

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2018-CP-07-00796
APPELLATE CASE NO.: 2019-000203

Stancel E. Kirkland and
El Cid Holdings, LLC,

Respondents,

vs.

Robert Wolfson,

Appellant.

RECORD ON APPEAL

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Attorneys for Respondent

RECEIVED

AUG 26 2019

SC Court of Appeals

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-00796

Stancel E. Kirkland

Old South Properties, Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:This came before me January 11th, 2019 on Defendant Robert Wolfson's Motion for New Trial, to Reconsider, Atler or Amend Judgment (filed November 21st, 2018). After hearing from parties and review of the file, I hereby deny the motion.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

S. Jahue MooreMaryann E. BlakeRalph N. Riley, Jr.**ATTORNEY(S) FOR THE PLAINTIFF(S)**Eugene H. MatthewsH. Fred Kuhn, Jr.**ATTORNEY(S) FOR THE DEFENDANT(S)****CLERK OF COURT****Court Reporter:** N/A



Beaufort Common Pleas

Case Caption: Stancel E Kirkland VS Old South Properties Inc , defendant, et al

Case Number: 2018CP0700796

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-01-16 16:11:01 page 3 of 3

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Stancel E. Kirkland and El Cid Holdings,
LLC,

Plaintiffs,

v.

Robert Wolfson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-07-00796

FINAL JUDGMENT

On October 1, 2018, this matter was referred to this Court with finality with special instructions to expedite the final hearing. The issues before the Court concern the interpretation of a contract between Stancel E. Kirkland¹ and Robert Wolfson regarding ownership of a company named Old South Properties, Inc.

On November 5, 2018, the matter was heard before this Court in a non-jury trial. The findings of this Court are as follows.

The evidence in the case confirmed that Kirkland and Wolfson were, at all times relevant, sophisticated and experienced businessmen. The evidence also confirmed that, at all times relevant, Wolfson had superior knowledge of the books, operations, assets and liabilities of Old South Properties, Inc., than did Kirkland.

The contract at issue was made in two parts: (1) an Agreement dated May 21, 2017, and (2) a Note of Security Agreement dated July 5, 2017. By their own terms, they are meant to act and be construed in conjunction with one another and as a single agreement.

¹ While this case was pending, on June 29, 2018, Stancel E. Kirkland assigned all of his interest in Old South Properties, Inc. to El Cid Holdings, LLC, who thereafter intervened as Plaintiff in this matter.

There were several provisions in the contract that provided valuable consideration to each party. The specific parts of the contract at issue in this case are as follows:

1. When the contract was executed, Kirkland and Wolfson were each 50% owners of Old South Properties, Inc.
2. Wolfson agreed to purchase Kirkland's 50% interest in Old South Properties, Inc. by paying Kirkland \$80,000 on or before March 1, 2018, with a 30-day period to cure default in the case of non-payment. Wolfson was also required to pay Kirkland another \$10,000 on or before January 1, 2019, with a 30-day period to cure default in the case of non-payment.
3. Following any such default, there was a self-executing consequence for the default, by which Wolfson's interest in Old South Properties, Inc. "shall be the exclusive property of Stancel E. Kirkland."

Neither party claims any ambiguity to any part of this contract, including the provisions referenced above, nor do I find that any exist.

It is undisputed that Wolfson failed to make the \$80,000 payment to Kirkland on or before March 1, 2018, and it is undisputed that Wolfson failed to cure this default within the 30-day grace period. Although Wolfson's reason for not complying with the payment schedule involved his concern about a 3rd party's lien on real estate owned by Old South Properties, Inc., nothing in the contract allowed for any extensions or modifications under such circumstances. Further, there was no agreement or modification that altered or extended the payment period.

Indeed, although certain extrinsic evidence was presented to and received by the Court, this ruling is based solely on the four corners of the unambiguous contract and upon the undisputed and unexcused failure to pay.

Under South Carolina law, the main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the contract. *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (S.C.

App. 1992); *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). If a contract's language is clear and capable of legal construction, a court's function is to interpret its lawful meaning and the intent of the parties as found in the agreement. *Smith-Cooper v. Cooper*, 344 S.C. 289, 543 S.E.2d 271 (S.C. App. 2001). A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense. *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 438 S.E.2d 275 (S.C. App. 1993); *Gilbert v. Miller*, 356 S.C. 25, 30-31, 586 S.E.2d 861, 864 (S.C. App. 2003).

Therefore, I find that Wolfson was in default of the Agreement as of the expiration of the grace period, which was March 31, 2018. This default activated the self-executing clause transferring Wolfson's interest in Old South Properties, Inc. to Kirkland. As of April 1, 2018, Kirkland was the exclusive owner of Old South Properties, Inc.

I also find that, as Kirkland transferred the entirety of his interest in Old South Properties, Inc. to El Cid Holdings, LLC on June 29, 2018, that as of that same date, El Cid Holdings, LLC became the sole and exclusive owner of Old South Properties, Inc.

As to the other provisions of the contract, I find that (1) Kirkland and El Cid Holdings, LLC each waives any further claims under the Agreement by reason of the forfeiture and declares the same to be satisfied, and said satisfaction shall be the Order of the Court, and (2) the mutual releases between Kirkland and Wolfson under the contract were not challenged and remain binding on Kirkland and Wolfson.

For the same reasons as set forth hereinabove, the Counterclaims fail and I find for the Plaintiffs on the same.

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Finally, as the evidence offered at trial establishes that the mortgage Wolfson gave on February 16, 2018 and recorded on March 6, 2018 (File No. 2018011846) in the name of Old South Properties, Inc. to his son's company, HCG Weight Loss Center, Inc., has been satisfied, I hereby direct Wolfson to take all actions necessary to have the appropriate satisfaction of mortgage filed with the Beaufort County Register of Deeds within fifteen (15) days of the date of this Order.

AND IT IS ORDERED.

Marvin Dukes
Master-in-Equity

November 14, 2018
Beaufort, South Carolina

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-00796

Stancel E. Kirkland & El Cid Holdings, LLC

Robert Wolfson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Eugene H. Matthews, Esq.

Attorney for : ☒ Plaintiff, ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment for Plaintiffs – see attached order

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

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or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Eugene H. Matthews, Esq.

Maryann E. Blake, Esq.

Ralph N. Riley, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

H. Fred Kuhn, Jr. Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

See attached order

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Beaufort Common Pleas

Case Caption: Stancel E Kirkland VS Old South Properties Inc , defendant, et al

Case Number: 2018CP0700796

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-11-15 13:46:09 page 7 of 7

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2018-CP-07-00796
STANCEL E. KIRKLAND and	)	
EL CID HOLDINGS, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
OLD SOUTH PROPERTIES, INC. AND	)	ORDER GRANTING MOTION OF
ROBERT WOLFSON,	)	ROBERT WOLFSON TO AMEND
	)	
Defendants,	)	
	)	

This matter came to be heard before me on September 25, 2018 for the purpose of hearing the Motion to Amend and to Supplement Answer filed on behalf of the Defendant Robert Wolfson on August 10, 2018. Present at the hearing was H. Fred Kuhn, Jr., Esquire, representing the Defendant Robert Wolfson. Present on behalf of the Plaintiff Stancel E. Kirkland was his attorney, S. Jahue Moore, Esquire. Appearing on behalf of the Plaintiff El Cid Holdings, LLC was its attorney Eugene H. Matthews, Esquire. The Defendant Wolfson has moved to amend and supplement his Answer on the ground that such is in the best interest of justice and does not prejudice any other party. He notes that this case is in its early stages and, at the time the motion was filed, no discovery had taken place nor had a scheduling order been entered. He further notes in his motion that since the filing of the initial pleadings a third party, El Cid Holdings, LLC, had moved to intervene as a result of an Assignment executed on or about June 29, 2018 by the Plaintiff in favor of El Cid Holdings, LLC. Wolfson accordingly asserts that the amendment and supplementation of his Answer is necessary in order to determine that the rights of all necessary and proper parties are determined fairly and with finality. Wolfson

attached to his motion a proposed Amended and Supplemental Answer, Counterclaim, and Cross-Claim.

Rule 15(a), SCRCP, provides that leave of the Court to amend a pleading "shall be freely given when justice so requires and does not prejudice any other party." Accordingly, I find that Defendant Wolfson's motion should be granted. Since the motion was filed, however, the motion of El Cid Holdings, LLC to intervene in this case has been granted and El Cid is now a Plaintiff. When the Defendant Wolfson files his Amended Answer, accordingly, he shall change his cross-claim against El Cid Holdings, LLC to a counterclaim.

IT IS, THEREFORE, ORDERED that the Motion of the Defendant Wolfson to amend and/or supplement his Answer shall be and is hereby granted and the Defendant Wolfson shall be allowed to change the cross-claim against El Cid Holdings, LLC to a counterclaim.

AND IT IS SO ORDERED.

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for the Beaufort County Court of Common Pleas

Beaufort, South Carolina
_____, 2018



Beaufort Common Pleas

Case Caption: Stancel E Kirkland VS Old South Properties Inc , defendant, et al
Case Number: 2018CP0700796
Type: Order/Amend

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-10-05 09:36:53 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Stancel E. Kirkland,

Plaintiff,

and

El CID Holdings, LLC,

Plaintiff-Intervenor,

v.

Robert Wolfson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-07-00796

ORDER OF REFERENCE

By Order of the Honorable Carmen Mullen, filed on September 4, 2018, this matter is hereby referred with finality and with direct appeal rights to the South Carolina Supreme Court to the Master-in-Equity of Beaufort County with discovery to be completed within 60 days. The Order also exempts the case from mediation.

The parties must also pay a reference fee totaling \$50.00 to the Office of the Master-in-Equity of Beaufort County. The Plaintiff is responsible for paying the Reference Fee set forth in South Carolina Code of Laws Section 14-11-310; however, if the Plaintiff's case has ended, any remaining party seeking Affirmative Relief shall be responsible for paying the fee. If the case is a Partition Action or Lien Foreclosure the fee amount is \$100.00; for all other types of cases the fee is \$50.00. The Reference Fee shall be paid to the Office of the Master in Equity for Beaufort County within 30 of the date of this Order or the Master will dismiss the case for non-payment of the Reference Fee without further notice.

THEREFORE, it is hereby ORDERED that this action is hereby referred to the Honorable Marvin H. Dukes, III, Master-in-Equity of Beaufort County.

Dated this the ____ day of September, 2018.

Jerri Ann Roseneau, Clerk of Court
Beaufort County



Beaufort Common Pleas

Case Caption: Stancel E Kirkland VS Old South Properties Inc , defendant, et al

Case Number: 2018CP0700796

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of
Court

Electronically signed on 2018-09-28 16:26:35 page 3 of 3

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 OLD SOUTH PROPERTIES, INC,)
)
 Plaintiffs,)
)
 vs.)
)
 WILLIAM GAVIGAN, GSI, LLC, BULL)
 POINT SC, LLC and BULL POINT)
 PLANTATION PROPERTY OWNERS)
 ASSOCIATION, INC.)
)
 Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CASE NOS.: 2018-CP-07-00144
 2018-CP-07-00796

ORDER

THIS MATTER came before the court on August 15, 2018 in Richland County on August 15, with the attorneys agreeing to come despite it being a Beaufort case.

1. The case of Old South Properties v. Gavigan, 2018CP0700144, has been dismissed under Rule 40(j), SCRCF, and will not return to the docket until Kirkland v. Wolfson, 2018CP0700796, has been resolved.
2. Until Kirkland v. Wolfson, 2018CP0700796, has been resolved, Fred Kuhn and his law firm may represent Mr. Wolfson but not Old South Properties, Inc.
3. The Motion for Summary Judgment of Plaintiff Stancel Kirkland is denied.
4. Kirkland v. Wolfson, 2018CP0700796, will be assigned to Judge Dukes, with discovery to be completed within 60 days. Because of the short time span, discovery disputes should be brought immediately to the attention of the Court. This case is exempt from mediation.
5. The Motion to Intervene by El CID Holdings, LLC, in Kirkland v. Wolfson, 2018CP0700796, has been granted. El CID Holdings, LLC is now a Plaintiff in the action.

AND IT IS SO ORDERED.

Carmen T. Mullen
Presiding Judge

This ____ Day of August, 2018.



Beaufort Common Pleas

Case Caption: Old South Properties Inc VS William E Gavigan , defendant, et al
Case Number: 2018CP0700144
Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2018-09-04 12:07:35 page 3 of 3

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STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Stancel E. Kirkland

Plaintiff(s)

VS

Old South Properties, Inc.,
Robert Wolfson and Bull Point
Plantation Property Owners
Association, Inc.

Defendant(s)

IN THE COMMON PLEAS COURT
CASE NO. 2018-CP-07-00796

STIPULATION OF DISMISSAL
AS TO DEFENDANT, BULL POINT
PROPERTY OWNERS ASSOCIATION,
INC.

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, it is hereby stipulated that the Complaint of Plaintiff be and the same is hereby dismissed without prejudice as to the Defendant, Bull Point Plantation Property Owners Association, Inc., only.

AND IT IS SO STIPULATED.

July 24, 2018

/s/ Maryann Blake
WOODARD & BUTLER, LLC
Attorneys for Plaintiff
P.O. Box 1906
Walterboro, SC 29488
Bar #73929

/s/ Eugene H. Matthews
Richardson Plowden &
Robinson, P.A.
Attorneys for Defendant,
Bull Point Plantation
Property Owners Association, Inc.
P.O. Drawer 7788
Columbia, SC 29202

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STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Stancel E. Kirkland

Plaintiff(s)

VS

Old South Properties, Inc.,
And Robert Wolfson

Defendant(s)

IN THE COMMON PLEAS COURT
CASE NO. 2018-CP-07-00796

MOTION FOR SUMMARY JUDGMENT

TO: THE ABOVE-NAMED DEFENDANTS AND TO THEIR ATTORNEY, H. FRED KUHN, JR.:

PLEASE TAKE NOTICE that the Plaintiff will move at a time, place and date to be set by the Court for an Order for summary judgment on the basis that there exists no issue of fact to be presented to a trier of fact and as such Plaintiff should have judgment as a matter of law.

PLEASE BE PRESENT IF SO MINDED.

July 24, 2018

/s/ Maryann Blake
Woodard & Butler, LLC
Attorneys for Plaintiff
P.O. Box 1906
Walterboro, SC 29488
(843) 538-4566
Bar #73929

I hereby certify that a true copy of the foregoing Motion for Summary Judgment was duly served on the attorney listed below by mailing same first class, postage pre-paid, to the

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address listed on this the 24th day of July, 2018.

H. Fred Kuhn, Jr., Esq.
Moss, Kuhn & Fleming, P.A.
P.O. Drawer 507
Beaufort, SC 29901-0507

/s/ Maryann Blake

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Stancel E. Kirkland

Plaintiff(s)

VS

Old South Properties, Inc.,
And Robert Wolfson

Defendant(s)

IN THE COMMON PLEAS COURT
CASE NO. 2018-CP-07-00796

MOTION TO INTERVENE BY
EL CID HOLDINGS, LLC

TO: THE ABOVE-NAMED DEFENDANTS AND TO THEIR ATTORNEY, H. FRED KUHN, JR.:

Comes now El CID Holdings, LLC ("El CID") by and through its undersigned counsel, and hereby moves to intervene in the above-captioned case pursuant to South Carolina Rules of Civil Procedure Rule 24(a)(2).

Rule 24(a)(2) permits anyone to intervene in an action upon timely application when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. The rules of intervention "should be literally construed where judicial economy will be promoted by declaring the rights of all affected parties". Ex parte Gov't Emp.'s Ins. Co., 373 S.C. 132, 138, 644, S.E. 2d 699, 702 (2007). The Motion should be granted

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because the intervenor has significant interests, as outlined herein, in the subject matter and outcome of the present matter.

On June 29, 2018, Stancel E. Kirkland, Plaintiff in the present matter, conveyed all his interest in and to Old South Properties, Inc. to El CID. Because of this assignment El CID has an interest in the property and transactions which are the subject matter of the present action. Furthermore, any disposition of the action may impair or impede El CID's ability to protect its interests in Old South Properties and the present action.

This Motion to Intervene has been timely as the case is still in its earliest stages as Defendants Old South Properties, Inc. and Robert Wolfson just filed their Answer and Bull Point Plantation Property Owner Association, Inc. has been dismissed. No scheduling Order has been entered and no factual or legal issues have been litigated.

The undersigned counsel has consulted with parties to this action and has their consent. This Motion is based on the pleadings and the attached Assignment (Exhibit A).

WHEREFORE, the intervenor respectfully requests this Honorable Court to allow it to intervene pursuant to Rule 24(a)(2) and grant it such other and further relief as this

Court deems just.

Respectfully Submitted:

July 31, 2018

/s/ Maryann Blake
Woodard & Butler, LLC
Attorneys for Plaintiff
P.O. Box 1906
Walterboro, SC 29488
(843) 538-4566
Bar #73929

STATE OF SOUTH CAROLINA)

ASSIGNMENT

COUNTY OF LEXINGTON)

For and in consideration of \$5.00 and other valuable consideration, Stancel E. Kirkland hereby conveys to El CID Holdings, LLC all of his interests in Old South Properties, Inc., which is at least fifty percent. The conveyance is made subject to the agreements between Stancel E. Kirkland and Robert Wolfson made May 21, 2017 and July 5, 2017. To the fullest extent allowed by law and to the fullest extent allowed by the agreements between Stancel E. Kirkland and Robert Wolfson, El CID Holdings, LLC may exercise all of Kirkland's proprietary rights in Old South Properties, Inc.

Stancel E. Kirkland SR
Stancel E. Kirkland

SWORN to before me this 29
day of June, 2018

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 2/21/28

EXHIBIT "A"

000026

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

STANCEL E. KIRKLAND,)
Plaintiff,)

vs.)

OLD SOUTH PROPERTIES, INC. AND)
ROBERT WOLFSON,)

Defendants,)

and)

ROBERT WOLFSON,)

Cross Claim Plaintiff,)

vs.)

EL CID HOLDINGS, LLC,)

Intervenor and Cross Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-07-00796

NOTICE OF MOTION AND MOTION
TO AMEND OR SUPPLEMENT
ANSWER

TO: S. JAHUE MOORE, ESQUIRE and MARYANN ELIZABETH BLAKE, ATTORNEYS
FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant Robert Wolfson, through his undersigned attorneys, hereby moves before the Presiding Judge of the Beaufort County Court of Common Pleas pursuant to Rule 15 of the South Carolina Rules of Civil Procedure for an Order allowing the Defendant Robert Wolfson to amend and supplement his Answer by filing the proposed Amended Answer, Counterclaim, and Cross Claim, attached hereto as Exhibit A.

This motion is made upon the grounds that the amendment and supplement as requested is in the best interest of justice and does not prejudice any other party. This case is in its early stages, no discovery has taken place nor has a scheduling order been entered. Since the filing of

the initial pleadings a third party, El Cid Holdings, LLC, has moved to intervene and as a result of an Assignment executed on or about June 29, 2018 by the Plaintiff in favor of El Cid Holdings, LLC uncertainty exists as to whom the Defendant Robert Wolfson should pay the payments referenced in the Complaint. The amended and supplemental Answer, Counterclaim, and Cross Claim is accordingly necessary in order to determine that the rights of all necessary and proper parties may be determined fairly and with finality.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: /s/ H. Fred Kuhn, Jr.

H. Fred Kuhn, Jr.
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Post Office Drawer 507
Beaufort, South Carolina 29901-0507
(843)524-3373 - telephone
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Email: fred@mossandkuhn.com
Attorney for Defendant Robert Wolfson

Beaufort, South Carolina
August 9, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2018-CP-07-00796
STANCEL E. KIRKLAND,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED ANSWER, COUNTERCLAIM
	)	AND CROSS CLAIM OF DEFENDANT
OLD SOUTH PROPERTIES, INC. AND	)	ROBERT WOLFSON
ROBERT WOLFSON,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
ROBERT WOLFSON,	)	
	)	
Cross Claim Plaintiff,	)	
	)	
vs.	)	
	)	
EL CID HOLDINGS, LLC,	)	
	)	
Intervenor and Cross Defendant.	)	
	)	

The Defendant, Robert Wolfson, answering the Complaint of the Plaintiff, and by way of counterclaim and cross claim, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint which are not expressly admitted are denied and strict proof demanded thereof.
2. The allegations of Paragraph 1 of the Complaint are admitted.
3. With respect to the allegations of Paragraph 2 of the Complaint it is admitted that the Defendant Robert Wolfson is a citizen and resident of the County of Beaufort in the State of South Carolina. It is further admitted that the Defendant Old South Properties, Inc. is a closely

held corporation organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina. This corporation is currently owned by the Plaintiff and the Defendant Robert Wolfson, subject to an agreement, referenced in the Complaint, whereby the Plaintiff is selling his interest in the corporation to the Defendant Robert Wolfson.

4. With the understanding that all litigation is "significant," the allegations of Paragraph 3 of the Complaint are admitted.

5. The allegations of Paragraph 4 of the Complaint are admitted.

6. With respect to the allegations of Paragraph 5 of the Complaint, it is admitted that pursuant to the handwritten agreement "Wolfson shall provide a security agreement as to his interest in Old South Properties." The remaining allegations of said paragraph are denied.

7. The allegations of Paragraph 6 of the Complaint are admitted, said payments conditioned upon Plaintiff's ability to transfer the subject assets free of liens or encumbrances.

8. With respect to the allegations of Paragraph 7 of the Complaint, except for the "security agreement" referenced above, the allegations of Paragraph 7 of the Complaint are denied.

9. The allegations of Paragraph 8 of the Complaint are admitted.

10. The allegations of Paragraph 9 of the Complaint are denied.

11. The allegations of Paragraph 10 of the Complaint are denied.

12. The allegations of Paragraph 11 of the Complaint are denied.

13. The allegations of Paragraph 12 of the Complaint are denied.

14. The allegations of Paragraph 13 of the Complaint are denied.

15. The allegations of Paragraph 14 of the Complaint are denied. While it is admitted that the Notice and Certificate of Lien attached to the Complaint as Exhibit C was filed on November 20, 2017, purportedly on behalf of the Bull Point Plantation Property Owners Association, Inc., it is affirmatively alleged that said lien is false, wrongful, and fraudulent and the validity of said lien is the subject of litigation currently pending in the Beaufort County Court of Common Pleas.

16. The allegations of Paragraph 15 of the Complaint are admitted.

17. With respect to the allegations of Paragraph 16 of the Complaint it is admitted that, pursuant Exhibit A attached to the Complaint "Wolfson shall have the \$90,000 obligation to Kirkland secured by a mortgage on a lot owned by Bob Wolfson valued at least \$80,000," and that, pursuant to Exhibit B attached to the Complaint "Should there be an event of default by nonpayment, Stancel E. Kirkland shall have the right to foreclose on a parcel of land known as Lot 90 Mackey Point in Jasper County, South Carolina." The remaining allegations of said paragraph are denied.

18. The allegations of Paragraph 17 of the Complaint are denied.

19. The allegations of Paragraph 18 of the Complaint are denied.

20. The allegations of Paragraph 19 of the Complaint are denied.

21. The allegations of Paragraph 20 of the Complaint are denied.

22. The allegations of Paragraph 21 of the Complaint are denied.

23. The allegations of Paragraph 22 of the Complaint are denied.

FOR A SECOND DEFENSE

24. The admitted allegations of the Complaint are hereby re-alleged and incorporated herein as fully as if repeated verbatim.

25. The handwritten agreement of the parties, which is attached to the Complaint as Exhibit A, provides in pertinent part as follows:

5. Wolfson shall pay Kirkland \$80,000 cash on or before 3/1/18.

6. Wolfson shall also pay Kirkland \$10,000 on or before 1/1/19.

7. Upon payment of the \$90,000 mentioned in 5 and 6 above Kirkland transfers his interest in Old South Properties to Wolfson.

27. The Plaintiff's ability to transfer his interest in Old South Properties, Inc., free and clear of liens or encumbrances, has been prevented by the filing of the lien, which was attached as Exhibit C to the Complaint, as well as by a purported judgment lien claimed to be held by German American Capital Corporation.

28. The Defendants have initiated litigation seeking to declare the lien purportedly filed on behalf of the Bull Point Plantation Property Owners Association to be invalid, as well as to recover damages for slander of title, and have also challenged in Court the validity of the purported judgment lien.

29. Until removed or extinguished the foregoing purported liens constitute a cloud on the title to the assets of Old South Properties, Inc.

30. The Defendant Robert Wolfson is justified in withholding payment to the Plaintiff so long as the foregoing clouds on the title to be assets of the Plaintiff have been resolved.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

31. The admitted allegations of the Complaint are hereby realleged and incorporated herein as fully as if repeated verbatim.

32. On March 1, 2018 this Defendant was ready, willing and able to tender to the Plaintiff the first payment referenced in Paragraph 6 of the Complaint.

33. On March 1, 2018 it was also the intent of this Defendant to deliver to the Plaintiff the final payment referenced in Paragraph 6 of the Complaint, even though said payment was not due until January 1, 2019.

34. In anticipation of making the aforesaid payments this Defendant obtained the loan secured by the mortgage referenced in Paragraph 12 of the Complaint.

35. Upon information and belief, however, the Plaintiff was unable, as of March 1, 2018, to transfer to this Defendant his shares of stock in Old South Properties, Inc., by virtue of, among other things, the lien referenced in Paragraph 14 of the Complaint.

36. This Defendant stands ready, willing and able to pay the full \$90,000.00 referenced in Paragraph 6 of the Complaint, and does hereby tender said payment to the appropriate party.

37. Upon information and belief, on or about June 29, 2018 the Plaintiff executed an Assignment to the Intervenor and Third Party Defendant El Cid Holdings, LLC which creates uncertainty as to whom this Defendant should pay the \$90,000.00 referenced in Paragraph 6 of the Complaint, that is, should he pay to the Plaintiff or to the Intervenor and Third Party Defendant.

38. Upon information and belief, this Defendant is entitled to a declaration from the Court as to whom this Defendant should pay the \$90,000.00 referenced in Paragraph 6 of the Complaint, and is further entitled to an Order directing the Plaintiff Stancel E. Kirkland and/or the Intervenor and Third Party Defendant El Cid Holdings, LLC, as may be appropriate, to transfer to this Defendant, free and clear of any liens or encumbrances, the shares of stock in Old South Properties, Inc. referenced in the Agreement attached as Exhibit A to the Complaint.

FOR THIRD DEFENSE AND BY WAY OF CROSS CLAIM

39. The admitted allegations of the Complaint, and the allegations of the Counterclaim, are hereby realleged and incorporated herein as fully as if repeated verbatim.

40. Upon information and belief El Cid Holdings, LLC, is a limited liability company organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

41. Upon information and belief, the Intervenor and Third Party Defendant El Cid Holdings, LLC, as a result of the Assignment executed by the Plaintiff on or about June 29, 2018, may claim entitlement to all or some of the payments referenced in Paragraph 6 of the Complaint, and/or, may claim an interest in the shares of stock in Old South Properties, Inc. referenced in the Agreement attached to the Complaint as Exhibit A, which are to be purchased by this payment.

42. The Defendant is informed and believes that he is entitled to a declaration by this Court declaring to whom this Defendant should deliver his payment and declaring that, in return, the shares of stock in Old South Properties, Inc. referenced in the Agreement attached as Exhibit A to the Complaint shall be conveyed to this Defendant free and clear.

WHEREFORE, this Defendant prays as follows:

- a. That the Complaint be dismissed;
- b. That the Court declare to whom this Defendant should deliver the payments in referenced in Paragraph 6 of the Complaint;
- c. That the Court order the appropriate individual or entity to convey to the Defendant, in exchange for the payment referenced above the shares of stock in Old South Properties, Inc. referenced in the Agreement attached as Exhibit A to the Complaint; and

d. For such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: /s/ H. Fred Kuhn, Jr.

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Attorney for

Beaufort, South Carolina
August 9, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2018-CP-07-00796
STANCEL E. KIRKLAND and	)	
EL CID HOLDINGS, LLC,	)	
	)	
Plaintiffs,	)	NOTICE OF MOTION AND MOTION
	)	FOR NEW TRIAL, TO RECONSIDER,
vs.	)	ALTER OR AMEND JUDGMENT
	)	(RULE 59, SCRPC)
ROBERT WOLFSON,	)	
	)	
Defendant.	)	

TO: EUGENE H. MATTHEWS, ESQUIRE, MARYANN ELIZABETH BLAKE, ESQUIRE, AND RALPH N. RILEY, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS, STANCEL E. KIRKLAND AND EL CID HOLDINGS, LLC:

PLEASE TAKE NOTICE that the Defendant, Robert Wolfson, through his undersigned attorney, hereby moves before the Honorable Marvin H. Dukes, III, Beaufort County Master in Equity, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for a new trial, and for a reconsideration, alteration, or amendment of that Final Judgment filed November 15, 2018 in the above captioned case on the following grounds:

1. The Court erred in finding as a matter of fact and concluding as a matter of law that Robert Wolfson defaulted on the Agreement dated May 21, 2017 by failing to make the first installment payment of \$80,000.00 to Kirkland on or before March 1, 2018. In order to constitute a default, a breach of contract must be "material." To be material, a breach of contract must be a failure to do something so fundamental as to go to the essence or substance of the contract, and defeat the object or purpose of the parties in entering into the contract. Wolfson's delay in tendering the \$80,000.00 payment to Kirkland was not a failure so fundamental as to go

to the essence or substance of contract, and the delay did not defeat the object or purpose of the parties in entering into the contract.

2. The Court erred in failing to find as a matter of fact or conclude as a matter of law that Wolfson's delay in tendering the first installment payment of \$80,000.00 to Kirkland was excused by Wolfson's concern over the lien that had recently been imposed upon the assets of Old South Properties, Inc.

3. The Court erred to failing to find as a matter of fact or conclude as a matter of law that Wolfson's delay in tendering the first installment payment of \$80,000.00 to Kirkland was due in part to Wolfson's total and complete incapacity as a result of personal injuries suffered in an accident and his resulting paralysis and hospitalization.

4. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the failure of the Plaintiff to deliver to the Defendant Robert Wolfson a notice of default delayed the running of the thirty day grace period until said notice of default was delivered.

5. The Court erred in finding as a matter of fact and concluding as a matter of law that the forfeiture provision contained in the Security Agreement executed after the May 21, 2017 handwritten Agreement was enforceable where said provision was not supported by any consideration.

6. The Court erred in finding as a matter of fact and concluding as a matter of law that Wolfson's failure to tender \$80,000.00 to Kirkland on or before March 1, 2018 resulted not only in Wolfson's inability to acquire Kirkland's one-half interest in Old South Properties, Inc., but also justified Wolfson's forfeiture to Kirkland of Wolfson's one-half ownership in Old South Properties, Inc. The Courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity. South Carolina Courts have held that a provision in an

installment land contract declaring forfeiture in the event of purchaser default can, in particular circumstances, constitute a penalty. Wolfson's loss of his substantial, long held, and hard earned one-half interest in Old South Properties, as a result of his delay in tendering the first installment towards the purchase of Kirkland's one-half interest in Old South Properties, is an unenforceable forfeiture or penalty.

7. The Court erred in finding as a matter of fact and concluding as a matter of law that under the circumstances of this case the Defendant Wolfson's forfeiture of his interest in Old South Properties, Inc., which he owned outright, to Kirkland constituted an enforceable forfeiture or penalty.

8. The Court erred in finding as a matter of fact and concluding as a matter of law that Wolfson's failure to tender the first installment of \$80,000.00 to Kirkland on March 1, 2018 constituted a material breach of the May 21, 2017 Agreement, and triggered the running of the thirty day grace period, where the contract failed to provide that time was of the essence.

9. The Court erred in finding as a matter of fact and concluding as a matter of law that Wolfson's failure to tender the first installment of \$80,000.00 due to Kirkland on March 1, 2018 under the terms of the May 21, 2017 Agreement constituted a material breach and triggered the running of the thirty day grace period where the Plaintiff Kirkland never notified Wolfson that it was holding him in default.

10. The Court erred in failing to find as a matter of fact and conclude as a matter of law that Wolfson's delay in tendering the first installment of \$80,000.00 to Kirkland, as set forth in the May 21, 2017 Agreement, was justified and did not constitute a material breach of the Agreement, where the delay was initially due to concern over a lien on the assets of Old South Properties Inc. that had arisen between the time of the Agreement and the time of the due date of

the first installment payment, and where the delay was subsequently extended due to Wolfson's physical and mental incapacity.

11. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the forfeiture clause in the Security Agreement was inequitable under the circumstances.

It is, accordingly, respectfully requested that the Court grant to the Defendant Robert Wolfson a new trial, reconsider, alter, or amend his judgment finding in favor of the Defendant Robert Wolfson and granting to him the relief requested in his Answer and Counterclaim.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By /s/ H. Fred Kuhn, Jr.

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Attorneys for the Defendant

Beaufort, South Carolina
November 21, 2018

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Stancel E. Kirkland and El Cid Holdings, LLC,

Plaintiffs,

v.

Robert Wolfson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-07-00796

**RESPONSE TO DEFENDANT'S
MOTION TO RECONSIDER**

On November 5, 2018, the matter was heard before the Court in a non-jury trial. On November 15, 2018, following consideration of the evidence in the record, testimony before the Court, and the arguments in this matter, the Court issued a Final Judgment on the issues before it, and found for the Plaintiffs as set forth in the Final Judgment.

On November 21, 2018, Defendant Robert Wolfson filed a Motion to Reconsider under Rule 59. The motion requests that the Court grant a new trial, or in the alternative, grant him the relief he requested in his pleadings.

Wolfson's motion is entirely without basis. It merely repeats the tired and groundless arguments that Wolfson has raised in the past to no avail, and is directly contrary to evidence presented to the Court through the parties' motions and through the evidence presented to the Court at trial.

For these reasons, El Cid Holdings, LLC respectfully requests that Wolfson's motion be DENIED.

STANDARD OF REVIEW

A motion under Rule 59(e), SCRCP, is essentially viewed as “motion for reconsideration” despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004).

WOLFSON'S MOTION TO RECONSIDER

Wolfson's re-hashed arguments appear to demand that his admitted failure to make the payments as set forth in the Contract at issue should be excused because (1) he does not consider his admitted breach to be “material,” (2) Wolfson was concerned about a lien placed on a piece of property owned by Old South Properties, Inc., (3) Wolfson was unable to make the payment because he was incapacitated, (4) Wolfson did not receive a notice of default,¹ (5) the forfeiture clause was not properly a part of the Agreement, (6) the provisions of the contract amount to an unenforceable penalty, or (7) the contract did not explicitly state that “time was of the essence.”

None of these arguments are new, and none are supported in the record or by the law of South Carolina. Wolfson unsuccessfully made these arguments at trial, and has merely restated them in his motion. In fact, he fails to cite a single case – not one – in support of his claims. He also fails to make a single citation to the record – not one – in support of his claims.

PLAINTIFFS' RESPONSE

As the Court's Final Judgment establishes, the parties admitted that the contract at issue was made in two parts: (1) an Agreement dated May 21, 2017, and (2) a Note of Security Agreement dated July 5, 2017. By their own terms, they are meant to act and be construed in

¹ This argument is particularly unconvincing. First, written notices under the contract are not required. Second, the Complaint in this case itself placed Wolfson on notice that default had occurred and that the grace period had expired.

conjunction with one another and as a single agreement. Neither party claimed any ambiguity to any part of this contract, nor did the Court find that any existed. In this regard, Wolfson's arguments that any part of the Agreement was unsupported by consideration, or not properly a part of the Agreement, simply have no basis. In fact, Wolfson himself specifically confirmed in his deposition that the Security Agreement dated July 5, 2017 was a part of the Agreement dated May 21, 2017. (Wolfson Deposition, p. 20, lines 20-25; p. 21, lines 1-7).

It is undisputed that Wolfson failed to make the \$80,000 payment to Kirkland on or before March 1, 2018, and it is undisputed that Wolfson failed to cure this default within the 30-day grace period. It is simply unfathomable that such a failure could possibly be characterized as "immaterial." Wolfson certainly has presented no evidence supporting such a claim.

Further, as stated in the Court's Final Judgment, although Wolfson's reason for not complying with the payment schedule involved his concern about a third-party's lien on real estate owned by Old South Properties, Inc., nothing in the contract allowed for any extensions or modifications under such circumstances. Further, there was no agreement or modification that altered or extended the payment period.²

Wolfson's argument that he did not receive proper "notice" of his own default is particularly unconvincing. First, written notices under the contract are not required. Second, the Complaint in this case itself placed Wolfson on notice that default had occurred and that the grace period had expired. Third, Wolfson himself was fully aware of his actions, and as Mr.

² Wolfson's argument that his failure to make the \$80,000 payment should be excused because of "physical" inability is as ridiculous as it is self-serving. It is undisputed that Wolfson's accident occurred on May 13, 2018. (Deposition of Teresa O'Connell, p. 114, line 25; p. 115, lines 1-11). This date is over 2 months after the \$80,000 payment was due, and over one month after the 30-day "grace" period had ended. Further, Wolfson went to great lengths to point out that he actually borrowed over \$90,000 from his son in early March 2017, but as S. Jahue Moore, Esq. testified, instead of paying the money to Kirkland as the Contract required, Wolfson simply refused to make the payment.

Moore credibly testified, Wolfson repudiated his duty to make the payments when they became due.

Moreover, Wolfson does not argue that the Contract was ambiguous. As stated in the Court's Final Judgment, under South Carolina law, where a contract's language is clear and capable of legal construction, a court's function is to interpret its lawful meaning and the intent of the parties as found in the agreement. *Smith-Cooper v. Cooper*, 344 S.C. 289, 543 S.E.2d 271 (S.C. App. 2001). A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense. *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 438 S.E.2d 275 (S.C. App. 1993); *Gilbert v. Miller*, 356 S.C. 25, 30–31, 586 S.E.2d 861, 864 (S.C. App. 2003).

In this light, Wolfson's arguments are simply non-sensical. The Contract speaks for itself, and as Mr. Moore testified, the Contract's deadlines for payment – and the consequences for non-payment – are clear, easy to understand, mutually agreed, and self-executing. Wolfson appears to rely on contractual provisions that do not exist – such as a non-existent provision that requires written notice of default – and to ignore those that do exist – such as the deadlines themselves, and the provisions that outline the consequences of default.

Finally, Wolfson's argument that the Agreement's provisions were an unenforceable "penalty" has no basis in law or fact. First, the provision providing for transfer of ownership of Old South Properties, Inc. to Kirkland in the event Wolfson failed to pay is not even a "liquidated damage." As was thoroughly discussed at the trial, Wolfson gained significant benefits from this Agreement as well as an opportunity to gain control of Old South Properties, Inc. If Wolfson failed to take advantage of his option to make the purchase, he could retain the other benefits of the Agreement and keep his \$90,000, but Kirkland would have full ownership

over Old South Properties, Inc. In return for the other benefits in the contract extended to Wolfson, Kirkland would either receive (1) \$90,000 by the dates noted in the Agreement, or (2) full ownership of Old South Properties, Inc. Wolfson has failed in every possible way to meet the demanding requirements to show that provisions of his own Agreement are unenforceable "penalties" or even qualify as "liquidated damages." *ERIE Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (S.C. App. 2011).

CONCLUSION

In short, Wolfson's motion fails in every possible way, and should be DENIED.

Dated this the 26th day of November, 2018.

Respectfully submitted,

/s/ Eugene H. Matthews

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/s/ Maryann Blake

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COUNSEL FOR PLAINTIFF EL CID HOLDINGS, LLC

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*Deposition Excerpts of
Robert Wolfson*

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 STANCEL E. KIRKLAND and
4 EL CID HOLDINGS, LLC,

5 Plaintiffs,

6 vs.

Case No. 2018-CP-07-00796

7 ROBERT WOLFSON,

8 Defendant.

9 DEPOSITION OF: ROBERT L. WOLFSON

10 DATE: October 1, 2018

11 TIME: 10:06 AM

12 LOCATION: Bull Point POA Clubhouse
13 114 Barnaby Bluff
Seabrook, SC

14 TAKEN BY: Counsel for the Plaintiff

15 REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC
16
17

18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
21 (843) 722-8414 (843) 785-3263 (843) 839-3376

22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919

24 Asheville, NC
(828) 123-9876
25

000046



APPEARANCES OF COUNSEL:

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and

WOODARD & BUTLER, LLC
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ATTORNEYS FOR THE DEFENDANT
ROBERT WOLFSON:

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fred@mossandkuhn.com

ALSO PRESENT:

Billy Gavigan

(INDEX AT REAR OF TRANSCRIPT)

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1 A. Correct.

2 Q. And you appear to have signed this
3 document on July 17, 2017; is that correct?

4 A. Correct.

5 Q. Was this the note and security
6 agreement that's referenced in Exhibit -- in the
7 handwritten document in Exhibit 1 --

8 A. It is.

9 Q. -- in paragraph 9?

10 A. Note? I don't know.

11 Q. Sir, I'm going to again draw your
12 attention -- and I'm going to read into the record
13 and I want -- your attorney can make sure I'm
14 reading it correctly. Paragraph 9 in the
15 handwritten document states:

16 Old South Properties shall also
17 guarantee, it appears to be, the obligations of
18 Wolfson and Wolfson shall provide a security
19 agreement as to his interest in Old South
20 Properties.

21 And my question to you is: Is this
22 note and security agreement which is Exhibit 2, is
23 that that note and security agreement?

24 A. Right.

25 Q. Do you understand, sir, what I'm asking

000048

1 you?

2 A. Yeah, um-hum.

3 Q. And, again, just to make sure the
4 record's clear, Exhibit 2 is the security agreement
5 that's referenced in paragraph 9 of your
6 handwritten document.

7 A. Right.

8 Q. Thank you. Now this document was made
9 on July 5th of 2017. So about, perhaps, a month
10 and a half after the handwritten document?

11 A. Correct.

12 Q. Okay. Do you recall who drafted this
13 document, Exhibit 2?

14 A. Yes.

15 Q. Who was that?

16 A. Jake Moore, I assume.

17 Q. Did you -- well, I'll ask this: Did
18 you draft it?

19 A. No.

20 Q. How did it come in your possession?

21 A. By mail.

22 Q. Okay. It was mailed to you?

23 A. Yes.

24 Q. Do you recall who it was mailed by?

25 A. I believe it was in an envelope

***Deposition Excerpts of
Teresa O'Connell***

1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2 COUNTY OF BEAUFORT

3
4 STANCEL E. KIRKLAND and EL CID HOLDINGS, LLC,

5 Plaintiffs,

6 vs.

CASE NO. 2018-CP-07-00796

7 OLD SOUTH PROPERTIES, INC.
8 and ROBERT WOLFSON,

9 Defendants.

10
11 DEPOSITION OF: TERESA A. O'CONNELL

12 DATE: October 25, 2018

13 TIME: 10:20 AM

14 LOCATION: Bull Point Clubhouse
15 114 Barnaby Bluff
16 Seabrook, SC

TAKEN BY: Counsel for the Plaintiff

17 REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

18
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

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22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919

24 Asheville, NC
25 (828) 123-9876

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF
EL CID HOLDINGS, LLC:

RICHARDSON, PLOWDEN & ROBINSON, PA
BY: EUGENE H. MATTHEWS
1900 Barnwell Street
Columbia, SC 29201
(803) 576-3733
gmatthews@richardsonplowden.com

and

WOODARD & BUTLER, LLC
BY: MARYANN E. BLAKE
404 Hendersonville Highway
Walterboro, SC 29488
(843) 635-1884
mablake1@lowcountry.com

ATTORNEYS FOR THE DEFENDANT
ROBERT WOLFSON:

MOSS, KUHN & FLEMING, PA
BY: H. FRED KUHN, JR.
1501 North Street
Beaufort, SC 29901
(843) 524-3373
fred@mossandkuhn.com

ALSO PRESENT:

William Gavigan

(INDEX AT REAR OF TRANSCRIPT)

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1 A. No, sir. I believe I mailed the
2 notarized document. I believe I'm the one that
3 dropped into the mail to Mr. Moore, but I don't --
4 I'm not been privy to any phone conversations and I
5 don't think there's been any e-mails that went back
6 and forth that I read.

7 Q. Mr. Kirkland first brought this case,
8 the current case we're in right now, against
9 Mr. Wolfson in I believe April 2018. Were you
10 familiar that it had been filed at that time? Did
11 you have personal knowledge of it?

12 A. I did not know at that time, no.

13 Q. When did you first know about it?

14 A. I don't know when Bob shared that with
15 me. I'm trying really hard to think back because
16 there are a lot of moving pieces to this.

17 Q. Right.

18 A. To be honest, I think Steve was the one
19 that told me and I think Steve told me --

20 Q. Steve Comerford?

21 A. I'm sorry. As I'm replaying all the
22 events, I think Steve Comerford was the one that
23 told me in May, the beginning of May, I think is
24 how I found out.

25 Q. When was Mr. Wolfson injured?

1 A. Mother's Day weekend in May.

2 Q. Do you remember what day that was?

3 A. I don't. I could pull up my calendar.

4 Q. If you would.

5 A. So Mother's Day was May 13th, 2008
6 (sic), so that would have been the date of his
7 injury.

8 Q. May '18?

9 A. Yes, sir. I'm sorry, May 13th.

10 Q. May 13th?

11 A. Yes.

12 Q. Do you know if Mr. Wolfson and
13 Mr. Moore spoke with each other prior to his injury
14 in May of 2018?

15 A. I do not.

16 Q. If they communicated by e-mail, that
17 may be on your computer?

18 A. Yes.

19 Q. Okay. I'm going to -- the next set of
20 questions I have may seem to be to you a little
21 tiresome. They're tiresome to me, that's why I
22 make that statement.

23 You've brought a significant number of
24 documents to us and I wanted us to speak generally
25 on the record about what they are.

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***Deposition Excerpts of
Robert Wolfson***

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1 A. Correct.

2 Q. And you appear to have signed this
3 document on July 17, 2017; is that correct?

4 A. Correct.

5 Q. Was this the note and security
6 agreement that's referenced in Exhibit -- in the
7 handwritten document in Exhibit 1 --

8 A. It is.

9 Q. -- in paragraph 9?

10 A. Note? I don't know.

11 Q. Sir, I'm going to again draw your
12 attention -- and I'm going to read into the record
13 and I want -- your attorney can make sure I'm
14 reading it correctly. Paragraph 9 in the
15 handwritten document states:

16 Old South Properties shall also
17 guarantee, it appears to be, the obligations of
18 Wolfson and Wolfson shall provide a security
19 agreement as to his interest in Old South
20 Properties.

21 And my question to you is: Is this
22 note and security agreement which is Exhibit 2, is
23 that that note and security agreement?

24 A. Right.

25 Q. Do you understand, sir, what I'm asking

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1 you?

2 A. Yeah, um-hum.

3 Q. And, again, just to make sure the
4 record's clear, Exhibit 2 is the security agreement
5 that's referenced in paragraph 9 of your
6 handwritten document.

7 A. Right.

8 Q. Thank you. Now this document was made
9 on July 5th of 2017. So about, perhaps, a month
10 and a half after the handwritten document?

11 A. Correct.

12 Q. Okay. Do you recall who drafted this
13 document, Exhibit 2?

14 A. Yes.

15 Q. Who was that?

16 A. Jake Moore, I assume.

17 Q. Did you -- well, I'll ask this: Did
18 you draft it?

19 A. No.

20 Q. How did it come in your possession?

21 A. By mail.

22 Q. Okay. It was mailed to you?

23 A. Yes.

24 Q. Do you recall who it was mailed by?

25 A. I believe it was in an envelope

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Stancel E. Kirkland)
Plaintiff,)

C.A. No.:

vs.)

SUMMONS

Old South Properties, Inc. and Robert)
Wolfson and Bull Point Plantation)
Property Owners Association, Inc.)
Defendants.)

TO THE DEFENDANTS ABOVE-NAMED;

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served up on you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office. 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the Complaint.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore (SC Bar #4063)

Post Office Box 5709

West Columbia, South Carolina 29171

Phone: (803) 796-9160

Fax: (803) 791-8410

jake@mttlaw.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Stancel E. Kirkland)

C.A. No.:

Plaintiff,)

vs.)

COMPLAINT
(Jury Trial Requested)

Old South Properties, Inc. and Robert)
Wolfson and Bull Point Plantation)
Property Owners Association, Inc.)

Defendants.)

The Plaintiff above-named complaining of the Defendants herein alleges that:

1. Plaintiff is a resident and citizen of Lexington County, South Carolina.
2. Defendant is a resident and citizen of Beaufort, South Carolina. The corporation is a closely held corporation presently titled in the name of Plaintiff and the individual Defendant.
3. The parties hereto previously have had significant litigation between them.
4. The litigation ended in a settlement agreement which was reduced to writing on or about May 21, 2017. A copy of that handwritten agreement is attached hereto as Exhibit A.
5. Pursuant to the handwritten agreement, Plaintiff was to receive a note and security agreement.
6. Plaintiff was also to have been paid \$90,000 with the first payment in cash March 1, 2018. The final payment was due on or before January 1, 2019.
7. Pursuant to the agreement between the parties, the Old South property was to have been held inviolate until the Plaintiff was paid. Plaintiff was supposed to receive a note and security agreement.

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8. On or about July 5, 2017, the Defendant executed a note and security agreement. A copy of that document is attached hereto as Exhibit B.

9. The note and security agreement were executed unilaterally by the Defendant and included certain things which the Defendant did not have the right to do.

10. Pursuant to the agreement, there has been a default and the Plaintiff hereby declares an event of default.

11. Plaintiff is entitled to an order of this court declaring him to be the sole owner of all stock in Old South Properties, Inc. as well as the property owned by Old South Properties.

12. In violation of the agreement, the individual Defendant has given a fictitious mortgage to an entity known as HCG Weight Loss Center, Inc. The mortgage is to a non-licensed company which does not have the authority to do business in South Carolina. In addition, the mortgage is a total fiction and was given without authority.

13. This court should look into the validity of the mortgage and should declare the mortgage null, void and of no affect whatsoever.

14. In addition to the above, the Defendant has conducted the affairs of the corporation in such a way as it is now the subject of a lien. A copy of the lien document is attached hereto as Exhibit C.

15. The aforementioned lien is listed in favor of Bull Point Plantation Property Owners Association, Inc. Plaintiff is entitled to a declaration that there is no lien and there is no money owed as is alleged in the lien.

16. In addition to the foregoing, Plaintiff was to have had a mortgage on a parcel of land located in Jasper County, South Carolina.

17. The mortgage which was to have been given in regard to the land in Jasper was not given.

18. This court should appoint a receiver to take possession of the property in Jasper County and should take such other actions as is necessary in order to protect the Plaintiff's secured position. The failure to deliver the mortgage; the promise to provide a mortgage on property not owned; the encumbrance placed upon the Old South real estate; the failure to abide by the agreement; and the other conduct complained of herein is fraudulent.

19. The conduct complained of herein amounts to a breach of contract accompanied by fraudulent acts.

20. Plaintiff is entitled to a declaration of his rights and to a declaration that is the sole owner of the corporation known as Old South Properties.

21. Plaintiff is entitled to judgment against the Defendant in the amount of \$90,000 as there has been an anticipatory repudiation of the agreement and as there have been acts contrary to the agreement.

22. Plaintiff is entitled to the appointment of a receiver to take possession and to secure the property in Jasper County and to foreclose on the property with payment to the Plaintiff.

WHEREFORE, Plaintiff prays for a judgment as follows: for a declaration of the rights of the parties one to another; for a declaration that Bull Point Plantation Property Owners Association, Inc. has no lien upon the property; for a declaration that the purported mortgage in favor of HCG Weight Loss Center, Inc. is a nullity and was entered ultra vires; for judgment against the individual Defendant for actual and punitive damages; for an order appointing a receiver to take possession of the individual Defendant's property and to foreclose on the property in Jasper

County which is the subject of the agreement; for attorney's fees and costs; and for such other and further relief as this court might deem just and proper.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore (SC Bar #4063)

Post Office Box 5709

West Columbia, South Carolina 29171

Phone: (803) 796-9160

Fax: (803) 791-8410

jake@mttlaw.com

Attorney for Plaintiff

EXHIBIT

A

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State of South Carolina } Agreement
County of Beaufort

Agreement dated 5/21/22.

Consideration is the mutual
promises contained herein.

1. The various Inland Agreement
of Tolgo Dot placed on
Record is Approved.

2. Except for the obligation
herein Bob Wilson and
Stan Kirkland fully Release
each other from any liability.

3. The Border Judgment Against
Wilson shall be satisfied
immediately.

4. Satisfaction of The Border
Judgment is The Responsibility
of Kirkland.

(over)

E. W. 1/80. shall pay
kickland 80,000 cash on or
before 3/1/18.

6. 4.17.20 shall also pay
Kirkland 19.00 on or before
1/1/19

7. Upon payment of the 90,000 mentioned in 5 and 6 above Kirkland transfers his interest in old South Properties to ~~Kirkland~~ Wolfson.

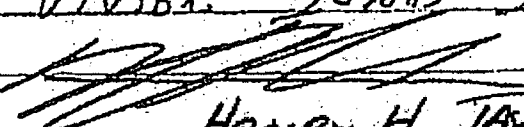
8. Wolfson shall have
The 90,000 obligation to
Krelland secured by a mortgage
on a lot owned by
~~Russ Wolfson~~ ~~the~~ ~~lot~~ ~~valued at~~
~~least \$80,000~~ ~~the mortgage~~
~~shall not be secured with~~
~~the development as approved~~
~~River Road~~ ~~the~~ ~~shall guarantee~~
~~payment of at least \$80,000~~

9. old South Properties shall
also guarantee the obligations
of Kellogg and Kellogg shall
provide a Security Agreement
as to her interest in old
South Properties.

3 10. Kellogg will ~~draw~~ withdraw
solicit for a Receiver and
shall not prove it so long
as Kellogg is current under
the Agreement.

Stam Kirkland
for Kellogg

Robert Kellogg

WILLIAM J. TAYLOR, JR.
By 
HENRY H. TAYLOR

(over)

all South Properties
by Robert W. Wooten

Braden Plantation
by Samuel E. Beckland Sr.

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EXHIBIT B

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NOTE AND SECURITY AGREEMENT

This is a promissory note made this 5th day of July, 2017. This promissory note is made pursuant to an agreement signed by Robert Wolfson, Stancel E. Kirkland, Henry H. Taylor, Old South Properties, Inc. and Bindon Plantation. The agreement referred to in this note is dated May 21, 2017.

For value received, Old South Properties, Inc.; Consolidated Ventures, LLC; and Robert Wolfson promised to pay Stancel E. Kirkland the sum of \$90,000. This note shall not bare interest.

The obligors herein shall pay Stancel E. Kirkland, the sum of \$80,000 on or before March 1, 2018. The undersigned shall also pay Stancel E. Kirkland the sum of \$10,000 in addition to the \$80,000 on or before January 1, 2019. Thus, the entire obligation of Robert Wolfson shall amount to \$90,000.

This note is hereby declared secured by Robert Wolfson's interest in Old South Properties, Inc. Should Robert Wolfson forfeit on his obligations hereunder, Wolfson shall transfer his interest at the election of Stancel E. Kirkland to Stancel E. Kirkland. Should there be a default, Robert Wolfson shall have 30 days from the day of default to cure said default. Following any default, Robert Wolfson's interest in Old South Properties, Inc. shall be the exclusive property of Stancel E. Kirkland.

During the terms of this note and security agreement, Robert Wolfson and Old South Properties, Inc. shall maintain the present ownership of the properties of Old South Properties, Inc. and shall not allow waste to be committed upon the properties.

In addition, should there be an event of default by non-payment, Stancel E. Kirkland shall have the right to foreclose on a parcel of land known as Lot 90 Mackay Point in Jasper County, South Carolina.

A copy of this note and security agreement shall be recorded in the Office of the Register

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of Deeds for Jasper County, South Carolina and in the Office of the Register of Deeds for Beaufort County, South Carolina.

The parties agree to execute such additional formal mortgages and financing statements as are necessary in order to properly perfect the mortgage and security interest of Stance E. Kirkland on record. As there is not presently a formalized approved plat for the real estate subject to this agreement, this agreement shall suffice as a security agreement against the property and against the interest of Robert Wolfson in Old South Properties, Inc. at this time. Once the formalized plat is approved, Robert Wolfson shall notify Stancel E. Kirkland through this attorney and a formalized mortgage shall be prepared and recorded.

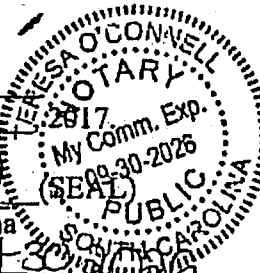
In witness whereof, this note and security agreement have been executed the date first written above.

Robert Wolfson
Old South Properties

Robert Wolfson
Robert Wolfson

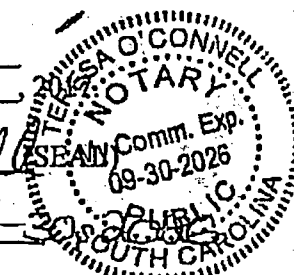
SWORN to before me this 17
day of July

Norisa O'Connell
Notary Public for South Carolina
My Commission Expires: Sept 30, 2026



SWORN to before me this 17
day of July

Norisa O'Connell
Notary Public for South Carolina
My Commission Expires: Sept 30, 2026



Robert Wolfson
Consolidated Ventures, LLC

SWORN to before me this 17
day of July, 2017.

Norisa O'Connell
Notary Public for South Carolina
My Commission Expires: Sept 30, 2026

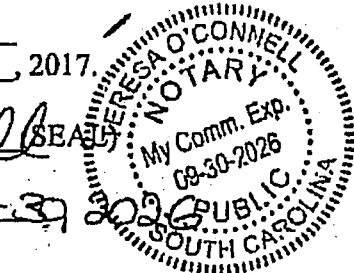


EXHIBIT C

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4/10/18
Bull Point
Pl & 10.00

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BULL POINT PLANTATION
PROPERTY OWNERS
ASSOCIATION, INC., a South
Carolina nonprofit corporation,

Plaintiff,

vs.

OLD SOUTH PROPERTIES, INC., a
South Carolina corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

LIEN NO. _____

NOTICE AND CERTIFICATE
OF LIEN

BEAUFORT COUNTY SC - ROD
BK 127 Pgs 365-368
FILE NUM 2017063067
11/20/2017 03:01:33 PM
REC'D BY rbinx RCPT# 871385
RECORDING FEES \$10.00

NOTICE IS HEREBY GIVEN that as of November 1, 2017, Bull Point Plantation Property Owners Association, Inc. ("Association") is due the sum of \$39,160.66 in past-due assessments, fines, late charges, interest and/or other authorized charges, as set forth in the Verified Statement of Account which is attached hereto and incorporated for all purposes as Exhibit "A," plus additional assessments, fines, late charges, interest and/or other authorized charges as may accrue, plus attorneys' fees and the costs of collection.

That said debt is due the Association for assessments, fines, late charges, interest and/or other authorized charges imposed for the common expenses of Bull Point Plantation, plus the costs of collection, attorney's fees and/or other authorized and proper purposes and charges, as authorized by the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated September 22, 1995; the Ninth Amendment to Declaration of Covenants, Conditions and

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Restrictions for Bull Point Plantation dated January 17, 2000; and any amendments thereto, recorded in the Office of the Register of Deeds for Beaufort County.

That by virtue thereof, and by virtue of this Notice and Certificate of Lien, the Association has and claims a lien to secure the payment of the debt so due and the costs of enforcing such lien upon the following described real property:

All that piece, parcel and tract of land, with improvements thereon, situate lying and being in Sheldon Township, Gardens County, Beaufort County, South Carolina, and being shown as 1.492 acres, Parcel A, Phase One, Bull Point Subdivision on a plat prepared by Andrews Engineering Co. Inc. dated January 2, 2004 to be recorded.

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

By: _____

Billy Gavigan,
President

November 14, 2017

114 Bull Point Drive
Seabrook, SC 29940

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Stancel E. Kirkland,

Plaintiff,

v.

Old South Properties, Inc., Robert
Wolfson, and Bull Point Plantation
Property Owners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-07-00796

**ANSWER OF DEFENDANT
BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.**

NOW COMES the Defendant Bull Point Plantation Property Owners Association, Inc. ("Bull Point Plantation POA"), by and through its undersigned counsel and answers the allegations of Plaintiff Stancel E. Kirkland (hereinafter "Plaintiff"), denying all allegations not specifically admitted, as follows:

PARTIES AND JURISDICTION

1. In Paragraphs 1 and 2 of the Complaint, Plaintiff attempts to identify two of the parties he has listed in the caption to this case.
2. Bull Point Plantation POA is a non-profit corporation properly organized in South Carolina.

FACTUAL ALLEGATIONS

3. As to the allegations in Paragraphs 3 through 13 of the Complaint, Bull Point Plantation POA craves reference to the documents referenced in these allegations as they speak for themselves. Bull Point Plantation POA did not engage in the "significant litigation" referenced in Paragraph 3 of the Complaint, and was not a party to the litigation described in

Paragraphs 4 through 13 of the Complaint. To the extent these allegations are not consistent with the record, they are denied.

4. Regarding Paragraphs 14 and 15 of the Complaint, in litigation currently pending in the U.S. District Court, District of South Carolina, captioned *Old South Properties, Inc. v. William E. Gavigan, GSI, LLC, Bull Point SC, LLC and Bull Point Plantation Property Owners Association, Inc.*, C/A No.: 9:18-cv-00522-RMG, Old South Properties, Inc. has already filed a declaratory judgment action requesting an Order that declares the lien "null and void."

5. In any event, the lien referenced in Paragraphs 14 and 15 of the Complaint is completely lawful, and there are no grounds for the lien to be declared "null and void." Furthermore, the Complaint states no grounds for the lien to be declared "null and void."

6. The allegations in Paragraphs 16 through 22 do not concern Bull Point Plantation POA. To the extent that a response to these allegations is required, they are neither confirmed nor denied.

NOW THEREFORE, having fully answered the allegations set forth in Plaintiff's Complaint, the Defendant Bull Point Plantation Property Owners Association, Inc. in this action sets forth its **DEFENSES AND AFFIRMATIVE DEFENSES:**

FOR A FIRST DEFENSE

1. Plaintiff's Complaint fails to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against this Defendant under Rule 12(b)(6) and/or 12(c) of the South Carolina Rules of Civil Procedure. Further, Plaintiff cannot prove the elements required to state any of the causes of action in the Complaint.

FOR A SECOND DEFENSE

2. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A THIRD DEFENSE

3. The conduct of this Defendant is not the proximate cause of the Plaintiff's injuries, if any, which the Defendant specifically denies.

FOR A FOURTH DEFENSE

4. Plaintiff is not entitled to declaratory or injunctive relief, and cannot demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (S.C. App. 2002), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

FOR A FIFTH DEFENSE

5. Plaintiff's claims are barred, in whole or in part, by the doctrines of *res judicata* and collateral estoppel.

WHEREFORE, having fully answered the Complaint herein, the Defendant Bull Point Plantation Property Owners Association, Inc. requests that:

1. the claims asserted and relief sought by Plaintiff against this Defendant be denied in each and every respect;
2. the claims asserted by Plaintiff against this Defendant be dismissed in their entirety with prejudice; and
3. the Court award this Defendant's its costs and attorney's fees under applicable case and statutory laws and such other and further relief as this Court may deem just and proper.

Dated this the 23rd day of May, 2018.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

/s/ Eugene H. Matthews

Eugene H. Matthews, SC Bar #10193

Post Office Drawer 7788

Columbia, South Carolina 29202

T: (803) 771-4400

F: (803) 779-0016

Email: gmatthews@RichardsonPlowden.com

**COUNSEL FOR DEFENDANT BULL POINT
PLANTATION PROPERTY OWNERS ASSOCIATION,
INC.**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2018-CP-07-00796
STANCEL E. KIRKLAND,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ANSWER OF DEFENDANTS
OLD SOUTH PROPERTIES, INC.,	)	ROBERT WOLFSON AND
ROBERT WOLFSON, AND BULL	)	OLD SOUTH PROPERTIES, INC.
POINT PLANTATION PROPERTY	)	
OWNERS ASSOCIATION, INC.,	)	
	)	
Defendants.	)	
	)	

The Defendants, Old South Properties, Inc. and Robert Wolfson, answering the Complaint of the Plaintiff, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint which are not expressly admitted are denied and strict proof demanded thereof.
2. The allegations of Paragraph 1 of the Complaint are admitted.
3. With respect to the allegations of Paragraph 2 of the Complaint it is admitted that the Defendant Robert Wolfson is a citizen and resident of the County of Beaufort in the State of South Carolina. It is further admitted that the Defendant Old South Properties, Inc. is a closely held corporation organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina. This corporation is currently owned by the Plaintiff and the Defendant Robert Wolfson, subject to an agreement, referenced in the Complaint, whereby the Plaintiff is selling his interest in the corporation to the Defendant Robert Wolfson.

4. With the understanding that all litigation is "significant," the allegations of Paragraph 3 of the Complaint are admitted.

5. The allegations of Paragraph 4 of the Complaint are admitted.

6. With respect to the allegations of Paragraph 5 of the Complaint, it is admitted that pursuant to the handwritten agreement "Wolfson shall provide a security agreement as to his interest in Old South Properties." The remaining allegations of said paragraph are denied.

7. The allegations of Paragraph 6 of the Complaint are admitted, said payments conditioned upon Plaintiff's ability to transfer the subject assets free of liens or encumbrances.

8. With respect to the allegations of Paragraph 7 of the Complaint, except for the "security agreement" referenced above, the allegations of Paragraph 7 of the Complaint are denied.

9. The allegations of Paragraph 8 of the Complaint are admitted.

10. The allegations of Paragraph 9 of the Complaint are denied.

11. The allegations of Paragraph 10 of the Complaint are denied.

12. The allegations of Paragraph 11 of the Complaint are denied.

13. The allegations of Paragraph 12 of the Complaint are denied.

14. The allegations of Paragraph 13 of the Complaint are denied.

15. The allegations of Paragraph 14 of the Complaint are denied. While it is admitted that the Notice and Certificate of Lien attached to the Complaint as Exhibit C was filed on November 20, 2017, purportedly on behalf of the Bull Point Plantation Property Owners Association, Inc., it is affirmatively alleged that said lien is false, wrongful, and fraudulent and the validity of said lien is the subject of litigation currently pending in the Beaufort County Court of Common Pleas.

16. The allegations of Paragraph 15 of the Complaint are admitted.

17. With respect to the allegations of Paragraph 16 of the Complaint it is admitted that, pursuant Exhibit A attached to the Complaint "Wolfson shall have the \$90,000 obligation to Kirkland secured by a mortgage on a lot owned by Bob Wolfson valued at least \$80,000," and that, pursuant to Exhibit B attached to the Complaint "Should there be an event of default by nonpayment, Stancel E. Kirkland shall have the right to foreclose on a parcel of land known as Lot 90 Mackey Point in Jasper County, South Carolina." The remaining allegations of said paragraph are denied.

18. The allegations of Paragraph 17 of the Complaint are denied.

19. The allegations of Paragraph 18 of the Complaint are denied.

20. The allegations of Paragraph 19 of the Complaint are denied.

21. The allegations of Paragraph 20 of the Complaint are denied.

22. The allegations of Paragraph 21 of the Complaint are denied.

23. The allegations of Paragraph 22 of the Complaint are denied.

FOR A SECOND DEFENSE

24. The admitted allegations of the Complaint are hereby re-alleged and incorporated herein as fully as if repeated verbatim.

25. The handwritten agreement of the parties, which is attached to the Complaint as Exhibit A, provides in pertinent part as follows:

5. Wolfson shall pay Kirkland \$80,000 cash on or before 3/1/18.

6. Wolfson shall also pay Kirkland \$10,000 on or before 1/1/19.

7. Upon payment of the \$90,000 mentioned in 5 and 6 above Kirkland transfers his interest in Old South Properties to Wolfson.

27. The Plaintiff's ability to transfer his interest in Old South Properties, Inc., free and clear of liens or encumbrances, has been prevented by the filing of the lien, which was attached as Exhibit C to the Complaint, as well as by a purported judgment lien claimed to be held by German American Capital Corporation.

28. The Defendants have initiated litigation seeking to declare the lien purportedly filed on behalf of the Bull Point Plantation Property Owners Association to be invalid, as well as to recover damages for slander of title, and have also challenged in Court the validity of the purported judgment lien.

29. Until removed or extinguished the foregoing purported liens constitute a cloud on the title to the assets of Old South Properties, Inc.

30. The Defendant Robert Wolfson is justified in withholding payment to the Plaintiff so long as the foregoing clouds on the title to be assets of the Plaintiff have been resolved.

WHEREFORE, the Defendants Robert Wolfson and Old South Properties, Inc., pray that the Court inquire into the matter set forth herein, dismiss the Complaint, and grant to these Defendants such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: /s/ H. Fred Kuhn, Jr.

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901-0507
(843)524-3373 - telephone
(843)524-1302 - facsimile
Email: fred@mossandkuhn.com
Attorney for Plaintiff

Beaufort, South Carolina
July 5, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2018-CP-07-00796
STANCEL E. KIRKLAND and	)	
EL CID HOLDINGS, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	AMENDED ANSWER AND
	)	COUNTERCLAIMS OF DEFENDANT
OLD SOUTH PROPERTIES, INC. AND	)	ROBERT WOLFSON
ROBERT WOLFSON,	)	
	)	
Defendants,	)	
	)	

The Defendant, Robert Wolfson, answering the Complaint of the Plaintiff, and by way of counterclaim and cross claim, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint which are not expressly admitted are denied and strict proof demanded thereof.
2. The allegations of Paragraph 1 of the Complaint are admitted.
3. With respect to the allegations of Paragraph 2 of the Complaint it is admitted that the Defendant Robert Wolfson is a citizen and resident of the County of Beaufort in the State of South Carolina. It is further admitted that the Defendant Old South Properties, Inc. is a closely held corporation organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina. This corporation was owned by the Plaintiff Kirkland and the Defendant Robert Wolfson, subject to an agreement, referenced in the Complaint, whereby the Plaintiff Kirkland agreed to sell his interest in the corporation to the Defendant Robert Wolfson.

4. With the understanding that all litigation is "significant," the allegations of Paragraph 3 of the Complaint are admitted.

5. The allegations of Paragraph 4 of the Complaint are admitted.

6. With respect to the allegations of Paragraph 5 of the Complaint, it is admitted that pursuant to the handwritten agreement "Wolfson shall provide a security agreement as to his interest in Old South Properties." The remaining allegations of said paragraph are denied.

7. The allegations of Paragraph 6 of the Complaint are admitted, said payments conditioned upon Plaintiff's ability to transfer the subject assets free of liens or encumbrances.

8. With respect to the allegations of Paragraph 7 of the Complaint, except for the "security agreement" referenced above, the allegations of Paragraph 7 of the Complaint are denied.

9. The allegations of Paragraph 8 of the Complaint are admitted.

10. The allegations of Paragraph 9 of the Complaint are denied.

11. The allegations of Paragraph 10 of the Complaint are denied.

12. The allegations of Paragraph 11 of the Complaint are denied.

13. The allegations of Paragraph 12 of the Complaint are denied.

14. The allegations of Paragraph 13 of the Complaint are denied.

15. The allegations of Paragraph 14 of the Complaint are denied. While it is admitted that the Notice and Certificate of Lien attached to the Complaint as Exhibit C was filed on November 20, 2017, purportedly on behalf of the Bull Point Plantation Property Owners Association, Inc., it is affirmatively alleged that said lien is false, wrongful, and fraudulent and the validity of said lien is the subject of litigation currently pending in the Beaufort County Court of Common Pleas.

16. The allegations of Paragraph 15 of the Complaint are admitted.

17. With respect to the allegations of Paragraph 16 of the Complaint it is admitted that, pursuant Exhibit A attached to the Complaint "Wolfson shall have the \$90,000 obligation to Kirkland secured by a mortgage on a lot owned by Bob Wolfson valued at least \$80,000," and that, pursuant to Exhibit B attached to the Complaint "Should there be an event of default by nonpayment, Stancel E. Kirkland shall have the right to foreclose on a parcel of land known as Lot 90 Mackey Point in Jasper County, South Carolina." The remaining allegations of said paragraph are denied.

18. The allegations of Paragraph 17 of the Complaint are denied.

19. The allegations of Paragraph 18 of the Complaint are denied.

20. The allegations of Paragraph 19 of the Complaint are denied.

21. The allegations of Paragraph 20 of the Complaint are denied.

22. The allegations of Paragraph 21 of the Complaint are denied.

23. The allegations of Paragraph 22 of the Complaint are denied.

FOR A SECOND DEFENSE

24. The admitted allegations of the Complaint are hereby re-alleged and incorporated herein as fully as if repeated verbatim.

25. The handwritten agreement of the parties, which is attached to the Complaint as Exhibit A, provides in pertinent part as follows:

5. Wolfson shall pay Kirkland \$80,000 cash on or before 3/1/18.

6. Wolfson shall also pay Kirkland \$10,000 on or before 1/1/19.

7. Upon payment of the \$90,000 mentioned in 5 and 6 above Kirkland transfers his interest in Old South Properties to Wolfson.

27. The Plaintiff's ability to transfer his interest in Old South Properties, Inc., free and clear of liens or encumbrances, has been prevented by the filing of the lien, which was attached as Exhibit C to the Complaint, as well as by a purported judgment lien claimed to be held by German American Capital Corporation.

28. The Defendants have initiated litigation seeking to declare the lien purportedly filed on behalf of the Bull Point Plantation Property Owners Association to be invalid, as well as to recover damages for slander of title, and have also challenged in Court the validity of the purported judgment lien.

29. Until removed or extinguished the foregoing purported liens constitute a cloud on the title to the assets of Old South Properties, Inc.

30. The Defendant Robert Wolfson is justified in withholding payment to the Plaintiff until as the foregoing clouds on the title to the assets of the Plaintiff have been resolved.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

31. The admitted allegations of the Complaint are hereby realleged and incorporated herein as fully as if repeated verbatim.

32. On March 1, 2018 this Defendant was ready, willing and able to tender to the Plaintiff Kirkland the first payment referenced in Paragraph 6 of the Complaint.

33. On March 1, 2018 it was also the intent of this Defendant to deliver to the Plaintiff Kirkland the final payment referenced in Paragraph 6 of the Complaint, even though said payment was not due until January 1, 2019.

34. In anticipation of making the aforesaid payments this Defendant obtained the loan secured by the mortgage referenced in Paragraph 12 of the Complaint.

35. Upon information and belief, however, the Plaintiff Kirkland was unable, as of March 1, 2018, to transfer to this Defendant his shares of stock in Old South Properties, Inc., by virtue of, among other things, the lien referenced in Paragraph 14 of the Complaint.

36. This Defendant stands ready, willing and able to pay the full \$90,000.00 referenced in Paragraph 6 of the Complaint, and does hereby tender said payment to the appropriate party.

37. Upon information and belief, on or about June 29, 2018 the Plaintiff Kirkland executed an Assignment to the Plaintiff El Cid Holdings, LLC which creates uncertainty as to whom this Defendant should pay the \$90,000.00 referenced in Paragraph 6 of the Complaint, that is, should he pay to the Plaintiff Kirkland or to the Plaintiff El Cid Holdings, LLC.

38. Upon information and belief, this Defendant is entitled to a declaration from the Court as to whom this Defendant should pay the \$90,000.00 referenced in Paragraph 6 of the Complaint, and is further entitled to an Order directing the Plaintiff Stancel El Kirkland and/or the Plaintiff El Cid Holdings, LLC, as may be appropriate, to transfer to this Defendant, free and clear of any liens or encumbrances, the shares of stock in Old South Properties, Inc. referenced in the Agreement attached as Exhibit A to the Complaint.

FOR FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

39. The admitted allegations of the Complaint, and the allegations of the Third Defense and Counterclaim, are hereby realleged and incorporated herein as fully as if repeated verbatim.

40. Upon information and belief El Cid Holdings, LLC, is a limited liability company organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

41. Upon information and belief, the Plaintiff El Cid Holdings, LLC, as a result of the Assignment executed by the Plaintiff Kirkland on or about June 29, 2018, may claim entitlement to all or some of the payments referenced in Paragraph 6 of the Complaint, and/or, may claim an interest in the shares of stock in Old South Properties, Inc. referenced in the Agreement attached to the Complaint as Exhibit A, which are to be purchased by this payment.

42. The Defendant Wolfson is informed and believes that he is entitled to a declaration by this Court declaring to whom this Defendant should deliver his payment and declaring that, in return, the shares of stock in Old South Properties, Inc. referenced in the Agreement attached as Exhibit A to the Complaint shall be conveyed to this Defendant Wolfson free and clear.

WHEREFORE, this Defendant Wolfson prays as follows:

- a. That the Complaint be dismissed;
- b. That the Court declare to whom this Defendant should deliver the payments in referenced in Paragraph 6 of the Complaint;
- c. That the Court order the appropriate individual or entity to convey to the Defendant, in exchange for the payment referenced above the shares of stock in Old South Properties, Inc. referenced in the Agreement attached as Exhibit A to the Complaint; and
- d. For such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: /s/ H. Fred Kuhn, Jr.

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901-0507
(843)524-3373 - telephone
(843)524-1302 - facsimile
Email: fred@mossandkuhn.com
Attorney for Robert Wolfson

Beaufort, South Carolina
September 28, 2018

000088

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Stancel E. Kirkland and El Cid Holdings,
LLC,

Plaintiffs,

v.

Robert Wolfson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-07-00796

**ANSWER OF PLAINTIFF EL CID HOLDINGS,
LLC TO DEFENDANT'S COUNTERCLAIMS**

NOW COMES Plaintiff El Cid Holdings, LLC, ("El Cid"), by and through its undersigned counsel, and answers the Counterclaim of Defendant Robert Wolfson (hereinafter "Defendant" or "Wolfson"), denying all allegations not specifically admitted, as follows:

RESPONSE TO DEFENDANT'S SECOND DEFENSE

1. In Paragraphs 24 through 30 of Defendant's Amended Answer and Counterclaims, Defendant attempts to set forth allegations related to his Agreements with Stancel Kirkland. Unless explicitly admitted, the allegations set forth or incorporated in these Paragraphs are denied.

2. In Paragraph 25 of Defendant's Amended Answer and Counterclaims, Defendant admits to the contents of Exhibit "A," especially the deadlines by which he was required to make payments.

3. There is no Paragraph 26 of Defendant's Amended Answer and Counterclaims.

4. The allegations in Paragraph 27 of Defendant's Amended Answer and Counterclaims are denied. No "lien or encumbrance" has ever been placed on Mr. Kirkland's shares of stock in Old South Properties, Inc. By agreement with El Cid Holdings, LLC, Mr.

Kirkland has transferred his entire interest in Old South Properties, Inc. to El Cid Holdings, LLC. Because Defendant's entire interest in Old South Properties, Inc. had transferred to Mr. Kirkland, who in turn transferred his entire interest in Old South Properties, Inc. to El Cid Holdings, LLC, El Cid Holdings, LLC is now the sole shareholder in Old South Properties, Inc.

5. The "litigation" referenced in Paragraph 28 of Defendant's Amended Answer and Counterclaims has been dismissed under Rule 40(j), SCRCP. Defendant has not adequately identified a "judgment lien" held by German American Capital Corporation against Old South Properties, Inc. to permit an informed response to that allegation.

6. There is no legal or factual basis for Defendant to allege that "the foregoing purported liens constitute a cloud on the title to the assets of Old South Properties, Inc." in any manner that would alter Defendant's responsibility to make the payments to Mr. Kirkland as previously required. The allegations in Paragraphs 29 and 30 of Defendant's Amended Answer and Counterclaims are denied.

RESPONSE TO DEFENDANT'S THIRD DEFENSE AND COUNTERCLAIM

7. In Paragraphs 31 through 38 of Defendant's Amended Answer and Counterclaims, Defendant attempts to set forth allegations related to his Agreements with Stancel Kirkland, as well as a counterclaim. Unless explicitly admitted, the allegations set forth or incorporated in these Paragraphs are denied.

8. The allegations in Paragraph 32 of Defendant's Amended Answer and Counterclaims are denied. In fact, Defendant affirmatively stated that he had no intention of honoring any agreement to pay Mr. Kirkland as provided in the Agreements referenced above.

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9. The allegations in Paragraph 33 of Defendant's Amended Answer and Counterclaims are denied. In fact, Defendant affirmatively stated that he had no intention of honoring any agreement to pay Mr. Kirkland as provided in the Agreements referenced above.

10. The allegations in Paragraph 34 of Defendant's Amended Answer and Counterclaims are denied. Instead, upon information and belief, Defendant has admitted that the purported "loan" was from his son and was a sham mortgage.

11. The allegations in Paragraph 35 of Defendant's Amended Answer and Counterclaims are denied.

12. Defendant has already missed the deadlines to make payment set forth in the Agreements and defaulted on his responsibilities under the Agreements. As a consequence, Defendant has no standing to "tender" any payment under the Agreement. In fact, Defendant has already repudiated his obligations under the Agreements. The allegations in Paragraph 36 of Defendant's Amended Answer and Counterclaims are denied.

13. El Cid Holdings, LLC admits that it is the sole shareholder of Old South Properties, Inc. As a consequence of his own misconduct and defaults under the Agreements, and his own repudiation of his obligations under the Agreements, Defendant has no standing to "tender" any payment under these Agreements. The allegations in Paragraph 37 of Defendant's Amended Answer and Counterclaims are denied.

14. The allegations in Paragraph 38 of Defendant's Amended Answer and Counterclaims are denied.

RESPONSE TO DEFENDANT'S FOURTH DEFENSE AND COUNTERCLAIM

15. In Paragraphs 39 through 42 of Defendant's Amended Answer and Counterclaims, Defendant attempts to set forth allegations related to his Agreements with

Stancel Kirkland, as well as a counterclaim. Unless explicitly admitted, the allegations set forth or incorporated in these Paragraphs are denied.

16. El Cid Holdings, LLC admits that it is a limited liability company organized in South Carolina.

17. El Cid Holdings, LLC admits that it is the sole shareholder of Old South Properties, Inc. As a consequence of his own misconduct and defaults under the Agreements referenced above, and Defendant's own repudiation of his obligations under the Agreements, Defendant has no standing to "tender" any payment under these Agreements.

18. The allegations in Paragraph 42 of Defendant's Amended Answer and Counterclaims are denied.

WHEREFORE, having fully answered the Counterclaims of the Defendant, Plaintiff El Cid Holdings, LLC requests that:

1. the counterclaims asserted and relief sought by Defendant be denied in each and every respect;
2. the counterclaims asserted by Defendant be dismissed in their entirety with prejudice; and
3. the Court award Plaintiff El Cid Holdings, LLC its costs and attorney's fees under applicable case and statutory laws and such other and further relief as this Court may deem just and proper.

Dated this the 12th day of October, 2018.

Respectfully submitted,

/s/ Eugene H. Matthews

Eugene H. Matthews, SC Bar #10193
RICHARDSON PLOWDEN & ROBINSON, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@RichardsonPlowden.com

/s/ Maryann Blake

Maryann Blake, SC Bar #73929
WOODARD & BUTLER, LLC
Post Office Box 1906
Walterboro, South Carolina 29488-0020
T: (843) 538-4566
F: (843) 538-2322
Email: mablake1@lowcountry.com

COUNSEL FOR PLAINTIFF EL CID HOLDINGS, LLC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Stancel E. Kirkland and El Cid Holdings,
LLC

Plaintiffs,

vs.

Old South Properties, Inc. and Robert
Wolfson,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-07-00796

REPLY

Stancel E. Kirkland replies to any counterclaim of Robert Wolfson as follows:

1. All other replies are hereby adopted into this pleading.
2. The allegation of any counterclaim are denied.

WHEREFORE, having fully replied, the Plaintiff Stancel E. Kirkland prays that the counterclaim be dismissed with costs; for judgment on the Complaint and for such other and further relief as this court might deem just and proper.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore (SC Bar #4063)

Post Office Box 5709

West Columbia, South Carolina 29171

Phone: (803) 796-9160

Fax: (803) 791-8410

jake@mttlaw.com

Attorney for Stancel E. Kirkland

October 22, 2018

000094

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
STANCEL E. KIRKLAND,)
Plaintiff,)
vs.)
OLD SOUTH PROPERTIES, INC. AND)
ROBERT WOLFSON,)
Defendants,)
and)
ROBERT WOLFSON,)
Cross Claim Plaintiff,)
vs.)
EL CID HOLDINGS, LLC,)
Intervenor and Cross Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-07-00796

AFFIDAVIT OF ROBERT WOLFSON

PERSONALLY appeared before me Robert Wolfson who, being duly sworn, deposes and states as follows:

1. I am over eighteen years of age and competent to give this affidavit.
2. All matters stated herein, unless expressly noted otherwise, are based upon my own direct and personal knowledge.
3. Attached as Exhibit A hereto is a true and accurate copy of an Agreement entered into between myself and the Plaintiff on May 21, 2017.

4. At the time we entered into this Agreement, I owned 50% of the shares of stock in Old South Properties, Inc., and the Plaintiff owned the remaining 50% shares of stock in Old South Properties, Inc.

5. This Agreement provided in pertinent part as follows:

5. Wolfson shall pay Kirkland 80,000 cash on or before 3/1/18.

6. Wolfson shall also pay Kirkland 10,000 on or before 1/1/19.

7. Upon payment of the 90,000 mentioned in 5 and 6 above Kirkland transfers his interest in Old South Properties to Wolfson.

6. I am now, and on May 1, 2018 was, ready, willing and able to pay to Kirkland not only the \$80,000 that was due on May 1, 2018, but also the \$10,000 that is not due until January 1st next year.

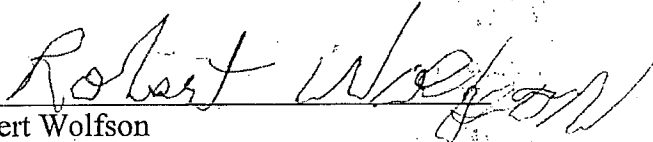
7. In anticipation of making said \$90,000 payment, I borrowed, pursuant to a Note and Mortgage, \$97,000 on or about February 18, 2018. Unfortunately, upon information and belief, the Plaintiff was unable to transfer to me his shares of stock in Old South Properties, Inc. free and clear.

8. A further complication has been created as a result of a document entitled "Assignment" executed by the Plaintiff on June 29, 2018, a true and accurate copy of which is attached hereto as Exhibit B.

9. Pursuant to this Assignment the Plaintiff conveys to El Cid Holdings, LLC all of his interest in Old South Properties, Inc., but then recites that it is "subject to" and only to the "extent allowed" the agreement with me.

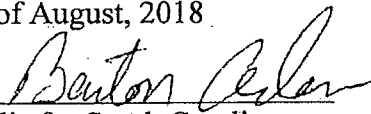
10. I am now satisfied that the lien on Old South Properties, Inc. referenced in the Complaint is not valid, and I stand ready, willing and able to immediately pay \$90,000 for the remaining stock in Old South Properties, Inc. pursuant to the May 21, 2017 Agreement. I simply want to make sure that I make the payment to the right person or entity, and that I don't have to pay it twice.

Further the affiant sayeth naught.


Robert Wolfson

Sworn to before me this

10 day of August, 2018.


Notary Public for South Carolina
My Commission Expires: 10/16/19

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EXHIBIT A

860000

State of South Carolina } Agreement
County of Beaufort }

Agreement dated 5/21/22

Consideration is The mutual
promises contained herein.

1. The Division Judgment Agreement
of today Date placed on
Record is Affirmed.

2. Except for the obligation
between Bob Wilson and
Stan Kirkland fully Release
each other from any liability

3. The Binder Judgment Against
Wilson shall be satisfied
immediately.

4. Satisfaction of The Binder
Judgment is The Responsibility
of Kirkland

(over)

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5. Wilson shall pay
Kirkland 80,000 cash on or
before 3/1/18.

6. Wilson shall also pay
Kirkland 10,000 on or before
1/1/19

7. Upon payment of the 90,000
mentioned in 5 and 6 above
Kirkland transfers his interest
in Old South Properties to
~~Wilson~~ Wilson.

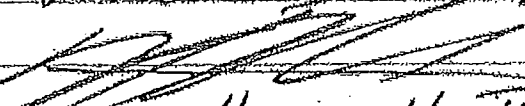
8. Wilson shall have
the 90,000 obligation to
Kirkland secured by a mortgage
on a lot owned by
~~Wilson~~ ~~Wilson~~ ~~Wilson~~ the value of
least \$80,000. ~~OR mortgage~~
~~shall not be executed until~~
~~the Department is approved.~~

9. Old South Properties shall also guarantee the obligations of Wilson and Wilson shall provide a Security Agreement as to his interest in old South Properties.

3 10. Kirkland will ~~draw~~ withdraw his secret for a Receiver and shall not prove it so long as Wilson is current under this Agreement.

Stam Kirkland
Stam Kirkland

Robert Wilson
Robert Wilson

By  Henry H. Taylor
Vivian Dubois Inc

(over)

all Smith Report
By Robert W. Wolf

Binder Production
By Samuel E. Berkland

#4

EXHIBIT B

000103

STATE OF SOUTH CAROLINA)

ASSIGNMENT

COUNTY OF LEXINGTON)

For and in consideration of \$5.00 and other valuable consideration, Stancel E. Kirkland hereby conveys to El CID Holdings, LLC all of his interests in Old South Properties, Inc., which is at least fifty percent. The conveyance is made subject to the agreements between Stancel E. Kirkland and Robert Wolfson made May 21, 2017 and July 5, 2017. To the fullest extent allowed by law and to the fullest extent allowed by the agreements between Stancel E. Kirkland and Robert Wolfson, El CID Holdings, LLC may exercise all of Kirkland's proprietary rights in Old South Properties, Inc.

Stancel E. Kirkland SR
Stancel E. Kirkland

SWORN to before me this 29
day of June, 2018

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 2/21/28

EXHIBIT "A"

000104

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2018-CP-07-00796

Stancel E. Kirkland and
El Cid Holdings, LLC,

Respondents,

vs.

Robert Wolfson,

Appellant.

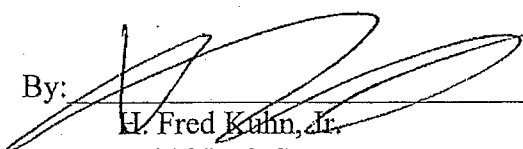
NOTICE OF APPEAL

The Appellant, Robert Wolfson, hereby appeals the Orders of the Honorable Marvin H. Dukes, III entitled Final Judgment dated November 15, 2018 and Order Denying Defendant's Motion for New Trial, to Reconsider, Alter or Amend Judgment (Form 4) dated January 16, 2019 copies of which are attached hereto. Appellant received written notice of the entry of the Order Denying Defendant's Motion for New Trial, to Reconsider, Alter or Amend Judgment on January 16, 2019.

000105

MOSS, KUHN & FLEMING, P.A.

By:


H. Fred Kuhn, Jr.

1501 North Street

Post Office Drawer 507

Beaufort, South Carolina 29901

(843)524-3373

(843)524-1302 - facsimile

Beaufort, South Carolina

February 8, 2019

Other Counsel of Record:

Maryann Elizabeth Blake, Esquire

Woodard & Butler

Post Office Box 1906

Walterboro, South Carolina 29488-0020

Attorney for the Respondents

Eugene H. Matthews, Esquire

Richardson Plowden Robinson, P.A.

Post Office Drawer 7788

Columbia, South Carolina 29202

Attorneys for the Respondents

S. Jahue Moore, Esquire

Ralph Nicholas, Jr., Esquire

Moore Taylor Law Firm

Post Office Box 5709

West Columbia, South Carolina 29171

Attorney for the Respondents

000106

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-00796

Stancel E. Kirkland

Old South Properties, Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:This came before me January 11th, 2019 on Defendant Robert Wolfson's Motion for New Trial, to Reconsider, Atler or Amend Judgment (filed November 21st, 2018). After hearing from parties and review of the file, I hereby deny the motion.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge	3069 Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

 S. Jahue Moore

 Maryann E. Blake

 Ralph N. Riley, Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

 Eugene H. Matthews

 H. Fred Kuhn, Jr.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Stancel E Kirkland VS Old South Properties Inc , defendant, et al
Case Number: 2018CP0700796
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-01-16 16:11:01 page 3 of 3

000109

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Stancel E. Kirkland and El Cid Holdings,
LLC,

Plaintiffs,

v.

Robert Wolfson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-07-00796

FINAL JUDGMENT

On October 1, 2018, this matter was referred to this Court with finality with special instructions to expedite the final hearing. The issues before the Court concern the interpretation of a contract between Stancel E. Kirkland¹ and Robert Wolfson regarding ownership of a company named Old South Properties, Inc.

On November 5, 2018, the matter was heard before this Court in a non-jury trial. The findings of this Court are as follows.

The evidence in the case confirmed that Kirkland and Wolfson were, at all times relevant, sophisticated and experienced businessmen. The evidence also confirmed that, at all times relevant, Wolfson had superior knowledge of the books, operations, assets and liabilities of Old South Properties, Inc., than did Kirkland.

The contract at issue was made in two parts: (1) an Agreement dated May 21, 2017, and (2) a Note of Security Agreement dated July 5, 2017. By their own terms, they are meant to act and be construed in conjunction with one another and as a single agreement.

¹ While this case was pending, on June 29, 2018, Stancel E. Kirkland assigned all of his interest in Old South Properties, Inc. to El Cid Holdings, LLC, who thereafter intervened as Plaintiff in this matter.

There were several provisions in the contract that provided valuable consideration to each party. The specific parts of the contract at issue in this case are as follows:

1. When the contract was executed, Kirkland and Wolfson were each 50% owners of Old South Properties, Inc.
2. Wolfson agreed to purchase Kirkland's 50% interest in Old South Properties, Inc. by paying Kirkland \$80,000 on or before March 1, 2018, with a 30-day period to cure default in the case of non-payment. Wolfson was also required to pay Kirkland another \$10,000 on or before January 1, 2019, with a 30-day period to cure default in the case of non-payment.
3. Following any such default, there was a self-executing consequence for the default, by which Wolfson's interest in Old South Properties, Inc. "shall be the exclusive property of Stancel E. Kirkland."

Neither party claims any ambiguity to any part of this contract, including the provisions referenced above, nor do I find that any exist.

It is undisputed that Wolfson failed to make the \$80,000 payment to Kirkland on or before March 1, 2018, and it is undisputed that Wolfson failed to cure this default within the 30-day grace period. Although Wolfson's reason for not complying with the payment schedule involved his concern about a 3rd party's lien on real estate owned by Old South Properties, Inc., nothing in the contract allowed for any extensions or modifications under such circumstances. Further, there was no agreement or modification that altered or extended the payment period.

Indeed, although certain extrinsic evidence was presented to and received by the Court, this ruling is based solely on the four corners of the unambiguous contract and upon the undisputed and unexcused failure to pay.

Under South Carolina law, the main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the contract. *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (S.C.

App. 1992); *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). If a contract's language is clear and capable of legal construction, a court's function is to interpret its lawful meaning and the intent of the parties as found in the agreement. *Smith-Cooper v. Cooper*, 344 S.C. 289, 543 S.E.2d 271 (S.C. App. 2001). A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense. *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 438 S.E.2d 275 (S.C. App. 1993); *Gilbert v. Miller*, 356 S.C. 25, 30-31, 586 S.E.2d 861, 864 (S.C. App. 2003).

Therefore, I find that Wolfson was in default of the Agreement as of the expiration of the grace period, which was March 31, 2018. This default activated the self-executing clause transferring Wolfson's interest in Old South Properties, Inc. to Kirkland. As of April 1, 2018, Kirkland was the exclusive owner of Old South Properties, Inc.

I also find that, as Kirkland transferred the entirety of his interest in Old South Properties, Inc. to El Cid Holdings, LLC on June 29, 2018, that as of that same date, El Cid Holdings, LLC became the sole and exclusive owner of Old South Properties, Inc.

As to the other provisions of the contract, I find that (1) Kirkland and El Cid Holdings, LLC each waives any further claims under the Agreement by reason of the forfeiture and declares the same to be satisfied, and said satisfaction shall be the Order of the Court, and (2) the mutual releases between Kirkland and Wolfson under the contract were not challenged and remain binding on Kirkland and Wolfson.

For the same reasons as set forth hereinabove, the Counterclaims fail and I find for the Plaintiffs on the same.

Finally, as the evidence offered at trial establishes that the mortgage Wolfson gave on February 16, 2018 and recorded on March 6, 2018 (File No. 2018011846) in the name of Old South Properties, Inc. to his son's company, HCG Weight Loss Center, Inc., has been satisfied, I hereby direct Wolfson to take all actions necessary to have the appropriate satisfaction of mortgage filed with the Beaufort County Register of Deeds within fifteen (15) days of the date of this Order.

AND IT IS ORDERED.

Marvin Dukes
Master-in-Equity

November 14, 2018
Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-00796

Stancel E. Kirkland & El Cid Holdings, LLC

Robert Wolfson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Eugene H. Matthews, Esq.

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Judgment for Plaintiffs – see attached order

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Eugene H. Matthews, Esq.

H. Fred Kuhn, Jr. Esq.

Maryann E. Blake, Esq.

Ralph N. Riley, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

See attached order



Beaufort Common Pleas:

Case Caption: Stancel E Kirkland VS Old South Properties Inc., defendant, et al

Case Number: 2018CP0700796

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-11-15 13:46:09 page 7 of 7

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 STANCEL E. KIRKLAND and
4 EL CID HOLDINGS, LLC,

Plaintiffs,

5 vs.

Case No. 2018-CP-07-00796

6 ROBERT WOLFSON,

7 Defendant.
8

9 DEPOSITION OF: ROBERT L. WOLFSON

10 DATE: October 1, 2018

11 TIME: 10:06 AM

12 LOCATION: Bull Point POA Clubhouse
13 114 Barnaby Bluff
Seabrook, SC

14 TAKEN BY: Counsel for the Plaintiff

15 REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC
16
17

18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
21 (843) 722-8414 (843) 785-3263 (843) 839-3376

22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919

24 Asheville, NC
(828) 123-9876

25 000117



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scheduledepo.com

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17 ATTORNEYS FOR THE DEFENDANT
18 ROBERT WOLFSON:

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23 (843) 524-3373
24 fred@mossandkuhn.com

25 ALSO PRESENT:

Billy Gavigan

(INDEX AT REAR OF TRANSCRIPT)

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1 A. Correct.

2 Q. And you appear to have signed this
3 document on July 17, 2017; is that correct?

4 A. Correct.

5 Q. Was this the note and security
6 agreement that's referenced in Exhibit -- in the
7 handwritten document in Exhibit 1 --

8 A. It is.

9 Q. -- in paragraph 9?

10 A. Note? I don't know.

11 Q. Sir, I'm going to again draw your
12 attention -- and I'm going to read into the record
13 and I want -- your attorney can make sure I'm
14 reading it correctly. Paragraph 9 in the
15 handwritten document states:

16 Old South Properties shall also
17 guarantee, it appears to be, the obligations of
18 Wolfson and Wolfson shall provide a security
19 agreement as to his interest in Old South
20 Properties.

21 And my question to you is: Is this
22 note and security agreement which is Exhibit 2, is
23 that that note and security agreement?

24 A. Right.

25 Q. Do you understand, sir, what I'm asking

000119

1 you?

2 A. Yeah, um-hum.

3 Q. And, again, just to make sure the
4 record's clear, Exhibit 2 is the security agreement
5 that's referenced in paragraph 9 of your
6 handwritten document.

7 A. Right.

8 Q. Thank you. Now this document was made
9 on July 5th of 2017. So about, perhaps, a month
10 and a half after the handwritten document?

11 A. Correct.

12 Q. Okay. Do you recall who drafted this
13 document, Exhibit 2?

14 A. Yes.

15 Q. Who was that?

16 A. Jake Moore, I assume.

17 Q. Did you -- well, I'll ask this: Did
18 you draft it?

19 A. No.

20 Q. How did it come in your possession?

21 A. By mail.

22 Q. Okay. It was mailed to you?

23 A. Yes.

24 Q. Do you recall who it was mailed by?

25 A. I believe it was in an envelope.

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1 State of South Carolina) Court of Common Pleas
 2 County of Beaufort) 14th Judicial Circuit
 No.: 2018-CP-07-00796

4 Stancel E. Kirkland and)
 El Cid Holdings, LLC,)

6 Plaintiff(s),)

7 vs.)

8 Robert Wolfson)

9 Defendant(s),)

COPY

FINAL HEARING

November 5th, 2018

11 Hearing reported by Deborah S. Thomas,
 12 Certified Verbatim Reporter and Notary Public in and
 13 for the State of South Carolina; said hearing held
 14 before Honorable Marvin H. Dukes, III, Beaufort
 15 County Master in Equity and Special Circuit Court
 16 Judge in accordance with the South Carolina Rules of
 17 Civil Procedure, at the Beaufort County Courthouse,
 18 102 Ribaut Road, Room 212, Beaufort, South Carolina
 19 on November 5th, 2018, at the hour of 9:22 a.m.

20
 21 DEBORAH S. THOMAS, CVRM
 156 Argent Way
 22 Bluffton, South Carolina 29909
 (803) 206-7390
 23
 24
 25

Appearances

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Examination by Mr. Matthews

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Examination by Mr. Kuhn

Examination by Mr. Matthews

ROBERT WOLFSON

Examination by Mr. Kuhn

Examination by Mr. Matthews

Certificate of Reporter

Word Index

* * * * *

EXHIBIT INDEX

Exhibits: Marked at Page

(Exhibits retained by Clerk of Court.)

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(Calendar Page)	
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(Other Liabilities)	
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(QuickBooks Report)	

* * * * *

1 This hearing is conducted in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 JUDGE DUKES: Good morning. We're
5 here in 2018-CP-07-00796. This is Kirkland versus
6 Old South, et al. And we are all gathered here for
7 a final hearing pursuant to an order of reference
8 heretofore filed. It's somewhere. I don't see it
9 here, but I know it is filed. There it is. Filed
10 October 1st of 2018.

11 And we've had a brief off the record
12 discussion about the possibility of settlement. And
13 although I know the parties have tried in the past
14 to settle, I've asked them to spend a few minutes
15 and see if there's some common ground. And I think
16 they are going to do that.

17 Before they break, though, I understand
18 Mr. Bell wanted to put something on the record.

19 Happy to hear from you, sir.

20 MR. BELL: Good morning, Judge.
21 Thank you. Again, Gill Bell with Moore Taylor Law
22 Firm. We represent Mr. Stancel Kirkland. He's
23 unable to be here this morning due to a physical and
24 mental reasons. With that said, Your Honor,
25 Mr. Kirkland assigned all of his interests in the

1 case to the remaining Plaintiff, El Cid. The only
2 remaining interest he would have would be of a
3 contractual nature.

4 Your Honor, with that said, we would
5 respectfully request that you allow me to be
6 excused. And allow these very capable attorneys to
7 continue with this proceeding without me.

8 JUDGE DUKES: Okay. So are we now --
9 is Mr. Kirkwood to be removed as a party or are
10 there counter -- I can't remember if there are
11 claims back against Mr. Kirkland?

12 MR. KUHN: There are.

13 JUDGE DUKES: So I guess you're
14 asking that he be removed as a party plaintiff and
15 El Cid substituted? Is that what we are doing?

16 MR. MATTHEWS: No objection, Your
17 Honor.

18 MR. MOORE: Your Honor, I believe
19 that what he'd like to do is just remain as a party
20 Plaintiff. He's not -- there's no counterclaim.
21 They're bringing the action in his name and on their
22 own behalf pursuant to the assignment. If he could
23 just remain as a party plaintiff, but let Mr. Gill
24 -- Mr. Bell go, indicating that El Cid will take
25 care of his interest in the case.

1 He has no interest in the case other than
2 being nominally the Plaintiff because he started the
3 action and had the contract.

4 JUDGE DUKES: Okay. And I mean, I'll
5 be happy to hear from everybody, but if he's -- he
6 no longer has any interest as an individual in the
7 case, is that what you all are telling me?

8 MR. MOORE: He's assigned his
9 interest, yes, sir.

10 JUDGE DUKES: A hundred percent?

11 MR. MOORE: Yes, sir.

12 JUDGE DUKES: No recourse. Gone.
13 Okay. So -- well, anyway. Let me hear from
14 counsel.

15 MR. KUHN: I have two counterclaims
16 against him, Your Honor.

17 JUDGE DUKES: Oh, okay. Well --

18 MR. KUHN: So --

19 JUDGE DUKES: There we go.

20 MR. KUHN: I think he's a necessary
21 party. I don't mind Mr. Bell being excused. And I
22 think the issue is Mr. Moore and Mr. Bell in the
23 same firm, Mr. Moore was representing Mr. Kirkland.
24 He's going to be testifying. Of course, he can't
25 testify and be the lawyer.

1 JUDGE DUKES: Okay. Do you have
2 counter --

3 MR. KUHN: So I think that is why Mr.
4 Bell is here.

5 JUDGE DUKES: You have claims --
6 counterclaims against Mr. Kirkwood, so he would
7 still need to be in the case.

8 MR. KUHN: I think he's still --

9 MR. BELL: Well, I believe they are
10 declaring --

11 MR. KUHN: I want him --

12 MR. BELL: They are not claims for
13 money interest. They're declaratory judgment
14 claims.

15 JUDGE DUKES: Okay.

16 MR. KUHN: Yes, so I want him bound
17 by this decision.

18 JUDGE DUKES: Okay. All right. So
19 he's -- well, nobody has tried to get him out. I
20 was just curious why no one was trying to get him
21 out and now I get it. So --

22 MR. MATTHEWS: Yes, sir.

23 MR. MOORE: And I think we would
24 agree that if there's a declaratory judgment that
25 you issue, it would be binding on Mr. Kirkland as

1 well as El Cid.

2 JUDGE DUKES: Okay.

3 MR. MOORE: Is that fair?

4 MR. BELL: That's right.

5 MR. MATTHEWS: Yes, Your Honor.

6 JUDGE DUKES: All right. Well, easy

7 enough. So questions --

8 MR. KUHN: I have no objection to

9 Mr. Bell being excused. Long story short.

10 JUDGE DUKES: Nor do I then. Thank
11 you so much.

12 MR. BELL: Thank you, Judge.

13 JUDGE DUKES: See you.

14 MR. BELL: I appreciate your time
15 this morning.

16 JUDGE DUKES: Have a safe trip back.
17 All right then. What we'll do is go off the record
18 for five or ten minutes, let you all talk. If --
19 obviously, there's some productivity in the talks,
20 you all let me know and we will spend as much time
21 as we need --

22 MR. MATTHEWS: Thank you, Your Honor.

23 JUDGE DUKES: -- to bring you all
24 together. We'll be off the record.

25 (BREAK TAKEN)

1 JUDGE DUKES: Back on in
2 2018-CP-07-00796. We took a brief break for the
3 parties to explore one final opportunity. I guess
4 it's not the final opportunity to keep talking, but
5 a pretrial opportunity to settle. And that was
6 unsuccessful, but I appreciate counsel working on
7 that.

8 And let's see. So the pleadings remain
9 the same way, but I understand Mr. Kirkland's
10 interests have been assigned to El Cid. So El Cid
11 is the effective Plaintiff --

12 MR. MATTHEWS: Yes, sir.

13 JUDGE DUKES: -- for purposes of how
14 we're going to start this thing. Is that --

15 MR. MATTHEWS: Yes, sir.

16 JUDGE DUKES: Is that accurate?

17 MR. MATTHEWS: Yes, sir.

18 JUDGE DUKES: And I'm happy to hear
19 from you, sir.

20 MR. MATTHEWS: Well, first of all,
21 Your Honor, just as a housekeeping matter, do you
22 want the court reporter to mark exhibits and then be
23 handed to you?

24 JUDGE DUKES: How many copies did we
25 bring?

1 MR. MATTHEWS: I brought one for my
2 friend and one to -- for the witness to see and, of
3 course, there are many copies. I just wanted to
4 make sure I was following the protocol that you
5 wanted us to follow.

6 JUDGE DUKES: I guess I should come
7 up with a protocol and put it on the website and
8 that kind of thing. Sometimes people will bring a
9 whole extra copy for me. If there are lots and lots
10 of copies, I understand the expense of that is a
11 problem.

12 MR. MATTHEWS: I don't think it would
13 be a problem for us to manage that with -- there are
14 some exhibits you may want to -- for instance, the
15 contracts that are at issue. Those are very
16 important. I think you should have those. And
17 there are a number of documents that have been
18 authenticated by admission. So there should be no
19 issue with authenticating documents.

20 I don't anticipate a significant number of
21 hearsay objections; although, who knows. Depending
22 on what witnesses have to say or not. There are
23 also a couple of matters that you may now want to
24 handle during trial regarding privilege and the
25 waiver of the same.

1 But the -- what I wanted to do to start
2 with an opening is to have you look at these -- or
3 have these at your hand so you could see what the
4 fuss was about.

5 JUDGE DUKES: Oftentimes, the
6 parties, and I probably should have suggested this
7 before, can sort of get together and come up with
8 what the relevant, undisputed documents are. And
9 I'm -- I think that's actually a part of a pleadings
10 somewhere; isn't it?

11 MR. MATTHEWS: It is, but the good
12 news is these documents have been authenticated by
13 admission.

14 JUDGE DUKES: Okay.

15 MR. MATTHEWS: So there's no real
16 dispute as to the ones -- especially the ones that
17 we're going to concentrate on today.

18 JUDGE DUKES: Yeah. I think that's
19 Exhibit 1 to the summons and complaint, the document
20 you've got in your hand.

21 MR. MATTHEWS: I believe so, Your
22 Honor.

23 JUDGE DUKES: Yeah. That -- but I'm
24 happy to do it anyway you want. Once they're marked
25 if -- you said there's an extra copy for the witness

1 and a copy for counsel. So we've got the original
2 and two copies. Is that what you've got?

3 MR. MATTHEWS: We have an
4 authenticated copy and then, of course, we would
5 have no objection if you -- okay. Thank you. We
6 would have no objection to -- it's the same document
7 relying on the exhibits that were part of the
8 summons and complaint.

9 JUDGE DUKES: Okay.

10 MR. MATTHEWS: And then we can -- to
11 the extent I did, though, want to mark them for a
12 witness to see.

13 JUDGE DUKES: Yeah. That's fine.

14 MR. MATTHEWS: All right. Well, we

15 --

16 JUDGE DUKES: For purposes of your
17 opening, I'm happy just to look at whatever you've
18 got and then we'll start marking when --

19 MR. MATTHEWS: Perfect.

20 JUDGE DUKES: -- we go. So -- and,
21 again, I've got a copy of it right here.

22 MR. MATTHEWS: And, Judge Dukes,
23 because I've appeared before you in informal
24 settings and in one -- a couple summary judgment
25 motions --

1 JUDGE DUKES: Sit, stand, coat off --

2 MR. MATTHEWS: Okay.

3 JUDGE DUKES: -- whatever makes you
4 comfortable.

5 MR. MATTHEWS: As you wish, thank
6 you.

7 JUDGE DUKES: We're in a tight little
8 room here. So --

9 MR. MATTHEWS: Thank you. Well,
10 Judge Dukes, let me briefly start off. The discrete
11 issue before you is interpretation of the two
12 documents that were attached to the complaint filed
13 by Mr. Moore.

14 They're contracts -- a handwritten
15 contract from May 21st, 2017, and a typewritten
16 contract, note and security agreement that was a
17 part of the same contract referenced in this first
18 contract and a part of it. This is a two-page,
19 handwritten document -- I'm sorry -- typed document
20 signed with a notarized signature by Mr. Wolfson.

21 Mr. Wolfson's also identified and
22 indicated that these are, in fact, his signatures on
23 the first and second contract. So the good news is
24 the parties at the very least agree on that. The
25 problem is they agree on little else.

1 And the issue we want before you today and
2 I think you wisely indicated let's decide what we're
3 fussing about today and what awaits other cases.
4 You've, of course, been heavily involved in a
5 dispute about a trailer and whether or not it was
6 properly removed and that remains to be seen.
7 Although, this case will probably resolve that
8 matter. But that matter is not before you.

9 Today the case is has the Plaintiff here,
10 now El Cid, is it the owner of Old South Properties
11 a hundred percent or 50 percent. And we need to --
12 in order for you to consider the case appropriately,
13 we think, you need to go back even before this
14 contract, what occasioned it to be written.

15 And there I'm going to ask you to take
16 judicial notice of some orders in a prior case,
17 Bindon Plantation v. Wolfson where Mr. Moore
18 represented Mr. Kirkland and others who were El Cid
19 members against Mr. Wolfson.

20 In early 2007, Judge Nettles sitting in
21 the Beaufort County Court of Common Pleas issued a
22 ruling on that case, that found Mr. Wolfson to have
23 misappropriated money to the tune of \$28,500 from
24 the company.

25 One of the witnesses you'll hear from

1 today, Ms. O'Connell, was actually a witness in that
2 trial as well and referenced in the order. The
3 order was devastating to Mr. Wolfson. It noted that
4 his testimony was not credible. Highly suspect, I
5 believe, are the exact words of the judge. That he
6 had misappropriated money. That he encouraged
7 Mr. Kirkland -- asked Mr. Kirkland to lie, words of
8 the case, to their partner about what happened with
9 the money.

10 Following that order, Mr. Moore issued a
11 motion to have a receiver appointed to supervise
12 Mr. Wolfson's assets to satisfy the judgment. And
13 on the tail of that stinging rebuke, Mr. Wolfson
14 engaged with Mr. Kirkland and Mr. Moore who was
15 representing Mr. Kirkland and others and came up
16 with this contract. This is the handwritten
17 contract dated May 21st, 2017.

18 And in it -- and Mr. Wolfson an
19 experienced businessman and able negotiator, he's
20 testified that he was certainly of sound mind and
21 body when he negotiated this contract. And that's
22 evident because he extracted from Mr. Kirkland and
23 others significant benefits.

24 The contract states that the Vivian's
25 Islands agreement that was placed on the record

1 today was approved. They affirmed it. He gained
2 significant advantages from that. Most importantly,
3 Number 2, except for the obligations herein, Bob
4 Wolfson and Kirkland -- Stan Kirkland fully release
5 each other from any liability. That's as of that
6 date.

7 Third, also very important, the Bindon
8 judgment against Wolfson shall be satisfied
9 immediately. And I ask you to take judicial notice.
10 We have the satisfaction of judgment, but you can
11 just as easily pull it up on your record. Mr. Moore
12 dutifully recorded that satisfaction of judgment.

13 If you turn to the next page, and this is
14 what we're here about, Wolfson shall pay Kirkland
15 \$80,000 on or about March 1st of 2018. Pay
16 another \$10,000 on or before January 1st, 2019.
17 Upon the payment of the \$90,000 mentioned in 5 and 6
18 above, Kirkland then would transfer his interest in
19 Old South Properties to Wolfson. And Old South
20 Properties is the real estate company that has been
21 so celebrated in other cases.

22 Wolfson shall have the \$90,000 obligation
23 to Kirkland secured by a mortgage on a lot. For
24 whatever reason, that never came to pass. Old South
25 Properties shall also guarantee the obligations of

1 Wolfson, and Wolfson shall provide a security
2 agreement as to his interest in Old South
3 Properties.

4 Kirkland will withdraw his request. This
5 is also very important and a benefit that
6 Mr. Wolfson retains to this day. Kirkland will
7 withdraw his request for receiver and shall not
8 pursue it so long as Wolfson is current under the
9 agreement. So he extracted any number of benefits
10 from the people he was dealing with, including Stan
11 Kirkland.

12 Now, the next part of this agreement is a
13 two-page typed agreement. Again, authored by Jake
14 Moore and signed and -- signed by Mr. Wolfson and
15 notarized by Ms. O'Connell. This is the note and
16 security agreement that was referenced in Paragraph
17 9 of the handwritten agreement. And in his
18 depositions, Mr. Wolfson has identified that these
19 are, in fact, the documents at issue. They are what
20 they appear to be.

21 The important thing I would point to you
22 here is it does repeat some. For instance, the
23 third paragraph, it does repeat when money is owed
24 and when it is due and the amounts that are due.

25 Now, the fourth paragraph is also what

1 will -- I think will demand your attention in this
2 case. And I'll read it into the record.

3 This note is hereby declared secured by
4 Robert Wolfson's interest in Old South Properties,
5 Inc. Should Robert Wolfson forfeit on his
6 obligations hereunder, Wolfson shall transfer his
7 interest at the election of Stancel E. Kirkland to
8 Stancel E. Kirkland. Should there be a default,
9 Robert Wilson shall have 30 days from date of
10 default to cure said default.

11 Following any default, Robert Wolfson's
12 interest in Old South Properties Inc. shall be the
13 exclusive property of Stancel E. Kirkland. And,
14 Your Honor, that actually did occur. That occurred
15 by execution of this agreement on March 31st when
16 Mr. Wolfson failed to make the \$80,000 payment and
17 when he failed to cure his default.

18 Note that the contract is quite clear.
19 Following any default. Any default. Robert
20 Wolfson's interests in Old South Properties, Inc.
21 shall be the exclusive property of Stancel E.
22 Kirkland. And, in fact, if there are any doubt
23 about that, shortly after the default Mr. Moore
24 filed a legal against Mr. Wolfson, which was
25 actually the legal action we are in right now,

1 saying, pal, you're in default. You had 30 days to
2 cure. You didn't. And we want -- we want a
3 declaration saying this is ours.

4 Now, that was the lawsuit. But to be
5 honest, the position of the Plaintiffs are it's
6 happened. As of April 1st, Stancel E. Kirkland
7 owned 100 percent of All South Properties. Why?
8 Because Mr. Wolfson agreed to it.

9 Now, you'll hear testimony today from Jake
10 Moore. Jake Moore as Fred Kuhn has indicated was at
11 one time an attorney in this case, but it became
12 evident that as the author of these documents and,
13 frankly, as a fact witness, he was a necessary
14 witness.

15 You will hear him testify that Mr. Wolfson
16 repudiated his obligations under these agreements to
17 Mr. Moore, personally, declared he would not honor
18 them. Mr. Moore will tell you in detail when and
19 how these meetings occurred. How this repudiation
20 occurred.

21 And you'll also hear Mr. Moore say there
22 was no wailing and gnashing of teeth as to much of
23 what Mr. Gavigan had done as declarant. This was a
24 matter between Mr. Kirkland and Mr. Wolfson, period.

25 Now, you'll also hear testimony from

1 Ms. O'Connell. Ms. O'Connell was -- she's a CPA.
2 She's an accomplished accountant, experienced
3 business woman. She ran the books for Mr. Wolfson
4 for years. You will hear her say a number of
5 things. Some of which she may find painful and I
6 understand that. She has a long history with
7 Mr. Wolfson and I want to respect that.

8 But she also appears to have a healthy
9 respect for the truth. And she testified in her
10 deposition that Mr. Wolfson was often untruthful in
11 his professional communications. We believe you'll
12 reach that same conclusion both from the testimony
13 of Mr. Moore and Ms. O'Connell and his own
14 testimony. Sadly so. I take no pleasure in saying
15 that, but there it is.

16 Judge -- what Judge Nettles said in his
17 order, what he found in his order is true.
18 Mr. Wolfson, I believe you will find, has changed
19 his story a number of times about why he failed to
20 make the payment. Not that it's relevant, to be
21 honest. He simply failed to make the payment. He
22 seeks to excuse it.

23 But the end of the day I think you'll find
24 there are no excuses. Mr. -- we anticipate that
25 Mr. Kuhn will argue that there were liens for unpaid

1 assessments placed on property owned by All South
2 Properties, Inc. and that that somehow excused
3 Mr. Wolfson's failure -- it excuses his default and
4 excuses his failure to cure.

5 We would -- we will argue to you that
6 those arguments are ridiculous. The contracts are
7 clear. He's buying shares of stock in a company.
8 Nothing more. You will also see evidence that when
9 he made these contracts there were plenty of other
10 encumbrances on the company. The fact that there
11 was an encumbrance on the company not only didn't
12 disturb him, he made the contract, we will argue,
13 with full knowledge there were plenty of
14 encumbrances. Some which far-outweighed any
15 encumbrance that he'd have to deal with in a lien
16 with a POA.

17 At the end of the day we think you will
18 find this, this is not a difficult case in one
19 regard. The statutory -- I'm sorry. The
20 contractual interpretation of contracts is not
21 difficult. The standard rules applying to
22 contractual interpretation are readily easy to see
23 here.

24 What's in the documents, was signed in the
25 document in an arm's length transaction between

1 experienced business persons, requires nothing more
2 than, frankly, an eighth grade education and reading
3 comprehension. That's it.

4 I'm going to ask the court not to be
5 beguiled by arguments that it's not so bad to
6 miss -- to miss a deadline. It's harsh. Please
7 excuse my client. He's raised any number of -- his
8 story has changed. I'm going to be delighted to see
9 what his story is today.

10 At one point he says, my attorney told me
11 not to do it. At some point he says, I really
12 couldn't get funding. He has told Mr. Moore,
13 we'll -- Mr. Moore will testify he indulged in none
14 of these fantasies. He just said I'm not going to
15 do it. I want you to do other things. He wanted to
16 bully Mr. Kirkland into doing his bidding. And the
17 answer was no.

18 And now he gains the benefit of the
19 contract and suffers the consequences of it, like
20 anyone else. He's no special -- he's no more
21 special than anyone else under this contract. And
22 that's what we are asking you to find. He has
23 gained the benefits of this contract. But the time
24 of trying to sweet talk your way out of it are over.
25 And that's what we'd like you to find.

1 JUDGE DUKES: Thank you so much.

2 Mr. Kuhn?

3 MR. KUHN: Please the court, Your
4 Honor. Scarcely I need to remind the court that the
5 comments of my esteemed colleague are not evidence.
6 I'd ask you to decide this case from what you hear
7 from the witness stand. I'm not going to give a
8 long argument.

9 I think the facts are, and we can agree on
10 this, I believe, fairly straightforward. This a
11 matter of interpreting a contract, two written
12 contracts. Need Your Honor to interpret those
13 contracts and then do what is just. This is a court
14 of equity. And that is the primary goal of this
15 court to do, equity.

16 Bull Point Plantation is an upscale,
17 gated, residential community here Beaufort County up
18 by Garden's Corner. Old South Properties was
19 initially owned by Stan Kirkland and Robert Wolfson
20 who is seated beside me, back in 1995, I believe.
21 They had a number of issues arise between them. And
22 these issues were resolved in this handwritten
23 contract and the note and security agreement.

24 My client has been trying to pay the
25 \$90,000. They've been refusing it. They want to

1 have this court declare a forfeiture of my client's
2 interest in Old South Properties because he has --
3 they have refused to accept his money.

4 Yes, I agree that is not fair. Yes, I
5 agree that is not equitable. But more importantly
6 that's not what the contract requires. I ask Your
7 Honor to closely read the contract. We'll get into
8 the contract. We'll parse it very carefully.
9 Unfortunately, we have to. It's a hastily written,
10 handwritten contract supplemented by what is called
11 a note and security agreement.

12 Once Your Honor has read that, studied it,
13 heard the testimony, I believe it's going to be
14 crystal clear that my client will pay \$90,000 and he
15 will own Old South Properties, Inc. Thank you.

16 JUDGE DUKES: Let's see. There's no
17 one else to give an opening, right? Let's see.
18 Because we are down to El Cid and --

19 MR. MATTHEWS: Yes, sir, Your Honor.

20 JUDGE DUKES: All right. Then call
21 your first witness then.

22 MR. MATTHEWS: Mr. Moore. And I'm
23 sorry. Some people entered the room that probably
24 the court reporter may need to identify.

25 JUDGE DUKES: Yeah.

1 (OFF RECORD DISCUSSION)

2 JUDGE DUKES: Can you all tell us who
3 you are for our court reporter, please, everyone
4 that just came in?

5 MS. GOODWIN: My name is Carol
6 Goodwin.

7 MS. D'AMBROSIA: My name is Mary
8 D'Ambrosio.

9 MS. HALL: Stacy Hall.

10 (OFF RECORD DISCUSSION)

11 JUDGE DUKES: Mr. Moore, do you swear
12 to truth, the whole truth, and nothing but the truth
13 so help you God?

14 THE WITNESS: I do, Your Honor.

15 JUDGE DUKES: Can you state your
16 whole name for our court reporter?

17 MR. MOORE: My name is Stephen with a
18 P, Jahue, spelled in the normal fashion Moore.
19 Jahue is how you spell Jahue. They call me Jake.

20 JUDGE DUKES: Thank you so much, sir.
21 Please proceed.

22 WHEREUPON:

23 STEPHEN JAHUE MOORE, being duly sworn
24 and cautioned to speak the truth, the whole truth
25 and nothing but the truth, testifies as follows:

EXAMINATION

BY MR. MATTHEWS:

Q. Mr. Moore, would you state your profession?

A. I'm a practicing lawyer.

Q. I'm technically not allowed to leave -- lead you, but I will try to be quick. Have you practiced law for over 40 years?

A. I have.

Q. Do you accept the honor of being one of our states leading trial lawyers?

A. I try a few cases every once in awhile, but thank you very much if you feel that way.

Q. Do you recognize that others regard you as one of the deans of the South Carolina Bar?

A. Thank you. If that is so, thank you.

Q. Let me ask you this. Have you run Moore and Taylor for decades?

A. I am the senior partner of the Moore Taylor Law Firm in West Columbia and Saluda. We have approximately 20 something lawyers. I have been with that firm since I was a law clerk in law school in 1974. I'm --

Q. I'm going to hand to you -- please go ahead.

1 A. -- a member of the South Carolina Bar,
2 American Board of Trial Attorneys, AV rating in
3 Martindale-Hubble, you know, so forth.

4 Q. Sir, I'm going to hand you two exhibits.

5 (OFF RECORD DISCUSSION)

6 JUDGE DUKES: So the handwritten is 1
7 and the typed is 2; is that correct?

8 MR. MATTHEWS: Yes, sir.

9 (MARKED PLAINTIFF'S EXHIBIT NOS. 1
10 and 2.)

11 COURT REPORTER: You said handwritten
12 1 and typed 2, but that's not how he handed them to
13 me and said they were 1 and 2.

14 JUDGE DUKES: Oh, well, let me
15 inquire. What was the intent?

16 MR. MATTHEWS: The handwritten was
17 Number 1. The typewritten was Number 2.

18 (OFF RECORD DISCUSSION)

19 JUDGE DUKES: All right. Any
20 objections?

21 MR. KUHN: No objections, Your Honor.

22 BY MR. MATTHEWS:

23 Q. Mr. Moore, can you tell the -- can you
24 tell the court what those documents are?

25 A. Exhibit Number 1 is a document that was

1 prepared during a trial of a case of Vivian's Island
2 versus Robert Wolfson. We were in the process of
3 trial and His Honor had asked that we consider the
4 possibility of settling the case over lunch.

5 Mr. Wolfson, myself, Mr. Stancel Kirkland,
6 and Mr. Henry Taylor all went to lunch together. At
7 which time, a settlement of the Vivian's Island and
8 the Bindon Plantation cases was reached. And that
9 agreement was written in my very poor handwriting at
10 a restaurant in Beaufort. And it basically sets
11 forth the term of a settlement agreement that we
12 reached over lunch and envisioned there would be a
13 more detailed agreement which would follow.

14 Q. Okay.

15 A. We returned to the courthouse. We placed
16 this agreement on the record. It was approved by
17 Judge Dukes. And that is my understanding of what
18 Exhibit Number 1 is.

19 Q. Okay. Let me -- let me stop you right
20 there. You mentioned two cases. I'm going to show
21 Judge Dukes and then I'm going to show my colleague
22 what appears to be an action dismissing the Vivian's
23 Island case.

24 JUDGE DUKES: Okay.

25 MR. MATTHEWS: And, of course, Your

1 Honor, it bears your signature at the back.

2 JUDGE DUKES: What I've been handed
3 is in case 11-CP-07-00297, filed May 23rd, 2017,
4 Form 4, essentially memorializing the case being
5 dismissed by reason of settlement. So that's
6 accurate.

7 MR. MATTHEWS: Show that to Mr. Kuhn.
8 Sir, I'd simply ask you take judicial note of this
9 under Rule 205.

10 UNKNOWN: Do you want to make this an
11 exhibit?

12 MR. MATTHEWS: Yes.

13 UNKNOWN: No objection.

14 JUDGE DUKES: That will be 3 without
15 objection.

16 (MARKED PLAINTIFF'S EXHIBIT NO. 3.)

17 BY MR. MATTHEWS:

18 Q. And, Mr. Moore -- I'm sorry. Go ahead.
19 Mr. Moore, this is the case that was -- where the
20 agreement was affirmed if you look at Exhibit 1 --

21 A. Yes, sir.

22 Q. -- paragraph 1. It references the
23 Vivian's Island agreement. That shall be placed on
24 the record and it is approved.

25 A. Exhibit Number 3 is the formal order of

1 Judge Dukes which dismissed the Vivian's Island case
2 pursuant to the settlement agreement announced to
3 the court, placed on the record, and codified in
4 Exhibit Number 1, yes, sir.

5 Q. Okay. Now, again, I'm going to draw your
6 attention back to your handwritten agreement,
7 Exhibit 1. It speaks of, on Paragraph 2, a mutual
8 release. Then it discusses in Paragraph 3 the
9 Bindon judgment against Wolfson shall be satisfied
10 immediately.

11 I'm going to hand to the court and my
12 colleague a copy of that judgment. And I'm going to
13 ask the court reporter to mark it as Exhibit 4.

14 (MARKED PLAINTIFF'S EXHIBIT NO. 4.)

15 MR. MATTHEWS: And, Your Honor, as
16 you can see -- that's fine. Your Honor, as you can
17 see this is the final order for judgment entered in
18 the court on March 21st, 2017.

19 JUDGE DUKES: I see that in Judge
20 Nettles' order. Any objection, Mr. Kuhn?

21 MR. KUHN: Yes, sir, Your Honor. I
22 object to the first several pages. I think this is
23 relevant only in the sense that a judgment was
24 entered against Robert Wolfson for \$28,500. Judging
25 from the opening statements of Mr. Matthews, they're

1 putting this in to attack Mr. Wolfson's credibility.

2 I do not believe it would be proper. You
3 can --

4 MR. MATTHEWS: Well, Your Honor --

5 MR. KUHN: -- due to argue that
6 because someone was not credible in one case then
7 they must not be credible in this case. So I
8 believe the prejudicial effect outweighs any
9 probative value. I stipulate and agree that the
10 last three pages are relevant. And that a judgment
11 was entered against my client for \$28,500.

12 MR. MATTHEWS: Well, Your Honor, if
13 this was an unsworn statement by someone who wasn't
14 a judge. He may have a point. But, number one,
15 this is admissible just as a judicial document.
16 It's relevant -- and, oh, by the way, Mr. Kuhn
17 correctly surmises that we intend to use this
18 to impeach Mr. Wolfson's credibility, in part because
19 it's this court. It's a year ago or about 18 months
20 ago. It's a sitting judge of this court declaring
21 him to be highly suspect, Mr. Wolfson's testimony to
22 be highly suspect.

23 That is absolutely relevant for us to
24 attack and impeach his credibility as a witness. In
25 fact, we can do this usually for up to ten years

1 following the entry of this judgment. If this were,
2 say, some ancient crime which he committed which was
3 a crime of moral turpitude, he may have a point. On
4 this he has no point.

5 JUDGE DUKES: I'm going to allow it.
6 Let me just make sure I understand. I think this to
7 be the case, but I just want to make sure we're all
8 in agreement. Is there any dispute but that the
9 judgment to be satisfied in Exhibits 1 and perhaps
10 Exhibit 2 is this final order of judgment filed
11 March 21st, 2017?

12 MR. MATTHEWS: Yes, sir. That's one
13 of them. The other's the Vivian's Island's
14 judgment.

15 JUDGE DUKES: Okay. So there are two
16 judgments that are to be satisfied according to
17 Exhibit 1?

18 MR. MATTHEWS: Well, more accurately
19 there's an agreement in Vivian's Island that the
20 parties reached and which you signed on May 22nd,
21 the day after the first agreement.

22 JUDGE DUKES: Right.

23 MR. MATTHEWS: And then there's this
24 judgment which was filed on March 21st. And then
25 I'll connect the two by introducing as evidence

1 Mr. Moore dutifully -- you'll see his motion for
2 receiver which was withdrawn. And you will see that
3 Mr. Moore dutifully entered a satisfaction of
4 judgment per the contract of the judgment. What's
5 now Exhibit 4.

6 JUDGE DUKES: All right. Yeah. I'll
7 -- okay. But anyway, I'll allow -- I thank you for
8 the objection, but I'm going to allow 4. This is 4
9 now; is that correct?

10 MR. MATTHEWS: Yes, sir.

11 BY MR. MATTHEWS:

12 Q. Mr. Moore, could you -- you were the
13 attorney of record for Bindon Plantation, LLC in
14 this case?

15 A. That is correct.

16 Q. Could you tell the court what you recall
17 of it?

18 A. Yes. Bindon Plantation was an LLC that
19 fell on hard economic times. It was owned by a
20 gentleman by the name of Zohar. It was owned by
21 Mr. Stancel Kirkland and it was owned by Robert
22 Wolfson. The property ultimately was sold, went
23 away, foreclosed, in effect, lost and there was a
24 lot of money lost in the transaction.

25 There were several pieces of equipment

1 that belonged to Bindon Plantation. And those
2 pieces of equipment were sold. Instead of putting
3 the money in Bindon Plantation, Mr. Wolfson took it
4 and spent it.

5 MR. KUHN: Your Honor, I'm going to
6 object to this. They're trying to impeach his
7 credibility by what he did in another case. Well,
8 the only thing relevant about this is there was a
9 judgment entered on March 21st, 2017, for \$28,500.

10 MR. MATTHEWS: Well, let's be clear.
11 He -- a judge found he misappropriated the money,
12 asked Mr. Kirkwood to lie to Mr. Zohar and then was
13 found -- then found liable for the \$28,000. It's
14 absolutely relevant and, you know, spoiler alert, we
15 do plan to use this to impeach Mr. Wolfson's
16 credibility.

17 JUDGE DUKES: Why don't we do this.
18 Why don't we save that part --

19 MR. KUHN: And I disagree that you
20 can --

21 JUDGE DUKES: -- unless and until Mr.
22 Wolfson testifies. And then that may very well be
23 appropriate cross-examination. But for now, I'm not
24 sure if these bricks are needed to build a house.

25 MR. MATTHEWS: Very good.

1 JUDGE DUKES: We're talking about the
2 contract, I think, right now.

3 MR. MATTHEWS: Very good. Then I'll
4 continue.

5 BY MR. MATTHEWS

6 Q. Mr. Moore, when it gets to the judgment,
7 what was -- was the judgment against Mr. Wolfson?

8 A. The judgment was against Mr. Wolfson for
9 breach of fiduciary duty and converting the money.

10 Q. All right. And --

11 A. It was \$28,500, as I recall.

12 Q. Has Mr. Wolfson ever paid a penny on that
13 judgment?

14 A. No. But the judgment was satisfied as a
15 part of the overall settlement when we tried the
16 Vivian's Island case.

17 Q. Well, let me show you two things. Again,
18 I ask the court to take judicial notice of.
19 Exhibit 5.

20 (MARKED PLAINTIFF'S EXHIBIT NO. 5.)

21 BY MR. MATTHEWS:

22 Q. Mr. Moore, I'm going to hand you what's
23 been marked as Exhibit 5.

24 MR. MATTHEWS: And, again, Your
25 Honor, because this is a pleading in a case in the

1 Common Pleas of Beaufort County -- Court of Common
2 Pleas of Beaufort County, we just ask you take
3 judicial notice of it and move it into evidence in
4 that grounds.

5 JUDGE DUKES: Mr. Kuhn, any
6 objection?

7 MR. KUHN: No, sir, Your Honor.

8 JUDGE DUKES: Is that a yes?

9 MR. KUHN: No objection. I'm sorry,
10 Your Honor.

11 JUDGE DUKES: Oh, no worry.

12 MR. KUHN: It was no, sir.

13 JUDGE DUKES: Okay. Thank you.

14 BY MR. MATTHEWS:

15 Q. Mr. Moore, could you identify this
16 document for the court?

17 A. This is a motion for the appointment of a
18 receiver in the Bindon Plantation case where I was
19 asking the court to appoint a receiver for the
20 assets of Robert Wolfson in order to seize his bank
21 accounts and his business interests and any other
22 assets in order to liquidate those funds to satisfy
23 the judgment of Bindon Plantation for the breach of
24 fiduciary duty and wrongful conversion as found by
25 Judge Nettles.

1 Q. Now, I'm going to draw your attention to
2 the script on the side which are filing dates. I
3 notice that the order which is Exhibit 4 was filed
4 on March 21st, 2017. Your motion for appointment of
5 receiver did not occur until May 8th of 2017. Did
6 Mr. Wolfson refuse to pay the judgment?

7 A. There was -- there was no effort to pay
8 the judgment. I'm not going to tell you that there
9 was an actual refusal. He just ignored it.

10 Q. Okay.

11 A. As best I recall.

12 Q. All right. And is that what occasioned
13 you to file the motion which is Exhibit 5?

14 A. Yes. That and the fact that he -- from --
15 there are two things that would basically have made
16 me move to file for a receiver. The same pattern
17 had occurred somewhere else on another asset where
18 he sold something and took the money. So what we
19 were basically worried about is the money he had
20 taken from everywhere was basically being absconded
21 with. So we were asking the court for the
22 appointment of a receiver.

23 Q. Okay. And the date on the notice of the
24 motion is May 8th?

25 A. It's dated May 4th. And I think it's

1 filed May 8th.

2 Q. Yes, sir. Now, I also, you know, take
3 note that the date on Exhibit 1, the handwritten
4 agreement is May 21st. That's some two weeks after
5 you filed the notice for appointment of receiver,
6 correct?

7 A. That is correct.

8 Q. All right.

9 MR. MATTHEWS: Now, I also ask the
10 court -- if you would mark this as 6.

11 (MARKED PLAINTIFF'S EXHIBIT NO. 6.)

12 JUDGE DUKES: Mr. Kuhn, any objection
13 to the satisfaction?

14 MR. KUHN: No objection, Your Honor.

15 JUDGE DUKES: Okay.

16 MR. KUHN: Thank you.

17 JUDGE DUKES: Six without objection.

18 Go ahead, please. Or 7?

19 MR. MATTHEWS: This is Number 6.

20 JUDGE DUKES: Six then.

21 BY MR. MATTHEWS:

22 Q. And, Mr. Moore, have you seen this
23 document before?

24 A. I have.

25 Q. Can you tell the court what it is?

1 A. Yes. If we look at the handwritten
2 agreement that settled the Vivian's Island lawsuit
3 during trial, Paragraph 3 provides that the Bindon
4 judgment against Wolfson shall be satisfied
5 immediately. And what this is is compliance with
6 Exhibit Number 1. I, on behalf of Bindon
7 Plantation, satisfied the judgment as agreed.

8 Q. So as I'm reading Exhibit 1, Mr. Wolfson
9 gained a number of advantages. One is that the
10 Bindon judgment was satisfied; is that correct?

11 A. Yes.

12 Q. The other is that the appointment of a
13 receiver for his property was essentially made moot
14 by the dismissal of the case?

15 A. By satisfying the judgment, it would moot
16 the motion for the motion for the appointment of a
17 receiver. So he got the receivership out of his way
18 and over.

19 Q. Okay. And you would -- you're an attorney,
20 again, with some decades of experience. Would those
21 be valuable things?

22 A. Yes.

23 Q. Okay. I'm going to ask you to now take a
24 look at the second page of Exhibit 1 and inform the
25 court about what it is and what it means?

1 A. All right. Mr. Wolfson had been the
2 exclusive managing partner of a company known as Old
3 South Realty in Beaufort. Old South Realty had the
4 privilege of having a sales office on the grounds of
5 Bull Point Plantation.

6 Q. Ms. Moore, forgive the interruption. Do
7 you mean Old South Properties, Inc.?

8 A. Old South Properties. I'm sorry.

9 Q. That is quite all right. Please continue.

10 A. The two -- the -- Bull Point is a very
11 high-end development. And for Old South to have a
12 sales office on the premises of Bull Point was a
13 very valuable asset. So what happened is at
14 Exhibit 5 Mr. Wolfson agreed to pay Mr. Kirkland
15 \$80,000 in cash on or before March the 1st of 2018.

16 Q. Sir, to correct the record, Exhibit 1?

17 A. Yes.

18 Q. Paragraph 5 of Exhibit 1?

19 A. Right.

20 Q. Perfect. Please continue.

21 A. Now, Mr. Wolfson was the sole and
22 exclusive managing partner a Old South at the time
23 Exhibit 1 was executed. He knew everything about
24 Old South and he had -- for all practical purposes,
25 for years, had been the exclusive partner managing

1 the affairs of Old South.

2 Now, he told us when asked are you going
3 to be able to pay this money by March the 1st of
4 '18, he told us that he had gotten involved in a
5 bond deal some way with Jasper County, which I was
6 not totally clear, but he claimed it was worth \$6
7 million to him. And he said he would have no
8 problem paying the money by March the 1st.

9 So in Paragraph 5, he agreed to pay
10 \$80,000 in cash to Mr. Kirkwood on or before March
11 the 1st. He also agreed to pay another \$10,000 on
12 or before January 1st of '19. It was agreed in
13 Paragraph 7 that when the \$90,000 was paid,
14 Mr. Kirkland would transfer his interest in Old
15 South to Mr. Wolfson.

16 Now, it was understood by everyone that
17 Old South had its problems. It had problems with
18 Homeowners Association. There'd been foreclosures.
19 There'd been all kinds of mess. But Wolfson knew
20 what those were. And he wanted Mr. Kirkwood's
21 stock.

22 Mr. Kirkland wanted to get away from
23 Mr. Wolfson, just as hard as he could, and was
24 willing to discount his interest in Old South to do
25 that. So the next thing that Wolfson agreed to do

1 was to provide security to Mr. Kirkland.

2 Mr. Kirkland did not trust Mr. Wolfson. I did not
3 trust Mr. Wolfson. For good reason. If you look at
4 the -- what he did in Bindon and if you look at the
5 absconding with the money from Vivian's, he
6 basically stole \$80,000. We didn't trust him.

7 MR. KUHN: Your Honor, I object to --
8 again, to saying someone did something allegedly
9 wrong on one occasion --

10 JUDGE DUKES: Right. It's a little
11 bit of a --

12 MR. KUHN: They're just trying to
13 assassinate his character at this case.

14 JUDGE DUKES: But it's sustained. I
15 mean, it's a little bit of a narrative answer, too.
16 I think it's a little outside the question.

17 THE WITNESS: In any event, and
18 Wolfson agreed that he was going to provide a
19 mortgage. That the property valued at \$80,000 on
20 property he was developing. The property was not
21 platted yet with an approved plat. So the
22 understanding was as soon as the plat was approved,
23 which he said would be any day now, he was going to
24 give the mortgage, which we never saw.

25 BY MR. MATTHEWS:

1 Q. Now, in that mortgage you're referring, is
2 that what's referenced in Paragraph 8?

3 A. Yes.

4 Q. Okay. Let me turn your attention, sir, to
5 Paragraph 9, which is on the following page.

6 A. All right. Paragraph 9 provides that Old
7 South was to guarantee the obligations of Wolfson,
8 and Wolfson was to provide a security agreement as
9 to his interest in Old South Properties. Now, what
10 that means is that Mr. Wolfson agreed to pledge his
11 interest in Old South Properties as security for his
12 obligation to pay the \$90,000.

13 Q. And, sir, what's been marked as Exhibit 2,
14 is that that note security agreement that's
15 referenced in Paragraph 9 of Exhibit 1?

16 A. That is the full note and security
17 agreement which was signed pursuant to Paragraph 9
18 of the handwritten agreement.

19 Q. Okay. Now, before we leave Exhibit 1 if
20 you'll take a look at Paragraph 10 which is the last
21 substantive paragraph. It obligates Mr. Kirkland to
22 withdraw his request for a receiver and shall not
23 pursue it so long as Wolfson is current under the
24 agreement. Is that what you did?

25 A. That's exactly what I did as referred to

1 by the fact that the Bindon Plantation judgment was
2 satisfied. So, yes. The satisfaction of the Bindon
3 Plantation judgment withdraws the request for
4 receiver, kills the Bindon Plantation lawsuit. Once
5 the Bindon Plantation lawsuit was dismissed with
6 prejudice, which it was, the appointment of receiver
7 was gone. So, yes.

8 Q. Okay. Well, as a practical matter, these
9 are the significant benefits Mr. Wolfson extracted
10 from Mr. Kirkland in this agreement?

11 A. Yes, sir.

12 Q. Okay. Now, if I could turn your attention
13 to Exhibit 2? Sir, did you draft this agreement?

14 A. I did.

15 Q. Can you please tell the court what you
16 think it means?

17 A. This is the note and security agreement
18 that were prepared pursuant to the handwritten
19 document which is Exhibit Number 1.

20 Q. Now, the signatures on the back, do you
21 recognize Mr. Wolfson's signature?

22 A. Yes, sir. That is Mr. Wolfson's
23 signature -- Mr. Wolfson's signature. And he signed
24 the document and transported it to us. He signed it
25 on behalf of Old South Properties as he should have.

1 He signed it on behalf of himself individually as he
2 should have. And he signed it on behalf of a
3 company none as known as Consolidated Ventures, LLC
4 which was the development company which was supposed
5 to be providing us the mortgage for \$90,000 on the
6 piece of real estate that he was promising to
7 secure.

8 Q. So your understanding was that the -- what
9 the contract clearly states, the security was to be
10 in the form of both the mortgage and the interest --
11 and Mr. Wolfson's own interest in Old South
12 Properties?

13 A. That's correct.

14 Q. Okay. Let me draw your attention to the
15 third paragraph of Exhibit 2. This appears to
16 address some of the deadlines and amounts of money
17 that were due that were set forth in Exhibit 1. Is
18 this a restatement of that or can you tell the court
19 what this means?

20 A. This would be a --

21 MR. KUHN: I'm going to object to him
22 telling the court what this means. It means what it
23 says.

24 JUDGE DUKES: Well, about that, it
25 does seem to be pretty clear.

1 MR. MATTHEWS: We will -- we couldn't
2 agree more. It's crystal clear.

3 BY MR. MATTHEWS

4 Q. Could you look at Paragraph 4?

5 A. Yes, sir.

6 Q. And could you -- this is the document that
7 you drafted?

8 A. Yes, sir.

9 Q. What part of Exhibit 1 does this paragraph
10 address?

11 A. It would refer to --

12 Q. I believe Paragraph 9?

13 A. Paragraph 9, right. The Paragraph 9
14 basically talks about -- the first one, Old South is
15 guaranteeing the obligation and Wolfson was to
16 provide an adequate security agreement as to his
17 interest in Old South.

18 Basically, this paragraph says very
19 clearly the note is secured by Wolfson's interest in
20 Old South Properties, Inc. Should Robert Wolfson
21 forfeit on his obligations hereunder, Wolfson shall
22 transfer his interest at the election of Stancel E.
23 Kirkland to Stancel E. Kirkland.

24 Should there be a default, Robert Wolfson
25 shall have 30 days from the date of default to cure

1 said default. Following any default, Wolfson's
2 interest in Old South shall be the exclusive
3 property of Stancel E. Kirkland.

4 The next paragraph goes along with that.
5 And it provided that Old South was to maintain its
6 present ownership of the Old South Properties and
7 would not allow there to be waste of any type
8 committed upon the properties.

9 In other words, the properties would be
10 maintained as is until the \$90,000 was paid. Of
11 course, we know that there was a judge -- or a
12 mortgage placed on the property for some large sum
13 of money which would have -- in my mind, have
14 violated that.

15 Q. Now, tell me about that mortgage. What do
16 you know about it?

17 A. Well, there was a mortgage placed on the
18 property by Mr. Wolfson after he signed the
19 agreement wherein that he would -- that Old South
20 would maintain the present ownership of the Old
21 South properties and would not allow there to be
22 waste.

23 Q. Okay.

24 A. There was a mortgage placed to some -- I'm
25 thinking from memory, but it was a large mortgage.

1 was placed on the property to, I believe, either
2 Mr. Wolfson's son or to a company owned by
3 Mr. Wolfson's son.

4 When we learned that he had encumbered the
5 property to the extent -- I believe it was \$100,000
6 or so. Obviously that caused us great concern
7 considering the fact that we had the -- should have
8 had the first lien on the property and there we had
9 a commitment from Mr. Wolfson that he would not
10 disrupt the ownership interests or commit waste.

11 When I made inquiry of Mr. Wolfson about
12 the mortgage, he told me that it wasn't a real
13 mortgage, that it was a fictitious mortgage and that
14 it was placed on the property simply to protect the
15 property.

16 Q. Did he explain that further?

17 A. The explanation -- the answer to your
18 question is, yes. The explanation was somewhat
19 convoluted.

20 Q. I understand.

21 A. He indicated that he was -- I did not know
22 a man named Billy Gavigan at the time. I do now.
23 But he indicated that he had a controversy with
24 Mr. Gavigan and that he wanted to protect the Old
25 South real estate from Mr. Gavigan. And that he had

1 placed the mortgage on the property in order to do
2 that.

3 I asked him, well, what happened to the
4 money. And he said there wasn't any. And I asked
5 him could I see the note that was allegedly secured
6 by the mortgage, and he said there wasn't any. That
7 he had simply placed a fictitious mortgage on the
8 property. The money was not owed and that I didn't
9 have to worry about it.

10 Q. Now, if you'll -- I'll turn your attention
11 again now to Paragraph 4. Of course, I believe,
12 sir, you filed the initial lawsuit that we're
13 discussing now?

14 A. I did.

15 Q. Let me ask you this. I'm familiar with
16 many agreements to transfer shares? I notice there
17 are no representation clauses in here. Was that on
18 purpose?

19 A. Yes. Mr. Wolfson knew everything there
20 was to know about Old South Properties.
21 Mr. Kirkland, through me, made it very clear that we
22 were selling whatever it was Stan had, where is, as
23 is and Bob was buying wherever is, as is. There
24 were no representations as to ownership. There were
25 no representation as to lien. Bob was simply buying

1 what's Stan had. And Stan was buying separation
2 from Bob.

3 Q. Now, when you wrote the part in here about
4 following any default, Robert Wolfson's interest in
5 Old South Properties, Inc. shall be the exclusive
6 property of Stancel E. Kirkland. And there were 30
7 days of default. I noticed there are no special
8 notice provisions in here. Was that -- did you
9 intend the agreement to be self-executed?

10 A. Yes, sir.

11 Q. Did Mr. Wolfson question you about it?

12 A. No, sir.

13 Q. Did he ever raise any concerns about that
14 provision to you?

15 A. No, sir.

16 Q. Okay. Now, I believe this agreement was
17 written in July of 2017 and signed by Mr. Wolfson in
18 July of 2017. When was the next time that you had
19 anything to do with Mr. Wolfson?

20 A. The document provided that if he defaulted
21 that he would have 30 days to get current or the
22 stock in Old South Properties would become the
23 exclusive property of Mr. Kirkland.

24 Q. Now, let --

25 A. The -- the next time I would have heard

1 would have been about the time -- and I can't give
2 you the exact date. But about the time that the
3 obligation of the first \$80,000 was coming due which
4 is about the time we learned about the mortgage
5 which had been placed on the Old South real estate.

6 MR. MATTHEWS: Okay. I'm going to
7 ask the court reporter to mark this as an exhibit.
8 Exhibit 7.

9 (MARKED PLAINTIFF'S EXHIBIT NO. 7.)

10 THE WITNESS: I had -- again, I --
11 this -- I'm not -- I hadn't been asked a question.
12 I had my girls send a calendar date, but, yeah, it
13 looks like in December of 2017 we had an appointment
14 with Bob to discuss this.

15 MR. MATTHEWS: Your Honor, given his
16 testimony, I believe this is what was sent this
17 morning to the court. I'm showing this to opposing
18 counsel. It appears to be an appointment date for
19 December 14th, 2017, for Bob Wolfson.

20 MR. KUHN: Okay.

21 MR. MATTHEWS: You can have that.

22 THE WITNESS: It would appear that I
23 met with Bob Wolfson and Stan Kirkland on December
24 the 14th. I know it was sometime about then. Stan
25 and myself and Bob met.

1 BY MR. MATTHEWS:

2 Q. Where did you meet?

3 A. My office.

4 Q. And what was the purpose of the meeting?

5 A. Bob had contacted me and indicated that he
6 wasn't going to make the payment due. And I told
7 him that that was unacceptable. And he said we
8 needed to talk, that he had an opportunity that we
9 could make things work to where Stan could make a
10 lot of money.

11 And I told him Stan and I were not
12 interested in having any further dealings with him
13 other than receiving the money. I remember him very
14 specifically stating to me, Jake, don't be that way.
15 I've got to talk to you. I want to make a proposal.
16 I said, Bob, the only proposal we're interested in
17 is \$90,000 when it's due.

18 His response was something to the effect
19 of, I'm not going to pay the money, but I want to
20 come talk to you. I said we'll talk, but we're not
21 changing anything. So he showed up in my office,
22 and myself and Mr. Kirkland and Mr. Wolfson had a
23 conversation.

24 Q. And?

25 A. Well, in that conversation, first of all,

1 I brought up the fact that the property had been
2 mortgaged and that we thought that that was contrary
3 to our agreement. The property was now encumbered
4 and that was, in itself, an event of default.

5 It was then he explained to me that the
6 mortgage was fictitious, that there was no mortgage
7 on the property. There was no note and that the
8 mortgage had been on there simply to protect the
9 property.

10 At which time, I asked the question, how
11 in the name of goodness is a fictitious mortgage on
12 a piece of property designed to protect the
13 property? At which time, he explained to me that he
14 had gotten into a controversy with a man named
15 Gavigan. And that he didn't like Mr. Gavigan. And
16 that he wanted for me and Stan to join forces with
17 him to fight Mr. Gavigan.

18 I again asked the question -- the actual
19 sequence, I can give you the gist of the
20 conversation.

21 Q. Well, here's -- actually, here's what I
22 want you to --

23 MR. MATTHEWS: Let's mark this as 8.

24 (MARKED PLAINTIFF'S EXHIBIT NO. 8.)

25 JUDGE DUKES: Let's do this for a

1 second because I've been waiting for a five minute
2 stopping point, but it just -- you have smoothly
3 between the witness and the attorney, you all --
4 there aren't any good stopping points. So this is a
5 terrible one, but why don't we just stop for five
6 minutes, stretch our legs, wander around, come back,
7 and then we'll run til 11:00. I'll do the same.

8 So, Mr. Moore, I know I don't need to tell
9 you this, but I'm required to tell you. Don't
10 discuss your testimony with anyone during the break.

11 (BREAK TAKEN)

12 JUDGE DUKES: All right, then. Sir,
13 you are still under oath. Back on the record.
14 Thank you.

15 MR. MATTHEWS: Just show the Judge --
16 I'm showing the Judge what has been marked as
17 Exhibit 8.

18 JUDGE DUKES: I've been handed a
19 mortgage, Plaintiff's Exhibit 8.

20 MR. MATTHEWS: Thank you, sir.

21 JUDGE DUKES: Any objection to 8?

22 MR. KUHN: No objection, Your Honor.

23 JUDGE DUKES: Okay. No objection to
24 Plaintiff's 8.

25 MR. MATTHEWS: Now, I'm actually

1 going to also hand you at the same time --

2 MR. KUHN: Oh, it I could interrupt.
3 The appointment was not put into evidence? I just
4 want to make sure I'm --

5 JUDGE DUKES: What I have for the
6 appointment was this.

7 MR. KUHN: This was not put in?

8 MR. MATTHEWS: No, we've not put it
9 in, unless you want to. I'm happy to do it, if
10 you'd like.

11 MR. KUHN: I think we probably better
12 just so I can -- later on I'll know what I'm talking
13 about.

14 MR. MATTHEWS: Well, I tell you what.
15 Let me introduce this.

16 MR. KUHN: Or we can make it 9.

17 MR. MATTHEWS: And then I'll do that
18 as 10.

19 MR. KUHN: Okay.

20 MR. MATTHEWS: This has an exhibit
21 number on it which was from a deposition. I'm going
22 to ask the court reporter to mark this as 9. And if
23 you'll just put it over that exhibit and mark it.
24 If you'll just put it over that.

25 COURT REPORTER: Okay.

1 MR. MATTHEWS: You can't?

2 COURT REPORTER: I can put it right
3 here. It's got my dates. That has different dates.

4 MR. MATTHEWS: Perfect.

5 COURT REPORTER: So it won't be -- it
6 might be confusing.

7 (MARKED PLAINTIFF'S EXHIBIT NOS. 9
8 and 10.)

9 JUDGE DUKES: So the mortgage is 8
10 without objection. I've been handed what looks like
11 an email which is 9 which is also from the
12 deposition, right?

13 MR. MATTHEWS: Yes, sir.

14 JUDGE DUKES: All right. Thanks.
15 Any objection to that?

16 MR. MATTHEWS: Fred, this is what we
17 got from you.

18 MR. KUHN: No objection.

19 JUDGE DUKES: Okay.

20 BY MR. MATTHEWS:

21 Q. Now, another -- there are a number of
22 different meetings during this time. I want to make
23 sure the court's clear, the chronology is clear.
24 You had one meeting with Mr. Wolfson in December; is
25 that correct?

1 A. Yes, and please let me say this. The
2 calendar screen that I put in may not have been the
3 exact date we met. I know there were several times
4 that things got bounced around. So the exact date
5 we met I cannot tell you, but I'm reasonably certain
6 that we met sometime in December.

7 Q. Well, the -- and I understand there were
8 later meetings and telephone calls. I want to make
9 sure the chronology is clear for the court. You met
10 with Mr. Wolfson in December or thereabouts,
11 correct?

12 A. Yes, sir.

13 Q. Okay. Then in January of 2018, Mr.
14 Wolfson filed a lawsuit against Mr. Gavigan and
15 others, correct?

16 A. I understand. I have never seen that
17 lawsuit, to my knowledge, but I think he did.

18 Q. Okay.

19 A. If I've -- if I've seen it, I've forgotten
20 it. I'm -- Stan was -- Stan Kirkland was not a
21 party to that lawsuit. I understand that
22 Mr. Wolfson sued Mr. Gavigan and others for
23 something which is totally beyond my sphere.

24 Q. Yes, sir.

25 A. I understand, although I haven't seen it,

1 that Old South Properties was a Plaintiff in that
2 lawsuit. Mr. Kirkland was not advised about that,
3 asked about that, nor did he consent to that. But I
4 understand at some point in time, Mr. Wolfson sued
5 Mr. Gavigan and others.

6 Q. Yes, sir. The Exhibit 9 that I've handed
7 you. Well, let me do Exhibit 8 first. Exhibit 8 is
8 the mortgage that I believe you referenced. The
9 date on that mortgage is, I believe, February 2018?

10 A. Looks to be.

11 Q. Is that the mortgage that was discussed
12 with you from December to March and April?

13 A. This mortgage would have been discussed
14 when we met some time in or around April where I was
15 either going to file a lawsuit or had filed a
16 lawsuit based upon the failure to pay.

17 Q. Okay. Now, I want to also direct your
18 attention to Exhibit 9. Exhibit 9 is an email that
19 was produced to us by Mr. Wolfson. It's dated
20 purportedly on March 1st, 2018, from him to you.
21 Have you see this e-mail before today?

22 A. This would have been the e-mail when Bob
23 Wolfson would have unequivocally indicated to me
24 that he was not going to pay the money.

25 Q. So he indicated to you both in December

1 and again in March that he was not going to pay the
2 money?

3 MR. KUHN: Object to the leading.

4 THE WITNESS: Let me -- let me say
5 this --

6 MR. KUHN: Object to leading.

7 JUDGE DUKES: Hold on one second.
8 What was the -- what was the objection?

9 MR. KUHN: I object to the leading.

10 JUDGE DUKES: Okay.

11 MR. KUHN: So he indicated to you --
12 I'm happy to rephrase.

13 JUDGE DUKES: Okay.

14 BY MR. MATTHEWS:

15 Q. What did Mr. Wolfson indicate to you in
16 December through March about his willingness to pay
17 his debt?

18 A. It is my belief that in December he told
19 us that he was not going to pay. I know that he
20 didn't pay and I know that in or about March of 2018
21 he clearly and unequivocally repudiated the
22 obligation to pay.

23 Q. Well, let me -- let me ask you about that
24 because is it your belief because the mortgage was
25 issued by Old South Properties to Mr. Wolfson's son

1 or the company he owns in February, is that the
2 mortgage that Mr. Wolfson disclosed to you that was
3 a fictitious mortgage?

4 A. It was. And if you don't -- I want to
5 answer your question.

6 Q. Please, go ahead.

7 A. The mortgage was to the HCG Weight Loss
8 Center, Inc.

9 Q. Right.

10 A. And I could not conceivably understand why
11 Old South Properties in the ordinary course of
12 business would be giving a note and mortgage and
13 borrowing money from the HCG Weight Loss Center.
14 Weight loss centers aren't banks. And they don't
15 normally loan real estate money.

16 Well, that's when I was explained that
17 this was his son's company and the mortgage was
18 fictitious. And there was no note. And there was
19 no debt owed and that it could be satisfied anytime
20 they wanted to. And it was there to protect the
21 property.

22 Q. Okay. Protect it from whom?

23 A. My understanding, from Mr. Gavigan. But I
24 don't know. I know that Mr. Kirkland who has
25 dementia now, but the beginning stages was

1 incredibly upset when he learned that the mortgage
2 had been filed against the property.

3 Q. To your knowledge, has that mortgage been
4 satisfied?

5 A. Not to my knowledge.

6 Q. Now, if I can turn your attention to
7 Exhibit 9. This is the e-mail or the alleged e-mail
8 we received from Mr. Wolfson. It's dated March
9 1st. I'm going to take you through it. The first
10 sentence says, Jake, I am writing to let you know
11 that I will not be able to meet my buyout deadline
12 with Stan as I am now involved in a full-blown
13 lawsuit against Gavigan, et al.

14 I'm going to just --

15 A. Sure.

16 Q. -- represent to you that on January
17 25th, 2018, in the name of Old South Properties,
18 Mr. Wolfson or his agents filed that lawsuit. Were
19 you aware of that? I take it as of March 1st, 2018,
20 you are unaware of that lawsuit?

21 A. I did not know, to the best of my
22 knowledge, in March of '18 that Old South Properties
23 or Mr. Wolfson had actually filed a lawsuit against
24 Mr. Gavigan.

25 Q. Okay. Now, later in that paragraph it

1 says Mr. Fred Kuhn of Moss Kuhn and Fleming can give
2 you more details. Did you ever discuss with Mr.
3 Kuhn about the details of that lawsuit?

4 A. I did not. As far as I was concerned,
5 that lawsuit was really none of our business except
6 for the fact that it had been filed in the name of
7 Old South Properties when Mr. Kirkland had -- knew
8 nothing about it, had not consented to it. But
9 considering the fact that Mr. Wolfson was supposed
10 to be buying Mr. Kirkland out, okay.

11 Q. Well, let me be more blunt about that.
12 Did you care in terms of whether or not it affected
13 his duty to pay here or to cure within the proper
14 time?

15 A. I did not care as long as Mr. Wolfson met
16 the only obligation that I really cared about was to
17 pay the \$90,000.

18 Q. Okay. Now, the next paragraph says,
19 please, let Stan know I want to honor this
20 agreement, but I also want to be able to sell real
21 estate there after our purchase. If the lawsuit is
22 lost, then the sales office will be removed. Was
23 Mr. Wolfson being able to sell real estate a
24 condition of the agreement?

25 A. Absolutely, positively not. Mr. Wolfson

1 understood the financial situations and the real
2 estate situations and the legal situations of Old
3 South Properties. He had run it from its inception.
4 He had run it with Mr. Kirkland initially, but for a
5 number of years he had been running it by himself as
6 the managing partner. There were no contingencies.
7 There was no warranty of title. He was simply
8 buying Stan out to whatever extent Stan had and he
9 fully understood that.

10 Q. Okay. Now, the last paragraph has some
11 comments that I would like to address to you. One
12 is, please give us the chance to win this suit.
13 Your stepping in and taking over will only result in
14 your having to try this case. If we prevail, Stan
15 will be entitled to a percentage of the proceeds and
16 then the buyout can be completed. What did you --
17 did you ever discuss this representation with
18 Mr. Wolfson?

19 A. Oh, yeah.

20 Q. Tell me what transpired?

21 A. The first portion of the conversation was
22 when Bob and I talked about setting up the meeting
23 in West Columbia at my office. I told Bob I wasn't
24 interested in any more litigation. Stan wasn't
25 interested in any more litigation. All we were

1 interested in was \$90,000. At which time, I
2 remember --

3 MR. MATTHEWS: Hold on just a minute.
4 Mr. Wolfson, I can hear you. You should be cautious
5 with your comments and please not interrupt the
6 witness. Please go ahead.

7 A. When I told -- I specifically remember
8 telling him, Bob, we're not interested in any of
9 that. All I expect you to do is to honor your
10 agreement for a change. At which time, he said,
11 Jake, don't be like that. And I remember I said,
12 oh, yeah. I'm going to be just like that. We want
13 nothing to do with you or your lawsuits. We just
14 want you to pay what you committed to pay.

15 He said, I got to come up and at least
16 talk to you. I said, I'll listen to anything. We
17 hung up. And he came up. And we had about a 30 to
18 45 minute meeting in my office. I sat behind my
19 desk. Stan Kirkland was in one chair. Mr. Wolfson
20 was in the other chair. I recall that conversation
21 very well. I cannot give you a tape-recorded
22 version of what was said, but I can tell you what
23 was said.

24 Q. Please.

25 A. He came up and told me that he had gotten

1 into a controversy with Mr. Billy Gavigan. And that
2 he had a deal with a new piece of property and he
3 had a \$6 million income that was coming off of some
4 sort of bond. I have no idea what he's talking
5 about.

6 It's the same money he was talking about
7 when we originally settled the case. And he said
8 though that he was in this controversy with Gavigan
9 and he needed our help. And he wanted me to get
10 involved in the litigation. And --

11 Q. Did he say what he wanted you to do?

12 A. Just get involved in litigation. And he
13 wanted me to get involved in the litigation on
14 behalf of Stan. And he wanted for us to -- I
15 remember the words, join forces to fight Gavigan,
16 and that he had a business opportunity for Stan and
17 that Stan could make a lot of money out of doing
18 this.

19 At which time I told him very
20 specifically, Bob, I know the way you do business.
21 I have seen you doing business. I do not trust you.
22 Stan does not trust you. We don't want anything
23 else to do with you. All I want you to do, all we
24 expect you to do is to honor your obligation.

25 And if you will not do that, I want you to

1 tell me when you're going to give us the keys to the
2 property so that we can occupy the sales office that
3 now belongs to Stan.

4 Q. What was his response?

5 A. I am not going to pay this.

6 Q. Did he say -- did he explain to you, other
7 than not wanting to give the money, why he wasn't
8 going to honor that obligation?

9 A. He simply said he was going to have legal
10 fees involved with fighting Mr. Gavigan and that he
11 was going to have to take all of his resources to
12 fight Gavigan. He said -- he said these words. I
13 know I owe it. I want to pay it. And I intend to
14 pay it, but I'm not going to pay it right now.

15 And I said, when are you going to pay it.
16 And he said, I don't know. And that's basically
17 when I asked him, love to have the keys since the
18 company now belongs to Stan. And that's when he
19 told me, he said, you can't really expect me to do
20 that.

21 And I said, oh, yes, I expect you to do
22 that. He said, I am not going to give up my primary
23 source of livelihood. He said Old South Properties
24 is my primary source of livelihood. It is very
25 valuable and I'm not walking away from it. And I

1 said, the agreement says you are. And he said,
2 well, I'm not going to do it. And that's where we
3 left it.

4 Q. Well, Mr. Moore, help me understand this.
5 If he made those representations about Old South
6 Properties being his primary source of income, in
7 the first paragraph he states as follows, this is in
8 Exhibit 9, last sentence. We have not been able to
9 sell out of the sales office since January. Did he
10 represent to you anything other than the fact that
11 he was telling you that he hadn't had any sales out
12 of the sales office since January of 2018?

13 A. You know, that is what this says. And
14 that to me was totally irrelevant. Totally
15 irrelevant. If he -- he could have cats and dogs in
16 that office as far as I'm concerned. As long as he
17 didn't commit waste or further encumber the property
18 and as long as he paid Stan the \$90,000 that he owed
19 him, we were happy. But the \$90,000 didn't show up.

20 Q. Well, when he breached the contract, did
21 you move to undo any of the other things that he did
22 receive under the contract? Like, did you try to
23 reopen the case in Bindon Plantation?

24 A. Did not.

25 Q. Did you try to reopen the Vivian's Island

1 case?

2 A. No.

3 Q. Did you try to have a receiver appointed
4 to control his assets so that he would repay his
5 debts?

6 A. I did not.

7 Q. Okay. So --

8 A. And there's a reason for that.

9 Q. Which is?

10 A. We had contractual remedies as set forth
11 in Exhibit 1 and Exhibit 2. Number 1, the Old South
12 Properties was forfeited. It now belonged to
13 Stancel E. Kirkland by the plain wording of the
14 agreement. Number 2, he still owed \$90,000.

15 And we were supposed to have had a
16 mortgage which we never received. And he --
17 basically I had -- I had -- I was supposed to be
18 able to move against the property. And I was
19 supposed to have been able to take as a forfeiture
20 Mr. Wolfson's interest in Old South.

21 He refused to turn that over. He still
22 hadn't given us the mortgage on the piece of
23 property that we were supposed to have had the
24 mortgage a year ago. And he hadn't paid his
25 \$90,000. And he said he wasn't going to pay any of

1 it.

2 Wouldn't give us a date as to when he was
3 going to pay it, how he was going to pay it, if he
4 was going to pay it. It's just, I want to pay you,
5 and he left. And he basically said, well, I'm
6 sorry -- he said, I'm sorry you're going to be that
7 way. But we made it very clear to him. We were
8 providing him no assistance in any litigation that
9 he had with any third party. That he was on his
10 own.

11 Q. Now, I note for the record that this
12 lawsuit was filed by you on April 16, 2018. Was
13 that after you had had your meeting with
14 Mr. Wolfson?

15 A. I am fairly certain the answer to that
16 question is, yes. I know that it was after he had
17 told us in March -- March the 1st that he was not
18 going to make the payment. As far as I was
19 concerned, he had 30 days by the self-effectuating
20 dates of the contract.

21 He didn't need any more notice because he
22 had all the notices and I didn't have to give him a
23 notice. He had 30 days from, I believe, March 1st
24 of 2018 to pay \$80,000. When he told us March
25 the 1st of 2018, which happens to be the exact day

1 the money was due, that he was going to repudiate
2 his obligation. As far as I was concerned, there
3 had been an anticipatory repudiation of the
4 agreement.

5 He basically had told us he was going to
6 breach. There was nothing else left to do. We gave
7 him the 30 days to basically pay the money.

8 Q. Cure the default?

9 A. To cure the default. Which he knew -- he
10 knew about the default to begin with. He had
11 anticipatorily repudiated the agreement, secondly.
12 Thirdly of all, it was a self-effectuating right to
13 cure.

14 He had done none of those things as far as
15 April the 1st. The forfeiture of the interest had
16 taken place. He was in total default. He had
17 repudiated the agreement. He had done, consistent
18 with classic Bob Wolfson, violated the terms of his
19 payment obligations. And I filed this lawsuit
20 basically asking the court to give us some relief
21 from what he had obviously breached.

22 Q. All right.

23 JUDGE DUKES: Tell me when you reach
24 another stopping point because we are going to go do
25 the sale.

1 MR. MATTHEWS: Actually, sir,
2 interests of the State take precedence, so we'll --
3 we can break now. And --

4 JUDGE DUKES: I mean, if you just had
5 like two more -- but I imagine --

6 MR. MATTHEWS: Actually, no.

7 JUDGE DUKES: -- it sounds like --

8 MR. MATTHEWS: We're about to --
9 we're going to continue, but it would be more --

10 JUDGE DUKES: Okay.

11 MR. MATTHEWS: -- than a short time

12 So --

13 JUDGE DUKES: Well, let's do this
14 then. I've got to go to the judicial sale. It can
15 take anywhere from ten minutes to 30 minutes. I'm
16 hoping it's more of a ten-minute version today.

17 MR. MATTHEWS: Yes, sir.

18 JUDGE DUKES: But as soon as it's
19 finished, I'll be right back out. So mill about
20 freely. Again, Mr. Moore, please don't discuss your
21 testimony --

22 THE WITNESS: Yes, sir.

23 JUDGE DUKES: -- with anyone during
24 the break.

25 THE WITNESS: Yes, sir.

1 JUDGE DUKES: And we will be in
2 recess, briefly.

3 (BREAK TAKEN)

4 JUDGE DUKES: We're back on the
5 record.

6 BY MR. MATTHEWS:

7 Q. Mr. Moore, we've just had a brief recess.
8 I've handed you what has been marked as Exhibit 10.
9 Could you identify it for the court?

10 A. This is an e-mail from my secretary, Diane
11 Corley, to me. It's sent April the 23rd, 2008, and
12 confirms an appointment with Bob Wolfson for
13 Thursday, May the 10th, 2018. Bob had asked that we
14 hold off serving the lawsuit.

15 I remember this. Bob had asked that we
16 hold off serving the lawsuit because he said if we
17 serve the lawsuit it would get him in hot water with
18 the homeowners association. So I think we held off.

19 Q. Well, sir, this is the lawsuit that was
20 filed today. Because it's already in the record,
21 I'm not going to turn it as an exhibit, but is this
22 the lawsuit that that refers to?

23 A. This is the lawsuit that refers to, yes,
24 sir.

25 Q. And, again, just to identify it for the

1 record. The lawsuit that I handed you, the summons
2 and complaint, is the one currently in this case?

3 A. It's Stancel E. Kirkland versus Old South
4 Properties, Inc., Robert Wolfson, and Bull Point
5 Property Owners Association, Inc. I think it is the
6 lawsuit which I understand to be the subject of the
7 action Case Number 2018-CP-07-00796.

8 Q. Okay. It was filed on April 16, 2018?

9 A. Yes, sir.

10 Q. So as of April 23rd, 2018, Mr. Wolfson was
11 aware of the lawsuit?

12 A. Yes, sir.

13 Q. All right. Thank you. Now we've talked
14 about meetings and conversations you've had with
15 Mr. Wolfson from, say, December 2017 through
16 April of 2018. And, of course, the current lawsuit
17 was filed in April of 2018. Did you have any other
18 meetings or conversations with Mr. Wolfson that we
19 haven't discussed about the contracts at issue here
20 today? Take your time.

21 A. I believe when he left my office the day
22 of the meeting we had with Stan in April or May
23 of 2018, I believe is the last time I had any
24 conversation with Mr. Wolfson.

25 He understood at that point in time that

1 our position was a breach of the agreement resulted
2 in a forfeiture of his ownership interest, that we
3 were going to move forward with the lawsuit. He
4 made it very clear he wasn't going to pay. He left
5 and I believe that's the last time I spoke with him
6 regarding the case. I did have one conversation
7 with his attorney.

8 Q. And can you tell us about that?

9 A. The lawsuit was either in default or about
10 to go in default. Mr. Kuhn called me and said he
11 was -- he might be representing Mr. Wolfson. Wanted
12 to know what the case was about. I explained to him
13 that Bob had agreed to pay Stan. And had basically
14 pledged his ownership interest. That Bob had
15 defaulted and that we were suing him based upon the
16 written agreement that we had.

17 Mr. Kuhn thanked me for telling him what I
18 had told him. And said that he would let me know
19 if, in fact, he was going to be representing
20 Mr. Wolfson. I thanked him for that and we hung up.
21 And I believe it was after that -- I could be wrong,
22 but I think I e-mailed Fred and said, hey, Fred did
23 you -- I think he's in default. Are you
24 representing him or not. And I believe that's when
25 we got an answer. Which if he wasn't in default, I

1 wouldn't have put Fred in default.

2 Q. Well, this may answer that question.

3 Let's mark this as Exhibit 11.

4 (MARKED PLAINTIFF'S EXHIBIT NO. 11.)

5 (OFF RECORD DISCUSSION)

6 THE WITNESS: And, actually, Exhibit
7 Number 11 I did see yesterday. I've see this, yes.
8 I know what it is.

9 BY MR. MATTHEWS:

10 Q. Would you please tell the judge what it
11 is?

12 A. This would be an e-mail where I wrote to
13 Fred Kuhn on June the 4th, 2018, and I just was
14 following up. I said, are you representing Mr. Bob
15 Wolfson. I never heard anything back. This would
16 be following our conversation. I think he is in
17 default if you're not representing him. I just need
18 to move forward with this. Thanks, Jake. And I
19 obviously typed it because I spelled move, m-e-v-e.

20 Q. I understand that. You mentioned that
21 you -- if -- that you would not hold Mr. Kuhn -- if
22 he was, in fact, representing Mr. Wolfson, you would
23 not hold him in default as to the lawsuit?

24 A. Right. I mean, I don't do that.

25 Q. But Mr. Wolfson himself had already been

1 in default of the agreement?

2 A. Oh, yes. This was talking about the
3 lawsuit. What I'm basically saying is, you know,
4 are you going to send me an answer. And it was
5 basically he either sent me an answer or I learned
6 that, yes, he was going to be representing him.

7 Q. Well, the record reflects that on
8 July 5th, 2018, he actually did file an answer --

9 A. Right.

10 Q. -- on behalf of, among others, Robert
11 Wolfson.

12 A. Right. Fred had called me and said, I'm
13 thinking about representing him. I believe I said,
14 make sure you get paid. And I think he kind of
15 giggled at that. And he said I'll get back to you.

16 And so I -- this is just a tickler back
17 from one lawyer to another saying, look, if you're
18 not representing him, he's in default of the
19 lawsuit. Just let me know. And then Fred sent me
20 an answer and it was fine by me. I'll accept the
21 answer from Fred.

22 MR. MATTHEWS: All right. Your
23 Honor, because we have reached -- I'm not complete
24 with my examination, but we are up to Exhibit 11.
25 To the extent -- and I know Mr. Kuhn referenced a

1 concern about the final judgment being admitted in
2 its entirety, but to the extent there's an exhibit
3 we have not moved into evidence, this is a
4 formality. I would now move them to evidence with
5 an understanding Mr. Kuhn has raised an objection as
6 to the entirety of the --

7 JUDGE DUKES: I thought I ruled on
8 it, but to the extent -- Mr. Kuhn, I kind of thought
9 we were -- had admitted each one. But to the extent
10 1 through 11 are not admitted, Mr. Kuhn, you're
11 welcome to --

12 MR. KUHN: That is my recollection.
13 The only thing I had a question about was this
14 document that was referenced --

15 JUDGE DUKES: I don't know if that
16 one was offered.

17 MR. KUHN: -- but I don't think put
18 in.

19 MR. MATTHEWS: That's not been put
20 in. Although, I have no objection to it being in
21 the record.

22 JUDGE DUKES: I never saw that.
23 That's --

24 MR. KUHN: I think we put just a
25 calendar notation on it that Mr. Moore had talked

1 about. But I read this later -- if I have to read
2 it later, I think it would be best to have it in the
3 record.

4 JUDGE DUKES: Well, if the Plaintiff
5 wants to offer it, great. If not --

6 MR. MATTHEWS: We have no objection
7 to it being in the record. This would be Number 12,
8 I believe.

9 JUDGE DUKES: All right. Twelve by
10 consent.

11 (MARKED PLAINTIFF'S EXHIBIT NO. 12.)

12 JUDGE DUKES: So basically we have 1
13 through --

14 MR. MATTHEWS: One through 12.

15 JUDGE DUKES: -- 12. The only
16 objection which I've ruled on is -- has to do with
17 the final order for judgment. Is that accurate?

18 MR. MATTHEWS: Yes, sir.

19 MR. KUHN: Yes, sir.

20 JUDGE DUKES: Okay.. All right.

21 BY MR. MATTHEWS:

22 Q. Now, Mr. Moore. Of course the story does
23 not end there. Subsequent to your discussions with
24 Mr. Wolfson from December to April, perhaps May, of
25 that year you also had a meeting with Mr. Kirkland.

1 and El Cid Holdings, LLC; is that correct?

2 A. It actually wasn't with El Cid Holdings,
3 LLC. At the time, I don't think there was an El Cid
4 Holdings. What happened was in another lawsuit,
5 which I'm not even sure which lawsuit it was,
6 Mr. Kirkland was asked to give a deposition. And
7 Mr. Gavigan and his attorney came to my office.
8 They were courteous enough to do it in West
9 Columbia, which I appreciated and so did
10 Mr. Kirkland.

11 I explained to them about Mr. Kirkland's
12 weakened condition. They were very kind to him.
13 And somewhere during the discussions we began
14 talking about, you know, going somewhere somehow
15 with this particular lawsuit and negotiations took
16 place.

17 Q. Did Mr. Kirkwood represent that he owned
18 100 percent of Old South Properties to Mr. Gavigan?

19 A. What Mr. Kirkwood through me represented
20 was that we had these contractual agreements and our
21 position was that there had been a repudiation and
22 breach by Mr. Wolfson. And by the terms of the
23 agreement, we believed Mr. Wolfson had forfeited his
24 claims to Old South Properties in favor of
25 Mr. Kirkland.

1 We explained that it was -- hadn't been
2 litigated, but it was being litigated. And our
3 position was and still is that Mr. Wolfson had
4 forfeited any rights he had to Old South Properties
5 by virtue of the agreement -- the agreements that
6 you've seen in the record and the lawsuit was
7 pending in order to confirm that.

8 Q. And what happened next?

9 A. There was an agreement reached wherein
10 Mr. Kirkland assigned to Mr. Gavigan or his
11 assignees all of his right, titles and interests in
12 and to the two contracts that are in evidence as
13 well as the lawsuit which is the subject of this
14 action. And that was signed. It was bought. It
15 was paid for. Mr. Gavigan wrote a check for it.

16 We understood that we would assign the
17 rights that Mr. Kirkwood had to Old South to
18 whatever designee Mr. Gavigan said. He told us who
19 to assign it to. We signed a very short assignment
20 document which basically provided that El Cid
21 Holdings, LLC was now the owner of the causes of
22 action set forth in our lawsuit and any and all
23 rights that Mr. Kirkwood had to be the owner of Old
24 South Properties, Inc. which we believed to be a
25 100 percent interest.

1 Q. Okay. And the consideration that
2 exchanged hands, how much was that?

3 A. I believe Mr. Gavigan paid Mr. Kirkwood
4 \$45,000. And there was an agreement that if any
5 other funds were received in any form or fashion
6 that there'd be a division of those.

7 Q. All right.

8 A. But it was our belief and still remains
9 that because of the breach and the anticipatory
10 repudiation of the agreement and the failure of
11 Mr. Wolfson to comply with the agreements that he
12 forfeited his interests and that we did have the
13 rights to transfer all of Mr. Kirkwood's interest in
14 Old South Properties to Mr. Gavigan, which is what
15 we did.

16 Q. Now, in his pleading in this case, his
17 admitted answer and counterclaim and cross claim
18 with the defendant Robert Wolfson. Paragraph 32, he
19 makes this allegation. On March 1st, 2018, this
20 Defendant was ready, willing and able to tender the
21 Plaintiff the first payment referenced in Paragraph
22 6 of that complaint; is that true?

23 A. That is not true. As a matter of fact, if
24 you look at the e-mail dated March 1st of 2018, he
25 specifically states in an e-mail that he authored, I

1 will not be able to meet my buyout deadline on the
2 stand as I am now involved in a full-blown lawsuit
3 against Gavigan, et al.

4 Q. So that representation in his counterclaim
5 is false?

6 A. False.

7 Q. Okay. Paragraph 33 states as follows, on
8 March 1st, 2018, it was also the intent of the
9 Defendant to deliver to the Plaintiff the final
10 payment referenced in Paragraph 6 of the complaint
11 even though said payment was not due until January
12 1, 2019. Did you receive that payment either?

13 A. No.

14 Q. Okay. Is that representation false?

15 A. That representation is false.

16 Q. Okay. Is it for the same reason?

17 A. Yes. I mean, he clearly indicated to us
18 by e-mail and in person that he was not going to
19 make the payments.

20 Q. Okay. Paragraph 34 of his counterclaim
21 states as follows, in anticipation of making the
22 aforesaid payments, this Defendant obtained the loan
23 secured by the mortgage referenced in Paragraph 12
24 of the complaint. And I'll just represent to you
25 that was the HCG mortgage. Did he indicate to you

1 otherwise?

2 A. I asked him to see the note. He said
3 there was no note. He said there had been no loan.
4 He said that the mortgage was -- he told me the
5 mortgage -- the mortgage -- I'm not sure these are
6 exact quotes, but it was something like fictitious
7 or a fiction and was placed on the property simply
8 to protect it. The -- he told me for certain that
9 there had been no loan.

10 Q. Okay. Paragraph 35 states as follows,
11 upon information belief, however, the Plaintiff,
12 meaning Mr. Kirkland, was unable as of March 1st,
13 2018, to transfer to this Defendant his shares of
14 stock in Old South Properties, Inc. by virtue of,
15 among other things, the lien referenced in Paragraph
16 14 of the complaint. I'm going to represent to you
17 that that lien was a lien placed by the POA on
18 property owned by Old South Properties at Bull Point
19 Plantation for unpaid assessments. Did that in your
20 view have anything to do with his ability to
21 transfer shares of stock in the company?

22 A. No. The -- there --

23 Q. Please explain why.

24 A. There was no lien or encumbrance on the
25 shares of stock. The contracts in question only had

1 to do with the transfers of shares of stock. The
2 transfers did not have anything to do with
3 transferring any specific portions of real estate.
4 There were no liens. There were no encumbrances on
5 the shares of stock.

6 Additionally, at the time the contracts
7 were entered into with Mr. Wolfson, he fully
8 understood all of the claims of the various
9 homeowners associations and other creditors which
10 existed for Old South Properties because he had been
11 the managing partner of the association for years.

12 As a matter of fact, when we were in the
13 process of negotiating these two agreements, he
14 advised us that there were claims by -- potentially
15 by Beaufort County as well as others that might go
16 against specific pieces of real estate. He knew
17 that when he entered into the agreement because he
18 told us that.

19 Q. Well, now it says here, and I'm now
20 reading from Paragraph 36 of the -- Mr. Wilson's
21 pleading, this Defendant stands ready, willing and
22 able to pay the full \$90,000 referenced as paragraph
23 -- said complaint and does hereby tender said
24 payment to the appropriate party.

25 Now, this statement was made -- was filed

1 on August 10, 2018. Prior to August 10, 2018, had
2 he ever made that representation to you or had
3 anyone on his behalf ever made that representation
4 to you?

5 A. Well, the answer to your question is no.
6 But my understanding is that a tender would have had
7 to actually amount to a delivery of payment. I have
8 been through this question before on a number of
9 occasions in regard to what a tender is. The
10 gentleman never delivered a check. He never
11 delivered cash. He never delivered or presented
12 anything of value that would have amounted to an
13 actual tender.

14 Now, in those pleadings, I understand that
15 he is saying that he is ready, willing and able to
16 tender. I wouldn't particularly trust anything he
17 says ever. Whether he says it and whether he does
18 it are two different things which has been
19 demonstrated on numerous occasions.

20 There has never been any tender of payment
21 made to me. There has never been any tender of
22 payment made to Mr. Kirkland. When those pleadings
23 came in is the first time that we ever heard the
24 gentleman was willing to make payment under the
25 contract which he had breached.

1 Q. By that time, had the shares of stock been
2 sold to the third party?

3 A. They had already been transferred to Mr.
4 Gavigan. Forfeiture had already taken place.
5 Breach had already taken place. The 30-day cure
6 period had already run. The ownership interest of
7 Old South Properties had been transferred to Mr.
8 Gavigan and what Mr. Gavigan did with it from that
9 point is his business.

10 Q. Now, from -- the understanding that the
11 transfer eventually to El Cid Holdings, LLC was
12 initiated and value was received on June 23rd -- I'm
13 sorry -- June 29th of 2018. Prior to that date, had
14 Mr. Wolfson or anyone working on -- any of his
15 agents, anyone working on his behalf make any type
16 of offer to you to cure his default?

17 A. None. All we got was silence. Now, I
18 also said the transfer had been made to Mr. Gavigan.
19 I use El Cid and Mr. Gavigan as one in the same.
20 The transfer has already been made to El Cid.

21 Q. The assignment I believe says El Cid,
22 also.

23 A. That's right. But the -- what we had
24 received from the time we met in my office and he
25 said he wasn't going to get paid, we had received

1 one thing. Silence.

2 Q. This is after your last meeting with him?

3 A. Right. He told us he wasn't going to pay
4 and he made good on that commitment. He didn't pay.

5 Q. All right. Are there any questions I
6 haven't asked you that you think are important?

7 A. I'm here as a witness.

8 Q. Very good, sir. I'll tender the witness
9 to Mr. Kuhn. Reserve him for redirect.

10 JUDGE DUKES: All right. Thank you
11 so much. Mr. Kuhn?

12 EXAMINATION

13 BY MR. KUHN:

14 Q. Mr. Moore, I guess it's fair to say you do
15 not like nor trust Mr. Wolfson?

16 A. Both of those would be true statements.
17 Mr. Wolfson has lied personally to me. And I have
18 -- I know that he has lied and cheated at least two
19 clients -- three clients of mine. And I have known
20 him to breach numerous fiduciary obligations and
21 numerous commitments over the course of the years.

22 Q. And your client in this case is Stan
23 Kirkland?

24 A. My client in this case is Stancel E.
25 Kirkland.

1 Q. And you have represented Mr. Kirkland in
2 other cases? He's a long standing client?

3 A. Mr. Kirkland was the senior partner who
4 gave me my very first job as a law clerk in 1974. I
5 have represented Mr. Kirkland on numerous matters
6 over the years. He not only is a client, but a
7 personal friend.

8 Q. Okay. And I think you just answered my
9 next question. But he is also an attorney?

10 A. He is no longer an active member of the
11 Bar. When he developed the dementia which he now
12 suffers from, he went on an inactive status or
13 retired status. So he's not actually a practicing
14 lawyer right now.

15 Q. When did that take place, before or after
16 this agreement which is Exhibit 1?

17 A. It would have been about the same time as
18 Exhibit 1. I believe that he was actively -- I
19 believe he had -- as a matter of fact, I'm fairly
20 certain he had an active license when Exhibit 1 was
21 entered.

22 Q. Okay. And Exhibit 1, the handwriting,
23 that is your handwriting?

24 A. I wrote that, yes, sir.

25 Q. And this was during a break of a trial

1 that involved Vivian's Island? Do I understand that
2 correctly?

3 A. We tried the case that morning. It did
4 not appear to be going well for Mr. Wolfson. The
5 judge had recommended that we try to get together
6 and resolve the case over lunch. We went to a local
7 restaurant. We came to a resolution. While Bob and
8 Stan and Henry Taylor were eating lunch, I moved to
9 another table and wrote that. And they all signed
10 it. And we came back and told Judge Dukes on the
11 record that the case was settled, and he adopted
12 that order -- that agreement as the order of the
13 court.

14 Q. Okay. Mr. Wolfson was acting pro se in
15 that case; is that correct?

16 A. Sure was.

17 Q. He did not have a lawyer, in other words?

18 A. He did not.

19 Q. And so he did not have a lawyer in
20 connection with the drafting of this agreement
21 either; is that correct?

22 A. That's true.

23 Q. Okay. This --

24 A. Now, the agreement you are talking --

25 Q. -- agreement --

1 A. -- about is Exhibit 1. I believe he did
2 have a lawyer review Exhibit 2.

3 Q. And what do you base that on?

4 A. I think he told me he did. Although, I
5 wouldn't anything he told me.

6 Q. All right. The note and security
7 agreement which is Exhibit 2, is that intended to
8 replace Exhibit 1 or are these to be read together?

9 A. I would think that Exhibit 2 would have
10 been to expound and clarify the intent of Exhibit 1.
11 I would read the two documents together.

12 Q. So these are two documents that are
13 basically part of the same transaction then; is that
14 fair to say?

15 A. I would say so.

16 Q. Okay. Exhibit 2 is not intended to
17 rewrite or contradict or replace Exhibit 1; is that
18 fair to say?

19 A. Exhibit 2 was written pursuant to Exhibit
20 1.

21 Q. Okay. And Exhibit 1, Paragraph 9, there's
22 a reference to a security agreement that, quote,
23 shall be provided. Is Exhibit 2 supposed to be that
24 security agreement?

25 A. Yes, sir.

1 Q. Okay. When you met with Ms. Wolfson in
2 December, the net result of that December meeting
3 was that these agreements or this agreement,
4 Exhibits 1 and 2, were not changed or modified at
5 all? They were made in full force and effect?

6 A. I have a very clear recollection, very
7 clear recollection of the meeting we had in April or
8 May. To tell you that I have a crystal clear
9 recollection of a meeting in December would not be
10 the truth.

11 Q. As a result of your subsequent meetings,
12 were these agreements modified or changed?

13 A. To my knowledge, those agreements have
14 never been modified or changed.

15 Q. Okay. That is my next question. As we
16 sit here today, these two agreements have never been
17 modified or changed? They are as they are?

18 A. Yes, sir.

19 Q. Okay. Paragraph 2 says except for the
20 obligations herein, Bob Wolfson and Stan Kirkland
21 fully release each other from any liability. That
22 means any other liability they may owe to each
23 other, other than what's in this agreement?

24 A. I want to answer your question, but it
25 needs to be explained.

1 Q. Okay.

2 A. The answer to your question is yes. Here
3 is what we had.

4 Q. This was supposed to be a full and final
5 settlement agreement that resolved all issues
6 between the two of them; is that fair to say?

7 A. Yes, but you need -- you need to
8 understand how this was supposed to work. From what
9 we had observed, there had been some serious issues
10 with Bob's dealings. The lot on Vivian's Island
11 which was sold and the money taken. The property of
12 Bindon where he sold the property and took the
13 money. The keeping of several sets of books which
14 Kirkland was not entitled to see. The mishandling
15 and misappropriation of funds to his son and other
16 basic, what we perceived to be, false dealings with
17 not only Stan but third parties.

18 The desire we had was to get Stan Kirkland
19 totally and completely and 100 percent removed from
20 Bob Wolfson. It was believed that the things being
21 given up were worth a whole lot more than \$90,000,
22 but we -- Stan was willing to pay a premium, at my
23 advice, to be totally and completely divorced from
24 Bob Wolfson.

25 All Stan wanted and we made this very

1 clear was \$90,000. You pay us when the money is due
2 with no exceptions. That was made incredibly clear
3 to Mr. Wolfson. And he then told us that he had a
4 \$6 million bond, forfeiture or something to where
5 having the money would not be a problem and that he
6 would clearly make the payment when due. At which
7 time, I explained to him I expect you to meet that
8 commitment. He said he would.

9 Q. Back to my question. The intent of this
10 was to be a full and final settlement agreement
11 between the two of them. Stan Kirkland would go his
12 way. Bob Wolfson would go his way except for what's
13 in here?

14 A. Except for what's in there and -- and for
15 what's in there and for the follow-up agreement that
16 was anticipated by that agreement and called for in
17 that agreement.

18 Q. Exhibits 1 and 2 were full and final
19 settlement agreements between the two of them.

20 A. Yes, sir.

21 Q. Okay. So, Stan was giving up some claims.
22 Bob Wolfson was giving out some claims. Correct?

23 A. Wolfson was --

24 Q. It says they fully release each other from
25 any liabilities. Is that what it says?

1 A. Wolfson was paying money. And Stan was
2 giving up claims, but Bob would have been giving up
3 any claims he may have had, which I'm not familiar
4 with any, but okay. Sure.

5 Q. All right. At the time this was done,
6 these two agreements, Old South Properties is an
7 entity that Bob Wolfson had pretty much been running
8 on his own?

9 A. He had been running the entity to the
10 exclusion of Mr. Kirkland, yes.

11 Q. Okay. Mr. Kirkland was living in
12 Columbia, Columbia area?

13 A. Right. But Bob was taking all the money
14 from Old South.

15 Q. Okay.

16 A. Mr. Kirkland was getting none. Bob was
17 getting lots.

18 Q. Okay.

19 A. Wolfson had basically excluded Stan from
20 any information or involvement in the operation of
21 Old South for several years.

22 Q. There is nothing in either one of these
23 two agreements that says time is of the essence; is
24 that correct?

25 MR. MATTHEWS: Objection. That's

1 irrelevant. The dates are clearly stated. The
2 consequences of missing dates is clearly stated.

3 JUDGE DUKES: Well, I'll allow the
4 question. I mean, I can read it. It says what it
5 says what it says.

6 THE WITNESS: The words time is of
7 the essence are not written in the document. But
8 the document has spelled out very clearly a due date
9 for \$80,000 and the repercussions of the self
10 effectuating cure period. The cure period is
11 specifically stated as 30 days. There is no notice
12 required to kick in the cure period.

13 As I understand it, when the law has a
14 specific date and a self-effectuating cure period,
15 the words time is of the essence is unnecessary
16 because the document speaks for itself as to the
17 efficacy of a default with a self-effectuating cure
18 period being ignored.

19 I hope I said that correctly.

20 BY MR. KUHN:

21 Q. It would have been very easy to have
22 written in time is of the essence --

23 MR. MATTHEWS: Okay.

24 BY MR. KUHN

25 Q. -- if time were to be of the essence,

1 correct?

2 A. It would have been --

3 MR. MATTHEWS: I'll object to that
4 question that's not relevant. The document -- as
5 Mr. Kuhn has stated, the document speaks for itself.
6 And this was an agreement arrived at by two
7 experienced parties.

8 JUDGE DUKES: Well, I'll sustain the
9 objection. Again, we've got the document. It seems
10 to speak for itself. So --

11 MR. MATTHEWS: Okay.

12 BY MR. KUHN:

13 Q. These obligations of Mr. Wolfson set forth
14 in here to pay \$80,000 and \$10,000, those are
15 absolute obligations? Am I interpreting that
16 correctly?

17 A. That is the way they were intended when
18 they were written.

19 Q. Okay. It says Wolfson shall pay Kirkland
20 80,000. It says Wolfson shall pay -- shall also pay
21 Kirkland 10,000. Did I read those correctly, on the
22 dates?

23 A. That's what it says.

24 Q. Okay. So this isn't a situation where Mr.
25 Wolfson could have paid the money in order to

1 receive Mr. Kirkland's interest in Old South? He
2 was obligating himself to pay \$90,000 to Mr.
3 Kirkland?

4 A. He was obligated to pay 80,000 and 10.

5 Q. Okay.

6 A. And he repudiated that obligation by way
7 of an e-mail, and he followed up with a repudiation
8 by an in person meeting which is consistent with
9 what he wrote to me in the e-mail, yes, sir.

10 Q. So it's your position that if you collect
11 \$90,000 from him now then Mr. Kirkland does not have
12 to transfer his interest in Old South Properties to
13 Wolfson?

14 A. No. No --

15 MR. MATTHEWS: Objection. That is
16 absolutely not what the testimony was.

17 JUDGE DUKES: Well, and again --

18 MR. KUHN: I'm asking him --

19 JUDGE DUKES: -- we are getting back
20 to -- no one has said this is a vague or ambiguous
21 agreement, right? I mean, there's -- that's not in
22 the pleadings anywhere. I mean, the document just
23 says what it says, right? So I guess you're asking
24 for a contractual interpretation, Mr. Kuhn. So
25 that's -- then I'd have to sustain the objection.

1 BY MR. KUHN:

2 Q. We'll ask it this way. It says upon
3 payment of the 90,000 mentioned in 5 and 6 above,
4 Kirkland transfers his interest in Old South
5 Properties to Wolfson, correct?

6 A. That is exactly what it says, yes, sir.

7 Q. It doesn't say how it's paid; voluntarily,
8 involuntarily, foreclosure on a mortgage,
9 foreclosure on a security interest, judgment
10 collection. It doesn't say how it's paid. It just
11 says when it's paid, he gets the interest in Old
12 South? Did I read that correctly?

13 A. No, sir. You read that incorrectly.

14 Q. What did I not read when it says upon
15 payment of the \$90,000 mentioned?

16 A. It says Wolfson shall pay Kirkland \$80,000
17 cash on or before March 1st, of '18.

18 Q. Okay.

19 A. That's cash.

20 Q. I agree with you. Doesn't it also say,
21 upon payment of the \$90,000 mentioned in 5 and 6
22 above, Kirkland transfers his interest in Old South
23 Properties to Wolfson.

24 A. It does.

25 Q. Did I read that correctly?

1 A. It does. And then --

2 Q. Doesn't say upon --

3 MR. MATTHEWS: I'm sorry. He's not
4 finished with his answer. Please continue.

5 THE WITNESS: And then when the
6 secured note -- the security agreement that Mr.
7 Wolfson reviewed, signed, as a follow up, it also
8 says that if there is a default that Mr Wolfson
9 forfeits his interest in Old South Properties to
10 Kirkland. And, of course, there were two separate
11 defaults. There was the failure to pay \$80,000 cash
12 on March the 1st.

13 There was an anticipatory repudiation of
14 that before and during March the 1st.

15 And there was the unlawful encumbering of
16 the property by way of a mortgage document which
17 according to the document was not within the
18 ordinary course of business and created either waste
19 or an encumbrance of property belonging to Old
20 South.

21 So, you know, it's -- it says what it
22 says. It looks to me like an breach.

23 BY MR. KUHN:

24 Q. Let's talk about that.

25 A. All right.

1 Q. If a buyer is going to buy a house from a
2 seller and they sign a contract, often the buyer
3 doesn't have the cash money to buy the house; is
4 that correct? They have to go out and get a
5 mortgage?

6 A. Yes, that would be correct.

7 Q. Okay. And often when the buyer goes to
8 get that mortgage to buy that house they put the
9 mortgage on that house. Is that fairly common?

10 A. Yes.

11 Q. By getting that mortgage on that house,
12 that enables them to buy the house. Isn't that,
13 again, fairly common?

14 A. That's -- yes, sir.

15 Q. If between the time the contract is signed
16 and the time of closing somebody else goes and puts
17 a lien on that property that could possibly be of
18 concern to the buyer, the seller and the mortgage
19 company, correct?

20 MR. MATTHEWS: Objection. It's not
21 relevant. The contract was for sale of shares of
22 stock. There's no evidence there was an encumbrance
23 on those shares of stock.

24 MR. KUHN: I disagree. The words
25 stock -- shares of stock are nowhere in these two

1 documents.

2 MR. MATTHEWS: It is for his interest
3 in the property that is represented by shares of
4 stock. This was not -- this was not an agreement
5 solely for the property at issue.

6 JUDGE DUKES: Well, and again, I will
7 end up reading the contract over and over again, but
8 I'll let him go on. But, I mean, I understand how a
9 property closing works. I'll just read this
10 agreement at some point. But anyway, I'll let him
11 continue.

12 THE WITNESS: I mean, I would assume
13 that at closing as long as the money is there, the
14 seller is not really gonna care.

15 BY MR. KUHN:

16 Q. The mortgage company, though, might.

17 A. Well, the mortgage company --

18 MR. KUHN: If the mortgage company --

19 MR. MATTHEWS: Objection. That is
20 also not relevant to anything in this case.

21 JUDGE DUKES: The transfer -- let's
22 see. Let me read it again here. Old South
23 Properties, Inc., that's what we're talking about.
24 That was what was supposed to be transferred, right?

25 MR. KUHN: Yes, sir.

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1 JUDGE DUKES: Any interest in Old
2 South Properties, Inc. If the payment was made, it
3 was going to go one way. If the payment wasn't
4 made, as a penalty, it was going the other way. Is
5 that -- is that --

6 MR. MATTHEWS: As a cure for the --
7 as a consequence of the default.

8 MR. KUHN: That's their
9 interpretation.

10 JUDGE DUKES: So I guess, Mr. Kuhn,
11 what I'm looking for is where's the part of the
12 contract that would have to do with -- well, I tell
13 you what. Let's go ahead and -- it's non-jury.
14 Just make a record. So what was your question,
15 again?

16 MR. KUHN: If a lien is put on the
17 property that's a subject of the transaction, after
18 the contract is signed but before closing, is that
19 something that might be of concern to the buyer, the
20 seller and the mortgagee?

21 MR. MATTHEWS: I -- and my objection
22 was this is not a contract for sale of property.
23 It's a sale for interest in a company.

24 JUDGE DUKES: Yeah.

25 MR. KUHN: Distinction without a

1 difference.

2 MR. MATTHEWS: Hardly.

3 JUDGE DUKES: Well, I tell you what.
4 I'll let him answer and then we'll move on. So if
5 you can answer, Mr. Moore?

6 THE WITNESS: I'm certain anytime
7 there's a lien placed on a house, that it's going to
8 be of concern to the owner, the buyer and the
9 seller. I guess the seller -- the seller put it on.
10 The seller would not be concerned about it because
11 he's the one that put it on. The buyer certainly
12 wouldn't want it gone before the transaction closed.
13 And the bank I would assume would be concerned
14 enough about it not to close the transaction until
15 and unless the encumbrance was removed.

16 That is generally why one does a title
17 search, but do I think that liens on property would
18 be of concern to people who are concerned with the
19 particular transaction, the answer to that question
20 would be, yes, sir.

21 BY MR. KUHN

22 Q. Okay. The mortgage, that is Exhibit 8,
23 that was placed on the property in February; is that
24 correct?

25 A. Yes, sir. The mortgage actually was

1 purportedly executed in February and recorded in
2 March, March the 6th, 2018.

3 Q. And what day in February was it signed?

4 A. It purports to -- carries the date
5 February the 16th. And purports to have been
6 notarized on -- the notary's certificate is in the
7 way, but it appears to have been notarized on
8 February the 16th. So Theresa O'Connell notarized
9 it February 16, 2018. So I am -- and I know her to
10 be an honest person. So I'm assuming it was signed
11 February the 16th, 2018, and recorded March the 6th,
12 2018.

13 Q. How much is the mortgage for?

14 A. The mortgage purports to be for \$97,000
15 and it's -- well, to HCG Weight Loss Center. And
16 apparently it is -- it says the debt is evidenced by
17 a note of the same date.

18 Q. So if Mr Wolfson were going to pay the
19 full \$90,000 on March 1st, obtaining a mortgage for
20 \$97,000 two weeks earlier on February 16th would be
21 entirely consistent with that, correct?

22 A. Look, if he had showed up in my office
23 with \$90,000, it would have been no problem. You
24 are absolutely right. We would not have had any
25 problem with his borrowing money against any piece

1 of Old South Property in order to pay the obligation
2 to Mr. Kirkland. That would have been fine.

3 Q. Thank you.

4 A. The problem is when he -- when the date
5 arrived, if he'd borrowed the money, he sure wasn't
6 giving it to us.

7 Q. Okay. The security agreement, let's talk
8 about Exhibit 1.

9 A. Yes, sir.

10 Q. Paragraph 8 says, Wolfson shall have the
11 90,000 obligation to Kirkland secured by a mortgage
12 on a lot owned by Bob Wolfson valued at least
13 \$80,000. Did I read that correctly?

14 A. Let me -- hold on one minute. Let me --
15 you are on -- oh, I see. Paragraph 8.

16 MR. KUHN: May my client be excused
17 just to use the restroom?

18 JUDGE DUKES: Yeah. No problem.

19 BY MR. KUHN:

20 Q. Paragraph 8?

21 A. Yes, sir. That is what it says. Wolfson
22 was to have the \$90,000 obligation to Kirkland
23 secured by a mortgage on a lot owned by Bob Wolfson
24 valued at least to \$80,000.

25 Q. Okay. And if we look at Number 2, first

1 page, the bottom references Stancel Kirkland shall
2 have the right to foreclose on a parcel of land
3 known as Lot 90, Mackay Point in Jasper County,
4 South Carolina in the event there should be an event
5 of default by non-payment?

6 A. Right.

7 Q. Is that the mortgage -- are those the same
8 mortgage being referenced in both of those
9 documents?

10 A. The way it worked -- and the answer to
11 your question would be yes. The way it worked is
12 when we signed Exhibit Number 1, Mr. Wolfson
13 represented that he owned a parcel of land that was
14 valued at least that much money and he would give us
15 a mortgage.

16 As I understand it, he also told us that
17 he wasn't in a position to give us the mortgage that
18 day because the final plat had not been approved.
19 But it was going to be approved. And just as soon
20 as it got approved, we would get the mortgage which
21 would secure the obligation contained in Exhibit
22 Number 1. He never delivered that mortgage.

23 Q. So if I'm understanding you correctly,
24 your interpretation of this agreement, both Exhibits
25 1 and Exhibit 2, is Bob Wolfson would pay Stan

1 Kirkland \$80,000 on March 1st of last year. He
2 would pay Stan Kirkland \$10,000 this coming January.

3 If he -- that \$90,000 total would be
4 secured by a mortgage on real estate. And if he
5 doesn't make that \$80,000 payment on March 1st, Mr.
6 Kirkland can foreclose on that mortgage, collect the
7 \$90,000 and Mr. Wolfson loses his 50 percent
8 interest in Old South Properties as a penalty?

9 A. That is -- well, as part of the agreement,
10 yes. The word as a penalty is not in there. The
11 actual operative words are, following any default,
12 Robert Wolfson's interest in Old South Properties,
13 Inc. shall be the exclusive property of Stancel E.
14 Kirkland.

15 Q. So if the payment is 1 minute late Mr.
16 Kirkland gets the 90,000 and Mr. Wolfson's 50
17 percent interest in Old South Properties. That's
18 your interpretation?

19 A. No, sir. If it's 30 days and 1 minute
20 late, yes, sir.

21 Q. Okay.

22 A. He has 30 days --

23 Q. It's not your interpretation that Mr.
24 Wolfson owes Mr. Kirkland \$90,000 secured by a
25 mortgage. And once Mr. Kirkland collects that

1 either by Mr. Wolfson paying it to him or by
2 collecting it on a mortgage or any other method,
3 once that 90,000 is paid then Mr. Wolfson owns Old
4 South Properties. That's not your interpretation of
5 this agreement?

6 A. The way this agreement is drawn and what
7 it was intended to mean is that the security
8 agreement was to have some teeth in it. Mr. Wolfson
9 had a significant period of time, the exact time he
10 asked for, to pay the small sums he agreed to pay
11 which he swore that would be paid and paid on time.

12 He was given 30-days grace to make the
13 payment. If he did not make the payment, the
14 agreement specifically states that Mr. Wolfson
15 forfeits his rights to Old South Property and Old
16 South Property becomes the exclusive property of Mr.
17 Kirkland.

18 In addition, Mr. Kirkland would still have
19 the right to foreclose and to collect on his \$90,000
20 which would still be owed.

21 The understanding was that these people
22 had to get out of business together. One or the
23 other had to own the property. It's like Jerry
24 Clower said, shoot up in here amongst us. One of us
25 got to have some relief.

1 If he paid it, it's his. If he doesn't
2 pay it, it's Stan's. He had stolen, I believe the
3 numbers were several millions of dollars, from this
4 corporation over the years.

5 MR. KUHN: I'm going to object. This
6 is not being responsive now. It was simple --

7 THE WITNESS: Well, okay.

8 MR. KUHN: -- yes or no question.

9 THE WITNESS: It's fine.

10 BY MR. KUHN:

11 Q. So if he pays it -- if Mr. Wolfson pays
12 it, then he ends up the owner of Old South
13 Properties?

14 A. No. That's not what the document says.

15 Q. I thought that's what you just said.

16 A. No, sir.

17 Q. But let me repeat my question then.

18 A. All right.

19 Q. If Mr. Wolfson -- this is not your
20 interpretation as I understand it. If Mr. Wolfson
21 pays the \$90,000, voluntarily, involuntarily, cash,
22 certified check or by way of foreclosure on his
23 property, you do not interpret this agreement to
24 mean he then gets Old South Properties?

25 A. Well, first of all, at this point --

1 Q. Is that a -- it's just a yes or no and
2 then explain it.

3 A. I can't explain -- I can't answer it yes
4 or no.

5 Q. That's fine. Now please explain.

6 A. Wait a minute. Wait a minute. Give me
7 the question again. What was the question again?

8 Q. I'm trying to think how better to ask it.
9 Let me ask it this way. Mr. Wolfson comes back in
10 this room, hands you a certified check for \$90,000.
11 You do not believe he has paid the money and is
12 entitled to Old South Properties, correct?

13 A. That would be totally correct. The time
14 to have done --

15 Q. All right.

16 A. -- that has come and gone. The forfeiture
17 provisions of the note and security agreement and
18 both agreements has basically run. He ignored his
19 obligations. He ignored his obligations for 30
20 days. The self-effectuating time limitations ran.

21 There was an anticipatory repudiation of
22 the obligations to pay. He knew that he was
23 forfeiting the agreement. We placed him on notice
24 that he was -- that he was forfeiting. And he
25 walked out the door.

1 Now, you may still run into a question as
2 to whether or not the \$90,000 is still due. I
3 believe that it still is in the clear writing of the
4 agreement. But one thing is for certain. Under the
5 clear wording and intent of both agreements, El Cid
6 Holdings, LLC presently is the owner of Old South
7 Properties, Incorporated.

8 Q. Was a notice of default ever sent to Mr.
9 Wolfson?

10 A. No, sir. And there are two reasons. A,
11 it didn't have to be under the language of the
12 agreement. It was a self-effectuating default
13 period. And, second of all, the man repudiated the
14 obligation to pay in March.

15 The law does not require the doing of a
16 vain act. When a person repudiates his obligations
17 and expresses a clear intent in writing not to honor
18 his commitment, even if the contract had had a
19 requirement of a written notification, which it
20 doesn't, you wouldn't have had to give written
21 notification under the law in South Carolina.

22 Q. So the answer is, no, a notice of default
23 was never sent?

24 A. That is the answer, yes, sir.

25 Q. What is the -- if further funds are

1 collected from Mr. Wolfson, what is the agreement
2 between Mr. Kirkland and El Cid as to how those will
3 be divided?

4 A. If there is any additional funds realized,
5 there is some sort of a division and I don't know
6 what that is. I think they divide the money 50/50,
7 but I don't -- or I don't -- or I think that El Cid
8 gets its \$45,000 back and they would divide any
9 funds 50/50. I believe that's what it says.

10 Q. Is that reduced to writing?

11 A. Yes, sir. The agreement was reduced to
12 writing and the assignment was made in writing. El
13 Cid Holdings, LLC is the present owner of the causes
14 of action in the contractual agreements between Mr.
15 Kirkland and Mr. Wolfson.

16 Q. So before this agreement was signed, Mr.
17 Wolfson owed Mr. Kirkland \$28,500 if I understand
18 you correctly?

19 A. No, sir. Mr. Wolfson owed Bindon
20 Plantation \$28,500 for the machinery he stole. He
21 owed Vivian's Island \$80,000 for the lot that he
22 stole. And he probably owed Mr. Kirkland about two
23 and a half million dollars.

24 Q. In your opinion. Those are not judgments.
25 Those last two items.

1 A. The -- well, the -- wait a minute now.

2 The Vivian's Island lawsuit was in progress.

3 Q. Correct.

4 A. It was about to be reduced to a judgment
5 because there was no accounting for the \$80,000 he
6 stole from Vivian's. The two and a half million
7 dollars is as the result of a forensic accounting
8 which has, in fact, been done, which basically shows
9 approximately -- to my understanding, approximately
10 five million dollars having been absconded with.

11 Q. That is based on hearsay, it sounds like?

12 A. You are correct about that.

13 MR. KUHN: And I move to strike that,
14 Your Honor?

15 MR. MATTHEWS: It was an answer to
16 his question. He can't object to a hearsay
17 response.

18 JUDGE DUKES: Yeah. It wasn't really
19 offered for truth, I don't think anyways. It was
20 just in response to the question. I'll allow it for
21 what it's worth.

22 MR. KUHN: That's all I have.

23 MR. MATTHEWS: Just a couple of
24 follow-ups, Your Honor.

25 JUDGE DUKES: Go ahead, please.

EXAMINATION

BY MR. MATTHEWS:

Q. There were some questions about Mr. Kirkland signing the agreement. When he signed these two agreements, was he under any sign of obvious duress?

A. No. He was in his right mind when he signed it. He -- Stan has gone down horribly in the last six to nine months.

Q. Mr. Kirkland you said was of sound mind and body for each of these agreements?

A. He understood.

Q. Okay. You saw Mr. Wolfson when he signed the agreement that's Exhibit 1?

A. Yes.

Q. Was he under duress in any way?

A. No.

Q. Okay. Did you threaten him in any way?

A. No.

Q. Okay. And I see that Exhibit 2 was notarized? The signatures were notarized?

A. Yes, sir.

Q. You had mentioned something about the Jasper County bond. Could you tell us what you know about that?

1 A. Very little --

2 MR. KUHN: I'm going to --

3 THE WITNESS: -- other than what I've
4 been told.

5 MR. KUHN: -- object. It's not in
6 response to anything that's been asked.

7 THE WITNESS: All I can tell you is
8 what he said.

9 JUDGE DUKES: Hold on one second.

10 MR. MATTHEWS: I believe it is. He
11 asked him --

12 JUDGE DUKES: I thought there was
13 some discussion of this bond. It was in his answer.

14 MR. MATTHEWS: I just -- and, Your
15 Honor, I just want him to explain what he knows
16 about it.

17 JUDGE DUKES: Yeah. I'll allow it.
18 Go ahead.

19 BY MR. MATTHEWS:

20 Q. If you would, sir.

21 A. When we were having lunch, the judge had
22 basically asked us to talk about trying to settle
23 the case over lunch. And we did that.

24 JUDGE DUKES: You can do that again
25 today, by the way. But go ahead.

1 THE WITNESS: And -- well, we did.

2 We went to a nice restaurant and I sat at a table
3 and ate a hamburger or something and wrote this
4 agreement while they sat there and were laughing
5 with each other. We actually had lunch with Mr.
6 Wolfson or they did.

7 But Bob was bragging about how he had
8 struck some sort of a deal and caught some bonding
9 company doing something. And that he had this big
10 claim dealing with this bond. And that he had \$6
11 million worth of value that he had come into. And
12 -- cause I asked him. I said, Bob, you know, all I
13 want you to do is honor this commitment. Not a
14 problem.

15 He was telling us that this \$6 million
16 that he had was such that he would have no problem
17 meeting the obligation in March and in January. So
18 do I know that he had \$6 million? No. Do I know
19 that he has some claim with the bond? No. I don't
20 have any specific information other than he telling
21 us he had \$6 million.

22 BY MR. MATTHEWS:

23 Q. Sir, opposing counsel asked you about
24 should there be -- in Exhibit 2, there is a section
25 that says, in addition, that should there be an

1 event of default by nonpayment, Stancel Kirkland
2 shall have the right to foreclose on a parcel of
3 land known as Lot 90 Mackay Point Jasper County,
4 South Carolina.

5 Are you aware that there's ever been a
6 mortgage or note or any other type of agreement that
7 would grant Mr. Kirkland an interest in that
8 property?

9 A. What gave Mr. Kirkland the contractual
10 rights to it to be secured were these two
11 agreements. The mortgage would have given him a
12 legal lien upon the property.

13 Q. But that --

14 A. The problem is --

15 Q. That doesn't exist.

16 A. -- we never -- we never were delivered the
17 mortgage that was contracted for, and we did ask for
18 it.

19 Q. But as of this moment, there's no way for
20 Mr. Kirkland or his assignee to foreclose on that
21 piece of property, correct?

22 A. Not that I know of. As a matter of fact,
23 I'm not -- no. The answer to your question is to my
24 knowledge, no, you could not foreclose on that
25 mortgage right now.

1 MR. MATTHEWS: Okay. Nothing
2 further, sir.

3 JUDGE DUKES: Do you have anything --

4 MR. KUHN: No recross.

5 JUDGE DUKES: All right. Thank you
6 so much, sir.

7 THE WITNESS: Thank you, sir.

8 JUDGE DUKES: I don't have any
9 questions. This is probably a good time to try to
10 eat some lunch. And, again, please feel free to
11 talk and see if you can figure out how to make this
12 go away, again.

13 MR. KUHN: Yes, sir.

14 JUDGE DUKES: And generally, it's
15 really hard to get out, eat lunch and make it back
16 here in about -- less than about 45 minutes. So --

17 MR. KUHN: Yes, sir.

18 JUDGE DUKES: -- there's a couple of
19 places across the street there. So let's see. What
20 time? Would that put us back at 1:30-ish?

21 MR. KUHN: Yes, sir.

22 JUDGE DUKES: Is that right? So why
23 don't we try and make it back more or less by 1:30?

24 MR. MATTHEWS: Yes, sir.

25 JUDGE DUKES: And we'll start from

1 MR. MATTHEWS: Okay. Nothing
2 further, sir.

3 JUDGE DUKES: Do you have anything --

4 MR. KUHN: No recross.

5 JUDGE DUKES: All right. Thank you
6 so much, sir.

7 THE WITNESS: Thank you, sir.

8 JUDGE DUKES: I don't have any
9 questions. This is probably a good time to try to
10 eat some lunch. And, again, please feel free to
11 talk and see if you can figure out how to make this
12 go away, again.

13 MR. KUHN: Yes, sir.

14 JUDGE DUKES: And generally, it's
15 really hard to get out, eat lunch and make it back
16 here in about -- less than about 45 minutes. So --

17 MR. KUHN: Yes, sir.

18 JUDGE DUKES: -- there's a couple of
19 places across the street there. So let's see. What
20 time? Would that put us back at 1:30-ish?

21 MR. KUHN: Yes, sir.

22 JUDGE DUKES: Is that right? So why
23 don't we try and make it back more or less by 1:30?

24 MR. MATTHEWS: Yes, sir.

25 JUDGE DUKES: And we'll start from

1 there. All right.

2 MR. MATTHEWS: Yes, sir.

3 JUDGE DUKES: Thank you so much.

4 (BREAK TAKEN).

5 JUDGE DUKES: We are back on in
6 18-796. And Mr. Dennis Ratchup will be the next
7 witness for the Plaintiff; is that correct? Sir,
8 can you hold your right hand up for me, please? Do
9 you swear or affirm to tell the truth, the whole
10 truth, and nothing but the truth so help you God?

11 MR. RATCHUP: I do.

12 JUDGE DUKES: Okay. Great. Thank
13 you so much. Please answer any questions. Ask
14 away.

15 WHEREUPON:

16 DENNIS RATCHUP, being duly sworn and
17 cautioned to speak the truth, the whole truth and
18 nothing but the truth, testifies as follows:

19 EXAMINATION

20 BY MR. MATTHEWS:

21 Q. Sir, for the court reporter would you
22 please state your full name for the record? For the
23 court reporter if you would please state your full
24 name?

25 A. Dennis Ratchup.

000241

1 Q. And what is your profession?

2 A. Right now I'm retired from the insurance
3 business, and I'm part owners in a company called
4 Ace Basin Earthworks with Bob Wolfson.

5 Q. Okay.

6 A. As well as Consolidated Ventures also
7 partnered with Bob Wolfson.

8 Q. How long have you known Mr. Wolfson?

9 A. Since 1991 or 2.

10 Q. Okay. Are those the only two business
11 ventures you've had together?

12 A. Yeah. Business ventures, yes. I did
13 invest in a property development that he had called
14 Vivian's Island.

15 Q. Okay. And did that turn out well?

16 A. It didn't turn out as I expected, but I
17 made money on the investment.

18 Q. Okay. I'm going to ask you to look at
19 what's been marked as Exhibit 2 in this case. Have
20 you ever seen that document before day?

21 A. I don't -- I don't think so.

22 Q. Okay. It references -- if you'll turn to
23 the very back, do you see that he has signed on
24 behalf of Consolidated Ventures, LLC?

25 A. Yes.

1 Q. Okay. Did you give him permission to sign
2 on behalf of Consolidated Ventures, LLC?

3 A. Well, since I wasn't aware of this -- I
4 was aware of this transaction before now, but not
5 aware of this document before now. So what I can
6 say is that Bob and I never discussed anything
7 concerning the agreement that is evidenced by this
8 note and security agreement.

9 Q. Let me turn your attention to the sixth
10 paragraph on the first page. It states as follows:
11 In addition, should there be an event of default by
12 nonpayment, Stancel E. Kirkland shall have the right
13 to foreclose on a parcel of land known as Lot 90,
14 Mackay Point in Jasper County, South Carolina. Is
15 that a piece of property owned by Consolidated
16 Ventures, LLC?

17 A. I believe that it is. Bob and I bought
18 many properties together under the umbrella of
19 Consolidated Ventures, but they are not all deeded
20 to Consolidated Ventures. Some are in his name.
21 Some are in my name. Some are in Consolidated
22 Ventures' name. Some are in Rivers Reach's name and
23 other names.

24 Q. If --

25 A. So assuming that this is one of the

1 Consolidated Ventures' lots, the ones that is deeded
2 directly to Consolidated Ventures, you know, I'm --
3 I was not aware of it.

4 Q. Did -- but so he did not discuss that
5 parcel --

6 A. No, we never had any discussion about this
7 before this document was signed.

8 Q. Okay. How long would you have said you've
9 been in business with the Defendant?

10 A. I think --

11 Q. You said you've known him since '91.

12 A. Yeah. I mean, I think -- well, I bought a
13 condo from him in '91/'92 which is how I met Bob in
14 Atlanta.

15 Q. Okay.

16 A. And so I wouldn't consider that doing
17 business with him exactly, but as far as like
18 investing or anything --

19 Q. Yeah.

20 A. I think the first time I invested with Bob
21 was in Vivian's Island, I believe.

22 Q. Okay. What year was that?

23 A. I don't remember. '90 -- sometime in the
24 mid '90s I think.

25 Q. Mid '90s? Have you ever known Mr. Wolfson

1 to be untruthful in his professional communications?

2 MR. KUHN: Object to that.

3 JUDGE DUKES: What is the relevance
4 of that?

5 MR. MATTHEWS: One of the things --
6 one of the defenses although it's not in his
7 complaint will be raised -- I mean, (inaudible)
8 failed to raise it, but he's indicated during the
9 hearing that he intends to rely on equity as some
10 type of defense. He has unclean hands. We have
11 every right to explore his unclean hands.

12 MR. KUHN: When someone has been
13 untruthful on another occasion, that has nothing to
14 do with whether or not they have clean hands on this
15 occasion.

16 MR. MATTHEWS: It has everything to
17 do with that. It has to do with the document that's
18 before him which is a part of this case.

19 JUDGE DUKES: What is -- let me look
20 at the answer and counterclaim real quick. Is --
21 are equity defenses pled?

22 MR. KUHN: No, sir.

23 JUDGE DUKES: I mean, I heard the
24 opening but -- let's see. Amended answer and
25 counterclaims. Mr. Kuhn, is there anything pled

1 under equity causes of action or claims? I mean,
2 I'm just looking through this real quick, but
3 obviously you know it better than I do.

4 MR. KUHN: Not expressly.

5 MR. MATTHEWS: And, Your Honor, with
6 the exception of another witness, we believe that's
7 relevant as to -- directly relevant as to this case.
8 If Mr. Kuhn is acknowledging that those defenses
9 have been waived because they've not been raised,
10 we'll withdrawal the question.

11 JUDGE DUKES: Well, I mean, they're
12 not pled. But, I mean, what -- and you mentioned
13 equity, but I guess I'm just scrolling through here.
14 What is it?

15 MR. KUHN: It's a rule of evidence.
16 Specific instances of conduct of a witness may not
17 be proved by extrinsic evidence. This is extrinsic
18 evidence. It's another witness.

19 MR. MATTHEWS: No. No. This is
20 character evidence. It's completely admissible.

21 MR. KUHN: That's exact -- it's the
22 Rule 608, evidence of character.

23 JUDGE DUKES: Well, let me ask you
24 this. No one has brought his -- they haven't
25 offered evidence of good character yet, right? And

1 they might, I suppose. I don't know. I don't know
2 if it even matters. I mean, we've got a contract --
3 two-page contract for -- whatever pages it is where
4 no party has said it had any ambiguity in it
5 whatsoever.

6 MR. MATTHEWS: Correct.

7 JUDGE DUKES: So I have to rely on
8 the four corners of however many pages the contract
9 is. I guess I'm trying to figure out --

10 MR. MATTHEWS: Your Honor, if I may,
11 I think I may have a reasonable response to that.
12 One of the things that has been raised by us is
13 anticipatory repudiation. And Mr. Moore testified
14 at length and quite clearly on his recollection. If
15 that is something that Mr. Wolfson adopts, then I
16 think we're ready to move for immediate judgment.

17 If he -- if he offers testimony that is
18 contrary to that testimony then his truthfulness is
19 directly at issue because you'll have a question of
20 fact before you as to anticipatory repudiation.

21 JUDGE DUKES: Well, at that point,
22 then I wonder if we bring this witness back if the
23 whole purpose of this witness is having to do with
24 character. But, I mean, at this point it hasn't
25 been introduced.

1 MR. MATTHEWS: Well, the --

2 JUDGE DUKES: I mean, I get the part
3 about the Consolidated Ventures or whatever.

4 MR. MATTHEWS: Yes, sir. Well, let
5 me be completely transparent.

6 JUDGE DUKES: All right.

7 MR. MATTHEWS: The thing that we --
8 number one, if it is true, as I -- we will certainly
9 argue you can't bring a defense you haven't raised.
10 And when you look at his pleadings, even his amended
11 pleading is devoid of an equitable defense.

12 Second, in terms of -- in the claim
13 specifically it states that Mr. Wolfson
14 anticipatorily repudiated the agreement. To say
15 nothing of the fact that it is undisputed that he
16 did not make the payments on time. And that the
17 language in the contract, as I also believe you say,
18 is written for all to see.

19 If it is true, as I believe is the case,
20 that the Defendant has raised no equitable defenses.
21 The only -- the only thing that makes his
22 truthfulness relevant is whether or not his
23 testimony is contrary to Mr. Moore's. And then you
24 do have a -- that question is before you and you'll
25 need to make that credibility determination.

1 And that point, making the credibility
2 determination whether or not he has cheated others,
3 is absolutely relevant.

4 MR. KUHN: And I disagree. Rule 608
5 is not.

6 JUDGE DUKES: Yeah. I think I --

7 MR. KUHN: I might have cheated 10
8 million people in the past, but I might not be
9 cheating today. That's the basis for Rule 608.

10 JUDGE DUKES: Yeah. I kind of agree
11 with Mr. Kuhn on this one. I'm -- I think I'm going
12 to sustain the objection to that. Again, unless his
13 credibility becomes an issue here, which, again, it
14 hasn't yet because I don't know what Mr. Wolfson's
15 testimony is going to be. And I'm still not
16 positive it would be appropriate to let it in, but I
17 think at this point --

18 MR. MATTHEWS: Well then, Your Honor,
19 in light of that statement, perhaps we should
20 reserve Mr. Ratchup as a rebuttal witness.

21 JUDGE DUKES: I think so. Yeah. I
22 think that's appropriate.

23 MR. MATTHEWS: Your Honor, we would
24 offer no objection to that.

25 JUDGE DUKES: You want to cross him

1 on what you've got so far?

2 MR. KUHN: No, sir. Thank you.

3 MR. MATTHEWS: Mr. Ratchup, do you
4 understand you're being reserved as a rebuttal
5 witness?

6 THE WITNESS: Yes.

7 MR. MATTHEWS: So that means you
8 would need to stick around until after.

9 THE WITNESS: Okay.

10 MR. MATTHEWS: Sorry about that.

11 THE WITNESS: I understand.

12 MR. MATTHEWS: Okay. Thank you. Not
13 excused, but off the stand.

14 JUDGE DUKES: All right. Thanks.

15 MR. MATTHEWS: Ms. O'Connell?

16 JUDGE DUKES: Can I get you to hold
17 your right hand up for me, please? Do you swear or
18 affirm to tell the truth, the whole truth, and
19 nothing but the truth so help you God?

20 MS. OCONNELL: Yes, I do.

21 JUDGE DUKES: All right. Can you
22 state your full name for our court reporter?

23 MS. OCONNELL: Theresa Ann O'Connell.

24 JUDGE DUKES: Could you spell
25 O'Connell, please?

1 MS. OCONNELL: O--'C-o-n-n-e-l-l.

2 JUDGE DUKES: Thank you so much.

3 Please answer any questions of the Plaintiff's
4 attorney.

5 WHEREUPON:

6 THERESA O'CONNELL, being duly sworn
7 and cautioned to speak the truth, the whole truth
8 and nothing but the truth, testifies as follows:

9 EXAMINATION

10 Q. Ms. O'Connell, you testified at a
11 deposition a couple of weeks ago; is that correct?

12 A. That's correct.

13 Q. Okay. Do you recall any of the questions
14 I asked you?

15 A. I do.

16 Q. Okay. Well, as a courtesy to you, the
17 court reporter has produced a transcript. If you
18 have any questions or would like to refer to that, I
19 want to make it available to you.

20 A. Okay.

21 Q. Okay. Now, I understand that you have
22 worked with Mr. Wolfson for some time.

23 A. That's correct.

24 Q. Okay. Although it's in the record in the
25 deposition, would you please tell us -- please tell

1 the court what that work history is?

2 A. I have -- I originally began working with
3 Mr. Wolfson as a real estate agent. And
4 transitioned over time to entering the information
5 that is QuickBooks based off of his bank statements.
6 I have helped pay bills for his multiple companies
7 and assisted in permitting and construction aspects
8 of some of his companies.

9 Q. Did he ever give you his power of
10 attorney?

11 A. Yes, sir.

12 Q. Do you remember the dates?

13 A. I believe June 1st it was signed. I would
14 have to see it to --

15 Q. Actually, I have a copy of it. I don't
16 know if we need to introduce this as an exhibit at
17 this point. But I don't want you to struggle with
18 the dates either.

19 A. Yes. It was as of -- dated as of June
20 1st, 2018. That is when it was verbally given to
21 me. But then we made it official in writing, and it
22 was notarized on the 14th day of August, 2018.

23 Q. Got it. That's simply to refresh your
24 recollection.

25 A. Okay. Sorry. I couldn't remember all the

1 dates.

2 Q. That's not been entered as an exhibit,
3 yet. If you will turn with me -- there are exhibits
4 in front of you. Exhibit 2, I believe, is in front
5 of you?

6 A. Yes, sir.

7 Q. Would you turn to the second page of that
8 exhibit? Do you see the signatures on the back of
9 that document?

10 A. Yes, sir.

11 Q. And do you see that there's a notary?

12 A. Yes, sir.

13 Q. -- on that document? Are you that notary?

14 A. I am that notary.

15 Q. Did you notarize the document in front of
16 the Defendant?

17 A. Yes, I did.

18 Q. Okay. Where was that?

19 A. I believe it was in the Old South
20 Properties sales office.

21 Q. Okay. Did the Defendant discuss that
22 document with you at all?

23 A. I was aware of it and aware of the
24 situation. That particular day -- I don't remember
25 if that particular day we had discussed it, but I

1 was aware of it.

2 Q. Okay. And in your dealings with the
3 Defendant, I believe you indicated -- is it a fair
4 statement to say that you kept the books of Old
5 South Properties while you were employed there?

6 A. Yes.

7 Q. Okay. Now, when you say -- all of us may
8 have a different opinion about what keep the books
9 means. What do you take that to mean?

10 A. I would take the bank statement and the
11 checks that were written during the month and enter
12 them into QuickBooks and then the QuickBooks records
13 were sent over to the CPA for the CPA to prepare tax
14 returns.

15 Q. Okay. Could you also produce balance
16 sheets and other financial statements for Mr.
17 Wolfson?

18 A. Yes, sir.

19 Q. Did you do so?

20 A. Upon request I did.

21 Q. Okay. Do you remember doing so?

22 A. I know that I've produced them for banks
23 when requested, yes, by him to send to banks.

24 Q. Okay. On those balance sheets there were
25 significant notations concerning loans. And,

1 although, I don't know if we are going to introduce
2 it as an exhibit, I wanted to refresh your
3 recollection. This is a 2016 tax return for Old
4 South Properties, and I want to show you, after I
5 show my colleague, a copy of the section of the tax
6 return that references liabilities.

7 Standby one minute. Ma'am, have you seen
8 those liabilities before?

9 A. Yes, sir.

10 Q. Could you tell the court what they are?

11 A. They were kept up with book records of
12 money and -- money that would be exchanged between
13 companies.

14 Q. Okay. When it says that there's a loan,
15 does that mean that money is owing from Old South
16 Properties to another company?

17 A. Concerning something under the liability
18 section, I would say, yes, it's owed to another
19 company.

20 Q. Okay. So these are actual liabilities
21 that existed with the company as of 2016?

22 A. Yes.

23 Q. And the total number of the liabilities
24 are \$250,306?

25 A. Yes.

1 Q. So those were encumbrances on the property
2 itself as of December 31, 201'6?

3 MR. KUHN: I'll Object to that
4 calling for a legal conclusion whether there were
5 any encumbrances on the property.

6 BY MR. MATTHEWS

7 Q. In the ordinary sense of the word, you're
8 an accountant, aren't you?

9 A. I would say I don't know that they're
10 necessarily encumbrances on the property, but they
11 would be encumbrances to the corporation.

12 Q. To the company?

13 A. To the company.

14 Q. And you would draw a distinction between
15 encumbrances to the corporation and those on the
16 property, wouldn't you?

17 A. I did when you said that to me, yes.

18 Q. Okay. Well, do you still believe that to
19 be true?

20 A. I do think the company is separate from
21 property it may hold, yes.

22 MR. MATTHEWS: Okay. The -- let's go
23 ahead and introduce this -- not the whole tax
24 return. I understand there's some -- there's
25 usually some sensitivity about introducing the

1 entire tax return, but we can just introduce this
2 part of the exhibit.

3 Fred, do you have any objection?

4 MR. KUHN: Just that page? No
5 objection, Your Honor.

6 JUDGE DUKES: Can you all redact any
7 identifying numbers or anything?

8 MR. MATTHEWS: There's an employee ID
9 number that we can redact right now.

10 JUDGE DUKES: That would be great. I
11 think the Rules call for that now.

12 MR. MATTHEWS: Yeah. Thank you.

13 JUDGE DUKES: What exhibit number
14 will that be?

15 COURT REPORTER: Thirteen.

16 MR. MATTHEWS: And then what I'll do
17 is just make this -- this will be the original
18 exhibit. Thank you.

19 (MARKED PLAINTIFF'S EXHIBIT NO. 13.)

20 BY MR. MATTHEWS

21 Q. Now, ma'am, one of the -- of the \$250,000
22 and change that is owed by Old South Properties as
23 of December 31, 2016, there is one loan to Bull
24 Point, LLC for \$116,000 -- \$116,093. Do you have
25 any idea what that's about?

1 A. From my recollection, there was a -- this
2 is a very, very old debt from many, many years ago
3 when Old South Properties was operating in the sales
4 trailer with Bull Point, LLC. And they would share
5 expenses back and forth. And at one time, a sales
6 launch was put on and some of that would be from the
7 bills that were incurred by one party for the other
8 one. And a journal entry was made to show that one
9 company was paying on behalf of the other one and
10 that was a debt that would be owed.

11 Q. What was the purpose of including that on
12 a tax return?

13 A. It does show the financial health of a
14 company. And I think they are expenses that were
15 paid but not necessarily accounted for because it
16 was put under a loan category. And so my
17 assumption, I am not a CPA and I have not done this,
18 but I would assume that if these debts were not ever
19 recouped, it could then be written off as a bad
20 debt.

21 Q. Would the loan on the tax return increase
22 or decrease tax liability?

23 A. It would decrease your tax liability.

24 Q. So if it's not a genuine loan, that would
25 be tax fraud, wouldn't it?

1 A. I guess that could be, yes, potentially.

2 Q. Now, ma'am, you've told the judge that
3 you've worked with Mr. Wolfson for a number of
4 years; is that fair?

5 A. Yes.

6 Q. Is it also fair to say you mean him -- you
7 mean to do him no harm?

8 A. That's correct.

9 Q. Is it also fair to say that you're not
10 anxious to say things that would be harmful to his
11 interests?

12 A. That's correct.

13 Q. But you're also under oath?

14 A. Yes.

15 Q. And you understand that things that you --
16 your answers to my questions have to be truthful?

17 A. Yes.

18 Q. Okay. I wanted to get that out of the
19 way. I'd like you to turn, if you will, to Exhibit
20 9. Have you seen this document before?

21 A. At the deposition with you a week and a
22 half ago.

23 Q. Do you recall what we discussed about it?

24 A. I do.

25 Q. Okay. Well, in front of a judge then,

1 we'll go over some of those items, again. And then
2 if you want to refer to your prior testimony, I'm
3 not trying to trick you. We have access to it if
4 you want to. I've got it at hand if you need it.

5 MR. KUHN: Your Honor, if I could
6 object to that question. It's pretty open ended. I
7 have no idea what he's asking.

8 MR. MATTHEWS: Well, no, I'm just
9 extending her a courtesy to say if she wants to
10 refer to her deposition transcript, I have it ready.

11 JUDGE DUKES: But you haven't
12 actually asked a question, yet.

13 MR. KUHN: Oh, okay.

14 MR. MATTHEWS: Not yet. No, but if
15 she wants to refresh her memory --

16 JUDGE DUKES: Got you.

17 MR. MATTHEWS: -- I am happy to share
18 it with her. Or if she wants to remember it, I'm
19 not trying to trip you up.

20 BY MR. MATTHEWS

21 Q. The email is dated March 1st of 2018.
22 Would this have been retrieved from your computer?

23 A. No, this was not from my computer.

24 Q. Okay. This would have been from Mr.
25 Wolfson's own computer?

1 A. It reads from his email address.. So I
2 would assume it's from a computer that he had access
3 to because it's coming from his email, not mine.

4 Q. Is rwolfson59@gmail.com an email address
5 you know to be from Bob Wolfson?

6 A. Yes.

7 Q. Okay. And I'll simply represent to you
8 that Jake@mttlaw.com was Mr. Moore's moniker or
9 email address at the time. The first sentence says,
10 I'm writing to let you know that I will not be able
11 to meet my buy-out deadline with Stan as I am now
12 involved in a full blown lawsuit against Gavigan, et
13 al.

14 As of March 1st, were you aware or
15 involved in that particular lawsuit that Mr. Wolfson
16 references?

17 A. I had heard about it, yes..

18 Q. But only -- you had only heard about it.
19 You weren't participating in it as an assistant or a
20 --

21 A. No, sir.

22 Q. -- or a party?

23 A. No.

24 Q. Okay. It then says they filed liens
25 against Old South Property -- against Old South and

1 deleted our 12th Amendment. Do you know what that
2 refers to?

3 A. I heard what -- I have heard what that
4 refers to, yes.

5 Q. Well, let me ask you the question like
6 this. Do you have any firsthand knowledge of what
7 those relate to? And if you don't know, that's
8 fine.

9 A. I have heard Mr. Wolfson speak of it. But
10 I have not myself read all the amendments, but I
11 know what it is referring to.

12 Q. All right. He then says, at the last
13 sentence of that paragraph, we have not been able to
14 sell out of the sales office since January. Is that
15 a true statement?

16 A. As I've shared in my deposition, that I
17 had heard in the office that sales -- walk-ins were
18 being sent to the clubhouse. Not to our sales
19 office. And so while I don't believe -- I was under
20 the impression that the rest of the employees also
21 were under the impression that walk-ins were not
22 relative -- actively coming to our office like they
23 had before. We were not in any way inhibited from
24 selling out of the office.

25 Q. Okay. I'm going to see if you recall your

1 answer to this question.

2 A. Okay.

3 Q. So from 2017 to the date the trailer was
4 removed, and for your purposes, I think you'll
5 recall that was January 4th, 2018?

6 A. Yes.

7 Q. Was there any -- to your mind, any loss of
8 business? Do you recall what your answer is?

9 A. I said no.

10 Q. Is that still your answer today?

11 A. Yes.

12 Q. Okay. So the statement that Mr. Wolfson
13 made in this email, we have not been able to sell
14 out of the sales office since January, that is
15 simply a false statement?

16 A. Because the office was open and able to
17 still run as a business.

18 Q. And did so out of that office, didn't it?

19 A. It did.

20 Q. The next paragraph says please let Stan
21 know I want to honor this agreement, but I also want
22 to be able to sell real estate there after our
23 purchase. As of this moment -- well, let me ask you
24 the question like this. You stopped keeping the
25 books for Old South Properties when?

1 A. I returned the checkbook in August.

2 Q. Okay.

3 A. So I've not had access to the checking
4 account or the finances since August.

5 Q. Are you aware if Mr. Comerford, Steven
6 Comerford --

7 A. I am.

8 Q. -- is still the broker in charge at Old
9 South Properties?

10 A. The last I heard he was, yes.

11 Q. Do you understand if he's still in
12 business?

13 A. The last I heard he was.

14 Q. Do you understand if he's still making
15 sales?

16 A. Last I heard he was.

17 Q. Okay. When did you last hear?

18 A. Within the last few weeks.

19 Q. So Old South Properties is still a going
20 concern and is still doing business?

21 A. From my understanding, yes.

22 Q. It is still making sales?

23 A. From my understanding, yes.

24 Q. Thank you. And you knew that from Mr.
25 Comerford?

1 A. The last time he and I spoke, yes.

2 Q. Did you hear that from Mr. Wolfson?

3 A. He and I have not discussed this. So I
4 don't have a frame of reference for that.

5 Q. Okay. Thank you. I also asked you this
6 question. In your knowledge of how Mr. Wolfson has
7 conducted his business, have you ever known him to
8 make an untruthful professional statement?

9 MR. KUHN: Your Honor, I'm going to
10 object to this same Rule 608.

11 JUDGE DUKES: Yeah. I guess at some
12 point I guess what you're anticipating is I'll have
13 to judge the credibility of Mr. Wolfson.

14 MR. MATTHEWS: Yes, sir. Obviously.

15 JUDGE DUKES: But I think the
16 appropriate way for me to do that, unless some third
17 party comes in and starts talking about his
18 credibility, is simply to do it the normal way and
19 just try and listen as best I can and judge his
20 statements against the evidence and see what the
21 story is.

22 I think that's premature unless they
23 introduce evidence of good character or something
24 like that. But --

25 MR. MATTHEWS: Well, Your Honor,

1 let's actually speak of this then. This may cause
2 me to -- again, I don't mean to inconvenience the
3 witness, but -- and if we can do this as a side bar
4 or on the record as you would -- as you see fit.
5 I'm going to engage in a discussion. Mr. Kuhn may
6 want this off the record. And I want to extend that
7 courtesy.

8 JUDGE DUKES: Why don't we do this.
9 Why don't we take a break for a second and just
10 leave the attorneys in here and --

11 MR. MATTHEWS: Perfect.

12 JUDGE DUKES: We'll do that. So,
13 ma'am, don't discuss your testimony with anyone
14 during the break. Okay?

15 THE WITNESS: Sure.

16 JUDGE DUKES: All right. So if you
17 all don't mind we'll just be off the record.

18 (DISCUSSION OFF THE RECORD.)

19 JUDGE DUKES: All right, 18-796 back
20 on. We had a brief, off the record side bar with
21 counsel with regard to some objections that are on
22 the record from earlier essentially having to do
23 with testimony as to --

24 MR. MATTHEWS: Sorry, Your Honor. I'm
25 having trouble hearing you.

1 JUDGE DUKES: Oh, sorry.

2 MR. MATTHEWS: They're just having a
3 side bar. If they're done --

4 JUDGE DUKES: Oh, sorry. Anyway, at
5 an off the record side bar with regard to the
6 general subject of testimony regarding Mr. Wolfson's
7 truthfulness and I think what we have come up with
8 is this. The Plaintiff will -- had the Plaintiff
9 been allowed to offer such testimony, they would
10 have proffered -- pardon me -- will be proffering
11 the fact that these two witnesses, Mr. Ratchup and
12 Ms. O'Connell, would have testified as to certain
13 events that they have knowledge of untruthfulness.

14 However, I'm sustaining Mr. Kuhn's
15 objection as to that. And those will simply be
16 proffered. Is that -- anything else that we need to
17 add to that?

18 MR. MATTHEWS: Only, sir, we're happy
19 to make the proffer in front of you now or if it's
20 -- we believe is sufficient. I think to preserve
21 the issue for appeal, we would need to -- we could
22 offer up, for instance, deposition testimony of Ms.
23 O'Connell. Would that be appropriate for her? The
24 only thing I don't want to do is make her -- if --
25 certainly if Mr. Wolfson testified, she'd have to be

1 available, as would Mr. Ratchup, to offer rebuttal
2 testimony.

3 JUDGE DUKES: Is that -- yeah, that's
4 right. By the way, this ruling is not definitive
5 for the entire case. I suppose we might still have
6 a situation where rebuttal might be appropriate.
7 And we're just talking about the Plaintiff's case
8 right now.

9 MR. MATTHEWS: But if it's
10 appropriate, we'd be happy to offer, for instance,
11 Ms. O'Connell's testimony in her deposition as a --

12 JUDGE DUKES: Do you have pages and
13 lines that you could --

14 MR. MATTHEWS: I do.

15 JUDGE DUKES: -- go by?

16 MR. MATTHEWS: I do, indeed, sir.

17 JUDGE DUKES: Why don't you go ahead
18 and read those into the record.

19 MR. MATTHEWS: All right.

20 JUDGE DUKES: Just the pages and
21 lines.

22 MR. MATTHEWS: Let's start with Page
23 88, Line 4 to Page 89, Line 25 on to Page 90 in its
24 entirety. On Page 92, Lines 3 to 15. Page 103,
25 Lines 12 to 25. Strike that. Put page -- I'm

1 sorry. Page 103 is Lines 9 to 25. Page 104 in its
2 entirety. Page 105 in its entirety. Page 16 in its
3 entirety. One more. Page 109 in its entirety.
4 Page 110 in its entirety. Page 111 in its entirety.

5 That is our proffer, Your Honor.

6 JUDGE DUKES: All right. Thank you
7 so much. And what was the date of that deposition?

8 MR. MATTHEWS: October 25th, 2018.

9 JUDGE DUKES: Thank you, sir.

10 MR. MATTHEWS: And those are, I
11 believe -- Mr. Kuhn, did you receive a copy of it?

12 MR. KUHN: Yes.

13 JUDGE DUKES: Okay. Good. All
14 right.

15 MR. MATTHEWS: We have the original
16 in case the court wants it. I was reading from a --
17 the condensed transcript.

18 JUDGE DUKES: Well, at this point I
19 don't think I would need it, but I know where to
20 find it just in case.

21 MR. MATTHEWS: Yes, sir.

22 JUDGE DUKES: So did you have other
23 questions of this witness other than the subject
24 matter we were previously discussing?

25 MR. MATTHEWS: No, Your Honor.

1 JUDGE DUKES: Mr. Kuhn?

2 MR. KUHN: Yes, sir, Your Honor.

3 EXAMINATION

4 BY MR. KUHN:

5 Q. Ms. O'Connell, Old South's sales office is
6 located just inside the gate at (inaudible)
7 Plantation or was located there?

8 A. That's correct.

9 Q. But you have to go through a maned gate to
10 get onto the plantation and you have to get onto the
11 plantation to get to the sales office; is that
12 correct?

13 A. That's correct.

14 Q. All right. And when Mr. Wolfson back in
15 March said, quote, we have not been able to sell out
16 of the sales office since January, if I understand
17 your testimony, the office was there and you had
18 agents there who were licensed and had the ability
19 to sell; is that correct?

20 A. That's correct.

21 Q. But were the guards at the gate directing
22 customers to go to the clubhouse as opposed to the
23 Old South sales office?

24 A. That is my understanding, yes.

25 Q. Okay. And at the clubhouse, real estate

1 sales agents who were not associated with Old South
2 Properties were engaging with those customers?

3 MR. MATTHEWS: Objection.

4 MR. KUHN: Is that --

5 MR. MATTHEWS: There is no foundation
6 for her knowledge of that.

7 JUDGE DUKES: What was the question,
8 again? I'm sorry?

9 MR. KUHN: At the clubhouse, the real
10 estate agents who were dealing with those customers
11 were not associated with Old South Properties, were
12 they?

13 JUDGE DUKES: And what was the
14 objection?

15 MR. MATTHEWS: She has no foundation
16 from her knowledge to answer that question. That's
17 not been lain.

18 JUDGE DUKES: If you know, you can
19 answer.

20 THE WITNESS: Whether anybody went
21 and met with agents, I have no knowledge of. I
22 wouldn't know. But I know that no one that was
23 licensed with Old South Properties was working out
24 of the clubhouse.

25 BY MR. KUHN:

1 Q. Okay. And as far as Old South now, on
2 July 4th of this year, Old South sales office was
3 destroyed and moved off the property, correct?

4 A. That's correct.

5 MR. MATTHEWS: That's also -- I'll
6 object to that. That's irrelevant to the current
7 case.

8 JUDGE DUKES: Well, I mean --

9 MR. MATTHEWS: He said Old --

10 JUDGE DUKES: You all have gotten
11 into all sorts of things that seem to be outside of
12 the contract. So I'm assuming at some point it will
13 all be brought together, but --

14 MR. KUHN: And I can explain. She
15 was asked if Old South is operating today.

16 JUDGE DUKES: Right. No, I --

17 MR. KUHN: So I'm trying to explain
18 that the Old South that is operating today is
19 totally different from the Old South that --

20 BY MR. KUHN

21 Q. Is it fair to say that the Old South that
22 is operating today is totally different from the Old
23 South that was operating before March 1st, 2018?

24 A. Yes.

25 MR. KUHN: Okay. That's all I have.

1 Well, excuse me.

2 BY MR. KUHN

3 Q. You keep the books for Old South or kept
4 the books for Old South?

5 A. Yes.

6 Q. Were you aware that Mr. Wolfson put a
7 mortgage on Old South's property around February of
8 2018?

9 A. Yes.

10 Q. And as a result of that, did the mortgage
11 company send to Old South approximately \$95,000?

12 A. Yes.

13 Q. Okay. And that money was deposited in Old
14 South's account?

15 A. Yes.

16 Q. And then after this went south, that money
17 was returned to the bank?

18 A. Yes.

19 Q. Or to the lender which was Mr. -- a
20 company that Mr. Wolfson's son owns; is that
21 correct?

22 A. That's correct.

23 MR. KUHN: Okay. Thank you. That's
24 all I have.

25 MR. MATTHEWS: I actually have a

1 number of follow-ups for that.

2 BY MR. MATTHEWS

3 Q. Mr. Kuhn said when this all went south.
4 Do you have any idea what that refers to?

5 A. I'm assuming he was referring to these --
6 this email in front of me that we had just been
7 referring to, Exhibit Number 9.

8 Q. Okay. Well, it states here on March 1st
9 -- if we're to believe what Mr. Wolfson has
10 presented, he's writing on March 1st that -- he's
11 letting Jake know, Mr. Moore, that he will not be
12 able to meet my buyout deadline with Stan as I am
13 now involved in a full blown lawsuit against
14 Gavigan, et al.

15 You see where she -- he says that, right?

16 A. I do, yes.

17 Q. Okay. Now, the money that he gave that
18 Old South Properties received as a mortgage from
19 HGC, apparently, the company that's owned by Mr.
20 Wolfson's son, that is an unusual loan; isn't it?

21 A. For a weight loss company, yes. That
22 would be unusual.

23 Q. In Old South's entire history, has it
24 given a mortgage to a weight loss company owned by
25 someone's -- by one of the -- one of the owner's

1 sons?

2 A. No.

3 Q. Okay. Now, was there anything else
4 unusual about that particular loan? I'll ask my
5 question more directly.

6 A. Okay. Thank you.

7 Q. Was the money sent from an Old South
8 account to the personal account of Mr. Wolfson?

9 A. Yes.

10 Q. Okay. Do you know if that was done with
11 Mr. Kirkland's consent or knowledge?

12 A. To my understanding, he was not discussed
13 -- he was not asked.

14 Q. Okay. And did the money, to your
15 knowledge, was it returned nearly immediately to Mr.
16 Wolfson's son?

17 A. Yes, it was a short time period and it was
18 returned to his son.

19 Q. A matter of days, if I'm not correct?

20 A. Days or a week or so, yes.

21 Q. I believe in our deposition we discovered
22 that the mortgage was for \$97,000. The amount that
23 was returned to Mr. Wolfson's son was \$95,000?

24 A. I believe that's correct.

25 Q. Do you have any idea what happened to the

1 other \$2,000?

2 A. I do not.

3 Q. Okay. Do you know if the mortgage has
4 ever been marked as satisfied?

5 A. I do not know.

6 Q. If it's not been marked as satisfied, it
7 still remains a debt of the company; doesn't it?

8 A. From my understanding.

9 MR. KUHN: Nothing further.

10 JUDGE DUKES: Thank you. anything
11 else, Mr. Kuhn?

12 MR. KUHN: Nothing further, Your
13 Honor. No recross.

14 JUDGE DUKES: Okay. So the money --
15 the 95 or \$97,000 was -- you have personal knowledge
16 of the --

17 THE WITNESS: I do.

18 JUDGE DUKES: -- deposits and the
19 transfers? It first was deposited in what, the Old
20 South account?

21 THE WITNESS: Yes.

22 JUDGE DUKES: Okay. And when was
23 that? Do you remember? Do you have --

24 THE WITNESS: I turned in statements
25 that would have it on it.

1 MR. MATTHEWS: I actually -- Your
2 Honor, with your permission, I believe we can
3 produce those for your review.

4 JUDGE DUKES: Okay.

5 MR. MATTHEWS: If you'll just give me
6 a moment.

7 JUDGE DUKES: Can counsel tell me the
8 date the mortgage was filed? I don't have one in
9 front of me.

10 MR. MATTHEWS: I believe that it's an
11 exhibit. Filed in March. It was dated February 16
12 and was filed with the court --

13 MR. KUHN: March 6th. Filed March
14 6th. Executed February 16th.

15 JUDGE DUKES: Got it. Thank you.

16 MR. MATTHEWS: Journal entries that
17 she identified in her deposition. Let's mark this
18 as Number --

19 MR. KUHN: Fifteen.

20 COURT REPORTER: This is Number 14.

21 MR. MATTHEWS: Is there another
22 Number 14?

23 MR. KUHN: Oh, that's Number 14 to
24 his deposition.

25 MR. MATTHEWS: Right.

1 MR. KUHN: I was confused. No
2 objection.

3 (MARKED PLAINTIFF'S EXHIBIT NO. 14.)

4 JUDGE DUKES: All right. Thank you.

5 BY MR. MATTHEWS:

6 Q. Ms. O'Connell, would you please tell the
7 court what that document is?

8 A. This is an accounting report from our
9 QuickBooks -- from Old South's QuickBooks records
10 showing how a note payable was recorded to HCG
11 Weight Loss. The deposit -- a deposit came in on
12 March the 2nd for \$95,000. And then on March the
13 8th a check was written to Robert Wolfson for
14 \$95,000.

15 Q. Did you write that check?

16 A. I believe I did. And then it went into
17 his personal account. And then I followed up with
18 his administrative assistant to make sure the money
19 was wired back to his son. So I followed through to
20 make sure his son received the money which was why
21 in my mind I recorded this as a zero debt.

22 Q. Okay. But in actuality there's still a
23 \$90,000 -- I'm sorry -- a \$97,000 mortgage on a
24 piece of property that's owned by Old South
25 Properties?

1 A. Yes.

2 Q. All right. And you have no idea what
3 happened to the other \$2,000?

4 A. I do not.

5 Q. Okay.

6 JUDGE DUKES: When was -- let me just
7 finish a couple of things. So you followed up with
8 an administrative assistant on transferring the
9 money back. When was the money transferred back?

10 THE WITNESS: That will be in a bank
11 statement. It was transferred back a day or two
12 later. Once the funds were available in his account,
13 on the 8th, she then emailed Melissa at Ameris, who
14 was our representative, and asked her to email it to
15 the HCG Weight Loss Center.

16 JUDGE DUKES: So you say a couple of
17 days later. You mean a couple of days after Check
18 1174?

19 THE WITNESS: Cleared in Mr.
20 Wolfson's account, yes.

21 MR. MATTHEWS: Your Honor, if I may?

22 JUDGE DUKES: Yes. Show the witness
23 the --

24 BY MR. MATTHEWS

25 Q. This is an Ameris Bank statement for

1 Robert L. Wolfson. If you would look at this --
2 where the bank statement is notated from March 2018?

3 A. Uh-huh.

4 Q. If you would look at this and simply tell
5 the court what you observe.

6 A. It shows a wire transfer leaving of
7 \$96,700.

8 Q. To who?

9 A. HCG Weight Loss Fitness.

10 Q. Okay. And is there any other notation
11 that's notable here?

12 A. There is a wire transfer fee for that for
13 \$35.

14 Q. Okay.

15 JUDGE DUKES: What date was that?
16 I'm sorry.

17 MR. MATTHEWS: March 16.

18 THE WITNESS: Oh, I'm sorry. I
19 didn't catch that. Yes, March 16th.

20 JUDGE DUKES: Okay. So if I
21 understand your testimony correctly, March 2nd, HG
22 -- HCG Weight Loss deposited \$95,000 into the Old
23 South Properties account. Then six days later Check
24 1174 transferred that same \$95,000 or the second
25 amount to Mr. Wolfson, personally. And then roughly

1 a week or so later that money plus a few thousand
2 dollars, \$96,700 you said --

3 THE WITNESS: \$1,700.

4 JUDGE DUKES: Went back to HCG Weight
5 Loss?

6 THE WITNESS: Yes.

7 JUDGE DUKES: So all of this took
8 place between 3/2/18 and 3/16/18?

9 THE WITNESS: Yes.

10 JUDGE DUKES: Is that accurate?
11 Okay. All right. Thank you. All right. Any
12 questions relevant to my questions? Those are the
13 only questions I have of this witness?

14 MR. MATTHEWS: No, Your Honor.

15 MR. KUHN: Not for the Defendant,
16 Your Honor. Thank you.

17 JUDGE DUKES: All right. Thank you
18 so much.

19 MR. MATTHEWS: Your Honor, let me beg
20 your indulgence one more minute.

21 JUDGE DUKES: Sure.

22 MR. MATTHEWS: Your Honor, those are
23 our witnesses.

24 JUDGE DUKES: All right. Does the
25 Plaintiff rest? Does the Plaintiff rest?

1 MR. MATTHEWS: Yes, sir, your Honor.
2 Those are our witnesses.

3 JUDGE DUKES: Okay.

4 MR. MATTHEWS: We do -- of course, we
5 have on the record that we reserve the right to
6 rebuttal witnesses.

7 JUDGE DUKES: Of course. Yes. Any
8 motions before we perhaps take a break and then
9 launch into the Defendant's case?

10 MR. MATTHEWS: Well, Your Honor, to
11 the extent that the Plaintiff -- I'm sorry -- that
12 the Defendant wishes to raise equitable defenses, we
13 believe that review of the pleadings in the case,
14 that he's not raised them. And that for that reason
15 he's waived them.

16 We also believe, as Your Honor has
17 referenced, that absent the testimony at
18 anticipatory repudiation, there's really -- the
19 contract speaks for itself. And so do the facts
20 that are before the court.

21 JUDGE DUKES: So that's not really a
22 motion?

23 MR. MATTHEWS: That's a motion -- if
24 we're going to call it a Rule 50 motion, ordinarily
25 a plaintiff does not raise the Rule 50 motion. But

1 to the extent that you find there is no genuine
2 issue of material fact, we would urge you to submit
3 a --

4 JUDGE DUKES: Well, of course, I've
5 got to hear from them first. So --

6 MR. MATTHEWS: I understand.

7 JUDGE DUKES: -- respectfully denied,
8 but thank you. Mr. Kuhn, anything?

9 MR. KUHN: Yes, Your Honor. Move for
10 direct verdict in favor of the Defendant on a
11 declaratory judgment cause of action which is an
12 equitable action, of course, on the ground that
13 viewing the evidence presented by the Plaintiff in
14 the light most favorable to the Plaintiff there is
15 only one conclusion that can be reached which is
16 what this contract says.

17 If Mr. Wolfson pays, no matter how,
18 \$90,000 then he's to receive ownership of Old South
19 Properties. I think that's what the bottom line of
20 this contract is. It's pretty clear. It has due
21 dates. If he misses a due date, they have the right
22 to bring a mortgage foreclosure action and
23 collection action. Whatever they want to do to
24 collect the \$90,000. But once they receive the
25 \$90,000, he gets Old South Properties in return.

1 That's what the \$90,000 is for.

2 And that's the only conclusion that can be
3 reached reading these contracts as a whole. This
4 interpretation that you owe us \$90,000, we get to
5 collect \$90,000, you lose your interest in Old South
6 Properties. And in exchange for the \$90,000 that we
7 get from you, you don't get anything is an
8 interpretation that is not supported by the
9 contract.

10 MR. MATTHEWS: Your Honor, perhaps
11 there may be another party litigating this case, but
12 that's not what we've asked for. We understand that
13 in failing -- in his failure to pay the \$90,000,
14 we're not entitled to that \$90,000. The result of
15 the contract was because of his failure to pay the
16 \$90,000, which we've not seen and even today have
17 not seen, the consequence of the contract is that
18 Mr. Kirkland gets the full interest of Old South
19 Properties to do with as he sees fit as of the date
20 that the breach and the default goes uncured. That
21 was March 31st of 2018.

22 We're not seeking on top of that \$90,000
23 nor can we.

24 JUDGE DUKES: All right.

25 MR. MATTHEWS: And moreover, in order

1 for you to find as he suggests, bid you to violate
2 standard rules of contractual -- of contract
3 construction. It requires you to ignore material
4 parts which are unambiguous in the contract. There
5 is absolutely no grounds for you to grant that
6 motion.

7 JUDGE DUKES: And the motion is
8 denied. Thank you.

9 MR. MATTHEWS: Thank you, Your Honor.

10 JUDGE DUKES: I don't necessarily
11 read it the way Mr. Kuhn reads it. So, Mr. Kuhn,
12 call your first witness, please, sir, or do you all
13 want to take a break before we start? You tell me.

14 MR. KUHN: I defer to everybody else.

15 MR. MATTHEWS: Actually, at your
16 pleasure.

17 JUDGE DUKES: Keep on rolling.

18 MR. KUHN: Call Robert Wolfson.

19 JUDGE DUKES: All right. Mr.
20 Wolfson, can I get you to hold your right hand up
21 for me, please? Do you swear or affirm to tell the
22 truth, the whole truth, and nothing but the truth so
23 help you God?

24 MR. WOLFSON: I do.

25 JUDGE DUKES: Thank you so much. I'm

1 guessing our court reporter has your spellings since
2 they are on the pleadings.

3 MR. KUHN: Just a second. Is this a
4 good layout or would Your Honor rather I sit over --
5 rather I sit over there so that he's not --

6 JUDGE DUKES: You're good there or
7 wherever you're comfortable.

8 MR. KUHN: -- doesn't have his back
9 to you.

10 JUDGE DUKES: Wherever you're
11 comfortable.

12 THE WITNESS: Where do you want me to
13 turn? This way? This way?

14 MR. KUHN: Well, the Judge and
15 Deborah need to hear you. And if you've got your
16 back to me --

17 JUDGE DUKES: Fred, do you want to
18 stand over here or sit over here? Just watch out
19 for all the wires.

20 MR. KUHN: I may stand for a little
21 while at least just to see how it goes.

22 BY MR. KUHN

23 Q. You're Robert Wolfson?

24 A. Yes, sir.

25 Q. Bob, you need to answer everything out --

1 loud.

2 A. Yes.

3 Q. What is your address?

4 A. 166 Bull Point Drive, Seabrook, South
5 Carolina 29940.

6 Q. Are you married?

7 A. Yes, I am.

8 Q. Who are you married to?

9 A. Lance Lee Wolfson.

10 Q. This is your wife seated here?

11 A. My wife.

12 Q. At the head of the table?

13 A. Head of the table.

14 Q. Very good. How old are you?

15 A. Seventy-seven.

16 Q. And what is your educational background?

17 A. High school in New Jersey. Got my AB
18 degree in Psychology at the University of South
19 Carolina.

20 Q. What year did you graduate from USC?

21 A. 1964.

22 Q. Okay. When you started -- you and Stan
23 Kirkland started Old South Properties?

24 A. That's correct.

25 Q. When was that?

1 A. 1994.

2 Q. What got you involved in that?

3 A. Well, Stan and I had been partners ten
4 years before that in various real estate deals and
5 when we were looking around for -- actually, we were
6 looking around for a tax-free exchange possibility
7 from property we had purchased and bought in
8 Atlanta, Georgia. And we happened onto a couple
9 pieces of property here in Beaufort, South Carolina.

10 One of them was Vivian's Island. And the
11 second one was Bull Point.

12 Q. Vivian's Island is located where? On
13 Lady's Island?

14 A. That's correct.

15 Q. Okay. And Bull Point is located where?

16 A. It's actually in Sheldon, but they have a
17 Seabrook address because of mailing.

18 Q. How big is Bull Point Plantation.

19 A. Approximately 700 acres.

20 Q. Okay. And when you bought it, was it
21 developed or was it all just raw land?

22 A. Raw land.

23 Q. And you acquired it under what entity,
24 your own personal names or how?

25 A. We initially contracted it under

1 Metropolitan Properties which was another entity
2 that Stan and I owned.

3 Q. And did that change?

4 A. Well, Metropolitan as we went on to
5 different phases were deeded into Bull Point, LLC.

6 Q. Was that an LLC that you and Mr. Kirkland
7 had an interest in?

8 A. That's correct.

9 Q. And how did Old South Properties play into
10 your purchase of Bull Point Plantation?

11 A. About a year before we purchased Bull
12 Point, Old South was formed and, basically, we were
13 going to do the real estate sales of both Vivian's
14 Island and Bull Point.

15 Q. Your background -- your background is real
16 estate sales and development?

17 A. Real estate sales and development, that's
18 correct.

19 Q. Mr. Kirkland is an attorney?

20 A. Correct.

21 Q. And was you all's relationship one of
22 friends as well as business associates?

23 A. We were -- we were close friends
24 throughout our relationship until I guess the
25 recession of 2008. And, you know, Mr. Kirkland at

1 that point in time had ventured outside of Bull
2 Point and bought a couple other developments of
3 which when the recession hit took him under. And
4 seems like everything just fell apart at that point
5 in time.

6 Q. Bull Point Plantation, did you all have to
7 develop that, subdivide it into lots, get sewer,
8 electricity, roads, development --

9 A. Correct.

10 Q. -- permits from Beaufort County?

11 MR. MATTHEWS: Objection.

12 THE WITNESS: All the infrastructure.

13 MR. MATTHEWS: Not relevant.

14 Objection, Your Honor. This line of questioning is
15 not relevant to the current --

16 JUDGE DUKES: So we're almost there,
17 right? So I'll allow it.

18 BY MR. KUHN:

19 Q. Did you have to do all that to get it --

20 A. Yes, sir.

21 Q. -- sellable? Old South Properties, did
22 it have a sales location inside the plantation?

23 A. From 1995 until 2004, by name only, it had
24 a location. Old South where we were operating out
25 of was owned by Bull Point, LLC. But in 2004, there

1 property was deeded out of Bull Point, LLC to both
2 Stan Kirkland and myself under our name Old South
3 Properties.

4 Q. Okay. And were restrictive covenants put
5 on the plantation?

6 A. They were put on early in the development,
7 that's correct.

8 MR. MATTHEWS: Yeah. Your Honor, we
9 object to this. And the earlier -- the numbers that
10 he's intending as he's indicated to me that he wants
11 to -- wants to introduce, absolutely irrelevant to
12 this case. Absolutely irrelevant to this case.

13 JUDGE DUKES: I'm assuming those are
14 the covenants? I haven't seen them yet, but I'm
15 assuming those are the covenants of --

16 MR. MATTHEWS: These are the initial
17 covenants.

18 JUDGE DUKES: What would the
19 relevance be? Again, we're dealing with two
20 contracts stipulated to be nonambiguous. What is
21 the -- what would be the relevance of the covenants,
22 the original covenants of Bull Point?

23 MR. KUHN: I think it's -- the issue
24 is who owns Old South Properties. I think it's
25 relevant to note just what is Old South Properties.

1 JUDGE DUKES: Well, let me ask you
2 this. I think you all had -- I don't know if it was
3 actually stated. But before all of this happened --
4 I think it's undisputed. It might be in all of your
5 pleadings that Mr. Wolfson owned 50 percent. Mr.
6 Kirkland owned 50 percent. Is that -- is that an
7 accurate statement, again, before --

8 MR. KUHN: Yes, sir.

9 JUDGE DUKES: -- before this?

10 MR. MATTHEWS: Yes, sir.

11 MR. KUHN: Yes, sir.

12 JUDGE DUKES: Okay. What more do I
13 need to know about the ownership than that, than
14 that stipulation?

15 MR. MATTHEWS: None, Your Honor.

16 JUDGE DUKES: Because those covenants
17 clearly predate 1 and 2. So, Plaintiff's 1 and
18 Plaintiff's 2. So if there's not a dispute but that
19 before this agreement was entered the parties were
20 50/50 owners, what -- kind of what difference does
21 it make from the history of it? Not that I'm not
22 interested in history, but I'm trying to stick to
23 the relevant issues here so I don't get confused.

24 MR. KUHN: I will move ahead.

25 JUDGE DUKES: Okay. Thanks.

1 MR. KUHN: Okay. Just a second.

2 BY MR. KUHN:

3 Q. Mr. Wolfson, if you would look at
4 Plaintiff's Exhibit Number 1 in front of you. This
5 is the document that Mr. Moore testified he hand
6 wrote on May 21, 2017. Are you familiar with that
7 document?

8 A. Yes.

9 Q. And you signed that?

10 A. Yes.

11 Q. And he testified that this was in the
12 middle of a trial over Vivian's Island; is that
13 correct?

14 A. Correct.

15 Q. All right. Were you represented by an
16 attorney?

17 MR. MATTHEWS: Objection. Relevance.

18 JUDGE DUKES: Well, I'll allow him to
19 answer.

20 THE WITNESS: At the signing of this
21 agreement? Is that --

22 BY MR. KUHN:

23 Q. Yes, sir? Did you have --

24 A. No, sir.

25 Q. -- a lawyer there?

1 A. No, sir.

2 Q. Okay. And Vivian's Island was this other
3 development that you and Mr. Kirkland had an
4 interest in?

5 A. Correct.

6 Q. Okay. What was your interest in Vivian's
7 Island?

8 A. At the time of this agreement,
9 approximately 38 to 40 percent.

10 Q. Okay. And 38 to 40 percent of what?

11 A. Of the entire development.

12 Q. And --

13 A. Whatever was not sold at that point in
14 time.

15 Q. And were there lots that were not sold,
16 that type of thing?

17 A. That's correct.

18 Q. Okay. And you owned 38 or 40 percent of
19 those lots?

20 A. Correct.

21 Q. What were those lots worth on this date,
22 ballpark?

23 A. Well, we tried to estimate it and it was
24 probably close to about \$320,000.

25 Q. And pursuant to this agreement that's

1 referenced in Plaintiff's Exhibit 1, did you give up
2 to Mr. Kirkland your interest in those properties?

3 A. I did.

4 Q. Then Item 2 of this agreement says except
5 for the obligation herein, Bob Wolfson, Stan
6 Kirkland fully release each other from any
7 liability. Did Mr. Kirkland have any potential
8 liabilities to you other than those that are set
9 forth expressly in here?

10 A. He did.

11 Q. Such as?

12 A. Well --

13 MR. MATTHEWS: Objection. There is
14 no evidence to lay that foundation.

15 JUDGE DUKES: What was --

16 MR. MATTHEWS: There's no
17 foundational evidence for him --

18 JUDGE DUKES: This is liability from?

19 MR. MATTHEWS: -- to ask that
20 question.

21 MR. KUHN: Kirkland to Wolfson.

22 JUDGE DUKES: Kirkland to Wolfson.

23 Well, I'll let him testify as to -- overruled.

24 THE WITNESS: Well, Mr. Kirkland had
25 purchased my interest in Bull Point in 2004 with

1 Bull Point, LLC and the remaining partners in Bull
2 Point, LLC. And in doing so, you know, the
3 consideration under my contract which is a written
4 document, a considerable number of pages, he was to
5 get my 25 percent ownership interest in Bull Point
6 for a \$2.3 million consideration which was made up
7 of lots and money.

8 And the money portion of it was roughly
9 \$1.6 million of which \$500,000 of it was still owed
10 at the time Mr. Kirkland declared bankruptcy.

11 My contract had written provisions in that
12 contract to -- I was holding a first mortgage on the
13 remaining property at Bull Point which included all
14 153 acres of undeveloped land and the contract
15 itself as it's written allowed Mr. Kirkland to
16 borrow money as long as the money was used to put
17 infrastructure in that 153 acres.

18 And at this particular time, he needed
19 more money than the money to put into the 153 acres
20 because Bull Point at that point in time was not
21 complete. And he asked me if I would allow him to
22 borrow more under -- you know, which was not
23 provided under my contract. And I went along with
24 this.

25 I allowed him to borrow \$7.2 million on

1 the agreement that he would protect my interests and
2 make certain that --

3 MR. MATTHEWS: Your Honor, there is
4 no evidence in the record to support this. And it
5 is not relevant to the case.

6 JUDGE DUKES: Yeah. I guess -- I
7 mean, I wanted to let him answer because the
8 paragraph clearly says they're mutually releasing
9 obligations. A lot of water under the bridge.
10 Probably claims back and forth. It all goes away it
11 appears under Paragraph 2. I don't know if I
12 necessarily needed a whole narrative of what some of
13 those claims were. I'm trying to take a look at
14 what the relevance would be specific.

15 THE WITNESS: Well, the long and
16 short of it was --

17 JUDGE DUKES: Well, hold on one
18 second. Hold on a second, Mr. Wolfson.

19 So, Mr. Kuhn, what would the -- again, I'm
20 dealing with an unambiguous contract. Clearly these
21 two needed to be separated, contractually. Other
22 than, yes, he owed me some money. I owed him some
23 money. Which would be the only reason to do a
24 mutual release. What's the relevance of the
25 specifics of that?

1 MR. KUHN: There was a -- Mr. Wolfson
2 was saying there was a buyout agreement where he
3 sold his interest in Bull Point, LLC as well as his
4 he's getting to his interest in Bull Point Realty,
5 LLC, \$2.3 billion. Over a million dollars was
6 financed. As a result of representations made by
7 Mr. Kirkland to Mr. Wolfson, Mr. Wolfson was never
8 repaid that money. I've got a copy of the
9 agreement, the note and the mortgage.

10 JUDGE DUKES: Assume for the moment
11 that is completely true, didn't that claim die along
12 with a bunch of other claims in Paragraph 2?

13 MR. KUHN: It did. I'm just trying
14 to show that Paragraph 2 is not meaningless. That
15 my client did have other claims against Mr.
16 Kirkland, potential claims that he released.

17 MR. MATTHEWS: Well, we'll stipulate
18 that both of these gentlemen had significant claims
19 against each other that they released as of the date
20 of this agreement.

21 MR. KUHN: That's good. I'll accept

22 --

23 MR. MATTHEWS: But not -- but not the
24 claims that arose thereafter.

25 JUDGE DUKES: Yeah. I mean, that's

1 the way I read this paragraph. So, okay.

2 BY MR. KUHN:

3 Q. Paragraph 3 refers to the Bindon judgment
4 that we've heard again -- heard about. That was for
5 \$28,500?

6 A. Correct.

7 Q. And did Mr. Kirkland have an interest in
8 that judgment?

9 A. He would have had 25 percent interest.

10 Q. And who would have had the other 75
11 percent interest?

12 A. I would have had 25 percent interest. And
13 Zohair Vendove would have had 50 percent interest.

14 Q. So you would have been responsible for
15 paying 75 percent of that judgment?

16 A. Correct.

17 Q. This agreement -- was it your intention to
18 acquire ownership of Old South Properties pursuant
19 to this agreement?

20 MR. MATTHEWS: Objection. The
21 agreement speaks for itself.

22 THE WITNESS: Which agreement are we

23 --

24 MR. MATTHEWS: I'm sorry. There's an
25 objection standing.

1 JUDGE DUKES: Yeah. But which
2 agreement?

3 MR. KUHN: Plaintiff's Exhibit 1.

4 JUDGE DUKES: Plaintiff's Exhibit 1.

5 And the objection -- the question is was it your
6 intent to use this agreement to obtain 100 percent
7 interest? Was that the question?

8 MR. MATTHEWS: And the agreement
9 speaks for itself.

10 MR. KUHN: In which case, I'd move to
11 strike 90 percent of Mr. Moore's testimony.

12 MR. MATTHEWS: That's come and gone.

13 JUDGE DUKES: Well, I mean, it does
14 speak for itself. I mean, it -- I think you all
15 would probably agree that the idea was if the money
16 was paid on a certain day or within a grace period
17 then he would own 100 percent of it, right. I mean,
18 is there any dispute but that that's what the
19 language says?

20 MR. MATTHEWS: That's what the
21 language says, Your Honor.

22 MR. KUHN: Yes, sir. It doesn't say
23 upon payment of the \$90,000 timely or on those
24 dates. It just says upon payment of \$90,000.

25 JUDGE DUKES: Well, I mean, that's --

1 MR. MATTHEWS: With respect, Your
2 Honor, that's --

3 JUDGE DUKES: I'll let you all argue
4 as to the verbiage after we finish. But, I mean,
5 there was a path under which Mr. Wolfson would own
6 100 percent of it. I think everyone would agree
7 there. The question is how do we describe the path
8 and did the parties stick to the path, right?

9 MR. MATTHEWS: Yes, sir, Your Honor.

10 JUDGE DUKES: But so I -- yes, I'll
11 sustain the objection there.

12 BY MR. KUHN:

13 Q. If you'd look at Exhibit 2, Mr. Wolfson.
14 Who prepared that document?

15 A. That's Jamar.

16 Q. And was this supposed to be a new
17 agreement or was this supposed to be the same
18 security agreement referenced in Exhibit 1?

19 A. The same agreement. I mean, that was --

20 Q. Did you give any additional consideration
21 or did Mr. Cooke give any additional consideration
22 for Exhibit 2 or did it just get presented to you
23 and you signed it?

24 MR. MATTHEWS: Objection. There is
25 no requirement for consideration, and he just

1 testified it was part of the same document.

2 JUDGE DUKES: Well, he can answer the
3 question.

4 THE WITNESS: It -- no, there was no
5 further consideration.

6 BY MR. KUHN

7 Q. Was this note and security agreement, to
8 your mind, supposed to change or alter or in any way
9 deviate from what you'd already agreed to in Exhibit
10 1?

11 MR. MATTHEWS: Same objection.

12 THE WITNESS: No.

13 MR. MATTHEWS: He reviewed the
14 agreement. He signed the agreement.

15 JUDGE DUKES: And that's --

16 MR. MATTHEWS: And it's unambiguous.

17 JUDGE DUKES: I'll let him testify,
18 but that's an argument for I'm sure a good spirited
19 argument here at the end of the case at some point.

20 MR. MATTHEWS: Yes, sir.

21 BY MR. KUHN:

22 Q. In anticipation of that \$80,000 payment, on
23 March 1st, what did you do?

24 A. Well, what happened was on August 17th,
25 2017, Mr. Gavigan bought Bull Point. Four hours

1 after he bought Bull Point, he deleted the 12th
2 Amendment of the covenants that you were alluding to
3 a few minutes ago when you were talking about the
4 covenants.

5 And he did that by enacting a 17th
6 Amendment. And this was done two hours or four
7 hours after he took title to Bull Point and recorded
8 on the 21st of August, 2017.

9 MR. MATTHEWS: Objection, Your Honor.
10 This is of no relevance to the case before you.

11 JUDGE DUKES: What was the -- where
12 are we going with this part?

13 THE WITNESS: Well --

14 JUDGE DUKES: Hold on a second. Mr.
15 Kuhn, where are we -- where's this going?

16 MR. KUHN: He's explaining his
17 thought process and why he was hesitant to make a
18 March 1, 2018 payment. Because between the time of
19 the contract and the due date, certain things
20 happened.

21 JUDGE DUKES: Okay. Well, let me --
22 I guess the first question -- well, I'll tell you
23 what. I'll let you do it any way you want, so I'll
24 let him go on. I'm not positive on the relevance,
25 but it's nonjury and off we go. So --

1 THE WITNESS: The 12th Amendment --

2 MR. MATTHEWS: Well, Your Honor, let
3 me offer another objection. It's undisputed that
4 these matters are not addressed in the contract.
5 There's no provision for -- there's no
6 representation provision in the contract. There's
7 no change of circumstances provision of which these
8 were -- wouldn't count anyway because this doesn't
9 involve Bull Point. It involves Old South
10 Properties, Inc.

11 And to the extent there are change of
12 circumstances, the parties bear the burden of it.
13 If Mr. -- the experienced man that he is, number 1,
14 he said that he didn't have lawyers. He didn't
15 draft and have lawyers review it. He could have.

16 There's no relevance for this extended
17 discussion other than to muddy the water. It is not
18 relevant to your decision.

19 JUDGE DUKES: And I'm still trying to
20 figure it out. And I don't necessarily disagree
21 with you, but, again, the beauty of nonjury is I can
22 sift through and figure out the relevance hopefully
23 and the testimony even though it causes us to sit
24 here a little bit longer. So I'm just going to --
25 perhaps this will lead to something relevant in the

1 narrative testimony. So I haven't quite figured it
2 out yet as far as relevance, but I'll let Mr. Kuhn
3 continue on a little bit more. But I am struggling
4 with relevance. So, since again, I'm sticking to
5 the four corners of agreements.

6 THE WITNESS: All right.

7 JUDGE DUKES: So let him ask another
8 question, if you would, Mr. Wolfson, before you go
9 on.

10 BY MR. KUHN:

11 Q. Mr. Wolfson, the 12th Amendment, that was
12 an amendment to the covenants?

13 A. Correct.

14 Q. And what did that amendment basically say?

15 A. The amendment was put on as an amendment
16 to the original covenants through my buyout
17 agreement of 2004, in which Mr. Kirkland was
18 supposed to protect the interests of the sales
19 office. And he being a part of that sales office
20 certainly wanted to protect it. Because if you read
21 the agreement that survived the closing of 2004, it
22 stipulates in that covenant that there shall only be
23 one sales office.

24 And if there is any other sales office of
25 record subsequent to this, it would be only with the

1 approval of Old South Properties. Basically, that
2 is what the amendment stated.

3 Q. Is that the amendment?

4 A. That is correct.

5 MR. KUHN: I move to introduce this.

6 MR. MATTHEWS: We object on grounds
7 of relevance as it has honestly nothing to do with
8 this case.

9 THE WITNESS: That --

10 JUDGE DUKES: Hold on a second, Mr.
11 Wolfson. Mr. Kuhn, again, is there -- I'm trying to
12 treat this like a contract action because it is a
13 contract action. What is the relevance of something
14 -- a 2004 amendment to the covenants that predates
15 this by 13 years or something?

16 MR. KUHN: The amendment states that
17 Old South Properties has the exclusive sales rights
18 inside Bull Point Plantation. When Mr. Wolfson
19 emailed Mr. Moore on March 1st and said, quote, we
20 can no longer sell out of this office, I'd like to
21 meet with you. Mr. Moore said that was a -- said
22 that was a false statement. Ms. O'Connell explained
23 what that -- actually happened is -- that is what
24 I'm trying to get through with Mr. Wolfson is in
25 August the new declarant came in and revoked the

1 12th Amendment without Old South's permission which
2 violates the amendment.

3 The guards started sending people to the
4 clubhouse, bypassing Old South. So, their business
5 was adversely effected. So, I'm trying to show,
6 number 1, he was concerned about this. And, number
7 2, his statement to Mr. Moore in that email was
8 reasonably accurate.

9 MR. MATTHEWS: Actually, I'm ready to
10 -- we're ready to cross on that point to the nth
11 degree. But it's still not relevant.

12 JUDGE DUKES: Yeah. I mean, I don't
13 -- I'm still struggling with how that has anything
14 to do with this contract. I understand that perhaps
15 the idea was that if Mr. Wolfson would come up with
16 a certain amount of money within a very particularly
17 specified period of time, pay that money and then he
18 would receive the balance of the 50 percent. He
19 would own 100 percent of Old South. That appears to
20 be what this says.

21 I've heard lots of testimony that Mr.
22 Wolfson was in the best position to understand the
23 particulars and values of Old South because he had
24 the books and the bookkeeper was employed by him and
25 all that.

1 So, in theory, he knew what he was getting
2 into when these agreements were signed. And
3 suddenly there's a bump in the road or a problem or
4 something with Old South. I'm trying to figure out
5 how that affects this agreement other than, perhaps,
6 to make it less advantageous for him. But I don't
7 know if that -- there is an out in this agreement
8 for that. I mean, where -- where are we going with
9 that?

10 MR. KUHN: To explain his hesitation
11 on March 1st of paying the money.

12 JUDGE DUKES: Okay.

13 MR. MATTHEWS: And with respect, that
14 is of no moment.

15 JUDGE DUKES: So if you say -- you
16 say -- you say, (inaudible) is it -- I think it's --
17 maybe -- there I've -- there have been no objections
18 or anything. I'm assuming the money just wasn't
19 paid. That wasn't really the first question. I
20 mean, the money was never paid. Otherwise, we
21 wouldn't be sitting here.

22 But I mean, I guess I'm still trying to
23 figure out, okay, the money wasn't paid. That's
24 covered. I think it's covered. I notice there's
25 going to be argument as to what some of these

1 paragraphs mean, but the fact that the money wasn't
2 going to be paid was anticipated and drafted in here
3 as what appears to be a penalty.

4 Again, I'm happy to hear argument on what
5 you all believe all this means since there's
6 stipulated to be no ambiguity. But, I mean, not
7 paying a choice, right? I mean, that's -- there was
8 a choice made not to pay.

9 MR. KUHN: That's correct, but there
10 was a reason for that.

11 JUDGE DUKES: Okay.

12 MR. KUHN: There was a choice made
13 not to pay at that time --

14 MR. MATTHEWS: And, Your Honor, with
15 respect --

16 MR. KUHN: -- as opposed to what's
17 been testified, I'm not going to pay at all.

18 MR. MATTHEWS: Well --

19 JUDGE DUKES: But I mean, time -- so
20 the question really then is does time matter in this
21 contract?

22 MR. MATTHEWS: And that's a question
23 of law, not a fact.

24 JUDGE DUKES: Okay. So I'll tell you
25 what. We -- how -- what is the -- I'll let him go

1 on just -- I understand your objection. I'm
2 struggling with the relevance. I don't know if it
3 matters one bit, but I allowed some stuff in for the
4 Plaintiff. And, again -- once again, the beauty of
5 nonjury is I can unring the bell if necessary when I
6 write the order. So you can go on a little bit with
7 it, Mr. Kuhn.

8 THE WITNESS: Your Honor, I --

9 MR. KUHN: I proffer this as an
10 exhibit.

11 JUDGE DUKES: And that --

12 MR. KUHN: Over objection.

13 MR. MATTHEWS: What is that?

14 MR. KUHN: The 12th Amendment.

15 MR. MATTHEWS: We object its
16 admissibility. It's not relevant in any way.

17 JUDGE DUKES: And I was going to let
18 him testify to his concerns that gave him hesitancy,
19 but I just don't understand what the -- what that is
20 all about. So --

21 MR. KUHN: I'll -- we'll just kind of
22 go through that real quick.

23 JUDGE DUKES: Yeah. Why don't we go
24 ahead. I'll sustain the objection of the document.

25 BY MR. KUHN:

1 Q. Between the time you signed those
2 documents and the March 1st, the 12th Amendment that
3 gave Old South Properties exclusive sales rights had
4 purportedly been nullified, correct?

5 MR. MATTHEWS: Objection.

6 THE WITNESS: That's correct.

7 MR. MATTHEWS: Relevance.

8 JUDGE DUKES: And overruled to a
9 limited amount --

10 MR. MATTHEWS: And, Your Honor --

11 JUDGE DUKES: -- discussed.

12 MR. MATTHEWS: -- I certainly mean no
13 disrespect, but I believe this is entirely out of
14 bounds in order to preserve the objection for
15 appeal. I do want to make that -- the record clear
16 that I'm making an objection to that. I'm certainly
17 not trying to disrespect your ruling. I understand
18 it and, of course, I abide by it. In order to make
19 the record clear I feel like I have to pose an
20 objection even though I understand your previous
21 ruling.

22 JUDGE DUKES: Okay. And you don't
23 have to do it every time. I will acknowledge that
24 this entire line of questioning associated with why
25 he was hesitant to make the payment --

1 MR. MATTHEWS: Is not relevant.

2 JUDGE DUKES: Is -- your objection is
3 it's not relevant. I'm going to allow some of it.
4 I'm not completely convinced you're not 100 percent
5 right, but I'll -- I'm going to give, for the
6 moment, Mr. Kuhn the benefit of the doubt and let
7 him continue on.

8 MR. MATTHEWS: Okay. And, again,
9 with no disrespect, I will say objection relevance
10 and I understand your ruling.

11 JUDGE DUKES: Thank you so much.
12 Okay. Go ahead if you would.

13 MR. KUHN: Okay. As a result of that
14 attempt to nullify the 12th Amendment, you filed a
15 lawsuit here --

16 MR. MATTHEWS: Object.

17 MR. KUHN: -- in Beaufort County?

18 MR. MATTHEWS: Objection.

19 THE WITNESS: Correct.

20 MR. MATTHEWS: Relevance.

21 JUDGE DUKES: All right.

22 BY MR. KUHN

23 Q. And that is the lawsuit you reference in
24 your email of March 1st to Jake Moore?

25 A. That's correct.

1 MR. MATTHEWS: Objection. Relevance.

2 JUDGE DUKES: I don't know if you
3 really need to object to every single question. I
4 will acknowledge for the record your objection --
5 your standing objection to this entire line of
6 questioning that will end when I -- when Mr. Kuhn
7 says I'm done with that. How about that?

8 MR. MATTHEWS: Sounds good.

9 MR. KUHN: I will say that.

10 BY MR. KUHN:

11 Q. In addition to that taking place, between
12 the time of the contract and March 1, 2018, a lien
13 had been filed on Old South's property by Mr.
14 Gavigan acting on behalf of the Property Owner's
15 Association --

16 MR. MATTHEWS: Objection.

17 MR. KUHN: -- is that correct?

18 MR. MATTHEWS: Leading.

19 THE WITNESS: That is correct.

20 JUDGE DUKES: Well, that's a whole
21 different objection. That's the leading. So try
22 not to lead.

23 MR. MATTHEWS: He was testifying. It
24 wasn't a question.

25 BY MR. KUHN:

1 Q. What else happened?

2 A. Well, I wanted to buy Old South --

3 MR. MATTHEWS: I'm sorry. Did you
4 sustain that objection, Your Honor?

5 JUDGE DUKES: I did. And he changed
6 it to what happened?

7 BY MR. KUHN

8 Q. In addition to the 12th Amendment issue,
9 did any other issue arise?

10 A. Old South Property was my livelihood. I
11 had been working the property for close to 20 years.
12 When Mr. Gavigan became the declarant in August of
13 2017, he knew he needed that sales office to make --
14 to make sales in there because of the 12th Amendment
15 that was in place.

16 By Mr. Gavigan removing the 12th Amendment
17 and then later putting a lien against the property
18 of which was put on just by his putting it on and no
19 -- no -- no meetings with the POA or whatever needed
20 to take place --

21 MR. MATTHEWS: Objection. There is
22 no foundation for that testimony in the least.

23 JUDGE DUKES: I'm -- let me say this.
24 I guess what I'm trying to do is this. Is the
25 testimony going to be that Mr. Kirkland somehow

1 conspired with Mr. Gavigan to create -- to blow this
2 deal up or something? Is that where -- I don't --
3 that's not in the pleadings. So --

4 MR. KUHN: Not quite that far, but
5 his testimony is going to be this lien was put on
6 for annual assessments, to have covered annual
7 assessments for many years going back in time, that
8 he never got a bill for any annual assessments. One
9 of the reasons he wanted to meet with Mr. Moore and
10 Mr. Kirkland was to find out, were you getting bills
11 for annual assessments all these years and not
12 paying them.

13 MR. MATTHEWS: Well, Your Honor, with
14 respect, that is not relevant to anything. If he
15 wants to challenge the assessments, presuming he has
16 standing to do so at this point, then that is
17 another issue. In fact, that was a whole another
18 lawsuit. That's not this lawsuit.

19 JUDGE DUKES: Assessments may have
20 statute of limitation problems. I don't know. But,
21 I mean, that --

22 MR. KUHN: Other problems. But all
23 of which is to show he had other reasons for meeting
24 with Mr. Moore and Mr. Kirkland other than what we
25 are here about today.

1 MR. MATTHEWS: But, again, with --
2 number 1, how on earth is that relevant as to how
3 the contract is to be interpreted?

4 JUDGE DUKES: It does seem to take us
5 outside the four corners of the contract. I
6 understand there was, for want of a better term,
7 some buyer's remorse after -- after some of these
8 issues with Mr. Gavigan came up.

9 The question is does that buyer's remorse
10 modify the contract at all, right? I mean, isn't
11 that kind of where we are? I understand there was a
12 -- I haven't heard that there wasn't a comfort level
13 on entering into this originally. And it sounds
14 like -- I don't remember it specifically, but it
15 sounds like Exhibit 1 was entered into right here on
16 the record in this room.

17 But -- and then we have the -- everyone
18 has testified that Exhibit 2 was signed. The only
19 thing that changed is I think it sounds like we now
20 have an acknowledgment that the money wasn't paid.
21 The defense appears to be, well, yeah, I didn't pay,
22 but here is why I didn't pay. Because something
23 came up in the interim that made this not as good a
24 deal for me as it would have been otherwise. I
25 mean, is that -- is that an accurate summary?

1 the covenants was going to take months or years down
2 the road, and I just felt uncomfortable encumbering
3 my son's property. I said maybe we can think of
4 another way to get Mr. Kirkland his money without
5 encumbering Old South Properties.

6 That was my intent on my conversation with
7 Jake on May 10th. Three days later I had a severe
8 accident. I was hospitalized for 90 days. I wasn't
9 able to do very much. My son came in the hospital
10 on three or four occasions in Atlanta, Georgia to
11 discuss --

12 MR. MATTHEWS: Your Honor, at this
13 point we have strayed into the irrelevant.

14 JUDGE DUKES: Well, I'll let him go
15 on a little bit. Your objection is noted.

16 THE WITNESS: -- to discuss putting
17 all the mortgage on something else besides Old South
18 Properties. And we came to the conclusion we could
19 do it by finagling a little bit and putting it on
20 our condominium at the beach of which he and I
21 agreed to do.

22 And of course, pursuant to this, Mr.
23 Gavigan had gone off, made an offer to Mr. Kirkland.
24 Mr. Kirkland accepted. And everything was assigned
25 to him. But I feel through Mr. Gavigan's need for

1 MR. KUHN: Nope. No, Your Honor.
2 How about let me move ahead and ask that question.

3 JUDGE DUKES: Okay.

4 BY MR. KUHN:

5 Q. Did you pay the \$80,000 on March 1st of
6 2018?

7 A. I had worked out a deal with my son to
8 borrow the total amount that was due, \$90,000. And
9 to give him a comfort level, I wanted to give him a
10 mortgage on Old South Properties which he agreed to
11 accept.

12 And prior to the closing, he wired me the
13 money. We put the mortgage -- we recorded the
14 mortgage. And I called him up and I said, Jeff, I
15 don't know if I'm going to be able to pay this money
16 or not. I don't know how I can get rid of this
17 lien. I don't want you -- I don't want to give you
18 an encumbered piece of property because it's not
19 what I agreed on. And I need it -- I needed this
20 for, you know, Old South. I want to pay it. He
21 said, dad, you do whatever you think is the right
22 thing to do.

23 After thinking about it a couple of days,
24 I knew that my lawsuit that I had filed against Mr.
25 Gavigan to remove the invalid lien he had placed on

1 this office that a lot of this that happened on the
2 property; the lien, the covenants being removed, all
3 caused me distress in terms of how to pursue it and
4 was an easy way for him to get control of the sales
5 office.

6 MR. MATTHEWS: At this point, Your
7 Honor --

8 THE WITNESS: He had to have control

9 --

10 MR. MATTHEWS: -- none of this is
11 relevant.

12 JUDGE DUKES: Right. Yeah. I think
13 we --

14 MR. MATTHEWS: It's just a conspiracy
15 theory at this point.

16 JUDGE DUKES: Right. Yeah. I'm --
17 so, yeah. Sustained.

18 BY MR. KUHN

19 Q. Was it -- let me back you up a little bit.
20 Was it ever your intention not to buy Mr. Kirkland's
21 interest in --

22 A. No.

23 Q. -- Old South Properties?

24 MR. MATTHEWS: Objection.

25 THE WITNESS: Absolutely not.

1 MR. MATTHEWS: Not relevant. Also,
2 we're asking about his intent. That does not
3 matter. He didn't pay the money.

4 JUDGE DUKES: Yeah, sustained.

5 BY MR. KUHN:

6 Q. Did you ever repudiate the contract and
7 say, I'm just not going to do it?

8 A. No.

9 Q. Did anybody ever send you a notice of
10 default saying, Mr. Wolfson, you are in default?
11 You have 30 days to cure your default.

12 A. No.

13 MR. MATTHEWS: Objection.

14 (Inaudible) the contract itself.

15 JUDGE DUKES: Well, I'll let him
16 answer. I mean, I --

17 THE WITNESS: No.

18 BY MR. KUHN:

19 Q. Anybody ever tell you that by not -- that
20 you had to pay this money by March 1st or you would
21 lose the ability to pay the money?

22 MR. MATTHEWS: Objection. That's
23 actually written in the contract.

24 MR. KUHN: I disagree. It's not.

25 JUDGE DUKES: Anyway, I'll let him

1 answer.

2 THE WITNESS: No.

3 JUDGE DUKES: No one other than --
4 I'm assuming you are talking about a third party or
5 --

6 MR. KUHN: Mr. Moore or Mr. Kirkland.

7 BY MR. KUHN:

8 Q. The handwritten contract, Paragraph 7,
9 says upon payment of the \$90,000 mentioned in 5 and
10 6 above, Kirkland transfers his interest in Old
11 South Properties to Wolfson; is that correct?

12 A. Correct.

13 Q. And did you interpret that literally that
14 when they get the \$90,000 you get Mr. Kirkland's
15 interest in Old South Properties?

16 A. Right.

17 MR. MATTHEWS: Objection. There's a
18 standing rule that if you are going to read part of
19 a document, you read the relevant parts. Paragraphs
20 5 and 6.

21 JUDGE DUKES: Let's do this for a
22 minute. We've been going for awhile. Our court
23 reporter looks like she'd like a break. Let's take
24 a break and then maybe I'll just talk to counsel
25 real quick before we all reconvene if we can do

1 that.

2 MR. MATTHEWS: Yes, sir.

3 JUDGE DUKES: So it's 3:18. Why
4 don't we take about a 15-minute break and then maybe
5 10 minutes (inaudible) see what we can do. So if
6 you all wouldn't mind just -- we'll get just the
7 lawyers back in here first. So, Mr. Wolfson, please
8 don't discuss your testimony with anyone during the
9 break. Okay? Thank you so much.

10 (BREAK)

11 JUDGE DUKES: All right. Back on the
12 record in 18-796. Is that what this one is?

13 MR. KUHN: Yes, sir.

14 JUDGE DUKES: And, Mr. Wolfson, you
15 are still under oath, sir. Go ahead, please, Mr.
16 Kuhn.

17 BY MR. KUHN

18 Q. Mr. Wolfson, you were in an accident this
19 year?

20 A. Yes, sir.

21 Q. When did that take place?

22 A. May 13th.

23 Q. And as a result of that, were you
24 incapacitated for a period of time?

25 A. Yes, sir.

1 Q. Briefly what were the nature of your
2 injuries?

3 A. They were all spinal cord related. I was
4 bedridden for a good while.

5 Q. When were you released from hospital?

6 A. August 1st.

7 Q. And during a period of time were you
8 basically comatose?

9 A. About ten days.

10 Q. Okay. Is that a picture of you in the
11 hospital?

12 A. I don't know. Nobody showed it to me. I
13 wouldn't look at it. To be honest with you, I
14 haven't looked at it.

15 Q. All right.

16 A. Holy mackerel.

17 Q. I thought you'd seen it.

18 A. No, I haven't.

19 Q. I apologize for that then. When did you
20 decide or are you ready, willing and able now to pay
21 the \$80,000 that was due March 1st as well as the
22 \$10,000 that's not due till next year?

23 MR. MATTHEWS: Objection. Relevance.

24 JUDGE DUKES: I'll allow it. Go
25 ahead.

1 THE WITNESS: Yes, sir.

2 BY MR. KUHN

3 Q. Okay. And when did you convey that to
4 Mr. Kirkland, Mr. Moore or anybody on their behalf?

5 A. I think we did it by affidavit.

6 Q. Affidavit you filed in this case?

7 A. Yeah.

8 MR. KUHN: For the record, Your
9 Honor, that was filed August 10th, I believe.

10 BY MR. KUHN

11 Q. Have you -- have they accepted your offer
12 to pay the money?

13 A. I haven't heard that, no.

14 Q. Has anybody allayed your concern that if
15 you send them the money they will not be able to --
16 they're not willing to give you Old South
17 Properties?

18 MR. MATTHEWS: We'll stipulate that
19 we're unwilling to do that, Your Honor.

20 MR. KUHN: Okay. That's all the
21 questions I have.

22 JUDGE DUKES: All right. Thank you.
23 Questions of Mr. Wolfson?

24 MR. MATTHEWS: Thank you.

25 BY MR. MATTHEWS

1 Q. Mr. Wolfson, you gave deposition testimony
2 on two separate dates. Once on October 1st and
3 again on October 24th. Do you recall that?

4 A. Correct.

5 Q. Okay. Part of your deposition testimony
6 was that you refused to make the \$80,000 payment on
7 or before March 31st of 2018 because of advice you
8 got from your lawyer. Do you recall that?

9 A. Yes, sir.

10 Q. Okay. What advice did your lawyer give
11 you?

12 A. Well, when we talked about it, he just --
13 you know, we couldn't get clear title and that was a
14 big concern. And that I was given my son of a
15 mortgage on the property. And I told them it would
16 be free and clear from any encumbrances.

17 Q. Okay. Did your lawyer give you a legal
18 reason that you could not make the payment?

19 A. A legal reason? No.

20 Q. Okay. You just thought it would be
21 inconvenient for your son -- well, actually, you had
22 already gotten a mortgage from your son --

23 A. We had already --

24 Q. -- on the property?

25 A. -- talked about it from way back and doing

1 it, but we didn't know if we were ever going to
2 get -- if and when the liens on the property would
3 be lifted. We felt they were invalid, but we were
4 having to go through a legal process to determine
5 that.

6 Q. Well, with respect, you knew about the
7 lien on November 2017, correct?

8 A. November of 2017? I knew about the lien
9 when it was filed, whatever date that was.

10 Q. In November 2017.

11 A. Okay.

12 Q. And you filed your lawsuit concerning the
13 lien in January of 2018; is that correct?

14 A. Could have been correct, yes.

15 Q. Okay. Do you have any doubt that you
16 filed the lawsuit on January --

17 A. We did file --

18 Q. -- 25th --

19 A. -- a lawsuit and I don't know the exact
20 date.

21 Q. I'm sorry, sir. Please let me finish my
22 questions before you answer. Did you file the
23 lawsuit on January 25th, 2018?

24 A. As I said, I don't know the exact date it
25 was filed.

1 Q. And then even though you knew of the lien
2 in November of 2017, and you actually filed a
3 lawsuit about it in January of 2018, you consummated
4 a mortgage on the property owned by Old South in
5 February of 2018 and recorded it in March of 2018,
6 correct?

7 A. That's correct.

8 Q. Okay. And you returned the money to your
9 son almost immediately?

10 A. Correct.

11 Q. When you signed the agreements in
12 question, those are Exhibits 1 and 3, were you of
13 sound mind and body?

14 A. I would -- yes, I was of sound mind and
15 body.

16 Q. Okay. You knew when you signed the
17 agreements that you could have seen a lawyer?

18 A. I do.

19 Q. And you chose not to?

20 A. I was trying to accommodate them.

21 Q. Well, sir, with respect, you knew you
22 could have hired a lawyer to review these --

23 A. Correct.

24 Q. -- agreements, and you chose not to; is
25 that correct?

1 A. That's correct..

2 Q. You agree with me, sir, that the check
3 that you -- that you got from your son, the one from
4 HCG, was for \$95,000?

5 A. That's correct..

6 Q. What was the -- what was the -- where's
7 the missing \$2,000.

8 A. The missing \$2,000? There's no missing
9 \$2,000.

10 Q. Well, with respect, you -- the bank
11 recorded a -- or Ms. O'Connell recorded a deposit of
12 \$95,000 from -- to Old South and then to your
13 personal account?

14 A. She did.

15 Q. The mortgage still outstanding as we know
16 is for \$97,000. What happened to the other \$2,000?

17 A. I sent that to my son.

18 Q. Okay. Is there any record of that?

19 A. Yes.

20 Q. What is it?

21 A. Ms. O'Connell can testify a check out of
22 my account was for \$97,000.

23 Q. That was not her testimony.

24 A. Well, it was \$96,7000 or \$96,800.

25 Q. All right. So where is the other money?

1 A. \$200?

2 Q. \$300, I believe. Where is it?

3 A. I only got \$95,000. I sent back \$96,700.

4 What other money?

5 Q. So -- well, if you only got \$95,000, but
6 the mortgage -- did you only get \$95,000 from your
7 son?

8 A. Yes.

9 Q. Then why did you give a mortgage --

10 A. Because --

11 Q. If you'll let me finish. Why did you give
12 a mortgage on the property for \$97,000?

13 A. Because it costs me \$97,000. I paid him
14 \$97,000 back because he had legal fees, some other
15 fees in putting it all together.

16 Q. In putting the mortgage together?

17 A. Putting the money together.

18 Q. Tell me what you mean by that?

19 A. What I mean by that?

20 Q. Yes, please explain.

21 A. He had to go through some things to get
22 the money.

23 Q. Tell me what they are?

24 A. I asked him how much it would cost and he
25 said about \$2,000. So I said, well, I'll send that

1 to you.

2 Q. So he paid others to give him the money to
3 give to you?

4 A. No, he didn't pay others. He had to
5 manipulate some things to get the money all together
6 from two or three different accounts, so forth and
7 so on. I said what is your time and everything
8 else? He said about \$2,000. I sent him 90 -- I
9 think 96,700.

10 Q. All right. But he never explained to you
11 what the \$2,000 was?

12 A. I'll ask him.

13 Q. I'm sorry, sir. Please answer my
14 question.

15 A. I don't know. I just told you. I told
16 you that he -- it was -- he said it was going to
17 cost about \$2,000. He did not explain to me, no.

18 Q. Okay. Now, in your deposition, you
19 declared on several occasions that you were not
20 willing to pay the 90 -- the \$80,000 if the lien or
21 assessments were still on the property. Do you
22 recall that?

23 A. Was not willing to?

24 Q. I'll read this into the record and you
25 tell me if you recall it. And if you have trouble,

1 we actually have the original deposition transcript
2 that we can review together.

3 My question was on Page 94, Line 2. So
4 you're not ready, willing, and able to pay it now,
5 to the \$80,000 now are you because the lien is not
6 removed. And your answer was not if the lien is on
7 the property. Do you recall that testimony?

8 A. Correct.

9 Q. So you're not willing -- at least as of
10 that point, you were not willing -- ready, willing
11 and able to do it because the lien is still on the
12 property, right?

13 A. Right.

14 Q. Okay. Did you change that testimony?

15 A. I don't know that I changed it ever.

16 Q. Okay. So you're not willing to make the
17 payment if a lien is on the property?

18 A. I am willing to do it today because I
19 can -- I can put the lien on some -- somewhere else.
20 Aside from Old South Properties.

21 Q. Okay. Is the reason -- so, is the reason
22 you initially refused to make the \$80,000 payment
23 was what, because the --

24 A. Because --

25 Q. Because there was an assessment --

1 A. Because I couldn't --

2 Q. -- lien for assessments on the property?

3 A. -- get my son a mortgage that was free and
4 clear of the lien on the property. That is correct.

5 Q. Okay. Now, your attorney has referenced
6 certain terms like, time is of the essence, or, you
7 know, other terms that might have been in a contract
8 that are not present. Is it true that you could
9 have asked for periods of due diligence or a term
10 such as representation to the buyers and sellers
11 that you could have included in these contracts?

12 A. I don't think so.

13 Q. Well, you've done it before, haven't you?

14 A. Well, that wasn't the case in this
15 particular matter. We broke here under Judge Dukes
16 and told us to see if we could go settle it. We
17 went and had lunch which you had to put it together
18 during the lunch period. They wanted to put it
19 together during the lunch period because they wanted
20 to leave and get back to Columbia.

21 So I just, as I told you before, I
22 accommodated them. I went ahead and I -- yes, I
23 could have done all of that with an attorney, but I
24 didn't have the advantage right then because they
25 were trying to get it finished.

1 Q. Okay. Let me read this -- your answer to
2 you. And if you doubt it, I'm going to examine you
3 with the original document. But I can only do that
4 if you disagree with this statement.

5 This is Page 161, Line 19 -- starting with
6 Line 19. My question is, as an experienced
7 businessman, if you had wanted provisions in the
8 agreement that would exclude those types of issues,
9 you most certainly could have added those
10 provisions, couldn't you? And you answered,
11 absolutely. Do you still -- do you change that
12 answer now?

13 A. Well, I mean, absolutely I could have
14 under normal circumstances. But under these
15 circumstances, I wasn't able to, no.

16 Q. Well --

17 A. Then if you want to say I changed, yes, I
18 changed.

19 Q. Well, sir, you understand your prior
20 testimony is under oath?

21 A. I understand that.

22 Q. So if it's -- if you're changing your
23 answers, what's changed?

24 A. I'm not changing my answer. My answer is,
25 yes, to you. I could have, but I didn't and this is

1 the reason why I didn't.

2 Q. Well, here's what you testified earlier.
3 When I asked and you failed to -- and you failed to,
4 didn't you? You said I didn't do it, not at the
5 time. I was trying to accommodate someone that was
6 it a dire rush to get back to Columbia and I was
7 trying to accommodate Stan, buy his interest, have
8 the property free and clear and go on. Do you stand
9 by that answer?

10 A. That is just what I just said.

11 Q. Okay. I also asked, did you have any
12 amendment to the agreement that extended the date of
13 default. Was either the agreement ever amended to
14 your knowledge and you answered not that I know of.
15 Is that answer still accurate?

16 A. That's correct.

17 Q. Do you recall meeting -- you heard
18 Mr. Moore's testimony this morning. Do you recall
19 meeting with him and Mr. Kirkland?

20 A. And Mr. Taylor.

21 Q. I'm sorry. I'm not referring to the main
22 meeting. After -- in 2017 and 2018 -- say,
23 December 2017 and up to the time of the default, did
24 you meet with Mr. Moore and Mr. Kirkland?

25 A. I met with Mr. Moore. I don't recall

1 Mr. Kirkland being there. But if he was there, I
2 just don't remember it.

3 Q. Okay. You testified in your deposition
4 that you never met with Mr. Kirkland with regards to
5 settlement of this agreement that we're talking
6 about here to buy him out for \$90,000. Now your
7 testimony is you just can't recall whether you met
8 with him or not; is that right?

9 A. Well, somebody said that he was there, but
10 I don't recall him being there. That's correct.

11 Q. Okay. So now your testimony is he may
12 have been there. You just don't recall?

13 A. Yes.

14 Q. Okay. I'm going to read this part of
15 Mr. Kirkland's affidavit to you and your response.
16 And, again, because you've heard Mr. Moore's
17 testimony in the morning I want you to consider what
18 he said and if this changes your response. This is
19 on Page 167 beginning on Line 11.

20 When the time came for me to receive the
21 initial payment -- now, this is Mr. -- in
22 Mr. Kirkland's voice. When the time came for me to
23 receive the initial payment of \$80,000, I was
24 approached by Mr. Wolfson who indicated he was not
25 going to make the required payment.

1 Mr. Wolfson wanted me to engage in various
2 business ventures with him related to the Bull Point
3 Development and other developments in Beaufort
4 County. I refused and advised Mr. Wolfson I simply
5 wanted him to comply with his agreement.
6 Mr. Wolfson advised he would not comply with the
7 agreement.

8 Mr. Wolfson has acknowledged that I have
9 done nothing to breach the settlement agreement with
10 him. He has also made it abundantly clear he will
11 do nothing to comply with the settlement agreement.

12 And your responses is, I can tell you this
13 affidavit is completely a lie. And you further
14 explain. This is what I want to get to. I've never
15 met with Mr. Kirkland in regards to this settlement
16 of this agreement and refusal to pay him \$80,000 or
17 \$90, 000. Your testimony now is you may have met
18 with him in Mr. Moore's office. You just don't
19 recall?

20 A. That conversation was with Mr. Moore. I
21 don't remember saying anything to Mr. Kirkland. I
22 don't remember talking about any Bull Point deals
23 that we could make because neither one of us was
24 involved in Bull Point. I don't even know how we
25 could talk about Bull Point.

1 Q. Okay.

2 A. So, you know, no, I did not talk to him
3 about Bull Point or anything else.

4 Q. Sir, let me draw your attention --

5 MR. MATTHEWS: Seem to be missing 8
6 and 9.

7 MR. KUHN: What are you looking for?

8 MR. MATTHEWS: Well, we need the
9 (inaudible) exhibits.

10 (OFF RECORD DISCUSSION)

11 BY MR. MATTHEWS

12 Q. Sir, I'd like you to look at what's been
13 marked as Exhibit 7 and Exhibit 9 and Exhibit 10.
14 And I have them in front of you. This 7, 9 and 10.
15 Do you see those?

16 A. Uh-huh.

17 Q. Okay. Let's start with Number 7. I put
18 it right before you. And that's an e-mail
19 purportedly from you to Mr. Moore about a meeting in
20 December?

21 A. Right.

22 Q. Do you recall meeting with him in
23 December of 2017?

24 A. Yes, I do. That was the meeting we just
25 talked about.

1 Q. Okay. In your words, what did you -- what
2 did you explain to him?

3 A. I explained to him that I had a problem
4 closing the property because of the lien that was
5 put on the property. Told him I had the money ready
6 to close, but I could not give a mortgage on the
7 property with it being encumbered. So that
8 presented a difficulty for me. That was the extent
9 of my conversation.

10 I also told Jake -- I said I wish you'd
11 get on board with me, try to resolve this lien,
12 whatever it took. I didn't know what it would take,
13 but the lien as it's purported to be was for back
14 POA fees which would be just as much owed by Stan as
15 it would be myself. So that's why I had approached
16 them.

17 Q. And you acknowledged, I believe, in your
18 deposition that Mr. Moore or Mr. Kirkland had no
19 duty to join you in your lawsuit; is that correct?

20 A. Well, Mr. Moore. I don't remember
21 speaking to Mr. Kirkland at all.

22 Q. Well, you would agree with me that
23 Mr. Moore had or on behalf of Mr. Kirkland,
24 Mr. Moore had no duty to join you in your lawsuit?

25 A. Correct.

1 Q. That was not a part of the agreement?

2 A. Correct.

3 Q. All right. Now, I would like you to take
4 a look at Exhibit 9. Okay. Between the time you
5 sent -- you met bet with Mr. Moore in December or
6 January perhaps of -- let's just say December 2017,
7 and the time you sent this email on March 1st,
8 2018, did you communicate with Mr. Moore about this
9 issue?

10 A. Other than this email, I do not believe I
11 did.

12 Q. Okay. And here's where you're writing to
13 let him tell you will not be able to make -- meet
14 the buy-out deadline with Stan as I am now involved
15 in a full blown lawsuit against Gavigan, et al; is
16 that correct?

17 A. Correct.

18 Q. Okay. Other than the fact that you were
19 involved in the lawsuit, was there any other reason
20 that you did not pay?

21 A. The title was impacted and I couldn't pay.

22 Q. Well, actually, sir, I think you admitted
23 in your deposition it just didn't occur you to
24 borrow the money off the property in Myrtle Beach,
25 you could have done it at that time if you wanted

1 to?

2 A. Sir, at the time, I wasn't even thinking
3 that way because when I started talking to my son
4 about this early on, Mr. Gavigan hadn't filed the
5 lien, yet. This was back -- right after I signed
6 the agreement in March I started talking to him.

7 And when the lien was filed, it changed
8 course and direction of everything. But, in fact, I
9 had very little conversation with my son up until
10 March 1st when this thing was actually -- he said
11 call me and said, dad, do you want to close. I
12 said, I don't think I'm going to be able to close,
13 son, but it was nice to have the money here so I
14 could tender it, but I want to tender it based on us
15 being able to get clear title.

16 I had all -- I had -- in the interim, I
17 had called Mr. Kuhn. I had discussed it with him.
18 He agreed with me. We needed to get clear title to
19 close. He even called Jake Moore to explain that to
20 him. And Jake said something like send me the
21 papers and let me look at them. And that was the
22 end of the conversation.

23 Q. So I think you acknowledged in your
24 deposition that none of those provisions or none of
25 those concerns were addressed in any way in the

1 agreement itself, right?

2 A. No, they weren't. That's correct.

3 MR. MATTHEWS: Your Honor, give me a
4 few minutes. I may be able to -- I want to refer
5 with my client, but it's in the service of not
6 asking question or asking fewer rather than more.

7 JUDGE DUKES: All right. Take a
8 minute or two. You want to just go off the record
9 and you all -- all right. Why don't we just take
10 five minutes?

11 (BREAK TAKEN)

12 JUDGE DUKES: We're back on in
13 18-796. So, anything else for this witness?

14 MR. MATTHEWS: Not at this time, Your
15 Honor.

16 JUDGE DUKES: Okay. All right. Mr.
17 Kuhn?

18 MR. KUHN: No redirect.

19 JUDGE DUKES: Okay. Anything else
20 from the Defendant?

21 MR. KUHN: I was going to call
22 Jeffrey Wolfson tomorrow. Mr. Wolfson's son who
23 owns the weight-loss center that gave the mortgage
24 to testify that he did give the mortgage. He did
25 send the money. He did get the money that's been

1 testified to back. And if his father asked, him
2 he's ready to re-send it.

3 JUDGE DUKES: So the first part of
4 that testimony matches Ms. O'Connell's, I believe
5 that he would stipulate that he would testify as to
6 the fact there was a mortgage. The money was sent.
7 The money then ultimately, through route, made it
8 back.

9 MR. MATTHEWS: We have no objections
10 to that proffer, Your Honor.

11 JUDGE DUKES: Okay. And the second
12 part to that as we sit here today, Mr. Wolfson,
13 Junior, stands ready, willing and able to pay 80,
14 90, whatever the number is -- \$90,000; is that
15 accurate?

16 MR. KUHN: 95,000.

17 MR. MATTHEWS: We have no objection
18 to that proffer, Your Honor.

19 JUDGE DUKES: All right. All right.
20 When you call it proffer. I don't know if it's a
21 proffer in this particular situation.

22 MR. KUHN: Stipulation as to expected
23 testimony.

24 JUDGE DUKES: More of a stipulation,
25 yeah.

1 MR. KUHN: Not admitting it's true,
2 but admitting that would be his testimony as I
3 understand it.

4 JUDGE DUKES: Okay. That will be his
5 testimony. Okay. All right.

6 MR. MATTHEWS: We agree that would be
7 his testimony.

8 JUDGE DUKES: Okay. Accepted.
9 Anything else then?

10 MR. KUHN: We rest.

11 JUDGE DUKES: All right. I think we
12 had spoken about perhaps having a follow-up
13 telephone conference --

14 MR. MATTHEWS: Two o'clock tomorrow,
15 Your Honor.

16 JUDGE DUKES: -- at 2:00 o'clock
17 tomorrow. And we'll decide at that point if we need
18 anything further on the record, but otherwise we'll
19 just talk and sort of plan where we go from there.

20 MR. KUHN: Yes, sir, Your Honor.

21 JUDGE DUKES: All right. Anything
22 else then for today's record?

23 MR. MATTHEWS: No, sir.

24 JUDGE DUKES: You all have been very
25 patient. Thank you so much. Have a great day. And

1 those of you driving, have a safe journey.

2 (Whereupon, the hearing was concluded
3 at 4:36 p.m.)

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Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Stancel E. Kirkland, et al v. Robert Wolfson, on the 5th day of November, 2018; and that the foregoing pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to H. Fred Kuhn, Jr., Esquire, Moss Kuhn & Fleming, PA, 501 North Street, Post Office 507, Beaufort, South Carolina 29901-0507.

In witness whereof I set my hand and seal this 30th of March, 2019.

My Commission
expires 2/7/28


Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina



State of South Carolina } Agreement
County of Beaufort }

Agreement dated 5/21/22

Consideration is the mutual
promises contained herein

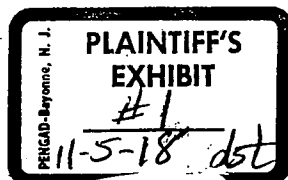
1. The Various Inland Agreement
of today Date placed on
Record is Apprised.

2. Except for the obligation
herein Sub Wilson and
Stan Kirkland fully Release
each other from any liability

3. The Borden Judgment Against
Wilson shall be satisfied
immediately.

4. Satisfaction of The Borden
Judgment is The Responsibility
of Kirkland

(over)



000346

EXHIBIT A

5. Walcott shall pay
Kirkland \$12,000 cash on or
before 3/1/18.

6. Walcott shall also pay
Kirkland 12,000 on or before
1/1/19.

7. Upon payment of the 90,000
mentioned in 5 and 6 above
Kirkland transfers his interest
in old South Properties to
Walcott.

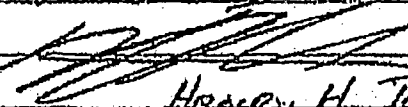
8. Walcott shall have
the 90,000 obligation to
Kirkland secured by a mortgage
on a lot owned by
Walcott. The value of
land is 80,000. Walcott
shall not be secured under
the mortgage. Walcott
shall guarantee
payment of at least 80,000.

9. old South Properties shall
also guarantee the obligations
of Wilson and Wilson shall
provide a Security Agreement
as to his interest in old
South Properties.

3 10. Kirkland will ~~with~~ his
request for a Receiver and
shall not prove it so long
as Wilson is current under
the Agreement.

Steen Kirkland
for Kirkland

Robert Wilson
Robert Wilson

Wilson, Dubois, Inc.
By 
Henry H. Taylor

(over)

all South Properties
by Robert W. [unclear]

Braden Properties
by Samuel E. Herkland Sr.

#4

NOTE AND SECURITY AGREEMENT

This is a promissory note made this 5th day of July, 2017. This promissory note is made pursuant to an agreement signed by Robert Wolfson, Stancel E. Kirkland, Henry H. Taylor, Old South Properties, Inc. and Bindon Plantation. The agreement referred to in this note is dated May 21, 2017.

For value received, Old South Properties, Inc.; Consolidated Ventures, LLC; and Robert Wolfson promised to pay Stancel E. Kirkland the sum of \$90,000. This note shall not bare interest.

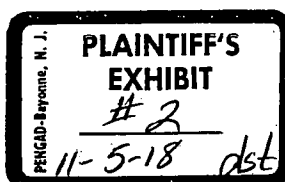
The obligors herein shall pay Stancel E. Kirkland, the sum of \$80,000 on or before March 1, 2018. The undersigned shall also pay Stancel E. Kirkland the sum of \$10,000 in addition to the \$80,000 on or before January 1, 2019. Thus, the entire obligation of Robert Wolfson shall amount to \$90,000.

This note is hereby declared secured by Robert Wolfson's interest in Old South Properties, Inc. Should Robert Wolfson forfeit on his obligations hereunder, Wolfson shall transfer his interest at the election of Stancel E. Kirkland to Stancel E. Kirkland. Should there be a default, Robert Wolfson shall have 30 days from the day of default to cure said default. Following any default, Robert Wolfson's interest in Old South Properties, Inc. shall be the exclusive property of Stancel E. Kirkland.

During the terms of this note and security agreement, Robert Wolfson and Old South Properties, Inc. shall maintain the present ownership of the properties of Old South Properties, Inc. and shall not allow waste to be committed upon the properties.

In addition, should there be an event of default by non-payment, Stancel E. Kirkland shall have the right to foreclose on a parcel of land known as Lot 90 Mackay Point in Jasper County, South Carolina.

A copy of this note and security agreement shall be recorded in the Office of the Register



000350 EXHIBIT B

of Deeds for Jasper County, South Carolina and in the Office of the Register of Deeds for Beaufort County, South Carolina.

The parties agree to execute such additional formal mortgages and financing statements as are necessary in order to properly perfect the mortgage and security interest of Stance E. Kirkland on record. As there is not presently a formalized approved plat for the real estate subject to this agreement, this agreement shall suffice as a security agreement against the property and against the interest of Robert Wolfson in Old South Properties, Inc. at this time. Once the formalized plat is approved, Robert Wolfson shall notify Stancel E. Kirkland through this attorney and a formalized mortgage shall be prepared and recorded.

In witness whereof, this note and security agreement have been executed the date first written above.

Robert Wolfson
Old South Properties

Robert Wolfson
Robert Wolfson

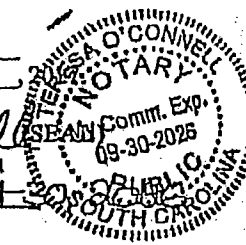
SWORN to before me this 17
day of July

Veresa O'Connell
Notary Public for South Carolina
My Commission Expires: Sept 30, 2026



SWORN to before me this 17
day of July

Veresa O'Connell
Notary Public for South Carolina
My Commission Expires: Sept 30, 2026



Robert Wolfson
Consolidated Ventures LLC

SWORN to before me this 17
day of July, 2017.

Veresa O'Connell
Notary Public for South Carolina
My Commission Expires: Sept 30, 2026



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-00297

Vivians Island Inc., et al.

Robert Wolfson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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

DISPOSITION TYPE (CHECK ONE)

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

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

☒ **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

☐ **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.

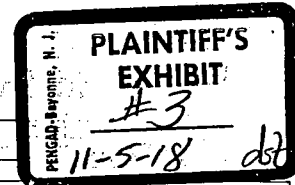
IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before me May 22, 2017 for final hearing. Attorney S. Jahue Moore appeared for the Plaintiffs and the Defendant appeared Pro-se. The parties were able to reach a settlement, therefore this matter is dismissed.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :



INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

000352

Circuit Court Judge

3069

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

S. Jahue Moore

Robert Wolfson (Pro-se)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

ELECTRONICALLY FILED - 2017 May 23 8:43 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700297



Beaufort Common Pleas

Case Caption: Vivians Island Inc , plaintiff, et al VS Robert Wolfson
Case Number: 2011CP0700297
Type: Order/Case Settled

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-05-22 14:12:10 page 3 of 3

ELECTRONICALLY FILED - 2017 May 23 8:43 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700297

000354

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Bindon Plantation, LLC,)
Plaintiff,)
vs.)
Robert Wolfson,)
Defendant.)

C.A. No.: 2012-CP-07-354

FINAL ORDER FOR JUDGEMENT

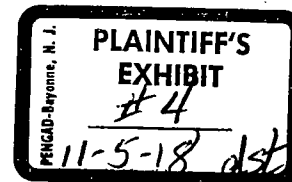
This is an action for wrongful conversion brought on behalf of Bindon Plantation, LLC. The Summons and Complaint have been properly served upon the Defendant. Defendant has filed an Answer which is nothing except a general denial. There is no counterclaim and there is no claim for offset.

The issues have been properly joined. The matter is properly before the Court. This Court has jurisdiction over the parties and the Court has jurisdiction as to the subject matter. Venue is proper in Beaufort County as the Defendant lives in Beaufort County and as the property which is the subject of this action, was sold in Beaufort County.

The action was tried non-jury before me at a term of Common Pleas Court in Beaufort County, South Carolina. Both the Plaintiff and the Defendant were well represented. The trial took place on Wednesday, November 30, 2016.

The matter was originally scheduled to be heard by a jury. Both parties consented to convert the matter to a non-jury trial and the trial proceeded in an orderly fashion.

Prior to the trial, most of the exhibits were admitted into evidence by way of consent. Several additional exhibits were placed into the record as the trial progressed.



Based upon the testimony presented, I find and conclude as follows:

The Plaintiff limited liability company was originally formed for the purpose of developing a large tract of land in Beaufort County. Fifty percent of the company was owned by a Mr. Zohar or one of his legal entities. Twenty-five percent of the company was owned by Stancel E. Kirkland and twenty-five percent of the company was owned by Robert Wolfson. Neither Mr. Wolfson nor Mr. Kirkland ever actually invested any significant sum of money into the company. The company appears to have been formed some time during the mid-2000s.

Mr. Zohar was to be the investor. Both Mr. Kirkland and Mr. Wolfson were on the management committee of the LLC and were responsible for its day to day operations. The management committee had a great deal of responsibility towards the company and was basically responsible for the development of the property and protection of company assets.

Through the efforts of Mr. Zohar, approximately \$20 million was invested in what was foreseen to be a large real estate plantation. Due to the economic crash, the plantation never developed and the property was ultimately lost.

Mr. Wolfson and Mr. Kirkland are co-owners of a company known as Old South Properties. It has been many years since Mr. Kirkland has received any money from Old South Properties. On the other hand, Mr. Wolfson continues to work out of the office of Old South Properties and the record reflects he receives significant money from time to time as real estate commissions from Old South. While Mr. Kirkland benefits very little or none from the assets and existence of Old South, Mr. Wolfson does receive significant benefit from Old South. In addition to receiving commissions, Wolfson maintains an office at the Old South real estate office and runs a number of partnership or other companies out of the Old South office. The continued existence and operation of Old South has worked significantly to the financial benefit to Mr. Wolfson.

After the loss of the real estate, Bindon Plantation, LLC, owned very little if anything in the way of assets except for a piece of heavy equipment.

In May of 2011, the equipment was sold for \$28,500. Wolfson insisted he receive physical possession of the check which was written for the equipment. Payment came by way of a check written from Southern Crane and Tractor Inc. dated May 3, 2015.

The record reflects significant electronic discussion about what was to be done with the proceeds. Kirkland appears to have wanted the money held in escrow and ultimately paid to Mr. Zohar. Wolfson responded by way of e-mail that he would not place the money in escrow and he wanted Mr. Zohar told the money had been used to pay "expenses". The money was not used to pay expenses for Bindon Plantation.

Wolfson did not place the \$28,5000 in the Bindon bank account. Instead, he opened a second bank account in the name of Bindon and used the check from Southern Crane to open the account. Within 30 days of opening the account, Wolfson caused the money to be drawn out of the account and "loaned" to Old South Properties. He had a check written to his wife. He had checks stubbed as loans. He had other checks simply with no documented reasons for their issuance.

There was no reason for Bindon Plantation, LLC to have loaned Old South Properties any money whatsoever. Wolfson was quite clear in his testimony all of the money taken from Bindon was taken as a loan to Old South. I find the money was written from the Bindon Plantation account to Old South Properties as a loan. The loan was not authorized by Mr. Kirkland. The loan was not authorized by Mr. Zohar. Neither Mr. Kirkland nor Mr. Zohar were ever consulted or advised about the loan. The loan did not benefit Bindon Plantation, LLC at all.

The only person to have benefited from the loan from Bindon to Old South was Robert Wolfson. Mr. Wolfson was regularly making commissions from Old South and he took the money

from Bindon to sustain a company in which he had an admitted fifty percent interest and which needed to remain viable for Mr. Wolfson's financial gain. Neither Bindon, Zohar nor Kirkland benefited from the loan. I find the loan was totally unauthorized and should never have been made. There was no legitimate business reason for Bindon Plantation, LLC to loan \$28,500 to Old South.

What actually became of the \$28,500 after it left the Bindon Plantation account is unclear. The financial records Mr. Wolfson caused to be placed into record, indicate a significant portion of the loan is still due. According to the accountant from Old South, approximately \$18,000 of the loan remains outstanding. There was absolutely nothing placed in the record to indicate what was done with the money once it was received by Old South. Some of the money was written to Mr. Wolfson's wife for undocumented "secretarial" services. Mrs. Wolfson's did not testify as to what those services are alleged to have been. There is no testimony as to what if anything, Mrs. Wolfson ever did to benefit Bindon Plantation. There are no receipts or any other records at all which indicate what Old South did with the money it received from Bindon Plantation. In short, there is no accounting of any type. Wolfson diverted the funds from Bindon Plantation, LLC to Old South. Thereafter, there is simply nothing in the record to document what happened to the funds.

When it was discovered Wolfson had diverted the funds from Bindon to Old South, this action was brought. Bindon Plantation, LLC alleges the money was improperly taken and has not been accounted for. I find and conclude the money was not properly taken and the money has not been accounted for.

In South Carolina, an officer or director of a legal entity owes a fiduciary duty to the entity. *Few v. Few*, 239 S.C. 321, 336, 122 S.E.2d 829, 837 (1961). There is a legal duty not to engage in self-dealing and to preserve, protect and defend the assets of the entity. *Lawson v. Rogers*, 312 S.C. 492, 498-99, 435 S.E.2d at 857 (1993). In this case, Wolfson was not simply an officer of

the LLC. He was responsible by contract for its management. He had a duty to the LLC not to engage in self-dealing and not to do anything inconsistent with the protection of the assets of the company. *Id.*

There was no legitimate purpose for the diverting of the funds by Wolfson to Old South. The money was taken without the knowledge or consent of the other two owners of the LLC. The money had actually come from Mr. Zohar and Wolfson suggested Mr. Kirkland tell Mr. Zohar other than the truth about what happened to the funds. In other words, Wolfson suggested that Kirkland lie Mr. Zohar about what had become of the money. Kirkland did not do as instructed by Wolfson.

Wolfson was examined at length as to the transaction. He was never able to give an explanation as to why he opened a second bank account for the deposit of the \$28,500. He originally suggested he simply wanted to open a second account and then he suggested that he opened the account to keep the money from Mr. Kirkland. Following such explanation, Wolfson testified Kirkland had signature authority on the new account. There is simply no documented proof that Kirkland ever knew of the second account or had the ability to sign checks on the new account.

It is for the Court to judge the credibility of the witnesses. *Church v. McGee*, 391 S.C. 334, 343, 705 S.E.2d 481, 485-86 (Ct. App. 2011) (citing *Thomas v. Mitchell*, 287 S.C. 35, 336 S.E.2d 154 (Ct. App. 1985)). I find the testimony of Mr. Wolfson highly suspect.

I find and conclude the diversion of the \$28,500 from Bindon to Old South was done ultra vires. The money was taken without the knowledge or consent of the LLC. The money was diverted for no commercial reason other than the benefit of Mr. Wolfson and the entity he owned. Wolfson had a conflict of interest in dealing on behalf of both companies and if he were going to engage in self-dealing, he had an obligation to fully and completely disclose the transaction. He

also had an obligation not to take the money without the knowledge and consent of the company or its investors. I find and conclude the diversion of the funds by Mr. Wolfson was wrongful and amounts to a violation of the obligations he owed Bindon Plantation, LLC. The taking of the money does amount to a conversion of the funds belonging to Bindon. I find and conclude Mr. Wolfson is obligated to the Plaintiff in the amount of \$28,500.

There is no allegation in the answer as to set off. There is nothing raised in the answer to give rise to a legal cause for Wolfson to have diverted the funds.

Plaintiff has alleged a conversion and I find and conclude a conversion of the money has taken place by Wolfson in violation of the fiduciary duties owed by him to the company. Plaintiff has also sought an accounting.

When an accounting is sought, the person obligated to account bears the burden of proof. *Lawson v. Rogers*, 312 S.C. at 499, 435 S.E.2d at 857 (1993). In the case at bar, there has been little if anything offered by Wolfson as an accounting.

This case has existed for a significant period of time. Plaintiff's counsel has sought through discovery various documents and other information as to what became of the funds. As of the date of trial, Wolfson presented no document by way of check, receipt, agreement or otherwise to the effect that Bindon Plantation, LLC owed Old South Properties any money at all.

It was represented to the Court that Old South has some documentation on a computer which might have shown a debt from Bindon to Old South. On the other hand, such documentation was never produced during discovery and was certainly not produced during trial.

The only witness Wolfson called at trial was his bookkeeper. The bookkeeper appears to be a very nice person but she certainly produced no testimony favorable to Mr. Wolfson. The bookkeeper was not working for Mr. Wolfson or Old South at the time the money was diverted from Bindon Plantation to Old South. She does not know who caused the entries on the Old South

records to take place which showed only \$18,000 owed to Bindon as opposed to \$28,500. She can provide absolutely no explanation for such a financial recording.

The bookkeeper is sure that Old South presently owes Bindon money pursuant to a loan. She also testified at length as to the obligations owed by Mr. Wolfson to Bindon Plantation and expressed her opinion that the conduct admitted by Mr. Wolfson amounts to a breach of his fiduciary duty and a breach of his obligations of good faith and fair dealing. In short, Mr. Wolfson's bookkeeper agreed with Plaintiff that Mr. Wolfson's conduct has been wrongful.

I find and conclude there was no justification by Mr. Wolfson's in diverting the \$28,500 to his business. The diversion of these funds was wrongful and amounts to a conversion. Mr. Wolfson has not accounted for the funds and he was responsible for them at the time they were taken.

Based on the findings of fact and conclusions of law set forth herein, I find and conclude the Defendant, Robert Wolfson, is liable to the Plaintiff in the amount of \$28,500.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff be and hereby is awarded judgement against the Defendant in the amount of \$28,500. The Clerk of Court is hereby directed to enroll this Order as a judgement.

This is a Final Order in this case.

AND IT IS SO ORDERED.

The Honorable Michael G. Nettles

_____, South Carolina
_____, 2016

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-00354

Bindon Plantation, LLC

Robert Wolfson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: S. Jahue Moore

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

DISPOSITION TYPE (CHECK ONE)

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff	Defendant	\$28,500
		\$
		\$

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

Date _____

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

J. Thomas Mikell

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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

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

Blank lined paper.



Beaufort Common Pleas

Case Caption: Bindon Plantation LLC VS Robert Wolfson

Case Number: 2012CP0700354

Type: Order/Judgment and Form 4

s/ Michael Nettles 2140

Michael Nettles

Electronically signed on 2017-03-21 14:53:55 page 10 of 10

000364

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Bindon Plantation, LLC,)
Plaintiff,)
vs.)
Robert Wolfson,)
Defendant.)

C.A. No.: 2012-CP-07-354

**NOTICE OF MOTION
FOR APPOINTMENT OF RECEIVER**

TO: ROBERT WOLFSON THE DEFENDANT HEREIN:

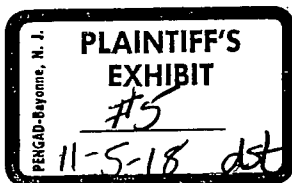
YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof or as soon thereafter as counsel can be heard, the undersigned, as counsel for the Plaintiff will move before the Court for an Order appointing a Receiver to liquidate such of the Defendant's assets as are necessary in order to satisfy the above-mentioned judgment.

Judgment in this case was filed March 21, 2017. Defendant was found to have misappropriated significant amounts of cash.

Defendant is presently in possession of an ownership interest in various businesses which can and should be liquidated in order to satisfy the judgment of the Plaintiff.

Pursuant to the South Carolina Code of Laws and the South Carolina Rules of Civil Procedure, a Receiver should be appointed in order to seize the bank accounts, business interests and other assets of the Defendant. The Receiver should be order to liquidate so much of the Defendant's assets as are necessary to satisfy the Final Order for Judgment in this case.

MOORE TAYLOR LAW FIRM, P.A.



BY: s/ S. Jahue Moore

S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR THE PLAINTIFF

West Columbia, South Carolina
May 4, 2017

000365

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Bindon Plantation, LLC,)
Plaintiff,)
vs.)
Robert Wolfson,)
Defendant.)

C.A. No.: 2012-CP-07-354

SATISFACTION OF JUDGMENT

The judgment in this case has been satisfied by way of an agreement dated May 21, 2017.

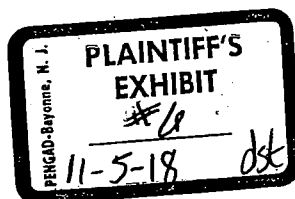
The judgment is hereby satisfied. The Clerk of Court is directed to enter a satisfaction of judgment on record.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR PLAINTIFF

West Columbia, South Carolina
May 30, 2017

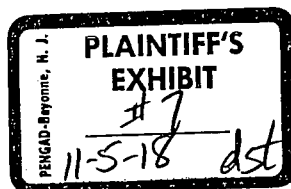


000366

Jake Moore

From: Robert Wolfson <rwolfson59@gmail.com>
Sent: Monday, December 11, 2017 6:55 PM
To: Jake Moore
Subject: Meeting

Jake,
See you Thursday at 5pm
Sent from my iPhone

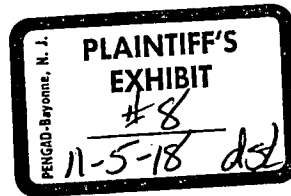


000367

Record and Return to:
Johnson & Davis, PA
10 Pinckney Colony Rd., Suite 200
Bluffton, SC 29909

5-11 RB
Old South Properties
1171

BEAUFORT COUNTY SC - ROD
BK 3649 Pgs 982-986
FILE NUM 2018011846
03/06/2018 03:19:17 PM
REC'D BY rhing RCPT# 882512
RECORDING FEES \$11.00



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MORTGAGE

THIS MORTGAGE ("Security Instrument") is given as of February 16, 2018. The mortgagor is Old South Properties, Inc. ("Borrower"). This Security Instrument is given to HCG Weight Loss Center, Inc., whose address is 6667 Vernon Woods Drive, Suite B40, Sandy Springs, GA 30328 ("Lender"). Borrower owes Lender the principal sum of NINETY-SEVEN THOUSAND and NO/100 DOLLARS (U.S. \$97,000.00). This debt is evidenced by Note dated the same date as this Security Instrument ("Note"), which provides for the full debt, if not paid earlier, due and payable on

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in Beaufort County, South Carolina:

See Exhibit A attached hereto and made a part hereof for a complete legal description.

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.
2. **Funds for Taxes and Insurance.** Pursuant to the Note entered into, no funds for taxes and insurance are applicable.
3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.
4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the

Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply

the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

10. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

12. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

17. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

18. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and -radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

19. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment

20. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

21. **Waivers.** Borrower waives all rights of homestead exemption in the Property.

22. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

By SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

OLD SOUTH PROPERTIES, INC.

First Witness Paul Nowlin

By: Raleent L. Wolfson

Its: President

Second Witness Sara J Willis

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that the within-named OLD SOUTH PROPERTIES, INC., by Raleent L. Wolfson, its president, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 16 day of February, 2018

Teresa A. Connell
Notary Public for South Carolina

My commission expires: Sept. 30, 2026

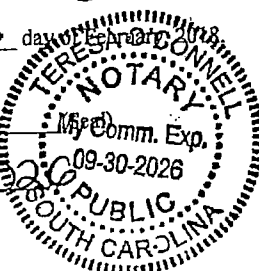


Exhibit A

All that piece, parcel and tract of land, with improvements thereon, situate lying and being in Sheldon Township, Gardens Corner, Beaufort County, South Carolina, and being shown as 1.492 acres, Parcel A, Phase One, Bull Point Subdivision on a plat prepared by Andrews Engineering Co. Inc. dated January 2, 2004.

ALSO, easements over and across property of the Grantor as required to provide existing and future utility services to the 1.492 acre tract.

This being the same property conveyed to Old South Properties, Inc. by deed dated January 2, 2004, and recorded in the Office of the Register of Deeds for Beaufort County in Deed Book 01893 at Page 2570 on January 6, 2004.

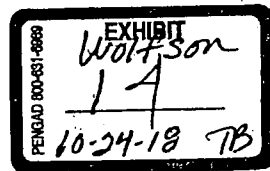
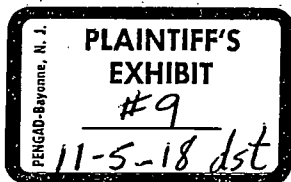
From: Bob Wolfson <rwolfson59@gmail.com>
Subject: March 1, agreement
Date: March 1, 2018 at 12:36:59 AM EST
To: Jake Moore <jake@mttlaw.com>

Jake,

I am writing to let you know that I will not be able to meet my buyout deadline with Stan as I am now involved in a full blown lawsuit against gavigan et al. They filed liens against Old South and deleted our 12th amendment. Mr Fred Kuhn of Moss, Kuhn and Fleming can give you more details. We have not been able to sell out of the sales office since January.

Please let Stan know I want to honor this agreement but I also want to be able to sell Real Estate there after our purchase. If the lawsuit is lost then the sales office will be removed.

Mr. Kuhn contact no.# is 843-524-3373 and his email address is fred@mossandkuhn.com. He has a copy of the one page agreement between Stan and myself. Please give us the chance to win this suit. Your stepping in and taking over will only result in your having to try this case. If we prevail Stan will be entitled a percentage of the proceeds and then the buyout can be completed.



000373

Jake Moore

From: Diane Corley
Sent: Monday, April 23, 2018 11:05 AM
To: Jake Moore
Subject: RE: Bob Wolfson

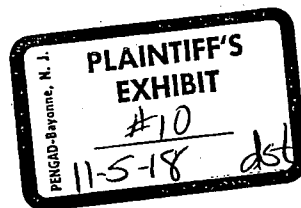
Spoke with Bob Wolfson and set him up an appointment to meet with you. Appointment is scheduled for Thursday, May 10th. Bob said something about holding off on service of a lawsuit. Is this correct?

Thank you.

Diane M. L. Corley
Legal Assistant to S. Jahue Moore

MT MOORE | TAYLOR
INC. LLC

1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
Tel.: (803) 796-9160 x 153
Fax: (803) 791-8410



000374

Jake Moore

From: Jake Moore
Sent: Monday, June 4, 2018 11:34 AM
To: fred@mossandkuhn.com
Subject: wolfson

Are you representing bob Wolfson? I never heard back. I think he is in default if you are not representing him. I just need to move forward with this. thanks. Jake



000375

Day

Work Week

Week

Month

Schedule View

Open Calendar

Calendar Groups

E-mail Calendar

Share Calendar

Publish Online

Calendar Permissions

Search People

Address Book

Find

Arrange

Manage Calendars

Share

December 10 - 16, 2017

SUNDAY
10

FILE APPOINTMENT INSERT FORMAT TEXT REVIEW TOTAL OFFICE

Save & Delete Close Copy to My Calendar

Scheduling Assistant Meeting Notes Invite Attendees Options Tags Zoom

Subject: bob wolfson

Location:

Start time: Thu 12/14/2017 5:00 PM

End time: Thu 12/14/2017 5:30 PM

All day event

In Shared Folder: Calendar - Jake Moore

Last modified by Jake Moore on 12/14/2017

Columbia, South Carolina Today Tomorrow Wednesday 70°F/59°F 73°F/59°F

THURSDAY
14

FRIDAY
15

RESCHED TO 1/12/18 - Lori Kaul
785-8452 and Valory Kaul - re: Initial
Inspection Allstate

000376

PENCAD-BAYONNE, N. J.
PLAINTIFF'S
EXHIBIT
#12
11-5-18

#8

Tasks

Employer ID Number

Other Current Liabilities:

Other Liabilities:

Adjustments to Shareholders' Equity:

000377

12:07 PM

08/14/18

Old South Properties, Inc.
Account QuickReport
All Transactions

Type	Date	Num	Name	Memo	Split	Amount	Balance
N/P- HCG Weightloss							
Deposit	03/02/18		HCG Weightloss	Deposit	Ameris- Operating	95,000.00	95,000.00
Check	03/08/18	1174	Robert Wolfson		Ameris- Operating	-95,000.00	0.00
Total N/P- HCG Weightloss						0.00	0.00
TOTAL						0.00	0.00



000378

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2018-CP-07-00796
APPELLATE CASE NO.: 2019-000203

RECEIVED
AUG 26 2019
SC Court of Appeals

Stancel E. Kirkland and
El Cid Holdings, LLC,

Respondents,

vs.

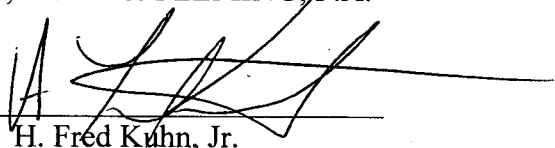
Robert Wolfson,

Appellant.

CERTIFICATE OF COUNSEL

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

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373 - Telephone
(843)524-1302 - Facsimile
Email: fred@mossandkuhn.com

Beaufort, South Carolina
August 20, 2019

Attorneys for the Appellant