pursuant to S.C.R.C.P. 12(f) to strike specific portions of the Answers and Counterclaims of both Defendants, including several of the counterclaims. Substantively, the Answers of both Defendants are identical. They differ only in the numbering of a few paragraphs. This Court heard oral argument on the motions on December 9, 2015.

MOTION TO STRIKE THE COUNTERCLAIMS

Plaintiff included in his Rule 12(f) motion a request that the counterclaims included in the answers of both Defendants for Violation of the Duty of Care in S.C. Code Sec. 33-44-409, Defamation, Abuse of Process and Frivolous Proceedings be stricken for failure to allege sufficient facts to establish these causes of action. Based on the memoranda filed by the parties

EXHIBIT A 669

and the arguments of counsel at the hearing of this matter, the Court finds that the motion to strike these counterclaims should be denied.

MOTION TO STRIKE MATTER THAT IS REDUNDANT, IMMATERIAL, IMPERTINENT AND/OR SCANDALOUS

Plaintiff's primary articulated objection to the parts of the Defendants' Answers is that reading these pleadings to the jury would prejudice their ability to hear Plaintiff's case. Avoiding such prejudice is one of the fundamental purposes of Rule 12(f). *Skadegaard v. Farrell,* 578 F.Supp. 1209, 1221 (D.N.J.1984); Wright & Miller 5C *Fed. Prac. & Proc. Civ.* § 1382 (3d ed.2011). At the hearing, counsel for both of these Defendants agreed that they would not read any part of these Answers and Counterclaims to a jury. Based on that agreement, this Court orders that no part of the Answers and Counterclaims of either Defendant may be read to a jury in this matter.

Plaintiff has asked that documents attached to these pleadings be stricken as they are redundant and because inclusion of documents which are unauthenticated and hearsay would, if read to a jury, subvert the rules of evidence, thereby prejudicing the Plaintiff's ability to prevent introduction to the jury of evidence otherwise improper. In light of the agreement of Defendants and this Courts Order that no part of their Answers and Counterclaims be read to a jury, it is not necessary to require the removal of the documents from these pleadings except as specified below with respect to allegations that are inherently prejudicial to Plaintiff and "scandalous" within the meaning of the Rule.

The Court is mindful of another of the purposes of Rule 12(f), "giving the allegations any other unnecessary notoriety inasmuch as, once filed, pleadings generally are public documents and become generally available." *Skadegaard,* supra; Wright & Miller, supra. Many of the allegations included in the Answers and Counterclaims filed by these Defendants have that

likelihood, while lacking any significant relevance to the matters in dispute. For that reason, this Court orders that the following language and exhibits be stricken from the Answers and Counterclaims of the Defendants:

1. Paragraph 104(a) and Exhibit R of the Answer of Philip Ferderigos which alleges that the Plaintiff was "half drunk" at a dinner party and told one of the Defendants that he hung "out with the ultra wealthy now and play their games"; and

Paragraph 103(a) and Exhibit R of the Answer of Spiros Ferderigos which is identical to the above paragraph in the Answer of Phillip Ferderigos.

2. Paragraph 106(a) and Exhibit S of the Answer of Philip Ferderigos which alleges that Plaintiff said he "was done paying your half of the food you so dearly like to eat at Old Towne..."; and

Paragraph 105(a) and Exhibit S of the Answer of Spiros Ferderigos which is identical to the above language.

3. Paragraph 108 and Exhibit T of the Answer of Philip Ferderigos which alleges that Plaintiff accused the Defendants of not going forward with the contract because they could not eat for free at the restaurant, insulted Philip Ferderigos' weight and said, "I bet your kids will be real proud of you in the future too. Your dad was right calling you 'palabo' (meaning "stupid" in Greek) Philipa."

Paragraph 107 and Exhibit T of the Answer of Spiros Ferderigos which is identical to the above language.

4. Paragraph 117, second sentence of the Answer of Philip Ferderigos, which reads, "This includes one email in which he specifically mentions that his lawsuits are not costing him anything because his attorney has taken on the case on a contingency fee"; and

Paragraph 116, second sentence of the Answer of Spiros Ferderigos which is identical to the above language.

5. Paragraph 127 x of the Answer of Philip Ferderigos which alleges that Plaintiff harassed Defendants by representing that he was going to make $25,000,000 as a consultant and that he said, "I hang out with the ultra wealthy now and play their games"; and

Paragraph 126 x of the Answer of Spiros Ferderigos which is identical to the above language.

6. Paragraph 127 aa of the Answer of Philip Ferderigos from the middle of the third line reading, "and that the proposed project fell apart because Philip could not eat for free at Old Towne Restaurant and by calling Philip Ferderigos stupid"; and

Paragraph 126 aa of the Answer of Spiros Ferderigos from the middle of the third line which is identical to the above language.

7. Paragraph 127 ff of the Answer of Philip Ferderigos which alleges that Plaintiff threatened to "take Philip and Spiros Ferderigos' homes and throw their children out on the street," unless they consummated the agreement Plaintiff alleges they made"; and

Paragraph 126 dd of the Answer of Spiros Ferderigos which is identical to the above language.

8. Paragraph 127 qq of the Answer of Philip Ferderigos which alleges that Plaintiff said his attorney was "working on a flat 20 percent contingency so he is not costing me anything until this case is settled" and that it will not cost him anything to proceed with his frivolous lawsuit strategy; and

Paragraph 126 oo of the Answer of Spiros Ferderigos which is identical to the above language.

NOW THEREFORE, it is ORDERED that:

1. Plaintiff's Motion to Strike counterclaims of the Defendants is denied;

2. Defendants shall not read any part of their Answers and Counterclaims to a jury in this matter;

3. Defendants shall within twenty (20) days of the date of this Order file Amended Answers and Counterclaims striking the language detailed above and removing the Exhibits R, S and T; and

4. Upon service of said Amended Answers and Counterclaims, Plaintiff shall have twenty (20) days to file Replies to any counterclaims contained therein.

IT IS SO ORDERED.

J. C. Nicholson, Jr.
Circuit Judge

Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3891 **ORDER REGARDING PLAINTIFF'S MOTION TO STRIKE ANSWER AND COUNTERCLAIMS OF DEFENDANTS, SPIROS FERDERIGOS AND PHILIP FERDERIGOS**

This action was filed by Plaintiff alleging defamation by Defendants in the form of making false and damaging statements about him. In another separate lawsuit, Plaintiff alleged a breach of a contract between the parties to add floors to the building they own together at 229 King Street, the bottom floor of which houses the Old Towne Restaurant. In that lawsuit, Athan Fokas v. Philip Ferderigos, Spiros Ferderigos and Jacob Ferderigos, 2015-CP-10-3919, two of the Defendants filed answers and counterclaims to which Plaintiff responded with a motion to strike pursuant to S.C.R.C.P. 12(f). In this action, both Defendants filed answers and counterclaims which incorporate in their entirety the answers and counterclaims filed in 2015-CP-10-3919. Plaintiff filed a motion to strike the answers and counterclaims of both Defendants in this case pursuant to Rule 12(f) for the same reasons as were set forth in his motion to strike in case 2015-CP-10-3919. This Court heard oral argument on the motions on December 9, 2015.

This Court has issued an Order in case 2015-CP-10-3919 confirming the agreement by counsel for both Defendants made at the hearing on December 9, 2015 that neither of their answers and counterclaims may be read to a jury in that case. That prohibition should apply equally to this case. Therefore, this Court orders that neither of the Defendant's answers and counterclaims may be read to a jury in this case.

In addition, this Court ordered that certain portions of the answers and counterclaims of both Defendants in case 2015-CP-10-3919 be stricken and that both Defendants file amended answers and counterclaims in compliance with the Court's direction. This Court orders both Defendants in this case to file amended answers and counterclaims removing all references to their original answers and counterclaims in case 2015-CP-10-3919.

NOW THEREFORE, it is ORDERED that:

1. Defendants shall not read any part of their Answers and Counterclaims to a jury in this matter;

2. Defendants shall within twenty (20) days of the date of this Order file Amended Answers and Counterclaims removing any reference to their original Answer and Counterclaims filed in Case No. 2015-CP-10-3919;

3. Upon service of said Amended Answers and Counterclaims, Plaintiff shall have twenty (20) days to file Replies to any counterclaims contained therein.

IT IS SO ORDERED.

J. C. Nicholson, Jr.
Circuit Judge

Charleston, South Carolina

Subject: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)
Date: Wednesday, December 16, 2015 at 11:00:36 AM Eastern Standard Time
From: Stan Barnett
To: Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)
CC: M. Dawes Cooke, Farrier, Jr., Richard A., J. Drayton Hastie III
Attachments: proposed order regarding plaintiff's motion to strike answers and counterclaims in case 3891.docx, proposed order regarding plaintiff's motion to strike answers and counterclaims in case 3919.docx

Judge Nicholson:

Attached are proposed orders as you requested regarding my motions on behalf of the Plaintiff, Athan Fokas, to strike the answers and counterclaims of Defendants Spiros Ferderigos and Philip Ferderigos in both cases he has filed against them, the breach of contract case, 2015-CP-10-3919, and the defamation case, 2015-CP-10-3891.

In the defamation case, the Defendants incorporated their entire answer in the breach of contract case into their answer. For that reason, I have drafted the proposed order in the defamation case so as to make your order in the breach of contract case apply equally to that case.

If there is anything else you would like, please let me know.

Stan Barnett
843-881-1623

Jeremy Bowers

From: Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>
Sent: Thursday, December 17, 2015 11:58 AM
To: M. Dawes Cooke; Stan Barnett; Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)
Cc: J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers; jweston@westonlawfirm.com
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook:

On behalf of my client, Phillip Ferderigos, I wanted to confirm that I join in Dawes' objections, but of course like Dawes, I also defer to the Court's recollection. To the extent it assists the court, I also wanted to note two additional items, which I believe will be reflected in the record. First, the Court specifically denied the motion to strike exhibits, and Mr. Barnett's proposed order is the opposite of the Court's ruling. Second, a review of Mr. Barnett's proposed Order reveals he is asking the Court to strike Plaintiff's own words to Defendants, some from Plaintiff's own texts, which we respectfully allege not only for factual support, but also to prove Defendants' counterclaims as well as their forthcoming motion for judgment on the pleadings.

Thank you, Richard Farrier

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Wednesday, December 16, 2015 4:32 PM
To: Stan Barnett; Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)
Cc: Farrier, Jr., Richard A.; J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers
Subject: Re: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

I'll defer to Judge Nicholson's memory, of course. I don't recall his saying that any of the Answers and Counterclaims should be stricken. He was going to review them later and let us know if anything needs to be stricken. Judge Nicholson will know if I am mistaken about that.

Dawes Cooke

From: Stan Barnett <stanleyb@s3blaw.com>
Date: Wednesday, December 16, 2015 at 3:53 PM
To: "M. Dawes Cooke" <mdc@barnwell-whaley.com>, "Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)" <JNicholsonLC@sccourts.org>
Cc: "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>, "J. Drayton Hastie III" <dhastie@scarolina-law.com>, "Thiem, Jennifer H." <Jennifer.Thiem@klgates.com>, "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook:

I am pretty sure that the judge asked me to include those parts of the answers that I thought should be stricken based on what he had already said about the motion. My memory is not perfect. That is my recollection, however.

Stan Barnett

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Wednesday, December 16, 2015 3:43 PM
To: Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs) <JNicholsonLC@sccourts.org>

EXHIBIT B

677

Cc: Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>; J. Drayton Hastie III <dhastie@scarolina-law.com>; Stan Barnett <stanleyb@s3blaw.com>; Thiem, Jennifer H. <Jennifer.Thiem@klgates.com>; Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>
Subject: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook, the Defendants object to the proposed orders submitted by Plaintiff on these motions. We agree that Judge Nicholson denied the motion to strike to the extent it sought to strike causes of action and exhibits from the Defendants' Answer and Counterclaims. We also agree that Judge Nicholson requested that the proposed order denying the motions to strike should include a ruling that the Answer and Counterclaims and attached exhibits could not be read to the jury.

However, we disagree with Mr. Barnett's statement that Judge Nicholson ruled on Plaintiff's motion to strike to the extent it sought to strike specific allegation from the Answer and Counterclaims. Judge Nicholson said that he would review the Answers and Counterclaims later and inform us what, if any, paragraphs need to be stricken. He did not give any instructions that the proposed orders should include language striking any paragraphs.

Moreover, our understanding is that the Judge Nicholson intended not to issue a ruling on any matters until after mediation.

If Judge Nicholson is inclined to strike any specific paragraphs or exhibits, the Defendants would respectfully request an opportunity to explain the relevance of that pleading or material. We respectfully submit that every allegation in the Answers and Counterclaims is relevant to some aspect of the claims or defenses.

If you should have any questions, please do not hesitate to e-mail me. As always, I appreciate your courtesy in this matter.

Dawes Cooke

BARNWELL WHALEY PATTERSON & HELMS, LLC

P.O. Drawer H

Charleston, SC 29402

(843)577-7700

From: Stan Barnett <stanleyb@s3blaw.com>
Date: Wednesday, December 16, 2015 at 11:00 AM
To: "Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)" <JNicholsonLC@sccourts.org>
Cc: "M. Dawes Cooke" <mdc@barnwell-whaley.com>, "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>, "J. Drayton Hastie III" <dhastie@scarolina-law.com>
Subject: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Judge Nicholson:

Attached are proposed orders as you requested regarding my motions on behalf of the Plaintiff, Athan Fokas, to strike the answers and counterclaims of Defendants Spiros Ferderigos and Philip Ferderigos in both cases he has filed against them, the breach of contract case, 2015-CP-10-3919, and the defamation case, 2015-CP-10-3891.

In the defamation case, the Defendants incorporated their entire answer in the breach of contract case into their answer. For that reason, I have drafted the proposed order in the defamation case so as to make your order in the breach of contract case apply equally to that case.

If there is anything else you would like, please let me know.

Stan Barnett
843-881-1623

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Richard.Farrier@klgates.com.

Jeremy Bowers

From: Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs) <JNicholsonLC@sccourts.org>
Sent: Thursday, December 17, 2015 1:00 PM
To: Farrier, Jr., Richard A.; M. Dawes Cooke; Stan Barnett
Cc: J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers; jweston@westonlawfirm.com
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

All,

Judge Nicholson and I have spoken about your concerns with the Order. There seems to be truth to both sides of the discussion. Mr. Cooke and/or Mr. Farrier, would you submit to the Court a redline version proposed order showing the specific language you disagree with as well as include any language you feel was left out? Mr. Barnett, you will then have a chance to respond if you disagree with the language of their proposed orders. Judge Nicholson will review everything and see if the Order should be changed and he will correct any errors he thinks need to be fixed.

Judge Nicholson does not want his Orders to extend to cases or motions that were not before him even though there are three related cases within this family. He can only rule on the motions at hand. He does want all three cases mediated however. He will issue an Order on the mediation.

The motion he is holding off on is the Motion of Preliminary Injunction. He will keep that under advisement until mediation is done.

In addition, it appears there are motions on the January roster in these cases. Since you all have mediation coming up, would it be beneficial to continue any hearings until after mediation? I am happy to do that for you.

Sincerely,
Brook

Brooklyn A. Burroughs
Law Clerk to The Honorable J.C. Nicholson, Jr.
Circuit Court Judge
100 Broad Street
Charleston, South Carolina 29401
Tel: (843) 958-5047
jnicholsonlc@sccourts.org

From: Farrier, Jr., Richard A. [mailto:Richard.Farrier@klgates.com]
Sent: Thursday, December 17, 2015 11:58 AM
To: M. Dawes Cooke; Stan Barnett; Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)
Cc: J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers; jweston@westonlawfirm.com
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook:

On behalf of my client, Phillip Ferderigos, I wanted to confirm that I join in Dawes' objections, but of course like Dawes, I also defer to the Court's recollection. To the extent it assists the court, I also wanted to note two additional items, which I believe will be reflected in the record. First, the Court specifically denied the motion to strike exhibits, and Mr. Barnett's proposed order is the opposite of the Court's ruling. Second, a review of Mr. Barnett's proposed Order reveals he is asking the Court to strike Plaintiff's own words to Defendants, some from Plaintiff's own texts, which we respectfully allege not only for factual support, but also to prove Defendants' counterclaims as well as their forthcoming motion for judgment on the pleadings.

EXHIBIT
C
680

Thank you, Richard Farrier

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Wednesday, December 16, 2015 4:32 PM
To: Stan Barnett; Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)
Cc: Farrier, Jr., Richard A.; J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers
Subject: Re: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

I'll defer to Judge Nicholson's memory, of course. I don't recall his saying that any of the Answers and Counterclaims should be stricken. He was going to review them later and let us know if anything needs to be stricken. Judge Nicholson will know if I am mistaken about that.

Dawes Cooke

From: Stan Barnett <stanleyb@s3blaw.com>
Date: Wednesday, December 16, 2015 at 3:53 PM
To: "M. Dawes Cooke" <mdc@barnwell-whaley.com>, "Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)" <JNicholsonLC@sccourts.org>
Cc: "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>, "J. Drayton Hastie III" <dhastie@scarolina-law.com>, "Thiem, Jennifer H." <Jennifer.Thiem@klgates.com>, "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook:

I am pretty sure that the judge asked me to include those parts of the answers that I thought should be stricken based on what he had already said about the motion. My memory is not perfect. That is my recollection, however.

Stan Barnett

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Wednesday, December 16, 2015 3:43 PM
To: Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs) <JNicholsonLC@sccourts.org>
Cc: Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>; J. Drayton Hastie III <dhastie@scarolina-law.com>; Stan Barnett <stanleyb@s3blaw.com>; Thiem, Jennifer H. <Jennifer.Thiem@klgates.com>; Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>
Subject: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook, the Defendants object to the proposed orders submitted by Plaintiff on these motions. We agree that Judge Nicholson denied the motion to strike to the extent it sought to strike causes of action and exhibits from the Defendants' Answer and Counterclaims. We also agree that Judge Nicholson requested that the proposed order denying the motions to strike should include a ruling that the Answer and Counterclaims and attached exhibits could not be read to the jury.

However, we disagree with Mr. Barnett's statement that Judge Nicholson ruled on Plaintiff's motion to strike to the extent it sought to strike specific allegation from the Answer and Counterclaims. Judge Nicholson said that he would review the

Answers and Counterclaims later and inform us what, if any, paragraphs need to be stricken. He did not give any instructions that the proposed orders should include language striking any paragraphs.

Moreover, our understanding is that the Judge Nicholson intended not to issue a ruling on any matters until after mediation.

If Judge Nicholson is inclined to strike any specific paragraphs or exhibits, the Defendants would respectfully request an opportunity to explain the relevance of that pleading or material. We respectfully submit that every allegation in the Answers and Counterclaims is relevant to some aspect of the claims or defenses.

If you should have any questions, please do not hesitate to e-mail me. As always, I appreciate your courtesy in this matter.

Dawes Cooke

BARNWELL WHALEY PATTERSON & HELMS, LLC

P.O. Drawer H

Charleston, SC 29402

(843)577-7700

From: Stan Barnett <stanleyb@s3blaw.com>
Date: Wednesday, December 16, 2015 at 11:00 AM
To: "Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)" <JNicholsonLC@sccourts.org>
Cc: "M. Dawes Cooke" <mdc@barnwell-whaley.com>, "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>, "J. Drayton Hastie III" <dhastie@scarolina-law.com>
Subject: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Judge Nicholson:

Attached are proposed orders as you requested regarding my motions on behalf of the Plaintiff, Athan Fokas, to strike the answers and counterclaims of Defendants Spiros Ferderigos and Philip Ferderigos in both cases he has filed against them, the breach of contract case, 2015-CP-10-3919, and the defamation case, 2015-CP-10-3891.

In the defamation case, the Defendants incorporated their entire answer in the breach of contract case into their answer. For that reason, I have drafted the proposed order in the defamation case so as to make your order in the breach of contract case apply equally to that case.

If there is anything else you would like, please let me know.

Stan Barnett
843-881-1623

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Richard.Farrier@klgates.com.
~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.
~~~

Jeremy Bowers

From: Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>
Sent: Friday, December 18, 2015 4:37 PM
To: Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs); M. Dawes Cooke; Stan Barnett
Cc: J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers; jweston@westonlawfirm.com
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)
Attachments: OBDoc34748981.pdf; OBDoc34748984.pdf; Proposed Order on Motions to Strike (Redlined w Spiros & Phillip Revisio....docx; Proposed Order on Motions to Strike (Clean).docx

Brook,

On behalf of both Phillip and Spiros Ferderigos, attached please find a redline version of the proposed order as requested below along with a clean copy of our proposed order.

Additionally, we received signed and filed copies of Mr. Barnett's orders, including an order for the defamation matter which was not before the Court. I have also attached these orders. Based on the date/time stamp, it appears that the orders were signed and filed before the objections were raised. I wanted to bring this to your attention as I believe these may have been inadvertently filed.

Thank you and have a nice weekend.
Richard Farrier

From: Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs) [mailto:JNicholsonLC@sccourts.org]
Sent: Thursday, December 17, 2015 1:00 PM
To: Farrier, Jr., Richard A.; M. Dawes Cooke; Stan Barnett
Cc: J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers; jweston@westonlawfirm.com
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

All,

Judge Nicholson and I have spoken about your concerns with the Order. There seems to be truth to both sides of the discussion. Mr. Cooke and/or Mr. Farrier, would you submit to the Court a redline version proposed order showing the specific language you disagree with as well as include any language you feel was left out? Mr. Barnett, you will then have a chance to respond if you disagree with the language of their proposed orders. Judge Nicholson will review everything and see if the Order should be changed and he will correct any errors he thinks need to be fixed.

Judge Nicholson does not want his Orders to extend to cases or motions that were not before him even though there are three related cases within this family. He can only rule on the motions at hand. He does want all three cases mediated however. He will issue an Order on the mediation.

The motion he is holding off on is the Motion of Preliminary Injunction. He will keep that under advisement until mediation is done.

In addition, it appears there are motions on the January roster in these cases. Since you all have mediation coming up, would it be beneficial to continue any hearings until after mediation? I am happy to do that for you.

Sincerely,
Brook

Brooklyn A. Burroughs



Law Clerk to The Honorable J.C. Nicholson, Jr.
Circuit Court Judge
100 Broad Street
Charleston, South Carolina 29401
Tel: (843) 958-5047
jnicholsonlc@sccourts.org

From: Farrier, Jr., Richard A. [mailto:Richard.Farrier@klgates.com]
Sent: Thursday, December 17, 2015 11:58 AM
To: M. Dawes Cooke; Stan Barnett; Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)
Cc: J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers; jweston@westonlawfirm.com
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook:

On behalf of my client, Phillip Ferderigos, I wanted to confirm that I join in Dawes' objections, but of course like Dawes, I also defer to the Court's recollection. To the extent it assists the court, I also wanted to note two additional items, which I believe will be reflected in the record. First, the Court specifically denied the motion to strike exhibits, and Mr. Barnett's proposed order is the opposite of the Court's ruling. Second, a review of Mr. Barnett's proposed Order reveals he is asking the Court to strike Plaintiff's own words to Defendants, some from Plaintiff's own texts, which we respectfully allege not only for factual support, but also to prove Defendants' counterclaims as well as their forthcoming motion for judgment on the pleadings.

Thank you, Richard Farrier

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Wednesday, December 16, 2015 4:32 PM
To: Stan Barnett; Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)
Cc: Farrier, Jr., Richard A.; J. Drayton Hastie III; Thiem, Jennifer H.; Jeremy Bowers
Subject: Re: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

I'll defer to Judge Nicholson's memory, of course. I don't recall his saying that any of the Answers and Counterclaims should be stricken. He was going to review them later and let us know if anything needs to be stricken. Judge Nicholson will know if I am mistaken about that.

Dawes Cooke

From: Stan Barnett <stanleyb@s3blaw.com>
Date: Wednesday, December 16, 2015 at 3:53 PM
To: "M. Dawes Cooke" <mdc@barnwell-whaley.com>, "Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)" <JNicholsonLC@sccourts.org>
Cc: "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>, "J. Drayton Hastie III" <dhastie@scarolina-law.com>, "Thiem, Jennifer H." <Jennifer.Thiem@klgates.com>, "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>
Subject: RE: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook:

I am pretty sure that the judge asked me to include those parts of the answers that I thought should be stricken based on what he had already said about the motion. My memory is not perfect. That is my recollection, however.

Stan Barnett

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Wednesday, December 16, 2015 3:43 PM
To: Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs) <JNicholsonLC@sccourts.org>
Cc: Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>; J. Drayton Hastie III <dhastie@scarolina-law.com>; Stan Barnett <stanleyb@s3blaw.com>; Thiem, Jennifer H. <Jennifer.Thiem@klgates.com>; Farrier, Jr., Richard A. <Richard.Farrier@klgates.com>
Subject: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Brook, the Defendants object to the proposed orders submitted by Plaintiff on these motions. We agree that Judge Nicholson denied the motion to strike to the extent it sought to strike causes of action and exhibits from the Defendants' Answer and Counterclaims. We also agree that Judge Nicholson requested that the proposed order denying the motions to strike should include a ruling that the Answer and Counterclaims and attached exhibits could not be read to the jury.

However, we disagree with Mr. Barnett's statement that Judge Nicholson ruled on Plaintiff's motion to strike to the extent it sought to strike specific allegation from the Answer and Counterclaims. Judge Nicholson said that he would review the Answers and Counterclaims later and inform us what, if any, paragraphs need to be stricken. He did not give any instructions that the proposed orders should include language striking any paragraphs.

Moreover, our understanding is that the Judge Nicholson intended not to issue a ruling on any matters until after mediation.

If Judge Nicholson is inclined to strike any specific paragraphs or exhibits, the Defendants would respectfully request an opportunity to explain the relevance of that pleading or material. We respectfully submit that every allegation in the Answers and Counterclaims is relevant to some aspect of the claims or defenses.

If you should have any questions, please do not hesitate to e-mail me. As always, I appreciate your courtesy in this matter.

Dawes Cooke

BARNWELL WHALEY PATTERSON & HELMS, LLC

P.O. Drawer H

Charleston, SC 29402

(843)577-7700

From: Stan Barnett <stanleyb@s3blaw.com>
Date: Wednesday, December 16, 2015 at 11:00 AM
To: "Nicholson, J. C. Law Clerk (Brooklyn A. Burroughs)" <JNicholsonLC@sccourts.org>
Cc: "M. Dawes Cooke" <mdc@barnwell-whaley.com>, "Farrier, Jr., Richard A." <Richard.Farrier@klgates.com>, "J. Drayton Hastie III" <dhastie@scarolina-law.com>
Subject: Proposed Orders in Fokas v. Ferderigos (Cases 2015-CP-10-3891 and 3919)

Judge Nicholson:

Attached are proposed orders as you requested regarding my motions on behalf of the Plaintiff, Athan Fokas, to strike the answers and counterclaims of Defendants Spiros Ferderigos and Philip Ferderigos in both cases he has filed against them, the breach of contract case, 2015-CP-10-3919, and the defamation case, 2015-CP-10-3891.

In the defamation case, the Defendants incorporated their entire answer in the breach of contract case into their answer. For that reason, I have drafted the proposed order in the defamation case so as to make your order in the breach of contract case apply equally to that case.

If there is anything else you would like, please let me know.

Stan Barnett
843-881-1623

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Richard.Farrier@klgates.com.
~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Richard.Farrier@klgates.com.
~~~

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendants.	)	Case No.: 2015-CP-10-3919 **ORDER REGARDING PLAINTIFF'S MOTION TO STRIKE ANSWERS AND COUNTERCLAIMS OF DEFENDANTS, SPIROS FERDERIGOS AND PHILIP FERDERIGOS**

This action was filed by Plaintiff alleging a breach of a contract between the parties to add floors to the building they own together at 229 King Street, the bottom floor of which houses the Old Towne Restaurant. Plaintiff alleges the same facts he has pleaded also make out a cause of action for breach of the duties owed by Defendants as members of ~~the~~ an LLC ~~through which they own the building~~. Two of the Defendants have answered, Spiros and Philip Ferderigos, and they alleged a number of defenses and counterclaims. In their Answers and Counterclaims, the Defendants deny Plaintiff's characterization of the proposed project and allege the proposed project involved the parties' investigation into the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street to be used for rental units.

Plaintiff has moved pursuant to ~~S.C.R.C.P.~~Rule 12(f), SCRCP, to strike specific portions of the Answers and Counterclaims of both Defendants, including the exhibits attached to the Answers and Counterclaims and several of the causes of action in the counterclaims. Substantively, the Answers of both Defendants are ~~identical~~ similar. ~~They differ only in the numbering of a few paragraphs.~~ This Court heard oral argument on the motions on December 9, 2015.

Formatted: Indent: First line: 0.5"

MOTION TO STRIKE THE COUNTERCLAIMS

Plaintiff included in his Rule 12(f) motion a request that the counterclaims included in the answers of both Defendants for Violation of the Duty of Care in S.C. Code Sec. 33-44-409, Defamation, Abuse of Process, and Frivolous Proceedings be stricken for failure to allege sufficient facts to establish these causes of action. Based on the pleadings and the arguments raised in the memoranda filed by the ~~parties~~ Defendants and the arguments of counsel at the hearing of this matter, the Court finds that the Defendants have sufficiently pleaded the various causes of action in their Counterclaims, and therefore, the motion to strike these counterclaims ~~should be~~is denied. The Court does hereby order that the Defendants cannot read any portion of the allegations contained in their Answers and Counterclaims to the jury at trial.

MOTION TO STRIKE THE EXHIBITS TO ANSWERS AND COUNTERCLAIMS

Plaintiff included in his Rule 12(f) motion a request that the exhibits to the Defendants' Answers and Counterclaims be stricken. Based on the memoranda filed by the parties and the arguments of counsel at the hearing of this matter, the Court finds that the motion to strike the exhibits from the Answers and Counterclaims is denied. By way of this Order, the Court does not rule on the admissibility of these exhibits at trial and specifically reserves those rulings to the trial court. The Court does order that the Defendants cannot read any portion of any exhibit attached to their Answers and Counterclaims to the jury at trial, absent a ruling by the trial court that the exhibit is admissible into evidence.

MOTION TO STRIKE SPECIFIC ALLEGATIONS

Plaintiff included in his Rule 12(f) motion a request to strike specific allegations from the Answers and Counterclaims. As the Court has not yet had an opportunity to review the specific

Formatted: Justified

Formatted: Indent: First line: 0.5"

allegations at issue in the Plaintiff's Motion, the Court will take its ruling on these specific allegations under advisement at this time and issue an order after its review.

Formatted: Justified

~~MOTION TO STRIKE MATTER THAT IS REDUNDANT, IMMATERIAL, IMPERTINENT AND/OR SCANDALOUS~~

~~Plaintiff's primary articulated objection to the parts of the Defendants' Answers is that reading these pleadings to the jury would prejudice their ability to hear Plaintiff's case. Avoiding such prejudice is one of the fundamental purposes of Rule 12(f). *Skadegaard v. Farrell*, 578 F.Supp. 1209, 1221 (D.N.J.1984); Wright & Miller 5C *Fed. Prac. & Proc. Civ.* § 1382 (3d ed.2011). At the hearing, counsel for both of these Defendants agreed that they would not read any part of these Answers and Counterclaims to a jury. Based on that agreement, this Court orders that no part of the Answers and Counterclaims of either Defendant may be read to a jury in this matter.~~

~~Plaintiff has asked that documents attached to these pleadings be stricken as they are redundant and because inclusion of documents which are unauthenticated and hearsay would, if read to a jury, subvert the rules of evidence, thereby prejudicing the Plaintiff's ability to prevent introduction to the jury of evidence otherwise improper. In light of the agreement of Defendants and this Courts Order that no part of their Answers and Counterclaims be read to a jury, it is not necessary to require the removal of the documents from these pleadings except as specified below with respect to allegations that are inherently prejudicial to Plaintiff and "scandalous" within the meaning of the Rule.~~

~~The Court is mindful of another of the purposes of Rule 12(f), "giving the allegations any other unnecessary notoriety inasmuch as, once filed, pleadings generally are public documents and become generally available." *Skadegaard*, supra; Wright & Miller, supra. Many of the~~

allegations included in the Answers and Counterclaims filed by these Defendants have that likelihood, while lacking any significant relevance to the matters in dispute. For that reason, this Court orders that the following language and exhibits be stricken from the Answers and Counterclaims of the Defendants:

1. Paragraph 104(a) and Exhibit R of the Answer of Philip Ferderigos which alleges that the Plaintiff was "half drunk" at a dinner party and told one of the Defendants that he hung "out with the ultra-wealthy now and play their games"; and

Paragraph 103(a) and Exhibit R of the Answer of Spiros Ferderigos which is identical to the above paragraph in the Answer of Phillip Ferderigos.

2. Paragraph 106(a) and Exhibit S of the Answer of Philip Ferderigos which alleges that Plaintiff said he "was done paying your half of the food you so dearly like to eat at Old Towne..."; and

Paragraph 105(a) and Exhibit S of the Answer of Spiros Ferderigos which is identical to the above language.

3. Paragraph 108 and Exhibit T of the Answer of Philip Ferderigos which alleges that Plaintiff accused the Defendants of not going forward with the contract because they could not eat for free at the restaurant, insulted Philip Ferderigos' weight and said, "I bet your kids will be real proud of you in the future too. Your dad was right calling you 'palabo' (meaning "stupid" in Greek) Philipa."

Paragraph 107 and Exhibit T of the Answer of Spiros Ferderigos which is identical to the above language.

4. Paragraph 117, second sentence of the Answer of Philip Ferderigos, which reads, "This includes one email in which he specifically mentions that his lawsuits are not costing him anything because his attorney has taken on the case on a contingency fee"; and

Paragraph 116, second sentence of the Answer of Spiros Ferderigos which is identical to the above language.

5. Paragraph 127 x of the Answer of Philip Ferderigos which alleges that Plaintiff harassed Defendants by representing that he was going to make $25,000,000 as a consultant and that he said, "I hang out with the ultra wealthy now and play their games"; and

Paragraph 126 x of the Answer of Spiros Ferderigos which is identical to the above language.

6. Paragraph 127 aa of the Answer of Philip Ferderigos from the middle of the third line reading, "and that the proposed project fell apart because Philip could not eat for free at Old Towne Restaurant and by calling Philip Ferderigos stupid"; and

Paragraph 126 aa of the Answer of Spiros Ferderigos from the middle of the third line which is identical to the above language.

7. Paragraph 127 ff of the Answer of Philip Ferderigos which alleges that Plaintiff threatened to "take Philip and Spiros Ferderigos' homes and throw their children out on the street," unless they consummated the agreement Plaintiff alleges they made"; and

Paragraph 126 dd of the Answer of Spiros Ferderigos which is identical to the above language.

8. Paragraph 127 qq of the Answer of Philip Ferderigos which alleges that Plaintiff said his attorney was "working on a flat 20 percent contingency so he is not costing me anything

~~until this case is settled" and that it will not cost him anything to proceed with his frivolous lawsuit strategy; and~~

~~Paragraph 126 oo of the Answer of Spiros Ferderigos which is identical to the above language.~~

NOW THEREFORE, it is ORDERED that:

1. Plaintiff's Motion to Strike the counterclaims of the Defendants is denied;

2. Plaintiff's Motion to Strike the exhibits from the Answers and Counterclaims of the Defendants is denied; and

~~3.~~2. Defendants shall not read any part of their Answers and Counterclaims, including exhibits, to a jury in this matter absent a ruling by the trial court that a specific exhibit is admissible;; and

4. The Court hereby takes Plaintiff's Rule 12(f) motion to strike specific factual allegations from the Defendants' Answers and Counterclaims under advisement.

~~3. Defendants shall within twenty (20) days of the date of this Order file Amended Answers and Counterclaims striking the language detailed above and removing the Exhibits R, S and T; and~~

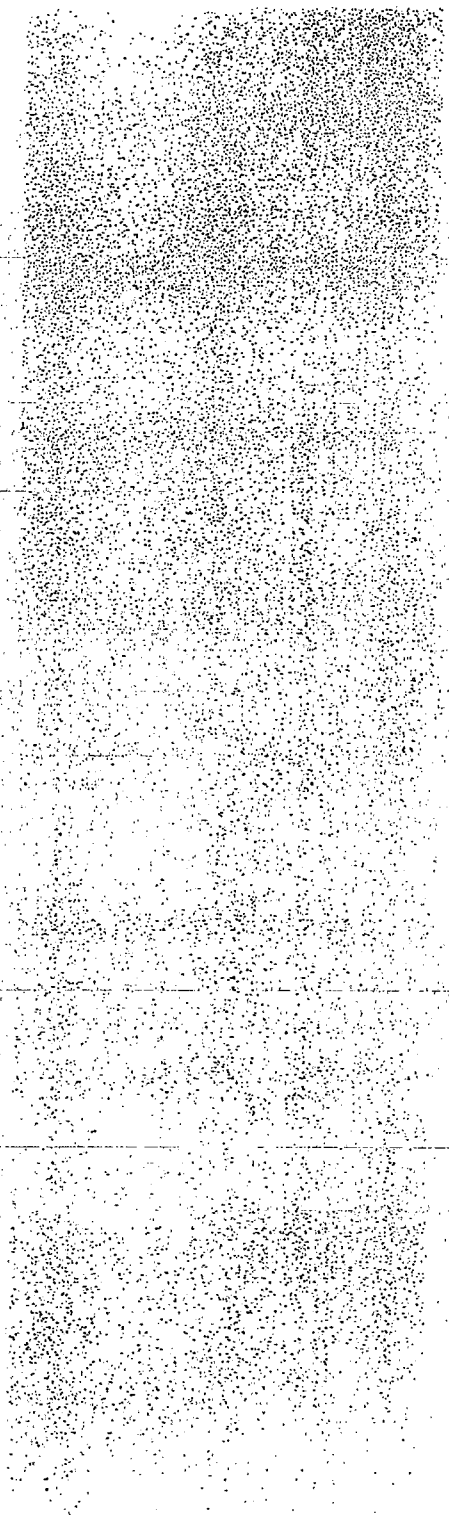
~~4. Upon service of said Amended Answers and Counterclaims, Plaintiff shall have twenty (20) days to file Replies to any counterclaims contained therein.~~

IT IS SO ORDERED.

J. C. Nicholson, Jr.
Circuit Judge

Formatted: Justified

Charleston, South Carolina



STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendants.	)	Case No.: 2015-CP-10-3919 **ORDER REGARDING PLAINTIFF'S MOTION TO STRIKE ANSWERS AND COUNTERCLAIMS OF DEFENDANTS, SPIROS FERDERIGOS AND PHILIP FERDERIGOS**

This action was filed by Plaintiff alleging a breach of a contract between the parties to add floors to the building they own together at 229 King Street, the bottom floor of which houses the Old Towne Restaurant. Plaintiff alleges the same facts he has pleaded also make out a cause of action for breach of the duties owed by Defendants as members of an LLC. Two of the Defendants have answered, Spiros and Philip Ferderigos, and they alleged a number of defenses and counterclaims. In their Answers and Counterclaims, the Defendants deny Plaintiff's characterization of the proposed project and allege the proposed project involved the parties' investigation into the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street to be used for rental units.

Plaintiff has moved pursuant to Rule 12(f), SCRCP, to strike specific portions of the Answers and Counterclaims of both Defendants, including the exhibits attached to the Answers and Counterclaims and several of the causes of action in the counterclaims. Substantively, the Answers of both Defendants are similar. This Court heard oral argument on the motions on December 9, 2015.

MOTION TO STRIKE THE COUNTERCLAIMS

Plaintiff included in his Rule 12(f) motion a request that the counterclaims included in the answers of both Defendants for Violation of the Duty of Care in S.C. Code Sec. 33-44-409, Defamation, Abuse of Process, and Frivolous Proceedings be stricken for failure to allege sufficient facts to establish these causes of action. Based on the pleadings and the arguments raised in the memoranda filed by the Defendants and the arguments of counsel at the hearing of this matter, the Court finds that the Defendants have sufficiently pleaded the various causes of action in their Counterclaims, and therefore, the motion to strike these counterclaims is denied. The Court does hereby order that the Defendants cannot read any portion of the allegations contained in their Answers and Counterclaims to the jury at trial.

MOTION TO STRIKE THE EXHIBITS TO ANSWERS AND COUNTERCLAIMS

Plaintiff included in his Rule 12(f) motion a request that the exhibits to the Defendants' Answers and Counterclaims be stricken. Based on the memoranda filed by the parties and the arguments of counsel at the hearing of this matter, the Court finds that the motion to strike the exhibits from the Answers and Counterclaims is denied. By way of this Order, the Court does not rule on the admissibility of these exhibits at trial and specifically reserves those rulings to the trial court. The Court does order that the Defendants cannot read any portion of any exhibit attached to their Answers and Counterclaims to the jury at trial, absent a ruling by the trial court that the exhibit is admissible into evidence.

MOTION TO STRIKE SPECIFIC ALLEGATIONS

Plaintiff included in his Rule 12(f) motion a request to strike specific allegations from the Answers and Counterclaims. As the Court has not yet had an opportunity to review the specific

allegations at issue in the Plaintiff's Motion, the Court will take its ruling on these specific allegations under advisement at this time and issue an order after its review.

NOW THEREFORE, it is ORDERED that:

1. Plaintiff's Motion to Strike the counterclaims of the Defendants is denied;

2. Plaintiff's Motion to Strike the exhibits from the Answers and Counterclaims of the Defendants is denied; and

3. Defendants shall not read any part of their Answers and Counterclaims, including exhibits, to a jury in this matter absent a ruling by the trial court that a specific exhibit is admissible; and

4. The Court hereby takes Plaintiff's Rule 12(f) motion to strike specific factual allegations from the Defendants' Answers and Counterclaims under advisement.

IT IS SO ORDERED.

J. C. Nicholson, Jr.
Circuit Judge

Charleston, South Carolina

BARNWELL WHALEY PATTERSON & HELMS LLC | 75 YEARS 1938-2013

Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

December 29, 2015
VIA HAND DELIVERY

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3919

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Motion to Reconsider and Alter or Amend Orders Pursuant to Rule 59(e) filed by Defendants, Phillip Ferderigos and Spiros Ferderigos, in the above-referenced matter. Please file the original and return the filed stamped copy to me via our courier.

By copy of this letter, I am informing all counsel of record of this communication with the Court and serving them with a copy of the Motion. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: The Honorable J.C. Nicholson (via U.S. Mail)
Stanley E. Barnett, Esquire (via U.S. Mail)
Richard A. Farrier, Jr., Esquire (via U.S. Mail)
John A. Massalon, Esquire (via U.S. Mail)

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
David S. Cox

William C. Helms, III'

* Registered patent attorney
' Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
)
) CASE NO.: 2015-CP-10-3919
Athan Fokas)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
Phillip Ferderigos, Spiros Ferderigos and Jacob Ferderigos)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533	John A. Massalon, Bar No.
Address:	Address:
P.O. Box 1542, Mt. Pleasant, SC 29465	97 Broad Street, Charleston, SC 29401
Phone: 843/881-1623Fax 843/881-4406	Phone: 843-727-1144 Fax
E-mail: stanleyb@s3blaw.comOther:	E-mail: Other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiffs Motion to Strike Answer and Counterclaims of Jacob Ferderigos
Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Stan Barnett January 25, 2016
Signature of Attorney for ☒ Plaintiff/☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	JUDGE CODE
☐ Motion Fee to be paid upon filing of the attached order.	
☐ Other:	Date:

CLERK'S VERIFICATION

Collected by: Date Filed:
☐ MOTION FEE COLLECTED: $
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **PLAINTIFF'S MOTION TO STRIKE ANSWER AND COUNTERCLAIMS OF DEFENDANT, JACOB FERDERIGOS**

FILED
2016 JAN 25 AM 11:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: JOHN A. MASSALON, ESQUIRE AND I. RYAN NEVILLE, ESQUIRE, Attorneys for Defendant, Jacob Ferderigos:

Plaintiff hereby moves pursuant to Rule 12(f) to strike the Answer and Counterclaims filed by Defendant, Jacob Ferderigos in the above captioned matter. The defects in the Answer and Counterclaims which should be stricken as insufficient, redundant, immaterial, impertinent and/or scandalous are as follows:

1. In paragraphs 72, 73, 74, 76, 77, 79, 80, 81, 82, 85, 87, 88, 89, 97, 98, 99, 100, 101, 102, 103, 105, 107, 108, 109, 110, 111, 112, and 120, there are allegations of fact which are then repeated as purported quotes from documents which are also attached as exhibits A-Z This is entirely redundant. The factual allegations are sufficient. Attachment of the documents, all unauthenticated, most hearsay, and not in context is a transparent effort to permit this Defendant to read these documents to the jury without complying with the rules of evidence. There is no proper purpose served by attaching these documents to the Answer and Counterclaims or quoting them in part other than to subvert the rules of evidence.

2. There are numerous allegations of statements by Plaintiff which are completely immaterial to any issue in the case raised by either party. There are statements about a disagreement between

the parties as to whether family members could continue to eat for free at the Olde Towne Restaurant. Inclusion of these statements is not only immaterial. It is childish and improper to include such references in a pleading about a contract dispute and the related claims. These portions of the pleading are, therefore, also impertinent and scandalous within the meaning of the rule and should be stricken. The "food" references are in:

a. Paragraph 105 and 106 : "I'm done paying your half of the food you so dearly like to eat..."

b. Paragraph 107: an allegation that Plaintiff complained to third parties that the contract was not being honored by this Defendant because "Philip Ferderigos couldn't eat for free..." This paragraph also includes an equally immaterial and impertinent allegation that Plaintiff insulted Phililp Ferderigos' weight and that he called Phillip "stupid" in Greek. These allegations have nothing whatsoever to do with the dispute and inclusion of them in this pleading is unprofessional and inconsistent with proper standards for pleading in this Court. The "food" allegations are repeated in paragraphs 126. r.

4. Paragraphs 116 and 126. z include allegations of what Plaintiff supposedly said his attorney was charging him. This is impertinent and immaterial. The supposed reason for this allegation to be included is to highlight that Plaintiff was somehow trying to convince this Defendant to honor his contractual obligations and consummate the agreement which lies at the heart of this dispute. Inclusion of these statements is, however, nothing more than petty invective of no relevance to the issues in the case. This allegation is also a transparent and completely unprofessional attempt to embarrass and harass Plaintiff's counsel in contravention of the standards and canons of legal ethics which are supposed to govern the profession.

5. Paragraphs 103 and 126. q include allegations of statements by Plaintiff that are entirely immaterial and which are also impertinent and scandalous. This Defendant alleges in paragraph 103 that Plaintiff communicated that he was at a dinner party "half drunk" and that, "I hang out with the ultra wealthy now and play their games." A summary version of the same allegation is included in paragraph 126.q. This allegation is another example of childish, petty invective which has nothing to do with the issues in the case.

6. Paragraphs 118-121 include allegations completely unrelated to this Defendant, Jacob Ferderigos. They assert that a separate lawsuit by Plaintiff against Jacob's brother, Philip and Spiros Ferderigos for defamation has no merit and was filed to gain some advantage over them in this case. That lawsuit does not involve Jacob Ferderigos. (The allegations are also factually inaccurate in that Plaintiff's mother has testified in a deposition in the separate case that she did in fact confront her son, Plaintiff, about the allegations against him and that she believed Philip and Spiros Ferderigos was the source of these allegations.) This is purely inflammatory invective. It is not material to any issue in the case. Such allegations are not directly related to a factual issue in the case, and their inclusion in a pleading is immaterial and impertinent. It's inclusion is intended purely for the purpose of casting Plaintiff in a bad light should the Answer and Counterclaim be read to the jury.

7. The first counterclaim, paragraphs 124-127, is insufficient to state the cause of action of violation of a duty of care. The allegations consist primarily of 1) a restatement of this Defendant's claim that the parties did not reach an agreement; and 2) of statements allegedly made by Plaintiff that hurt this Defendant's feelings. Neither set of allegations makes out either a concrete duty owed by Plaintiff to this Defendant or a violation of such a duty.

8. The fifth counterclaim, paragraphs 145-149, is insufficient to state the cause of action for Abuse of Process. There is no allegation of the demand for a collateral advantage, which is necessary element of this cause of action.

This motion is supported by the general law of South Carolina regarding Rule 12(f) and is consistent with the attached Order of Judge J.C. Nicholson, Jr. in this case granting in part nearly identical motions to strike the Answers and Counterclaims of Defendants Spiros and Philip Ferderigos. (That Order is the subject of a motion to reconsider by Spiros Ferderigos which is pending).

CONCLUSION

Due to the above improper, unprofessional, insufficient, immaterial, impertinent and scandalous portions of this Defendant's Answer and Counterclaims, the pleading should be stricken. The pleading is inconsistent with the standards set by the Rules of Civil Procedure for pleadings in this Court.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

January 23, 2015
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendants.	Case No.: 2015-CP-10-3919 **ORDER REGARDING PLAINTIFF'S MOTION TO STRIKE ANSWERS AND COUNTERCLAIMS OF DEFENDANTS, SPIROS FERDERIGOS AND PHILIP FERDERIGOS**

FILED
2015 DEC 16 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT

This action was filed by Plaintiff alleging a breach of a contract between the parties to add floors to the building they own together at 229 King Street, the bottom floor of which houses the Old Towne Restaurant. Plaintiff alleges the same facts he has plead also make out a cause of action for breach of the duties owed by Defendants as members of the LLC through which they own the building. Two of the Defendants have answered, Spiros and Philip Ferderigos, and they alleged a number of counterclaims. Plaintiff has moved pursuant to S.C.R.C.P. 12(f) to strike specific portions of the Answers and Counterclaims of both Defendants, including several of the counterclaims. Substantively, the Answers of both Defendants are identical. They differ only in the numbering of a few paragraphs. This Court heard oral argument on the motions on December 9, 2015.

MOTION TO STRIKE THE COUNTERCLAIMS

Plaintiff included in his Rule 12(f) motion a request that the counterclaims included in the answers of both Defendants for Violation of the Duty of Care in S.C. Code Sec. 33-44-409, Defamation, Abuse of Process and Frivolous Proceedings be stricken for failure to allege sufficient facts to establish these causes of action. Based on the memoranda filed by the parties

and the arguments of counsel at the hearing of this matter, the Court finds that the motion to strike these counterclaims should be denied.

MOTION TO STRIKE MATTER THAT IS REDUNDANT, IMMATERIAL, IMPERTINENT AND/OR SCANDALOUS

Plaintiff's primary articulated objection to the parts of the Defendants' Answers is that reading these pleadings to the jury would prejudice their ability to hear Plaintiff's case. Avoiding such prejudice is one of the fundamental purposes of Rule 12(f). *Skadegaard v. Farrell*, 578 F.Supp. 1209, 1221 (D.N.J.1984); Wright & Miller 5C *Fed. Prac. & Proc. Civ.* § 1382 (3d ed.2011). At the hearing, counsel for both of these Defendants agreed that they would not read any part of these Answers and Counterclaims to a jury. Based on that agreement, this Court orders that no part of the Answers and Counterclaims of either Defendant may be read to a jury in this matter.

Plaintiff has asked that documents attached to these pleadings be stricken as they are redundant and because inclusion of documents which are unauthenticated and hearsay would, if read to a jury, subvert the rules of evidence, thereby prejudicing the Plaintiff's ability to prevent introduction to the jury of evidence otherwise improper. In light of the agreement of Defendants and this Courts Order that no part of their Answers and Counterclaims be read to a jury, it is not necessary to require the removal of the documents from these pleadings except as specified below with respect to allegations that are inherently prejudicial to Plaintiff and "scandalous" within the meaning of the Rule.

The Court is mindful of another of the purposes of Rule 12(f), "giving the allegations any other unnecessary notoriety inasmuch as, once filed, pleadings generally are public documents and become generally available." *Skadegaard,* supra; Wright & Miller, supra. Many of the allegations included in the Answers and Counterclaims filed by these Defendants have that

likelihood, while lacking any significant relevance to the matters in dispute. For that reason, this Court orders that the following language and exhibits be stricken from the Answers and Counterclaims of the Defendants:

1. Paragraph 104(a) and Exhibit R of the Answer of Philip Ferderigos which alleges that the Plaintiff was "half drunk" at a dinner party and told one of the Defendants that he hung "out with the ultra wealthy now and play their games"; and

Paragraph 103(a) and Exhibit R of the Answer of Spiros Ferderigos which is identical to the above paragraph in the Answer of Phillip Ferderigos.

2. Paragraph 106(a) and Exhibit S of the Answer of Philip Ferderigos which alleges that Plaintiff said he "was done paying your half of the food you so dearly like to eat at Old Towne..."; and

Paragraph 105(a) and Exhibit S of the Answer of Spiros Ferderigos which is identical to the above language.

3. Paragraph 108 and Exhibit T of the Answer of Philip Ferderigos which alleges that Plaintiff accused the Defendants of not going forward with the contract because they could not eat for free at the restaurant, insulted Philip Ferderigos' weight and said, "I bet your kids will be real proud of you in the future too. Your dad was right calling you 'palabo' (meaning "stupid" in Greek) Philipa."

Paragraph 107 and Exhibit T of the Answer of Spiros Ferderigos which is identical to the above language.

4. Paragraph 117, second sentence of the Answer of Philip Ferderigos, which reads, "This includes one email in which he specifically mentions that his lawsuits are not costing him anything because his attorney has taken on the case on a contingency fee"; and

Paragraph 116, second sentence of the Answer of Spiros Ferderigos which is identical to the above language.

5. Paragraph 127 x of the Answer of Philip Ferderigos which alleges that Plaintiff harassed Defendants by representing that he was going to make $25,000,000 as a consultant and that he said, "I hang out with the ultra wealthy now and play their games"; and

Paragraph 126 x of the Answer of Spiros Ferderigos which is identical to the above language.

6. Paragraph 127 aa of the Answer of Philip Ferderigos from the middle of the third line reading, "and that the proposed project fell apart because Philip could not eat for free at Old Towne Restaurant and by calling Philip Ferderigos stupid"; and

Paragraph 126 aa of the Answer of Spiros Ferderigos from the middle of the third line which is identical to the above language.

7. Paragraph 127 ff of the Answer of Philip Ferderigos which alleges that Plaintiff threatened to "take Philip and Spiros Ferderigos' homes and throw their children out on the street," unless they consummated the agreement Plaintiff alleges they made"; and

Paragraph 126 dd of the Answer of Spiros Ferderigos which is identical to the above language.

8. Paragraph 127 qq of the Answer of Philip Ferderigos which alleges that Plaintiff said his attorney was "working on a flat 20 percent contingency so he is not costing me anything until this case is settled" and that it will not cost him anything to proceed with his frivolous lawsuit strategy; and

Paragraph 126 oo of the Answer of Spiros Ferderigos which is identical to the above language.

NOW THEREFORE, it is ORDERED that:

1. Plaintiff's Motion to Strike counterclaims of the Defendants is denied;

2. Defendants shall not read any part of their Answers and Counterclaims to a jury in this matter;

3. Defendants shall within twenty (20) days of the date of this Order file Amended Answers and Counterclaims striking the language detailed above and removing the Exhibits R, S and T; and

4. Upon service of said Amended Answers and Counterclaims, Plaintiff shall have twenty (20) days to file Replies to any counterclaims contained therein.

IT IS SO ORDERED.

J. C. Nicholson, Jr.
Circuit Judge

12/16/15
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2016 JAN 25 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Motion to Strike Answer and Counterclaims of Defendant Jacob Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 25th day of January, 2016, addressed as follows:

John A. Massalon, Esquire
I Ryan Neville, Esquire
Wills & Massalon, LLC
97 Broad Street
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-3919

ATHAN FOKAS, Plaintiff,
vs.
PHILIP FERDERIGOS, et al., Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
STANLEY E. BARNETT, Bar No. ____ Address: 305 North Civitas Street MT. PLEASANT, SC 29464 Phone: Fax E-mail: stan.barnett@yahoo.comOther: ____	JOHN A. MASSALON, Bar No. 10279 Address: WILLS MASSALON & ALLEN LLC P.O BOX 859 CHARLESTON, SC 29402 Phone: 843-727-1144 Fax8433-727-7696 E-mail: jmassalon@wmalawfirm.net Other: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment on Behalf of Defendant Jacob Ferderigos
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant 02/28/2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	JUDGE CODE ____
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2015-CP-10-3919
ATHAN FOKAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT JACOB FERDERIGOS**
	)	
PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS,	)	
	)	
Defendants.	)	
	)	

FILED
2017 FEB 28 PM 12:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: STANLEY E. BARNETT, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, JACOB FERDERIGOS (hereinafter referred to as "Jacob"), by and through his undersigned counsel, will hereby move before this Honorable Court, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, for an Order granting summary judgment as to all causes of action in his favor.

This Honorable Court should grant summary judgment because no genuine issue of material fact exists and Jacob moves for summary judgment for the following reasons: there is no genuine issue of material fact that (1) the material terms Plaintiff alleges were not known at the time the Plaintiff alleges the parties entered into any "agreement"; (2) the material terms Plaintiff alleges were not agreed upon by the Defendants; (3) there was no "meeting of the minds" necessary to form a binding agreement and/or no "meeting of the minds" of what constituted the material terms of any alleged agreement; (4) there is no signed written agreement between the Plaintiff and this Defendant concerning the material terms of any alleged agreement

the Plaintiff alleges[1]; (5) the Plaintiff's claims are barred by the Statute of Frauds; (6) South Carolina does not recognize "agreements to agree," and Jacob did not agree to an agreement to agree; and (7) there was no binding agreement as Plaintiff repeatedly released Defendants in writing from any alleged agreement and informed Defendants that he himself [Plaintiff] could abandon any alleged agreement.

Here, essentially, all parties agree that Plaintiff and Defendants were exploring the possibility of building a new building at 229 King Street. All parties agree that the parties spent money investigating the proposed project, including paying their respective share of fees for engineering, architectural work, planning and zoning approval, and design work for the proposed project. However, when negotiations of material terms came to an impasse (concerning material terms of the proposed project itself, as well as terms of financing the proposed project), Plaintiff threatened and subsequently filed this present lawsuit against all Defendants, including Jacob.[2]

Specifically, from 2012 to October 17, 2014, the parties were exploring the possibility of building a new building at 229 King Street (a property which the Plaintiff and Defendants own as tenants in common). Plaintiff and Jacob were supposed to get a personal loan for the proposed project, but Defendant Spiros Ferderigos and Defendant Phillip Ferderigos (Jacob's brothers) would bring their own cash to the transaction if it were to occur. Importantly, during this time period, Defendant Spiro Ferderigos and Defendant Phillip Ferderigos never agreed and

[1] Unlike the other Defendants, Jacob, along with the Plaintiff, did sign a loan commitment letter with South Coast bank for a personal loan for himself and the Plaintiff. Jacob believed and still believes that the South Coast loan commitment letter he signed was for a personal loan for his and the Plaintiff's benefit, where Plaintiff and Jacob would mortgage their respective portion of 229 King Street (and their respective portion of Old Towne Suites LLC) to serve as collateral for their respective shares of the proposed project. Jacob's willingness to move forward with exploring the proposed project based on such possibilities is a far cry from having a binding agreement with the Plaintiff to build a new building because material terms for the proposed project were still unknown and were still being negotiated at the time Plaintiff threatened to file his lawsuit against Jacob's brothers.

[2] Plaintiff sent emails/texts to Jacob advising him that he was "innocent" and that he would not sue Jacob; however, Plaintiff subsequently filed a meritless lawsuit against all Defendants.

specifically rejected providing any guarantees, mortgages, encumbering their interests, or incurring any debt in regard to the proposed project.

After the permit was issued, on or about October 17, 2014, Plaintiff told Jacob that his brothers (Phillip and Spiros) had to sign a mortgage concerning their interests in 229 King Street for the proposed project. As such, Plaintiff demanded that Defendants Spiros Ferderigos and Phillip Ferderigos encumber their interest in 229 King Street for the proposed project. Defendants Spiros Ferderigos and Phillip Ferderigos had previously rejected such demands from Plaintiff.

Although both Defendants Spiros and Phillip Ferderigos had outright rejected such demand previously, from October 17, 2014 until the filing of Plaintiff's Complaint, Defendants Spiros Ferderigos and Phillip Ferderigos attempted to negotiate material terms to potentially move forward with the proposed project, including a Side Agreement/Ancillary Contract which would protect their respective collateral if Plaintiff or this Defendant were to default on any loan obligations, IF Defendant Spiro and Phillip Ferderigos were to sign a mortgage for Plaintiff and this Defendant to get their personal loan. Subsequently, Plaintiff and Defendant Phillip Ferderigos reached an impasse as to material terms for the proposed project, including, but not limited to, the financing of the proposed project and the Side Agreement/Ancillary Contract terms, as well as other material terms. Further, aside from Defendants Spiros and Phillip Ferderigos negotiating the possibility of signing a mortgage for the proposed project, Plaintiff subsequently demanded that Defendants Spiros and Philip Ferderigos sign additional documents with material terms which Defendants Spiros and Phillip Ferderigos had never agreed to. Finally, thereafter, Jacob witnessed Plaintiff threaten, harass, and try to bully his brothers into giving into Plaintiff's demands.

Jacob hereby incorporates his detailed Answer and Counterclaim and the accompanying Exhibits which set forth and prove that Plaintiff's pleadings and allegations lack merit. There were further numerous unknown material terms at the time Plaintiff alleges the parties entered into an agreement that would make a meeting of the minds between the parties impossible, as the parties cannot and did not agree to material terms that were still unknown at the time. As such, the parties never reached a meeting of the minds as to the essential terms of a mortgage agreement, a side agreement, any other material terms set forth in Plaintiff's bank closing documents, or other additional material terms. Plaintiff's claims are barred as there was never even an "agreement to agree" between the parties. The cost of the proposed project, the scope of the proposed project, the financing details of the proposed project, the loan documentation details of the proposed project, and other material terms of the proposed project were simply unknown and/or had yet to be negotiated by and between the parties. This is evidenced by the written documentation between the parties which have been attached as exhibits to Jacob's Answer and Counterclaims.

Jacob bases this Motion for Summary Judgment upon the pleadings and other matters of record including deposition testimony and accompanying exhibits, Affidavits, any documents filed with this motion and subsequent memorandum and with the court, the applicable law, and any memorandum of law to be submitted to the Court. Jacob reserves the right to supplement this Motion with additional memoranda, Affidavits, and other documents in support of the arguments contained herein.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
rneville@wmalawfirm.net

ATTORNEYS FOR DEFENDANT
JACOB FERDERIGOS

CHARLESTON, SC

February 28, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 28, 2017, copies of the attached pleading/discovery have been served upon the following via:

XX	United States Postal Service
	Hand Delivery

Stanley E. Barnett, Esquire
305 North Civitas Street
Mount Pleasant, SC 29464
Stan.barnett@yahoo.com

ATTORNEYS FOR PLAINTIFF

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
(843) 579-5619
richard.farrierjr@klgates.com
jennifer.thiem@klgates.com

ATTORNEYS FOR DEFENDANT
PHILIP FERDERIGOS

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402
(843) 577-7700
mdc@barnwell-whaley.com
jbowers@barnwell-whaley.com

and

Joseph R. Weston, Esquire
Weston Law Firm
Post Office Box 1992
Mt. Pleasant, SC 29465-1992
jweston@westonlawfirm.com

ATTORNEYS FOR DEFENDANT
SPIROS FERDERIGOS

WILLS MASSALON & ALLEN LLC

WMA
WILLS MASSALON & ALLEN LLC

97 Broad Street • Charleston, SC 29401 • Post Office Box 859 • Charleston, SC 29402
Phone: 843-727-1144 • Fax: 843-727-7696 • www.wmalawfirm.net

February 28, 2017

Direct Line: (843) 793-6039

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: Athan Fokas v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos
Case No.: 2015-CP-10-3919
Our File No.: 1056-1

Dear Julie:

Enclosed please find the original and one (1) copy of a Motion Coversheet and Notice of Motion and Motion for Summary Judgment on Behalf of Defendant Jacob Ferderigos in regard to the above-referenced matter. In addition, please find my firm's check in the amount of $25.00 representing the filing fee. Please file the original, file-stamp the copy, and return the file-stamped copy to me via the bearer of this correspondence. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC

John A. Massalon
jmassalon@wmalawfirm.net

JAM/cb
Enclosures

cc: Mr. Jacob Ferderigos (via e-mail only)
Stanley E. Barnett, Esquire (via U.S. Mail)
Richard A. Farrier, Jr., Esquire/Jennifer H. Thiem, Esquire (via U.S. Mail)
M. Dawes Cooke, Jr., Esquire/Jeremy E. Bowers, Esquire (via U.S. Mail)
Joseph R. Weston, Esquire (via U.S. Mail)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS Plaintiff, vs. PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-3919 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Stanley B. Barnett 305 North Civitas Street Mt. Pleasant, SC 29464 Phone (843) 708-4887 Fax: (843) 881-4406 E-mail: stan.barnett@yahoo.com	Richard A. Farrier, Jr., Bar No. 1962 Jennifer A. Thiem, Bar No. 73739 Address: K&L Gates LLP 134 Meeting Street, Suite 500, Charleston, SC 29407 Phone: (843) 577-5619 Fax: (843) 579-5601 E-mail: richard.farrier@klgates.com Other: jennifer.thiem@klgates.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Defendant Phillip Ferderigos' Motion for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant — February 28, 2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-10-3919

ATHAN FOKAS,

Plaintiff,

v.

PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS,

Defendants.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS

FILED
FEB 28 PM 12:04
JULIE J. ARMSTRONG
CLERK OF COURT

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, PHILLIP FERDERIGOS (hereinafter referred to as "Phillip"), by and through his undersigned counsel, will hereby move before this Honorable Court, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, for an Order granting summary judgment as to all causes of action in his favor.

This Honorable Court should grant summary judgment because no genuine issue of material fact exists and Phillip moves for summary judgment for the following reasons: there is no genuine issue of material fact that (1) the material terms Plaintiff alleges were not known at the time the Plaintiff alleges the parties entered into any "agreement"; (2) the material terms Plaintiff alleges were not agreed upon by Phillip; (3) there was no "meeting of the minds" necessary to form a binding agreement and/or no "meeting of the minds" of what constituted the material terms of any alleged agreement; (4) there is no signed written agreement between the Plaintiff and Phillip concerning the material terms of any alleged agreement the Plaintiff alleges; (5) the Plaintiff's claims are barred by the Statute of Frauds; (6) South Carolina does not

recognize "agreements to agree," and Phillip did not agree to an agreement to agree; and (7) there was no binding agreement as Plaintiff repeatedly released Defendants in writing from any alleged agreement and informed Defendants that he himself [Plaintiff] could abandon any alleged agreement.

Here, essentially, all parties agree that Plaintiff and Defendants were exploring the possibility of building a new building at 229 King Street. All parties agree that the parties spent money investigating the proposed project, including paying their respective share of fees for engineering, architectural work, planning and zoning approval, and design work for the proposed project. However, when negotiations of material terms came to an impasse (concerning material terms of the proposed project itself, as well as terms of financing the proposed project), Plaintiff threatened and subsequently filed this present lawsuit, which Phillip asserts is simply a meritless action[1] designed to force him to agree to material terms he had, has, and continues to resoundingly reject.

Specifically, from 2012 to October 17, 2014, the parties were exploring the possibility of building a new building at 229 King Street (a property which the Plaintiff and Defendants own as tenants in common). Plaintiff and Defendant Jacob Ferderigos were supposed to get a personal loan for the proposed project, but Defendant Spiros Ferderigos and Phillip would bring their own cash to the transaction if it were to occur. Importantly, during this time period, Defendant Spiros Ferderigos and Phillip never agreed and specifically rejected providing any guarantees, mortgages, encumbering their interests, or incurring any debt in regard to the proposed project.

After the issuance of a permit, on or about October 17, 2014, Plaintiff told Defendant Jacob Ferderigos that his brothers (Phillip and Spiros) had to sign a mortgage concerning their

[1] For example, Plaintiff himself subsequently sent written emails/texts advising that his attorney is not costing him anything and Defendants need to agree to his terms or he would continue to force Defendants to spend money on attorneys' fees defending the case.

interests in 229 King Street for the proposed project. As such, Plaintiff demanded that Defendants Spiros Ferderigos and Phillip encumber their interest in 229 King Street for the proposed project. This demand had been previously rejected by Defendant Spiros Ferderigos and Phillip.

Although both Defendants Spiros and Phillip Ferderigos had outright rejected such demand previously, from October 17, 2014 until the filing of Plaintiff's Complaint, Defendants Spiros Ferderigos and Phillip attempted to negotiate material terms to potentially move forward with the proposed project, including a Side Agreement/Ancillary Contract which would protect their respective collateral if Plaintiff were to default on any loan obligations, IF Phillip were to sign a mortgage for Plaintiff to get his loan. As to Phillip, Plaintiff refused to agree to the Side Agreement terms and placed even more terms upon Phillip, which Phillip summarily rejected. Further, aside from Phillip negotiating the possibility of signing a mortgage for the proposed project, Plaintiff subsequently demanded that Phillip sign, in his individual capacity, additional documents with material terms which Phillip never agreed to, including, but not limited to: (1) a mortgage for Phillip's interest in 229 King Street, (2) an assignment of rents, (3) a hypothecation agreement, (4) a HUD Statement, (5) an agreement to provide insurance, and (6) a UCC Financing Statement/Addendum. Plaintiff's incorrect and non-agreed upon closing documents also required Phillip to assign his interests *as a member of the LLC* for (1) the Note as the Borrower for Plaintiff's loan, (2) an assignment of rents for a construction loan agreement, (3) a guaranty of completion and performance agreement, (4) a commercial security agreement, (5) a hazardous substances certificate and indemnity agreement, (6) an agreement to provide insurance, and (7) a UCC Financing Statement/Addendum. See Par. 101 of Phillip's Answer & Counterclaim.

Finally, thereafter, Plaintiff threatened to build the building on Defendant's property, without Defendant's permission. Moreover, Plaintiff subsequently introduced even more terms to try to force Phillip to mortgage his property for Plaintiff's benefit, this time unilaterally decreeing that the 20 plus year custom of the parties and their families eating for free at the family restaurant was to immediately cease, and, when such tactic failed, by then threatening to defame Phillip by spreading false rumors as to why the proposed project fell apart if Phillip did not give Plaintiff what he wanted. See Phillip's Answer & Counterclaim Par. 108, Email from Plaintiff dated 12/15/14, stating "I can't wait to spread the word that the suites multimillion dollar project couldn't get done cause Phillip can't eat for free. I'm sure everyone will find it hilarious. I'm probably doing you a favor. Smaller waist line. I bet your kids will be real proud of you in the future too. Your dad was right for calling you palabo [stupid] Philipa."

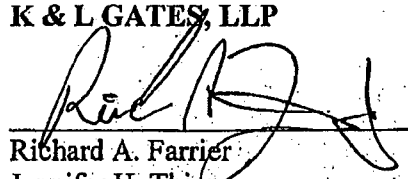
Phillip hereby incorporates his detailed Answer and Counterclaim and the accompanying Exhibits which set forth and prove that Plaintiff's pleadings and allegations lack merit. There were further numerous unknown material terms at the time Plaintiff alleges the parties entered into an agreement that would make a meeting of the minds between the parties impossible, as the parties cannot and did not agree to material terms that were still unknown at the time. As such, the parties never reached a meeting of the minds as to the essential terms of a mortgage agreement, a side agreement, and/or any other material terms set forth in Plaintiff's bank closing documents, or other additional material terms. Plaintiff's claims are barred as there was never even an "agreement to agree" between the parties. The cost of the proposed project, the scope of the proposed project, the financing details of the proposed project, the loan documentation details of the proposed project, and other material terms of the proposed project were simply unknown and/or rejected by Phillip at the time Plaintiff alleges an agreement was made. This is

evidenced by the written documentation between the parties which have been attached as exhibits to Phillip's Answer and Counterclaims.

Plaintiff's claims are barred as there was no "meeting of the minds" and no binding agreement between the parties as to numerous material terms of the alleged agreement. Plaintiff admits that Phillip did not agree to subject himself to personal liability for Plaintiff's personal loan. A mortgage is a material term. It constitutes possible personal liability for Phillip by subjecting his most important and valuable asset known at the time, 229 King Street, to possible foreclosure in the event Plaintiff defaulted on his personal loan. Phillip told Plaintiff that he would not mortgage or guarantee "anything" for Plaintiff or anyone else. Spiros Ferderigos further informed Fokas in writing on December 19, 2012, that he would not be willing to accumulate debt or pledge his assets for the proposed project. In addition, Phillip signing his name as an individual (direct personal liability) and/or signing his interest as a member of the LLC (personal liability if the corporate veil is pierced) for Plaintiff's incorrect and non-agreed upon closing documents further constitutes exposure for a personal guarantee that Phillip never agreed to.

Phillip bases this Motion for Summary Judgment upon the pleadings, deposition testimony and accompanying exhibits, Affidavits, any documents filed with this motion and subsequent memorandum and with the court, the applicable law, and any memorandum of law to be submitted to the Court. Phillip reserves the right to supplement this Motion with additional memoranda, Affidavits, and other documents in support of the arguments contained herein.

K & L GATES, LLP



Richard A. Farrier
Jennifer H. Thiem
134 Meeting Street, Suite 500
Charleston, SC 29401
Telephone: (843) 579-5600
Facsimile: (843) 579-5601
Email: richard.farrier@klgates.com
jennifer.thiem@klgates.com

ATTORNEYS FOR DEFENDANT PHILLIP FERDERIGOS

February 28, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3919
	)	
Athan Fokas,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
Philip Ferderigos, Jacob Ferderigos, and Spiro Ferderigos,	)	
	)	
Defendants.	)	
	)	

FILED
2017 FEB 28 PM 12:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF SERVICE

I, the undersigned, of the law office of K&L Gates LLP do hereby certify that I have served counsel in this action with a copy of **Notice of Motion and Motion for Summary Judgment on behalf of Defendant Phillip Ferderigos** by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Stan Barnett, Esq.
305 North Civitas Street
Mount Pleasant, SC 29464

Attorney for Plaintiff

M. Dawes Cooke, Jr., Esq.
Jeremy E. Bowers, Esq.
Barnwell Whaley Patterson & Helms LLC
P.O. Drawer H
Charleston, SC 29402

Attorneys for Defendant Spiro Ferderigos

John A. Massalon, Esq.
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

Attorneys for Defendant Jacob Ferderigos

Gwyn L. Martin
Senior Practice Assistant

February 28, 2017

K&L GATES

February 27, 2017

Richard A. Farrier, Jr.
T +1 843 579 5619

richard.farrier@klgates.com

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: **Athan Fokas v. Philip Ferderigos, Spiros Ferderigos and Jacob Ferderigos**
Case No. 2015-CP-10-3919

Dear Ms. Armstrong:

Enclosed herewith please find the original and one copy of Notice of Motion and Motion for Summary Judgment on Behalf of Defendant Phillip Ferderigos in connection with the above-referenced matter. Also enclosed is a Motion Cover Sheet and our check in the amount of $25.00 for your filing fee.

Please file the original and return the filed-stamped copy to me *via* the bearer of this letter.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all counsel of record.

With kind regards, I remain.

Sincerely,

Richard A. Farrier, Jr.

RAF/glm
Enclosures
cc: Stan Barnett, Esq. *(via email and US Mail, w/encl.)*
M. Dawes Cooke, Jr., Esq. *(via email and US Mail, w/encl.)*
Jeremy E. Bowers, Esq. *(via email and US Mail, w/encl.)*
John A. Massalon (*via email and US Mail, w/encl.)*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Athan Fokas,
☐ Plaintiff

v.

Phillip Ferderigos, Spiros Ferderigos, And Jacob Ferderigos,

☒ Defendant.

CASE NO.
2015-CP-10-03919

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Stanley F. Barnett, Bar No.	M. Dawes Cooke, Jr., Esquire, Bar No.
Address:	Address:
Smith Bundy Bybee & Barnett, P.C.	Barnwell Whaley Patterson & Helms, LLC
P.O. Box 1542	288 Meeting Street, Suite #200 (29402)
Mt. Pleasant, SC 29465	P.O. Drawer H
phone: (843) 881-1623 fax: (843) 881-4406	Charleston, SC 29402
e-mail: stanleyb@s3blaw.com other:	phone: (843) 577-7700 fax: (843) 577-7708
	e-mail: mdc@barnwell-whaley.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SCCA/233 (11-03)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed:30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — February 28, 2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00

☐ EXEMPT: (check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-10-3919

ATHAN FOKAS,

Plaintiff,

v.

PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS,

Defendants.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT SPIROS FERDERIGOS

FILED
2017 FEB 28 AM 10:53
JULIE J. ARNOLD
CLERK OF COURT
BY

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, SPIROS FERDERIGOS (hereinafter referred to as "Spiros"), by and through his undersigned counsel, will hereby move before this Honorable Court, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, for an Order granting summary judgment as to all causes of action in his favor.

This Honorable Court should grant summary judgment because no genuine issue of material fact exists, and Spiros moves for summary judgment for the following reasons: there is no genuine issue of material fact that (1) the material terms Plaintiff alleges were not known at the time the Plaintiff alleges the parties entered into any "agreement"; (2) the material terms Plaintiff alleges were not agreed upon by Spiros; (3) there was no "meeting of the minds" necessary to form a binding agreement and/or no "meeting of the minds" of what constituted the material terms of any alleged agreement; (4) there is no signed written agreement between the Plaintiff and Spiros concerning the material terms of any alleged agreement the Plaintiff alleges; (5) the Plaintiff's claims are barred by the Statute of Frauds; (6) South Carolina does not

recognize "agreements to agree," and Spiros did not agree to an agreement to agree; and (7) there was no binding agreement as Plaintiff repeatedly released Spiros in writing from any alleged agreement and informed Spiros that he himself [Plaintiff] could abandon any alleged agreement.

Here, essentially, all parties agree that Plaintiff and Defendants were exploring the possibility of building a new building at 229 King Street. All parties agree that the parties spent money investigating the proposed project, including paying their respective share of fees for engineering, architectural work, planning and zoning approval, and design work for the proposed project. However, when negotiations of material terms came to an impasse (concerning material terms of the proposed project itself, as well as terms of financing the proposed project), Plaintiff threatened and subsequently filed this present lawsuit, which Defendants assert is simply a meritless action[1] designed to force Spiros to agree to material terms he had, has, and continues to resoundingly reject.

Specifically, from 2012 to October 17, 2014, the parties were exploring the possibility of building a new building at 229 King Street (a property which the Plaintiff and Defendants own as tenants in common). Plaintiff and Defendant Jacob Ferderigos were supposed to get a personal loan for the proposed project, but Defendant Phillip Ferderigos and Spiros would bring their own cash to the transaction if it were to occur. Importantly, during this time period, Defendant Phillip Ferderigos and Spiros never agreed and specifically rejected providing any guarantees, mortgages, encumbering their interests, or incurring any debt in regard to the proposed project. Importantly, on December 19, 2012, Spiros told Plaintiff in writing that:

> Assuming all that pans out, there will be a continuing issue on how we finance. If the bank is looking for me (and I presume this goes for Phillip as well but I will

[1] For example, Plaintiff himself subsequently sent written emails/texts advising that his attorney is not costing him anything and Defendants need to agree to his terms or he would continue to force Defendants to spend money on attorneys' fees defending the case.

let him speak for himself) to personally guarantee a loan, I am not going to do it. There is too much that can go wrong with a personal guarantee. I am confident that Phillip, Jacob and I will be able to come up with our end of the amount needed and we can move forward without accumulating debt as we did for the first round of units.[2] ...The question is how do we get there, will it be by personally guaranteeing loans that could be catastrophic to our individual families or each individual raising the necessary funds and doing it without a million dollars in debt so we can greatly limit liability. I for one already have plenty of money sitting in a bank account for my share of the additional units.

See Spiros' Answer and Counterclaim, Par. 77.

After the issuance of a permit, on or about October 17, 2014, Plaintiff told Defendant Jacob Ferderigos that his brothers (Phillip and Spiros) had to sign a mortgage concerning their interests in 229 King Street for the proposed project in order for Plaintiff and Defendant Jacob Ferderigos to secure their personal loan. As such, Plaintiff demanded that Defendants Phillip Ferderigos and Spiros encumber their interests in 229 King Street for the proposed project. Spiros never agreed to mortgage his interest in 229 King Street and, as early as December 2012, had specifically stated he would not accumulate debt or pledge his assets to secure financing for anyone's share of the proposed project.

Despite the first closing on the personal loans for Plaintiff and Defendant Jacob Ferderigos falling through because of these newly injected terms, from October 17, 2014, until the filing of Plaintiff's Complaint, Defendants Phillip Ferderigos and Spiros attempted to negotiate material terms to potentially move forward with the proposed project. The new terms included a Side Agreement/Ancillary Contract which would protect their respective collateral if

[2] The parties built the first set of rental units without any mortgage of 229 King Street.

Plaintiff were to default on any loan obligations and if this Defendant were to sign a mortgage for Plaintiff to get his loan. As to Spiros, Plaintiff never signed the Side Agreement/Ancillary Contract that he required to move forward with the proposed project negotiations. Further, aside from Spiros negotiating the possibility of signing a mortgage for the proposed project based on the execution of the Side Agreement/Ancillary Contract, Plaintiff subsequently demanded that Spiros sign, in his individual capacity, additional documents with material terms which Spiros never agreed to, including, but not limited to: (1) a mortgage for Spiros' interest in 229 King Street, (2) an assignment of rents, (3) a hypothecation agreement, (4) a HUD Statement, (5) an agreement to provide insurance, and (6) a UCC Financing Statement/Addendum. Plaintiff's incorrect and non-agreed upon closing documents also required Spiros to assign his interests *as a member of the LLC* for (1) the Note as the Borrower for Plaintiff's loan, (2) an assignment of rents for a construction loan agreement, (3) a guaranty of completion and performance agreement, (4) a commercial security agreement, (5) a hazardous substances certificate and indemnity agreement, (6) an agreement to provide insurance, and (7) a UCC Financing Statement/Addendum. See Par. 100 of Spiros' Answer & Counterclaim.

Spiros hereby incorporates his detailed Answer and Counterclaim and the accompanying Exhibits which set forth and prove that Plaintiff's pleadings and allegations lack merit. There were further numerous unknown material terms at the time Plaintiff alleges the parties entered into an agreement that would make a meeting of the minds between the parties impossible, as the parties cannot and did not agree to material terms that were still unknown at the time. As such, the parties never reached a meeting of the minds as to the essential terms of a mortgage agreement, a side agreement, any other material terms set forth in Plaintiff's bank closing documents, or other additional material terms. Plaintiff's claims are barred as there was never

even an "agreement to agree" between the parties. The cost of the proposed project, the scope of the proposed project, the financing details of the proposed project, the loan documentation details of the proposed project, and other material terms of the proposed project were simply unknown and/or rejected by Spiros at the time Plaintiff alleges an agreement was made. This is evidenced by the written documentation between the parties which have been attached as exhibits to Spiros' Answer and Counterclaims.

Plaintiff's claims are barred as there was no "meeting of the minds" and no binding agreement between the parties as to numerous material terms of the alleged agreement. Plaintiff admits that Spiros did not agree to subject himself to personal liability for Plaintiff's personal loan. A mortgage is a material term. It constitutes possible personal liability for Spiros by subjecting his most important and valuable asset known at the time, 229 King Street, to possible foreclosure in the event Plaintiff defaulted on his personal loan. Spiros further informed Plaintiff in writing on December 19, 2012, that he would not be willing to accumulate debt or pledge his assets as security for the proposed project and that he intended to use cash for his portion of the proposed project. In addition, Spiros signing his name as an individual (direct personal liability) and/or signing his interest as a member of the LLC (personal liability if the corporate veil is pierced) for Plaintiff's incorrect and non-agreed upon closing documents further constituted exposure for a personal guarantee that Spiros never agreed to.

Spiros bases this Motion for Summary Judgment upon the pleadings, deposition testimony and accompanying exhibits, Affidavits, any documents filed with this motion and subsequent memorandum and with the court, the applicable law, and any memorandum of law to be submitted to the Court. Spiros reserves the right to supplement this Motion with additional memoranda, Affidavits, and other documents in support of the arguments contained herein.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR DEFENDANT SPIROS FERDERIGOS

February 28, 2017
Charleston, South Carolina

Certificate of Service

15-CP-10-3919

I hereby certify that the foregoing NOTICE OF MOTION and MOTION FOR SUMMARY JUDGMENT was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of record:

Stanley E. Barnett, Esquire
305 North Civitas Street
Mount Pleasant, SC 29464

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates LLP
134 Meeting Street, Suite #500
Charleston, SC 29401

John A. Massalon, Esquire
Irish Ryan Neville, Esquire
Wills, Massalon & Allen, LLC
97 Broad Street
Charleston, SC 29401

FILED
2017 FEB 28 AM 10:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This 28th day of February 2017.

Cheryl O. Lirhard
Legal Assistant

BARNWELL WHALEY PATTERSON & HELMS LLC
75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Jeremy E. Bowers, Associate
jbowers@barnwell-whaley.com

February 28, 2017
VIA HAND DELIVERY

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3919

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Notice of Motion and Motion for Summary Judgment filed on behalf of the Defendant, Spiros Ferderigos, in the above-referenced matter. Also, enclosed please find the Motion Coversheet and a check in the amount of Twenty-Five Dollars ($25.00) for the motion filing fee. Please file the original Motion and return the filed stamped copy to me via our courier.

By copy of this letter, I am informing all counsel of record of this communication with the Court and serving them with a copy of the Motion. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: Stanley E. Barnett, Esquire (via U.S. Mail)
Richard A. Farrier, Jr., Esquire (via U.S. Mail)
John A. Massalon, Esquire (via U.S. Mail)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS Plaintiff, vs. PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-3919 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533 Address: 305 North Civitas St., Mt Pleasant, SC 29464 Phone: 843-708-4887 Fax ____ E-mail: stan.barnett@yahoo.com Other: ____	Richard Farrier, Jr., Bar No. ____ Address: 134 Meeting St., Suite 200, Charleston, SC 29401 Phone: 843-579-5619 Fax ____ E-mail: ____ Other: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Partial Summary Judgment
Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — Date submitted: 2/27/17

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ ____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos. Defendant(s).	)	Case No.: 2015-CP-10-3919 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNTERCLAIMS OF PHILLIP FERDERIGOS**

FILED
2017 FEB 28 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: Richard A. Farrier, Jr., Esquire, Attorney for Defendant:

Pursuant to Rule 56 of the SCRCP, the Plaintiff hereby moves for summary judgment as to the counterclaim by Defendant Phillip Ferderigos for Defamation set forth in his Answer filed in the above captioned case. The basis for this motion is that there are no genuine issues of material fact as to the allegations of the counterclaim, specifically that Plaintiff published to any third party the alleged defamatory statements set forth in the counterclaim.

This motion is supported by the attached exhibits:

Exhibit A: Supplemental Affidavit of Plaintiff, Athan Fokas

Exhibit B: Answers to Interrogatories by Phillip Ferderigos

Exhibit C: Deposition excerpt of Phillip Ferderigos

Exhibit D: Deposition excerpt of Irene Fokas

Exhibit E: Deposition excerpt of Athan Fokas

Respectfully submitted,

Stan Barnett
305 North Civitas Street
Mount Pleasant, S.C. 29464
(843) 884-1031/(843) 708-4887
stan.barnett@yahoo.com
Attorney for Plaintiff

February 28, 2017
Mount Pleasant, S.C.

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919

FILED
FEB 28 2017
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

AFFIDAVIT OF ATHAN FOKAS

After being sworn, Affiant testified as follows:

1. I am Athan Fokas, a resident of Mount Pleasant, South Carolina and the Plaintiff in this case.

2. At no time, have I ever told anyone that the Defendants, Phillip and Spiros Ferderigos, had published defamatory remarks about me as they allege in their counterclaim in this case. When I learned that they had done this, I commenced a lawsuit against them for damages arising from these defamatory statements. That case is Case No. 2015-CP-10-3819.

2. Sometime in March or April of 2015, my mother told me in several different conversations that Spiros and Phillip Ferderigos were making defamatory statements accusing me of causing the fire at Old Towne Restaurant and of instances of insurance fraud. She commenced the conversation with me. I did not ask her about such statements or tell her I thought they were doing this before she engaged me in conversation. The statements concerning the allegations by Spiros and Phillip Ferderigos about me in this regard are false.

FURTHER AFFIANT SAYETH NOT.

ATHAN FOKAS

SWORN TO before me
this 22nd day of February 2017.

Notary Public for South Carolina
My Commission Expires on: 7/18/26

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-10-3919

ATHAN FOKAS,

Plaintiff,

v.

PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS,

Defendants.

PHILLIP FERDERIGOS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF:

NOW COMES Defendant Phillip S. Ferderigos, by and through counsel, and answers Plaintiff's First Set of Interrogatories as follows:

Defendant states that these answers are complete and responsive in accordance with his understanding of the Interrogatories, as drafted, and are based upon records or other information in his possession, or reasonably available to him at the time they were made, and that if additional or different information is subsequently discovered or brought to his attention during the pendency of this cause which renders any initial Answer incomplete, incorrect or otherwise subject to supplementation, he will do so as required by the South Carolina Rules of Civil Procedure.

Defendant further states that in preparing and making these answers, he has not accepted or acquiesced in the purported directions, conditions or definitions imposed at the time the Interrogatories were propounded by Plaintiff, except and to the extent that the same may have been consistent or in conformity with his understanding of the applicable discovery rules.

GENERAL OBJECTIONS

Defendant hereby incorporates by reference the General Objections attached hereto as Exhibit A. All of these General Objections shall be deemed continuing throughout the responses to the specific Interrogatories that follow even when not further referred to in said responses. Defendant also reserves the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein, as discovery in this case is ongoing.

ANSWERS TO INTERROGATORIES

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

Answer:

1) Phillip Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

2) Jacob Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

3) Spiros Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

4) Athan Fokas – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

5) Jeffrey Odom – Plaintiff should have contact information for Mr. Odom as Mr. Odom was Plaintiff's loan representative from Southcoast Community Bank.

6) Irene Fokas – See Irene Fokas Deposition and Affidavit(s) for written or recorded statements, in the possession of Plaintiff.

7) Spiro Fokas – No Statement taken.

8) Gerasimos Nikatos – See Affidavit of Gerasimos Nikatos for written or recorded statements, in the possession of Plaintiff.

9) Rania Nikatos – See Affidavit of Rania Nikatos for written or recorded statements, in the possession of Plaintiff.

10) Kevin Carroll – No Statement taken.

11) Justin Hansen – No Statement taken.

These individuals will testify regarding any knowledge they may have concerning the allegations in the pleadings in this case. Defendant reserves the right to call any witness named by any other party.

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

Answer: See Defendants Answers/Counterclaims and Answers to Plaintiff's Request for Production and accompanying documentation. See Defendants Response to Request No. 1 and attached Bates stamped documentation.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Answer: To be supplemented.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the defendant as alleged in defendant's counterclaims in this case.

Answer: Any and all damages to be determined by a jury. This includes, but is not limited to, any expenses paid toward the proposed project being considered, any potential loss of income had the proposed project being considered been built (had it not been for Plaintiff's wrongful actions), any damages that may be awarded by a jury for Plaintiff's defamatory statements, and actual and punitive damages to be determined by the jury for Plaintiff's conduct. See also Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce.

5. List the names and addresses of any expert witnesses whom the defendant proposes to use as a witness at the trial of this case.

Answer: To be supplemented in accordance with the Rules of Civil Procedure. Defendant reserves the right to call a testifying expert at trial.

6. For each person known to the defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer: See Answer No. 1, Answer No. 7, and Defendants Answer and Counterclaims.

7. List every person to whom the defendant claims plaintiff published defamatory statements concerning this defendant and for each describe the date, place, time and manner of such publication and the substance of such defamatory statements defendant alleges plaintiff made to each such person.

Answer: Plaintiff published libel and slander per se, which are actionable per se, and defamatory, to the following individuals:

1) Jacob Ferderigos – See Defendants Answer/Counterclaims and Answers to Plaintiff's Requests for Production.

2) Justin Hansen – Upon information and belief, Plaintiff has inquired of Mr. Hansen if Defendant has accused him of inappropriate involvement regarding a fire at 229 King Street and/or has informed Mr. Hanson that Defendant is accusing Plaintiff of inappropriate involvement regarding the fire at 229 King Street. The exact date, place and time of the statement is not known to Defendant at this time.

3) Kevin Carroll – See Defendants Answer/Counterclaims and Answer to Plaintiff's Requests for Production. In addition, upon information and belief, Plaintiff informed Mr. Carroll that the proposed project being considered was not moving forward because Defendant was not willing to give his brother a mortgage and that Plaintiff was not seeking a mortgage from Defendant. Plaintiff defamed Defendant by advising Mr. Carroll that Defendant had made promises to him and the Defendant was breaching those promises to him and, further, that the proposed project was not being built because it was the Defendants' fault. Plaintiff's statements to Mr. Carroll are defamatory per se and depicted Defendant as an unfit and stupid business person (i.e., that Defendant was unfit in his business or profession). Plaintiff also continuously informed Mr. Carroll that the proposed project was going to be built long after Plaintiff knew that the proposed project was not moving forward because of the Plaintiff's own misrepresentations, while, at the same time, Plaintiff defamed this Defendant, blaming him for the Plaintiff's own failures to obtain the necessary funds to move forward with the proposed project. Plaintiff further misrepresented the circumstances of the proposed project falling apart and purposely and intentionally attempted to cast this Defendant in a bad light and in a defamatory manner.

4) Irene Fokas – See Deposition and Affidavit(s) of Irene Fokas, in Plaintiff's possession.

In addition, upon information and belief, Plaintiff defamed this Defendant to numerous individuals, including to Defendant's brother, Jacob Ferderigos, Plaintiff's mother Irene Fokas, his father Spiro Fokas, his sister Rania Nikatos, and Old Towne's Manager Justin Hanson by telling these individuals that the proposed project fell apart because Defendant Phillip Ferderigos could not eat for free at Old Towne, because Defendant is a stupid business person/that he has no business sense, because Defendant is jealous of him, because Defendant does not want his

brothers to be successful, because Defendant wants to be wealthier than his brothers (i.e., to keep his brothers "below" him), because Defendant is a stupid and unwise business person, and his telling said witnesses that Defendant made a promise to him to mortgage 229 King Street for Plaintiff's benefit (and that Defendant broke such promise to him), all with actual malice and ill-will and intent to harm Defendant in an effort to extort and force Defendant to give him a mortgage over 229 King Street (when Plaintiff knows Defendant made no such promise) and to make other concessions to Plaintiff, when Defendant never agreed to do any of those things. Plaintiff libeled this Defendant by stating Defendants (Phillip Ferderigos and Spiro Ferderigos) "have no business sense." Plaintiff further libeled this Defendant on March 21, 2016 by stating: "Now you have turned your brother Jacob into a puppet getting him to send your words on his phone. I actually now think that you didn't go along with building the new suites so that your brothers would not be able to have more income so that you can keep them below you." Defendant further incorporates his Answer and Counterclaims, Defendants Answers to Requests for Production, and the libelous emails forwarded from Plaintiff to third parties concerning this Defendant.

8. For each of the instances of alleged publication of defamatory statements described by this defendant in Answer to interrogatory number 7, describe the exact manner in which this defendant learned of such publication and include the date when defendant so learned of each alleged publication.

Answer: See Answer No. 7.

9. For each instance in which defendant alleges plaintiff made misleading or untrue statements to this defendant as alleged in this defendant's counterclaims, describe the date,

manner, extent and nature of any actions taken by this defendant in reliance on each of said alleged misrepresentations.

Answer: See Answer No. 7, Answer to No. 10, and Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

10. List all damages this defendant claims to have suffered as the proximate cause of any act of the plaintiff identified in defendant's answer and counterclaims and for each alleged damage identify the nature of the loss, the date of the loss, the value defendant claims it represents in terms of money, the action of plaintiff the defendant claims caused the loss and way in which said alleged loss resulted from the alleged action of plaintiff.

Answer: See Defendants Answers and Counterclaims and Answer No. 4. In addition, the Defendant expended personal funds as a result of the Plaintiff's misrepresentations to the detriment of Defendant. Defendant has also lost money and profit based on Plaintiff's wrongful actions. Plaintiff has intentionally caused and continues to try to cause intentional and malicious harm to Defendant's business and reputation, which directly impacts his livelihood. Plaintiff has also filed frivolous lawsuits against this Defendant and caused harm to Defendant as set forth in Defendants Answer and Counterclaims. Plaintiff is liable for actual and punitive damages to be determined by a jury.

11. With respect to the counterclaim by defendant for abuse of process, identify any demand for a collateral advantage made by plaintiff associated with any legal process defendant claims was improperly brought and list the date, the way such demand was communicated and describe the substance of said demand for collateral advantage. For each such communication, list all proof defendant claims proves the communication was made.

Answer: See Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce. In addition, Plaintiff has filed frivolous lawsuits against this Defendant in an effort to force Defendant to give him a mortgage and agree to other terms this Defendant never agreed to. The

Plaintiff boasted that his lawyer was working on a contingency and his filing a frivolous lawsuit would not cost him any money, whereas it would cost Defendant large sums of money to defend against Plaintiff's frivolous claims. Plaintiff followed through with his threat and abuse of process and the existence of these two lawsuits prove Defendant's abuse of process claim against Plaintiff. Plaintiff is demanding that this Defendant share in his risk of the project and underwrite his portion of the proposed project. This is a risk that Defendant never agreed to bear and Defendant does not agree to bear. Plaintiff has always been responsible for his portion of the proposed project and the Plaintiff cannot use this Defendant's property in order to secure a loan for his benefit. Plaintiff has defamed Defendant and filed frivolous lawsuits against Defendant to try to force Defendant to give Plaintiff a mortgage (for Plaintiff's benefit) and to try to force Defendant to agree to other terms Defendant never agreed to. Plaintiff is improperly using the legal process to try to extort concessions from this Defendant by knowingly filing frivolous lawsuits against this Defendant.

12. Identify the date and circumstances in which defendant became aware of the terms for financing the project to expand the building at 229 King Street as identified by South Coast Bank. If there were separate times and circumstances for the elements of those terms set forth below, identify when and how defendant became aware of the terms related to:

a. A requirement that defendants mortgage their interest in 229 King Street;

b. A requirement that the LLC which operates the suites rental business be obligated to pay the bank on the note;

c. A requirement for a hypothecation agreement.

Answer: Defendant objects to Plaintiff's terminology in this Interrogatory. There were no "terms for financing the project to expand the building at 229 King Street" applicable to this

Defendant. See Defendants Answer and Counterclaims. Defendant incorporates and craves reference to his texts/emails.

Defendant objects to this Interrogatory as there was never a "requirement" as this Defendant never agreed to mortgage his interest in 229 King Street for the benefit of the Plaintiff or anyone else; likewise, there was never a "requirement" as this Defendant never agreed that the LLC be obligated to pay any note, and there was never a "requirement" as this Defendant never agreed to sign a hypothecation agreement. This Defendant never agreed to provide Plaintiff with a mortgage for the proposed project, nor did he agree to the other terms as set forth in this Defendant's pleadings. Initially, this Defendant rejected getting a mortgage for the proposed project, but decided to pay for his portion of the proposed project with cash. After October 17, 2014, this Defendant attempted to negotiate terms where he would be willing to execute a mortgage, so long as Plaintiff would execute a side agreement which would protect this Defendant's collateral, but the negotiations fell apart due to Plaintiff's actions as set forth in the pleadings. Thereafter, Plaintiff made even more additional demands and new terms were sprung on Defendant on the day of the second closing as well.

Generally, there are three distinct time periods applicable to this case: (1) from the inception of the exploring of the proposed project until October 17, 2014, (2) from October 17, 2014 to November 24, 2014, and finally (3) from November 24, 2014 to the present.

(1) First time period: from the inception of the explanation of the proposed project until October 17, 2014.

During this time period, the parties explored the possibility of the proposed project. Early on, Plaintiff told Jacob Ferderigos that the parties should mortgage 229 King Street for the proposed project. Phillip Ferderigos and Spiro Ferderigos rejected such request and told Jacob

Ferderigos to tell Plaintiff they would not mortgage 229 King Street for the proposed project. From the beginning, Plaintiff knew Phillip and Spiro Ferderigos would not mortgage 229 King Street for the proposed project. Plaintiff then accosted Phillip Ferderigos at the Hellenic Center as set forth in paragraphs 70 and 71 of his Answer and Counterclaims. Again, Plaintiff knew that Phillip Ferderigos would not mortgage 229 King Street or guarantee anything for the proposed project being considered and he would self-fund his portion of the proposed project by bringing cash to the transaction if Defendant decided to move forward with the proposed project being considered.

Further, on December 19, 2012, via text, Plaintiff also texted Defendants implying that they should personally guarantee a loan for the proposed project to get a loan for the proposed project. In his written Answer, Spiro Ferderigos immediately responded he would not guarantee anyone else's loan or incur additional debt for the proposed project and, if the proposed project were to move forward, it would be in the same manner as the original units (i.e., with no mortgage or guarantee for anything). See paragraphs 77 and 78 of Defendant's Answer and Counterclaims.

Plaintiff apparently did not even contact South Coast until 1/12/13. On September 9, 2014, Plaintiff advised Defendants that the proposed project cost had drastically increased to about Two Million Dollars. Also, pursuant to Paragraph 89 of Defendant's Answer and Counterclaims, on September 24, 2014, Plaintiff represented that his South Coast loan was a fixed 5% interest 20-year loan. Plaintiff was in error, his South Coast loan was not a fixed 5% interest 20-year loan.

At all times during this time period, Plaintiff knew Phillip Ferderigos and Spiro Ferderigos would not mortgage or guarantee anything for the proposed project being considered.

However, Plaintiff deceptively allowed Defendants to expend funds to explore the possibility of the proposed project as Plaintiff hoped that he could force Defendants to ultimately give him a mortgage for the proposed project (otherwise they would have wasted all of their investment). Plaintiff's scheme was intentional and in bad faith.

(2) From October 17, 2014 to November 24, 2014.

As set forth in paragraphs 92-106, and subsections (a), (b) and (c) below, and Answer No. 14, on or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time since 2012 (when Defendants had outright rejected providing a mortgage or any other encumbrance of any kind for the proposed project) that Plaintiff demanded this Defendant (along with his brother) mortgage his interest in 229 King Street for Plaintiff's benefit. This message was relayed to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage or guarantee his interest in 229 King Street for the proposed project.

However, after some additional thought, this Defendant attempted to work with Plaintiff in response to his new demand (which had previously been rejected) in order to determine if Plaintiff would agree to very specific terms that allowed Defendant to be comfortable with mortgaging his interest in 229 King Street for the proposed project if, and only if, this Defendant had assurances, to his satisfaction, that his property would be protected from Plaintiff defaulting on his obligations. In an effort to respond to the new demands of the Plaintiff (which had previously been rejected), Phillip Ferderigos and Spiro Ferderigos decided to see if the proposed project could move forward and attempted to negotiate an ancillary agreement/side agreement which they believed would protect their interest in 229 King Street if they were to provide

Plaintiff and Jacob Ferderigos with a mortgage for the proposed project being considered. Negotiations fell apart, however, when Plaintiff placed additional demands on Phillip Ferderigos for the side agreement and when Plaintiff's bank closing documents were also incorrect in several material terms as set forth more particularly in Defendant's Answer and Counterclaims. Further, with the scheduling of the second closing, Plaintiff made additional demands on this Defendant which this Defendant never agreed to.

(3) From November 24, 2014 to the present.

After negotiations fell apart, Plaintiff proceeded in bad faith and ill will to threaten and harass Defendants as set forth with more particularity in Defendant's Answer and Counterclaims.

---

a. Initially, Plaintiff contacted Jacob Ferderigos to tell him that the parties should consider building an additional new building behind Old Towne. At some point, Plaintiff and Jacob Ferderigos apparently decided that they would need to obtain a mortgage of 229 King Street for the proposed project. Plaintiff requested that this Defendant also guarantee and/or mortgage 229 King Street for the proposed project. This Defendant told Plaintiff in no uncertain terms that he would not mortgage Old Towne, that he would not guarantee anything, and that he would pay cash to fund his share of the proposed project if the proposed project were to happen. Similarly, but separately, via written correspondence, Defendant Spiro Ferderigos advised Plaintiff of the same. From that time forward, having expressly told Plaintiff that this Defendant would not mortgage, guarantee, or encumber any of his assets for the proposed project, Plaintiff knew that, if the proposed project being considered were to go forward, he would have to be responsible for his share of the costs of the proposed project and Plaintiff knew this Defendant

would not mortgage or guarantee or in any way risk or encumber his share of the 229 King Street property for the proposed project. As such, this Defendant believed Plaintiff and Jacob Ferderigos were attempting to get a loan by mortgaging their portion of 229 King Street.

Subsequently, this Defendant started paying his share of the costs (through his ongoing profits of Old Towne Suites, LLC) for determining the possibility, feasibility and desirability of the proposed project and Plaintiff knew that this Defendant would not mortgage, guarantee, or in any way encumber his 229 King Street property for the proposed project; yet, Plaintiff apparently knew his bank would require Defendants to provide a mortgage for Plaintiff's benefit in order for Plaintiff to get a loan for the project, yet, Plaintiff did not disclose this information to any of the Defendants, and Plaintiff allowed this Defendant to spend funds during this time period. Plaintiff and Jacob Ferderigos were supposed to get a loan/mortgage for their own respective share of the proposed project over their portion of 229 King Street, and this Defendant never agreed to mortgage, guarantee, or otherwise encumber his portion of 229 King Street for the proposed project. Plaintiff knew the same, but intentionally or negligently enticed this Defendant to spend monies for the proposed project's planning, while apparently scheming to force this Defendant to give him a mortgage for his benefit.

Further, on or about September, 2014, Plaintiff advised Defendant that his bank was going to give him a 5% fixed rate 20-year mortgage for the proposed project. Plaintiff forwarded a loan document from South Coast and, after only looking at the rate and time period for this loan, Defendant determined that Plaintiff was wrong and that Plaintiff's bank did not provide him with a 5% fixed rate 20-year mortgage, but, rather, the mortgage rate was variable and would change/balloon after five years. Defendant advised Plaintiff that Plaintiff was wrong about what Plaintiff thought the terms of Plaintiff's loan were. [At this time, this Defendant still

believed that Plaintiff was obtaining a mortgage for Plaintiff's and Jacob Ferderigos' portion of 229 King Street, and Defendant did not look at the rest of the South Coast document until sometime in 2015]. On September 30, 2014, this Defendant reiterated that he was going to pay cash for his share of the project. Defendant did not become aware that Plaintiff's bank or the Plaintiff wanted this Defendant to sign a mortgage until approximately October 17, 2014 when Plaintiff advised Jacob Ferderigos, who then relayed it to this Defendant.

On or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time since 2012 (when this Defendant and Spiro Ferderigos had outright rejected providing a mortgage or any other encumbrance of any kind for the proposed project) that Plaintiff demanded this Defendant (along with his brother Spiro) mortgage his interest in 229 King Street for Plaintiff's benefit. This message was relayed to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage or guarantee his interest in 229 King Street for the proposed project.

b.) Not until on or about November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing documents were sent to Defendant to be reviewed for the first time. See also Defendants Answer and Counterclaims to Plaintiff's Request to Produce.

c.) Not until November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing attorney for Plaintiff sent an email that "[t]here will also be hypothecation agreements, I believe." See also Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

13. If this defendant claims that he informed plaintiff he would refuse to mortgage his interest in 229 King Street as part of the financing of the project to expand the building, identify the date and circumstances and means by which this was communicated to plaintiff.

Answer: See Defendants Answers/Counterclaims and Answers to Plaintiff's Request to Produce, Answer Nos. 12 and 14.

14. Does this defendant claim that he never agreed to mortgage his interest in 229 King Street as part of the financing of the project to expand the building?

Answer: Yes, see Answer Nos. 11 and 12; this Defendant never agreed to mortgage his interest in 229 King Street for the proposed project. There was never an agreement to mortgage Defendant's interest in 229 King Street as part of the financing for the proposed project being considered/explored for new construction above 229 King Street at any time, as further explained below.

In the initial stages of the parties considering/exploring new construction above 229 King Street, this Defendant told Plaintiff he would not mortgage or guarantee anything for the proposed project. See Interrogatory Answer Nos. 11 and 12 and see paragraphs 70 & 71 of this Defendant's Answer and Counterclaims. Plaintiff sent written correspondence on December 19, 2012 implying that he wanted Defendants to personally guarantee the loan. Defendant Spiro Ferderigos immediately responded the same day via written correspondence, that he outright refused to guarantee, mortgage his interest in 229 King Street, and/or accumulate any debt for the proposed project being considered. Also, this Defendant was clear with Plaintiff he would not mortgage or guarantee or encumber his interest in 229 King Street for the proposed project. (See Defendants' Answers/Counterclaims for additional details).

With this clear understanding, the parties continued to consider and explore the possibility of the proposed project from 2012 forward. It was not until a few days prior to Plaintiff unilaterally scheduling a closing for the proposed project that Plaintiff, on or about October 17, 2014, for the first time, informed Defendant (through Jacob Ferderigos) that Plaintiff demanded Defendant provide him with a mortgage in his interest in 229 King Street so Plaintiff could get Plaintiff's loan. For the first time ever, shortly thereafter, Phillip and Spiro Ferderigos, on or about October 19, 2014, informed Plaintiff that they would consider providing a mortgage of their interests in 229 King Street for the proposed project on the condition that Plaintiff would sign a side/ancillary agreement that Defendants felt was necessary to protect their financial interests. Plaintiff eventually refused to sign the side/ancillary agreement Defendant required in order to consider mortgaging his interests in 229 King Street and also placed even more demands on this Defendant, which the Defendant rejected. (See Defendants Answers/Counterclaims for additional details).

It was only after Plaintiff demanded on or about October 17, 2014 that this Defendant provide a mortgage over his portion of 229 King Street for the proposed project to move forward, did this Defendant attempt to work with Plaintiff in order to determine if Plaintiff would agree to very specific terms that allowed Defendant to be comfortable with mortgaging his interest in 229 King Street for the proposed project if, and only if, this Defendant had assurances, to his satisfaction, that his property would be protected from Plaintiff defaulting on his obligations. In an effort to respond to the new demands of the Plaintiff (which had previously been rejected), Defendant considered mortgaging his interest of 229 King Street for the proposed project if Plaintiff signed a side agreement that Defendant believed protected his interest; however, via his texts/emails referenced in the pleadings, Plaintiff refused to sign the side

agreement without preconditions and made additional demands of this Defendant, demands which this Defendant never agreed to, and the negotiations fell apart. Further, with the scheduling of the second closing, Plaintiff made additional demands on this Defendant which this Defendant never agreed to.

15. If you take the position that the LLC which operates the suites rental business being obligated to make payment on the note to South Coast Bank would have a material effect on you, explain that effect why you allege this is true.

Answer: This Interrogatory is irrelevant. Defendant never agreed to mortgage or guarantee or in any way encumber his interest in 229 King Street for the benefit of the Plaintiff or for anyone else. This Defendant was bringing cash to fund his portion of the proposed project outright and this Defendant was looking forward to enjoying the profit that would come from the investment once the proposed project was built. This Defendant never agreed to encumber his interest in the LLC or any income stream that the proposed project would bring. Per the Plaintiff's bank closing documents, the income and/or assets that would potentially be used to pay the Note would include Defendant's own profits from the rental income. Defendant never agreed to such arrangement. Defendant further never agreed to have the LLC pay a Note or to use his rental profits in such a manner. Further, based on the incorrect closing documents, which were never agreed to, having the LLC obligated to make payment on the note potentially exposes this Defendant to personal liability and further potentially interferes with this Defendant's cash flow/profit from the LLC.

Defendant also objects to this Interrogatory as it is confusing. Subject to this objection, Defendant is unable to answer this Interrogatory as the final cost of the proposed project was never established or agreed to by the parties, and, as a result, Defendant cannot state what the

income from the rental suites business would be. Defendant further objects because he never agreed that any payment was to be made by the LLC and never agreed to/was under no obligation to have a payment for a loan required by Plaintiff to be potentially paid out of Defendant's share of the rental suites business.

16. Identify the date and circumstances under which you became aware that the project to expand the building would be for an additional floor over and above what was originally investigated by you, the other defendants and plaintiff.

Answer: See Defendants Answer/Counterclaims and Defendants Answers to Requests for Production. This Defendant craves reference to the texts and emails produced in discovery. Plaintiff represented that the total cost of the project would be less than One Million Dollars and, based on that figure, this Defendant would have been responsible for one-sixth of that amount, something that this Defendant had in cash and was willing to invest at the time for the proposed project. Defendant recalls that he was notified that the costs of the proposed project had ballooned from an estimated $900,000 to well over Two Million Dollars, on or about September 9, 2014.

17. If you disagree that the rental income from the suites rental business would be sufficient to cover the payments on the loan financing the expansion of the building at 229 King Street, explain why that is true and include what you think the shortfall in funds to cover said payments would likely be.

Answer: As the final cost of the proposed project was never established, Defendant does not know at this time if income from the rental suites would have been sufficient to cover payments on any loan obtained by Plaintiff to cover his fifty percent (50%) portion of the construction

costs. Furthermore, this Interrogatory is irrelevant to this Defendant. Defendant never agreed to have his share of profits from the rental suites to be used to pay a loan.

18. Do you agree that by the date of the first scheduled closing for the loan from South Coast Bank to finance the expansion of the building at 229 King Street all necessary design and regulatory approvals had been secured to allow the expansion to proceed? If you do not agree, explain why.

Answer: Defendant objects to the terminology of this Interrogatory; there was no expansion of the building, the proposed project was to build a new building. Further, Defendant is not aware if all necessary design and regulatory approvals had been secured to build a new building above 229 King Street by the time Plaintiff unilaterally scheduled a closing. However, Defendant knows that the final cost of the proposed project was never known. Decisions still needed to be made and the full cost of the proposed project was still unknown, including decisions/costs for windows and sprinkler systems, both material matters potentially increasing costs significantly. See also Defendant's Answer/Counterclaims and Answers to Request to Produce. Defendant craves reference to the texts/emails between the parties.

K&L Gates LLP

By: _____

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
134 Meeting Street, Suite #200
Charleston, SC 29401
Phone: 843-579-5619
Fax: 843-579-8819
Richard.Farrier@klgates.com
Jennifer.Thiem@klgates.com

EXHIBIT A

GENERAL OBJECTIONS

1. Defendant objects to the Requests to the extent that they seek to impose any obligations beyond those provided for by the South Carolina Rules of Civil Procedure ("Rules") or any other applicable laws or rules.

2. Defendant objects to the Requests to the extent that they seek information contained in documents that were prepared for or in anticipation of litigation, constitute attorney work-product, contain or divulge attorney-client communications, contain confidential or proprietary business information, or are otherwise protected from disclosure under applicable privileges, laws or rules. Defendant does not intend to disclose information that is privileged or otherwise immune from discovery. Disclosure of any protected or privileged information in response to the Requests shall be deemed inadvertent and shall not constitute a waiver or prejudice of any privilege or any other ground for objecting to discovery with respect to any such documents, nor shall such inadvertent disclosure waive or prejudice Defendant's right to object to the use of any such information or documents during this or any subsequent proceeding.

3. Defendant objects to the Rquests to the extent that they seek information and documents that are a matter of public record, that are within the knowledge or possession of Plaintiff, or to which Plaintiff's access is equal to that of Defendant, on the grounds that providing such information and documents would impose an unreasonable burden and expense upon Defendant.

4. Defendant objects to the Requests to the extent that they seek information that is overly broad and unduly burdensome for Defendant to locate and will result in an unreasonable

expenditure of costs that exceeds the value and relevancy of finding any such information and is disproportionate to the amounts in controversy in this case.

5. Defendant objects to the Requests to the extent that they seek information prior to or beyond the scope of the subject dispute.

6. Defendant objects to the Requests to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. Defendant's answers and objections to the Requests are made without waiving, or intending to waive, but on the contrary preserving, and intending to preserve: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, confidentiality, authenticity, admissibility, or any other proper grounds, as evidence for any purpose, in whole or in part, the use of the responses provided by Defendant, in any subsequent proceeding, or in any trial in this or any other action; (b) the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of the Requests to which Defendant has responded herein; and (c) the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein.

8. No objection or limitation, or lack thereof, made in these answers and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

9. Defendant's answers to the Requests are made to the best of his personal knowledge, information and belief. Defendant's discovery and investigation of the facts relevant to this case are ongoing.

11. All of these general objections shall be deemed continuing throughout the responses to the specific items of the Requests that follow even when not further referred to in said responses. The failure to note the application of the general objections is not a waiver of

these general objections with respect to any Request. Defendant also reserves the right to assert additional general and specific objections arising from matters discovered during this litigation.

12. Defendant reserves the right to introduce and rely upon any documents or materials listed and information provided in any other party's discovery Answers, or any materials introduced or information obtained at any deposition of any party or witness. In addition, Defendant reserves the right to introduce any documents or materials as rebuttal, if necessary.

Certificate of Service

I hereby certify that on the 1st day of June, 2016, I served the foregoing Answers to Plaintiff's First Set of Interrogatories to Defendant Phillip Ferderigos upon the parties to this action by U.S. mail, sufficient postage attached thereto, correctly addressed as follows:

Stanley E. Barnett, Esquire
Smith Bundy Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd.
Building F, Suite #100
Mt. Pleasant, SC 29464

John A. Massalon
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, South Carolina 29402

M. Dawes Cooke, Esquire
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

Legal Assistant

EXHIBIT C

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF PHILLIP FERDERIGOS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3919
PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS,
Defendants.

ORIGINAL

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: PHILLIP FERDERIGOS
DATE: SEPTEMBER 21, 2016
TIME: 11:08 A.M.
LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A. I don't -- I don't know what you mean by "collateral demand." I -- I -- let me just say this, and maybe we can cut through. I mean, he's trying to force me to do what I didn't agree to do with the lawsuits that he's filed.

Does that make -- is that what you're getting? 'Cause I'll tell you that.

Q. That's the answer. That that's all he's asked for. I want to be clear about this. I don't want to hear about something later. That's all he's asked for.

A. As I'm sitting here today, I can't think of anything.

Q. Okay. All right. Now, let me ask you about your defamation claim, which begins on page 31 of your answer.

A. I thought that was a separate -- okay. No. Go ahead.

Q. Well, you have a counterclaim. You have a counterclaim for a defamation/slander/liable.

A. My counterclaims. Go ahead.

Q. Starts on page 31.

A. No. I understand. Go ahead.

Q. There are a number of -- some of them are somewhat related; and I'm going to ask you,

as you can imagine, similar questions about all of these.

A. Okay.

Q. 147 you say that "Athan Fokas threatened to publish false and defamatory statements by informing Phillip in writing that he cannot wait to tell everyone in the community that a million dollar project did not move forward because Phillip could not eat for free at Old Towne Restaurant."

Okay. Now, you say he threatened to you that he was going to say this; right?

A. Yeah.

Q. Of course, that's not defamation, is it?

A. Well, if he tells a third party.

Q. Did he tell a third party?

A. Well, discovery's ongoing. Let's find out.

Q. Who do you think he told?

A. Discovery's ongoing. I don't know.

Q. No, that's not -- I'm asking you --

A. Oh, sitting here today?

Q. I'm asking what you know.

A. Sitting here today? I don't know sitting here today.

Q. Okay. All right. Has anybody come back to you and said that he made such a statement? They heard he made such a statement?

A. Well, he threatened to make it.

Q. But has anybody told you that they heard that he did make the statement?

A. Well, I mean, I believe once we depose some people that, yes, such as the individual that I listed in the discovery responses are probably going to verify that. And I -- I don't know. Anyone from the contractor to the manager to several other people. We haven't deposed them yet.

Q. You say you believe that, but you're not --

A. 'Cause he threatened me, Stan.

Q. You're not telling me that --

A. Yeah. Sitting here today -- let's just do it like this. Sitting here today, I don't know.

Q. That is all we can get. So you don't -- you haven't talked to Mr. Hanson about this?

A. No.

Q. All right. Okay. You haven't talked to Kevin Carroll about this?

A. No.

Q. You haven't talked to Irene Fokas about this? Your aunt?

A. No. I mean, it's her deposition, whatever, you know. I don't talk to -- to her about stuff.

Q. Okay. All right. Okay. What harm have you suffered from this?

A. This defamation?

Q. If -- if this particular thing has been communicated, how have you been harmed?

A. My reputation is harmed.

Q. Reputation is harmed how?

A. It's not true, and it casts me in a negative light.

Q. Okay. Is everything that casts everything in a negative light defamation?

A. I don't know. You're asking me a legal question; but in this circumstance, it makes -- I believe it's defamatory, per se, if he did it.

Q. How is it defamatory, per se? Is it damaging you in your profession?

A. Defamation could -- if he's -- if he's spreading rumors that aren't true about me, yeah, I'd say he could. Like when he says -- we're

going to go on to it about being a businessman and not having any sense. I believe it's the fifth prong of the defamation --

Q. We're not there yet.

A. Let me finish. Let me finish. I'm answering.

I believe it's the fifth prong of defamation, per se, that he violated with all these emails that I'm referencing to.

Q. How have you been -- how has your reputation as a lawyer, we'll put it that way, been damaged if somebody has said that you pulled out of this multi-million dollar project because you couldn't eat for free at Old Towne?

A. It damages me as a lawyer, and it damages me as a businessperson.

Q. How does it damage you as a lawyer?

A. What are you -- are you kidding me?

Q. No. I'm asking a serious question.

A. If -- if Athan goes around saying this to everybody like he threatened, then people are going to think I'm an idiot. That's not why the project fell apart, Stan. We already covered why the project -- why the proposed project fell apart.

Q. Okay.
A. And this -- I'll stop.
Q. Your testimony is that this damages you as a lawyer because people would think you were an idiot if you -- if that were true.
A. Yeah. And it's not -- it's not true. It's defamatory as a lawyer and as a businessperson is my testimony.
Q. Well, of course, the not being true part is just part of the inquiry about defamation. It's also got to damage you in some way that the law recognizes.
A. Oh, I think the law recognizes that damage, Stan.
Q. That --
A. Harm to my reputation. I think that's what defamation is.
Q. You think this is harm to your reputation as a lawyer? That's what I'm getting at.
A. As a lawyer and as a businessperson.
Q. Now, your business activities, other than being a lawyer, are that you own some rental properties; right?
A. Yes.

Q. How does it damage you as somebody who owns rental property?

A. Same reason. Somebody's going to hear that false statement and think like, "Well, oh, Phillip's stupid. He's not a good businessman."

Q. Has anybody told you or have you heard by rank hearsay that somebody has said, "I think Phillip Ferderigos is stupid because he got out of a deal because he couldn't eat for free at the restaurant"? Has anybody told you that?

A. Well, you combined two things. I think I have emails from Athan that say I'm a stupid businessperson.

Q. But that's not defamation, is it?

A. Well, it copied Jacob and Spiros.

Q. Okay. Because it was communicated to your brothers?

A. Yeah.

Q. Okay. How have you been damaged by that?

A. It's not true.

Q. Have they denied you business? Have they caused you to lose business in some way?

A. I think you and I have a different understanding of what "defamation" means as far

as damages.

Q. We might. But I'm asking you questions about the facts.

A. Yeah. No. My -- my brothers Spiros and Jacob don't think any less of me because of his threats.

Q. Okay.

A. And his defamation.

Q. And you don't know of any business you've lost either as a lawyer or as a -- an owner of rental property because of this; is that correct?

A. Well, I mean, I don't know; but, as I said, sitting here today, discovery is ongoing. If -- if, you know, if we discover that he did tell third parties, I mean, we'll see when we get there.

Q. Okay. Okay. Number 48 seems to repeat. It says that you believe that he did carry out these threats. So we won't beat that horse anymore.

Number 149 says that because he wrote you and Spiros have no business sense, and I'm sure we will be butting heads with Greek properties in the future. Very sad.

How, first of all, is that defamation to you; and then how have you been damaged by that?

A. If somebody does not have business sense, it means they're not a good businessperson; and, again, I don't know if he's told any third party that. We will find out.

Q. Okay. So you -- and, again, you don't know that you've lost any business or lost anything as a result of this?

A. Sitting here today, I don't know how much harm his defamation has caused me. I agree.

Q. Okay. Well, sitting here today, you don't know if there's been defamation. You don't know if he told anybody other than you.

A. I disagree. He sent texts to my brothers about it. That in and of itself, plus I don't know about third parties; but we'll find out.

Q. And no business sense, isn't that an opinion?

A. Whoa, Stanley. I don't know if it's an opinion or a fact. That's a jury issue.

Q. Okay. All right. Let's see. Publish -- publish statements are bad business people and/or do not have any business sense.

That seems to be repetitive so we'll move on to 151.

Did he -- he -- he defamed you to third parties by saying that you and Spiros are accusing him of setting fire to 229 King Street. Okay. How -- who is it that you claim he communicated this to?

A. Same answer. Discovery is ongoing, and he clearly put it in his pleadings as well. That's what he alleged.

Q. Okay. Well, never mind what's in his pleadings but what -- in other words, communicating to third parties outside of the pleadings of the lawsuit, do you have any knowledge that he did that?

A. Discovery's ongoing. Not sitting here today.

Q. So you don't know today. All right.

You say it's defamation that he said to third parties the project wasn't going forward because you and Spiros were not doing what you agreed to do.

Okay. Who do you believe he communicated that to?

A. We'll find out, but I suspect -- and let

me incorporate my interrogatory responses, but that's what I suspect we will determine via deposition testimony. I believe he told several individuals that: Kevin Carroll, potentially the manager. I don't know. We're going to find out when we depose these folks.

Q. But you don't have any evidence that he told them that sitting here today.

A. Well, I have -- sitting here today, I don't have any direct evidence, no.

Q. Do you have any indirect evidence?

A. No.

Q. All right. So no one has told you that these statements were made to any particular person.

A. Well, actually that's -- it's attorney-client privileged and work product privileged after anticipation of litigation. So I'm not going to open the door and testify about it. That's why I answered no.

Q. I'm going to -- I'm not sure I'm -- if either you know -- either you have some information that somebody has -- that Mr. Fokas here has communicated this thing to a third party or you don't.

A. Right.

Q. I'm asking you what that is and who that person was?

A. I believe that I have a good faith basis that that sort of information was communicated to Kevin Carroll.

Q. To Kevin Carroll.

A. But I'm not going to tell you who because it's attorney-client/work product privilege, and it was after the anticipation of the lawsuit.

Q. Because your lawyer told you this? Is that what you're telling me?

MR. FARRIER: You know, Stanley, this is sort of new territory to me. I'd like to consult with him on this so I can understand whether or not to instruct him not to answer.

MR. BARNETT: Okay. All right. Why don't we -- why don't we keep going. We'll set that aside. Let me make a big note 'cause I'll forget. Attorney-client privilege.

Q. But it's Mr. Carroll is the guy. That's the person that you were speculating this was communicated to?

A. You use the word "speculating." I

believe it's -- I believe -- I believe things were said to him.

Q. I beg your pardon?

A. You're the one that used the word "speculating." I believe that things were said to him, and I'm looking forward to taking his deposition to find out.

Q. Okay. You believe it. All right. Okay. So he's the guy. All right. But you've not spoken --

A. He's one of them, yes.

Q. All right. And you haven't spoken to Justin Hanson about this.

A. No.

Q. And you said you don't speak to your aunt. So it's not her.

A. Right.

Q. Okay. I really don't understand paragraph 153. You're going to have to explain that to me, if you can.

"Athan Fokas published false defamatory statements to third parties that he was not seeking a mortgage and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project."

What do you mean by that?

A. Well, you got to read the second part of that sentence.

Q. Well, no. It's a standalone -- it's a standalone statement. You're saying he published to third parties that he -- by Athan, that's him; right? Athan Fokas is the "he," was not seeking a mortgage and/or other financial assurances from Phillip and/ or Spiros Ferderigos for the proposed project.

A. "While at the same time filing a lawsuit demanding that we mortgage and plus or provide financial assurances of their interests for Athan Fokas' benefit for the proposed project."

So, in other words, he's making me look like I'm a stupid businessperson and a stupid lawyer by saying that the project isn't happening because of something I failed to do. I think it's pretty clear.

Q. Well, that's not quite what it says; but he's filed -- he's filed a lawsuit. That's a standalone statement. So who did he communicate to? What -- who are these third parties --

A. Well, the --

Q. -- that he was not seeking a mortgage

and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project? Who did he communicate that to do you say?

A. Well, discovery will hopefully reveal that.

Q. Same answer. You don't know right now.

A. Sitting here today, no, no evidence.

Q. All right. Direct or indirect, right?

A. Sitting here today, no evidence.

Q. And what harm have you suffered if this has been communicated to third parties --

A. That same --

Q. -- that you are aware of?

A. The same answer as far as reputation. Damage to reputation.

Q. It would damage your reputation?

A. As a lawyer and as a businessman, yes.

Q. Okay. So every time somebody says to you if you're out there in the rental business. All right. Every time somebody says to you, "You didn't -- you're not complying with our agreement for our short-term rental. That agreement says that you were supposed to provide fresh towels every day, and you didn't do it. You're not --

EXHIBIT D

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS

DATE: NOVEMBER 19, 2015

TIME: 9:37 A.M.

LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A. The other day --

THE WITNESS: The other day I had to come here to the office, to Phillip and Spiros.

THE INTERPRETER: The interpreter did not hear what you said or understand.

A. I came late, around 12; and the next day I received a paper saying that I had to go to the office where Spiros -- Spiros is. I asked them to cancel it or to reschedule because I came from a very long trip, but they did not do it.

Q. And the day of the week that you returned, was it a Friday?

A. I don't remember exactly.

Q. Okay. Okay. All right. Mrs. Fokas, did you -- before you went to Greece, did you discuss with your son Athan --

A. Yes.

Q. -- some allegations that you heard had been made about him?

A. Yes.

Q. And what were those allegations?

A. He was playing Tavli with his father. I told my -- my son to be very careful. I heard that they're going to come after you, and they're going to -- they're going to say things against

you.

They're going to say things about you about the insurance. They're going to say that you caused the fire, about a bicycle, and that you received money from insurance; or that he went skiing with his children. He got hurt. He pointed insurance. Things like that.

Q. You said a fire. Was there a specific place that he was accused of starting a fire?

MS. THIEM: Objection.

A. Yes. The whole town. They're going to accuse you of starting the fire -- fire there.

Q. And who was -- who were the people that you thought might accuse your son of these things?

MR. BOWERS: Object to the form.

A. His cousin. They were accusing him. They were going to destroy him.

Q. What are their names?

A. Spiros and Phillip Ferderigos.

MR. BARNETT: Do you want to chat with me?

MR. HASTIE: Just for purposes -- I meant to bring it up ahead of time, and I didn't; and I just want to set things out. This is

technicalities.

A. Okay.

Q. You didn't seem bothered by it.

Okay. All right. Let's go forward.

A. Okay.

Q. This discussion you had with your son, do you remember what month this was?

A. I don't remember exactly. Could have been April or May.

Q. Okay. It was in the spring.

THE WITNESS: Uh-huh, in the spring.

A. Yes.

Q. And where did you learn that these allegations might be made?

MR. BOWERS: Object to the form.

A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.

It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"

Q. You referred -- you said "them." "She worked with them," I think you said.

A. Yes.

THE INTERPRETER: I'm telling her to please state in sentences so that I can translate.

A. Yes. She has -- she does work with her cousins. They have a store together or stores. They have businesses together.

Q. And, again, the cousin's names are?

A. Spiros Ferderigos, Phillip Ferderigos, and Iakovos Ferderigos.

Q. When your daughter said that these things might be -- these allegations might be made against your son and that it would destroy him --

A. She was very afraid, and I was very afraid.

Q. Yes. Did your daughter say that it was one person or multiple people that would do these things?

MS. PHILLIPS: Objection.

A. She said her cousins will do it. Her cousins.

Q. Okay. Thank you. And those are the same people you just named; right?

MR. BARNETT: Ma'am, are you there? Madam interpreter?

(Pause in proceedings.)

MR. BARNETT: You there?

THE INTERPRETER: Yes. I could hear everything you said. You could not hear me.

MR. BARNETT: Yes. There was a little blip there.

THE INTERPRETER: I don't know what happened, but I never left. What was the last question?

MR. BARNETT: You know, Madam Court Reporter, do you mind reading it?

(The pending question was read back by the reporter.)

MR. BARNETT: And I think we had an answer.

THE REPORTER: That was the answer we couldn't hear.

A. Yes. It was -- it was her cousin.

Q. Okay. All right.

Q. Does she -- do you know what the specifics of the accusations are?

A. For fire, insurance, things like that.

Q. But Rania did not tell you these things.

A. Not for the attorney.

Q. Who told you these things?

A. Either the attorney or my son.

Q. Okay. Before today had you ever told anyone that Rania was the source of the information that you had about destroying Athan Fokas?

A. No. I said I was -- I was forced to say this to my son when he came here.

Q. Today?

A. Not today. When I came back -- when I came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

false insurance claims?

A. Yes. He told me that these -- the -- the accusations against Athan.

Q. And had your son Athan previously told you that Phillip and Spiros were accusing him of setting the fire at 229 King Street and filing false insurance claims?

A. I said that because my daughter told me. Are we going to repeat the same thing?

Q. No. But I want to know did your son Athan ever tell you that Phillip and Spiros were accusing him of those things?

A. Athan said that they are looking for things to accuse me.

Q. And --

A. And I -- and I -- and I heard them -- I heard the things from my daughter; and I told him, "They're accusing you of insurance."

Q. So no one other than Rania told you that Phillip and Spiros were accusing Athan of these things?

A. Nobody else.

Q. And then you heard those same things, though, from Mr. Barnett; correct?

A. I heard those things, as I said before,

EXHIBIT E

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ATHAN FOKAS
VOLUME II

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, JACOB FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: ATHAN FOKAS

DATE: FEBRUARY 10, 2017

TIME: 2:10 P.M.

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Ruth@clark-associates.com

APPEARANCES

ON BEHALF OF PLAINTIFF:
LAW OFFICE OF STANLEY E. BARNETT
BY: STANLEY E. BARNETT
305 North Civitas Street
Mount Pleasant, SC 29464

ON BEHALF OF PHILLIP FERDERIGOS:
K&L GATES
BY: RICHARD A. FARRIER, JR.
134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF JACOB FERDERIGOS:
WILLS MASSALON & ALLEN
BY: JOHN MASSALON
97 Broad Street
Charleston, SC 29401

ON BEHALF OF SPIROS FERDERIGOS:
BARNWELL WHALEY PATTERSON & HELMS
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
Charleston, SC 29401

ALSO PRESENT:
LESLIE LENHARDT
PHILLIP FERDERIGOS
JACOB FERDERIGOS
SPIROS FERDERIGOS

INDEX

WITNESS	PAGE
ATHAN FOKAS	
BY MR. COOKE	323
BY MR. FARRIER	400
BY MR. MASSALON	444
BY MR. BARNETT	454
BY MR. COOKE	458
CERTIFICATE OF REPORTER	470

EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
EXHIBIT NO. 36	EMAIL WITH ATTACHED ACCOUNTING	323
EXHIBIT NO. 37	EMAIL WITH ATTACHED DRAWINGS	326
EXHIBIT NO. 38	WEBSITE SCREENSHOT	337
EXHIBIT NO. 39	EMAIL WITH ATTACHED PERSONAL TAX RETURNS	342
EXHIBIT NO. 40	EMAIL AND ZEUS TAX RETURNS	347
EXHIBIT NO. 41	NORTH TOWNE TAX RETURNS	349
EXHIBIT NO. 42	FOREIGN DOCUMENT	351
EXHIBIT NO. 43	FOREIGN DOCUMENT	352
EXHIBIT NO. 44	FOREIGN DOCUMENT	356
EXHIBIT NO. 45	FOREIGN DOCUMENT	356
EXHIBIT NO. 46	FOREIGN DOCUMENT	361
EXHIBIT NO. 47	CONTRACT OF SALE	375
EXHIBIT NO. 48	CORRESPONDENCE	381
EXHIBIT NO. 49	EMAIL STRING	433
EXHIBIT NO. 50	BANK ACCOUNT DETAIL SCREENSHOT	449
EXHIBIT NO. 51	EMAIL WITH ATTACHED COMMITMENT LETTER	454
EXHIBIT NO. 52	EMAIL STRING	455
EXHIBIT NO. 53	TEXT MESSAGES	466

ATHAN FOKAS,
being previously duly sworn, testified as follows:

MR. COOKE: We're back on the record. Just to make sure we're clear on what we're doing here, we had had scheduled for this afternoon a deposition of Justin Hansen. By agreement we're going to postpone that, and we'll work with you on a time. And we had also intended to depose Kevin Carroll at some point. Is it all right if we just agree that we'll work with you on a time?

MR. BARNETT: Definitely, yes, right.

EXAMINATION

BY MR. COOKE:

Q. Okay. I'm going to backtrack only as little as I can possibly do and cover things that were already covered before, but here is an accounting that you have previously provided.

(Exhibit No. 36 marked for identification.)

Q. Who prepared this accounting?

A. I think Joe Tucker.

Q. So this is an accounting of just the account of the architectural fees that were paid?

A. And some engineering.

Q. Do these dates on the right, is that the

Page 436

for the notes in the first page.
Q. Yes or no?
A. I'm not sure. I'm not sure how that works. But the LLC was the reason they had the stream of money that would pay for the note in the first place.
Q. If you don't know, you don't know.
A. Okay.
Q. Did you tell your sister Rania that Phillip and Spiros promised to give you a mortgage and that they broke that promise?
A. I don't know.
Q. I'm going to ask you that same question as to several people. Did you ever tell that to Maki Nikatos?
A. I don't know.
Q. Did you ever tell that to Irene Fokas?
A. I don't think so.
Q. Did you ever tell Justin, the manager?
A. Can you repeat that question?
Q. Yes, that Phillip and Spiros promised to give you a mortgage and they broke the promise.
A. That was the original agreement that we had with Southcoast. We all agreed to sign on the mortgage.

Page 437

Q. Did you ever tell Justin, the manager at Old Towne, that Phillip and Spiros made an original promise to give you a mortgage and that they broke that promise?
A. I don't think so.
Q. Okay. Same question as to Kevin High.
A. I don't think so.
Q. I'm going to ask you that as to Spiro Fokas.
A. My father?
Q. Yes.
A. I don't think so.
Q. All right. Now, I'm going to ask you a question that is like that pertaining to those same individuals. Did you ever tell your sister Rania that Phillip and Spiros are stupid?
A. I don't think so.
Q. Did you ever tell that to Maki Nikatos?
A. I don't think so.
Q. Did you ever tell that to Irene Fokas?
A. Ditto.
Q. You did not tell that to Irene Fokas?
A. I don't think so.
Q. How about Kevin High?
A. I don't think so.
Q. How about Spiros Fokas?

Page 438

A. I don't think so.
Q. How about Justin, the manager?
A. I don't think so.
Q. All right. Next question, same program, did you ever tell your sister Rania that Phillip and Spiros are liars?
A. I don't think so.
Q. Same question is to say Maki Nikatos.
A. I don't think so.
Q. I'm going to read these names, and at the end you can just say, I don't think I told any of those people that, okay? It's quicker.
A. That would be quicker.
Q. Yes. I don't know if I said Maki Nikatos.
A. You did.
Q. Irene Fokas?
A. You did.
Q. Justin, the manager?
A. You did.
Q. Kevin High?
A. Yes.
Q. Spiros Fokas?
A. All those, I don't think I said any of those things about Phillip.
Q. Okay. Or how about Spiros?

Page 439

A. Or Spiros.
Q. All right. Did you and Kevin High ever talk or communicate about preferred advertising on your website?
A. No.
Q. I remember Dawes identifying this, and so I apologize if I'm asking a question related to Kevin High and his buying the property.
A. Your apology is accepted.
Q. I was apologizing to these guys, not to you.
A. Okay.
Q. What happened with Kevin High and his buying the property?
A. His buying what property?
Q. 493 King.
A. He did not buy 493 King.
Q. I know. But originally he was on the contract for sale, and then in a modification he was taken out as a purchaser.
A. Yes, we talked about originally he showed me the property and he would like to be a partner in the property.
Q. Okay.
A. But that didn't happen.
Q. Okay. Going to show you a paragraph out of

Page 440

our answer and counterclaim in this suit.
A. Okay.
Q. It is paragraph 71 out of our answer and counterclaim. Have you got a copy?
MR. BARNETT: I do, yes.
THE WITNESS: Could I ask you a question? How long do you think you will be deposing me because my wife wants to know.
Q. I think this is my last question, but it depends on your answer.
A. Okay. Tell me what answer you would like to hear.
Q. Look at paragraph 71 and read it to yourself, please.
A. I see it. I read it.
Q. Have you read both pages?
A. Yes.
Q. Do you agree in full or disagree in full with the allegations of that paragraph?
A. I disagree in full with the allegations of this paragraph.
Q. Is there anything in this paragraph which you would agree with?
A. We were sitting -- our kids were at dance practice one time at the church hall, and Phillip I

Page 441

think came and sat at the table where I was sitting; and I think we were drinking tea that day, so we had tea, and I don't remember anybody saying pussy or ignorant or moron. This may be how -- this may be what Phillip said happened, but this is not what happened. He said I accosted him, and I remember just sitting down at the table, drinking tea. And there were a lot of people at the table as well. It wasn't just the two of us.
Q. Do you agree that this is the only -- I'm sorry. You've already testified that there were many, many conversations about the Old Towne Suites project and about the mortgage. You've already testified about that, right?
Is that a yes?
A. That we've already testified about the --
Q. You already testified that there were --
A. Many conversations.
Q. -- many conversations concerning the mortgage.
A. Right.
Q. In this conversation what is being alleged is that Phillip and you had a conversation in which he said, I am not going to mortgage the property.
A. I don't remember that conversation.

Page 442

Q. You don't recall that conversation occurring at church at some point?
A. No.
Q. Okay. You don't recall a conversation that occurred at church during which Phillip said he was not going to guarantee the property?
A. No.
Q. Did you have a conversation with Phillip, I mean a verbal conversation with Phillip, not writings because we've got these writings here; but did you ever have a verbal conversation with Phillip during which he said, I am not going to mortgage the property and I am not going to guarantee anything related to this project?
A. No.
Q. Do you recall anyone else that was at the table that day?
A. I think it was -- it might have been Tony Forsberg, he was -- his kids were at dance as well. It might have been -- what is his name? There were a few people there, like Stephanie Moskos might have been at the table. She usually sat there. And there's a guy named Thanasi Tsimidilis, his wife is usually at that table as well.
Q. All right.

Page 443

A. And I think Tula Zecopoulos was there as well.
Q. Okay. Why don't you go ahead and spell those last two names now.
A. Zecopoulos is Z-E-C-O-P-O-U-L-O-S.
Q. Okay.
A. Tsimidilis -- I have to write it down.
THE REPORTER: Write it on here for me, that would be perfect (indicating).
THE WITNESS: I think that's how you spell his last name. I don't know his wife's name, but that's -- his name is Thanasi Tsimidilis. Thanasi is T-H-A-N-A-S-I.
Q. I just want to make sure I understand your testimony. There's a difference between a recollection and an educated guess or probability.
A. Right.
Q. Are you saying you actually remember these people being there or that these are the typical people that were there for this event.
A. Well, usually they have the -- the families whose kids do dance, we all sit at one table, and it's typical the people that always sit there. And Stephanie Moskos is always there. Tula is usually there. I think she was sitting to my -- no, I

Page 460

Q. So do you have an email like this where you sent that commitment letter to Phillip and Spiros?
A. I haven't seen it. I don't know. Maybe I gave that to them in person, I copied it and gave that to them in person, but I don't remember.
Q. Or might you not have given it to them at all?
A. No, they would definitely have known that we received the million dollars or we would have not gone forward.
Q. I thought you said yesterday that you may have relied on Jacob to inform his side of the family.
A. To give it to them. If I did, I made a copy of it, gave it to Jacob, Jacob might have given it to his brothers; but we all knew about it because we were excited that we got the new loan, and we talked about it at our church gatherings as well.
Q. I noticed that you, in this email where you are introducing the letter, you do refer to the term of it, that is, you say that you talked the banker into getting rid of the five-year balloons and fixing it at 5 percent for the life of the loan. Is there any other email or other communication where you called Spiros's attention

Page 461

to the collateral required in this commitment?
A. I'm sure we talked about it, but I don't know if there are other emails out there. I would have shown all the emails.
Q. And how soon after this email did Ms. Haines issue the closing papers?
A. I'm not sure.
Q. Okay. You were shown Exhibit 52 which is an email from Pete Paulatos to Spiros, correct; and this was evidently sent to him around November 19, 2014.
A. Correct.
Q. Now, when did you first see this email?
A. I guess maybe last -- I don't know, couple days ago.
Q. So you've never seen that before?
A. No.
Q. Okay. Do you remember this morning seeing Exhibit 3 to the deposition of Mr. Odom?
A. Okay.
Q. Look at the page that's numbered 3 at the bottom.
A. Okay.
Q. There's an email from you to Jeff Odom dated November 20, 2014. Do you see that?

Page 462

A. Yes.
Q. It says, hey, Jeff, check out the email below. It seems that we only need $1,750,000 now. Look at the math below and let me know if it makes sense. Did you send that email?
A. Yes.
Q. And the forwarded message was a message from Spiros to you and Jacob and -- well, to you and Jacob with a copy to, evidently, himself and to Phillip; do you see that?
A. Yes.
Q. And it's regarding payments on loan, and you see it begins on the next page, Phillip is working on the agreement and anticipates, and so forth?
A. Yes.
Q. And then do you see about a third of the way down he says, here is the email from my accountant.
A. Correct.
Q. Do you see that?
A. Yes.
Q. All right. Now, compare the email that he quotes with the email that you're now saying you saw for the first time this week.
A. The email that I saw for the first time this week was the email from Pete Paulatos to Spiros.

Page 463

Q. Right.
A. The content was the accountant that we had no clue who the accountant was until Pete showed us the email.
Q. Yes. So do you agree that what Spiros forwarded to you in this email back on November 20, 2014, is essentially the same email that Pete Paulatos sent him on November 19?
A. Well, it's not the same email because he had other words up here, ha, yes, typo, 1.75 million, you are awesome, glad to know I was close, we are just going to do 7 point -- might have been 1.75 million.
I don't know how many other emails there are about Pete Paulatos talking about the project with Spiros or how many times they talked about the project with Spiros, but this is the first time that I knew that Pete Paulatos was involved in this case.
Q. But maybe I misunderstood the thrust of your being shown this exhibit. I thought that maybe it was to try to show somehow that Spiros had hidden this information from you, but I just want to make sure that we agree that he forwarded the substance of Mr. Paulatos's email to you on November 19,

Page 456

Q. Do you know whether your cousin Spiros is a close friend with Mr. Paulatos?
A. They're childhood friends and we go to church together and we often see each other.
Q. All right. Now, John Massalon asked you some questions about your complaint and your allegations against Jacob. I'm not going to re-ask you those. Before this lawsuit was filed, when Phillip and Spiros were telling you they did not want to go forward with the deal, did you discuss with Jacob the possibility that you might file the lawsuit?
A. Yes.
Q. Did you tell Jacob that you did not want to join him in the lawsuit?
A. Yes.
Q. Did you ask Jacob to enter into some sort of an agreement that if his cousins agreed or were required to go forward with the project that he would go forward with the project?
MR. MASSALON: I object. That's settlement discussions.
THE WITNESS: I think so. I think I did.
Q. What did he say?

Page 457

MR. MASSALON: Same objection.
THE WITNESS: He agreed to go forward with the project.
Q. Did he refuse to enter into an agreement?
MR. MASSALON: Same objection.
THE WITNESS: He would have to have the agreement from his brothers to have an agreement.
Q. Okay. So he wouldn't enter into an agreement unless his brothers said it was okay.
A. Yes.
Q. All right. Have you ever told anyone, I won't borrow Richard's list of people, but anyone other than your cousins -- I'm not asking you what you told your cousins.
A. Okay.
Q. Did you ever tell anyone else other than your cousins that Phillip was a bad businessman, and by that I mean a bad businessman or a really, really bad business -- any language at all disparaging his skill as a businessman?
A. No.
Q. Did you ever say that kind of thing in any words about your cousin Spiros?
A. No.
Q. Did you ever say that thing by whatever

Page 458

words about your cousin Jacob?
A. No.
Q. Have you ever accused your cousins -- well, take them one at a time. Have you ever said to any person other than your cousins that Phillip is dishonest in any way?
A. No.
Q. By whatever words.
A. No.
Q. Spiros, did you ever tell anybody that you thought Spiros was dishonest?
A. No.
Q. Did you ever tell anybody that you thought Jacob was dishonest?
A. No.
Q. Did you ever tell anybody that this project to expand the suites at 229 King Street was not going forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant?
A. No.
MR. BARNETT: That's all I have.
MR. COOKE: I've got a few follow-up.
BY MR. COOKE:
Q. This is Exhibit 51. Take a look at that. This is dated September 24, 2014. Says, well, I

Page 459

don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5 percent for the life of the loan, which is unheard in the current banking industry.
Do you now agree that you did not, in fact, talk your banker into getting rid of the five year balloons?
A. Yes. I misunderstood. So I always knew it was a 20-year loan for five year balloons, but then when I went back and reread something, maybe the commitment letter, maybe I -- for a second I interpreted it that way, I shot him out an email -- I don't know if this was around the time when I was at Zero George with all those guys and we were drinking, but definitely it was the original loan that I thought it was, which was a 20-year with five balloon payments.
Q. Okay. And then you did attach a copy of the amended or the new, I guess, commitment letter.
A. Okay.
Q. So my question is, as we've discussed many times, there was another commitment letter that was issued on or about February 5, 2013, for a $1 million loan, correct?
A. Correct, yes.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2017 FEB 28 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Stan Barnett, hereby certify that true and correct copies of Plaintiff's Motions for Partial Summary Judgment as to the Counterclaims by Spiros Ferderigos and Phillip Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 28th day of February, 2017, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

Stan Barnett

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)
)
) CASE NO.: 2015-CP-10-3919
)
ATHAN FOKAS)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533	M. Dawes Cooke,Jr., Bar No. _____
Address:	Address:
305 North Civitas St., Mt Pleasant, SC 29464	288 Meeting St., Charleston, SC 29401
Phone: 843-708-4887Fax _____	Phone: 843-577-7700 Fax_____
E-mail: stan.barnett@yahoo.com Other: _____	E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Partial Summary Judgment
Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Stan Barnett 2/28/17
Signature of Attorney for ☒ Plaintiff ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $_____
☐ CONTESTED – AMOUNT DUE: $_____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos. Defendant(s).	)	Case No.: 2015-CP-10-3919 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNTERCLAIMS OF SPIROS FERDERIGOS**

FILED
2017 FEB 28 PM 1:3
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: M. Dawes Cooke, Jr., Esquire, Attorney for Defendant:

Pursuant to Rule 56 of the SCRCP, the Plaintiff hereby moves for summary judgment as to the counterclaim by Defendant Spiros Ferderigos for Defamation set forth in his Answer filed in the above captioned case. The basis for this motion is that there are no genuine issues of material fact as to the allegations of the counterclaim, specifically that Plaintiff published to any third party the alleged defamatory statements set forth in the counterclaim.

This motion is supported by the attached exhibits:

Exhibit A: Supplemental Affidavit of Plaintiff, Athan Fokas

Exhibit B: Answers to Interrogatories by Spiros Ferderigos

Exhibit C: Deposition excerpt of Spiros Ferderigos

Exhibit D: Deposition excerpt of Irene Fokas

Exhibit E: Deposition excerpt of Athan Fokas

Respectfully submitted,

Stan Barnett
305 North Civitas Street
Mount Pleasant, S.C. 29464
(843) 884-1031/(843) 708-4887
stan.barnett@yahoo.com
Attorney for Plaintiff

February 28, 2017
Mount Pleasant, S.C.

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919

AFFIDAVIT OF ATHAN FOKAS

After being sworn, Affiant testified as follows:

1. I am Athan Fokas, a resident of Mount Pleasant, South Carolina and the Plaintiff in this case.

2. At no time, have I ever told anyone that the Defendants, Phillip and Spiros Ferderigos, had published defamatory remarks about me as they allege in their counterclaim in this case. When I learned that they had done this, I commenced a lawsuit against them for damages arising from these defamatory statements. That case is Case No. 2015-CP-10-3819.

2. Sometime in March or April of 2015, my mother told me in several different conversations that Spiros and Phillip Ferderigos were making defamatory statements accusing me of causing the fire at Old Towne Restaurant and of instances of insurance fraud. She commenced the conversation with me. I did not ask her about such statements or tell her I thought they were doing this before she engaged me in conversation. The statements concerning the allegations by Spiros and Phillip Ferderigos about me in this regard are false.

FURTHER AFFIANT SAYETH NOT.

ATHAN FOKAS

SWORN TO before me
this 23rd day of February 2017.

Notary Public for South Carolina
My Commission Expires on: 7/18/26

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3919
ATHAN FOKAS, Plaintiff, v. PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS, Defendants.	**SPIROS FERDERIGOS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

NOW COMES Defendant Spiros S. Ferderigos, by and through counsel, and answers Plaintiff's First Set of Interrogatories as follows:

Defendant states that these answers are complete and responsive in accordance with his understanding of the Interrogatories, as drafted, and are based upon records or other information in his possession, or reasonably available to him at the time they were made, and that if additional or different information is subsequently discovered or brought to his attention during the pendency of this cause which renders any initial Answer incomplete, incorrect or otherwise subject to supplementation, he will do so as required by the South Carolina Rules of Civil Procedure.

Defendant further states that in preparing and making these answers, he has not accepted or acquiesced in the purported directions, conditions or definitions imposed at the time the Interrogatories were propounded by Plaintiff, except and to the extent that the same may have been consistent or in conformity with his understanding of the applicable discovery rules.

GENERAL OBJECTIONS

Defendant hereby incorporates by reference the General Objections attached hereto as Exhibit A. All of these General Objections shall be deemed continuing throughout the responses to the specific Interrogatories that follow even when not further referred to in said responses. Defendant also reserves the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein, as discovery in this case is ongoing.

1. Defendant objects to each interrogatory to the extent it seeks information that constitutes evidence or reflects confidential communications between Defendant and Defendants' attorneys.

2. Defendant objects to each interrogatory to the extent it seeks information that constitutes evidence or reflects trial preparation materials or work product of Defendant or Defendants' representatives, agents, or attorneys. Defendant objects to each interrogatory to the extent it seeks information already available to or equally available to Defendant.

3. The following answers are based upon information presently available to Defendant and are made without prejudice to the rights of Defendant to utilize subsequently discovered information.

4. By making a Answer to any interrogatory or document request, Defendant does not intend or mean to waive the attorney-client privilege, the work-product rule or any other privilege, objection or other limitation upon discovery as to that interrogatory or as to any other present or future request for discovery.

5. All Answers to the interrogatories and Answers to the requests for production of documents are made without the waiver of these general objections, or the specific objections which are hereinafter set forth.

6. The foregoing objections are general ones applicable to all categories of information to be produced. The following Answers to any particular item of information should be deemed to include these objections and categories.

7. As to all discovery Answers: Defendant reserves the right to introduce and rely upon any documents or materials listed and information provided in any other party's discovery Answers, or any materials introduced or information obtained at any deposition of any party or witness. In addition, Defendant reserves the right to introduce any documents or materials as rebuttal, if necessary.

ANSWERS TO INTERROGATORIES

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

ANSWER:

1) Phillip Ferderigos – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

2) Jacob Ferderigos – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

3) Spiros Ferderigos – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

4) Athan Fokas – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

5) Jeffrey Odom – Plaintiff should have contact information for Mr. Odom as Mr. Odom was Plaintiff's loan representative from Southcoast Community Bank.

6) Irene Fokas – See Irene Fokas Deposition and Affidavit(s) for written or recorded statements, which Defendant believes are already in the possession of Plaintiff.

7) Spiros Fokas – No Statement taken.

8) Gerasimos Nikatos – See Affidavit of Gerasimos Nikatos for written or recorded statements which Defendant believes are already in the possession of Plaintiff.

9) Rania Nikatos – See Affidavit of Rania Nikatos for written or recorded statements, which Defendant believes are already in the possession of Plaintiff.

10) Kevin Carroll – No Statement taken.

11) Justin Hansen – No Statement taken.

These individuals will testify regarding any knowledge they may have concerning the allegations in the pleadings in this case. Defendant reserves the right to call at trial any witness identified by any other party.

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

ANSWER: See Defendants' Answers/Counterclaims and Answers to Plaintiff's Request for Production and accompanying documentation. See Defendants' Response to Request No. 1 and attached Bates stamped documentation.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: To be supplemented.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the defendant as alleged in Defendants' counterclaims in this case.

ANSWER: Any and all damages to be determined by a jury. This includes, but is not limited to, any expenses paid toward the proposed project being considered, any potential loss of income had the proposed project being considered been built (had it not been for Plaintiff's wrongful actions), any damages that may be awarded by a jury for Plaintiff's defamatory statements, and actual and punitive damages to be determined by the jury for Plaintiff's conduct. See also Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce.

5. List the names and addresses of any expert witnesses whom the defendant proposes to use as a witness at the trial of this case.

ANSWER: To be supplemented in accordance with the Rules of Civil Procedure. Defendant reserves the right to call a testifying expert at trial.

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

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

ANSWER: See Answer No. 1, Answer No.7, and Defendants' Answer and Counterclaims.

7. List every person to whom the defendant claims plaintiff published defamatory statements concerning this defendant and for each describe the date, place, time and manner of such publication and the substance of such defamatory statements defendant alleges plaintiff made to each such person.

ANSWER: Plaintiff published libel and slander per se, which are actionable per se and defamatory, to the following individuals:

1) Jacob Ferderigos – See Defendants' Answer/Counterclaims and Answers to Plaintiff's Requests for Production.

2) Justin Hansen – Upon information and belief, Plaintiff has inquired of Mr. Hansen if Defendant has accused him of inappropriate involvement regarding a fire at 229 King Street and/or has informed Mr. Hanson that Defendant is accusing Plaintiff of inappropriate involvement regarding the fire at 229 King Street. The exact date, place, and time of the statement is not known to Defendant at this time.

3) Kevin Carroll – See Defendants' Answer/Counterclaims and Answer to Plaintiff's Requests for Production. In addition, upon information and belief, Plaintiff informed Mr. Carroll that the proposed project being considered was not moving forward because Defendant was not willing to give his brother a mortgage and that Plaintiff was not seeking a mortgage from Defendant. Plaintiff defamed Defendant by advising Mr. Carroll that Defendant had made promises to him and that Defendant was breaching those promises to him and, further, that the proposed project was not being built because it was the

Defendants' fault. Plaintiff's statements to Mr. Carroll are defamatory per se and depicted Defendant as an unfit and stupid business person (i.e., that Defendant was unfit in his business or profession). Plaintiff also continuously informed Mr. Carroll that the proposed project was going to be built long after Plaintiff knew that the proposed project was not moving forward because of Plaintiff's own misrepresentations, while, at the same time, Plaintiff defamed this Defendant, blaming him for the Plaintiff's own failures to obtain the necessary funds to move forward with the proposed project. Plaintiff further misrepresented the circumstances of the proposed project falling apart and purposely and intentionally attempted to cast this Defendant in a bad light and in a defamatory manner.

4) Irene Fokas – See Deposition and Affidavit(s) of Irene Fokas, which Defendant believes are already in Plaintiff's possession.

In addition, upon information and belief, Plaintiff defamed this Defendant to numerous individuals, including to Defendants' brother, Jacob Ferderigos, Plaintiff's mother Irene Fokas, his father Spiros Fokas, his sister Rania Nikatos, and Old Towne Restaurant's Manager, Justin Hanson, by telling these individuals that the proposed project fell apart because Defendant Phillip Ferderigos could not eat for free at Old Towne, because Defendant is a stupid business person/that he has no business sense, because Defendant is jealous of him, because Defendant is a stupid and unwise business person. Plaintiff has also told these witnesses that Defendant made a promise to him to mortgage 229 King Street for Plaintiff's benefit and that Defendant broke such promise to him. Plaintiff published all of these statements with actual malice and ill will and intent to harm Defendant in an effort to extort and force Defendant to give him a mortgage over 229 King Street (when Plaintiff knows Defendant made no such promise) and to make other

concessions to Plaintiff, when Defendant never agreed to do any of those things. Plaintiff libeled this Defendant by stating Defendants (Phillip Ferderigos and Spiros Ferderigos) "have no business sense." Defendant further incorporates his Answer and Counterclaims, Defendants' Answers to Request for Production, and the libelous emails forwarded from Plaintiff to third parties concerning this Defendant.

8. For each of the instances of alleged publication of defamatory statements described by this defendant in Answer to interrogatory number 7, describe the exact manner in which this defendant learned of such publication and include the date when defendant so learned of each alleged publication.

ANSWER: See Answer No. 7.

9. For each instance in which defendant alleges plaintiff made misleading or untrue statements to this defendant as alleged in this Defendants' counterclaims, describe the date, manner, extent and nature of any actions taken by this defendant in reliance on each of said alleged misrepresentations.

ANSWER: See Answer No. 7, Answer No. 10, and Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

10. List all damages this defendant claims to have suffered as the proximate cause of any act of the plaintiff identified in Defendants' answer and counterclaims and for each alleged damage identify the nature of the loss, the date of the loss, the value defendant claims it represents in terms of money, the action of plaintiff the defendant claims caused the loss and way in which said alleged loss resulted from the alleged action of plaintiff.

ANSWER: See Defendants' Answers and Counterclaims. In addition, Defendant expended personal funds as a result of the Plaintiff's misrepresentations to the detriment of

Defendant. Defendant has also lost money and profit based on Plaintiff's wrongful actions. For the value it represents in terms of money, that is a determination to be made by the jury. Defendant further refers Plaintiff to Answer No. 4. Plaintiff has intentionally caused and continues to try to cause intentional and malicious harm to Defendants' business and reputation, which directly impacts his livelihood. Plaintiff has also filed frivolous lawsuits against this Defendant and caused harm to Defendant as set forth in Defendants' Answer and Counterclaims. Plaintiff is liable for actual and punitive damages to be determined by a jury.

11. With respect to the counterclaim by defendant for abuse of process, identify any demand for a collateral advantage made by plaintiff associated with any legal process defendant claims was improperly brought and list the date, the way such demand was communicated and describe the substance of said demand for collateral advantage. For each such communication, list all proof defendant claims proves the communication was made.

ANSWER: See Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce. In addition, Plaintiff has filed frivolous lawsuits against this Defendant in an effort to force Defendant to give him a mortgage and agree to other terms this Defendant never agreed to. The Plaintiff boasted that his lawyer was working on a contingency and his filing a frivolous lawsuit would not cost him any money, whereas it would cost Defendant large sums of money to defend against Plaintiff's frivolous claims. Plaintiff followed through with his threat and abuse of process, and the existence of these two lawsuits prove Defendants' abuse of process claim against Plaintiff. Plaintiff is demanding that this Defendant share in his risk of the project and underwrite his portion of the proposed project. This is a risk that Defendant never agreed to bear and Defendant does

not agree to bear. Plaintiff has always been responsible for his portion of the proposed project and the Plaintiff cannot use this Defendants' property in order to secure a loan for his benefit. Plaintiff has defamed Defendant and filed frivolous lawsuits against Defendant to try to force Defendant to give Plaintiff a mortgage (for Plaintiff's benefit) and to try to force Defendant to agree to other terms Defendant never agreed to. Plaintiff is improperly using the legal process to try to extort concessions from this Defendant by knowingly filing frivolous lawsuits against this Defendant.

12. Identify the date and circumstances in which defendant became aware of the terms for financing the project to expand the building at 229 King Street as identified by South Coast Bank. If there were separate times and circumstances for the elements of those terms set forth below, identify when and how defendant became aware of the terms related to:

a. A requirement that defendants mortgage their interest in 229 King Street;

b. A requirement that the LLC which operates the suites rental business be obligated to pay the bank on the note;

c. A requirement for a hypothecation agreement.

ANSWER: Defendant objects to Plaintiff's terminology in this Interrogatory. There were no "terms for financing the project to expand the building at 229 King Street" applicable to this Defendant. See Defendants' Answer and Counterclaims. Defendant incorporates and craves reference to his texts/emails.

Defendant objects to this Interrogatory as there was never a "requirement" as this Defendant never agreed to mortgage his interest in 229 King Street for the benefit of the Plaintiff or anyone else; likewise, there was never a "requirement" as this Defendant never agreed that the LLC be obligated to pay any note, and there was never a "requirement" as

this Defendant never agreed to sign a hypothecation agreement. This Defendant never agreed to provide Plaintiff with a mortgage for the proposed project, nor did he agree to the other terms as set forth in this Defendants' pleadings.

a. On or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time Plaintiff demanded Defendant mortgage his interest in 229 King Street. This message was immediately repeated to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage his interest in 229 King Street. See also Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

b. Not until on or about November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing documents were sent to Defendant to be reviewed for the first time.

c. Not until November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing attorney for Plaintiff sent an email that "[t]here will also be hypothecation agreements, I believe." See also Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

13. If this defendant claims that he informed plaintiff he would refuse to mortgage his interest in 229 King Street as part of the financing of the project to expand the building, identify the date and circumstances and means by which this was communicated to plaintiff.

ANSWER: See Defendants' Answers/Counterclaims and Answers to Plaintiff's Request to Produce.

14. Does this defendant claim that he never agreed to mortgage his interest in 229 King Street as part of the financing of the project to expand the building?

ANSWER: Yes, see Answer No. 11 and 12; this Defendant never agreed to mortgage his interest in 229 King Street for the proposed project. There was never an agreement to mortgage Defendants' interest in 229 King Street as part of the financing for the proposed project being considered/explored for new construction above 229 King Street at any time, as further explained below.

In the initial stages of the parties considering/exploring new construction above 229 King Street, Plaintiff sent written correspondence on December 19, 2012, stating that he wanted Defendant to mortgage his interest in 229 King Street. Defendant immediately responded the same day via written correspondence, outright rejecting that he would mortgage his interests in 229 King Street and/or accumulate any debt for the proposed project being considered. (See Defendants Answers/Counterclaims and Answers to Plaintiff's Request to Produce).

With this clear understanding, the parties continued to consider and explore the possibility of the proposed project. It was not until on or about October 17, 2014, a few days prior to Plaintiff unilaterally scheduled a closing for the proposed project still being considered, that Plaintiff, for the first time, informed Defendant (through Jacob Ferderigos) that Plaintiff demanded Defendant provide him with a mortgage against his interest in 229 King Street so Plaintiff can get a loan for his share of the construction costs. For the first time ever, Defendant, on or about October 19, 2014, informed Plaintiff that he would consider providing a mortgage in his interest in 229 King Street on the condition and so long as the Plaintiff signed a side/ancillary agreement that Defendant felt was necessary

to protect his financial interests. Plaintiff refused to sign the side/ancillary agreement Defendant demanded in order to consider mortgaging his interests in 229 King Street. (See Defendants' Answers/Counterclaims and Answers to Plaintiff's Request to Produce).

15. If you take the position that the LLC which operates the suites rental business being obligated to make payment on the note to South Coast Bank would have a material effect on you, explain that effect why you allege this is true.

ANSWER: This Interrogatory is irrelevant. Defendant never agreed to mortgage or guarantee or in any way encumber his interest in 229 King Street for the benefit of Plaintiff or for anyone else. This Defendant was bringing cash to fund his portion of the proposed project outright and this Defendant was looking forward to enjoying the profit that would come from the investment once the proposed project was built. This Defendant never agreed to encumber his interest in the LLC or any income stream that the proposed project would bring. Per the Plaintiff's bank closing documents, the income and/or assets that would be used to pay the Note would include Defendants' own profits from the rental income. Defendant never agreed to such arrangement. Defendant further never agreed to have the LLC pay a Note or to use his rental profits in such a manner. Further, based on the incorrect closing documents, which were never agreed to, having the LLC obligated to make payment on the note potentially exposes this Defendant to personal liability and further potentially interferes with this Defendants' cash flow/profit from the LLC.

Defendant also objects to this Interrogatory as it is confusing. Subject to this objection, Defendant is unable to answer this Interrogatory as the final cost of the proposed project was never established or agreed to by the parties, and, as a result, Defendant cannot state what the income from the rental suites business would be. Defendant further

objects because he never agreed that any payment was to be made by the LLC and never agreed to/was under no obligation to have a payment for a loan required by Plaintiff to be paid out of Defendants' share of the rental suites business.

16. Identify the date and circumstances under which you became aware that the project to expand the building would be for an additional floor over and above what was originally investigated by you, the other defendants and plaintiff.

ANSWER: See Defendants' Answer/Counterclaims and Defendants Answers to Requests for Production. This Defendant craves reference to the texts and emails produced in discovery. Plaintiff represented that the total cost of the project would be less than One Million Dollars and, based on that figure, this Defendant would have been responsible for one-sixth of that amount, something that this Defendant had in cash and was willing to invest at the time for the proposed project. Defendant recalls that he was notified that the costs of the proposed project had ballooned from an estimated $900,000 to well over Two Million Dollars, on or about September 9, 2014.

17. If you disagree that the rental income from the suites rental business would be sufficient to cover the payments on the loan financing the expansion of the building at 229 King Street, explain why that is true and include what you think the shortfall in funds to cover said payments would likely be.

ANSWER: As the final cost of the proposed project was never established, Defendant does not know at this time if income from the rental suites would have been sufficient to cover payments on any loan obtained by Plaintiff to cover his fifty percent (50%) portion of the construction costs. Furthermore, this Interrogatory is irrelevant to this Defendant.

Defendant never agreed to have his share of profits from the rental suites to be used to pay a loan.

18. Do you agree that by the date of the first scheduled closing for the loan from South Coast Bank to finance the expansion of the building at 229 King Street all necessary design and regulatory approvals had been secured to allow the expansion to proceed? If you do not agree, explain why.

ANSWER: Defendant objects to the terminology of this Interrogatory. There was no expansion of the building as the proposed project was for building a new building. Further, Defendant is not aware if all necessary design and regulatory approvals had been secured to build a new building above 229 King Street by the time Plaintiff unilaterally scheduled a closing. However, Defendant knows that the final cost of the proposed project was never known. Decisions still needed to be made and the full cost of the proposed project was still unknown, including decisions/costs for windows and sprinkler systems, both material matters potentially increasing costs significantly. See also Defendants' Answer/Counterclaims and Answers to Request to Produce. Defendant craves reference to the texts/emails between the parties.

[SIGNATURE BLOCK ON THE NEXT PAGE]

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR SPIROS FERDERIGOS

June 1, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answers to Plaintiff's First Set of Interrogatories on behalf of the Defendant, SPIROS FERDERIGOS, has been served via U.S. Mail, on this 1st day of June 2016, to counsel of record as follows:

Stanley E. Barnett, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
P.O. Box 1542
Mount Pleasant, SC 29465

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite #200
Charleston, SC 29401

John A. Massalon, Esquire
I. Ryan Neville, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

Cheryl Reynard
Legal Secretary

EXHIBIT A

GENERAL OBJECTIONS

1. Defendant objects to the Interrogatories to the extent that they seek to impose any obligations beyond those provided for by the South Carolina Rules of Civil Procedure ("Rules") or any other applicable laws or rules.

2. Defendant objects to the Interrogatories to the extent that they seek information contained in documents that were prepared for or in anticipation of litigation, constitute attorney work-product, contain or divulge attorney-client communications, contain confidential or proprietary business information, or are otherwise protected from disclosure under applicable privileges, laws or rules. Defendant does not intend to disclose information that is privileged or otherwise immune from discovery. Disclosure of any protected or privileged information in response to the Interrogatories shall be deemed inadvertent and shall not constitute a waiver or prejudice of any privilege or any other ground for objecting to discovery with respect to any such documents, nor shall such inadvertent disclosure waive or prejudice Defendant's right to object to the use of any such information or documents during this or any subsequent proceeding.

3. Defendant objects to the Interrogatories to the extent that they seek information and documents that are a matter of public record, that are within the knowledge or possession of Plaintiff, or to which Plaintiff's access is equal to that of Defendant, on the grounds that providing such information and documents would impose an unreasonable burden and expense upon Defendant.

4. Defendant objects to the Interrogatories to the extent that they seek information that is overly broad and unduly burdensome for Plaintiff to locate and will result in an

unreasonable expenditure of costs that exceeds the value and relevancy of finding any such information and is disproportionate to the amounts in controversy in this case.

5. Defendant objects to the Interrogatories to the extent that they seek information prior to or beyond the scope of the subject dispute.

6. Defendant objects to the Interrogatories to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. Defendant's answers and objections to the Interrogatories are made without waiving, or intending to waive, but on the contrary preserving, and intending to preserve: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, confidentiality, authenticity, admissibility, or any other proper grounds, as evidence for any purpose, in whole or in part, the use of the responses provided by Defendant, in any subsequent proceeding, or in any trial in this or any other action; (b) the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of the Interrogatories to which Defendant has responded herein; and (c) the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein.

8. No objection or limitation, or lack thereof, made in these answers and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

9. Defendant's answers to the Interrogatories are made to the best of his personal knowledge, information and belief. Defendant's discovery and investigation of the facts relevant to this case are ongoing.

10. All of these general objections shall be deemed continuing throughout the responses to the specific items of the Interrogatories that follow even when not further referred to in said responses. The failure to note the application of the general objections is not a waiver of

EXHIBIT C

Page 1

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF SPIROS FERDERIGOS

Athan Fokas,
Plaintiff,

vs. CASE NO. 2015-CP-10-3919

Phillip Ferderigos, Spiros Ferderigos,
and Jacob Ferderigos,
Defendants.

DEPONENT: SPIROS FERDERIGOS

DATE: NOVEMBER 11, 2016

TIME: 10:00 AM

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SOUTH CAROLINA

REPORTED BY: ANNE BOULEY MEYER, RPR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Office@clark-associates.com

Page 2

APPEARANCES

ON BEHALF OF PLAINTIFF:

SMITH BUNDY BYBEE & BARNETT
BY: STANLEY E. BARNETT
1037 Chuck Dawley Blvd., Suite 100-F
Mount Pleasant, SC 29464

ON BEHALF OF PLAINTIFF:

LENHARDT LAW FIRM
BY: LESLIE S. LENHARDT
1876 Wallenberg Blvd.
Charleston, SC 29407

ON BEHALF OF DEFENDANT SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS
BY: DAWES COOK, JR.
288 Meeting Street
Charleston, SC 29401

ON BEHALF OF DEFENDANT SPIROS FERDERIGOS:

WESTON LAW FIRM
BY: STEPHANIE A. PHILLIPS
761 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, SC 29464

ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS:

K&L GATES
BY: RICHARD A. FARRIER, JR.
134 Meeting Street, Suite 200
Charleston, SC 29401

Page 3

ON BEHALF OF DEFENDANT JACOB FERDERIGOS:

WESTON LAW FIRM
BY: STEPHANIE A. PHILLIPS
761 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, SC 29464

ON BEHALF OF DEFENDANT JACOB FERDERIGOS:

WILLS MASSALON & ALLEN
BY: IRISH RYAN NEVILLE
97 Broad Street
Charleston, SC 29401

Page 4

INDEX

EXAMINATION

BY MR. BARNETT 5
BY MS. LENHARDT 112
CERTIFICATE OF REPORTER 147
DEPONENT CORRECTION SHEET 148

EXHIBITS

Exhibit No. 1 - E-mail chain 20
Exhibit No. 2 - E-mail chain 28
Exhibit No. 3 - Texts 38
Exhibit No. 4 - Answer/counter claims 74
Exhibit No. 5 - Phillip's statement 114
Exhibit No. 6 - Texts 120
Exhibit No. 7 - Affidavit 123

Page 89

Mr. Fokas.
Q. So you are seeking one-sixth of the costs that were spent doing the design and the permitting?
A. That's part of it.
Q. Okay. And you're seeking lost profits?
A. Sure.
Q. Okay.
A. Anything that he's seeking from me, I can seek from him. It's everything across the board. And especially with these horrible lies that he put forward to try to bully me into giving him a mortgage. I think that punitive damages comes into that completely.
But again, I'm saying this as a layperson. You'd have to direct that to my attorneys. It's just my personal opinion.
Q. Well, I have sat through an unfortunately large number of depositions in cases where people are suing each other for money, and this is a question, that I have to tell you, comes up at every one of them.
A. Sure.
Q. Whoever is seeking money is usually asked in a deposition, how much?

Page 90

A. I'm not offended by your question. But -- and I - and if I meant to say that I'm offended by it, I'm not. The thing is --
Q. I'm just telling you, this is what we do.
A. Oh, I know. What I'm saying is, again, you're asking my opinion. I have legal counsel for --
Q. No.
A. Well, you just asked me what my opinion was --
Q. I'm asking you what you are seeking.
A. Again, that is a legal question that you have to ask my attorneys. They're the ones who apply the facts of the case to the law, and they're the ones who are going to make the arguments based upon the facts of the case.
I've provided you all the facts in the discoveries, in the pleadings, in everything that's been filed. So I incorporate and refer you to those.
But including to those -- including to those is that I wouldn't have spent a penny on this project if Athan was honest from the beginning. And I also believe he could have done what he wanted.

Page 91

He literally had three times the amount of money a couple of months later. The project could have gone forward. He hid that from me. He lied to me. He said that, once I get my money I'm just going to pay the mortgage off. We all need the mortgage to get this done.
No. I don't need the mortgage. He's the one who said he needed the mortgage, but he didn't. Because he was -- and unless he's lying, he said he was going to make something like 12 percent or 1 percent off of $10 million, and he was coming in with $3 million.
That's after the fact. He tried to goad us into doing what he wanted to after the second closing fell apart. It was all lies.
And I believe that he did all this on purpose to try to get me to mortgage my interest in 229 King Street, which I have always refused to do, and including the current suits that we have right now. And that's just the truth; that's the facts.
Q. Let's move ahead to your claim for defamation damages --
A. Yes, sir.
Q. -- slander.
A. Yes, sir. Which page?

Page 92

Q. It starts on page 30.
A. Yes, sir.
Q. You allege that Athan Fokas published false and defamatory statements to Jacob Ferderigos in writing, that Phillip and Spiros Ferderigos have no business sense, and I'm sure we will be butting heads with Greek properties in the future, very sad, unquote.
How have you been damaged by that statement?
A. Okay. So, when -- you see he refers here to Greek properties. It is my understanding that Athan, as well as I, we have Greek properties in Greece that we pay taxes on in Greece, okay? So that's what he's referring to over there.
He owns some properties in Greece. And he's saying that we're going to butt heads in the management, or whatever it is, of those in the future. That's what he's referring to there is his Greek properties and my Greek properties.
He says I have no business sense. And if you read the full e-mail, you'll see it's a direct -- your brothers -- I think he said, your brothers have no business sense.
I am in the business of being an attorney, and I am also in the business of being an

Page 93

entrepreneur. I own rental properties. I am in that business. My reputation for both of those professions that I have, for both of those businesses, is everything.

So going around saying you have no business sense, he just went and told the contractor -- he implied to him that I lied about how much it would cost to hang some towel holders up saying, Spiros said X. Well, it was a lie. Do you think that guy is going to want to keep doing business with me?

I rely on these people in the community, and he is going around bad-mouthing me about it. So when he says I have no business sense, it affects me in my profession. And I think that's per se.

Q. Is the statement about towel holders in here somewhere? Did I miss it?

A. No. I'm just saying there's another example.

Q. Oh.

A. Yeah, I'm just -- because that's a newer one.

Q. Who's the contractor?

A. Let's see. The guy -- I don't know if contractor is the right word. It's the guy who was doing the work on it was Kevin Carroll.

Page 94

And there's a text from Athan saying, this is too expensive even for Greek terms, something like that. You know, why in the world is it this much? Spiros told me it's not going to be this much.

And then I have the text from Athan where he agrees to it, but he's making me look bad on purpose. He's trying to bully me.

Q. Making you look bad because your estimate of a towel-holder cost was wrong?

A. No. Because I asked Athan and my brothers, I said, Kevin Carroll says he can fix this for X amount.

I don't know who fixed the towel holders before, but they looked horrible, horrible. All this foam, and disgusting. So Kevin said, I can fix it for X amount for each towel holder.

I asked for permission, because in an LLC you have to ask for permission; you have to have a majority consent for those things. Athan said yes. So then Kevin was told yes.

Athan finds out about the bill and he says, Spiros didn't say that's what it is, making me look horrible to the builder, horrible. It's an extension of this stuff, a complete extension,

Page 95

trying to affect my reputation in the community.

Q. Has anyone refused to do business with you as a result of this, so far as you know?

A. So far as I know right now? No, I don't know. But how many people have heard about this stuff, where they're not doing business with me? I don't know. That's something that we have discovery for to bring it out.

Q. Has anyone told you that they have heard that you were a bad business person?

A. He told Jacob.

Q. Your brother, okay. Anyone else?

A. He told Jacob. Well, he strongly implied it by saying that I was wrong with what I was saying to Kevin Carroll. It wouldn't surprise me if Kevin Carroll thinks I have no business sense because of what he said.

Q. I got that down. Has anyone else told you, other than your brother, that they have heard that you're a bad business person?

A. Not to my face, no. Not that I know of, but we have discovery ongoing. But I have to say, again, he followed up in doing this with Kevin Carroll and tried to make me look bad to him.

I don't know what he said to the property

Page 96

manager or anybody else. But I guess we have discovery for that.

Q. You allege in paragraph 152 that Athan Fokas has alleged -- the defamatory statement is charging you with commission of a crime of moral turpitude and/or unfitness in his business.

What are you talking about there?

A. Saying I have no business sense.

Q. The same thing you just went over?

A. Yeah. I mean, whatever -- I incorporate everything that's in this complaint and in my pleadings and in discovery.

Again, all this stuff, this stuff that I'm saying in here, when he goes around and says that I have no business sense, that goes directly towards my reputation in the business that I'm in and affects it per se.

Q. You're not alleging that he's accused you of committing a crime?

A. Not that I know of.

Q. Okay. And other than your brother Jacob, who else are you saying that he has published these statements to?

A. Well, I just gave you an example of Kevin Carroll, on how he's telling him that I have no

Page 97

business sense by saying that I don't know how to do an estimate.
Q. About the towel holders?
A. It was a bunch of stuff. I think it was towel holders and tiles and all this other stuff.
And, yeah, discovery is going to be ongoing. We're going to have to depose a lot of people, and we're going to get to the bottom of it.
But when he's going around telling my brother, just arrogantly in writing that I have no business sense, I would assume he's going around saying it to other people.
Q. As we sit here right now today --
A. Yes, sir.
Q. -- today, do you know of another single, solitary person other than the two people you have mentioned?
A. For business sense?
Q. Yes.
A. No, I do not. Not sitting here today.
Q. All right.
Let's move on to the next counterclaim, use of process, page 32. At any time before this lawsuit was filed, did Athan Fokas make a demand on you for something that he wanted you to do so that

Page 98

he wouldn't file the lawsuit?
A. He's done a lot of things. Let's see here. He has threatened to come after me professionally as an attorney.
Q. I beg your pardon?
A. He has threatened to come after me professionally as an attorney.
Q. Be more specific about that, please.
A. Saying I have ethics -- that I violated my ethical duty as a lawyer for not giving him a mortgage on 229 King Street or not doing what he wanted me to do.
Q. When did he say that?
A. It's in the discovery I sent to you. He threatened to try to get me fired from my job as an assistant solicitor. He's done that. That's in text communications in writing that he sent to me.
Q. Okay. So you're saying that that's in these text messages that you're talking about?
A. It's in the communications between us. It's all in writing between him and me.
Q. All right.
A. He's threatened to come after me ethically. He's threatened to come after me for my current business to try to bully me into -- this is after

Page 99

the lawsuit is filed.
Q. Oh. After the lawsuit.
A. No. No. For the threat for me as an assistant solicitor. But for the threat for me professionally, it was before. But he's threatened that.
He's filed a frivolous defamation lawsuit for the sole purpose of trying to get an advantage in this action. He's filed some other lawsuit that I, you know, don't even know how to caption that.
Q. The frivolous defamation lawsuit, that was the one for which summary judgment was denied?
A. At that moment because y'all asked for more discovery.
Q. You moved for summary judgment --
A. And y'all asked for more time to do discovery, so he granted you more time to do discovery.
Q. Okay. All right.
So anything else that he made a demand from you about?
A. Okay. So like I said, but again, hundreds and hundreds of documents that I have given you. So I'm going to refer to those, incorporate those in my answer.

Page 100

And I'm going to talk off the top of my head as well, but I'm letting you know because of the hundreds and hundreds of documents that I gave you, I am incorporating those right here, right now.
But you have him threatening me ethically as an attorney. You have him threatening me for my current position that I am in. He's filing frivolous defamation lawsuits where the sole basis of it -- to amend the complaint on it to take that person out completely.
Q. Now, the question --
A. Then you have --
Q. I'm sorry. Go ahead.
A. No. I'm sorry.
Q. He hasn't filed an ethical complaint against you?
A. No, he hasn't. But he's threatened it.
Q. No one has filed an ethical complaint --
A. Nobody has threatened it. And it's frivolous, and the mere threat alone is absolutely insane.
Because as you see, the beauty, Mr. Barnett, of all this is that I have all of our communications in writing. Everything is there. This is a meritless, frivolous lawsuit.

EXHIBIT D

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS

DATE: NOVEMBER 19, 2015

TIME: 9:37 A.M.

LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A. The other day --

THE WITNESS: The other day I had to come here to the office, to Phillip and Spiros.

THE INTERPRETER: The interpreter did not hear what you said or understand.

A. I came late, around 12; and the next day I received a paper saying that I had to go to the office where Spiros -- Spiros is. I asked them to cancel it or to reschedule because I came from a very long trip, but they did not do it.

Q. And the day of the week that you returned, was it a Friday?

A. I don't remember exactly.

Q. Okay. Okay. All right. Mrs. Fokas, did you -- before you went to Greece, did you discuss with your son Athan --

A. Yes.

Q. -- some allegations that you heard had been made about him?

A. Yes.

Q. And what were those allegations?

A. He was playing Tavli with his father. I told my -- my son to be very careful. I heard that they're going to come after you, and they're going to -- they're going to say things against

you.

They're going to say things about you about the insurance. They're going to say that you caused the fire, about a bicycle, and that you received money from insurance; or that he went skiing with his children. He got hurt. He pointed insurance. Things like that.

Q. You said a fire. Was there a specific place that he was accused of starting a fire?

MS. THIEM: Objection.

A. Yes. The whole town. They're going to accuse you of starting the fire -- fire there.

Q. And who was -- who were the people that you thought might accuse your son of these things?

MR. BOWERS: Object to the form.

A. His cousin. They were accusing him. They were going to destroy him.

Q. What are their names?

A. Spiros and Phillip Ferderigos.

MR. BARNETT: Do you want to chat with me?

MR. HASTIE: Just for purposes -- I meant to bring it up ahead of time, and I didn't; and I just want to set things out. This is

technicalities.

A. Okay.

Q. You didn't seem bothered by it.

Okay. All right. Let's go forward.

A. Okay.

Q. This discussion you had with your son, do you remember what month this was?

A. I don't remember exactly. Could have been April or May.

Q. Okay. It was in the spring.

THE WITNESS: Uh-huh, in the spring.

A. Yes.

Q. And where did you learn that these allegations might be made?

MR. BOWERS: Object to the form.

A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.

It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"

Q. You referred -- you said "them." "She worked with them," I think you said.

A. Yes.

THE INTERPRETER: I'm telling her to please state in sentences so that I can translate.

A. Yes. She has -- she does work with her cousins. They have a store together or stores. They have businesses together.

Q. And, again, the cousin's names are?

A. Spiros Ferderigos, Phillip Ferderigos, and Iakovos Ferderigos.

Q. When your daughter said that these things might be -- these allegations might be made against your son and that it would destroy him --

A. She was very afraid, and I was very afraid.

Q. Yes. Did your daughter say that it was one person or multiple people that would do these things?

MS. PHILLIPS: Objection.

A. She said her cousins will do it. Her cousins.

Q. Okay. Thank you. And those are the same people you just named; right?

MR. BARNETT: Ma'am, are you there? Madam interpreter?

(Pause in proceedings.)

MR. BARNETT: You there?

THE INTERPRETER: Yes. I could hear everything you said. You could not hear me.

MR. BARNETT: Yes. There was a little blip there.

THE INTERPRETER: I don't know what happened, but I never left. What was the last question?

MR. BARNETT: You know, Madam Court Reporter, do you mind reading it?

(The pending question was read back by the reporter.)

MR. BARNETT: And I think we had an answer.

THE REPORTER: That was the answer we couldn't hear.

A. Yes. It was -- it was her cousin.

Q. Okay. All right.

Q. Does she -- do you know what the specifics of the accusations are?

A. For fire, insurance, things like that.

Q. But Rania did not tell you these things.

A. Not for the attorney.

Q. Who told you these things?

A. Either the attorney or my son.

Q. Okay. Before today had you ever told anyone that Rania was the source of the information that you had about destroying Athan Fokas?

A. No. I said I was -- I was forced to say this to my son when he came here.

Q. Today?

A. Not today. When I came back -- when I came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

false insurance claims?

A. Yes. He told me that these -- the -- the accusations against Athan.

Q. And had your son Athan previously told you that Phillip and Spiros were accusing him of setting the fire at 229 King Street and filing false insurance claims?

A. I said that because my daughter told me. Are we going to repeat the same thing?

Q. No. But I want to know did your son Athan ever tell you that Phillip and Spiros were accusing him of those things?

A. Athan said that they are looking for things to accuse me.

Q. And --

A. And I -- and I -- and I heard them -- I heard the things from my daughter; and I told him, "They're accusing you of insurance."

Q. So no one other than Rania told you that Phillip and Spiros were accusing Athan of these things?

A. Nobody else.

Q. And then you heard those same things, though, from Mr. Barnett; correct?

A. I heard those things, as I said before,

EXHIBIT E

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ATHAN FOKAS
VOLUME II

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, JACOB FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: ATHAN FOKAS

DATE: FEBRUARY 10, 2017

TIME: 2:10 P.M.

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Ruth@clark-associates.com

APPEARANCES

ON BEHALF OF PLAINTIFF:
LAW OFFICE OF STANLEY E. BARNETT
BY: STANLEY E. BARNETT
305 North Civitas Street
Mount Pleasant, SC 29464

ON BEHALF OF PHILLIP FERDERIGOS:
K&L GATES
BY: RICHARD A. FARRIER, JR.
134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF JACOB FERDERIGOS:
WILLS MASSALON & ALLEN
BY: JOHN MASSALON
97 Broad Street
Charleston, SC 29401

ON BEHALF OF SPIROS FERDERIGOS:
BARNWELL WHALEY PATTERSON & HELMS
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
Charleston, SC 29401

ALSO PRESENT:
LESLIE LENHARDT
PHILLIP FERDERIGOS
JACOB FERDERIGOS
SPIROS FERDERIGOS

INDEX

WITNESS	PAGE
ATHAN FOKAS	
BY MR. COOKE	323
BY MR. FARRIER	400
BY MR. MASSALON	444
BY MR. BARNETT	454
BY MR. COOKE	458
CERTIFICATE OF REPORTER	470

EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
EXHIBIT NO. 36	EMAIL WITH ATTACHED ACCOUNTING	323
EXHIBIT NO. 37	EMAIL WITH ATTACHED DRAWINGS	326
EXHIBIT NO. 38	WEBSITE SCREENSHOT	337
EXHIBIT NO. 39	EMAIL WITH ATTACHED PERSONAL TAX RETURNS	342
EXHIBIT NO. 40	EMAIL AND ZEUS TAX RETURNS	347
EXHIBIT NO. 41	NORTH TOWNE TAX RETURNS	349
EXHIBIT NO. 42	FOREIGN DOCUMENT	351
EXHIBIT NO. 43	FOREIGN DOCUMENT	352
EXHIBIT NO. 44	FOREIGN DOCUMENT	356
EXHIBIT NO. 45	FOREIGN DOCUMENT	356
EXHIBIT NO. 46	FOREIGN DOCUMENT	361
EXHIBIT NO. 47	CONTRACT OF SALE	375
EXHIBIT NO. 48	CORRESPONDENCE	381
EXHIBIT NO. 49	EMAIL STRING	433
EXHIBIT NO. 50	BANK ACCOUNT DETAIL SCREENSHOT	449
EXHIBIT NO. 51	EMAIL WITH ATTACHED COMMITMENT LETTER	454
EXHIBIT NO. 52	EMAIL STRING	455
EXHIBIT NO. 53	TEXT MESSAGES	466

ATHAN FOKAS,
being previously duly sworn, testified as follows:

MR. COOKE: We're back on the record. Just to make sure we're clear on what we're doing here, we had had scheduled for this afternoon a deposition of Justin Hansen. By agreement we're going to postpone that, and we'll work with you on a time. And we had also intended to depose Kevin Carroll at some point. Is it all right if we just agree that we'll work with you on a time?

MR. BARNETT: Definitely, yes, right.

EXAMINATION

BY MR. COOKE:

Q. Okay. I'm going to backtrack only as little as I can possibly do and cover things that were already covered before, but here is an accounting that you have previously provided.

(Exhibit No. 36 marked for identification.)

Q. Who prepared this accounting?

A. I think Joe Tucker.

Q. So this is an accounting of just the account of the architectural fees that were paid?

A. And some engineering.

Q. Do these dates on the right, is that the

Page 436

for the notes in the first page.
Q. Yes or no?
A. I'm not sure. I'm not sure how that works. But the LLC was the reason they had the stream of money that would pay for the note in the first place.
Q. If you don't know, you don't know.
A. Okay.
Q. Did you tell your sister Rania that Phillip and Spiros promised to give you a mortgage and that they broke that promise?
A. I don't know.
Q. I'm going to ask you that same question as to several people. Did you ever tell that to Maki Nikatos?
A. I don't know.
Q. Did you ever tell that to Irene Fokas?
A. I don't think so.
Q. Did you ever tell Justin, the manager?
A. Can you repeat that question?
Q. Yes, that Phillip and Spiros promised to give you a mortgage and they broke the promise.
A. That was the original agreement that we had with Southcoast. We all agreed to sign on the mortgage.

Page 437

Q. Did you ever tell Justin, the manager at Old Towne, that Phillip and Spiros made an original promise to give you a mortgage and that they broke that promise?
A. I don't think so.
Q. Okay. Same question as to Kevin High.
A. I don't think so.
Q. I'm going to ask you that as to Spiro Fokas.
A. My father?
Q. Yes.
A. I don't think so.
Q. All right. Now, I'm going to ask you a question that is like that pertaining to those same individuals. Did you ever tell your sister Rania that Phillip and Spiros are stupid?
A. I don't think so.
Q. Did you ever tell that to Maki Nikatos?
A. I don't think so.
Q. Did you ever tell that to Irene Fokas?
A. Ditto.
Q. You did not tell that to Irene Fokas?
A. I don't think so.
Q. How about Kevin High?
A. I don't think so.
Q. How about Spiros Fokas?

Page 438

A. I don't think so.
Q. How about Justin, the manager?
A. I don't think so.
Q. All right. Next question, same program, did you ever tell your sister Rania that Phillip and Spiros are liars?
A. I don't think so.
Q. Same question is to say Maki Nikatos.
A. I don't think so.
Q. I'm going to read these names, and at the end you can just say, I don't think I told any of those people that, okay? It's quicker.
A. That would be quicker.
Q. Yes. I don't know if I said Maki Nikatos.
A. You did.
Q. Irene Fokas?
A. You did.
Q. Justin, the manager?
A. You did.
Q. Kevin High?
A. Yes.
Q. Spiros Fokas?
A. All those, I don't think I said any of those things about Phillip.
Q. Okay. Or how about Spiros?

Page 439

A. Or Spiros.
Q. All right. Did you and Kevin High ever talk or communicate about preferred advertising on your website?
A. No.
Q. I remember Dawes identifying this, and so I apologize if I'm asking a question related to Kevin High and his buying the property.
A. Your apology is accepted.
Q. I was apologizing to these guys, not to you.
A. Okay.
Q. What happened with Kevin High and his buying the property?
A. His buying what property?
Q. 493 King.
A. He did not buy 493 King.
Q. I know. But originally he was on the contract for sale, and then in a modification he was taken out as a purchaser.
A. Yes, we talked about originally he showed me the property and he would like to be a partner in the property.
Q. Okay.
A. But that didn't happen.
Q. Okay. Going to show you a paragraph out of

Page 440

our answer and counterclaim in this suit.
A. Okay.
Q. It is paragraph 71 out of our answer and counterclaim. Have you got a copy?
MR. BARNETT: I do, yes.
THE WITNESS: Could I ask you a question? How long do you think you will be deposing me because my wife wants to know.
Q. I think this is my last question, but it depends on your answer.
A. Okay. Tell me what answer you would like to hear.
Q. Look at paragraph 71 and read it to yourself, please.
A. I see it. I read it.
Q. Have you read both pages?
A. Yes.
Q. Do you agree in full or disagree in full with the allegations of that paragraph?
A. I disagree in full with the allegations of this paragraph.
Q. Is there anything in this paragraph which you would agree with?
A. We were sitting -- our kids were at dance practice one time at the church hall, and Phillip I

Page 441

think came and sat at the table where I was sitting, and I think we were drinking tea that day, so we had tea, and I don't remember anybody saying pussy or ignorant or moron. This may be how -- this may be what Phillip said happened, but this is not what happened. He said I accosted him, and I remember just sitting down at the table, drinking tea. And there were a lot of people at the table as well. It wasn't just the two of us.
Q. Do you agree that this is the only -- I'm sorry. You've already testified that there were many, many conversations about the Old Towne Suites project and about the mortgage. You've already testified about that, right?
Is that a yes?
A. That we've already testified about the --
Q. You already testified that there were --
A. Many conversations.
Q. -- many conversations concerning the mortgage.
A. Right.
Q. In this conversation what is being alleged is that Phillip and you had a conversation in which he said, I am not going to mortgage the property.
A. I don't remember that conversation.

Page 442

Q. You don't recall that conversation occurring at church at some point?
A. No.
Q. Okay. You don't recall a conversation that occurred at church during which Phillip said he was not going to guarantee the property?
A. No.
Q. Did you have a conversation with Phillip, I mean a verbal conversation with Phillip, not writings because we've got these writings here; but did you ever have a verbal conversation with Phillip during which he said, I am not going to mortgage the property and I am not going to guarantee anything related to this project?
A. No.
Q. Do you recall anyone else that was at the table that day?
A. I think it was -- it might have been Tony Forsberg, he was -- his kids were at dance as well. It might have been -- what is his name? There were a few people there, like Stephanie Moskos might have been at the table. She usually sat there. And there's a guy named Thanasi Tsimidilis, his wife is usually at that table as well.
Q. All right.

Page 443

A. And I think Tula Zecopoulos was there as well.
Q. Okay. Why don't you go ahead and spell those last two names now.
A. Zecopoulos is Z-E-C-O-P-O-U-L-O-S.
Q. Okay.
A. Tsimidilis -- I have to write it down.
THE REPORTER: Write it on here for me, that would be perfect (indicating).
THE WITNESS: I think that's how you spell his last name. I don't know his wife's name, but that's -- his name is Thanasi Tsimidilis. Thanasi is T-H-A-N-A-S-I.
Q. I just want to make sure I understand your testimony. There's a difference between a recollection and an educated guess or probability.
A. Right.
Q. Are you saying you actually remember these people being there or that these are the typical people that were there for this event.
A. Well, usually they have the -- the families whose kids do dance, we all sit at one table, and it's typical the people that always sit there. And Stephanie Moskos is always there. Tula is usually there. I think she was sitting to my -- no, I

Page 456

Q. Do you know whether your cousin Spiros is a close friend with Mr. Paulatos?
A. They're childhood friends and we go to church together and we often see each other.
Q. All right. Now, John Massalon asked you some questions about your complaint and your allegations against Jacob. I'm not going to re-ask you those. Before this lawsuit was filed, when Phillip and Spiros were telling you they did not want to go forward with the deal, did you discuss with Jacob the possibility that you might file the lawsuit?
A. Yes.
Q. Did you tell Jacob that you did not want to join him in the lawsuit?
A. Yes.
Q. Did you ask Jacob to enter into some sort of an agreement that if his cousins agreed or were required to go forward with the project that he would go forward with the project?
MR. MASSALON: I object. That's settlement discussions.
THE WITNESS: I think so. I think I did.
Q. What did he say?

Page 457

MR. MASSALON: Same objection.
THE WITNESS: He agreed to go forward with the project.
Q. Did he refuse to enter into an agreement?
MR. MASSALON: Same objection.
THE WITNESS: He would have to have the agreement from his brothers to have an agreement.
Q. Okay. So he wouldn't enter into an agreement unless his brothers said it was okay.
A. Yes.
Q. All right. Have you ever told anyone, I won't borrow Richard's list of people, but anyone other than your cousins -- I'm not asking you what you told your cousins.
A. Okay.
Q. Did you ever tell anyone else other than your cousins that Phillip was a bad businessman, and by that I mean a bad businessman or a really, really bad business -- any language at all disparaging his skill as a businessman?
A. No.
Q. Did you ever say that kind of thing in any words about your cousin Spiros?
A. No.
Q. Did you ever say that thing by whatever

Page 458

words about your cousin Jacob?
A. No.
Q. Have you ever accused your cousins -- well, take them one at a time. Have you ever said to any person other than your cousins that Phillip is dishonest in any way?
A. No.
Q. By whatever words.
A. No.
Q. Spiros, did you ever tell anybody that you thought Spiros was dishonest?
A. No.
Q. Did you ever tell anybody that you thought Jacob was dishonest?
A. No.
Q. Did you ever tell anybody that this project to expand the suites at 229 King Street was not going forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant?
A. No.
MR. BARNETT: That's all I have.
MR. COOKE: I've got a few follow-up.
BY MR. COOKE:
Q. This is Exhibit 51. Take a look at that. This is dated September 24, 2014. Says, well, I

Page 459

don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5 percent for the life of the loan, which is unheard in the current banking industry. Do you now agree that you did not, in fact, talk your banker into getting rid of the five year balloons?
A. Yes. I misunderstood. So I always knew it was a 20-year loan for five year balloons, but then when I went back and reread something, maybe the commitment letter, maybe I -- for a second I interpreted it that way, I shot him out an email -- I don't know if this was around the time when I was at Zero George with all those guys and we were drinking, but definitely it was the original loan that I thought it was, which was a 20-year with five balloon payments.
Q. Okay. And then you did attach a copy of the amended or the new, I guess, commitment letter.
A. Okay.
Q. So my question is, as we've discussed many times, there was another commitment letter that was issued on or about February 5, 2013, for a $1 million loan, correct?
A. Correct, yes.

Page 460

Q. So do you have an email like this where you sent that commitment letter to Phillip and Spiros?
A. I haven't seen it. I don't know. Maybe I gave that to them in person, I copied it and gave that to them in person, but I don't remember.
Q. Or might you not have given it to them at all?
A. No, they would definitely have known that we received the million dollars or we would have not gone forward.
Q. I thought you said yesterday that you may have relied on Jacob to inform his side of the family.
A. To give it to them. If I did, I made a copy of it, gave it to Jacob, Jacob might have given it to his brothers; but we all knew about it because we were excited that we got the new loan, and we talked about it at our church gatherings as well.
Q. I noticed that you, in this email where you are introducing the letter, you do refer to the term of it, that is, you say that you talked the banker into getting rid of the five-year balloons and fixing it at 5 percent for the life of the loan. Is there any other email or other communication where you called Spiros's attention

Page 461

to the collateral required in this commitment?
A. I'm sure we talked about it, but I don't know if there are other emails out there. I would have shown all the emails.
Q. And how soon after this email did Ms. Haines issue the closing papers?
A. I'm not sure.
Q. Okay. You were shown Exhibit 52 which is an email from Pete Paulatos to Spiros, correct; and this was evidently sent to him around November 19, 2014.
A. Correct.
Q. Now, when did you first see this email?
A. I guess maybe last -- I don't know, couple days ago.
Q. So you've never seen that before?
A. No.
Q. Okay. Do you remember this morning seeing Exhibit 3 to the deposition of Mr. Odom?
A. Okay.
Q. Look at the page that's numbered 3 at the bottom.
A. Okay.
Q. There's an email from you to Jeff Odom dated November 20, 2014. Do you see that?

Page 462

A. Yes.
Q. It says, hey, Jeff, check out the email below. It seems that we only need $1,750,000 now. Look at the math below and let me know if it makes sense. Did you send that email?
A. Yes.
Q. And the forwarded message was a message from Spiros to you and Jacob and -- well, to you and Jacob with a copy to, evidently, himself and to Phillip; do you see that?
A. Yes.
Q. And it's regarding payments on loan, and you see it begins on the next page, Phillip is working on the agreement and anticipates, and so forth?
A. Yes.
Q. And then do you see about a third of the way down he says, here is the email from my accountant.
A. Correct.
Q. Do you see that?
A. Yes.
Q. All right. Now, compare the email that he quotes with the email that you're now saying you saw for the first time this week.
A. The email that I saw for the first time this week was the email from Pete Paulatos to Spiros.

Page 463

Q. Right.
A. The content was the accountant that we had no clue who the accountant was until Pete showed us the email.
Q. Yes. So do you agree that what Spiros forwarded to you in this email back on November 20, 2014, is essentially the same email that Pete Paulatos sent him on November 19?
A. Well, it's not the same email because he had other words up here, ha, yes, typo, 1.75 million, you are awesome, glad to know I was close, we are just going to do 7 point -- might have been 1.75 million.
I don't know how many other emails there are about Pete Paulatos talking about the project with Spiros or how many times they talked about the project with Spiros, but this is the first time that I knew that Pete Paulatos was involved in this case.
Q. But maybe I misunderstood the thrust of your being shown this exhibit. I thought that maybe it was to try to show somehow that Spiros had hidden this information from you, but I just want to make sure that we agree that he forwarded the substance of Mr. Paulatos's email to you on November 19,

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2017 FEB 28 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Stan Barnett, hereby certify that true and correct copies of Plaintiff's Motions for Partial Summary Judgment as to the Counterclaims by Spiros Ferderigos and Phillip Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 28th day of February, 2017, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

Stan Barnett

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919

FILED
2017 JUN -5 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTIONS FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

In this case, the Plaintiff seeks summary judgment as to the claims by Defendants Spiros Ferderigos and Phillip Ferderigos that Plaintiff published defamatory statements about them. Defendants have failed in their discovery responses to identify any direct proof of publication of those statements. Moreover, the materials submitted by Plaintiffs proves that the individuals these Defendants say they "think may have been told" these statements deny that any such statements were made to them by Plaintiff. The record demonstrates that there are no genuine issues of material fact sufficient to submit these counterclaims to a jury.

STRUCTURE OF THE CASE

This case was filed by Plaintiff alleging breach of a contract between himself and the Defendants, all brothers and the cousins of Plaintiff, to add floors to a building all of the parties own together at 229 King Street in downtown Charleston. The answers of Defendants in this case incorporated counterclaims by Spiros and Phillip Ferderigos for defamation in which they

allege nearly identical allegations that Plaintiff published false and damaging statements against them. The statements allegedly made to third persons were:

a. That these Defendants did not agree to go forward with the plan to add additional rental suites at 229 King Street because Phillip Ferderigos and/or Spiros Ferderigos could not eat for free at the Old Towne Restaurant;

b. That either Phillip or Spiros Ferderigos do not have good business sense;

c. That either Phillip or Spiros Ferderigos are bad business people; and

d. That either Phillip or Spiros Ferderigos were accusing Athan Fokas of setting fire to 229 King Street.

Discovery was completed and included interrogatories and requests to produce to these Defendants and the depositions of both. In their responses to interrogatories, these Defendants said they had no specific information as to what third parties such statements were made by Plaintiff, but that they thought he might have made them to his mother, Irene Fokas, Kevin Carroll and Justin Hansen. (Exh. B to Motions as to both Defendants). They made similar statements in their deposition testimony. (Exh. C to Motions as to both Defendants). Irene Fokas was deposed in a companion case, Athan Fokas v. Phillip Ferderigos and Spiros Fokas, Civil Action No. 2015-CP-10-3819 and denied any such statements were made to her by Plaintiff. (Exh. D). Justin Hansen has denied by affidavit ever being told these things by Plaintiff. (Exh. F). Plaintiff has denied in his deposition and affidavit testimony making any such statements to third parties. The publication these Defendants claimed "on information and belief" to have occurred is not supported by even a scintilla of proof. Moreover, these Defendants have alleged no damages of any kind flowing from publication of the above statements.

STANDARD FOR SUMMARY JUDGMENT

The standard for summary judgment under South Carolina law is high. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376-77, 597 S.E.2d 181, 184 (Ct. App. 2004)(quoting Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct. App. 2001). Furthermore, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). If there is a "scintilla of evidence" in the record which gives rise to a genuine issue of material fact, summary judgment should not be granted. Howle v. Woods, 231 S.C. 75, 97 S.E.2d 205 (1957).

A trial court may grant a motion for summary judgment only when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *See also*, Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied."

However, the party opposing summary judgment has the burden of producing proof and not mere allegations in the face of proof submitted by the moving party. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is genuine issue of fact remaining for trial." Sides v. Greenville Hospital System, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by

relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516-17, 445 S.E.2d at 655; German v. N.Y. Life Ins. Co., 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985).

ELEMENTS OF DEFAMATION

The tort of defamation permits a plaintiff to recover for an injury to his reputation caused by false statements by another. Banks v. St. Matthew Baptist Church, 406 S.C. 156, 161, 750 S.E.2d 605, 607 (2013). To prove defamation, a plaintiff must show: (1) a false defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006). "A communication is defamatory if it tends to impeach the honesty, integrity, virtue or reputation..." Hubbard and Felix, The South Carolina Law of Torts, 462 (2nd Ed. 1997).

A statement may be actionable *per se*, in which case the defendant is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages." Id. Under common law, slander is actionable *per se* only when it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime or moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; (5) unfitness in one's business or profession. Holtzscheiter v. Thomsan Newspapers, Inc., 332 S.C. 502, 511 n.5, 506 S.E.2d 497, 502, n. 5 (1998). "Or a statement may be not actionable *per se*, in which case nothing is

presumed and the plaintiff must plead and prove both common law malice and special damages." Erickson, 368 S.C. at 465, 620 S.E.2d at 664. Common law malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, i.e. with a conscious disregard of the plaintiff's rights. Padgett v. Sun News, 278 S.C. 26, 32, 292 S.E.2d 30, 34 (1982). "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." Erickson, 368 S.C. at 466, 629 S.E. 2d at 665.

Moreover, a statement is not necessarily defamatory simply because it is unfavorable. Dauterman v. State Record Co., 249 S.C.512, 154 S.E.2d 919 (1967), "It is true the complaint alleges that the publication tended to impeach the reputation of the plaintiff and to injure his business, but that bald allegation does not make the publication actionable, else a confessedly harmless act may be converted into a harmful act by a mere allegation. The inference of hurt arising out of a statement of facts in order to become actionable, must be such an inference as is established by the general consent of men, and the inference must be judged of by the court in the first instance. The language complained of by the plaintiff was naturally displeasing to him and was unquestionably of an unfavorable nature. However, it by no means follows that a publication which is unfavorable is also libelous;" Costas v. Florence Printing Co., 237 S.C. 655, 118 S.E.2d 696 (1961), "We point out that there is no allegation that the respondent lost any customers, or had any diminution in trade. There is no allegation of special damages for losses sustained by reason of the publication of the alleged libelous statement. In short, the complaint does not allege special damages."; Murphy v. News &Courier, 141 S.C. 51, 139 S.E. 18 (1927), "To hold libelous per se the mere statement that one has failed, or even that he was unable, to furnish bond-whether the amount required be large or small-would be carrying the law of libel beyond any precedent that has been called to our attention. Many a good citizen, if suddenly and

unexpectedly arrested without reason for forearming himself against the contingency of such arrest, would very likely be unable to give immediate bond, or perhaps might be reluctant to call in friends who would relieve his embarrassment, but enjoy his misadventure."

THERE IS NO GENUINE ISSUE OF MATERIAL FACT SUFFICIENT TO SEND THIS CASE TO TRIAL

There is no genuine issue of material fact on the record in this case as to two of the four elements of defamation. There is no evidence that the plaintiff made defamatory statements about either Phillip or Spiros Ferderigos. And there is no evidence that he made these statements to third parties.

As to publication of the statements by Plaintiff which are claimed to be defamatory, Phillip and Spiros Ferderigos have not identified any person to whom these statements were made. None of the people they said in discovery that they thought Plaintiff "might" have made these statements has come forward to say that Plaintiff made such statements to them. In fact, both Irene Fokas and Justin Hansen have offered sworn testimony that he did not. Phillip and Spiros Ferderigos noticed the deposition of Kevin Carroll, but cancelled it and never rescheduled it during the discovery period allowed under the scheduling order. Those are the only third parties who have been identified as possible recipients of the alleged defamatory statements.

Moreover, the statements claimed to be defamatory are simply not defamation. They may have been unwelcome statements to Phillip and Spiros Ferderigos, but they are not defamation. The statement that they refused to go forward with the agreement to add rental suites to 229 King Street because they could not "eat for free" does not impugn their honesty, integrity or proficiency in their profession, which is the practice of law. A statement that they do not have good business sense in the context of the proposed project to add rental suites at 229

King Street is purely an opinion about that proposal and nothing more. Many people have different opinions about the wisdom of development projects, but disagreement does not equate to defamation. The allegation that Plaintiff reported that Phillip and Spiros Ferderigos were accusing Plaintiff of setting fire to 229 King Street has only been made in the context of a lawsuit, Fokas v. Ferderigos, 2015-CP-10-3819, and is, therefore, privileged. As noted above, there is no proof whatsoever that Plaintiff communicated this claim to any third person outside of the scope of that lawsuit.

As there is no evidence giving rise to a genuine issue of material fact, the counterclaims by Spiros and Phillip Ferderigos for defamation against Plaintiff should be dismissed on summary judgment.

CONCLUSION

For the foregoing reasons, the counterclaims against Plaintiff by Spiros and Phillip Ferderigos for defamation should be dismissed on summary judgment.

Respectfully submitted,

Stan Barnett
305 North Civitas Street
Mt. Pleasant, South Carolina 29464
Telephone: (843) 884-1031/(843) 708-4887

Leslie S. Lenhardt
Lenhardt Law Firm
1876 Wallenberg Blvd.
Charleston, S.C. 29407
Telephone: (843)737-2874

Attorneys for Plaintiff

June 4, 2017
Mt. Pleasant, South Carolina

STAN BARNETT
Attorney at Law
305 North Civitas Street
Mount Pleasant, South Carolina 29464
(843) 884-1031/cell (843) 708-4887
stan.barnett@yahoo.com

June 4, 2017

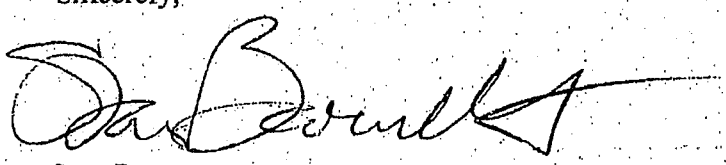
The Honorable J. C. Nicholson, Jr.
Circuit Judge
100 Broad Street, Suite 341
Charleston, S.C. 29401

RE: Athan Fokas vs. Spiros Ferderigos and Jacob Ferderigos and Philip Ferderigos
C/A No.: 2015-CP-10-3919

Dear Judge Nicholson:

Enclosed are two memoranda on behalf of Plaintiff in motions on your roster for June 8, 2017. One is a Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment with a copy of the motion itself and the materials filed with the motion in support. The second is a memorandum and materials in support filed in opposition to Defendants' Motions for Summary Judgment. The materials related to the second memorandum are a bit too large to facilitate emailing them. I will email the memorandum itself however.

With kindest regards, I remain
Sincerely,



Stan Barnett

Cc: Mr. Athan Fokas

Counsel of Record

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919

FILED
2017 JUN -5 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT BY DEFENDANTS

INTRODUCTION

This is a case in which the plaintiff alleges that defendants entered into a contract in which all the parties, co-owners of the building at 229 King Street and of an LLC which operates a rental suites business on the second floor, agreed to add two additional floors to that building for the purpose of adding more rental suites to the business of the LLC. Defendants have moved for summary judgment arguing that there is no genuine issue of material fact regarding the existence of a binding contract and/or that the contract is subject to the Statute of Frauds. As explained below, the record supports submittal of the case the jury and denial of summary judgment.

STANDARD FOR SUMMARY JUDGMENT RELATING TO THE EXISTENCE OF A CONTRACT

The standard for summary judgment under South Carolina law is high. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." McCall v. State Farm Mut. Auto. Ins. Co., 359

S.C. 372, 376-77, 597 S.E.2d 181, 184 (Ct. App. 2004) (quoting Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct. App. 2001). Furthermore, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Koester v. Carolina Rental Ctr. Inc., 313 S.C. 490, 443 S.E.2d 392 (1994); and Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). If there is a "scintilla of evidence" in the record which gives rise to a genuine issue of material fact, summary judgment should not be granted. Howle v. Woods, 231 S.C. 75, 97 S.E.2d 205 (1957). If the evidence, when viewed in that light, supports the existence of a contract, the issue should be submitted to a jury. *See* Columbia Hyundai v. Carll Hyundai, Inc., 326 S.C. 78, 484 S.E.2d 468 (1997) (holding matter of existence of a contract properly submitted to the jury).

A trial court may grant a motion for summary judgment only when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *See also,* Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied."

However, the party opposing summary judgment has the burden of producing proof and not mere allegations in the face of proof submitted by the moving party. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is genuine issue of fact remaining for trial." Sides v. Greenville Hospital System, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by

relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516-17, 445 S.E.2d at 655; German v. N.Y. Life Ins. Co., 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985).

LAW GOVERNING DETERMINATION OF THE EXISTENCE OF A CONTRACT

The required elements of a contract are an offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005); Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997). Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005); and Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). A benefit to the promisor or a detriment to the promisee may provide sufficient consideration for a contract. Shayne of Miami, Inc. v. Greybow, Inc., 232 S.C. 161, 167, 101 S.E.2d 486, 489 (1957).

A contract may arise from oral or written words or by conduct. Allegro, Inc. v. Scully, 418 S.C. 24, 791 S.E.2d 140 (2016); Prescott v. Farmers Tel. Co–op., Inc., 335 S.C. 330, 335, 516 S.E.2d 923, 926 (1999). "[F]or a contract to be valid and enforceable, the parties must have a meeting of the minds as to all essential and material terms of the agreement." Davis v.

Greenwood Sch. Dist. 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005). The essential elements of a contract for construction are typically described as: the price, the method and schedule of payment and the scope of work to be done. Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E. 2d 291 (Ct. App. 1987. The essential elements of a contract depend on the subject matter of the agreement.

When the existence of a contract is disputed or its terms are ambiguous, evidence that a party complied with the terms of the alleged contract or acted in conformity therewith is relevant and admissible on the issues of the contract's existence, the meaning of its terms, and whether the contract was breached. Conner v. City of Forest Acres,363 S.C. 460, 811 S.E.2d 905 (2005), citing Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 303, 468 S.E.2d 292, 300 (1996) (contract may be based on verbal understanding to which both parties have mutually assented and upon which both are acting); Gaskins v. Blue Cross-Blue Shield of S.C., 271 S.C. 101, 105, 245 S.E.2d 598, 600 (1978) ("agreement" does not necessarily import any direct or express stipulation, nor is it necessary that it should be in writing; if there is verbal understanding to which both parties have assented, and upon which both are acting, it is an agreement); Baylor v. Bath, 189 S.C. 269, 1 S.E.2d 139 (1938) (in lawsuit to enforce specific performance of an alleged oral agreement by elderly bachelor to make a will in consideration of care and nursing, it was proper to admit evidence that plaintiffs provided care and nursing for three years until bachelors death to prove existence of the contract and performance under its terms). A contract may arise from actual agreement of the parties manifested by words, oral or written, or *by conduct.* Prescott v. Farmers Tel. Co-op., Inc., 335 S.C. 330, 335, 516 S.E.2d 923, 926 (1999) (emphasis added); Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 439 (Ct.App.2003)

With certain exceptions, a contract need not be in writing to be enforceable. Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005), citing Gaskins v. Firemen's Ins. Co. of Newark, N.J., 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral). A contract may arise from oral or written words or by conduct. Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997); and Skully, citing Prescott v. Farmers Tel. Co–op., Inc., 335 S.C. 330, 335, 516 S.E.2d 923, 926 (1999). "[F]or a contract to be valid and enforceable, the parties must have a meeting of the minds as to all essential and material terms of the agreement." Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005). Evidence of conduct by the parties is relevant to prove the existence of consent of a party, either express or implied, sufficient to constitute an enforceable contract. Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc., 379 S.C. 31, 664 S.E.2d 83 (Ct. App. 2008); Prestwick Golf Club, Inc. v. Prestwick Ltd. Partnership, 331 S.C. 385, 503 S.E. 2d 184 (Ct. App. 1999); Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E. 2d 291 (Ct. App. 1987); and Edwards v. Rouse, 290 S.C. 449, 371 S.E.2d 174 (Ct. App. 1986). It is well settled that, if the minds of the parties have met on the essential elements of a contract, the binding agreement thus formed is not invalidated by subsequent negotiations regarding the details of performance or requests for modification of terms agreed upon. Hoffstot v. Dickinson, 166 F.2d 36 (4th Cir. 1948), citing, Townsend v. Stick, 4 Cir., 158 F.2d 142.

If the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury. Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003); and Sherman v. W & B Enterprises, Inc., 357 S.C. 243, 250, 592 S.E.2d 307, 310 (Ct.App.2003) ("When the existence of a contract is questioned

and the evidence either conflicts or gives rise to more than one inference, the issue of the contract's existence becomes a question for the finder of fact.")

BACKGROUND FACTS

The parties own 229 King Street as tenants in common, Plaintiff, Athan Fokas, holding one half interest and the Defendants one sixth interest each. Defendants are the first cousins of Plaintiff. The parties' fathers took title to 229 King in the 1970s where they operated the restaurant still there today, Old Towne Restaurant. The restaurant is operated by a corporation, S&S Old Town, Inc. in which Defendants, Phillip and Spiros Ferderigos have no interest.

A fire on the second floor of 229 King Street in 2009 resulted in extensive damage that was compensated for by insurance proceeds. Rather than restore the second floor to overflow dining space as it had been used previously, the parties elected to convert the second floor to two rental suites. The repair and conversion of the second floor was done solely with insurance funds and there is no mortgage on 229 King Street today. This business, operated by an LLC owned by the parties in the same proportion to their ownership of the building, Old Towne Suites, LLC, was very successful. That success caused the parties in 2012 to begin discussions about adding floors to the building for the purpose of adding more profitable rental suites.

THE RECORD GIVES RISE TO GENUINE ISSUES OF MATERIAL FACT AS TO THE EXISTENCE OF A CONTRACT

The record, including testimony of the parties, emails, the bank commitment letters approving the loan to fund the project and the clear conduct of the parties gives rise to genuine issues of material fact as to the existence of a contract between the parties. The essential elements of that contract were:

- The parties originally agreed to expansion of the existing building at 229 King Street by the addition of two more floors of rental suites to add to the existing rental suites business

which they owned jointly, Old Towne Suites, LLC and subsequently agreed to add three floors so that six more rental suites would be constructed;

- The parties would share the costs of design, engineering and permitting in proportion to their ownership interests in the building (and the LLC, these being the same percentages);
- The parties would mortgage the property at 229 King Street, which they owned jointly as tenants in common to secure the bank loan;
- The loan amount as per the commitment from South Coast Bank was to be $1,800,000;
- The LLC would be a borrower on the loan as provided in the bank commitment letter and the profit stream of the LLC's existing rental suites business would fund payments on the loan;
- Only Jacob Ferderigos and Athan Fokas would personally guarantee the loan from South Coast; and
- Construction would commence once the loan was closed under a contract with Kevin Carroll, the same contractor who constructed the original rental suites.

Plaintiff has testified that soon after the original suites rental business began to show such an impressive profit, the parties began to discuss the possibility of adding floors to the building to add more suites. (Exhibit A, Deposition of Athan Fokas, pp. 15-17). By July 2012 and continuing through the summer of 2012, they were receiving estimates on the costs for design and permitting from an architect, Joe Tucker, and the contractor who constructed the original suites, Kevin Carroll. (Exhibit B, Email chain). In December 2012, the parties began to pay for some initial design work by both Tucker and Campbell. At this point in time, the agreement between the parties was to investigate the possibility of adding the suites and to look for acceptable funding through a loan. (Exhibit A, Deposition of Athan Fokas, p. 17-18).

The agreement was to find a loan agreement in which all the parties would borrow the funds and then proceed with the process of design, engineering and permitting of the new structure. (Exhibit A, Deposition of Athan Fokas, p. 19-21). After canvassing a number of banks, Plaintiff received a commitment letter from South Coast Bank on February 5, 2013, dealing with Jeff Odom and Tony Daniel, in the total amount of $1,000,000 to fund the original plan for adding two more floors of rental suites. (Exhibit C, Original Commitment Letter as amended in September 2014). This letter reflects the discussions Plaintiff had with the other parties over a period of months, often at their church, in which the Defendants agreed to go forward with the expansion of the building based on a loan as reflected in the commitment letter. Phillip and Spiros Ferderigos had made clear that they did not want to sign any personal guarantee for the loan and the bank agreed. Jacob Ferderigos and Plaintiff signed the commitment letter and copies were provided to the other two defendants. (Exhibit A, Deposition of Athan Fokas, p. 21-49, 88-89, 98-118).

The commitment letter is very specific in laying out the details of the loan. Plaintiff and Athan Fokas were to sign personal guarantees for the loan. The third listed borrower is Old Towne Suites, LLC. The loan was to be secured by: a) "a mortgage on 229 King Street and the assignment of rents and leases"; and b) "all accounts receivables, inventory, and furniture fixtures and equipment now owned or hereinafter acquired." The letter spelled out other requirements as well, none out of the ordinary for loans of this type. (Exhibit G, Deposition of R.A. Daniel and Exhibit H, Deposition of Jeffrey Odom).

At this point, the parties began to spend substantial sums paying for detailed engineering, design and permitting work detailed on Exhibit D, a spreadsheet prepared by Plaintiff and explained in his deposition, Exhibit A, at page 262. These costs were shared by the parties in

proportion to their ownership in the building and the Old Towne Suites, LLC. (Exhibit E, Deposition of Jacob Ferderigos, p. 27-28). Throughout the remainder of 2013 and most of 2014, the parties spent a total of $89,916, with the Plaintiff picking up half of that total and the Defendants splitting the rest. They paid these costs out of the profits from Old Towne Suits, LLC. Throughout the process, Jacob Ferderigos was involved in every aspect of the design, permitting and funding, including the loan approval acting on behalf of his brothers. (Exhibit A, Deposition of Athan Fokas, p. 71). The email chains in Exhibits B and F from June and July 2013 are consistent with Plaintiff's testimony.

Spiros Ferderigos was also directly involved in discussions with South Coast Bank. In mid-April 2013, two and one half months after the first commitment letter, Spiros corresponded with Jeff Odom at South Coast by email and gave him specific advice on how to describe the ownership of the LLC. (Exhibit F). Throughout this period, Spiros asked several times if he was correct in understanding that only Plaintiff and Jacob Ferderigos were personally guaranteeing the loan. On April 9, 2013, he asked for Plaintiff to again send out the details of the loan. (Exhibit I). At no time before the first closing scheduled for the South Coast loan did any of the Defendants object to or question any requirement set forth in the commitment letter, including notably the mortgage and the fact that the LLC would be a listed borrower.

During the Board of Architectural Review ("BAR") review and approval process, the parties learned that it would be possible to get approval to add an addition story to the project. They agreed to revise the plans and the loan to do so. By mid-June 2014, the parties had secured approval from the City for the additional story and set about paying for the redesign and engineering needed for this increase in the size of the project. (Exhibit J). Plaintiff and Jacob Ferderigos went back to South Coast Bank at that time to seek approval of the additional money

needed for the larger building. (Exhibit A, Deposition of Athan Fokas, p. 107-116). On September 24, 2014, the bank increased the loan amount to $1,800,000 by hand modifying the original commitment letter. Plaintiff forwarded the new commitment letter to the Defendants the same day. (Exhibit K). By text messages on the same day, Spiros Ferderigos told Plaintiff, "Sweet...good job" and "That is great news!" and again asking for confirmation of the loan details. Six days later, Spiros again joined in a group text with the other parties, exclaiming, "Wow" and "When we starting?" (Exhibit N, p. 1-2).

Upon receipt of the revised commitment letter, Phillip Ferderigos responded by telling Plaintiff he would try to find a better loan deal, specifically with Crescom, the bank in the same building as his lawfirm. (Exhibit L). Nothing came of this effort, however, and the commitment from South Coast continued to be the loan solution the parties pursued. At no time did Phillip express any objection to any of the terms set forth in the South Coast Bank commitment letter. Months earlier, on January 9, 2014, Phillip had also engaged in detailed correspondence with Plaintiff by email concerning some requirements that he thought, as a lawyer, the parties should ask from the contractor. (Exhibit M). Plaintiff testified he believed these questions were answered satisfactorily by the contractor, Kevin Carroll. (Exhibit A, Deposition of Athan Fokas, p. 111).

At this point, all the parties were waiting on was the final building permit from the City. That permit was received on October 10, 2014. (Exhibit N, p. 3). Five days later, on October 15, 2014, Plaintiff executed a contract with Kevin Carroll on behalf of the LLC, himself and Jacob Federigos for the construction of the building at a fixed price of $1,728,900. (Exhibit O).

Jacob's response by text was "Awesome." Spiros, however, responded that he had to delay his execution of any bank documents because he was under consideration for a Family Court judgeship. At p. 3 of Exhibit N is his response:

> I need to hold off signing anything for old Towne, until I am done with judgeship process. Should be mid-November. Will create too much of a headache to amend everything I have filed. That will also give Phillip time to do what he needs to do and also any ancillary contracts we need to do to go along with the loan.

Plaintiff objected to the request for the delay and Spiros responded with the same insistence that he could not sign until after the judgeship process was over.

> You don't understand. Nothing to discuss. Putting kids to bed. I can't sign anything until hopefully mid-November. That is when I should know if I am selected to move forward. Can (sic) sign before that. If you don't need my signature then you can do it before then. Otherwise, you need to wait for my signature u tip (sic) I get through the process I am working on. (Exhibit N, p. 4).

and adding:

> I am not fighting with you. Sorry if it upsets you, but ***my signature goes on once I am done with what I have to do. If it was done a month ago, it wouldn't be an issue.*** Now that I am weeks away from being considered, I am not affecting my P&L. Move forward without my signature if you want. We have been waiting years for this and now I need you to wait a few more weeks. It is important or I wouldn't be saying I need to wait...

Phillip entered the conversation at this point, texting:

> Athan this is Phillip. I do not like your tone. ***Shut up or I will kill the deal....***Do you understand.

At point, Spiros adds:

> ***I have no problem moving forward but need to get through this first.***

Phillip adds:

> I am losing interest in being in business with you... Spiro says you need to wait a week, then you need to wait a week...it is not an unreasonable request on his part and we don't need back and forth drama... (Exhibit N, p. 5).

The argument continued over the next day. For the first time, Phillip asserted that the Defendants had never agreed to anything, neglecting the fact that Jacob had signed the commitment letter from South Coast and that all of them had shared in the $89,000 of expenses to design and permit the building expansion. Under the cloud of the new tension between the parties a second closing was set for November 21, 2014 for the South Coast loan pursuant to the revised commitment letter dated September 24, 2014. (Exhibit N, p. 10). On the Wednesday before that scheduled closing, Phillip injected for the first time a new term into the parties' agreement. He not only planned to bring his own money to the deal so as to reduce the loan amount, but he demanded an agreement from the other parties describing the consequences of their not making their portion of the payments to the bank and requiring that he be paid his portion of the loan proceeds from the LLC rental suites business.

Plaintiff was not willing to agree to these terms and the closing for November 21, 2014 was cancelled. Among the large volume of emails between the parties about this disagreement, Sprios sent one to Plaintiff November 21, 2014 claiming that he never realized until that day he was expected to mortgage his interest in 229 King Street or that the LLC was to be listed as a borrower. In the same message, he makes this completely contradictory admission, however, "Again, I was always told that only you and Jacob would have to sign the note and ***Phillip and I only having to mortgage our physical property interests in 229 King.***" He goes on to claim incorrectly that he was now being asked to sign personally on the note. He added, "Lastly, Phillip has been crystal clear from the beginning that he had no interest in being part of any loan or loan requirement. He would come up with his own money completely separate. ***The only thing he was willing to do was allow his personal physical property interest in 229 King Street to be collateralize to help you get a loan.***" (Exhibit P).

Ultimately, the parties never agreed to the new terms demanded by Phillip, and subsequently by Spiros. Defendants have since claimed a number of inconsistent things and, contrary to the record set out above, that they were surprised by the bank's loan terms, terms they had been in possession of since February 2013. Some of their latter day objections to closing on the loan are that they were asked to sign a hypothecation agreement. This agreement is included in the bank's closing package and clearly does no more than parrot the language of the mortgage. It imposes no obligations on the parties different than those in the mortgage. (Exhibit Q, Closing package). [1]

ARGUMENT

South Carolina recognizes that contracts may be formed in writing or by the oral agreements of the parties as well as by conduct. The record in this case gives rise to genuine issues of material fact sufficient to defeat the Defendants' motions for summary judgment on the question of the existence of a contract between the parties to add floors to 229 King Street for the purpose of adding rental suites to the existing rental suites business there. Plaintiff was deposed at length by two experienced attorneys. Most of the transcript of that testimony is attached. He did not waiver or contradict his clear description of the parties' agreement or the substantial steps taken in pursuit of that agreement, steps that cost over $89,000, of which he spend half.

[1] As this case has worn on, Spiros and Phillip have argued that they were never to mortgage "their part of 229 King Street" and that the bank's commitment letter only required Jacob and Athan Fokas to commit "their part" of the LLC. This would be strange in any context, but coming from lawyers who have been practicing for some time, it is almost incomprehensible. R. A. Daniel, a banker with 45 years of experience testified to the obvious, that no mortgage is ever taken without the signatures of all owners. (Exhibit G). The bank commitment letter was clearly given to Spiros and Phillip. Their education and experience could have left them with only one conclusion – the bank was expecting them to execute the mortgage and the LLC – all of the LLC – was to be a borrower on the loan.

Plaintiff testified that after a period of investigation and seeking a good loan, when the parties were given a commitment letter by South Coast Bank for $1,000,000 for the purpose of building two additional floors at 229 King Street, they entered into an agreement to do just that. They began spending substantial sums to design and permit the new structure. The bank's commitment letter was signed by both he and Jacob Ferderigos, whom he testified was acting for his brothers, the other two Defendants. The record shows active involvement of Spiros with the bank and routine discussions by email with Plaintiff. The written record similarly shows direct involvement of Phillip. Plaintiff's testimony is that the parties agreed in mid-2014 to increase the size of the addition to 220 King to three more floors and the written record confirms this. When the new loan amount was approved by South Coast on September 24, 2014, all the Defendants were copied and all expressed enthusiastic support. None expressed any objection to any of the bank's terms, the same terms they had been aware of since February 2013 and in reliance on which they had spent between them nearly $100,000.

The text messages accompanying Spiro's objection to close before his judgeship process was over are unequivocal admissions that he was in agreement with the bank's terms, or could certainly be accepted as such by a jury. Indeed, unless Spiros was going to mortgage his interest in 229 King Street and agree that the LLC's income was to be applied to make the loan payments, his "P&L" would not have been affected at all. Similarly, Phillip's messages at the time in support of Spiros' request only confirm all of their agreement to the bank's terms. The evidence in the record is more than sufficient to allow a jury to conclude that the parties entered into an oral agreement to borrow money from South Coast Bank pursuant to the terms set forth in its commitment letter and build the additional floors to 229 King Street. Their actions in spending nearly $100,000 to design and permit the structure constitute part performance of that

agreement sufficient to establish consideration. Gaskins v. Blue Cross–Blue Shield of S.C., 271 S.C. 101, 105, 245 S.E.2d 598, 600 (1978) (if there is verbal understanding to which both parties have assented, and upon which both are acting, it is an agreement). Where, as in this case, the parties disagree about the existence of a contract and the evidence is in conflict, the issue is one for the trier of fact and summary judgment is not proper. Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003); and Sherman v. W & B Enterprises, Inc., 357 S.C. 243, 250, 592 S.E.2d 307, 310 (Ct.App.2003) ("When the existence of a contract is questioned and the evidence either conflicts or gives rise to more than one inference, the issue of the contract's existence becomes a question for the finder of fact.")

Phillip's subsequent demand for a side agreement, never previously discussed, to impose sanctions on the other parties is their part of the loan was not met does not serve to change the fact that a contract was formed. Subsequent efforts to amend an agreement do not affect its validity and enforceability. Hoffstot v. Dickinson, 166 F.2d 36 (4th Cir. 1948), citing, Townsend v. Stick, 4 Cir., 158 F.2d 142.

When Defendants refused to honor their contractual obligation to execute the loan agreement at the second scheduled closing on November 21, 2014, they breached the contract with Plaintiff and are liable to him for all the damages that flow naturally from that refusal.

Defendants' claim that the contract is subject to the Statute of Frauds is incorrect. If the basis for this claim is that contract is not to be performed within a year, the agreement as alleged by Plaintiff does not qualify under this category of the Statute. This statute does not apply except in cases where the contract cannot possibly be performed within the year. Florence Printing Co. v Parnell, 178 SC 119, 182 SE 313 (1935); Joseph v Sears Roebuck & Co. 224 SC 105, 77 SE2d 583 (1953); 40 ALR2d 742. In Thompson v Gordon, 34 SCL 196 (1848),

the court held that the statute of frauds, when it enacts that any agreement that is not to be performed within the space of one year, from the making thereof shall be in writing, means an agreement not to be performed in the space of a year, and expressly so stipulated. A contingency is not within the statute - it must appear, **within the agreement** that it is not to be performed till after the year, to make a note in writing necessary. Walker v Wilmington C. & A. R. Co., 26 SC 80, 1 SE 366 (1887) Oswald v Lawton, 187 SC 42, 196 SE 535 (1938); and McGehee v South Carolina Power Co., 187 SC 79, 196 SE 538 (1938). Moreover, the contract is not one for the transfer of land. The term "interest in land," as used in this section, means some portion of the title or right of possession, and does not include agreements which may affect land but which do not contemplate the transfer of any title, ownership or possession. Carter v. McCall ,193 S.C. 456, 8 S.E.2d 844 (1940); 151 A.L.R. 641. The contract was to build additional floors to 229 King Street and to offer as collateral for the necessary loan a mortgage on the building.

If, however, the contract is deemed to be subject to the statute, there was clearly part performance of a substantial nature in the expenditure of nearly $100,000 in pursuit of the design and permitting of the addition. An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other. Graham v. Prince, 293 S.C. 77, 358 S.E.2d 714 (Ct. App. 1987); citing Scurry v. Edwards, 232 S.C. 53, 100 S.E.2d 812 (1957). A party seeking to show part performance by possession and improvements must show acts which relate clearly and unequivocally to agreement, exclusive of any other relation between parties touching agreement; mere payment of all or portion of price is not itself regarded as such part performance; however, taking possession and paying rent, in conjunction with other facts and circumstances, may

constitute sufficient part performance to take agreement out of statute of frauds. Gibson v. Hrysikos, 293 S.C. 8, 358 S.E.2d 173 (Ct App. 1987). Payment of nearly $100,000 to engineer, design and permit the building these parties agreed to build is the quintessential example of part performance.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' Motions for Summary Judgment as the record gives rise to genuine issues of material fact as to the existence of a contract and as to part performance of that contract.

Respectfully submitted,

Stan Barnett
305 North Civitas Street
Mt. Pleasant, South Carolina 29464
Telephone: (843) 884-1031/(843) 708-4887

Leslie S. Lenhardt
Lenhardt Law Firm
1876 Wallenberg Blvd.
Charleston, S.C. 29407
Telephone: (843)737-2874

Attorneys for Plaintiff

June 4, 2017
Mt. Pleasant, South Carolina

EXHIBIT A

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ATHAN FOKAS

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, JACOB FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: ATHAN FOKAS

DATE: FEBRUARY 9, 2017

TIME: 10:05 A.M.

LOCATION: K&L GATES
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Ruth@clark-associates.com

APPEARANCES

ON BEHALF OF PLAINTIFF:

LAW OFFICE OF STANLEY E. BARNETT
BY: STANLEY E. BARNETT
305 North Civitas Street
Mount Pleasant, SC 29464

ON BEHALF OF PHILLIP FERDERIGOS:

K&L GATES
BY: RICHARD A. FARRIER, JR.
134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF JACOB FERDERIGOS:

WILLS MASSALON & ALLEN
BY: JOHN MASSALON
97 Broad Street
Charleston, SC 29401

ON BEHALF OF SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS
BY: M. DAWES COOKE, JR.
BY: JEREMY BOWERS
288 Meeting Street, Suite 200
Charleston, SC 29401

ALSO PRESENT:

LESLIE LENHARDT
PHILLIP FERDERIGOS
JACOB FERDERIGOS

INDEX

WITNESS	PAGE
ATHAN FOKAS	
BY MR. COOKE	5
BY MR. FARRIER	153
BY MR. COOKE	267
CERTIFICATE OF REPORTER	319

EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
EXHIBIT NO. 01	COMPLAINT	14
EXHIBIT NO. 02	ANSWERS TO INTERROGATORIES	65
EXHIBIT NO. 03	RESPONSE TO REQUESTS FOR PRODUCTION	82
EXHIBIT NO. 04	SUPPLEMENTAL ANSWER TO INTERROGATORIES	83
EXHIBIT NO. 05	EMAIL	85
EXHIBIT NO. 06	EMAIL STRING	89
EXHIBIT NO. 07	EMAIL STRING	95
EXHIBIT NO. 08	EMAIL	107
EXHIBIT NO. 09	EMAIL	109
EXHIBIT NO. 10	EMAIL STRING	112
EXHIBIT NO. 11	COMMITMENT LETTER	113
EXHIBIT NO. 12	EMAIL	123
EXHIBIT NO. 13	TEXT MESSAGES	128
EXHIBIT NO. 14	EMAIL STRING	130
EXHIBIT NO. 15	TEXT MESSAGES	140
EXHIBIT NO. 16	EMAIL STRING	197
EXHIBIT NO. 17	TITLE TO REAL ESTATE	205
EXHIBIT NO. 18	DEED	214
EXHIBIT NO. 19	POST AND COURIER ARTICLE	218
EXHIBIT NO. 20	FACEBOOK POST	218
EXHIBIT NO. 21	EMAIL	252
EXHIBIT NO. 22	EMAIL STRING	253
EXHIBIT NO. 23	EMAIL STRING	259
EXHIBIT NO. 24	SPREADSHEET	262
EXHIBIT NO. 25	EMAIL	264
EXHIBIT NO. 26	EMAIL	264
EXHIBIT NO. 27	TEXT MESSAGES	267
EXHIBIT NO. 28	EMAIL STRING	273

EXHIBITS (CONTINUED)

EXHIBIT	DESCRIPTION	PAGE
EXHIBIT NO. 29	EMAIL STRING	283
EXHIBIT NO. 30	CLOSING DOCUMENTS	291
EXHIBIT NO. 31	EMAIL	296
EXHIBIT NO. 32	EMAIL STRING	301
EXHIBIT NO. 33	TEXT MESSAGES	306
EXHIBIT NO. 34	STANDARD AGREEMENT BETWEEN OWNER AND CONTRACTOR	310
EXHIBIT NO. 35	EMAIL STRING	312

Page 5

ATHAN FOKAS,
being first duly sworn, testified as follows:
EXAMINATION
BY MR. COOKE:
Q. Would you state your full name for the record, please?
A. Full name is Athanasios Spiridonou Fokas, A-T-H-A-N-A-S-I-O-S, S-P-I-R-I-D-O-N-O-U.
Q. Can we just go with Athan Fokas for today?
A. Great.
Q. Thank you. Under the rules I'm supposed to tell you that if you have any questions, then you should consult with your attorney. If he objects to a question, then you should pause for a minute to see if he wants you to not answer it or if he's just objecting for the record. Sometimes it goes both ways, but if he does object, then you should stop for just a second, get his instruction whether you should proceed. If I show you a document that has not been provided to you previously, you have a right to consult with your attorney about that, and he'll fill you in on that as well.
A. Okay.
Q. If you do have a question about a question that I ask, you should direct those questions back

Page 6

to me. If there's something that you don't understand, direct that to me, and I'll try to straighten it out with you.
A. Sounds good.
Q. All right. And if you need to discuss potential privilege of anything, you may take a break to do that with your attorney, and then the rules provide for certain circumstances under which we can put on the record what you discussed with him, and sometimes you can, sometimes you can't. Do you understand all that?
A. Yes.
Q. All right. Are you under any kind of disability or illness or anything that would keep you from being able to fully and accurately answer questions today?
A. No.
Q. Not taking any medication that would affect your mental abilities?
A. No.
Q. Okay. It's not meant to be an inquisition, so if you need to take a break for any reason, take a break and just let me know, okay?
A. Sounds good.
Q. So when were you born?

Page 7

A. May 27, 1967.
Q. Where were you born?
A. In Charleston.
Q. Okay. Where did you go to school?
A. High school -- well, all schools? Grammar school is Blessed Sacrament, high school is Bishop England, College is College of Charleston.
Q. When did you graduate from College of Charleston?
A. '89.
Q. Did you receive any honors or distinctions at the College of Charleston?
A. No.
Q. How about at Bishop England?
A. No.
Q. But you did graduate?
A. I did.
Q. What did you major in?
A. Poli-sci and business.
Q. Did you have any post graduate education?
A. No.
Q. Are you married?
A. I am.
Q. How long have you been married?
A. 17 years.

Page 8

Q. What's your wife's name?
A. Antonia.
Q. Been married just once?
A. Yes.
Q. Do you have children?
A. Four boys.
Q. How old are they?
A. 13 is the oldest, then I have a 11-year-old -- no, he's 10, he'll be 11 in October, a 9-year-old, and a 7-year-old.
Q. Have you ever been arrested for anything?
A. No.
Q. Have you ever been treated or counseled for any mental health issues or substance abuse problems or anything like that?
A. No.
Q. Can you give me your work history?
A. Started working at the Old Towne Restaurant, 229 King Street, probably since I was eight, helping my dad with just bussing tables or whatever, and I grew up in that business, worked my way to waiting tables and then cashiering and then cooking and then managing and general managing.
Q. So is it fair to say that you've always worked in the restaurant industry or hospitality

Page 9

industry?
A. Yes, that's true.
Q. What is your current position?
A. I currently still own the Old -- run the Old Towne Restaurant through general managers, so I go there daily. I run Zeus Grill and Seafood restaurant, that's kind of a catering side now, and then -- that's my main two businesses.
Q. What other businesses do you have?
A. Well, I have North Towne, which was a restaurant in North Charleston. I opened that up out of college in -- 1990 I opened that up. So I had that open for 21 years. We leased that building. My brother-in-law and I own that building together. We had that business together. We decided to lease the building to Lumber Liquidators, so we have rent that comes in from that business. So that's another just business that I go up there occasionally to check on things.
Q. Okay. What sources of revenue or income do you have?
A. I have the Old Towne Restaurant, Old Towne Suites, Zeus Investment Properties, I think -- and that's about it.
Q. What properties does Zeus Investment

Page 10

Properties own?
A. Oh, I have a Goat Island property too. It's a company called Old Goat, LLC.
Q. Is that a rental property?
A. It's a rental property -- well, no, it's just land now. It's a lot. It was a house and a lot, and I sold the house, but I kept the lot.
Q. What properties does Zeus --
A. Zeus investment property --
(Simultaneous discussion interrupted by the court reporter.)
THE WITNESS: So the property that Zeus Investment -- used to own the property at Zeus Grill and Seafood in Mount Pleasant. I sold that, flipped that into a property at 493 King, so that Zeus Investment Properties owns 493 King.
Q. What is the nature of that property?
A. It's a boutique hotel upstairs.
Q. When did you flip that property?
A. Well, I mean, I bought it, had to gut it. It's been a while. Over a year, I think.
Q. How long has it been operating as a boutique hotel?
A. Since July.
Q. Of 2016?

Page 11

A. 2016.
Q. Is Zeus Investments an LLC?
A. It is an LLC.
Q. Who are the members of the?
A. Well Zeus Investments Properties is an LLC.
Q. Yes.
A. Yes. Zeus Grill and Seafood is incorporated.
Q. Right. Zeus Investment Properties, who are the members of that?
A. I am, 100 percent.
Q. Does anybody else own any interest in 493 King Street?
A. No, hm-mm.
Q. And then what other -- what real estate do you own all together or own an interest in?
A. So I have the one in North Charleston, the North Towne building that I told you about, the Goat Island property, my house that I live in.
Q. That's in Ion?
A. Yes, Ion.
Q. Is it one property or two properties in Ion?
A. I own one property.
Q. Anything else?
A. I think that's it.

Page 12

Q. Okay. Do you have any other business interests other than what you've described to me?
A. Nope.
Q. Can you describe for me your experience in real estate transactions?
A. First property I bought was that property in 1990, might have bought it in '89, bought the property, put a restaurant on the land.
Q. The one in North Charleston?
A. North Charleston, mm-hmm.
Q. Okay. You went to a regular closing on that?
A. Of course, yes.
Q. Did you have an attorney?
A. Yes.
Q. Who was your attorney in that?
A. Might have been George Morris, I think.
Q. Okay. What else?
A. And then Zeus Grill and Seafood, I bought that land, put a restaurant on the lot.
Q. When did you buy that?
A. It was 2003. I might have bought it in 2002. It opened in 2003.
Q. Who was your attorney for that?
A. Probably George Morris.

Page 13

Q. What about when you sold it?
A. When I sold it, I think Amy Haines.
Q. Okay. What other transactions?
A. I think that's it.
Q. You've got your residences, I guess, too?
A. Yes, so bought that house.
Q. And then the 493, who was your attorney for that transaction?
A. Amy Haines.
Q. Okay. Can you think of any other businesses that you've bought or sold?
A. I mean, I used to own a bakery too, Southeastern Bakery, and when I had North Towne open, I bought that business. Well, no, we started that business from scratch, and then I sold it to a guy out of Chicago.
Q. Who was your attorney for that transaction?
A. Maybe George Morris, I think.
Q. Do you own any property in Greece?
A. I don't have any property in Greece.
Q. Is there any property that's in your name in Greece that you don't own?
A. Not that I know of.
Q. Do you own any business interests in Greece?
A. No.

Page 14

Q. Do you derive any income in Greece?
A. No.
Q. Do you have any other sources of income other than what you've described to me so far?
A. No.
Q. All right. I'm going to start with the complaint. It's probably a good place to keep us organized here. Once you identify that as your complaint, I'm going to ask the court reporter to mark that.
(Exhibit No. 01 marked for identification.)
Q. So the complaint that you filed in this case -- and this is the case we call the contract case. There's other litigation, but for ease of reference we'll call this the contract case. That appears to be the complaint that you filed?
A. Yes.
Q. Okay. Go ahead and put that in front of you, and I want to ask you about some of the specific allegations, and I'm going to skip the first page that talks about where everybody lives and what they do. Let's begin, second page, paragraph 6 says that Plaintiff and Defendants Ferderigos together hold title to the building at

Page 15

229 King Street with Plaintiff owning an undivided one-half interest and the other one-half undivided interest being held in equal shares by the said Ferderigos brothers. That's an accurate statement?
A. 229 King, I own half of it, and they own the other half, that's right.
Q. And you own that in your individual names, not as an LLC or corporation.
A. Correct.
Q. So each of them would own one sixth and you own one half?
A. That's right.
Q. And that's because each of your fathers originally owned half.
A. That's right.
Q. And you don't have any brothers that share that.
A. No.
Q. Paragraph 7 says, the luxury suite rental business described above was commenced after the upper story of 229 King Street was converted from restaurant seating to luxury suites. And when was that done?
A. I think early -- well, 2011, I think, or '10, 2010.

Page 16

Q. Now, is the real property that comprises those suites part of 229 and thus owned individually by the four of you?
A. That's correct.
Q. It's not owned by Old Towne Suites, LLC?
A. Old Towne Suites, hmm, I'm not sure. Let's see, who owns it. No, the building itself is owned 50 percent me, 50 percent the Ferderigos boys, yes.
Q. And that includes the apartments.
A. It includes the apartments or the suites.
Q. Does Old Towne Suites, LLC, own anything?
A. Old Towne Suites, LLC, I'm sure all the furniture in there, the furniture and fixtures.
Q. It owns no real property, though.
A. Real property, no.
Q. Paragraph 8 says, the success and the profitability of the suites rental business was such that the parties agreed in 2012 to investigate the possibility of adding more rental suites by expanding the building. That's a true and accurate statement?
A. Yes.
Q. So your choice of words there says that you agreed in 2012 to investigate the possibility.
A. Mm-hmm.

Page 17

Q. And is that fair to say that in 2012 it was an agreement to investigate the possibility?
A. Just like we did before we put the suites above Old Towne, we investigated that project as well.
Q. Right.
A. And then built it. So of course you investigate first, and then you go on to building it.
Q. Right, but you might investigate and then decide not to build it.
A. If you figure out why the reasons why not to build it, sure.
Q. That's what the word investigation means, right?
A. Yes, you look and see if it makes sense.
Q. Okay. In early 2013 the parties jointly agreed to investigate financing options, and defendants authorized plaintiff to look for acceptable financing; is that a fair and accurate statement?
A. Yes.
Q. Okay. So, again, the agreement in early 2013 was to investigate financing options.
A. To see if we can get financing to build the

Page 18

building.
Q. Nobody had any commitments to -- bank commitments or anything like that at that point.
A. No, at that point.
Q. In what way did the defendants authorize you to look for acceptable financing?
A. We talked about the original suites that we have up there and how profitable they were, and then we said we should build more, so I said, let's see if we can get money to build it and how much it would cost. So the same contractor that built the original suites, we just contacted him and got him to figure out how much it would cost us to build more.
Q. Was the original idea to build four new suites?
A. It was. We talked about building two stories, building two suites per story.
Q. And that would be two two-bedrooms and two three-bedroom suites?
A. That's correct. Well, and we might have wanted to do three-bedrooms originally. I'm not sure.
Q. When you did the original suites, how was that financed?

Page 19

A. We didn't get a loan for that. That was paid for mostly by insurance money. We had a fire at the restaurant, and they paid us enough money to fix the upstairs.
Q. So is it fair to say that no property was mortgaged to pay for the original suites?
A. No property was mortgaged.
Q. Okay. So your statement here that defendants authorized plaintiff to look for acceptable financing, was there any discussion about who was going to be borrowing the money?
A. Yes, all of us.
Q. Okay.
A. Yes.
Q. So in 2013 the initial discussion was that everybody would be borrowing the money together.
A. That's right, the owners of the building because we -- the building was put for mortgage for the -- that's the only way to get the loan, basically.
Q. Was there ever any discussion of any of you coming with cash rather than borrowing the money?
A. Never.
Q. Never?
A. Never.

Page 20

Q. Even up until 2014?
A. 2014 -- the first time I heard about somebody bringing in their own money was, when we didn't go through with the first closing, then it was the second closing, and that's the first time that I heard that Phillip was going to get a separate loan. I think his loan was 300,000, and he was going to come in with 50,000 of his own money, yes. So he wanted out of the -- our original agreement, and then it came to be we all had to put in -- they had to put in 350,000, I had to put in three times that because they're doing one-sixth and I'm doing half.
Q. Sure. So what about Spiros, was there ever any discussion about him not being part of your loan?
A. Never.
Q. Never.
A. Not until much later after -- I think after the second closing he was saying that -- no, I think he was always in the mortgage. He was always in the bank note.
Q. Okay. And we'll look at some correspondence about that later and see if it refreshes your memory about that.

Page 21

A. Okay.
Q. No. 10 says, Plaintiff and Jacob Ferderigos worked in late 2012 and throughout 2013 with engineers, an architect and others to develop plans for the expansion of the building, all with the knowledge and consent of Phillip and Spiros Ferderigos; is that correct?
A. That's correct.
Q. So is it fair to say then that you began the work with the engineers and architects and others before there was any agreement in place to go forward with the suites?
A. No. We began with the architects and engineers when we had the note guaranteed from the bank. Once we had that letter the bank was supplying us the money, that's when we started spending money.
Q. Okay. So you never had any work done until you had a commitment letter from the bank?
A. That's correct. The contractor did some free work where he figured out how much it would cost, an estimate, to build the building at that point; and then we said, once we get the money, then we're going to -- you know, we have to hire the engineer to do -- or the architect to make the

Page 22

plans.
Q. Okay. Did you share the commitment letter with Spiros?
A. I think so, yes.
Q. When?
A. On the email. I think it went through email. But Jacob signed the commitment letter. He was the one that was talking with his brothers, mostly. I would see them at church often, and we would discuss this project or at -- maybe at dance. We have Greek dance, and I'd see them there as well.
Q. Did you ever provide that letter to them prior to September of 2014?
A. I'm not sure, but it might have been on an email. I think we had an email going -- thread going back and forth, because that letter was updated afterwards. The bank updated it because we -- after we realized it was -- we needed to build -- we were going to build three stories instead of two stories.
Q. So you originally had a commitment letter, and then it was hand changed on September 24, 2014, correct?
A. Yes, mm-hmm.

Page 23

Q. So did you ever provide that letter to Spiros prior to September 24th of 2014?
A. I'm sure it was in an email thread or chain, but they were well aware of the plans because the BAR changed our plans, the Board of Architectural Review. I think we changed plans four times until they approved the project.
Q. Okay. Who was paying the expenses of the engineers, architects and others?
A. It was either Jacob or myself because we hold the books. Like for the Old Towne Suites checkbook, we switch every four months; so he'll hold it for four months, and then I'll hold it for the following four months, and we switch every four months. So whoever has the checkbook at that point, they're the ones who cut the checks; but we all agree that these checks are going to be paid for.
Q. Were they paid by Old Towne Suites?
A. In the beginning, no. That insurance money was in the Old Towne Restaurant account, so it was paid out of the Old Towne Restaurant account. Later on the bookkeeper figured out what was paid out of the Old Towne Restaurant account to go into the suites account, basically, for expenses.

Page 24

Q. Okay. So I just want to make sure I understand. Regardless of who the checks were actually written to, was it an obligation of Old Towne Suites, LLC?
A. To pay the bills?
Q. To pay the architect and the engineer and the others that were developing this project.
A. Yes, Old Towne Suites or Old Towne Restaurant. I mean, we all had interest -- well, we had that insurance money in the Old Towne Restaurant account, and we were spending it for the suites.
Q. So the insurance money actually belonged to the owners of the building.
A. That's correct.
Q. But it was being held for their benefit in the Old Towne Restaurant account?
A. That's correct.
Q. Because Spiros and Phillip don't have an interest in the restaurant, right?
A. No.
Q. So you were holding their money for them in the Old Towne Restaurant account.
A. Well, I think the check was cut to just Old Towne Restaurant, and then so it went in the Old

Page 25

Towne Restaurant account, and then we spent the money to fix the restaurant for the fire and to fix the suites upstairs.
Q. But anyway, was it generally agreed that the expenses of developing and building these new suites would be an expense of Old Towne suites, LLC?
A. Yes.
Q. What expenses specifically did Old Towne Suites, LLC, incur then? You mentioned engineers, architect and others. Who were the engineers and what did they do?
A. I don't remember all their names, but we had -- I think Curry Engineer might have been one of them.
Q. Is that Paul Curry?
A. Paul Curry, that's correct. There was another engineer.
Q. What did they have to do?
A. Draw plans, I think, or engineer -- make sure the building is structurally what it needs to be. I mean, you have to hire an architect, architect makes the plans, and the engineer says that the plans work for the project.
Q. Okay. How much did Old Towne Suites pay

Page 26

Curry Engineering?
A. I'm not sure. I don't know. 10,000, 15 -- I have no clue. I'm sure we have records of it. I don't know right now.
Q. And then Joe Tucker was the architect?
A. He was.
Q. How much was he paid?
A. Maybe 30, 40,000. I'm not sure. I'd have to see the expense sheet to know exactly how much he got paid.
Q. And then it says, and others. Who were the others?
A. Other expenses, oh, Kevin, the contractor, Kevin Carroll, he got paid for his work. And then we had soil testing, we had water flow testing, let's see, other expenses that would occur. We had a storage unit that we had to pull stuff out of the restaurant to go into a storage unit that the contractor was going to use for his supplies. We had cut trees down in back of the restaurant so the contractor could pull back his, I guess, equipment back there. I don't know what else. I'd have to see the expense sheet to see exactly. And then we had some insurance as well. We had to carry builders risk insurance while we're building it.

Page 27

Q. Okay. Kevin Carroll, what did you have to pay him?
A. I'm not sure of the figure, but I'm sure it was a few thousand. 10,000, 15,000, I'm not sure.
Q. You said earlier that he did his preliminary work for free.
A. That's right.
Q. So what did he actually do?
A. Well, once we received the money and were actually paying people, then he went out and did whatever he needs to do, like get permitting, and I think you have to pay for the city -- the permit might have cost $5,000. I'm not sure. I remember it was a big number, three or four or five. I don't know.
Q. But you never actually got the money.
A. Sorry?
Q. You never actually got the money.
A. No, you don't get the money until you close on the project.
Q. Right, so --
A. You're talking about the new suites.
Q. Yes.
A. The new suites, yes, we didn't get the money, but we knew we were going to have the money,

Page 28

but we didn't go forward with the loan yet until we needed to close on it. Because the original suites were making money regularly, so we didn't need to borrow the money until we were going to build the building right away.
Q. I'm trying to figure out what you had to pay Kevin Carroll for because he never started the work, right?
A. I'm sure the permit to build and then his work to work with the architect and get the plans approved through the BAR. He's the one that found all the engineers. He found the architect. He did all the leg work for us, so he had some type of fee. I know we cut checks to Kevin Carroll.
Q. But you don't know how much?
A. I'm not sure. I'd have to see an expense report.
Q. And you do have a comprehensive report somewhere.
A. We do. I think we spent somewhere in the neighborhood of $93,000 or $92,000, somewhere.
Q. I know you said that. That's why I'm trying to figure out where all that money went.
A. It's all itemized.
Q. And then soil testing, how much would that

Page 29

have been?
A. Maybe a thousand, but I'm not sure of that figure unless I see it in front of me.
Q. And then water flow testing, what was that for?
A. That's, you have to make sure that -- well, you have to make sure you have adequate water to go to the second and third story and the fourth story with this building, so to pull water up you have to make sure your flow test is correct or else your going to have to put a pump station to pump water up to the top.
Q. Okay. And did you have adequate flow?
A. No. I think we had to have a pump station.
Q. Did you actually build a pump station?
A. We did not build it. Pump station would be built way after.
Q. How much did the flow testing cost?
A. I think it was a few hundred dollars.
Q. And the storage unit, how much was that?
A. Storage unit was, I think it was we got $360, if we pay for two months, we got one month free, so I think that was for a three-month period.
Q. Okay. Tree cutting, how much was that?
A. One check was for 900, I remember that, and

Page 30

then they had to come down and grind the stumps. The contractor said the stumps were too high, so they cut the trees down but didn't grind the stumps; so I think we paid another $400 for them to come in and grind all the stumps down.
Q. So the trees were actually cut even though the work never commenced?
A. Yes. We were planning on working, I think it was the Monday after the closing. Once we closed, then the contractor was going to start. He wanted an initial, I think it was $150,000 that he needed to -- his mobilization fee, so once we closed on the project, he'd get that money and then bring all his equipment in.
Q. When was the tree cut?
A. I'm not sure. I'd have to see a receipt or the expense sheet that shows the dates on it.
Q. Paragraph 11 says, by January 2014 plaintiff secured pre-approval of a loan for the building expansion for more rental suites in which he and Jacob Ferderigos would personally guarantee the loan, but the other defendants would not execute a personal guarantee. Why was that arrangement done?
A. Phillip and Spiros Ferderigos said that they're attorneys and they don't personally

Page 31

guarantee anything. I thought it was a little bit odd. I'd never heard of that. I went to the bank and asked them, I said, I have two guys that are partners in it that didn't want to personally guarantee the note. I guess if you default on a note, then they can't come after you personally. Maybe that's an attorney thing but -- and then the bank agreed to do it without Phillip and Spiros because I had 50 percent and Jacob had 16.67 percent, and that was enough personal guarantee for them on the -- as long as they had the mortgage to the building, they were fine, I guess.
Q. Who was the banker that you discussed that with?
A. Southcoast. That was Tony Daniels and Jeff Odom who worked for Southcoast.
Q. I thought you told me a few minutes ago that the deal, up until the closing fell through, was always that they were all going to participate in the loan.
A. They were.
Q. But here in this paragraph --
A. Well, the money, we were all in the money, we were all going to owe -- it was my 50 percent and the Ferderigos' 50 percent, so Fokas 50

Page 32

percent, Ferderigos 50 percent.
Q. But you say here that they said that they were not going to personally guarantee the loan.
A. That's right. They wanted to be not personal guarantors, and the bank agreed that just Jacob and I could be the personal guarantors on the note.
Q. Well, how could they be borrowers and not be personal guarantors?
A. The building was what they -- the bank wanted to secure the building. The building was worth way more than the project was worth.
Q. How much was the building worth?
A. I would estimate maybe 5 million.
Q. Okay. So your half would have been 2 and a half million and their half would have been 2 and a half million?
A. Worth of the building, yes.
Q. Okay. Paragraph 12 says, the details of the loan package was explained to defendants who were aware that they would be required to execute a mortgage for the building and that the LLC would be a signatory on the note to the lending bank, and defendants consented to these things being done.
So we've got several parts to that. One was

Page 33

that the details of the loan package was explained to defendants. Who did that, when was that done, and in what form was that done?

A. I think we discussed that -- I mean, we discussed it at church all the time. We discussed it maybe when we had our family gatherings. We had Thanksgiving together and Christmas together, so we would -- but we discussed that we had a 5 percent note and that it was a 20-year -- 5 percent, 20-year loan.

Q. All right. When did you have that discussion?

A. Sometime prior to the -- well, when we got the agreement, what we were looking for. I think it was always -- we were all trying to get around 5 percent.

Q. All right. I don't want to get ahead of ourselves, but the first commitment letter that you provided to us is dated February 5, 2013, so would it be sometime after that that you had that discussion?

A. Well, I'm sure once I got -- once we got a commitment letter, then that was our deal, and I'd just say we got the deal that we wanted, 5 percent with a 20 year note.

Page 34

Q. And according to your paragraph 12 here, the agreement was that they would be required to execute a mortgage for the building and that the LLC would be a signatory on the note to the lending bank, and the defendants consented to those things being done. So what you just told me was that you discussed with them that it was a 5 percent, 20-year loan.

A. Mm-hmm, yes.

Q. So when did you discuss with them that they would be required to execute a mortgage for the building?

A. Well, that's part of the loan, the mortgage -- it was always the deal that the Old Towne Restaurant would be the mortgage -- the building would be the mortgage for this loan and that the suites, the Old Towne Suites were making enough income to justify the payments on the loan. That's how the bank lent the money. They saw the record of the volume that we were doing through the original suites, and it was so successful that they said that this new venture would be no problem; it should be a success as well. But there was enough income coming in -- income stream to pay for the actual note just from the original suites that we had there.

Page 35

Q. Who did you deal with primarily at the bank, was it Mr. Daniel or Mr. Odom?

A. Jeff Odom was the main guy, but Tony is his boss, so he was always -- he was involved in a lot of meetings as well, I think.

Q. How did you get hooked up with them?

A. Maybe a realtor told me about them. I'm not sure.

Q. Had you ever done business with them before?

A. No.

Q. Do you remember who the realtor was that told you about them?

A. Little short guy, can't think of his name -- Brent Case. He worked for Coldwell Banker. That might have been him. He might have thrown out a bunch of names. He wasn't the first banker so -- but we would bring the banker to Old Towne Suites, show them the property, saying this is what we have and we want to extend this. It's doing so well. We want to put it behind -- you know, behind these suites we want to build more.

Q. How many banks did you talk to?

A. I think three or four.

Q. Which other ones did you talk to besides

Page 36

Southcoast?

A. There was one on Broad Street, I remember a guy. I can't tell you what his name is. And then First Citizens was our bank, and they weren't ready to do big -- they were in commercial lending at that time, and so that was three. It might have been just been three. Or, no, I think there was another one on Broad Street too.

Q. Do you remember the names of either of the ones on Broad Street?

A. No.

Q. Do you remember who you talked to there?

A. I remember the one guy from Broad Street, he's a chubby guy; came by and saw the suites, and he loved them. He had a funny character. He would tell jokes, so I remember him.

Q. Well, that narrows it down. Did they offer to loan you the money?

A. No. They wanted to see more -- most of them, I think, just wanted to see two years history, and we only had one year history of the suites at the time.

Q. So was First Citizens the only bank that agreed to loan you money for this project?

A. It was Southcoast.

Page 37

Q. Southcoast.
A. Yes, Southcoast was the one. They immediately said yes, and they seemed friendly, so that's who we went with.
Q. Who actually met with them?
A. I met with them and Jacob, I think, met with them.
Q. Did Spiros ever meet with them?
A. I don't know. I don't think so. I think Spiros communicated through emails with them.
Q. So I want to drill down a little bit more on your statement here that it was explained to the defendants who were aware that they would be required to execute a mortgage for the building, and you said that was part of the package; but in what way was that explained to them, and who did it, and where?
A. Well, we discussed it. I mean, it might have been at church or one of our functions; but, you know, we mortgage the building, the bank gives us the money, we have the income stream from the original suites to show that it's a successful project, and that's how they gave us the loan.
Q. So your testimony is that you told them that orally?

Page 38

A. Yes.
Q. Not in writing.
A. No.
Q. Have you looked to see if you have any emails or texts or letters or anything that confirms that you told them, let's just say prior to the first closing, that they were going to be mortgaging the building?
A. It might be in emails. There's so many emails and texts that went back and forth. It might be. I'm sure you already have them.
Q. Right. Well, that would have been pretty important for the case, right? So I'm asking you, in your going back and looking through your records and emails, have you found any in which you informed Spiros that he was going to be signing a mortgage for the building?
A. I'm not sure. We discussed that the building was going to be mortgaged, that's the only way the bank would give the loan; and it was all agreed that we were going to mortgage the building, and we were all going to be on the note.
Q. Suppose Spiros were to say that he was not aware until the Saturday before the closing that he was going to have to sign a mortgage for the

Page 39

building. Would you agree with that or disagree with that?
A. I would definitely disagree with that.
Q. You're absolutely sure that he knew before the Saturday before the first closing that he was going to be signing a mortgage for the property?
A. Yes, 100 percent sure.
Q. Okay. And, again, I want you to remember as carefully as you can; and when I asked you earlier how it was explained, you said it might have been at a family gathering or church or wherever. I want you to think back now, and I'm not talking about when did you tell him it was a 5 percent loan for 20 years. I'm talking about when did you tell him specifically that he was going to be signing a mortgage for his interest in the building.
A. We discussed it probably before I went to look for banks as well. I mean, they know the only way to get the money would be to mortgage the building. The bank's not going to just loan you money.
Q. Was there ever any discussion about mortgaging just yours and Jacob's interests in the building.
A. Never.

Page 40

Q. Could that be done?
A. No, I don't think so. I think a bank needs to have all properties that own the building in order to give the loan.
Q. How do you know that?
A. I'm assuming.
Q. Okay. All right. And then the last part of this says it was also explained to them or that they were aware that the LLC would be a signatory on the note to the lending bank and they consented to these things being done. In what way did they consent to that being done?
A. Can you repeat that? Which one are you at?
Q. Paragraph 12?
A. Okay.
Q. It basically says three things. It says the details of the loan package was explained to the defendants.
A. Mm-hmm.
Q. And you explained that, that that was the 5 percent for 20 years.
A. Right.
Q. Were aware that they would be required to execute a mortgage for the building. We've talked about that.

Page 41

A. Yup.
Q. And then the third is and that the LLC would be a signatory on the note to the lending bank and defendants consented to these things being done.
A. Yes. We discussed that the income stream from the current suites was enough to pay for the mortgage even if we don't make a dime in the new project.
Q. Who was present during the discussion where you told them that there would be a mortgage on the building?
A. Who was present. We talked about the mortgage on the building before we even went to look for banks, so they knew way ahead of time. Who was present? I'm not sure. But that's the only way to get a loan.
Q. What about after you got the commitment, did you tell them again that based on this commitment we are going to be mortgaging your interests in the property?
A. They knew it then as well. It was just -- it was an exciting time. We got the loan. We were ready to build. I mean, that was the one thing that we needed was to make sure the bank agreed and they would give us a loan for this new project.

Page 42

Q. Yes, but how did they know? How did they know specifically not just that the bank was going to loan the money but that their interests in the real estate were going to have to be mortgaged?
A. They knew. Their interest in the real estate to be mortgaged was known before we even went to look for banks.
Q. Okay. Can you remember a specific day and place where that was discussed?
A. No, I can't.
Q. Or who was present during that discussion?
A. I'm not sure. It would have been Jacob and Phillip and Spiros. A lot of times we -- outside of church, when the kids go to Sunday school, we would all, the dads would be outside with the wives, and the dads would sit around, and we'd have our little huddle session, and we discussed the project.
Q. Did you ever discuss it separately with Spiros?
A. Separately. The project, many times with Spiros, at church or at family gather.
Q. I'm talking about the terms of financing where you told him that his interest in the property was going to be mortgaged.

Page 43

A. He knew that the interest in the property was going to be mortgaged before we even went to look for banks.
Q. Right.
A. That's the only way we'd get the loan.
Q. Right. You explained that. This question was did you ever have a separate conversation with Spiros where Phillip wasn't present?
A. It's possible. At church there are a lot of people there, so if we're discussing it, sometimes we go over and talk to another friend or, you know, people who baptized our kids. They're called koubari. We'll go over and talk to somebody else. I'm not sure if Phillip was present for every conversation or -- we talked alone too. Phillip and I used to play chess matches at the family gatherings, so it was just he and I until someone was getting ready to win. Then they would huddle around and try to figure out who the winner of the match was.
Q. But, again, I'm focusing on a particular conversation, and that is where you discussed the fact that Spiros's interest in property was going to be mortgaged. I'm not talking about how many suites there are going to be or what color the

Page 44

wallpaper is going to be or anything like that. I'm talking about one specific thing, and I want to know how many times you told Spiros that his property was going to be mortgaged.
A. I'm not sure many times was even necessary. Before we even went to the bank we knew that we were going to mortgage the building to get the loan to build the new building above the restaurant.
Q. What is a mortgage?
A. A mortgage is money that goes towards a building that you have to pay back.
Q. Okay. And if you don't pay it, they get to take the property.
A. I wouldn't say the whole property. Depends on what the property's worth.
Q. Enough to cover the debt.
A. Eventually they would have to put the property up for sale so they could get their money out of it.
Q. So if you assume that the property here was worth far more than the amount that was going to be borrowed, which I think you've said is the case, right?
A. Mm-hmm, that's correct.
Q. So does that mean that having a mortgage on

Page 45

the property is in effect like a personal guarantee of the loan?

MR. BARNETT: Object to form, but you can answer.

THE WITNESS: Personal guarantee is different. Not only do you have the building mortgaged where they can sell it and if you don't pay your bills the personal guarantee means, I guess, if you don't have enough money in the building, if they don't get enough money out of it, they can come after you personally, so whatever your house is or whatever you have in your name, then they can come after you personally.

Q. That's why I was asking, in this particular case the building was more than worth enough to cover the loan.

A. Yes.

Q. So if the loan didn't get paid back and there was a mortgage on Spiros's interest in the property, his interest would be taken by the bank, or at least enough of that to cover the indebtedness if you didn't pay the loan, correct?

A. Correct.

Q. So in that circumstance how is that any different than a personal guarantee? His property

Page 46

is being taken to pay the loan. Isn't that effectively the same as if he personally guaranteed the loan?

MR. BARNETT: Object to form, but you can answer.

THE WITNESS: It's not the same because either you -- they can't come after you -- like if they don't get enough money out of the building, then they can come after you personally. That's what a personal guarantee is.

Q. I'm talking about if, as was the case here, the property is more than sufficiently valuable to cover the entire cost of the loan, doesn't that mean that the -- if you defaulted on the loan and the bank foreclosed on the mortgage, that they would get the entire amount of the loan paid from the value of the building?

A. I guess. The issue there would be, I don't know, are there attorney's fees involved? I don't know what other expenses come along. I don't know how banks rack up expenses. If they don't get enough out of the building, they're going to come after you personally. Phillip and Spiros from the beginning said they would get a note but they don't want to be personal guarantors on it because that's

Page 47

what attorneys do, they don't like to personally guarantee anything.

Q. Right. What I'm exploring right now is how is a mortgage on their property any different than a personal guarantee because you were going to borrow it and at the end -- originally you were going to borrow a million dollars, and then eventually you were going to borrow $1.8 million, right?

A. Yes, but you can personally guarantee and not have a mortgage on a building. They're two different issues there.

Q. Right, but in this particular case your testimony is that they agreed, Spiros agreed specifically, that he would mortgage his interest in a $5 million building.

A. Correct.

Q. And the loan was going to be $1.8 million, right?

A. Correct.

Q. So you'd have to have some pretty expensive lawyers to eat up a $5 million building to pay back a $1.8 million loan, right?

A. I've seen some crazy lawyer bills.

Q. Not that crazy, right? I mean, can we agree

Page 48

sitting here that it was the contemplation, certainly your contemplation, that a $5 million building was more than adequate security to cover a $1.8 million loan?

A. What if it was dragged out for months and then you had attorney bills and deposition -- who knows. You throw you guys in it, then you'd probably find ways to get a couple million dollars more, I would think.

Q. All right. So can we agree that for all practical purposes pledging Spiros's one-sixth interest in a $5 million building would have been more than enough security to cover his indebtedness, his share of indebtedness, if that loan went into default?

A. Yes, I would think so; but the bank asks you to personally guarantee it, that's one of their stipulations. And Spiros said he didn't want to be personally guaranteeing it.

Q. But he had no problem mortgaging his one-sixth interest in a $5 million building.

A. Correct.

Q. All right. Paragraph 13 says Defendants Phillip and Spiros Ferderigos agreed to execute the mortgage so long as they were not required to sign

Page 49

as personal guarantors on the note to the bank, and at no time were they asked by Plaintiff or any lending bank to do so.

So at the risk of repeating, can you think of any other conversation that you had with Spiros where he agreed to execute the mortgage as long as he was not required to sign as personal guarantor?

A. That was his one limitation, he didn't want to be personally guaranteeing it, but if the bank agreed to that.

Q. All right. Now, this is going to become important because I didn't ask you when he said he wouldn't be a guarantor. I asked you when he said he would sign a mortgage. Those are two different things, right?

A. He said he would sign a mortgage when we -- before we even went out to look for banks.

Q. And the same conversations that we talked about, either at church or some family gathering.

A. Mm-hmm, yes.

Q. Did he ever put that in writing?

A. I don't think so. I don't know. It might have been in one of the emails.

Q. But you've looked for those emails and haven't found any where he said that?

Page 50

A. I'd have to reread them, I guess. I mean, there's so many.

Q. Well, I mean, given that we've been in this litigation since July of 2015, and in their very detailed answer and counterclaim they very explicitly deny agreeing to enter into a mortgage, can I assume that you have been back and looked through every scrap of paper or email or text that you can find to find some evidence that they agreed to that?

A. There are some. When we were having conversations with Amy Haines on the email thread, there was talk about the mortgage. And I think Phillip and Spiros both said that they were only supposed to mortgage the building and -- maybe it was about a hypothecation agreement he was talking about, that he didn't know about the hypothecation agreement, they weren't supposed to sign that. Or they complained that -- or Phillip agreed about the Old Towne Suites signing on the note. He said that Old Town Suites is not supposed to sign on the note because then he would be personally guaranteeing it.

Q. Was that email chain after the first closing?

Page 51

A. I think so.

Q. So can you think of anytime before the first closing when you got any kind of a document at all where Spiros Ferderigos agreed to mortgage his interest in the building?

A. On paper I'm not sure. It was all orally we discussed it, went out to the banks and got the bank.

Q. Well, that was exactly my question. So you agree it was all oral, and you've looked, but you have not found any paper or email or other document where he agreed prior to the first closing to mortgage his interest in the property.

A. I think his email talking about even the second closing -- nothing has changed. It was always one note, one bank, and one mortgage. So his emails after the second closing saying -- talking about the mortgage, that's just him reiterating that we're only supposed to sign a mortgage. I guess after he saw the closing documents -- we didn't have closing documents for the first -- or we might have got them. They might have prepared them. I don't know if they went through the email chains. Then he came back and said that we're not supposed to sign a

Page 52

hypothecation agreement. I think Phillip was mentioning that, and he talked about the Old Towne Suites not signing on it at that point.

Q. We'll look at those things in a little while, but I just wanted to make sure there wasn't some email out there that we haven't seen or that you haven't produced to us.

A. You do have the email saying that they're only supposed to sign on the mortgage and not be personal guarantors.

Q. I was just asking you about anything before that first closing.

A. It's all the same deal. It's all one bank note.

Q. Okay. Paragraph 15 says, the closing was scheduled by plaintiff and Jacob Ferderigos with the bank for October 24, 2014. And was that the one that didn't happen, and there was a communication between you and Spiros about him having to put off a closing because of his judicial race?

A. Yes. He was going to become a judge I found out later. He didn't express that in the beginning. He just said he just couldn't show up Friday for the closing.

Page 53

Q. Paragraph 16 says, Defendant Spiros Ferderigos refused to sign the mortgage for the closing as he was in contention for a seat on the South Carolina Circuit Court and informed plaintiff that the mortgage might affect his consideration.
A. That's correct.
Q. Okay. Did he specifically say a mortgage might affect his consideration?
A. Oh, yes. He said that because the judgeship people, I guess, didn't know that he was mortgaging the building, and he didn't put that in his paperwork, he screwed up and didn't put, I guess, or he thought later on that it might affect his judgeship if they see that he's mortgaging his interest in the building, so he wanted to wait until his judgeship process was over, which could have been I guess a couple of weeks. I think the email chain -- at one point Phillip said, you have to wait a couple of weeks to see how this process goes, then we'll close after that.
Q. Okay. Paragraph 17 says, the second closing was set for late November 2014. We've seen correspondence about that. Paragraph 18 says, prior to the second closing Defendant Phillip Ferderigos demanded that Plaintiff execute an

Page 54

agreement whereby specified penalties would be paid in the event payments were not made on the note to the lending bank. If this agreement were executed, said defendant agreed he would execute the mortgage. Why did you not agree to sign that document?
A. Well, it's the first time I saw it. There was an email chain saying that we want you to sign a piece of paper, Philip's preparing a piece of paper, and I have never seen that. I didn't even know what it was about. Once I saw it, I was like if you don't pay -- it said if you don't pay on time, then you lose one percent interest. And I showed it to an attorney. I think it was John -- he's a real estate attorney. What is his name? He works above Amy Haines' office. John McNeill maybe. I'm not sure. And I showed it to him and he goes, I wouldn't ever let my client sign something like this. And then I said, well, you know, he's -- they're saying that I have to sign it to go to the closing. The closing was going to happen I think the next day. I think I saw it the night before. And then I told them, well, I don't think I'll ever have an issue paying on time because I have enough income to -- I have other

Page 55

properties, and I don't think there will ever be an issue with me not being able to pay on time, so as a 50 percent owner, if one of them don't pay on time and if I pay their percentage, then it would benefit me to have more than 50 percent at one point. So I eventually said I'm okay with it and he said then -- and I think he made some adjustments, and Phillip agreed to change a few things. In an email chain he would say I agree to 1, I agree to 3, I agree to 4, whatever my questions were that the attorney said, but I'm not agreeing to No. 2, whatever that was.
Q. Okay. When did that exchange occur?
A. After the second closing, sometime -- sometime before November -- late November 2014.
Q. Okay.
A. And after the October closing.
Q. So at that point was Phillip going to borrow the money, or was Phillip bringing his own money?
A. That's the first time I heard that Phillip said that he was going to bring his own money, when he sprung that letter on me; and then he said, I'm not going to be in the note, I'm going to have my own deal. He wouldn't say what it was. I find out later from an email chain that he only had 300,000

Page 56

guaranteed from a bank and that the extra 50,000 he'd have to come out of pocket.
Q. When did you learn that?
A. I think Jacob told me that he had a loan for 300,000 because I sent an email chain, who's going to be responsible for Philip's 50,000 if he doesn't come up with the money. And at one point Spiros said, I'm not responsible for it and neither is Jacob. I was like, well, if Phillip doesn't pay it, do I have to pay it? You have to show proof that you have the money to do the project.
Q. When did that conversation take place?
A. It was an email thread, chain.
Q. Was it before or after the second closing?
A. After the second closing.
Q. So by the time that Phillip was asking you to sign this extra agreement, were you aware that he was not going to be part of your loan?
A. Yes, he made it -- he made it a point at that point to tell me that he wasn't part of the loan. He was making it sound like we need him now, and he doesn't need to sign the mortgage now and -- because he's got his own loan. But I never saw the document that he had his own loan. I asked him to supply it, and he said that he doesn't have to

Page 57

supply it.
Q. Did he say he had his own loan or that he had his own money?
A. He had his own money is what he said. I found out that 300,000 of that, just from the email chain -- there was an accountant on the email chain, and the accountant knew that Phillip had 300,000 guaranteed but he needed to come up with the extra 50,000.
Q. When did you first learn or get information that Phillip was going to be borrowing the money rather than just having cash?
A. Through that email chain that I think Phillip -- Spiros sent it out and said that we each had to put in 350,000, and he had some accounting numbers down there that said what the percentages were because originally -- I think for 1.8 million they couldn't split it for all six of us. Spiros said the loan should be for 1,750,000 so that we each come up with 350,000. And then at one point the accountant, his wording was in there. I later found out that that was a guy at the church who is an accountant who gave him that information, but it was $50,000, and the accountant said the $50,000 -- the one deal was with me eating the $50,000, me

Page 58

eating Phillip's $50,000. And the accountant said in there, Athan probably won't agree to this.
Q. Was it understood that Phillip's money was not going to be secured by a mortgage on the real estate?
A. I had no clue how he was securing his money. I don't know. I never saw that deal. I asked for the information, and he said he didn't have to supply it.
Q. Was it your understanding that Old Towne Suites, LLC, was not going to be the borrower on that loan?
A. On Phillip's loan? I have no clue. I never saw any paperwork.
Q. Was there ever any discussion of assigning rents from Old Towne Suites to secure his loan?
A. I didn't see the document. I have no clue what his deal was with another bank.
Q. So what about Spiros, as of the time of the second closing, what was your understanding about where his money was going to come from?
A. He was going to be part of the note. He was always part of the note.
Q. Okay. So he was going to sign the note?
A. Yes.

Page 59

Q. The same note that you were signing.
A. Definitely.
Q. Okay. But not guaranteeing it; he was going to sign the note but he wasn't going to guarantee it?
A. Not personally guaranteeing it.
Q. Well, if you sign it personally --
A. You sign it for the mortgage of the building. They wanted -- Phillip -- Spiros owned one-sixth of the building, so the bank required that all people who were on the building to sign off on the mortgage, so he was signing off on the mortgage of the building.
Q. I'm talking about the note now. Was he going to sign off on the note as well?
A. No. He wasn't signing the note, hm-mm.
Q. So he was not borrowing the money then.
A. He was definitely borrowing the money. The building was borrowing the money. They needed to secure the building, so he was on the closing documents. His name was on all the closing documents, so he was signing on the note, yes.
Q. So was he or was he not going to sign on the note?
A. I think he had to sign on the note because

Page 60

he was guaranteeing the building. I'm sure his name was on the bank note.
Q. Okay. And on the mortgage?
A. Mortgage of the building, of course.
Q. Okay. Paragraph 19 says, initially Plaintiff refused to sign the agreement as it was a change in the agreement of the parties, and the scheduled closing was canceled due to Defendant Phillip and Spiros Ferderigos refusal to sign the mortgage. Is that what you just described to me that you took it to John O'Neill?
A. Was it O'Neill? Maybe it was O'Neill.
Q. McNeill, John McNeill?
A. It might be O'Neill.
Q. Whoever it was.
A. Yes.
Q. Now, when you took it to him, was he aware that Phillip was not going to be a party to the loan?
A. I'm not sure.
Q. Wouldn't that make a big difference as to whether it was fair for him to ask for that agreement?
MR. BARNETT: Object to form.
THE WITNESS: Phillip was still a part

Page 61

of the money. He had to come up with 350,000. So he was still one-sixth partner in the deal. I mean, I later found out that the 300,000 -- he had guaranteed 300,000 from maybe his bank. He was talking to a bank called CresCom that was in his building, so maybe CresCom told him, we'll give you 300,000. I have no clue. I never saw that paperwork.

Q. But you were told, if there was a CresCom loan or wherever that loan was coming from, that it would, A, be secured by the mortgage on the building, or that it would be secured by an assignment of rents from Old Towne Suites, or that Old Towne Suites would be a signatory to that loan.

A. I had no clue how his loan was done because I never saw it.

Q. And you never agreed to sign a mortgage for his note, right, for his loan?

A. Me sign the mortgage?

Q. Yes. You never agreed to sign a mortgage to secure Phillip's loan.

A. No. I never saw it, yes.

Q. You never agreed to sign any document that would assign the rents from Old Towne Suites to secure his loan, did you?

Page 62

A. He never asked me.

Q. And you never agreed to sign on behalf of Old Towne Suites as a borrower or guarantor of that loan, did you?

A. No, he never asked me. I don't know what the details were. He might have come to me later and said, I'm guaranteeing the building. I have no clue what that deal was with that loan.

Q. Paragraph 20 says, Plaintiff agreed to sign the agreement presented to him by Defendant Phillip Ferderigos in early 2015.

A. Mm-hmm.

Q. Would you tell me about that? I haven't seen anything where you said you would agree to it.

A. Oh, I think there's an email chain that said I would be more than happy to go ahead and sign the side agreement because I like the idea of getting more percentage in the building. If I'm over 50 percent owner, then I can make decisions.

Q. What would make you more than 50 percent owner?

A. If one of them defaulted and didn't pay their monthly payment, then I would be paying their monthly payment for them, and then I would get one percent of the building, according to Phillip's

Page 63

document.

Q. I thought Phillip's document said that you would be penalized if you didn't pay.

A. Oh, everybody. It was everybody. It wasn't just me. It was the document for everybody that we would -- we had to come up with -- they had to come up with one sixth of the payment, and I would have come up with half the payment, so if anybody didn't -- and I had asked him to change the document at one point. I was like, can we put on there, if the person who is paying the late payment -- in other words, if Phillip didn't pay his one-sixth and I paid the one-sixth for him, then I would be the one that would receive the one percent extra interest in the building.

Q. That's the way you interpreted the agreement that Phillip wanted you to sign.

A. He agreed to that. He agreed to put it that way.

Q. Why didn't you agree to that in November of 2014?

A. I was -- at that point it was sprung on me the day before the closing, I think; and I took it to John O'Neill, I think that's his name, and he said he would never let his client sign something

Page 64

like this. He goes, you're already guaranteeing the note for the building and you're personally guaranteeing it. What is this side agreement about? That's something Phillip concocted, I think, Phillip and Spiros, and just sprung on me. That was never a part of our agreement from the beginning. We never discussed it. I saw that the day before the closing, I think, or the night before the closing.

Q. Then paragraph 21 said, despite plaintiff's agreement to sign the above agreement, defendants refused to sign the mortgage and notified plaintiff they would not go forward with the planned expansion of the building.

Did they explain to you why they wouldn't go forward after you agreed to sign the side agreement?

A. They didn't explain, I think Phillip's feelings got hurt and he didn't want to go through with the deal.

Q. I'm going to skip some of the paragraphs, but there's one paragraph, it's 28, it says the parties entered into part performance in furtherance of their agreement in the form of payment of a total of $86,000 in fees for

Page 65

engineering, architectural work, planning and zoning approval and design work so that by the time a final loan package was offered by the bank all designs and plans and all zoning approvals for the project were complete.

That 86,000, is that the expenses that you explained earlier that Old Towne Suites, LLC, paid?

A. That's correct, and I think it was more than -- it was around 92,000 because there was insurance that wasn't in that figure and most -- a lot of that payment was paid by the -- out of the Old Towne Restaurant account.

Q. But it was paid on behalf of Old Towne Suites, LLC.

A. Correct.

Q. Let me show you another Exhibit. We'll mark this as 2.

(Exhibit No. 02 marked for identification.)

(Recess held.)

Q. Before I get to Exhibit 2, a couple things I want to clarify. One is the 86,000 or 90,000 or 92,000, whatever, that was spent, were those all expenditures pursuant to trying to build the project?

Page 66

A. Build the new building, yes.

Q. Build the new building. Okay. And when you said that you agreed in early 2015 to sign the side agreement, was that agreement in the email chain?

A. Yes.

Q. Was there any oral agreement in addition to that?

A. I'm not -- I don't think so.

Q. All right. So let me let you look at Exhibit 2. These are answers to interrogatories. I just want to ask you about some of the witnesses that you've identified. I think I know what Jacob Ferderigos, Spiros Ferderigos, Phillip Ferderigos might say. But No. D is Justin Hansen, Old Towne Restaurant. What does he know or what do you expect he's going to testify that would be relevant to this case?

A. I don't know what he'll testify, but he was the general -- he's the general manager, so he knows everything that's going on with the restaurant, and he knew that we took the stuff out of storage to start the project. He knew that we cut the trees down to start the project. I mean, he might have been the one that actually cut the check to the guy for cutting trees. I'm not sure.

Page 67

Q. Was he present for any conversations that you had with Spiros about agreeing to borrow money or mortgage the building?

A. I don't think so.

Q. And Robert Daniel, I think you've explained, that's one of the bank officers?

A. It says here Southcoast. Oh, Tony -- that's probably Tony Daniel. Maybe he goes -- Robert is his formal name.

Q. So what does Robert Daniel, BNC Bank, what is his role?

A. I think he's the president of the bank. Is that right, BNC? Southcoast. He was the president of Southcoast, and they changed to BNC.

Q. Okay. And it says he's knowledgeable about the offer to finance the project and the dealings with plaintiff and defendants and the agreement to go forward with the project. So what does he know about that?

A. He's the one that did the loan for Southcoast.

Q. What dealings did he have with Spiros Ferderigos?

A. I'm not sure. I think they emailed. I'm not sure if he emailed or Jeff Odom emailed.

Page 68

Q. You say in your answer that he's knowledgeable about the offer to finance the project and the dealings with plaintiff and defendants.

A. Mm-hmm.

Q. And the agreement to go forward with the project.

A. The dealings might be that the deal didn't go through and tell him that the brothers or the cousins aren't ready to sign now, there's a little dispute over a side agreement.

Q. Do you know whether he had any communication directly with either Spiros or Phillip Ferderigos?

A. I'm not sure.

Q. So you're not aware of any.

A. I'm not aware of any.

Q. What about Jeffrey Odom. That's the person you dealt with primarily at the bank?

A. He's the banker, mm-hmm.

Q. Do you know whether he ever had any dealings directly with Spiros or Phillip?

A. I think I saw an email chain that they were emailing back and forth, so Spiros would have emailed him.

Q. When was that?

Page 69

A. It's in one of the emails of our -- our emails.
Q. Was that after the first closing?
A. I don't know. I'm not sure.
Q. Did you ever tell him that Spiros was not aware until the Saturday before the closing, or shortly before the closing, that he was supposed to sign a mortgage?
MR. BARNETT: Object to the form. You can answer.
THE WITNESS: I don't know if he -- I have no clue. I guess you'd have to rephrase that question.
Q. Did you ever tell Mr. Odom that Spiros had not been aware until shortly before the first closing that he was supposed to sign a mortgage?
A. No. Spiros was aware that the building was going to be mortgaged before we even went to any of the banks.
Q. So you never told Mr. Odom anything to the contrary.
A. No. I mean, Spiros was always signing on the mortgage.
Q. Joe Tucker, we know him. He's the architect.

Page 70

A. Right.
Q. Did he have any dealings directly with Spiros or Phillip?
A. I don't know if they were at one of the meetings at Old Towne. I'm not sure if Spiros and -- Jacob was the one that usually was at all the meetings with the architect and the contractor, but maybe Phillip and Spiros were at one of them because they were in there eating lunch one day. I have no clue. They might have said hello to them. I'm not sure.
Q. Do you know whether they ever discussed with Joe Tucker the terms of the financing for the project?
A. I don't even think Joe Tucker would know the terms of the financing.
Q. And Kevin Carroll, he's the contractor?
A. That's correct.
Q. Is he the one that did the first phase?
A. He is.
Q. Okay. Did he deal directly with Spiros or Phillip?
A. I think he had conversations with them but I'm not sure.
Q. Okay. Did you actually sign a contract with

Page 71

him for the new addition?
A. Yes.
Q. When did you do that?
A. I'm not sure. It's in the records. I don't remember the exact date.
Q. Did you get Jacob or Phillip or Spiros to sign off on that?
A. I think Jacob was on that contract as well.
Q. Why didn't you get Spiros or Phillip to sign off on it?
A. Jacob was handling the Ferderigos half, and I was the other half. It was always Jacob -- and that's the way it worked on the first suites as well. Jacob cut all the checks. I never saw Phillip or Spiros come to any of the meetings.
Q. So what do you mean that he was handling the Ferderigos half?
A. We always cut -- like for the Old Towne Suites we'd cut one check to Ferderigos and one check to Fokas. I'm the Fokas half, and then they would split their thirds. And Jacob held the checkbook for the Old Towne Suites every four months, and if he held the checkbook, then he would cut the checks, and he would communicate to his brothers for the Ferderigos half.

Page 72

Q. Did Spiros specifically authorize you to sign a contract with Mr. Carroll?
A. Spiros authorize me to sign a contract, no, that's -- Spiros would probably tell Jacob not to sign it, I guess, and then Jacob wouldn't sign it because that was part of their half, their 50 percent interest in the building.
Q. Okay. So to your knowledge did Spiros ever specifically tell you that it was okay to sign the contract?
A. I don't think Spiros -- I think it was just given that we were going to sign the contract. It was get the note, secure the money, sign the contract for the contractor, build the building.
Q. Why did you sign the contract before the closing?
A. I don't know that we did. Did we?
Q. I don't know. Did you?
A. That's what you're saying. Where's the contract?
Q. Well, you said you signed it, and there was never any closing, so I assume you signed it before there was a closing.
A. No, I wouldn't assume that. I'm not sure. I'd have to see the date of that one.

Page 73

Q. Well, there was never a closing, right?
A. There was never a closing. Oh, sign the contract. Yes, we did sign the contract because we -- once we had the money secured from the bank, we had the letter from the bank, then we were spending money on the project. The contractor is the one who went and got the engineers and the architects and everything for the project, so he had to be paid; and that's, I guess, when he asked us to sign the contract.
Q. So, again, why did you sign the contract? Did you sign the contract for the whole scope of work?
A. Yes.
Q. But you did that before you had the closing?
A. Well, we already had the money secured at that point.
Q. What do you mean, because you had a commitment letter?
A. We didn't need to bring -- we didn't need to close on the -- once you close on the project, then you get the bank money. We didn't need to get the bank money until we started putting the pilings in the ground, I guess.
Q. Okay.

Page 74

A. We had money coming from the original suites, an income stream enough to pay for the architects and the engineers and the contractor; so we didn't want to be paying money on a loan if we didn't need to until we needed that loan, and the time we needed the loan was for the contractor to receive his mobilization draft, I guess, which I think was 150,000.
Q. But what if you didn't get the loan; what if something happened at the last minute, as did here, and you didn't get the loan?
A. But we did get the loan. You saw the commitment letter. We have the loan. They committed to the loan.
Q. Yes, but you don't actually get access to the money until the closing, right?
A. Well, I remember Tony Daniels and Jeff Odom saying that that commitment letter is good as long as they're Southcoast Bank, I think.
Q. So why isn't Mr. Carroll out there building your building then?
A. Because we didn't close on the project.
Q. You just said you didn't need to close on the project.
A. We needed to close on the loan when we need

Page 75

the money. You need to pull the money out to build the project. The project costs money, $1.8 million. We didn't have $1.8 million to build the project without a loan.
Q. But you said that you thought it was okay to sign the contract without having the closing because you didn't need the money to get started.
A. We had an income stream from the suites. We had enough money to justify paying the $90,000 that we paid before we close on the loan to start the project.
Q. But what if Mr. Carroll sues you all now because he's got a contract to build this building and there's no money and he's not building it so, I mean, are you concerned about that, that he might sue you for breach of contract?
A. I don't think he will. I know him. He's not that type of person. But I guess he could if he wanted to. I have no clue.
Q. And who are the parties to that contract?
A. The parties to which contract?
Q. The construction contract.
A. Kevin Carroll's the contractor, and then I was signed on it and so did Jacob.
Q. For Old Towne Suites, LLC?

Page 76

A. I think so. I don't know how the contract was written. If you show it to me I'll see it.
Q. We'll get to that later.
A. Okay.
Q. All right then Dennis Dowd, City of Charleston, what does he know about this?
A. He's the, I guess, the architect, I mean, the planning, he's the head of the planning and zoning commission, I guess. I remember seeing him a few times at the meetings, the BAR meetings, the Board of Architectural Review meetings.
Q. Does he know anything about the agreements to finance or mortgage the property?
A. He wouldn't know anything about financing or mortgaging.
Q. Do you know whether he ever dealt with Spiros?
A. I have no clue if he dealt with Spiros.
Q. And Harold Jervey, is that Ned Jervey?
A. Let's see, bank officer with CresCom. That's probably Phillip's guy, Phillip's loan, the 300,000 note, I assume. I never saw that paperwork, and he never brought it forward. I don't know what the deal was with that $300,000 loan he was talking about.

Page 77

Q. Okay. Have you ever talked to -- I assume Harold Jervey is Ned Jervey?
A. I don't know. I've never met him.
Q. Okay. So you haven't discussed the case with him.
A. No. I think Phillip might have mentioned that he knows a guy, works in his building that's the president of CresCom, and he'll go ask him if he can get a better deal than the Southcoast one. I think at one point there was that email chain.
Q. Okay. Question No. 2 is please identify any and all communications, including written, oral, or email, between the plaintiff and the defendants -- related to the allegations described in the plaintiff's complaint. And your answer was, there are numerous emails and text messages, many of which have been exchanged by the parties.
So my question to you is, do I read that to mean that there are some communications that you have not exchanged with the parties?
A. Oh, I don't know. I think -- I'm not sure. I think you have all the emails and texts, or my attorney has them and you provided to him, I think. I'm not sure.
Q. But your answer says, there are numerous

Page 78

emails and text messages. It doesn't say all of which have been exchanged. It says many of which have been exchanged. So do you know of any communications, by email or written, between the plaintiff and defendants related to the allegations in the complaint that you have not produced?
A. Oh, I think I have produced everything.
Q. What efforts have you gone to to locate every relevant document?
A. Put a search in my computer and my phone and sent them to my attorney.
Q. What search terms did you use?
A. All the -- Jacob, Spiros, Phillip's names and Old Towne Restaurant and Old Towne Suites, I guess, Kevin Carroll too and Joe Tucker.
Q. Did you find any texts or emails that related to the allegations of the complaint that you did not provide to your attorney?
A. No. I think I provided everything. I think. I'm pretty sure.
Q. How did you search your text messages?
A. Same way, I would put Kevin Carroll's name in it or Joe Tucker or anything to do with this contract case.
Q. Question No. 8 asks for any identification

Page 79

of any expert witnesses, and your answer is you have not selected or named an expert. Do you know, are you planning to retain an expert witness?
A. I don't know. I guess, if we needed one, we'd bring him forward.
Q. Okay. Question No. 11 is, please identify the written correspondence or document wherein the plaintiff or any other person allegedly informed Spiros Ferderigos that he would have to mortgage his interest in 229 King Street in order for the plaintiff to obtain a loan for his share of the new construction. And your answer, I won't read the whole thing into the record, but would you read that to yourself and answer if that's still a complete answer to that question.
A. I agree with that answer.
Q. So are there any other documents besides what you've identified here that you believe reflect that Spiros was informed that he would have to mortgage his interest in 229 King Street?
A. I think you have everything.
Q. And then No. 13 says, please identify the written document wherein Spiros Ferderigos allegedly agreed to mortgage his interest in 229 King Street for the benefit of the plaintiff to

Page 80

obtain a loan, and you said see answer to No. 11, so is that a complete and accurate answer --
A. I think so.
Q. -- to that question?
A. I think so. (Reading.) I think so.
Q. And then it says, if you allege that Spiros Ferderigos made a verbal agreement with plaintiff to mortgage Spiros Ferderigos' interest in 229 King Street for the benefit of the plaintiff to obtain a loan, please provide the following, and it has the date, the exact terms of the agreement, the consideration, the names and addresses of people present and the alleged actions undertaken by the plaintiff and Spiros Ferderigos in furtherance of the alleged agreement to mortgage 229 King Street. And your answer to that was, see answer to No. 11 above, which was the name one that you just read.
A. Right.
Q. So do you have anything now that you would add to that answer to make it more accurate or complete?
A. I mean, I think you have all the documents.
Q. Okay. And you have no other oral conversations to add to what we've already discussed.

Page 81

A. I don't think so.
Q. Okay. Paragraph 16 asks for the total construction costs, and you said total construction cost to the contractor was 1.8 million. The parties were responsible for paying the sprinkler system, according to the contractor. And then would the parties also be providing the furnishings as well?
A. That's correct.
Q. What was the cost of the sprinkler system?
A. I'm not sure, like we have to -- I'm not sure if we got a number on that.
Q. Okay. Can you give me a ballpark?
A. I don't know. I've seen some numbers, 10,000 to 100,000. I have no clue what the sprinkler -- there's three or four guys out there so play them against each other and try to figure out the best deal.
Q. Did you ever get any bids or proposals?
A. I think the contractor had a pretty good idea, ballpark, what that sprinkler system would cost.
Q. And what was that ballpark?
A. I'm not sure.
Q. Why wouldn't you want to get that nailed

Page 82

down if you had to have a sprinkler system?
A. We might have known. I don't remember. It might have been 20,000, it might have been 10,000. I don't remember that number. At that point we might have known what it was.
Q. We'll go ahead and mark No. 3.
(Exhibit No. 03 marked for identification.)
Q. This is Plaintiff's response to first requests for production by Defendant Spiros Ferderigos, and it's asked you to identify documents. And you say, all documents responsive to the first request for production have been provided to the above-named defendant.
So I just want to confirm, is that still accurate, as far as you know, that all responsive or relevant documents have been produced?
A. I think they have.
Q. Are you aware of any that were lost or -- any relevant documents, that is, documents that pertained in any way to the claims that are being made in this lawsuit, aware of any documents or emails or texts that have been destroyed or deleted or lost?
A. Nothing destroyed, deleted or lost that I

Page 83

know of.
Q. Okay. We've got a supplemental answer.
(Exhibit No. 04 marked for identification.)
Q. You've identified Pete Paulatos, Fennell Holdings as a witness.
A. Yes.
Q. What is his knowledge about this case?
A. I think he was the accountant -- he is the accountant that figured out for Spiros the money and that -- the $50,000, if I was going to eat it, I think he was the one that put that in his thread that I wouldn't agree that I lose the $50,000 because the way it was set, somebody had to absorb that extra $50,000, I remember that in the email thread, and I think he was the accountant that did that. And he figured out or Spiros had figured out on that email because he was text -- I think he was emailing back and forth with Spiros, and Spiros would copy that and send it to me.
Q. I'm confused because earlier you said that that was Phillip who was going to have to come up with the $50,000 and you'd heard it from an accountant, but in your answer here you said that Mr. Paulatos consulted with Spiros Ferderigos --

Page 84

Spiros Fokas. Who is that?
A. Spiros Fokas is my father.
Q. So it says he consulted with Spiros Fokas on the percentage of loan/interest payments to be borne by the parties with respect to the project at issue.
A. It's probably a typo. It's probably supposed to be Spiros Ferderigos.
MR. BARNETT: I will confirm it is a typo as a result of my incredibly bad proofreading.
MR. COOKE: So is it supposed to be Spiros or Phillip?
MR. BARNETT: Ferderigos, Spiros Ferderigos.
MR. COOKE: Spiros Ferderigos.
MR. BARNETT: Right.
Q. To resolve my confusion, because I thought you'd said earlier that the accountant was communicating with Phillip about his having to come up with $50,000, but you're saying here that Mr. Paulatos consulted with Spiros.
A. It might have been all them on the email thread. I'm not sure. But Spiros's the one that sent me in the email the information that the accountant was talking about, so I don't know who

Page 85

they communicated with. I mean, it was -- it could have been Spiros and Jacob and Phillip that were on the email thread with the accountant. I never saw those, the emails that they did with themselves. That was never produced.

Q. Okay. But this is something that occurred after the second closing?

A. No. I would think it occurred before the second closing.

Q. Was it after the first closing?

A. I think it was after the first closing.

Q. So it was between the first and second closing.

A. Right.

(Exhibit No. 05 marked for identification.)

Q. Let me show you, looks like an email from Joe Tucker to Athan and Jacob dated December 11, 2012. This has previously been identified as Exhibit B to the answer and counterclaim of Spiros. Have you seen that email before?

A. Yes. I'm on the email, so I would have seen it.

Q. Okay. So this is dated December 11, 2012.

A. Okay.

Page 86

Q. At that time did you have any commitments from a bank to loan money?

A. I think so. What was the date on that commitment letter, the first one?

Q. The original one was February 5, 2013.

A. The original one was February 5, 2013. This is December 11, 2012. Yes, looks like it's dated December 11, 2012, and Joe Tucker was working on it. I'm not sure if we told Joe to go ahead with the $2500 at that point, but he was probably giving us his proposal to start the project, how much it would be. I'm not sure if we told him to go ahead. We probably waited -- I don't think we spent any money until we got the commitment letter.

Q. That's what I want to explore because your commitment letter was February 5, 2013.

A. Mm-hmm.

Q. But this email was several months before that. It was December 11, 2012.

A. Yes. So that was probably when we were investigating the project to see if it was worthwhile, how much it would cost us. And Kevin was doing those numbers, so Joe probably came back and said he would need $2,500. I'm not sure if we paid him any money until after we had the commitment letter from the bank.

Page 87

Q. But he says here attached -- Athan and Jacob, attached are the drawings which we have prepared for the pricing set. They are about 80 percent complete. Do you see that?

A. I do see that.

Q. And then, we propose a payment of $2,500, which is the next portion of our fee.

A. Yes.

Q. Although this represents a substantial portion of our work.

A. Mm-hmm.

Q. Also we propose $500 drafting fee for the structural drawings.

A. So there might have been a time where we said that -- or Kevin Carroll said that we needed Joe Tucker to make preliminary plans for the bank. Maybe these are the plans that we needed for the bank to agree to the project. I'm not sure. Maybe Joe said at that point it would be $2,500 for him to come up with some plans for the bank so that we could show them what project we were going to do. That's what I assume I see here.

Q. Okay. So whatever it is that he's produced for you, I assume he did it with your

Page 88

authorization.

A. I assume so.

Q. And this was before you had a bank commitment for any money.

A. Yes. We probably needed plans to show the bank.

Q. Okay. Prior to this had Spiros ever said in writing that he would agree to mortgage his interest in the building?

A. I'm sure. Not in writing, but we spoke about it verbally, that we were going to mortgage the building.

Q. Is it fair to say that as of the time that you asked Mr. Tucker to start preparing these drawings you did not know yet how the building was going to be financed?

A. I think we always had the assumption that we would not go forward with a project if we couldn't get financing because it's a lot of money and we didn't have 1.8 million or whatever -- million dollars at that point. We thought it was a million dollars at that point.

Q. Right.

A. Yes.

Q. So did you understand that if you engaged

Page 89

Mr. Tucker and had him do these drawings but you couldn't get financing that you just would lose that money?
A. I'm sure, yes. We probably needed just those drawings for the bank. The bank probably required us to come up with some kind of drawings.
Q. All right. And you do see here where he says that as of December 11 he's 80 percent complete.
A. It was probably for the bank drawings, I guess.
Q. And he wouldn't have done those drawings if you hadn't told him to do it, right?
A. Or Jacob. I think Jacob and I are on that email. Anybody else? And the contractor's on there as well.
Q. All right. Let me show you a group of emails that you produced in discovery, and they're numbered at the bottom, the pages are numbered 1 through 4.
(Exhibit No. 06 marked for identification.)
Q. Would you look at that and see if you would agree that that's a series of emails that you produced in discovery? And I'll give you a clue,

Page 90

at the top it's got an email from Stan Barnett to lawyers on our side that says -- it's dated February 3rd, 2017, and it says, supplemental production, colon, and it's got a list.
A. Yes, I agree.
Q. Did you provide those to -- that series to Mr. Barnett?
A. I'm sure I sent it to Stan, yes.
Q. And when did you discover that series of emails?
A. I'm not sure.
Q. Did you produce this because it was a complete set of the email chain on this discussion?
A. I don't know if it's complete.
Q. Were there any responses or parts of this chain that you did not produce for some reason?
A. I'm not sure. I'd have to see the chain on an email, on my email on my computer, and then I would know that everything was on there. I assume it's everything.
Q. Okay. As part of this chain, if you go to page 2, there's one from Athan Fokas to Phillip and Spiros with a copy to Jacob.
A. Yes.
Q. And it's dated December 19, 2012, 11:15 and

Page 91

it says, it has come to my attention that there has been some questions about phase two of the Old Towne Suites project. By that, by phase two of the Old Towne Suites project you're referring to --
A. Building the second --
Q. -- the new building?
A. -- building, yes.
Q. And don't read it out loud, but just take a second and read what your comments were and tell me, if you would, what prompted you to send that information out.
A. Maybe, I don't know, Jacob -- I have no clue, but Jacob might have said that my brother had a question about something and I'm like -- and then I probably went into it and I was like, do you realize how much we're making in our suites now and then -- let's see. And I just talked about how it's a gold mine, that it's making a lot of money.
Q. Looking at page 3, marked at the bottom 3, it says phase two is going to have two three-bedroom units with kitchen and two two-bedroom units with kitchens. And then, the total cost of this project will be somewhere between 800,000 and 900,000 with spending about 25,000 per unit to furnish and make them luxury

Page 92

units. I hope that we can keep this project somewhere around $900,000.
A. Mm-hmm, I guess that was the intent.
Q. And it says, I'm currently talking to a few banks to see if anyone is interested in giving us a note. The banking industry has changed dramatically in the last couple of years, and they will not lend on equity alone. Our equity in Old Towne is somewhere between 5 and $10 million. Many banks these days won't touch anything in the hospitality industry, so it is no guarantee that they will lend us the money. The note on the property should be somewhere in the neighborhood of $4,000 a month if they let us carry the note for 30 years. If it is a 15 to 20-year note, the payments will be between 6,000 and $8,000 a month.
So is it fair to say that at this point you did not have any bank who had committed to finance this project?
A. I think so, yes.
Q. And does it follow from that, therefore, that Spiros Ferderigos had not agreed to any specific financing terms?
A. I don't know when they agreed to it, but we probably discussed it that we were going to get a

Page 93

note on the building, and we don't know if we'll get the note, but we're going to try to get the note.
Q. Right. But my standpoint is simpler than that. Is it fair to say that Spiros could not have agreed to any specific terms of financing because no specific terms of financing had been offered to you at that point?
A. We probably came up with the 5 percent, that we'd like to get 5 percent, and we'd spend a million dollars or try to get a million dollar note. I'm sure we discussed all that.
Q. But no terms had been offered to you at that point.
A. Yes. But we had an idea of what we'd like to get because we had the numbers. To have those numbers down you have pretty much -- so what are we basing those numbers on? Probably 5 percent or somewhere between because it says, payments would be 6,000 to 8,000, so maybe it was from 4 percent to 6 percent. I'm not sure.
Q. But at this point you're not saying that we're going to borrow $1.8 million. You're saying that it's going to be around $900,000.
A. Right, because that's what the architect and

Page 94

I guess the contractor came up with that he thinks it would cost 900,000.
Q. So would it have been possible at that point that, in fact, the loan would be 1.8 million instead of 900,000 and maybe the interest would be less favorable or the term would be shorter and that Phillip or Spiros might not agree to that?
A. Well, I mean, we hadn't had the commitment letter yet. We had a goal that we wanted it to be, and once we get that, then we'd move forward, but we weren't going to move forward until we got the commitment letter.
Q. But did you understand at this point that Spiros and Phillip could back out at any time; they could just say, no, we're not agreeing, we don't like these terms, we're not agreeing to those terms?
A. I assume at this point we haven't spent any money, yes, because we didn't get the commitment letter.
Q. Well, you had spent money. We now know that you'd hired Joe Tucker to start drawing things up.
A. Yes, just for the bank, I guess for the drawings for the bank loan. So that was December 11, and this is dated December 20, so you're just

Page 95

talking about a week later.
Q. But at this point --
A. Yes, at that point we're trying to figure out how much it's going to cost, the whole project, and I'm telling them what a gold mine we have now, that the suites income that we have now could easily pay for the note that we would be trying to get.
Q. Mm-hmm.
A. Yes.
Q. So the response that you produced to this is -- looks like it's from Phillip, and it's sent December 20, 2012. Do you know whether there were any other responses to your email than that?
A. I don't know.
Q. Let me show you another set then that includes some of the same emails.
(Exhibit No. 07 marked for identification.)
Q. So you see that this appeared to have been forwarded from a gmail account and from Jacob, do you see that, up at the top?
A. Yes.
Q. Do you see that the first email listed there is the same one that we just talked about which was

Page 96

yours of December 19, 2012, which starts out, it has come to my attention that there has been some questions about phase two of the Old Towne Suites project.
A. Yes, but I don't know if they're identical. Let's see.
Q. Take a look.
A. So it looks like it's a little different because in phase two...trying to read it (reading).
So it's not exactly identical because it changes, hotels downtown, so it seems like I copied and pasted. If it's a different email thread, I'm not sure, but at one point where it says, in conclusion, the reason, another six months, if we get the same money, then it ends with remainder, so it's -- I probably copied most of this and then didn't include the part for BB&T -- no, I did BB&T on here...(reading).
It looks like they're not the same email chain. I'm not sure, but it comes out different on this print than it did on this print (indicating).
Q. It's spaced differently, you see that.
A. Yes.
Q. Do you see any words that are different?
A. That's what I'm trying to figure

Page 97

out...(reading).
It looks the same.
MR. COOKE: Is it all right if she doesn't try to write all that down when he's talking to himself?
THE REPORTER: If I can't hear it I can't --
THE WITNESS: Is it weird that I'm talking to myself?
MR. BARNETT: The I can't hear it exception.
THE WITNESS: (Reading). Yes, it looks like the same --
Q. Same text?
A. -- same text or email. I'm not sure.
Q. And it includes a paragraph that you just referred to. You said, with that said, I don't even know if the bank will lend us the money. First Citizens said they are not allowed to touch the hospitality industry.
A. Right.
Q. BB&T is 50/50 and will let me know if they are interested in a couple of days. South Carolina Bank and Trust seems very interested, according to their president, but will have to see our current

Page 98

income to make sure the numbers work. I'm meeting with SunTrust tomorrow, but I think they will be a long shot. I'm only going to send information to banks that are very interested in doing the deal.
All right. So you agree that that's the same email?
A. Well, in the beginning it says, Athan and Jacob, and then it switches to Spiros, so maybe Spiros was added on this afterwards; and then Phillip's on here as well, so I'm not sure.
Q. And that's what I wanted to get to is that this one, unlike the one that you produced to us in discovery, has a response from Spiros dated December 19, 2012, at 11:49. Your email says it was sent at 11:22 that day.
A. Okay.
Q. So do you remember receiving this response from Spiros? Take a minute and read it.
A. Yes, they're talking about not personally guaranteeing the note. So, yes, I got that. I mean, they had talked about that before, that they didn't want to personally guarantee, I think. Personally, I don't think there's a risk...
THE REPORTER: I'm sorry?
THE WITNESS: I shouldn't talk to

Page 99

myself.
Q. Yes, and don't get ahead of me yet because all I'm asking is did you receive this email.
A. Yes. My name's on it. I received it.
Q. Okay. Is there any reason that you didn't produce this email to us when you produced the email that's in the previous exhibit?
A. I think I was copying and pasting for Stan, and I thought I gave him everything. I don't know. After here, what's after here (indicating)? There may be the rest of the email chain or maybe, a lot of times on email chains it depends on -- you know, it shows many different chains; so maybe when I sent this to Stan, it was only without Spiros on there and it was just Jacob and me. I'm not sure. But here it says all of them.
Q. Do you know for a fact whether you provided this one that's from Spiros, that you provided that to Stan?
A. I think I've seen it through all our email exchanges, so I would assume I provided it to Stan.
Q. Let's look at what it says. It says, hey, Athan, thanks for sending the detailed emails. I'm sure it will answer a lot of the questions that we have. I will take a look at it in detail as soon

Page 100

as I can and let you know what other questions I have. Of course, the issue of what we are currently making on the units and the cost to construct new ones are obvious questions which you appear to go into detail below (given the hour I have only quickly glimpsed over your email).
Assuming all that pans out, there will be a continuing issue on how we finance. If the bank is looking for me (and I assume this goes for Phillip as well but I will let him speak for himself) to personally guarantee a loan, I am not going to do it. There is too much that can go wrong with a personal guarantee. I'm confident that Phillip, Jacob and I will be able to come up with our end of amount needed and we can move forward without accumulating debt as we did for the first round of units. I completely agree that adding more units above Old Towne is a gold mine and the way to move forward. The question is how do we get there. Will it be by personally guaranteeing loans that could be catastrophic to our individual families, or each individual raising the necessary funds and doing it without a million dollars in debt so we can greatly limit liability. I for one already have plenty of money sitting in a bank account for

Page 101

my share of the additional units. I am more than happy to have all of us sit down and discuss in more detail after the holidays. That will give everyone plenty of time to look over what you sent and determine the best way to move forward. Thanks to both you and Jacob for all the hard -- it says heard but means hard -- and great work you guys have been doing on these units.

And you responded to that on the following day: Personally, I don't think it is a risk, and if so it is a very low risk because we show future incomes and the demand is there and we have the current income's third cash flow that could easily pay for it. With that said, let's start collecting money and see what kind of money we can come up with to get this baby started.

A. Mm-hmm.

Q. So my question to you is is it your contention that at this point Spiros had agreed to borrow the money and to mortgage his interest in the property to secure that mortgage?

A. I'm not sure. We had always talked about having a mortgage. Personally guaranteeing is the one thing that they stipulated that it was just lawyers don't personally guarantee their property.

Page 102

And then I went to the bank and asked the bank and I said, Phillip and Spiros are attorneys and they say they won't personally guarantee it, and you're asking for us to personally guarantee it. And then the banker said that all they needed was me and Jacob.

Q. But where here does he even say that he'll participate in the loan at all?

A. He doesn't in this email, but there are other emails where he talks about breaking down the loan where he's part of the loan in the one that he and Phillip -- or Phillip was out of the loan. He took himself out of it after the first mortgage. He was explaining that.

Q. You mean after the first closing?

A. After the first closing.

Q. Yes.

A. But in the beginning it was always that we were going to get a mortgage on the building, they weren't going to personally guarantee it, Phillip and Spiros weren't going to personally guarantee it, and then the Old Towne Suites was going to pay for the loan.

Q. But he says, I'm confident that Phillip, Jacob and I will be able to come up with our end of

Page 103

the amount needed and we can move forward without accumulating debt as we did with the first round of units.

And you've already explained that, when you did the first round of units, you didn't borrow any money, you didn't mortgage any property, you didn't accumulate any debt for that?

A. Right.

Q. So isn't Spiros saying here that he is confident that that could be done this time as well?

A. He's saying that in this email, but he never provided any information how he had the money. He said he didn't have the money. And Phillip, from what I understand, didn't have the money then either.

Q. Yes, but I want to know how you can get from this response to your email that he's in any way, shape or form agreeing to borrow any part of 900,000, or any amount, to go forward. He says, I for one already have plenty of money sitting in a bank account for my share of the additional units.

A. Yes. He never -- he never showed that money. He never said, I'm going to bring this money. We always agreed to one note, and you saw

Page 104

the Southcoast loan that Jacob signed, and that was the loan that we were all going to do. I know what he's saying here, but we'd always talked about -- maybe after that, this email, he figured he didn't have the money to do the deal. I have no clue. Maybe he was going to bring the money from Greece. I have no clue.

Q. So what you're saying is that there may have been a subsequent agreement on his part to participate in this loan.

A. Well, he always agreed to mortgage the building. We were always going to have a bank lend us the money, and all of us were going to mortgage the building and have Old Towne Suites pay for the note, and the only stipulation was if the bank would agree that Phillip and Spiros did not have to personally guarantee the note.

Q. Well, he says, I'm confident that we'll be able to come up with our end of the amount needed and we can move forward without accumulating debt.

A. I mean, apparently the confident we're going to come up with the money later on I found out was Phillip doing his own deal where he was borrowing 300,000, but never did Spiros ever say this is -- I've got the money.

Page 105

Q. But I'm talking about what he was telling you on December 19, 2012, because up until now, and it's noon, we've been here several hours, what you've told me was that Spiros had agreed from the very beginning that we were going to borrow this money and we were going to mortgage the building; and now I'm looking at an email from him dated December 19 where he specifically says, we still need to talk about -- there will be a continuing issue on how we finance. I'm confident that we can come up with the money without accumulating debt. And he says, I for one have plenty of money sitting in a bank account for my share of the additional units. So where do you get --

A. For all I know, he's blowing smoke that he has the money in the bank account. He never showed that to me. And he -- we always were just going to get a note, and then the only time that I saw that Phillip wasn't going to be in the note was after the first closing that Phillip was going to borrow his own $300,000 and then come up with the extra $50,000.

Q. Right.

A. They never said that, you know, we have the money, you get the money. The first deal we had

Page 106

the insurance money that paid for most of that deal. We did come out of pocket for I think the furnishings on that deal.

Q. In your response you said, with that said, let's start collecting money and see what kind of money we can come up with to get this baby started.

A. All right. So at that point nobody collected any money. Nobody showed that they came up with money.

Q. Right. What we're talking about here, Mr. Fokas, is a meeting of the minds, and we're looking at these documents and these communications to see if you can prove from these documents that there was a meeting of the minds on the specific terms of this loan where Spiros was going to mortgage his interest in the property to guarantee a loan, and at this point it's for $900,000.

But I just want to know, are you contending that this email reflects that he has agreed to borrow $900,000 and to secure that with a mortgage on this building?

A. Not on this email. When exactly was the commitment letter, the first commitment letter, what was the date of that?

Q. That was February 5th, 2013.

Page 107

A. All right. So in between December -- when did he send this thing -- December 20th and February 15 he couldn't come up with the money, I guess, and that's when we said we have to get a loan or maybe -- sometime between that, I would assume. He never showed that he had the money. As far as I know, he was just blowing smoke that he had all this money because he's a solicitor, and they don't get paid a lot of money.

Q. Had you even met Mr. Odom at that point?

A. I don't know.

Q. Let's go to the next exhibit.

(Exhibit No. 08 marked for identification.)

Q. I'm showing you an email dated January 11, 2013. It's previously been identified as Exhibit E to the answer and counterclaim. And this is from Mr. Odom to you -- I guess where it says zeusgrillandseafood, is that you?

A. That's me.

Q. With a copy to Tony Daniel, and it's dated January 11, 2013. It says, Athan, it was a pleasure meeting you yesterday afternoon. I just received your fax. It looks like it went through. I have also received your emails with the attached

Page 108

financial information. Thank you for getting everything to us so quickly. We will get to work and will be in touch shortly.

So does that suggest that you met him for the first time on January 10th?

A. I think so.

Q. Okay. So it would be correct then that you had not met Mr. Odom, let alone gotten any kind of a loan commitment, as of December 19, 2012.

A. I had -- we had not received a loan letter at that point, no.

Q. And you, in fact, had not even spoken to Mr. Odom about a loan.

A. I think I spoke to other banks or maybe the realtor guy that -- Brent Case, he might have said how much it would cost. He probably did all preliminary numbers and said if you borrow $900,000 -- and the way we got that figure was probably from the contractor. The contractor probably said that this is what it's -- approximately what it's going to cost you to build the building. So at that point we're probably just butting heads, trying to figure out how we're going to do this deal. And then at some point we said, well, we're going to have to get a loan because we

Page 109

don't have the money to put -- we don't have the 900,000 or a million dollars to put in this deal.
Q. I notice that back in your original December 19 I don't think you even listed Southcoast as the banks that you were talking to.
A. Right.
Q. So does that also suggest that you had not spoken to or met Mr. Odom at that point?
A. I think so.
Q. Okay. Let me show you the next exhibit.
(Exhibit No. 09 marked for identification.)
Q. So this is an email from Phillip to Spiros, Athan and Jacob dated January 9, 2014. Do you remember receiving that?
A. Yes.
Q. He says, also, trust me on this, here's the lawyer in me protecting us: We need to make sure that, one, the builder has at least a million dollars CGL. Do you know what that is?
A. Builders risk insurance. We got that.
Q. Do you know that he has a million dollar --
A. We probably asked him. Oh, no, we have to buy the builders risk, so whenever you build a building, the person who builds it buys the

Page 110

builders risk insurance.
Q. Is that a liability policy?
A. Builders risk is just insurance on if anything goes wrong with the building of the project.
Q. And he says, number two is a performance bond. Do you know whether the builder had a performance bond?
A. I don't know.
Q. And a payment bond to protect us against unpaid subcontractor liens. Do you know whether he got a payment bond?
A. I'm not sure.
Q. And do you know whether the contract provided for the architect to have contract administration/supervisory responsibilities?
A. Not sure, but this same contractor and this same architect built the original suites.
Q. Phillip knew that, right?
A. Yes, Phillip knew that.
Q. But he's still saying that you need to have these additional requirements. And then he also says, and a million dollar E&O policy, which is an errors and omissions policy, for the architect. Do you know whether Joe Tucker had that?

Page 111

A. I might have asked him and he might have told me yes, I would think. I don't know.
Q. But you don't know.
A. I don't know from looking right now. I might have known after Phillip sent me this email. I probably went and asked the guys, and I probably called Phillip up on the phone and said, yup, he's got this, he's got this, I guess.
Q. Well, you're guessing. Do you specifically remember doing that?
A. No, hm-mm.
Q. So it's possible that you didn't do that?
A. No, I think I would have because I'm pretty -- I'm pretty detailed. Like if he asked me to check on that, I would have checked on that.
Q. But you don't remember there being any emails or documents or anything that document doing that?
A. No. I probably would have just called him up and said, we're good, they have all this stuff.
Q. Okay. Did you make any notes of your conversations with either the contractor or the architect?
A. No.
Q. Do you know whether the contract with either

Page 112

one of them provided for them to have these coverages?
A. I'm not sure.
(Exhibit No. 10 marked for identification.)
Q. This one we're skipping ahead a little bit, but this is a June 17, 2014, email. It's been previously identified as Exhibit F to the answer and counterclaim. And this is from Spiros to you and Jacob dated January 17, 2014. Says, the loan pre-approval that you guys have for the suites, are you all going to have to personally guarantee the loan. And your answer is, we are pre-approved, and since we personally asked for the loan, yes, we are personally guaranteeing it. Then on another note, we're hitting record sales, and so forth.
So is that an indication that at least as of June 17, 2014, there was no final approval on a loan?
A. We already had the approval at that point. The commitment letter -- when was the commitment letter? You said it was February, right?
Q. The original was February 2013. I'm skipping ahead here.
A. Yes. So we had already had the loan

Page 113

approved at this point.
Q. It says pre-approved, do you see? You say, we are pre-approved. What's the difference between pre-approval and approval?
A. I have no clue. I don't know what he's -- how he's wording that. That means that we are pre-approved or we're approved. I would think it's the same thing, but approved, pre-approved, pre-approved is probably before you actually sign they're telling you, hey, you're pre-approved.
Q. Okay. So in your mind you think pre-approved is the same as approved?
A. I think so.
Q. Okay.
A. It's pretty much, yes, if you go to a car dealership and you're pre-approved already, then the bank already says that you're approved for buying the car, so you already have the money for the car because you've been pre-approved for it.
Q. Is that the same as a commitment?
A. The commitment letter is the commitment.
Q. Okay. Let's look at that. We've been talking about that commitment letter.
(Exhibit No. 11 marked for identification.)

Page 114

Q. Okay. So this has been previously identified as Exhibit G to the answer and counterclaim, and it's the Southcoast Community Bank letter, and it's dated -- addressed to you and to Jacob, dated -- initially dated February 5th, 2013.
My first question is, it appears that this was amended later, and there are a number of things that are initialed on September 24, 2014. So am I reading this right if I look at the typed part and assume that that was done on February 5th, 2013, and the handwritten additions were made on September 24th, 2014?
A. I think so.
Q. So the original loan --
A. September 29th of 2014. Is that what you said?
Q. Do you follow me?
A. Did you say September 29th? It says September 24th so --
Q. 24th, yes.
A. Somebody maybe -- only because on the back it says, commitment letter extended -- oh, the period of September 29th, 2014, yes, September 24. Okay.

Page 115

Q. The original loan amount was a million dollars.
A. Correct.
Q. Is that right?
A. Yes.
Q. And that was to build four rental units?
A. Two floors, four rental units.
Q. When was the deal changed from four to six units?
A. After we went through the BAR, I think, and we realized the height that we could actually go. Because originally we were thinking that we could go as high as the Charleston Place that was across the street, and if that were the case, we could go up four stories. So we talked about building two stories now and then coming back later and building another two stories if those two were successful. Do them in stages. Then we found out that we could only build three stories max. So after we found that out, we drew the plans -- or we asked everybody, it's better to do three stories now than to do two stories and then one story later. It will cost you a lot more money is what the contractor said. So we tried to figure out if we could do the deal for three stories. Then we went

Page 116

back to the bank, probably showed them plans for three stories, and they said that there was enough income in the Old Towne Suites to justify the extra $800,000.
Q. Did you have approval to do three stories?
A. Yes. That's what this is.
Q. Okay.
A. Yes.
Q. So the final deal was it was going to be three stories and six units.
A. Correct.
Q. And it was going to be $1.8 million instead of a million.
A. Correct.
Q. When did you first tell Spiros that the deal changed from four units and a million dollars to six units and $1.8 million?
A. I'm not sure if I told him or if Jacob told him, but Jacob was in every meeting with the BAR and the architects. But we discussed it. We discussed that we're now going three floors and probably at church where we saw each other.
Q. Did Spiros ever agree to participate in a $1 million loan?
A. Yes.

Page 117

Q. When did he do that?
A. He agreed to the project, period. When we got the million dollars, at that point we were thinking we were going to build two stories. He agreed that -- he agreed that we were going to mortgage the building to build the two stories, and then we came out with the plans where it's better to do three stories, and he agreed that we do three stories then.
Q. So where do I get from this that, from this letter -- let's look at it as it was written on February 5, 2013. Where do I get from this that Spiros is going to be a signatory to that loan?
A. Signatory for the mortgage. He always had to sign off on the mortgage. He just didn't want to personally guarantee the note.
Q. But I thought you were trying to tell me that he agreed to be a participant in the loan, that he was going to be a co-borrower on the loan.
A. What do you think signing off on the mortgage is? He just didn't want to personally guarantee the loan. He said he'd do everything else except for personally guarantee the loan. That was his deal and that was Phillip's deal through that email that you saw earlier too. I

Page 118

think he called me up and verbally said that, and that's when we all went and asked the bankers if -- you know, I have two of the partners who say they don't want to personally guarantee the loan. Can we still do the loan without them personally guaranteeing the loan. And the bank said, yes, if we have -- I mean, it probably took them a few days to answer me, but they said as long as you and your cousin, Jacob, personally guarantee the loan, then we're okay with it.
Q. Does it say that in this February 5th, 2013, commitment letter?
A. Sorry. How do I get this thing -- my watch is not working correctly.
Q. Do you need to get a call?
A. No, no, no.
Q. So did you provide Spiros with a copy of this February 5th, 2013, equipment letter?
A. I think we had it on an email chain.
Q. Have you found an email that shows that?
A. I'm not sure. Jacob would have a copy of it, and Jacob's the one that communicated with his brothers.
Q. Those are two different things. My question was did you provide a copy of this letter to

Page 119

Spiros.
A. It was more -- I would assume we talked about it, that it was now at $1.8 million, it went from a million to 1.8. They knew right away when we got the loan because either I called them or Jacob told them. We were excited that we got the loan to build the new project.
Q. Let's don't even get to the 1.8 million. I'm talking about the February 5th, 2013, commitment letter which was for $1 million.
A. Right.
Q. Did you provide a copy of that commitment letter to Spiros?
A. I personally may not have provided it. His brother may have provided it. If anything, whenever we got this commitment letter, it was an excitement deal because now we could build the new ones, so I'm sure he knew about the commitment letter.
Q. Yes, but there seems to be a difference of recollection between Spiros and you that he thought that -- he says in his answer and counterclaim that you and Jacob were going to take out this loan and he and Phillip were not. And you're saying that that wasn't the agreement, that Spiros was always

Page 120

going to be one of the borrowers of that loan.
A. He always knew he had to mortgage the property. That is a very untrue statement that Spiros is saying there.
Q. Well, we're talking about two different things, mortgaging the property versus borrowing the money. Is it your testimony that he --
A. You have to borrow the money to mortgage the property. I'm confused about what you're saying there.
Q. Well, you could mortgage property to secure somebody else's loan, to guarantee somebody else's loan.
A. That's not the case in this deal.
Q. So your understanding was that he was going to sign off on the loan.
A. Definitely. We would not get the loan if that weren't the case.
Q. So why isn't this commitment letter addressed to him?
A. Because Jacob and I were the ones talking to the banker, and we were the ones personally guaranteeing the loan, so I guess they just wanted us to sign it because they weren't personally guaranteeing it, I guess.

Page 121

Q. Did you provide a personal financial statement to the bank?
A. I'm sure I did.
Q. Did you provide one for Spiros?
A. No, I don't think so.
Q. Or Phillip?
A. I guess, since they were personally -- not personally guaranteeing the loan, the banks didn't require that, and the only thing the bank wanted was that the building be signed off so that they can have the equity if something goes wrong, and that the Old Towne Suites signs off as the income stream to pay for these payments.
Q. Did you sign off on this commitment letter on February 7, 2013?
A. Yes.
Q. Did you sign it again after it was changed in September of 2014?
A. I'm not sure if at that point the -- what the stipulation for the bank, I think they just marked it out, at $1.8 million, he initialed it, and he said this is still good, so I guess it's the new and revised, it's just them scratching it out, putting $1.8 million, and I guess Jeff Odom signed it or Tony Daniels signed it, initialed it, and

Page 122

that's all they needed to do.
Q. Spiros never signed it, though, right?
A. No.
Q. And Phillip never signed it?
A. No. I guess they didn't need to.
Q. The terms and conditions, was it your understanding that this was a 20-year mortgage at -- 20-year loan at 5 percent?
A. Yes.
Q. But that's not actually what it is, right?
A. Well, it's a 20-year loan, 5 percent, with balloon every five years, which means that if the interest rate changes in between the -- at that five year point, then it can go up or down.
Q. Let's read what it says. We'll read it as it's modified. Terms and conditions, 12 monthly payments of interest only followed by 59 consecutive monthly payments of principal, interest and escrow with one final payment of the remaining principal balance plus any accrued interest.
Doesn't say an annual balloon payment. It says one final payment.
A. Right.
Q. So that's not a 20-year loan, is it?
A. No. I think they based it on 20 years. I'm

Page 123

pretty sure it was a 20-year loan.
Q. It says --
A. We'd have to ask Jeff Odom that because I haven't seen the bank document. This is just the commitment letter where they're saying they will loan us the money, and then we changed it from six monthly payments, I guess, and went to 12 monthly payments, each month instead of every other month.
Q. The next sentence says, the monthly payments will be based on a 240-month amortization schedule; do you see that?
A. Yes.
Q. And then it says, the interest rate will be fixed at 5 percent for the life of the loan.
A. So let me figure out the calculation. Okay.
Q. Is it your understanding that this loan would have to be paid off in five years or six years or 20 years?
A. 20 years.
Q. We'll go to the next document.
(Exhibit No. 12 marked for identification.)
Q. This was previously marked as Exhibit H to the answer and counterclaim. It's an email from Athan to gentlemen, meaning Jacob, Spiros and

Page 124

Phillip, dated September 9, 2014. I'm going to skip the first couple of paragraphs. The third paragraph says, it looks like our new project of six more units will cost us around 2 million to build. The bank has agreed to 1 million, so I'm going to try to convince them to give us 1.8 million which will cover us for everything except furnishing and kitchen equipment. The reason I'm asking for 1.8 million is that we can justify that amount through the money that we already receive from these suites. Furnishing and kitchen equipment will be roughly 225,000. We should be -- we should get permitting to start building this month, and I do have two other bids coming in, but I suspect that they will both be higher.
Who were you getting the other two bids from?
A. Other contractors.
Q. So was it your understanding that the furnishings would be $225,000 in addition to the $1.8 million?
A. And kitchen equipment because we were putting full kitchens in these units.
Q. So the total --
A. That was just an estimate.

Page 125

Q. So the total estimate would be 1.8 million plus 225,000?
A. Yes.
Q. Does that include the sprinklers?
A. No.
Q. So it would be 1.8 million plus 225,000 plus the sprinklers?
A. That's correct, but that's just an estimate on the furnishings, we don't know at that point, and the kitchen equipment. Maybe we based the kitchen equipment at 30,000 or 40,000 per unit, but it might have been 12,000.
Q. Going back to the previous exhibit, it says the purpose of the loan is to provide a construction to permanent loan to build six rental units above Old Towne Grill and Seafood at 229 King Street, Charleston, South Carolina 29401. The loan will also include the purchase of furnishings for the units. So does your email reflect a difference between what the commitment letter said?
A. Yes, I guess the commitment letter thinks that we're putting all -- that it would cost us $1.8 million for the whole project.
Q. Including the furnishings?
A. I don't know how much of the furnishings. I

Page 126

would assume -- I'm not sure. I'm not sure at this point, so maybe we thought -- maybe we figured out it would be more than 1.8 million at one point. Let me see this date. September 9th. The commitment letter is February 5th, 2014. September 9th so -- one was September 24, 2014, so a couple of weeks letter.
Yes, it says that it's going to cost us 1.8 million plus 225,000. 1.8 million was for the contractor to build the project with all the engineer fees and everything, and then we were supposed to come up with furnishing the place, putting in the kitchen and paying for the sprinkler system.
Q. Is this the first time you told Spiros that the cost was going to be around $2 million?
A. I don't know. We've talked about the project many times.
Q. Do you have any other written communications prior to this that says -- it looks like our new project of six more units will cost us around 2 million to build. You don't reference having talked about that before here.
A. I probably sent out this email, and we discussed it either afterwards or before. I don't

Page 127

know.
Q. Can you remember a specific occasion, prior to September 9, 2014, when you told Spiros that it was going to be closer to 2 million than to 900,000?
A. Oh, 900,000 was just for two stories, so of course we knew it was going to be more than that. And then 900,000 was before we went through the BAR. The BAR made us add all these windows to the building and change the whole structure of it. They gave us the design that they wanted it to look like, and that added all the cost to it.
Q. But was there a meeting or an email or a letter or a document of some kind where Spiros said, I'm agreeing that we're going to go from 900,000 to 1.8 million or $2 million for this project?
A. We probably verbally, and he had an email thread that said what the project would be, and he split it out, and we were going to pay the difference of that. On his email thread all the way to closing he talked about, I think, 1,750,000, and we wanted to -- we were getting 1.8 million, how it was going to be -- how it was going to come out per person at that point.

Page 128

Q. You've produced those emails?
A. You just showed me that email.
Q. Where he says how it's going to be broken --
A. Oh, no, no, that's the one -- I think so. I think we saw that. Didn't you show me one from Pete Paulatos or something? No, that was when we were saying we were going to bring Pete Paulatos in. Yes. But there is email thread somewhere in all the emails that he discusses exactly with Amy Haines how much the percentage was, or he was communicating with me as well; and the accountant came in and said that we would need to -- he talked about that extra $50,000, how I probably wouldn't want to eat it.
Q. This is an email that you've produced to us, an email thread that you produced?
A. I think so.
MR. BARNETT: Let's go off the record.
MR. COOKE: All right.
(Discussion off the record.)
(Exhibit No. 13 marked for identification.)
Q. Exhibit 13 appears to be a text chain, is that right?
A. That's right.

Page 129

Q. And it was previously marked as Exhibit I to the answer and counterclaim. These appear to be dated September 19, 2014, do you see that?
A. Yes.
Q. Which would be after the September 9 emails that we just looked at and before the September 24 amendment to the commitment letter.
A. Yes.
Q. So it starts out -- is that your number up at the top (843) 813-5612?
A. Yes.
Q. By the way, let me just pause for a second, are there any other phones from which you sent any texts or received any texts?
A. I don't think so.
Q. Do you have any other email accounts other than the ZeusSeafood@bellsouth email account?
A. I do.
Q. What are those?
A. I have AthanFokas@gmail.com.
Q. We've seen that one.
A. And I have FokasA@bellsouth.net.
Q. Is there a difference in how you use those or what you use them for?
A. I think the FokasA@bellsouth.net was before

Page 130

my gmail account, and the Zeus one was for my emails for Zeus.
Q. That Fokas one, are there any emails relating to this project on that account?
A. I don't know. I mean, I don't think so. I think I would have supplied them all.
Q. So you searched that one as well?
A. Yes, oh, I did.
Q. Beg your pardon?
A. I did.
Q. Okay. You start out, good news, we are approved for 1.8 million. Down at the bottom it says, the banker just called me. I won't have the details until next week. Then you say, I'm sure it's 5 percent for 20 years.
A. Mm-hmm.
Q. Was that your understanding, that it was going to be 5 percent for 20 years?
A. It was a 20-year note, 5 percent for the 20 years, yes, I think so. And here Spiros's excited that we got the loan, so apparently he knew all about it.
(Exhibit No. 14 marked for identification.)
Q. This one is dated September 24, 2014, 10:07.

Page 131

It was previously marked as Exhibit J to the answer and counterclaim. It's from you, this is your AthanFokas@gmail.com account, to Jacob, looks like a couple of them to Jacob and then Phillip and Spiros. Says, well I don't know how I managed to sweet talk our banker into getting rid of the five-year balloons and fixing it at 5 percent for the life of the loan, which is unheard of in the current banking industry. Phillip, show it to your banker quickly, but they want to close this month; and I don't see anybody beating this note in a timely manner.
A. Yes.
Q. At that point who did you understand was going to be signatory, a borrower under that loan?
A. They're mortgaging the building so all of us.
Q. So Phillip was going to sign the loan, the note?
A. Yes.
Q. Spiros was going to sign the note?
A. Yes.
Q. Jacob was going to sign it?
A. Yes.
Q. And you were going to?

Page 132

A. Well, they were going to sign off on the mortgage. Phillip and Spiros do not want to personally guarantee it.
Q. But were they going to sign off on the note?
A. For the mortgage of the building, yes. They were on the closing, so they were on the closing documents.
Q. Okay. So you're telling them, as of September 24th, that the loan is fixed at 5 percent for the life of the loan which is unheard of.
A. Yes. I was surprised. But I misread it, I think.
Q. You thought it was a 20-year loan?
A. It was a 20-year loan because he came back and fixed it, I think. On the next page it says, hey, Jeff, my cousins noticed that on the terms and conditions it says 12 monthly payments of interest only followed by 59 consecutive monthly payments, then it says 240 month amortization schedule. Can it say 12 monthly payments of interest only for -- followed by 239 consecutive monthly payments so that it is truly a 20-year note. Just want to make sure that the note continues after five years.
Q. Was it your understanding that Phillip had taken that commitment letter and shown it to Ned

Page 133

Jervey?
A. I think so.
Q. And he came back and said, this isn't a 20-year note, it's a --
A. No, that's not -- Phillip said that he could get a better deal than this note. He didn't say that this isn't a 20-year note. I was surprised. I thought -- it looked to me like it was a 20-year note. When I did my North Towne loan, that was a fixed 15 year note. And I thought it was fixed for 20 years. I didn't know.
Q. It says here, hey, Jeff, my cousin -- is that Phillip?
A. I'm not sure which cousin.
Q. My cousin noticed that on terms and conditions it says 12 monthly payments of interest only followed by 59 consecutive monthly payments.
A. Yes, that's what I just read.
Q. So do you know which cousin that was that noticed that?
A. I assume it was Phillip, but I'm not sure.
Q. And then look at the next page which is -- this is Mr. Odom's response to you. Do you see that?
A. Yes.

Page 134

Q. The note will be 12 months of interest only followed by five years of principal, interest and escrow payments and then a balloon maturity with monthly payments based on a 20-year schedule. That is what you wanted, and that is the same thing we are doing on your North Towne deal.
A. Right.
Q. That is pretty standard on commercial loans, and I think a six-year fixed rate (12 months plus the following 60 months) on a construction project with speculative income is a very good deal for you guys. We will revisit the deal at the end of the five-year period, technically in six years, and we can apply for a simple renewal. You won't have to hire a closing attorney and pay all of the closing fees and all of that.
A. Right.
Q. The bank will just draw up a simple renewal form which we can sign in my office.
So describe for me in your words what you think that loan was.
A. It says based on 20 years and that it balloons every five years, and you look at, I guess, at the interest rate at that point. If the interest rate is higher, then you pay a little bit more interest; if it's lower, then you negotiate the loan at that point. You can change it, I guess, after five years. But the bank said that they'll sign off on it.

Page 135

Q. So even today you think that this is a 20-year loan?
A. He said it's based on a 20-year schedule.
Q. Right. He says that the monthly payments are based on a 20-year schedule.
A. Right.
Q. Do you know what he means by that?
A. Yes, they base it on the interest and principal for 20 years.
Q. That means that the amount of the payments will be set as though it was to be paid for 20 years.
A. Right.
Q. But you're not actually getting 20 years to pay it, are you?
A. Well, it balloons every five years, and you look at the interest at that point. It's pretty standard with all commercial loans.
Q. Where does it say every five years?
A. He said something about five years. We will revisit the deal at the end of the five-year

Page 136

period, technically in six years because you get a year for the construction loan. You will not have to hire a closing attorney or pay any closing fees at that point. The bank will just draw up a simple renewal form which you can sign in my office. So, I mean, that tells me it's basically a 20-year note, balloons every five years.
Q. What does that mean? What does the balloon mean?
A. Well, that's -- my Zeus loan was the same way. It was a 20-year note, and in five years they'd see what the interest is at that point. It was based on LIBOR. I think LIBOR was 1.7 at that point or 1.65 at that point, and at five years they looked at whatever the LIBOR was and they base the new payments on that. If it went up from the previous time, it would go up a little bit; or if it went down, it would go down a little bit.
Q. You're talking about an adjustable interest rate, aren't you?
A. No. It's fixed. It's not adjustable. But after the five-year point, whatever it is at that five years, then it -- it figures out how much the payments will be for the next five years, so it's fixed for five years.

Page 137

Q. But the commitment letter says the interest rate will be fixed at 5 percent for the life of the loan.
A. Mm-hmm.
Q. So how is it going to go up or down?
A. Okay. So in this case we got 5 percent for the life of the loan, which I'm surprised they would do that because if interest rates go to 8 percent or 10 percent then -- well, he's saying that it will -- at five years you've got to redo it, so I don't think it --
Q. He says you have to reapply in five years.
A. Yes. I think he just means just that they approved it inhouse. You just sign it. You don't have a closing attorney. So it's not like you're reapplying.
Q. Is that the way you explained it to your cousins?
A. I didn't explain it to my cousins. I guess they -- they saw the commitment letter, and then they -- they asked questions about the note, and then I sent them what the banker sent me, and they agreed to it.
Q. To make sure that I understand it, your testimony today is that you went to that closing

Page 138

believing that all of you and your cousins had agreed to a 20-year loan.
A. We agreed to this loan the way it was written.
Q. But you said it was a 20-year loan.
A. It was based on a 20-year amortization. Isn't that what it says there? 20-year schedule. So the monthly payments are based on a 20-year schedule. If it was a five-year loan, then the payments would be probably 4 or 5 times as high.
Q. How many years did you have to pay this loan off?
A. To pay it off totally?
Q. Yes.
A. Based on 20 years, so on a 20-year schedule.
Q. And that's what you told your brothers, I mean, your cousins; I'm sorry, your cousins.
A. Well, they saw the commitment letter. They know it was 5 percent, based on a 5 percent for 20-year schedule. That's what it says here.
Q. So your testimony is that Spiros had agreed to mortgage his interest in the building to secure a 20-year loan.
A. To secure this loan, the one that Southcoast gave us. He knew the details of the Southcoast

Page 139

loan. He agreed that he was going to mortgage the building on that Southcoast loan. In his emails he even spelled out what the percentages were.
Q. But you just told me numerous times that you said that you had 20 years to pay this loan off.
A. Well, it says right here that it's based on a 20-year schedule.
Q. Just answer --
A. So at five years, at the five-year point --
Q. Wait, I'm going to ask you a question.
A. At the five-year point if you redo the thing and then it's for another five years, but it's based on a 20-year schedule, so you're making payments based on a 20-year schedule. It's not a five-year loan or the payments wouldn't be 6,000 a month. It would be 20,000 a month if it was based on -- if it had to be paid off in five years. The bank is basing the loan paid off in 20 years, that's how they're basing it.
Q. I asked you directly a question. I said, is it your understanding that you had 20 years to pay this loan off, and you said yes. In fact, I think I asked you how many years did you have to pay this loan off and you said 20 years.
A. Well, it's based on a 20-year schedule; so

Page 140

it's assuming we are going to pay it off in 20 years. We're not going to escalate the payments all of a sudden after five years.
Q. But your understanding of this loan is that you and your cousins had 20 years to pay this loan off.
A. It's based on a 20-year schedule.
Q. Just say yes or no to that question, all right? Did you understand that you had 20 years to pay this loan off?
A. I understood that we would be paying the loan off in 20 years, yes.
(Exhibit No. 15 marked for identification.)
Q. Exhibit 15 is a set of appears to be text messages. Take a second to look those over, see if you've seen those before.
A. Yes, I've seen them.
Q. At the very top of this is a text which appears to be from Phillip. Do you see that?
A. Yes.
Q. And it doesn't say what date that is, but right underneath it it says Friday, October 10, 2014; do you see that?
A. Yes.

Page 141

Q. So Phillip says, okay, unless it F's you all up, let me know when I need my money by and how much. As much as I would like to join in with you all on a 20-year obligation, I will just pay up my money up front.
A. Mm-hmm.
Q. And then you said, I'll take a million tomorrow. Is that a joke?
A. Yes.
Q. I mean, you were kidding about -- he wasn't really going to pay a million dollars tomorrow, right?
A. Mm-hmm.
Q. But does that indicate that Phillip was -- at least Phillip was going to pay his own money rather than join in your 20-year --
A. That's what he's saying here, but he never came forward in his document -- I mean, I don't even know if he's blowing smoke at this point.
Q. But was that agreeable to you at that point that --
A. He could bring in his money any time, yes, I mean, in the beginning.
Q. And that he would not sign off on the note?
A. Oh, that he wouldn't -- no, he had to

Page 142

mortgage the building, period. He always knew that before the beginning.
Q. But he says here, as much as I would like to join in you all on a 20-year obligation, I will just pay up my money up front.
A. So he's saying he wouldn't want to be on the money obligation of the payments, but he was still going to mortgage his portion of the building. The bank wouldn't do the deal without mortgaging his portion of the building.
Q. Okay. That's what you understood?
A. Yes.
Q. Okay. Did you have any conversation with him outside of this text?
A. Everybody knew in the beginning when we were getting the loan, original loan, from the beginning that we were doing it -- they were giving us a loan to mortgage the building. We were mortgaging the building. They would give the loan otherwise.
Q. Spiros on Sunday, October 19 says, I need to hold off signing anything for Old Towne until I am done with the judgeship process. Should be mid November. Will create too much of a headache to amend everything I have filed. That will also give Phillip time to do what he needs to do and also any

Page 143

ancillary contracts we need to go along with the loan.
What ancillary contracts was he talking about there?
A. I have no clue. That's probably the document that they -- I have no clue what he's talking about there. But then later on before the second closing I got that document about Phillip saying that he wanted people to sign the paper, all of us to sign, and if we didn't pay on time, that we would lose one percent of the building.
Q. Did you say that -- do you think that it's likely that by ancillary contract he's referring to that side agreement that he wanted you to enter into?
A. I have no clue what he's referring to.
Q. Well, in your response you're not contesting that, right, at least about any ancillary contracts; you don't sound surprised by that.
A. No. I mean, I could be thinking it would be part of the closing. I have no clue.
Q. Okay. Your response was, that's crazy. You're not even on the note. The bank wants to close, and our builder's ready to build. Call me. That makes no sense whatsoever.

Page 144

A. What I meant by that's you're not personally guaranteeing the note.
Q. Let's keep going then. Spiros then says, you don't understand. Nothing to discuss. Putting kids to bed. I can't sign anything until hopefully mid November. That is when I should know if I am selected to move forward. Can sign before that. If you don't need my signature, then you can do it before then. Otherwise, you need to wait for my signature until I get through the process I'm working on. Then you said -- is that right, you're 813-5612?
A. Yes.
Q. You said, I have been busting my ass to get this done without you even on the note. I talked to Jacob and he thought that you are signing over the collateral on the note but they are two separate forms. Once again, you are not on the note listed as signing over the collateral, so there is no way it affects you. Put your kids to bed and then call me. What did you mean by that?
A. Meaning for his judgeship process there's no way they're going to know that he's signing off the collateral on the note because they're not asking for his tax return, Social Security number or

Page 145

anything like that, so there's no way the judgeship process will even find out that he's mortgaging the building. I was kind of confused about the whole -- why he couldn't go forward because he didn't put it on his paperwork that he was going to mortgage the building. That was just a shocker. We were supposed to close, I think, on Friday, and maybe I got this note from him on Wednesday, and on Monday we all decided that we were going to close on Friday.

Q. So you were suggesting that he could sign, because he didn't have to sign the note, that whoever was interested in the judicial thing wouldn't know that he had signed the collateral?

A. Personally guaranteeing. He didn't have to sign the personal guarantee. By signing he would only sign off his mortgage. I don't think -- I had no clue with his deal with the judgeship process. I was just speculating at this point. I was confused that, you know, on Monday he said, we're going to close on Friday; and here Wednesday, I think it was Wednesday, he said that he can't sign on the note because he was going to become a judge and he forgot to put that in his judgeship paperwork that he was going to mortgage the

Page 146

building.

Q. Flip forward where down at the bottom it says 00036. It says, some hard numbers to ponder. Going into closing today. We incurred about $15,000 worth of expenses.

A. Whose -- oh, that's my number.

Q. Yes. Is that expenses incurred on behalf of Old Towne Suites, LLC?

A. Probably. Title insurance, it says, had to be written from scratch. We had to buy flood insurance, builders risk insurance, building permits, put all our excess items in storage and have no clue the attorney's fees.

THE REPORTER: I'm sorry? I can't hear you.

THE WITNESS: I'm just reading what this says. I guess I don't have to read it out loud.

Okay. Yes, I sent that.

Q. Let's go forward to page 0038, and it looks like we're still on Tuesday, October 21st, 2014, and there's been a lot of argument going back and forth. Do you agree with that?

A. 2014, where do you see that?

Q. Beginning on the page we were just on, 36.

Page 147

A. These are all copied and pasted, so it's really hard to see.

Q. Well, we'll follow the times that go along with it, so do you see that's October 21st, 2014, at 6:38 a.m., on the next page there's one at 7:05, one at 7:09, one at 7:25, one at 7:31.

A. Okay.

Q. Then on the page that I'm directing you to, page 38, there's one at 7:46 a.m., 7:50, 8:02, and in the interests of time I'm not getting you to read all those.

A. Right. I assume it's all the same text thread.

Q. So do you remember this one at 8:26 a.m. from Spiros, begins, good news? Why don't you take a second and read that, and then I'm going to read it on the record.

A. Yes, I read it.

Q. Did you receive it back in October 2014?

A. I think so.

Q. It says, good news, I have decided I am out because I cannot trust our business partner. He is being a bully, and I do not do business with bullies. All I asked for was a few weeks after a closing date was sprung on me. Athan can go reread

Page 148

his texts. Neither Phillip nor I ever agreed to encumber our interests in Old Towne. I found out about that this past Saturday. What I was told was being considered was that Athan and Jacob would personally guarantee and that was all that was needed for the possible loan we were working on. Also, go reread your texts. No one ever gave you authority to do anything on anyone else's behalf. All you were doing was getting information about loan options. I was, before I realized how difficult Athan is to work with, going to allow my interest in Old Towne to be encumbered in a few weeks, even though this was sprung on me a few days ago. I don't have time for drama or overdramatic bully partners. Good job, Athan. You screwed the deal because you had to try to bully everyone instead of being a team player and waiting a few more weeks.

Do you remember that text?

A. Yes.

Q. Is this your response that comes right after that on the next page at 8:28 a.m.?

A. Yes.

Q. It says, I realize that I don't have authorize to close by myself; probably meant

Page 149

authority, I don't have authority to close by myself, and I don't think I ever gave that impression, and everyone has been in the loop from the beginning. Jacob knows of every expenditure, and he wrote most of the checks to the contractor, architects and engineers. Once again, selective amnesia, and your texts to me say two different things. I would rather leave it in your hands now and keep me in the loop if and when you all are ready. We do have expenses incurred that need to be paid, and we will pay as money becomes available.

In that response you don't say, Phillip, you agreed a long time ago to mortgage your interest; or, Spiros, you agreed a long time ago to mortgage your interest. You said -- you responded to his statement about your not having authority to close.

A. No. I said I kept -- everybody's been in the loop from the beginning. Everybody knew from the beginning that we were mortgaging the building. That's what it says there. The comment about the selective amnesia is when Phillip -- when Spiros says, I didn't give you authority for the expenses. They're attorneys, and Spiros was acting like he's going to come and make me pay for the -- everything

Page 150

that was spent on the project at that point. I'm like, your own brother is the one who wrote those checks. It's not like I wrote those checks. That's basically what it's saying. He's trying to back out of it at this point.

Q. Your statement that says, I don't think I have ever given the impression and everyone has been in the loop from the beginning, aren't you referring there to the expenditures? Because your next sentence says, Jacob knows of every expenditure, and he wrote most of the checks.

A. The entire loop from the beginning, meaning the contract with the contractor, the bank note, everybody's been in the loop from the beginning exactly what we're doing. The only deal that they wanted, Spiros and Phillip, was that they did not want to have to personally guarantee the note which means if this whole deal goes sour that the bank can go after them personally for their houses and their cars.

Q. You don't say that in this response.

A. Well, that's what I mean. Everybody's been in the loop from the beginning. What does that tell you?

Q. Looks like what you're saying is that

Page 151

everybody knows of the expenditures that we've been making because that's what your next sentence --

A. From the beginning. What does the beginning mean to you?

Q. I think we know what the beginning is.

A. The beginning of this project.

Q. All right. So that's the way you interpret this?

A. Yes.

Q. Okay. Going down to the very end. It says, label as you like, but everything we have done until now was agreed upon. It's in your court now. I could care less. My Zeus deal is bringing in plenty to keep my family happy. Spiros says, good, I'm glad your deals are working out for you.

So had you agreed at this point to drop the deal if everybody didn't want to go forward?

A. No. I didn't want to -- I wasn't going to drop it. I was just saying that I'll keep working on my Zeus deal. And I often went to Jacob after that and said, you know, what are your brothers doing? Are we going to go? He tells me, wait until Thanksgiving, wait until Christmas, and then he said after the first of the year. And I was like, we're spending money on this storage unit.

Page 152

We need to figure out what we're going to do to bring all that stuff back. And then eventually Jacob came back and said that we should go get the stuff out of the storage unit so we don't have to pay for that anymore. And we did that sometime in, I don't know, January or February.

Q. When you say, it's in your court now, I could care less, my Zeus deal is bringing in plenty to keep my family happy, how could that not be taken as you're saying that the deal is over?

A. That's not what I said. That's just me saying, I'm fine for right now. I'm just -- I'll just float, and it's in your court now. Hopefully, you know, we'll get this done -- we'll get this done. And then, finally, at one point I remember talking to Jacob outside of Old Towne, and he said that I can't get anywhere with my brothers. They say they're not -- we're probably not going to go through the deal. He can't get an answer with them. He never said they weren't going to go through the deal because he's the one that's been communicating with them all the time. And when we finally decided to bring the stuff back from storage, I'm like, you know, we spent all this money on this deal. There could be a lawsuit. I

Page 153

could ask for damages that could go against their houses and their cars. And I remember somewhere in Greece my parents heard that comment that I was going to take their houses and cars, which is ridiculous.

MR. COOKE: All right. Why don't we go ahead and take a break now.

(Lunch recess held.)

BY MR. FARRIER:

Q. Mr. Fokas, my name is Richard Farrier I represent Phillip. Have I deposed you before?

A. I don't think so.

Q. Okay. I'm going to ask you some questions. The entity that was going to borrow the money to construct the suites that are the subject of the lawsuit is Old Towne Suites, LLC, correct?

A. And Old Towne the building. Well, the entity? Yes, the entity, I guess Old Towne Suites, but they want us to guarantee the building for the mortgage.

Q. Right. Not asking you about that. I asked you who was going to borrow the money, and it's Old Towne Suites, LLC, right?

A. And Jacob and I had to personally guarantee it too.

Page 154

Q. Not asking you about guarantees. I'm asking you about borrowing money.

A. Yup.

Q. It was the LLC that was going to borrow the money.

A. Well, it was Jacob and I that were signing off on the -- we signed on that letter, the bank letter.

Q. Right. And the revenue that would have been generated by the suites, had they been built, would flow through Old Towne Suites, LLC, correct?

A. Correct.

Q. Okay. You weren't going to form any other entity to operate those suites, correct?

A. No.

Q. And you hadn't formed any other entity to operate those suites, correct?

A. Correct.

Q. And you would receive money, if these suites were built, you personally, through a distribution as a member in Old Towne Suites, LLC, correct?

A. Correct.

Q. All right. And in order to build these suites it was necessary to create additional capital, correct?

Page 155

A. Create additional capital?

Q. Yes.

A. No. I don't understand that question.

Q. Well, you needed money to build the suites, right?

A. Oh, yes, definitely.

Q. And so the members would have to in some form or fashion contribute equity into Old Towne Suites, LLC, correct?

A. Or get a loan from the bank.

Q. And what they chose to do, in order to garner the money, is get a loan from the bank; that's what the LLC chose to do, per your pleadings, correct?

A. Right.

Q. Okay. And you contend that there was an agreement by the LLC to not only borrow the money but to mortgage property that was not actually owned by the LLC, correct?

A. As owners of the building, let's take the LLC out of this.

Q. No, let's take my question. My question to you was that the LLC was going to borrow money, correct?

A. No. I'm not going with the LLC. It was

Page 156

Jacob and I and Phillip and Spiros, as owners of the building, who wanted to build additional units upstairs. The LLC held the money for the units, so we disbursed our income through the LLC.

Q. If you'll look at the loan commitment, it says, Mr. Fokas and Mr. Ferderigos. That's Jacob, right? I'm looking at Exhibit 11, and there are signature blanks for two people and one entity, correct?

A. Jacob and myself, right.

Q. Yes, and Old Towne Suites, LLC.

A. Yes.

Q. There's no signature blank for my client, is there?

A. No, because they weren't going to personally guarantee the note, so they didn't have to sign this.

Q. Just stick with my question. There's no signature blank, right, for my client?

A. Right.

Q. No signature blank for Spiros either, correct?

A. That's correct.

Q. All right. Now, when Mr. Cooke was examining you, you often used you and we

Page 157

interchangeably in referring to yourself and to the LLC, and I'm going to try to be very clear about distinguishing the LLC from you individually, okay?
A. Well, when I say we, I say we meaning myself and the cousins, the three cousins, that's the we.
Q. Well, the cousins and you never formed an entity to operate the suites other than the LLC, correct?
A. It was just an extension of what we already had.
Q. It was the LLC, correct?
A. The LLC ran the suites.
Q. Okay. And you're a member of the LLC, correct?
A. I am a member.
Q. And so are the three brothers, correct?
A. That's correct.
Q. All right. But the actual -- you understand what a business entity is, correct?
A. I think so.
Q. Okay. A corporation, an LLC, an LLP, those are all fictional entities, correct?
A. Sure.
Q. But they are entities, right?
A. They are entities.

Page 158

Q. And by and large they have responsibilities to act as entities, they have bylaws or statutes by which they operate, correct?
A. Yes.
Q. And they oftentimes pay taxes independent of the members' taxes, correct?
A. Members for taxes flow to K-1's, is that what you're saying?
Q. Yes. In an LLC they flow to the members, but in a corporation like S&S Old Town, Inc. -- that is the restaurant, correct?
A. That's correct.
Q. It pays taxes on its profits, correct?
A. On its profits.
Q. On its income.
A. Yes, mm-hmm.
Q. So we've talked about the three entities, I think, that are involved in this. We've already talked about Old Towne, LLC. It's going to separate the suites, correct?
A. That's right.
Q. All right. There is S&S Old Town, Inc., and that runs the restaurant, correct?
A. Downstairs, yes.
Q. And then there is 229 King Street, the real

Page 159

estate. That is owned as tenants in common, correct?
A. Correct.
Q. There's no entity that owns that, correct?
A. Correct.
Q. All right. And do you understand that Old Towne Suites, LLC, is a member managed LLC?
A. Yes.
Q. Okay. And how do you understand the voting to work in a member managed LLC?
A. The person who has over 50 percent can make decisions, is that what it is, you have to have over 50 percent of the vote.
Q. Are you aware that in a member managed LLC it's a per capita voting system?
A. Per capita.
Q. You have one vote, my client has one vote, Spiros has one vote, and Jacob has one vote; are you aware of that?
A. No, I'm not aware of that. Well, they all have one vote, but they have 50 percent of the votes, and I have 50 percent of the votes.
Q. Okay. That's not right. You're just telling me you're not aware of that.
A. Well, that's the way we have -- we're set

Page 160

up.
Q. Okay. You're not aware of any written document by which the members of the LLC chose to operate outside of the LLC statute, are you?
A. I'm not aware of any other document.
Q. So to the extent the LLC statute has a per capita voting system, one-man-one-vote system --
A. We've never exercised that.
Q. You've got to let me tell finish my question.
A. I hear you.
Q. You're not aware of any modification of what's provided under the LLC statute, are you?
A. No.
Q. All right. And the LLC has never assigned to you any rights related to this lawsuit, have they -- has it?
A. No.
Q. All right. Now, as I understand it, the gut of this lawsuit consists of what you would describe as your portion of the $92,000 that was expended in investigating the suites, number one; and number two, the future lost profits, correct?
A. It's not investigating. Investigation was done when we had the contractor make up the plans

Page 161

originally for basically free, and I think there was a little architectural work in there that might have been $2,500.
Q. I'm going to stop you.
A. That's investigation.
MR. BARNETT: Let him answer your question now, Richard. You asked him a question, and he tries to answer it, and you're trying to cut him off.
MR. FARRIER: I am cutting him off because I want to -- I'm going to withdraw the question, how about that?
MR. BARNETT: Once you ask the question, he gets to answer it, I think.
MR. FARRIER: I'll be much kinder as we go forward.
MR. BARNETT: I don't want you to be kind.
Q. I'm not trying to label the $92,000. You spent $92,000 for architectural drawings for contractor work and other things that you described in the first portion of your deposition, correct?
A. Correct.
Q. And your share of that is a part of the damages you're claiming in this lawsuit, right?

Page 162

A. I think -- I'm not sure exactly what the damages are. I think they are for lost profits.
Q. Okay. And that's the other bucket is lost profits that would have flowed to the LLC had the suites been constructed, correct?
A. Correct.
Q. All right. Let's talk first about the $92,000. I was not clear from your testimony this morning as to whether all of it was paid from the insurance proceeds or a portion paid from the insurance proceeds and another portion paid out of the LLC.
A. The insurance proceeds was only during the fire that built the first suites. The $92,000 had nothing to do with insurance proceeds.
Q. Okay. Thank you. So that came out of the LLC?
A. Correct.
Q. Checks written out of the LLC?
A. Some of them were written out of Old Towne Restaurant.
Q. And so asked another way, Athan Fokas never wrote a check personally out of any personal accounts that comprises part of that $92,000.
A. I don't think so, no.

Page 163

Q. Okay. Now, the sole business of Old Towne Suites, LLC, is the management of Old Towne Suites, correct?
A. The sole business is the management -- we set up Old Towne Suites, LLC, as a partnership, 50/50 partnership, where I own 50 percent and the three cousins own 16.67 percent each, and we run the business amongst ourselves.
Q. The question is really what does Old Towne Suites, LLC, do. You've already confirmed that it manages the existing suites at 229 King. It was going to manage the suites that are the subject of this lawsuit if they were built, correct?
A. There's no management company that you're -- there's no -- there are no employees in it. It's just myself 50 percent and my three cousins, who make the decisions. So when you say the Old Towne Suites, LLC, does it, it's myself and my three cousins operating individually, you know, operating individually. We also own the building of 229, so the building is owned individually. So when we make decisions to rebuild the building, it's just us talking. I'm not so sure that -- Old Towne Suites, LLC, was set up just to have the checking account and to have the money flow through the

Page 164

checking account.
Q. What I'm trying to do is make sure that I'm not missing something. Old Towne Suites does not do anything by way of business outside of the suites, correct?
A. No.
Q. It doesn't own any other property?
A. No.
Q. It doesn't own any other businesses?
A. Yes.
Q. It's just these suites, right?
A. That's correct.
Q. Okay. Now, I want to pick up right where you were just a moment ago. Old Towne Suites was formed not as a partnership but as an LLC, correct?
A. I think, yes. It's an LLC, but there's a partnership within LLC's, I think. They say -- doesn't it say it's a partnership LLC? I'm not sure.
Q. And all the profits that flow from the suite rentals flow into the LLC, correct?
A. Flow into Old Towne Suites checking account.
Q. Right. The Old Towne Suites, LLC, checking account, correct?
A. That's correct.

Page 165

Q. And ultimately you may or may not be a beneficiary of that income, correct?
A. I may or may not.
Q. Yes.
A. Why do you say may or may not?
Q. Well, the LLC may -- the money is coming into the LLC, into an entity, and I know in the past that money is generally distributed out to the members after overhead is paid, those sorts of things.
A. There's no overhead. It's 50/50 checks. There's no overhead that comes out of the LLC. So if we receive $4,000 from the management company who manages our rentals, then $2000 will go to me and $2000 will go to Ferderigos.
Q. Right. And you understand the LLC could decide to not do that.
A. Well, that was always our agreement that we would do that.
Q. But you understand that LLC's sometimes take votes and an LLC can change its direction.
A. But we've opted to -- we haven't ever -- we've never taken votes. We've never had an official meeting.
Q. Different question. I'm asking you if you

Page 166

understand that fact.
A. I would be -- I guess we would have to vote on it to change --
Q. Right.
A. -- to change the system as we're running it now.
Q. And so the LLC could vote, for instance, to begin saving money to construct these suites.
A. Yup.
Q. So there were no distributions, correct?
A. It would be me -- or we would communicate with the four of us and agree that we want to save the money in the suites account so we could build a new venture.
Q. Right. And my question is just you're aware that that could be done.
A. As to what we did to build the units.
Q. Yes.
A. We did that.
Q. Now I want to understand why you are bringing this lawsuit, if you know, rather than the LLC.
A. I'm bringing the lawsuit because the lost profits and the -- and that I'm not receiving, as an individual owner of the building. We're

Page 167

building the building, building the suites, part of the building, and I have loss of income.
Q. But you would agree with me that that's a two-step process, that the moneys have to go into the LLC and then they're distributed to you; you're a beneficiary of the distribution, correct?
A. 50/50.
Q. You're a beneficiary of the distribution, correct?
A. I am.
Q. Okay. And that not only you benefit from it but your family benefits from it, correct?
A. Correct.
Q. Okay. And do you believe that just because you're a beneficiary, as a member of the LLC, that gives you the right to bring this lawsuit?
A. I have the right to bring the lawsuit because I was -- I'm owed damages for not building something that we always agreed to build.
Q. And who are you owed that by?
A. The brothers who decided they didn't want to build the project.
Q. Well, the profits would have come to you through the LLC, wouldn't they?
A. I guess at some point. If we built a new --

Page 168

if we built a new project, I don't know, we might have started a new account. Who knows.
Q. Yes, but you didn't, right?
A. Yes, mm-hmm.
Q. So the moneys actually would come from the LLC, right?
A. The lost profits?
Q. Mm-hmm.
A. Well, if a jury awards lost profits, I have no clue how they're going to give me the money.
Q. I'm not asking you to predict what's going to happen in the lawsuit. I'm asking you to confirm with me that, unless things are changed, the way the money flows from the rental of the suites which are the subject of this lawsuit, it would flow into the LLC and then be distributed as the LLC decides, correct?
A. In which I am 50 percent owner and I make half the decisions in that LLC.
Q. Right, and so what I just said was correct.
A. I'm not sure it would work that way exactly like you said. I'm not sure it would flow through the LLC. At some point if lost profits -- if we were going to -- I'm kind of confused with the -- if, like you said, don't assume, but lost profits

Page 169

will come from the people who owe me the lost profits, right? It's not going to come from the LLC. If I was going to make the money through the LLC, then the LLC would distribute me half the money.

Q. That's exactly what I'm asking you is, assuming that these suites were built and assuming you could rent the suites and they generated income, the profit from those suite rentals would come into the LLC as a first step, correct?

A. Yes.

Q. And then a check would be written out of the LLC's checkbook.

A. Mm-hmm.

Q. To the members, as agreed by the LLC.

A. Yes.

Q. And that's how you would ultimately get your money, that's the flow of the money, correct?

A. That's how we've been doing it since 2011.

Q. All right. Now, we've looked at a bunch of documents here. We don't have any formal -- you're not aware of any formal documentation within the LLC, written documentation, that the LLC ever approved the undertaking of this debt, are you?

A. That would be us communicating, and since we

Page 170

agreed on it, then that would be the LLC taking on the debt.

Q. Well, let's break that down. I asked you in writing. I have looked at all the documents. I see nothing in writing --

A. Yes, it was done all orally.

Q. Okay. Very good. And are you aware of any formal action within the LLC, a referendum, a vote, minutes of any meeting, that would confirm that?

A. If the -- we discussed this as owners of the building. The owners of the building don't have this LLC. We discussed as owners of the building that we would add property on top of our existing building.

Q. Well, the LLC --

A. I don't think it has to go through the LLC. There's no documents that it go through the LLC. I make 50 percent of the decisions. The Ferderigos brothers make 50 percent of the decisions. If we both agree, then we continue.

Q. I want you to explain what you just said. You said there's no documents that say -- I got confused. There's no documents that say what?

A. You're trying to pin this and say, well, Old Towne, LLC didn't have a meeting that made this.

Page 171

We had the meeting amongst the owners of the building. We don't have an LLC for the building. We, as owners of the building, decided to build another part of the building.

Q. A lot of these questions are pretty simple. I just am trying to confirm, I'd like you to confirm, that there is no written documentation of any formal action within the LLC by its members.

A. No. It was done all orally by its members.

Q. Okay. And there's no written agreement within Old Towne, LLC, by the members by which they agreed to respond to any capital calls, correct?

A. Any capital calls.

Q. Yes.

A. Explain that term.

Q. Do you understand what a capital call is?

A. Not so sure.

Q. Okay. If you are in a partnership or an LLC and your profits don't exceed your -- there's a lot of reasons you can make a capital call, but you can be running short one year. For instance, your lawyer and I might be partners, and we're having a bad year. We've got a bunch of contingency cases out there, and we've got to pay our staff.

A. Yup.

Page 172

Q. What a partnership has to do and what an LLC has to do from time to time is for Stan and I to kick in money so we can make payroll and keep the lights on.

A. Yup.

Q. You understand what I mean by that?

A. Fortunately, that's never happened with us in the LLC.

Q. And you would agree with me that there's no agreement, no written agreement, signed by any member by which they would agree prospectively to respond to any capital call.

A. We've never made a capital call.

Q. That's not my question. This will go -- really, this will go so much faster if you answer the question I'm asking you. I'm asking you to confirm that you're not aware of any agreement signed by the members of the LLC by which they agree to respond to capital calls.

A. Not written. It was all done orally.

Q. You mentioned earlier in responding to questions by Mr. Cooke that there were a number of instances in which you had discussions with Spiros by which he agreed to mortgage the property as security for the loan that you wanted to undertake.

Page 173

I want to ask you the same questions relative to my client, Phillip. And several times this morning Mr. Cooke asked you a question and your response was what was said. And I want to get to what was said, but I don't want to start there. I'm going to ask you this question: Were there conversations prior to 2014 between you and Mr. Phillip Ferderigos in which Phillip Ferderigos was both told that the bank needed a mortgage and he agreed to mortgage his share of the interest in the restaurant.

A. Yes.

Q. Okay. There are four things I'm going to ask you. When, where, I'm going to ask you who was there, and lastly I'm going to ask you what was said.

A. Okay.

Q. I don't want to get to what was said until we get those other things pinned down. So, first of all, on how many occasions did these conversations take place?

A. Multiple occasions, probably out of church or at family gatherings, we said that the original units were so successful that we wanted to do new ones, but we didn't have the money, obviously, to

Page 174

pay $2 million for the -- or whatever it would be. Even a million dollars. Everybody didn't have the money. I mean, especially Phillip -- I mean, Phillip makes good money but not Spiros or Jacob, so they definitely didn't have the money to put in the thing. So we said we would take a loan out, and we would guarantee the loan with the building; and if we show the income stream for the original suites, that will show the bank that we're going to have enough money to pay for those payments.

Q. I see my admonition just a moment ago did not get any traction, and I probably should have cut you off because what I want is, first of all, how many occasions, on how many occasions did you have a conversation with my client?

A. I would say at least a dozen times. We talked about it many -- maybe 20 times. I don't know. Every time we got together, every single time we got together, we would huddle outside. If our kids were in Sunday school, we would sit there, and we would talk about this deal, how long it was taking, the BAR, what it's doing with the BAR, the architectural plans, everything, and we discussed all this, and we discussed the mortgage.

Q. All right. Tell me, pick any one of the 20

Page 175

or 12 and tell me as best you can in what year it occurred.

A. Oh, it would have been before this letter (indicating) so before 2013, I guess. When is this letter? February 2013.

Q. Okay. And where did that conversation take place?

A. 2012 maybe. I don't know. It might have been at the church. I think mostly at the church we would get together.

Q. Is it fair to say that you don't have a specific recollection of any particular instance where you can give me the particulars of who was there, what the weather was like --

A. It's 2012.

Q. Let me finish my question.

A. You're talking 2012. I can't know what the weather's going to be like.

Q. I'm asking you to give me any information about any conversation.

A. I have no clue what the weather was like in 2012 on the date that we got together and discussed these -- the mortgage.

Q. Can you tell me the location and who was present specifically for --

Page 176

A. I think it was around church.

Q. Let me finish. You've got to let me finish my question.

A. I thought you were finished.

Q. No. Any of the particulars about any meeting with my client.

A. Well, the reason I say church, because a lot of our conversations start at the church. The reason we decided to build the original suites was because a lady at the church named Chris Atapoulos (ph.) had said that she had rental units with this gentleman, Kevin High, who does our units now. And she said she's making a ton of money from his Airbnb, VRBO business that he's doing and that -- and I was saying that I'm -- we're trying to figure out what we were going to do with the upstairs, and right now there's too much office space downtown, and it's hard to get rent, and they said $3,000 would be the most that we could get if we could find a great client. And she was telling me -- the numbers she was telling me, I was like, we could make a lot more money, at least $10,000, plus, in this business. And that's how we started the conversation with the brothers outside of church at many of these gatherings, usually around Sunday

Page 177

school. The kids would go to Sunday school around 11:30, so we had about a half an hour every Sunday to sit around and talk about our project.
Q. So you can't give me any particulars about any specific meeting.
A. No. I can't tell you if it was raining or hailing.
Q. Or anything. Who was there, the number of people?
A. It probably wasn't raining because when we're outside, it's usually sunny. If it was raining that day, we were probably inside the center, and there's too many people there cluttered. It's cluttered.
Q. I actually don't care about the rain. I was being hyperbolic.
A. I'm trying to help you out.
Q. Okay. So the answer is you can't tell me any specific meeting. You had general meetings, and there were a number of them, up to 20, and it was a topic of discussion that you had that's never been reduced to writing.
A. And it could have been more than 20 because we talked about it at our Thanksgiving and Christmas when we're together.

Page 178

Q. Do you want me to repeat my question?
A. It could have been more than 20.
Q. Okay. Do you want me to repeat my question?
A. Up to 20. I just wanted to clarify that it could be more than 20.
Q. And otherwise, what I just said was correct, right?
A. Oh, you have to repeat it.
MR. FARRIER: Okay. Would you repeat the question?
THE REPORTER: (Reading): So the answer is you can't tell me any specific meeting. You had general meetings, and there were a number of them, up to 20, and it was a topic of discussion that you had that's never been reduced to writing.
Q. So other than the number, what I just said is correct.
A. Other than the number, yes.
Q. All right. Let me talk to you a little bit about -- you talked a little bit mortgages earlier. I want to make sure that you understand what a mortgage is, that there is a loan and there's a mortgage, and those are two different things, correct?
A. I guess, yes.

Page 179

Q. Okay. A mortgage is one form of security interest that secures a lender's loan to a borrower, correct?
A. Usually a mortgage you're mortgaging a property to get the loan.
Q. Right. But when somebody borrows money from say a bank, the bank could make an unsecured loan, correct?
A. It probably could.
Q. Yes, and they could take a security interest, for instance, in a car, right?
A. I guess.
Q. They could take a security interest in inventory if they're lending to a --
A. Manufacturer.
Q. Yes. Correct?
A. Correct.
Q. Or they could secure a loan with a mortgage, right?
A. Correct.
Q. And when you're securing a loan with a mortgage, the person that's borrowing the money is actually transferring a right in real estate back to the bank, correct?
A. Well, they're guaranteeing the real estate

Page 180

for the loan. If you default on the loan, the bank can come take your property and sell it to get their money back.
Q. Well, there's a lien on the real estate, correct?
MR. BARNETT: Object to form.
THE WITNESS: I'm not sure how the banks have it, but you're not able to sell the real estate unless the bank agrees, I think.
Q. Would you call that a lien?
A. They put a lien on the property.
MR. BARNETT: Object to form.
THE WITNESS: I'm not sure how the banks do it.
Q. All right.
A. Okay.
Q. And as you said, if you don't pay back the money and there's a mortgage, the bank can come in and foreclose on the property and take the property and sell it, right?
A. Correct.
Q. And when the bank sells the property, that is not the best way, in a foreclosure, that's not the best way to maximize the value of the property, is it?

Page 181

A. Well, I guess it depends on the situation. I guess some ways you can sell the property and make a lot more money.
Q. Well, that's what I'm asking you. You said this property at 229 King was worth $5.8 million, something like that?
A. I'm assuming around $5 million. I said 5 to 10 in that thing. After we build the suites, it will probably be a lot more.
Q. Well, if the bank loans you $1.8 million, they loaned it to the LLC, and they took a mortgage in the restaurant property, the mortgage would be for $1.8 million, right?
A. Yes.
Q. And do you know what happens in a foreclosure sale?
A. You get the bidder, the next -- the highest bidder.
Q. So how much money does the bank care that is generated by the sale of the property in this hypothetical?
A. I guess it depends on if they have expenses too. It wouldn't just be the $1.8 million. They may have lawyer fees. Who knows.
Q. Well, fair enough. It would be the value of

Page 182

the loan plus whatever expenses, right?
A. Correct.
Q. And beyond that they don't care what the sale generates, correct?
A. I don't know what the bankers are thinking. That's hard for me to know. But I would assume they want to get the money out of what their -- they borrowed.
Q. And that's all they're entitled to take, right?
A. I would think so.
Q. Okay. Now, you know Phillip's position is that he told you from day one that he was going to be self-funding his portion of the proposed project, right?
A. That's not true.
Q. It's not true that -- I think it's pretty true that he is contending that.
A. It's not true that he actually did that.
Q. That wasn't my question. You're aware that that's what he's contending.
A. I'm aware that he said that.
Q. Okay. And you're not aware of any writings in which he deviated from that, are you?
A. I think he sent some emails to Amy Haines

Page 183

that he was supposed to be only signing, he was not personally guaranteeing, I think he was on that thread where he spoke to Amy Haines and he discussed the note.
Q. Any other documents that you know of?
A. Besides that, if it is in our emails where we talked about it, then that's what we have. Everything that we have, we have right now.
Q. I would purport to tell you that it's not.
A. Okay.
Q. And there was a discussion that you had with Mr. Cooke, and I wasn't exactly sure what you meant. Does it matter to you at all in this deal whether Phillip totally self-funded versus his mortgaging his portion of his interest at 229 King Street?
A. Would it bother me if he was self-funding? Yes, I think it would be cleaner if we went through one loan if he was going to mortgage the property. If he was going to get out of this deal and then get $350,000 from another bank and they wanted to mortgage the property, I'd be like, Phillip, why don't we just do it under one deal, why do you want to bring in -- because it muddles it up. And I'm not sure the banks would like that. I'm not sure

Page 184

the bank would want a percentage -- another percentage of another entity in another -- they probably wouldn't want -- I don't know what banks would want, but I would doubt they'd want two banks to be in the mix.
Q. Did you ever ask them?
A. Did I ever ask them? No, I never asked them.
Q. Why didn't you ask them?
A. It never came up. I didn't find out that Phillip was doing his deal until after the -- until we were almost going to the second mortgage.
Q. Okay.
A. That he was bringing in another -- his own money.
Q. Well, at that time why didn't you go to the bank and say, here's my problem, I've got one of my cousins who doesn't want to mortgage his interest in the property, he's willing to come to closing with cash, can I reduce the loan to 1.45 --
A. I asked the bank and they said --
Q. Let me ask my question.
A. Yup.
Q. -- reduce the loan amount and just take a mortgage on the interest of the people who are

Page 185

willing to mortgage their interest?
A. I'm answering your question. I told -- I asked the bank, and they said they wanted everybody that's on the building to sign off on the mortgage.
Q. And who did you speak with about that?
A. Jeff Odom.
Q. And when did you speak with Jeff Odom about that?
A. I'm not sure, but I did call him or saw him in person and asked if like one of the parties didn't -- couldn't be on the note or couldn't -- weren't going to sign off on the mortgage, and he said, no, everybody had to sign off on the mortgage.
Q. You don't know when that was?
A. It was sometime after Phillip mentioned that he didn't want to -- wanted to bring in his own money, I think. I think I had that conversation with him.
Q. Not sure.
A. Not 100 percent sure. But I think I remember them saying that everybody that owned the building had to sign off on the mortgage.
Q. Well, it wouldn't matter to you where Phillip got the money from as long as it didn't

Page 186

impact you, would it?
A. No.
Q. I mean, if he proposed to mortgage his house or borrow it from his in-laws or whatever, it wouldn't matter to you where he got his money, would it?
A. As long as he proved that he had the money.
Q. Right. Well, you've said that several times. I don't understand what that means. If he brings $350,000 to the closing, if that's part of the deal, the bank is only going to loan if Phillip comes up with $350,000 --
A. In one of our email exchanges I asked Phillip, I asked him to prove that he had the 350,000. He said he did not have to give proof.
Q. Why would he have to give proof?
A. Because we have to prove that we have all the money to do this deal. If we didn't have all the money to do the deal, then we can't go forward. One of us would have to cover Phillip's share.
Q. The property just wouldn't close, would it?
A. The property wouldn't close because -- I mean, we would have to borrow the money, but if he had a side deal going on, I wouldn't sign this document unless I knew all the money was going to

Page 187

be there.
Q. So what you're telling me is that you feel like you had an opportunity to opt out of this bank loan if some contingency arose and it wasn't handled to your satisfaction.
A. Well, nope, we had the note secured from Southcoast Bank. If Phillip didn't want to borrow the whole -- or want to be part of this, then he could show where he has the money so we could tell the bank, no, we didn't need the $350,000 here; Phillip has the money. At one point he talked to his uncle and he said he was going to put it in escrow. That never happened.
Q. That's really not the part of your answer I'm interested in. What you just told me is that after you entered Exhibit 11, this commitment letter, up until the time of the actual closing, if something happened and it was not to your satisfaction, that you would not close on the loan that's reflected.
A. No. I agreed to close on this loan, not that I wouldn't go with the deal; but the deal is if Phillip had a hypothetical $350,000 and we took $350,000 out of this note, and then all of a sudden the money wasn't there, then that would be a bad

Page 188

deal. Then we'd have to go back to the bank and get the money from the bank.
Q. And you would not have closed.
A. Well, the bank -- I mean, it wouldn't make sense to close because you want to make sure you have the money to build the project.
Q. I'm really --
A. It's not like I'm going to -- I'm not backing out of anything. We all agreed to do this deal. That side agreement that happened was just Phillip making up a side agreement.
Q. I'm asking you about your statement just a moment ago. I asked you if Phillip committed to the $350,000 and you said, well, he had to prove it to me, and if he didn't prove it to me, then I never would have signed the loan that's represented by Exhibit No. 11; that's what you said, isn't it?
A. I would have never signed the altered loan that he's asking us to alter. Show that you're going to make this loan the same thing, but he could never do that.
Q. So the answer to my question just a moment ago is yes.
MR. BARNETT: If that's a question, I object to the form.

Page 189

MR. FARRIER: I'll re-ask it. We're going to be here for two days, Stan.
THE WITNESS: This is the agreement that we all agreed to sign. The bank gave us this agreement. This was the deal. All of a sudden Phillip made up a side deal. Side deal doesn't make sense. It's a problem. This is the deal we agreed to go along with (indicating).
Q. But you, Athan, and Jacob and the LLC, those are the only people that signed Exhibit No. 11, correct?
A. Right, mm-hmm.
Q. And so if Phillip makes some proposal after you committed yourself to Exhibit No. 11, you would not have closed on the loan.
A. I'm not saying I wouldn't have closed on the loan because I agreed to sign his side agreement too. I mean, whatever Phillip -- I mean, it sounded good to me. It's not like I agreed -- that's all hypothetical, what you're saying now. You have to see the agreement that you're talking about. I can't say that. I mean, Phillip wouldn't come up with the money to show that he had it. He didn't put it in escrow or anything, so it was all a confusing state at that point. This is the deal

Page 190

that we all agreed to do (indicating).
Q. So if Phillip in his mind was going to put in cash, that was acceptable to you as long as he proved he had the cash, correct?
A. Yes.
Q. Okay. But you still wanted him to get a mortgage on the property.
A. It was always the bank would not give us this loan without mortgaging the property. Jacob did not have 350,000. Spiros did not have 350,000. I might have been able to pull together 350,000 at the point, but this loan would not happen unless -- everybody that owned the building signed off on the mortgage, and that was the original agreement.
Q. Mr. Fokas, let me say one thing: It is not helpful to this process for you to keep giving the same talking point to every question I ask. I know your testimony is that my client and the other three defendants committed to mortgage their portion of the property, okay? You don't have to keep telling me that.
A. Okay.
Q. I'm asking you questions that are not asking for that answer again.
A. Okay.

Page 191

Q. My question has to do with what happens after Exhibit No. 11 is signed. Phillip proposes to come in with $350,000.
A. It's not after. We would have never -- the deal -- we would have made the deal before this was signed, I guess. I mean, if Phillip was going to alter this agreement, it would be before this agreement was signed, right? You're saying after the agreement.
Q. I'm assuming that because I'm assuming that your testimony is that sometime in 2012 you and your cousins agreed to build some suites, to borrow the money to build the suites and to mortgage the property in which you were tenants in common.
A. That's right.
Q. Okay. And I also assume your testimony is sometime thereafter Phillip says, I do not want to mortgage my interest in the property, I want to put in cash.
A. He did that right before the second closing.
Q. Okay. And that would have been acceptable to you had he demonstrated proof that he had the cash, correct?
A. And he was going to still sign off on the mortgage.

Page 192

Q. Okay.
A. Yes.
Q. Well, if Phillip was going to put in cash, why would he sign off on the mortgage?
A. Because we would not get this note. Jacob didn't have the 350,000, Spiros did not have the 350,000.
Q. Well, why would he agree to risk his property to get you a loan?
A. He's not doing it for me. It's for the whole project. In order to get a mortgage for the building the building has to be signed off for it. All of us needed to come up with that money. I don't even know if he even had the 350,000. Later on we found out that he had a possible loan for 300,000. He never gave us any information. This was all done after the second closing -- right before the second -- right before the second closing. Nothing was confirmed.
Q. Did you either offer or convey anything of value to my client in exchange for his agreeing to take on the risk of a mortgage?
A. I don't think so.
Q. We've talked about anything in writing about a mortgage between you and my client, and you've

Page 193

told me that unless it's in some document that is yet to appear in the discovery, you're not aware of any, correct?
A. He talked about the mortgage when he was talking about it with Amy Haines, I think he mentioned the mortgage.
Q. Okay. Other than that document.
A. Yes, and then it was all oral.
Q. All right. From October 2014 to the present do you have anything in writing whereby my client agreed to a hypothecation agreement?
A. No.
Q. From 2014 to present do you have anything in writing signed by my client where he agreed to an assignment of rents?
A. Assignment of rents, yes, he always knew -- we agreed from the beginning that the Old Towne Suites had the revenue to pay for this new -- had the revenue to pay for the project and that the -- I guess if they would pay the note on the new mortgage.
Q. Let me ask that question again. Do you have anything from October of 2014 to present day in writing and signed by my client whereby my client has agreed to an assignment of rents.

Page 194

A. In writing, no.
Q. Do you have anything from October 2014 to present whereby my client in writing agreed to sign a HUD statement?
A. HUD I think is part of the mortgage, right?
Q. Do you want me to ask the question again?
A. A HUD statement is part of the mortgage; isn't it?
Q. It is part of the mortgage but that's --
A. So he agreed that he would sign the mortgage and that would make it an agreement to sign the HUD.
Q. I'm asking you --
A. From my understanding, the hypothecation agreement is the same thing as signing the HUD, I think.
Q. Do you have anything in writing from 2014, October 2014 to present, whereby my client has committed to sign a HUD statement?
A. It was all done orally, verbal.
Q. So the answer is no.
A. Yes, no.
Q. Do you have anything in writing from October 2014 to present, signed by my client, whereby he agreed that Old Towne Suites, LLC, would be a

Page 195

borrower?
A. Not in writing but he agreed to orally.
Q. I'm going to ask you a similar question, and I've been using October of 2014 forward, and I want to go backwards in time, you know, from the beginning of time up until October of 2014, and I'm just going to state this for you because I think I know the answer. You're not aware of anything in writing signed by my client whereby he agreed to enter a hypothecation agreement, an assignment of rents, to execute a HUD statement, or for Old Towne Suites to be a borrower, correct?
A. Not in writing.
Q. Okay. Thank you. How about for a mortgage? From the beginning of time until the present do you have anything in writing, signed by Phillip, that he ever agreed to sign a mortgage; and the answer would be no?
A. That was done all orally.
Q. Yes. And you do agree that neither Phillip nor Spiros were going to sign a guarantee for the proposed project, correct?
A. Personal guarantee is what they asked to be taken off of.
Q. Now, you acknowledge that none of the owners

Page 196

can build a building at 229 King Street without the other owners' consent?
A. For us to get a loan we would all have to consent to sign on the mortgage. To build the building it's a 50/50, so I think -- I don't know. I don't know how it happens. It would have to be figured out between the lawyers. Like if I wanted to do something and Jacob wanted to do something and we have more than 50 percent interest, I would assume that we could go forward with it because we have more stock in the company.
Q. How about if the three brothers -- who own 50 percent, correct?
A. That's correct.
Q. -- decided they wanted to build a hookah bar on top of the restaurant and you came -- they didn't tell you about it. You came in one day, and there was all this construction, and you said what's going on?
A. You have to be more than 50 percent to make that decision.
Q. Right. And you alone could not build on that property as a 50 percent owner without the consent of some or all of the brothers, correct?
A. That's correct.

Page 197

Q. And did you in fact threaten to do that?
A. To build something without the brothers?
Q. Yes.
A. I think in one email I said I would buy out one of the brothers.
Q. Did you in fact not threaten to build on the property without my client's consent?
A. No. Unless we had more -- a majority, I think. It would have to be done legally.
Q. But you don't recall ever doing that?
A. No.
Q. Do you recall when you or if you sent a copy of the contract signed with a contractor to any of the three brothers?
A. No. I don't recall when it was.
(Exhibit No. 16 marked for identification.)
Q. Let me show you what I have marked as Exhibit No. 16. You would agree that as of September 5, 2014, at least from this email, that my client did not know the details of your loan.
A. It was our loan and he was asking questions about the loan.
Q. And you don't have any reason to believe that the things he was asking about he actually

Page 198

knew?
A. I'm not sure. We might have discussed it verbally. We discussed that we wanted 5 percent for 20 years was our goal.
Q. Okay. Well, Phillip clearly is indicating here that he does not know these things, correct?
A. Phillip is saying, can you tell me the key points of the loan for the building, what bank is making the offer, how much money will they give, what are the terms, interest rate. He may have heard, we might have said it verbally, but maybe he's asking again. I have no clue.
Q. Okay. You don't have evidence --
A. This is where he's saying he's got the bank president that's in his building and he wants to see if his bank can do something better.
Q. You don't have any reason to believe that my client's being disingenuous in this document, do you?
A. He's just asking for the specifics again is what it seems like because he's ready to go to his banker and see if he can beat the deal.
Q. I'm going to suggest, to speed this along, that, if you can answer a question with a yes or a no, I'd like you to do that.

Page 199

And so you would agree with me that you don't have any evidence that tends to suggest that Phillip was not being honest in what he knew and didn't know in Exhibit No. 16, correct?
A. You're assuming that he knows nothing about the loan in this time, but he did. He knew the loan. He knew that we were doing 20 percent, I mean, we were trying to get 5 percent. He wanted me to spell it out again, I guess, in this text or email.
Q. You don't have any evidence that my client knew which bank was making the offer, do you, as of this date?
A. He knew which bank was making the offer.
Q. Do you have any evidence to suggest that he actually knew the loan amount?
A. He knew the loan amount.
Q. All right. You're saying that in a conclusory fashion.
A. We orally --
Q. I'm asking you --
A. We orally --
THE REPORTER: Hold on.
Q. I'm asking you to listen to my question and not talk over me, okay?

Page 200

A. Okay.
Q. I'm asking you about evidence. I know that you claim, as I understand it, you claim that you had several discussions with my client through which certain terms of the loan were communicated to my client, correct?
A. Right, correct.
Q. Okay. But you don't have anything other than those fairly nonspecific recollections of discussions to suggest my client actually knew these questions he was asking?
MR. BARNETT: Object to the form. You can answer.
THE WITNESS: I think he was on the email when Spiros said, great, when I said, you know, we got the Southcoast loan for a million or whatever it was, I think he was on that email thread. And that was a long time ago.
Q. Prior to September of 2014 you never provided to my client a copy of Exhibit 11, did you?
A. I'm not sure.
Q. Well, I guess your answer is I might have but I can't recall.
A. That's right. I mean, I don't know if I had

Page 201

sent it to him or his brother sent it to him. I'm not sure how it got to him, but we got one letter and he got it.
Q. You don't have any evidence that you, in fact, provided it to my client, correct?
A. No.
Q. And I think we've already marked this email, but on September 30th Phillip informed you in a text, in an email, that he is paying cash for his share of the project, correct?
A. That's the first time I heard of it.
Q. Okay. You're not aware of any conversations Phillip had with the bank about your loan, correct?
A. I'm not aware. He may have. He may have called the banker.
Q. In a lot of my questions I'm asking you what you know, and I'm not asking you about possibilities. It's possible that my client went and sat down and met with your bank. That's in the realm of possibility.
A. Right.
Q. But you don't have any evidence to support that he had any conversation with your bank, correct?
A. With my bank, I can't recall. He might have

Page 202

told me verbally outside of church that he spoke to my banker at one point, but I can't remember.
Q. So as we sit here today the answer is no, I don't have any evidence.
A. I do not have any evidence right now.
Q. When did the project escalate from a $900,000 project to a $2 million project?
A. In between us going to the board of architectural review.
Q. When would that have been?
A. Sometime after we got the commitment letter for the million dollars, and then we started paying the architect, and then they started paying -- we started paying the engineers that went along with the architect, made up the plans, went to the BAR, so it took many months. I think we went there -- we changed the plans, I think, four times.
Q. Did my client ever agree to a loan of $2 million?
A. Your client agreed to a loan of 1.8. We figured 1.8 would be enough and then we would put in the rest, we would take care of the rest.
Q. And when did that agreement occur?
A. The agreement occurred before we got the $1 million loan. Then we said it was going to be

Page 203

three stories. We talked about this all the time. We figured out it was going to be three stories and it was going to cost us $1.8 million. That's what the contractor wanted. So we wanted the loan amount to be for what the contractor needed and we would take care of the rest.
Q. And I assume that this is like the other meetings that you referred to where you can't give me a specific time, place or any specific facts about it?
A. Or if it was raining that day I can't remember.
Q. And the project, as priced, did not -- I can't remember if Dawes asked you this, so if he has, I apologize -- did not include pricing for a sprinkler system, for the appliances and the furnishings, correct?
A. That's correct.
Q. It didn't include pricing for the windows, correct?
A. No, it did include pricing for the windows.
Q. Now, when Mr. Cooke was questioning you, I was taking notes about your sources of income, and he didn't use that phrase with you, but I want to use that phrase. You derive income from S&S Old

Page 204

Town, Inc., correct?
A. Correct.
Q. Do you derive any income from the Goat Island property?
A. No.
Q. I didn't really understand what's happening with the North Towne building. Do you derive income from there?
A. We lease that to Lumber Liquidators.
Q. Do you have any other sources of income, either passive or active sources of income?
A. Old Towne Suites, LLC.
Q. Right.
A. And Zeus Investment Properties and Zeus Grill and Seafood, the restaurant, catering.
Q. Any other forms of income?
A. No.
Q. Now, Zeus Investment Properties is now 493 King, correct?
A. Yes, yes.
Q. Does it derive income from any other source?
A. No.
Q. And you were able to purchase 493 King with the -- you said you flipped the property over in Mount Pleasant, the old Zeus Restaurant?

Page 205

A. I had plenty of income to buy the property at that point.
Q. Okay. What was your income at that point?
A. I sold the building for, I think it was 3.5 million, something like that, I can't remember exactly.
Q. And that's the building in Mount Pleasant?
A. Mount Pleasant.
Q. That was the Greek restaurant and is now a spa?
A. It's now a spa.
Q. Okay. And that property was sold --
I'm going to mark that as Exhibit No. 17.
(Exhibit No. 17 marked for identification.)
Q. -- in February of 2015, correct?
A. That's correct.
Q. And that was some six months before you brought this lawsuit, correct, five months?
A. I guess.
Q. If you look at Exhibit 1, you'll see that the lawsuit was filed on July 15, 2015.
A. Okay.
Q. And so you had $2.25 million generated by the sale of that property, correct?

Page 206

A. Correct.
Q. There's no other income that came to you through the sale of this property other than this amount that's set forth on Exhibit 17, is there?
A. That's right.
Q. So at this point in time you had the ability to do an all cash deal to build out Old Towne Suites, correct?
A. Probably.
Q. Well, you certainly did, I think, because that would only take, depending on what you put in, I mean, the total cost of the project was $1.8 million, and assuming you prorated the cost, you got more than enough money to do the project, correct?
A. Correct.
Q. All right. But you chose to invest it in another project, correct?
A. After the fact, after this deal didn't go through.
Q. Well, you knew, and it's reflected in some emails that we're going to mark or maybe have already been marked, back in 2014 that you were about to come into a lot of money.
A. Mm-hmm.

Page 207

Q. And you knew you were about to come into a lot of money because you had listed the property over in Mount Pleasant, correct?
A. Well, I don't know unless I do the deal. I don't know unless it's purchased.
Q. Right.
A. I mean, it's all hypothetical until then.
Q. Sure. But you knew that you were listing the property, you knew what you were listing the property at, correct?
A. Yes, mm-hmm.
Q. And you could very easily in 2014, when this dispute is simmering, actually before October of 2014 when it really sort of begins to blow up -- that's when it begins to blow up, correct?
A. I would think so.
Q. So you knew before this deal ever blew up that you could be coming into sufficient funds to do an all cash deal, correct?
A. If I have it. I didn't have it at that point. And I knew that Spiros and Jacob didn't have it. I knew that, hypothetically, Phillip had it because he said he was going to bring it; but he never showed it, but Spiros and Jacob told me they did not have the money.

Page 208

Q. Let's just talk about you. You had the money, right?
A. Well, I didn't have it then. I had it after the fact.
Q. Well, you had it sometime during February of 2015, correct?
A. When this deal was done, yes.
Q. Cash in hand. And you chose not to invest in Old Towne Suites, right?
A. I think the deal was dead by then.
Q. Okay. Did you ever come back to Phillip or any of the brothers and say, I now have the cash to do this deal. I still think it's a great deal. Let's try to resurrect it?
A. Jacob said forget it, it's not going to happen.
Q. Did you ever go to Jacob and say that?
A. I kept asking him constantly, get with your brothers, let's see if we can continue, and he basically -- once we said to pull the stuff out of storage, he said he can't -- has no clue what's going to happen with his brothers, no clue.
Q. Now, your lawyer's not in here. So, Leslie, you need to listen up to this. What I'm about to ask you may be subject to Rule 408.

Page 209

A. Maybe I'll go to the rest room now and wait until my lawyer comes back.
MR. FARRIER: That's fine.
(Recess held.)
MR. FARRIER: I'm going to inform Stan of what I just informed him off the record, and that is that that it's difficult for me to discern some questions about the negotiations toward the tail end of your negotiations. They may drift into what would be covered by our Rule 408, which would be settlement discussions, and it's a little bit of a gray area. By my asking you those questions and your responding to them I am stipulating that Mr. Barnett does not waive any right to claim Rule 408.
MR. BARNETT: And I'm going to ask him, just delay, like, you know, certain news shows where people have said bad words, have a 5 or 10 second delay so I can get a word in edgewise.
Q. We were talking about the fact that you had come into this cash in February of 2015 and that that cash was used to purchase 493 King, okay?
A. That's not true.
Q. What part is not true?
A. Well, I used that cash for other things as well.

Page 210

Q. Okay. Did you use a portion of it to purchase 493 King?
A. Indirectly. I didn't flip it on a 1031. I put the cash all -- paid off debt, bought other properties possibly. I did other things with it and then went back because I didn't know about the 493 deal when I did the closing for this deal --
Q. Okay.
A. -- for Zeus Grill and Seafood.
Q. And what I was asking you before was why didn't you do a cash deal, once you had the cash in hand, for the Old Towne Suites?
A. And I told you before that that deal had died with Phillip saying he was out of the deal and for Spiros saying they were out of the deal.
Q. Didn't Phillip, in fact, come to you directly, once he found out you had the cash, and say, let's do this deal as the cash deal now, I know that you have the cash.
A. I don't remember that.
Q. And that is actually in writing, correct?
A. I have to see it.
Q. Do you deny that occurred?
A. I don't know what you're talking about.
Q. Okay.

Page 211

A. I have to see it.
Q. I'm asking you if you have a recollection as to whether or not my client proposed to you to do a cash deal after February of 2015.
A. After February of 2015, I'm not sure.
Q. Okay. Wouldn't that be something you might remember?
A. I'm trying to remember.
Q. Is it contingent on whether or not I have a writing?
A. Do you have the writing?
Q. Yes.
A. If you show me the writing and it has it in an email, then maybe it will recollect my thoughts.
Q. Okay. I'm not going to stop, but I believe there is a writing. That's the reason I'm asking you that.
A. Okay. I'd like to see it.
Q. All right. We'll get it for you. In fact, you continued to want to do the deal well after October of 2014, correct?
A. I still want to do the deal today.
Q. But the only deal you're willing to do today is a deal which involves mortgaging the property, right?

Page 212

A. That's always been the deal.
Q. The only deal that you're willing to do today is one that involves mortgaging 229 King, correct?
A. Which has always been the deal.
Q. You need to say yes, and then you can say what you just said.
A. Yes, which has always been the deal.
Q. Very good.
MR. BARNETT: I'm not sure the rule restricts him to that particular answer, but I think he answered your question.
Q. All right. And I want to understand a little bit more about the use of moneys. You testified with Mr. Cooke -- moneys derived from the sale of the old Zeus restaurant. You used the phrase with Mr. Cooke that you flipped that property, which allowed you to get into 493 King. That was your testimony from this morning.
A. That doesn't mean -- I sold that property, freed up debt and had income, didn't even know about the 493 property until way later, saw it was for sale and bought it.
Q. But you would agree with me that, number one, you had in hand sufficient cash, if you wanted

Page 213

to, to do an all cash deal with the Old Towne Suites, correct?
A. I could have done the all-cash deal, probably, in the beginning. If everybody came in with 350,000, I probably could have come up with 350,000 to do an all-cash deal; but Jacob did not have the money, and Spiros did not have the money, and Phillip didn't have the money, and I never saw that money. That's why we had a bank loan. That was our agreement from the beginning.
Q. So you agree that you could have done an all-cash deal, had the other people come to the table with cash.
A. Everybody came with cash, but that was never -- they couldn't do it.
Q. Okay. In fact, you're just not sure whether that was in fact proposed to you by Phillip, correct?
A. Restate that.
Q. Yes. I asked you if my client ever proposed that to you after February 2015, and your initial response was no.
A. I don't remember him asking that after February 2015.
Q. Okay. Would you deny that occurred?

Page 214

A. I did not deny it. I asked you to show it to me.
Q. Okay.
A. I sold the property for Zeus -- when did I sell the Zeus property?
Q. 2015, February.
A. Okay. All right.
(Exhibit No. 18 marked for identification.)
Q. Exhibit No. 18 is the deed by which you purchased 493 King, correct?
A. Correct.
Q. And the purchase price was $2.2 million, correct?
A. Correct.
Q. And you would agree with me that that is $400,000 more than the 1.8 loan that you were seeking from Southcoast.
A. Right.
Q. What is 493 King?
A. It is a luxury suites hotel, that's what I call it, luxury suites hotel.
Q. And how does it differ from the Old Towne Suites?
A. It has full kitchens, and it's two bedrooms,

Page 215

they all have two bedrooms.
Q. Both are short-term rentals?
A. Yes, they're all short-term rentals. And they're larger units, like one of them can sleep ten people.
Q. But both short-term rentals, correct?
A. They're all like -- well, hotel units. It can be one day, it can be five days, it can be a month.
Q. I'm sorry, are you taking issue with the term short-term rental?
A. Yes.
Q. How would you like to call them?
A. Whatever people -- I mean, I've got somebody who wants to book it for two months, so it really depends on how much -- how much time, depends. So I don't know what a short-term rental -- if you call short-term -- do you call short-term less than a month? Some people call it less than a month.
Q. I'm asking you what you call 493 King.
A. Luxury suites hotel.
Q. Would you agree that Old Towne Suites is also a luxury suites hotel?
A. It's not a hotel because it only has two units, but they have luxury suites.

Page 216

Q. Okay. And both on King Street?
A. Both on King Street.
Q. Okay. And the short-term rental market or the rental market for luxury suite hotels is a pretty competitive business, correct?
A. It's not as competitive as regular hotel business. We have suites. Suites are different, so it's not that competitive.
Q. Okay. Do you agree that you're competing with Old Towne Suites at 493 King?
A. They're totally different locations, so I don't think I'm competing with -- Old Towne Suites has three bedrooms, and I have two bedrooms.
Q. Okay.
A. They're different so...
Q. All right. What is Walk Away Stays?
A. It's a company that manages the suites.
Q. And that is run by Kevin High?
A. Correct.
Q. Are you in any business ventures with Kevin High other than as a property manager?
A. No.
Q. What is Kevin High's take of a rental at 493 King?
A. 12.5 percent.

Page 217

Q. And is that the same percentage at Old Towne Suites?
A. It was supposed to be if we built the rest of the suites. Kevin's deal was, if you build the six more, he'll have eight units, and I'll lower it from 15 percent to 12.5 percent. And since I knew that ahead of time with the Old Towne Suites deal, that's the deal that I made with him on 493.
Q. What is the percentage at Old Towne Suites?
A. 15 percent.
Q. And Kevin High, through Walk Away Stays, markets both properties?
A. Correct. And many properties. I think he has 50 properties.
Q. And you have a mortgage on 493 King?
A. I do.
Q. Of $2.4 million?
A. Probably.
Q. I'll show you the mortgage (indicating).
A. Okay.
Q. Look at the highlighted area.
A. $2.4 million with Tidelands, yup.
Q. Okay. And along with that mortgage you agreed to an assignment of rent and leases, correct?

Page 218

A. I'm not sure.
Q. You did (indicating).
A. Loan with principal amount 2.4 million. It says assignment of leases and rents in here?
Q. That's the title of the document.
A. Oh, assignment of leases and rents. Okay. I'm not sure. When you say assignment of leases and rents, I don't know what that means. It could be different leases and rents with different contracts.
(Exhibit No. 19-20 marked for identification.)
Q. Let me show you what I have marked as Exhibit No. 19. This is an article that appeared in the Post and Courier, and this is indeed an article that ran on your property at 493 King, correct?
A. Yes.
Q. And was this pursuant to a press release done by Kevin High?
A. I think so. It looks like it's early on because the permit stickers are still in the window. I don't know if it was complete then.
Q. And Exhibit No. 20 is a snapshot of a posting on your Facebook page, correct?

Page 219

A. I didn't do the Facebook page. I think it is. I mean, I've seen this before. I think now it says I'm just -- the suites have washers and dryers. I don't think it says seven and eight. But I've seen this before. Kevin High does the Facebook page. The Walk Away Stays manages that.
Oh, and it looks like I posted this, so I copied it. It says my name on top, so it must have been my Facebook page.
Q. That's what I asked you.
A. Okay. I thought -- we probably have a Facebook page for 493 King as well.
Q. Okay.
A. That's what I thought you were referring to.
Q. No.
A. So they manage 493 King's Facebook page but my personal -- I would have probably posted that.
Q. And Walk Away Stays has a site by which you can book properties either at Old Towne Suites or at 493 King, correct?
A. And their 40-something other properties.
Q. Is there any prominence given to 493 King on that website?
A. Is there any what?
Q. Prominence given.

Page 220

A. Prominence?
Q. Yes.
A. I don't think so.
Q. So when you click onto it, 493 King does not appear as the home page?
A. No. It says booking, so you book, and then it shows all the properties that they have. Home page is probably their 493 King website.
Q. So within that website on Walk Away Stays all the properties listed there are competing against each other for potential tenants, correct?
A. And they're all in different locations, so it depends on where you want to stay, what location.
Q. Is that a yes?
A. No because -- it's a no because you're not competing for the same -- not apples to apples. There's some properties on Folly Beach, some properties on Isle of Palms, some properties on nicer Upper King some properties on not so nice Upper King.
Q. Well, the properties are defined by their location and quality of construction and by their amenities, some might have a gym access or a pool access, but those are things that are designed to

Page 221

lure a prospective tenant to your site and away from other sites, correct?
A. I'm not sure if they have pool access and spa access. I don't think any of them have that. I don't know.
Q. Well, when you built out 493 King, you had something in mind to attract people, correct?
A. Well, I knew there was a market for it because we already do it at 229 King.
Q. Right. And you knew from your experience at 229 King from feedback that you get what people like and what they don't like, correct?
A. Kevin High is probably better at that than I am.
Q. And did Kevin High assist you in designing 493 King?
A. Yes.
Q. Okay. And, I mean, I would agree with you that they're different. Lower King is a lot different than Upper King. Some people might want all the night life, some people might want quiet.
A. Yes.
Q. Some people might be attending a convention at the hotel right across the street, right?
A. Correct.

Page 222

Q. And although there will be, there's no hotel right across the street from 493 King yet, right?
A. Well, there's a Hyatt around the corner.
Q. Fair enough.
A. Real close.
Q. And you have a greater financial reward from a rental at 493 King than you do from a rental who stays at Old Towne Suites, correct?
A. Well, I own it all, 100 percent.
Q. So your answer is yes.
A. Old Towne Suites I have 50 percent.
Q. Right. So you would agree with me.
A. That I have a greater -- I mean, it really depends on the booking, I guess. You might book something for 900 bucks a night at 229, and I might book the same night at 493 for much cheaper, so it really depends.
Q. Let's say two couples, one couple books at Old Towne Suites, the other couple books at 493 King, they book as similar as the rooms can be, they book similar rooms, and they both stay for two nights.
A. But at 229 we would tend to book three couples because it's three bedroom. At 493 I only have two bedrooms, so it's usually two couples.

Page 223

Q. All right. I get to make the hypotheticals.
A. Okay.
Q. You've got a couple, and they're both staying for the weekend, same weekend, and one of them's going to stay at Old Towne Suites, one of them's staying at 493 King. You're going to make more money if they stay at 493 King, correct, you individually?
A. It depends on the market, what it can be purchased for. 229 King might be more expensive. 493 King might be much less expensive. I don't know. For example, if 493 King books for 300 a night and 229 books for 700 a night, I'll be making more money at 229 for the same weekend.
Q. Yes, assume it's the same price.
A. If it's the same price?
Q. You get a bigger cut, right?
A. Yes. I own 100 percent of 493, so yes.
Q. Let me talk to you about the rent paid by S&S Old Town, Inc., to the owners of 229 King, okay, your father gave you your ownership at 229 King Street, correct?
A. My father just turned over -- well, yes, he gave me 50 percent -- his 100 percent ownership he gave me in the building of 229 King.

Page 224

Q. That's what I'm talking about. I'm sorry, I said S&S, didn't I?
A. I thought you were going there.
Q. Yes, I'm sorry. I'm going to re-ask my question because there's a transcript, and it's not going to read right.
A. Okay.
Q. Your father gave you your interest as a tenant in common at 229 King Street, correct?
A. Correct.
Q. And you currently have 50 percent of the ownership, correct?
A. Yes.
Q. The other 50 percent is split equally between the three Ferderigos brother, correct?
A. Correct.
Q. From the '90s up until these lawsuits did you ever speak to Phillip about rent for the Old Towne Restaurant?
A. From the 1990s?
Q. Yes.
A. Up until the lawsuit have we ever talked about -- I don't know.
Q. Okay. Now, we know that sometime last year my client wrote you about rent over there and said,

Page 225

I want to increase the rent, something like that. I don't need to quote it.
A. Right.
Q. But before that did you ever have any conversations with any of the Ferderigos brothers about rent?
A. I don't recall.
Q. What is the rent you pay to the owners, what is the rent that S&S Old Town, Inc., pays to the owners of 229 King Street?
A. $4,000.
Q. How many square feet is it?
A. I think around 5,000 square feet. I'm not sure. It might be a little less.
Q. So that's about $8 a square foot, is that right?
A. I don't know. I have to hit it on the calculator. Do you have a calculator.
Q. You've got a calculator.
A. Oh, use my phone?
Q. Yes.
A. I prefer the regular ones. The phones sometimes are so damn glitchy. But let's see, what was the number you said?
Q. You said the numbers, 4,000 --

Page 226

A. $4,000.
Q. Yes.
A. About $8 a foot if you say 5,000 square feet.
Q. Okay. Now, you're wearing several hats here --
A. I don't know if you figure that over a year period.
Q. Well, I'm assuming that this is monthly, $4,000 a month, right?
A. Yes, it is monthly.
Q. Do you know what the average rental rate in your block is at 229 King per square foot?
A. I'm not sure, no.
Q. You have no idea?
A. I have no idea.
Q. Would you disagree with me if I said it was likely 75 to $100 a square foot?
A. I would think that's high.
Q. Okay. Now, I started to say that you're wearing several hats. You are an owner of real estate, you are a tenant of the real estate, and you have the suite business. I just want to talk about being an owner of the real estate and being a tenant. You would agree with me that there's some

Page 227

conflict in there, depending on what hat you put on on any given day, correct?
A. You have to explain that conflict.
Q. Well, just in the abstract, the owner of property wants to maximize the income derived from the rental of the property; would you agree with me there?
A. It's possible.
Q. Okay. Well, that's a pretty easy concept, isn't it? You rent property. Don't you want to make money off the property?
A. You usually do. Some people are attached to properties and they don't seek -- they don't try to sell it. They're just family money, family income, and they're just attracted to the property.
Q. Okay. Would you agree with me that the owners of 229 have the right to raise rent on a tenant at 229 King Street?
A. I guess we would all have to be in agreement or a majority agreement. I'm not sure. I don't know how that works.
Q. Well, is it your position, to cut to the chase, is it your position that my client, who has an ownership interest in the real estate but no ownership interest in S&S Old Town, Inc., is

Page 228

committed long-term to whatever arrangement your father and my client's father made as to how the rent would be paid?
A. I don't think I'm -- I wouldn't have the answer for that. I don't know.
Q. Well, is it your position that the rent should not be raised at the request of my client?
A. I guess we'd have to have a sit-down meeting and try to figure it out, and I think your client didn't want to have that sit-down meeting.
Q. Well, I'm asking you right now whether you object to sitting down and discussing a rental increase.
A. No, I don't object. I'd love to sit down and have a meeting.
Q. You would agree with me that my client is not obligated long-term to subsidize your restaurant business, correct?
MR. BARNETT: Object to the form, you can answer.
THE WITNESS: I don't know what your client is obligated to do.
Q. Well, do you think he should subsidize your restaurant?
MR. BARNETT: Object to the form. You

Page 229

can answer.
THE WITNESS: I guess he does what he does.
Q. Well, if his only interest is in the real estate, has no interest in the restaurant other than, as you say, a familiar historical interest in it being what made your families what they are, there's nothing to prevent him from seeking to maximize his, and Spiros as well, from both of trying to maximize their return on the property that they have an interest in.
A. They may just love the property because it's family property.
Q. And what if they want to make money?
A. Then they make money.
Q. I mean, you've already -- you've alluded to the -- to Spiros having a lesser income. Wouldn't it be nice for Spiros to be able to have a little money on the side; if, in fact, the rental rates on King Street could be as high as 75 to $100, wouldn't that be a good thing for him?
A. It would be a very good thing for Spiros if he went along with this deal and had an extra income for six extra units, it would be much, much more money than he could possibly make on the

Page 230

bottom of the restaurant for one-sixth percent.
Q. I'm just talking about the restaurant.
A. I know.
Q. The restaurant -- it would be helpful to him wouldn't it?
A. He might be fine. I don't know. I don't know Spiros's situation.
Q. Well, you certainly testified to it several times.
A. His situation?
Q. Yes. You said he didn't have a lot of money --
A. Well, I know --
Q. -- and you said that he didn't make much money?
A. I know solicitors probably don't get paid a lot. I would think they don't get paid a lot. He has properties in Greece that he makes money from. I don't know his financial situation.
Q. Okay. Well, your premising a lot of your testimony on assumptions about peoples financial situations because you've said over and over, when I asked you about a cash deal, with I felt some confidence on your part that neither Jacob nor Spiros could do a cash deal.

Page 231

A. They said they could not do the cash deal.
Q. But you don't really know other than what they may have told you, right?
A. They both said that they did not have the money to put down.
Q. You don't know, do you?
A. All I could go by is what they told me.
(Discussion off the record.)
Q. I was talking about the rent. In addition to the rent being held steady -- because it has been held steady for a while, hasn't it?
A. It has.
Q. -- the families got to eat free at the restaurant?
A. They have been eating free at the restaurant, and I haven't said much. There was one time when Phillip came in with a girlfriend and ate a lot of crab legs, and that upset me because -- and I asked Phillip to go to North Towne, when North Towne was open, to go get us crab legs since we ran out and the restaurant didn't have crab legs. And he said, it's your problem, not mine. So that upset me that he was over -- overindulging on the benefit.
Q. I assume that wasn't in the last week or so.

Page 232

A. It was a little bit over a week.
Q. Like when?
A. When I say his girlfriend, it was before he was married.
Q. I was hoping that.
A. Yes.
Q. And so that would have been 15 years ago, 25?
A. I don't know exactly. I don't think 25.
Q. That's all right. Old Towne Restaurant also paid taxes, insurance and upkeep for the building, correct?
A. Correct.
Q. And that's all part of the rent as well, it comes out of the rent?
A. Old Towne -- no, the taxes doesn't come out of the rent. The restaurant pays for the taxes.
(Discussion off the record.)
Q. So Phillip and Spiros have demanded increased rent, correct?
A. I've seen those letters.
Q. And why is S&S Old Town not responding or paying that rent?
A. I think we're paying what we've always paid, our agreed upon amount.

Page 233

Q. And you think that the owners of the building are committed to that for eternity?
A. Unless something changes.
Q. How was it agreed upon?
A. I don't recall.
Q. It's just what has always been done?
A. At one point we raised it to 4,000. I think before that it was 2,000 a month.
Q. When was 229 King Street purchased?
A. I think it was 1974.
Q. And it was purchased by your father and Phillip's father?
A. I think my father bought it and then Phillip's father paid him back over time.
Q. Has it ever been mortgaged?
A. I don't know if there was a note on it. It may have been.
Q. To your knowledge it's never been mortgaged, though, correct?
A. I have no clue.
Q. You spoke about family fondness. Would you also say that it is credible for someone to say, this building's never been mortgaged, and I don't want it to ever be mortgaged?
A. Unless there's a big opportunity, I guess.

Page 234

Q. Well, you told me earlier that some people are very sentimental and they just -- they don't want to take what might be a good business decision because they're sentimental, and you said that was a justifiable position to take.
A. I didn't say it was justifiable. I said that could be the case.
Q. Okay. Well, is it possible that my client does not want to put a mortgage on the property because it's never been mortgaged?
A. I don't think it's possible at this point because he agreed from the beginning back in -- when did we get this letter -- a little bit before this letter that he had no problem, nobody had a problem with signing the mortgage, as long as he was not a personal guarantor on the note.
Q. Well, when he first said that, according to you, the deal was in one state, but the overall deal changed dramatically over time, did it not?
A. It didn't change that much. We just added another floor.
Q. It went from $900,000 to $2 million, correct?
A. Well, $900,000 was just a building that the architects thought they could build. The BAR said

Page 235

we had to have a different building of certain caliber.
Q. You didn't know what the building was going to look like, you didn't know what the BAR was going to approve, you didn't know how much it was going to cost to build, you didn't know any of those things, correct?
A. It probably couldn't have generated the money that we have now, I think, as it was before because the BAR, the first comment they had was it looks like a 1950's motel was what one guy said.
Q. So the list I just went through, all of those things were unknown at the time that you claim my client first agreed to mortgage the property.
A. Will you repeat that list?
Q. Yes. You didn't know how much the project was going to cost; you didn't know what the BAR would approve; you didn't know, consistent with that, not only the way it would look, height, scale and mass and general architectural direction, you didn't know whether you could have two floors or three floors, correct?
A. No, we knew how much the project was going to cost, approximately because we had the idea.

Page 236

The contractor told us he could build it for $900,000. We knew a basic idea that you could do for a building because other buildings near the area had been approved, similar ideas. The architect had worked on those buildings as well, so the architect had a pretty good idea what he could get passed through the BAR; but in the beginning, I guess, he was offering a cheaper concept, and eventually the concept got a little bit more expensive.
Q. In 2009 after the fire you wanted to get a mortgage on 229 King Street, correct?
A. After the fire?
Q. Yes.
A. I don't know. I don't think so.
Q. You don't recall asking my client and his brothers to mortgage the property and they rejecting it?
A. No, never.
Q. For the second and third floors, the Old Towne Suites location, the insurance money paid for a portion of that renovation, but the members also had to contribute capital, correct?
A. We did. We bought furniture and we might have paid for a little of the upgrades. I don't

Page 237

know exactly what it was, but the majority of the project was insurance money.

MR. FARRIER: Off the record.

(Discussion off the record.)

Q. Do you know how much was put in as capital by the various members?

A. I do not.

Q. I think you may have been asked this question sort of indirectly, but did you get money from Greece from your father in order to make your capital contribution?

A. No.

Q. Where did the money that you contributed come from?

A. My money.

Q. Come from savings or --

A. Savings or checking or income that I currently had. It wasn't a lot of money. I don't know exactly what it was, but it was definitely under $100,000.

Q. You've listed a number of properties you own. Are any of those other, either directly -- I assume you own your house in your own name, you and your wife probably.

A. Yes, we do.

Page 238

Q. But directly or indirectly through an entity, North Towne, 493, whatever properties you've listed earlier, are they all mortgaged?

A. North Towne does have a small mortgage on it. We had to do some upfit before we had Lumber Liquidators in there. I think it's about $100,000 or maybe a little bit less. My house is mortgaged. 493 has a mortgage on it. Is that it? Is that the question? Goat Island does not have a mortgage.

Q. Okay. You've mentioned a lot of sort of halcyonic discussions that you and my client and the family had around kindergarten and around the church at family gatherings but --

A. Sunday school.

Q. Sunday school, yes. That pleasant picture that you're painting has faded, correct?

A. It has somewhat.

Q. Yes. And in fact you have not had any direct communication with Spiros or Phillip related to this project since 2014 other than communication in writing, correct?

A. I've greeted them when I've seen them. I mean, I have no problem. We text back and forth. I've been trying to get them to go to a bar and have a drink with me and discuss the issue, but

Page 239

they won't do it.

Q. That was my point. They have refused to engage in any discussions with you since January of 2014 other than in writing, correct?

A. Ever since Phillip's feelings got hurt.

Q. You said that earlier. What are you talking about?

A. Our exchanges through the thread, when he finally said, if you don't like this deal, I'm going to kill it, or if you -- oh, if you use that tone. Because I said, in the one comment Dawes had read the thing, I said, I've been working my ass off to get this project done. And then he said, I want you to wait a couple of weeks. I was like, we should have a sit-down, some kind of explanation. It shouldn't just be a text saying, I'm out. You know, we've got a big deal going on.

Q. So from October of 2014 to the present my client and Spiros have refused to engage in any discussion of this project other than in writing?

A. I guess they have refused that.

Q. Okay. And I still don't know what you mean by you feel -- I don't know if it's a perception born of family history, that you think my client got his feelings hurt. I mean, it's clear that he

Page 240

did not go forward with the project, and it's clear in the written documents he says, I am not going to do this, correct?

A. In the text. Basically he said, I don't want to do business with you anymore. That's the sense -- it's a sense of somebody who's -- he's just turned. He decided that I'm not going to do this deal, too bad, whatever. I think it's because his feelings got hurt, our exchange -- maybe he didn't win the conversation. I have no clue.

Q. Could not you derive the inference that he simply did not want to do business with you?

A. No, we have business. I mean, we've been in business a long time.

Q. You don't think it's a fair inference that he did not want to get into additional business with you?

A. It's not very sensible when you have a project that's making a lot of money, you know, you go into it relatively inexpensively, and then you make a heck of a lot more money, it doesn't make sense that you wouldn't want to be in business with somebody. He can still not communicate, I guess, if that's what he wants to do.

Q. We talked earlier about the side agreement.

Page 241

A. Mm-hmm.
Q. That was a yes? I'm sorry. You've done really well, although you don't often say yes or no, you don't say a lot of uh-huh's, but you need to say yes or no when you respond, okay?
A. I think we did talk about the side agreement with Dawes. I'm not so sure we did with you.
Q. Not me. And you sent the side agreement to be looked at by a lawyer, and I think that was Haines, is that right?
A. I think it was John McNeill.
Q. John McNeill, that's right. And he made revisions to the side agreement that you proposed to Phillip, correct?
A. He said that there should be a couple of changes, yes, I think so.
Q. And you made some demands on Phillip to modify the proposed side agreement, correct?
A. I asked him to revise it.
Q. And he refused to.
A. He said that in our email text thread, I think he said he was good with 1, 2 and 4, but he didn't agree to 3, something like that.
Q. The first time you ever alleged in writing that Phillip made an oral agreement with you to

Page 242

give a mortgage was on January 26th of 2015 through a letter drafted through your counsel, by your counsel; is that correct?
A. I don't know. I guess I'd have to see that letter. I'm not so sure that's a true comment.
Q. Well, do you agree that the side agreement that was being negotiated between you and Phillip was material to these negotiations?
A. No, that was something that was sprung on me, and we never agreed to any side agreement. He just brought that up all of a sudden out of the blue.
Q. And you never signed it in any form, did you?
A. I don't remember.
Q. You're not aware of any signed copy of the side agreement, are you?
A. I'm not sure.
Q. You would have produced it to your lawyer, wouldn't you?
A. I would think I had if I had it, if I had signed it. I can't even remember if I'd signed it.
Q. Did you agree to sign it or did you not?
A. I did through an email, I think in a text message, there was one on there that said I agreed

Page 243

to sign it.
Q. Okay. Do you think that that agreement that you would sign it is binding?
A. I don't know. That would in, I guess, a court to figure out.
Q. Well, it would be, but I'm just asking you your personal opinion that you told, according to your testimony, Phillip was giving you a side agreement, and he says, I'm not going forward with this until you sign the side agreement; yes?
A. Right. So I showed that to my lawyer, and my lawyer came back with a couple -- well, he said don't sign it first, and then he said ask for these revisions; and then I asked for the revisions, and I think he said that he was good with all of them except for one. I can't remember.
Q. And then you sent a text to Phillip saying, I agree to sign this?
A. I think so.
Q. Okay. Now, at that point in time do you feel like you were bound by the side agreement that you had not yet signed?
A. I think I'd have to sign it first.
Q. Okay.
A. I think.

Page 244

Q. Now, you believe that you had an agreement as early as 2012 with my client to build out the new Old Towne Suites, correct?
A. It would have been a little bit before this or we talked about it -- we probably talked about it, once we started seeing the income for the new suites was good, that we should expand and build more.
Q. And so I want to talk about that phrase, the agreement to build out the Old Towne Suites. Do you believe that obtaining financing would have been a material term to that agreement?
A. If we needed money to build it, we would have to have financing.
Q. So you would agree that's a material term?
A. A material term. I don't know if I could answer material term, how you define material.
Q. Important.
A. Important. It's important. You'd have to have money to build a project.
Q. Because you wanted to do it through a loan. Apparently some other people you claim wanted to do it through a loan. If you can't get a loan, then you can't do the project.
A. Unless you have the money.

Page 245

Q. Right. It would have to be a different deal, have to be a cash deal, correct?
A. Could be some other deal, I guess; a land swap deal, who knows. There are many deals out there.
Q. And so a full and final price would also be an important or material term to the agreement, correct?
A. A pretty close number, I would think.
Q. Because if it wound up costing five times more than your original estimates, that might be a no-go for the deal, correct?
A. Probably wouldn't make as much money, profitable, if you spent $10 million on this project.
Q. And we could keep going with an exponent, but at some point the cost of construction is going to make it very difficult to make a profit, correct?
A. If it gets too high, at some point you've got to figure out how much income you can make from the property to make payments and actually put money in your pocket.
Q. And the ability to obtain a mortgage under this agreement would be an important or material

Page 246

term, correct?
A. The ability to obtain a mortgage?
Q. Yes.
A. A bank would have to agree.
Q. How about a personal guarantee, would that be an important or material term?
A. It's not important to me, but it was important to Phillip to not be a personal guarantor.
Q. Okay. So it's fair at least as to Phillip that's an important or material term.
A. For Phillip, yes.
Q. How about the exposure of risk, would that be an important or material term to the people that were going to participate in a deal?
A. Risk.
Q. Mm-hmm.
A. I'm sure that's important for everybody.
Q. Let me ask you a few more, how about assignment of rents, is that an important or material term?
A. It depends on the rent.
Q. Okay. It could be, though, correct?
A. And it could not be.
Q. How about a UCC security agreement, is that

Page 247

an important and material term?
A. What is that?
Q. A UCC security agreement? You don't know what that is?
A. I'm asking you.
Q. If you don't know what that is, I'm not going to ask you the question.
A. Well, can you define it?
Q. Yes, the Uniform Commercial Code which has been adopted by every state in the US has a provision that outlines how one gets a security interest and how that is recorded so that it is protected regardless of what it's securing, that's what a UCC security agreement is.
A. I guess it depends on if that is important to the situation.
Q. Okay. So it could be an important and material term.
A. Sure.
Q. All right. Last one, would you agree that a hypothecation agreement is an important and material term?
A. From what I understand, a hypothecation agreement is the same thing as a HUD. It's just a guarantee that you're going to pay the -- there's

Page 248

nothing different. It doesn't do anything else.
Q. Okay. Whether a HUD and a hypothecation agreement are the same or different, both of them would be important and material terms.
A. It would be important if the bank requires you to sign one.
(Exhibit No. 21 marked for identification.)
Q. Let me show you what I've marked as Exhibit No. 21.
A. I think we've already marked this.
Q. Have we? All right. I withdraw No. 21.
(Discussion off the record.)
Q. Do you know who Kevin Carroll is?
A. I do.
Q. Did you ever have a conversation with my client about using him to be the builder?
A. Sure. He built the original suites, and he built the restaurant out during the fire. We trusted him. He did a great job.
Q. Thank you. My question was did you ever have a conversation with Phillip about using him to build out the proposed but never completed Old Towne Suites.
A. I'm sure that we had that conversation.

Page 249

Q. I want to make sure I understand your answer. Are you just deducing that you had that conversation or you actually recall having that conversation?
A. I'm sure we discussed that Kevin Carroll would be a good guy for the project and we did look at other bids and the other bids were more expensive.
Q. Who is we?
A. The family.
Q. Okay. So like the other questions I was asking you about the conversations about the mortgage and so on, you believe that you had a conversation with my client about Kevin Carroll, but you can't tell me anything about when, where, those conversations occurred, who was present or what took place?
A. Well, everybody knew that Kevin Carroll was the one that built the original -- that built after the fire. He was our trusted contractor. He would be a great guy to build the new suites since he built the old suites that made us so profitable.
Q. He may have been the best person in the southeast. That's not my question. My question is that you cannot tell me anything specific about a

Page 250

conversation you had with my client about Kevin Carroll being the builder for the new Old Towne Suites.
A. We definitely had a conversation about Kevin Carroll being the builder if he gets a good price, we assumed he would be a good builder, that we would try other bids and hopefully maybe knock down his price, but our other bids were higher.
Q. When did that --
A. I can't tell you if it was raining that day.
Q. And by that you mean you can't give me any of the specifics I'm asking for, correct?
A. I can't.
Q. Okay. You mentioned exploring other bids. As of October 10 the parties were still exploring bids and getting different bids, correct?
A. I'm not sure, October 10.
Q. 2014, I'm sorry, October 10, 2014.
A. I'm not sure.
Q. Okay. You don't have any basis to disagree with that, do you?
A. I don't know the timeline of when we first started asking people to give us bids, I know that I met with a few people on the property and they came back with bids and they were higher bids than

Page 251

the bids that bid that Kevin Carroll gave us.
Q. And the reason I ask you that is because, and you just -- this date is actually January 9, Exhibit No. 9, from Phillip --
A. Okay.
Q. -- where he's asking to make sure that whatever builder you use has certain things?
A. Right, yes, I remember that.
Q. Okay. And so as of that date you're still looking at prospective bidders, correct?
A. No, I did not know if that's -- we probably might have had all the bids by that date. That was just Phillip saying, here's the lawyer in me, the contractor that who you have now, which is Kevin Carroll, we've already had in the building, make sure he has a million dollar policy builders risk insurance, which we carry anyway, performance bond which I guess he carries, a payment bond, I'm not sure. But I would have called Kevin and asked him and probably called Phillip and said, we're good. He has all that stuff.
Q. Did you send emails, texts, to my client releasing him from any alleged agreement to build the building?
A. I'm not sure. I don't know what you're

Page 252

talking about. I guess you'd have to show it to me.
(Exhibit No. 21 marked for identification.)
Q. Let me show you what I have marked as Exhibit No. 21. Have you ever seen that document?
A. I see it.
Q. Okay. In this document your lawyer, in consulting with you about the side agreement, notes that my client could be personally liable for the debt if the corporate veil were pierced on the LLC. What does that mean to you?
A. It says, only the LLC assets and the property by virtue of the mortgage are at risk. I'm not so sure that the LLC owns the assets -- owns the building. We own the building personally. The LLC would have nothing to do with the building. LLC just has the -- it's a checking account that runs the profits from the suites and we split them 50/50.
Q. Do you see the second sentence, the note is in the LLC's name. I'm sorry, the third sentence. Only the LLC assets in the property by virtue of mortgage are at risk, assuming the LLC corporate veil could not be pierced for some reason.

Page 253

My question to you is if you know what that means.
A. Corporate veil being pierced, I guess, is some attorney taking pieces of it.
Q. Okay. Would you agree with me that this is a statement that likely my client was not at risk but he could be at risk if there is a veil piercing?
A. I think -- I don't know what percentage that would be. Is it a one percent chance? I have no clue.
Q. Well, you would agree with me that there is a chance at least noted by your lawyer.
A. Well, he said unless it's pierced. I have no clue how to pierce a veil.
(Exhibit No. 22 marked for identification.)
Q. Let me show you what I have marked as Exhibit No. 22. Have you had a chance to look at this?
A. Seems like this is Phillip venting.
Q. Let's start with the first email, which is the one at the bottom. And in the second paragraph he says, I will not sign off on any mortgage of my share unless you sign an agreement that you will

Page 254

make your payments timely.
A. If you are an intelligent person, you will see that I cannot and will not agree to mortgage my share of Old Towne if you do not --
THE REPORTER: I'm sorry, I'm having a hard time --
THE WITNESS: I'm just reading this thing. So he continues to say, if you are an intelligent person, you will see that I cannot and will not agree to mortgage my share of Old Towne if you do not agree to make your payments. That's the deal with the bank, though. The bank makes sure you make the payments. That's what the mortgage is about.
Q. So I just want to get the sequence right, and this is what you're testifying is that your claim is that my client and his brother Spiros agreed to mortgage the property sometime in 2012.
A. Yes.
Q. And that that was their position until close to the second closing when my client says, I am not going to mortgage my property and Spiros takes the same position, correct?
A. I don't think Spiros ever took that position. It was just Phillip that took the

Page 255

position.
Q. I'll stick with my client then.
A. Yes.
Q. My client says, I'm not going to mortgage the property under any condition, right? That's what he first says. And then we move forward in time to November, and Phillip now has said, okay, I will do this under one condition, and that is you sign the side agreement, correct; that's consistent with this email here, correct?
A. Right, yes.
Q. And then above that you say, well, it's done. I'll reverse as much as I can and just write it off as a stupid transaction dealing with the Ferderigos family.
A. I don't know if that's -- if they're in the same sequence. Are they in the same sequence?
Q. I believe they are.
A. 1:46 p.m., November 24th, I guess so. When it's, well, it's done, I'll reverse it as much as I can, this is way into the dealings, and Phillip said that he's not doing the deal. I know at that point that he's not doing the deal, I think.
Q. Okay.
A. I think. I'm not sure.

Page 256

Q. And what was your intent in this response to him?
A. I'm not sure, and I don't even know where I was. I remember one night I was at Zero George drinking or with a bunch of my friends, and he was texting me, and it could have been then. I have no clue.
Q. Okay. At this point had you abandoned the deal?
A. No. I want to do the deal today. I've never abandoned the deal.
Q. But you're only willing to do the deal today if my client executes a mortgage, correct?
A. That was our original agreement. That was always the agreement.
Q. Is that a yes?
A. Yes, because that was always our agreement.
Q. All right. If you'll pull out Exhibit No. 1, I'm going to ask you some questions about these exhibits in order.
A. All right. Okay.
Q. And if you'll turn to paragraph 13. This is your complaint, okay?
A. Okay.
Q. And this question was asked to you of Spiros

Page 257

and I just want to ask it to you as to Phillip as well. You agree because you've pled it here, I assume, that my client --
A. Because I what it there? I'm sorry. I didn't hear that comment. Because I what there?
Q. You pled it here.
A. Pled it. I pled it. Okay.
Q. It's in your complaint. I don't mean to speak legalese.
A. I heard putted.
Q. Okay. You allege in your complaint that Phillip agreed to execute a mortgage as long as he was not required to sign a personal guarantee.
A. Those were his stipulations. That was his only thing that he was worried about, to not be personally guaranteeing the project.
Q. If you'll turn to Exhibit No. 5.
A. Okay.
Q. You were asked about this, and Mr. Cooke established that this was two months before the commitment letter. Do you recall that?
A. Yes, I see it here.
Q. Did you ask my client about retaining Joe Tucker prior to this date?
A. I'm sure. I can't recall the date or the --

Page 258

if it was raining that day, but we definitely had the conversation to use Joe Tucker doing the drawings for the bank documents to be able to get the loan.
Q. And below there was a reference to eight attachments.
A. Yes.
Q. Do you have any recollection as to what those are?
A. I'm assuming they're plans.
MR. FARRIER: Stan, could you produce this in some format, if you have it, that allows us to open the attachments?
MR. BARNETT: Is this something that came to you from me?
MR. FARRIER: I think it is.
MR. BARNETT: The reason I say it is it's got an Exhibit B sticker on it, which indicates it was attached to your or somebody's answer.
MR. FARRIER: I think it was attached to a deposition. I'm not sure about that, though. I'll follow up on that.
MR. BARNETT: I think whatever I have that he's given you has gone to you all.

Page 259

MR. COOKE: It was an exhibit to our answer and counterclaim.
THE WITNESS: It looks like a screen shot because it's got all the top stuff on it, screen shot of a computer screen.
Q. Do you know what Charleston Consulting Services, LLC, is?
A. Yes, I do.
Q. What is that?
A. It's an LLC that I started in I guess 2016.
Q. That's correct. What is it and what does it do?
A. It's a consulting company.
Q. Consulting in what field?
A. It could be any field.
Q. Has it derived any income?
A. No income.
Q. Does it still exist?
A. It does.
(Exhibit No. 23 marked for identification.)
Q. Let me show you what I have marked as Exhibit No. 23 and it is -- it begins with an email from you, and I'm not clear on this format, but it looks like an email that you sent to all three of

Page 260

the brothers, and then Phillip responds to it, and in it towards the bottom it says, on April 1 I'm getting paid $3.5 million for a transaction I created long ago in which I have less than $800,000 invested in it.
A. Yes. Yes, that deal didn't go through.
Q. That deal did not go through?
A. It did not.
Q. What is that?
A. It was some other project I was working on that didn't happen.
Q. What project is it?
A. 800,000 debt.
It might have been my Zeus Grill and Seafood property that I sold, and I didn't get 3.5 million.
Q. No, you got 2.2, maybe 2.25?
A. Okay.
Q. And the timing of that works with the documents we've previously marked, correct?
A. It says November 21st.
Q. Right, and the Zeus property actually closes in February.
A. Yes, that's right.
Q. Of 2015.
A. That's right.

Page 261

Q. So am I correct in assuming that you'd either listed it at 3.5 or you had somebody that was very interested at 3.5 but that didn't occur?
A. It's possible.
Q. But what's interesting is my client's response to you.
A. Yes.
Q. And he says, here's a thought that we could kick around. It's not an offer. If you're coming into all this money, why don't we just move forward in April, and we don't even need this loan at all. At that point it will be just Jacob that needs to get a loan, and then I'm sure you will agree to mortgage Old Towne so he can get it. These are just thoughts thinking out loud?
A. We would all have to mortgage Old Towne.
Q. Well, you know you can mortgage only your interest in Old Towne.
A. I don't think the bank would do that.
Q. You never asked, did you?
A. I think I did.
Q. Okay. Well, anyway, my client is suggesting to you that you move forward on an all cash deal, correct?
A. I think I told him I wasn't interested

Page 262

because I was slating that money for another project in that email thread.
Q. You were already slating that money for 493 King?
A. No. I was looking at another building. At that point I was going to do a 1031 exchange.
(Exhibit No. 24 marked for identification.)
Q. This looks like an Excel spreadsheet of expenses that were paid relative to the build-out of the Old Towne Suites property, right?
A. Correct.
Q. And to the left are the dates, and those are the dates that Old Towne Suites had cut checks for these payments?
A. Yes. Some of it came from Old Towne Restaurant.
Q. Okay.
A. Everything that has three -- five numbers, the 25862, starting with the Southcoast through Tucker Architect on October 13 was all paid out of Old Towne Restaurant.
Q. Okay.
A. The Carter Self Storage was paid out of Old Towne Restaurant's credit card. The $600, a

Page 263

bookkeeper thing that says loan from Old Towne building improvements, so it looks like we paid that out of Old Towne and she put it back on the Old Towne Suites account. I could not find that check, but that's the $600 entry there. Everything from 5/22 to 3/31 looks like is from the Old Towne Suites checking account, and there was another check for an appraisal for $2,500 that we paid the bank; and I didn't see that, so that came out of somewhere.
Q. Okay. And how about, on the first page, these two insurance payments?
A. First Insurance.
Q. First Insurance, yes.
A. That's the builders risk for the building.
Q. And it's paid out of Old Towne Suites?
A. It was paid out of Old Towne Restaurant.
Q. How about the payments on the second page, were they all paid out of the restaurant?
A. Second page, with the exception of the insurance, was all paid out of the suites account, I think, except for I'm not sure how the Amy Haines $350 was paid, because there isn't a check number next to it, or the $2,500 that we paid Southcoast Bank for the appraisal.

Page 264

Q. All right. And to the best of your knowledge the dates that are referenced are accurate dates of payment?
A. Yes, I think so.
Q. And we only have a handful of these that occur after the aborted first closing, correct?
A. The first closing was October of 2013. We've got some --
Q. I thought it was 2014.
A. I mean 2014, October, October, so we have the -- no, the storage fee, that's the one thing that kept going. We do have -- First Insurance kept going a little bit.
Q. Well, the dates are what they are. You don't need to go through them.
A. And then we had to pay Curry Engineer $3,000 that we still owed that we paid in 2015, and then we had to pay Joe Tucker three different payments after October of 2014 and Curry Engineer; we had to pay Tucker two times and Curry Engineer. This is for money that we had owed them.
MR. FARRIER: All right. Let's take a quick break.
(Exhibit No. 25 and Exhibit No. 26 marked for identification.)

Page 265

Q. I have shown you Exhibits 25 and 26. They're actually out of order chronologically, so let's talk about 26 first.
A. Is this the same email chain?
Q. No, I don't think so.
A. Okay.
Q. But the first one is your writing to Spiros, copying my client, and you see, I have no -- and this is talking about the side agreement -- I have no problem signing the agreement.
A. Is it to Spiros?
Q. It's to Spiros, yes.
A. I think it's to Phillip.
Q. You're looking at the wrong one.
A. Oh, you said 25 or 26?
Q. We're looking at 26 first, and it's dated November 21, and you say, I have no problem signing the agreement; but, of course, as any business partner, would like assurances that every party puts in what they are supposed to. And my client actually refused to give you those assurances, did he not?
A. Let me read it. That was funny. I just found out last night that you guys wanted --
Q. Read it to yourself.

Page 266

A. Well, I think it's important to put on record what this says.
Q. It's in the record.
A. I can't read it?
Q. You can read it, but I can tell you, it's costing your client money.
A. It's costing what client money?
Q. Well, it's costing you money.
A. That was funny, about me costing me money. I just found out last night that you guys wanted me to sign and my attorney instructed me what to do and you saw his letter. I like how you portray Phillip as Mother Teresa. Think about the big picture. Talk to the bank yourselves and get things done if you like. I have no problem signing the agreement, but of course, as any business partner should, would like assurances that every party puts in what they are supposed to. If you are sending an email and asking for no reply, then I suggest that no content is put there. Bullying is a word you like to use, but the bottom line is to be fair to all parties involved, and the fact that you and Phillip are not personally guaranteeing anything puts you way ahead of the rest of us in the deal.

Page 267

Okay. What is your question?
Q. So you are saying you'll sign the side agreement but you put on that a contingency that you would like assurances from my client, correct?
A. I wanted to make sure he was coming up with the money.
Q. Right, and he never provided that to you, did he?
A. He never did.
MR. FARRIER: Okay. That's all the questions I have.
(Recess held.)
(Exhibit No. 27 marked for identification.)
BY MR. COOKE:
Q. Okay. Picking up where we left off earlier, I'm showing you some more text messages, and these, at the top it says Friday, November 21, 2014. This document was previously identified as Exhibit L to the answer and counterclaim. It's now been marked as 27. So does this fairly capture the conversation that you had on the 21st, morning of the 21st, about the side agreement that Spiros and Phillip asked you to sign?
A. So the one that's highlighted up top that

Page 268

says me, is that Phillip?
Q. Yes.
A. They're saying that they're ready to close on the property, and at 3:00 today they said that should work. They were all in agreement that we would show up at 3:00.
Q. They had not yet seen the HUD settlement statement, correct, because he's asking you to have the lawyer email that to him, do you see that, at 8:52?
A. Says...
Q. Says should work for me, ask the lawyer to email me the HUD settlement statement and all paperwork beforehand and I can review and we can go through the closing more quickly.
A. Where are you at?
Q. That's at 8:52.
A. 8:52, yes, that's what Phillip said, yes.
Q. Then you said, okay. Then Spiros says, from my end we need to have the agreement signed and a copy of the closing docs to review beforehand. I want to make sure I know what I'm signing.
Do you agree that they had not seen the closing documents up to this point?
A. Copy of the closing docs to review...

Page 269

Yes, seems that way.
Q. Did they know what was in the closing documents?
A. I think, to me, it should be a regular closing document. You close on a house, you close on the mortgage of the house, you close on a building, you close on the mortgage of the building. They knew what the arrangements were of the loan payments with the bank. I would assume it would be correct. But they got them -- I'm sure they got them before the -- they did get them before we went to closing, just like they asked, I would think.
Q. Right. But had anybody told them or showed them, prior to this morning of the 21st of November, what closing documents they were and what they provided for?
A. I think, when they asked, I probably hadn't seen them yet. Whenever the attorney, I think it was Amy Haines, whenever she forwarded them to me, I would have forwarded them to him. Or maybe she forwarded it directly to all of us. I'm not sure.
Q. Okay. So as of 8:53 or 9:00 on that Friday morning you had not seen the closing documents, and so certainly Spiros had not seen the closing

Page 270

documents.
A. Yes. I would have given it right to him if I had them.
Q. Had there been any kind of preview of what was going to be in them, in other words, that there was going to be a hypothecation agreement, there was going to be a requirement of assignment of rents, had that ever been explained to Spiros?
A. That had been explained to everybody in the beginning about the loan. Old Towne Suites was signing on the loan because the rental income coming -- the stream coming from the Old Towne Suites was available to pay for this note. That's the way the bank did the deal, so that was agreed from the beginning. Hypothecation agreement, to me and what I have understood afterwards, is nothing different than a HUD. It's just another guarantee that you're going to make sure you make payments on time, so it's nothing different.
Q. What I'm trying to get at is in what manner was that explained to Spiros prior to the date of the closing?
A. We discussed that in September, when we had the original agreement from the bank. That was our agreement, that we were going to sign off the

Page 271

mortgage on the building and that the rental income from the Old Towne Suites was the stream that the bank saw. It was enough money to justify both loans, the million dollars and the 1.8 million. The bank figured out that the money that came from our property a year was more than enough to pay for the note payments on the new note.
Q. And do you specifically recall sending that commitment letter to Spiros?
A. I don't remember how he got it. I mean, I don't remember if his brother gave it to him. I have no clue.
Q. Or if he got it then, you don't know if he got it.
A. Yes, I think he got it because we talked about it.
Q. You talked about the terms, that is, that it was 5 percent for 20 years, but I haven't seen any document here where you're talking to Spiros about other requirements of the loan.
A. I think we had a text and Spiros said, great, I'm glad you got the loan at that point; and then after that, once I got the commitment letter -- or maybe I had the commitment letter at that point. I would have either given it to Jacob

Page 272

and he would have shown it to Spiros and Phillip, but everybody knew that we had the commitment letter at that point because there was excitement that we got the loan. I mean, we were all excited.
Q. I understand that, but the point I'm making, I'm asking you whether you agree or disagree, the excitement was over you got the loan, you knew the amount, you knew it was 5 percent for 20 years.
A. And we had the letter.
Q. Well, that's what I'm asking. But I think you just told me that you don't know whether Spiros saw that letter specifically.
A. I'm sure he saw it. I wouldn't be hiding a letter. Eventually I would have sent it out, just like when we got the permit. We got the permit for the building to build it. I was like, great news, we got the permit; and I would have forwarded the picture or given it to Jacob so he could give it to his brothers.
Q. But that's a big or. I asked you if you knew whether Spiros got it. You said you assume he got it. He may have gotten it from his brother. But you don't know whether he got it, right?
A. He would have gotten it for sure. If we had it, he would he have gotten it because he's all

Page 273

part of this deal and they're part of this deal from the beginning. It's a big deal. Same thing with the permit, same thing with anything. It's great news and we would have -- everybody would have seen it.

(Exhibit No. 28 marked for identification.)

Q. This is a package of several emails. At the top it says gmail, Friday, November 21, 10:11. This is from Athan to Phillip. Says, I spoke to my attorney, and he pretty much reiterated what I mentioned earlier. And is that O'Neill or McNeill?

A. I think so.

Q. He asked that if you are providing one-sixth percent, I guess you mean one-sixth, of the payments of $350,000 for construction, then you would have to provide evidence that you do have access to that money. If in fact you did receive a separate loan, then all parties should be aware of the collateral of that loan. He also said that we include in this agreement that you are liable for putting in your one-sixth of the construction costs for completion of the project and that there should be a penalty clause in there if one of the other partners had to fund the money if you were not able

Page 274

to. I asked him to draft up a document with his recommendation but wanted you to get this email ahead of time so that you would be aware.

Phillip says, no, I'm not signing it. I do not care what your lawyer says. He is wrong. I don't have to give you any such assurances. You are not giving me a mortgage. I am giving you a mortgage. You can cancel the closing if this is a problem.

Then you said, I'm only talking about the new building being built. Today you're saying that you will come up with the money to build the new building. What happens if tomorrow you change your mind and Spiros, Jacob and myself go ahead and build it, should the party or parties that put in the extra $350,000 be the owners of the new building based on percentages of money they put in.

Then Phillip says, you are over-thinking it. Assuming the prior agreement I sent is signed by all parties, I have agreed to sign a mortgage for you over my share of the property. I'm doing you a favor by agreeing to sign a mortgage for you for your benefit. I have not asked you to do the same for me. If I wanted to, I could say you need to pay me X money before I would agree to do it. I

Page 275

haven't. If that is not good enough, then let's not move forward.

Then you said, the bank is asking you to sign on the mortgage and you agreed a long time ago that it was a normal procedure -- that it was normal procedure.

What did you mean by the phrase, it is normal procedure?

A. That we were mortgaging the building and every party that owns the building has to sign on the mortgage.

Q. I mean, I note that you did not say, the bank is asking you to sign on the mortgage and you agreed a long time ago to do it. You just said he agreed a long time ago it was normal procedure. Any particular reason you chose those words rather than saying that Phillip specifically agreed to sign a mortgage?

A. I'm sorry. I may say things different than you. To me normal procedure might mean the same thing that you just said, you know, maybe, so that's basically my answer.

Q. Okay. But it could also mean that Phillip would consider it or might do it, but your lawsuit says that he specifically told you he would sign

Page 276

the mortgage.

A. Yes, he definitely did, so did Spiros, so did Jacob.

Q. But when you had this opportunity here, you didn't say that. You just said he agreed that it was a normal procedure.

A. This is normal talk back and forth. You're trying to say in every conversation I'm supposed to have a lawyer by my side to put in the correct verbiage.

Q. Then he answers and says, Athan, I'm sorry you don't get it. It is hardly normal procedure, and I did not agree to squat. I'm doing you a favor and you act like it is the other way around. And then you go back and forth.

Why did you not at this point, when you had everything ready to close, the only thing that had to be done was you to sign a piece of paper that basically said you were going to do what you were already saying you were going to do, which is pay the payments on the loan, why didn't you just do it?

A. Because in here it says, what if tomorrow or sometime in the future you decide to quit making your $350,000 contribution. I asked to see that

Page 277

bank note or how he was getting the money. His uncle told him to put it in escrow, and his uncle called me back and said Phillip was going to put it in escrow. It never happened.

Q. What would have happened? What if he had just reneged and said, I'm not paying my 350,000?

A. Then I would be stuck with 50 percent of the job, probably. I mean, we would have to come up with -- Jacob and I and Spiros would have to come up with it.

Q. And do you think Phillip would seriously claim that he had a right to the profits of the project if he hadn't put any money in?

A. Phillip? Oh, he'll suck blood out of a turnip.

Q. I mean, really. You are already signing a note on behalf of the LLC, you were already personally guaranteeing the entire $1.8 million --

A. Therefore why should there even be a side agreement if I'm personally guaranteeing, I'm having my houses in a project and my buildings, everything I own, why does there have to be a side agreement?

Q. Let me finish the question. How could you possibly be hurt by signing that agreement when you

Page 278

had already signed a note, a mortgage and a personal guarantee for the entire $1.8 million? What could have possibly have hurt you just to humor Phillip and sign something that says you're going to do what you already promised you were going to do?

A. Because he wouldn't show where he had the money. I didn't believe him. Phillip could be blowing smoke. He talks that way back and forth, and he acts like he's on a pedestal, and he acts like he's doing me a favor by signing the mortgage. I'm only doing the mortgage for my percentage of the building, half of it. They're responsible for one-sixth of the building. He's not doing me any favors. That was the deal from the beginning.

Q. So the reason you wouldn't sign that agreement to allow this closing to go forward was because you didn't believe he had the $350,000?

A. Well, John McNeill said, let's make sure he has his money, and he wouldn't say -- and then later on I found out that he was getting a loan for 300,000. I had no clue how he was securing that loan. And then when I asked his brothers, I asked Spiros, what happens with the extra 50,000 that he has to come up with if he doesn't come up with it,

Page 279

are you and Jacob going to cover it? And they said, no, we're not covering it. Does that mean I'm going to be stuck with it?

Q. So you're actually agreeing with me, the reason this thing did not close on November 21st was because you weren't comfortable that Phillip had the $350,000.

A. No. The reason it didn't close is because he backed out. I can't remember if it was Phillip or Spiros. He said, I'm not going forward -- I don't want to be in -- I don't want to be in business with you is what he said. That's what ended it.

And when I kept going back and forth with Jacob, you know, talk to your brothers. Are they doing it? He said, let's wait until after Thanksgiving; and then he said, let's wait until after Christmas and let's wait until the first of the year. And then, you know, we had stuff in storage. We were paying money on it, and we didn't want to continue paying -- throwing away money for nothing.

Q. I do want to drill down on this a little bit on what you've just explained to me was happening on the 21st of November, that Phillip and Spiros

Page 280

both said, we're ready to close at 3:00 this afternoon if you'll sign this agreement.

A. Phillip --

Q. Let me finish the question. The agreement required you to do exactly what you had already promised you would do and you had personally guaranteed it and you had signed a mortgage of your entire interest in all of Old Towne and you were prepared to sign a loan agreement, and the reason you wouldn't do it was because you weren't comfortable that Phillip would come up with his $350,000.

A. No, that wasn't the reason I wouldn't sign it. He wanted out of our original agreement. He wanted to pull himself out of it and have a hypothetical other loan that I had heard about on the side. All I said is, you know, we know this deal with Southcoast. We have the money. We're all in it. We're signing it. This is the deal. All of a sudden Phillip brings in another piece of paper, says I want you to sign this, it gives away one percent, which I said finally I'll sign just to get it done. And then he said he's out of the deal and he's doing me a favor. I'm only signing my 50 percent mortgage on the building. He was there for

Page 281

one-sixth.
Q. When did he say he was out of the deal?
A. When he said that I don't want to do business with you, I think whenever that email was.
Q. That was before you ever agreed to sign that paper, right?
A. No, I don't think so. I think that was after the fact.
Q. I've been looking, and I can't find any paper where you said you would sign that.
A. Where I'd sign the deal? It was in an email that said that I -- I like the opportunity of possibly in the future having one percent more interest in the building.
Q. I'm looking at the correspondence on the day that this closing was supposed to happen, and what I'm seeing is Phillip and Spiros telling you that they're ready to close if you'll sign that agreement and you saying you're not going to sign the agreement.
A. That wasn't the deal. At that point Phillip had his side agreement, was pulling himself out of our original note and supposedly coming up with the money on his own, which I found out later was a $300,000 loan that I had no idea how it was being

Page 282

secured or if it the money would come or if it even -- was it just a joke; did he really have this loan or did he just go downstairs and see his banker and the banker said, sure, you can have 300,000 once we see the financials. Who knows.
Q. So that was it, you just weren't confident that he was going to come up with this $350,000.
A. No. What we should have done is our original deal that we all agreed before Phillip tried to amend this deal.
Q. Well, we looked at -- I'm trying to see which exhibit it was -- at Exhibit 15 where he texted you in October and said, okay, unless it F's you all up, let me know when I need my money by and how much. As much as I would like to join in you all on a 20-year obligation, I will just pay up my money up front.
I don't see anything from you here where you said, that's not the deal, Phillip, you have to be part of this 20-year mortgage.
A. Right after didn't I say, that's crazy, you're not even on the note. Oh, that was to Spiros. What time is that?
Q. That's at 12:00 p.m., it's right at the top of Exhibit 15. This is when the first closing was

Page 283

supposed to happen.
A. Okay. Yes, right.
Q. And so you knew as of at least October 10th that he was not going to be signing the note, that he was going to be putting in his own money.
A. And then I was asking, what is that money; how do we know it's going to come. And then he had conversations with his uncle Fenudi (ph.) and Fenudi called me up and said he was going to put it in escrow, and he never did that either.
Q. So once again, the reason that you wouldn't sign that side agreement was because you weren't confident that Phillip was going to come up with his money.
A. No. Once again, the original deal was the deal that I always wanted to sign. He amended it last-minute after the first closing. I had no clue there was a side agreement. I found out the night before that that was happening. So he's the one that altered our original agreement. I never did anything.
(Exhibit No. 29 marked for identification.)
Q. Exhibit 29 looks like emails dated November 21st between you and Spiros. And it starts out, it

Page 284

says, regarding final email from me regarding the closing. This is from Spiros to you at 3:17 p.m. He says, Athan, there are too many small chains going on with a bunch of accusations from you that are not accurate, so I wanted to send this one email out with no response so you are clear about my position. I have no intention of arguing.
So he's got essentially three points there. The first one says that when we were originally considering getting a loan to build additional units, you stated that you would be able to get a loan for only you and Jacob personally guaranteeing the loan. I have always refused to personally guarantee anything from the very beginning. Two days before our original closing date, for which I had something like three days notice, I found out for the first time that I would need to put up my physical property interest in 229 King Street as collateral for the loan.
Did you agree or disagree with that?
A. He's lying. That's not true.
Q. Okay. So you responded that he was lying about that?
A. I responded and said -- and we have this in another one in here because I remember this Mother

Page 285

Teresa statement. I said, that was funny. I just found out last night what you guys wanted me to sign, and my attorney instructed me not to do so. It's all about the side agreement. They amended our original deal or Phillip amended the original deal with the side agreement that I saw the night before the closing, and I sent it to my attorney, and you saw what he said.

Q. So Item 2, he says, today for the first time I was asked to have OT Suites, LLC, for which I am a personal member, sign as borrower on the note. That has never been discussed and definitely never been agreed to.

Did you agree or disagree with that statement?

A. That's a lie as well.

Q. Again, I was always told that only you and Jacob would have to sign the note and Phillip and I only having to mortgage our physical property interests in 229 King.

A. Another lie.

Q. Even though you texted him and said, you're not even on the note.

A. His deal was to not personally guarantee the note, but he always knew there was a mortgage on

Page 286

the note, and they always knew that the Old Towne Suites income was the stream of income that justified paying for the new note.

Q. But when did you tell him not only that that stream of income was how the note was going to be paid but that you would have to assign that stream of income as security?

A. Before we even got the bank note. I mean, that was the deal with the bank. We had to show them income for at least a year. Most banks wanted two years. Southcoast is the one bank that was okay with one year.

Q. Today I was also asked to sign the note in my name as well. Of course this is in direct contradiction to what I agreed to do. Did you agree or disagree with that statement?

A. I disagree. This is basically him trying to find a way to get out of the contract.

Q. 3 says, lastly, Phillip has been crystal clear from the beginning that he had no interest in being part of any loan or loan requirement. He would come up with his own money completely separate. Did you agree or disagree with that?

A. That's an incorrect statement as well.

Q. And down at the bottom he says, I am also

Page 287

willing, despite being told late in the game, to mortgage my physical interest in 229 King Street as collateral for your and Jacob's note, assuming the agreement I sent out is signed. Lastly, I am not comfortable with you attempting to bully Phillip to sign or do anything, as the agreement has always been that Phillip would not have to do anything at all for the loan or provide any documentation whatsoever, with the exception of his generosity in agreeing to mortgage his physical interest in 229 King Street with the assurances he wants to protect his interests.

So you disagree with that statement as well?

A. That's also a lie.

Q. When you responded at 3:31, you don't dispute any of those except for Phillip being Mother Teresa, so --

A. I'm saying this is funny. I realized at that point, from what he's putting on here, he's just saying that to find a way to get out of it. He's trying to act like we didn't even do the deal, we didn't have it, that he was never going to be on the mortgage, when he said that he didn't have any money in the first place. I mean, it's all a joke at that point.

Page 288

Q. Why you do you think Spiros wanted to get out of the deal?

A. He's an attorney, and I guess maybe Phillip wanted to get out of the deal because his feelings were hurt, so he sent out this letter, hoping it made him look like he was never in the deal in the first place.

Q. What makes you think that Spiros wanted out of the deal because Phillip's feelings were hurt, what do you base that on?

A. When Phillip said, if you don't like -- change your tone of voice or I'm going to kill the deal now. And I was like, what are you talking about? I busted my ass. And he didn't like the idea that I wasn't -- it's not like I told Spiros he couldn't have his two weeks. I was just shocked that he came to me on a Wednesday and we were supposed to close on a Friday and said that he's out of the deal because he's waiting on judgeship, and he said it could take a couple of weeks. He didn't know if it would take a couple weeks or a couple of months. I was like, the contractor's ready to start Monday. That following Monday the contractor was ready to start putting pilings in the building.

Page 289

Q. You'd already signed a contract.
A. We'd signed a contract, but we couldn't start the contract until we did the closing. He would not execute that contract until he got his $150,000, I think that was the number, to -- the mobilization plan where he had to bring all his equipment on site and buy the steel for the pilings and move forward.
Q. Would this deal have closed on the 21st of November, 2014, if you had signed that side agreement?
A. I don't know. I doubt it.
Q. Were there any other conditions? Did Phillip or Spiros or Jacob make any other conditions to going forward?
A. I had no clue if Phillip had the 350,000 at that point.
Q. Well, he didn't have to have the 350,000 as a condition of closing this loan, did he?
A. Well, if you don't have the money to build the building, then someone else is going to have to come up with it.
Q. That's got nothing whatsoever to do with what I just asked you.
A. If you're going to close on a loan to build

Page 290

a building and you don't have enough money to finish the project, it can remain unfinished.
Q. That's got nothing to do with what I just asked you. I said --
A. I think it did.
Q. I said, would this loan have closed on November 21st had you signed that side agreement. I didn't ask you if the building was going to get built. I asked you if that loan would have closed on the 21st of November.
A. I'm not sure, but the loan would have definitely closed if we had gone along with our original agreement with the bank.
Q. On what do you base your uncertainty as to whether the loan would have closed if you had signed that agreement that day?
A. They could have pulled something else out of the hat. Who knows. Phillip could have had a bad day and decided that he's not going to do it now.
Q. Do you agree that neither Phillip nor Spiros placed any other conditions on going forward and closing that day other than your signing that paper?
A. He said he wasn't signing the hypothecation agreement either, that's what Phillip said. And he

Page 291

didn't want to sign the LLC onto the -- Old Towne Suites onto the note. That was his other stipulation. So Phillip said he would not close if he had to sign on the hypothecation agreement and the LL suites was signing on the note -- the LLC, the Old Towne Suites, LLC.
(Exhibit No. 30 marked for identification.)
Q. I've just handed you some closing documents, No. 30. The one on top is a resolution of Old Towne Suites, LLC, and it's got a place for everybody's signature. Do you know whether that was ever presented to Spiros prior to this date?
A. I don't know.
Q. The next one is a promissory note to be signed by Old Towne Suites, LLC.
A. If this was all in the closing document, which is what it looks like, then he had all this prior to the closing.
Q. On the same day as the closing.
A. Yes.
Q. But not prior to that day.
A. Whenever the attorney would send it to you, whenever the attorney sent it to us.
Q. Which was that day, right?

Page 292

A. I think so.
Q. Why was the note made in the name of the Old Towne Suites, LLC, rather than individuals?
A. Because the LLC had the money income stream that the bank wanted that was able to pay for this note.
Q. When did you first learn that there would be a hypothecation agreement required?
A. Phillip was the first one that told me that. I didn't know what it was. He said, and this thing's asking for a hypothecation agreement.
Q. When did he tell you that?
A. I think it was the day of the -- or the day before the closing. I'm not sure. Whenever he saw the documents, he looked at it and he goes, I'm signing a hypothecation agreement, I'm not signing that Old Towne Suites is on it. I was like, those are requirements from the bank.
Q. So you didn't see a hypothecation agreement, therefore Spiros and Phillip probably didn't see a hypothecation agreement before the day of the closing.
A. I've signed hypothecation agreements before, and I know that they're just a guarantee for the note. I can't see that there's anything wrong with

Page 293

signing a hypothecation agreement. It's the same thing as the HUD.
Q. What did I just ask you?
A. I don't know, I'm just trying to tell you.
Q. I suspected as much. Let's try to do it a different way. I'll ask you a specific question, and you try to answer it if you can.
The question was is it true that you had not seen this hypothecation agreement prior to the day of closing.
A. I'm not sure when I saw it. It's whenever the attorney sent me the documents. Whenever the attorney sent me the documents, I gave it to them. I don't know if it was the day before the closing or the day of the closing.
Q. And the assignment of rents, I'll ask you the same question, when did you first see this assignment of rents document?
A. When the attorney sent it to me.
Q. Do you remember ever having told Spiros that he would be signing an assignment of rents document prior to the day of the closing?
A. To me this is a standard closing document. I didn't go through and say, okay, this is an assignment of rent. I'm not sure. It's a standard

Page 294

closing document.
Q. Is the same true for the settlement statement, the HUD statement?
A. Yes. It's all part of what the bank requires.
Q. And so you did not see it, and therefore Spiros probably didn't see it until the attorney sent them to you.
A. Until the attorney sent them to us, that's correct.
Q. Would the same be true for the next document, the construction mortgage?
A. If it was all in the same closing document. Is this all the same closing document?
Q. Yes.
A. Yes, then that's when we got it from the attorney.
Q. What about the agreement to provide insurance, when did you first learn that you were going to have to sign an agreement to provide insurance?
A. I'm not sure. I think the attorney had it listed. It was in an email, what would be signed that day; and maybe he sent that out and I sent it to Phillip and he said -- he might have said he's

Page 295

not signing this before he even received it. I don't remember.
Q. Is the same true for the construction loan agreement, that is, that you did not see that agreement until the lawyer sent it to you?
A. Correct.
Q. Was that sent with the rest of the closing package?
A. Yes. I didn't receive the closing packet until the lawyer sent it to me and I forwarded it to the cousins.
Q. And what about the guarantee of completion and performance document, was that the same thing?
A. If it was all part of the closing document, when the attorney sent it to me, that's when I saw it.
Q. Same for the commercial security agreement?
A. I would think so if it was in the same closing document.
Q. Same for the hazardous substances certificate and indemnity agreement?
A. Yes, if it was in the closing documents.
Q. Same for the agreement to provide insurance?
A. Yes, if it was in the closing documents.
Q. And for the UCC financing statement?

Page 296

A. If it was in the closing documents, yes.
(Exhibit No. 31 marked for identification.)
Q. This looks like an email dated November 21, 2014, from you to Phillip and Spiros and Jacob, and it starts out with your talking about some of the productivity of the existing suites. Then at the middle you say, I think it's best to think of the big picture of this new project which will put us in a boutique hotel category and forget about stupid details that carry no weight in the big picture. Comments like, when I asked what side agreement; and Phillip responds, quote, it's going to cost you big if you don't pay, closed quote, is just egos blowing smoke. You guys recommended that I show it to my attorney, and you didn't like his response.
So what did Phillip tell you specifically about what that agreement meant?
A. I saw that, I think, the night before the closing, or maybe the day of the closing. No, it was the night before the closing, I think. And it was a side agreement that if each partner didn't pay their rent on time, then they can lose one percent or they would lose one percent of the

Page 297

building.
Q. Mm-hmm.
A. And that would put me at, you know, 49 percent.
Q. Okay. That's if you didn't pay and they did pay.
A. Of course.
Q. Okay.
A. And vice versa.
Q. The agreement provided vice versa?
A. Vice versa meaning that if they didn't pay, then I would have 51 percent.
Q. Down below it says, on April 1 I'm getting paid 3.5 million for a transaction I created long ago which I have less than 800,000 invested in. Then I plan to pay my debt in full.
Did you tell Mr. Farrier that that did not happen--
A. Yes.
Q. -- that deal didn't go through?
A. That was another deal.
Q. Had you told Phillip or Spiros prior to this day about that money coming available?
A. No. And I was going to -- I had planned to buy another building for that money anyway. I was

Page 298

doing a 1031 exchange.
Q. What building were you going to buy?
A. It was a building in -- off of Leeds Avenue.
Q. What was it supposed to be a 1031 exchange for?
A. My Zeus building.
Q. But you wound up doing a 1031 with this other property.
A. I did not do a 1031.
Q. So you never did the 1031 for that?
A. I didn't have the property in mind after I sold the Zeus property.
Q. Okay. So the other property that you bought on King Street, that's not a 1031?
A. It's not.
Q. On Exhibit 23, it's already in evidence, I think it's the very last page of that.
A. Got it. 23?
Q. Yes.
A. Okay.
Q. Go to the very last page.
A. Okay.
Q. And there's a message there, it says, I'm at a swanky dinner now and half drunk but by then I will be in the money and not interested in any

Page 299

ventures but my own. I'm also working on a deal where I get 25 percent of $100 million for just being an expert consultant. I hang out with the ultra wealthy now and play their games.
What were you referring to there?
A. That was the night that I was at Zero George and I was with some gentlemen and we were drinking and Phillip was texting me back and forth, and that deal didn't go through either.
Q. Which one, the $100 million deal?
A. The $100 million deal.
Q. What kind of deal was that?
A. It was a deal where I was an expert witness, I think. Let's see. Let's see here, I'm working on a deal with 25 percent, an expert consultant...
We were talking, and some of the guys there had a venture that they were discussing, and they wanted me to go in with them on it as an expert, and the deal didn't go through.
Q. What kind of deal was it?
A. It was a class action lawsuit.
Q. Based on what?
A. I didn't have all the details at that point.
Q. What kind of expert consultant were you going to be?

Page 300

A. On bookkeeping. I was pretty good at numbers, so I was kind of going to be the numbers guy.
Q. Okay. This sounds like maybe barroom talk, possibly.
A. It could have been barroom talk.
Q. Okay. So there wasn't really a serious deal to get you $25 million.
A. Well, it was a conversation that we had. It was a possibility. It just didn't happen.
Q. Who were the other guys that were involved in that conversation?
A. It was Chris -- he's in Ohio now, he moved away -- Johnson, Chris Johnson. He's a pharmaceutical managing company -- for a big managing company. He's a very wealthy guy, and he had other guys there that I didn't know well, and I can't even tell you their first names. They were his people, and we were discussing it.
Q. Was that the first night you had discussed this deal?
A. I think Chris had mentioned it to me before as well, that there was some kind of deal that he's in with a couple other guys, and that's probably why -- and he invited me to dinner at this place.

Page 301

Q. All right. I mean, is this kind of like just BS talk back to Phillip at that point?
A. Well, I was talking about a deal and it probably had a potential for 25 million sometime in the future. And there was also some apps involved. They had designed some apps that went along, that company, but -- so it wasn't really BS. It was a possibility that evening, but it didn't happen.
(Exhibit No. 32 marked for identification.)
Q. This is an email. On top it's from Phillip to you dated November 24.
A. It's from me to Phillip.
Q. I'm sorry. It looks like it's from Phillip to you.
A. No.
Q. Sorry. I've already moved ahead.
A. What page?
Q. I think it's the third page.
A. Okay.
Q. Do you see Phillip is emailing you on November 24th, and in the third paragraph he says, I believe you have mortgaged your other properties and now you want to mortgage Old Towne. I'm not your piggybank. I will not mortgage my share of

Page 302

Old Towne for you unless you agree to make your payments timely.
Do you know why he believed that you had mortgaged your other properties?
A. Maybe he'd heard that I had mortgaged my other properties.
Q. Had you mortgaged your other properties?
A. I had a small mortgage on North Towne's building because we had to up-fit it for lumber liquidators. I think it was a little under $100,000. That building -- I'm not sure. It's definitely worth over a million, maybe a million five or two. I'm not sure. The Zeus property did have a mortgage on it. I think I owed 800,000 on that.
Q. Okay. So he wasn't wrong, at least, in believing that you had mortgaged your other properties?
A. It was small debt compared to the buildings that we were talking about.
Q. What I think I have as the last page of that group there, do you see that? And this is from you to Phillip. Says, oh, it has been a pleasure, to say the least. I'm also done with paying your half of the food you so dearly like to eat at Old Towne

Page 303

weekly on my dime. If you don't pay your portion to me, then Jacob will have to. All management will be put on notice.
Why did you do that?
A. Phillip's been eating for free in the restaurant, and he doesn't own the restaurant and so he's taking advantage of me. So at that point I said, Jacob, you can pay for your brother, and I'll pay for my family if they come in. And we can document it when people come in, what they eat, and figure it out each month who is going to owe who.
Q. Do you pay for your meals now?
A. Do I pay for my meals now? I work in the restaurant. So when I work in the restaurant, I don't pay for my meal.
Q. Okay. For how long had Phillip and his family been eating there for free?
A. I told you that one incident when he ate all our crab legs, and that was some 15 years ago. I don't know how often, but it started getting more and more because Spiros came in there with clients a couple of times. It wasn't just them eating lunch. It was them bringing in clients and paying for their clients' meals, or I was paying for their clients' meal. So it started to get excessive.

Page 304

Q. Do employees eat free there, or do they just get a discount?
A. I think the cooks probably eat for free.
Q. Is there a standard employee discount for other employees?
A. I know we used to have one. I can't tell you what the policy is now. I'd have to ask Justin, who's the general manager.
Q. Would it be fair to say that the reason you did this was because you were mad at Phillip for --
A. I would see him come in and Spiros come in with their clients, and I'm thinking, well, I'm paying half of that money and they don't even have any percentage in this restaurant. I think it's fair for Jacob to pay for his brothers if he wants and I'll pay for my family if I want if they want to eat for free.
Q. Does your family ever eat for free?
A. Not anymore.
Q. So you pay for your family when they go in?
A. It used to be my sister would go in there occasionally and have a gyro with her husband but, no, they pay now.
Q. But, I mean, what changed? Phillip had been going in there for years and eating crab legs and

Page 305

so forth. Isn't it fair to say that you were mad at him for what happened with this deal?
A. I think it was excessive abuse of the system. I didn't mind a sandwich here and there, but maybe it started getting to the point where they were bringing in clients and I think there were other attorneys and they would have meetings there with their clients and they'd buy their whole meal, and I was paying for that and I saw that.
Q. So it had nothing to do with the fact that the closing hadn't just gone through.
A. No.
Q. So it was just a pure coincidence that this November 24th, 2014, was the day that you finally decided that he had had too much to eat there?
A. I probably came in there one day and saw Phillip gorging on food, thinking, I'm done paying with his food.
Q. It had nothing to do with the closing not going forward.
A. It's just excessive abuse of -- of eating at the restaurant when it's not his.
Q. So it had nothing to do with the closing not going forward.
A. No.

Page 306

Q. The page before that it says, well, then it's done. I'll reverse as much as I can and just write it off as stupid transactions dealing with the Ferderigos family.
What did you do to reverse -- I assume you're talking about reversing expenses.
A. Yes, try to stop the expenses that we had, like get the stuff out of storage, put it back in the restaurant.
Q. What else did you do, anything?
A. I mean, I told the contractor we weren't going forward.
Q. Anything else?
A. I can't think of anything right now, but whatever we started in the process we had to undo. I couldn't put the trees back.
(Exhibit No. 33 marked for identification.)
Q. This looks like a couple of text messages dated -- the only date you can see is the Tuesday, December 16 and then Wednesday, December 17, so I'm presuming that the one above that is from Monday, December 15. That's from you and it says, I can't wait to spread the word that the suites multimillion dollar project couldn't get done

Page 307

because Phillip can't eat for free. I'm sure everyone will find it hilarious. I'm probably doing you a favor. Smaller waistline. I bet your kids will be real proud of you in the future too. Your dad was right for calling you "palabo Philipa".
What were you trying to convey with that text?
A. "Palabo Philipa" means dumb Phillip. His father -- we're in Greece. We have this little bar on the beach that we sit at. We go to Greece during the summers, so we see each other and we have cocktails. Phillip will sometimes drink a lot of draft beer. Even my kids, when they refer to Phillip, they'll say, you know, that guy (indicating). Anyway, because he's on vacation so he can do -- I think Phillip calls it -- there's a term for what he calls his life in Greece. His wife knows and everything. I forgot. It's something about the vacation of Phillip, nobody messes with Phillip when he's on vacation. So anyway, he'd drink a good bit; and his father would come down and pick him up and bring him up to the village because he was probably too drunk to drive. And he would call him "palabo Philipa". He would

Page 308

say "palabo Philipa" (speaks in a foreign language).
So his dad would drive by in his truck and we'd be sitting there with a lot of people or whatever, and he would yell out, he'd say, "palabo Philipa" meaning, dumb Phillip, get in the car so we can go back to the village. And that's where we got the comment and a lot of people heard that and they would call him "palabo Philipa" as a joke because that's what his father called him.
Q. But he meant that when he had drunk a lot of beer, though, right?
A. Yes.
Q. So, I mean, what were you --
A. I was saying his dad was right for calling him dumb Phillip because it's kind of funny that he's pissing away a multimillion dollar deal that's proven it is making a lot of money because he doesn't, oh, want to eat for free, is that what it says, talking about the food.
Q. So why do you think that the deal didn't go through because Phillip can't eat for free?
A. I threw that as a joke because he was probably complaining -- oh, at one point he said that he wants it to go back to status quo. He sent

Page 309

an email or a text out. I'm sure it's somewhere in here. And we had discussed it, but he wanted to go back to status quo where he can eat in the restaurant for free. I was like, no, I'm not going back to -- your brother pays for you, and I'll pay for my family. I shouldn't have to pay for you and your clients when you bring people in the restaurant. That's what I meant.

Q. And did you spread the word that the deal didn't go forward because he can't eat for free?

A. No, I did not.

Q. Have you ever told anybody that?

A. No.

Q. Then you said down below, as I was running this morning, I came up with a proposal. I will agree to let you eat for free if you are out of the note and you put your 350 g's in escrow. This is because you will sign off on the mortgage without needing to. And this will take place as long as my portion of the mortgage is not paid off. If we go the other route where we split everything 50/50 on the loan, then you are signing for your own 16 percent interest and therefore we are even.

What do you mean by all that?

A. I jog the bridge, so that morning I must

Page 310

have jogged the bridge and I decided -- I thought, if it's really bugging him that he can't eat for free in the restaurant, that I will allow him to eat for free if he signs off on the mortgage and shows that he's got the 350,000 in escrow.

Q. Okay.

A. Or we go back to the 50/50 where I'm responsible for 50 percent of the loan, the Ferderigos are responsible for 50 percent of the loan, and there's no eating at the restaurant because we're even at that point.

Q. Okay.

A. And I think I said I spoke to his father. I did speak to his father about it, and he didn't think that anybody should eat for free at the restaurant either.

(Exhibit No. 34 marked for identification.)

Q. I'm showing you the standard agreement between owner and contractor marked as Exhibit 34. This was previously Exhibit Y to the answer and counterclaim. Is this the construction contract that you signed?

A. 15th day of October, yes.

Q. It was done October 15, 2014.

Page 311

A. Yes.

Q. Signed by you on, as owner, and by Kevin Carroll.

A. I think Jacob signed it as well.

Q. Okay.

A. Maybe I handed it to Jacob afterwards. I have no clue. Might be me and -- no, that's Kevin Carroll.

Q. Yes, this looks like you and Kevin Carroll signing that.

A. Yes.

Q. Did you ever show this contract to either Phillip or Spiros before you signed it?

A. I think I did. I pretty much -- I know I discussed it. We said we were going forward with Kevin Carroll. I'm not sure when I showed it to them. Maybe when I got it I would have showed it to them. What is the amount for in this contract?

Q. 1,728,900.

A. So then we would have discussed it because -- oh, we were at 1.8. Hmm. Then I'm not sure. The 1.8 might have been including the sprinkler system and some of the furniture and fixtures. I'm not sure. This is just for the contractor, 1,728,900. So we must have added some

Page 312

extra in there that we would have had to pay out of pocket in the loan for the $1.8 million loan.

Q. But this does not include the sprinkler system.

A. No.

Q. And you still to this day don't have a price for the sprinkler system.

A. I think he did tell us the price. I can't remember what it was. And I'm sure I would have told everybody.

Q. Back when I asked you, I said did you show this to Spiros, your answer was, well, I'm sure we talked about hiring Kevin Carroll. That's not exactly what I was asking.

A. I think I gave him this contract. I think I would have.

Q. Okay.

A. I don't sign anything unless everybody agrees, and we agreed on Kevin Carroll being the contractor at that point, so we must have had the other bids come in as well.

(Exhibit No. 35 marked for identification.)

Q. All right. This is a back and forth, looks like, between you and Phillip and Spiros and Jacob

Page 313

in June of 2015.
A. Okay.
Q. So you write to them, hey, guys, this is a friendly email that I am sending to all of you so that you might understand the full exposure of the lawsuit that my attorney is preparing to file. And you go through and talk about what your damages are. You said, my attorney is working on a flat 20 percent contingency, so he's not costing me anything until this case is settled.
Is that true, by the way, is that your agreement?
A. We altered it a little bit.
Q. To what?
MR. BARNETT: I object.
THE WITNESS: Yes.
MR. COOKE: You not only object but you instruct him not to answer, is that right?
MR. BARNETT: If you force me to.
MR. COOKE: Okay.
Q. Spiros on the next page says, I do not believe you are aware of the repercussions of filing a frivolous lawsuit. Tell me when and where I ever told you I would cosign my interest in 229 King Street for your loan. You know that never

Page 314

happened.
A. But it did.
Q. All right. Let's keep reading the conversation. It looks like you responded on the next page, you are cosigning only your interest in the building; and if you remember correctly, you said from the beginning that you did not want to personally guarantee the loan and the bank approved that. This lawsuit is very far from frivolous, and if you think otherwise I would seek better counsel.
Did you say in this email where he had -- when and where he ever told you he would cosign his interest in 229 King Street?
A. I prefaced it that it was done in the beginning. The beginning means before we even, when we got the bank note, when we were out looking for banks, we agreed that we would mortgage the building and have the income stream from the Old Towne Suites, we'd show one year because that's all we had at that point is one year, show how much money they're making to try to hopefully convince a bank to do this deal, and Southcoast was that bank.
Q. Yes, but with all due respect, what you actually said was that, if you remember correctly, you said from the beginning that you did not want

Page 315

to personally guarantee the loan and the bank approved that.
A. That was his only stipulation. It was originally the bank said that they wanted the Old Towne Suites, LLC, the income stream for that suites which had the money in it to pay for this note, they wanted to mortgage the building, and then we would all sign as personal guarantees. And then Phillip and Spiros said they did not want to sign as personal guarantees. And I went back to Jeff Odom and I said, you know, I've never heard of this but they say they're attorneys and they don't sign as personal guarantees. They own 16 percent interest apiece. Do you guys allow a note where you don't sign personal guarantees. And they said that we would do it in this case because you own 50 percent and Jacob owns 16 percent, and that's enough of a personal guarantee for us.
Q. Is it fair to say that you interpret Spiros saying that he would not personally guarantee the loan as his agreeing by inference that he would mortgage his interest in the property?
A. No. I'm not interpreting at all. The deal was from the beginning that we would mortgage our building to get the bank note. That's the only way

Page 316

we'd get a bank to give us a note. The building is worth $5 million. They would mortgage the building. And showed the income stream of the original suites to prove that our project would be successful.
Q. He then writes back and says, when and where did I ever tell you I would cosign my interest in 229 King Street for your loan. You are evading my question.
Before you answered that he added, and by the way, I never had a discussion with your bank for it to, quote, accept, closed quote. I have no idea what you are talking about. I never agreed to personally guarantee anything. This includes never agreeing to personally guarantee my interest in 229 King Street for your loan and/or benefit.
Then you answer, your emails to all of us speak a different story. Playing the naive lawyer is not going to help you with all of the documentation we have.
Then he says, your inability to answer my question is exactly what I expected. Then he goes on with some more argument.
And then you answered, check your emails with Amy Haines and you will see that you agreed to

Page 317

mortgage your interest in the building to cover your percentage of the loan. We also discussed the loan in depth back in 2012 where you agreed 5 percent was a good deal in your emails.

So are you now saying in this email that his emails with Amy Haines is where he agreed to mortgage his interest in the property?

A. I think I said what you just read. In 2012 he agreed to the loan and the mortgage that -- because our deal from the beginning was to try to get a 5 percent loan for 20 years, mortgage our building, show the income stream for the original suites to prove that our new project was going to be a successful one. So this is all untrue that he's saying. Spiros's just backpedaling is what he's doing.

Q. But your reference to the emails with Amy Haines, is there where --

A. That was one of them where he had -- he specifically talked about the loan that he was not supposed -- he was not personally guaranteeing it, he was only signing off on the mortgage. I think that was what that email was with Amy Haines.

Q. But his communication with Amy Haines was after the first closing date, wasn't it?

Page 318

A. I think she was doing the original closing too.

Q. What communication did Spiros have with her prior to the first closing?

A. I'm not sure. They're in the email threads of Amy Haines.

Q. Did he have any communication with her before I'll just say a week prior to the first closing?

A. I don't know. I don't even know if he knew Amy.

Q. Okay.

(Discussion off the record.)

(Deposition adjourned at 5:52 p.m.)

- - -

Page 319

CERTIFICATE OF REPORTER

I, Ruth L. Mott, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

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 on February 15, 2017 at Charleston, Charleston County, South Carolina.

Ruth L. Mott
Registered Professional Reporter
Certified Realtime Reporter
and Notary Public
My Commission expires
February 23, 2025

Page 452

A. Yes. I'm handling the books now. Yes, I handle them in February.
Q. Any other transfers that you can tell me about from S&S Old Town to Suites other than this one here since you've taken over the books this year?
A. I don't know.
Q. Now, the last page, frankly, it contains something that I just can't read. Do you see that? It looks like a --
A. It says Old Towne Suites. It's an Old Towne Suites deposit.
Q. Have you got any idea what that was for?
A. We would have gotten a check from Kevin High from Walk Away Stays for $124.92, and then we would have gotten another check from Kevin High for $30, which totaled $154.92, so that's why it was deposited in the suites checking account.
Q. It seems like a strangely small amount. Is that just what --
A. It was probably his end of the year number to get his books to zero. It's probably what he owed us out of the account. So he probably short-paid us at one point 124.92. And then I think the $30, I had complained because there was a

Page 453

charge on the suites account for somebody sweeping our stairs. Old Towne Suites, they have the black stairs there. And I go by and sweep those weekly, so I probably questioned the $30 charge and they sent us back the $30 charge.
Q. I gotcha. Do you get monthly accountings from Kevin emailed to you?
A. Not monthly, but I get them when he gives us checks.
Q. How often is that?
A. I guess it depends when he builds up money in the account.
Q. Okay. Does he still send email copies of that to the Ferderigos brothers?
A. I think so.
Q. When's the last one you recall receiving from him?
A. I don't remember.
Q. Do you think you got one this year?
A. I don't know. I might have gotten an end of the year one. I'm not sure. I think the last big check we received was for a little over $7,000. And I don't know if I got it from Kevin or I had to go to the office and get it from the accountant. There's a girl named Cass who does the accounting

Page 454

work, and I'll often pop in. If I don't get something, I'll ask her for it.
MR. MASSALON: Okay. That's it for me. Thanks.
BY MR. BARNETT:
Q. You were asked, Athan, yesterday I think multiple times whether you had ever sent a copy of the revised commitment letter, which I think has been admitted as Exhibit 11 in your deposition, to your cousins, correct?
A. Yes.
Q. And I think you said you didn't remember.
A. Okay.
Q. Take a look at this email and see if that refreshes your recollection. These are not stapled together, I'm sorry to say.
(Exhibit No. 51 marked for identification.)
THE WITNESS: Yes, so this shows that I did send the Southcoast commitment letter to Spiros, Phillip and Jacob Ferderigos.
Q. All right. After you sent that email, did any of them object to any of the provisions in the commitment letter to you?
A. No.

Page 455

Q. Did you discuss that commitment letter with your cousins after you sent them the email?
A. Yes.
Q. Okay.
(Exhibit No. 52 marked for identification.)
THE WITNESS: This is a letter or an email that Pete Paulatos sent me.
Q. How did Mr. Paulatos come to send that to you?
A. I called him up and asked him if he was the accountant who did the numbers for Spiros on the -- about this case because Spiros -- in one of our emails it showed the 1,750,000. He said, yes, he was the accountant who gave him those numbers. And I asked him to forward me that email.
Q. Okay. Do you remember your cousin Spiros's deposition?
A. Yes.
Q. Do you remember when I asked him the question about the accountant?
A. He acted like he didn't know what accountant did anything and he had no clue and he couldn't remember if Pete Paulatos had anything to do with anything.

Page 456

Q. Do you know whether your cousin Spiros is a close friend with Mr. Paulatos?
A. They're childhood friends and we go to church together and we often see each other.
Q. All right. Now, John Massalon asked you some questions about your complaint and your allegations against Jacob. I'm not going to re-ask you those. Before this lawsuit was filed, when Phillip and Spiros were telling you they did not want to go forward with the deal, did you discuss with Jacob the possibility that you might file the lawsuit?
A. Yes.
Q. Did you tell Jacob that you did not want to join him in the lawsuit?
A. Yes.
Q. Did you ask Jacob to enter into some sort of an agreement that if his cousins agreed or were required to go forward with the project that he would go forward with the project?
MR. MASSALON: I object. That's settlement discussions.
THE WITNESS: I think so. I think I did.
Q. What did he say?

Page 457

MR. MASSALON: Same objection.
THE WITNESS: He agreed to go forward with the project.
Q. Did he refuse to enter into an agreement?
MR. MASSALON: Same objection.
THE WITNESS: He would have to have the agreement from his brothers to have an agreement.
Q. Okay. So he wouldn't enter into an agreement unless his brothers said it was okay.
A. Yes.
Q. All right. Have you ever told anyone, I won't borrow Richard's list of people, but anyone other than your cousins -- I'm not asking you what you told your cousins.
A. Okay.
Q. Did you ever tell anyone else other than your cousins that Phillip was a bad businessman, and by that I mean a bad businessman or a really, really bad business -- any language at all disparaging his skill as a businessman?
A. No.
Q. Did you ever say that kind of thing in any words about your cousin Spiros?
A. No.
Q. Did you ever say that thing by whatever

Page 458

words about your cousin Jacob?
A. No.
Q. Have you ever accused your cousins -- well, take them one at a time. Have you ever said to any person other than your cousins that Phillip is dishonest in any way?
A. No.
Q. By whatever words.
A. No.
Q. Spiros, did you ever tell anybody that you thought Spiros was dishonest?
A. No.
Q. Did you ever tell anybody that you thought Jacob was dishonest?
A. No.
Q. Did you ever tell anybody that this project to expand the suites at 229 King Street was not going forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant?
A. No.
MR. BARNETT: That's all I have.
MR. COOKE: I've got a few follow-up.
BY MR. COOKE:
Q. This is Exhibit 51. Take a look at that. This is dated September 24, 2014. Says, well, I

Page 459

don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5 percent for the life of the loan, which is unheard in the current banking industry.
Do you now agree that you did not, in fact, talk your banker into getting rid of the five year balloons?
A. Yes. I misunderstood. So I always knew it was a 20-year loan for five year balloons, but then when I went back and reread something, maybe the commitment letter, maybe I -- for a second I interpreted it that way, I shot him out an email -- I don't know if this was around the time when I was at Zero George with all those guys and we were drinking, but definitely it was the original loan that I thought it was, which was a 20-year with five balloon payments.
Q. Okay. And then you did attach a copy of the amended or the new, I guess, commitment letter.
A. Okay.
Q. So my question is, as we've discussed many times, there was another commitment letter that was issued on or about February 5, 2013, for a $1 million loan, correct?
A. Correct, yes.

Page 460

Q. So do you have an email like this where you sent that commitment letter to Phillip and Spiros?
A. I haven't seen it. I don't know. Maybe I gave that to them in person, I copied it and gave that to them in person, but I don't remember.
Q. Or might you not have given it to them at all?
A. No, they would definitely have known that we received the million dollars or we would have not gone forward.
Q. I thought you said yesterday that you may have relied on Jacob to inform his side of the family.
A. To give it to them. If I did, I made a copy of it, gave it to Jacob, Jacob might have given it to his brothers; but we all knew about it because we were excited that we got the new loan, and we talked about it at our church gatherings as well.
Q. I noticed that you, in this email where you are introducing the letter, you do refer to the term of it, that is, you say that you talked the banker into getting rid of the five-year balloons and fixing it at 5 percent for the life of the loan. Is there any other email or other communication where you called Spiros's attention

Page 461

to the collateral required in this commitment?
A. I'm sure we talked about it, but I don't know if there are other emails out there. I would have shown all the emails.
Q. And how soon after this email did Ms. Haines issue the closing papers?
A. I'm not sure.
Q. Okay. You were shown Exhibit 52 which is an email from Pete Paulatos to Spiros, correct; and this was evidently sent to him around November 19, 2014.
A. Correct.
Q. Now, when did you first see this email?
A. I guess maybe last -- I don't know, couple days ago.
Q. So you've never seen that before?
A. No.
Q. Okay. Do you remember this morning seeing Exhibit 3 to the deposition of Mr. Odom?
A. Okay.
Q. Look at the page that's numbered 3 at the bottom.
A. Okay.
Q. There's an email from you to Jeff Odom dated November 20, 2014. Do you see that?

Page 462

A. Yes.
Q. It says, hey, Jeff, check out the email below. It seems that we only need $1,750,000 now. Look at the math below and let me know if it makes sense. Did you send that email?
A. Yes.
Q. And the forwarded message was a message from Spiros to you and Jacob and -- well, to you and Jacob with a copy to, evidently, himself and to Phillip; do you see that?
A. Yes.
Q. And it's regarding payments on loan, and you see it begins on the next page, Phillip is working on the agreement and anticipates, and so forth?
A. Yes.
Q. And then do you see about a third of the way down he says, here is the email from my accountant.
A. Correct.
Q. Do you see that?
A. Yes.
Q. All right. Now, compare the email that he quotes with the email that you're now saying you saw for the first time this week.
A. The email that I saw for the first time this week was the email from Pete Paulatos to Spiros.

Page 463

Q. Right.
A. The content was the accountant that we had no clue who the accountant was until Pete showed us the email.
Q. Yes. So do you agree that what Spiros forwarded to you in this email back on November 20, 2014, is essentially the same email that Pete Paulatos sent him on November 19?
A. Well, it's not the same email because he had other words up here, ha, yes, typo, 1.75 million, you are awesome, glad to know I was close, we are just going to do 7 point -- might have been 1.75 million.
I don't know how many other emails there are about Pete Paulatos talking about the project with Spiros or how many times they talked about the project with Spiros, but this is the first time that I knew that Pete Paulatos was involved in this case.
Q. But maybe I misunderstood the thrust of your being shown this exhibit. I thought that maybe it was to try to show somehow that Spiros had hidden this information from you, but I just want to make sure that we agree that he forwarded the substance of Mr. Paulatos's email to you on November 19,

Subject: Fwd: BAR Review
From: Iakovos Ferderigos (jacobspita@yahoo.com)
To: spirosferderigos@gmail.com; pferderigos@barnwell-whaley.com;
Date: Friday, June 28, 2013 1:12 PM

Sent from my iPhone

Begin forwarded message:

From: "Joe Tucker" <tuckeraia@gmail.com>
Date: June 27, 2013, 5:24:02 PM EDT
To: "'Athen Fokas'" <Fokasa@bellsouth.net>, "Jacob Federico'" <Jacobspita@yahoo.com>, "Kevin'" <kiawahwork@yahoo.com>
Subject: FW: BAR Review

Gentlemen,

I am forwarding a response which I just got from Mr. Dowd. I do not think he is very interested in helping.

Please take a look and let me know what you think.

Joe

From: Dowd, Dennis [mailto:DOWDD@charleston-sc.gov]
Sent: Thursday, June 27, 2013 4:58 PM
To: 'Joe Tucker'
Subject: RE: BAR Review

Joe,

My sense is that the Board is opposed to the general architectural direction of the project (tall building over lower building, the experience of the corridor on the south side with porches facing blank walls, access to the units via circuitous circulation to get to the porches etc.). As you recall one Board member asked what is different enough about this proposal from the previously denied version. They also mentioned that the drawings were difficult to understand.

EXHIBIT 3 P. Ferderigos

You need to re-think the project from a fresh perspective to develop something that is more architecturally appealing, and present it in a very straightforward understandable manner. I remember suggesting to you having a model of the proposed design that could be plugged into the existing building. We also discussed having the drawings show previous and current versions of the design, none of which you provided and I believe hurt your case.

After you have a new design developed you can send it to me via email (pdf), I will take a look at it and we can determine if a meeting is necessary.

Dennis

Dennis J. Dowd, AIA | City Architect & Preservation Officer

e: dowdd@charleston-sc.gov

o: 843.724.3783 | f: 843.724.3772

City of Charleston | Planning, Preservation & Sustainability

75 Calhoun Street | Charleston, South Carolina 29401

From: Joe Tucker [mailto:tuckerala@gmail.com]
Sent: Thursday, June 27, 2013 9:59 AM
To: Dowd, Dennis
Subject: BAR Review

Dennis,

We would like to schedule a meeting with you to discuss options for how to proceed after the board denied our proposal last night. Please check

your schedule and see if you have a convenient time.

Thanks,

Joe

TUCKER ARCHITECTURAL ASSOCIATES

772 Gypsy Lane

Mt. Pleasant, SC 29464

843.881.6428 phone

www.tuckerarchitectural.com

tuckeraia@gmail.com

Gmail

Jacob Ferderigos <iakovosstavros@gmail.com>

Fwd: Drawing Package

Iakovos Ferderigos <iakovosstavros@gmail.com> Sat, Oct 19, 2013 at 12:51 PM
To: spiros ferderigos <spirosferderigos@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>, Stavros Ferderigos <ferderigos40@gmail.com>

Sent from my IPhone

Begin forwarded message:

From: Athan Fokas <fokasa@bellsouth.net>
Date: October 19, 2013 at 9:24:14 AM EDT
To: "iakovosstavros@gmail.com" <iakovosstavros@gmail.com>
Subject: Fwd: Drawing Package

Sent from my IPhone

Begin forwarded message:

From: "Joe Tucker" <tuckerala@gmail.com>
Date: October 14, 2013, 9:28:06 AM EDT
To: "Athan Fokas" <fokasa@bellsouth.net>, "Kevin" <kjawahwork@yahoo.com>
Subject: Drawing Package

Athan,

Attached is the drawing package which we are turning in this morning.

There are also twelve photos (too large to email) starting out front, including the existing units and ending with a before and after view from the parking garage.

The BAR meeting will be next Wednesday Oct 23

TUCKER ARCHITECTURAL ASSOCIATES

772 Gypsy Lane

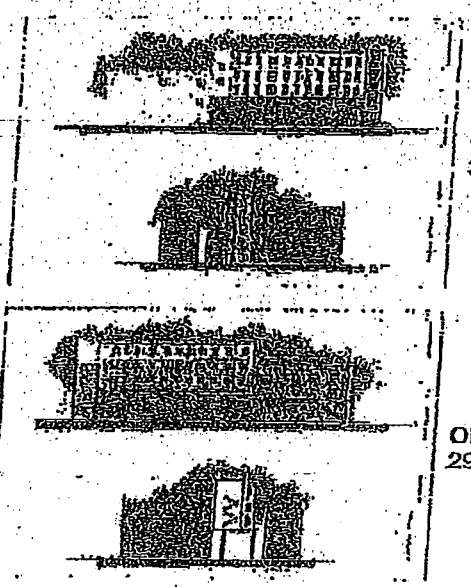
Mt. Pleasant, SC 29464

843.881.6426 phone

www.tuckerarchitectural.com

tuckeraia@gmail.com

9 attachments



Old Towne_ELEV1 131014.tif
3101K

Old Towne_ELEV2 131014.tif
2913K

1_1240_SITE.pdf
62K

2_1240_PLAN.pdf
1266K

5_1240_ELEV.pdf
32K

June26-1_1240_ELEV.pdf
56K

June26-2_1240_ELEV.pdf
370K

May22-1_1240_ELEV.pdf
358K

May22-2_1240_ELEV.pdf
223K

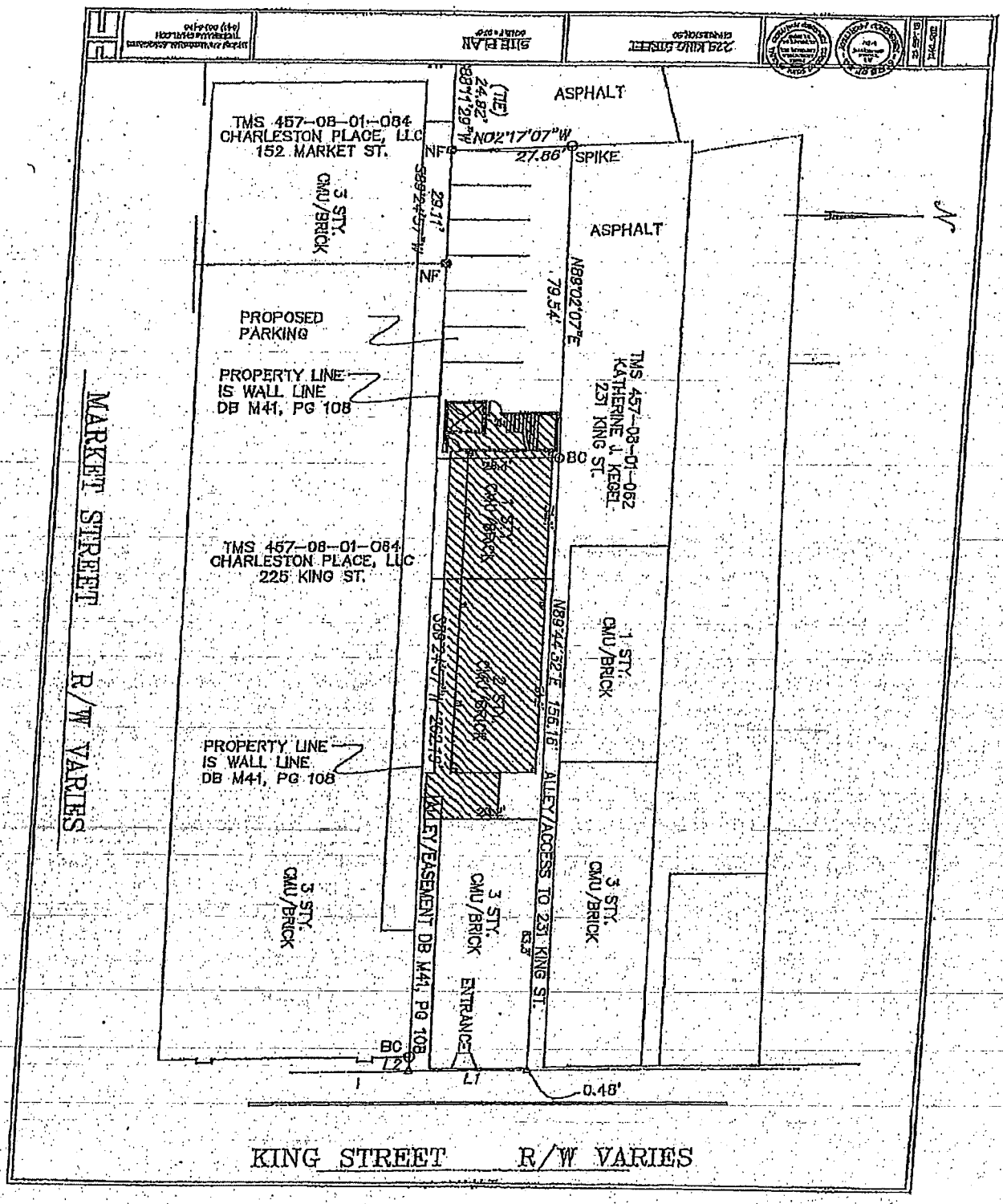
KING STREET
NORTH ELEVATION
PROPERTY LINE
PROPERTY LINE
MARKET STREET
PROPERTY LINE
PROPERTY LINE
WEST ELEVATION
BUILDING ELEVATIONS
221 KING STREET
CHARLESTON, SC

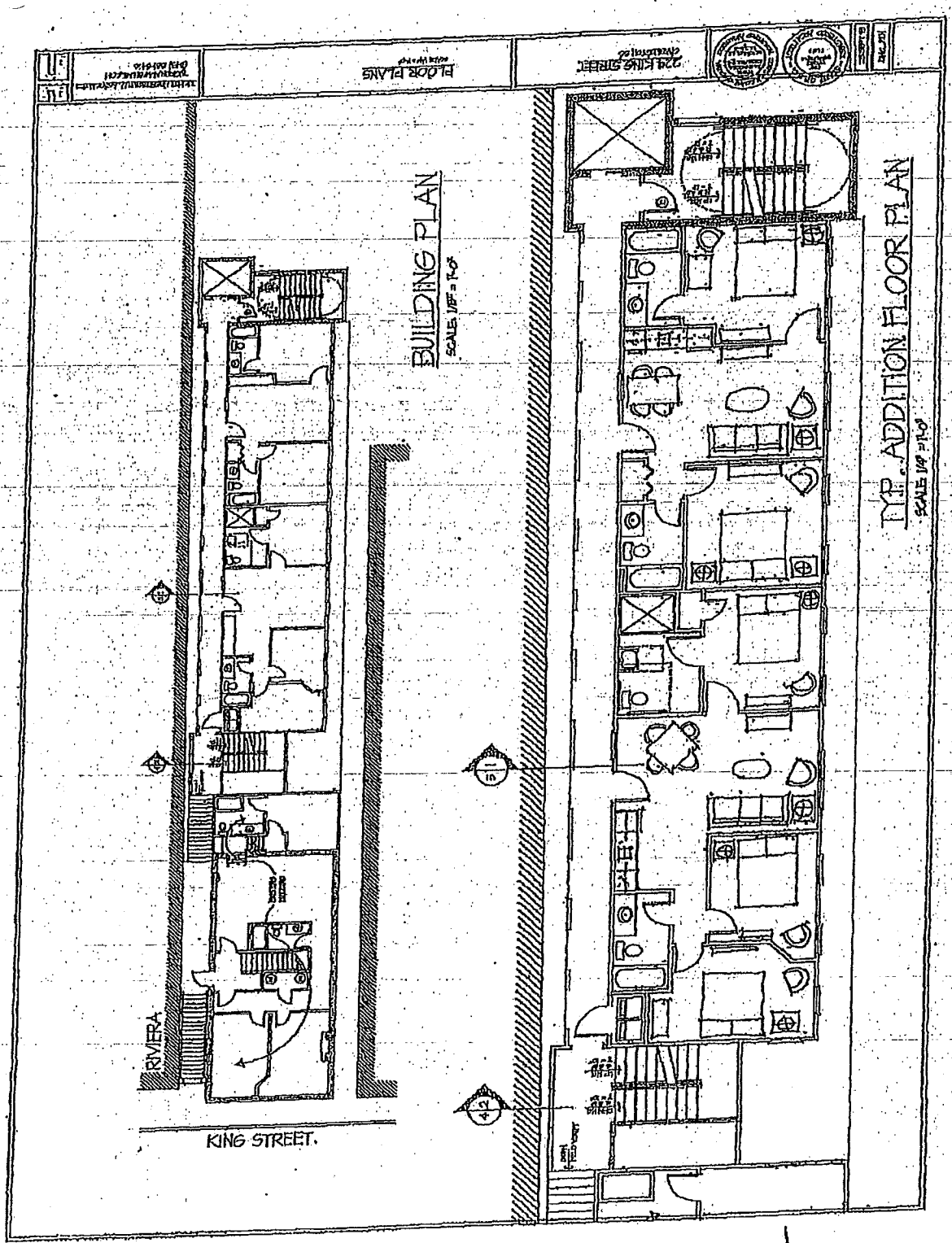
BUILDING ELEVATIONS

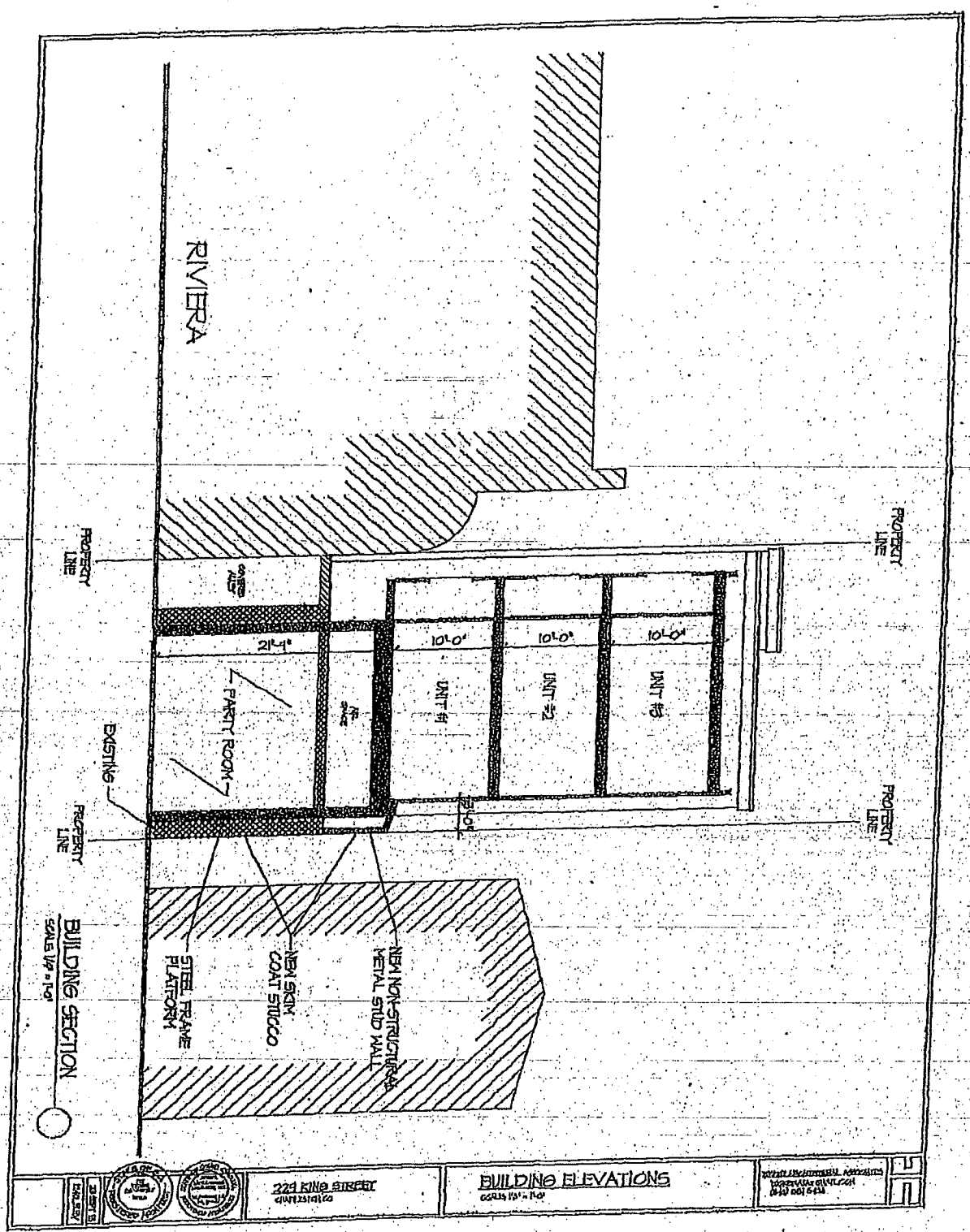
SCALE: 1/8" = 1'-0"

224 KING STREET
charlottesville, va

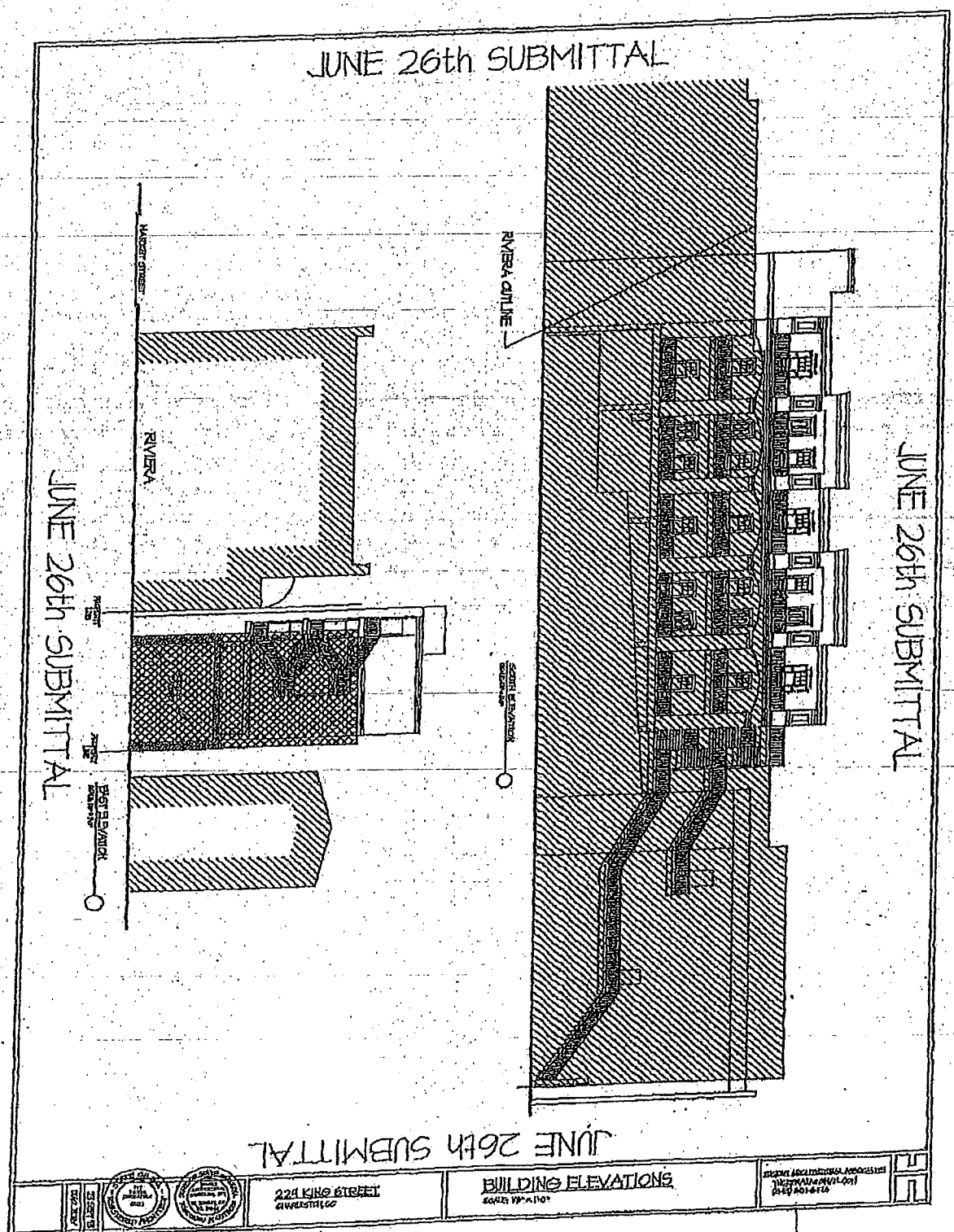
WEBB ARCHITECTURAL ASSOCIATES
1402 RIVA RIDGE
(434) 293-5423


SITE PLAN
225 KING STREET
CHARLESTON
ASPHALT
TMS 457-08-01-084
CHARLESTON PLACE, LLC
152 MARKET ST.
3 STY. CMU/BRICK
(TIE)
24.82'
S81°11'29"W
N02°17'07"W
27.86'
SPIKE
NF
S89°24'57"W
29.11'
ASPHALT
N89°02'07"E
79.54'
PROPOSED PARKING
PROPERTY LINE IS WALL LINE DB M41, PG 108
TMS 457-08-01-062
KATHERINE J. KEGEL
231 KING ST.
BC
1 STY. CMU/BRICK
TMS 457-08-01-084
CHARLESTON PLACE, LLC
225 KING ST.
N89°44'32"E 155.16'
S89°24'57"W 29.49'
2 STY. CMU/BRICK
1 STY. CMU/BRICK
PROPERTY LINE IS WALL LINE DB M41, PG 108
ALLEY/ACCESS TO 231 KING ST.
ALLEY/EASEMENT DB M41, PG 108
3 STY. CMU/BRICK
3 STY. CMU/BRICK
3 STY. CMU/BRICK
ENTRANCE
63.3'
BC
L2
L1
0.48'
MARKET STREET R/W VARIES
KING STREET R/W VARIES


BUILDING PLAN
SCALE: 1/8" = 1'-0"
TYP. ADDITION FLOOR PLAN
SCALE: 1/8" = 1'-0"
RIVIERA
KING STREET.



Document 0126


JUNE 26th SUBMITTAL
RIVERA OUTLINE
MARKET STREET
RIVERA
JUNE 26th SUBMITTAL
JUNE 26th SUBMITTAL
JUNE 26th SUBMITTAL
224 KING STREET
BUILDING ELEVATIONS

JUNE 26th SUBMITTAL

JUNE 26th SUBMITTAL

JUNE 26th SUBMITTAL

JUNE 26th SUBMITTAL

SNOWMELT BUILDING ELEVATIONS

221 King Street
Alexandria

Document 9371

MAY 22nd SUBMITTAL

MAY 22nd SUBMITTAL

MAY 22nd SUBMITTAL

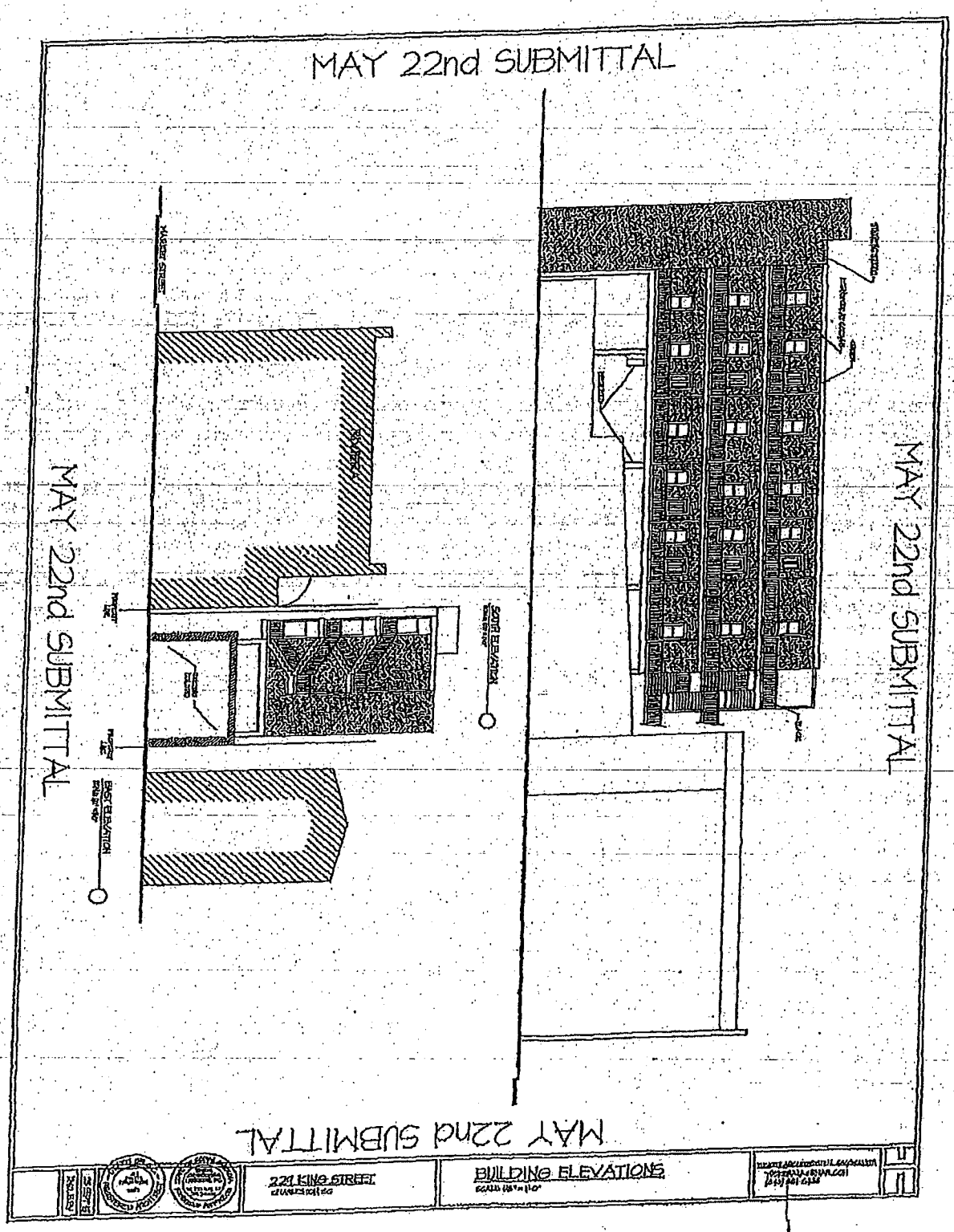
MAY 22nd SUBMITTAL

BUILDING ELEVATIONS

NORTH ELEVATION

WEST ELEVATION

MARKET STREET


MAY 22nd SUBMITTAL
MAY 22nd SUBMITTAL
MAY 22nd SUBMITTAL
MAY 22nd SUBMITTAL
BUILDING ELEVATIONS

Gmail

Jacob Ferderigos <lakovosstavros@gmail.com>

Fwd: Old Towne Suites 2

1 message

lakovos Ferderigos <lakovosstavros@gmail.com> Thu, Oct 24, 2013 at 11:40 AM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>, spiros ferderigos <spirosferderigos@gmail.com>

Sent from my IPhone

Begin forwarded message:

From: Athan Fokas <fokasa@bellsouth.net>
Date: October 24, 2013 at 11:19:37 AM EDT
To: "lakovosstavros@gmail.com" <lakovosstavros@gmail.com>
Subject: Fwd: Old Towne Suites 2

Sent from my IPhone

Begin forwarded message:

From: "Joe Tucker" <tuckerala@gmail.com>
Date: October 24, 2013, 11:02:46 AM EDT
To: "'Athan Fokas'" <fokasa@bellsouth.net>
Cc: "'Kevin'" <kjawahwork@yahoo.com>
Subject: Old Towne Suites 2

Athan,

It was nice to have good news from a BAR meeting.

The following is a list of items that we plan to work on for the Preliminary Design meeting

1. Height requirement
2. Placement of HVAC equipment
3. Brick or not on stair tower
4. How to install real stucco
5. How to waterproof hallway openings or install windows
6. Add detail to tall base on North elevation

7. No square openings
8. Revise windows at stairs on West elevation
9. Structure for front stair

Attached is the statement for us and the artist for this current phase

Joe

TUCKER ARCHITECTURAL ASSOCIATES

772 Gypsy Lane

Mt. Pleasant, SC 29464

843.881.6426 phone

www.tuckerarchitectural.com

tuckerafa@gmail.com

otsuites1024.doc
39K

Gmail

Jacob Ferderigos <iakovosstavros@gmail.com>

Fwd: 229 king street window elevation revision

2 messages

Iakovos Ferderigos <iakovosstavros@gmail.com> Fri, Nov 14, 2014 at 4:56 PM
To: Spiros Ferderigos <spirosferderigos@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>

Sent from my iPhone

Begin forwarded message:

From: Athan Fokas <athanfokas@gmail.com>
Date: November 14, 2014 at 4:45:38 PM EST
To: "iakovosstavros@gmail.com" <iakovosstavros@gmail.com>
Subject: Fwd: 229 king street window elevation revision

I've been working on this change for the last two weeks. It saved us a little over $60,000.00.

Sent from my iPhone

Begin forwarded message:

From: "Hopkins, Debbi Rhoad" <HOPKINSD@charleston-sc.gov>
Date: November 14, 2014 at 4:18:51 PM EST
To: 'Klawahwork' <klawahwork@yahoo.com>
Cc: Athan Fokas <athanfokas@gmail.com>
Subject: RE: 229 king street window elevation revision

Kevin & Athan,

Our staff met this morning to review projects, including your window revision, and I'm pleased to say that we all agreed using the same windows throughout is fine. I'll put the drawings you emailed me into the file with a note documenting the approval so you don't need to do anything else.

Thanks for your patience- I'm sorry it took a few days to get back to you, but hopefully the answer was worth it!

Have a good weekend,

Debbi

Debbi Rhoad Hopkins | Senior Preservation Planner

e: hopkinsd@charleston-sc.gov

o: 843.724.3779 | f: 843.724.3772

City of Charleston | Planning, Preservation & Sustainability

75 Calhoun Street | Charleston, South Carolina 29401

City of Charleston South Carolina PP&S PLANNING, PRESERVATION & SUSTAINABILITY

From: Klawahwork [mailto:klawahwork@yahoo.com]
Sent: Thursday, November 06, 2014 4:49 PM
To: Hopkins, Debbi Rhoad
Cc: Athan Fokas
Subject: 229 king street window elevation revision

Debbie, the upper windows have been revised to match all other openings on plans.

Look forward to Your thoughts, or approval.

Thanks,

Kevin W. Carroll

klawahwork@yahoo.com

843-830-3307

NOTICE: This correspondence may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to review, print, retain, copy or disseminate this message including any attachments. If you have received this transmission in error, please delete this message from your system and notify the sender immediately.

Iakovos Ferderigos <iakovosstavros@gmail.com> Fri, Nov 14, 2014 at 5:10 PM
To: Athan Fokas <athanfokas@gmail.com>

- That's going to save a lot of money!
Jacob

Sent from my iPhone
[Quoted text hidden]

Subject: Fwd: Old town suites deflection calculation challenge

From: Jacob Ferderigos (jacobspita@yahoo.com)

To: spirosferderigos@gmail.com; pferderigos@barnwell-whaley.com;

Date: Thursday, June 5, 2014 9:26 PM

Sent from my iPhone

Begin forwarded message:

From: Kiawahwork <kiawahwork@yahoo.com>
Date: June 5, 2014 at 11:42:56 PM GMT+3
To: Paul Curry <curryp@curryengineers.com>
Cc: Athan Fokas <zeusseafood@bellsouth.net>, Jacob Federico <Jacobspita@yahoo.com>, Joe Tucker <tuckerala@gmail.com>
Subject: Old town suites deflection calculation challenge

Paul, We have decided that we need to challenge Dennis dowd on the calculation of the wall deflection downtown can you please do the math and let me know what the deflection is of a 2 x 4 wall with half-inch plywood attached with 78 Stucco three layer applied to it is so we can see how close we are to the L over 600.
The cost of building with metal studs low gauge as he is requesting is astronomical and trickles down all the way to every phase after framing and we cannot afford it
Thank you in advance for your assistance with this we plan to meet with Dennis to challenge this

Thanks,
Kevin W. Carroll
kiawahwork@yahoo.com
843-830-3307

athanfokas@gmail.com

You don't have to respond but in the last ten years Jacob has never written me one paragraph much less these novels that Phillip likes to write. Your writing style is seen in all the paperwork of all three lawsuits Phillip. Jacob did tell me after you decided you weren't going to build the new suites Phillip that (Jacob's quote) "my brothers (Phillip & Spiro) think I'm stupid cause they are attorneys and I'm not"

I don't think Jacob is stupid at all. He is the one who realized what a great profitable deal these new suites would be given our track record. Now you have turned your brother Jacob into a puppet getting him to send your words on his phone. I actually now think that you didn't go along with building the new suites so that your brothers would not be able to have more income so that you can keep them below you. Just like your dad said that Phillip is the King of the family.

And the checks that Jacob and I receive is because we are overseeing the managers and making sure the restaurant runs smoothly. I continue to make sure the restaurant runs well and continue to fix any issues that we have with Old Towne because that's what I get paid to do. On another note: Justin has expressed that he would like a raise. Apparently that was discussed at Starbucks when he signed the affidavit you guys wrote for him and then realized that it was incorrect information. Justin is a reliable employee and he is asking a $10.00 a shift raise which is not unreasonable at all. My father has spoken to Justin and agreed with the raise but would like confirmation from Jacob. If Justin quits then I will have to pick up his shifts until we find another manager or I will split those shifts with Jacob but he has already said that he doesn't have extra time to work extra shifts. I and my father would like to know if Jacob agree's with this raise that he had already discussed with Justin when he was tricked into signing an affidavit that was false but forgot to mention it to me or my father.

8:27 PM

Tuesday, March 22, 2016

athanfokas@gmail.com

Good news! The city extended the building permit to build the new suites through August 24, 2017. We have plenty of time now to negotiate.

11:05 AM

Subject: Fwd: Old Town

From: Iakovos Ferderigos (jacobspita@yahoo.com)

To: pferderigos@barnwell-whaley.com; spirosferderigos@gmail.com;

Date: Tuesday, July 10, 2012 8:58 PM

Hey guys,
Keeping yall in the loop for Old Towne,trying to get the project started.

Sent from my iPhone

Begin forwarded message:

From: Kevin Carroll <kiawahwork@yahoo.com>
Date: July 10, 2012 8:52:09 PM EDT
To: Athen Fokas <Fokasa@bellsouth.net>, Athan Fokas <zeusseafood@bellsouth.net>
Cc: Jacob Federico <Jacobspita@yahoo.com>
Subject: Fw: Old Town
Reply-To: Kevin Carroll <kiawahwork@yahoo.com>

Athen, see if this would work....this appears to be very fair for the size of this project. will concepts work for the bank ?

From: "Joe Tucker" <tuckeraia@gmail.com>
Date: Tue, 10 Jul 2012 12:00:58 -0400
To: <kiawahwork@yahoo.com>
Subject: Old Town

Kevin,

Attached is the revised proposal which has been reduced by three thousand dollars. This is not a firm number for the engineers (until they see some concept drawings), but this should be very close. We have also reduced the amount for the concept phase to $1,800.
Please review this with the owner and let us know.

Joe

EXHIBIT 2 Ferderigos

ADD OUR NEW EMAIL TO YOUR CONTACTS
tuckeraia@gmail.com

TUCKER ARCHITECTURAL ASSOCIATES
843.881.6426 phone
843.881.2559 fax
http://www.tuckerarchitectural.com/

Attachments

- oldtown2.doc (27.00KB)

July 9, 2012

Athen Fokasa
Jacob Federigos
via email:

OLD TOWNE BUILDING RENOVATION (BACK PORTION) – 229 King Street

We appreciate the opportunity to send this proposal / agreement for our Architectural services. We understand that you intend to build an addition over the rear portion of first floor of your existing building. The work will include four three-bedroom suites similar to the previous project in an area of approximately 2100 sq ft on each of two floors.

We will prepare concept drawings showing options for the space. We will then develop the design to a point where it can be used for pricing, permitting and construction.

Engineering for Mechanical, Electrical and Plumbing will also be included as part of our work. We understand that Mr. Rosen will be providing Structural Engineering and Ms. Goff, Interior Design separate from this contract. We also understand that we will be working with Kevin Carroll as the Builder.

We propose to provide our services for a lump sum of eleven thousand six hundred dollars ($11,600.00). The fee for engineering services will be included in this contract. The following is an estimated payment schedule.

1800.00	concept drawings	7200.00	Architecture
2500.00	preliminary design	4400.00	MP&E
2300.00	design development one	$11,600.00	
2300.00	design development two		
2700.00	working drawings		
$11,600.00			

If you approve of these terms, please sign below and return one copy.

Tucker Architectural

Client

TUCKER ARCHITECTURAL ... tuckeraia@gmail.com ...
www.tuckerarchitectural.com ... 843.881.6426

Subject: Fwd: Old Town Suites

From: Iakovos Ferderigos (jacobspita@yahoo.com)

To: pferderigos@barnwell-whaley.com; spirosferderigos@gmail.com;

Date: Monday, September 24, 2012 4:56 PM

Sent from my iPhone

Begin forwarded message:

From: Kevin Carroll <kiawahwork@yahoo.com>
Date: September 24, 2012 4:53:51 PM EDT
To: Athen Fokas <Fokasa@bellsouth.net>, Athan Fokas <zeusseafood@bellsouth.net>, Jacob Federico <Jacobspita@yahoo.com>
Cc: Architect Tucker <Joe@tuckeraiasc.com>, "P. E. Russell A. Rosen" <rosen@rosenonline.com>, Russle Rosen <roseneng@aol.com>
Subject: Old Town Suites
Reply-To: Kevin Carroll <kiawahwork@yahoo.com>

Gentlemen, I have spoken with athen about an alternative site for the additional hotel rooms. We would like to entertain, building the addition over the rear parking area. Joe has been authorized to put some concepts together and once they are available I would like for us to meet on site for review and ideas.
The time frame that athen and jacob would like to perform project is getting close and i would like to meet there expectations. this new site location would allow more windows, possible additional rooms in the future and more importantly, not cause his business to be interrupted during construction. And most valuable of all the project can be completed within the budget numbers we have been talking about.

Tuesday October 2nd @ 8:30 Am
please let me know if this date and time is available for all

Thanks, Kevin W. Carroll

Joe, lets meet asap to discuss idea for your concept drawings. call me to schedule.

Subject: Fwd: Old Towne

From: Iakovos Ferderigos (jacobspita@yahoo.com)

To: pferderigos@barnwell-whaley.com; spirosferderigos@gmail.com;

Date: Tuesday, December 11, 2012 5:02 PM

Just for your information...

Sent from my iPhone

Begin forwarded message:

From: "Joe Tucker" <tuckeraia@gmail.com>
Date: December 11, 2012, 3:56:47 PM EST
To: "Athen Fokas" <Fokasa@bellsouth.net>, "'Jacob Federico'" <Jacobspita@yahoo.com>
Cc: <kiawahwork@yahoo.com>
Subject: Old Towne

Athen / Jacob

Attached are the drawings which we have prepared for the pricing set. They are about 80% complete. We propose a payment of $2,500.00 which is the next portion of our fee, although this represents a substantial portion of our work. Also we propose $500.00 drafting fee for the structural drawings

We are sending these drawings to Russell Rosen so he can give a proposal for his portion, since structural engineering is outside our contract.

Not included (in the pricing set) are mechanical, plumbing and electrical engineering. We understand that Kevin's subs will do the best they can pricing from our drawings.

We met with the building inspector this morning and did not find any significant issues.

We also spoke with the zoning staff and we will disouss building height, parking requirement, and BAR review at our next meeting

Joe

TUCKER ARCHITECTURAL ASSOCIATES

843.881.6426 phone

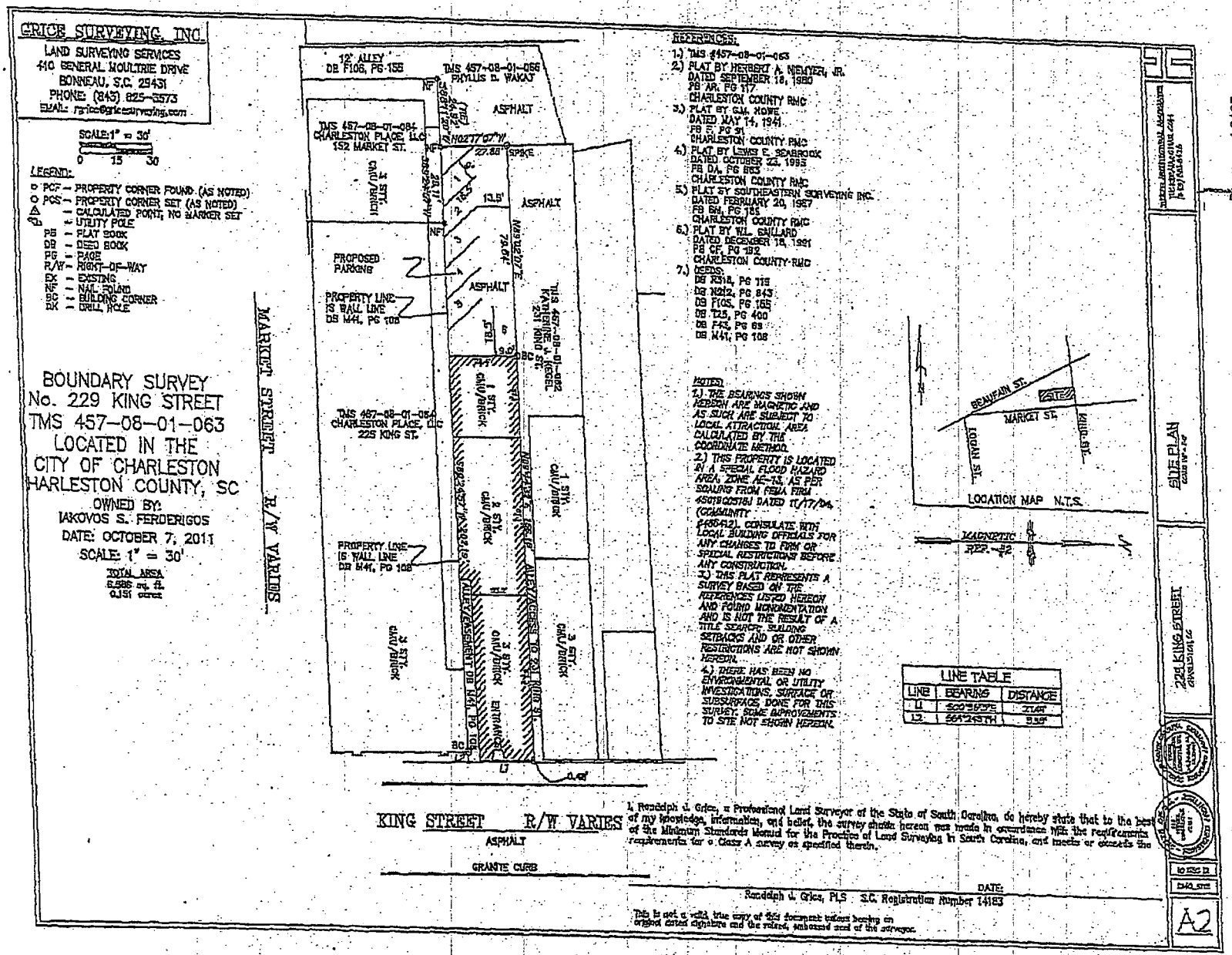
843.881.2659 fax

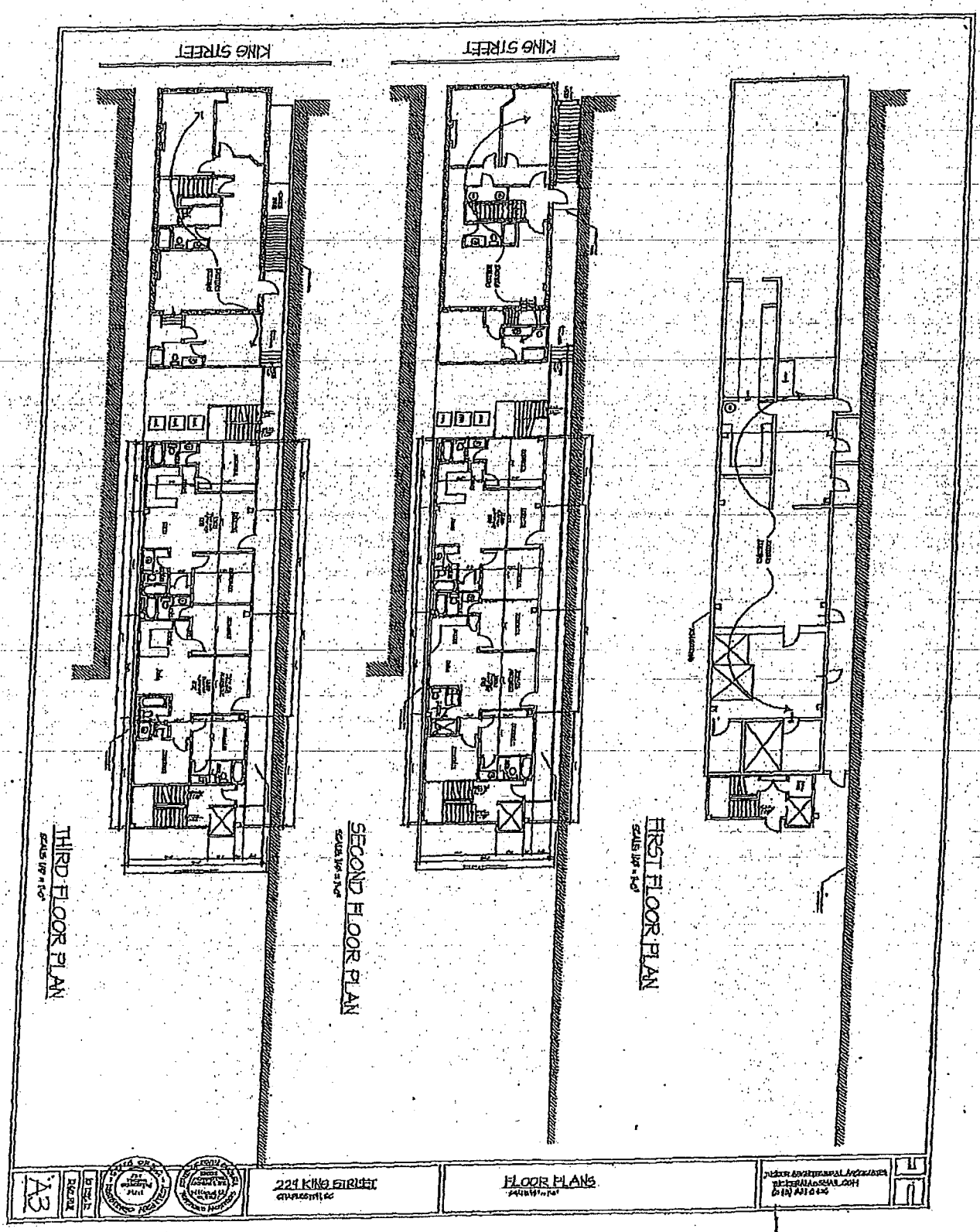
www.tuckerarchitectural.com

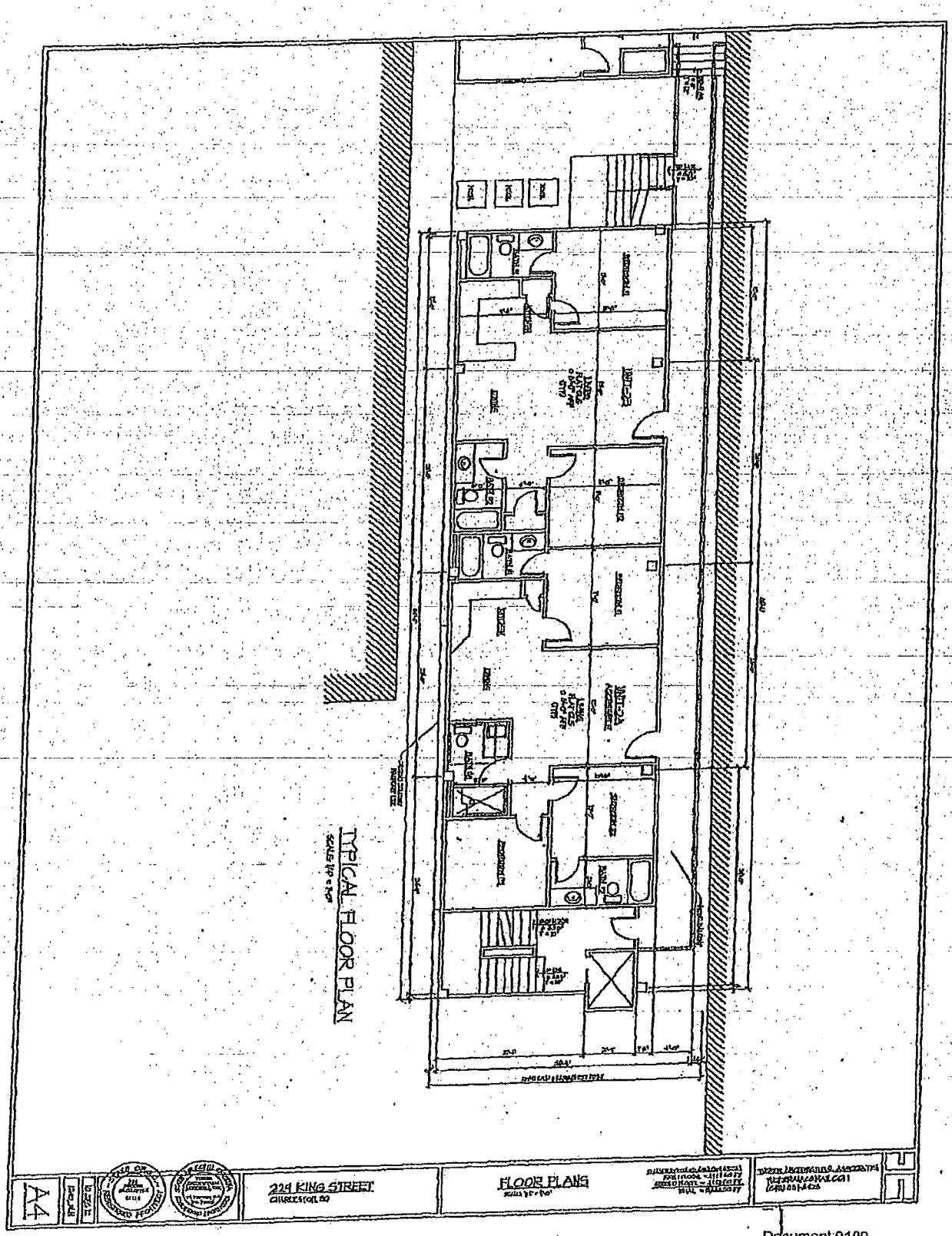
Attachments

- A1_1240_SITE.pdf (89.34KB)
- A2_1240_SITE.pdf (204.70KB)
- A3_1240_PLN.pdf (153.15KB)
- A4_1240_PLN.pdf (73.80KB)
- A5_1240_SECT.pdf (57.66KB)
- A6_1240_WSEC.pdf (83.22KB)
- A7_1240_FND.pdf (56.37KB)
- A8_1240_FRM.pdf (105.50KB)

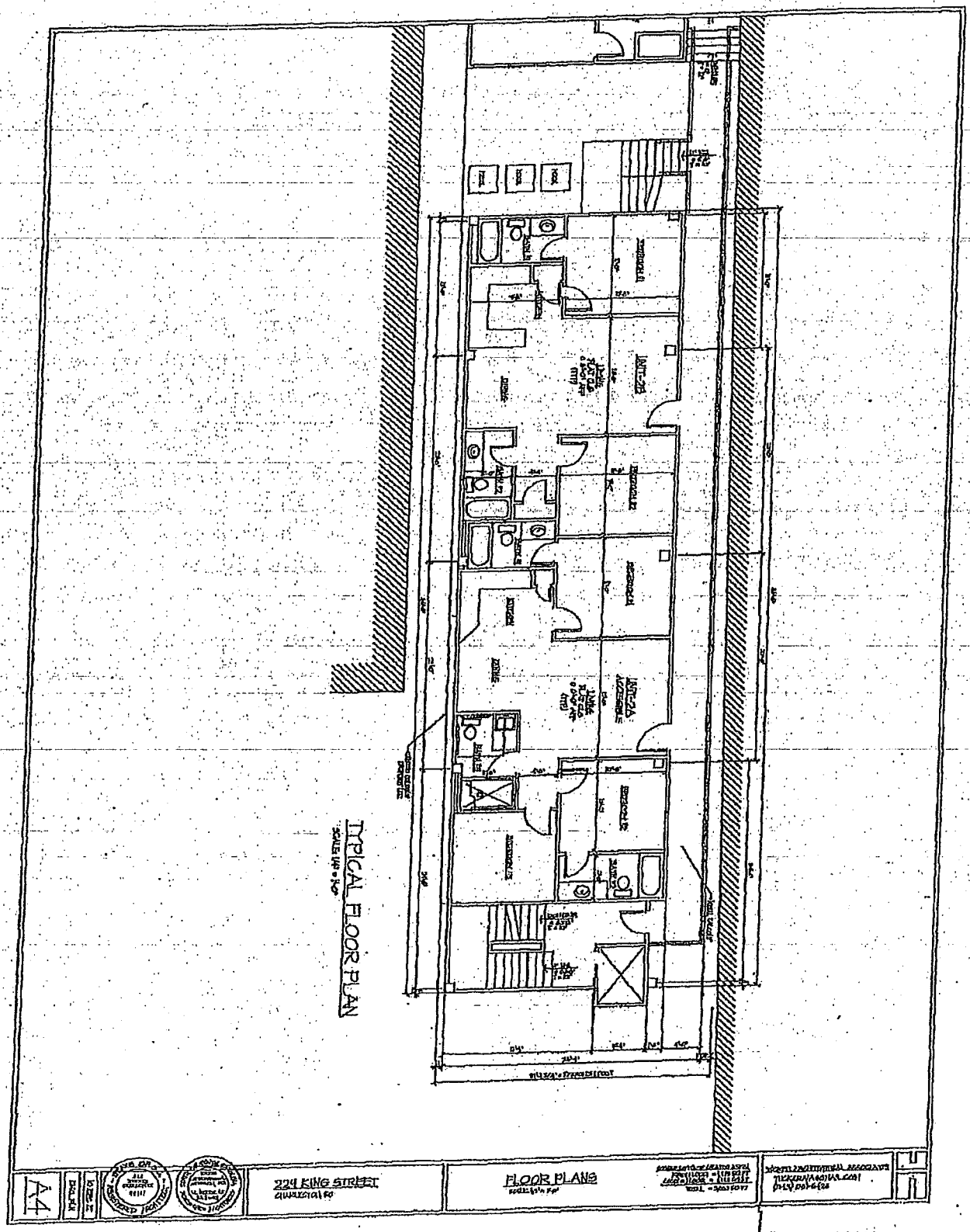
MAGNETIC
REF. -#2
12' ALLEY
DB F105, PG 155
TMS 457-08-01-065
PHYLLIS D. WAKAT
NF
S88°11'29"W
24.92'
(TIE)
ASPHALT
TMS 457-08-01-084
CHARLESTON PLACE, LLC
152 MARKET ST.
N02°17'07"W
27.86'
SPIKE
3 STY.
CMU/BRICK
S89°24'57"W
29.11'
ASPHALT
N89°02'07"E
79.54'
PROPOSED
PARKING
PROPERTY LINE
IS WALL LINE
DB M41, PG 108
TMS 457-08-01-062
KATHERINE J. KEGEL
231 KING ST.
BC
29.4'
1 STY.
CMU/BRICK
TMS 457-08-01-064
CHARLESTON PLACE, LLC
225 KING ST.
N89°44'32"E
156.16'
1 STY.
CMU/BRICK
2 STY.
CMU/BRICK
S89°24'57"W
202.19'
ALLEY/ACCESS TO
PROPERTY LINE
IS WALL LINE
DB M41, PG 108
23.2'
ALLEY/EASEME
3
CMU
MARKET STREET
R/W VARIES

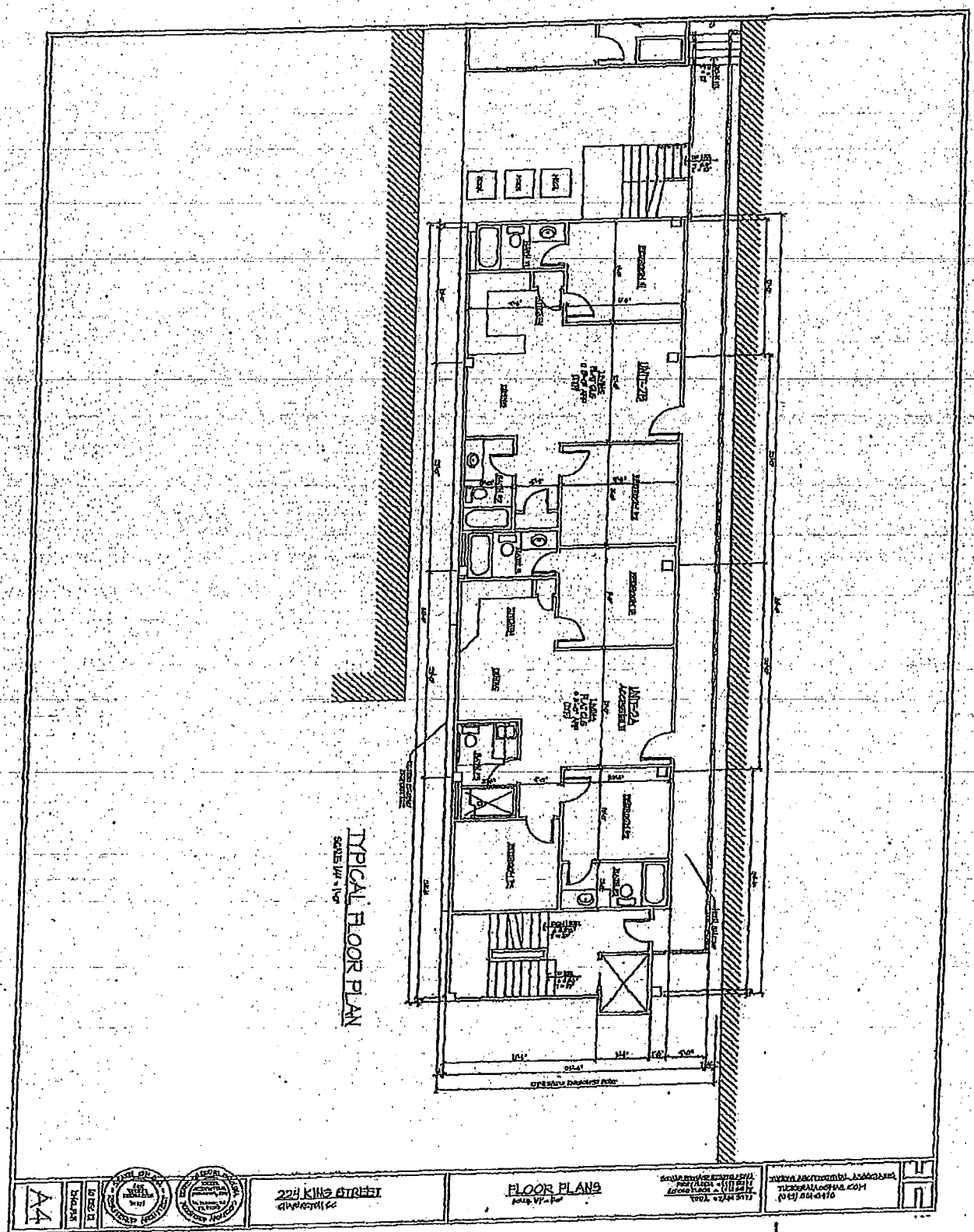

GRICE SURVEYING, INC.
LAND SURVEYING SERVICES
410 GENERAL MOULTRIE DRIVE
MONCKS CORNER, S.C. 29461
PHONE: (843) 825-3573
EMAIL: rgrice@gricesurveying.com
SCALE: 1" = 30'
0 15 30
LEGEND:
PCF - PROPERTY CORNER FOUND (AS NOTED)
PCS - PROPERTY CORNER SET (AS NOTED)
CALCULATED POINT, NO MARKER SET
UTILITY POLE
PB - PLAT BOOK
DB - DEED BOOK
PG - PAGE
R/W - RIGHT-OF-WAY
EX - EXISTING
NF - NAIL FOUND
BC - BUILDING CORNER
DH - DRILL HOLE
BOUNDARY SURVEY
No. 229 KING STREET
TMS 457-08-01-063
LOCATED IN THE
CITY OF CHARLESTON
CHARLESTON COUNTY, SC
OWNED BY:
IAKOVOS S. FERDERIGOS
DATE: OCTOBER 7, 2011
SCALE: 1" = 30'
TOTAL AREA
6,586 sq. ft.
0.151 acres
MARKET STREET R/W VARIES
12' ALLEY
DB F106, PG 155
TMS 457-08-01-066
PHYLLIS D. WAKAT
ASPHALT
TMS 457-08-01-064
CHARLESTON PLACE, LLC
152 MARKET ST.
CMU/BRICK
1 STY.
SPIKE
27.88'
N10°27'07"W
12.5'
PROPOSED PARKING
PROPERTY LINE IS WALL LINE DB M41, PG 108
TMS 457-08-01-062
KATHERINE S. HODGES
201 KING ST.
7.8'
9.0'
TMS 457-08-01-054
CHARLESTON PLACE, LLC
225 KING ST.
1 STY. CMU/BRICK
1 STY. CMU/BRICK
2 STY. CMU/BRICK
3 STY. CMU/BRICK
ALLEY ACCESS TO PARKING
ALLEY EASEMENT DB M41, PG 108
ENTRANCE
BC
LI
0.4'
KING STREET R/W VARIES
ASPHALT
GRANITE CURB
REFERENCES:
1.) TMS #457-08-01-063
2.) PLAT BY HERBERT A. NEMYER, JR. DATED SEPTEMBER 18, 1980 PB AR, PG 117 CHARLESTON COUNTY RMC
3.) PLAT BY G.M. HOWE DATED MAY 14, 1941 PB S, PG 91 CHARLESTON COUNTY RMC
4.) PLAT BY LEWIS E. SEABROOK DATED OCTOBER 23, 1953 PB DA, PG 863 CHARLESTON COUNTY RMC
5.) PLAT BY SOUTHEASTERN SURVEYING INC. DATED FEBRUARY 20, 1987 PB BM, PG 185 CHARLESTON COUNTY RMC
6.) PLAT BY W.L. GAILLARD DATED DECEMBER 18, 1991 PB CF, PG 192 CHARLESTON COUNTY RMC
7.) DEEDS:
DB R318, PG 119
DB N212, PG 843
DB F105, PG 155
DB T25, PG 400
DB F43, PG 69
DB M41, PG 108
NOTES:
1.) THE BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION. AREA CALCULATED BY THE COORDINATE METHOD.
2.) THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA, ZONE AE-13, AS PER SCALING FROM FEMA FIRM #45019C0578J DATED 11/17/04, (COMMUNITY #150216), CONSULATE WITH LOCAL BUILDING OFFICIALS FOR ANY CHANGES TO FIRM OR SPECIAL RESTRICTIONS BEFORE ANY CONSTRUCTION.
3.) THIS PLAT REPRESENTS A SURVEY BASED ON THE REFERENCES LISTED HEREON AND FOUND MONUMENTATION AND IS NOT THE RESULT OF A TITLE SEARCH. BUILDING SETBACKS AND OR OTHER RESTRICTIONS ARE NOT SHOWN HEREON.
4.) THERE HAS BEEN NO ENVIRONMENTAL OR UTILITY INVESTIGATIONS, SURFACE OR SUBSURFACE, DONE FOR THIS SURVEY. SOME IMPROVEMENTS TO SITE NOT SHOWN HEREON.
BEAUFAIN ST.
MARKET ST.
1ST. MARY ST.
KING ST.
LOCATION MAP N.T.S.
MAGNETIC REF. N
LINE TABLE
LINE | BEARING | DISTANCE
L1 | S00°36'57"E | 27.48'
L2 | S64°24'57"W | 5.35'
I, Randolph L. Grice, a Professional Land Surveyor of the State of South Carolina, do hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein.
DATE:
Randolph L. Grice, PLS S.C. Registration Number 14183
This is not a valid true copy of this document unless bearing an original dated signature and the raised, embossed seal of the surveyor.
SITE PLAN
229 KING STREET
A2
Document 0107


KING STREET
KING STREET
THIRD FLOOR PLAN
SECOND FLOOR PLAN
FIRST FLOOR PLAN
224 KING EAST
FLOOR PLANS


TYPICAL FLOOR PLAN
229 KING STREET
FLOOR PLANS
A4

UNIT-2B
UNIT-2A
ACCESSIBLE
TYPICAL FLOOR PLAN
FLOOR PLANS
224 King Street
A4


TYPICAL FLOOR PLAN
224 KING STREET
FLOOR PLANS
A4


TYPICAL FLOOR PLAN
224 KING STREET
FLOOR PLANS
A4

UNIT-2B
UNIT-3A
TYPICAL FLOOR PLAN
SCALE: 1/4" = 1'-0"
FLOOR PLANS
224 KING STREET
A4

Gmail

Jacob Ferderigos <fakovosstavros@gmail.

Fwd: Old Town

4 messages

Jacob Ferderigos <fakovosstavros@gmail.com>
To: Philip Ferderigos <pferderigos@barnwell-whaley.com>, Spiros Ferderigos <spirosferderigos@gmail.com>

Sent from my iPhone

Begin forwarded message:

> From: Athan Fokas <fokasa@bellsouth.net>
> Date: June 18, 2013, 8:42:44 PM EDT
> To: "fakovosstavros@gmail.com" <fakovosstavros@gmail.com>
> Subject: Fwd: Old Town

Sent from my iPhone

Begin forwarded message:

> From: "Joe Tucker" <tuckerajr@gmail.com>
> Date: June 16, 2013, 4:24:36 PM EDT
> To: "Kevin" <klawallwalk@yahoo.com>, "Athan Fokas" <fokasa@bellsouth.net>
> Subject: Old Town
>
> We are continuing our progress in preparation for tomorrow.
>
> Attached are our latest drawings.
>
> Joe
>
> TUCKER ARCHITECTURAL ASSOCIATES
>
> 772 Gypsy Lane
>
> Mt Pleasant, SC 29464
>
> 843.881.6429 phone
>
> www.tuckerarchitectural.com
>
> tuckerajr@gmail.com