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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No.: 2018-CP-43-01583
Appellate Case No. 2019-000873

M.B. Hutson.....Appellant,

v.

A. Paul Weissenstein.....Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

BACKGROUND

Respondent respectfully moves this Court for an order dismissing the current Appeal. Appellant avers that he seeks to challenge the Circuit Court's order denial of his purported "motion to reconsider." However, no valid Rule 59(e) motion was filed by Appellant, and his notice of appeal is untimely.

By way of background, the Circuit Court entered summary judgment for Respondent on February 25, 2019. (Exhibit A, "Summary Judgment Order"). Thereafter, Respondent's counsel emailed the entered order to Appellant on February 26, 2019. (Exhibit B). Thus, Appellant received notice of entry of the Summary Judgment Order on February 26, 2019 and had ten (10)

days from then to serve a Rule 59(e) motion or thirty (30) days to file a notice of appeal. Appellant did neither.

This notice of appeal states that it was served on Respondent's counsel on May 17, 2019--eighty (80) days after Appellant received notice of entry of the Summary Judgment Order. As no Rule 59(e) motion was filed after entry of the Summery Judgment Order, this appeal is untimely.

Appellant suggests that he is appealing an order of the Circuit Court dated April 22, 2019 that purports to deny a motion to reconsider the Circuit Court's grant of summary judgment. (Exhibit C). However, he did not file a Rule 59(e) motion asking that the Summary Judgment order be altered or amended. Instead, Appellant filed a pre-emptive "motion to reconsider" on February 13, 2019. At that time, however, the Circuit Court had not entered an order that could be the subject of a Rule 59(e) motion. (Exhibit D, "Premature Motion to Reconsider", Exhibit E, "Circuit Court Docket").

Nonetheless, since a motion was filed (albeit a defective motion) it was placed on a motions roster and then subsequently denied by the Circuit Court. (Exhibit F, "Order Denying Motion to Reconsider"). However, there is no Court rule or Rule of Civil Procedure that allows for the filing of a pre-emptive Rule 59(e) motion. Thus, the Premature Motion to Reconsider was invalid and did not attach to the Summary Judgment Order.

In summary, no Rule 59(e) motion was served within ten (10) days of entry of the Summary Judgment Order. Therefore, the Circuit Court did not have jurisdiction to hear the Premature Motion to Reconsider. Likewise, the Premature Motion to Reconsider did not toll Appellant's time to serve a notice of appeal. Accordingly, the Appellant failed to serve a notice of appeal within thirty (30) days of entry of the Summary Judgment Order, and this appeal is untimely.

ANALYSIS

"A motion to alter or amend the judgment shall be served not later than 10 days *after* receipt of written notice of the entry of the order." Rule 59(e), SCRCP (emphasis added). Here, no Rule 59(e) motion was filed within 10 days of the entry of the Summary Judgment Order. When the Appellant failed to timely file any post-judgment motions after entry of the Summary Judgment Order, the Summary Judgment Order became a final order and the Circuit Court lost jurisdiction over the case. Consequently, Appellant did not serve and file a valid "motion to reconsider," nor did he timely serve a notice of appeal.

Similar facts were recently discussed by the South Carolina Supreme Court in *Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432-433 (2018). In *Overland*, the Supreme Court reiterated that the time limitations of Rule 59(e) cannot be altered by the trial court or by agreement of the parties. *Id.* Consistent with *Overland*, this black and white rule applies not only to an extension of time after entry of an order, but likewise applies to an alleged motion to reconsider served and filed *prior* to entry of an order.

Indeed, in *Overland* the Supreme Court stressed that the Circuit Court loses jurisdiction over a matter after the time period for filing post-judgment motions lapses. *Id.*, (citing, *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006)("Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."); *Doran v. Doran*, 288 S.C. 477, 343 S.E.2d 618 (1986) (on appeal from an order entered just before the effective date of the Rules of Civil Procedure, holding that the trial court lost the power to modify the final order after the end of the term of court and noted that under Rule 59(e), the trial court only has the power to alter or amend such an order for a ten-day period after entry of judgment).

In summarizing this firm rule, the Supreme Court held that "the failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal." *Overland*, 423 S.C. at 257, 815 S.E.2d 431, 433 (emphasis added).

Here, when Plaintiff filed the Premature Motion to Reconsider, there was no order that could be altered or amended. On February 25, 2019, the Order Granting Summary Judgment was entered. Thereafter, Plaintiff did not file a Rule 59(e) motion. Accordingly, no valid motion to reconsider was pending before the Circuit Court on the date the Purported Motion to Reconsider was heard.

Moreover, as no Rule 59(e) motion was filed within ten (10) days of entry of the Summary Judgment Order, the Summary Judgment Order became a final order and the Court lacked jurisdiction to alter or amend the Summary Judgment Order. Thus, the Circuit Court was without jurisdiction to rule on the alleged motion.

CONCLUSION

Appellant did not file a Rule 59(e) motion within ten (10) days of notice of entry of the Summary Judgment Order. Likewise, Appellant did not serve a notice of appeal within thirty (30) days of notice of entry of the Summary Judgment Order. Indeed, the current notice of appeal was filed eighty (80) days after notice of entry of the Summary Judgment Order. Accordingly, this appeal is untimely and should be dismissed.

[Signature Page to Follow]

This 20th day of June, 2019.

Respectfully submitted by,

Steven R. Kropski (S.C. Bar # 101441)
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Attorney for Respondent

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF SUMTER MB HUTSON A/K/A MB HUTSON, Plaintiff, vs. PAUL WEISSENSTEIN (Attorney)/ PAUL WEISSENSTEIN, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT CASE NO.: 2018-CP-43-1583 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant's motion for summary judgment. The parties have filed submissions in support of their respective positions, and the Court heard oral arguments from Plaintiff, pro se, and counsel for the Defendant on December 10, 2018. After careful consideration of the pleadings, affidavits, documentary evidence and the arguments of the parties, the Court grants the Defendant's motion for summary judgment.

BACKGROUND

This matter arises out of a long-term dispute between Plaintiff, M.B. Hutson, and non-parties TLC Holdings, LLC, and the individual members of TLC Holdings, LLC (collectively the "TLC Parties"). Defendant, Attorney Paul Weissenstein, represented Plaintiff in one of several lawsuits between Hutson and the TLC Parties. Although not directly related to Weissenstein's representation of the Plaintiff, a recitation of the history between Hutson and the TLC Parties aids in the disposition of this motion.

In fall of 2010, Plaintiff and the TLC Parties began discussing a potential real property and business transaction wherein Hutson would take over a campground known as "Big Water Resort"

("BWR"), along with the real property on which it was located. At the time of the BWR Transaction, Hutson was not represented by the Defendant Weissenstein, but was represented by a lawyer based out of Tennessee, Andrew Tucker, Esq.

In connection with the BWR transaction, on December 10, 2010 Hutson executed a lease purchase agreement ("LPA") related to real property in Clarendon County, South Carolina on which BWR was located. Plaintiff also purchased the limited liability company that operated BWR ("BWR, LLC").

Prior to the BWR Transaction, BWR, LLC sold what the parties refer to as "lifetime retail membership agreements" ("Lifetime Memberships") to individuals and families who then became members of BWR. These agreements were entered into between BWR, LLC and the campground members, and purported to give the members exclusive access to the campground. Hutson alleges that he did not want to operate a campground, but rather wished to develop residential structures on certain portions of the unimproved Property[1]. At the time of the transaction, Hutson was aware of the Lifetime Memberships.

On November 11, 2010, Hutson's realtor wrote to the realtor for the TLC Parties:

> Attached is Susan's lifetime membership info. (sic) regarding Big Water camp ground. ***My buyer is concerned about the "life time" members and the impact they can have on the future development of the property***. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property.?

[1] For purposes of this motion, the evidence and all inferences which can be reasonably drawn from the evidence are viewed in the light most favorable to the Plaintiff.

Consistent with Hutson's intention to develop the property, the LPA provided Hutson an opportunity to examine marketable title to the Property, identify any title defects, and potentially terminate the transaction if title defects were not cured. Page 5 of the LPA states:

> Purchaser shall, within ninety (90) days after the Effective Date [of the LPA], investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser. Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety days after the Effective Date, then the Purchaser shall be deemed to have accepted title to the premises with all exceptions and conditions. If Purchaser timely notifies Seller of Title Exceptions (other than the Title Exceptions that can be cured by the payment of money to satisfy any liens as of the Closing, which Title Exceptions shall be cured as of the Closing), Seller may (but shall not be required to) cause all Title Exceptions to be deleted as Exceptions from the Title Commitment, as the case may be, on or prior to 30 days prior to closing (the "Cure Deadline"). If Seller fails or refuses to cure any Title Exceptions prior to the Cured Deadline, then Purchaser may, as its sole and exclusive remedy for the existence of, or Seller's failure to cure, such Title Exceptions before the Cured Deadline, elect to terminate this Agreement, or waive its right to terminate this Agreement in writing and accept the Title Commitment with all uncured Title Exceptions.

Hutson and the TLC Parties signed the LPA and related transaction documents in December of 2010.

By November 29, 2011, Hutson defaulted under the LPA and the TLC Parties filed to eject him from the subject property. Defendant Weissenstein represented Hutson in this ejectment action, in which Hutson asserted counterclaims against the TLC Parties for various misrepresentations, including a sewer moratorium, issues with the utility provider, and pending litigation which was to have been dismissed prior to closing on the LPA, but allegedly remained pending as of November 2011. Weissenstein, on behalf of Hutson, did not file a counterclaim

alleging fraudulent concealment of title defects created by the Lifetime Memberships and there is no evidence in the record that such a counterclaim was considered.

Ultimately, the 2011 ejectment action ended in a settlement incorporated into a consent order that, *inter alia*, extended Hutson's time to comply with his payment obligations and attempts to develop the property.

Thereafter, Hutson defaulted under the terms of the settlement agreement, and the TLC Parties again initiated an action to eject Hutson from the subject property. Defendant Weissenstein did not represent Hutson in this subsequent ejectment proceeding, which concluded with an order ejecting Hutson from the property.

In April 2014, a class action lawsuit was filed against the TLC Parties in Federal District Court by over 1,000 putative class members who purchased Lifetime Memberships. *Reed et al. v. Big Water Resorts et al.*, Case no. 2:14-cv-01583 (U.S. Dist. Court, D.S.C.). The TLC Parties filed a third-party complaint against Hutson alleging he was responsible for the damages alleged by the putative class members.

Hutson then counterclaimed against the TLC Parties alleging, *inter alia*, that the TLC Parties defrauded him by failing to disclose that the Lifetime Memberships created a title defect,[2] and that the settlement agreement resolving the 2011 ejectment action was procured by fraud since he was unaware of the alleged title defect created by the Lifetime Memberships.

The District Court adopted the Magistrate Judge's Report and Recommendation dismissing Hutson's counterclaims based upon a theory of *res judicata*. The Court held that

[2] Hutson alleges that the Lifetime Memberships were leases that clouded title to the subject property. For purposes of this motion, this allegation is construed in favor of the nonmoving party, Hutson. However, the Court expressly makes no ruling on the merits of this allegation as it is not material to the disposition of the motion.

settlement of the 2011 ejectment action precluded the re-litigation of counterclaims that were or could have been asserted in the 2011 ejectment action.

In their decisions, the Magistrate Judge and District Judge noted that documentary evidence, deposition testimony, and open court statements by Hutson established that he was aware of the Lifetime Memberships prior to closing, he was aware they may impact title prior to closing, and was, thus, aware of these issues prior to entering into the settlement agreement as part of the 2011 ejectment action. In light of these findings, the Federal Court held that the subject settlement agreement was not procured by fraud. *Reed et al. v. Big Water Resorts et al.*, case no. 2:14-cv-01583 (U.S. Dist. Ct., D.S.C.) (5-20-2016 order of Judge D. Norton) (4-5-2016 Report & Recommendation of Judge M. Baker).

Hutson now alleges that Weissenstein committed legal malpractice by failing to recognize the title defect created by the Lifetime Memberships. In his Amended Complaint, Hutson advances two theories. First, Hutson alleges that Weissenstein failed to advise him that the Lifetime Memberships were a cloud on title that TLC concealed at the time of the LPA. Second, Hutson alleges that, but for Weissenstein allowing him to enter into the settlement agreement as part of the 2011 eviction action, Hutson would not have lost his counterclaim in the Federal class action. Hutson alleges that Weissenstein committed malpractice by failing to assert a counterclaim in the 2011 ejectment action for fraud based upon the TLC Parties' concealment of the cloud on title created by the Lifetime Memberships. Hutson alleges that he would have prevailed on a claim of fraudulent concealment against the TLC Parties.

In support of his claim, Hutson also submitted the expert affidavit of Mark Hardee, Esq., which alleges:

> h. M.B. Hutson intended to purchase and develop property on lake Marion through a lease purchase agreement which also included an on going business.
>
> i. Unknown to Mr. Hutson was that a title defect existed on the property due to hundreds of 70 year right to sole use agreements which had been sold by TLC Holdings, LLC and Big Water Resort.
>
> j. Mr. Hutson was unaware that these agreements constituted a title defect on the property which would keep him from developing the property as planned.
>
> ...
>
> o. Mr. Weissenstein fell below the standard of care expected of attorneys in similar situation at the time, by failing to advise Mr. Hutson that the existence and effect of the long term leases would prevent him from ever developing the property as he intended, and that his default of the settlement agreement was inevitable, and that he would be forever barred from prosecuting and using as a defense the fraud perpetrated on him by TLC Holding LLC.

Weissenstein argues that he cannot be liable for Hutson's failure to discover the alleged title defect, as Hutson was represented by a different lawyer with respect to the initial transaction with the TLC Parties, including the LPA.

Weissenstein further argues that the evidence shows Hutson was both aware of the Lifetime Memberships before closing on the LPA, and aware that the Lifetime Memberships could potentially impact title prior to closing on the LPA. Weissenstein avers that after the LPA's ninety day examination period expired, Hutson's could not seek recourse against the TLC Parties for alleged title defects, including in the 2011 ejectment action.

Finally, Weissenstein argues that Hutson's legal malpractice claim is barred by the statute of limitations, since Hutson knew or should have known that no counterclaim for concealment of the alleged title defect created by the Lifetime Memberships was brought in the 2011 ejectment action at the time he signed the settlement agreement.

LEGAL STANDARD

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law:" Rule 56, SCRCP; *South Carolina Prop. & Cas. Guar. Ass'n. v. Yensen,* 345 S.C. 512, 528, 518, 548 S.E.2d 880, 883 (Ct.App.2001). "When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits." *Anthony v. Padmar, Inc.,* 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ANALYSIS

I

In his Amended Complaint, Hutson asserts twelve causes of action styled as "counts of malpractice": (1) breach of duty by attorney #1; (2) breach of duty by attorney #2; (3) negligence; (4) damage to the client/plaintiff; (5) proximate causation of the client's damages by the breach; (6) fraudulent coverup by defendant(s); (7) gross negligence damaging plaintiff; (8) gross negligence; (9) gross negligence: failure to introduce S.C. Law 27-33-30; (10) negligence and lack of concern; (11) allowing fraud upon the court; (12) on-going damages from malpractice.

As an initial matter, although Hutson separately lists his counts of malpractice, each separate count alleges the same thing; that Defendant Weissenstein breached a duty arising out of

the attorney-client relationship. Accordingly, the Court construes all of these allegations as asserting a single claim for legal malpractice consistent with South Carolina Supreme Court precedent. *See, RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012) (where a separately plead cause of action is premised on the duty inherent in the attorney-client relationship and arises out of the same factual allegations, the claim for legal malpractice will encompasses the separately plead claim).

II

Moving next to an analysis of Hutson's allegations under the framework of a legal malpractice claim, under South Carolina law, a plaintiff must establish four elements in a legal malpractice action: "(1) The existence of an attorney-client relationship; (2) A breach of duty by the attorney; (3) Damage to the client; and (4) Proximate cause of the client's damages by the breach." *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010) (quoting *Rydde v. Morris*, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009)). Failure to establish any one of the four elements of legal malpractice renders the legal malpractice claim insufficient as a matter of law. *See, e.g., Henkel v. Winn*, 346 S.C. 14, 18, 550 S.E.2d 577, 579 (Ct. App. 2001).

Here, it is undisputed that Hutson and Wiessenstein were in an attorney-client relationship with respect to the 2011 ejectment action. Thus, Hutson has established the first element of a legal malpractice claim with respect to the 2011 ejectment action.

It is likewise undisputed that no attorney-client relationship was present between Hutson and Weissenstein with respect to the initial transaction between Hutson and the TLC Parties, including the examination of title.

The Court finds that the undisputed facts show that Weissenstein cannot be held liable for an alleged failure to identify title defects created by the Lifetime Memberships. It is indisputable that *before* closing on the LPA, Hutson's realtor sent an email to the TLC Parties' realtor stating, *inter alia,* **"my buyer is concerned about the "life time" memberships and the impact they can have on future development of the property...will these memberships have an impact on obtaining clear title for the property."**

Hutson had knowledge that the Lifetime Memberships could potentially impact title to the subject property. Pursuant to the terms of the LPA, Hutson was required to examine the possible impact of these Lifetime Memberships within ninety days of closing on the LPA. To the extent that an error was made in failing to identify a title defect caused by the Lifetime Memberships, Weissenstein cannot be held liable for such error.

III

Hutson also alleges that Weissenstein committed malpractice by allowing him to sign the settlement agreement ending the 2011 ejectment action without litigating a counterclaim for fraudulent non-disclosure of the title defects created by the Lifetime Membership. Hutson alleges that, as a result of signing the settlement agreement instead of litigating a fraudulent non-disclosure counterclaim, he was precluded from making the same claim in the Federal class action lawsuit against the TLC Parties, on which he would have prevailed. The Court disagrees.

Integral to defeating summary judgment on a claim for legal malpractice is expert testimony expressly stating that the Plaintiff "most probably" would have obtained a better result in the underlying matter "but for" the alleged breach of an attorney's standard of care. *See, Doe v. Howe*, 367 S.C. 432, 445-46, 626 S.E.2d 25 (Ct. App. 2005)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have received a greater

settlement "but for" the attorney's breach of the standard of care); *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 290, 701 S.E.2d 742 (2010)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have obtained a better outcome had the attorneys not breached their standard of care). The question of the success of the underlying claim is a question of law. *Holmes v. Haynsworth, Sinkler, & Boyd, P.A.*, 408 S.C. 620, 636, 760 S.E.2d 399 (2014) citing, *Howe*, 367 S.C. at 442.

Here, the Court finds that Hutson cannot establish that he would have prevailed on a claim for fraudulent nondisclosure of title defects created by the Lifetime Memberships. First, Hutson's expert does not assert that Hutson "most probably" would have achieved a better result. Thus, Hutson cannot establish this essential element.

Furthermore, while ordinarily the issue of proximate cause is a jury question, where there is no genuine issue of material fact concerning proximate cause, the Court may grant summary judgment. *Singleton v. Sherer*, 377 S.C. 203, 659 S.E.2d 196, 206 (Ct. App. 2008). The Court finds that there is no genuine issue of material fact precluding summary judgment.

Here, the evidence is capable of only one reasonable inference. Hutson was aware of the Lifetime Memberships prior to closing on the LPA. Page 5 of the LPA required Hutson to "within ninety (90) days after the Effective Date [of the LPA], investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser." The LPA further states "if Purchaser does not notify Seller in writing of Title Exceptions within ninety days after the Effective Date, then the Purchaser shall be deemed to have accepted title to the premises with all exceptions and conditions."

Accordingly, by the time the TLC Parties initiated the 2011 ejectment action, Hutson had accepted title to the premises with all exceptions and conditions based upon the plain and

unambiguous terms of the LPA. Thus, Hutson could not prevail on a claim alleging title defects during the 2011 ejectment, as he had already contractually agreed to accept title "with all exceptions and conditions."

Moreover, Hutson had knowledge of the Lifetime Memberships *before* he closed on the LPA, and also was on notice that the Lifetime Memberships could impact clear title to the property *before* he closed on the LPA. Thus, a fraud claim against the TLC Parties with respect to alleged concealment of title defects created by the Lifetime Memberships would necessarily fail.

To establish fraud, the following nine elements must be shown: 1) a representation or nondisclosure of a material fact, 2) its falsity, 3) its materiality, 4) either knowledge of its falsity or a reckless disregard of its truth or falsity, 5) intent that the representation be acted upon, 6) the hearer's ignorance of its falsity, 7) the hearer's reliance on its truth, 8) the hearer's right to rely thereon, and 9) the hearer's consequent and proximate injury. *Kiriakides v. Atlas Food Sys. & Servs., Inc.,* 338 S.C. 572, 586, 527 S.E.2d 371, 378 (Ct.App.2000).

Although Hutson's expert affidavit suggests that Hutson was "unaware" the Lifetime Memberships created a title defect, the documentary evidence in the record before the Court shows that Hutson was, in fact, aware that the Lifetime Memberships could impact title to the subject property. In fact, the Federal District Court made very specific factual findings that Hutson knew about the membership agreements at the time he purchased the Big Water Resort. (4-5-16 Report & Recommendation of Judge Baker at 23, note 5.). Among other things, the District Court notes that Hutson's real estate agent contacted an attorney regarding the lifetime memberships and how they would impact obtaining clear title to the property, Hutson admitted at the District Court hearing he knew there were memberships, and Hutson stated he and his original attorney "sat at the table together and went over" the membership agreements before closing. Therefore, to the

extent that Hutson alleges the TLC Parties fraudulently concealed that the Lifetime Memberships could impact clear title to the property, the evidence establishes that Hutson was not ignorant to this fact. Accordingly, as a matter of law, Hutson cannot show that he "most probably" would have prevailed against the TLC Parties in a claim for fraudulent nondisclosure of title defects.

The Court finds that, viewing the evidence in the light most favorable to Hutson, no material facts are in dispute and Hutson cannot satisfy all four elements of a legal malpractice claim against Weissenstein.

IV

Weissenstein also argues that Hutson's legal malpractice claim is barred by the statute of limitations. The Court agrees.

The statute of limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years); *see Berry v. McLeod,* 328 S.C. 435, 444–45, 492 S.E.2d 794, 799 (Ct.App.1997) (concluding that section 15–3–530(5) of the South Carolina Code provides a three-year statute of limitations for legal malpractice actions).

Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct.App.1989); *see* S.C. Code Ann. § 15–3–535 (2005) ("[A]ll actions initiated under Section 15–3–530(5) must be commenced within three

years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). "This standard as to when the limitations period begins to run is *objective* rather than subjective." *Burgess*, 300 S.C. at 186, 386 S.E.2d at 800. "Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." *Id.*

As the Court has described in detail, Hutson was aware of the Lifetime Memberships and the possibility that the Lifetime Memberships could impact clear title to the property prior to closing on the LPA. Therefore, to the extent that Hutson believes a fraud counterclaim should have been asserted by Weissenstein in the 2011 ejectment action against the TLC Parties related to nondisclosure of alleged title defects created by the Lifetime Memberships, Hutson knew or should have known of this claim prior to the conclusion of the 2011 ejectment action. The 2011 ejectment action concluded on April 13, 2012 when Judge James entered a consent order adopting the settlement agreement signed by the parties.

The Court finds that Mr. Hutson knew or should have known that Mr. Weissenstein did not assert a cause of action for fraudulent nondisclosure of alleged title defects caused by the Lifetime Memberships at that time. This action, alleging malpractice against Weissenstein was filed on September 9, 2018. The Court finds that this action was filed after the expiration of the three-year statute of limitations.

V

After consideration of the material in the record, the relevant law, the parties' memoranda, and the oral arguments of the parties, Defendant's motion for summary judgment is GRANTED.

[Judge's Electronic Signature to Follow]

Sumter Common Pleas

Case Caption: M B Hutson VS Paul Weissentein

Case Number: 2018CP4301583

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

EXHIBIT B

Steve Kropski

From: Steve Kropski
Sent: Tuesday, February 26, 2019 12:19 PM
To: 'H Hutson'
Subject: Hutson v. Weissenstein
Attachments: Order Granting Summary Judgment (signed).pdf

Good afternoon Mr. Hutson:

I told you I would email you the signed order when it was filed. Please find attached the filed order granting summary judgment in favor of Weissenstein. I believe the Court likely mailed a copy to you as well, however, please let me know if you are unable to open the attachment.

Earhart Overstreet
ATTORNEYS AT LAW

Steven R. Kropski
Attorney
Direct 843 972 9404
PO Box 22528, Charleston, SC 29413

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No. 2018-CP-430-1583
Appellate Case No. UNKNOWN

A. Paul Weissenstewin, Esq.,

Respondent,

v.

M B Hutson, Appellant.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL on the respondents by depositing a copy of it in the United States Mail, postage paid, on May 17, 2019, addressed to their attorney of record, Steven Kropski, Earhart Overstreet, LLC, Post Office Box 22528, Charleston, South Carolina, 29413.

May 17, 2019

s/ M B Hutson
M B Hutson
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308 - 2714
Pro Se Appellant

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No. 2018-CP-430-1583

A. Paul Weissenstewin, Esq.,

Respondent,

v.

M B Hutson, Appellant.

NOTICE OF APPEAL

M B Hutson appeals the order [judgment] of the Honorable Kristi Curtis dated April 22, 2019. Appellant received written notice of entry of this order [judgment] on April 24, 2019.

May 17, 2019

s/ M B Hutson
M B Hutson
Post Office Box 2755
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(803) 308 - 2714
Pro Se Appellant

Other Counsel of Record:

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EXHIBIT D

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

Civil Action No. **2018-CP-430-1583**

MB Hutson/MB Hudson,

Plaintiff

vs.

A. Paul Weissenstein, Esq., Weissenstein Law Firm, John Doe #2 ,

Defendant(s).

MOTION TO RECONSIDER JUDGE CURTIS' RULING DATED FEBRUARY 4, 2019, RE: HUTSON v. WEISSENSTEIN

PURSUANT TO RULE 59 (e), PLAINTIFF IS ASKING AND MOVES THE HONORABLE COURT TO RECONSIDER ITS FINDINGS OF FEBRUARY 4, 2019, WHICH WERE FOR THE DEFENDANT AND TO RULE IN FAVOR OF THE PLAINTIFF SINCE THE HONORABLE COURT ERRED IN ITS RULING BECAUSE THERE ARE ISSUES OF MATERIAL FACT THAT MUST BE DETERMINED BY A JURY.

1. The date that Plaintiff "knew or reasonably should have known" the "legal significance" of the Retail Membership Agreements (hereinafter referred to as RMAs) with respect to the land that Plaintiff was to develop is the issue in question with respect to when the time for the statute of limitations began. Legally that question is a question of fact to be determined by a jury after a hearing of all the facts surrounding the purchase of the property in question by Plaintiff. Of importance in answering that question is what is the standard by which Plaintiff's knowledge and capability will be measured, by that of a layman or that of an attorney. Those are two different standards. There is no evidence that Plaintiff was an attorney licensed in SC, which would have placed him under the higher standard.

2. Significant evidence which raises more than a scintilla of evidence in favor of the reasonableness of Plaintiff's knowledge and what Plaintiff should have known when, follows:

3. Plaintiff paid for and received a title opinion on the property in question. A thorough review of the land records for Clarendon County, SC executed by the experienced Williamson Research Services and reviewed by Nester and Jackson Law Firm revealed that there were no conditions of record that would prohibit the property from being developed. Therefore, Plaintiff's belief that he, Plaintiff, could develop the property was reasonable. Plaintiff did what Plaintiff knew to do in that situation. The first two pages of the Title Search is attached as Exhibit "Z" for verification. The full Title Search will be produced during Discovery. The Title Search was completed March 15, 2011, during the 90 day due diligence period as outlined in the Lease Purchase Agreement (Exhibit "B"). Plaintiff swears and will demonstrate during Discovery to the Honorable Court that no title defects caused by RMAs were on file in the county courthouse, and therefore no title defects by those RMAs were discoverable via Title Search by the Pro Se Plaintiff.

4. Plaintiff then ran into some issues and the sellers filed an action to evict Plaintiff from the property.

5. Plaintiff hired attorney, Defendant, to defend an action filed by the sellers to evict Plaintiff from the property.

6. Defendant, Weissenstein, was to fully investigate the situation, define the issues, defend Plaintiff against the eviction, and to file any counterclaims available to Plaintiff, and advise Plaintiff how to proceed.

7. Plaintiff provided Defendant, Weissenstein, with all the documents necessary for this purpose. Included in those documents were Exhibits B, C, and D (Lease Purchase Option, Membership Interest Purchase Agreement, and RMAs. The latter, granted the "sole use" of the campground properties to RMAs' holders.

8. Defendant Weissenstein held himself out as an attorney licensed to practice law in the state of South Carolina. Weissenstein advertised that he was a real estate attorney. Defendant Weissenstein held himself out as an expert in real estate law in South Carolina.

9. Despite Defendant's claims, Defendant Weissenstein did not ascertain the "legal significance" of the RMAs to the title of the property that Plaintiff had contracted to purchase and develop.

10. Defendant Weissenstein, by his actions, demonstrated to Plaintiff that Plaintiff could legally develop the property in question. Those actions are verified by Defendant's correspondences and signatures in the exhibits attached, leading to Plaintiff's reasonable belief that he could legally develop the property in question:

A) **March 31, 2012:** Exhibit "**Q**": Defendant corresponded with Sellers attorney regarding drafting "final settlement agreement" (¶ 6) and "consent order" (¶ 4) and stating "I believe that you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years." ¶ 7).

B) **April 3, 2012:** Exhibit "**AA**": Defendant works collaboratively with Plaintiff for development approval presentations to County Planning Commission, and informs Plaintiff of upcoming Planning Commission meetings, submission due dates for subsequent four months.

C) **April 12, 2012:** Exhibit "**J**": Defendant signed *Clarendon County Planning Board Commission's Application for Development* to "develop a single family subdivision at Big Water Resort."

D) **April 12, 2012:** Exhibit "**BB**": Defendant corresponds with Terry Barrett, Regional Sales Manager for Wells Fargo Home Mortgage in Raleigh, NC regarding "development of which is being coordinated by M. B. Hutson....intends to develop... The Big Water Resort...construction of...cabins on individual lots...seller will enter into contracts with individual lot purchasers...would apply for a construction perm loan with you...Please confirm that the terns set forth herein conform to the agreement an requirements of Wells Fargo Home Mortgage for the development of this project." Pages one and two.

E) **June 18, 2012:** Exhibit "**CC**": Defendant corresponds with Sellers attorney regarding the progress toward approvals and noting: "Ms. Rose at Clarendon County said this submission did not have your consent. I told her that I did not think your consent was required for each stage, but she and David Epperson (County Attorney) believe that it does...if you agree with me that your approval of each step of the proposed development is not required, please let her know....please try to approve this ASAP...(Rose) she said that she would really like to have your letter before 5:00 tomorrow."

F) **June 29, 2012:** Exhibit "**DD**": Defendant corresponds with Sellers attorney, citing construction commencing target dates, citing delays and resulting effects on the construction commencement, challenges incurred in obtaining DHEC approval, and that impact on the project dates, and requesting that seller's attorney

> "*Please contact your clients and let us know what they may be willing to do as far as additional extensions.*"

11. Until Plaintiff was told by Michael Medlock, Esq. of the Stewart Title Guarantee Company in October 2, 2015, that the membership agreements would be a cloud on the title of **some** "portions of the property" in question, Plaintiff had had no reason to question his ability to legally develop the property that Plaintiff contracted to purchase, nor did Plaintiff have enough information to file a malpractice complaint. Plaintiff became shocked and confused over

the fact that he could not understand *which* portions of the land were defective. It took at least two months later for Plaintiff to understand which portions of the 109 acres were defective. That question was answered by the Federal Class Action on December 15, 2015.

> Providing the court an example: Should an individual receive a letter from the Internal Revenue Service that simply states "Dear Sir/Madam, You owe a portion of your taxes from last year that you have not paid." Should a person get out their checkbook, sign a blank check, mail it into the Internal Revenue Service...prior to investigating what part of their taxes were not been paid?

Please note that the Stewart Title Insurance attorney instantly saw that the RMAs would be a cloud on some "portions of the property" in question. Even with that information, Plaintiff did not know *which* portions of the property title were clouded until a court ruled in a later litigation the extent of that cloud. (December 15, 2015: Federal Judge Norton's Order, *2:14-CV-01583-DCN-MGB*). This is clearly within the thirty-six month statute.

12. The only evidence that Plaintiff could have known that the membership agreements could be a problem was that Plaintiff knew of their existence. Knowing of their existence does not equate to understanding their impact on title. Defendant Weissenstein is proof of that. A non-lawyer who has secured a title opinion with respect to the property he purchased has done all that he can and what is reasonable in order to protect himself with respect to the purchase of a piece of property.

13. Plaintiff had every right, and it was reasonable for Plaintiff. to rely upon the legal advice of his lawyer, Defendant, Weissenstein. Defendant's failure to recognize the "legal significance" of the membership agreements was legal malpractice on *his* part. Plaintiff has an affidavit from an attorney that states that opinion which puts that issue to a jury, and it is also

proof that Plaintiff was reasonable in Plaintiff's belief that Plaintiff could legally develop the property in question until such time as a legal professional advised Plaintiff otherwise.

14. On **October 2, 2015,** Stewart Title Company advised Plaintiff that portions of the property had title defects due to the Family Memberships. Once Plaintiff had that information he searched over two months trying to figure out which portions of the property were defective, but could not. Plaintiff became confused and in utter disbelief. Plaintiff continued for the next two months trying to figure out which "portions of the property[1]" were the portions that had title defects. Since Plaintiff had already been wrongfully evicted off the property on April 15, 2014, he did not have the ability to re-enter the property and certainly no way to figure out what parcel(s) of the property was/were defective.

15. **On December 15, 2015, Plaintiff first learned that ALL of the property was defective by way of the Class-Action lawsuit:** After the Class discovery, depositions and Settlement Agreement was filed in Federal Court, and the Honorable Judge Norton signed off and approved the settlement, did news of that filter down to this Plaintiff.

16. **Shortly afterwards and for the first time, Plaintiff learned and fully understood that ALL of the property had title defects preventing ANY type of development, even though NO membership agreements were ever properly recorded in the Clarendon County Courthouse. Since the Title Search Plaintiff had secured during his due diligence period in early 2011 showed no type of title defect from the RMAs, Plaintiff reasonably believed that both *he and* the RMAs families could use the property.** Plaintiff

[1] Michael Medlock, Esq., S.C. Underwriting Counsel, Stewart Title Guaranty Company correspondence via e-mail.

could construct new cabins for there were many family members who had interest in purchasing the same while still being able to use the facilities including the lake, 3 swimming pools, club house, existing cabins, boat launch, camper/motorhome storage and other amenities offered by the campground.

17. **Once Plaintiff was evicted he then lost all monies including his documented equitable interest[2] and hundreds of thousands of dollars that Plaintiff had paid/invested and consequently lost due to the wrongful eviction of which Defendant could have stopped by recognizing and filing a defense for the Plaintiff exposing the clouded title and fraud within the Settlement Agreement and Consent Order which Defendant had formerly supported.**

18. **Noted again, not until December 15, 2015 did, or could the Plaintiff learn that ALL the property was defective, even though *no* memberships were ever legally recorded. Plaintiff filed his Malpractice suit against the Defendant on November 8, 2018. That filing date was, in fact, within the 36 month requirement as to the statute limits.**

19. Plaintiff's intention with respect to the property was clearly articulated in the Lease Purchase Agreement. The property Plaintiff was to develop was also displayed on drawings that were submitted to the Clarendon County Planning Commission for the purpose of obtaining permits to allow the development of the property in question. It was clear to both the Plaintiff and Defendant Weissenstein, who was actively in contact with the Plaintiff, the county,

[2] Exhibit "O". Affidavit and Equitable Interest by Bonham Gardner.

and Wells Fargo on behalf of the Plaintiff and perspective buyers as to what property and what activity Plaintiff intended with the property.

20. We know that Defendant supported his client, Plaintiff, to sign a Consent Order and Settlement Agreement to develop property that could not legally be developed due to the prior (700+) RMAs to use that exact property in question for time periods of up to 70 years.

21. The Lease Purchase Agreement required Plaintiff to not only develop the property but to also to *pay for the property by the sales of individual lots within 2 years of signing the agreement*. Those are mutually exclusive alternatives. The membership agreements were prior in time, which legally precluded the development of the property by Plaintiff, or anyone else. Therefore, the documents Defendant had his client, Plaintiff, sign could *not be* legally valid. If either Defendant or Plaintiff had understood that legal situation, these documents (Settlement Agreement and Consent Order) would not have been signed.

22. It was reasonable for Plaintiff to have not understood the legal implication of the membership agreements. It was *not* reasonable for Defendant Weissenstein to have not understood the legal implication of the membership agreements. As a licensed attorney and an expert in real estate, Defendant should not have advised Plaintiff to sign the Settlement Agreement and Consent Order. Instead, Defendant should have advised Plaintiff to file a counter-claim seeking damages from the sellers relative to the defective title.

23. The greater weight of the evidence, as to the reasonableness of Plaintiff's belief and Plaintiff's ability to understand the legal implication of the membership agreements, is in

favor of Plaintiff. Therefore, the date that triggers the statute of limitations is not when Plaintiff knew of the existence of the membership agreements, but when the legal implication of the membership agreements upon the title to ALL the property in question raised the issue of a cloud not on "portions" but upon ALL of the title. **That did not happen until December 15, 2015,** when the Federal Court action and Settlement Agreement between the owners of the RMAs and the owners of the land resolved that ALL the land was covered under the RMAs. Plaintiff had no method of knowing nor understanding that all 109 acres of said property was defective until **DECEMBER 15, 2015** which places him within the 36 month statute for he filed the malpractice on **NOVEMBER 8, 2018.**

24. A conclusion that knowledge of the memberships alone elevates Plaintiff's responsibility of knowing to the status of an attorney is not reasonable, and, it is *not* supported by any evidence period. Plaintiff is not an attorney and cannot be required to possess the legal acumen of an attorney. It would be injustice for any court to rule in such a manner. This is especially true when the very attorney that the Plaintiff hired, Defendant Weissenstein, failed *himself* to understand the significance of these agreements.

25. Plaintiff/Pro Se is concerned about justice and fairness and therefore wishes to speak of the following concerns, in light of the Honorable Judge Curtis' ruling:

a. Judge Curtis refers in the open hearing to Defendant's attorney, Steve Kropski, Esq., several times as "Steve" (by first name only), which indicates more than a strictly professional association.

b. The Defendant, Weissenstein, his daughter, and Steve Kropski practice law in the Honorable Judge Curtis's Courtroom.

c. Plaintiff / Pro Se is not a officer of the Court and even though Plaintiff has submitted concrete evidence that should send this case to a Jury, the Judge ruled from the bench to deny Plaintiff his right for a jury trial.

Therefore, Plaintiff Prays for the following:

a. The Honorable Judge rule to deny Defendant's motion to dismiss this case.
b. Plaintiff be given a open hearing for this reconsideration before the Honorable Judge Curtis rules in favor of Defendant's motion for dismissal.
c. Due to the overwhelming evidence that demands this case be sent to a Jury, Plaintiff prays to be given a speedy Jury trial.
d. Plaintiff provided an expert affidavit from Mark Hardee, Esq. which seems to have been ignored by this court. Plaintiff has been damaged in excess of $2.5M by Defendant.

Respectfully Submitted on this 13th day of February, 2019.

MB Hutson, Pro Se

P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714

A Copy has been e-mailed and has been placed in the mail on February 13, 2019, to:

Steven Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413
Telephone: (843) 972-9400

Commission on Judicial Conduct
1220 Senate St., Suite 309
Columbia, SC 29201

Commission on Lawyer Conduct
1220 Senate St., Suite 309
Columbia, SC 29201

EXHIBITS: Hutson v A Paul Weissenstein CIVIL CASE **2018-CP-43-1583**

1	EXPERT WITNESS AFFADAVIT: MARK HARDEE, ATTORNEY
A	ATTORNEY RETAINER AGREEMENT: HUTSON: WEISSENSTEIN
B	LPA -LEASE PURCHASE AGREEMENT
C	MIPA -MEMBRSHIP INTEREST PURCHASE AGREEMENT
D	REAIL MEMBERSHIP AGREEMENT
E	PLAT
F	FEDERAL JUDGE NORTON'S ORDER PP. 15-20
G	A PAUL WEISSENSTEIN'S ANSWER TO APPLICATION FOR EVICTMENT 11-9-11
H	SA -SETTLEMENT AGREEMENT WITH PLAT
I	CO -CONSENT ORDER (SC JUDGE GEORGE JAMES)
J	PAUL SIGNED CLARENDON COUNTY PLANNING COMMISSION APPLICATION
K	CLARK DEPOSITION (3-18-15): BWR HAD NO LEASE TO OPERATE
L	STEWART TITLE LETTER 10-2-15
M	EMAIL HUTSON TO KROPSKI 3PP
N	MOTION FOR THIRD PARTY DEFENDANT DEPOSITION TAKEN IN FEB 2PP
O	EQUITABLE INTEREST AFFADAVIT: BON GARDNER, EXPERT
P	PAYMENTS TO TLC VIA CHECK AND WIRE TRANSFER
Q	EMAIL FROM APW TO TOM HARPER 3-31-12
R	SC COMMON PLEAS: MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JDGEMENT
S	RULE 60 b, c, d
T	LOVELL DEPOSITION 2/16/11 BWR LOSSES
U	" " " (ANOTHER COPY OF "T")
V	NOV. 9, 2015: NOTICE LETTER FROM MBH TO APW
W	MARK HARDEE AFFADAVIT RE-SUBMITTED
X	ENVELOPE: *Sent papers to* SLED (July 21, 2016)
Y	Attachments to SLED letter sent July 21, 2016
Z	TITLE SEARCH PP. 1 & 2
AA	APW email to MBH re: County Planning Meetings and deadlines
BB	APW email to Wells Fargo for project financing – 2pp
CC	APW email to Tom Harper, Esq. re: lack of approval letter from seller
DD	APW email to Tom Harper, Esq. re: approval delays and request for additional extensions

YELLOW Highlighted accompanied Reconsideration Request.

Page 2 of Application to Clarendon County Planning Board

J

10. Explain in detail what it is you are requesting permission to do. Attach supporting documentation and/or data if necessary or applicable.

Develop a single family subdivision at Big Water resort

Signature of Applicant: [signature]

Sworn to and subscribed before me this 12 day of April Year 2012

[signature]
Notary Public My Commission Expires Aug 31, 2017

PERFORMANCE ZONE CERTIFICATE

Clarendon County Planning Commission Hearing Date: _____

Upon the basis of the above application, the statements in which are made a part thereof, The Clarendon County Planning Commission approves the proposed use, in so far as all other applicable requirements of the Clarendon County Unified Development Code, Ordinance 2011-05, are adhered to.

_____
Chairman, Clarendon County Planning Commission

This certificate shall expire 365 days from the Planning Commission Hearing Date unless a Use or Building Permit has been issued for the approved use. This certificate neither implies nor authorizes the commencement of construction without the issuance of a Building Permit.

Application Denied*

Reason for Denial:

_____
Chairman, Clarendon County Planning Commission

***Applicant may not reapply for the same use with 365 days of the above Planning Commission Hearing Date.**

***Revised September 2011

Q

INBOX Compose Addresses Folders Options FTC WEBMAIL

Current Folder: **Sent**

Message List Delete Edit Message as New Forward Forward as Attachment Reply Reply All

Subject: RE: Big Water Resort
From: pwlaw@ftc-i.net
Date: Sat, March 31, 2012 5:57 pm
To: THarper@wcsr.com
Priority: Normal
Options: View Full Header | View Printable Version | Download this as a file | View Message details | View as HTML

13 days before Settlement agreement signed

Dear Tom,
Mr. Hudson has signed the agreement and same is attached hereto. Please provide us a copy signed by your clients as soon as possible.

I have also attached a proposed letter to be signed by Mr. Hudson per the agreement. I will provide it once I have received the signed agreement from your clients.

Please provide the wiring instructions so that we can send the initial $8000 payment.

I look forward to receiving the proposed consent order from you soon which I understand will be signed by me and Mr. Hudson as well as by you and your clients.

I trust that this resolves the court hearing scheduled for Wednesday, and I am taking it off my calendar.

Thank you for all of your hard work, especially over the past few days, in preparing the drafts and the final settlement agreement.

I believe that you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years.

I hope that you have a good rest of the weekend.

Yours very truly,
A. Paul Weissenstein, Jr.
APWjr/lle

EXHIBIT 7

Number: E104

Date: March 15, 2011

Fed. ID #57-1077425

Bill To:
Nester & Jackson
P O Box 349
Santee, SC 29142

Title search

Your File Number	Tax Map Parcel Number	Service Rep.	Owner/Client
	035-05-00-001, et al	SLE	TLC Holdings, LLC

Description	Amount
60 year search - 035-05-00-001 ✓ 30.44 AC	160.00
60 year search - 035-06-02-007 ✓ 3.21 AC	160.00
> 10yr update - 035-06-02-005	90.00
> 10 yr update - 035-06-02-008 (w/add'l chain for access strip)	120.00
> 10 yr update - 035-06-02-002	90.00
60 year search - 035-00-00-013 ✓ 57.8 AC	160.00
SCP&A - Leased Portion TRACTS A & B = 5.27 AC ✓	90.00
Copies	15.00

NESTER & JACKSON / OPERATING ACCOUNT

3373

Williamson Research Services — 3/16/2011

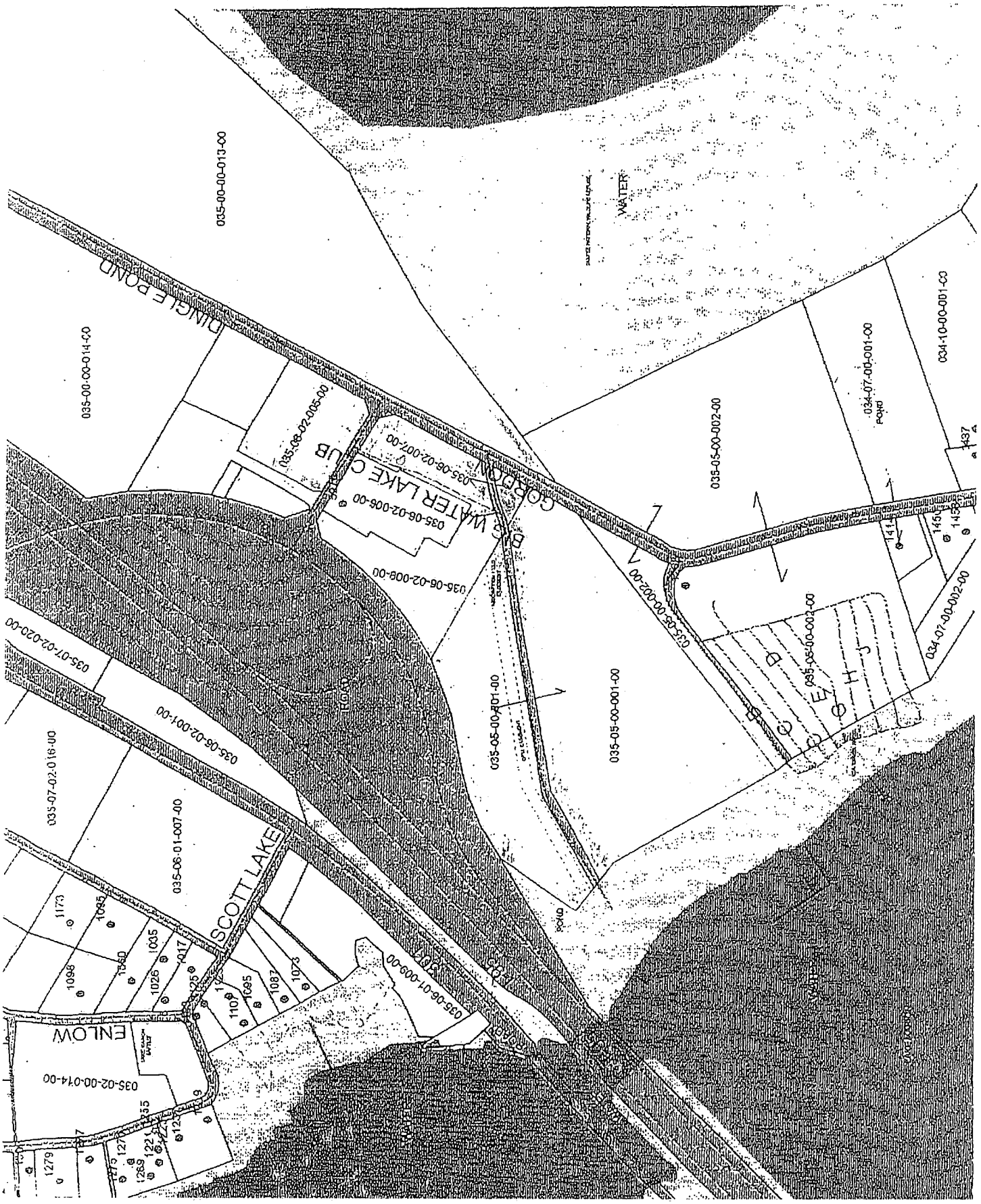
Big Water Resort — 885.00

803 4355064 Sonia

PAYMENT RECORD

Operating Account - SCB title work — 885.00

733243 (6/10)


035-00-00-013-00
WATER
DINGLE ROAD
035-00-00-014-00
035-06-02-005-00
035-06-02-007-00
035-06-02-008-00
WATER LAKE CUB
GORDON
035-05-00-002-00
034-07-00-001-00
034-10-00-001-00
035-05-00-002-00
035-05-00-001-00
035-05-00-001-00
035-07-02-020-00
035-06-02-001-00
035-07-02-016-00
035-06-01-007-00
SCOTT LAKE
035-06-01-009-00
035-02-00-014-00
ENLOW

Reply all | Delete Junk | ...

Fwd: Meetings and deadlines

M.B. Hutson <mbh4444@gmail.com>
Yesterday, 12:15 PM
ods06535cpc

Reply all

Inbox

This item will expire in 30 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/13/2018 12:15 PM

MBH
"Great minds discuss ideas;
Average minds discuss events;
Small minds discuss people, "
- Eleanor Roosevelt

---------- Forwarded message ----------
From: **MB Hutson** <mbh4444@gmail.com>
Date: Thu, Apr 5, 2012 at 6:52 PM
Subject: Fwd: Meetings and deadlines
To: Wireless Printer <mbh4444@hpeprint.com>

MBH
Sent from my iPhone

Begin forwarded message:

> **From:** pwlaw@ftc-i.net
> **Date:** April 3, 2012 2:44:35 PM EDT
> **To:** mbh4444@gmail.com
> **Subject:** Meetings and deadlines
>
> The schedule for the Planning Commission times is as follows: the Planning Commission meetings are on the third Tuesday of each. The next available one is May 16. You will need to submit everything by Friday, April 13, 2012. The meeting after that is June 19 with a May 18 deadline. The meeting after that is July 17 with a June 15 deadline. The meeting after that is August 21 with a July 20 deadline.

Reply all Delete Junk ... Paul

Exhibit B

Fwd: Letter Terry Barrett

M.B. Hutson <mbh4444@gmail.com>
Yesterday, 12:08 PM
ods06535cpc

Reply all

Inbox

This item will expire in 30 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/13/2018 12:08 PM

Wells Fargo home mort. letter Paul wrote

MBH
"Great minds discuss ideas;
Average minds discuss events;
Small minds discuss people, "
- Eleanor Roosevelt

---------- Forwarded message ----------
From: <pwlaw@ftc-i.net>
Date: Thu, Apr 12, 2012 at 4:41 PM
Subject: Re: Letter Terry Barrett
To: mbh4444@gmail.com

Mr. Hudson,

Below is the proposed letter to Terry Barrett at Wells Fargo Home Mortgage (we intend to send via email to him) for your review.

Yours very truly,
Laura L. Emrich
Paralegal

Terry Barrett, Regional Sales Manager
Wells Fargo Home Mortgage
7721 Six Forks Road, Suite 116
Raleigh, NC 27615

Dear Mr. Barrett,

I attempted to call you to discuss with you The Big Water Resort near Summerton, South Carolina, the development of which is being coordinated by M. B. Hudson. Mr. Hudson tells me that he has talked to you a couple of times regarding this, including yesterday April 11, 2012.

In order to be sure as to the development and funding of this project, I am writing you this letter and request that you confirm that this is the understanding of Wells Fargo Home Mortgage, as well.

Mr. Hudson intends to develop a portion of The Big Water Resort Campground by construction of numerous cabins over the next year. He anticipates that the first phase will involve the construction of probably 54 and as many as 72 cabins on individual lots.

Mr. Hudson anticipates that the seller will enter into contracts with individual lot purchasers and that each lot purchaser will at that time make a small down payment and then would apply for a construction perm loan with you. At the time of closing, and Mr. Hudson hopes to have a mass closing of most of these cabins more or less simultaneously, the clients would pay to me the balance of the required down payment percentage. Mr. Hudson anticipates that the amount will be set by you at between 15 and 20% of the ultimate purchase price of each cabin based on each individual applicant's credit worthiness.

Each lot will have developed on it a 2 bedroom 2 bath cabin on deeded lots with an anticipated sales price of between $130,000.00 and $148,000.00, depending on lot location.

At each closing, Wells Fargo will disburse to the property seller the difference between the down payment and the lot purchase price. The seller/developer will use those funds to complete the installation of infrastructure (roads, sewer, and water) simultaneously while the cabins are being constructed, and to obtain releases of the property from the existing indebtedness on the property.

The infrastructure contractor will be required to post bond with the county for the work to be done and, if you so desire, will provide his credentials to you for approval. From the lot purchase price, the cost of the infrastructure improvements will be escrowed to ensure payment to the contractor for services rendered in constructing those improvements.

After the balance for lot purchase has been paid at the initial closing draw by Wells Fargo for each cabin, additional draws will be made by the cabin contractor from the construction loan funds, in the usual manner. Mr. Hudson understands from his discussions with you that when Wells Fargo gives approval for the loan, it locks in that approval for six months, from the date of approval to the date of the construction perm lot closing.

Please confirm that the terms set forth herein conform to the agreement and requirements of Wells Fargo Home Mortgage for the development of this project.

If you require anything further, or if anything in this letter is not accurate, please do not hesitate to let me know.

Yours very truly,

A. Paul Weissenstein, Jr.

APWjr/lle

Reply all | Delete Junk ...

I'm generally around – if you can get the materials to me, I will do my best to make the Tuesday at 5:00 deadline.

Thanks.

Tom

From: pwlaw@FTC-I.NET [mailto:pwlaw@FTC-I.NET]
Sent: Monday, June 18, 2012 3:34 PM
To: Harper, Thomas
Cc: MB Hudson
Subject: Approval

Dear Tom,

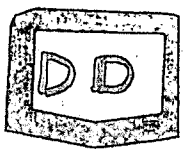
Mr. Hudson has submitted additional designs to Clarendon county planning. Ms. Rose at Clarendon County said this submission did not have your consent. I told her that I did not think your consent was required for each stage, but she and David Epperson (County Attorney) believe that it does.

I have suggested to Hudson that he try to get copies to you (I don't have copies), but if you agree with me that your approval of each step of the proposed development is not required, please let her know. If I am wrong (I have not reviewed the settlement) please accept my apology but also please try to approve this ASAP. Ms. Rose said that she would really like to have your letter before 5:00 tomorrow.

Yours very truly,

A. Paul Weissenstein, Jr.

Reply all Delete Junk ... Paul



From: pwlaw@FTC-I.NET
Date: Fri, June 29, 2012 10:38 am
To: "T Harper" <THarper@wcsr.com>

Dear Tom,
I talked to Maria Rose last week and Mr. Hudson and I talked to her again to try to make sure that we understood the time frame for approval for this subdivision development. At the time that we entered into the contract, we thought that the subdivision could be approved for construction to commence by mid-July, we figured with a couple of delays it should be ready to begin by mid-September. However, we now understand that instead the earliest it is likely to be ready would be mid-November. The documentation that is submitted and will be considered at the July meeting is a revised sketch plan. If they approve the revised sketch plan, then he will then attempt to obtain all of the approvals, etc from DHEC and Mrs. Rose says that the quickest that DHEC will turn around an approval request is 30 days, and that would be lucky. But she does not anticipate that the preliminary plan approval could be considered by planning before the September 18 planning commission meeting. Because the deadline to submit documentation for the October meeting is September 14, we would be unable to submit any documentation in time for an October meeting. We cannot submit a prepared final plat until the preliminary plan is approved (which we hoped would be in September). Construction cannot begin nor can properties be offered for sale until the final plat is approved by the planning commission. I asked if the plat could be approved administratively by her, and she said that because that it is a subdivision plat it would require approval by the actual planning commission when they meet in mid-November. The contract and consent order that has been signed by the parties anticipated a faster timeline than this. You will recall when we first began negotiation we had hoped that the timeline would possibly allow development to begin in June. Now it does not appear that development can even begin until November at the earliest. Mr. Hudson anticipates that he would have trouble making $8,000.00 per month payments continuing into the fall. Please contact your clients and let us know what they may be willing to do as far as additional extensions. Mr. Hudson has incurred a lot of expense in trying to get the development to an approval stage, and before additional expenses incurred, wants some assurance that TLC is willing to work with him through these delays.

Yours very truly,

EXHIBIT E

2018CP4301583 : M B Hutson VS Paul Weissentein

Common Pleas

CaseN umber 2018CP4301583
CaseS ubtype LegalM alpract 210
FiledD ate 09-04-2018
Status Judgment

Plaintiff MB H utson
Defendant PaulW eissentein
AssignedJu dge Clerk OfCo urt C P, GS , AndF amily Court
FileT ype Jury

⊞S how/HideP articipants

Name	Description	Type	FileD ate
MB H utson	Notice/Appeal	Filing	05-23-2019 08:42:17A M
PaulW eissentein	NEF(04-22-20190 2:11:18P M)O rder/Electronic Form 4	Filing	04-22-2019 02:11:34P M
PaulW eissentein	Order/Electronic Form 4	Order	04-22-2019 02:11:18P M
MB H utson	Plt'sR esponseto M emo	Filing	04-17-2019 09:47:13A M
MB H utson	Plt'sR esponseto M emo	Filing	04-17-2019 09:47:13A M
PaulW eissentein	NEF(04-12-20190 4:41:20P M)M emo/Memoi nO pposition	Filing	04-15-2019 08:32:13A M
PaulW eissentein	Memo/Memoi nO pposition	Filing	04-12-2019 04:41:20P M
PaulW eissentein	Memo/Memoi nO pposition-EX_1	Filing	04-12-2019 04:41:20P M
PaulW eissentein	Memo/Memoi nO pposition-EX_2	Filing	04-12-2019 04:41:20P M
PaulW eissentein	Service/CertificateO fS ervice	Filing	04-12-2019 04:41:20P M
MB H utson	4/22/2019_MOTION_Roster/Noticeo fM otionsR osterP ublication	Action	04-12-2019 02:53:58P M
StevenR aymondK ropski	4/22/2019_MOTION_Roster/Noticeo fM otionsR osterP ublication	Action	04-12-2019 02:53:58P M
MB H utson	ADR/AlternativeD isputeR esolution(Workflow)	Action	04-02-2019 12:46:26P M
MB H utson	Judgment/Summary Judgment	Judgment	02-25-2019 11:00:47A M
PaulW eissentein	Judgment/Summary Judgment	Judgment	02-25-2019 11:00:47A M
MB H utson	Judgment/Summary Judgment	Judgment	02-25-2019 11:00:41A M
PaulW eissentein	Judgment/Summary Judgment	Judgment	02-25-2019 11:00:41A M
PaulW eissentein	NEF(02-25-20190 8:42:34A M)O rder/Summary Judgment	Filing	02-25-2019 08:42:42A M
PaulW eissentein	Order/Summary Judgment	Order	02-25-2019 08:42:34A M
MB H utson	Plt'sR esponseO bjectingto O rder	Filing	02-19-2019 01:46:53P M
PaulW eissentein	NEF(02-14-20190 5:03:36P M)P roposedO rder/Summary Judgm...	Filing	02-15-2019 08:39:52A M
PaulW eissentein	Order/OrderCo verS heet $25.00	Filing	02-14-2019 05:03:36P M
PaulW eissentein	Service/CertificateO fS ervice	Filing	02-14-2019 05:03:36P M
MB H utson	Plt's/ MotionT oR econsider	Motion	02-13-2019 01:18:47P M
MB H utson	PltsR esponseto D ef'sM emoI nS upport	Filing	12-12-2018 04:38:03P M
PaulW eissentein	NEF(12-07-20180 9:44:50A M)M emo/Memoi nS upport	Filing	12-07-2018 09:50:16A M
PaulW eissentein	Memo/Memoi nS upport	Filing	12-07-2018 09:44:50A M
PaulW eissentein	Memo/Memoi nS upport-EX_1	Filing	12-07-2018 09:44:50A M
PaulW eissentein	Memo/Memoi nS upport-EX_2	Filing	12-07-2018 09:44:50A M
PaulW eissentein	Memo/Memoi nS upport-EX_3	Filing	12-07-2018 09:44:50A M
PaulW eissentein	Memo/Memoi nS upport-EX_4	Filing	12-07-2018 09:44:50A M
PaulW eissentein	Service/Affidavit OfS ervice	Filing	12-03-2018 09:45:27A M
MB H utson	12/10/2018_MOTION_Roster/Noticeo fM otionsR osterP ublicatio	Action	11-16-2018 08:54:07A M
MB H utson	12/10/2018_MOTION_Roster/Noticeo fM otionsR osterP ublicatio	Action	11-16-2018 08:54:07A M
MB H utson	12/10/2018_MOTION_Roster/Noticeo fM otionsR osterP ublicatio	Action	11-16-2018 08:54:07A M
StevenR aymondK ropski	12/10/2018_MOTION_Roster/Noticeo fM otionsR osterP ublicatio	Action	11-16-2018 08:54:07A M
StevenR aymondK ropski	12/10/2018_MOTION_Roster/Noticeo fM otionsR osterP ublicatio	Action	11-16-2018 08:54:07A M
StevenR aymondK ropski	12/10/2018_MOTION_Roster/Noticeo fM otionsR osterP ublicatio	Action	11-16-2018 08:54:07A M
MB H utson	Plt'sM otion/Other	Motion	11-02-2018 12:45:01P M
MB H utson	Plt'sM otion/Other	Motion	11-02-2018 12:45:01P M
MB H utson	Plt'sM otion/Production	Motion	11-02-2018 12:43:44P M
MB H utson	PLt'sR esponseto D ef'sM tn/Dism	Filing	10-18-2018 02:52:03P M
PaulW eissentein	NEF(10-03-20180 4:19:53P M)S ervice/CertificateO fS ervi...	Filing	10-04-2018 08:42:10A M
PaulW eissentein	NEF(10-03-20180 4:18:41P M)A nswer/Answer	Filing	10-04-2018 08:41:08A M
PaulW eissentein	NEF(10-03-20180 4:16:53P M)M otion/Dismiss & Summary Jud...	Filing	10-04-2018 08:40:42A M
PaulW eissentein	Service/CertificateO fS ervice	Filing	10-03-2018 04:19:53P M
PaulW eissentein	Service/CertificateO fS ervice	Filing	10-03-2018 04:19:53P M
PaulW eissentein	Answer/Answer	Filing	10-03-2018 04:18:41P M
PaulW eissentein	Motion/Dismiss & Summary Judgment	Motion	10-03-2018 04:16:53P M
MB H utson	Exhibitsto A mendedCo mplaint	Filing	10-03-2018 01:43:41P M
MB H utson	Amended/AmendedS ummonsan dCo mplaint	Filing	10-03-2018 01:37:33P M

PaulW eissentein	Notice/Noticeo fA ppearance	Filing	10-03-2018	09:28:10A M
MB H utson	Summons & Complaint	Filing	09-04-2018	12:44:48P M

EXHIBIT F

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4301583

M B Hutson
PLAINTIFF(S)

Paul Weissentein
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

After a motion hearing on today's date, Plaintiff's motion to reconsider is DENIED. Plaintiff has 30 days to file an appeal.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/22/2019 .

M B Hutson for M B Hutson
M B Hutson for M B Hutson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

Sumter Common Pleas

Case Caption: M B Hutson VS Paul Weissentein

Case Number: 2018CP4301583

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No.: 2018-CP-43-01583
Appellate Case No. 2019-000873

M.B. Hutson.....Appellant,

v.

A. Paul Weissenstein.....Respondent.

Respondent.

PROOF OF SERVICE

I, Shelbi Brueckner, an employee of Earhart Overstreet LLC, paralegal for the attorney for Respondent A. Paul Weissenstein certify that I served a copy of the attached *Motion to Dismiss Appeal* by depositing a copy of it in the United States Postal Service, postage prepaid, on June 20th, 2019, addressed to Pro Se Appellant M.B. Hutson at P.O. Box 2755, Orangeburg, SC 29116.

This 20th day of June, 2019.

Shelbi Brueckner

Earhart Overstreet
ATTORNEYS AT LAW

Main: 843.972.9400
www.earhartoverstreet.com
PO Box 22528, Charleston, SC 29413

Steve@earhartoverstreet.com
Direct: 843.972.9404

June 20, 2019

VIA MAIL
Jenny Abbott Kitchings, Clerk
V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: M.B. Hutson, Appellant v. A. Paul Weissenstein, Respondent
Appellate Case No.: 2019-000873
EO File No.: 120-0452

Dear Ms. Kitchings and Ms. Allen:

Enclosed please find ***Respondent Paul Weissenstein's Motion to Dismiss Appeal*** pursuant to SCACR 240(d) and motion fee for filing. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

STEVEN R. KROPSKI

SRK/shb
Enclosures

RECEIVED
JUN 21 2019
SC Court of Appeals