

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 2007-CP-40-0576

J. Michael Baxley, Circuit Court Judge
Case No. 2010-CP-16-0332
Appellant Case No. 2013-001461

Ex Parte: Douglas N. Truslow, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee and Richland County Clerk of
Court, Defendants.

AND

Ex Parte: Desa Ballard, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

RECORD ON APPEAL
VOLUME ONE

RECEIVED
MAR 25 10 2014
SC Court of Appeals

James M. Griffin
Ariail E. King
Lewis, Babcock and Griffin, LLP
P.O. Box 11208
Columbia, SC 29211
(803) 771-8000

ATTORNEY FOR APPELLANT

Douglas N. Truslow
P.O. Box 1465
Truslow & Truslow
Columbia, SC 29202
(803) 256-6276

ATTORNEY FOR RESPONDENT
TRUSLOW

Desa Ballard
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, SC 29171
(803) 796-9299

ATTORNEY FOR RESPONDENT
BALLARD

Table of Contents

ORDERS

Order Granting Partial Summary Judgment Order, (<i>Anasti v. Wilson</i>), dated 10-25-07	1
Order staying case, (<i>Anasti v. Wilson</i>), 1-8-08	11
Orders of remand by the Court of Appeals (<i>Anasti v. Wilson</i>), dated 3-18-08.....	12
Order (<i>Anasti v. Wilson</i>), dated 4-3-08	14
Orders of the Court of Appeals (<i>Anasti v. Wilson</i>), 6-20-08	20
Order (<i>Anasti v. Wilson</i>), 4 -1-09	22
Order of Bankruptcy Court (<i>In re Lee</i>), dated November 9, 2009	33
Order of Bankruptcy Court (<i>In re Lee</i>), dated December 21, 2009.....	41
Order of the Court of Appeals (<i>Anasti v. Wilson</i>), filed February 22, 2010.....	48
Order of the Court of Appeals dismissing appeal (<i>Anasti v. Wilson</i>) dismissing appeal, dated April 1, 2011	52
Order Disqualifying Megna, (<i>Pee Dee Health Care v. Thompson</i>) dated 4-15-11	55
Order of Court of Appeals (<i>Anasti v. Lee</i>), dated 5-20-11.....	64
Order Denying Plaintiff's 59(e) Motion for Reconsideration of Disqualification, (<i>Pee Dee Health Care v. Thompson</i>), dated 8-15-11	67
Order Dismissing Plaintiff's motion to reconsider the granting of summary judgment (<i>Pee Dee Health Care v. Thompson</i>), dated 10-4-11.....	69
Supreme Court's Denial of petition for writ of certiorari, dated 10-5-11	71
Remittitur by Court of Appeals (<i>Anasti v. Wilson</i>), dated October 7, 2011	72
Court's Order Relieving counsel, dated February 24, 2012	73
Order (<i>Anasti v. Wilson</i>), filed March 1, 2012	74
Order awarding Sanctions (<i>Pee Dee Health Care v. Thomspson</i>), filed Febraury 13, 2013.....	77
Order awarding Sanctions (<i>Anasti v. Wilson</i>), filed February 13, 2013	90
Order denying Motion for Reconsideration (<i>Anasti v. Wilson</i>), filed 6-12-13	120

Order Denying Motion for Reconsideration (<i>Pee Dee Health Care v. Thomspson</i>), filed 6-12-13.....	128

Order of Court of Appeals, (<i>Pee Dee Health Care v. Thomspson</i>), filed 7-3-13	134

Order confessing Judgment (<i>Anasti v. Wilson</i>), 7-18-13	136

PLEADINGS

Complaint, (<i>Wilson et al. v. Lee</i>), filed November 12, 2004	140

Complaint, (<i>Wilson et al. v. Dallis Law Firm</i>), filed November 12, 2004	159

Complaint (<i>Anasti v. Wilson</i>), dated January 26, 2007	172

Answer of Wilson and Goodwin (<i>Anasti v. Wilson</i>), dated March 6, 2007	179

Answer of Lee, (<i>Anasti v. Wilson</i>), dated March 21, 2007	186

Award in (<i>Wilson et al. v. Lee</i>) / (<i>Wilson et al. v. Dallis Law Firm</i>), dated August 15, 2008.....	200

TRANSCRIPTS

Transcript of Summary Judgment (selected portion), (<i>Anasti v. Wilson, et al</i>), September 19, 2007.....	220

Transcript of Status Conference before Judge Barber, (<i>Anasti v. Wilson, et al</i>), January 18, 2012.....	241

Transcript of Hearing before Judge Baxley, May 16, 2012.....	261

Transcript of Hearing before Judge Baxley, August 21, 2012	314

MOTIONS AND MEMORANDA

Truslow's Motion Pursuant to Rule 56(g) (<i>Anasti v. Lee</i>), dated November 7, 2007	340

Motion to lift bankruptcy stay, dated August 19, 2009	342

Motion for Sanctions and Memorandum of Support, filed by Truslow in Court of Appeals (<i>Anasti v. Lee</i>), filed 5-9-11	368

Ballard's Motion for Sanctions (<i>Pee Dee Health Care v. Thompson</i> , filed 8-5-11	421

Truslow's Amended Motion for Sanctions (<i>Anasti v. Wilson</i>), filed 11-21-11	441

Truslow's Motion to Quash (<i>Anasti v. Wilson</i>) dated, 3-9-12 with attachments and memorandum	444

Motion for sanctions in (<i>Pee Dee Health Care v. Thompson</i>) dated March 9, 2012, objection and exhibits	490

Truslow Memorandum (with exhibits/attachments) (<i>Anasti v. Wilson</i>), dated May 9, 2012	509

Appellant's Opposition to sanctions, submitted May 15, 2012	818

Appellant's Supplemental Memorandum to Anasti's Motion to Quash, May 29, 2012	1030

Motion to Reconsider (<i>Anasti v. Wilson</i>) filed February 25, 2013	1055

Motion to Reconsider (<i>Pee Dee Health Care v. Thompson</i>) filed February 25, 2013	1065

NOTICES

Notice for 1-8-08 hearing (<i>Anasti v. Wilson</i>) dated 12-11-07	1072

Notice of Bankruptcy (<i>In re Lee</i>), dated April 16, 2009	1073

Notice of hearing (<i>Pee Dee Health Care v. Thompson</i>) dated June 17, 2011	1074

Notice of Appearance of Aimee Zmorczek (<i>Anasti v. Lee</i>), dated May 14, 2012	1075

SUBPOENAS

Subpoena to Ballard, (<i>Pee Dee Health Care v. Thompson</i>), with exhibits dated 7-27-11	1077

Ballard's Objection to Subpoena (<i>Pee Dee Health Care v. Thompson</i>), dated 8-4-11	1085

AFFIDAVITS

Affidavit of Doug Truslow (<i>Pee Dee Health Care v. Thompson</i>) filed October 19, 2011	1111

Supplemental Affidavit of Doug Truslow (<i>Pee Dee Health Care v. Thompson</i>), filed November 3, 2011	1131

Affidavit of Attorney Fees for Desa Ballard (<i>Pee Dee Health Care v. Thompson</i>), dated 5-11-12	1133

Amended and Supplemental Affidavit of Desa Ballard (<i>Pee Dee Health Care v. Thompson</i>), dated August 8, 2012	1145

CORRESPONDENCE

Megna's letter to Truslow, (<i>Anasti v. Wilson, et al</i>), dated September 11, 2007	1156
Matthews' letter to court, (<i>Anasti v. Wilson</i>), dated April 10, 2008	1163
Megna's email chain with Ballard Law Firm, dated October 12, 2010	1165
Megna's Letter to Beck, dated August 8, 2011	1168
Megna's letter (with attachments) to court regarding status conference, November 3, 2011 ...	1170
Truslow's letter to Megna, dated January 20, 2012.....	1181
Ballard's letter to Suggs, dated February 17, 2012 filing redacted ODC complaint as an exhibit to motion for sanctions.....	1184
Megna's letter to Truslow, dated March 8, 2012.....	1196
Judge Baxley's Email, dated March 16, 2012	1198
Appellant's letter to Judge Baxley and Synopsis, dated March 19, 2012.....	1217
Ballard's letter to Suggs dated March 26, 2012 filing second ODC complaint as an exhibit to motion for sanctions.....	1272
Megna's email to court, dated May 14, 2012	1291
Judge Baxley's letter, dated 7-26-12	1298

DISCOVERY

Discovery by Megna to Truslow and Earle, February 2012.....	1303

OTHER DOCUMENTS

Appellate caption for PDHC, Megna, et. al., Case No. 2012-213052	1334
Lower Florence County Hospital District d/b/a Lake City Community Hospital et al. v. Mid-Carolina Hospital Group, LLC et al. caption.....	1338
Certificate of Counsel	1339

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

JAMES A. ANASTI,)

Docket Number: 2007-CP-40-0576

Plaintiff,)

vs.)

**ORDER GRANTING PARTIAL
SUMMARY JUDGEMENT
IN FAVOR OF PLAINTIFF**LANCE WILSON,
WILLIS GOODWIN,
GINA L. ANASTI LEE,
RICHLAND COUNTY
CLERK OF COURT,

Defendants.)

THIS MATTER CAME BEFORE ME on September 19, 2007 pursuant to Plaintiff's Motion for Summary Judgment, as well as two separate Motions to Compel Discovery filed by Plaintiff June 4, 2007 and July 12, 2007.¹ Plaintiff was represented by Douglas N. Truslow; Defendants Wilson and Goodwin were represented by Thomas Earle and Defendant Lee was represented by Tony Megna. The Richland County Clerk of Court is merely a stake holder of funds received from the South Carolina Department of Transportation in a related condemnation action (2000-CP-40-/filed December 16, 2002) and consequently it did not need to appear.

In support of his Motion for Summary Judgment, Plaintiff submitted Affidavits, pleadings, portions of significant depositions and requested that the Court take Judicial Notice of other documents that are of record. Defendants Wilson and Goodwin submitted no Affidavits, pleadings, depositions, or other documents and made no argument in Plaintiff's Motion for Summary Judgment. Defendant Lee submitted an affidavit that was consistent with the format

¹ Plaintiff suggested that his Motions to Compel Discovery should be heard, if necessary, subsequent to the resolution of Summary Judgment in the interests of judicial economy, and hence they were not addressed at this time.

required by SCRCP 56(e)², yet lacked the content necessary to establish specific facts showing that there is a genuine issue for trial.

From a careful review of all the evidence presented, as well as arguments of counsel, it appears that Plaintiff is entitled to partial Summary Judgment as a matter of law in that there is no genuine issue of material fact and that Plaintiff is entitled to judgment as a matter of law.

FACTS

According to the records before the Court, the following are uncontested facts:

- I. The property in question in this lawsuit is commercial property located at 2325 Two Notch Road, Columbia, SC. The property has been used as commercial property since it was built in the 1960's.
- II. On November 17, 1978 Laura Corvi deeded real estate located at 2325 Two Notch Rd. in Richland County, South Carolina (hereinafter the "Two Notch real property") to Albert Anasti and his son James Anasti (Plaintiff herein) as tenants in common with right of survivorship (See Deed Book 482, pages 756 and 757)
- III. On October 24, 1995 Albert Anasti died leaving as survivors his son, Plaintiff James Anasti and Defendant Gina Anasti Lee.
- IV. On November 7, 1996 Defendant Lee filed and recorded a deed of distribution purportedly giving herself individually the entire Two Notch real property (see Deed Book 1347, page 0991).

² Plaintiff has objected that the affidavit submitted by Defendant Lee was in a format inconsistent with SCRCP 56(e). This objection has no merit. Under Rule 56(e) the affiant must be competent to testify to the matters contained in the affidavit and the court may at its discretion allow affidavits submitted with a Motion for Summary Judgment "to be opposed by... further affidavits." SCRCP 56(e). In this instance Defendant Lee submitted an affidavit at the request of the court in response to Plaintiff Anasti's affidavit in support of his Motion for Summary Judgment. Defendant Lee's affidavit was properly sworn, served to the parties, and it is not disputed that defendant Lee was competent to testify. Thus, the objection to the format of Defendant Lee's affidavit is overruled.

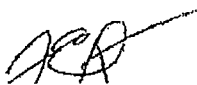
- V. On January 6, 2000, Defendant Lee in ostensible reliance on her deed of distribution and will of Albert Anasti purported to sell and deed the Two Notch real property to Plaintiff's Lance Wilson and/or Willis Goodwin by way of "owner financing." That deed is recorded at Deed Book 00373, pages 0223 through 0225.
- VI. On November 12, 2004 Defendant Wilson filed action(s) (04-CP-40-5333/5334) in which she alleged, inter alia, that Defendant Lee did not have sufficient title so as to be able to convey fee simple marketable title of the Two Notch real property to either he or Defendant Goodwin. In turn Defendant Lee filed a Third Party Action on March 25th, 2005 (Cross Claim) alleging that, inter alia, the attorney attending to her Two Notch real property real estate closing with Defendant Wilson and/or Goodwin had deviated from acceptable standards by certifying that she had good marketable fee simple title. Significantly, Plaintiff herein was not made a party to any of those lawsuits, which were dismissed under SCRCP 40(j) and later reinstated (yet to be heard).
- VII. On January 26, 2007 Plaintiff filed within action seeking, inter alia, quieting of title to the within Two Notch real property.
- VIII. In her deposition of June 26, 2007, Defendant Lee swore under oath the following:
- a. She had not been on the premises since the mid 1980's (TR29, L4-13)
 - b. She wanted to be honest and not take something that was not hers (TR 41, L 12-18).
 - c. That Plaintiff now owns one half of the Two Notch real property in dispute herein (TR 68, L 24 and 25),
 - d. Her claim to the Two Notch real property is predicated on Albert Anasti's will (TR 68, L24 and 25)

- e. Her deed of distribution relative to the Two Notch real property was acknowledged by her to be defective (TR 77, L 2-14 and TR 63, L 11-17),
- f. She relinquished and sold her complete interest e.g. any interest she may have had in the Two Notch real property in 2000 and after that she didn't own it anymore (TR 83, L 16-25),
- g. She did not own the Two Notch real property for ten years and at most only owned it for four years and a couple of months (TR 84, L 9-14),
- h. She does not rely on any facts in alleging Laches and does not know what Estoppel means (TR 89, L 2-11),
- i. Her whole case would be based on the deed of distribution and will of her father (TR 89, L 23-25) (whose interest the Court finds ended at his death),
- j. Plaintiff was never Ousted from the Two Notch real property (TR 90, L 12-21, TR 91, L 7-9, and TR 92, L 1-7) and Plaintiff and his father Albert Anasti enjoyed a very good relationship until he died (TR 91, L 10-13),
- k. Defendant Lee does not know of any facts to support her claim of a Presumption of Grant (TR 923, L 14-24),
- l. Defendant Lee has claimed damages and attempted to foreclose against Defendant Wilson relative to Two Notch real property, to which she apparently now asserts she had no title (and hence could not sell).

IX. In early January, 2000, the Dallis Law Firm, P.A., a real estate law firm located in Columbia, SC, certified that the Defendant Lee had legal title to the Two Notch Property. The Defendant Lee signed a general warranty deed to the property that was prepared by

the Dallis Law Firm. The Defendant Lee retained a mortgage on the property. (See deposition of Willis Goodwin, page 10, lines 3-8).

- X. On January 28, 2007, the Plaintiff filed the current lawsuit against the Defendant Lee asking this Court to declare him the legal title owner of the Two Notch Property.
- XI. In her supplemental Affidavit, dated October 5, 2007, Defendant Lee has asserted:
- a. Following her father's death on October 24, 1995, Defendant Lee continued to lease the property as commercial property and leased it to the same tenants who had been leasing it while her father was alive. (Paragraph 1 of Defendant Lees supplemental affidavit)
 - b. Defendant Lee is asserting her claim to title to the Two Notch property by adverse possession under Color of Title. The filed Deed of Distribution establishes at the minimum Defendant Lee's intent to assert her claim of adverse possession to the property against the world, including her brother by color of title. In addition, her brother also had constructive notice of her claim to the Two Notch property as a result in his participation in Probate Court proceedings that were initiated immediately following her father's death in 1995. (Paragraph 2 of Defendant Lees affidavit)
 - c. Defendant Lee's brother is barred from recovering any property improperly distributed to her by virtue of S.C. Code Section 62-3-1006 that bars any such claim "at the later of three years after the decedent's death or one year after the time of distribution thereof." (Paragraph 3 of Defendant Lees affidavit)
 - d. Defendant Lee's husband and defendant Lee replaced the roof on the building that is located on the Two Notch property in the early 1990's and made certain that the



lessees performed other general maintenance on the property. (Paragraph 5d of Defendant Lees affidavit)

- e. Defendant Lee continuously made certain the lessees maintained the property in good repair and collected the rent. (Paragraph 5(k) of Defendant Lees supplemental affidavit)
- f. Defendant Lee maintained insurance on the property. (Paragraph 5(l) of Defendant Lees supplemental affidavit)
- g. On January 2, 2000, the Dallis law firm conducted the closing where defendant lee signed a deed to sell the property. (Paragraph 5i).

LAW/ANALYSIS

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. In determining whether any triable issues of fact exists for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Fleming v. Rose, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002); Conner v. City of Forest Acres, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002).

Defendant Lee claims superior title by means of adverse possession under color of title. In order to assert a claim of adverse possession, the party must hold the premises adversely to the legal title for ten years before the commencement of the action. See S.C. Code § 15-67-210 (1976); S.C. Code 15-67-220(1976). If the party makes a claim under color of title, the party must also continuously occupy and possess the premises described in the title for ten years. See

RA

S.C Code 15-67-220(1976). A party occupies and possesses the property adversely if the party uses the property for the ordinary use for which the land is fitted. *See S.C. Code 15-67-230(3)(1976); Bardin v. Commercial Ins. & Trust Co.*, 82 S.C. 358, 64 S.E. 165 (1909) (Under this section [former Code 1962 §. 10-2423], possession is adverse and continuous where land, though not cultivated or enclosed, is continuously used for the supply of fuel and timber, the ordinary use for which the land is fitted.); *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61, 65-66 (1961) ("Acts of adverse possession with regard to open, wild, unfenced lands not capable of cultivation, are only required to be exercised in such manner as is consistent with the use to which the lands may be put and the situation of the property admits of without actual residence or occupancy.").

According to the undisputed facts of the case, Defendant Lee claim of title was made November 7, 1996, when she filed and recorded a deed of distribution purportedly giving herself individually the entire Two Notch real property. Defendant Lee leased the property to tenants, who paid her rent. Defendant Lee made sure the tenants maintained the property. On January 2, 2000, the Dallis law firm conducted the closing where Defendant Lee signed a deed to sell the property. In the light most favorable to the non-moving party, Defendant Lee adversely possessed the property from November 7, 1996 to January 2, 2000, a period of four years, one month and 26 days.

Defendant Lee claims that her actions following the January 2nd, 2000 sale of the property are sufficient to establish a claim for adverse possession. I disagree. After January 2nd, 2000 the defendant did not assert ownership of the property; the defendant did not collect rent from the tenants, the defendant did not maintain the property, and the defendant did not claim that she possessed a deed to the property. The defendant maintained owner financing on the

property, essentially a mortgage, and kept insurance on the property. The defendant did not use the property for the ordinary use for which the land is fitted following January 2, 2000. Further the last tax record which specifically mentions the Two Notch Road property is in 2001. See Supplemental Income and Loss Form 2001 attached to Defendant Lee's supplemental affidavit. There is no specific reference to the Two Notch road property in any of the post 2001 tax records. The mere fact that the defendant had a mortgage on the property and kept insurance on the property is insufficient to establish a claim of adverse possession. Therefore, I find that the Defendant did not adversely possess the property for a period of ten years as required by statute.

Since I have decided Defendant Lee did not meet the statutory minimum period required for adverse possession, I do not need to discuss the effect of any notice by Plaintiff Anasti.

It is undisputed that in 1978 Laura Corvi deeded the Two Notch real property to Albert Anasti and his son James Anasti as tenants in common with a right of survivorship. Further, it is undisputed that shortly after October 24, 1995 a South Carolina probate court directed that in accordance with Albert Anasti's will, Defendant Lee inherited the Two Notch Road Property. Future interest created by tenancy in common with right of survivorship vest on the death of the other party. Smith v. Cutler, 366 S.C. 546, 623 S.E.2d 644. Upon the death of Albert Anasti the property passed immediately to his son, Plaintiff Anasti, as tenant in common with right of survivorship. Albert Anasti's act of leaving the property to his daughter did not destroy the tenancy in common with right of survivorship. See Id. ("Future interests created by a tenancy in common with a right of survivorship are indestructible, i.e. not subject to defeat by the unilateral act of one cotenant"). Therefore, I find the Two Notch Road property was not part of the probate estate of Albert Anasti, but property of Plaintiff Anasti, when the probate court made its ruling.



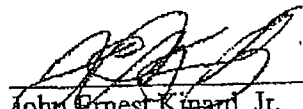
Does the circuit court have jurisdiction to overturn a distribution by the probate court when the probate court lacked subject matter jurisdiction to make the distribution? Defendant Lee claims that Plaintiff Anast is barred from recovering any property improperly distributed to Defendant Lee by virtue of S.C. Code Section 62-3-1006 that bars any such claim "at the later of three years after the decedent's death or one year after the time of distribution thereof."³ This matter does not come before the court as an appeal from the probate court's decision, so this court is not deciding the case on the basis of its appellate jurisdiction, but rather under its general jurisdiction. The circuit court has the authority under its general jurisdiction to determine the ownership of real property. Therefore, I find the circuit court sitting in equity is within its general subject matter jurisdiction to make a determination about the ownership of the property, if the probate court lacks subject matter jurisdiction to make a distribution of the property.

Did the probate court have subject matter jurisdiction to distribute the Two Notch road property or did the probate court act outside its jurisdiction when it distributed the Two Notch Road Property? According to section 62-1-302, "the probate court has exclusive subject matter jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons." The probate court does not have subject matter jurisdiction to distribute property, which is not part of the estate of the decedent. Therefore, the probate court wrongfully distributed property that did not belong to a decedent, and the probate court's ruling is void for lack of subject matter jurisdiction.

³ Section 62-3-1006. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) if a claim by a creditor of the decedent, at one year after the decedent's death and (ii) any other claimant and any heir or devisee, at the later of three years after the decedent's death or one year after the distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

Now therefore it is Ordered: (a) Plaintiff is granted Summary Judgment as to Defendant Lee's defenses, (b) Plaintiff is granted Summary Judgment as to his claims against Defendants Wilson and Goodwin, (c) Title to the within Two Notch real property is certified and found to be the exclusive real property of Plaintiff and Plaintiff is granted title to the within property located at 2325 Two Notch Road, Columbia, South Carolina and described in Deed Book 782, page 756 is Confirmed and Ordered as belonging solely to the Plaintiff, (d) Plaintiff shall be and is hereby entitled to such sums as are being held by the Richland County Clerk of Court, and (e) the case shall proceed to trial to the issue of damages to be awarded to Plaintiff.

AND IT IS SO ORDERED.


John Ernest Kinard, Jr.
Presiding Judge
Fifth Judicial Circuit
Court of Common Pleas

Columbia, South Carolina

10/26, 2007

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

JUDGMENT IN A CIVIL CASE
 CASE NO: 2007CP4000576

James A Anastl

vs.

Lance Wilson

Plaintiff

Defendant

CHECK ONE:

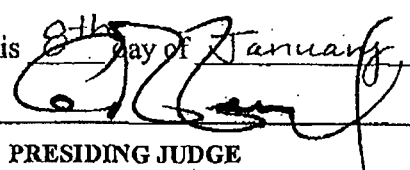
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK 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:

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☒ Statement of Judgment by the Court:

Stayed pending appeal of partial Summary Judgment.

Dated at Columbia, South Carolina, this 8th day of January, 2008.


 PRESIDING JUDGE

This judgment was entered on the 9th day of Jan, 2008, and a copy mailed first class this 9th day of Jan, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow

ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas George Earle
 Tony Ray Megna

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

s/ BARBARA A. SCOTT
 Clerk of Court

The South Carolina Court of Appeals

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina
L. Anasti Lee, Richland County Clerk
of Court,

Defendants,

Of Whom Lance Wilson, Willis
Goodwin and Richland County Clerk of
Court are

Respondents

And Gina L. Anasti Lee is the

Appellant.

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No. 2007-CP-40-00576

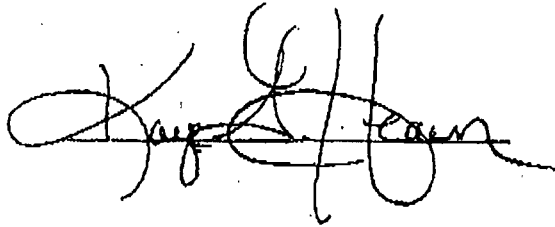
ORDER

Appellant appeals from an order of the trial court granting summary judgment in favor of the Respondent. Respondent filed a motion to dismiss the appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a return. In the return, counsel for Appellant, Tony Megna, claims his Rule 59(e) motion was filed within ten days after he actually received the trial court's order. Megna also accuses Respondent's counsel, Douglas Truslow, of filing a frivolous motion and acting inappropriately. Megna requests we admonish Truslow and award attorneys' fees and costs.

After careful consideration of the motion to dismiss, return, and reply, the matter is remanded to the circuit court for an evidentiary hearing to determine when Megna received the order granting summary judgment.

Because we find Respondent's motion to dismiss raises a bona fide question about the timing of Appellant's Rule 59(e) motion, Appellant's requests for an admonishment of Truslow and an award of attorney's fees and costs are denied.

AND IT IS SO ORDERED.



Columbia, South Carolina

3/18, 2008

cc: Tony Ray Megna, Esquire
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

FILED

3/18/08 *dlp*

CASE NO: 2007CP4000576

Lance Wilson

Defendant

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:

☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2008.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2008, and a copy mailed first class this 8th day of April, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

Thomas George Earle
Tony Ray Megua

ATTORNEY(S) FOR THE DEFENDANT(S)

~~S/BARRABA A. SCOTT~~

Clerk of Court

SCRCP APP-24/FORM 4

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JAMES A. ANASTI,)
Plaintiff/Respondent,)
vs.)
LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
And RICHLAND COUNTY)
CLERK OF COURT,)
Defendants,)
OF WHOM GINA L. ANASTI LEE)
Is Appellant.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-6062

ORDER

BARBARA A. SCOTT
S.C.C. & G.S.

2008 APR -3 PM 4:13

FILED

THIS MATTER CAME BEFORE ME on April 3, 2008 pursuant to an Order of the South Carolina Court of Appeals dated March 18, 2008 requiring an evidentiary hearing as to when Appellant Gina Lee's counsel (Megna) received the Order granting Summary Judgment herein. Present representing the Plaintiff James A. Anast (Respondent) was Douglas N. Truslow. As well, Thomas Earle was present representing Wilson and Goodwin. Neither the Appellant nor her attorney (Megna) were present, and in that regard, the Court was presented with documentary proof that Megna was put on specific notice of the date and time of the within hearing on March 28, 2008. Regardless of Appellant's and Megna's absence however, I have considered all previous submissions to the Court by or on behalf of Appellant, including pleadings, affidavits, evidence and memoranda presented to the South Carolina Court of Appeals.¹

Having considered the record, including the pleadings, affidavits, memoranda and evidence presented, as well as the representations and arguments of counsel who were present, I find and conclude as follows:

¹ The Clerk of Court was merely the holder of certain funds deposited pursuant to a South Carolina Department of Transportation Condemnation (case 2002-CP-40-6062) and its presence was not required.

1. The Honorable Ernest Kinard issued an Order granting James Anasti (hereinafter Anasti) Summary Judgment on Friday, October 26, 2007.
2. The Order granting Summary Judgment was promptly and properly filed and entered into the Richland County Clerk of Court's records on October 26, 2007, then mailed to respective counsel by the Richland County Clerk on Monday, October 29, 2007 and received by Anasti's and Goodwin and Wilson's attorneys on November 1, 2007 and October 31, 2007 respectively. The said Order was likewise received by Megna on or about the same date as received by other counsel of record, but pursuant to S.C.R.C.P. 6(e), and giving Megna the benefit of the doubt, receipt of written notice of the Order granting Summary Judgment shall be and is deemed effective as of November 3, 2007.
3. A closely related case involving issues pertaining to the same real estate at issue herein e.g. "companion case" in which Megna was involved as counsel for Lee (Wilson and Goodwin v. Lee, 04-CP-40-5333) was set for trial on October 29, 2007; Megna has represented in writing that he appeared in Court at that time and that he checked on the status of the instant case on that date. I find and conclude that, if he did as he represented, he was on further notice of the Order granting Summary Judgment being issued on October 26, 2007.
4. On or about November 7, 2007, Anasti's counsel provided Megna with additional written notice that the Court had previously issued an Order granting Summary Judgment by virtue of a letter and Motion for Rule 11 sanctions that was duly served.
5. On November 20, 2007, Megna filed a Motion for Reconsideration of the October 26, 2007 Order granting Summary Judgment to Anasti, which was received by Anasti's counsel on November 26, 2007 and received by Judge Kinard on December 3, 2007.
6. Relative to receipt of the written notice of the Court's Order granting Summary Judgment that was mailed by the Richland County Clerk of Court on October 29, 2007, there is a rebuttable presumption of fact of

prompt receipt of properly addressed mail with postage attached, Bakala v. Bakala, 576 SE2d 156, 352 SC 612 (2003); Weir V. Citicorp National Services, 435 SE2d 864, 312 SC 54 (1993) e.g. the "mailbox rule", and Megna has not contested that the Court's Order granting Summary Judgment was properly mailed, nor has he denied actual receipt. Therefore, it is beyond dispute that the Court's Order was both mailed and received by Megna. However, Megna appears to argue that the written notice was not mailed on the date represented by the Clerk of Court, or that it was not delivered in a prompt manner. The Court may take Judicial Notice of the usual course of the mails CJS Evidence §43. Also, it is noted that failure to acknowledge receipt, ignorance of delivery or failure to read one's mail does not nullify the fact or presumption of receipt to be afforded under the circumstances. See CJS Evidence §155, et seq.

7. Megna is not engaged in the full time practice of law. Rather, he practices sporadically from his home in Blythewood, S.C. (Richland County), where he receives his mail, prepares his own pleadings and correspondence and personally undertakes responsibility for calendaring significant dates and deadlines. Further, Megna is engaged in employment outside of the Richland County area and he regularly travels out of the area during normal week days.
8. Taking into consideration the fact of the filing of Megna's Motion for Reconsideration, it is beyond a doubt that he received the Court's Order granting Summary Judgment but, in the Motion for Reconsideration, Megna did not set forth any date of receipt, irregular or otherwise, of the Court's Order granting Summary Judgment, nor has he ever produced the envelope in which said Order was delivered to him, nor has he produced any document time stamping the date of receipt of the Order, nor has he provided any other evidence supporting his claim of late receipt of the Order (such as documentation from the United States Post Office, or a letter to the Court or opposing counsel notifying them of late receipt), excepting his Affidavit(s), pleadings and written memoranda (subsequent

to his Notice of Appeal) that I have considered. In fact, the first time Megna raised any issue regarding a late receipt of the Court's Order was at the time he filed the Notice of Appeal (that was out of time).²

9. The Court denied Lee's Motion for Reconsideration *sua sponte* on December 5, 2007.
10. On January 4, 2008, Lee filed the Notice of Intent to Appeal.
11. I find and conclude that Megna received written notice of the Court's Order much more than ten days prior to the filing of his Motion for Reconsideration, even when all "grace periods" are factored in pursuant to S.C.R.C.P. 6(e).
12. Perhaps most compelling, in the closely related case that was litigated on December 5, 2007 e.g. the "companion case", Megna represented to the Court and opposing counsel that:

"within a week after he (Judge Kinard) filed the Order, a week to ten days after he filed the Order... the Motion to Reconsider was filed".

Thus, by his own words, Megna acknowledged and admitted that he received the Order dated October 26, 2007 within a week to ten days after it was issued, (but he seriously misrepresented the time when he filed his Motion for Reconsideration). And just as egregious if not more so, in the instant case Megna now makes representations relative to the date he received the Order granting Summary Judgment inconsistent with his prior adamant and strident representations made to the trier of fact (Judge Thomas W. Cooper) and opposing counsel in the trial of the "companion case".³

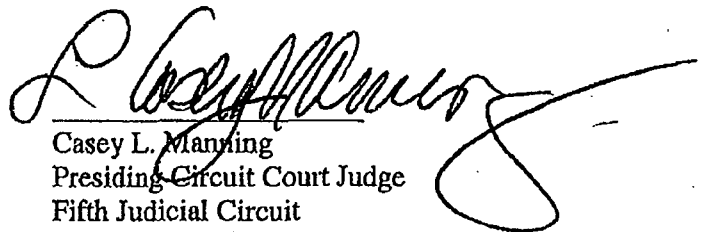
13. I find and conclude that Megna is not at all credible as to any contested issue, specifically including the date he now (in this case) alleges he received the Court's Order granting Summary Judgment, and he is and

² On December 5, 2007 opposing counsel in the "companion case" alerted Megna that his Motion for Reconsideration was too late.

³ I have considered in full context all appropriate pages of the transcript in the "companion case" that is of record as Exhibit 10 to Respondent's Memorandum in Support of the Motion to Dismiss.

should be equitably, judicially and legally estopped to deny timely receipt of the Court's Order dated October 26, 2007 within a week to ten days after the Order was filed e.g. receipt by November 6, 2007 at the latest. In essence, I do not believe the assertions of Megna relative to any contested issue and find that Megna had written notice of Court's Order granting Summary Judgment on November 1, 2007, on November 3, 2007 and by November 6, 2007 and on November 12, 2007 factoring in all possible "grace periods" in a light most favorable to him and without regard to his claim of having personally checked with the Clerk of Court on the status of the case on October 29, 2007. In making these findings and conclusions, I have considered Megna's serious and repeated inattention to detail, which is well documented and of record, as well as his repeated and gross misrepresentations to the Court, as well as his unwarranted, unjustified and untrue attacks on opposing counsel who clearly appears to have been remarkably restrained and professional in the representation of his client and in dealing with Megna under the circumstances.

AND IT IS SO ORDERED.


Casey L. Manning
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina

April 3, 2008

The South Carolina Court of Appeals

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina
L. Anasti Lee, Richland County Clerk
of Court,

Defendants,

Of Whom Lance Wilson, Willis
Goodwin and Richland County Clerk of
Court are

Respondents

And Gina L. Anasti Lee is the

Appellant.

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No. 2007-CP-40-00576

ORDER

Respondent filed a motion to dismiss the above-captioned appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a Return, claiming his Rule 59(e) motion was timely and accusing Respondent's counsel of filing a frivolous motion and acting inappropriately.

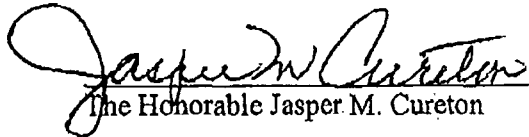
By order dated March 13, 2008, this Court remanded the matter to the circuit court for an evidentiary hearing to determine when Appellant's attorney received the order granting summary judgment. After conducting a hearing, the circuit court found "beyond a doubt" Appellant's attorney, Tony Megna, received written notice of the underlying order "much more than ten days prior to the filing of his Motion for Reconsideration." This Court received the circuit court's

order on April 4, 2008, and Appellant's appeal was dismissed as untimely on April 17, 2008.

However, unbeknownst to this Court, the attorney for Appellant filed a Rule 59(e) motion on April 7, 2008, arguing he never received notice of the evidentiary hearing.

Appellant has now filed a motion for rehearing, requesting this Court reconsider our order dismissing the appeal. We once again remand the case to the circuit court for a hearing on Appellant's pending Rule 59(e) motion. The Richland County Clerk of Court is responsible for notifying the parties when the hearing is scheduled. After the circuit court rules on the pending Rule 59(e) motion, this Court will consider Appellant's motion for rehearing.

AND IT IS SO ORDERED.

 , A.J.
The Honorable Jasper M. Cureton

FOR THE COURT

Hearn, C.J., Thomas, J., and Cureton, A.J.

Columbia, South Carolina

June 19, 2008

cc: Tony Ray Megna, Esquire
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

FILED

6/20/08 dhg

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,)

WILLIS GOODWIN,)

GINA L. ANASTI LEE,)

And RICHLAND COUNTY)
CLERK OF COURT,)

Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

ORDER

RICHLAND COUNTY
FILED
2009 APR -1 PM 3:51
JEANETTE W. McBRIDE
C.C.P. & G.S.

IN RE:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

James A. AnastI,.....Respondent,

v.

Lance Wilson, Willis Goodwin,

Gina AnastI Lee, Richland

County Clerk of Court,.....Defendants,

Of Whom Lance Wilson, Willis Goodwin and

Richland County Clerk of Court are.....Respondents,

And Gina L. AnastI Lee is the.....Appellant.

THIS MATTER CAME BEFORE ME on October 2, 2008, pursuant to the South Carolina Court of Appeals Order dated June 19, 2008, in which this Court was directed to conduct a hearing on Appellant Gina L. Anasti Lee's Motion to Alter or Amend this Court's Order dated April 3, 2008, said Motion being filed April 7, 2008 pursuant to SCRCP 59(e).^{1 2}

FINDINGS, CONCLUSIONS AND DISPOSITION

Having heard extensive arguments and carefully considered all supporting documents and pleadings, as well as all the asserted basis(s) for Appellant's pending 59(e) Motion, I find and conclude that it should be and is denied in that;

- I. Appellant did in fact receive notice of the hearing held April 3, 2008 that was in writing, properly transmitted, reasonable under the circumstances and in compliance with due process.
- II. Appellant did in fact timely receive the Order granting partial Summary Judgment dated October 26, 2007, as determined and set forth in this Court's Order dated April 3, 2008, but she failed to thereafter timely file a 59(e) Motion to Alter or Amend (eg. her untimely 59(e) Motion of November 20, 2007, relative to the Court's October 26, 2007 Order) and she failed to timely file a Notice of Appeal (untimely filed on January 4, 2008).
- III. For the reasons set forth in the Order dated April 3, 2007, which are adopted by reference herein.
- IV. For the reasons set forth in the Order herein.

¹ The pending 59(e) Motion filed April 7, 2008 was not previously considered because (a) the case was then on Appeal and had been remanded on March 18, 2008 for an evidentiary hearing only, (b) subsequent to this Court's Order dated April 3, 2008, the Appeal was dismissed by Order dated April 16, 2008, (c) Appellant filed a Motion pursuant to SCACR 221 on April 22, 2008, apparently confirming that she was taking the position that the matter was then exclusively before the Court of Appeals for a resolution, (d) Appellant had previously submitted (in writing) that this Court was without jurisdiction to hear her 59(e) Motion, (e) no copy of the 59(e) Motion was submitted to me by the moving party, as required by Rule 59(g), prior to dismissal of the Appeal and (f) for the reasons that are apparent for footnote 6.

² In Appellant's Rule 59(e) Motion, she seeks to have this Court set aside its April 3, 2008 Order as improvidently granted and to hold an evidentiary hearing as to when her counsel (Megna) received the Court's Order dated October 26, 2007, granting partial Summary Judgment.

PROCEDURAL HISTORY

For the purposes of the within Order, the pertinent procedural history of the case reflects that;

- a) Partial Summary Judgment was granted to Respondent (Plaintiff herein) James Anasti by Order of the Honorable J. Ernest Kinard, Jr. dated October 26, 2007. That Order was filed on October 26, 2007 and mailed to respective counsel by the Richland County Clerk of Court on Monday, October 29, 2007.
- b) On November 20, 2007, Appellant filed a Motion to Alter or Amend Judge Kinard's Order pursuant to SCRPC 59(e).³
- c) On December 5, 2007, Judge Kinard denied Appellant's Rule 59(e) Motion, *sua sponte*.⁴
- d) On January 4, 2008, Appellant filed a Notice of Intent to Appeal.
- e) On January 22, 2008, Respondent Anasti filed a Motion to Dismiss Appellant's Appeal on the grounds that it was not timely filed.
- f) On March 18, 2008, the South Carolina Court of Appeals remanded the matter, with written notice to all counsel, for an evidentiary hearing as to the date when Appellant Lee's counsel (Megna) received the Order granting partial Summary Judgment. The accompanying transmittal letter from the Clerk of Court of the Court of Appeals to respective counsel directed that Respondent's counsel was to schedule a hearing "as soon as possible". Thereafter, Respondent's counsel requested (in writing) a hearing, and Appellant's counsel was copied with that request.
- g) On March 28, 2008 an evidentiary hearing date was set by this Court for April 3, 2008, and Respondent Anasti's counsel was directed to notify opposing counsel of the hearing date, which I have found and concluded

³ Appellant's Motion did not set forth an irregular date of receipt of Judge Kinard's Order granting partial Summary Judgment (or any date of receipt whatsoever for that matter).

⁴ Appellant's November 20, 2007 59(e) Motion was not received by Judge Kinard until December 3, 2007 because Appellant had addressed and mailed it to an incorrect address for Judge Kinard.

that he did, promptly and properly by, the most reasonable means under the circumstances.⁵

- h) On April 3, 2008, the said evidentiary hearing was held, an Order was issued by the undersigned and it was promptly filed with the South Carolina Court of Appeals on April 4, 2008.
- i) On April 7, 2008, counsel for Appellant (Megna) filed yet another Motion with the Richland County Clerk of Court pursuant to SCRCP 59(e), requesting a rehearing of the evidentiary hearing of April 3, 2008, and representing that (a) he never received any notice of the said evidentiary hearing and (b) no notice had been sent.
- j) On April 10, 2008 Appellant's counsel wrote to the Court, asserting that all motions were stayed pending the Appeal.
- k) On April 16, 2008, the South Carolina Court of Appeals dismissed Appellant's Appeal.
- l) On April 22, 2008, Appellant filed a Motion to Rehear, Alter or Amend pursuant to SCACR 221(a) and at that time did Appellant make the Court of Appeals aware that her 59(e) Motion of April 7, 2008 had been filed.
- m) By Order dated June 19, 2008, the Court of Appeals again remanded the matter for a hearing on Appellant's pending (April 7, 2008) 59(e) Motion, and the within Order is issued pursuant to that Order of the South Carolina Court of Appeals.⁶

⁵ Appellant's counsel (Megna) has asserted, *inter alia*, that at both his law office/home and at his non-law office business he was experiencing difficulty receiving mail from the U.S. Post Office in a timely manner (and relied on that assertion as a basis for his apparent late filing of Appellant's November 20, 2007 59(e) motion, as well as his apparent late filing of Appellant's Notice of Appeal), and he also asserted that he had purposely chosen to limit or avoid contact with Anastasi's counsel. While rejecting that Megna had any reasonable basis for purposefully avoiding contact with opposing counsel, I have found that written notice to Megna of the evidentiary hearing ultimately held on April 3, 2008 by fax at the same fax number he had used for years, with proof of both a successful fax text confirmation and a sent/received fax receipt journal is and was clearly appropriate notice under the circumstances with which Respondent's counsel was faced, especially given the arguments, affidavits and documents previously submitted to the South Carolina Court of Appeals and this Court, and also given the written notice to Megna on March 18, 2008 that a hearing was to be held "as soon as possible".

⁶ Subsequent to the Court's Order of April 3, 2008 and subsequent to dismissal of the Appeal on April 16, 2008, Ben Matthews was added as co-counsel with attorney Megna on Appellant's behalf and upon the matter being remanded on June 19, 2008 for another evidentiary hearing, Megna then requested protection from the Court (for vacations) for both he and Matthews for the period of June 27, 2008 through July 27, 2008. Then, the day before the matter was scheduled to be heard (July 22, 2008), Richard Harpootlian was

NOTICE OF THE APRIL 3, 2008 HEARING

As a basis(s) for Appellant's pending 59(e) Motion to Alter or Amend, Appellant's counsel (Megna) first asserted that no notice of the April 3, 2008 hearing was sent and that he did not receive any notice whatsoever for the hearing. Specifically, Megna asserted:

1. he "*completely denies the existence of any notice provided*" to him, "*by any means*" (emphasis added by the Court).

And;

2. "*Any assertion that the undersigned had any notice of a March 28, 2008 (sic) hearing before this Court is absolutely untrue and completely false.*" (emphasis added by the Court)

And;

3. "*...no such notice has been sent* (emphasis added by the Court) *to his office or home.*"⁷

I find each of those assertions by Megna to be untrue and in fact belied by overwhelming evidence to the contrary.

On March 28, 2008, this Court set the date of April 3, 2008 for the evidentiary hearing relative to when Megna received Judge Kinard's October 26, 2007 Order granting partial Summary Judgment (which Order Megna first claimed to have not timely received on January 4, 2008 -- long after his November 20, 2007 Rule 59 (e) Motion was denied by Judge Kinard, long after misrepresenting to Judge Thomas W. Cooper, Jr. and opposing counsel on December 5, 2007 that he had in fact filed a 59(e) Motion within a week to ten days of the date the Summary Judgment Order was filed and only after being put on specific notice that his November 20, 2007 59(e) motion was untimely (see transcript in the "companion case"/Arbitration hearing of December 5, 2007, page 193 in conjunction with page 23), and directed Respondent Anasti's counsel to notify opposing

added as additional co-counsel for Appellant and he was permitted to set a time for the hearing that would allow him to be prepared and which would not conflict with other counsel(s)' schedules, with the result being that there were further delays in having the matter concluded. Matthews did not appear for the within hearing and no reason was given for his absence.

⁷ At all pertinent times, Megna's only "law office" was his home at 1815 Fulmer Rd., Blythewood, SC.

counsel, which I find beyond a doubt that he promptly did in writing by fax dated March 28, 2008. I further find and conclude that the March 18, 2008 written notice from the Court of Appeals (which Megna does not deny timely receiving) that a hearing was to be set as soon as possible and also specifically the written, faxed notice of March 28, 2008 for the April 3, 2008 hearing that were provided to Megna were both proper and reasonable under the circumstances. Evidence proving both transmission to and receipt by Megna on March 28, 2008 of written notice for the April 3, 2008 hearing has clearly been established by successful fax text transmission confirmation to his published fax number (753-9004) and also by sent/received fax journal confirmation to the same number. The March 28, 2008 notice of hearing was in fact sent by fax on that day to the exact same fax number Megna had listed and published in the South Carolina Bar Directory, on his correspondence, on pleadings previously prepared by him and subsequently on his signed April 7, 2008 59(e) Motion Cover Sheet. Without a doubt, other faxes had previously and/or subsequently been transmitted to (and received by) Megna by Respondent's counsel and/or other members of the South Carolina Bar at the exact same fax number without any complaint, objection or attempt by Megna for correction, and there was no evidence presented reflecting that Megna had notified the Clerk(s) of Court, opposing counsel, counsel in other cases or the South Carolina Bar that notice should not be sent to that fax number (or that Megna was not using that fax number).

In a letter faxed to Respondent's counsel (by Megna from an undisclosed fax number) dated April 22, 2008, Megna clearly appears to have ultimately acknowledged that Respondent's counsel did in fact send him specific written notice on March 28, 2008 (for the April 3, 2008 evidentiary hearing) to his law office fax number (753-9004), and Megna cannot truthfully deny that notice of the April 3, 2008 evidentiary hearing was in fact sent to and received by him at the very same fax number he had listed and represented to be his law office fax number (753-9004). However, Megna then asserted in his April 22, 2008 letter, as the basis for non-appearance at the evidentiary hearing on April 3, 2008, that Respondent's counsel had utilized a fax number (753-9004) for Megna *"that is not in active use"* and that *"the recent confusion over the April 3, 2008 Order entered by Judge Manning was apparently caused by your (Respondent's*

counsel) office faxing me notice on March 28, 2008 to a number that had not been in active use for a long while. (emphasis added by the Court). I stress that the fax number (753-9004) that Megna claims to have "not been in active use for a long while" prior to March 28, 2008 is in fact the identical fax number he had listed on his April 7, 2008 Motion Cover Sheet (signed by Megna) that accompanied his April 7, 2008 Motion pursuant to Rule 59(e). Respondent's counsel promptly responded to Megna's April 22, 2008 fax and again provided supporting evidence completely disproving Megna's claims and assertions that notice of the hearing had not been sent or received or that Megna had not used his fax number "for a long while". Further, Megna has presented no documentary evidence that his fax number (753-9004) listed with the South Carolina Bar and utilized by him in his Motion of April 7, 2008 and which clearly has been used by him for a number of years on various of his law office letterheads, correspondence, emails and pleadings had ever been out of service or not used "for a long while" (such as a cancellation of service, his sent/received fax journal records, a new fax listing, his payment records for his fax service, a notice to other counsel or Courts, etc.), despite being requested (in writing) to do so.

Based on the overwhelming evidence presented, as well as the lack of any believable documentary evidence or affidavits produced by Megna to the contrary, I find and conclude that Megna was and had been actively using fax number 753-9004 on March 28, 2008, prior to March 28, 2008 ("for a long while" -- more than three years) and in fact subsequent to March 28, 2008.

I have considered, in juxtaposition to Megna's assertions that he had no notice of the April 3, 2008 hearing, the entire record including but not limited to Respondent's Return with accompanying exhibits filed in the South Carolina Court of Appeals on April 29, 2008, as well the exhibits submitted in conjunction with Respondent's Motion to Dismiss the Appeal and all the pleadings, documentary evidence and affidavits before me, and I find them to provide overwhelming evidence of the lack of credibility of Megna as to all contested issues.

SERVICE PURSUANT TO SCRPC 5

As an excuse for non-appearance for the April 3, 2008 evidentiary hearing, Megna first claimed on April 7, 2008 that no notice of the hearing was sent to him by "any means", and he also claimed that no notice of the hearing was received by him at "his office or home". Once it was clearly established that in fact notice of the hearing had been both sent to and received by Megna on March 28, 2008, he then claimed on April 22, 2008 that notice of the hearing had been sent to him at a fax number (753-9004) that he had not used "in a long while". That claim has also clearly been proven to be false because he was using that same exact fax number for years prior to March 28, 2008, on March 28, 2008 and subsequent to March 28, 2008 (for at least approximately a month). Megna now claims that, even if he did in fact receive notice of the April 3, 2008 hearing on March 28, 2008, as well as prior written notice from the South Carolina Court of Appeals that a hearing was to be scheduled as soon as possible, those facts should be considered irrelevant because the notice of the hearing was not in strict compliance with the terms of SCRPC 5.⁸

In the context of Rule 5 and if it were applicable, an analysis of the facts as I find them to be establishes that Megna was at all pertinent times engaged in non-legal business activities, usually out of the Columbia area during normal work weeks, and he only practiced law (as a sole practitioner) on a limited basis (such as Court appointed cases) from his home/"law office". At all pertinent times, he represented on his legal stationary that his law office was at 1815 Fulmer Road, Blythewood, SC (his home) and that his law office fax number was 753-9004. He received his legal mail at his home/law office. He prepared his own correspondence and pleadings and he docketed his own calendar. Megna has sworn under oath that he was and had been purposefully avoiding contact with Respondent's counsel for some time, and he submitted evidence, though not believable, that Respondent's counsel was "stalking" him or his family at his home/law office by virtue of, *inter alia*, sending letters to Megna (at his published law office address) and by virtue of confirming for the Court that Megna's home was in fact his

⁸ This last claim is the essence of the argument presented on behalf of Appellant by Mr. Harpootlian and he has made abundantly clear that he is representing Appellant only and not Mr. Megna.

"law office". Under these circumstances in which Megna already knew on or about March 18, 2008 that the evidentiary hearing was to be set as soon as possible, I find that prompt written notice to Megna of the April 3, 2008 evidentiary hearing date by fax on March 28, 2008 with both fax text confirmation and sent/received fax journal confirmation was certainly reasonable, proper and in compliance with due process, especially given Megna's claim that the U.S. Post Office was not promptly delivering his mail.

I find and conclude that Appellant had notice of the April 3, 2008 hearing by March 28, 2008 that was both express and implied. Further Appellant had constructive notice of the hearing, and her counsel should have had inquiry notice as well in that the circumstances reflect that Megna knew or should have known that an evidentiary hearing was imminent by virtue of the Court of Appeals' March 18, 2008 Order remanding the case for a hearing as "soon as possible" and by virtue of Respondent's subsequent written request for a hearing, yet Megna apparently did nothing to ever check on the status of the matter. In addition and perhaps more compelling, and given that Megna had in fact received written, specific notice of the April 3, 2008 hearing on March 28, 2008, he made no timely objection to the matter being heard on April 3, 2008, nor did he claim any irregularity, nor did he appear or timely assert that the notice given for the April 3, 2008 hearing was in anyway defective or prejudicial. Finally and most compelling, Appellant has not suffered any prejudice because I had previously considered and now have reconsidered all that has been submitted on Appellant's behalf, and I reiterate that on all contested issues I continue to find Appellant's claims to be totally without merit.

I find and conclude that Appellant's reliance on Dedes v. Strickland; 307 S.C. 152, 414 S.E.(2d) 132 (1992) is both misplaced and distinguishable in that, *inter alia*, in Dedes, all counsel in fact appeared for a Summary Judgment hearing; counsel timely objected to hearing the matter on short notice with no meaningful opportunity to present affidavits; counsel's request for an opportunity to submit opposing affidavits was denied and the rights of the party were in fact prejudiced thereby. Such distinguishing factors are compared to the instant case in which Appellant's counsel did not appear or raise any objection whatsoever until after the April 3, 2008 Order was issued; Appellant has been afforded a full and complete opportunity to submit (and did submit) affidavits, and

Appellant was encouraged to make a full and complete argument and record, which has been done, and which I have considered and reconsidered. Furthermore, Appellant was also allowed to set and schedule the within hearing for October 2, 2008, after having it continued from its original hearing date of July 22, 2008 and Appellant's counsel (Mr. Harpootlian) appeared to have been very well prepared. Therefore, Appellant has not suffered any prejudice under the circumstances.

TIMELY RECEIPT OF OCTOBER 26, 2007 ORDER

After providing Appellant with another full opportunity to be heard, nothing credible, believable or favorable to Appellant has been presented that would compel me to reverse the findings and conclusions set forth in my April 3, 2008 Order⁹, and I reiterate and incorporate the terms of that Order herein by reference, with special emphasis on the transcript in the "companion" case in which, in diametrical opposition to what Megna has now represented to this Court and the South Carolina Court of Appeals relative to the critical date when he received the Court's October 26, 2007 Order (eg. his current claim that he only received the Order on Saturday, November 10, 2007), whereas Megna previously represented to the Court (Arbitrator Thomas W. Cooper, Jr. and opposing counsel at an Arbitration hearing on December 5, 2007) that he had in fact received written notice of the October 26, 2007 Order within a week or ten (10) days of that date (because he falsely claimed to have filed his 59(e) Motion within a week or ten days of the October 26, 2007 Order - see transcript of hearing TR 28, L 14-20).¹⁰

NOW, THEREFORE, IT IS ORDERED that Appellant's 59(e) Motion to Alter or Amend filed April 7, 2008 is denied in that;

⁹ Despite being requested to do so (in writing), Megna has failed to produce the envelope in which the October 26, 2007 Order was mailed to him (which he has acknowledged to have received) by the Richland County Clerk of Court (which would have exhibited a US Mail date stamp), nor has he produced a date stamp or any other record establishing the date of actual receipt by him, nor has he produced any other calendar/time table docketing record(s) (reflecting when he received the Order) that he may have theoretically maintained as a component of his law practice.

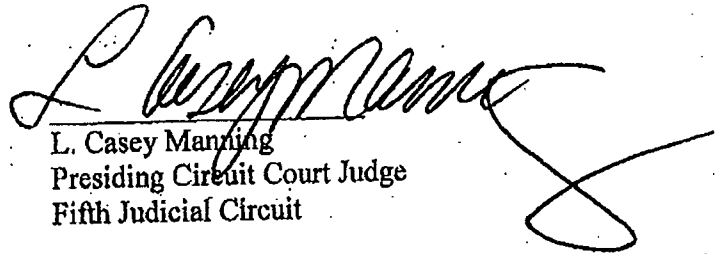
¹⁰ As well, I have taken notice of all of the content of the Arbitration award in the "companion case".

- a) Appellant's counsel (Megna) clearly received reasonable notice of the April 3, 2008 hearing, to which he did not appear or timely object, and he has no legitimate excuse or basis for his non-appearance. Regardless, his client has suffered no prejudice by his initial non-appearance based on my review and reconsideration of this entire matter.
- b) I have considered and reconsidered all submissions by or on behalf of Appellant in any event, and I remain convinced that my April 3, 2008 Order and all findings and conclusions of law were correct and proper as further expanded on and explained herein.
- c) Appellant's counsel (Megna) received written notice of the October 26, 2007 Order granting partial Summary Judgment more than ten (10) days prior to his untimely 59(e) Motion filed November 20, 2007 and more than thirty (30) days prior to his untimely Notice of Appeal dated January 4, 2008.

AND IT IS SO ORDERED,

Columbia, South Carolina

April 1, 2008


L. Casey Manning
Presiding Circuit Court Judge
Fifth Judicial Circuit

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 09-02854

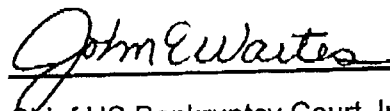
ORDER

The relief set forth on the following pages, for a total of 8 pages including this page, is hereby ORDERED.

FILED BY THE COURT
11/09/2009



Entered: 11/09/2009



Chief US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Gina Anasti Lee,

Debtor.

C/A No. 09-02854-JW

Chapter 13

ORDER

This matter comes before the Court on the Amended Motion Seeking 11 U.S.C. § 362(d) Relief ("Motion") filed by James Anasti ("Anasti"). This Court has jurisdiction pursuant to 28 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), and (O). Pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014, the Court makes the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. On October 26, 2007, the Richland County Court of Common Pleas entered an order ("state court order") granting partial summary judgment to Anasti with respect to the ownership of real property at 2325 Two Notch Road, Columbia, SC, 29202 (the "Property").² Specifically, the court rejected Debtor's claim to the Property by adverse possession and found title to the Property belonged solely to Anasti.

2. Gina Anasti Lee ("Debtor") filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 16, 2009. On Schedule A, Debtor listed the Property as an asset with a value of \$167,000. Debtor stated the nature of her interest was disputed: "Property the subject of litigation now pending in the SC Court of Appeals. The title was determined adversely [sic]

¹ To the extent any Findings of Fact constitute Conclusions of Law, they are adopted as such. To the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

² At the hearing on Anasti's Motion, counsel for the parties indicated that the Property is commercial property, which is presently being used by a tenant as a night club.

to the Debtor in the Lower Court proceedings, and the matter is now on Appeal.”

3. On April 22, 2009, the Court of Appeals filed an Order dismissing Debtor’s appeal of the state court order. However, by order dated April 28, 2009, the Court of Appeals rescinded its April 22 order of dismissal, reinstated the appeal, and provided that the timelines for perfecting the appeal would be held in abeyance. Subsequently, on June 16, 2009, the Court of Appeals issued an order holding the appeal in abeyance pending a final decision in the bankruptcy proceedings.

4. On June 22, 2009, the Chapter 7 Trustee filed her Report of No Distribution, in which she stated no property was available for distribution from the estate.

5. This Court issued an order on August 14, 2009, granting Debtor’s motion to convert her case to Chapter 13. The Chapter 13 Trustee does not oppose modification of the stay in this matter.

6. The Chapter 13 plan filed by Debtor does not contain any motions, but provides: “The Debtor has requested the Court to order the immediate sale of the [Property] with all interests being paid to the creditors.”

7. On August 20, 2009, Debtor commenced an adversary proceeding against Anasti concerning the ownership of the Property.

CONCLUSIONS OF LAW

In the Motion, Anasti requests the Court to lift the automatic stay, pursuant to 11 U.S.C. § 362(d)(1) and (2), for the purpose of permitting completion of the appellate process with respect to the state court order. Section 362(d)(1) provides the Court shall grant relief “for cause, including the lack of adequate protection of an interest in property of such party in interest,” and § 362(d)(2) provides for relief if “the debtor does not have equity in such property” and “such

property is not necessary to an effective reorganization.”

For purposes of § 362(d)(1), a bankruptcy judge has “broad discretion to determine what constitutes ‘cause’ sufficient to warrant relief from stay.” In re Breibart, C/A No. 03-07440-W, slip op. at 2 (Bankr. D.S.C. Feb. 17, 2004); see also Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992) (stating that “[b]ecause the Code provides no definition of what constitutes ‘cause,’ courts must determine when discretionary relief is appropriate on a case-by-case basis”).

In determining whether to grant relief from stay to a creditor for the purpose of litigating an issue in state court, the court should consider the following factors:

(1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because the matter would have to be litigated in the bankruptcy court; and (3) whether the estate can be protected properly by a requirement that the creditor seek enforcement of any judgment through the bankruptcy court.

In re Katzburg, 326 B.R. 606, 610 (Bankr. D.S.C. 2004) (citing Robbins, 964 F.2d at 345); see also In re Charleston Affordable Housing, Inc., C/A No. 09-01020-dd, slip op. (Bankr. D.S.C. Jun. 9, 2009) (focusing on “whether judicial economy will be served by returning the parties to state court or whether litigation in the bankruptcy court would impair progress” in the bankruptcy case).

Furthermore, courts, including this one, have granted relief from the automatic stay based on a finding of cause to allow a movant to pursue a state court appeal. In re Moore, C/A No. 04-15363-B, slip op., 2005 WL 6267364, at *2 (Bankr. D.S.C. 2005) (finding cause existed to lift the automatic stay because the movant’s state court appeal was the only method available for judicial review of the state court order); see also In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997)

(finding that cause, pursuant to § 362(d)(1), existed to permit potential judgment creditor proceed with her state court appeal); In re Metz, 165 B.R. 769, 771 (Bankr. E.D.N.Y. 1994) (granting relief from stay to allow state appellate proceedings to continue, reasoning that the bankruptcy court could not serve as an appellate court for the state court judgment and that a parallel proceeding in the bankruptcy court would lead to “a serious duplication of efforts”); In re Morris, 153 B.R. 588, 590-92 (M.D. Fla. 1993) (affirming the bankruptcy judge’s decision that sufficient cause existed to lift the automatic stay for the purpose of allowing the state appellate proceedings to continue, and noting that “the state court appeal would help lead the bankruptcy case to a conclusion”).

Legislative history to § 362(d)(1) also supports lifting the stay in such circumstances: “. . . a desire to permit an action to proceed to completion in another tribunal may provide another cause.” H.R. Rep. No. 95-595, at 343-44 (1977).

In this case, Anasti asserts that cause exists to lift the automatic stay to permit the continuation and conclusion of the state appellate proceedings as they provide the only mechanism available to create finality with respect to title to the Property. To this end, Anasti argues the Rooker-Feldman doctrine prevents any action by this Court with regard to the Property which, prior to the filing of Debtor’s bankruptcy case, was determined to be the property of Anasti. Further, Anasti argues that his interests are not being adequately protected because he continues to have a cloud on his title. Alternatively, Anasti asserts the Property and the related appeal are not subject to the automatic stay due to the Chapter 7 Trustee’s abandonment of the Property.³

In her objection to Anasti’s Motion, Debtor refutes that any order of abandonment was

³ Anasti also notes he does not pursue any liability against Debtor beyond a determination of title to the Property since any such action is stayed.

entered by the Chapter 7 Trustee. Debtor also disputes the applicability of the Rooker-Feldman doctrine, arguing that no final state order was issued. Further, Debtor asserts there is no indication of finality of the state court order since the state appellate proceedings have been stayed and the pending appeal has not been briefed by the parties. Debtor also contends a modification of the stay is not warranted because the bankruptcy estate and its creditors were not parties to the lower court action. Finally, Debtor states Anasti has no security interest in the Property and the sale of the Property is necessary to an effective reorganization.

The Court agrees that cause exists pursuant to § 362(d)(1), and finds that in the interests of judicial economy and comity, the automatic stay is modified to allow for completion of the state court appellate proceedings.⁴ Through her response to Anasti's Motion, the Chapter 13 plan, and the adversary proceeding, Debtor seeks to have this Court adjudicate the issue of title to the Property and make a conflicting ruling to that of the state court order. The Court finds that even if the Rooker-Feldman doctrine does not preclude the Court's jurisdiction as to this issue,⁵

⁴ Because the Court finds that relief is appropriate under § 362(d)(1), the Court need not address Anasti's claim for relief pursuant to § 362(d)(2) at this time.

⁵ The Rooker-Feldman doctrine applies only to bar "the loser in state court" from filing a "suit in federal district court seeking redress for an injury allegedly caused by the state court's decision." Davani v. Va. Dep't of Transp., 434 F.3d 712, 713 (4th Cir. 2006) (citing Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 291 (2005)); McGuffin v. Barman (In re BHB Enters.), Adv. Pro. No. 97-80201, slip op., 1997 WL 33344249, at *6 (Bankr. D.S.C. Aug. 27, 1997). The "pendency of an action in the state court is no bar to proceedings concerning the same matter" in a federal court with jurisdiction; nevertheless, "[c]omity or abstention doctrines" may permit or require a federal court to stay a federal action in favor of a proceeding in state court. Exxon Mobil, 544 U.S. at 292 (internal citation omitted).

Initially, the Court questions the applicability of Rooker-Feldman on the basis that Debtor's plan, response to Anasti's Motion, and adversary proceeding do not appear to seek redress for any injury caused by the state court's order in favor of Anasti; rather, Debtor seeks to commence parallel litigation regarding title to the Property in this Court. Secondly, courts have differed in their opinions as to what constitutes a final order for purposes of Rooker-Feldman. Compare Field Auto City, Inc. v. General Motors Corp., 476 F. Supp. 2d 545, 552-54 (E.D. Va. 2007) (finding the purpose of Rooker-Feldman is best served by applying the doctrine to state trial court judgments because "a federal suit is no less an appeal of the state trial court judgment simply because state appeals are not yet final"); Sinclair v. Bankers Trust Co. of Cal., N.A., C/A No. 5:05-CV-072, slip op., 2005 WL 3434827, at *3 (W.D. Mich. Dec. 13, 2005) (finding that "the state court proceeding that must reach judgment before a federal complaint is filed for Rooker-Feldman to be applicable is the appealable trial court's judgment"); and Moore, 2005 WL 6267364, at *2 (finding the Rooker-Feldman doctrine precluded the bankruptcy court's review of the appealable

relief from stay is still appropriate based on the Court's broad discretion in finding cause under § 362(d)(1).

The determination of title to the Property and the nature and extent of Debtor's interest is an issue of state law that has already been litigated in and addressed by the lower state court. Although the timing of the completion of the state appellate proceedings is uncertain, the Court of Appeals' series of orders indicates a readiness to handle the appeal upon modification of the stay. Moreover, Anasti has noted that he does not seek authority to pursue any action or liability against Debtor beyond a determination of title to the Property in the state court proceedings. Thus, a resolution of the issue in the pending state appellate proceedings would provide this Court with a final determination as to the dispute between Anasti and Debtor with respect to the Property and would avoid an unnecessary duplication of efforts and judicial resources in this Court.

Further, Debtor would not be prejudiced by the Court's refusal to adjudicate this issue; rather, Debtor's remedy is to pursue her appeal of the state court order, and if successful, she may return to this Court for relief at that time. Debtor's indication that she initiated the pending adversary action as a debtor-in-possession on behalf of the bankruptcy estate is erroneous and fails to recognize that such standing belongs to the Chapter 13 Trustee. Thus, any argument that Debtor, in her individual capacity, is not attempting to relitigate the issue of title to the Property in this Court is flawed.

master-in-equity's order) with Bear v. Patton, 451 F.3d 639, 641-42 (10th Cir. 2006) (interpreting Exxon Mobil to limit Rooker-Feldman's applicability to state court decisions only once the state proceedings are completed, or the state order is otherwise unappealable); Dornheim v. Sholes, 430 F.3d 919, 923 (8th Cir. 2005) (finding that Exxon Mobil makes clear that the Rooker-Feldman doctrine precludes federal district court jurisdiction only if the federal suit is commenced after the state court proceedings have ended); and State Resources Corp. v. The Architectural Team, Inc., 433 F.3d 73, 79 (1st Cir. 2005) (stating that that Rooker-Feldman doctrine is not applicable if "federal litigation is initiated before state proceedings have ended"). The Court, however, decides this matter on the basis of cause under § 362(d)(1) and need not rely on the Rooker-Feldman doctrine as a basis for modification of the automatic stay.

Based on the foregoing reasons, the Court finds that modification of the stay is appropriate at this time pursuant to § 362(d)(1) so that the issue of title to the Property can be finally determined through the state appellate process. Accordingly, Anasti's Motion is granted, and the appeal in state court may proceed. In the event the state court finds Debtor has an interest in the Property, the automatic stay shall apply and the parties may return to this Court.

AND IT IS SO ORDERED.

Columbia, South Carolina
November 9, 2009

ENTERED

DEC 21 2009

K.R.W.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Gina Anastasi Lee,

Debtor.

C/A No. 09-02854-JW

Chapter 13

**AMENDED ORDER GRANTING
11 U.S.C. § 362(d) RELIEF**

FILED
at 0'clock
DEC 21 2009

United States Bankruptcy Court
Columbia, South Carolina, S.C.

This matter comes before the Court on the Amended Motion Seeking 11 U.S.C. § 362(d) Relief ("Motion") filed by James Anastasi ("Anastasi"). This Court has jurisdiction pursuant to 28 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), and (O). Pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014, the Court makes the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. On October 26, 2007, the Richland County Court of Common Pleas entered an order ("state court order") granting partial summary judgment to Anastasi with respect to the ownership of real property at 2325 Two Notch Road, Columbia, SC, 29202 (the "Property").² The court rejected Debtor's claim to the Property by adverse possession and Debtor's defenses of laches and estoppel and found title to the Property belonged solely to Anastasi.

2. Gina Anastasi Lee ("Debtor") filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 16, 2009. On Schedule A, Debtor listed the Property as an asset with a value of \$167,000. Debtor stated the nature of her interest was disputed:³ "Property the subject

¹ To the extent any Findings of Fact constitute Conclusions of Law, they are adopted as such. To the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

² At the hearing on Anastasi's Motion, counsel for the parties indicated that the Property is commercial property, which is presently being used by a tenant as a night club.

³ However, it is undisputed that in January 2000, Debtor conveyed her claimed interest in the Property to a third party.

of litigation now pending in the SC Court of Appeals. The title was determined adversely [sic] to the Debtor in the Lower Court proceedings, and the matter is now on Appeal."

3. On April 22, 2009, the Court of Appeals filed an Order dismissing Debtor's appeal of the state court order. However, by order dated April 28, 2009, the Court of Appeals rescinded its April 22 order of dismissal, reinstated the appeal, and provided that the timelines for perfecting the appeal would be held in abeyance. Subsequently, on June 16, 2009, the Court of Appeals issued an order holding the appeal in abeyance pending a final decision in the bankruptcy proceedings.

4. On June 22, 2009, the Chapter 7 Trustee filed her Report of No Distribution, in which she stated no property was available for distribution from the estate.

5. This Court issued an order on August 14, 2009, granting Debtor's motion to convert her case to Chapter 13. The Chapter 13 Trustee does not oppose modification of the stay in this matter.

6. The Chapter 13 plan filed by Debtor does not contain any motions, but provides: "The Debtor has requested the Court to order the immediate sale of the [Property] with all interests being paid to the creditors." However, no sale of the Property is pending, and there are no contracts for the purchase of the Property.

7. On August 20, 2009, Debtor commenced an adversary proceeding against Anasti concerning the ownership of the Property.

CONCLUSIONS OF LAW

In the Motion, Anasti requests the Court to lift the automatic stay, pursuant to 11 U.S.C. § 362(d)(1) and (2), for the purpose of permitting completion of the appellate process with respect to the state court order. Section 362(d)(1) provides the Court shall grant relief "for cause,

including the lack of adequate protection of an interest in property of such party in interest,” and § 362(d)(2) provides for relief if “the debtor does not have equity in such property” and “such property is not necessary to an effective reorganization.”

For purposes of § 362(d)(1), a bankruptcy judge has “broad discretion to determine what constitutes ‘cause’ sufficient to warrant relief from stay.” In re Breibart, C/A No. 03-07440-W, slip op. at 2 (Bankr. D.S.C. Feb. 17, 2004); see also Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992) (stating that “[b]ecause the Code provides no definition of what constitutes ‘cause,’ courts must determine when discretionary relief is appropriate on a case-by-case basis”).

In determining whether to grant relief from stay to a creditor for the purpose of litigating an issue in state court, the court should consider the following factors:

- (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary;
- (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because the matter would have to be litigated in the bankruptcy court; and
- (3) whether the estate can be protected properly by a requirement that the creditor seek enforcement of any judgment through the bankruptcy court.

In re Katzburg, 326 B.R. 606, 610 (Bankr. D.S.C. 2004) (citing Robbins, 964 F.2d at 345); see also In re Charleston Affordable Housing, Inc., C/A No. 09-01020-dd, slip op. (Bankr. D.S.C. Jun. 9, 2009) (focusing on “whether judicial economy will be served by returning the parties to state court or whether litigation in the bankruptcy court would impair progress” in the bankruptcy case); In re Joyner, 416 B.R. 190, 192-93 (Bankr. M.D.N.C. 2009) (relying on the Robbins factors and modifying the automatic stay to permit the state court action to proceed).

Furthermore, courts, including this one, have granted relief from the automatic stay based on a finding of cause to allow a movant to pursue a state court appeal. In re Moore, C/A No. 04-

15363-B, slip op., 2005 WL 6267364, at *2 (Bankr. D.S.C. 2005) (finding cause existed to lift the automatic stay because the movant's state court appeal was the only method available for judicial review of the state court order); see also In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997) (finding that cause, pursuant to § 362(d)(1), existed to permit potential judgment creditor proceed with her state court appeal); In re Metz, 165 B.R. 769, 771 (Bankr. E.D.N.Y. 1994) (granting relief from stay to allow state appellate proceedings to continue, reasoning that the bankruptcy court could not serve as an appellate court for the state court judgment and that a parallel proceeding in the bankruptcy court would lead to "a serious duplication of efforts"); In re Morris, 153 B.R. 588, 590-92 (M.D. Fla. 1993) (affirming the bankruptcy judge's decision that sufficient cause existed to lift the automatic stay for the purpose of allowing the state appellate proceedings to continue, and noting that "the state court appeal would help lead the bankruptcy case to a conclusion").

Legislative history to § 362(d)(1) also supports lifting the stay in such circumstances: "... a desire to permit an action to proceed to completion in another tribunal may provide another cause." H.R. Rep. No. 95-595, at 343-44 (1977).

In this case, Anasti asserts that cause exists to lift the automatic stay to permit the continuation and conclusion of the state appellate proceedings as they provide the only mechanism available to create finality with respect to title to the Property. To this end, Anasti argues the Rooker-Feldman doctrine prevents any action by this Court with regard to the Property which, prior to the filing of Debtor's bankruptcy case, was determined to be the property of Anasti. Further, Anasti argues that his interests are not being adequately protected because he continues to have a cloud on his title. Alternatively, Anasti asserts the Property and the related appeal are not subject to the automatic stay due to the Chapter 7 Trustee's

abandonment of the Property.⁴

In her objection to Anasti's Motion, Debtor refutes that any order of abandonment was entered by the Chapter 7 Trustee. Debtor also disputes the applicability of the Rooker-Feldman doctrine, arguing that no final state order was issued. Further, Debtor asserts there is no indication of finality of the state court order since the state appellate proceedings have been stayed and the pending appeal has not been briefed by the parties. Debtor also contends a modification of the stay is not warranted because the bankruptcy estate and its creditors were not parties to the lower court action. Finally, Debtor states Anasti has no security interest in the Property and the sale of the Property is necessary to an effective reorganization.

The Court agrees that cause exists pursuant to § 362(d)(1), and finds that in the interests of judicial economy and comity, the automatic stay is modified to allow for completion of the state court appellate proceedings.⁵ Through her response to Anasti's Motion, the Chapter 13 plan, and the adversary proceeding, Debtor seeks to have this Court adjudicate the issue of title to the Property and make a conflicting ruling to that of the state court order. The Court finds that even if the Rooker-Feldman doctrine does not preclude the Court's jurisdiction as to this issue,⁶

⁴ Anasti also notes he does not pursue any liability against Debtor beyond a determination of title to the Property since any such action is stayed.

⁵ Because the Court finds that relief is appropriate under § 362(d)(1), the Court need not address Anasti's claim for relief pursuant to § 362(d)(2) at this time.

⁶ The Rooker-Feldman doctrine applies only to bar "the loser in state court" from filing a "suit in federal district court seeking redress for an injury allegedly caused by the state court's decision." Davani v. Va. Dep't of Transp., 434 F.3d 712, 713 (4th Cir. 2006) (citing Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 291 (2005)); McGuffin v. Barman (In re BHB Enters.), Adv. Pro. No. 97-80201, slip op., 1997 WL 33344249, at *6 (Bankr. D.S.C. Aug. 27, 1997). The "pendency of an action in the state court is no bar to proceedings concerning the same matter" in a federal court with jurisdiction; nevertheless, "[c]omity or abstention doctrines" may permit or require a federal court to stay a federal action in favor of a proceeding in state court. Exxon Mobil, 544 U.S. at 292 (internal citation omitted).

Courts have differed in their opinions as to what constitutes a final order for purposes of Rooker-Feldman, with some courts, including in this district, finding that the state court litigation need not reach a state's highest court for the doctrine to apply. See Sharper v. S.C. Dep't of Corr., C/A No. 2:09-777, slip op., 2009 WL 1209583, at *1 (D.S.C. May 1, 2009) (finding that the federal action was barred by Rooker-Feldman because "it [was] clear that the

relief from stay is still appropriate based on the Court's broad discretion in finding cause under § 362(d)(1).

The determination of title to the Property and the nature and extent of Debtor's interest is an issue of state law that has already been litigated in and addressed by the lower state court. Although the timing of the completion of the state appellate proceedings is uncertain, the Court of Appeals' series of orders indicates a readiness to handle the appeal upon modification of the stay. Moreover, Anasti has noted that he does not seek authority to pursue any action or liability against Debtor beyond a determination of title to the Property in the state court proceedings. Thus, a resolution of the issue in the pending state appellate proceedings would provide this Court with a final determination as to the dispute between Anasti and Debtor with respect to the Property and would avoid an unnecessary duplication of efforts and judicial resources in this Court.

Further, Debtor would not be prejudiced by the Court's refusal to adjudicate this issue; rather, Debtor's remedy is to pursue her appeal of the state court order, and if successful, she may return to this Court for relief at that time. Any unsecured creditors' rights are dependent

plaintiff [was] seeking to challenge the results of an on-going state court action"); Lloyd v. Miller, C/A No. 9:08-cv-00675, slip op., 2009 WL 2356170, at *4 (D.S.C. May 8, 2009) (applying doctrine even though state court litigation had not yet reached highest state court); Field Auto City, Inc. v. Gen. Motors Corp., 476 F. Supp. 2d 545, 552-54 (E.D. Va. 2007) (finding the purpose of Rooker-Feldman is best served by applying the doctrine to state trial court judgments because "a federal suit is no less an appeal of the state trial court judgment simply because state appeals are not yet final"); Sinclair v. Bankers Trust Co. of Cal., N.A., C/A No. 5:05-CV-072, slip op., 2005 WL 3434827, at *3 (W.D. Mich. Dec. 13, 2005) (finding that "the state court proceeding that must reach judgment before a federal complaint is filed for Rooker-Feldman to be applicable is the appealable trial court's judgment"); Moore, 2005 WL 6267364, at *2 (finding the Rooker-Feldman doctrine precluded the bankruptcy court's review of the appealable master-in-equity's order). But see Bear v. Patton, 451 F.3d 639, 641-42 (10th Cir. 2006) (interpreting Exxon Mobil to limit Rooker-Feldman's applicability to state court decisions only once the state proceedings are completed, or the state order is otherwise unappealable); Dornheim v. Sholes, 430 F.3d 919, 923 (8th Cir. 2005) (finding that Exxon Mobil makes clear that the Rooker-Feldman doctrine precludes federal district court jurisdiction only if the federal suit is commenced after the state court proceedings have ended); State Resources Corp. v. The Architectural Team, Inc., 433 F.3d 73, 79 (1st Cir. 2005) (stating that that Rooker-Feldman doctrine is not applicable if "federal litigation is initiated before state proceedings have ended").

The Court, however, decides this matter solely on the basis of cause under § 362(d)(1) and need not rely on the Rooker-Feldman doctrine as a basis for modification of the automatic stay.

upon Debtor's rights in the Property, which are determined by state law.

Based on the foregoing reasons, the Court finds that modification of the stay is appropriate at this time pursuant to § 362(d)(1) so that the issue of title to the Property can be finally determined through the state appellate process. Accordingly, Anasti's Motion is granted, and the appeal in state court may proceed. In the event the state court finds Debtor has an interest in the Property, the automatic stay shall apply and the parties may return to this Court.

AND IT IS SO ORDERED.

Columbia, South Carolina
December 21, 2009


UNITED STATES BANKRUPTCY JUDGE

The South Carolina Court of Appeals

James A. Anastasi,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina
L. Anastasi Lee, Richland County Clerk
of Court,

Defendants,

Of Whom Lance Wilson, Willis
Goodwin and Richland County Clerk of
Court are

Respondents

And Gina L. Anastasi Lee is the

Appellant.

The Honorable J. Ernest Kinard, Jr.
The Honorable L. Casey Manning
Richland County

Trial Court Case No. 2007-CP-40-00576
2007-CP-40-00576

ORDER

Respondent filed a motion to dismiss the above-captioned appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a Return, claiming his Rule 59(e) motion was timely.

By order dated March 13, 2008, this Court remanded the matter to the circuit court for an evidentiary hearing to determine when Appellant's attorney received the order granting summary judgment. After a hearing, the circuit court issued an order filed April 3, 2008, finding "beyond a doubt" Appellant's attorney, Tony Megna, received written notice of the underlying order

"much more than ten days prior to the filing of his Motion for Reconsideration." Appellant filed

a Rule 59(e) motion, which the trial court denied on April 1, 2009. Appellant appealed the trial court's rulings, and this court consolidated the appeal with Appellant's initial appeal.

Appellant subsequently filed for relief in the United States Bankruptcy Court. This appeal, therefore, was held in abeyance pending conclusion of the bankruptcy proceedings. By order of November 9, 2009, the Bankruptcy court granted Respondent "relief from the automatic stay for the purpose of permitting completion of the appellate process with respect to the state court order." Appellant appealed the Bankruptcy Court's order to the United States District Court. In addition, Appellant filed a motion with the Bankruptcy Court, requesting the court issue a stay pending appeal. The court denied Appellant's motion, stating "this court believes it is best for the state court to finalize the appeal." The court further stated, "It is apparent that one of the primary reasons [Appellant] filed for bankruptcy relief was to escape the consequence of the state court order and any determination that the order was final due to the untimely appeal filed by [Appellant]." The Bankruptcy Court subsequently issued several additional orders reiterating its determination that Appellant's appeal to this court is not stayed.

After careful consideration of the parties' filings, the Bankruptcy Court's orders, and case law, we hereby lift the stay of abeyance. See Matter of Abington Realty Co., 530 F.2d 588 (4th Cir. 1976) ("[T]he filing of a petition to review an order of the bankruptcy judge does not stay the effect or operation of the order unless a supersedeas bond is filed or the order provides for the stay."); In re Regency Woods Apartments, Ltd., 686 F.2d 899, 903 (11th Cir. 1982) (providing although a stay may be continued pending appeal, the debtor must affirmatively act to obtain the stay and post a supersedeas bond).

In regards to Respondent's motion to dismiss, the trial court held on remand that Appellant received the underlying order more than ten days prior to filing her Rule 59(e) motion. See Rule 59(e), SCRPC (requiring motions to alter or amend the judgment be served not later than ten days after receipt of written notice of the entry of the order). Appellant, however, has appealed the trial court's order, and this court consolidated the appeal with Appellant's initial appeal. Therefore, we deny Respondent's motion to dismiss at this time. Appellant shall have thirty days from the date of this order to file her initial brief.

AND IT IS SO ORDERED.

Jaqueline M. Carleton A.S.

Columbia, South Carolina

February 19, 2010

FILED

2/22/10 *TH*

cc: Tony R. Megna, Esq.
Ben Mathews, Esq.
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin,
Gina L. Anasti Lee, and
Richland County Clerk of
Court,

Defendants,

Of Whom Gina L. Anasti Lee
is the

Appellant.

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2011-UP-187
Submitted April 1, 2011 – Filed April 28, 2011

APPEAL DISMISSED

Tony R. Megna, of Columbia, for Appellant.

Douglas N. Truslow and Thomas George Earle, both of
Columbia, for Respondent.



PER CURIAM: In January 2008, Appellant filed a notice of appeal from an order granting Respondent partial summary judgment and from the order denying reconsideration. In March 2008, this court remanded the appeal to the circuit court for an evidentiary hearing regarding the timeliness of Appellant's notice of appeal. After a hearing,¹ and after reviewing "all previous submissions to the [circuit] court by or on behalf of Appellant, including pleadings, affidavits, evidence, memoranda and evidence presented," the circuit court found that because Appellant received the order granting partial summary judgment more than ten days prior to filing her motion for reconsideration, her motion for reconsideration did not toll the time for filing her notice of appeal; thus, her notice of appeal was untimely.² Appellant moved for reconsideration, which was denied.³ In its order denying reconsideration, the circuit court noted that "nothing credible, believable, or favorable to Appellant ha[d] been presented that would compel [the circuit court] to reverse the findings and conclusions set forth in [its prior order]."⁴ Because the circuit court's factual findings regarding timeliness are

¹ Neither Appellant nor her counsel attended the hearing; however, the trial court found Appellant received notice of the hearing.

² Specifically, the circuit court found the order granting summary judgment was mailed to the parties on October 29, 2007, and received by Respondent's attorney on November 1, 2007. Giving Appellant the benefit of the doubt, and tacking on an additional five days for service by mail pursuant to Rule 6(e), SCRCp, the circuit court deemed Appellant's receipt of the order as being effective on November 3, 2007. Because November 3, 2007, was a Saturday, Appellant had ten days from Monday, November 5, 2007, to file her motion for reconsideration. Appellant's motion for reconsideration was served and filed on November 20, 2007; therefore, the circuit court found it was untimely. The circuit court noted that Appellant did not contest that the order was properly mailed or that she actually received the order. The circuit court found Appellant's counsel was "not credible as to any contested issue" and, specifically, as to the date he claimed he received the order granting summary judgment.

³ Appellant's counsel was present for the hearing on Appellant's motion for reconsideration.



supported by evidence, we dismiss⁵ this appeal pursuant to Rule 220(b)(1), SCACR, and the following authorities: Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999) ("Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal."); Elam v. S.C. Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (citing Rule 203(b)(1), SCACR, and Rules 50(e), 52(c), and 59(f), SCRCP) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."); Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 57 (Ct. App. 1999) ("A motion under Rule 59(e) is timely if it is 'served not later than ten days after receipt of written notice of the entry of the order.'"); Pollard v. Cnty. of Florence, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994) (reviewing the circuit court's ruling on a Rule 59(e) motion pursuant to an abuse of discretion standard); Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007) ("An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.") (citation and quotation marks omitted); USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (deferring to the circuit court's credibility determinations regarding the timeliness of a motion for reconsideration and declining to reverse the circuit court's decision); Reed v. Ozmint, 374 S.C. 19, 24, 647 S.E.2d 209, 211 (2007) (noting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony).

APPEAL DISMISSED.

FEW, C.J., and CURETON and GOOLSBY, A.J., concur.

⁴ In a footnote, the circuit court stated Appellant's counsel failed to produce the envelope in which the October 29, 2007 order was mailed to him or a date stamp or any other record establishing a date of receipt.

⁵ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA,
COUNTY OF DARLINGTON.

IN THE COURT OF COMMON PLEAS
2010-CP-16-0332

Pee Dee Health Care, P.A.,

Plaintiff,

vs.

Estate of Hugh S. Thompson,

Defendant.

ORDER DISQUALIFYING
PLAINTIFF'S COUNSEL TONY R. MEGNA

SCOTT A. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2011 APR 15 PM 2:11

FILED

J.S.
This is an action originally filed in the Probate Court wherein the Plaintiff is attempting to recover reimbursement from the Defendant estate for losses in Medicare reimbursements allegedly occasioned by the actions of Dr. Hugh S. Thompson during his period of practice with Plaintiff. Counsel for the Defendant has now moved this Court for an Order disqualifying Plaintiff's counsel Tony R. Megna.. This motion is based upon the Rules of Professional Conduct, as found in SCACR 407, and supporting case law. Plaintiff filed a response to the motion on March 11, 2011, and the matter was heard by the Court on March 16, 2011. After consideration of all the pleadings, motions, exhibits, and the arguments of counsel, the Court finds that Attorney Megna should be disqualified from further representation of the Plaintiff in this matter. This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

(1) Counsel Tony R. Megna has identified himself as the Chief Executive Officer ("CEO") of Plaintiff Pee Dee Health Care, P.A. ("PDHC"). In addition to such identification made to the Court at the March 16th hearing, the response of PDHC to the pending motion to

disqualify states that Mr. Megna "has been the CEO and General Counsel to the Plaintiff since 1995." Plaintiff's Return (see footnote 1 below).

(2) Mr. Megna's admitted position as the CEO for PDHC confirms his focal point as a witness in this matter. By his signature in Section 15 of a "Medicare Enrollment Application" submitted to the Centers for Medicare and Medicaid Services (CMS) within the United States Department of Health and Human Services (Exhibit B to the Motion), "completed for" PDHC, Mr. Megna "binds this provider to the laws, regulations, and program instructions of the Medicare program."¹ Accordingly, Mr. Megna is positioned to be a person with knowledge at PDHC about the efforts of that organization to comply with Medicare "laws, regulations, and program instructions." PDHC's adjudicated non-compliance led to the adverse Medicare decision at the heart of this case. Thus, Mr. Megna is a necessary witness to matters raised in this case.

Jan 2
(3) PDHC has answered interrogatories propounded pursuant to Rule 33 of the South Carolina Rules of Civil Procedure (responses dated July 28, 2010 attached as Exhibit C to the Motion). In response to interrogatory 1, which calls for the identification of witnesses, PDHC lists Tony R. Megna.² In addition, the response to Interrogatory 8 identifies Tony Megna as the only person known to PDHC with whom Hugh S. Thompson (the "decedent") communicated about the adverse Medicare determination for recoupment. While the motion response of PDHC now seeks to minimize Attorney Megna's communications with Dr. Thompson, the

¹ At the close of argument, PDHC suggested that this document is not supportive of Megna's CEO status - a status now admitted by PDHC. While the application cover letter indicates that it generally relates to Lower Florence County Hospital, the letter specifically provides that sections 6 and 15 relate to PDHC of Darlington. These sections identify Megna as an owner of PDHC, a managing employee of PDHC, and as a "Director/Officer" of PDHC - all uncontested at this point according to PDHC positions at the hearing. In the PDHC written response to the Motion to Disqualify, Megna is specifically confirmed to have an interest in the outcome of this lawsuit. Response page 30.

² PDHC's interrogatory answer asserts that "Mr. Megna is not likely to testify..." This anticipatory disclaimer does not alter Defendant's right to discover information from witness Megna and this alone requires disqualification whether called at trial as a witness, by either party, or not.

communications described in these initial interrogatory answers and in the complaint³ make Mr. Megna a witness to relevant issues in this matter.

(4) The appeal of the adverse PDHC Medicare determination is relevant in this matter. While PDHC asserts that the Defendant should be estopped, even by the decedent's alleged silence, from denying liability for the indemnification of Plaintiff's Medicare overpayment, there would have been no liability to Medicare at all if the PDHC appeal had been successful like the appeal of decedent's other employer, Firstchoice Healthcare, which arose over the same issue. The claim to equitable indemnification referenced by PDHC in argument at this motion hearing requires a finding that the proposed indemnitee (PDHC) was without fault or liability for the damages. See Fowler v. Hunter, 388 S.C. 355, 697 S.E.2d 531 (2010). Thus, PDHC's fault is at issue in this case and the decision of federal Administrative Law Judge Metry (Exhibit A to the Motion) speaks to that issue directly and decisively. The appeal of Judge Metry's Order, if any, would be relevant in this matter on the preclusive finding that PDHC was at fault and therefore could not be indemnified.⁴

Mr. Megna is identified in PDHC's answer to interrogatory 9 as the person involved with the defense of the adverse Medicare determination. He has firsthand knowledge regarding the status and results of any administrative appeals.

³ In its complaint (¶ 13), PDHC alleges that the decedent Thompson made "contact" with PDHC by sending a letter to the Plaintiff in which he is alleged to have "admitted" not providing "accurate information to Plaintiff upon and during his employment with the Plaintiff...." The unsigned letter was submitted at the hearing, without objection, as Defense Hearing Exhibit 1, and is directed to "Tony"—current counsel for PDHC. The complaint purports to attach a copy of the alleged letter as an exhibit. The same document is submitted in the motion response of PDHC as Exhibit HH.

PDHC's answer to Interrogatory 2 identifies the same alleged letter from decedent Thompson to Tony Megna as a document that relates to a claim or defense in the case. That interrogatory answer also references other "information sent to Tony Megna by Dr. Thompson relating to the SC Board of Medical Examiners." Thus, by the Plaintiff's own responses, Mr. Megna is the alleged recipient of documents and information relevant to claims and defenses in the case. Questions regarding the authenticity of this letter, the circumstances of its alleged receipt, and its alleged contextual meaning are all fairly directed to Mr. Megna.

⁴ Judge Metry's finding of fault was based upon the affirmative duty of employers to perform due diligence by investigating the program exclusion status of prospective employees lest they face liability for exclusion facts they "should know." See 42 U.S.C. § 1320a-7a(a)(6); 42 CFR 1003.102(a)(2).

(5) Even if PDHC were not at fault, communications between PDHC and Thompson about the Medicare claim and appeals process are relevant to the issues raised in this case. At least in part, PDHC's claim to equitable indemnification also depends upon showing that Dr. Thompson was provided timely notification and an opportunity to participate and help defend the claim Medicare made against PDHC. This is because one who seeks equity must do equity.⁵

(6) Disqualification of Mr. Megna will not work a substantial hardship. This matter is early in the discovery phase. No depositions have been taken. Thus, there is minimal extra expense or loss of time, if any. Both Mr. Megna and attorney Benjamin Matthews have made appearances on behalf of PDHC in this action; indeed, it is Mr. Matthews who executed the complaint in this Court. Further, Mr. Megna represented to the Court that the Plaintiff has 75-80 employees; the Court finds that Plaintiff has the resources to add additional counsel if needed.

CONCLUSIONS OF LAW

Jo 4 (A) In South Carolina, an attorney cannot "act as an advocate at a trial in which the lawyer is likely to be a necessary witness," unless the issue about which the attorney will testify (1) is uncontested, (2) relates to the nature or the value of the legal services rendered, or (3) disqualification would work a substantial hardship on the attorney's client. Rule of Prof. Conduct 3.7, SCACR 407. Rule 3.7 is absolute; only when one of the three delineated exceptions applies may a witness also serve as an advocate. 1 S. C. Juris. *Attorney and Client* § 53; ROBERT M. WILCOX, South Carolina Legal Ethics § 9.1.1. An adversary, such as the Estate of Dr. Thompson, has an obligation to immediately move for disqualification when there is an issue of the opposing advocate's position as a witness. Comment (1), RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 108.

⁵ Accord *Quis Elevator, Inc. v. Hardin Constr. Co. Group*, 316 S.C. 292, 296-97 450 S.E.2d 41, 44 (1994) (allowing indemnification where "indemnitee gave the indemnitor notice and an opportunity to participate in the litigation....").

(B) The first two exceptions allowed by Rule of Professional Conduct 3.7, SCACR 407, are not applicable here. Mr. Megna's testimony relates, in part, to contested communications with the decedent at the heart of the claims and defenses in this case. In addition, Mr. Megna's testimony relates to contested administrative issues of Medicare compliance (such as employee screening, due diligence, and record keeping) and the contested issue of Plaintiff's alleged damages. Mr. Megna's testimony does not relate to "legal services rendered" in this Court of Common Pleas matter.

(C) The hardship exception of Rule 3.7 provides no relief here. A South Carolina District Court has noted that the hardship exception to Rule 3.7 should be construed very narrowly. Brown v. Daniel, 180 F.R.D. 298, 302 (D.S.C. 1998). Simple extra expense or the loss of time that is inherent in any disqualification is not a substantial hardship. To find substantial hardship, "courts have required something beyond the normal incidents of changing counsel, such as the loss of extensive knowledge of a case based upon a long-term relationship between the client and counsel and substantial discovery conducted in the actual litigation." *Id.* Here, the normal incidents of changing counsel are not even present as Rule 3.7(b) will allow for Mr. Megna's non-witness partner Mr. Matthews to continue in his existing representation of PDHC.

(D) The Dead Man Statute⁶ does not change Mr. Megna's status as a fact witness in this case under Rule 3.7 of the Rules of Professional Conduct – regardless of how it might apply in the ultimate trial of this matter. Moreover, the Dead Man Statute has no effect upon the discoverability of information allegedly known by Megna as a fact witness.⁷

⁶ The Dead Man Statute, codified in South Carolina at S.C. Code § 19-11-20, is an evidentiary rule that relates to the competency of a witness to testify about certain matters. The statute exists to prevent interested parties from offering self-serving, incontrovertible testimony that may be unreliable. Harris v. Berry, 231 S.C. 201, 98 S.E.2d 251 (1957); Trimmer v. Thomson, 41 S.C. 125, 19 S.E. 291 (1894). Specifically, a competency objection may be raised by the decedent's representatives to prohibit a person or party with an interest in the matter from testifying about communications or transactions with another person who is deceased at the time of such testimony. See, e.g., Estate of Revis by Revis v. Revis, 326 S.C. 470, 484 S.E.2d 112 (Cl. App. 1997) ("The 'dead man's' statute is an exception to the general rule of witness competency. It is to be read restrictively, and the party requesting its use bears the burden of establishing its applicability.").

⁷ While the competency objection may be waived by the decedent's representatives at trial, the Court of Appeals has previously held that a discovery deposition regarding the communications between a decedent and an interested person or party does not "open the door" or waive the availability of the objection at trial. Thomas v. Taylor, 300 S.C. 127, 386 S.E.2d 630 (Cl. App. 1989) (Sanders, Chief Judge) (Relying, in part, on SCRCP 32(d)(3)(A) which provides that "Objections to the competency of a witness ... are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time."). Obviously, Dr. Thompson's death cannot be removed or obviated "before or during" any Megna deposition so waiver is not possible at a deposition. PDHC's assertion that the statute acts as a complete bar to any examination is belied, however, by the statute's own provision for "opening the door" to otherwise incompetent testimony. See, e.g., Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997).

(E) Mr. Megna's role as general counsel to PDHC does not change Mr. Megna's status as a fact witness in this case under Rule 3.7 of the Rules of Professional Conduct – regardless of how this status might trigger evidentiary privileges. While PDHC asserts that privileges attach to anything and everything that Mr. Megna might say, thereby freeing him to act only as counsel, this Court concludes that the potential application of attorney-client privilege⁸ does not preclude anything and everything that Mr. Megna might say as a witness.

PDHC's complaint is that decedent Thompson did not disclose information to PDHC or gave wrong information to PDHC – in part through its CEO Tony Megna. Under the guise of privilege, Mr. Megna cannot avoid examination on the disclosures and communications made to him that he now claims were tortious.⁹

gms
6
In further support of the court's decision, focusing narrowly on PDHC's exhibit HH submitted in response to the motion to disqualify, there is nothing in that alleged Thompson letter to Mr. Megna that indicates that Thompson is seeking legal advice. Furthermore, that communication has already been divulged by PDHC as part of its complaint – so even if it arguably related to legal advice needed by PDHC at the time, that privilege has clearly been

⁸ South Carolina has long recognized the attorney-client privilege against the disclosure of confidential communications by a client to his attorney. *State v. Lave*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). The privilege applies only to "confidential disclosures by a client to an attorney made in order to obtain legal assistance." *Fisher v. United States*, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 186 (1980). The burden is on the proponent of the privilege to demonstrate its applicability. *United States v. Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982). The party asserting the attorney-client privilege must establish not only that the attorney-client relationship existed, but also that the particular communication at issue is privileged and that the privilege was not waived. *Cameron v. Gen. Motors Corp.*, 158 F.R.D. 581, 584 (D.S.C. 1994), vacated by, in part *In re Gen. Motors Corp.*, No. 94-2435, 1995 U.S. App. LEXIS 41270 (4th Cir. 1995).

⁹ The precise boundaries of any applicable privilege are not before the court in this motion. As noted by the Defendant, however, PDHC may have implicitly waived any possible remaining or existing privilege by placing the subject of communications and disclosures between the decedent and Mr. Megna (on behalf of PDHC) into controversy. See *Duplan Corp. v. Deering Milliken, Inc.*, 397 F.Supp. 1146, 1161 (D.S.C. 1975). See also *In re Long Point Road Ltd. P'ship*, No. 93-72769-JW, 1997 Bank. LEXIS 2403, at *9-10 (Bankr. D.S.C. Sept. 8, 1997); see also *Heam v. Rhay*, 68 F.R.D. 574, 580 (E.D. Wash. 1975). Fairness is the underlying touchstone for implicit waiver; the rationale is that privileged materials ought not be used as both a shield and sword. See *In re: United Supermarkets, Inc.*, 36 S.W.3d 619, 621 (Tex. Ct. App. 2000) ("a party who is seeking affirmative relief should not be permitted to maintain an action, and at the same time, maintain evidentiary privileges that protect from discovery outcome determinative information not otherwise available to the other party."); see also *Hangards, Inc. v. Johnson & Johnson*, 413 F. Supp. 926, 929 (N.D. Cal. 1976) ("a party may not insist on the protection of the attorney-client privilege for damaging communications while disclosing other selected communications because they are self-serving.").

waived by its disclosure. Thus, Mr. Megna is now subject to examination as to details of that document.

More broadly, the privilege would only extend to Mr. Megna's communications where the medical practice of PDHC is seeking legal advice. The privilege would not extend to Mr. Megna when acting in the capacity of CEO of the medical practice; for example, Mr. Megna's communications with third parties such as government regulators, insurers, and Medicare program administrators is clearly not privileged and would be relevant to issues in this case. Likewise, questions directed to the CEO's knowledge of business operations, finances, and damages would not infringe upon privileged communications. Further, the existence of other persons who may also have knowledge in these areas does not remove Mr. Megna from the witness list prohibited by Rule 3.7.

JMB
7
(F) The work-product privilege also does not preclude anything and everything that Mr. Megna might say as a witness. The work-product doctrine seeks to protect things or information "prepared in anticipation of litigation or for the trial ..." SCRCP 26(b)(3). Specifically, the rule protects "against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." The work-product doctrine does not, however, extend to anything and everything an attorney might have done – particularly when acting in the capacity of a CEO of a medical practice.¹⁰

¹⁰ The work-product privilege applies only to "attorneys' or legal representatives' mental impressions, conclusions, opinions, or legal theories authored in anticipation of litigation." Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643, 668 (10th Cir. 2006). Fact work product is not absolutely privileged and discovery of fact or non-opinion work product may be compelled in some circumstances. In Qwest Communications Int'l, Inc., 450 F.3d 1179, 1186 (10th Cir. 2006), "Work product which is primarily factual in nature is not absolutely immune from discovery under the rule. At best, it receives a qualified protection which is overcome if the opposing party shows substantial need of the material and inability to obtain it elsewhere without undue hardship." Transit Authority of River City v. Vinson, 703 S.W.2d 482, 486 (Ky. App. 1985); see also Duffy v. Wilson, 289 S.W.3d 555, 559 (Ky. 2009).

While the Court can address specific assertions of privilege if and when they arise, the Defendant correctly points out that the work-product doctrine is limited to protecting such things in the context of the litigation to which the information relates – *not other litigation*. Accord Kirschbaum v. WRGSB Assocs., No. 97-5532, 1998 U.S. Dist. LEXIS 8860, at *3 (E.D. Pa. June 18, 1998). In this case, the Defendant is not interested in Mr. Megna's thoughts about the present litigation with the Estate; rather, its interest is in the litigation with Medicare. The litigation with Medicare is now concluded and the work product protection, if applicable at all, would only apply in the context of that litigation – protecting against disclosure to Medicare.

Even where applicable, Rule 26(b)(3) provides for an exception when a party is "unable without undue hardship to obtain the substantial equivalent of the materials by other means." Absent some audio recording, the only means to get the substantial equivalent of Dr. Thompson's alleged conversations with the CEO of PDHC is to ask the surviving party to those conversations.

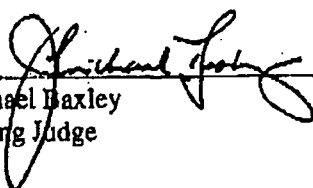
CONCLUSION

Jan 8
This is the type of factual scenario for which Rule 3.7 was written. Mr. Megna is the CEO of the Plaintiff organization and is an owner with a financial stake in the outcome of this litigation. By his position alone, Mr. Megna is central to the issues involved in this case. In addition, Mr. Megna was intimately involved in the relationship between Plaintiff and the Decedent Hugh S. Thompson, and was responsible for many decisions that were made regarding the employment relationship between the two parties. Mr. Megna's knowledge of these important facts assure that his testimony will be necessary in this case.

The Court is not persuaded by the Plaintiff's assertions of various privileges. Even if applicable in some limited context, the applicability of any particular privilege does not change

Mr. Megna's obvious status as a witness. In discovery or at trial or both, Mr. Megna may be called upon to testify regarding facts at issue in the present action, and thus, Mr. Megna cannot proceed as an advocate for the Plaintiff in this proceeding. The Court orders complete disqualification effective with the execution of this Order.¹¹

IT IS SO ORDERED.


J. Michael Baxley
Presiding Judge

April 15, 2011
Hartsville, South Carolina

2011 APR 19 PM 2:11
SCOTT B. SUEES
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

¹¹ The Court concludes that it is not feasible for Mr. Megna to remain involved as counsel of record even before trial. The potential for problems would exist with depositions and other pre-trial functions. The immediate availability of Mr. Megna's partner eliminates any hardship or difficulty associated with this effective date.

m

The South Carolina Court of Appeals

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina
L. Anasti Lee, Richland County Clerk
of Court,

Defendants,

Of Whom Lance Wilson, Willis
Goodwin and Richland County Clerk of
Court are

Respondents,

And Gina L. Anasti Lee is the

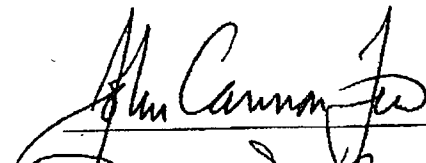
Appellant.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2007-CP-40-00576
2007-CP-40-00576

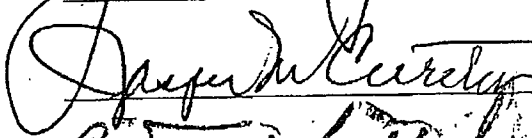
ORDER

After consideration of Respondent's motion for sanctions, Appellant's return, and the
record before this Court, Respondent's motion is denied.

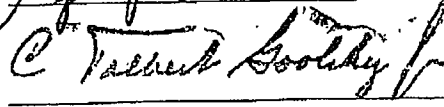
IT IS SO ORDERED.



C.J.



A.J.



A.J.

Columbia, South Carolina

cc: Tony R. Megna, Esq.
Ben Matthews, Esq.
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

FILED
MAY 20 2011



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29207
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

May 20, 2011

Douglas N. Truslow, Esquire
Truslow & Truslow
P.O. Box 1465
Columbia, SC 29202

Re: Anasti, James v. Wilson, Lance

Dear Mr. Truslow:

Enclosed is a copy of an Order of the Court Denying your Motion for Sanctions in the above case.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

ves
TAG/rj

cc: Tony R. Megna, Esq.
Ben Matthews, Esq.
Thomas George Earle, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Pee Dee Health Care, P.A.,

Plaintiff,

v

Estate of Hugh S. Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS

2010-CP-16-0332

ORDER DENYING PLAINTIFF'S 59(E)
MOTION FOR RECONSIDERATION OF
ORDER DISQUALIFYING COUNSEL AND
QUASHING ALL MOTIONS, SUBPOENAS,
AND FILINGS SIGNED ONLY BY
DISQUALIFIED COUNSEL TONY R.
MEGNA AND ISSUED AFTER JUNE 17, 2011

This matter is before the Court on Plaintiff's SCRCF 59(e) Motion for Reconsideration of an Order dated April 15, 2011, which disqualified Plaintiff's counsel from representing Plaintiff in this matter. Plaintiff filed the present motion to reconsider on May 2, 2011. On May 20, 2011, Defendant filed a Motion to Dismiss Plaintiff's Rule 59(e) motion and Memorandum in Opposition to Plaintiff's Motion. Plaintiff then filed a Reply to Defendant's Motion in Opposition on May 26, 2011. All these filings have been considered by the Court in reaching this decision.

On July 19, 2011, the Court conducted a hearing on this matter as well as cross motions for Summary Judgment filed by both parties. Prior to this hearing, in its Notice of Hearing dated June 17, 2011, and to avoid any prejudice to Plaintiff, the Court permitted Plaintiff's disqualified counsel to argue the outstanding Summary Judgment Motions before it would render a decision on Plaintiff's 59(e) Motion. The Court took all three Motions under advisement. The Cross-Motions for Summary Judgment remain under advisement as of the date of this Order.

After careful consideration of the extensive record submitted by both parties, as well as the arguments heard on July 19, Plaintiff's Motion for Reconsideration under SCRCF 59(e) is **DENIED**.

The findings of fact and conclusions of law in the Order Disqualifying Counsel are replete. Thus, the Court declines to offer additional reasoning for its decision to uphold that determination, without alteration.

However, the Court does find that its decision to allow Plaintiff's counsel oral argument on previously-filed Summary Judgment Motions did not attenuate its Order of Disqualification. The Court granted Plaintiff's counsel a limited appearance only. Therefore, all motions, subpoenas, and filings signed only by disqualified-counsel, Tony R. Megna, and made subsequent to the Notice of Hearing dated June 17, 2011 in which the Court formally announced the parameters of its accommodation to Plaintiff and its counsel, are hereby **QUASHED**.

Plaintiff's remaining counsel is Ordered to personally serve a copy of this Order on all parties affected by the Court's decision herein, including counsel for Defendant, within 5 days of service from the Clerk of Court.

TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

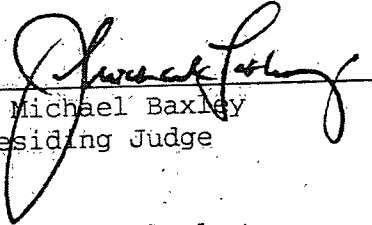
FILED
JUL 15 AM 10:41
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

IT IS SO ORDERED.

Hartsville, South Carolina
August 12, 2011

Attorney for Plaintiff
Benjamin R. Matthews, Esq.
3400 West Avenue
Columbia, S.C. 29203

CC:
Tony R. Megna, Esq.
3400 West Avenue
Columbia, S.C. 29203


J. Michael Baxley
Presiding Judge

Attorneys for Defendant
J. Rene Josey, Esq.
1831 West Evans Street
Florence, S.C. 29501

John Jay James, II, Esq.
Post Office Box 507
Darlington, S.C. 29540

2011 AUG 15 AM 10:41
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Pee Dee Health Care, P.A.,

Plaintiff,

v.

Estate of Hugh S. Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2010-CP-16-0332ORDER DISMISSING PLAINTIFF'S
MOTION TO RECONSIDER THE ORDER
GRANTING SUMMARY JUDGMENT
(Ending Case)FILED
OCT -4 PM 2:19
COTT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

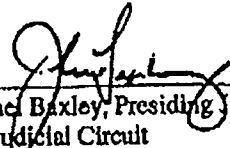
This matter is before the Court on Plaintiff's putative SCRPC 59(e) Motion for Reconsideration of an Order dated September 1, 2011, which granted summary judgment in favor of Defendant. Plaintiff filed the present Motion to Reconsider on September 13, 2011. On September 19, 2011, Defendant filed a Response to Plaintiff's Motion for Reconsideration. Plaintiff then filed a Reply to Defendant's Response on September 20, 2011. All of these filings, as well as previous Orders issued in this case, have been considered by the Court in reaching its decision. As will be explained below, attorney Megna was not authorized to file the present motion on Plaintiff's behalf. Therefore, Plaintiff's Motion for Reconsideration under SCRPC 59(e) is **DISMISSED AS IMPROPER**.

On April 15, 2011, this Court issued an Order disqualifying Plaintiff's counsel, Tony R. Megna, from representing Plaintiff in this matter because Mr. Megna is a necessary witness in the case. Subsequently, in response to Plaintiff's motion to reconsider that ruling, the Court modified this disqualification to avoid any prejudice to Plaintiff, and permitted attorney Megna to argue the then outstanding Summary Judgment Motions. The Court made it clear that this was a limited appearance only, further stating in an Order dated August 12, 2011, that "all motions, subpoenas, and filings signed only by disqualified-counsel. Tony R. Megna, and made subsequent to... June 17, 2011... are hereby **QUASHED**."

By filing and signing the present putative Motion for Reconsideration, Plaintiff's counsel disregarded the Court's previous Orders disqualifying him from representing Plaintiff and then granting him a limited appearance for the sole purpose of arguing an outstanding Motion for Summary Judgment. Plaintiff has other counsel of record (Benjamin R. Matthews, Esq.) that could have, but did not, execute the present Motion for Reconsideration. Rule 11(a) of the SCRPC requires that every pleading, motion, or other paper filed by a party represented by counsel must be executed by an attorney of record for that party. Plaintiff continues to be represented by Mr. Matthews, not by Mr. Megna. Accordingly, Mr. Megna's motion is unauthorized under the Rules of South Carolina Civil Procedure and is therefore **DISMISSED AS VOID ab initio**.

IT IS SO ORDERED.

Dated at Hartsville, South Carolina, this 28th day of September, 2011


J. Michael Baxley, Presiding Judge
Fourth Judicial Circuit

FILED
2011 OCT -4 PM 2:19
SCOTT B. SUESS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

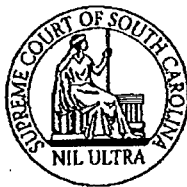
This judgment was entered on the ____ day of September 2011, and a copy mailed first class this ____ day of September, 2011 to attorneys of record or to parties as follows:

Attorney for Plaintiff
Benjamin R. Matthews, Esquire
3400 West Avenue
Columbia, SC 29203

Attorneys for Defendants
J. Rene Josey, Esquire
1831 West Evans, Street
Florence, SC 29501

John Jay James, II, Esquire
Post Office Box 507
Darlington, SC 29540

CLERK OF COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 5, 2011

Tony Ray Megna, Esquire
Matthews & Megna, LLC
3400 West Ave.
Columbia, SC 29203

Re: Anasti, James A. v. Lee, Gina L. A.
Trial Court Case No. 2007-CP-40-0576 (Judge Kinard)
Trial Court Case No. 2007-CP-40-0576 (Judge Manning)

Dear Mr. Megna:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

October 5, 2011."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,



CLERK

DES/lda

cc: Douglas N. Truslow, Esquire
The Honorable Jeanette W. McBride
The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A. OEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29101
TELEPHONE: (803) 734-1190
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

October 7, 2011

REMITTITUR

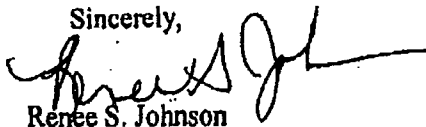
The Honorable Jeanette W. McBride
1701 Main Street, Room 205
PO Box 2766
Columbia, SC 29202

Re: Anasti, James v. Wilson, Lance
2007-CP-40-00576 2007-CP-40-00576

Dear Mrs. McBride:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,


Renee S. Johnson
Administrative Specialist

TAG/rj

cc: Tony R. Megna, Esq.
Ben Matthews, Esq.
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JAMES A. ANASTI,

Plaintiff,

VS.

LANCE WILSON, WILLIS GOODWIN,
GINA L. ANASTI LEE AND RICHLAND,
COUNTY CLERK OF COURT

Defendants.

COURT OF COMMON PLEAS

Case No. 2007CP40-0576

CONSENT TO RELEASE
COUNSEL

JEANE L. W. McBRIDE
C.O.C. & G.S.

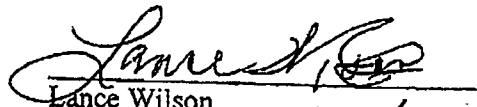
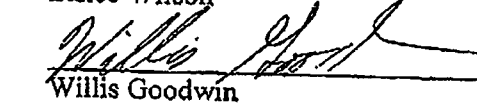
2012 FEB 24 PM 3:38

RICHLAND COUNTY
FILED

We, Lance Wilson and Willis Goodwin, Defendants in the above captioned case, hereby release Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth from any and all present and future employment in this case, including any responsibility to represent us. We have been made aware of the circumstances of Mr. Earle's inability to continue because of his serious medical condition and consider it good cause shown pursuant to S. C. Rules of Civil Procedure Rule 11(b).

The law firm of Seigler, Earle & Ellsworth has communicated to us access and ability for any new attorney, or for us, *pro se*, to obtain any and all file contents to proceed in this action and to employ new counsel, if we so desire.

I understand there will be no attorney's fees, costs and disbursements due to Thomas G. Earle and Seigler, Earle & Ellsworth for this employment which is hereby terminated without recourse.


Lance Wilson

Willis Goodwin

February 24, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES A. ANASTI,

Plaintiff,

VS.

LANCE WILSON, WILLIS GOODWIN,
GINA L. ANASTI LEE AND RICHLAND,
COUNTY CLERK OF COURT

Defendants.

COURT OF COMMON PLEAS

Case No. 2007CP40-0576

ORDER TERMINATING
EMPLOYMENT AND
CONTINUANCE

RICHLAND COUNTY
FILED
2012 MAR -1 AM 10:36
JEANNETTE W. MCBRIDE
C.C.B. & G.S.

This matter is before me on a Notice of Motion and Motion of Thomas G. Earle, Esquire, by Carl A. Ellsworth, Esquire of Seigler, Earle & Ellsworth, dated February 24, 2012 and duly filed in the Office of the Clerk of Court for Richland County, South Carolina on February 24, 2012. Included in the Motion was the Motion and Order Information Form And Coversheet. Personal service was effected upon Lance Wilson as shown by Affidavit of Service filed herein, dated February 28, 2012 as well as in accordance with Rule 11(b) South Carolina Rules of Civil Procedure and pursuant to Rules 4 and 5 of South Carolina Rules of Civil Procedure by regular mail and certified mail, restricted delivery to the addressees of Lance Wilson and Willis Goodwin along with service by mail upon Douglas N. Truslow, Esquire, in behalf of James A. Anasti and Tony R. Megna, Esquire, in behalf of Gina L. Anasti Lee. Technically, Mr. Megna is not involved nor is his client in this aspect of the case such that his concurrence will not be necessary.

The substance of the Motion is to terminate the employment of Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth as a result of Thomas G. Earle's experiencing sudden and serious health problems which prevent him from continuing to handle the above captioned case and any other cases such as 04CP40-5333/5334 as a result of his being placed in a medically induced coma in the Intensive Care Unit (ICU) at Palmetto Richland Memorial Hospital since on or about January 27, 2012 and his being diagnosed with a condition called "myasthenia gravis". His return to the practice of law is questionable at the present time and any future date. The medical opinion letter of Franklin R. McGuire, M.D. attached to the Motion as Exhibit A and incorporated by reference herein confirms the same in support of this Motion.

It has been reported to the Court that the workload placed on Carl A. Ellsworth in the two-man partnership of Seigler, Earle & Ellsworth has been overwhelming according to Carl A. Ellsworth, Esquire, and has made continued handling of this case and any and all other cases of Lance Wilson and Willis Goodwin impossible. Seigler, Earle & Ellsworth waives any and all attorney's fees and costs which were substantial.

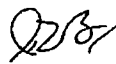
Consent to Release was duly signed by Lance Wilson and Willis Goodwin, dated February 24, 2012, and filed herein as shown by copy attached hereto consenting to the termination and release, the original being attached to the original motion filed with the Richland County Clerk of Court on February 24, 2012. All the files of Lance Wilson and Willis Goodwin were delivered personally to Lance Wilson and Willis Goodwin on February 24, 2012 at the offices of Seigler, Earle & Ellsworth as requested and as shown by the Receipt and Release for them to employ new counsel or to proceed *pro se* (individually by themselves) if they so desire.

Furthermore, to accommodate the termination of employment, employment of new counsel and preparation for a damages hearing presented by Plaintiff by and

through his counsel, Douglas N. Truslow, Esquire, in the above captioned case it is necessary that this case be continued and more time allowed for the defense to be prepared, and for good cause shown.

NOW, THEREFORE, IT IS ORDERED that the relief requested by Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth, attorneys at law, and as sought by Lance Wilson and Willis Goodwin be and hereby is granted.

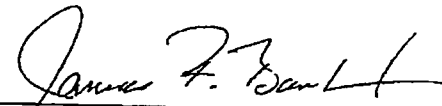
IT IS FURTHER ORDERED that good cause has been shown and consent given by all interested parties approving the termination of employment of Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth by Lance Wilson and Willis Goodwin as it pertains to any and all legal matters they have past, present and future with the aforementioned attorneys which this Court hereby grants, and the Clerk of Court shall remove the name of Thomas G. Earle, Carl A. Ellsworth and Seigler, Earle & Ellsworth as attorneys of record.

IT IS FURTHER ORDERED that Lance Wilson of 149 Barney Lane, Columbia, South Carolina 29223 and Willis Goodwin of 1000 Windsor Shores Drive, Columbia, South Carolina 29222 shall have thirty (30) days from the date of the signing of this Order to employ new counsel. *IF THEY FAIL TO DO SO THEY WILL PROCEED PRO SE.* 

IT IS FURTHER ORDERED that the hearing of the damages case brought by Plaintiff scheduled for March 12, 2012 before Judge Manning at 2:00 p.m. be and hereby is continued for a period of at least ninety (90) days from the date of this Order or until further Order of this Court.

AND IT IS SO ORDERED.

29 day of FEBRUARY, 2012
Columbia, South Carolina

By 
The Honorable James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-16-0332

Ex Parte:

Desa Ballard

In re:

Pee Dee Health Care P.A.,

Plaintiff,

Vs.

Estate of Hugh S. Thompson

Defendant.

**ORDER FOR SANCTIONS
AGAINST TONY R. MEGNA**

Non-party Desa Ballard moved for sanctions, pursuant to Rule 11(a), SCRPC, in connection with a subpoena for records served on her on or about July 30, 2011, ostensibly issued by the plaintiff in this action. The motion is granted.

As will be discussed in more detail below, in order to reach a decision in this case, this Court also was assigned jurisdiction in a Richland County case, *James A. Anastasi v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576. Stated succinctly, the reason that this Court had to consolidate sanctions motions hearings in two separate and unrelated cases pending in two different circuits is because of Megna's actions that this Court finds to be gross civility and professionalism violations. Having been disqualified as counsel because he was a material witness in *Thompson*, Megna continued to serve discovery under his signature in that case in violation of this Court's Order, which this Court had to quash; thereafter, Megna again served similar and additional discovery, this time under the auspices of the *Anastasi* case in Richland, a case that had nothing to do with the

TRUE CERTIFIED COPY,
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

discovery requests, and which by that time was concluded as to his client. Moreover, the discovery was not meritorious as to any case-related issues, but propounded solely to vex the recipients.

In granting the sanctions motion in this case, the Court makes the following:

FINDINGS OF FACT¹

- Sub 2*
1. This action was originally filed in the Darlington County Probate Court by the plaintiff corporation seeking to recover damages from the defendant. The plaintiff corporation was represented by attorney Tony R. Megna (Megna). The matter was removed to the Circuit Court in Darlington County.
 2. After removal to this Court, defense counsel made a motion to disqualify attorney Megna from representing the corporate plaintiff, alleging Megna was a necessary witness in that he was, and had been since 1995, the Chief Executive Officer of the plaintiff corporation.
 3. By order dated April 15, 2011, this Court made detailed findings of fact concluding that Megna was, in fact, a material witness as to core facts in this action and was disqualified from acting as counsel for the corporate plaintiff. The final sentence of that order stated "The Court orders complete disqualification effective with the execution of this Order. (footnote omitted)."
 4. The Court thereafter permitted Megna, at his request, to remain counsel for the plaintiff for the sole and limited purposes of arguing his motion for reconsideration of the disqualification Order and for arguing summary judgment motions. The motion to reconsider was eventually denied, and the issue of Megna's disqualification as

¹ The findings of fact are made from this Court's detailed review of the Clerk of Court's files in both the Richland County case and the instant case, the submissions of counsel, and the oral argument held in these consolidated matters in Darlington County on March 15, 2012.

counsel is on appeal to the South Carolina Court of Appeals as of this writing. As well, Defendant was subsequently granted summary judgment. An appeal from that Order is also pending. No stays were issued by the appellate court. Megna's disqualification to act as counsel in this matter is currently in effect.

5. When Megna was disqualified as counsel in this case, there was separate and unrelated litigation involving different parties pending in the Richland County Court of Common Pleas in a matter entitled *James A. Anasti v. Lance Wilton, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576 (the Richland case). Megna represented defendant Gina L. Lee in the Richland County case.
6. Other than Megna being counsel for a party in each case, the two cases are completely unrelated to one another. Megna is the only common denominator.
7. As more fully detailed in an Order issued this date in the Richland case, there have been numerous state court appellate proceedings, all initiated by Megna on behalf of his client Gina Lee, as well as bankruptcy proceedings involving Lee as the debtor in the United States Bankruptcy Court for the District of South Carolina.
8. In the Richland case, the plaintiff James Anasti was represented by attorney Douglas N. Truslow (Truslow). Truslow continued to represent Anasti throughout the several state appeals initiated by Megna on behalf of Lee, all of which appeals were subsequently dismissed based on procedural grounds; the merits of the appeals could not be reached because of Megna's repeated failures to comply with various deadlines.

Ans
3

9. In attempts to escape the consequences of his failure to comply with the rules, Megna made false statements to the circuit court and the appellate court, as more fully described by Judge L. Casey Manning in Orders dated April 8, 2008 and April 1, 2009 in the Richland case, where he found Megna's explanations for his delay to be false and intentionally manipulative.

10. According to Truslow, because of appellate and ethical issues he encountered in dealing with Megna in the Richland case, Truslow associated and consulted with Ballard, who has experience in both fields. In September, 2011, in connection with one of the appeals filed by Megna (on behalf of Gina Lee) at the South Carolina Court of Appeals, Ballard executed an affidavit which Truslow submitted to the Court of Appeals addressing the insufficiency of an appellate documents filed by Megna.

11. On or about July 30, 2011, Ballard was served with a subpoena signed by Megna as counsel for the plaintiff, bearing the caption in this case, seeking production of certain materials, including copies related to her communications with several attorneys, including Truslow, several of the lawyers involved in this case, and other lawyers which apparently have no relation to this case or the Richland case.

12. Ballard was not counsel for nor otherwise involved in the instant case in any way. The subpoena sought information related to the assistance she provided to Truslow in the Richland County case, and sought to discover if any evidence existed of her communications with a list of attorneys whom Megna apparently believed to be his adversaries in this or other cases. The subpoena sought nothing relevant to this case. The subpoena purported to be issued from Darlington County, although Ballard's

Jan 4

office is in Lexington County. The subpoena to Ballard did not comply with the SCRCF.

13. Ballard had no knowledge of the instant case, but when she received the subpoena, she located information to identify some of the attorneys involved. She obtained a copy of this Court's Order dated April 15, 2011, in which Megna was disqualified as counsel for the corporate plaintiff in this case.
14. Ballard filed and served an Objection to the subpoena. Since Megna had been disqualified in this case as counsel for the plaintiff, she served her objection on attorney Benjamin R. Matthews, who was listed on the Darlington County Clerk's website as Megna's law partner and also counsel for the plaintiff in the instant case.
15. She also filed and served a Motion for Sanctions on August 4, 2011, which argued that Megna had attempted to subpoena her records for an improper purpose, and in violation of this Court's order disqualifying him as counsel.
16. Truslow also filed a motion for sanctions in the Richland County case dated March 9, 2012. Ballard's motion for sanctions in this case was consolidated with Truslow's motion for hearing before this Court.
17. Prior to the hearing in this matter, Megna provided the Court and counsel with a document, bearing the caption in both cases, entitled "Synopsis." This document contained a rambling diatribe of challenges of unethical behavior against Truslow, Ballard, and others. As best the Court can understand Megna's allegations against Ballard, they arise from a contact to her office by Megna in which he sought to associate her on a potential unrelated case on behalf of Pee Dee Health Care. Ballard's associate responded that Ballard would consider looking at the matter if she

was paid hourly and she never heard back from Megna. She was never asked to represent Megna and no confidential information concerning Megna or his client was provided to her². Neither Megna nor his client contacted Ballard again until the subpoena was issued in this case.

18. In order to understand why Megna's efforts to subpoena information from Ballard were improper, a brief history of the litigation in the Richland case is necessary. By Order issued this same date in that case, that history is set forth in detail, and to the extent necessary, the findings in that Order are incorporated herein by reference.

19. By way of summary, the subpoena to Ballard was part of an improper and impermissible attempt by Megna to engage in discovery for purposes of defending himself (not his client) against motions for sanctions that were pending against him in the Richland County case. In addition, it appears that the subpoena was served on Ballard in an effort to punish her for consulting with Truslow in the Richland County case, and to deter her from continuing to assist him.

20. At the time Megna served the subpoena on Ballard, all discovery in the Richland County case had been concluded, Megna's client was no longer an active party to the Richland case, and the only remaining issues in that case in which Megna had any interest concerned the Richland Plaintiff's motions (via Truslow) for sanctions against Megna.

21. The subpoena issued to Ballard sought, among other things, her records of communications with Mr. Truslow in the Richland County case. This Court

² Even if the information provided by Megna to Ballard concerning Pee Dee Health Care was considered confidential information under Rule 1.6, and even if Ballard received and reviewed the material, this court finds she would not have been disqualified from continuing to assist Truslow in the Richland case. As stated earlier, the two cases are unrelated, the only common denominator again being Mr. Megna (representing two separate and unrelated clients in the two cases).

specifically finds there could be no other purpose for the discovery sought but to use the information to defend Truslow's claim for sanctions against Megna in the Richland case.

22. The subpoena to Ballard was issued in violation of this Court's order disqualifying Megna as counsel, sought privileged information regarding the advice she had given to Truslow, and constituted a fishing expedition into what other discussions she or others may have had with Truslow, all apparently for the purpose, *inter alia*, of seeking to deflect sanctions against himself in the Richland case.

23. Between his conduct in this case and in the Richland case, Megna has shown little regard for the Orders of this Court or for the legal limitations imposed upon him in his representative capacity as counsel for his client.

24. The inevitable conclusion is that Megna has, under the auspices of this case, attempted to subpoena Ballard, as well as her legally protected files, even though he has been disqualified, and that his intentions were fully improper. The Court has no choice but to conclude that he did so, at least in part, as a pretext to harass her and apparently to dissuade her from providing legal advice to Truslow in the Richland case.

25. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Richland case and he is in willful violation of this Court's orders, specifically including the Order disqualifying him as counsel for the plaintiff. He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in the Richland County case.

26. Megna's conduct is willful, deliberate and unapologetic. In both his "Synopsis" (captioned with both cases) and the memorandum he submitted to the Court in connection with the hearing in this matter, Megna continued to hurl fabricated allegations of misconduct upon Ballard, Truslow, and others who he considers to be adverse to him.

27. Perhaps the most egregious part of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless. This Court would be faced with an entirely different scenario if Megna had admitted his misconduct and shown remorse in any degree, or had he apologized for his continuous affronts upon the Court and his colleagues.

28. The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court.

29. Even viewed separately from Megna's conduct in the Richland case, Megna's conduct is ill-conceived, vitriolic, and abusive. When viewed in conjunction with the lengthy period during which he has engaged in similar conduct in the Richland case (as more thoroughly discussed in an Order issued this date), Megna's conduct is alarming and disturbing. He has engaged in a concerted effort to abuse the legal process in both cases for his own purposes, abusing this Court and his colleagues in the process.

30. Ballard has requested an award of sanctions pursuant to Rule 11(a), SCRCP, for her time in having to respond to the subpoena served upon her by Megna. I find that sanctions under Rule 11(a) are warranted. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996).

31. Ballard's original affidavit of fees includes time she has spent in responding to two (2) grievances filed against her with the Office of Disciplinary Counsel which contain similar allegations as those asserted against her in these proceedings by Megna. Those two grievances (which were dismissed) were filed by Mark Matthews, who appears (from the Court's review of filings by Megna in this case) to be an employee and agent of either Megna or Pee Dee Health Care.

32. Although the Court perceives it is highly likely that Megna participated in or facilitated the filings of these grievances against Ballard, this Court concludes that her time spent in defending against these grievances is not within the scope of sanctions which this Court can award under Rule 11(a) or otherwise. At the Court's request, Ballard has submitted an amended affidavit of attorney fees which does not include the time spent in responding to the grievances. She has also included her time spent in attending the hearing on May 15, 2012 and her work since then, including the preparation of a proposed order for the Court, all of which are appropriate.

33. The Court's review of this affidavit finds that the time Ballard spent in responding to the subpoena, appearing before this Court, and preparing the draft order requested by this Court are reasonable.

34. Ballard's hourly rate is her regular hourly rate charged to her clients, and in light of her standing in the legal community and her expertise in these areas, is immensely reasonable. Ballard is a recognized expert in the field of attorney conduct (and misconduct), she has an AV rating with Martindale Hubbell, and she has earned the respect of her peers and of the Courts of this state for her professionalism as a member of the Bar. Her experience and insight in the areas in which Truslow was

attempting to defend against Megna in the Richland case made her an appropriate choice for assistance to Truslow. Her agreement to assist Truslow in the Richland case made her a target of Megna's wrath, and she should be compensated by way of sanctions against Megna for the time she spent in responding to his improper discovery against her. The costs set forth in her affidavit, which consist of filing fees, copying costs and postage, are reasonable and were necessarily incurred in connection with the subpoena served upon her and the subsequent sanctions motion against Megna.

35. Pursuant to Rule 11(a), SCRCP, this Court awards sanction in favor of Ballard against Megna in the amount of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents (\$17,388.75), which constitutes reimbursement for the time and expenses set forth in Ms. Ballard's amended affidavit dated August 8, 2012. These sanctions are not punitive but are compensatory, and are required to be paid notwithstanding any penalties imposed herein. *Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 725 S.E.2d 698 (2012).

Jmb
10

36. The award of fees and costs herein are a sanction (and hence considered to be non-dischargeable except by payment), as well as a civil money judgment so as to carry interest at the legal judgment rate. The Clerk is directed to enroll this sum as a civil judgment in favor of Ballard against Megna.

37. In making this award, the Court is aware of the sanctions also being awarded to Truslow against Megna in the Richland County case. The sanctions awarded to Ballard are not duplicative of the sanctions awarded to Truslow, and the Court finds that both awards are compensatory in nature and are warranted, reasonable, and

supported by the evidence. The sanctions are awarded to pay the reasonable attorneys fees and costs incurred by the moving party. *Ex Parte: Bon Secours and St. Francis Xavier Hospital Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011).

Criminal Contempt Citation Against Mr. Megna, sua sponte

In presiding over these matters, this Court has undertaken a full review of the pleadings, discovery, previous Court Orders, correspondence, memoranda, and emails from Attorney Megna in both cases, together with review of applicable attorney oaths and disciplinary rules, as well as an analysis of prevailing law and Supreme Court decisions involving attorney conduct. As indicated in the language of this Order, this Court is concerned that the conduct of Attorney Megna reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, consistently uses language that is accusatory and demeaning directed at opposing counsel, includes inappropriate references to the judiciary, and contains unwarranted criticisms of other professionals, parties, and witnesses. Moreover, this Court finds that Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the Court system.

Because of the willful misconduct set forth throughout the body of the factual findings herein and the factual findings in the Richland County case set forth by Order issued this same date, the Court has determined to conduct a hearing to require Megna to show cause why he should not be held in criminal contempt of this Court for intentionally and willfully violating a Court Order. Megna is hereby advised that he has the right to counsel during such hearing, and shall be given an opportunity to present arguments to the Court. Megna is hereby specifically

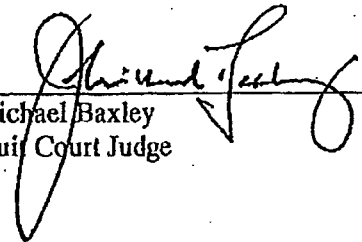
advised that a finding of criminal contempt by this Court may subject him up to six (6) months' imprisonment therefor, in addition to other sanctions. This Show Cause and Sanctions hearing is hereby set for March 18, 2013, beginning at 2:00 p.m., after the call of the regular non-jury roster for that day, in the fifth floor courtroom of the Darlington County Courthouse. Service of this Order upon Attorney Megna and his counsel shall constitute service of the Notice of Contempt hearing upon Megna.

Because of the numerous occasions on which Megna has denied receipt of service of an order or other papers (in the Richland case), Ballard shall make arrangements for personal service of a copy of this Order and the Richland County order issued this date upon Megna, unless Megna personally (not through counsel) consents to accept service in some other fashion and executes a written acceptance of service to that effect.

THEREFORE IT IS ORDERED:

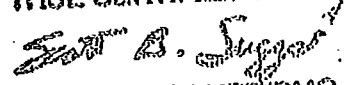
- 
1. Ms. Ballard's motion for sanctions is granted.
 2. Mr. Megna is ordered to pay Ms. Ballard the sum of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents (\$17,388.75) within thirty (30) days of the date of this Order. The Clerk shall enroll a civil judgment for this sum.
 3. Mr. Megna shall be required to show cause why he should not be held in criminal contempt of this Court for the actions outlined in this Order, and shall appear on March 18, 2013, at 2:00 p.m. in the fifth floor courtroom of the Darlington County courthouse for such hearing.

IT IS SO ORDERED.


J. Michael Baxley
Circuit Court Judge

February 11, 2013

FILED
2013 FEB 13 PM 2:47
SCOTT B. SUGGS
CLERK OF COURT/R.D.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY

CLERK OF COURT/RMC
DARLINGTON COUNTY S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Ex Parte:)

Douglas N. Truslow,)
JAMES A. ANASTI,)
Plaintiff,)

vs.)

LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
and RICHLAND COUNTY)
CLERK OF COURT,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2007-CP-40-0576

**ORDER FOR SANCTIONS
AGAINST TONY R. MEGNA**

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 FEB 13 PM 2:52

RICHLAND COUNTY
FILED

Sub
Plaintiff's counsel Douglas N. Truslow (Truslow) moves¹ for sanctions against Tony R. Megna (Megna), counsel for Defendant Gina L. Anasti Lee (Lee), in connection with improper subpoenas and discovery served upon him and a member of his staff in this matter and in an unrelated civil action pending in Darlington County, *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, Case No. 2010-CP-16-0332 (the Darlington case)². The motion is granted based upon the findings of fact set forth below.

Stated succinctly, the reason that this Court had to consolidate sanctions motions hearings in two separate and unrelated cases pending in two different circuits is because of Megna's

¹ Truslow's motion is dated March 9, 2012.

² This Court had previously issued several orders in the Darlington action. The instant case was pending in Richland County; Chief Administrative Judge James R. Barber assigned this Court to hear both motions. Hearing was held in Darlington on May 15, 2012.

actions that this Court finds to be gross civility and professionalism violations. Having been disqualified as counsel because he was a material witness in *Thompson*, Megna continued to serve discovery under his signature in that case in violation of this Court's Order, which this Court had to quash; thereafter, Megna again served similar and additional discovery, this time under the auspices of the *Anasti* case in Richland, a case that had nothing to do with the discovery requests, and which by that time was concluded as to his client. Moreover, the discovery was not meritorious as to any case-related issues, but propounded solely to vex the recipients.

FINDINGS OF FACT³

- 
1. This Richland case was filed by Plaintiff James A. Anasti (Anasti), through his counsel Truslow, to declare Anasti's ownership of real property at 2325 Two Notch Road in Columbia, and for an accounting for money allegedly due to Anasti from Defendant Gina Anasti Lee (Lee) and other defendants. Megna appeared as counsel for Lee in this action.
 2. Summary judgment on the merits was granted to Anasti on October 26, 2007, with a damages hearing against Lee and others to follow. That damages hearing has yet to be held. Instead, Megna began a series of appeals that has lasted four (4) years (with two remands to the circuit court) in both the South Carolina Court of Appeals and Supreme Court. These appeals finally concluded with the Supreme Court's denial of Megna's petition for certiorari on October 28, 2011.

³ The findings of fact are made from this Court's detailed review of the Clerk of Court's files in both this case and the Darlington county case. Both files were made available to this Court prior to a motions hearing held in this matter on May 15, 2012.

3. Neither of the appellate courts addressed the merits of this action. The appeals were dismissed because of Megna's repeated failures to comply with deadlines set forth in both the South Carolina Rules of Civil Procedure (SCRCP) and the appellate court rules (SCACR).
4. Prior to Megna's first appeal, Truslow filed a Rule 11 sanctions motion against Lee and Megna on November 7, 2007. That motion has not been heard and is not addressed in this Order; however, the pendency of that additional sanctions motion is relevant, as discussed later herein.
5. By the time the appellate proceedings in this case concluded, Lee had been discharged in bankruptcy⁴ and, consequently, absolved from any risk of a money judgment in this suit. After that time, any and all pleadings filed or discovery served by Megna, ostensibly on Lee's behalf, were undertaken solely by Megna for his own benefit, to defend Truslow's pending Rule 11 sanctions motion.
6. During the appellate proceedings, the case was remanded by the Court of Appeals to Circuit Judge L. Casey Manning on two (2) occasions to determine whether Megna's representations regarding the timeliness of his filings and receipt of notice by him were credible and accurate.
7. On both remands, Judge Manning found that Megna's various explanations to the courts as to when he received documents and when he received notice were "not

⁴ *In re: Gina Anasti Lee*, Case No. 09-02854-jw (United States Bankruptcy Court, District of South Carolina). An order was issued by United States Bankruptcy Judge John Waites on November 9, 2009 for the purpose of lifting the stay to allow these state court proceedings to continue. Judge Waites' order was based, at least in part, on Anasti's representation that he would not seek any financial recovery against Lee. *Id.* (Docket No. 34 at page 6). Thus, it was clear as early as November 9, 2009 that the only issue which remained pending as to these parties was Anasti's November 7, 2007 motion for Rule 11 sanctions. Because of Lee's bankruptcy, Anasti's Motion for Rule 11 sanctions was pending only against Megna and not his client Lee. Lee was discharged in bankruptcy on April 16, 2010.

credible” and that he had made material misrepresentations of fact to the courts.

Order dated April 3, 2008.”*Id.* at ¶ 13; Order date-stamped April 1, 2009.

8. Following the conclusion of the state court appellate proceedings, Truslow requested a status conference so that, *inter alia*, Anasti’s Rule 11 motion against Megna could be scheduled. A status conference was held on the record on January 18, 2012. At the status conference, Megna acknowledged and confirmed that Lee’s involvement in the case had ended and Rule 11 sanctions were being sought against him only⁵.
9. In February of 2012, under the caption of this case but indicating issuance from Darlington County, Megna served⁶ a subpoena on Truslow to take his deposition and that of attorney Steve Licata (who represented Anasti in the bankruptcy matters) as well as Truslow’s assistant, Amanda Hilley. He also served discovery requests upon Truslow which asked for a broad range of materials related to Truslow’s communication with a number of lawyers⁷ in the State, none of which have anything to do with this case.
10. Like the earlier subpoena served on attorney Desa Ballard (Ballard) in the Darlington county case (see separate sanctions order issued simultaneously in Darlington Case No. 2010-CP-16-0332 for additional sanctions arising from this conduct), the

⁵ On February 24, 2012, the Richland County Clerk of Court set Anasti’s damages hearing against other defendants for March 12, 2012. That hearing was apparently not held, presumably because this sanctions motion was pending, although the two issues (damages against other defendants and sanctions against Megna) are unrelated.

⁶ “Service” was made by email to Mr. Truslow, with a mailed copy sent to Mr. Truslow at 944 Richland Street, Suite 4, Columbia, which is not now nor ever has been Mr. Truslow’s address. It appears that throughout this litigation, in both the circuit and appellate courts, Mr. Megna has forwarded mail to Mr. Truslow at incorrect or non-existent addresses, causing great confusion in the progress of the case.

⁷ Jay James, J. René Josey, Kenneth Woodington, Steve Licata, Andy Savage, Caroline Streater, Celeste Jones, Ashley Stratton, any lawyers in the McNair Law Firm or their agents, any lawyers in Turner Padgett Law Firm or their agents, Thomas Earle, and Curtis Dowling.

discovery sought production of communications between Truslow and lawyers who Megna believed to be adverse to him in matters unrelated to this case.

11. Megna's former client in this case, Lee, has submitted an affidavit indicating she did not authorize the discovery by Megna, was not aware of it, and did not approve it. She indicated that Megna was no longer her lawyer at the time the discovery was served on Truslow.
12. By the time Megna served the subpoenas and propounded discovery to Truslow, the merits of this matter had been long decided (summary judgment had been granted to Anasti in October, 2007). Anasti had waived any damages or sanctions claims against Lee. All that remained to be adjudicated in this matter (as far as Megna was concerned) was Anasti's Rule 11 motion against Megna. As indicated above, Megna had also been disqualified as counsel in the Darlington case.
13. On March 9, 2012, Truslow filed the pending Motion to Quash and for other relief, including sanctions against Megna, in connection with the discovery.
14. Megna e-mailed this Court an unsolicited letter and 54-page "Synopsis" on March 19, 2012. The "Synopsis" contained the caption of this case, as well as the Darlington county case.
15. In the "Synopsis," Megna asserted that the Court of Appeals had previously and "unanimously denied" Truslow's March 9, 2012 motion. In addition, Megna leveled a number of claims of professional misconduct on the part of a number of attorneys, including Ballard, whose own motion for sanctions was pending in the Darlington action.

16. Truslow provided the Court with voluminous evidence refuting the allegations contained in Megna's "synopsis." This included Truslow's affidavit with detailed time records, the affidavit of former client Gina Lee, an affidavit of a legal assistant in Truslow's office, an affidavit of Ballard verifying that the fees sought by Truslow were reasonable in light of the issues raised by Megna, memoranda, and other documents.
17. Truslow asked that the Court take judicial notice of the Clerk of Court's files in the Thompson case in Darlington and relevant appeals; the "Florence cases" (Lake City Community Hospital, et al. v. Tony Megna, Benjamin R. Matthews, et al., 2008-CP-21-706); Matthews, Megna, et al. v. Celeste Jones, Leroy Nettles, et al., 2011-CP-21-841); the "companion" cases; and, Lee's bankruptcy case.
18. Megna neither objected, nor filed any counter-affidavits at the hearing on both motions, and his counsel handed up a memorandum with numerous attachments.
19. This Court has taken judicial notice of and considered the various records on file with the respective Clerks of Court, and has considered the other voluminous documentation referenced.
20. Much of the materials and argument asserted by Megna, to which Truslow necessarily responded and which this Court reviewed and considered, is completely irrelevant to the issues of the pending motion for sanctions. The Court has had to sift through mountains of materials as a result of Megna's efforts to dissuade this Court from looking at the merits of the issue actually presented. Unfortunately, the irrelevance could not be determined by the Court until all of the material was

gmb
6

reviewed. An immense amount of judicial time has been required to review these matters, only to discover that most of it was unnecessary.

21. The arguments in Megna's "Synopsis" are fragmented and illogical, but fervently presented; however, they are wholly without merit. The Court of Appeals has never considered sanctions with respect to Megna's service of discovery upon Truslow. Megna's other arguments can be summed up as follows: Megna does not like Truslow and/or Anasti and has hurled multiple accusations against them in an effort to deflect the Court from Megna's own misconduct. None of Megna's accusations have merit.

22. The Court notes that Megna has not heeded previous admonitions about his conduct. In his Orders on remand (April 3, 2008 and April 1, 2009) in this case, Judge Manning found that Megna had made "repeated and gross misrepresentations" to the Court, and he had made "unwarranted, unjustified and untrue attacks on opposing counsel." That has continued. This Court intends to stop it now.

23. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Darlington case (as more specifically described in the order issued this date in *Thompson*). He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in this case.

24. Megna's conduct is willful and deliberate. In both his "Synopsis" and the memorandum, he continued to hurl fabricated allegations of misconduct upon Ballard, Truslow, and multiple others he considers to be adverse to him.

25. A substantial component of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless. This Court

would be faced with an entirely different scenario if Megna had at any time admitted his misconduct and shown remorse to any degree, or had he apologized for his continuous affronts upon the Court and his colleagues.

26. The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court.

27. Even viewed separately from Megna's conduct in the Darlington County case, Megna's conduct is ill-conceived, vitriolic, and abusive. When the evidence from both cases is viewed together, Megna's conduct is alarming and disturbing. He has engaged in a concerted effort to abuse the legal process in both cases for his own purposes, abusing this Court, his colleagues, and adverse parties in the process.

28. Megna's conduct in this case cannot be justified, nor condoned. The Court has both actual and inherent authority to address these matters, to preserve the integrity of the court system, to ensure respect for Court Orders and Court rules, and to protect litigants and counsel from further abusive conduct. Megna's conduct clearly violates the SCRCF, and Rule 11 provides ample authority for the Court to impose sanctions. *Ex Parte: Bon Secours and St. Francis Xavier Hospital Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011).

30. Truslow has requested, by way of Rule 11 sanctions, an award for the time and expenses he incurred in responding to Megna's efforts at improper discovery. I find and conclude that Truslow did in fact expend the amount of time set forth in his fee and cost affidavit. The hours of legal time expended were both reasonable and necessary under the circumstances, given Megna's conduct.

Sub
8

31. The matter before this Court was made exceedingly difficult and contentious by Megna. His claims were convoluted and, though without any merit, were serious and have been time-consuming to address. The time expended by Truslow, as well as the basis for its expenditure, was well documented and confirmed independently.

32. Truslow's requested fees are reasonable, designed merely to compensate, and are justified. No loadstar multiplier has been utilized by this Court. Truslow is entitled to an award of fees and costs against Megna in the amount of \$31,547.25, plus \$295.14 in costs (for a total of \$31,842.39), as set forth in his detailed affidavit and time sheets.

33. The award of fees and costs herein are a sanction (and hence considered to be non-dischargeable except by payment), as well as a civil money judgment so as to carry interest at the legal judgment rate. Thus, the Clerk of Court is instructed to enroll this sum as a civil judgment against Megna in favor of Truslow.

34. It is an unfortunate circumstance when the Court must induce someone to be civil, but it is an entirely different matter when a licensed professional such as Megna so seriously misuses the procedural processes and legal mechanisms of this Court in such an abusive manner, with an ulterior motive, and repeatedly in violation of previous Court Order(s).

CRIMINAL CONTEMPT CITATION AGAINST MR. MEGNA, SUA SPONTE

35. In presiding over these matters, this Court has undertaken a full review of the pleadings, discovery, previous Court Orders, correspondence, memoranda, and emails from Attorney Megna in both cases, together with review of applicable attorney oaths and disciplinary rules, as well as an analysis of prevailing law and Supreme Court decisions involving attorney

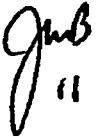
conduct. As indicated in the language of this Order, this Court is concerned that the conduct of Attorney Megna reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, consistently uses language that is accusatory and demeaning directed at opposing counsel, includes inappropriate references to the judiciary, and contains unwarranted criticisms of other professionals, parties, and witnesses. Moreover, this Court finds that Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the Court system.

Because of the willful misconduct set forth throughout the body of the factual findings herein and the factual findings in the Darlington County case set forth by Order issued this same date, the Court has determined to conduct a hearing to require Mr. Megna to show cause why he should not be held in criminal contempt of this Court for intentionally and willfully violating a Court Order. Mr. Megna is hereby advised that he has the right to counsel during such hearing, and shall be given an opportunity to present arguments to the Court. Mr. Megna is hereby specifically advised that a finding of criminal contempt by this Court may subject him up to six (6) months' imprisonment therefor, in addition to other sanctions. This Show Cause and Sanctions hearing is hereby set for March 18, 2013, beginning at 2:00 p.m., after the call of the regular non-jury roster for that day, in the fifth floor courtroom of the Darlington County Courthouse. Service of this Order upon Attorney Megna and his counsel shall constitute service of the Notice of Contempt hearing upon Mr. Megna.

SERVICE OF ORDERS ON OFFICE OF DISCIPLINARY COUNSEL,

SUA SPONTE

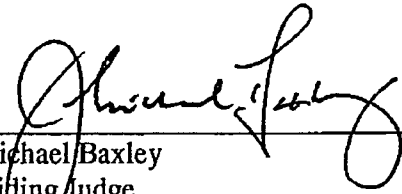
36. Under these circumstances, the reasons required for Megna to self-report this Order are self-evident. Megna is and shall be required to report (service by certified mail) this Order and the concomitant sanctions to Lesley M. Coggiola, Director of Office of Disciplinary Counsel (Post Office Box 12159, Columbia, South Carolina, 29211); together with an explanatory transmittal cover letter, within thirty (30) days of service of this Order upon him. Megna's report is to include at a minimum a copy of the Orders of the Honorable L. Casey Manning issued on April 3, 2008 and April 1, 2009, as well as the within Order. Megna shall enumerate in detail the documents being served/delivered, together with the signed return receipt or affidavit of service within the same time frame. Proof of service shall be required by Megna to be filed with the Richland County Clerk of Court in this matter and with the Darlington County Clerk of Court in Thompson.

 NOW, THEREFORE IT IS ORDERED:

1. Plaintiff's March 9, 2012 motion is granted.
2. This Order shall be filed in such a manner as to make clear to the respective Clerks of Court in Richland and Darlington Counties that the Court has issued a related Order in Thompson (10-CP-16-0332), as well as in this case.
3. Sanctions are imposed upon Tony Megna personally as outlined hereinabove to include:
 - a. Megna shall be and is required to pay Plaintiff's Counsel the sum of \$31,842.39 within thirty (30) days, and the Clerk shall issue a civil judgment therefor.

- b. Said sums shall be and are to be deemed a non-dischargeable, legal judgment, accruing interest at the legal judgment rate.
4. Megna shall self-report to the Office of Disciplinary Counsel.
- a. His report shall include this Order, as well as Judge Manning's orders dated April 3, 2008 and April 1, 2009.
 - b. Megna shall enumerate in detail the documents being submitted to ODC by certified mail, return receipt requested.
 - c. He shall then file same with the respective Clerks of Court in Richland and Darlington Counties.
 - d. Furthermore, he shall copy respective Counsel in his filings with the Clerks of Court.
 - e. Megna shall be and is required to take this action within thirty (30) days of service of the within Order.
 - f. Megna shall appear at a Criminal Contempt Show Cause Hearing at the Darlington County Courthouse on March 18, 2013.
5. Parallel sanctions are being imposed in Thompson (10-CP-16-0332) pending in Darlington County.
6. Because of the numerous occasions on which Megna has denied receipt of service of an Order or other papers, counsel shall make arrangements for personal service of a copy of this Order upon Megna, unless Megna personally (not through counsel) consents to accept service in some other fashion and executes a written acceptance of service to that effect.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge
Fourth and Fifth Judicial Circuits

Hartsville, South Carolina
February 11, 2013

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-16-0332

Pee Dee Health Care, PA

Estate of Hugh S. Thompson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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 BELOW):
☐ 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)
Desa A. Ballard, Esquire	Tony R. Megna	\$17,388.75
		\$
		\$

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
SCRPC Form 4C (12/2011)

2121
Judge Code

2-11-13
Date

Page 1

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:

Benjamin R. Matthews, Esquire

3400 West Avenue

Columbia, SC 29203

Jon Rene Josey, Esquire

Post Office Box 5478

Florence, SC 29502

John J. James, II, Esquire

Post Office Box 507

Darlington, SC 29540

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-16-0332

Ex Parte:

Desa Ballard

In re:

Pee Dee Health Care P.A.,

Plaintiff,

Vs.

Estate of Hugh S. Thompson

Defendant.

**ORDER FOR SANCTIONS
AGAINST TONY R. MEGNA**

FILED
2013 FEB 13 PM 2:50
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

Non-party Desa Ballard moved for sanctions, pursuant to Rule 11(a), SCRCP, in connection with a subpoena for records served on her on or about July 30, 2011, ostensibly issued by the plaintiff in this action. The motion is granted.

JanB
As will be discussed in more detail below, in order to reach a decision in this case, this Court also was assigned jurisdiction in a Richland County case, *James A. Anasti v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576. Stated succinctly, the reason that this Court had to consolidate sanctions motions hearings in two separate and unrelated cases pending in two different circuits is because of Megna's actions that this Court finds to be gross civility and professionalism violations. Having been disqualified as counsel because he was a material witness in *Thompson*, Megna continued to serve discovery under his signature in that case in violation of this Court's Order, which this Court had to quash; thereafter, Megna again served similar and additional discovery, this time under the auspices of the *Anasti* case in Richland, a case that had nothing to do with the

discovery requests, and which by that time was concluded as to his client. Moreover, the discovery was not meritorious as to any case-related issues, but propounded solely to vex the recipients.

In granting the sanctions motion in this case, the Court makes the following:

FINDINGS OF FACT¹

- 
1. This action was originally filed in the Darlington County Probate Court by the plaintiff corporation seeking to recover damages from the defendant. The plaintiff corporation was represented by attorney Tony R. Megna (Megna). The matter was removed to the Circuit Court in Darlington County.
 2. After removal to this Court, defense counsel made a motion to disqualify attorney Megna from representing the corporate plaintiff, alleging Megna was a necessary witness in that he was, and had been since 1995, the Chief Executive Officer of the plaintiff corporation.
 3. By order dated April 15, 2011, this Court made detailed findings of fact concluding that Megna was, in fact, a material witness as to core facts in this action and was disqualified from acting as counsel for the corporate plaintiff. The final sentence of that order stated "The Court orders complete disqualification effective with the execution of this Order. (footnote omitted)."
 4. The Court thereafter permitted Megna, at his request, to remain counsel for the plaintiff for the sole and limited purposes of arguing his motion for reconsideration of the disqualification Order and for arguing summary judgment motions. The motion to reconsider was eventually denied, and the issue of Megna's disqualification as

¹ The findings of fact are made from this Court's detailed review of the Clerk of Court's files in both the Richland County case and the instant case, the submissions of counsel, and the oral argument held in these consolidated matters in Darlington County on March 15, 2012.

counsel is on appeal to the South Carolina Court of Appeals as of this writing. As well, Defendant was subsequently granted summary judgment. An appeal from that Order is also pending. No stays were issued by the appellate court. Megna's disqualification to act as counsel in this matter is currently in effect.

5. When Megna was disqualified as counsel in this case, there was separate and unrelated litigation involving different parties pending in the Richland County Court of Common Pleas in a matter entitled *James A. Anasti v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576 (the Richland case). Megna represented defendant Gina L. Lee in the Richland County case.
6. Other than Megna being counsel for a party in each case, the two cases are completely unrelated to one another. Megna is the only common denominator.
7. As more fully detailed in an Order issued this date in the Richland case, there have been numerous state court appellate proceedings, all initiated by Megna on behalf of his client Gina Lee, as well as bankruptcy proceedings involving Lee as the debtor in the United States Bankruptcy Court for the District of South Carolina.
8. In the Richland case, the plaintiff James Anasti was represented by attorney Douglas N. Truslow (Truslow). Truslow continued to represent Anasti throughout the several state appeals initiated by Megna on behalf of Lee, all of which appeals were subsequently dismissed based on procedural grounds; the merits of the appeals could not be reached because of Megna's repeated failures to comply with various deadlines.

Ans
3

9. In attempts to escape the consequences of his failure to comply with the rules, Megna made false statements to the circuit court and the appellate court, as more fully described by Judge L. Casey Manning in Orders dated April 8, 2008 and April 1, 2009 in the Richland case, where he found Megna's explanations for his delay to be false and intentionally manipulative.
10. According to Truslow, because of appellate and ethical issues he encountered in dealing with Megna in the Richland case, Truslow associated and consulted with Ballard, who has experience in both fields. In September, 2011, in connection with one of the appeals filed by Megna (on behalf of Gina Lee) at the South Carolina Court of Appeals, Ballard executed an affidavit which Truslow submitted to the Court of Appeals addressing the insufficiency of an appellate documents filed by Megna.
11. On or about July 30, 2011, Ballard was served with a subpoena signed by Megna as counsel for the plaintiff, bearing the caption in this case, seeking production of certain materials, including copies related to her communications with several attorneys, including Truslow, several of the lawyers involved in this case, and other lawyers which apparently have no relation to this case or the Richland case.
12. Ballard was not counsel for nor otherwise involved in the instant case in any way. The subpoena sought information related to the assistance she provided to Truslow in the Richland County case, and sought to discover if any evidence existed of her communications with a list of attorneys whom Megna apparently believed to be his adversaries in this or other cases. The subpoena sought nothing relevant to this case. The subpoena purported to be issued from Darlington County, although Ballard's

office is in Lexington County. The subpoena to Ballard did not comply with the SCRCF.

13. Ballard had no knowledge of the instant case, but when she received the subpoena, she located information to identify some of the attorneys involved. She obtained a copy of this Court's Order dated April 15, 2011, in which Megna was disqualified as counsel for the corporate plaintiff in this case.
14. Ballard filed and served an Objection to the subpoena. Since Megna had been disqualified in this case as counsel for the plaintiff, she served her objection on attorney Benjamin R. Matthews, who was listed on the Darlington County Clerk's website as Megna's law partner and also counsel for the plaintiff in the instant case.
15. She also filed and served a Motion for Sanctions on August 4, 2011, which argued that Megna had attempted to subpoena her records for an improper purpose, and in violation of this Court's order disqualifying him as counsel.
16. Truslow also filed a motion for sanctions in the Richland County case dated March 9, 2012. Ballard's motion for sanctions in this case was consolidated with Truslow's motion for hearing before this Court.
17. Prior to the hearing in this matter, Megna provided the Court and counsel with a document, bearing the caption in both cases, entitled "Synopsis." This document contained a rambling diatribe of challenges of unethical behavior against Truslow, Ballard, and others. As best the Court can understand Megna's allegations against Ballard, they arise from a contact to her office by Megna in which he sought to associate her on a potential unrelated case on behalf of Pee Dee Health Care. Ballard's associate responded that Ballard would consider looking at the matter if she

was paid hourly and she never heard back from Megna. She was never asked to represent Megna and no confidential information concerning Megna or his client was provided to her². Neither Megna nor his client contacted Ballard again until the subpoena was issued in this case.

18. In order to understand why Megna's efforts to subpoena information from Ballard were improper, a brief history of the litigation in the Richland case is necessary. By Order issued this same date in that case, that history is set forth in detail, and to the extent necessary, the findings in that Order are incorporated herein by reference.

19. By way of summary, the subpoena to Ballard was part of an improper and impermissible attempt by Megna to engage in discovery for purposes of defending himself (not his client) against motions for sanctions that were pending against him in the Richland County case. In addition, it appears that the subpoena was served on Ballard in an effort to punish her for consulting with Truslow in the Richland County case, and to deter her from continuing to assist him.

20. At the time Megna served the subpoena on Ballard, all discovery in the Richland County case had been concluded, Megna's client was no longer an active party to the Richland case, and the only remaining issues in that case in which Megna had any interest concerned the Richland Plaintiff's motions (via Truslow) for sanctions against Megna.

21. The subpoena issued to Ballard sought, among other things, her records of communications with Mr. Truslow in the Richland County case. This Court

² Even if the information provided by Megna to Ballard concerning Pee Dee Health Care was considered confidential information under Rule 1.6, and even if Ballard received and reviewed the material, this court finds she would not have been disqualified from continuing to assist Truslow in the Richland case. As stated earlier, the two cases are unrelated, the only common denominator again being Mr. Megna (representing two separate and unrelated clients in the two cases).

specifically finds there could be no other purpose for the discovery sought but to use the information to defend Truslow's claim for sanctions against Megna in the Richland case.

22. The subpoena to Ballard was issued in violation of this Court's order disqualifying Megna as counsel, sought privileged information regarding the advice she had given to Truslow, and constituted a fishing expedition into what other discussions she or others may have had with Truslow, all apparently for the purpose, *inter alia*, of seeking to deflect sanctions against himself in the Richland case.

23. Between his conduct in this case and in the Richland case, Megna has shown little regard for the Orders of this Court or for the legal limitations imposed upon him in his representative capacity as counsel for his client.

24. The inevitable conclusion is that Megna has, under the auspices of this case, attempted to subpoena Ballard, as well as her legally protected files, even though he has been disqualified, and that his intentions were fully improper. The Court has no choice but to conclude that he did so, at least in part, as a pretext to harass her and apparently to dissuade her from providing legal advice to Truslow in the Richland case.

25. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Richland case and he is in willful violation of this Court's orders, specifically including the Order disqualifying him as counsel for the plaintiff. He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in the Richland County case.

26. Megna's conduct is willful, deliberate and unapologetic. In both his "Synopsis" (captioned with both cases) and the memorandum he submitted to the Court in connection with the hearing in this matter, Megna continued to hurl fabricated allegations of misconduct upon Ballard, Truslow, and others who he considers to be adverse to him.
27. Perhaps the most egregious part of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless. This Court would be faced with an entirely different scenario if Megna had admitted his misconduct and shown remorse in any degree, or had he apologized for his continuous affronts upon the Court and his colleagues.
28. The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court.
29. Even viewed separately from Megna's conduct in the Richland case, Megna's conduct is ill-conceived, vitriolic, and abusive. When viewed in conjunction with the lengthy period during which he has engaged in similar conduct in the Richland case (as more thoroughly discussed in an Order issued this date), Megna's conduct is alarming and disturbing. He has engaged in a concerted effort to abuse the legal process in both cases for his own purposes, abusing this Court and his colleagues in the process.
30. Ballard has requested an award of sanctions pursuant to Rule 11(a), SCRPC, for her time in having to respond to the subpoena served upon her by Megna. I find that sanctions under Rule 11(a) are warranted. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996).

31. Ballard's original affidavit of fees includes time she has spent in responding to two (2) grievances filed against her with the Office of Disciplinary Counsel which contain similar allegations as those asserted against her in these proceedings by Megna. Those two grievances (which were dismissed) were filed by Mark Matthews, who appears (from the Court's review of filings by Megna in this case) to be an employee and agent of either Megna or Pee Dee Health Care.
32. Although the Court perceives it is highly likely that Megna participated in or facilitated the filings of these grievances against Ballard, this Court concludes that her time spent in defending against these grievances is not within the scope of sanctions which this Court can award under Rule 11(a) or otherwise. At the Court's request, Ballard has submitted an amended affidavit of attorney fees which does not include the time spent in responding to the grievances. She has also included her time spent in attending the hearing on May 15, 2012 and her work since then, including the preparation of a proposed order for the Court, all of which are appropriate.
33. The Court's review of this affidavit finds that the time Ballard spent in responding to the subpoena, appearing before this Court, and preparing the draft order requested by this Court are reasonable.
34. Ballard's hourly rate is her regular hourly rate charged to her clients, and in light of her standing in the legal community and her expertise in these areas, is immensely reasonable. Ballard is a recognized expert in the field of attorney conduct (and misconduct), she has an AV rating with Martindale Hubbell, and she has earned the respect of her peers and of the Courts of this state for her professionalism as a member of the Bar. Her experience and insight in the areas in which Truslow was

Sub
9

attempting to defend against Megna in the Richland case made her an appropriate choice for assistance to Truslow. Her agreement to assist Truslow in the Richland case made her a target of Megna's wrath, and she should be compensated by way of sanctions against Megna for the time she spent in responding to his improper discovery against her. The costs set forth in her affidavit, which consist of filing fees, copying costs and postage, are reasonable and were necessarily incurred in connection with the subpoena served upon her and the subsequent sanctions motion against Megna.

35. Pursuant to Rule 11(a), SCRCP, this Court awards sanction in favor of Ballard against Megna in the amount of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents (\$17,388.75), which constitutes reimbursement for the time and expenses set forth in Ms. Ballard's amended affidavit dated August 8, 2012. These sanctions are not punitive but are compensatory, and are required to be paid notwithstanding any penalties imposed herein. *Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 725 S.E.2d 698 (2012).

36. The award of fees and costs herein are a sanction (and hence considered to be non-dischargeable except by payment), as well as a civil money judgment so as to carry interest at the legal judgment rate. The Clerk is directed to enroll this sum as a civil judgment in favor of Ballard against Megna.

37. In making this award, the Court is aware of the sanctions also being awarded to Truslow against Megna in the Richland County case. The sanctions awarded to Ballard are not duplicative of the sanctions awarded to Truslow, and the Court finds that both awards are compensatory in nature and are warranted, reasonable, and

supported by the evidence. The sanctions are awarded to pay the reasonable attorneys fees and costs incurred by the moving party. *Ex Parte: Bon Secours and St. Francis Xavier Hospital Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011).

Criminal Contempt Citation Against Mr. Megna, sua sponte

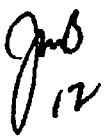
In presiding over these matters, this Court has undertaken a full review of the pleadings, discovery, previous Court Orders, correspondence, memoranda, and emails from Attorney Megna in both cases, together with review of applicable attorney oaths and disciplinary rules, as well as an analysis of prevailing law and Supreme Court decisions involving attorney conduct. As indicated in the language of this Order, this Court is concerned that the conduct of Attorney Megna reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, consistently uses language that is accusatory and demeaning directed at opposing counsel, includes inappropriate references to the judiciary, and contains unwarranted criticisms of other professionals, parties, and witnesses. Moreover, this Court finds that Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the Court system.

Because of the willful misconduct set forth throughout the body of the factual findings herein and the factual findings in the Richland County case set forth by Order issued this same date, the Court has determined to conduct a hearing to require Megna to show cause why he should not be held in criminal contempt of this Court for intentionally and willfully violating a Court Order. Megna is hereby advised that he has the right to counsel during such hearing, and shall be given an opportunity to present arguments to the Court. Megna is hereby specifically

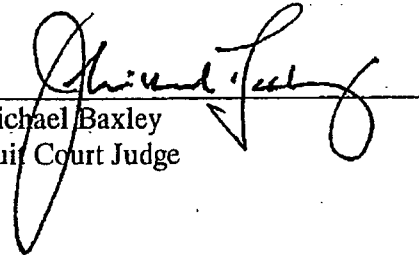
advised that a finding of criminal contempt by this Court may subject him up to six (6) months' imprisonment therefor, in addition to other sanctions. This Show Cause and Sanctions hearing is hereby set for March 18, 2013, beginning at 2:00 p.m., after the call of the regular non-jury roster for that day, in the fifth floor courtroom of the Darlington County Courthouse. Service of this Order upon Attorney Megna and his counsel shall constitute service of the Notice of Contempt hearing upon Megna.

Because of the numerous occasions on which Megna has denied receipt of service of an order or other papers (in the Richland case), Ballard shall make arrangements for personal service of a copy of this Order and the Richland County order issued this date upon Megna, unless Megna personally (not through counsel) consents to accept service in some other fashion and executes a written acceptance of service to that effect.

THEREFORE IT IS ORDERED:

- 
1. Ms. Ballard's motion for sanctions is granted.
 2. Mr. Megna is ordered to pay Ms. Ballard the sum of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents (\$17,388.75) within thirty (30) days of the date of this Order. The Clerk shall enroll a civil judgment for this sum.
 3. Mr. Megna shall be required to show cause why he should not be held in criminal contempt of this Court for the actions outlined in this Order, and shall appear on March 18, 2013, at 2:00 p.m. in the fifth floor courtroom of the Darlington County courthouse for such hearing.

IT IS SO ORDERED.



J. Michael Baxley
Circuit Court Judge

February 11, 2013

HSTATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Ex Parte:)

Douglas N. Truslow,)

In re:)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,)

WILLIS GOODWIN,)

GINA L. ANASTI LEE,)

and RICHLAND COUNTY)

CLERK OF COURT,)

Defendants.)

 STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Ex Parte:)

Desa Ballard,)

Pec Dee Health Care P.A.)

Plaintiff,)

Vs.)

Estate of Hugh S. Thompson,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2007-CP-40-0576

**ORDER DENYING TONY R.
MEGNA'S MOTION FOR
RECONSIDERATION OF
SANCTIONS**

JEANETTE W. HOSBRIDE
C.C.P. & G.S.

2013 JUN 12 AM 10:52

RICHLAND
FILED

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-16-0332

Tony R. Megna moves for reconsideration pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 59 of this Court's sanctions Orders filed February 13, 2013 in the above captioned cases. The motions are denied as set forth herein.

Motions for Rule 11 sanctions were filed seeking awards of sanctions against Tony R. Megna in both cases. In the Richland County case, *Anasti v. Lee*, sanctions were sought by an adverse party against Mr. Megna in connection with discovery abuses. In the Darlington case, *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, non-party Desa A. Ballard also sought sanctions for discovery abuses. The sanctions motions were consolidated for hearing. While separate orders were issued in each case, the motions for reconsideration filed in both cases raise common issues, and were considered together.

The motions for reconsideration were heard on the record, via telephone, on March 7, 2013.¹ Attorney Megna's new counsel, James M. Griffin, Esq., represented Mr. Megna.² Douglas N. Truslow, Esq. represented his client James Anasti in the Richland County case; and Desa A. Ballard, Esq. appeared *pro se* in the Darlington County case. Also present for the hearing were J. Rene Josey, Esq. and John J. James II, Esq., counsel for defendants in the Darlington county case.³ No objections to the scope or manner of conducting the hearing were made. As a preliminary matter, Attorney Truslow raised several procedural issues that may have barred the Court's consideration of the motions for reconsideration, and those objections were

¹ On March 4, 2013, the Court notified the parties that argument should be limited to the amount of sanctions awarded. No objection was made to the notice or limitation.

² Attorney Griffin filed notices of appearance on Mr. Megna's behalf (and others) in August, 2012, several months after the consolidated hearing on the pending sanctions motions, but before issuance of the orders. Mr. Megna continues to be represented by attorney Aimee J. Zmroczek as well as Mr. Megna's law partner, Benjamin R. Matthews, neither of whom signed the Motions for Reconsideration and neither of whom participated in the hearing in this matter.

³ Messrs. Wilson's and Goodwin's counsel had requested that he be excused in that, while interested in the proceeding, he likely had nothing to add that would not otherwise be argued by others in attendance.

noted but not necessary to be ruled upon. The Court has considered all issues raised by the motions for reconsideration and concluded all to be without merit.

The Court heard argument on Mr. Megna's objection to the amount of sanctions awarded in both cases. Mr. Megna asserts the amount of sanctions awarded were unreasonable and excessive and, in the case of Attorney Ballard's motion, unwarranted in that Ms. Ballard represented herself *pro se* and was not eligible to be awarded sanctions under the well-established rule in South Carolina that an attorney proceeding *pro se* may not recover attorneys' fees on behalf of herself. See *Hopkins v. Hopkins*, 343 S.C. 301, 306-07, 540 S.E.2d 454, 457 (2000).

The Court possesses discretion under Rule 11 to determine an amount of sanction to be awarded based on the unique facts of each case, and significant sanctions are appropriate when "a filing is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." *Ex Parte: Bon Secours et al., In re: Thomas R. Weiters v. Bon-Secours-St. Francis Hospital Inc. et al.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011). Here, this Court has found that Mr. Megna's conduct far exceeded being "patently without merit." He acted in both cases in such a vexatious manner as to shock the conscience of the Court.

The traditional standard for an award of Rule 11 sanctions is where "no good grounds exist to support the filing." *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). That standard pales here. While the findings of the Court are fully contained in the previous sanctions Orders, Mr. Megna was found to have violated previous Court orders that disqualified him as counsel in the Darlington case, and then used the Richland County case as a vehicle to propound discovery in the Darlington case. This occurred after Mr. Megna's client essentially no longer had an interest at Bar in the Richland case. Mr. Megna clearly intended to vex and

cause substantial inconvenience to Attorney Truslow and his staff and client, for no legitimate purpose, and further intended to intimidate Ms. Ballard, all in an effort to protect his own pecuniary interests notwithstanding his (former) client's lack of interest in the matter. He also acted in direct violation of a Court Order. It is difficult to imagine an award of sanctions not being made under these facts.

Mr. Megna argues the amount of sanctions awarded is substantial and not warranted by his misconduct. This Court disagrees. Mr. Megna is the architect of this situation. A reasonable attorney under these circumstances would have realized the error, or at least questioned the wisdom of his actions, when faced with two (2) motions for sanctions by different movants, both pointing out the extreme impropriety of his conduct. Here, however, after the motions for sanctions were filed, Mr. Megna attempted to divert the Court's attention from his own misconduct by burying the Court and the parties with a volume of documentation that attempted to justify his own misconduct while attacking everyone else. This pattern of misdirection and accusing others has continued into the Motions for Reconsideration.

In Mr. Megna's assertion that the amount of sanctions is unwarranted, he criticizes both Attorney Truslow and Ms. Ballard for spending the substantial time on these matters that was reflected in their time records, although he does not dispute that the time was actually expended by them. He argues that they should not have spent the time they did in responding to his discovery and in seeking sanctions against him. Aside from the question of whether the issue has been properly preserved, that is simply not his decision.

In determining an award of sanctions, the amount of time devoted by the responding party is only one of many factors that can be considered in determining an appropriate amount of sanctions. Sanctions available to the Court are not limited to a mathematical calculation of

attorney fees incurred by the defending party, but the time devoted to defending the matter and seeking sanctions is certainly a factor that the Court can consider in determining an appropriate amount of sanctions. *Ex Parte Bon Secours, supra*. Here, the Court chose to award an amount of sanctions that was tied to the time Attorney Truslow and Ms. Ballard spent in addressing this matter (and in fact addressing the reasonableness of that time), but it need not have done so. This Court has no hesitation in confirming that the amount of sanctions awarded, which are characterized by Mr. Megna as "substantial," are appropriate remediation for Mr. Megna's conduct in this matter and commensurate with the level of his offenses. Sanctions are, after all, awarded to "deter" the offending party from continued bad faith actions. *Id*

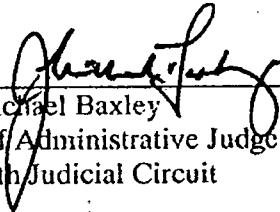
Mr. Megna asserts that Ms. Ballard cannot recover attorney fees, citing *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000) and *Williamson v. Middleton*, 383 S.C. 490, 681 S.E.2d 867 (2009) for the proposition that, since Ms. Ballard did not pay someone else to represent her, she cannot recover for her own time. Ms. Ballard acknowledges that she represented herself *pro se* in responding to the discovery served upon her by Mr. Megna and in seeking sanctions against him.

Ms. Ballard was not awarded attorney fees, she was awarded sanctions. While the sanctions were tied to the amount of work required as a result of Mr. Megna's defalcations, the sums awarded were still sanctions. Order dated 2-13-2013, ¶¶ 35 – 37. In both *Calhoun* and *Williamson*, the appellate courts construed the applicability of statutes which could be used to shift the payment of attorney fees to a different party in the action, in contravention of the American rule that each party pays their own fees unless otherwise provided by agreement or statute. *Calhoun* involved statutory fee-shifting in family court, and *Williamson* involved fee shifting in a wage claim matter pursuant to S.C.Code Ann. Section 39-65-30. In *Williamson*, the

fee shifting statute specifically required the prevailing party to have "incurred" attorney fees before the obligation to pay could be shifted to the unsuccessful party. Neither case is applicable to an award of sanctions under Rule 11.

Ms. Ballard asked the Court to reduce the amount of sanctions she was awarded by \$1,390.00 based on her error in including two time entries for time expended by her and her staff on April 5, 2012. Since her original request for sanctions, and the award, were based on the time she had spent in responding to the discovery and pursuing sanctions against Mr. Megna, the Court will grant her request to reduce the sanctions award by the amount requested. For that reason, the amount of sanctions awarded to Ms. Ballard in the February 13, 2013 order is reduced by \$1,390.00, from \$17,388.75 to \$15,998.75. The Darlington County Clerk of Court is directed to amend the judgment entered against Mr. Megna in favor of Ms. Ballard to reflect this adjustment. The award of sanctions to Ms. Ballard is \$15,998.75.

For the reasons set forth above, Mr. Megna's motions for reconsideration in both matters are denied.



J. Michael Baxley
Chief Administrative Judge
Fourth Judicial Circuit

June 5, 2013

Hartsville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Ex Parte:)

Desa Ballard)

In re:)

Pee Dee Health Care P.A.,)

Plaintiff,)

Vs.)

Estate of Hugh S. Thompson)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No. 2007-CP-40-0576

CERTIFICATE OF SERVICE

CELANE LIE W. MCGNIDE
C.C.P. & G.S.

2013 JUN 12 AM 10:52

FILED

I, Mara T. Ballard, an employee with Ballard Watson Weissenstein, do hereby certify that a copy of Order Denying Tony R. Megna's Motion for Reconsideration of Sanctions in the above-captioned case was placed in the US Mail with sufficient postage to:

James M. Griffin, Esquire
A. Camden Lewis, Esquire
Lewis Babcock & Griffin, LLP
Post Office Box 11208
Columbia, South Carolina 29211
Attorney for Tony R. Megna

Aimee J Zmroczek, Esquire
A.J.Z. Law Firm, LLC
Post Office Box 11961
Columbia South Carolina 29211

Jon Rene Josey, Esquire
Turner Padget Graham & Laney, PA
Post Office Box 5478
Florence South Carolina 29502

John J. James, II, Esquire
Paulling & James, LLP
Post Office Box 507
Darlington South Carolina 29540


Mara T. Ballard, CMA, CFE, Forensic Accountant

June 11, 2013
West Columbia, South Carolina



HSTATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Ex Parte:)

Douglas N. Truslow,)

In re:)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,)

WILLIS GOODWIN,)

GINA L. ANASTI LEE,)

and RICHLAND COUNTY)

CLERK OF COURT,)

Defendants.)

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Ex Parte:)

Desa Ballard,)

Pee Dee Health Care P.A.)

Plaintiff,)

Vs.)

Estate of Hugh S. Thompson,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2007-CP-40-0576

**ORDER DENYING TONY R.
MEGNA'S MOTION FOR
RECONSIDERATION OF
SANCTIONS**

FILED
2013 JUN 12 PM 1:35
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-16-0332

TRUE CERTIFIED COPY, 1

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

COPY

Tony R. Megna moves for reconsideration pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 59 of this Court's sanctions Orders filed February 13, 2013 in the above captioned cases. The motions are denied as set forth herein.

Motions for Rule 11 sanctions were filed seeking awards of sanctions against Tony R. Megna in both cases. In the Richland County case, *Anasti v. Lee*, sanctions were sought by an adverse party against Mr. Megna in connection with discovery abuses. In the Darlington case, *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, non-party Desa A. Ballard also sought sanctions for discovery abuses. The sanctions motions were consolidated for hearing. While separate orders were issued in each case, the motions for reconsideration filed in both cases raise common issues, and were considered together.

The motions for reconsideration were heard on the record, via telephone, on March 7, 2013.¹ Attorney Megna's new counsel, James M. Griffin, Esq., represented Mr. Megna.² Douglas N. Truslow, Esq. represented his client James Anasti in the Richland County case; and Desa A. Ballard, Esq. appeared *pro se* in the Darlington County case. Also present for the hearing were J. Rene Josey, Esq. and John J. James II, Esq., counsel for defendants in the Darlington county case.³ No objections to the scope or manner of conducting the hearing were made. As a preliminary matter, Attorney Truslow raised several procedural issues that may have barred the Court's consideration of the motions for reconsideration, and those objections were

¹ On March 4, 2013, the Court notified the parties that argument should be limited to the amount of sanctions awarded. No objection was made to the notice or limitation.

² Attorney Griffin filed notices of appearance on Mr. Megna's behalf (and others) in August, 2012, several months after the consolidated hearing on the pending sanctions motions, but before issuance of the orders. Mr. Megna continues to be represented by attorney Aimee J. Zmroczek as well as Mr. Megna's law partner, Benjamin R. Matthews, neither of whom signed the Motions for Reconsideration and neither of whom participated in the hearing in this matter.

³ Messrs. Wilson's and Goodwin's counsel had requested that he be excused in that, while interested in the proceeding, he likely had nothing to add that would not otherwise be argued by others in attendance.

noted but not necessary to be ruled upon. The Court has considered all issues raised by the motions for reconsideration and concluded all to be without merit.

The Court heard argument on Mr. Megna's objection to the amount of sanctions awarded in both cases. Mr. Megna asserts the amount of sanctions awarded were unreasonable and excessive and, in the case of Attorney Ballard's motion, unwarranted in that Ms. Ballard represented herself *pro se* and was not eligible to be awarded sanctions under the well-established rule in South Carolina that an attorney proceeding *pro se* may not recovery attorneys' fees on behalf of herself. *See Hopkins v. Hopkins*, 343 S.C. 301, 306-07, 540 S.E.2d 454, 457 (2000).

The Court possesses discretion under Rule 11 to determine an amount of sanction to be awarded based on the unique facts of each case, and significant sanctions are appropriate when "a filing is so patently without merit that no reasonable attorney could have a good faith belief in its propriety. "*Ex Parte: Bon Secours et al., In re: Thomas R. Weiters v. Bon-Secours-St. Francis Hospital Inc. et al.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011). Here, this Court has found that Mr. Megna's conduct far exceeded being "patently without merit." He acted in both cases in such a vexatious manner as to shock the conscience of the Court.

The traditional standard for an award of Rule 11 sanctions is where "no good grounds exist to support the filing." *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). That standard pales here. While the findings of the Court are fully contained in the previous sanctions Orders, Mr. Megna was found to have violated previous Court orders that disqualified him as counsel in the Darlington case, and then used the Richland County case as a vehicle to propound discovery in the Darlington case. This occurred after Mr. Megna's client essentially no longer had an interest at Bar in the Richland case. Mr. Megna clearly intended to vex and

cause substantial inconvenience to Attorney Truslow and his staff and client, for no legitimate purpose, and further intended to intimidate Ms. Ballard, all in an effort to protect his own pecuniary interests notwithstanding his (former) client's lack of interest in the matter. He also acted in direct violation of a Court Order. It is difficult to imagine an award of sanctions not being made under these facts.

Mr. Megna argues the amount of sanctions awarded is substantial and not warranted by his misconduct. This Court disagrees. Mr. Megna is the architect of this situation. A reasonable attorney under these circumstances would have realized the error, or at least questioned the wisdom of his actions, when faced with two (2) motions for sanctions by different movants, both pointing out the extreme impropriety of his conduct. Here, however, after the motions for sanctions were filed, Mr. Megna attempted to divert the Court's attention from his own misconduct by burying the Court and the parties with a volume of documentation that attempted to justify his own misconduct while attacking everyone else. This pattern of misdirection and accusing others has continued into the Motions for Reconsideration.

9-5
4
In Mr. Megna's assertion that the amount of sanctions is unwarranted, he criticizes both Attorney Truslow and Ms. Ballard for spending the substantial time on these matters that was reflected in their time records, although he does not dispute that the time was actually expended by them. He argues that they should not have spent the time they did in responding to his discovery and in seeking sanctions against him. Aside from the question of whether the issue has been properly preserved, that is simply not his decision.

In determining an award of sanctions, the amount of time devoted by the responding party is only one of many factors that can be considered in determining an appropriate amount of sanctions. Sanctions available to the Court are not limited to a mathematical calculation of

attorney fees incurred by the defending party, but the time devoted to defending the matter and seeking sanctions is certainly a factor that the Court can consider in determining an appropriate amount of sanctions. *Ex Parte Bon Secours, supra*. Here, the Court chose to award an amount of sanctions that was tied to the time Attorney Truslow and Ms. Ballard spent in addressing this matter (and in fact addressing the reasonableness of that time), but it need not have done so. This Court has no hesitation in confirming that the amount of sanctions awarded, which are characterized by Mr. Megna as “substantial,” are appropriate remediation for Mr. Megna’s conduct in this matter and commensurate with the level of his offenses. Sanctions are, after all, awarded to “deter” the offending party from continued bad faith actions. *Id*

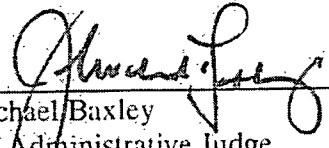
Mr. Megna asserts that Ms. Ballard cannot recover attorney fees, citing *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000) and *Williamson v. Middleton*, 383 S.C. 490, 681 S.E.2d 867 (2009) for the proposition that, since Ms. Ballard did not pay someone else to represent her, she cannot recover for her own time. Ms. Ballard acknowledges that she represented herself *pro se* in responding to the discovery served upon her by Mr. Megna and in seeking sanctions against him.

Ms. Ballard was not awarded attorney fees, she was awarded sanctions. While the sanctions were tied to the amount of work required as a result of Mr. Megna’s defalcations, the sums awarded were still sanctions. Order dated 2-13-2013, ¶¶ 35 – 37. In both *Calhoun* and *Williamson*, the appellate courts construed the applicability of statutes which could be used to shift the payment of attorney fees to a different party in the action, in contravention of the American rule that each party pays their own fees unless otherwise provided by agreement or statute. *Calhoun* involved statutory fee-shifting in family court, and *Williamson* involved fee shifting in a wage claim matter pursuant to S.C.Code Ann. Section 39-65-30. In *Williamson*, the

fee shifting statute specifically required the prevailing party to have "incurred" attorney fees before the obligation to pay could be shifted to the unsuccessful party. Neither case is applicable to an award of sanctions under Rule 11.

Ms. Ballard asked the Court to reduce the amount of sanctions she was awarded by \$1,390.00 based on her error in including two time entries for time expended by her and her staff on April 5, 2012. Since her original request for sanctions, and the award, were based on the time she had spent in responding to the discovery and pursuing sanctions against Mr. Megna, the Court will grant her request to reduce the sanctions award by the amount requested. For that reason, the amount of sanctions awarded to Ms. Ballard in the February 13, 2013 order is reduced by \$1,390.00, from \$17,388.75 to \$15,998.75. The Darlington County Clerk of Court is directed to amend the judgment entered against Mr. Megna in favor of Ms. Ballard to reflect this adjustment. The award of sanctions to Ms. Ballard is \$15,998.75.

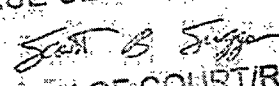
For the reasons set forth above, Mr. Megna's motions for reconsideration in both matters are denied.


J. Michael Baxley
Chief Administrative Judge
Fourth Judicial Circuit

June 5, 2013

Hartsville, South Carolina

TRUE CERTIFIED COPY.


CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

2013 JUN 12 PM 1:35
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

The South Carolina Court of Appeals

Pee Dee Health Care, P.A., Appellant,

v.

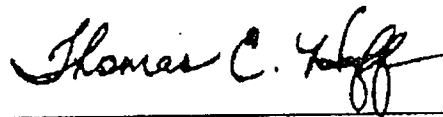
Hugh S. Thompson, III, and Louise T. Dailey, as
Personal Representatives of the Estate of Hugh S.
Thompson, Respondent.

Appellate Case No. 2011-185767

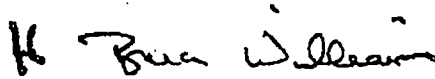
ORDER

After review of Pee Dee Health Care, P.A.'s ("PDHC") motion to vacate the circuit court's order of summary judgment, we find the motion raises the same issues as PDHC's appeal. In as much as this Court has issued an opinion dismissing PDHC's appeal of the circuit court's order entering summary judgment in favor of the Estate, we find it appropriate to dismiss the motion.

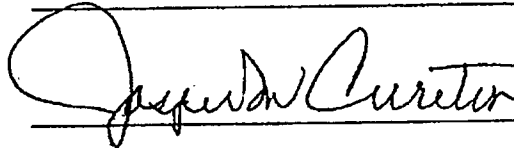
It is hereby ordered.



J. Huff



J. Williams



A.J. Cureton

Columbia, South Carolina

cc:

Benjamin Rushton Matthews

Tony Ray Megna

John J. James, II

Jon Rene Josey

FILED

July 3, 2013

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-40-0576

JAMES A. ANASTI

LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI
LEE, and RICHLAND COUNTY CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: DOUGLAS N. TRUSLOW

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
- ☐ **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: THIS IS A CONSENT ORDER AND CONFESSION OF JUDGMENT 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)
JAMES A. ANASTI	LANCE WILSON	\$250,000.00
JAMES A. ANASTI	WILLIS GOODWIN	\$250,000.00
		\$.

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

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

Circuit Court Judge.

2126
Judge Code

7-15-13
Date

16 day of July 20 13
s box on this day of

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

~~CLERK OF COURT~~

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.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

COPY

04CP405333

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Lance Wilson and Willis Goodwin,
PLAINTIFS,

vs.

Gina L. Anasti Lee,
DEFENDANT.

IN THE CIRCUIT COURT FOR THE

FIFTH JUDICIAL CIRCUIT

COVERSHEET FOR CIVIL ACTION

Docket No.:

BARBARA A. SCOTT
C.C. & G.S.

2004 NOV 12 PM 2:33

FILED

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

NATURE OF ACTION: (Check one category for the main cause of action)

☐ TORT - Motor Vehicle	☐ CONTRACT - Debt Collection
☐ TORT - Professional Malpractice	☐ CONTRACT - Employment
☐ TORT - Unfair Trade Practices, other Economic or Business Related Wrongs	☐ CONTRACT - Construction
☐ TORT - Products Liability	☐ CONTRACT - Wrongful Breach
☒ TORT - General or Other	☐ CONTRACT - General or Other
☐ PCR	☐ REAL PROPERTY
☐ GOV/ADM - Workers Comp	☐ MINOR SETTLEMENTS
☐ GOV/ADM - General or Other	☐ DOMESTIC FOREIGN JUDGMENT
	☐ OTHER (Please Describe)

JURY DEMAND

☒ YES

☐ NO

Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does not constitute a demand for a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION (Check one box.)

- ☐ This case is subject to **arbitration** (all cases with monetary damages less than \$25,000.00 are subject to arbitration, unless otherwise exempt).
- ☒ This case is subject to **mediation** (all cases not subject to arbitration must be mediated, unless otherwise exempt.)
- ☐ This case is exempt from ADR, and certificate is attached.

Date:

12 NOV 2004

Thomas J. Case

SEE REVERSE SIDE FOR FURTHER IMPORTANT INFORMATION

PLAINTIFF'S
EXHIBIT 4

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

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

1. The parties shall select a neutral within 210 days of the filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for Appointment of a Neutral" on or before the 224th day after the filing of the action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of this action.

3. Cases are exempt from ADR only upon the following grounds:

- (a) Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition
- (b) Cases which are appellate in nature such as appeals or writs of certiorari;
- (c) Post conviction relief matters;
- (d) Contempt of Court proceedings;
- (e) Forfeiture proceedings brought by the State;
- (f) Cases involving mortgage foreclosures; and
- (g) Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Lance Wilson and,)
Willis S. Goodwin,)
Plaintiffs,)
)
vs.)
)
Gina L. Anast Lee,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.: _____

BARBARA A. SCOTT
C.C.C. & G.S.

2004 NOV 12 PM 2:33

FILED

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices at 1735 St. Julian Place, Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SEIGLER, EARLE & ELLSWORTH

By 
Thomas G. Earle
Attorneys for Plaintiff
1735 St. Julian Place
Suite #103
Columbia, S. C. 29204
(803) 254-2791

Columbia, South Carolina

November 12, 2004

X
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Lance Wilson and Willis Goodwin,)
Plaintiffs,)
vs.)
Gina L. Anasti Lee,)
Defendants.)

COMPLAINT
JURY TRIAL DEMANDED

FILED
2004 NOV 12 PM 2:33
BARBARA A. SCOTT
C.C.C. & G.S.

Plaintiffs, complaining of the Defendant herein, allege:

GENERAL ALLEGATIONS:

1. Plaintiffs are citizens and residents of Richland County, South Carolina, and the property which is involved in this litigation is located in the City of Columbia, Richland County, South Carolina.
2. Upon information and belief, the Defendant, Gina L. Anasti Lee (sometimes hereafter referred to as Lee), is a citizen and resident of Richland County, South Carolina.
3. Defendant Lee listed for sale the property known as Dave's Place with Russell and Jeffcoat, Realtors and said realtors placed a "For Sale" sign on the property.
4. The Plaintiff, Lance Wilson, entered into an arrangement with Willis S. Goodwin whereby Goodwin would contract to purchase the property known as Dave's Place located at 2325 Two Notch Road, Columbia, S. C. (which Wilson through his corporation Padaro, Inc., d/b/a Daves had been leasing from Defendant Lee for several

years and which Wilson's father and brother had leased from Mr. Albert A. Anastasi since 1980 and operated as a business known as Dave's Place) with Willis S. Goodwin being the Purchaser on the Contract of Sale and with Gina L. Anastasi Lee being the seller.

FOR A FIRST CAUSE OF ACTION:

5. The General Allegations set forth above are incorporated herein by reference as if set forth herein verbatim.

6. Willis Goodwin and Gina L. Anastasi Lee entered into a Contract of Sale whereby Willis Goodwin paid \$5,000.00 earnest money and entered into a contract of sale with Gina L. Anastasi Lee whereby Willis Goodwin contracted to purchase the property known as Dave's Place for a gross sales price of \$177,000.00.

7. Plaintiffs entered into a side agreement or collateral agreement designated as "Installment Sales Contract" whereby Lance Wilson agreed to purchase from Willis Goodwin the property in accordance with the terms and conditions of said agreement between Goodwin and Wilson. Said Contract was recorded on January 12, 2000 in Record Book 376 at Page 1268, copy is attached hereto and is incorporated herein by reference the same as if set forth here verbatim.

8. The transaction closed in the offices of Dallis Law Firm upon representation by Gina L. Anastasi Lee that she had good, marketable fee simple title to the property and that Goodwin, once the transaction was closed and the deed recorded, would have had good, marketable fee simple title to the property.

9. At the closing Defendant executed and delivered a General Warranty Deed to Goodwin representing that she was the sole owner of the property and that she was conveying fee simple title to the property to Goodwin.

10. That at the time Gina L. Anasti Lee entered into the contract with Goodwin and at the time she delivered the General Warranty Deed to Goodwin she knew that she and her brother, James A. Anasti, were equal co-owners of said property and that she could not convey full fee simple marketable title to Goodwin.

11. Defendant Lee knew or should have known that she was under an affirmative obligation to disclose to Goodwin that she was not the sole owner of the property and, consequently, could not convey full fee simple title to Goodwin but that she willfully concealed said fact and failed and refused to reveal this information to Goodwin, her purchaser.

12. Defendant Lee accepted funds and installment paper obligations from Goodwin, knowing full well that she was perpetrating a fraud upon Goodwin and upon Wilson the long-time tenant of the property whom she knew was using Willis Goodwin as a money source for this transaction and knew further that Lance Wilson would eventually become the owner of the property that he or his father had rented from the Anasti Family since approximately 1980.

13. Defendant Lee's actions were intentional, were calculated to defraud Goodwin and Wilson as Defendant Lee knew full well that her brother, James A. Anasti, was co-owner of this property and that she could not convey full fee simple title to the property.

14. Willis Goodwin and Lance Wilson over time discovered that Gina L. Anasti Lee was not the sole owner of this property at the time of the real estate closing with Goodwin as a result of information obtained from SCDOT in connection with the widening project of Two Notch Road by South Carolina Department of Transportation

and correspondence by SCDOT with Goodwin and Wilson concerning a strip of land along the front of this property known as Dave's Place that the Highway Department would require in connection with its widening project.

15. Plaintiffs are informed and believes that Mrs. Lee's fraudulent actions were not discovered earlier due to the fact that her brother and co-owner, James A. Anast, was living outside of the country and that Defendant Lee thought she could deal with this property in any way that she chose, and that her brother would not learn of her actions and come stateside to contest her illegal and fraudulent actions.

16. Defendant Lee's actions were intentional and harmful to Plaintiffs in that:

a. Defendant Lee represented to Goodwin and to Wilson that she was the sole owner of the property that is the subject of this action;

b. Said representation was false and Defendant Lee knew that it was false;

c. Said representation by Defendant Lee was material to and was the very essence of the proposed purchase transaction by Goodwin and Wilson and Defendant Lee knew that her representation was material to the proposed transaction;

d. The transaction was initiated by Defendant Lee and Goodwin and Wilson entered into negotiations with Defendant Lee only after the property (which Defendant Wilson and his family had leased from the Anast Family since 1980 and operated a restaurant and bar known as Dave's Place) was listed for sale with a local real estate firm (Russell & Jeffcoat) and Defendant Lee or her representatives advised Wilson that the property was about to be sold out from under him;

e. Defendant Lee knew or should have known that her representation that she was the sole owner of the property was false;

f. Defendant Lee intended that her representation that she owned the property be acted upon by Goodwin and Wilson;

g. Goodwin and Wilson did not know that Defendant Lee's representation of ownership was false;

h. Goodwin and Wilson relied upon the truth of Lee's representation;

i. Goodwin and Wilson were entitled to rely upon Lee's representation; and

j. As a proximate and consequent result of the false representation of ownership by Lee, plaintiffs Goodwin and Wilson have suffered the injuries and damages set forth herein.

17. Plaintiffs are informed and believe that they are entitled to recover of Defendant their damages, actual and punitive and such other relief as is just and proper, to-wit:

- a. Attorneys' fees they have incurred in efforts to correct this matter;
- b. Any overpayments made to Defendant Lee;
- c. Punitive damages in an amount determined by the Judge or Jury commensurate with the degree of fraud and deception employed by Defendant Lee to bring this fraudulent transaction to fruition; and
- d. Such other actual damages as required to make Plaintiffs whole from a financial point for this transaction.

FOR A SECOND CAUSE OF ACTION:

18. The General Allegations and the allegations of the First Cause of Action are incorporated herein by reference as if set forth herein verbatim.

19. Defendant Lee falsely represented to Plaintiffs that she was the sole owner of said property.

20. Defendant Lee had a pecuniary interest in making this representation which was the difference between one-half of the sales price and all of the sales price.

21. Defendant Lee owed a duty to communicate truthful information to Plaintiffs and did not do so.

22. Defendant Lee breached that duty to communicate truthfully when she stated that she was the sole owner of subject property and executed and delivered to Plaintiff Goodwin a deed representing in said document that she was the sole owner.

23. Plaintiff Wilson had dealt with Defendant Lee or her agents ever since Mr. Albert Anasti died, knew that Defendant Lee served as personal representative of her father's estate (Estate of Albert A. Anasti) and that she had acquired an ownership interest in the property upon her father's death and Plaintiffs were justified in relying upon her representation that she was the sole owner of the property.

24. Plaintiffs have suffered a pecuniary loss in that they have paid or are obligated to pay full price for this property when the title although purporting to convey a full fee simple title to the property only conveyed the property interest that Defendant

Lee owned at the time of the conveyance which was an undivided one-half interest in the property.

25. Plaintiffs have been damaged by these actions of Defendant Lee and are entitled to recover the damages, actual and punitive, as well as such other relief as is just and proper.

FOR A THIRD CAUSE OF ACTION:

26. The General Allegations and the allegations of the First and Second Causes of Action are incorporated herein by reference as if set forth herein verbatim.

27. SCDOT has deposited with the Clerk of Court for Richland County the sum of \$5500.00 in satisfaction of jury award in the condemnation action by SCDOT to acquire a strip across the front of subject property.

28. These funds are deposited in the names of Willis S. Goodwin, Lance Wilson, James A. Anasti and Gina L. Anasti Lee as their interests may appear and Plaintiffs are informed and believe that they are entitled to an order of this court that defendant Lee has no right, title or interest in said funds and that the Clerk of Court should make a notation to that effect on her records concerning these funds. See Judgment Roll Number 252784 for particulars on this matter.

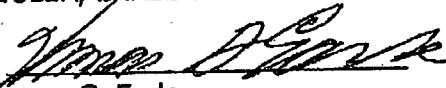
WHEREFORE, having fully set forth their causes of action against the Defendant herein, Plaintiffs pray that they be granted the following relief as well as such other and further relief as is just and proper:

- a. Attorneys' fees they have incurred in efforts to correct this matter;
- b. Any overpayments made to Defendant Lee;

- c. Punitive damages in an amount determined by the Judge or Jury commensurate with the degree of fraud and deception employed by Defendant Lee to bring this fraudulent transaction to fruition by closing at the offices of Dallis Law Firm; and
- d. Such other damages suffered by Plaintiffs from this transaction as required to make Plaintiffs whole from a financial point; and
- e. An order of the court directing the Clerk of Court to enter a notation on her records involving the \$5500.00 deposited with the clerk by SCDOT that Defendant Gina L. Anasti Lee has no right, title or interest in said funds.

SEIGLER, EARLE & ELLSWORTH

By


Thomas G. Earle

Attorneys for Plaintiffs

1735 St. Julian Place, Suite #103

Columbia, S.C. 29204

Phone: (803) 254-2791

Fax: (803) 254-7755

Columbia, SC
November 12, 2004.

Book 00376-1268
 Notarized by: [Signature]
 Fee: \$10.00 County Tax: \$0.00 State Tax: \$0.00

Contract of Sale



2000003818 John G. Norris

Notarized by: [Signature]

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

INSTALLMENT SALE CONTRACT

AGREEMENT made and entered into on the day and year stated below by and between the undersigned seller or sellers ("Seller") and the undersigned buyer or buyers ("Buyer").

WITNESSETH:

WHEREAS, Seller holds title to certain real property more particularly described in Exhibit "A", attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer under the terms and conditions stated below; now, therefore,

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the above recitals, the mutual and dependent covenants recited below, and the sum of One (\$1.00) Dollar, each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree as follows:

1. The purchase price for the Property shall be One Hundred Seventy-Seven thousand and No/100 (\$177,000.00) dollars and shall be paid in the following manner: Buyer agrees to make 6 monthly payments of \$1,500.00 to Seller beginning February 1, 2000 to be followed by 41 monthly payments of \$1,000.00 to Seller beginning August 1, 2000, and in addition to the aforesaid 47 monthly payments, Buyer agrees to assume First Mortgage Loan executed this date by Seller to Gina Lee in the amount of 127,000.00 calling for repayment over 11 years at an interest rate of Nine (9%) percent with monthly payments of \$1,519.02.

2. Buyer shall have possession of the Property immediately upon execution of this Agreement.

3. Seller shall deliver to Buyer a general warranty deed to the Property immediately upon completion by Buyer of full performance under the terms of this Agreement whereupon Buyer shall then reconvey an undivided 10/100 interest in the property to Seller.

4. At the time that the deed is delivered to Buyer, title shall be free and clear of all liens and encumbrances other than those exceptions as follows (the "Allowed Exceptions"): Normal utility, water and sewer easements, covenants and restrictions of record, zoning regulations, assessments.

5. Upon execution of this Agreement, Buyer shall be responsible for paying taxes upon the Property and maintaining sufficient casualty insurance upon the Property to protect the interest of Buyer, Seller, and the holder of the Mortgage, if any, from windstorm, fire, and related peril as provided in standard homeowner policies, plus flood insurance, if applicable. In the event Buyer does not pay taxes and does not maintain sufficient insurance, then Seller may pay or provide the same. In such event, Buyer shall pay Seller any sums advanced pursuant to this Paragraph, plus interest from the date advanced until paid in full at the rate of fourteen (14%) percent per annum.

6. Buyer shall maintain the Property, including any improvements thereon, in a state of good repair and condition, normal wear and tear excepted, and Buyer shall not sell or otherwise dispose of any article of personal property or fixtures located upon the Property at the time of execution of this Agreement except for necessary replacements.

7. Neither Seller nor Buyer shall cause or permit any act to be done prior to delivery of the deed to the Property which would burden or cloud title to the Property or interfere with Buyer's or Seller's full use and enjoyment thereof.

Richland County ROD

John G. Norris

8. In the event Buyer fails to pay any sum due hereunder or in the event that Buyer breaches any other provision of this Agreement and such breach continues for ten (10) days after provision by Seller of notice of such breach to Buyer, then Seller may, at Seller's option:

a. Declare a forfeiture of Buyer's rights hereunder and cancel this Agreement. Upon such election, all right, title, and interest of Buyer hereunder shall cease and determine, and all payments theretofore made by Buyer shall be retained by Seller as liquidated damages and as rental for the use and occupation of the Property; or

b. In lieu of declaring a forfeiture, accelerate and bring an action for the balance of the purchase price remaining due plus any sums advanced by Seller pursuant to the provisions hereof, or for any other relief available at law or in equity.

9. The parties hereto acknowledge and agree that a substantial portion or all of the performance contemplated hereunder shall be performed within the State of South Carolina and, therefore, stipulate that this Agreement shall be enforced and construed in accordance with the laws of the State of South Carolina and jurisdiction and venue shall lie with the courts of Richland County, South Carolina.

10. This Agreement represents the entire agreement between the parties and supercedes any prior agreements or negotiations, oral or written, between the parties.

11. This Agreement may not be changed orally but can be changed only by an instrument in writing signed by each of the parties hereto.

12. Neither this Agreement, nor any rights hereunder, may be assigned or transferred without the prior written consent of the other party.

13. This Agreement binds and inures to the benefit of the heirs, successors, representatives and permitted assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the date stated below.

WITNESSES:

Charles Ringer
[Signature]
As to Seller

SELLER:

Willis S. [Signature]

BUYER:

Charles Ringer
[Signature]
As to Buyer

[Signature]
LANCE WILSON

Richland County ROB

John G. Morris

Exhibit "A"

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the Western Side of Two Notch Road (US #1) in the City of Columbia, County of Richland, State of South Carolina, and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the Western Side of Two Notch Road (US Highway No. 1); and thence running North Sixty-seven degrees nine minutes West a distance of 127.6 feet to an iron pin, thence turning and running North twenty-seven degrees fifty-four minutes East for a distance of 25.4 feet to an iron pin; thence turning and running North Sixty-seven degrees seventeen minutes West a distance of 81.9 feet to an iron pin, thence turning North twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running South Sixty-seven Degrees 00 minutes East for a distance of 222.9 feet to an iron pin, thence turning and running along Two Notch Road South Thirty Degrees One Minute West for a distance of 118.5 feet to the point of beginning, and having such shapes, metes, bounds and distances as shown on said latter plat.

This being the same property conveyed to Willis S. Goodwin by deed of Gina L. Anastasi Les dated January 6, 2000 and recorded ~~simultaneously~~ herewith prior hereto.

TMS NO. 11510-03-03

Property Address: 2325 Two Notch Road Columbia, SC 29223

Richland County ROD

John O. Morris

Book 00375-0223

Fee: \$10.00 County Tax: \$194.70 State Tax: \$180.20



2000002152 John G. Morris

Re: Hand Carried / R/C

(SPACE FOR RECORDING)

STATE OF SOUTH CAROLINA

RC-00-004

TITLE TO REAL ESTATE

COUNTY OF RICHLAND

KNOW ALL MEN BY THESE PRESENTS, THAT I, Gina L. Anasti Lee in the State aforesaid for and in consideration of the sum of One Hundred Seventy Seven Thousand and No/100 (\$177,000.00) Dollars, to me in hand paid at and before the sealing of these presents by Willis S. Goodwin in the State aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Willis S. Goodwin, his heirs and assigns forever, the following described property, to wit:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the Western Side of Two Notch Road (US #1) in the City of Columbia, County of Richland, State of South Carolina, and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the Western Side of Two Notch Road (US Highway No. 1), and thence running North Sixty-Seven degrees nine minutes West a distance of 127.6 feet to an iron pin, thence turning and running North twenty-seven degrees fifty-four minutes East for a distance of 25.4 feet to an iron pin; thence turning and running North Sixty-Seven degrees seventeen minutes West a distance of 81.9 feet to an iron pin, thence turning North twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running South Sixty-Seven Degrees 00 minutes East for a distance of 222.9 feet to an iron pin, thence turning and running along Two Notch Road South Thirty Degrees One Minute West for a distance of 118.5 feet to the point of beginning, and having such shapes, metes, bounds and distances as shown on said latter plat.

This being the same property conveyed to Gina L. Anasti Lee by deed of distribution of Albert A. Anasti dated October 24,

Richland County ROD

John G. Morris

1995 and recorded November 7, 1996 in Deed Book D1347 at page 991 said ROD Office.

TMS NO. 11510-03-03

Property Address: 2325 Two Notch Road Columbia, SC 29223

Grantee Address: 1010 Windsor Shores Dr #16A C/A SC 29223

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Willis S. Goodwin, his heirs and assigns forever.

AND I do hereby bind myself and my heirs, executors, and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Willis S. Goodwin, his heirs and assigns, against me and my heirs, and all persons whomsoever, lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal, this 6th day of January, in the year of our Lord two thousand and in the two hundred and twenty-fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

[Signature]
[Signature]

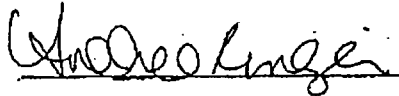
Gina L. Anastasi Lee
Gina L. Anastasi Lee

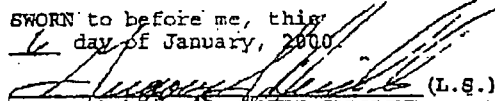
Richland County ROD

John G. Morris

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }

PERSONALLY appeared before me the undersigned witness
and made oath that he/she saw the within named Gina L. Anastasi Lee
sign, seal and as his act and deed, deliver the within written
Deed, and that he/she with the other witness witnessed the
execution thereof.



SWORN to before me, this
6 day of January, 2000
 (L.S.)
Notary Public for SOUTH CAROLINA
My Commission Expires: 2-28-2002

Richland County R00

John G. Morris

IN THE COUNTY OF RICHLAND

STATE OF SOUTH CAROLINA

James A. Anasti,

Plaintiffs,

VS

Lance Wilson, Willis Goodwin, Gina L.
Anastis Lee and Richland County
Clerk of Court,

Defendants.

Case No. 2007-CP-40-00576

AFFIDAVIT OF SERVICE

FILED
07 MAR -2 AM 9:09
BARBARA A. SCOTT
C.C.C. & G.S.

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn, says that he served a Civil Action Cover Sheet; Summons and Complaint (Non Jury), in this action on, by delivery to:

(X) Gina L. Anasti Lee, Personally:

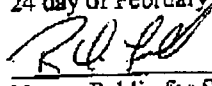
() _____ the _____ of party to be served, and a person of discretion residing at the residence of the party to be served;

() _____ of _____

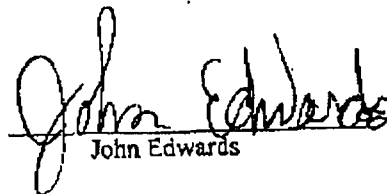
and leaving with her a copy at 100 Rimer Pond Road Blythewood, South Carolina

in Richland County, South Carolina on February 21, 2007, at 6:00 pm and the deponent is not a party to this action.

Sworn to and subscribed before me this
24 day of February 2007



Notary Public for South Carolina
My Commission Expires: 08/18/2007


John Edwards

Irma Dulecive Agney

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
CHAPTER 13 PROCEEDING
CASE NUMBER: 09-02854

IN RE:

Gina Anasti Lee,

Debtor.

I have been informed of the Appeals filed with the Bankruptcy Court and now pending before US District Court. I am fully aware of the nature of the appeals, and have given my consent to the appealing of these issues of law as I remain firm that the Two Notch property belongs to me and has always belonged to me per my Father's wishes as stated in his Last Will and Testament and the fact that during the probate of my father's estate there was never a question that I owned the Two Notch property. In fact, my brother was very much involved in the probate proceedings and agreed to my ownership of the Two Notch property.

In addition, I have been informed of the nature of the continuing bankruptcy proceedings and understand that the Two Notch property, if ownership is determined to be in my name, is property of the bankruptcy estate. .

Gina A. Lee
Gina A. Lee

SWORN TO before me this

24 day of February 2010.

Naniet L. Lebb (L.S.)
Notary Public for South Carolina
My Commission expires: 4-17-12

COPY

443

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Lance Wilson and Willis Goodwin,)
PLAINTIFFS,)
vs.)
Dallis Law Firm, P.A.,)
DEFENDANT.)

IN THE CIRCUIT COURT FOR THE

FIFTH JUDICIAL CIRCUIT

04CP405334

COVERSHEET FOR CIVIL ACTIONS

Docket No.:

RECEIVED
C. C. & G. S.

NOV 12 PM 2:34

FILED

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

NATURE OF ACTION: (Check one category for the main cause of action)

☐ TORT – Motor Vehicle	☐ CONTRACT – Debt Collection
☒ TORT – Professional Malpractice	☐ CONTRACT – Employment
☐ TORT – Unfair Trade Practices, other	☐ CONTRACT – Construction
Economic or Business Related	☐ CONTRACT – Wrongful Breach
Wrongs	☐ CONTRACT – General or Other
☐ TORT – Products Liability	☐ REAL PROPERTY
☐ TORT – General or Other	☐ MINOR SETTLEMENTS
☐ PCR	☐ DOMESTIC FOREIGN JUDGMENT
☐ GOV/ADM – Workers Comp.	☐ OTHER (Please Describe)
☐ GOV/ADM – General or Other	

JURY DEMAND ☒ YES ☐ NO

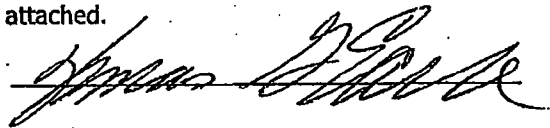
Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does not constitute a demand for a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION (Check one box.)

- ☐ This case is subject to **arbitration** (all cases with monetary damages less than \$25,000.00 are subject to arbitration, unless otherwise exempt).
- ☒ This case is subject to **mediation** (all cases not subject to arbitration must be mediated, unless otherwise exempt.)
- ☐ This case is exempt from ADR, and certificate is attached.

Date:

12 NOVEMBER 2004



SEE REVERSE SIDE FOR FURTHER IMPORTANT INFORMATION

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

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

1. The parties shall select a neutral within 210 days of the filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for Appointment of a Neutral" on or before the 224th day after the filing of the action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of this action.

3. Cases are exempt from ADR only upon the following grounds:

- (a) Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition
- (b) Cases which are appellate in nature such as appeals or writs of certiorari;
- (c) Post conviction relief matters;
- (d) Contempt of Court proceedings;
- (e) Forfeiture proceedings brought by the State;
- (f) Cases involving mortgage foreclosures; and
- (g) Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Lance Wilson and Willis S. Goodwin,)
Plaintiffs,)
vs.)
Dallis Law Firm, P. A.,)
Defendant.)

SUMMONS

FILE NO.: _____

2004 NOV 12 PM 2:34
BARBARA A. SCOTT
C.C.C. & C.S.

FILED

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices at 1735 St. Julian Place, Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SEIGLER, EARLE & ELLSWORTH

By _____

Thomas G. Earle
Attorneys for Plaintiff
1735 St. Julian Place
Suite #103
Columbia, S. C. 29204
(803) 254-2791

Columbia, South Carolina

November 19, 2004

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Lance Wilson and Willis Goodwin,)
)
Plaintiffs,)

vs.)

Dallis Law Firm, P.A.,)
)
Defendants.)

COMPLAINT

JURY TRIAL DEMANDED

FILED
2024 NOV 12 2:34
ARBANA SCOTT
C.C.C.
COPY

Plaintiffs, complaining of the Defendant herein, allege:

GENERAL ALLEGATIONS:

1. Plaintiffs are citizens and residents of Richland County, South Carolina, and the real property which is at the root of this litigation is located in the City of Columbia, Richland County, South Carolina.

2. On information and belief, the Defendant, Dallis Law Firm, P.A. is a professional association organized under the laws of the State of South Carolina and maintains an office and does business in Richland County, South Carolina.

3. The Plaintiff, Lance Wilson, with the help and assistance of Dallis Law Firm, PA, entered into an arrangement whereby Willis S. Goodwin would contract to purchase the property located at 2325 Two Notch Road, Columbia, S. C., known as Dave's Place which Wilson through his corporation Padaro, Inc., d/b/a Daves had been leasing from Defendant Lee for several years and which his father and brother had leased from Mr. Albert A. Anastasi since 1980 and operated as a business known as Dave's

Place with Willis S. Goodwin being the Purchaser on the Contract of Sale and with Gina L. Anastli Lee being the Seller.

FOR A FIRST CAUSE OF ACTION:

4. The General Allegations set forth above are incorporated herein by reference as if set forth herein verbatim.

5. Dallis Law Firm prepared and Willis Goodwin and Gina L. Anastli Lee entered into a Contract of Sale whereby Willis Goodwin paid \$5,000.00 earnest money and entered into a contract of sale with Gina L. Anastli Lee whereby Willis Goodwin contracted to purchase the property known as Dave's Place for a gross sales price of \$177,000.00

6. The contract was prepared by Dallis Law Firm, executed in the offices of Dallis Law Firm at 1925 Marion Street, Columbia, South Carolina, and Dallis Law Firm was retained to do the title examination and close the real estate transaction for Plaintiffs.

7. Dallis Law Firm also prepared a side agreement or collateral agreement between Plaintiffs designated as "Installment Sales Contract" whereby Lance Wilson agreed to purchase from Willis Goodwin the property in accordance with the terms and conditions of said agreement between Goodwin and Wilson. Said Contract was recorded on January 12, 2000 in Record Book 376 at Page 1268, copy is attached hereto and is incorporated herein by reference the same as if set forth here verbatim.

8. The transaction closed in the offices of Dallis Law Firm upon representation by Dallis Law Firm that Gina L. Anastli Lee had good, marketable fee

simple title to the property and that Goodwin, once the transaction was closed and the deed recorded, would have good marketable fee simple title to the property.

9. Gina L. Anasti Lee attended the closing in the offices of Dallis Law Firm, executed and delivered a General Warranty Deed to Goodwin representing that she was the sole owner of the property and that she was conveying fee simple title to the property to Goodwin. Plaintiffs are informed and believe that the deed was prepared by Dallis Law Firm and that the defendant, Gina Anasti Lee, paid Dallis Law Firm to prepare the deed for her.

10. That at the time Gina L. Anasti Lee entered into the contract with Goodwin and at the time she delivered the General Warranty Deed to Goodwin she knew that she and her brother, James A. Anasti, were equal co-owners of said property and that she could not convey full fee simple marketable title to Goodwin and Dallis Law Firm should also have known that Lee could not convey full fee simple marketable title to the property..

11. On information and belief, Defendant Dallis Law Firm obtained from Lee an Indemnification and hold harmless agreement at the closing wherein Lee represented that she owned the property and agreed to Indemnify and hold Dallis Law Firm harmless should it develop that she was not the owner or was not the sole owner of the property.

12. Willis Goodwin and Lance Wilson discovered that Gina L. Anasti Lee was not the sole owner of this property as a result of the widening project of Two Notch Road by South Carolina Department of Transportation and correspondence by SCDOT with Goodwin and Wilson concerning a strip of land along the front of this property

known as Dave's Place that the Highway Department would require in connection with its widening project.

13. Goodwin and Wilson over time obtained information from representatives of SCDOT as to the chain of title and ownership interest of James A. Anasti in this property and then contacted Dallis Law Firm concerning the matter.

14. When this title question was called to the attention of Dallis Law Firm it purportedly had its abstractor go back and re-work the matter and once again Dallis Law Firm represented to Goodwin and Wilson that Gina L. Anasti Lee at the time she closed with Goodwin was the sole owner of the property and that Mrs. Lee had good fee simple marketable title to the property and that James A. Anasti had no ownership interest in this property.

15. Plaintiffs are informed and believe that they are entitled to recover of Defendant Dallis Law Firm their damages, actual and punitive and such other relief as is just and proper.

FOR A SECOND CAUSE OF ACTION:

16. The General Allegations and the allegations of the First Cause of Action are incorporated herein by reference as if set forth herein verbatim.

17. Goodwin and Wilson hired Dallis Law Firm to prepare the Contract of Sale and to handle the closing of the purchase by Goodwin and also to close on the collateral agreement between Goodwin and Wilson involving the property known as Dave's Place (2325 Two Notch Road, Columbia, South Carolina).

18. Goodwin, a long-time friend of Wilson, agreed to loan Wilson the money needed for the down payment on the property and Dallis Law Firm was retained to

structure the transaction in such a manner as to fully protect the interest of Goodwin until such time as he had been repaid monies he advanced to facilitate the acquisition of said property.

19. The entire transaction as structured by Dallis Law Firm was as follows:

- a. It would prepare the contract of sale between Lee and Goodwin;
- b. It would prepare the collateral or side agreement between Goodwin and Wilson;
- c. It would supervise the execution of the contract of sale between Lee and Goodwin;
- d. Dallis Law Firm would then do the title work to verify who held legal title to the property and verify that said owner(s) had good marketable fee simple title to the property;
- e. Dallis Law Firm would then report on status of title to Goodwin and Wilson by reporting any title problems or any title defects discovered during the title examination by Dallis Law Firm; and
- f. If there were no title problems, Dallis Law Firm was to close on the purchase of the property by Goodwin and simultaneously therewith do the needful to assure that Wilson would be the eventual owner of said property pursuant to the collateral or side agreement between the Plaintiffs.

20. Dallis Law Firm represented that Defendant Lee was the sole owner of the property and therefore was able to convey good, marketable, fee simple title to the property and Goodwin closed on the purchase of the property and paid at closing the requisite funds shown on the Closing Statement prepared by Dallis Law Firm and in addition thereto gave Defendant Lee a Promissory Note secured by Purchase Money Mortgage for the remaining balance of the purchase price in the amount of \$127,000.00.

21. In addition to funds paid to Defendant Lee, Goodwin paid funds to Dallis Law Firm for retention by said law firm or payment to others as more particularly shown on the HUD-1 Closing Statement.

22. Simultaneously with the closing with Defendant Lee or immediately thereafter, Goodwin and Wilson executed documents prepared by Dallis Law Firm entitled "Assumption of Purchase Money Mortgage" and "Installment Sales Contract" copy of "Installment Sales Contract attached hereto and incorporated herein by reference the same as if set forth herein verbatim.

23. Subsequent to the closing (which occurred on or about January 6, 2000), Plaintiffs discovered:

- a. Mrs. Lee was not the sole owner of the property known as Dave's Place and
- b. James A. Anasti, Mrs. Lee's brother, owned an undivided one-half interest in the property.

24. Immediately after said discovery, preliminary contact was made with Dallis Law Firm concerning title problems.

25. Plaintiffs are informed and believe that the injuries and damages suffered by them in their efforts to purchase this property were the direct and proximate result of the deficient legal work performed by Dallis Law Firm in one or more of the following particulars:

- a. Title work was very deficient in that a mere check of the Tax Rolls for this property for the preceding 10 years would have put a reasonably knowledgeable person on notice that more than one person had an ownership interest in this property.
- b. Check of the land records for this property in the Records Office for Richland County would have shown:

i. A conveyance dated November 17, 1978 from Albert A. Anasti to Laura Corvi, recorded November 17, 1978 in Deed Book D-482 at Page 744 followed almost immediately by a conveyance from Laura Corvi to Albert A. Anasti and James Anasti recorded November 17, 1978 in Deed Book D-482 at Page 756 to the subject property known as Dave's Place, current address of 2325 Two Notch Road, Columbia, South Carolina, TMS#11510-03-03.

ii. No subsequent conveyance by James A. Anasti of the undivided one half interest he acquired in this property by the deed recorded D-482 @ 756.

26. Plaintiffs are informed and believe that they are entitled to recover of Defendant their damages, actual and punitive and such other relief as is just and proper:

- a. Attorneys' fees;
- b. Any and all costs and expenses that Plaintiffs incur due to the deficient legal work by Dallis Law Firm in these transactions;
- c. the amount required to acquire the remaining fifty (50%) percent ownership interest in this property from the owner thereof;
- d. Punitive damages in such amount as the court or jury might award for the gross negligence of said defendant;
- e. Such other damages as appear from the defective title acquired by Plaintiffs at the closing, up to and including requirement that this defendant purchase the property from Plaintiffs if that is the better way to make plaintiffs whole and restore them to their position prior to this debacle; and
- f. Such other damages as required to make Plaintiffs whole from a financial point for this transaction.

FOR A THIRD CAUSE OF ACTION

27. The general allegations set forth above, the allegations of the first cause of action and the allegations of the second cause of action are incorporated herein by reference as if set forth here verbatim.

28. Heretofore the parties hereto entered into an agreement whereby the Defendant agreed to perform the necessary legal services for Plaintiffs in connection with their acquisition of real property on Two Notch Road in Columbia known as 2325 Two Notch Road which Plaintiff Wilson or his family had rented from the Anasti Family since 1980 to assure that they acquired good fee simple marketable title to the property and that all of their rights were protected throughout the matter.

29. Among the services Defendant was to perform for Plaintiffs were:

- a. Preparation of the contract of sale between Lee and Goodwin;
- b. Preparation of the collateral or side agreement between Goodwin and Wilson;
- c. Supervise the execution of the contract of sale between Lee and Goodwin;
- d. Dallis Law Firm would then do the title work to verify who held legal title to the property and verify that said owner(s) had good marketable fee simple title to the property;
- e. Dallis Law Firm would then report on status of title to Goodwin and Wilson by reporting any title problems or any title defects discovered during the title examination by Dallis Law Firm; and
- f. If there were no title problems, Dallis Law Firm was to close on the purchase of the property by Goodwin and simultaneously therewith do the needful to assure that Wilson would be the eventual owner of said property pursuant to the collateral or side agreement between the Plaintiffs.

30. Defendant prepared certain documents and undertook a title examination to determine the owners of the property.

31. Defendant advised Plaintiffs that Gina L. Anasti Lee had good marketable fee simple title to the property and that it was in order to close on the transaction in

accordance with the contract of sale between Goodwin and Lee which Defendant had earlier prepared for Plaintiffs.

32. Plaintiffs closed on the contract in Defendant's Columbia office after which Goodwin and Wilson executed the collateral or side agreement between the two of them and Defendant attended to the recordation of the documents.

33. Plaintiffs later discovered that Defendant's title work had been defective and that contrary to what Plaintiffs had been told by Defendant that Gina L. Anastasi Lee was not the sole owner of the property and that Lee only owned an undivided one-half interest in the property.

34. Plaintiffs apprised Defendant of this discovery and the dilemma it placed them in but to date Defendant has done nothing to correct or rectify this error on its part.

35. Plaintiffs find themselves with a defective title to the property and are unable to borrow funds to effect urgently needed repairs to the property by way of a mortgage loan against the property since the title is not solely in them.

36. Goodwin has outstanding a promissory note to Lee that was prepared by Defendant and executed by Goodwin in Defendant's office at the closing conference upon Defendant's assurance to Goodwin and to Wilson that Lee was the sole owner of the property and that Lee had good marketable fee simple title to the property.

37. Defendant failed to do the work and perform the services it was hired to do and as a direct and proximate consequence thereof Plaintiffs have been damaged and Plaintiffs are informed and believe that they are entitled to recover of Defendant their damages as follows:

- a. Attorneys' fees;
- b. Any and all costs and expenses that Plaintiffs incur due to the deficient legal work by Dallis Law Firm in these transactions;
- c. the amount required to acquire the remaining fifty (50%) percent ownership interest in this property from the owner thereof ;
- d. Punitive damages in such amount as the court or jury might award for the gross negligence of said defendant;
- e. Such other damages as appear from the defective title acquired by Plaintiffs at the closing, up to and including requirement that this defendant purchase the property from Plaintiffs if that is the better way to make plaintiffs whole and restore them to their position prior to this debacle; and
- f. Such other damages as required to make Plaintiffs whole from a financial point for this transaction

WHEREFORE, having fully set forth their causes of action against the Defendant herein, Plaintiffs pray that they be granted the relief requested as well as such other and further relief as is just and proper:

SEIGLER, EARLE & ELLSWORTH

By 
Thomas G. Earle
Attorneys for Plaintiffs
1735 St. Julian Place, Suite #103
Columbia, S.C. 29204
Phone: (803) 254-2791
Fax: (803) 254-7755

Columbia, S.C.
November 12, 2004

A

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
RICHLAND COUNTY CLERK)
OF COURT)

Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

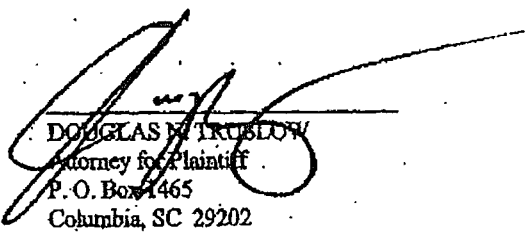
Docket Number: 2007-CP-40-00576

SUMMONS

RICHLAND COUNTY
2007 JAN 26 AM 9:49
BARBARA A. SCOTT
C.C.C. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber, at his office at 914 Richland Street, Suite B102, Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.


DOUGLAS H. TRUETT
Attorney for Plaintiff
P. O. Box 1465
Columbia, SC 29202
(803)256-6276

Columbia, South Carolina
1/22, 2007

MANDATED ADR COUNTIES OF
Florence, Horry, Lexington, Richland, Greenville and Anderson

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

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
JAMES A. ANASTI,	)	
	)	Docket Number:
Plaintiff,	)	
vs.	)	
LANCE WILSON,	)	COMPLAINT
WILLIS GOODWIN,	)	(Non-Jury)
GINA L. ANASTI LEE,	)	
RICHLAND COUNTY CLERK	)	
OF COURT	)	
Defendants.	)	

RICHLAND COUNTY
CLERK
2007 JAN 26 AM 9:49
BARBARA A. SCOTT
C.C.C. & G.S.

Plaintiff, complaining of the Defendants above named, alleges:

For a First Cause of Action

1. Plaintiff is a citizen and resident of Charleston County, South Carolina.
2. Defendants Lance Wilson, Willis Goodwin and Gina L. Anast Lee are, on information and belief, citizens of Richland County, South Carolina and they may claim some interest in the real property described hereunder.
3. This case involves title and ownership to real property located in Richland County, South Carolina that is described herein, and this Court has jurisdiction over the parties and subject matter herein.
4. The real property that is at issue in the within lawsuit is located at 2325 Two Notch Rd., Columbia, South Carolina, and has the following legal description, to wit:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on the Western Side of Two Notch Road (US #1) in the City of Columbia, County of Richland, State of South Carolina, and being more fully shown on a plat prepared for Ferris Hunter by William Wingfield, Registered Surveyor, dated February 18, 1958, and measuring and bounding as follows: Beginning at an iron pin on the Western Side of Two Notch Road (US Highway No. 1), and thence running North Sixty-Seven degrees nine minutes West a distance of 127.6 feet to an iron pin, thence turning and running North twenty-seven degrees fifty-four minutes East for a distance of 25.4 feet to an iron pin; thence turning and running North Sixty-Seven degrees seventeen minutes West a distance of 81.9 feet to an iron pin, thence turning North twenty-six degrees forty minutes a distance of 92.7 feet to an iron pin, thence turning and running South Sixty-Seven Degrees 00 minutes East for a distance of 222.9 feet to an iron pin, thence turning and running along Two Notch Road South Thirty Degrees One Minute West for a distance of 118.5 feet to the point of beginning; and having such shapes, metes, bounds and distances as shown on said latter plat.

5. The Richland County Clerk of Court is, on information and belief, holding in Trust funds that belong to the Plaintiff.

6. The aforesaid real property (hereinafter "property") is alleged to be owned by Plaintiff, and in support of that claim, he would show that on or about November 17, 1978 the then titled owner of the property Laura Corvi deeded the property over to Plaintiff and his father Albert A. Anasti as joint tenants with a right of survivorship, as is shown in the deed recorded on November 17, 1978 at Deed Book D 482, pages 756-758 and attached hereto as Exhibit 1.
7. On October 24, 1995 Albert A. Anasti died, so that the Plaintiff then became the sole owner of the property.
8. On or about November 16, 1995 Gina L. Anasti Lee was appointed as the Personal Representative of the Estate of Albert A. Anasti.
9. On or about October 25, 1996 Gina L. Anasti Lee prepared a "Deed of Distribution" so as to make it appear that she might be the owner of the aforesaid property on Two Notch Road, when in fact the said property was and is owned by Plaintiff. Plaintiff alleges that the "Deed of Distribution" is and was of no legal effect, is and was not in proper form and that any and all ownership claims and/or attempted transfer to or by Defendant Gina L. Anasti Lee is and was believed to be void, invalid and a nullity.
10. On or about January 6, 2002, Gina L. Anasti Lee attempted to transfer and deed the property over to Lance Wilson and Willis S. Goodwin or one of them, and that deed transfer and any supposed retainage of any rights relating to the property is also asserted to be of no legal effect

and is and was void, invalid, and a nullity as to the rights of the Plaintiff.

11. Plaintiff seeks to Quiet Title and have this Court declare that the deed to Gina L. Anasti Lee and any deed from Gina L. Anasti Lee, as well as any rights relating to said property are all void, invalid and a nullity. Further, Plaintiff seeks to have the Court declare, rule, and Order and to make clear that Plaintiff is the true and lawful owner of all rights to the property, to the exclusion of all others.

For a Second Cause of Action

12. Each and every allegation is repeated herein as if verbatim.
13. Plaintiff is informed and believes that at some point in the recent past, the South Carolina Department of Transportation took a portion of the property by way of eminent domain and attempted to pay some money to the owner. Plaintiff believes that those sums of money are being held by the Clerk of Court for Richland County, and Plaintiff seeks to have the Court declare that he is the true and lawful owner of those sums held by the Clerk of Court.

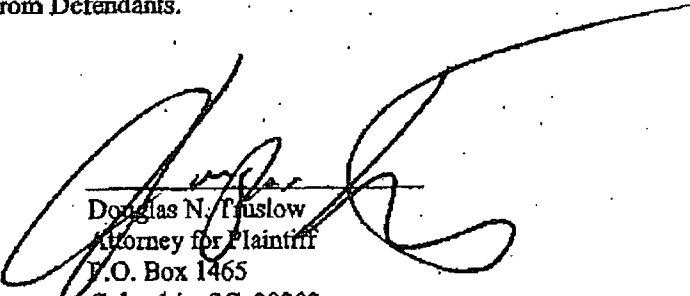
For a Third Cause of Action

14. Each and every allegation is repeated herein as if verbatim.
15. Plaintiff is informed and believes that Defendant Gina L. Anasti Lee has received certain funds from or for Lance Wilson and/or Willis Goodwin that are or should be the rightful property of the Plaintiff and he seeks an accounting and payment to him of those sums paid to her.

For a Fourth Cause of Action

16. Each and every allegation is repeated herein as if verbatim.
17. Plaintiff is informed and believes that Defendants Wilson and Goodwin are and have been occupying for business purposes Plaintiff's property for some extended period of time and that they should in equity pay Plaintiff some fair sum for the use of Plaintiff's property.

Wherefore, having set forth his claims herein, Plaintiff prays that the Court declare that the property herein is his property to the exclusion of all others, and that he be awarded all sums that are due from Defendants.



Douglas N. Truslow
Attorney for Plaintiff
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276

Columbia, South Carolina
1/22, 2007

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES A. ANASTI,

Plaintiff,

Vs.

LANCE WILSON,
WILLIS GOODWIN,
GINA L. ANASTI LEE,
RICHLAND COUNTY CLERK
OF COURT

Defendant.

IN THE COURT OF COMMON PLEAS

IN THE FIFTH JUDICIAL CIRCUIT

C.A. Number: 2007-CP-40-0576

ANSWER OF DEFENDANTS,

LANCE WILSON AND WILLIS S. GOODWIN

These Defendants answering the allegations of the Complaint herein allege:

As to First Cause of Action

1. Admit on information belief the allegations of Paragraph 1.
2. As to the allegations of Paragraph 2, admit Defendants, Lance Wilson and Willis S. Goodwin are citizens of Richland County, South Carolina and they do claim some interest in the real property described in said Complaint and in further response thereto admit on information and belief the allegations regarding Gina L. Anast Lee.
3. Admit the allegations of Paragraphs 3 and 4.
4. As to allegations of Paragraph 5 admit only that the Clerk of Court is holding funds paid over to her by SC DOT in connection with the condemnation matter noted later herein.

Answer of Defendants

1.

Lance Wilson and Willis S. Goodwin

5. As to the allegations in Paragraph 6, admit the allegations thereof, but in further response thereto would show that the Defendant, Gina L. Anastasi Lee claims or at least in the past has claimed an ownership interest in said property.
6. Admit the allegations of Paragraph 7, but in further response thereto would show that Gina L. Anastasi Lee claims or has claimed in the past an ownership interest in said property.
7. Admit the allegations of Paragraphs 8 and 9 of said Complaint.
8. As to allegations of Paragraph 10 would show that Defendants, Lance Wilson and Willis S. Goodwin retained the Dallis Law Firm, PA to represent them in connection with the real estate transaction mentioned in Paragraph 10 and said Defendants were advised by Dallis Law Firm, PA that they acquired good Fee Simple Title to said property, free and clear of any liens and encumbrances except for the purchase money mortgage back to Gina L. Anastasi Lee to secure a portion of the purchase price for said property.
9. As to the allegations of Paragraph 11, Defendants, Lance Wilson and Willis S. Goodwin would show that they presently have pending litigation against Dallis Law Firm, PA (04-CP-40-5334) and Gina L. Anastasi Lee (04-CP-40-5333) and they are informed and believe that the resolution of this present action will buttress the position of Lance Wilson and Willis S. Goodwin in these early actions.

As to the Second Cause of Action

10. Assuming Paragraph 12 of the Complaint incorporates by way of reference the first eleven (11) paragraphs of said Complaint, these Defendants incorporate as

their response to Paragraph 12 their answers to said eleven (11) paragraphs the answers given earlier [paragraphs 1 thorough 9 of this Answer] which are incorporated here by reference as their answer to Paragraph 12 as if repeated here verbatim.

11. As the allegations of Paragraph 13 would show that the Defendants Lance Wilson and Willis S. Goodwin were the only Defendants in this action who actively participated in the litigation and the only parties who incurred cost and expenses in connection with same including obligation for attorney's fees for their attorney, Thomas G. Earle, to be paid out of these deposited funds when determination of rightful owner or owners is made and these Defendants assert here that regardless of who is determined to be lawful owner of these funds that a reasonable attorney's fee should be paid their attorney who represented them throughout the course of this litigation.

As to the Third Cause of Action

12. As to allegations of Paragraph 14 of the Complaint which seems to incorporate by way of reference the first thirteen (13) paragraphs of said Complaint, these Defendants incorporate as their response answer to said thirteen (13) paragraphs the answers given earlier which are incorporated here by reference as their answer to Paragraph 14 as if repeated here verbatim.
13. As to allegations of Paragraph 15 Defendants, Lance Wilson and Willis S. Goodwin have paid funds to Gina L. Anast Lee comprised of the initial funds paid upon closing of this transaction at Dallis Law Firm, PA with Gina L. Anast Lee and monthly payments on the purchase money mortgage as long as Lance

Wilson was able to make those payments and if Plaintiff proves he owns this property, these Defendants concur with Plaintiff that Defendant Gina L. Anastasi Lee should pay said monies to Plaintiff.

As to the Fourth Cause of Action

14. In response to allegation in Paragraph 16 of the Complaint which seems to incorporate by way of reference the first fifteen (15) paragraphs of said Complaint, these Defendants incorporate their answers to said fifteen (15) paragraphs the given earlier by them which are incorporated here by reference as their answer to Paragraph 16 as if repeated here verbatim.
15. In response to the allegations of Paragraph 17 of said Complaint would show:
 - a.) Defendant Goodwin acquired "Record Title" to the property at the closing at Dallis Law Firm as security for funds he loaned Defendant Wilson in order that the property could be acquired and simultaneously with said closing Defendant Goodwin entered into an installment sales contract with Defendant Wilson which basically secured the funds that Defendant Goodwin had advanced from his retirement funds to enable Defendant Wilson to acquire this property which Defendant Wilson and or members of his family had operated as Dave's Place for many years.
 - b) The improvements on said property were in bad shape when Goodwin and Wilson acquired same from Gina L. Anastasi Lee and Wilson knew that substantial, major improvements would be required to get the property up to par and in good operating order.

- c) When the title problems appeared Goodwin and Wilson were unable to borrow any funds to rehabilitate the property as there were some serious questions about the title to the property.
- d) Defendant Wilson has lost substantial funds trying to keep the property afloat until the title issue could be resolved as to all causes of action.
- e) Defendant Lance Wilson has been through an absolute financial nightmare over this title problem; has seen the finances of Dave's Place shift from earning a reasonably good living for him and his family to losing money day after day and week after week due to the inability to rehab the building in that;
 - i) The roof needs replacing and leaks like a sieve.
 - ii) The kitchen equipment is outdated.
 - iii) The parking area needs to be updated and paved.
 - iv) The front entrance of the building needs to be completely redone.
- f) Defendants Lance Wilson and Willis S. Goodwin could do none of the rehabilitation work as they were unable to borrow any funds to accomplish this work once the title problems became known.
- g) Defendants Lance Wilson and Willis S. Goodwin could not deal directly with Gina L. Anasti Lee insofar as obtaining her consent to place a mortgage lien on the property to rehabilitate the same as it appeared that she did not have any record title to the property other than perhaps the assertion by Gina L. Anasti Lee or her attorney that they had the title by adverse possession; however, neither Defendants Wilson and Goodwin

nor their attorney were able to find any confirmation or documentation that Gina L. Anasti Lee had acquired by way of litigation title to the property by adverse possession.

- h) Defendants Lance Wilson and Willis S. Goodwin realize the predicament they have been placed in by virtue of Dallis Law Firm, PA assuring them that they had good Simple Fee Title to this property; having paid substantial funds to Gina L. Anasti Lee upon assurance of Dallis Law Firm and Gina L. Anasti Lee that she was the owner in fee simple of the property and thus entitled to proceeds from the sale of the property and these Defendants are hopeful that should this court decree that James A. Anasti is the owner of the property that the court will likewise acknowledge that Lance Wilson and Willis S. Goodwin were innocent parties in all of this mess and protect their interest in this matter.

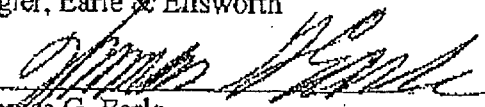
As to All Causes of Action

16. All allegations of said complaint that are not hereinabove specifically admitted, qualified or explained are denied.

Wherefore, having fully answered the allegations of said Complaint the Defendants Lance Wilson and Willis S. Goodwin pray that this court carefully consider all of the evidence in this matter; determine who is the owner of the property described in the Complaint; find that the defendants Lance Wilson and Willis S. Goodwin are the innocent parties in this matter and should be protected in this litigation; grant reasonable attorney's fees to Thomas G. Earle, their attorney, for services rendered including the trial of the condemnation case brought by South Carolina Department of Transportation; and should the court find that Plaintiff is the owner of

said property that it also grant judgment for Plaintiff against his sister, Gina L. Anasti Lee, for all sums paid by Lance Wilson and/or Willis S. Goodwin to Gina L. Anasti Lee for this property.

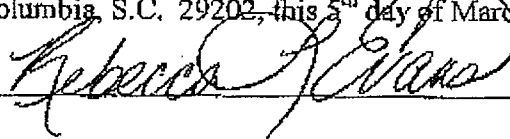
Scigler, Earle & Ellsworth

By 
Thomas G. Earle
Attorneys for Defendants,
Lance Wilson and Willis S. Goodwin
1735 St. Julian Place, Suite 103
Columbia, S.C. 29204
(803) 254-2791
(803) 254-7755 Facsimile

Columbia, South Carolina
March 5, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document(s) has been served upon opposing counsel by mailing a copy properly addressed, with sufficient postage affixed thereto, to Douglas N. Truslow, P.O. Box 1465 Columbia, S.C. 29202, this 5th day of March.



FILED
07 MAR -6 AM 10:38
MARSHALL A. SCOTT
CLERK, U.S.

A-2

COPY

STATE OF SOUTH CAROLINA

James A. Anasti,

Plaintiff,

vs.

Lance Wilson, Willis Goodwin,
Gina L. Anasti Lee, Richland
County Clerk of Court,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 07-CP-40-0576

ANSWER OF DEFENDANT LEE TO
CLAIMS OF PLAINTIFF

AND

CROSS-CLAIMS OF DEFENDANT LEE
AGAINST DEFENDANT WILSON

[FORECLOSURE AND SUIT ON NOTE]

[NON-JURY]

- TO: (a) Plaintiff named above and their attorney, Douglas N. Truslow, Esquire
(b) Thomas G. Earle, Esquire, Attorney for Defendants Wilson and Goodwin

The Defendant Lee, by and through her undersigned attorney, answering the
complaint of the Plaintiff, states as follows:

FOR A FIRST DEFENSE

1. The Defendant Lee denies all allegations of the Plaintiff's Complaint not specifically admitted herein, and demands strict proof thereof.

FOR A SECOND DEFENSE

2. The Defendant Lee admits the allegation of paragraphs 2, 3, 4, and 8 of the Complaint.
3. The Defendant Lee has insufficient information to admit or deny the remaining allegations of the Plaintiffs' Complaint, and therefore denies same.

FOR A THIRD DEFENSE

4. The Plaintiff is barred and estopped from asserting any claim, however defined, against the Defendant Lee of any interest, legal or equitable, in the property known as 2325 Two Notch Road, Columbia, SC because:
- a. the Plaintiff participated in the Probate Court proceedings that led to the transfer of the property of which Plaintiff complains and is bound by the orders and/or deeds of transfer,
 - b. the Plaintiff acquiesced in the transfer of the property to Defendant Lee by the Probate Court and is bound by the orders and/or deeds of transfer, and
 - c. the provisions of S.C. Code Ann. 62-3-1006 bar recovery by Plaintiff against the Defendant Lee.

FOR A FOURTH DEFENSE

5. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the statute of limitations.

FOR A FIFTH DEFENSE

6. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrines of laches and abandonment.

FOR A SIXTH DEFENSE

7. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrine of adverse possession as the possession by Defendant Lee of the property which is the subject of this action has been actual, open, notorious and exclusive possession under claim of title as filed in the Office of the Richland County Clerk of Court, and that continued exclusive occupation, possession and

claim under title of the premises by Defendant Lee has existed for over ten (10) years prior to the filing of this action.

FOR A SEVENTH DEFENSE

8. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrine of adverse possession on behalf of the devisee of the property to Defendant Lee as the property which is the subject of this cause of action had been in devisee's actual, open, notorious and exclusive possession under claim of title and that there had been continued occupation and possession of the premises for over ten (10) years prior to the death of the devisee. Therefore, the subsequent transfer of the property to the Defendant Lee by the Richland County Probate Court, on behalf of the decedent devisee, was proper and bars all claims of the Plaintiff.

FOR A EIGHTH DEFENSE

9. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the doctrine of ouster as the possession of the property which is the subject of this cause of action has been in actual, open, notorious and exclusive possession of the Defendant Lee and the devisee of the property in question to Defendant Lee under claim of title and that there had and has been continued occupation and possession of the premises for over twenty (20) years prior to the filing of this action.

FOR A NINTH DEFENSE

10. All claims of the Plaintiff, however defined, against the Defendant Lee are barred by the common law presumption of grant as the possession by the Defendant Lee [and her ancestors and heirs] of the property which is the subject of this cause of

action has been in actual, open, notorious, continuous and exclusive possession and occupation of and by the Defendant Lee [and her ancestors and heirs] for over twenty (20) years prior to the filing of this action.

FOR A FIRST CAUSE OF ACTION

AGAINST DEFENDANT WILSON

(Foreclosure)

11. Plaintiff incorporates each of the foregoing allegations as fully as if repeated herein verbatim.
12. On January 6, 2000, the Plaintiff Goodwin executed and delivered a promissory note and purchase money mortgage securing payment of the note to the Defendant Lee. A copy of the note and mortgage is attached hereto as Exhibit A.
13. Defendant Lee is the legal owner of the Mortgaged Property.
14. The Note and First Mortgage (collectively "Loan Documents") provide that upon Defendant Wilson's failure to make payments thereunder when due, the entire outstanding balance under the Loan Documents shall, at the option of Defendant Lee, become immediately due and payable, and Plaintiff may foreclose the Mortgage.
15. Defendant Wilson is in default under the terms of the Loan Documents by reason, among others, of the failure to make payments when due.
16. Defendant Lee has and does hereby elect to declare the total unpaid balance of principal and interest on Note due and payable, and does hereby elect to foreclose its First Mortgage on the Mortgaged Property reserving, however, any and all other rights and remedies Defendant Lee may have under the Loan Documents including but not limited to the right to a deficiency judgment and the right to judgment against any other person or entity liable for the debt.
17. There is due and owing on the Note the following amounts:

Principal Balance	\$122,301.00
9% Contractual Interest Due	\$23,674.19
Late Fees [\$79.60 per month]	\$5,174.00
Balance Due on Note [through February 28, 2007]	\$154,149.19

Interest continues to accrue at the rate of 9% per annum (which is currently \$31.31506 *per diem*). This figure does not include attorney's fees incurred to date, but such fees are requested pursuant to the terms of the Note.

18. Despite demand, Defendant Wilson has not paid the aforesaid amounts due under the Note.
19. The Loan Documents provide that Defendant Wilson pay all costs and expenses of the Plaintiff in the collection of the Loan Documents including reasonable attorneys' fees in connection with the collection and enforcement of the Loan Documents.
20. Defendant Lee does not waive, but specifically demands judgment against the Defendant Wilson for the full amount found to be due on the Loan Documents held by Defendant Lee, with the right to enter a personal deficiency judgment against the Defendant Wilson for any deficiency in this action remaining after the sale of the Mortgaged Property.

FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT WILSON
(Suit on Note)

21. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

22. In the event the Court determines not to issue an order declaring the First Mortgage remains on the Mortgaged Property nor places an equitable lien on the Mortgaged Property and allows Defendant Lee to foreclose its lien on the Mortgaged Property, Defendant Lee seeks to enforce her rights under the Note. Exhibit B.
23. For valuable consideration given, on or about January 6, 2000, Defendant Wilson executed and delivered to Plaintiff the Note in the amount of \$127,000.00 Dollars.
24. The Note provides that upon failure by Defendant Wilson to make payments thereunder when due, the entire outstanding balance under the Note shall at the option of the Defendant Lee, become immediately due and payable.
25. The Defendant Wilson is in default under the terms of the Note by reason of the failure to make the payments when due.
26. Defendant Lee has and does hereby elect to declare the total unpaid balance of principal and interest on the Note due and payable, reserving, however, any and all other rights and remedies Plaintiff may have under the Note.
27. There is due and owing on the Note the following amounts:

Principal Balance	\$122,301.00
9% Contractual Interest Due	\$23,674.19
Late Fees [\$79.60 per month]	\$5,174.00
Balance Due on Note [through February 28, 2007]	\$154,149.19

Interest continues to accrue at the rate of 9% per annum (which is currently \$31.31506 *per diem*). This figure does not include attorney's fees incurred to date, but such fees are requested pursuant to the terms of the Second Note.

28. Despite demand, Defendant Wilson has not paid the aforesaid amounts due under the Note.
29. The Note provides the Defendant shall pay all expenses, including reasonable attorneys' fees and expenses of the Defendant Lee in the collection of the Note.
30. Defendant Lee has placed this matter with the undersigned attorneys for collection.

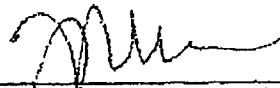
WHEREFORE, Plaintiff prays that this Court enter an Order as follows:

1. Dismissing the complaint of the Plaintiff and entering such orders as are necessary to declare and order Defendant Lee's full, sole and complete ownership in fee simple of the property in question,
2. The indebtedness due under the Loan Documents be computed, ascertained and established by this Court, together with all accrued interest, all costs of this action and other costs of collection incurred by Defendant Lee, and a reasonable attorney's fee, and that Plaintiff be granted judgment of foreclosure against Defendant Wilson in that amount; and
3. This Court issue its order:
 - (a) Declaring the Defendant Lee's First Mortgage to be a first lien upon the Mortgaged Property;
 - (b) Directing that the Defendant Lee's First Mortgage described herein be foreclosed, that the Mortgaged Property hereinabove described be sold in accordance with the law and practices of this Court, and that the Defendants Wilson and Goodwin as well as the Plaintiff James A. Anasti and all other persons claiming by, through, or under them be barred and forever foreclosed of all right, title, and interest and equity of redemption in and to the said Mortgaged Property or any part thereof now and forever;

(c) Directing that out of the proceeds of the sale of the Mortgaged Property, after the costs of this action and of such sale have been deducted, Defendant Lee be paid in full the amount due on its Loan Documents and with interest thereon and attorneys' fees as set out above and all amounts that it may hereafter and prior to such sale have to pay pursuant to the provisions of its Mortgage with the surplus, if any, to be distributed according to law; and

(d) For the costs and fees associated with this action; or in the alternative,

3. Granting Defendant Lee judgment against Defendant Wilson on the Note as indicated hereinabove; and
4. Granting Defendant Lee the costs and attorneys fees associated with this action,
5. For such other further relief that is deemed just, proper and equitable.



Tony R. Megna, Esquire
Attorney at Law
Bar Number 3930
1815 Fulmer Road
Blythewood, SC 29016
Telephone: 803-799-1700
Facsimile: 803-753-9004
E-mail: tony@pdhc.com

March 20, 2007.

STATE OF SOUTH CAROLINA

James Anasti,

Plaintiffs,

vs.

Lance Wilson, Willis Goodwin,
Gina L. Anasti Lee, Richland
County Clerk of Court,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 07-CP-40-0576

FILED
07 MAR 21 PM 8:48
CLERK OF COURT
BARBARA A. SCOTT
C.C.C. & G.S.

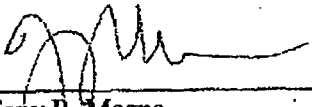
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below a copy of the Defendant Lee's Answer and Cross-Claim was served upon the below-named by delivering a copy first class mail, postage prepaid as follows:

Douglas N. Truluck, PO Box 1465, Columbia, SC 29202 [tel: 803.256.6276]

Thomas G. Earle, 1735 St. Julian Place, Suite 103, Columbia, SC 29204 [telephone 803.254.2791, facsimile: 803.254.7755]

The Honorable Barbara A. Scott, Richland County Clerk of Court,
P.O. Box 2766, Columbia, SC 29202-2766 [803.748.4684]



Tony R. Megna
Attorney-at-law
1815 Fulmer Road
Blythewood, SC 29016
803-799-1700
tony@pdhc.com

March 20, 2007.

EX. A

PROMISSORY NOTE

\$127,000.00

January 6, 2000

FOR VALUE RECEIVED, the undersigned (hereinafter referred to as "Borrower(s)") promise(s) to pay to the order of GINA L. ANASTI LEE (hereinafter referred to as "Lender") at Columbia, South Carolina, in lawful money of the United States of America the principal sum of ONE HUNDRED TWENTY SEVEN THOUSAND and NO/100 (\$127,000.00) DOLLARS, with interest thereon at the rate of Nine (9%) percent per annum, payable as follows:

- (a) Payments of Principal and Interest to Lender, on the 6th day of each month beginning on February 6, 2000. Any principal and interest remaining on the 6th day of January, 2011, will be due on that date, which is called the "Maturity Date."
- (b) Each Monthly payment of principal and interest will be in the amount of U.S. \$ 1,519.02.
- (c) Payment shall be made at Gina L. Anastis Lee
P.O. Box 1685, Bismarck, ND 58104
- (d) If Lender has not received the full monthly payment required by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of Five (5%) Percent of the overdue payment.
- (e) The undersigned borrower(s) have the right to prepay the debt evidence by this Note, in whole or in part, without charge or penalty, on the 6th day of any month. Lender shall accept prepayment on other days provided that borrower(s) pays any interest due at the time of prepayment.

If default be made in the performance of or compliance with any of the covenants and conditions of the mortgage or any other instrument securing this note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt courts, or under foreclosure proceedings under the mortgage securing this note, then all cost or collection, including a reasonable sum for attorney fee shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Presentment protest, and notice are hereby waived.

No/100 (\$127,000.00) Dollars.

This note is secured by a mortgage of even date conveying property in Richland County, South Carolina.

This note is assumable, provided that Borrower(s) obtain prior written consent from Lender, which consent shall not be unreasonably withheld.

Witness the hand and seal of each of the signers hereof.

Witness:

Andrew Renger

Willis S. Goodwin (l.s.)
Willis S. Goodwin

Gregory K. Hill

EX-B

(Space for Recording)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) MORTGAGE OF REAL ESTATE

WHEREAS, WILLIS S. GOODWIN ("Mortgagor(s)") in and by that certain Note or obligation bearing even date herewith (the "Note"), stand firmly held and bound unto GINA L. ANASTI LEE ("Mortgagee(s)") conditioned for the payment in lawful money of the United States of America of the full and just sum of ONE HUNDRED TWENTY SEVEN THOUSAND AND NO/100 (\$127,000.00) Dollars, as in and by that certain Note having a maturity date of January 6, 2000 and the conditions thereof, reference thereunto had will more fully appear.

NOW, KNOW ALL MEN, that Mortgagor(s) in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the Note; which with all its provisions is hereby made a part hereof; and also in consideration of Three Dollars to Mortgagor(s) in hand well and truly paid, by Mortgagee(s), at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the Mortgagee(s), forever, the following described property, to wit:

SEE "EXHIBIT A" ATTACHED HERETO AND MADE A PART HEREOF

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises unto Mortgagee(s) and Mortgagee(s)'s successors or heirs and assigns forever.

AND Mortgagor(s) does hereby bind Mortgagor(s) and Mortgagor(s)'s successors or heirs, executors, and administrators, to procure or execute any further necessary assurances of title to the said premises, the title to which is unencumbered except as otherwise stated above, and also to warrant and forever defend all and singular the said Premises unto Mortgagee(s) and Mortgagee(s)'s successors or heirs and assigns, from and against Mortgagor(s) and Mortgagor(s)'s successors or heirs, executors, and administrators and all persons lawfully claiming, or to claim the same or any part thereof.

AND IT IS AGREED, by and between the parties hereto, that Mortgagor(s) and Mortgagor(s)'s successors or heirs, executors, or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss or damage by fire, for the benefit of Mortgagee(s), for an amount not less than the fair market value, in such company as shall be approved by the Mortgagee(s), and shall deliver the policy to Mortgagee(s), and in default thereof, Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, may effect such insurance and reimburse themselves under this mortgage for the expense thereof, with interest thereon,

Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns shall be entitled to receive from the aggregate of the insurance moneys to be paid, a sum equal to the amount of the debt secured by this mortgage.

AND IT IS AGREED, by and between the said parties, that if Mortgagor(s), Mortgagor(s)'s successors or heirs, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this mortgage for the sums so paid, with interest thereon, from the dates of such payments.

AND IT IS AGREED by and between the said parties, that upon any default being made in the payment of the interest on the Note, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this mortgage, that then the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due, at the option of Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, although the period for the payment of the said debt may not then have expired.

AND IT IS AGREED, that if the holder of the Note secured hereby is compelled to pay any taxes upon the debt represented by said note, or by this mortgage, then, and in that event, unless the said taxes are paid by some party other than the said holder, that then the entire amount of the debt secured, or intended to be secured, shall forthwith become due at the option of Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, although the period for its payment may not then have expired.

AND IT IS AGREED, by and between the said parties, that, should legal proceedings be instituted for the collection of the debt secured hereby, then and in that event, Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, shall have the right to have a Receiver appointed of the rents and profits of the above described premises, with power to forthwith lease out the said premises anew if he should so elect, who, after deducting all charges and expenses attending such proceedings and the execution of the said trust as Receiver, shall apply the residue of the said rents and profits towards the payment of the debts secured hereby.

AND IT IS FURTHER AGREED, by and between the said parties, that should legal proceedings be instituted for the foreclosure of this mortgage, or for any purpose involving this mortgage, or should the debt hereby secured be placed in the hands of an attorney at law for collection, by suit or otherwise, that all costs and expense incurred by Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, including a reasonable counsel fee (of not less than ten percent of the amount involved) shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED, ALWAYS, and it is the true intent and meaning of the parties to these Presents, that when Mortgagor(s), Mortgagor(s)'s successors or heirs, executors or administrators shall pay, or cause to be paid unto Mortgagee(s), Mortgagee(s)'s certain attorneys, successors or heirs and assigns, the said debt, with the interest thereon, if any shall be due, and also all sums of money paid by Mortgagee(s), Mortgagee(s)'s successors or heirs and assigns, according to the conditions and agreements of the Note, and of this mortgage and shall perform all the obligations according to the true intent and meaning of the Note and this mortgage, and the conditions thereunder written, then this Deed of Mortgage and Sale shall cease, determine and be void, otherwise it shall remain in full force and virtue.

AND IT IS LASTLY AGREED, by and between the said parties,

Mortgagor(s) is to hold and enjoy the said premises until
all of payment shall be made.

WITNESS the hand and seal of Mortgagor(s), this ____ day
of January in the year of our Lord Two Thousand and in the two
hundred and twenty fourth year of the Sovereignty and Independence
of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Andrea Ringer William S. Smith
George H. Smith

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PERSONALLY appeared before me the undersigned witness and
made oath that he/she saw the within named Mortgagor(s) sign, seal
and as his act and deed, deliver the within written Deed, and that
he/she with the other witness witnessed the execution thereof.

SWORN to before me, this

6 day of January, 2000.

George H. Smith (L.S.)
Notary Public for South Carolina
My Commission Expires: 07-08-2008

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Lance Wilson and Willis Goodwin,) Docket No.: 2004-CP-40-5333
Plaintiffs,)

v.
Gina L. Anasti Lee)

Defendant/
Third-Party Plaintiff)

AWARD

v.
Dallis Law Firm, P.A.,)

Defendant/
Fourth-Party Plaintiff,)

v.
Sandra Michelsen d/b/a Abstract Title,
Fourth-Party Defendant,)
Defendants.)

Lance Wilson and Willis Goodwin,) Docket No.: 2004-CP-40-5334
Plaintiffs,)

v.
Dallis Law Firm, P.A.,)

Defendant/
Third-Party Plaintiff,)

AWARD

v.
Sandra Michelsen d/b/a Abstract Title,
Third-Party Defendant,)
Defendants.)

This matter comes before me pursuant to binding arbitration agreed to by three of the four parties to these matters: (1) Lance Wilson and Willis Goodwin ("Wilson" and "Goodwin"); (2) Gina L. Anasti Lee ("Lee"); and (3) the Dallis Law Firm, P.A ("Dallis Law Firm" or "Dallis"). This arbitration was agreed to pursuant to a consent Order dated November 9, 2007. This award finally determines, without appeal, the rights of the three parties to this arbitration in Case Nos. 04-CP-40-5333 and 04-CP-40-5334.

A fourth party is Sandra Michelsen d/b/a Abstract Title ("Michelsen"). Michelsen has never appeared in either of these cases and is in default. Michelsen was sued by the Dallis Law Firm, which sought a recovery only in the event the Dallis Law Firm was found liable to Wilson and Goodwin and/or Lee. Michelsen is not a party to this binding arbitration but, by virtue of being in default, is bound to indemnify the Dallis Law Firm for any award against the Dallis Law Firm.

STATEMENT OF THE CASE

This case revolves around a parcel of property, the "Two Notch property," that is the source of the dispute between the parties. With regard to these cases, the first relevant owner of the property was Albert Anasti who owned the property in fee simple. On November 17, 1978, he deeded the property to a third party who, on the same day, deeded it back to Albert Anasti and his son James Anasti as joint tenants with right of survivorship. Albert died testate on October 24, 1995. At his death the "Two Notch property" became the exclusive property of James Anasti pursuant to the survivorship deed noted above.

Complicating matters, Albert Anasti's Will bequeathed the property to his daughter, Gina Lee. When Albert Anasti died in 1995, James Anasti was out of the country. Gina Lee served as personal representative and in that capacity, Gina Lee deeded the property to herself in fee simple in a deed of distribution on October 24, 1996, pursuant to Albert's Will.

While Albert Anasti was still alive, he had rented the Two Notch property to Lance Wilson who operated a club on the property. After Anasti's death, Wilson continued to pay rent and other sums to Gina Lee, who he believed, at least for a time, to

be the rightful successor owner of the property. Eventually Lee and Wilson worked out a deal for the sale of the property to Wilson, but due to financing issues, Wilson enlisted his friend Willis Goodwin to help financially.

Wilson and Goodwin together were able to strike a deal with Lee to buy the parcel in 2000. However, still in 2000, Wilson and Goodwin became aware of title problems with the property when they became interested in using it as collateral for a loan. In February of 2002, Lee herself became aware of title problems with the property. Eventually, in a different civil action, James Anasti was able to obtain a judgment that he was the rightful owner of the parcel.

Wilson and Goodwin sued Lee and all three sued the Dallis Law Firm, the firm that handled the real estate closing. The Dallis Law Firm was sued by Wilson and Goodwin on November 12, 2004 but was not sued by Lee until March 24, 2005. Dallis, in turn, sued Sandra Michelsen d/b/a Abstract Title, who has defaulted and never appeared.

FINDINGS OF FACT

1. Prior to 1978, Albert Anasti came into fee simple ownership of the Two Notch property.
2. On November 17, 1978, Albert Anasti deeded the Two Notch property to a third party who, on the same day, deeded it back to Albert Anasti and his son, James Anasti, to hold as joint tenants with right of survivorship.
3. Albert Anasti died on October 24, 1995, and at his death the Two Notch property became the exclusive property of James Anasti pursuant to the survivorship deed in Finding Number Two.

4. Albert Anasti's daughter, Gina Lee, served as personal representative of her father's estate.

5. Albert Anasti's Will attempted to bequeath the Two Notch property to Gina Lee. On November 7, 1996, a deed of distribution appeared to transfer ownership of the property to Lee. This deed of distribution was prepared by the Probate Court with jurisdiction over the Albert Anasti estate.

6. Wilson was a renter of the property both before Albert Anasti's death and after.

7. Wilson paid rent to Lee after Albert Anasti's death.

8. Wilson and Goodwin together paid the following sums relating to the Two Notch property: (1) \$61,250 (rent collected the 49 months from November 1995 to November 1999; rent was \$1,250 per month); (2) \$3,000 (rent collected the 2 months from December 1999 to January 2000; rent was \$1,500 per month); (3) \$50,000 (a down payment on the purchase of the property); (4) \$51,646.68 (mortgage payments collected the 34 months from February 2000 to December 2002; mortgage payments were \$1,519.02 per month). All of these monies were paid to Lee by Wilson and/or Goodwin.

9. Wilson and/or Goodwin also paid property taxes for the parcel totaling \$18,657.24.

10. Wilson learned of problems with the title to the disputed property in 2000. Shortly after the closing of the sale of the disputed property in January 2000, Wilson went to the Bank of America to see about getting a loan with the property as collateral. Wilson Depo. p. 48 ll. 11-13 ("Q. When did you go to the Bank of America to get a loan?

Wilson. That was in—I believe around 2000.”). Wilson learned that neither he nor Goodwin were the actual owners of the property. Wilson Depo. p. 49 ll. 7-25.

Q. Now, when you went to the Bank of America in whenever it was to get a loan, what were you told?

Wilson. My name was not on the building or the property.

Q. And that was it. Since you were not the owner of the property, you couldn't get a loan?

Wilson. Yes.

Q. Did you ask Mr. Goodwin, since his name was on there, did you ask him if he could get another loan?

Wilson. His name was not on the property.

Q. All right, so you're saying whenever you went to Bank of America, you were aware then that there was some problem with the title or did they tell you? Did you know before?

Wilson. No, I didn't know before.

Q. So Bank of America is the one that told you? Was this before there was a condemnation action?

Wilson. (Nods head affirmatively).

Q. You're shaking your head yes?

Wilson. Yes.

Id. Wilson then went to his attorney regarding this matter. Id. at p. 50 ll. 1-9.

Q. What did you do at that time, since Bank of America is telling you that Mr. Goodwin didn't own the property? You know you didn't own the property? What did you do at that point to try to figure out what was going on?

Wilson. That's about when I went to Mr. Earle.

Q. Did you go to Mr. Earle before the condemnation action?

Wilson. I believe so.

Id.

Wilson's live testimony offered at the arbitration hearing was punctuated by serious gaps in memory. Wilson suffered a stroke and brain damage in August of 2000 and has attendant memory problems. Due to his memory problems, Wilson offered no reliable testimony as a live witness regarding whether or not he approached a bank in 2000 and learned that neither he nor Goodwin were the actual owners of the disputed property.

Because of his inability to recall the events of 2000, counsel for the Dallis Law Firm introduced into evidence portions of his deposition testimony cited above without objection. Tr. at p. 55 et seq. The portions of Wilson's deposition in the record establish that Wilson approached a bank for a loan in 2000 but the bank advised Wilson he could not borrow against the property because neither he nor Goodwin owned it. Wilson then proceeded to speak to a lawyer about the matter.

A preponderance of the evidence supports the finding that Wilson learned in 2000 that there were problems with the title to the disputed property due to his dealings with a bank in an effort to secure a loan on the property. Wilson's memory problems during the hearing of this matter made his live testimony unhelpful on this question, but his deposition testimony, tips the scales toward Wilson's learning about title problems to the disputed property in 2000. Further, because Wilson suffered a stroke in mid-August of 2000 that debilitated him for approximately 18 months, Wilson's activities with regard to the property (seeking a loan, finding out that neither he nor Goodwin owned the property, and seeking advice of counsel) must have taken place between January and August of 2000.

11. Wilson and Goodwin went in together with regard to the purchase of the Two Notch property.

12. Lee learned of the problems with the title to the disputed property on February 27, 2002. The testimony is undisputed on this point. In late 2001 and early 2002, the State of South Carolina became interested in exercising eminent domain to take a sliver of the disputed property for a road widening project. Link Aff. Exhibit A (Plaintiff's Exhibit 11). John Link was an agent of the State of South Carolina involved

in this project. Link Aff. On February 27, 2002, Link communicated to Lee that there were title problems with the disputed property and that it appeared that James Anasti owned the disputed property. Link Aff. ¶¶ 9-10 (“[O]n February 27, 2002 I spoke to Gina L. Anasti Lee regarding the [Two Notch property]. . . . [D]uring this February 27, 2002 conversation, I explained to Ms. Lee that there were problems with the title to the parcel and that her brother had an interest in the property.”); Tr. p. 162 l. 25 – p. 164 l. 7 (“[T]here was a fellow that just called the shop where I worked at that said . . . something about the property that . . . I inherited was supposedly my brother’s.”).

13. On September 27, 1999, Wilson and Lee, without the benefit of an attorney, entered into a contract for sale of the Two Notch property that Lee represented she owned. However, that contract was renegotiated later in the year and Dallis was retained to prepare the Contract documents and protect Goodwin’s interest also. By the terms of the Lee-Goodwin Contract, Goodwin agreed to purchase the Two Notch property from Lee for the sum of \$177,000.00, paying \$50,000.00 down with “owner financing” by Lee, as evidenced by a note and mortgage in the sum of \$127,000.00, payable at the rate of \$1,519.02 per month commencing February 6, 2000 (Plaintiffs’ Exhibit 3). At or about the same time, Goodwin and Wilson entered into an “Installment Sale Contract,” also prepared by Dallis, by the terms of which Wilson would purchase the identical Two Notch property from Goodwin (Plaintiff’s Exhibit 4). This installment sales contract was a material component of the contract and was specifically approved of and consented to by Lee. In other words, she gave written permission for Wilson to assume Goodwin’s promissory note and mortgage obligations (Plaintiff’s Exhibit 5) so

that he would be the ultimate owner of the Two Notch property which she erroneously represented that she owned.

14. In conjunction with the aforesaid transactions, Wilson and Goodwin engaged Dallis for purposes of a real estate closing, to include preparing all necessary documents and performing a title search to ensure that Lee had proper "good", marketable, fee simple title to the Two Notch property to be deeded to Goodwin and then ultimately to Wilson. Dallis in turn has alleged that it engaged Abstract to perform a title search.

15. Based upon Abstract's real estate title report, Dallis subsequently represented or certified to Wilson and Goodwin that Lee had proper "good", marketable, fee simple title to the Two Notch property, a closing took place as evidenced by Lee's general warranty deed (Plaintiffs' Exhibit 9) and the settlement statement (Plaintiffs' Exhibit 2). Thereafter, Wilson paid Goodwin most all of the sums due under his Installment Sale Contract, as well as paying to Lee all sums ostensibly due her under the note and mortgage with Goodwin e.g. \$1,519.02 per month. In addition, Wilson asserts that he paid all real estate taxes on the Two Notch property from 2000 through 2006, and he presented receipts for the period of 1994 – 2004 (Plaintiffs' Exhibit 6).

From the records produced, I find that Wilson has paid taxes relative to the Two Notch property in reliance on the deed from Lee to Goodwin and in conjunction with his installment sales contract with Goodwin as follows:¹

Year	Amount	With Prejudgment Interest
2000	\$3,346.75	\$5,536.03

¹ From the real estate closing statement, it appears that Lee had not paid property taxes on the Two Notch property for 1998 or 1999, such that they were deducted from her settlement at closing on January 6, 2000.

2001	\$3,120.34	\$5,161.49
2002	\$3,362.23	\$5,114.16
2003	\$4,389.92	\$6,140.08
2004	\$4,438.00	\$5,707.89
TOTALS	\$18,657.24	\$27,659.65

Although Wilson testified that he paid applicable real estate taxes through 2006, no documentary evidence of payments for 2005 and 2006 (and more importantly no evidence as to amounts paid) was presented and, therefore, I am not able to speculate as to what sums were in fact paid (or by whom).

16. In August, 2000, Wilson suffered a stroke, has suffered significant permanent memory loss and was not able to work for approximately 18 months. During that time Goodwin and Mrs. Robin Wilson (wife of Lance Wilson) operated Dave's. Nonetheless all monthly mortgage payments of \$1,519.02 each were paid to Lee until December, 2002 for a total of 34 payments and a total amount paid of \$51,646.68.

17. Wilson and Goodwin were, in essence, the buyers of the Two Notch property from Lee, and the business known as Dave's (owned and operated by the corporation known as Pedaro, Inc.) was a separate entity. All repairs and improvements were asserted by Wilson to have been made and/or paid for by him. However, having recited that testimony, it is not dispositive because Wilson presented no documentation nor other evidence relative to the amount(s) of repairs and improvements and hence any award for same would be speculative and must

therefore be denied. Furthermore, any damages to the corporation known as Pedaro and/or Dave's are not compensable in that (a) they are not parties to the within action and (b) such claims, if any, would be too speculative upon which to base any award.

18. Wilson has asserted that he has paid and maintained insurance on the Two Notch property, but he has provided no proof of the costs of same such that no award can properly be made.

19. From January, 2000 until being served with an action by S.C.D.O.T. in December, 2002 (case # 02-CP-40-6062) Wilson paid Lee \$1,519.02 per month relative to Goodwin's note and mortgage. Thereafter, all payments to Lee stopped.

20. I have taken judicial notice of the terms of the Court's Order dated October 26, 2007 in action 07-CP-40-0576 and I adopt the terms, findings and conclusions as my own. Thus, it is clear that title to the Two Notch property is now in the name of James A. Anasti (since the death of Albert A. Anasti).

21. I find and conclude that Lee never at any stage had any ownership in the Two Notch property and that she obtained funds from Goodwin and/or Wilson to which she was not entitled, as follows:

January 6, 2000 = \$50,000.00 at closing

February, 2000 through November, 2002 -- \$1,519.02 per month

34 months x \$1,519.02 = \$51,646.68

Total \$101,646.68

22. Wilson has continued to operate Dave's at the Two Notch property but has paid no sums as rent or otherwise since his November 2002 payment to Lee.

23. As reflected in Plaintiff's Exhibit 2, Lee did not pay real estate taxes on the Two Notch property in 1998 or 1999 (or since that time); she presented no documentary evidence that she has ever paid any real estate taxes on it, and no documentary evidence (or amounts) was presented that she has ever paid any sums for insurance on the Two Notch property. Thus, I find and conclude that she has never paid real estate taxes or insurance on the Two Notch property, excepting taxes paid or advanced by Wilson and/or Goodwin which were deducted at the closing January 6, 2000 for 1999, and Wilson paid the real estate taxes in 1998.

24. When Lee "sold" the Two Notch property to Goodwin, she testified that she thought in good faith that she had good, marketable title and that she took pursuant to a "deed of distribution" prepared by the Probate Court. Further, she testified that she would want to do what was honest and would not have attempted to sell it if she did not own it.

25. No competent evidence was advanced in support of Lee's foreclosure and debt claims, which claims I would have found to have been totally without merit in any event since she would have been seeking to foreclose on property she clearly never owned and on a debt that was clearly not owed to her.

26. In Wilson and Goodwin's complaint, they allege that Dallis was negligent and that they were damaged as a proximate result. They presented no expert testimony but instead rely upon the common knowledge exception to the general requirement that expert witness is required in a professional malpractice or negligence action. Their premise simply stated is that Dallis was retained to represent

them in a real estate closing to ensure that they (Goodwin, initially, and Wilson, ultimately) receive good, marketable fee simple title to the property.

27. Plaintiffs have shown that Dallis Law Firm was retained to represent them in a two stage real estate transaction in which:

- a. Dallis Law Firm was given the earlier "store bought" contract
- b. Dallis Law Firm was to draft the contracts (1) contract between Gina L. Anasti Lee and Willis Goodwin and (2) secondary contract to protect Lance Wilson in this now 3 party transaction.
- c. Dallis Law Firm was to conduct a title examination to make sure Mrs. Lee did in fact own the property and thus could convey good marketable fee simple title to Willis Goodwin who in turn could obligate himself to Lance Wilson in the secondary contract.
- d. Prior to closing Dallis Law Firm advised Goodwin and Wilson that title was good; that the closing would occur at their office on 6 January 2000 and that Willis Goodwin would need to bring \$45,000.00 to closing in order with Mrs. Lee and that Wilson would also need to be at closing so he and Goodwin could execute the Installment Sale Contract.
- e. It is not clear who contacted Mrs. Lee but she was a necessary party for the closing and she along with Goodwin and Wilson were at Dallis Law Firm for the closing conferences.

28. The crux of this litigation from the plaintiffs' point of view is that Dallis Law Firm was retained by them to assure them that they would get good marketable fee simple title to the property subject only to the Goodwin to Lee purchase money

mortgage to be given by Goodwin to secure the deferred portion of the purchase price.

29. The order of the Honorable J. Ernest Kinard, Jr. (Lee's Exhibit 9) in the case of James A. Anasti vs. Goodwin, Wilson, Lee and Barbara Scott as Clerk of Court (2007CP40-576) conclusively established that James A. Anasti is the sole owner of the real property. The Dallis Law Firm certified to Willis S. Goodwin, to Lance Wilson (and from the testimony of Gina L. Anasti Lee to her also) that Gina L. Lee was the owner of and that Willis S. Goodwin, once the closing was completed and the deed recorded, would own fee simple marketable title to the property subject to the Purchase Money Mortgage back to Mrs. Lee as provided for in the Contract of Sale (which Dallis Law Firm prepared for Goodwin and Wilson).

30. Lance Wilson in reliance upon the representations of Dallis Law Firm that Willis S. Goodwin had good marketable fee simple title to the property (subject to the Goodwin to Lee promissory note secured by said Purchase Money Mortgage) then entered into the Installment Sale Contract with Willis S. Goodwin. Goodwin then entered into the agreement with Wilson.

31. The evidence is irrefutable that Mrs. Lee never had any title to the property.

32. The Dallis Firm asserts that the claims of professional negligence of Wilson, Goodwin, and Mrs. Lee, fail, in part, because no expert testimony has been offered on the issues of the standard of care, the breach of care, and the proximate cause of any damages.

33. This case clearly comes within the "common knowledge" exception to the requirement of expert testimony in cases of this sort. The Dallis Firm recognized its need for a title examination to determine the true owner of the property. It retained its own abstractor to conduct that examination and to satisfy the Dallis Firm itself as to the true ownership. Unfortunately for all parties concerned, the abstractor hired by Dallis failed to discover and/or report the true ownership of the property as being in Mr. James Anasti pursuant to the survivorship terms of the deed referred to in Finding Number Two above. That negligent oversight is imputed to Dallis, the firm which hired the abstractor to conduct the examination. No expert is required to explain a survivorship deed; by its very terms, the ownership is apparent.

34. It is not necessary to know how to examine a title to reach that finding. If the issues of whether or not liens existed against the property or whether or not there was some esoteric rule of property law (the Rule against Perpetuities, for example) then clearly expert testimony may be necessary. However, in this case, the question is a simple one of true ownership. The Dallis Firm reported the true owner was Gina L. Anasti Lee. The clear wording of the survivorship deed indicated the true ownership in James Anasti.

35. Therefore, the claims of Wilson, Goodwin and Gina Lee against the Dallis Firm do not fail for the lack of expert testimony. They fail because their respective suits were not filed within the three year period allowed by the Statute of Limitations. (See paragraphs ten and twelve above and Conclusions five and six below.)

CONCLUSIONS OF LAW²

² To the extent any conclusions of law may be, in whole or in part, findings of fact, they are to be construed as such.

1. Albert Anasti and James Anasti held the Two Notch property as joint tenants with right of survivorship prior to Albert Anasti's death. At Albert Anasti's death, James Anasti came into ownership of the entirety of the Two Notch property in fee simple. Accordingly, the language in Albert Anasti's Will indicating the Two Notch property was bequeathed to Gina Lee never operated. Since Albert Anasti's death, James Anasti has held title to the Two Notch property.

2. Therefore, neither Lee nor anyone else other than James Anasti has held title to the Two Notch property since Albert Anasti's death.

3. Lee never had the legal right to sell the Two Notch property.

4. The attempted sale of the property was invalid because Lee could not sell the property.

5. The statute of limitations is a bar to Lee recovering against the Dallis Law Firm. The statute of limitations defense is an affirmative defense. Arant v. Kressler, 327 S.C. 225, 227, 489 S.E.2d 206, 208 n.1 (1997). For the defendant to prevail, the defendant must show by a preponderance of the evidence that the plaintiff was on notice that a claim might exist more than three years prior to the filing of the lawsuit. Cole v. South Carolina Electric and Gas, Inc., 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct. App. 2003); Epstein v. Brown, 363 S.C. 372, 380, 610 S.E.2d 816, 820 (2005).

"[The South Carolina Supreme Court] has recognized that, under the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist. The fact that the injured party may not comprehend the full extent of the damage is immaterial." Epstein v. Brown, 363 S.C. 372, 382, 610 S.E.2d 816, 821 (2005) (citing,

inter alia, Dean v. Ruscon Corp., 321 S.C. 360, 363-364, 468 S.E.2d 645, 647 (1996)).

"[An] injured party must act with some promptness where [the] facts and circumstances of injury would put [a] person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist; [the] statute of limitations begins to run from this point and not when advice of counsel is sought or [a] full-blown theory of recovery is developed." Id. (describing the holding of Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994)).

The undisputed facts of the case are that Lee learned about title problems regarding the disputed property on February 27, 2002. Lee's testimony and the stipulated testimony of John Link both establish, without question, that Link notified Lee of title problems and, in fact, told Lee that it appeared her brother owned the disputed property. Link Aff. ¶¶ 9-10 ("[O]n February 27, 2002 I spoke to Gina L. Anasti Lee regarding the [Two Notch property]. . . . [D]uring this February 27, 2002 conversation, I explained to Ms. Lee that there were problems with the title to the parcel and that her brother had an interest in the property."); Tr p. 162 l. 25 – p. 164 l. 7 ("[T]here was a fellow that just called the shop where I worked at that said . . . something about the property that . . . I inherited was supposedly my brother's.").

When Lee was told on February 27, 2002 that her brother James Anasti owned the disputed property rather than Lee or the putative buyers, Wilson and Goodwin, she was put on notice that there was a title problem regarding the property. Lee's statute of limitation against the Dallis Law Firm began to run on February 27, 2002, because a reasonable person of common knowledge and experience would have been put on notice that she might have a claim at that point in time.

Lee did not file suit against the Dallis Law Firm until March 24 of 2005, more than three years after the statute of limitations began running as to any claims against the Dallis Law Firm. The applicable statute of limitations in this matter is three years. Epstein v. Brown, 363 S.C. 372, 380, 610 S.E.2d 816, 820 (2005). Accordingly, Lee's claims against the Dallis Law Firm are time-barred and the Dallis Law Firm is entitled to a defense award with respect to all claims leveled by Lee.

6. The statute of limitations is also a bar to Wilson and Goodwin recovering against the Dallis Law Firm. The statute of limitations defense is an affirmative defense. (See paragraph five above.)

In the instant case, Wilson learned of problems with the title to the disputed property in 2000. Finding of Fact 10, supra. The segments of Wilson's deposition entered into the record in this case reveal that he learned about problems with the title to the disputed property sometime in 2000. Further, no other evidence in the case points to a different date of discovery. Neither counsel for Wilson nor any other party elicited any testimony or adduced any evidence that would point to a different discovery date. It is true that Wilson himself had no reliable memory regarding when he discovered problems with the title to the property, but the portions of his deposition testimony entered into the record are incontroverted: Wilson learned of problems with the title to the disputed property in 2000.

Wilson's knowledge that neither he nor Goodwin owned the property in 2000 after the closing was sufficient to put a reasonable person of common knowledge and experience on notice that he might have a claim. While it was not necessary for Wilson to consult with a lawyer before triggering the running of the statute, Wilson nonetheless

did consult with an attorney in 2000 regarding the disputed property. Because of Wilson's stroke in mid-August of 2000, this consultation must have occurred sometime between January and August of 2000. Therefore, the statute of limitations began running as to Wilson no later than August of 2000.

It is well-settled law that the knowledge of one co-adventurer is imputed to all members of the joint venture. E.g., In re Parmalat Securities Litigation, 501 F.Supp.2d 560 (S.D.N.Y. 2007) (citing Mallis v. Bankers Trust Co., 717 F.2d 683, 689 n. 9 (2d Cir. 1983)) ("Knowledge of a joint adventurer is imputed to its co-adventurers."). Because Wilson and Goodwin were engaged in a joint venture with respect to the purchase of the disputed property, Wilson's knowledge of problems with the title in 2000 is imputed to Goodwin. Accordingly, the statute of limitations began running as to Goodwin the same time it began running as to Wilson: no later than August of 2000.

The preponderance of the evidence then indicates that Wilson (and, vicariously, Goodwin) learned of problems with the title to the disputed property in 2000. Wilson and Goodwin did not file suit against the Dallis Law Firm until November of 2004, more than four years after the statute of limitations began running as to any claims against the Dallis Law Firm. The applicable statute of limitations in this matter is three years. Epstein v. Brown, 363 S.C. 372, 380, 610 S.E.2d 816, 820 (2005). Accordingly, Wilson and Goodwin's claims against the Dallis Law Firm are time-barred and the Dallis Law Firm is entitled to a defense award with respect to all claims leveled by Wilson and Goodwin.

CONCLUSION

Based on the findings of fact and conclusions of law set forth above, it is accordingly ordered:

1. The Wilson-Goodwin joint venture be awarded the sum of \$216,337.70 in actual damages against Gina L. Anasti Lee. That amount is derived from the following calculations:

- a.) \$50,000.00 paid at closing plus prejudgment interest at 8.75% per annum through January 6, 2008, which equals \$97,814.70;
- b.) 34 monthly mortgage payments of \$1,519.12 each for a total of \$57,646.68, plus prejudgment interest as above totaling \$90,863.35;
- c.) Real estate taxes for the years 2000 through 2004 total \$18,657.24, plus prejudgment interest as above, totaling \$27,659.65.

2. Wilson and Goodwin's claim against The Dallis Law Firm must be denied because it was filed after the statute of limitations had expired for the filing of such a claim.

3. Gina Anasti Lee's claim against The Dallis Law Firm must also be denied because it was filed after the statute of limitations has expired for the filing of such a claim. Further, Ms. Lee failed to prove that she suffered any damages proximately caused by the actions of The Dallis Law Firm.

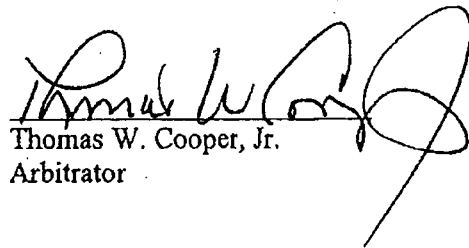
4. This court has not awarded punitive damages in this case because the actions of Ms. Lee were not willful actions in that she had a good faith belief that she was the owner of the subject property as a result of Albert Anasti's Will. However, a good faith belief does not afford any protection against Wilson and Goodwin's claim for actual damages awarded above.

5. Lee's claim for foreclosure against Wilson and Goodwin is denied because Lee never owned the Two Notch property and therefore cannot foreclose.

6. All other claims by the parties are denied, except, however, for claims the Dallis Law Firm has against Sandra Michelsen d/b/a Abstract Title for any sums which Dallis becomes legally obligated to pay or reasonably chooses to pay as a result of this matter. These claims by Dallis against Michelsen are not resolved by this arbitration as Michelsen was not a party to this arbitration.

7. The fees for the arbitrator will be evenly divided among the three parties to this action.

AND IT IS SO AWARDED.


Thomas W. Cooper, Jr.
Arbitrator

August 15, 2008

Manning, South Carolina

1 SEPTEMBER 19, 2007

2 MR. TRUSLOW: I would suggest that perhaps the
3 motion for summary judgment ought to be heard first
4 because if we're successful, that may be
5 dispositive of a lot of issues and streamline the
6 case, but if you would prefer to --

7 THE COURT: I mean, I don't know anything
8 about it, Mr. Truslow, so if you feel like summary
9 judgment should be argued first, have at it.

10 MR. TRUSLOW: All right. Your Honor, I
11 represent James Anasti. And the parties or the
12 people involved as it relates to my case, there is
13 James Anasti. There is a sister. Her name is Gina
14 Anasti Lee. And then there -- and she is
15 represented by Mr. Megna, who is to my far right,
16 to your far left. My friend Mr. Earle to my
17 immediate right is representing Lance Goodwin
18 and/or -- Lance Wilson and/or Mr. Goodwin.

19 Again, Mr. -- and my client and Mr. Megna's
20 clients are brother and sister. Their father was a
21 man named Albert Anastasi,

22 We're here seeking partial summary judgment
23 with the issue of damages to be heard at a later
24 time.

25 The issues in this case, or what the Plaintiff

1 would submit are the issues for summary judgment
2 are whether a personal representative in a
3 probate -- or in an estate case, whether that deed
4 of distribution the personal representative,
5 Mr. Megna's client, prepared to herself trumps what
6 the law calls to be the perfect deed, what is of
7 record in the chain of title.

8 My client submits that this is a very
9 straightforward issue, that as a matter of law a
10 deed trumps a personal representative's deed of
11 distribution. Otherwise, one of us could deed away
12 the Statehouse or the Empire State Building and it
13 would be effective, which we submit that it is not.

14 If Your Honor agrees, however, with
15 Mr. Megna's position, and that would go to the
16 second issue as to whether four years constitutes
17 adverse possession, my client submits as a matter
18 of law, four years, if you accept everything that
19 they had to say, assume everything that they had to
20 say would be correct as related to that, would four
21 years of ownership under a deed of distribution
22 constitute adverse possession.

23 My client says it doesn't and we're entitled
24 to a judgment as a matter of law.

25 Your Honor, I have submitted a memorandum, but

1 if I can go through so you'll understand some of
2 the background and the undisputed facts.

3 THE COURT: All right. Well, Mr. Truslow, I
4 don't know anything about the case. You understand
5 that. I mean, I'm holding nonjury. It is not like
6 I'm an Appellate Court and I had six months and
7 briefs. I walk in here and we get handed the file.

8 MR. TRUSLOW: Yes, sir.

9 THE COURT: All I know, next case, next case.

10 MR. TRUSLOW: I understand.

11 THE COURT: Four year holding does not satisfy
12 adverse possession, unless the law has changed, as
13 far as I know.

14 MR. TRUSLOW: That's what we say.

15 THE COURT: So he is going to lose that. Now,
16 what about the other thing? You need to tell me
17 sequentially what happened.

18 MR. TRUSLOW: That's what I was going to do,
19 Your Honor.

20 THE COURT: Good idea.

21 MR. TRUSLOW: In 1978, my client and his
22 father, Albert Anastasi, acquired real estate on Two
23 Notch Road. It was called the Amvets Club. And
24 then about 1980 or so --

25 THE COURT: It doesn't matter. They had

1 property.

2 MR. TRUSLOW: They acquired this together as
3 joint tenants with the right of survivorship in
4 1978. They owned this property continuously since
5 that time.

6 In 1980, Mr. Earle's client began to operate
7 the club as a tenant. That was Mr. Lance Wilson,
8 operating the club as Dave's as a tenant. He paid
9 the rent.

10 In 1995, Mr. Albert Anasti died. And, again,
11 they -- he and his son were joint tenants with a
12 right of survivorship.

13 My client submits that at the time of death
14 his right -- his interest ends, he can't will it
15 away, he can't deed it away after death, it is
16 gone.

17 In 1996, Mr. Megna's client, Gina Lee, did a
18 deed of distribution deeding the property to
19 herself, and then by way of a private mortgage type
20 of deal, she then sold the property to Mr. Earle's
21 client.

22 In 2002, the Highway Department was condemning
23 the property. Mr. Earle's client finds out that he
24 has got problems with the title. He is not -- and
25 significantly in this case, he is not alleging or

1 not disputing any affidavits we submitted.

2 Again, he bought the property in the year
3 2000, so Gina Lee got it by way of deed of
4 distribution to herself in 1996. She sold it in
5 2000.

6 THE COURT: Well, she didn't get anything.

7 MR. TRUSLOW: That's what we say.

8 THE COURT: All right. What do y'all say
9 about it?

10 MR. MEGNA: Your Honor, as often, the facts
11 are a little bit more complicated. What we say --

12 THE COURT: If -- and I haven't looked at
13 anything -- if it was truly held by father and son,
14 joint tenant with right of survivorship, it passed
15 to the son when the father died. If it was not, we
16 go forward with the case, that's all.

17 MR. MEGNA: Your Honor, adverse possession I
18 think is a little more difficult than that. There
19 is no doubt that we will concede that the deed did
20 exactly what he says it did at the time of death.

21 However, after that during the Probate Court
22 proceedings and then subsequent to that, she has
23 held that property more than 10 years under deed of
24 title, under color of title. And she possessed the
25 property, she handled all the rent with the

1 property, she did everything. She paid the
2 property taxes. She --

3 THE COURT: If that is so, then that is a
4 factual issue --

5 MR. MEGNA: Yes, sir.

6 THE COURT: -- that you can't rule as a matter
7 of law on adverse possession.

8 MR. MEGNA: That is correct.

9 THE COURT: If she's been in possession 10
10 years, allegedly, Mr. Truslow, allegedly, then I
11 can't grant summary judgment.

12 MR. TRUSLOW: Your Honor, you can, if I can
13 explain why. Number -- he is claiming under a
14 grant, which a grant would be 20 years. Under a
15 deed or a claim pursuant to a deed it is 40 years.
16 For adverse possession or having it hostilely, it
17 would be 10.

18 THE COURT: Ten.

19 MR. TRUSLOW: She had it for four. And she
20 says in her deposition that I handed to you, I know
21 haven't read it --

22 THE COURT: He says over 10. I mean, you
23 know, y'all are quoting two things to me.

24 MR. TRUSLOW: She sold it in the year 2000,
25 Your Honor. If in fact she owned it from '96. He

1 is saying that since she has a mortgage that she
2 owns the property. Well, she has given a deed to
3 Mr. Earle's client. Mr. Earle --

4 THE COURT: Back off.

5 MR. MEGNA: Well, I'm saying she had nothing
6 to sell. What happened is when she did the
7 closing, the closing attorneys, and we have a cross
8 claim against the closing attorneys --

9 THE COURT: Good idea.

10 MR. MEGNA: There was absolutely -- she had no
11 legal title. She had nothing to sell. However,
12 she continued in possession of the property with
13 actual notice of all of this, and that will go to
14 the factual dispute, for more than 10 years. As a
15 matter of fact, it was over 11 years before this
16 action was filed. There are --

17 THE COURT: Well, Mr. Truslow, you have got to
18 litigate it.

19 MR. TRUSLOW: Just because he -- with all due
20 respect, just because he says it is not true -- Mr.
21 Earle's client is in the property. She has sold
22 it. She is not in it. She is not possessing it.

23 THE COURT: Hold it, hold it, hold it, hold
24 it. I don't know anything about it, but how can
25 she be in possession of it? If she has filed an,

1 affidavit saying she was in possession for over 11
2 years, you win at summary judgment stage. If she
3 was not, you lose, because you can't tack 10 years.

4 MR. MEGNA: I'm not trying to tack anything,
5 Your Honor. She actually owned this property for
6 10 years. When they sold this property
7 allegedly --

8 THE COURT: 2000, what happened?

9 MR. MEGNA: 2000 -- I'm sorry, 1996, during
10 the probate -- 1995, '96, she took possession of
11 this property.

12 THE COURT: All right.

13 MR. MEGNA: Factually. Our facts, our
14 allegation and our factual allegations are that she
15 continued in possession of this property until 2007
16 until they began their -- initiated their lawsuit
17 this year. It is more than 10 years.

18 MR. TRUSLOW: Your Honor, she has given a deed
19 that you have and filed it in the courthouse and we
20 have taken her deposition and we provided it to you
21 and Mr. Earle can confirm his clients bought it.
22 She gave a deed to them in the year 2000.

23 Now, counsel is going to -- I don't know what
24 we would do if he just says that she is in
25 possession when it says in her own deposition she

1 hasn't stepped foot on the property, not collecting
2 rent.

3 THE COURT: If she sold it and if she is not
4 in possession, you lose. I mean, you know, I don't
5 know anything --

6 MR. MEGNA: Your Honor, and I agree with you,
7 but the truth is, when it was sold, there was
8 nothing -- she owned nothing. How could she sell
9 something she did not own?

10 THE COURT: She should not have sold
11 something, but if she in fact did sell it, that
12 severed any adverse claim because she disavowed any
13 ownership of it. You lose. Have a good day.
14 Prepare an order --

15 MR. TRUSLOW: All right. Thank you.

16 THE COURT: -- sustaining. It might be kind
17 of quick on it, but, you know, you are talking out
18 of four sides to me.

19 MR. MEGNA: No, sir, I'm not. I have got her
20 affidavit in the file. I mean, I just --

21 THE COURT: Well, hand me her affidavit.

22 MR. MEGNA: It is in the file, Your Honor. I
23 mean, there are factual disputes here.

24 THE COURT: What are the factual disputes?

25 MR. MEGNA: Whether or not she was able to

1 convey property she can't sell.

2 THE COURT: Well, forget about that.

3 MR. MEGNA: Okay. She did not sell the
4 property. There is no way she could have sold that
5 property.

6 ~~the~~ COURT: She signed a deed to the property.
7 I am not arguing with you. I haven't researched
8 it, obviously. You do not deny that she deeded the
9 property to herself for deed of distribution at
10 some point around 1996?

11 MR. MEGNA: Yes, sir.

12 THE COURT: Subsequently, around the year
13 2000, she signed another deed transferring it to an
14 adverse party to these parties?

15 MR. MEGNA: There is a 1931 case in South
16 Carolina that specifically says you can't deed what
17 you don't own.

18 THE COURT: Well, it is not valid, but you can
19 deed anything like you can sue anybody.

20 MR. MEGNA: Yes, sir. But she didn't -- she
21 can't deed what she didn't own.

22 THE COURT: She did deed it. She did sign a
23 deed to it. Don't tell me she didn't if she did.

24 MR. MEGNA: Oh, we know she signed the deed.

25 THE COURT: All right, then it was a ~~verdict~~

1 deed.

2 MR. MEGNA: But she signed the deed, Your
3 Honor. This is a factual issue. She signed the
4 deed because of the issue with the attorneys
5 clearing the title. There is no way that we can
6 say as a matter of fact and law that this woman
7 signed away what she had. For adverse possession,
8 that is a jury issue, and that is clearly a jury
9 issue in South Carolina, Your Honor. Clearly a
10 jury issue. It is not an issue appropriate for
11 summary judgment.

12 THE COURT: The property passed to the son
13 when the father died. You don't deny that?

14 MR. MEGNA: I would agree with that, Your
15 Honor.

16 ~~THE COURT:~~ All right.

17 MR. MEGNA: But I would also disagree with
18 anything happening subsequent to that time. And
19 ~~those are factual issues for a jury to decide.~~
20 Based on this before the Court, the Court is making
21 factual determinations, you know, without listening
22 to motion for summary judgment.

23 THE COURT: I'm listening to what is being
24 argued, and her affidavit is not much. Who
25 prepared it, you?

1 MR. MEGNA: Yes, sir. It states the actual
2 sequence of events that occurred A to Z, including
3 the fact that he had a power of attorney, including
4 the fact that he participated in the probate
5 proceedings, including the fact that his attorney
6 in fact agreed to -- and the documents are in there
7 -- agreed to the distribution, the deed of
8 distribution in 1996, including the fact that they
9 did the title search in 2000, including the fact
10 that the title search turned out to be inaccurate,
11 and including the fact that they didn't file this
12 action until 2007, 11 years after that deed. These
13 are actual factual disputes, Your Honor. These are
14 just not subject to summary judgment.

15 MR. TRUSLOW: Your Honor, as a matter of law,
16 a person can't will away something that they don't
17 own and the personal representative can't --

18 THE COURT: That's right.

19 MR. TRUSLOW: -- deed away something that the
20 person didn't have.

21 MR. MEGNA: This is adverse possession. We're
22 not saying she took under the Probate Court. We're
23 saying that the deed -- and the law is very
24 specific on adverse possession.

25 THE COURT: She lived in the property?

1 MR. MEGNA: Sir? This is commercial property.
2 You know, she took the property, she owned the
3 property, she took the rents on the property, she
4 dealt with the property. Yes, sir. The law is
5 very specific, and there is case law which I have
6 supplied to this Court. This is not an issue for
7 summary judgment. ~~That is our only concern.~~ This
8 is an issue to be decided at trial, rightfully.

9 THE COURT: Not rightfully. You've got a
10 sister who doesn't like the fact that the dad let
11 the property go to the son and she is trying to
12 flimflam him.

13 MR. MEGNA: Your Honor, that is just not fair.

14 THE COURT: I'm reading this. Why do you even
15 put all this stuff in here about Mr. Truslow is
16 examining her and she has got cancer and all that?

17 MR. MEGNA: Because if you will -- the Court
18 will read. Your Honor, that is just not fair.
19 That is just inappropriate, with all due respect,
20 sir.

21 THE COURT: I mean, I'm reading what you --

22 MR. MEGNA: And I did -- and that is a very
23 appropriate affidavit, Your Honor. And it is very
24 appropriate to say that there are issues of fact
25 here. And regardless of how this Court feels about

1 it, there are issues of fact for a jury.

2 THE COURT: Hold it, hold it, hold it. You
3 submit to me an affidavit in proper form without
4 going into all these extraneous things saying what
5 she did to satisfy a claim, and I will let it go
6 forward.

7 MR. MEGNA: To satisfy a claim?

8 THE COURT: For adverse possession. That she
9 occupied the property, what she told --

10 MR. MEGNA: I will be happy to do that. I
11 will be happy to do that.

12 THE COURT: -- she told her brother, listen, I
13 don't care what dad did, I'm entitled to this
14 property, and so forth and so forth.

15 MR. MEGNA: I will happy to submit that to the
16 Court, Your Honor.

17 MR. TRUSLOW: Your Honor, in that regard,
18 Mr. Earle is here, and he is an officer of the
19 court, and he will, I believe he will tell you he
20 hasn't opposed our motion for summary judgment. He
21 is the person that got the property and paid
22 \$177,000 to Mr. Megna's client that he is trying to
23 get back and my client is trying to -- dealing
24 with. He, as an officer of the court, I'm sure
25 Mr. Earle will tell you his client has been

1 continuously in that property since 1980.

2 MR. MEGNA: This is commercial property.

3 MR. TRUSLOW: As a tenant. Excuse me, if I
4 can finish. And just because she might sign just
5 like this affidavit --

6 THE COURT: That puts facts in issue. You are
7 going to eventually win because she has not played
8 fair, irrespective of what he says. She is going
9 to lose. She is going to owe him back \$100,000
10 something dollars. Your client is going to have
11 the property, because you have got legal title.

12 MR. TRUSLOW: I'm just

13 THE COURT: If he wants to fool with it and
14 bring it out and put in an affidavit like that, you
15 can have a trial on it, but you need to have it
16 right away. It doesn't need to drag out.

17 MR. TRUSLOW: Well, I would think so. I would
18 respectfully -- and I'm choosing my words
19 carefully, but I believe it would not -- I am going
20 to just say not appropriate, if she knows she has
21 not been -- counsel knows she hasn't been on the
22 property, she knows she hasn't been on the
23 property.

24 THE COURT: He has got to file an affidavit
25 signed by her setting forth grounds for the claim.

1 MR. TRUSLOW: But she can't, because we have
2 done her deposition.

3 THE COURT: Well, I don't know that,
4 Mr. Truslow. If she does not file an appropriate
5 affidavit, she loses at summary judgment.

6 MR. TRUSLOW: We have already taken her
7 deposition and she said that she had not even set
8 foot on the property.

9 THE COURT: Then you prepare an affidavit.

10 MR. TRUSLOW: Okay.

11 THE COURT: Then you prepare an order granting
12 it and address all those issues, you prepare an
13 order denying it and send it to him, and we'll deal
14 with it.

15 MR. TRUSLOW: I understand.

16 THE COURT: Okay.

17 MR. TRUSLOW: Your Honor, my point was, I just
18 take it seriously if somebody says something that
19 is in -- not in direct contradiction to her
20 deposition, her affidavit that she had given
21 before.

22 THE COURT: You will be able to address that
23 when you see the affidavit..

24 MR. TRUSLOW: I understand. Thank you, Your
25 Honor.

1 THE COURT: All right.

2 MR. DOWLING: Your Honor, Curtis Dowling, I
3 represent the Dallas Law Firm.

4 We had a status conference with Judge Lee a
5 coupe of weeks ago. She said hopefully you would
6 be able to address my motions to compel directed at
7 these two parties.

8 We pretty much have got everything worked out.
9 They have since responded to my discovery. And I
10 just want to put on the record with respect to
11 Mr. Megna, his client was sued by Mr. Truslow's
12 client, and I guess he has been defending that.
13 His client was also sued by Mr. Earle's client, who
14 has been defending that. And they were claiming
15 that as an element of damage in the case against
16 the closing attorney, the Dallas Law Firm, who I
17 represent.

18 And my position was if it is an element of
19 damage I want to see the bills and invoices and
20 those type of things.

21 Mr. Megna has represented to me now that he is
22 not charging her in those cases, but he is getting
23 a contingency in the case against the Dallas Law
24 Firm. If he prevails, that contingency will take
25 care of it. Therefore, if their representation is

1 correct, then we don't need to address bills and
2 fees from those cases. Is that correct, Mr. Megna?

3 MR. MEGNA: Yes. I have -- this is all on
4 contingency.

5 THE COURT: All right. You are on a
6 contingency basis, so you are not claiming anything
7 from the Dallas Law Firm in addition to whatever
8 you collect?

9 MR. MEGNA: We're not claiming any fees for
10 the underlying malpractice action.

11 MR. DOWLING: All right. As long as it is
12 correct the way I worded what he was telling me is
13 that if he has been -- he told me he wasn't
14 charging her by the hour in these other two cases
15 where he is a Defendant, and if we are not going to
16 be seeing those elements of damage, then that is
17 fine.

18 With respect to Mr. Earle, he has kindly now
19 given me the documents that he has, and Mr. Earle
20 sent us everything he has got. I believe him on
21 that. But he has also said that he is trying to
22 find the rest of the documents that I would need
23 and have asked for.

24 THE COURT: What else do you need, Mr.
25 Dowling?

1 MR. DOWLING: Tax returns, basically, and
2 statement -- back-up supporting documents. Just
3 don't tell me you have lost \$100,000 in a year.
4 Give me some documents to support that you have
5 lost \$100,000 from your business income.

6 So -- and the tax returns for a number of
7 years, I mean, I don't even know if they have even
8 filed tax returns, but like every few years I do
9 have a tax return, but Mr. Earle said that he is
10 trying to get those and will provide those to me,
11 so I believe we have an agreement on that. And if
12 that is not the case, then Mr. Earle could say, but
13 I believe -- I just want to represent that we do
14 have that understanding.

15 THE COURT: All right, Mr. Earle, is that
16 everybody's understanding?

17 MR. EARLE: That's correct. That's correct.

18 THE COURT: If he has tax returns, he will
19 give them to you. If he doesn't have them --

20 MR. DOWLING: If he -- yeah, if he doesn't
21 have them or if he tells me his client has never
22 filed them for these years, you know, tell me that
23 so I know. But when they tell me -- they have come
24 and said, all right, we -- our business, you know,
25 revenues was "x" amount each year. If they are

1 able to do that, they should be able to get the
2 documentation. I believe they haven't turned it
3 over to Mr. Earle. Mr. Earle is going to make an
4 effort to get those to me, is my understanding.
5 And if they don't have it, they don't have it.

6 MR. EARLE: That's true.

7 THE COURT: All right. When are y'all going
8 to get these things to me?

9 MR. MEGNA: Your Honor, I have got to be in
10 the Fourth Circuit next week. Can I have two
11 weeks?

12 THE COURT: If you need a month, no problem.
13 You have got as much time as you want. But my deal
14 is, October 1st I'm going to Greece for two weeks,
15 and I'm really not back here until the last week in
16 October. When I get back I'm in Aiken or
17 somewhere. So --

18 MR. TRUSLOW: If in fact an affidavit is
19 submitted --

20 THE COURT: I am not going to act on it
21 immediately. He will copy you with it and you can
22 reply to it.

23 MR. TRUSLOW: As it related to -- if the Court
24 were inclined not to deal with that, then we are
25 going to need to deal at a later time on a motion

1 to compel. I want tax returns. If she claimed
2 that she got income, which would be an indicia of
3 ownership, that she declared on tax returns, and we
4 want to get those, among other things. But I don't
5 think we need to deal with that unless they come up
6 with something that I wouldn't expect.

7 THE COURT: Well, Mr. Megna will give you his
8 information within the next two weeks, you will
9 reply to it. And then I'm back whatever week it is
10 in October. You can check on the schedule. I
11 think it is the last week in October. Y'all can
12 come over some morning at 9 o'clock, other than
13 Monday.

14 MR. TRUSLOW: That will be fine.

15 THE COURT: And knock it out.

16 MR. TRUSLOW: Appreciate it. Thank you, Your
17 Honor.

18 THE COURT: To compel, or whatever. If you
19 want to argue further on it, no problem.

20 MR. MEGNA: Thank you, Your Honor.

21 (WHEREUPON, the proceedings were concluded.)
22
23
24

25 (END OF TRANSCRIPT)

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2007-CP-40-576

James A. Anastasi,
Plaintiff,

vs.

Gina L. Anastasi Lee, Lance
Wilson, Willis Goodwin, and
Richland County Clerk of
Court,
Defendants.

Transcript of Record

January 18, 2012
Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge

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

Douglas N. Truslow, Esquire
Attorney for the Plaintiff

Thomas G. Earle, Esquire
Attorney for Defendants Wilson and Goodwin

Tony R. Megna, Esquire
Benjamin R. Matthews, Esquire
Attorneys for Defendant Lee

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Status Conference	4
Certificate Page	20

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>

No Exhibits Introduced.

1 THE COURT: All right, this is the case of Anasti vs.
2 Anasti, et al. Mr. Truslow requested a status conference
3 apparently, and apparently my law clerk got him to get
4 everybody together, and we're all here this morning. So,
5 if y'all would tell everybody who you are for the court
6 reporter so Ms. Harris will know exactly who is speaking
7 when you speak.

8 MR. TRUSLOW: Your Honor, thank you for accommodating
9 us. I'm Doug Truslow; I represent the plaintiff in this
10 action. Mr. Tom Earle is here; he represents Wilson and
11 Goodwin. They are defendants. There is ---

12 THE COURT: Mr. Megna.

13 MR. TRUSLOW: Mr. Megna and Mr. Matthews, they
14 represent Ms. Lee, and I think ---

15 THE COURT: Does somebody represent the clerk of
16 court?

17 MR. TRUSLOW: They were only involved as a
18 stakeholder. They're not necessary at this point in time.
19 This has all been resolved.

20 THE COURT: All right. So ---

21 MR. TRUSLOW: Your Honor, Your Honor.

22 THE COURT: Y'all have Ms. Lee?

23 MR. MATTHEWS: Yes, sir.

24 MR. MEGNA: Yes, Your Honor, Tony Megna and Ben
25 Matthews.

1 THE COURT: All right, who has Lance Wilson? Mr.
2 Earle, you do?

3 MR. EARLE: Yes, Your Honor.

4 THE COURT: And who has Willis Goodwin?

5 MR. EARLE: I do.

6 THE COURT: Oh, you got both of them? Okay, good.

7 All right, tell me what we need to talk about here,
8 Mr. Truslow.

9 MR. TRUSLOW: Your Honor, we're requesting a status
10 conference. We've asked that this be considered to be on
11 the record because I wasn't sure what claims were going to
12 be made, and whether an assertion would be made in case the
13 matter shouldn't go forward at this time. There are two
14 basic issues: setting of a damages hearing, and setting of
15 a Rule 11 sanctions hearing.

16 THE COURT: All right, is there already a judgment in
17 this case?

18 MR. TRUSLOW: Yes, sir. By way of history, this was a
19 real-estate matter. It went up on appeal. It's got a
20 tortured history of coming back for, for certain factual
21 findings that are, that are in large part the basis for
22 Rule 11 sanctions.

23 From that point in time, after the lower court ruled
24 in my client's favor, there was -- ultimately an appeal was
25 commenced, but there was a filing of bankruptcy by Ms. Lee

1 which stayed proceedings until the stay was lifted. The
2 Court of Appeals ruled in my client's favor. There was a
3 petition for writ of certiorari; that was also resolved in
4 my client's favor. An argument was made that the matter
5 was stayed because of appeals by Ms. Lee in a bankruptcy
6 court. That was rejected by the bankruptcy court on least
7 two occasions, by the federal district court on at least
8 two occasions, and by the Fourth Circuit Court of Appeals
9 most recently.

10 We -- quite frankly, the plaintiff didn't think that
11 anything that was going on in appeal in the Fourth Circuit
12 had anything to do with the case since the, since the
13 Supreme Court of the State of South Carolina had ruled it
14 in view of comity. But be that as it may, we waited until
15 that was resolved. I thought that was going to be
16 inevitable that she was going to lose. She did.

17 So, the matter is now ripe for two things. For a
18 damages hearing, and that will involve -- it won't involve
19 Ms. Lee because she's filed for bankruptcy and has some
20 limited protection. Your Honor, we could, we could
21 potentially go beyond that, but there's no need. We're
22 going to be dealing with -- in the, in the damages hearing
23 would be my friend and Mr. Goodwin and Mr. Wilson. I don't
24 believe Ms. Lee would be even involved in that because
25 we're not seeking dollars from her, and especially given

1 her bankruptcy.

2 So, the damages hearing will be, will involve just
3 myself, Mr. Earle, and our respective clients. We think
4 that that probably ought to be resolved first because that
5 goes almost ---

6 THE COURT: All right, let me ask you. How do you --
7 I mean, is that a normal damages hearing, fifteen minutes
8 or so? Is it going to be, going to be protracted because
9 if I'm going to need ---

10 MR. TRUSLOW: I would think that it would take no more
11 than two hours. We're talking about rentals for -- since
12 2007 or so. So, we're, you know, we're going to have a lot
13 of money at stake.

14 Mr. Earle has had some -- he's one of the nicest -- I
15 know Your Honor knows, but he's one of the nicest, nicest,
16 most conscientious professionals I've ever had the pleasure
17 to deal with. He's had some recent health problems, and as
18 you would expect, I would certainly accommodate whatever,
19 whatever his needs are, and my client would. But we're
20 probably going to need two hours for that.

21 THE COURT: All right. So, you're requesting a
22 damages hearing with respect to Mr. Wilson and Mr. Goodwin
23 only. You think it will take two hours?

24 MR. TRUSLOW: Yes, sir.

25 THE COURT: Y'all agree Ms. Lee is not, would not be

1 involved in that?

2 MR. MEGNA: Yes, sir, Your Honor.

3 THE COURT: All right, and then after that, you're
4 going to request, assuming damages are awarded, you're
5 going to ask the court to set a Rule 11 hearing on
6 sanctions against all of them or?

7 MR. TRUSLOW: No. That would be only against Mr.
8 Megna and/or Mr. Matthews. It's them and the order is
9 without -- I'm not here to argue the case, Your Honor. I'm
10 just trying to get this thing scheduled.

11 THE COURT: Well, I'm just trying to figure out.

12 All right, Mr. Earle, what are you -- tell me about
13 your clients or you and when y'all will be available.

14 MR. EARLE: Your Honor, I've been diagnosed with MG,
15 and it's sort of doubtful how speedily I'll recover. I can
16 speak today; tomorrow I may not be able to speak. So, I
17 would ask for protection until the end of March to see if
18 I'm going to improve, or if not, I'll need to get
19 substitute counsel for that damages hearing. It's very
20 doubtful at the moment whether or not I will be able to
21 handle it.

22 THE COURT: All right, do you concur is that it's
23 probably a two hour hearing?

24 MR. EARLE: Yes, Your Honor.

25 THE COURT: All right. Well, I'll look and see what

1 kind of damages hearing we can -- how long if, in fact,
2 somebody is substituted, Mr. Earle, how long would it take
3 them to get up to stuff?

4 MR. EARLE: I think it would take them about two
5 weeks.

6 THE COURT: All right. So, you will be able to make a
7 decision by March 1st, and we could have a hearing some
8 time after March 15th?

9 MR. EARLE: Yes, Your Honor. Yes, Your Honor.

10 THE COURT: Any problems with that, Mr. Truslow?

11 MR. TRUSLOW: No, Your Honor.

12 THE COURT: All right. Well, I'll have to find out
13 what nonjury court we have and when it is, and I'll see
14 about trying to schedule some hearing.

15 I guess y'all don't care since you're not involved in
16 that process.

17 MR. MEGNA: No, Your Honor.

18 THE COURT: Although we'll give y'all notice so if you
19 want to appear for whatever reason, you're certainly able
20 to do so.

21 All right, well, I'll -- let me ask you this. I don't
22 know whether your clients have any ability to respond to a
23 judgement, Mr. Earle. Your position may be that they got
24 nothing anyway. So, whatever anybody got against them,
25 it's just a piece of paper. But is there any chance that

1 -- do your clients have any ability to respond to a
2 judgement?

3 MR. EARLE: I would say very little. I would say very
4 little. The -- I'm trying to surmise. I would guess, and
5 this is just my guess, that the damages hearing primarily
6 would relate somewhere to the Rule 11 sanctions. I'm not
7 sure, but I would think.

8 THE COURT: I was just curious as to whether y'all
9 might be able to resolve it before we tie up two hours of
10 court, and then something happens and it falls off.

11 I assume your primary purpose, Mr. Truslow, is to
12 collect money for your client. So, you know, if in fact
13 some way y'all can resolve -- a little bit of something is
14 worth a lot more than a whole lot of nothing. But I'll try
15 to get you something scheduled after March 15th for two
16 hours.

17 MR. TRUSLOW: And if we can work it out, I'll let you
18 know just as soon as possible.

19 THE COURT: Yes. I mean, even if it's a week before
20 because we can plug in stuff all the time if I got two
21 hours. That basically will ruin a morning if we don't go
22 forward.

23 MR. TRUSLOW: All right. Your Honor, in that regard,
24 one, one request I'm going to have. Since it's nonjury, I
25 don't think it would be a problem. My client lives in

1 Mexico at this point in time, and I assume since it's
2 nonjury, we'll have a date certain.

3 THE COURT: Well, as much as a day certain -- you
4 know, there may be three cases set at 9:00.

5 MR. TRUSLOW: That day certain?

6 THE COURT: Yeah, you'll have a day. You'll know what
7 day the hearing is.

8 MR. TRUSLOW: Yes, sir. Thank you.

9 THE COURT: And you'll know. I don't know. Sometimes
10 they'll set them up. They'll give each one of them fifteen
11 minutes, thirty minutes, whatever time they claim they
12 need. And sometimes they'll, as you know, put four of them
13 at 9:00, and three of them will drop off. But yeah, y'all
14 know the time frame, and the roster should be out several
15 weeks ahead. I don't know how much time you need to get
16 your client here.

17 MR. TRUSLOW: All right.

18 THE COURT: Matter of fact, it will probably be on the
19 Internet thirty days ahead of time.

20 MR. TRUSLOW: Yes, sir.

21 THE COURT: All right, anything y'all want to say?

22 MR. MEGNA: Yes, Your Honor. Only that the -- number
23 one, that Mr. Truslow made this same motion before the
24 Court of Appeals, motion for sanctions, and that we, since
25 we're on the record, we would like -- appreciate having the

1 opportunity to have this filed with the record. And the
2 Court of Appeals unanimously denied it on May 29, 2011.
3 And he did not appeal that order to the South Carolina
4 Supreme Court, and the case law is very plain. That
5 becomes the law of the case, right or wrong.

6 In addition to that, we would apparently all agree he
7 wrote me a letter on January 9, 2012, saying that the
8 underlying motions, there are some underlying motions from
9 his side and our side to compel discovery and other motions
10 similar to that, and that they are moot as a practical
11 matter.

12 The federal court actions have nothing to do with the
13 state court actions, and that our position is very simple.
14 And I believe the court has the authority to deal with this
15 now. That the Court of Appeals has ruled on this. It's
16 ruled unanimously on this. He has no -- he has nothing,
17 and rightly or wrongly, he didn't appeal that and it
18 becomes the law of the case. And if for no other reason, --
19 may I approach the bench and file this?

20 THE COURT: Well, I'm not here to -- this is a status
21 conference, not a motions hearing. It wasn't noticed as
22 anything like that. You know, if y'all can't agree and
23 there is a motion, it will probably be scheduled for a
24 hearing, and then you can make your argument at that time.

25 MR. MEGNA: Right. Your Honor, as long as it's a

1 status conference, may I have the opportunity also? It's
2 kind of hard to do a motion to dismiss the motion for
3 sanctions. But the plaintiff would like to have an
4 opportunity after they finish whatever they're finishing --
5 or the defendant Ms. Lee would, to file a response and file
6 a counter motion to whatever he has filed with the court as
7 a part of the status conference. And we'll have -- just
8 need a few weeks, thirty days, fifteen days.

9 THE COURT: All right, tell me that again now. You
10 want to file something, a motion? You want to file your
11 own motion for sanctions under Rule ---

12 MR. MEGNA: Well, I don't know if I want to file for
13 sanctions. I want to respond to -- if we file any response
14 to what ---

15 THE COURT: We can go ahead and do that.

16 MR. MEGNA: Well, I could if you wanted me to. I just
17 thought if you'd wait until this damages hearing was over.

18 THE COURT: Well, I don't know. I mean, his motion is
19 pending. I don't know. See, I don't know what this has to
20 do with motions for sanctions.

21 MR. MEGNA: Right.

22 THE COURT: I mean, I'm just trying to accommodate
23 y'all.

24 MR. MEGNA: Yes, sir. I understand, but I'm happy to
25 file in the next few weeks anyway. That's fine.

1 THE COURT: I wasn't planning on setting the Rule 11
2 hearing until after the 15th, so it may be the term after
3 that. But again, I just turn it over to the scheduling
4 clerk, and he does all that stuff, and so you would
5 probably have -- I mean, what is today? You got two months
6 before the earliest that his hearing would be held.

7 MR. MEGNA: Okay. That will be fine.

8 THE COURT: So, I mean, you can just keep that in
9 mind.

10 MR. MEGNA: I will. Thank you.

11 THE COURT: I would tell you even if it comes up
12 short, whatever you want to file, file it.

13 MR. MEGNA: Okay. Thank you, Your Honor.

14 THE COURT: Even the day before the hearing,
15 understanding that if you send it to the clerk, the judge
16 won't get it because it will languish in the clerk's office
17 for two months before it gets in a file. So, make sure
18 that whoever hears it gets a copy of whatever you file.

19 MR. MEGNA: I will. Thank you. May I file this today
20 since it's on the record now?

21 THE COURT: Sure.

22 MR. MEGNA: Thank you.

23 THE COURT: Well, you'll just have to take it to the
24 clerk.

25 MR. MEGNA: Sir?

1 THE COURT: You'll have to take it to the clerk to
2 file.

3 MR. MEGNA: Okay.

4 THE COURT: We don't -- you can't file them in here.
5 Just take it in there and give it to Randy or Athena.

6 All right, I thank y'all, and you will be noticed.

7 MR. TRUSLOW: It sounds like we don't, we don't even
8 need to deal with the setting of the Rule 11 hearing at
9 this point.

10 THE COURT: Well, didn't you tell me you wanted -- I
11 can set the Rule 11 hearing right now. I mean, the next
12 term that I can get, I think we're scheduled up through the
13 end of this month on nonjury, but there's probably a
14 nonjury term some time in February I can put the Rule 11
15 on.

16 MR. TRUSLOW: I was thinking that the Rule 11 probably
17 ought to go after. I think both sides ---

18 THE COURT: Well, based on what Mr. Earle told me, I
19 assumed that was the case.

20 MR. TRUSLOW: Yes, sir.

21 THE COURT: So.

22 MR. TRUSLOW: We would just ask that it be some time
23 after March 15th. Give the -- Ms. Lee's counsel time to be
24 adequately prepared, and if they have concerns, they can
25 let me know or they can file whatever motions they deem

1 appropriate.

2 THE COURT: How long is the Rule 11 going to take?

3 MR. TRUSLOW: Your Honor, I'm guessing -- I've started
4 to list who I thought the witnesses were going to be. I'm
5 guessing nonjury, regrettably at least a day. And I can
6 tell you some of the witnesses, I would expect --- here are
7 some of them.

8 THE COURT: Well, I don't need to know that.

9 MR. TRUSLOW: Yes, sir. All right.

10 THE COURT: But that's going to be, that's going to be
11 difficult finding a day, and that won't be a -- that will
12 probably go on a nonjury trial week. And it would be --
13 you'll have a roster meeting, and you'll just have to show
14 up because we don't, we don't have days we can ---

15 MR. TRUSLOW: I realize. It's a, it's a very serious
16 matter and ---

17 MR. MEGNA: Could we ask Your Honor ---

18 MR. MEGNA: --- they're entitled to their day in
19 court.

20 MR. MEGNA: Could we ask Your Honor for a list? This
21 is the first we've heard of this. Could we also request
22 for a list of all the witnesses? And that's my concern.
23 We have no notice of what he's going to do at this point in
24 time so we can address it.

25 THE COURT: Well, you want to tell him who your

1 witnesses are?

2 MR. TRUSLOW: I don't have any problem at all with
3 that. This is a preliminary list that would be here would
4 be Desa Ballard, possibly Mr. Earle, depending on where
5 this goes. Curtis Dowling, Rene Josey, Celeste Jones,
6 Steve Blacatto.

7 THE COURT: And all these people are going to come in
8 and testify as to some ---

9 MR. MEGNA: Nothing related to this case.

10 THE COURT: Well, I don't know. I mean, they're all
11 going to -- this is not all cumulative, is it?

12 MR. TRUSLOW: I think each one stands separately.

13 THE COURT: Well, I know they're all well respected
14 attorneys, but we're not going to hear five or six lawyers
15 coming in to say the same thing: that these are bad
16 fellows. If that's what you're going to say, I mean, two
17 people can say that.

18 MR. TRUSLOW: It could be, it could be Ms. Ballard and
19 myself. I think he has lot of the documentation because
20 we've provided it before, but if he needs something ---

21 THE COURT: Well, I would tell you to write him and
22 tell him who -- what prospective witnesses you might have.
23 Now, I can't promise you you're going to hear -- we're
24 going to hear seven or eight lawyers come in and say
25 basically the same thing.

1 MR. TRUSLOW: It's on different cases with Mr. Megna.

2 THE COURT: Well, I don't know about that.

3 MR. TRUSLOW: May relate, maybe not. We're not
4 arguing that right now.

5 THE COURT: Well, I'm arguing it because I've got to
6 schedule time.

7 MR. TRUSLOW: Oh, yes.

8 THE COURT: Y'all understand that.

9 MR. MEGNA: I would ask the court to please consider
10 that other cases have no bearing on ---

11 THE COURT: Well, that will be up to the hearing
12 judge. I can't rule at this point in time.

13 MR. MEGNA: Well, if I ---

14 THE COURT: Let me tell y'all something. There's very
15 little benefit to being the administrative judge in the
16 Fifth Circuit of Richland County, but there is one: you
17 don't hear nonjury. So, I probably will not be involved in
18 this because of that prohibition. But you'll have to take
19 that up with whoever the hearing judge is.

20 MR. TRUSLOW: Thank you, Your Honor.

21 MR. MEGNA: Well, can I ask just one more thing, Your
22 Honor?

23 THE COURT: Sure.

24 MR. MEGNA: Since this is a status conference. If
25 we're going to do this, and obviously that's the -- your

1 court's -- Mr. Truslow's decision, it would seem only fair
2 that we have an understanding that he detail what his
3 issues are so that we can be prepared to counter them.
4 Otherwise, we aren't prepared to counter them.

5 THE COURT: Well, I don't know how that would work.
6 But, I mean, y'all, y'all need to have some conversation
7 about it.

8 Doug, I'm probably not going to schedule this for more
9 than a half a day. You're just going to have to fit it in
10 in a half a day.

11 MR. TRUSLOW: All right, sir.

12 THE COURT: And I may just go ahead and schedule it on
13 a motions thing because -- I mean, I don't want to tie
14 lawyers up sitting around for days at a time waiting to see
15 whether a case comes for trial.

16 But, you know, tell them what your complaints are
17 against -- is it against the clients or the lawyers?

18 MR. TRUSLOW: Lawyer. You can look at the record and
19 you can see the orders of Judge Manning and draw your own
20 conclusions, and you can look at the summary judgement
21 order and the transcript and probably ---

22 MR. MEGNA: And the Court of Appeals has already
23 denied all those motions.

24 THE COURT: Well, that may, that may free up that
25 judge quickly, whoever it is.

1 MR. MEGNA: As long as we understand exactly what he's
2 dealing with and that we can respond. That's all we ask.

3 THE COURT: Well, I can't -- I don't know anything
4 about the case, Mr. Megna, so I cannot speak to ---

5 MR. MEGNA: No, sir, I'm not ---

6 THE COURT: --- any of the allegations in the ---

7 MR. MEGNA: I'm not asking you to.

8 THE COURT: --- in the motion.

9 MR. MEGNA: I just would like for him to ---

10 THE COURT: Well, talk, talk to Mr. Truslow. Y'all
11 have some conversations.

12 All right, y'all will get a notice as to a hearing.

13 MR. TRUSLOW: Thank you.

14 MR. MEGNA: Thank you, Your Honor.

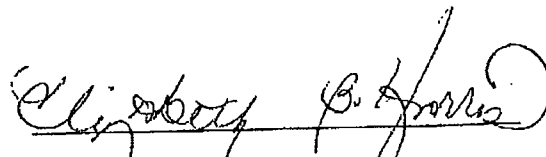
15 THE COURT: Y'all have a nice day.

16 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 18TH DAY OF JANUARY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

MARCH 28TH, 2012

) IN THE COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA

) FOURTH JUDICIAL CIRCUIT

COUNTY OF DARLINGTON

)

PEE DEE HEALTH CARE, P.A.

)

May 16, 2012

)

PLAINTIFF,

)

)

VERSUS

)

THE ESTATE OF HUGH S. THOMPSON,

)

2010-CP-16-00332

)

DEFENDANT.

)

)

STATE OF SOUTH CAROLINA

)

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

)

FIFTH JUDICIAL CIRCUIT

)

JAMES A. ANASTI,

)

)

PLAINTIFF,

)

)

VERSUS

)

)

LANCE WILSON, WILLIS GOODWIN,

)

GINA L. ANASTI LEE, AND

)

RICHLAND COUNTY CLERK OF COURT

)

)

DEFENDANT.

)

)

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Pamela Ozment-Cartee
Circuit Court Reporter

APPEARANCES

Tony R. Megna, Esquire
Aimee J. Zmroczek, Esquire
Attorney on behalf of Mr. Megna

Desa Ballard, Esquire

Douglas N. Truslow, Esquire
Neal Truslow, Esquire
Attorneys for Anasti

Charles J. Johnson, Esquire
Attorney for Lance Wilson and Willis Goodwin

Jon Rene Josey, Esquire
John Jay James, Esquire
Attorneys for the Estate of Hugh Thompson

Larry Orr, Esquire

Motion Hearing	Page 03
Ruling of the Court (Under Advisement)	Page 50
Certificate of Reporter	Page 53

COURT EXHIBIT

Court's Exhibit 1	Page 50

1 (WHEREUPON, this hearing began at 3:02 p.m.
2 on Wednesday, May 15, 2012.)

3 THE COURT: We are here in the matter of two cases
4 at least, and perhaps others. But this is Pee Dee Health
5 Care versus Thompson, which is 2010-CP-16-332, a
6 Darlington case. As well as Anasti versus Wilson and
7 others, which is 2007-CP-40-0576, a Richland Case. This
8 matter is being held today with the specific authorization
9 of Court Administration who has give us nonjury authority
10 in both the fourth and fifty judicial circuits.

11 Perhaps the best way to begin this process would be
12 to have everyone come across and introduce themselves, so
13 that our record will reflect who is present, whether you
14 are sitting beyond the bar or behind the bar. And let's
15 start if you would, with Pee Dee Health Care and Mr.
16 Megna.

17 MR. MEGNA: Tony Megna, Your Honor, with Pee Dee
18 Health Care.

19 MS. ZMROCZEK: Your Honor, Aimee Zmroczek, I am here
20 on behalf of Mr. Megna.

21 THE COURT: All right. Welcome.

22 MS. BALLARD: Your Honor, I am Desa Ballard, and I
23 am here pro se.

24 THE COURT: Thank you.

25 MR. TRUSLOW: Good afternoon, Your Honor. Doug

1 Truslow, I am here with my son Neal. We represent James
2 Anasti in the Richland County Case.

3 **THE COURT:** Thank you.

4 **MR. JOHNSON:** Good afternoon, Your Honor. I am
5 Charles Johnson, and I represent Lance Wilson and Willis
6 Goodwin.

7 **THE COURT:** All right. Mr. Johnson, welcome.

8 **MR. JOHNSON:** Thank you.

9 **THE COURT:** And then we have some members of the
10 bar and other interested parties who are in the back.
11 When I say in the back, seated behind the bar. If you
12 would identify yourself, so our record will reflect who is
13 present today. And we will begin on the right.

14 **MS. JONES:** Good afternoon, Your Honor. My name is
15 Celeste Jones, I am with the McNair Law Firm in Columbia.

16 **THE COURT:** Good afternoon.

17 **MR. JOSEY:** My name is Rene Josey, I am here for the
18 Estate of Thompson, and we have the two personal
19 representatives sitting between me and Mr. James.

20 **THE COURT:** Very good. Thank you.

21 **MR. JOSEY:** And, Your Honor, I am Jay James with Mr.
22 Josey and my clients.

23 **THE COURT:** Thank you.

24 **MR. ORR:** I am Larry Orr, Your Honor.

25 **THE COURT:** All right. Welcome, ladies and

gentlemen. Mr. Truslow, we are really here, what is your Motion, which I should say motions, which are Motions to Quash, as well as a Motion for Sanctions. Ms. Ballard, you have pending perhaps in the Richland case, but I know in the Darlington case, as well a Motion for Sanctions.

MS. BALLARD: That's correct, Your Honor.

THE COURT: And what I would like to do is begin, then if we could on this side of the courtroom. We will let Mr. Truslow make his arguments, and then Ms. Ballard, and then we will hear from defense, I will call in response to that. Very good.

MR. TRUSLOW: Thank you, Your Honor. Your reputation precedes you. You have always had a fine reputation for reading what we submit before you hear the arguments versus some judges decide to hear the argument and read what has been submitted. So, my argument will be very brief.

First is a matter of housekeeping, Your Honor. I think the matter before you is our motion, and it is dated March 9, 2012. The documents that you have, that I think are of record that have been filed, have been served, are the Motion and the Memorandum with the exhibits attached. The Affidavit of Ms. Ballard, my Affidavit, along with the attorney speech documentation, my legal assistant's Affidavit, which at the time records that we have a series

1 of exhibits that have been filed, and while they seem
2 voluminous for a matter that should be this simple, they
3 were presented to show Your Honor how --- what should have
4 been a simple, or what we thought would have been a simple
5 matter has been so contentious, that we have to seek Your
6 Honor's assistance.

7 Your Honor, you have these documents. You can take
8 judicial notice, or have taken judicial notice of the
9 Richland County case. The Darlington County case. If
10 necessary, the Florence cases; I think there are two of
11 them involving Mr. Megna. The appeals, the bankruptcy,
12 and I think there were four or five appeals, and that case
13 filed by Mr. Megna both to the Federal District Court and
14 then to the Court of Appeals. All of those cases are
15 concluded. The appeal in this case is concluded. And the
16 only matter that we are dealing with here today, I submit,
17 would be our Motion to Quash and for Protection, and then
18 move onto the issue of sanctions.

19 **THE COURT:** And counsel, let me say so our record
20 will be clear. We have the benefit of having the Clerk's
21 files from the Darlington case, which this court presided
22 over. We have also been forwarded the files from the
23 Richland County Clerk of Court, which we have here in the
24 courtroom with today. We have also received from the
25 Florence County Clerk of Court the court files, that is

1 the Clerk's files of the cases that are pending in
2 Florence. So, we have all of that with us here today.

3 **MR. TRUSLOW:** Mr. Megna had indicated in a
4 synopsis, and I filed his synopsis because it looked like
5 --- I was not available at the time, but it looked like he
6 had emailed something to Your Honor. We did not want to
7 engage in what I call dueling emails, and we filed Mr.
8 Megna's synopsis, and we have that as a part of the
9 exhibits that we filed on the ninth and provided Your
10 Honor. So, I think those are the documents.

11 **THE COURT:** Very good.

12 **MR. TRUSLOW:** Given that Your Honor, I think I can
13 sit down and have you consider what we have submitted.

14 **THE COURT:** Well, before you do that, let me say
15 that I would appreciate some argument from you, because,
16 first of all these documents are voluminous.

17 **MR. TRUSLOW:** Yes, sir.

18 **THE COURT:** They involve multiple cases over
19 multiple circuits, and it is easy when you are not in the
20 middle of it to become lost in the volume of it.

21 So, if you would, and so our record will reflect as
22 well if you would give us a succinct and concise statement
23 of where you believe you find yourself today in the relief
24 that you request.

25 **MR. TRUSLOW:** Your Honor, by way of history, my

1 client was granted Summary Judgment in a real estate
 2 matter. It was a partial Summary Judgment with the issue
 3 of damages being reserved to be heard at a later time.
 4 Upon being granted Summary Judgment and given the defenses
 5 in this case, and the argument that was made at the time
 6 of Summary Judgment, we filed a November 7, 2007; that is
 7 how long this has been going on. It started in January
 8 2007, and the other cases stated I think in 2004,
 9 involving some of the same issues. Mr. Johnson may wish
 10 to address those. But Mr. Earl preceded him, and is now
 11 ill and not able to practice anymore. We had at that
 12 point in time two things pending. Having been granted
 13 Summary Judgment, we were going to have a damages hearing
 14 sometime in the future, and a Rule 11 Motion for
 15 Sanctions, which is entirely different than any sanctions
 16 that might emanate from say, the Court of Appeals on
 17 different issues. The Motion for Rule 11 Sanctions was
 18 scheduled to be heard on January the 8th. On January the
 19 4th, and there had been no complaint by Mr. Mayham, who is
 20 representing the Defendant Ms. Lee, and sanctions were
 21 only going to at that point in time, be addressed to him
 22 personally, and Ms. Lee. They had nothing to do with Mr.
 23 Johnson. If you look, and I know you have seen it, but in
 24 the answer we say that we were right, that we owned the
 25 property, and they thought we should win. So, their

1 defense was one, we thought was legitimate. They said we
2 should win and they should be entitled to some relief
3 against Mr. Megna's client. Again, we got Summary
4 Judgment. We filed Rule 11 Motions for Sanctions. Four
5 days without any complaint that he had not gotten anything
6 in a timely manner, Mr. Megna filed an appeal on the
7 fourth, four days before, and I think there was a weekend
8 in between, and at that time said that he had gotten the
9 order granting Summary Judgment at a later time. This was
10 the first time this came up. We had numerous documents
11 that are in the file before Your Honor. And they were
12 filed on January 22, 2008, in the Court of Appeals, but
13 they are part of the record in the Court below saying in
14 essence that the appeal was untimely.

15 Your Honor, we got a response from Mr. Megna, that
16 you have accused me of the same as he accused Mr. James
17 and Mr. Josey of misconduct in this case in the Motion to
18 Disqualify. He made a lot of claims regarding my ethics,
19 and I can repeat, but it is already in the file. So, you
20 don't need for me to repeat. The Court of Appeals sent
21 the matter back for an evidentiary hearing. They remanded
22 the case for it to be heard before Judge Manning to
23 determine whether the appeal was timely. Judge Manning
24 had the matter set. Mr. Megna was put on notice. He was
25 put on appropriate notice. Your Honor, some of the

1 circumstances that you can see in Judge Manning's Order,
 2 Mr. Megna was saying among other things that I was
 3 stalking --- he had his office in his home, but I was
 4 stalking him and his family, stealing stuff. He used the
 5 word pilfered from his files, and a lot of bazaar claims,
 6 or what I consider serious but bazaar claims. I notified
 7 him, and he was saying he was purposely avoiding me. I
 8 notified in a most appropriate way that the Court found to
 9 be appropriate, and it has become the law of the case.
 10 Mr. Megna didn't come. The Court took a recess. Tried to
 11 look for Mr. Megna, he couldn't be located. The Court
 12 issued its order, and you have it before you, and that is
 13 dated April 3, 2008. The Court among other things found
 14 that Mr. Megna had made inappropriate accusations. That
 15 plaintiffs counsel, meaning me, had been restrained in
 16 responding. I had done everything appropriate. It was
 17 clear that his appeal was untimely. You have that and it
 18 was dated April 3, 2008.

19 After that the Court of Appeals dismissed the case,
 20 because the appeal was untimely. Mr. Megna moved to
 21 reopen it, and argued that he hadn't gotten notice of the
 22 hearing.

23 Well, he had. But regardless, the Court of Appeals
 24 gave Mr. Megna one more opportunity to resolve the case
 25 appropriately. He did the exact opposite. And what he

1 did was, he argued --- his attacks became head on and has
 2 became even worse. Judge Manning issued another order and
 3 he was more specific this time, because this time he had
 4 more documentation. Mr. Megna said that I hadn't sent
 5 anything to him. He also said that he hadn't received it,
 6 that I had sent it to an address that he had not used for
 7 a long time. And that there had been no notice, no
 8 receipt, and no knowledge of the case. Well, having sent
 9 the case back the second time, he could not allege any
 10 prejudice, because the Court was reconsidering everything
 11 that he had said the first time. Judge Manning was a very
 12 conscious judge, and considered everything the first time,
 13 and he considered it the second time. He recites specific
 14 documentation where Mr. Megna said that I had sent this
 15 notice to an address that he had not used in a long time,
 16 and guess what? We had document, after document, after
 17 document sent by Mr. Megna on his letterhead and even
 18 subsequent to that time where he filed a motion to the
 19 memoranda, he used the same fax line that he said he
 20 hadn't used in a long time. I don't think I need to go
 21 through that for you now. But the evidence that Mr. Megna
 22 wasn't showing appropriate candor with the Court was
 23 simply overwhelmed. That order went back to the Court of
 24 Appeals, and it was inevitable what was going to happen
 25 and did happen. The Court of Appeals once again dismissed

1 the appeal. However, Mr. Megna --- and that order is
 2 dated April 1, 2009, and Your Honor can see that he was
 3 given a long period of time, and there were a number of
 4 delays that I mentioned in my most recent memoranda that I
 5 gave to the Court, and with the documentation that he was
 6 given a long period of time to handle the thing
 7 appropriately. At the time of Summary Judgment he had
 8 been given an opportunity, and the Court had attempted to
 9 steer him in the right direction, the same as Judge
 10 Manning had attempted to steer him in the right direction
 11 and give him time to deal with things.

12 Your Honor, you have the transcript before you going
 13 back to the time of Summary Judgment where Judge Kinard --
 14 - when Mr. Megna was making representations when he said
 15 his client owned the property, because she had sold what
 16 she didn't own and therefore she owned it. Therefore, you
 17 have the transcript. Judge Kinard, who was a very
 18 gracious person, told Mr. Megna among other things, he
 19 said, don't tell me something that is not true, Mr. Megna.
 20 And he also said, and I am going to come back to this
 21 other. He also said, Mr. Megna, you are talking out of
 22 four sides of your mouth to me. And he said also in the
 23 transcript, giving him an appropriate warning that --- we
 24 might call it a safe harbor in Federal Court to do it, to
 25 handle things correctly. Why are you attacking Mr.

1 Truslow? Why do you put these things in here? Do a
 2 proper Affidavit, because the one that he had done was not
 3 proper. He didn't pay attention to Judge Kinard. He
 4 didn't pay attention to Judge Manning. In two separate
 5 orders he was given a long period of time to deal with
 6 issues, but he remained impractical. He wouldn't do what
 7 he was suppose to do and what he should have done. What
 8 he did immediately knowing that what was getting ready to
 9 happen and did happen, the Court of Appeals dismissed the
 10 case. I made one mistake in my memorandum. I said that
 11 he filed his Notice of Appeal on April 15th, from the
 12 April 1st order of Judge Manning, the second remand order.
 13 I said that he filed his bankruptcy on the sixteenth. I
 14 looked back and saw that is when I had actually gotten it
 15 and it had been --- I guess the date was not correct. But
 16 when I looked, he actually filed the notice of appeal on
 17 the fifteenth from the order dated the first, and that
 18 same day filed bankrupts in Ms. Lee's name. You can look
 19 at the timing on it. You can see that he already had from
 20 August 2008 --- he represented Ms. Lee in a companion case
 21 where he called a companion case, and had a two hundred
 22 sixteen thousand-dollar verdict rendered against her. Mr.
 23 Johnson's clients were the plaintiffs in that separate
 24 case. Judge Cooper was the arbitrator. I was not a party
 25 to that. My client was not a party to that. Your Honor,

1 from that point on after the filing of the bankruptcy, my
 2 client in bankruptcy court, having the services of a
 3 skilled bankruptcy attorney, Mr. Steve Licata, he is a
 4 long time practitioner. Has a very successful bankruptcy
 5 action filed an action to lift the stay. We sought to
 6 lift the stay, so that Mr. Megna's own appeals --- there
 7 were three at that point in time in state court to go
 8 forward. He resisted those, and Your Honor has the orders
 9 of Judge Waites found among other things, he said that he
 10 granted the relief that my client had requested in
 11 bankruptcy court, and said that one of the reasons was
 12 pretty obvious. He could see what was going on, and he
 13 said in his order, and Your Honor has it before you, that
 14 it appeared that Mr. Megna was resisting lifting the stay,
 15 so that his own appeals could go forward because of
 16 attorney error for the client for Mr. Megna. Well the
 17 client didn't file her appeal. Mr. Megna was the one that
 18 filed for the three appeals, and he is the only one that
 19 has been untimely. It is the law of the case. It hasn't
 20 been overturned using his term. Judge Manning made some
 21 findings that are --- they are what they are. Judge
 22 Manning's orders are very clear. And, the Court of
 23 Appeals ultimately got the case. There was a tremendous
 24 amount of legal wrangling in the Court of Appeals. But,
 25 Your Honor has the order, the appeal was dismissed on a

1 jurisdictional basis. So, the Court would never be in the
2 position jurisdictionally to address issues over which it
3 had no jurisdiction, but even if it did, Mr. Megna said
4 that the Rule 11 he is representing to you in his
5 synopsis, that the Court of Appeals address the Rule 11
6 Sanctions Motions. He also says in the letter in the
7 synopsis, and more importantly in the November 3, 2011
8 letter to Judge Lee, he is representing that he won the
9 case as to damages and as to sanctions. Your Honor can
10 well, look at the order of the Court dismissing on the
11 basis of the lack of jurisdiction, and see if that
12 assertion by Mr. Megna is true. You have the bankruptcy
13 order. You have Judge Waites' order. You have Judge
14 Anderson's order, talking about the tortured legal
15 proceedings, and it has gone on and on.

16 Your Honor, some things that I think are very
17 significant, and it is in Exhibit A-2 for Your Honor, Mr.
18 Megna has represented that the C-4 --- you can compare C-4
19 and A-2 of the Exhibits. He has represented to the
20 Bankruptcy Court, to the Federal Courts, he has
21 represented to Judge Lee, and he is representing to Your
22 Honor that he won, and I can read if I can have just a
23 moment. He has represented that he won the case. And
24 that is a serious, serious matter. One place that I am
25 reading from Mr. Matthews, his partner, that says in

1 essence the timeliness order of Judge Manning has been
 2 reversed and vacated by the Court of Appeals. He copies
 3 Judge Waites with that, Chief Justice of the Bankruptcy
 4 Court. Mr. Megna writes to a number of people in an
 5 email, and he says the timeliness order of the State
 6 Judge, Judge Manning, has been reversed and vacated. He
 7 said because it is no mistake, he says it again, and
 8 again, and again. There are numerous emails where he has
 9 said quote, Judge Manning has been reversed, the Court of
 10 Appeals has vacated his Order. We are grateful that Judge
 11 Manning's order has been vacated and reversed. These
 12 aren't just on one day Your Honor, he says it repeatedly.
 13 And he said on November 3rd, Your Honor, he said that
 14 among other things, and it is one of the reasons why the
 15 attorneys have been significant in this case. We have had
 16 to go back and go through this since this motion was
 17 filed. He said, and I am looking at his November 3rd
 18 letter, after accusing me of ethical violations, he said
 19 that the Court of Appeals --- this is what he is
 20 representing to another Circuit Court judge, that the
 21 state Court of Appeals has denied Mr. Truslow's Motion for
 22 damages, and goes over, and over, and over. Your Honor,
 23 the Court of Appeals never had a damages case before. The
 24 only issue that was before the Court of Appeals was ---
 25 and Mr. Megna said he was going to bring for Your Honor

1 the transcript, and he can have his briefs. I have them
 2 if you need it. But, Your Honor, he has argued that the
 3 Court of Appeals addressed the Rule 11 sanctions hearing.
 4 He has alleged that the Court of Appeals addressed the
 5 damages hearing. And it couldn't be any further from the
 6 truth. It is a serious, serious matter, and he is
 7 seriously wrong. The Court of Appeals did not address
 8 this. They did not address damages. And they didn't
 9 address sanctions under Rule 11, and it was never before.
 10 The only reason that the motion we filed, and again we
 11 filed it on November 7, 2007, was to corroborate what
 12 Judge Manning found, that Mr. Megna said that he had no
 13 idea that the Court had granted Summary Judgment. Well,
 14 he got the motion in which we sought Rule 11 sanctions.
 15 He got it in a timely manner. He argues that he didn't
 16 get it. He didn't argue that he didn't get it in a timely
 17 manner. And, Your Honor, as Judge Manning found in a
 18 separate case, a companion case where Mr. Megna said that
 19 he had in that case when he found it convenient, was that
 20 he argued that he had gotten the order granting Summary
 21 Judgment. And he got it in a timely way. And Judge
 22 Manning went through the transcript in that case. He went
 23 through Mr. Megna's personal --- I want to say his
 24 business records. And we had overwhelming evidence that
 25 what Mr. Megna was saying was not true. So, that is what

1 we have by way of background, and now what we have, and if
2 you will look at the timing of it, we have the January 18,
3 2012 status conference. Your Honor has the letters that
4 were written. We said we weren't seeking damages from Ms.
5 Lee. They didn't relate to Mr. Megna. That was between
6 me and my friend Charlie Johnson, or then Mr. Earl, and we
7 had everything resolved. There was no need for any
8 discovery. We had exchanged the appropriate letters and
9 had an agreement about how things were going to be
10 received if we didn't resolve the case. At that time, Mr.
11 Megna acknowledges that he was not involved in the
12 damages. They didn't need to be in the damages part of
13 the case, and that Rule 11 sanctions would be at a later
14 time. Well, that had nothing to do with this. What he
15 has done is served interrogatories by notices of
16 deposition by email. He sends them to the wrong place.
17 Your Honor has the records where I have told him
18 repeatedly where I get my mail, and don't send them to the
19 wrong zip code. Send it to the correct address. My
20 address is what my street address is. Don't send it down
21 the street to 944 and it keeps going on, and on, and on,
22 and Your Honor, maybe I am taking too much time, but I
23 think you need this. And it has gone on and on, and I
24 have tried to just ignore some of the things. I have
25 gotten letters, and he sends them and the are before the

1 court, they are before the Court of Appeals. He sent
 2 letters addressed --- this is envelopes to Dog, Debug,
 3 Dumb Ass, A-S-S. He uses different things for my last
 4 name, for my first name. Your Honor has a number of those
 5 before you. He sends things to the wrong place. I have
 6 been trying to be as vigilant as I could and just ignore
 7 those kinds of things, and thought that, you know, let's
 8 get the case concluded, and then we can deal with some
 9 other issues that may come up. But right now we've got
 10 the damage hearing which would involve my friend Mr.
 11 Johnson, that were not going to be contentious. We
 12 thought that we could work those out. We had a Rule 11
 13 sanctions hearing that since Ms. Lee was in bankruptcy,
 14 and had been discharged, and Mr. Megna had acknowledged
 15 this, that we weren't going to be seeking Rule 11
 16 sanctions against her, but against Mr. Megna and his law
 17 firm, and Mr. Matthews had also been involved at that
 18 point. He has in fact been involved in the matter since
 19 2008, and he was also found by Judge Manning not to be
 20 credible and believable, and engaged in some delaying
 21 tactics that were inappropriate.

22 Your Honor, you have the Affidavit of my client. You
 23 have the documentation of Mr. Megna. You have what he has
 24 sent me. He is saying that he representing Ms. Lee, and
 25 again he is talking, I would suggest out of four sides of

1 his mouth, the same as Judge Kinard found. He wants to
2 say the Court ruled in his favor as to damages. If so, he
3 has no reason to need to engage in any discovery. He says
4 he needs a discovery for damages, but he says he has won.
5 If he won, he doesn't need it. If he lost, he has already
6 said that he doesn't care to be involved.

7 Your Honor, we are here about sanctions at this point
8 in time. We are here on a Motion to Quash, or a Motion
9 for Protection, and a Motion for Appropriate Sanctions.

10 They have argued that Your Honor has no authority or
11 right to deal with this matter. We 100 percent disagree
12 on a number of levels. The Court has inherent power to
13 deal with these powers. The Court may deal with things
14 such as contempt *sua sponte*, you can do it under the
15 rules, you can do it based on our motion. Mr. Megna has
16 submitted them, but a synopsis to Your Honor, and he gives
17 you an order from the arbitration that my client wasn't
18 involved in. He uses that as a basis to say that you
19 should not --- you are not entitled to hear anything, and
20 you have no jurisdiction. He claims that he has appealed
21 in Darlington, so you have no right to deal with this
22 matter, the Richland County, or Ms. Ballard's case that
23 again, she would be able to argue about Rule 205.

24 Your Honor, the list goes on, and on, and on. You
25 have everything before you that I think you need. What we

1 have, Your Honor, I would submit, and I regret to have to
 2 say this, and it is not directed at counsel, it is
 3 directed at the person who is engaged in the misconduct.
 4 Is that the most dangerous thing for the legal process is
 5 when you have someone who acts unprofessionally, who
 6 appears to be ignorant of the law and can't get plaintiff
 7 and defendant straight. Mr. Megna is seeking discovery in
 8 my case for Pee Dee Health Care. Pee Dee Health Care was
 9 in no way part of this. He wants information about Mr.
 10 Josey, about Mr. James, about Mr. Woodington. You can
 11 look at what --- Ms. Ballard is going to talk about this.
 12 He wants information from her using a Darlington case in
 13 which he has been disqualified to get information
 14 apparently for the Richland County case, and he is asking
 15 for things relating to Andrew Savage, he is an attorney.
 16 I don't know if you know him. He was in my class. He is
 17 a Charleston attorney, very well respected. Ashley
 18 Stratton, competent professional appellate attorney,
 19 Caroline Streater, who is a lawyer and a Magistrate, and
 20 he wants to get those. Somehow he thinks this is related
 21 to this case, and it is totally irrelevant.

22 Your Honor, we have what I would submit based on the
 23 record, someone who has acted unprofessional, has shown
 24 ignorance of the law. He has been extraordinarily mean
 25 spirited. He has shown disdain for the courts, and his

1 actions have been contemptuous. He has known since April
2 2011, that he has been disqualified in Mr. Josey and Mr.
3 James' case, but he is continuing seeking discovery in
4 this case, or in the Darlington case for use in the
5 Richland, trying to do the same thing for use in Richland
6 or in Florence. And Your Honor, I will have to say that
7 in thirty-seven years of practicing law I have never seen
8 something quite --- not quite --- anywhere approaching
9 conduct that we have seen. We ask for Your Honor to not
10 be merciful in this situation. That what Mr. Megna has
11 done has been more importantly being disrespectful of the
12 attorneys, and not showing an appropriate degree of
13 civility. Most importantly, he has been contentious of
14 the Court, not only in this case, but in the arbitration
15 case. He claims that the judges ought to disqualify
16 themselves, that they should not hear anything that he is
17 involved in. And it has gone on, and on, and on. This is
18 somebody who has shown no respect at all for the legal
19 process, for the attorneys involved, and most importantly,
20 for the Court. Thank you.

21 **THE COURT:** Thank you, Mr. Truslow. And Ms.
22 Ballard.

23 **MS. BALLARD:** Thank you, Your Honor. I am not
24 involved as counsel of record in either the Darlington
25 case, the Pee Dee Health Care case, or the Richland County

1 case, which is Mr. Truslow's case in which he represents
 2 Mr. Anasti. However, beginning in 2007, Mr. Truslow began
 3 consulting with me, and he was handling the Richland
 4 County case for Mr. Anasti, because of the series of
 5 troubling encounters that he had with Mr. Megna. Some of
 6 my practice Your Honor, is advising lawyers on their
 7 ethical obligations, and I also have some experience in
 8 the Appellate Court. And Mr. Truslow had been consulting
 9 with me on a fairly regular basis, and my advice to him
 10 essentially to stay above and not lower yourself to the
 11 kinds of conduct that you are being lured into. But
 12 again, I have not appeared as counsel on any of the cases.
 13 Mr. Truslow has consulted for purposes of ethical and
 14 appellate responsibilities. In August of 2011, I received
 15 by certified mail --- Excuse me on July 29, 2011, I
 16 received by certified mail from Mr. Megna, a subpoena
 17 obsessively issued in the case out of Darlington County
 18 entitled Pee Dee Health Care PA versus The Estate of Hugh
 19 Thompson in which Mr. Megna was seeking a great deal of
 20 information involving a number of lawyers, one of whom was
 21 Mr. Truslow, one of whom was Ms. Jones, Ken Woodington,
 22 some lawyers I did not know. Some other individuals
 23 related to Pee Dee Health Care, which of course was a case
 24 I had never heard. I had no idea what it was about. I
 25 had no idea what it was about. I either went on line or

1 called the Clerk's Office; I don't recall which, to find
2 out what this case was and whether it was a pending case.
3 And someone, I don't recall who, faxed me a copy of Your
4 Honor's Order from April 2011, in which Mr. Megna was
5 disqualified as counsel in this case. Of course the
6 subpoena served on me came approximately four months
7 later.

8 I filed an objection to the subpoena, and I served it
9 on Mr. Matthews, who is Mr. Megna's co-counsel, and is
10 still shown in Darlington as counsel of record for Pee Dee
11 Health Care. Since obviously Mr. Megna was disqualified,
12 it was served on him. And I filed a Motion for Sanctions,
13 because there were a number of issues about the subpoena.
14 Of course, it was improper in terms that it was issued in
15 Richland County, which I had no connection with. It was
16 not served properly. And the thing that offended me most
17 Your Honor, is that sought my confidential communications
18 with Mr. Truslow. Mr. Truslow had been consulting with me
19 in an effort to make sure that he complied with his
20 ethical obligations in trying to defend against a very
21 serious bazaar series of transactions that Mr. Megna was
22 engaging in. I met with Mr. Truslow on repeated
23 occasions, reviewing documents with him. At one point, I
24 believe probably 2011 or 2012, he brought me a box of
25 documents that Mr. Megna had delivered to him, and said

1 Desa, is this the record on appeal? It was one of the
2 many appeals that Mr. Megna had filed with the South
3 Carolina --- South Carolina Court of Appeals. I looked at
4 it, and I told him no, it is not a record on appeal. And
5 he showed me the Court orders where the records on appeal
6 had to be served by a certain day, so I did an Affidavit
7 for him saying this is not a record on appeal, because it
8 doesn't comply with the rules. I thereafter got a very
9 nasty letter from Mr. Megna, questioning my integrity, and
10 making similar allegations against me that he had made
11 against Mr. Truslow for the past three or four years.

12 So, when I filed a Motion for Sanctions, the real
13 issue was that he was trying to inquire into my
14 confidential communications with Mr. Truslow. I
15 thereafter found of course, that he was disqualified in
16 this case, and I added that as an additional grounds for
17 the Motion for Sanctions.

18 As I began to research what it was he was trying to
19 do, and I saw numerous documents filed by him, and he was
20 trying to engage in discovery in order to defend against
21 Mr. Truslow's Rule 11 Motion against him, not against his
22 client, but against Mr. Megna. I did research. There is
23 no authority anywhere in the country that I can find that
24 authorizes discovery to be conducted in connection to a
25 Rule 11 Motion. All the authority that I have been able

1 to find indicates that the only standard for Rule 11
2 Motion Hearings is due process. Notice and opportunity to
3 be heard. Some cases say that you have a hearing. Some
4 cases say that you submit those motions on the record.
5 But none of the cases that I can find anywhere in the
6 country allow or authorizes discovery to be conducted in
7 connection with a Motion in Rule 11 sanctions. So, I
8 wrote Your Honor a couple of times to try to get my motion
9 hearing scheduled, and apparently my request to get the
10 Motion scheduled before Your Honor ruffled the feathers of
11 an individual by the name of Mark Matthews, whom I do not
12 know. He is apparently somehow affiliated with Pee Dee
13 Health Care. He has filed two grievances against me with
14 the Office of Disciplinary Counsel. I am glad to say they
15 were dismissed as of April 30th. But, it was apparent
16 from the first one that he filed, that he filed against a
17 whole bunch of other people too. I filed the grievance
18 with this Clerk's Office, so that Your Honor would have a
19 copy of the grievance that was filed against me. So, I
20 did redact them so that it was clear the other lawyers who
21 were subject to the grievance were not disclosed. But I
22 chose to disclose that.

23 It appears to me that I am under attack as a result
24 of having provided legal advice and counsel to Mr.
25 Truslow, which is entirely inappropriate. Mr. Truslow

1 clearly under Rule 1.6, has a right to seek ethical advice
 2 and ethical counsel. And he can seek appellate
 3 assistance. Whatever he needs to seek in order to
 4 represent his client. But I filed my Motions for
 5 Sanctions for the time that I had spent in responding to
 6 this subpoena, which was improper, beyond the scope of
 7 anything that is permitted under Rule 11. I have
 8 submitted my Affidavit indicating the amount of time I
 9 have spent both filing the Motion for Sanction, and the
 10 time I have spent for preparing for today's hearing. And
 11 my request is an award of sanctions against Mr. Megna, as
 12 indicated in my Affidavit, for the time that I have spent.
 13 I have not paid myself. I have done it myself. But I
 14 have not been able to bill other clients. The only out of
 15 pocket money I have is the filing fees, and I have
 16 indicated that in my Motion. But the amount of time that
 17 I have had to devote to this thing at my regular hourly
 18 rate of four hundred dollars an hour Your Honor, is over
 19 twelve thousand dollars. And I am requesting both an
 20 award of sanctions. And if the Court deems it appropriate
 21 under the Charleston County case that Your Honor is
 22 familiar with, and I can't pronounce. Wieters v Bon
 23 Secours I believe it is, a fine if Your Honor finds it to
 24 be appropriate with. Also, against Mr. Megna for clearly
 25 among the most outrageous behavior by any lawyer I have

1 ever seen in my almost thirty years of practice.

2 Thank you, Your Honor.

3 **THE COURT:** And counsel, would you speak to the
4 jurisdictional question that has been raised about whether
5 or not this Court has jurisdiction.

6 **MS. BALLARD:** Yes sir, Your Honor. In an appellate
7 setting when you file the Notice of Appeal, it transfers
8 jurisdiction to whatever appellate court it is. But under
9 Rule 205 of the Appellate Court Rules, the trial court
10 retains jurisdiction to entertain issues that are not
11 affected by the appeal. And I understand from a
12 memorandum that I was handed as I walked into the
13 courtroom that apparently the order of disqualification is
14 on appeal. I was not aware of that. But, even if the
15 order of disqualification is on appeal, it is my position
16 under Rule 205 that discovery issues, which is what this
17 is, still remain within the jurisdiction of the Circuit
18 Court to the extent that the case remains within the
19 jurisdiction of the Circuit Court. And obviously while
20 the order disqualifying Mr. Megna may be on appeal, I
21 think under Rule 205 clearly the subpoena that was served
22 on me is a matter that remains within the jurisdiction of
23 the trial court, because it is unaffected by the appeal.

24 The basis for my Motion is not solely that Mr. Megna
25 was disqualified. In fact you can set those aside if you

1 would like to. The Motion for Sanctions is based on ---
 2 It was an improper subpoena on me. It was seeking to
 3 inquire into confidential communications I had with Mr.
 4 Truslow. Ignore the fact that Mr. Megna had been
 5 disqualified if you want to, you don't need to, because
 6 there are plenty of other grounds under which you can
 7 impose sanctions on Mr. Megna for this.

8 The other thing that I did want to mention Your
 9 Honor, is that clearly a contention that I have drawn from
 10 all of this is that the grievances that were filed against
 11 me, they seem to be tied to my request to Your Honor to
 12 schedule a Motion Hearing on my sanctions --- a hearing on
 13 my sanctions motion. I don't know who Mark Matthews is.
 14 He represents in his letters to The Office of Disciplinary
 15 Counsel that he has nothing to do with Pee Dee Health
 16 Care. He indicates that he contacted my office in October
 17 2010 for Mr. Megna. I consulted with my law partner
 18 staff, and he did receive a call from Mr. Megna in October
 19 2010. She advised me that she had received a call from
 20 Mr. Megna indicating that he would like for us to look at
 21 a case. And I told her in no uncertain terms, based on
 22 what I have learned with Mr. Megna, dealing with Mr.
 23 Truslow, that we don't want anything to do with any case
 24 that Mr. Megna was involved in. So, Ms. Rogers did what
 25 we often do is, we quote a fee, which very often will

1 cause people to be less than interested in retaining our
2 services. So, we said we have to look at this, and we
3 will be happy to, if you want us to look at it. I have
4 since --- since he raised this issue, I have gone back and
5 looked, and even if I had opened up that file, if I had
6 accepted the review of that case, it clearly does not rise
7 to the level of 1.7, 1.8, or 1.9 conflict of interest that
8 would prohibit me from consulting with Mr. Truslow. So,
9 the issues about what Mr. Matthews has filed grievances
10 against me are completely frivolous.

11 And as I indicated in my Affidavit, the Rules of
12 Professional Conduct, and the Rules of Lawyer's
13 Disciplinary Enforcement give unfortunately I believe,
14 give people who file grievances in a malicious fashion
15 absolute immunity. They cannot be sued for their
16 malicious actions against lawyers. It is different for
17 doctors and a lot of other professionals. But lawyers
18 unfortunately can have malicious reasons against them as
19 they can tolerate. And I believe, because of their
20 relationship that appears to exist between Mr. Megna and
21 Mr. Matthews, that Mr. Megna was probably behind the
22 grievances that were filed against me.

23 **MS. ZMROCZEK:** Your Honor, I am going to object to
24 that speculation.

25 **MS. BALLARD:** I said it was a conclusion that I had

1 drawn, Your Honor.

2 **THE COURT:** I am going to overrule and permit that
3 subjective argument. Go ahead.

4 **MS. BALLARD:** I don't know, I suppose we could call
5 Mr. Megna to the stand or Mr. Matthews to the stand, but I
6 understand that we are not having live testimony. But I
7 am here to tell you that in almost thirty years of
8 practice that the most horrible thing that can happen to a
9 lawyer is to have a grievance filed against them. I have
10 represented many, many lawyers who have had grievances
11 filed against them, and it is the single worst thing that
12 could ever happen. And I find it offensive that I was
13 attempting to protect my rights, and I had grievances
14 filed against me as a result of it. It is clearly tied to
15 this case. It is clearly tied to my advice and counsel to
16 Mr. Truslow. And again, I feel like I am under attack,
17 and I believe the Court retains jurisdiction under Rule
18 205 to award sanctions and a fine, if Your Honor deems
19 appropriate.

20 **THE COURT:** And, Ms. Ballard, just logistically,
21 when this Court --- when I learned of your motion for
22 sanctions, it was at a time unrelated to this case. I was
23 involved in a case in Richland County, which took a month
24 to try, and that due to my unavailability, it may be
25 something that you wish to take up with the appellate

1 court. Have you taken those issues up?

2 **MS. BALLARD:** No, sir. Your Honor, I have drafted
3 a Motion for a Limited Remand. But I did not it because I
4 received a subsequent communication from your office that
5 you were willing to hear motion. So, I drafted my motion.
6 My Affidavit of my time indicates the time that I spent
7 drafting that motion for limited remand. It was a bit
8 unwieldy because there were apparently three appeals, and
9 I had to search out what the various appeals were and
10 learn a little bit about them in order to make that
11 motion. But, Your Honor communicated with us that you
12 were scheduling this hearing. So, I did not file that
13 motion.

14 **THE COURT:** One final question for you. The
15 disqualification is on appeal?

16 **MS. BALLARD:** Yes, sir.

17 **THE COURT:** And then ultimately while that is on
18 appeal, a decision granting Summary Judgment against Mr.
19 Megna's client was rendered and that is also on appeal.
20 Does that affect your argument or your position on whether
21 or not this Court has the authority to resolve the issue?

22 **MS. BALLARD:** Not at all, Your Honor. I am not a
23 party to any of these cases. Mr. Megna served a subpoena
24 on me using this caption. But I am not a party. I am not
25 representing a party. Even if the Court --- Even if one

1 of the appellate courts should find error in Your Honor's
2 order disqualifying Mr. Megna, the other grounds for my
3 motion for sanctions still remain. And even if Summary
4 Judgment should be granted against Mr. Megna's clients in
5 the Darlington County case, the Pee Dee Health Care case,
6 that would have no effect on the issue that I have raised
7 to Your Honor in my request for sanctions.

8 **THE COURT:** All right.

9 **MS. BALLARD:** Thank you.

10 **THE COURT:** Anything further from what I will call
11 the petitioner's side of the case here?

12 **MR. TRUSLOW:** Your Honor, one final thing that I
13 have, and I don't think Ms. Ballard will have this. And
14 you have it. It is Exhibit C-2. It is in support to what
15 she says, and what my client is saying. Mr. Megna has
16 submitted to the Court of Appeals something that he calls
17 plethora's reply to respondent, Anasti's Motion to
18 Expedite, and I put sic after that, because there are just
19 so many typos. But the most significant thing I think,
20 and I will wait for Your Honor to have a chance to get it.
21 It is about half way down.

22 **THE COURT:** Yes, sir. Thank you. Just a moment
23 please.

24 **(PAUSE.)**

25 **THE COURT:** I have it.

1 **MR. TRUSLOW:** Your Honor, in this on the second
2 page, you can see what the date of it is, it is August 10,
3 2011, signed by Mr. Megna. On the first page, second
4 paragraph, what he says, and I am quoting. The true
5 motives behind Mr. Anasti's motion to expedite or his
6 counsel, and the others are engaged in inappropriate
7 behavior, that is the subject of pending subpoenas and
8 motions for enforcement of those subpoenas in another
9 action pending in the Darlington County Court of Common
10 Pleas. And then he goes on and on.

11 Your Honor, he well knows that as of April of that
12 year, he was clearly unequivocally disqualified. And he
13 is representing to the Court of Appeals that he has got
14 these outstanding discoveries, when he knows he is
15 disqualified. And it is inappropriate. And it is
16 inappropriate in my case. It is inappropriate in Mr.
17 James and Mr. Josey's case. And it is contemptuous of
18 Your Honor's Orders.

19 Your Honor, I see one other thing that I have
20 neglected to mention. But got handed this memoranda today
21 from Mr. Megna's attorney. It says it is a memorandum as
22 attorney for Defendant Anasti, and I want to make the
23 record clear that he does not represent my client. He has
24 never represented my client. He says in his discovery
25 that he is representing the plaintiffs and he is not

1 representing Ms. Lee. Your Honor, I want to stress Ms.
2 Lee's involvement in this case is done. She doesn't
3 approve of what he is doing. She didn't know what he was
4 doing. We have the Affidavit to that effect, Your Honor,
5 that she doesn't approve at all. And in fact, what Mr.
6 Megna is averse to her interest, because you have the
7 Bankruptcy Court Order that says that we can seek --- If
8 she had been the architect of this or the engineer, either
9 one, we could seek post bankruptcy sanctions against her.
10 Well, you have the Affidavit of Mr. Anasti. She was not
11 aware of the motives that Mr. Megna had that are multi-
12 tiered, both in Florence, in Darlington, and in Richland,
13 against one of the most professional lawyers I have ever
14 had the privilege of knowing. That anybody who opposes
15 Mr. Megna, whether it is the Court, whether it is an
16 attorney, he just tries to engage ad hominem attacks. He
17 taunts people. He insults people. He even sent thing
18 things to my son, who no longer on active duty, but was
19 sending insulting emails to my son while he was on active
20 duty telling him what a liar, and awful person, and
21 perjurer I was. And Your Honor, this has just got to
22 stop. He doesn't represent Ms. Lee. Certainly, Mr.
23 Johnson is here and can tell you that he is not condoning
24 at all what Mr. Megna is doing. Mr. Megna reports that he
25 needs to engage in discovery as to damages on behalf of

1 the unrepresented plaintiffs in the other case, or the
2 unrepresented defendants in the case that I am involved
3 in. It is not true, Your Honor. It is bazaar. It is
4 dangerous. And this case needs to come to an end.

5 And I finally have one final thing that I have, Your
6 Honor. It is a case that came out --- I know you will be
7 proud of me, but I actually read the Advance Sheets.
8 There is a case that came out on May 2nd, it is the Cannon
9 Case, *Ex Parte David Cannon* that just came out on May 2nd,
10 that indicates, and in that case it wasn't nearly as
11 egregious as what Mr. Megna has done in this case. The
12 innocent party in that case was awarded \$89,000 in legal
13 fees. Our case is much more modest. My client is of
14 modest means, and it is appropriate to utilize, since I
15 had the case on a contingency basis to use a load start.
16 And Your Honor, the conduct that Mr. Megna has been
17 ongoing, egregious, claims of ethic violations against
18 numerous people in different settings, have required a
19 tremendous amount of work to deal with something as I
20 said, to start with that should have been very very
21 simple. Thank you. And I am going to hand this up to
22 Your Honor, if you don't have a copy. I am sure counsel
23 has a copy.

24 **THE COURT:** The Cannon decision?

25 **MR. TRUSLOW:** The Cannon decision.

1 **THE COURT:** All right, sir, thank you. And now in
2 defense.

3 **MS. ZMROCZEK:** Thank you, Your Honor, and I will
4 hand up the memo that you are referring to. I would have
5 emailed it, but I was advised by Mr. Truslow that it was
6 inappropriate to email my Memorandum last night, so I did
7 not. That is why I hand delivered it today.

8 And I just wanted to clear up --- I did it myself.
9 Ms. Anasti is listed as a defendant, and that is simply
10 what that means.

11 Your Honor, I think that I have a unique position,
12 because I have been brought in late. And some would find
13 that as a disadvantage. But after hearing all the
14 arguments, I find it as an advantage. It is a fresh set
15 of eyes. I haven't been dealing with this case, or any of
16 the companion or subsequent touched cases since 2007. So,
17 what that does is provide me with a unique perspective to
18 sit down and say, what is this about. And that is why the
19 first couple of pages of the memo lay out the outlines for
20 me, so that I could look at it and say, why does he need
21 an attorney? Why are we here? Why are we wasting time
22 arguing between lawyers. I just took the oath just a few
23 years ago, and I remember specifically that is not what we
24 are here to do. We are not here to bicker back and forth.
25 And it is terrible when there are communication problems.

1 Trust me, I work in Lexington County, and the Solicitor's
2 Office would agree that we have communication problems all
3 the time with defense counsel, but we work them out. But
4 to hear the accusations flying back and forth is very
5 disheartened to me, Your Honor. But, I can kind of set
6 away from the emotions of that, because I haven't been
7 involved in it.

8 But as I look through the time line, and in fact if
9 you will turn to Exhibit B, some of the things that maybe
10 were presented, are presented for one perspective. But if
11 you look at the Order from the South Carolina Court of
12 Appeals which follows Mr. Truslow's Motion for sanctions
13 that he filed in the Court of Appeals.

14 Bear with me, Your Honor.

15 (PAUSE.)

16 THE COURT: I have it.

17 MS. ZMROCZEK: You have it. And I read straight
18 from that order. After consideration of respondents'
19 motion for sanctions, appellate return a record before
20 this Court, respondent's motion is denied. To me, Your
21 Honor, they did consider the motion for sanctions when it
22 was relayed earlier to the Court, but they did not
23 consider the motion for sanctions. And Your Honor, all I
24 can go by are the papers that I read and the orders from
25 the Court. And this order specifically makes a finding

1 that they did consider the motion for sanctions. The
 2 exact same motions that appears we are in front of Your
 3 Honor today. Additionally Your Honor, the courts found
 4 that Mr. Megna --- it is our job as attorneys to zealously
 5 advocate for our clients. And I am not calling Mr. Megna
 6 a saint at all. But at times I think words were probably
 7 exchanged and a deep breath should have been taken. And,
 8 I now for that he is apologetic that it has blown up this
 9 far. He is involved in numerous litigation in different
 10 counties, which Your Honor is aware of. They have been
 11 assigned to different judges, and involving numerous
 12 parties. His concern grew immensely when he received a
 13 motion for sanctions, and they are suing what was
 14 submitted by Mr. Truslow, and the motion for sanctions,
 15 and the Affidavits and the witnesses listed are attorneys
 16 that he at some point was representing him and his
 17 clients. And also, he is now involved with litigation.
 18 It was very troubling to him to understand why --- why a
 19 case that he took pro bono that deals with property that
 20 is now resolved, how did that have anything to do with a
 21 case that involves his Pee Dee Health Care client. That
 22 is all he wanted to know. And then he is being advised
 23 through the motion that he is facing sanctions of up to
 24 \$500,000, which is a significant amount of money. Of
 25 course, he is filed a very limited amount of discovery

1 just to say, why are the bills this high? And all of the
2 Affidavits that were submitted Your Honor, for a time were
3 in response to work that Mr. Truslow did after his filing.
4 But there are no Affidavits supporting any thing, or any
5 charges, or any damages prior to the filing fo the motion
6 for sanctions. And I believe he submitted, and we
7 submitted, as well his time, without the load start talks
8 about reviewing Mr. Megna's reply. His synopsis that he
9 spent I think, almost \$30,000 reviewing his synopsis. A
10 synopsis that would not have been compiled if it weren't
11 in response to the motion for sanctions.

12 Your Honor, I think this has gotten way, way out of
13 control. But to break it down to the most simple level,
14 on March 16th, Mr. Truslow was ordered to provide forty-
15 eight hours prior to the hearing, a list of damages. Your
16 Honor, all I have seen, and I have had kidney stones, so I
17 spent the entire day yesterday --- the entire day going
18 through every single piece of paper in this case. And it
19 is voluminous. And I could not find any request or any
20 list of damages prior to the filing for the Motion for
21 Sanctions. Your Honor, I think that claim has been
22 abandoned, unless it is Mr. Truslow's position that the
23 damages here he is entitled to, were generated after the
24 Motion for Sanctions was filed, which is just not logical
25 to me. Any damages seeking sanctions should have been for

1 time spent, or behavior, or anything prior to a motion
2 being filed.

3 Again, Your Honor, we feel like that same motion as
4 Exhibit B, shows you were already heard, examined, and
5 ruled on by the Court of Appeals, and they specifically
6 said they find no wrong doing. Mr. Megna's intent has not
7 been malicious. It has grown to the worst case that I can
8 think of where these two lawyers can't let it go and can't
9 walk away. Your Honor, Ms. Ballard's motion came, and as
10 she said, you can throw away the fact the appeal is
11 pending. I don't think that you can. I think that that
12 is a very important part of one of the reasons she
13 initially filed the motion for sanctions. But, the other
14 reason Your Honor, is her name appeared as being in a
15 separate case. All he wanted to know was why. All he
16 wanted to know was why, which is why he filed this
17 subpoena and said, at your convenience, let's talk about
18 this. And I think that is where the break down has been,
19 Your Honor. There has been no talking. It is just
20 throwing little swords back and forth. And these swords
21 have gotten bigger, and bigger, and bigger, and they have
22 started to touch persons to parties that have nothing to
23 do with this little piece of property that is now in the
24 possession of the original plaintiff. That case is closed
25 and over with. And I submit to the Court, that this whole

1 case should be closed and over with. And that emails,
2 words that have been exchanged on both sides weren't
3 appropriate. But, do they rise to the level of
4 sanctions, Your Honor, I submit that they don't. I think
5 that this has gotten out of control. And at this point,
6 the best thing to do is to rule on the case and close it.
7 And I think that is the most fair thing to do, Your Honor.

8 **THE COURT:** All right. Thank you. And Mr.
9 Truslow, you are the movant, do you wish to reply to what
10 you have heard?

11 **MR. TRUSLOW:** Thank you, Your Honor. I know she is
12 late in this case, Your Honor. I didn't know that she was
13 involved I guess, until I got Mr. Megna's email on Sunday.
14 I thought it was something that would come from his
15 partner, but there was no notice of appearance. When we
16 requested, both Ms. Ballard and I over a month ago, have
17 requested in writing repeatedly for Mr. Megna to disclose
18 if he had an attorney and who it was, he neglected to,
19 refused to, he wouldn't tell us if he had an attorney. I
20 don't know if there is --- I checked at the Richland
21 County Courthouse, you can go to their website and see
22 whether there has been a filing of a formal appearance,
23 and there wasn't.

24 Your Honor, the second thing that I wrote down that
25 counsel said is, this is a case of two lawyers that can't

1 get together. Your Honor, you have, I think it is C-7-C,
2 Mr. Megna is accusing --- you can look at this. Mr.
3 Megna, and I can give you a minute if you need.

4 MR. TRUSLOW:

5 THE COURT: I have it.

6 MR. TRUSLOW: Your Honor, as you can see, I just
7 did the extracts, because there was so much. But if you
8 go to page 20, the last paragraph, page 2049 by Mr. Megna.

9 THE COURT: Exhibit C-7.

10 MR. TRUSLOW: I think it is C-7-C.

11 THE COURT: I have page 2049.

12 MR. TRUSLOW: Your Honor, the last paragraph, and
13 counsel would say this is an argument or an unseemly
14 dispute between two attorneys. I have tried to rise above
15 this. I have consulted with counsel in having to deal
16 with someone like Mr. Megna, who is being extraordinarily
17 difficult to deal with. It suggest to people like Craven,
18 Ravenel, or Professor John Freeman, somebody who might
19 help us work through this. This is not a case of one
20 incidence of attorneys --- this is what he said about the
21 former U. S. Attorney, who is one of the finest gentlemen
22 I know. One of the most civil lawyers I know. I have
23 known Mr. James long --- but what Mr. Megna says about the
24 two of them, about the McNair Firm, about --- it is clear

1 that Mr. Nettles is around the law firm, Turner Padget.
 2 He says the false and unprincipled personal accusations
 3 and innuendoes by Mr. James and Mr. Josey --- he talks
 4 about that. He talks on the previous page about their
 5 baseless and self-serving dishonorable actions. On page
 6 19, he talks about unethical, unprofessional conduct by
 7 lawyers of one of the largest state, allegations of
 8 unethical and unprofessional lawyers in an influential
 9 firm in the Pee Dee. Allegations of unethical conduct by
 10 relatives of a judge in Florence. And it goes on and on.
 11 This is not just one case and one isolated situation. I
 12 would disagree. If it were Your Honor, we wouldn't be
 13 here. Counsel --- I don't know if you need for me to read
 14 anymore?

15 **THE COURT:** Go ahead.

16 **MR. TRUSLOW:** Counsel had indicated that I had said
 17 that I thought it was inappropriate to continue to send
 18 emails to the Court. And I did, and I stand by that. I
 19 don't think those --- I think it is highly inappropriate
 20 to attempt at doing emails, and attempt to argue your case
 21 and make claims through emails. If there were a need, the
 22 proper place is in a courtroom, so that we can have a
 23 record, and not go outside of the record and say certain
 24 things happened. So, I stand by that. I think that the
 25 appropriate place to deal with matters is to file

1 discovery, file Affidavits, give Your Honor the things
2 that we need.

3 Your Honor, we have the motives on a variety of
4 levels. We have the Cannon Case, that was --- Mr. Megna
5 did not move for discovery. Again, he has no client. He
6 is not acting on behalf of Mr. Johnson's clients. In
7 Bankruptcy Court, he was not allowed to be paid for
8 pursuing this appeal, which the Court found --- the Court
9 ordered that you have before you indicated that it --- I
10 am paraphrasing, but it appeared to the Bankruptcy Court
11 noted that none of the creditors who would have an
12 interest in supporting Mr. Megna. The bankruptcy trustees
13 didn't support Mr. Megna. Mr. Megna is doing this all on
14 his own, for his own self-benefit, his self-doing, for
15 self, Pee Dee Health Care and/or Mr. Matthews.

16 Your Honor, the final thing is, if I may, counsel
17 misunderstands. What a Rule 11 Motion is entirely
18 different than any motion they might rely on in Federal
19 Court. There was never ever --- and I think Ms. Ballard
20 can talk about this in addition. But there was never,
21 ever any damages hearing that was resolved by the Court of
22 Appeals, and there was no Rule 11 sanctions motion
23 resolved by the Court of Appeals. It wasn't even before
24 the Court of Appeals. It was only before the Court of
25 Appeals on a limited basis, and that was to corroborate

1 what Judge Manning found. Thank you.

2 **THE COURT:** Thank you. Ms. Ballard, do you have a
3 reply?

4 **MS. BALLARD:** Nothing, Your Honor, other than I
5 haven't had an opportunity to review Mr. Megna's response
6 in detail. But I did want to point out that it does
7 contain a letter, a quite insulting letter that he wrote
8 me on March 1, 2011, which I was not going to submit to
9 Your Honor, but you can have it.

10 **THE COURT:** Anything else for our record from
11 anyone else?

12 **MS. ZMROCZEK:** Your Honor, I would like to submit a
13 time line that would supplement the memo. I think it
14 breaks it down.

15 **THE COURT:** Is there any objection from anyone?

16 **MR. TRUSLOW:** I haven't seen it.

17 **THE COURT:** Just take a look at it if you would
18 please, and let me hear from you whether you have a
19 response.

20 **(PAUSE.)**

21 **MS. BALLARD:** Your Honor, I would object to this as
22 being handed up. It is full of editorial comments, and
23 suggestions, collaborations among lawyers.. It is clearly
24 prejudicial, and I would object.

25 **MR. TRUSLOW:** I have an additional basis to object,

1 Your Honor. As I have said in my memorandum that I gave
2 to the Court, this is irrelevant to the issue that we are
3 here for today. It is far beyond what we are talking
4 about. This is talking about time sheets in the Court of
5 Appeals. This is not what we are here for. That is on
6 the first page. And the second page it has editorial
7 comments. The third page is the same. And, don't know if
8 counsel is going to represent that she prepared this or
9 Mr. Megna prepared this. But we need to find that out.
10 But again, this goes to something that is not relevant to
11 what we are talking about today. What happened in the
12 Court of Appeals, except for the fact that the Court of
13 Appeals dismissed the appeal because it was untimely,
14 didn't rule on it, didn't agree with Mr. Megna that he won
15 the case. And didn't deal with the Rule 11 sanctions that
16 this is not appropriate.

17 **THE COURT:** All right. Let me ask. Counsel,
18 what is the origin of that document?

19 **MS. ZMROCZEK:** Your Honor, that is something that I
20 put together with my client. He read to me the time line
21 to help me grasp when things happened, what things
22 happened. So, I can redact the commentary, I guess, as
23 they call it. But he keeps, argues that one has nothing
24 to do with the other. But, the only Affidavit before the
25 court for damages Your Honor, involves his time sheet.

1 His time sheet reflects communications with persons whom
2 he has already admitted have nothing to do with this case.
3 The only question is why are there communications between
4 him or amongst him and lawyers that have nothing to do
5 with this case. I think that is the main issue.

6 **THE COURT:** I understand you point. But, again to
7 make sure I understand, so that we know from which that
8 document derives, are you telling me that it was jointly
9 yours and Mr. Megna's work product that is objected to by?

10 **MS. ZMROCZEK:** Yes, Your Honor.

11 **THE COURT:** All right. Then what we will do is, I
12 am going to overrule the objection, and I am going to
13 permit it in. We are also going to mark it. But we are
14 going to mark it as a Court's Exhibit, in case there is
15 some dispute that specifically arises so we can segregate
16 that document.

17 That is Court's Exhibit 1. Again, just for purposes
18 of removing it from the voluminous papers, and memoranda,
19 and documents that we have, because it is objected to.

20 **MS. BALLARD:** Your Honor, can we receive a copy of
21 this, since it is being made a Court's Exhibit?

22 **THE COURT:** Certainly, you may, and I will let you
23 be given that by counsel.

24 **MS. ZMROCZEK:** We have an unhighlighted copy, and
25 maybe that would make it less objectionable.

1 **MS. BALLARD:** I would prefer the unlighted version
2 to be submitted.

3 **THE COURT:** Let's mark that as Court's Exhibit 1,
4 please.

5 **WHEREUPON, COURT'S EXHIBIT**
6 **NUMBER 1 WAS MARKED FOR THE**
7 **RECORD.**

8 **THE COURT:** All right. Then ladies and gentlemen,
9 there being no further arguments, the Court is simply not
10 in a position to rule on this today, with the magnitude of
11 the memoranda as well as some just handed up. It is more
12 than I am able to absorb and rule upon with any degree of
13 certainty at this moment. Thus, we are going to take this
14 under advisement, and we will do one of two things at a
15 later time. Either convene a telephone conference on the
16 record in the event there are followup questions, or issue
17 a ruling or letter that would indicate what ruling is, and
18 asked for an order to be prepared by the prevailing side.

19 So, now before we close the record, is there anything
20 further from today's petitioners?

21 **MR. TRUSLOW:** Again, just for housekeeping, Your
22 Honor, what we have, and is a part of the record is ---
23 just so I can be clear on this, is that we have our motion
24 and memorandum, and that is March 9. We have the synopsis
25 or the documents that we submitted to Your Honor, and

1 filed in the Richland County Courthouse the exhibits that
2 we referred to. We have the Affidavits of Ms. Ballard in
3 the Darlington case and the Richland County case. My
4 Affidavit, the Affidavit of my legal assistant. The
5 Affidavit of Ms. Lee, I think I said the Affidavit of my
6 client Ms. Lee. And, the exhibits --- well, there hasn't
7 been a question about if they have been timely submitted,
8 so I think that is not worth talking about. Then I have a
9 memorandum that is here that quite frankly we were handed
10 today, so I haven't had a chance to see it, and can't
11 totally comment. But I don't think it is going to be
12 objectionable. I don't think it is relevant, but I don't
13 think there are any objections. But you can see that it
14 appears to be a hundred, two hundred pages, and I haven't
15 had a chance to look at it. So, I would like to observe
16 the opportunity to object if necessary.

17 Other than that, I think that is the entire record.
18 And again, I don't think I am going to object.

19 **THE COURT:** All right. That is Court's Exhibit 1,
20 which has been marked over objection today.

21 **MR. TRUSLOW:** Yes, sir.

22 **THE COURT:** Would be part of what you have. All
23 right. Very good. Now anything further now from the
24 respondents?

25 **MS. ZMROCZEK:** - Yes, Your Honor, he was referring to

1 the memo that he presented. I did not receive a copy of
2 that.

3 **THE COURT:** All right. We will let counsel, Mr.
4 Truslow, I will let you give that to counsel.

5 **MR. TRUSLOW:** Your Honor, she had not made an
6 appearance. I have delivered it, and it is voluminous,
7 delivered it to Mr. Megna and Mr. Matthews. They can
8 confirm that they got it at their office. It was hand
9 delivered, and it was hand delivered in an appropriate
10 time. And, I don't know what she is referring to. If she
11 never saw my memorandum, I don't know how she could have
12 ever responded. He can confirm that he has got it.

13 **THE COURT:** Did you get a copy from your client?

14 **MS. ZMROCZEK:** I will verify that.

15 **THE COURT:** So noted. Then ladies and gentlemen,
16 with that we will close this record for today. Thank you
17 for your attendance. And the Court will be back in touch
18 at a future time. This meeting is adjourned.

19 (WHEREUPON, this hearing was concluded at
20 4:48 p.m. on Tuesday, May 15, 2012.)

21 **-- END OF TRANSCRIPT --**

CERTIFICATE OF REPORTER

53

I, the undersigned Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the above captioned case, relative to appeal, in the Court of common pleas for Darlington County and Richland County South Carolina on the 15th day of May 2012.

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

May 19, 2012

Pamela Ozment-Cartee
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
PEE DEE HEALTH CARE, P.A.	)	August 21, 2012
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
THE ESTATE OF HUGH S. THOMPSON,	)	2010-CP-16-00332
	)	
DEFENDANT.	)	
	)	
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JAMES A. ANASTI,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	2007-CP-40-0576
	)	
LANCE WILSON, WILLIS GOODWIN,	)	
GINA L. ANASTI LEE, AND	)	
RICHLAND COUNTY CLERK OF COURT	)	
	)	
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Pamela Ozment-Cartee
Circuit Court Reporter

APPEARANCES

C. Camden Lewis, Esquire
James M. Griffin, Esquire
Aimee J. Zmroczek, Esquire
Attorneys on behalf of Mr. Megna

Desa Ballard, Esquire

Douglas N. Truslow, Esquire
Attorney for James A. Anasti v Lance Wilson et al

Telephone Conference

Page 03

Certificate of Reporter

Page 26

1 (Whereupon, this hearing began at 10:00 a.m.
2 on August 21, 2012.)

3 **THE COURT:** First of all, Desa, thank you for
4 setting up this telephone call. I will tell you that Pamela
5 Cartee, my court reporter is with us, so if you would kindly
6 give us your name before you speak, so that our record will
7 always be clear as to who said what.

8 Also with me is Jamie Scruggs, who is my present law
9 clerk, just began work this week, who is listening to and
10 monitoring this conversation.

11 I thought that we would begin this if I may, by me
12 proposing if such is appropriate what may be a global
13 settlement of all of this, or at least opening this matter
14 to see whether such might be possible, just to try to
15 resolve it all. Because, as I have looked through the
16 history of this it just seems to be an ever ascending
17 complication of matters, and various courts at various
18 levels of that court that may have no end. So, I wonder
19 would there be an objection from anyone if we began this
20 conference again by allowing me just to ramble on for three
21 or four minutes, with a few thoughts and proposals, and then
22 we would take it from there? Is there an objection to that
23 from anybody?

24 **MR. TRUSLOW:** No, sir.

25 **MS. BALLARD:** Judge, no objection at all. I think

1 that is an excellent idea.

2 **THE COURT:** And let me ask, Mr. Lewis, I have not
3 seen in the clerk's office, or have you formally appeared,
4 or will you be formally appearing in these cases?

5 **MR. LEWIS:** We are appearing for Tony Megna, Ben
6 Matthews, Magna and Matthews, for purposes of the contempt
7 and the --

8 **THE COURT:** All right. Then with that understanding
9 then, we are all together as we should be. Let me just make
10 a few observations if I may.

11 **MS. BALLARD:** Your Honor, this is Desa, could I ask
12 one question before you begin?

13 **THE COURT:** Yes, please.

14 **MS. BALLARD:** Is Aimee still representing Mr. Megna?

15 **MS. ZMROCZEK:** Yes, with Jim and Cam, yes.

16 **THE COURT:** And it appears if I understood Mr. Lewis
17 correctly, his role is somewhat limited in that it applies
18 only to what was termed the criminal contempt sanction as
19 well as the fees sanctions. Am I right, Mr. Lewis; that you
20 have a limited engagement as to those issues only?

21 **MR. LEWIS:** Right now, that is correct, Your Honor.
22 That is what we are here for.

23 **THE COURT:** Okay. All right. And Ms. Ballard, is
24 that clear for your understanding?

25 **MS. BALLARD:** It is. Thank you, Your Honor.

1 **THE COURT:** All right, very good. First of all, I
2 have received the two orders which have been forwarded to me
3 by Mr. Truslow and Ms. Ballard. I have reviewed those. I
4 have not finalized them. They are what I would call roughly
5 what I would order. I would make a few changes as to some
6 of the specific findings, and perhaps maybe tone them down
7 just a little bit, which really doesn't alter the ultimate
8 findings and substance of them. But just might say it a
9 slightly different way in some instances.

10 But before I issue those orders, I wonder if we might
11 be able to reach a global settlement that would encompass
12 all facets of this gordian knot in which we find ourselves,
13 which includes the sanction issued, which includes the
14 existence and the positions in the two pending cases. One
15 of which is in Richland and one in Darlington, as well as
16 whether or not there is some bankruptcy proceeding that
17 remains extant, which I am not certain, as well as the
18 appellate positions of these cases as well as to the extent
19 that we can at least control or mitigate where we find
20 ourselves with ODC. So, this is what I would propose.

21 Is that -- and again, before I begin this say, that I
22 don't demand this. I don't insist upon it. I simply put
23 this out there as a starting point to see if there may be a
24 resolution. It is a little bit like, I tell the folks when
25 we start a Post- Conviction Relief hearing. We are all

1 here. The parties are in place. We are ready to go. But,
2 if we can resolve this, if you want to waive our PCR Claim,
3 or however we wish to term it in that circumstance, well,
4 you know, let's go ahead and do that now before we get any
5 further into this. But, if this isn't possible, I don't
6 hold this against any party, and certainly I don't think the
7 other parties would hold it against one another either. I
8 just hope that we may be able to.

9 If Mr. Megna would be willing to pay the two attorney
10 fees within thirty days, which I felt was a valid finding of
11 the fees, although I recognize that they are substantial,
12 because it is \$31,547.00 plus \$295.00 cost to Mr. Truslow,
13 and \$17,388.75 to Ms. Ballard. And also dismiss the
14 appeals which are pending in these underlying cases, which I
15 have reviewed these and frankly I am not an appellate judge,
16 but I don't believe there is much merit to these appeals.
17 As well as, it appears to me that the grievances that were
18 filed were --- and this is not a finding really within
19 necessity for me to make in my order, but the grievances
20 appeared to be related to these matters, and also appeared
21 to have little merit to them, that the author of them would
22 withdraw the grievances, and I don't mind contacting Lee
23 Coggiola's Office myself to say by letter so we would all be
24 able to see what I did say, which would simply be as part of
25 a global settlement, these matters are abandoned or

1 withdrawn.

2 Then, I would be willing to not issue these orders
3 which are before me. I would issue a Form 4, which would
4 simply say that the matters have completely resolved. I
5 would reissue my letter of findings which went to the two
6 lawyers asking for orders to be prepared, and at the end add
7 a paragraph that would still require Mr. Megna to self-
8 report, because I believe after a review of what I found
9 here is a reportable, which would be not appropriate for me
10 not to report. And thus, I would though add a paragraph
11 saying that the matters before me have resolved, but require
12 Mr. Megna to report. And then issue a Form 4 in the two
13 civil cases which is one in Richland and one in Darlington
14 which would basically end the matter without the issuance of
15 a formal order, and dismiss the cases.

16 Now, as part of that, I would not sanction Mr. Megna
17 and require him to go to jail. A point about that, and this
18 may be a distinction without a difference, I did not find
19 Mr. Megna to be in criminal contempt. I imposed a Rule 11
20 sanction, which is an unusual one, but nevertheless based on
21 the wording of the Rule, I believe is authorized.

22 I didn't find contempt, because I knew that that would
23 be a reportable for which Mr. Megna would add to his woo's.
24 Now, Mr. Megna may say to that well that is a silly
25 distinction without a difference I have ever heard. You are

1 putting me in jail, what possible difference could it make
2 as to whether you find contempt or find Rule 11. And after
3 looking closely at that issue, I concede to Mr. Lewis's
4 point really before he even makes it, which is that the
5 notices were sent out on this order which included an email
6 from me, or from my office, and then a separate specific
7 actual notice from Mr. Truslow. Did not say to Mr. Megna
8 that he was in danger of losing his liberty. And for that
9 reason I believe that due process would require that if we
10 do not --- are not able to resolve this case totally, then
11 what I would do is go ahead and issue the sanction orders
12 for the attorney's fees, reopen the hearing and just go
13 ahead and call it what it is, a criminal contempt
14 proceeding. Give Mr. Megna adequate notice and an
15 opportunity to be heard. I would not demand that Ms.
16 Ballard and Mr. Truslow, who has had enough of this I feel
17 sure, to require them to participate. I would not. I would
18 leave that up to them. And then we would have a proceeding
19 in contempt. Of course, the one month sentence that I have
20 already handed down would be receded in my original letter,
21 so we are back to square one. It could be zero, it could be
22 six months. So, you know, it would open it back up. So,
23 that is how I see after rambling on here where we find
24 ourselves. Either a global settlement or proceed in that
25 fashion.

1 Now the last thing I would say is, before you all
2 respond to this, you may among your various teams just want
3 to hang up and talk to yourselves, among yourselves before
4 we all talk together again. And if that is your preference,
5 I don't mind rescheduling this conference. If you want to
6 go into specific discussions now, I am more than happy to do
7 that. Will be glad to hear from anyone who wishes to speak.

8 **MS. BALLARD:** This is Desa, Your Honor. If we do
9 end the conference call now, could we reconvene it later
10 today?

11 **THE COURT:** That would be fine. I am actually in
12 the office today. Today would be a good day, because
13 starting tomorrow I will be in the conference in Columbia.
14 So, that would be fine.

15 **MS. BALLARD:** Is there anyone who is unable to
16 reconvene later today by phone?

17 **MR. LEWIS:** Well, we have a bunch of experts in
18 town, but I can tell you right now that I would be inclined
19 to do just what the judge asked. That would be my
20 explanation. And, of course, I have to have my client's
21 permission. But, I will hit him over the head and beat him
22 up.

23 **MS. ZMROCZEK:** Yeah, I agree with you.

24 **THE COURT:** And, may I say, and thank you Mr. Lewis
25 for that, it doesn't offend me. I realize there is a --- I

1 don't want to call it personal animosity, because that would
2 not be appropriate. But everyone has become professional
3 distinctly at odds here, as this case has evolved. And I am
4 not trying to short sell whether I believe Mr. Megna did
5 badly wrong, or hard sell it by sanctioning him to the jail.
6 I am just simply trying to, without speaking to the merits
7 of anything, just reach a conclusion to end this ever
8 tightening knot.

9 **MR. LEWIS:** I think that is a great idea, and I am
10 going to work very hard to do it.

11 **MS. ZMROCZEK:** Yeah, I agree.

12 **MS. BALLARD:** Well, Your Honor, again this is Desa.
13 I certainly am not opposed to the proposal that you have
14 suggested. As I said in my email, Mr. Truslow, were not
15 parties to your sua sponte order regarding Mr. Megna. Our
16 address was the request for attorney fees. So, I think your
17 proposal satisfies the request that Mr. Truslow and I had
18 made. And in fact separates out your sua sponte ruling as
19 they should have been separated out. And we tried to with
20 proposed orders.

21 So, I guess Cam, this may be a first, but I agree with
22 you too. This is my first agree with Cam Lewis which I am
23 going to put it on the calendar.

24 **THE COURT:** Well, we have it on the record. May I
25 suggest a time then that we reconvene?

1 **MS. BALLARD:** Yes, sir. Whatever time is convenient
2 for you, I am fine. Can when are your experts?

3 **MR. LEWIS:** They are here today and tomorrow, but
4 Jim and I, maybe one of us break away, and all it is, is
5 just an up or down.

6 **MR. GRIFFIN:** Just one small twist Judge. You
7 mentioned the author of the grievances. I am not sure that
8 Mr. Megna is the author of all the grievances.

9 **THE COURT:** Well, I understand that. The comment
10 was --- our court reporter could not hear that. I believe
11 that was Mr. Truslow said that Mr. Megna was not the author
12 of the grievances.

13 **MR. TRUSLOW:** This is Doug Truslow. I have been
14 pretty quiet. I think that was Mr. Griffin.

15 **THE COURT:** Mr. Griffin, excuse me. I didn't hear
16 that. Mr. Griffin said that Mr. Megna is not the author of
17 the grievances. I am aware of that. But I do believe that
18 it was someone associated with Mr. Megna. I did not make
19 that finding specifically, because I didn't really want to
20 get in to what was really a ODC matter, but it appeared to
21 be a targeted grievance that arose from a professional
22 difference over which I believe Mr. Megna has some control.
23 And I realize that I cannot --- it should not be set up in
24 any way that we control what OCD does. But, I do believe
25 that it would be appropriate that the author of that

1 grievance, if they are tied to Mr. Megna, would realize that
2 there is some benefit to just stopping this, and I would
3 send a message to the ODC advising that this matter is, in
4 the Court's opinion, something that just got out of hand,
5 and has been handled now at the circuit level, and I would
6 strongly suggest that any grievances that are pending,
7 except the one that Mr. Megna is going to self-report,
8 anything prior to that just be done and over with. And if
9 ODC thinks this is a resolution of Mr. Megna's situation as
10 well, I have no qualms with that. That is their decision.

11 **MR. GRIFFIN:** And, Judge we agree wholeheartedly.
12 The only reason I raise that is that I don't know that we
13 can get all the players together by five this afternoon. I
14 am going to try. That is my only concern about scheduling a
15 call this afternoon is that we touch all of the people that
16 we need to.

17 **THE COURT:** Well, I can set it at perhaps at ten
18 o'clock tomorrow morning, if you need more time in order to
19 do that. I think that is an important -- again although we
20 cannot control it, I think in my mind that is an important
21 part of the resolution.

22 **MR. GRIFFIN:** And we can set it for later today.
23 That is the only caveat that we may not be able to get in
24 touch with other people.

25 **THE COURT:** Well, why don't we perhaps set it for

1 later today, and see if we have an agreement in principle,
2 which would then allow some time to contact the others, and
3 perhaps we could communicate by email which would prevent us
4 from having everyone carve out their schedule at the same
5 time.

6 **MS. BALLARD:** Your Honor, this is Desa again. I can
7 add some facts that I think will simplify at least to the
8 grievances that were filed against me. Mr. Martin Matthews
9 filed two grievances against me, and they have been
10 dismissed. But the grievances were against a whole lot of
11 people, and I don't know the status of those.

12 **THE COURT:** All right. And, again, we normally
13 would not know the status of yours, except for the fact that
14 you have divulged it. And I say that again to say this is
15 something that we cannot control. But, I do believe that we
16 can all agree that we would approach ODC with the same
17 position, which is simply that this is a matter that is
18 resolved. The desire to pursue a grievance is withdrawn.
19 We have resolved it on the civil side, and we all move
20 forward.

21 **MS. BALLARD:** I have no objection to that part of it
22 either, Your Honor. I just wanted to point out that as far
23 as I was concerned, the grievances against me is dismissed,
24 and I don't know the status of the others.

25 **THE COURT:** Very good.

1 **MR. LEWIS:** What time do you want us to call back,
2 Your Honor?

3 **THE COURT:** How about four o'clock is fine with me.
4 I just choose that randomly. I don't insist upon it. Is
5 there a better time that suits more folks?

6 **MS. BALLARD:** That is fine with me.

7 **MR. LEWIS:** That is fine with me. One of us will be
8 on here, and we will have the information. And we will have
9 a big yes.

10 **MS. ZMROCZEK:** I have another meeting at that time,
11 and I am going to try to break free. But I will speak with
12 --- if I can't be present.

13 **THE COURT:** All right. Thank you, everyone then.

14 **MR. TRUSLOW:** Excuse me, Judge. This is Doug
15 Truslow.

16 **THE COURT:** Yes, sir.

17 **MR. TRUSLOW:** I've been quiet up until this point,
18 but I have one bit of housekeeping. With Mr. Griffin and
19 Mr. Lewis involved, who is the order supposed to be served
20 on? Is it on Ms. Zmroczek, or is it on Mr. Lewis, or Mr.
21 Griffin, or do we have to locate Mr. Megna?

22 **MS. ZMROCZEK:** You can just serve the attorneys,
23 that will be fine.

24 **MS. BALLARD:** By regular mail, U.S. Mail?

25 **MR. LEWIS:** Just any way you want to, just serve us.

1 **MS. BALLARD:** Thank you for that judge. That was
2 unclear when we drafted our order.

3 **THE COURT:** All right. Then ladies and gentlemen,
4 it appears that we have reached a consensus, and we will
5 dial in this number we have all dialed into again at four
6 o'clock. And I look forward to talking with you at that
7 time.

8 **MR. LEWIS:** Thank you, Your Honor.

9 **MS. BALLARD:** Thank you, Your Honor.

10 **THE COURT:** Thank you. Good bye.

11 (Whereupon, this portion of the telephone
12 conference was completed at 10:21 a.m. on August 21, 2012.)

(Whereupon, this telephone conference reconvened at 4:02 p.m. on August 21, 2012.)

THE COURT: All right. Let's go ahead and assume that Amy is not going to join us.

MS. BALLARD: That's fine.

THE COURT: And Jim --

MS. BALLARD: Did we get a court reporter this afternoon, Your Honor?

THE COURT: Yes, we do.

MS. BALLARD: Okay.

THE COURT: Pamela Cartee is with us as well as my law clerk Jamie Scruggs is with us. And, Mr. Griffin, may we assume then that you speak for Mr. Megna, and represent all counsel for him for purposes of this conversation?

MR. GRIFFIN: Yes, I do.

THE COURT: All right, very good. And, then ladies and gentlemen, I will just leave it. The last time I spoke. This time I will leave it to you all to tell us what resolution or what responses you have to our earlier conference this morning.

MR. GRIFFIN: Judge, this is Jim Griffin, I guess I should go first on behalf of Mr. Megna. We spoke with him about the proposal the Court outlined, and he is following our advice and agrees to accept it. So, we are in agreement with the proposal. We would --- There may be some details

1 that needs to be hashed out with regard to the Thompson
2 case. Mr. Truslow does make a good point that counsel for
3 the estate is not involved. So, we are not sure --- we
4 would want some mutual release there as well as all of these
5 other issues.

6 **MS. BALLARD:** This is Desa, Your Honor. Was your
7 intention when you were talking about the Form 4 orders, to
8 be addressing the conclusion of the overall cases, or just
9 these pending motions?

10 **THE COURT:** No, just these pending motions. And I
11 may have misstated it. If it was within the authority of
12 the circuit court, which it is not in Thompson, because
13 Thompson is up on appeal --

14 **MS. BALLARD:** -- Correct -

15 **THE COURT:** -- it is my understanding though that
16 the appeal would be withdrawn. Now, what happened in
17 Thompson was I granted Summary Judgment in favor of the
18 defendants and thus, if that would be affirmed, then the
19 case would be over. And if Mr. Megna withdrew his appeal
20 then the case would be over. But, my intention was simply
21 to do a Form 4 as to the Motions that were in front of me.

22 Now, I don't know what the status of the Anasti Case,
23 it may be over with as well. I sense that it is except for
24 certain appeals, and thus, it may be the same result if
25 those appeals are withdrawn.

1 **MR. TRUSLOW:** Judge, this is Doug Truslow. The
2 Anasti case still has some matters that are pending, and one
3 of them that is not before you, but we are having this
4 discussion for potential for resolution is there is a
5 pending Rule 11 Sanctions Hearing against Mr. Megna in
6 Richland County that we consider to be far more egregious,
7 if I can use that word, than the matter that was before you.
8 And, for us to have a global settlement, we are going to
9 have to hear from counsel who is representing Mr. Megna in
10 that case, and try to resolve it.

11 We think that if we try to settle the case piecemeal,
12 that it creates more problems and more mischief than a
13 global settlement. And we want to be --

14 **MS. BALLARD:** -- Amy, is that you?

15 **MR. LEWIS:** No, this is Cam.

16 **MS. BALLARD:** Oh, hi Cam.

17 **THE COURT:** All right, Mr. Lewis. Thank you for
18 joining us. Mr. Griffin is present, and we were just
19 listening to Doug Truslow who was talking about the other
20 outstanding issues in the Anasti Case. And, go ahead, Mr.
21 Truslow.

22 **MR. TRUSLOW:** My client's goal and mine would be to
23 conclude the matter involving Mr. Megna and his law firm and
24 Mr. Matthews in its entirety. And we think it creates more
25 mischief to try to settle the case on a piecemeal basis than

1 to conclude the matter in its entirety. We are substituting
2 one set of problems for another. So, if there is going to
3 be a resolution, we would like to have the matter resolved,
4 and not do it in a --- on a partial basis.

5 **MS. BALLARD:** What would that involve, Doug?

6 **MR. TRUSLOW:** Well, there is the pending --

7 **MS. ZMROCZEK:** Hey, sorry. This is Aimee.

8 **MR. TRUSLOW:** I was speaking. This is Doug Truslow.

9 **THE COURT:** Welcome. We were just listening. This
10 is Mike Baxley speaking. We were just speaking to Mr.
11 Truslow telling us about issues that are still extant in the
12 Anasti case, and Ms. Ballard just asked what specifically
13 are those issues. Mr. Truslow was just answering when you
14 came in, so go ahead, Mr. Truslow.

15 **MR. TRUSLOW:** Pending a Rule 11 Sanction Motion that
16 has been pending since November 7, 2007, we filed that
17 immediately after my client received Summary Judgment. We
18 contended that there was a frivolous defense that was
19 interposed, and it kept my client from selling the property.
20 Of course, selling it and any money that would be entitled
21 to it. Since that time the property sold when the economy
22 is in a drastic traumatic change. Citi Quick Financing the
23 improvement of that area. The property is not --- these
24 issues have been going on, the property has --- nobody has
25 had any incentive or the tenant didn't have any incentive to

1 clean it up, fix it up, and it has gone way downhill. And
2 without going into any more detail that is the essence of
3 it. So, that is something that we think is much more
4 egregious than what we have had before you, Judge Baxley.

5 **THE COURT:** Well, Mr. Truslow, to respond to you
6 there, I saw an email that was passed between the parties
7 where Ms. Ballard asked about my use of the word global.
8 And when I use the term global, what I meant was, a
9 resolution of all the issues before me. If the parties can
10 resolve all the total issues that are even not before me
11 that is fine, but that is not something that is really
12 before me. I would not stand in the way of it, but I would
13 not feel it to be necessary to a resolution of those issues
14 before me. But, I also appreciate the fact that the parties
15 are going to have to make a decision as to what is best for
16 them. But, am I hearing you say that if --- that you do not
17 wish to settle just this piece of Anasti, if it leaves
18 outstanding the other sanction issues you have from 2007?

19 **MR. TRUSLOW:** That is essentially correct. I
20 believe that it makes things much more complex, and much
21 more contentious if we leave part of it outstanding.

22 **MS. ZMROCZEK:** I agree. This is Aimee. I believe
23 it is probably best to get it all settled.

24 **THE COURT:** And just a moment. That did not come
25 across to our court reporter, but would you say that again

1 please, ma'am?

2 MS. ZMROCZEK: I was saying I believe it would be
3 best if we could get it all settled.

4 THE COURT: Anyone else want to weigh in on that?

5 MS. BALLARD: I don't believe I have a dog in that
6 fight. This is Desa.

7 MR. LEWIS: This is Cam, Your Honor. I don't know
8 enough about what Mr. Truslow is saying, but he --- it seems
9 to me that it is another court, another judge, and another
10 filing in some other jurisdiction.

11 We were interested in you, and what you said today.
12 And we say yes to it.

13 THE COURT: Mr. Truslow, in response to that too, I
14 would have to say the same thing that again, I don't stand
15 in the way of a complete and total settlement. But I don't
16 have the authority over that. I wasn't assigned that by
17 Court Administration or by Judge Barber. I could probably
18 get that assignment, but I don't see it. And would hope
19 that that matter remaining out would not prevent us from
20 resolving this.

21 But if you believe there is some utility to standing
22 this conversation down again so that all parties, except for
23 Ms. Ballard, who actually says is not involved in that can
24 talk further about a total settlement, I don't mind doing
25 that. I don't have enough information really to speak to it

1 at this juncture.

2 **MR. TRUSLOW:** Judge, again this is Doug Truslow.
3 Without having a resolution, just as Aimee has said, we are
4 facing the same potential for discovery abuses, uncivil
5 attacks, and it goes on and on. And it has the potential to
6 one side or the other and this has no reflection on Mr.
7 Lewis or Mr. Griffin, with whom I have the highest regard,
8 but it has the potential to embowl someone to act or to
9 continue to act in an inappropriate matter, and we just ---
10 we would like to have everything resolved.

11 **MR. GRIFFIN:** We will say that Mr. Megna will not be
12 involved in those or his firm. I can't just --

13 **MR. TRUSLOW:** This is Doug Truslow. By way of
14 history, if you go back you can see that Mr. Griffin and Mr.
15 Harpootlian were not successful going back to 2008 and
16 getting Mr. Megna from acting as he has, and I have the
17 highest regard for Mr. Lewis. But, I am just dubious if we
18 don't resolve the matter, we are creating more problems.

19 **THE COURT:** All right. What about this suggestion.
20 Today is the 21st. We have chambers this week. I am in
21 Georgetown next week. What if we stood this down until we
22 gave maybe ten days for Mr. Truslow to work out with counsel
23 for Mr. Megna a settlement in the other Anasti issue, or
24 just explore that? And if they determine they can't then
25 decide where that leaves us with regard to the proposal that

1 we have talked about this morning. Is a ten day delay
2 satisfactory for everyone?

3 **MR. GRIFFIN:** It is for me, Your Honor. But you
4 have got to have a commitment from Mr. Truslow that he will
5 talk to us, and sit down with us.

6 **MR. TRUSLOW:** Judge, this is Doug Truslow. I have
7 been right here, and nobody has made any suggestion at all
8 for a proposal to resolve anything.

9 **MS. BALLARD:** Ten days will be the thirty-first,
10 Your Honor.

11 **MR. TRUSLOW:** I am glad to give him ten days, and I
12 have a high regard for Mr. Griffin and Mr. Lewis. And I
13 certainly will be accommodating. I am sure they will be
14 accommodating to me.

15 **THE COURT:** Well, let me encourage everyone toward
16 that end.

17 Now, actually when I say ten days, we have Labor Day
18 coming, so this will be the week after Labor Day. I will be
19 in the Lancaster area at CPNJ, so what we will probably do
20 is that Tuesday, Jamie in my office, that is Jamie Capell
21 who is my judicial assistant will contact everyone to see
22 about what time we can set a phone conference. And we will
23 --

24 **MR. TRUSLOW:** That will be great, Your Honor.

25 **THE COURT:** And we will take it from there.

1 **MS. BALLARD:** That will be fine with me, Your Honor.
2 That Tuesday I teach at the law school in the afternoon, but
3 the rest of the week I am pretty much --- I can move things
4 around.

5 **THE COURT:** Anyone else wish to respond?

6 **MS. ZMROCZEK:** As long as I get an email Your Honor,
7 I will accommodate my schedule.

8 **THE COURT:** All right. I feel certain that Jamie
9 Capell will be in touch with each of you by email on that
10 day, probably collectively to see what can be resolved as
11 far as setting a time, and we will take it from there.
12 Okay.

13 Have a good Labor Day, everyone.

14 **MR. TRUSLOW:** I look forward to hearing from Mr.
15 Lewis and Mr. Griffin, and hopefully we can resolve things.

16 **THE COURT:** All right. Good bye.

17 (Whereupon, this hearing was concluded at
18 4:20 p.m. on August 21, 2012.)

19 -- END OF TRANSCRIPT --

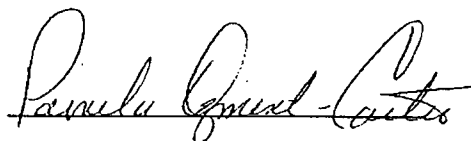
CERTIFICATE OF REPORTER

26

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Circuit Court in Darlington County, South Carolina, on the 21st day of August 2012.

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

October 4, 2012

A handwritten signature in cursive script, reading "Pamela Ozment-Cartee", written over a horizontal line.

Pamela Ozment-Cartee

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
And RICHLAND COUNTY)
CLERK OF COURT,)

Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

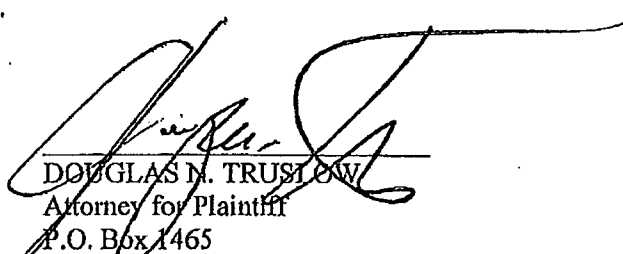
NOTICE OF MOTION
AND MOTION PURSUANT TO
SCRCP 56(G), 30 AND 11

FILED
2007 NOV -7 AM 11:47
BARBARA A. SCOTT
C.C.C. & G.S.

TO: TONY R. MEGNA, ATTORNEY FOR DEFENDANT GINA L. ANASTI LEE.

PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned attorney, on the 10th day after service hereof or at such time and place as the Court may set, will move before the Court for an assessment of fees and costs against Defendant Lee and/or her attorney for the reasons set forth in a Memorandum to be submitted to the Court.

The undersigned counsel for Plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.


DOUGLAS M. TRUSTOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Fax (803) 256-7659

Columbia, South Carolina

Nov 7, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,
WILLIS GOODWIN,
GINA L. ANASTILEE,
And RICHLAND COUNTY
CLERK OF COURT,

Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

CERTIFICATE OF SERVICE

BARBARA A. SCOTT
C.C.C. & G.S.

2007 NOV -7 AM 11:47

FILED

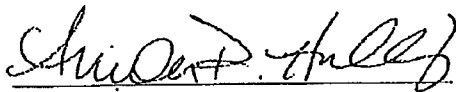
I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail, postage prepaid to the following address:

Tony R. Megna, Esquire
1815 Fulmer Rd.
Blythewood, SC 29016

Thomas G. Earle, Esquire
Seigler Earle and Ellsworth
1735 Saint Julian Place #103
Columbia, SC 29204

DOCUMENT(S):

1. Notice of Motion and Motion



Amanda Douglas Hilley

Columbia, South Carolina

11/7, 2007

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Gina Anasti Lee

CASE NO: 09-02854
CHAPTER: 7

AMENDED NOTICE OF MOTION FOR
RELIEF FROM AUTOMATIC
Debtor(s). STAY (11 U.S.C. § 362)

TO: DEBTOR, TRUSTEE (if applicable), AND THOSE NAMED IN THE ATTACHED MOTION

PLEASE TAKE NOTICE THAT a hearing will be held on the attached motion on:

Date: 9/17/2009
Time: 9:30 a.m.
Place: 1100 Laurel Street, Columbia, SC 29201

Within fourteen (14) days after service of the attached motion, the notice of motion, the movant's certification of facts, (and a blank certification of facts form (applicable to service on *pro se* parties only)), any party objecting to the relief sought shall:

- (1) File with the Court a written objection to the 11 U.S.C. § 362 Motion;
- (2) File with the Court a certification of facts;
- (3) Serve on the movant items 1 and 2 above at the address shown below; and
- (4) File a certificate of such service with the Court.

If you fail to comply with this procedure, you may be denied the opportunity to appear and be heard on this proceeding before the Court.

DATE OF SERVICE: August 19, 2009

MOVANT: James Anasti

ATTORNEY: Steven B. Licata

ATTORNEY'S ADDRESS: P.O. Box 23407
Columbia, S.C. 29224

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Gina Anasti Lee

Debtor(s).

CASE NO: 09-02854

CHAPTER: 7

AMENDED MOTION SEEKING
11 U.S.C. §362(d) RELIEF

James Anasti ("Movant") moves the Court pursuant to 11 U.S.C. § 362(d)(1) and 362(d)(2); for modification of the automatic stay issued in this case and/or for a determination that the stay is no longer applicable and represents as follows:

1. The above-referenced Debtor filed a petition for relief under Chapter 7 of the U. S. Bankruptcy Code on April 16, 2009.
2. The Chapter 7 case was converted to a case under Chapter 13 of the U.S. Bankruptcy Code on August 17, 2009.
3. William K. Stephenson is the Trustee of the Debtor's estate and may claim an interest in the property which is the subject of this action.
4. By virtue of an Order Granting Partial Summary Judgment entered on October 26, 2007 in case No. 2007-CP-40-0576 in the Court of Common Pleas of Richland County (the "State Court Order"), the Movant was determined to have title to that certain real property located in Richland County, South Carolina and designated as 2325 Two Notch Road, Columbia, S.C. (the "Property"). A copy of the State Court Order is attached hereto as Exhibit A and incorporated herein by reference.

5. The Order was appealed to the South Carolina Court of Appeals by the Debtor.
6. Subsequent to the filing of the petition in this action, by Order dated April 22, 2009, a copy of which is attached hereto as Exhibit B, the South Carolina Court of Appeals dismissed the debtor's appeal.
7. Upon being advised by counsel for the Debtor that the petition in this case had been filed, the Court of Appeals withdrew the dismissal and indicated that further proceedings were stayed.
8. Despite the fact that the Debtor is the party pursuing the appeal for the purposes of overturning the State Court Order, the Debtor has asserted the applicability of the automatic stay to the appeal.
9. This Court has previously addressed a Motion to Lift Stay in the context of an appeal of a state court action:

11 U.S.C. § 362(d)(1) provides that the court shall grant relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." The Bankruptcy Code provides no guidance as to what constitutes "cause;" therefore such determination is left to the discretion of the bankruptcy judge. See *Robbins v. Robbins (In re Robbins)*, 964 F.2d 342, 345 (4th Cir. 1992) ("Because the Code provides no definition of what constitutes 'cause,' courts must determine when discretionary relief is appropriate on a case-by-case basis.").

In this case "cause" exists to lift the automatic stay because Johnson's state court appeal is the only method available for judicial review of the Master's order denying Johnson's motion pursuant to *S.C. Code Ann. § 12-49-60* (1976, as amended) and ordering the payment of surplus funds to the Clerk of the Bankruptcy Court. The *Rooker-Feldman*¹ doctrine precludes review of the Master's order in this Court.

¹ Under the *Rooker-Feldman* doctrine, lower federal courts generally do not have jurisdiction to review state court decisions; rather, jurisdiction to review such decisions lies exclusively with superior state courts and, ultimately, the United States Supreme Court. See *Leonard v. Suthard*, 927 F.2d 168, 169-70 (4th Cir. 1991); *Young v. Murphy*, 90 F.3d 1225, 1230 (7th Cir. 1996).

In *In re Wilson*, 116 F.3d 87 (3rd Cir. 1997), the court of appeals reversed the district court and the bankruptcy court for refusing to lift the stay under similar circumstances. The court held as follows:

As demonstrated, Baldino cannot relitigate the adverse trial court judgment in bankruptcy court. If she is denied relief from the automatic stay, she will have no opportunity to challenge the adverse judgment before the bankruptcy proceedings are complete. If Baldino is not afforded an opportunity to pursue her appeal in state court, she will have no forum to litigate her cause. Accordingly, we believe it is necessary to lift the stay to permit prosecution of her appeal to the state appellate courts.

In re Wilson, 116 F.3d at 90. The House Report on § 362(d)(1) also supports lifting the stay in this case:

The lack of adequate protection of an interest in property of the party requesting relief from the stay is one cause for relief, but it is not the only cause... a desire to permit an action to proceed to completion in another tribunal may provide another cause.

House Report No. 95-595, 95th Cong., 1st Sess. 343-4 (1977).

Other courts have also granted relief from the automatic stay to pursue state court appeals. [*6] See *In re Morris*, 153 B.R. 588 (M.D. Fla. 1993) (bankruptcy judge did not abuse his discretion in allowing state court appeal to proceed and noting party opposing relief had burden of proof since debtor's equity was not an issue); *Grant v. Thurston Group, Inc.*, 186 B.R. 659 (N.D. 111. 1995) (affirming bankruptcy judge's granting relief from stay so creditor could perfect appeal). This Court agrees with the reasoning set forth in these cases and in the legislative history.¹

10. Prior to the conversion of the case to one under Chapter 13, the Chapter 7 Trustee had filed her report abandoning all listed assets. The Property was listed as an asset of the Debtor in her schedules with the comment: "Property the subject of litigation now pending in the SC Court of Appeals. The title was determined adversely to the Debtor in the Lower Court proceedings and the matter is now on appeal."

¹ *In re Schuyler*; Case No 04-15363-B (Order dated December 14, 2005); 2005 Bankr. Lexis 2742.

11. As demonstrated by the Chapter 7 Trustee's abandonment of the Property, there is no equity in the Property to benefit the Debtor's estate (a determination that the Debtor owns no interest in the Property having been entered in the state court in such a manner as it cannot be overturned by this Court) and the property is not necessary for a reorganization (this case being a Chapter 7 liquidation case).

12. Assuming for the sake of argument that the stay continues to apply to the appeal, "cause" exists to lift the stay as the continuation and conclusion of the appellate proceedings are the only mechanism available to create finality as to the title to the Property (whether by the State Court Order being affirmed or through its reversal and further proceedings in the state court).

13. In its Chapter 13 plan, the Debtor apparently seeks to have this Court exercise jurisdiction over the Property by, essentially, overturning the State Court Judgment awarding title to Property to the Movant. The Rooker Feldman doctrine prevents any action by this Court as to the Property which, prior to the filing of this bankruptcy case, had been determined to be the property of the Movant.²

14. The interests of the movant are not being adequately protected as the Movant, with the stay in place continues to have a cloud on his title to the Property and he is not being compensated for the delay caused by the temporary stay of the appellate process resulting from the filing of the petition in this case and the Debtor's assertion of the applicability of the stay.

15. In the alternative, the Movant would show that the Property and the appeal related thereto are no longer subject to the automatic stay (if they ever were) due to the Trustee's

² See, e.g. *In re Robert Frank-Leonard Wilson* 116 F.3d 87 (3rd Cir. 1997) ("The bankruptcy court is also prohibited from reviewing the state court's judgment by the Rooker-Feldman doctrine, which prohibits lower federal courts from sitting as effective courts of appeal for state court judgments.");

abandonment of the Property and the appeal being an appeal by the Debtor seeking to obtain title to the property (through the appellate process). The latter action is an affirmative action by the Debtor; not an action by the Movant which would be subject to the automatic stay.

16. The Movant does not seek authority or permission to pursue any action or liability against the Debtor, personally, beyond a determination of title to the Property in the State Court Proceedings as any such personal liability is stayed and will be enjoined by this Court upon entry of a discharge order.³

17. The Movant agrees to waive any claim that may arise under 11 U.S.C. §503(b) or Section 507(b) as a result of this Order.

18. Movant requests that the stay of Rule 4001(a)(3) not apply to any Order entered in this matter.

WHEREFORE, pursuant to 11 U.S.C. § 362(d)(1) and (2), Movant hereby moves for an Order modifying the automatic stay to permit actions in State Court against the subject property, that the stay of Rule 4001(a)(3) not apply to any Order entered in this matter and/or for the determination that the provisions of 11 U.S.C. 362(a) do not apply to the appellate proceeding initiated by the Debtor and/or for such other and further relief as may be appropriate..

/s/ Steven B. Licata
Steven B. Licata
Law Office of Steven B. Licata, P.C.
P.O. Box 23407
Columbia, S.C. 29224
Phone (803) 699-6550
Facsimile (803) 699-9858
E-Mail: SLicata@sc.rr.com
District Court ID No. 2682

Columbia, South Carolina
August 19, 2009

³ Movant reserves, however, his right to seek an award of sanctions against counsel for the debtor in the state court proceedings if such action is warranted by existing or future facts.

EXHIBIT A

11/1/07

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4000576

James A Anastfi

vs.

Lance Wilson

Plaintiff

Defendant

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: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2007.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2007, and a copy mailed first class this
29th day of October, 2007, to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truslow

ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas George Earle
Tony Ray Megna

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,
WILLIS GOODWIN,
GINA L. ANASTI LEE,
RICHLAND COUNTY
CLEKR OF COURT,

Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

**ORDER GRANTING PARTIAL
SUMMARY JUDGEMENT
IN FAVOR OF PLAINTIFF**

2007 OCT 25 10:10
RICHLAND COUNTY
FILED
CLERK OF COURT

THIS MATTER CAME BEFORE ME on September 19, 2007 pursuant to Plaintiff's Motion for Summary Judgment, as well as two separate Motions to Compel Discovery filed by Plaintiff June 4, 2007 and July 12, 2007.¹ Plaintiff was represented by Douglas N. Truslow; Defendants Wilson and Goodwin were represented by Thomas Earle and Defendant Lee was represented by Tony Megna. The Richland County Clerk of Court is merely a stake holder of funds received from the South Carolina Department of Transportation in a related condemnation action (2000-CP-40-/filed December 16, 2002) and consequently it did not need to appear.

In support of his Motion for Summary Judgment, Plaintiff submitted Affidavits, pleadings, portions of significant depositions and requested that the Court take Judicial Notice of other documents that are of record. Defendants Wilson and Goodwin submitted no Affidavits, pleadings, depositions, or other documents and made no argument in Plaintiff's Motion for Summary Judgment. Defendant Lee submitted an affidavit that was consistent with the format

¹ Plaintiff suggested that his Motions to Compel Discovery should be heard, if necessary, subsequent to the resolution of Summary Judgment in the interests of judicial economy, and hence they were not addressed at this time.



required by SCRCP 56(e)², yet lacked the content necessary to establish specific facts showing that there is a genuine issue for trial.

From a careful review of all the evidence presented, as well as arguments of counsel, it appears that Plaintiff is entitled to partial Summary Judgment as a matter of law in that there is no genuine issue of material fact and that Plaintiff is entitled to judgment as a matter of law.

FACTS

According to the records before the Court, the following are uncontested facts:

- I. The property in question in this lawsuit is commercial property located at 2325 Two Notch Road, Columbia, SC. The property has been used as commercial property since it was built in the 1960's.
- II. On November 17, 1978 Laura Corvi deeded real estate located at 2325 Two Notch Rd. in Richland County, South Carolina (hereinafter the "Two Notch real property") to Albert Anasti and his son James Anasti (Plaintiff herein) as tenants in common with right of survivorship (See Deed Book 482, pages 756 and 757)
- III. On October 24, 1995 Albert Anasti died leaving as survivors his son, Plaintiff James Anasti and Defendant Gina Anasti Lee.
- IV. On November 7, 1996 Defendant Lee filed and recorded a deed of distribution purportedly giving herself individually the entire Two Notch real property (see Deed Book 1347, page 0991).

² Plaintiff has objected that the affidavit submitted by Defendant Lee was in a format inconsistent with SCRCP 56(e). This objection has no merit. Under Rule 56(e) the affiant must be competent to testify to the matters contained in the affidavit and the court may at its discretion allow affidavits submitted with a Motion for Summary Judgment "to be opposed by... further affidavits." SCRCP 56(e). In this instance Defendant Lee submitted an affidavit at the request of the court in response to Plaintiff Anasti's affidavit in support of his Motion for Summary Judgment. Defendant Lee's affidavit was properly sworn, served to the parties, and it is not disputed that defendant Lee was competent to testify. Thus, the objection to the format of Defendant Lee's affidavit is overruled.

- V. On January 6, 2000, Defendant Lee in ostensible reliance on her deed of distribution and will of Albert Anasti purported to sell and deed the Two Notch real property to Plaintiff's Lance Wilson and/or Willis Goodwin by way of "owner financing." That deed is recorded at Deed Book 00373, pages 0223 through 0225.
- VI. On November 12, 2004 Defendant Wilson filed action(s) (04-CP-40-5333/5334) in which she alleged, inter alia, that Defendant Lee did not have sufficient title so as to be able to convey fee simple marketable title of the Two Notch real property to either he or Defendant Goodwin. In turn Defendant Lee filed a Third Party Action on March 25th, 2005 (Cross Claim) alleging that, inter alia, the attorney attending to her Two Notch real property real estate closing with Defendant Wilson and/or Goodwin had deviated from acceptable standards by certifying that she had good marketable fee simple title. Significantly, Plaintiff herein was not made a party to any of those lawsuits, which were dismissed under SCRCP 40(j) and later reinstated (yet to be heard).
- VII. On January 26, 2007 Plaintiff filed within action seeking, inter alia, quieting of title to the within Two Notch real property.
- VIII. In her deposition of June 26, 2007, Defendant Lee swore under oath the following:
- a. She had not been on the premises since the mid 1980's (TR29, L4-13)
 - b. She wanted to be honest and not take something that was not hers (TR 41, L 12-18)
 - c. That Plaintiff now owns one half of the Two Notch real property in dispute herein (TR 68, L 24 and 25),
 - d. Her claim to the Two Notch real property is predicated on Albert Anasti's will (TR 68, L24 and 25)

- e. Her deed of distribution relative to the Two Notch real property was acknowledged by her to be defective (TR 77, L 2-14 and TR 63, L 11-17),
 - f. She relinquished and sold her complete interest e.g. any interest she may have had in the Two Notch real property in 2000 and after that she didn't own it anymore (TR 83, L 16-25),
 - g. She did not own the Two Notch real property for ten years and at most only owned it for four years and a couple of months (TR 84, L 9-14),
 - h. She does not rely on any facts in alleging Laches and does not know what Estoppel means (TR 89, L 2-11),
 - i. Her whole case would be based on the deed of distribution and will of her father (TR 89, L 23-25) (whose interest the Court finds ended at his death),
 - j. Plaintiff was never Ousted from the Two Notch real property (TR 90, L 12-21, TR 91, L 7-9, and TR 92, L 1-7) and Plaintiff and his father Albert Anasti enjoyed a very good relationship until he died (TR 91, L 10-13),
 - k. Defendant Lee does not know of any facts to support her claim of a Presumption of Grant (TR 923, L 14-24),
 - l. Defendant Lee has claimed damages and attempted to foreclose against Defendant Wilson relative to Two Notch real property, to which she apparently now asserts she had no title (and hence could not sell).
- IX. In early January, 2000, the Dallis Law Firm, P.A., a real estate law firm located in Columbia, SC, certified that the Defendant Lee had legal title to the Two Notch Property. The Defendant Lee signed a general warranty deed to the property that was prepared by



the Dallis Law Firm. The Defendant Lee retained a mortgage on the property. (See deposition of Willis Goodwin, page 10, lines 3-8).

- X. On January 28, 2007, the Plaintiff filed the current lawsuit against the Defendant Lee asking this Court to declare him the legal title owner of the Two Notch Property.
- XI. In her supplemental Affidavit, dated October 5, 2007, Defendant Lee has asserted:
- a. Following her father's death on October 24, 1995, Defendant Lee continued to lease the property as commercial property and leased it to the same tenants who had been leasing it while her father was alive. (Paragraph 1 of Defendant Lees supplemental affidavit)
 - b. Defendant Lee is asserting her claim to title to the Two Notch property by adverse possession under Color of Title. The filed Deed of Distribution establishes at the minimum Defendant Lee's intent to assert her claim of adverse possession to the property against the world, including her brother by color of title. In addition, her brother also had constructive notice of her claim to the Two Notch property as a result in his participation in Probate Court proceedings that were initiated immediately following her father's death in 1995. (Paragraph 2 of Defendant Lees affidavit)
 - c. Defendant Lee's brother is barred from recovering any property improperly distributed to her by virtue of S.C. Code Section 62-3-1006 that bars any such claim "at the later of three years after the decedent's death or one year after the time of distribution thereof." (Paragraph 3 of Defendant Lees affidavit)
 - d. Defendant Lee's husband and defendant Lee replaced the roof on the building that is located on the Two Notch property in the early 1990's and made certain that the

- lessees performed other general maintenance on the property. (Paragraph 5d of Defendant Lees affidavit)
- e. Defendant Lee continuously made certain the lessees maintained the property in good repair and collected the rent. (Paragraph 5(k) of Defendant Lees supplemental affidavit)
- f. Defendant Lee maintained insurance on the property. (Paragraph 5(l) of Defendant Lees supplemental affidavit)
- g. On January 2, 2000, the Dallis law firm conducted the closing where defendant lee signed a deed to sell the property. (Paragraph 5i).

LAW/ANALYSIS

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. In determining whether any triable issues of fact exists for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Fleming v. Rose, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002); Conner v. City of Forest Acres, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002).

Defendant Lee claims superior title by means of adverse possession under color of title. In order to assert a claim of adverse possession, the party must hold the premises adversely to the legal title for ten years before the commencement of the action. *See* S.C. Code § 15-67-210 (1976); S.C. Code 15-67-220(1976). If the party makes a claim under color of title, the party must also continuously occupy and possess the premises described in the title for ten years. *See*

S.C Code 15-67-220(1976). A party occupies and possesses the property adversely if the party uses the property for the ordinary use for which the land is fitted. *See S.C. Code 15-67-230(3)(1976); Bardin v. Commercial Ins. & Trust Co.* 82 S.C. 358, 64 S.E. 165 (1909) (Under this section [former Code 1962 § 10-2423], possession is adverse and continuous where land, though not cultivated or enclosed, is continuously used for the supply of fuel and timber, the ordinary use for which the land is fitted.); *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61, 65-66 (1961) ("Acts of adverse possession with regard to open, wild, unfenced lands not capable of cultivation, are only required to be exercised in such manner as is consistent with the use to which the lands may be put and the situation of the property admits of without actual residence or occupancy.").

According to the undisputed facts of the case, Defendant Lee claim of title was made November 7, 1996, when she filed and recorded a deed of distribution purportedly giving herself individually the entire Two Notch real property. Defendant Lee leased the property to tenants, who paid her rent. Defendant Lee made sure the tenants maintained the property. On January 2, 2000, the Dallis law firm conducted the closing where Defendant Lee signed a deed to sell the property. In the light most favorable to the non-moving party, Defendant Lee adversely possessed the property from November 7, 1996 to January 2, 2000, a period of four years, one month and 26 days.

Defendant Lee claims that her actions following the January 2nd, 2000 sale of the property are sufficient to establish a claim for adverse possession. I disagree. After January 2nd, 2000 the defendant did not assert ownership of the property; the defendant did not collect rent from the tenants, the defendant did not maintain the property, and the defendant did not claim that she possessed a deed to the property. The defendant maintained owner financing on the



property, essentially a mortgage, and kept insurance on the property. The defendant did not use the property for the ordinary use for which the land is fitted following January 2, 2000. Further the last tax record which specifically mentions the Two Notch Road property is in 2001. See Supplemental Income and Loss Form 2001 attached to Defendant Lee's supplemental affidavit. There is no specific reference to the Two Notch road property in any of the post 2001 tax records. The mere fact that the defendant had a mortgage on the property and kept insurance on the property is insufficient to establish a claim of adverse possession. Therefore, I find that the Defendant did not adversely possess the property for a period of ten years as required by statute.

Since I have decided Defendant Lee did not meet the statutory minimum period required for adverse possession, I do not need to discuss the effect of any notice by Plaintiff Anasti.

It is undisputed that in 1978 Laura Corvi deeded the Two Notch real property to Albert Anasti and his son James Anasti as tenants in common with a right of survivorship. Further, it is undisputed that shortly after October 24, 1995 a South Carolina probate court directed that in accordance with Albert Anasti's will, Defendant Lee inherited the Two Notch Road Property. Future interest created by tenancy in common with right of survivorship vest on the death of the other party. Smith v. Cutler, 366 S.C. 546, 623 S.E.2d 644. Upon the death of Albert Anasti the property passed immediately to his son, Plaintiff Anasti, as tenant in common with right of survivorship. Albert Anasti's act of leaving the property to his daughter did not destroy the tenancy in common with right of survivorship. See Id. ("Future interests created by a tenancy in common with a right of survivorship are indestructible, i.e. not subject to defeat by the unilateral act of one cotenant"). Therefore, I find the Two Notch Road property was not part of the probate estate of Albert Anasti, but property of Plaintiff Anasti, when the probate court made its ruling.



Does the circuit court have jurisdiction to overturn a distribution by the probate court when the probate court lacked subject matter jurisdiction to make the distribution? Defendant Lee claims that Plaintiff Anasti is barred from recovering any property improperly distributed to Defendant Lee by virtue of S.C. Code Section 62-3-1006 that bars any such claim "at the later of three years after the decedent's death or one year after the time of distribution thereof."³ This matter does not come before the court as an appeal from the probate court's decision, so this court is not deciding the case on the basis of its appellate jurisdiction, but rather under its general jurisdiction. The circuit court has the authority under its general jurisdiction to determine the ownership of real property. Therefore, I find the circuit court sitting in equity is within its general subject matter jurisdiction to make a determination about the ownership of the property, if the probate court lacks subject matter jurisdiction to make a distribution of the property.

Did the probate court have subject matter jurisdiction to distribute the Two Notch road property or did the probate court act outside its jurisdiction when it distributed the Two Notch Road Property? According to section 62-1-302, "the probate court has exclusive subject matter jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons." The probate court does not have subject matter jurisdiction to distribute property, which is not part of the estate of the decedent. Therefore, the probate court wrongfully distributed property that did not belong to a decedent, and the probate court's ruling is void for lack of subject matter jurisdiction.

³ Section 62-3-1006. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) if a claim by a creditor of the decedent, at one year after the decedent's death and (ii) any other claimant and any heir or devisee, at the later of three years after the decedent's death or one year after the distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

Now therefore it is Ordered: (a) Plaintiff is granted Summary Judgment as to Defendant Lee's defenses, (b) Plaintiff is granted Summary Judgment as to his claims against Defendants Wilson and Goodwin, (c) Title to the within Two Notch real property is certified and found to be the exclusive real property of Plaintiff and Plaintiff is granted title to the within property located at 2325 Two Notch Road, Columbia, South Carolina and described in Deed Book 782, page 756 is Confirmed and Ordered as belonging solely to the Plaintiff, (d) Plaintiff shall be and is hereby entitled to such sums as are being held by the Richland County Clerk of Court, and (e) the case shall proceed to trial to the issue of damages to be awarded to Plaintiff.

AND IT IS SO ORDERED.


John Ernest Kinard, Jr.
Presiding Judge
Fifth Judicial Circuit
Court of Common Pleas

Columbia, South Carolina

10/26, 2007

EXHIBIT B



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

April 22, 2009

Tony R. Megna, Esq.
Ben Matthews, Esq.
3400 West Avenue
Columbia, SC 29203

Re: Anasti, James v. Wilson, Lance
Case Tracking #: 200877266

Dear Counsel:

Enclosed is a copy of an Order of the Court in regards to the above case.

Please be advised the remittitur will be sent in accordance with the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in dark ink, appearing to read "JF Barber", is written over the typed name.

CLERK

JFB/ec

cc: Douglas N Truslow, Esquire
Thomas G Earle, Esquire
The Honorable Jeanette McBride

The South Carolina Court of Appeals

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina
L. Anasti Lee, Richland County Clerk
of Court,

Defendants,

Of Whom Lance Wilson, Willis
Goodwin and Richland County Clerk of
Court are

Respondents

And Gina L. Anasti Lee is the

Appellant.

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No. 2007-CP-40-00576

ORDER

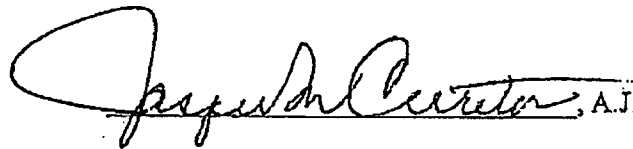
Respondent filed a motion to dismiss the above-captioned appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a Return, claiming his Rule 59(e) motion was timely and accusing Respondent's counsel of filing a frivolous motion and acting inappropriately.

By order dated March 13, 2008, this Court remanded the matter to the circuit court for an evidentiary hearing to determine when Appellant's attorney received the order granting summary judgment. After conducting a hearing, the circuit court found "beyond a doubt" Appellant's attorney, Tony Megna, received written notice of the underlying order "much more than ten days prior to the filing of his Motion for Reconsideration." This Court received the circuit court's

order on April 4, 2008, and Appellant's appeal was dismissed as untimely on April 17, 2008. However, unbeknownst to this Court, the attorney for Appellant filed a Rule 59(e) motion on April 7, 2008, arguing he never received notice of the evidentiary hearing.

Thereafter, Appellant filed a motion for rehearing, requesting this Court reconsider our order dismissing the appeal. We once again remanded the case to the circuit court for a hearing on Appellant's pending Rule 59(e) motion. That hearing has been held, and the circuit court has denied the motion. Accordingly, the above-captioned appeal is dismissed.

AND IT IS SO ORDERED.



Columbia, South Carolina

April 20, 2009

cc: Tony R. Megna, Esq.
Ben Matthews, Esq.
Douglas N Truslow, Esquire
Thomas G Earle, Esquire

FILED
4/22/09

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Gina Anasti Lee

CASE NO: 09-02854

CHAPTER: 7

CERTIFICATION OF FACTS

Debtor(s).

In the above-entitled proceeding, in which relief is sought by James Anasti from the automatic stay provided by 11 U.S.C. § 362, I do hereby certify to the best of my knowledge the following:

(1) Nature of Movant's Interest.

Owner of Property by State Court determination under appeal by the Debtor

(2) Brief Description of Security Agreement, copy attached (if applicable).

The Movant's interest is not a security interest but is, instead a title interest in real property as to which the debtor has asserted an interest and had that asserted interest determined adverse to her in a prior state court proceeding.

(3) Description of Property Encumbered by Stay (include serial number, lot and block number, etc.).

2325 Two Notch Road, Columbia, SC

(4) Basis for Relief (property not necessary for reorganization, debtor has no equity, property not property of estate, etc.) include applicable subsection of 11 U.S.C. § 362).

362(d)(1) Cause – allowing the appeal to proceed is the only available way to obtain a final determination of the parties interest in the Property;

362(d)(2) Lack of equity and the property is not necessary for an effective reorganization.

(5) Prior Adjudication by Other Courts, copy attached (Decree of Foreclosure, Order for Possession, Levy of Execution, etc., if applicable).

Order Granting Partial Summary Judgment entered on October 26, 2007 in case No. 2007-CP-40-0576 in the Court of Common Pleas of Richland County

determining that title to the Property was in the Movant and denying all claim of the Debtor therein

- (6) Valuation of Property, copy of Valuation attached (Appraisal, Blue Book, etc.):

Fair Market Value	\$167,000
Liens (Mortgages)	Movant claims fee simple title to the property.
Equity Before Exemption	0
Debtor's Exemption (-)	0
Net Equity	0

Lienholder	Amount
James A Anasti (Movant claims fee simple title to the property)	167,000
Total Liens	167,000

Source/Basis of Value: Debtors schedules

- (7) Amount of Debtor's Estimated Equity (using figures from paragraph 6, supra).

0

- (8) Month and Year in Which First Direct Post-petition Payment Came Due to Movant (if applicable).

Not Applicable

- (9) (a) For Movant/Lienholder (if applicable): List or attach a list of all post-petition payments received directly from debtor(s), clearly showing date received, amount, and month and year for which each such payment was applied.⁴

Not Applicable

(b) For Objecting Party (if applicable): List or attach a list of all post-petition payments included in the Movant's list from (a) above which objecting party disputes as having been made. Attach written proof of such payment(s) or a statement as to why such proof is not available at the time of filing this objection.

Not Applicable

⁴ This requirement may not be met by the attachment of a payment history generated by the movant. Such attachment may be utilized as a supplement to a complete and detailed response to (9)(a) above, which should be shown on this certification.

• (10) Month and Year for Which Post-petition Account of Debtor(s) is Due as of the Date of this Motion:

Not Applicable

Date: August 19, 2009

/s/ Steven B. Licata
Signature of Attorney
Steven B. Licata
Law Office of Steven B. Licata, P.C.
P.O. Box 23407
Columbia, S.C. 29224
Phone (803) 699-6550
Facsimile (803) 699-9858
E-Mail: SLicata@sc.rr.com
District Court ID No. 2682

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Gina Anasti Lee

Debtor(s).

CASE NO: 09-02854

CHAPTER: 7

CERTIFICATE OF SERVICE

The undersigned certifies that on this 19th day of August, 2009, he served a copy of the Notice of Motion, Motion to Modify Stay, and Certification of Facts on the following by depositing a copy of same in the United States Mail with sufficient first-class postage affixed and addressed as indicated below or by filing through CM/ECF as indicated:

Gina Anasti Lee
P.O. Box 655
Blythewood, SC 29016

William K. Stephenson
Through CM/ECF

Benjamin R. Matthews
Through CM/ECF

/s/ Steven B. Licata
Signature of Attorney
Steven B. Licata
Law Office of Steven B. Licata, P.C.
P.O. Box 23407
Columbia, S.C. 29224
Phone (803) 699-6550
Facsimile (803) 699-9858
E-Mail: Slicata@sc.rr.com
District Court ID No. 2682

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL(S) FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge
L. Casey Manning, Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

RECEIVED
MAY 09 2011
SC Court of Appeals

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti
Lee, Richland County Clerk of Court,

Defendants,

Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court are

Respondents

And Gina Anasti Lee is the

Appellant.

MOTION FOR SANCTIONS

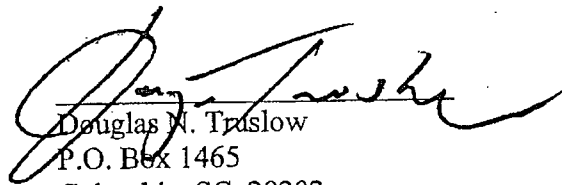
Respondent moves for sanctions against Appellant's counsel pursuant to Rule 269, SCACR.

This motion is made on the grounds that, *inter alia*, Appellant's counsel has wrongfully and frivolously pursued this Appeal and has engaged in inappropriate conduct for wrongful purposes and delay.

In support of this Motion, Respondent would rely on the entire record in this case including but not limited to the Orders of the Lower Court, the Order(s) of the Bankruptcy Court and District Court and such Memorandum(s), Affidavit(s), the Fee Affidavit and Exhibits as may be presented.

RESPECTFULLY SUBMITTED,

(Signature on following page.)



Douglas N. Truflow

P.O. Box 1465

Columbia, SC 29202

(803)256-6276

Attorney for Respondent Anasti

Columbia, South Carolina

May 9, 2011

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge
L. Casey Manning, Circuit Court Judge

RECEIVED

MAY 09 2011

COURT OF APPEALS

CIVIL ACTION NO.: 2007-CP-40-0576

James A.
Anasti, ...Respondent,

v.

Lance Wilson, Willis Goodwin,
Gina Anasti Lee, Richland
County Clerk of Court, ...Defendants,

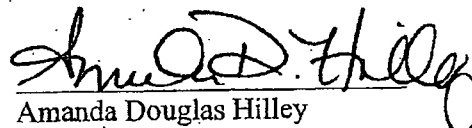
Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court
are Respondents,

And Gina L. Anasti Lee is
the Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Motion for Sanctions, Memorandum in Support of Motion, and Affidavit of Douglas N. Truslow on Appellant Gina Anasti Lee, and Respondents Willis Goodwin and Lance Wilson by depositing a copy of same in the United States Mail, postage prepaid, on May 9, 2011, addressed to their attorneys of record, Tony R. Megna (Certified and regular U.S. Mail), 3400 West Avenue, Columbia, SC 29203 and Thomas G. Earle, 1735 St. Julian Place, Suite 103, Columbia, SC 29204.

May 9, 2011


Amanda Douglas Hilley
Paralegal for Douglas N. Truslow

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL(S) FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge
L. Casey Manning, Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

RECEIVED
MAY 09 2011
SC Court of Appeals

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti
Lee, Richland County Clerk of Court,

Defendants,

Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court are

Respondents

And Gina Anasti Lee is the

Appellant.

MEMORANDUM IN SUPPORT

Respondent Anasti seeks Rule 269, SCACR sanctions, damages, legal fees and costs caused by Appellant's counsel's (Megna's) misconduct and bad faith in this frivolous Appeal.¹

¹ Technically, two Appeals involving the same case were consolidated and have now been dismissed.

HISTORY²

The essence of the underlying case is that it should have been a simple, straightforward, uncontested matter involving the confirmation of title to real estate. There should have been no need for litigation, especially extraordinary contentious litigation spanning many years.³

However, Megna continued, from the inception of the case through dismissal of the Appeal, to advance claims that were proven to be false, disingenuous and unprofessional. Defenses and counterclaims that Megna asserted – that Appellant owned the property in question by way of adverse possession because, he argued, she owned what she had sold because she could not sell what she did not own [sic] (see transcript of the Summary Judgment hearing), were specious, at best.

Subsequent to Summary Judgment being granted on October 26, 2007, a Rule 11, SCRCF sanctions hearing was set for January 8, 2008. Megna admitted just weeks before (December 5, 2007) to having timely received the Summary Judgment Order (see Transcript in the "Companion Case" and Orders dated April 3, 2008 and April 1, 2009), and Megna was beyond any doubt squarely and unequivocally on notice that the Rule 11 hearing had been set for a day-certain. Despite knowing that he was out-of-time, Megna nonetheless filed a Notice of Intent to Appeal on January 4, 2008, claiming for the first time "late receipt" of the Order granting Summary Judgment as an excuse for his facially defective filing.

The net effect of the appeal was to prevent the Rule 11 sanctions hearing from proceeding; a hearing in which sanctions, fees and damages were expected to be levied against

² A more complete procedural and factual history of this Appeal is contained in the Record on Appeal and other documents filed in this case, specifically including Respondent's Motion to Dismiss of January 23, 2008 (with supporting Exhibits); Respondent's Initial Brief dated April 5, 2010; Respondent's Motion to Dismiss dated July 1, 2010, and Respondent's Final Brief dated March 16, 2011.

³ The Appeal alone lasted three and one-half years.

Megna personally.⁴ A Motion to Compel discovery, which would have proven to be extremely problematic for Megna, was also set to be heard in conjunction with the Rule 11 sanctions hearing. It too could not be heard because of Megna's legal maneuvering.

Upon receiving notice that Megna had appealed, albeit untimely, Respondent filed a Motion to Dismiss the Appeal. Thereafter, Megna engaged in more egregious, duplicitous conduct by personally signing and filing Affidavits that were not merely inaccurate, but which were twice found by the Lower Court on remand to constitute "gross misrepresentations".

Upon receiving two separate Orders confirming that he (Megna) had engaged in gross misrepresentations to both the Court of Appeals and the Lower Court, Megna compounded his misconduct by making further, even more bizarre and outrageous claims and engaging in further transgressions. In conjunction, Megna immediately filed for bankruptcy (for Appellant) with the practical effect being that Appellant's own Appeal was mired in a legalistic artifice.

Significantly, and for transparent reasons, Megna opposed Respondent's application for a lifting of the Bankruptcy stay so that Appellant's own Appeal could be concluded. Megna's procedural perversions caused additional and unnecessary delay and expense (to respondent's prejudice), as well as being an undue burden on the Courts.

In ruling against Megna's opposition to a lifting the stay, so that Appellant's Appeal could be resolved, the Bankruptcy Court found:

"It is apparent that one of the primary reasons Debtor filed for bankruptcy relief was to escape the consequence of the state court order and any determination that the order was final due to the untimely appeal filed by Debtor or her counsel.";

⁴ From discovery, it was clear that the frivolous defenses, counterclaims and the Appeal itself were directly attributable to Megna.

And,

"...although Debtor is the party who filed the appeal in state court, when faced with issues of the timeliness of her appeal and possible issues of attorney error, she filed bankruptcy to prohibit a final ruling."

Subsequently, the Bankruptcy Court denied Megna's motion for reconsideration of its Order(s). He then appealed to the Federal District Court and was denied again. He then lost another motion for reconsideration in the District Court, yet he continues to unnecessarily grind the legal wheel in the Fourth Circuit Court of Appeals, while at the same time inaccurately suggesting, if not outright misrepresenting to this Court, that the within Appeal should be stayed by his continued appeals of the separate and distinct Bankruptcy Court Order(s).

The file in the Court of Appeals establishes the extent to which Megna has gone to prevent the matter from being concluded in a timely, just manner. The Appeal has, however, now been dismissed on the grounds initially submitted by Respondent in January, 2008. Thus, in context, the following Courts have ruled against Megna:

- Judge Kinard (twice, in Summary Judgment and on Megna's out of time Rule 59 (e), SCRCF motion),
- Judge Manning (twice, on remand – finding that Megna was not at all credible and had made repeated and gross misrepresentations to the Court),
- Judge Cooper in the "Companion Case" (finding and concluding that the evidence was irrefutable that Appellant never had title to, nor the right to sell, the property in question);

- Judge Waites (twice relative to Megna's objection to the request to lift the stay so that the within Appeal could move forward)
- Judge Anderson (twice upholding the Orders of Judge Waites and denying Megna's motion for reconsideration), and
- the South Carolina Court of Appeals (in dismissing the appeal as out of time and thus jurisdictionally defective).

Relevant to the Appeal, and to the point of the within Rule 269 Motion, Megna has in bad faith and for personal, unacceptable ulterior motives chosen to continue with frivolous, bad faith litigation. He has deliberately and repeatedly utilized tactics and has made misrepresentations that have been determined to be unacceptable, especially for an attorney. Megna has repeatedly been found to have engaged in misconduct, the result of which has been unnecessary delay, an undue burden on the Courts, and for Respondent to unnecessarily incur very significant costs and fees.⁵

In basic terms, it appears that Megna initiated and has continued the within vexatious and unjustifiable Appeal for at least three totally inappropriate, interrelated reasons:

1. Megna has a documented record of making false claims in an attempt to wear-down Respondent financially and so as to "win at all costs".

Upon the Appeal being remanded for a factual determination as to timeliness, the Lower Court carefully reviewed all of Megna's submissions, assertions and arguments. Megna's

⁵ Since Appellant is in personal bankruptcy and the conduct complained of is asserted to be directly attributable to Megna, the damages hearing should be simple. Although the grounds for the Rule 11 sanctions is arguably technically distinct from the grounds for Rule 269 sanctions, the Court has the authority and there is ample precedent to remand the Rule 269 hearing to the Lower Court to be heard in conjunction with the Rule 11 hearing, which may be in the interest of judicial economy, consistency and which may perhaps promote a more complete resolution of the entire matter once and for all.

personal credibility was central to the issue of timeliness because it was he who received the Order from which the Appeal emanated, and it was he who claimed that it came to him out-of-time. He was found to be untruthful. In the context of finding and concluding that the Appeal was untimely, the Lower Court unequivocally stated;

"In making these findings and conclusions, I have considered Megna's serious and repeated inattention to detail, which is well documented and of record, as well as his repeated and gross misrepresentations to the Court, as well as his unwarranted, unjustified and untrue attacks on opposing counsel who clearly appears to have been remarkably restrained and professional in the representation of his client and in dealing with Megna under the circumstances."

It is also noteworthy that, upon a subsequent remand⁶, the Lower Court adopted the identical findings it made previously, with even more emphasis on Megna's penchant for continued and even more egregious, outrageously untruthful claims and unjustified personal attacks.

At that point, and aside from the subsequent and distinct Bankruptcy Court findings and conclusions quoted herein, Megna had been admonished three separate times by two separate Courts for making false claims and in engaging in untrue, uncivil *ad hominem* attacks. Despite being repeatedly rebuked by the Courts, Megna has continued unapologetically and in fact has escalated his vituperative, grossly inappropriate, inaccurate and uncivil attacks (that were

⁶ The second hearing was found to have been due to Megna's contrived, untruthful excuses for non-appearance at the first hearing.

(irrelevant in any event to any issue of substance). Most seriously, he continued to assert substantial untruths and engage in other behavior that has been concluded to be reprehensible, all in an attempt or with the affect of harming Respondent, circumventing the law, avoiding personal responsibility, and detracting from the case.

In essence, Megna's repeated misconduct from the inception of this case through the entire appellate process has reflected that he has a habit of engaging in inappropriate conduct in a transparent, but unsuccessful attempt to "win at all costs".

2. Megna's motives to cause more delay.

A) Rule 11 Sanctions

(Although the Appeal was dismissed on the grounds of being untimely, the underlying case was frivolous and the Appeal has the appearance of having been interjected for, inter alia, the purposes of avoiding Rule 11 sanctions. Once the Lower Court granted Summary Judgment, a Rule 11 sanctions hearing was set for January 8, 2008, along with Respondent's Motion to Compel discovery that would certainly have proven problematic for Megna (especially given his assertion that he has throughout these extensive proceedings apparently represented Appellant for free, based on some personal relationship between the two of them).

(It was not coincidental that, with absolutely no prior assertion by Megna of a "late receipt" of the Summary Judgment Order appealed from, and refusing to produce the envelope or any other notation showing the time of receipt, Megna waited until the last possible moment before the Rule 11 and Motion to Compel

hearing were to be heard before unjustifiably filing the patently out-of-time Appeal. At that point in time, he and his law partner, Benjamin Matthews, asserted that the Lower Court was without jurisdiction to hear those matters. They were successful at that time in delaying the Rule 11 and Motion to Compel hearing that had been scheduled. The Appeal was clearly without merit and it is submitted to have been interjected for an ulterior motive – to delay sanctions from being rendered against Megna personally.

B) It appears that Megna has attempted to cover up for missing important deadlines

As is readily apparent from the Record on Appeal, Megna has a history of inattention to important legal detail. Missing the critical, jurisdictionally mandated time in which to appeal is but one more example.

At that point, Megna had two choices, to wit:

(1) make full disclosure, and deal with the consequences, whatever they might have been, or

(2) engage in blatant dishonesty and attempt to blame others for his oversight, in an ill conceived attempt to gain a collateral advantage.

Under Megna's seriously flawed theory, he would have won the Appeal, as well as the underlying case and the "Companion Case", but for having filed the underlying Appeal out-of-time. The essence of what Megna has posited is that it was through his lack of professional diligence that his client lost her case(s) and was forced into bankruptcy. Under these circumstances where there may have been significant consequences attendant to Megna's oversight, his conduct is perhaps understandable, but nonetheless completely unacceptable conduct,

especially for an attorney. Respondent is reminded of a longstanding axiom that is applicable to this situation: "When one finds himself in a hole, the first thing to do is to stop digging."

Given his continued behavior, Megna now should be held accountable for all the damages and fees he has unnecessarily caused Respondent to incur.

3. Megna has demonstrated throughout this case, as in other cases, a continual pattern of engaging in extremely uncivil and unbecoming conduct in an attempt to gain a perceived advantage.

A third reason for Megna's pursuit of frivolous claims is explained and exemplified by the extraordinary mean spirited manner in which he has chosen to practice law, not only in this case, but in other recent cases.

Megna has engaged in a patterns of incivility and extremely discourteous conduct, from the trivial to the outrageous. Initially, he was admonished by the Lower Court at the time of Summary Judgment for unseemly, personal and unjustified attacks, as well as for advancing disingenuous claims. His tactics have unfortunately permeated this Appeal, and in fact escalated subsequent to the time he was admonished twice again for making false claims, as well as making unjustified and untrue attacks directed at opposing counsel. And, it is stressed that such conduct by Megna is not isolated, or an unfortunate dispute between two otherwise professional attorneys in the heat of battle, as reflected in Exhibits 1 and 2 that are attached hereto – Megna has repeatedly engaged in similar conduct and used the same uncivil, unprofessional tactics in dealing with other counsel – accusing two of the

most reputable law firms in South Carolina, multiple respected attorneys in the Pee Dee, a respected former U.S. Attorney, and the Judiciary of the same or similar unethical conduct Megna has asserted Respondent's counsel in this case. Moreover, but to a lesser degree, Megna accused opposing counsel in the "Companion Case" of making untrue representations to the Court, for which he was again admonished. As well, he has made similar odious and abusive complaints against witnesses in this case and against an eminently qualified, respected appellate attorney who rendered an opinion relative to Megna's continued non-compliance with Appellate Rules.

Unfortunately, it has been Megna's *modus operandi* to utilize uncivil and untrue *ad hominem* attacks in a desperate attempt to "win at all costs". Such conduct should not be condoned or ignored.

CONCLUSION

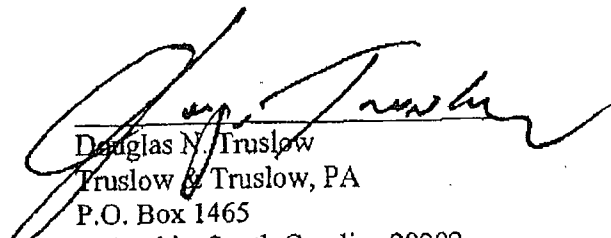
It has been repeatedly found, concluded and now confirmed once again that Megna was untimely in the pursuit of this Appeal. Aside from the utter frivolousness of Appellant's underlying case and Appeal, the Appeal was beyond a doubt untimely. Megna's disingenuous excuses were repeatedly proven to be untrue, at great cost to Respondent. In short, Megna was found to have been grossly and repeatedly untruthful, uncivil, and unprofessional. He has personally caused Respondent to needlessly incur significant legal fees for which Megna, and to a lesser degree his partner Matthews, who also participated in this Appeal and caused unnecessary delay, should be held accountable.

While this Court may certainly elect to assign the within Rule 269 hearing to one of its members for resolution, an alternative choice would be to remand the matter to the Lower Court

for findings and conclusions in conjunction with the pending Rule 11 hearing. It appears that the Federal Appellate Courts have dealt with similar misconduct in such a fashion by remand. See Caldwell v. Palmetto State Savings Bank of South Carolina, 811 F.2d 916. Given that there is a pending Motion for Rule 11 sanctions, a remand of the Rule 269 Motion may be an alternative worth considering – for the sake of consistency, judicial economy, so as to avoid delay and to provide a full and complete opportunity further light to be shed on Megna's conduct. All this is aside from the fact that as a practical matter, when faced with the insurmountable evidence of his misconduct, Megna may be forced to seek wise counsel to advise him of the benefits of resolving all the issues once for all.

Respondent's exhibits and fee affidavit are attached.

Respectfully submitted,


Douglas N. Truslow
Truslow & Truslow, PA
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Attorney for Respondent James Anasti

Columbia, South Carolina

May 9, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge
L. Casey Manning, Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

James A. Anasti,.....Respondent,

v.

Lance Wilson, Willis Goodwin,
Gina Anasti Lee, Richland
County Clerk of Court,.....Defendants,

Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court are.....Respondents,

And Gina L. Anasti Lee is the.....Appellant.

EXHIBIT 1

PORTION OF MEGNA'S PLEADING IN A SEPARATE CASE

PART VIII

PREDJUDICIAL USE OF UNRELATED, INAPPROPRIATE INFORMATION, AND DEFAMATORY LITIGATION STRATEGY

The undersigned submits that not only do the Personal Representatives of the Estate of the Decedent have conflicts of interest in the case at bar, and not only have they made mis-statements of material facts by co-mission and omission, but that they have also resorted to an inappropriate and demeaning litigation strategy in the case at bar that is, in its best light, dishonorable. The Defendant has produced absolutely no evidence whatsoever that the undersigned had any contact with the Decedent other than the Decedent providing limited documents to the Plaintiff that have been disclosed to the Defendant during discovery. Mr. Josey and Mr. James also know they obtained these same documents from the SC Board of Medical Examiners, see Mr. James letter dated June 2, 2010 [See Exhibit KK]. It is not much of a leap to conclude that that there was and is no reasonable basis to file the Motion to Disqualify in the first instance.¹³

The Motion to Disqualify is replete with implied [and not so implied] offensive and unjustified personal and professional attacks on the integrity of the undersigned. It is no secret that the Plaintiff and the undersigned are involved in litigation now pending in Florence County that is completely unrelated to the case at bar. Nor is it a secret that the undersigned was the CEO of MCHG, LLC, the holding company that is at the center of the Lake City litigation. Mr. Josey's and Mr. James' attaching a copy of the Medicare 855 to the Motion to Disqualify noting that fact is for no legitimate reason other than to inflame the passions of this Court. The undersigned is extremely aware that Mr. Josey and Mr. James are attempting to convey to the

¹³ Mr. Josey's law firm has been previously admonished for discovery misconduct. The Plaintiff remains astounded that Mr. James' has participated in such matters.

Court the misleading, insulting and not so subtle message to this Court that the undersigned is somehow "dishonest, untrustworthy", etc. They can phrase the issue however they wish. But the truth is they have underestimated the undersigned's absolute unwillingness to bend to such baseless, self-serving, dishonorable actions. The undersigned's association with MCHG and the "Lake City" litigation issues occurred no less than seven [7] years *AFTER* the Decedent left the employ of the Plaintiff. Moreover, the Decedent *has actually admitted his own wrongdoing*. [See Exhibit E]. Mr. Josey, Mr. James, and the Personal Representatives of the Estate of the Decedent have seriously miscalculated the determination of the Plaintiff, and the undersigned, to remedy the wrong that has occurred in the case at bar -- as well as in the Lake City matters.

The undersigned has no qualms in informing this Court that the 'Lake City litigation' involves significant allegations of unethical and unprofessional conduct by lawyers of one of the largest law firms in this state, allegations of unethical and unprofessional conduct by lawyers in an influential firm in the Pee Dee, allegations of unethical and unprofessional conduct by relatives of a judge in Florence County, allegations of unethical and unprofessional conduct by physicians with medical practices in Lake City, SC, and allegations of conspiracy, fraud and unprofessional conduct by many others. Neither is it a secret that the 'Lake City litigation' began with the foregoing lawyers and physicians providing *ex parte* information to a Florence County judge¹⁴ that led to the issuance of an *ex parte* restraining order against the undersigned and others. Nor is it secret that the *ex parte* order, as intended by the unethical conduct of many, destroyed a business venture in which the Plaintiff, the undersigned and others were partners.

While the undersigned is perhaps prohibited from discussing the precise nature of the

¹⁴ The undersigned was the Chief Executive Officer of the venture. That is no secret and the undersigned has never denied it. However, the undersigned's position as CEO of that venture, that was initiated in 2007-08 has nothing to do with the current proceedings before this Court.

pending investigations surrounding the matters, the undersigned can attest to the fact, that nearly three years after the initial events, no allegations of wrongdoing against the Plaintiff nor the undersigned have been proven true for the simple reason that there was no wrongdoing by the Plaintiff nor the undersigned in the first instance.

In sum, the Plaintiff and the undersigned, as well as many others, were victimized by many in the Pee Dee area in regard to the Lake City matters. Neither the Plaintiff nor the undersigned has asked for nor expect compassion, empathy, or even understanding from anyone. Additional litigation against those involved in the events leading up to and including the obtaining of the fraudulently obtained *ex parte* order is forthcoming. The Plaintiff provides the foregoing information to this Court for one simple reason. Counsel for the Defendants have unnecessarily, maliciously, and unethically interjected the 'Lake City litigation' into this lawsuit by their personal attacks and insinuations of improper conduct by the undersigned; and have attached a Lake City document to their Motion to Disqualify for the sole realistic reason of prejudicing these proceedings. The Motion to Disqualify crosses the line from advocacy to obstructionism. See the foregoing discussion in relation to Rule 401, Rules 3.3 and 3.4.

The false and unprincipled personal accusations and innuendos being made by Mr. James and Mr. Josey against the undersigned have placed this Court in the unfair and unenviable position of determining whether or not Mr. James and Mr. Josey's accusations [implied and explicit] have prejudiced these proceedings to the extent this Court should *sua sponte* recuse itself from hearing and determining these matters. In the Lake City litigation, the Chief Justice of the SC Supreme Court specifically assigned the proceedings to a jurist outside of the immediate Pee Dee area because of concerns of actual and perceived conflicts of interest as well as the appearance of such conflicts. Mr. James' and Mr. Josey's unprincipled attacks on the

undersigned and the Plaintiff have placed this Court in a similar position considering the distasteful circumstances we collectively find ourselves discussing.

Regardless of the Court's determination of the foregoing, the Plaintiff responds to the Defendant's Motion as follows with the foregoing and the following.

PART IX

1. The basic dispute between the parties revolves about funds repaid to Medicare by Plaintiff on Decedent's behalf during a time period [1999-2000] when, unknown to Plaintiff Decedent was admittedly disbarred as a provider of medical services under the Medicare program. As noted herein,
 - a. Decedent admitted in May, 2004 that, in March 1996 [the first letter], he received a letter from the Medicare OIG stating he had been disbarred as a provider in the Medicare program. [See Exhibit F].
 - b. The Defendant's issue as to the undersigned's 'necessary' testimony concerning the document and the authenticity of this document in the first instance has been obviously, purposely and patently intended to mislead this Court because:
 - 1) As noted previously, Mr. Jay James, by letter dated July 9, 2010 (a copy of which is attached hereto as Exhibit GG) actually provided both pages 1 and 2 of the document to the Plaintiff. As noted, Mr. James specifically entitled the document "Summary of events and observations believed to have been prepared by Hugh S. Thompson, Jr. May 28, 2004,
 - 2) A two-page version of this document was produced and provided to Plaintiff during discovery in this case from FirstChoice Health. The two page version of the document is attached hereto as Exhibit II. This same document (as all documents provided by FirstChoice) was provided to the Defendant by Plaintiff on July 30, 2010. A copy of the email evidencing the documents produced from First Choice to Defendant's counsel, Jay James, is attached hereto as Exhibit MM.

The Plaintiff's answers to interrogatories have been updated to reflect the complete document was obtained by Plaintiff as noted above even though the Defendant's received the document from Plaintiff months prior to the filing of their Motion and provided the Plaintiff the document.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge
L. Casey Manning, Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

James A. Anasti,.....Respondent,

v.

Lance Wilson, Willis Goodwin,
Gina Anasti Lee, Richland
County Clerk of Court,.....Defendants,

Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court are.....Respondents,

And Gina L. Anasti Lee is the.....Appellant.

EXHIBIT 2

TONY R. MEGNA

ATTORNEY-AT-LAW
3400 West Avenue
Columbia, SC 29203
TELEPHONE: 803-799-1700
E-mail: tmegna@gmail.com

March 1, 2011

**SENT VIA TELEFAX TO 803-796-1066
AND BY FIRST-CLASS MAIL**

Desa Ballard
226 State Street
West Columbia, SC 29171-6338

Re: Lee v. Anasti et. al. - 2007-CP-40-0576

Dear Desa:

I have been provided a copy of the Affidavit that you provided for Douglas Truslow. I am bewildered. I have not discussed the matter with you, and you did not contact me or anyone in my office prior to filing the Affidavit. Hopefully, you did not have knowledge of the fact that Douglas had provided my office with hundreds of pages of documents with comments and notes that we had to reorder and 'white-out' so that the page numbers could be inserted and the pages placed in the correct order - as best we could. I cannot speculate as to your motive or comment otherwise except to say I am very disappointed you did not contact me prior to filing the Affidavit.

For your information, I have attached a letter that I have sent to the Court of Appeals this date. The letter is self-explanatory. I respectfully suggest that you consider the fact that you may have been used by Mr. Truslow in a less than appropriate manner, and now find yourself at the center of a difficult situation that you have, hopefully inadvertently, complicated further. I respectfully suggest that you contact Harriet Hobbs at my office [254-3646] if you believe it would be too awkward to contact me directly so that you can understand the actual facts. My intent is to avoid any type of 'he said- she said.' Then, you can make the decision you are now confronted with as to whether or not you should [or have an ethical obligation] to provide the Court of Appeals a more balanced statement that is consistent with the requirements of Rules 3.3 and 3.4 of Rule 407 of the SC Rules of Appellate Practice.

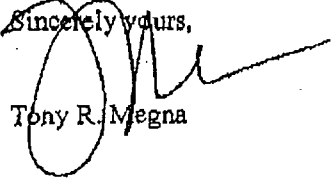
I am very sorry that you have seen fit to insert yourself into these matters - without even the courtesy of a telephone call. You must decide what, if any further obligation you have to the Court, to inquire into matters you now have knowledge were, at best, partially correct when conveyed to you in the first instance. I am more than happy to speak with you if you wish. I can be reached at 803-254-3676 or on my mobile at 803-6106-5983.

I have no control over Douglas nor your decision not to verify the information you were

Desa Ballard
March 1, 2011
Page 2 of 2

provided by him. I am, however, personally astonished that you did not so, but that was and remains your decision. One simple telephone call on your part would have avoided, or at least ameliorated, these matters.

Sincerely yours,



Tony R. Megna

cc: Douglas N. Truslow, Esquire
Gina Leo
SC Court of Appeals

TONY R. MEGNA

ATTORNEY-AT-LAW
3400 West Avenue
Columbia, SC 29203
TELEPHONE: 803-799-1700
E-mail: tmegna@gmail.com

March 8, 2011

SENT VIA TELEFAX TO 803-796-1066
AND BY FIRST-CLASS MAIL

Desa Ballard
226 State Street
West Columbia, SC 29171-6338

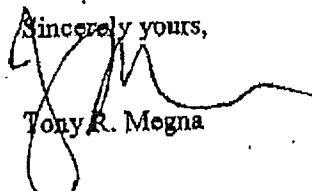
Re: Lee v. Anastj et. al. - 2007-CP-40-0576

Dear Desa:

As I often tell my children -- old enough does not necessarily denote 'wise enough'. Please find enclosed the information you requested in your letter dated March 1, 2011.

I am very sorry that you have seen fit to insert yourself into these matters without even the courtesy of a telephone call. Obviously, I have no control over the injudicious decision not to verify the information you were providing to the Court of Appeals prior to making what you now know are misleading statements. While I remain astounded that you did not do so, and continue to refuse to do so, I respect your judgment that you are 'old enough' to make your own decisions.

Sincerely yours,


Tony R. Megna

TONY R. MEGNA

ATTORNEY-AT-LAW

3400 West Avenue

Columbia, SC 29203

TELEPHONE: 803-799-1700

E-mail: tmegna@gmail.com

SENT VIA TELEFAX TO 803-734-1839

AND SENT FIRST-CLASS MAIL

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Lee v. Anasti et. al. - 2007-CP-40-0576

Dear Ms. Gee:

I would appreciate you advising the Court that I am surprised [and again embarrassed] by Mr. Truslow's most recent [and, once again, misleading] statements to the Court in his letter dated February 25, 2011.

As noted on my attached Affidavit and the Affidavit of my paralegal, Ms. Harriet Hobbs, Mr. Truslow informed us, in writing, on February 22, 2011 that the proposed ROA we had provided him in the above case was 'acceptable to him.' Once Mr. Truslow's blessings were obtained, my office copied the documents in the Record on Appeal he accepted, hand-delivered 734+ pages to him, and also a pdf copy to Mr. Truslow's office on Wednesday, February 23, 2011. We then reviewed the ROA again, corrected a few errors, and completed the preparation of the ROA to send to the printers. This process was cumbersome as Mr. Truslow had provided our office over 500+ pages of documents [most out of any understandable order; many with hand-writing covering them, most with multiple page numbers on the bottoms of the pages [all of which had to be 'whited out'], many duplicates, others that were blank or blacked out, and the vast majority that were in violation of the orders of the Court as well as Court's procedural rules. We did not complain, but rather cleaned up the documents as best we could. We then went through the ROA again on Thursday, re-positioned some of the documents to better assure they were in correct order, and sent the file to the printers on Friday morning. The printer is going through the ROA again to check our work.

Mr. Truslow's statement that he does not have a copy of the ROA with page numbers on the bottom is a product of his own sad making. The bottom of virtually every page of the 500+ pages [as well as other writings on the documents] he inappropriately insisted be included in the ROA had numerous markings that had to be erased and 'whited-out'. He obviously and purposely did everything he could to make it all but impossible to get the ROA complete and to the printers and returned in any less time that we have done. And now, he has used his own misconduct to file a request with this Court to dismiss the appeal yet once again. With all due

The Honorable Tanya Gee
South Carolina Court of Appeals
March 1, 2011
Page 2 of 3

respect, no one can reasonably state or believe we have not taken every reasonable effort to comply with the orders of this Court. We have. The truth is Mr. Truslow has done, and is continuing to do, his absolute best to mislead this Court. His intentional misconduct is abhorrent and violates any concept of fairness, reasonableness or even the simplest concept of thoughtfulness. I am truly sorry that Mr. Truslow has once again provided partially correct statements to the Court. Once again, the issue is not the information Mr. Truslow provided, but the information he failed to provide to the Court that, respectfully, is the equivalent of an affirmatively false statement. As noted in the comment to Rule 407, SCACR, and Rule 4.1 [Comment 1]: ... Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.

Mr. Truslow now has exactly what I have - a record that he found acceptable and suitable for him to use to complete his brief and for me to complete the Appellant's brief. Once the printers complete their processes of review, including putting page numbers at the bottom of each page, I have requested they forward Mr. Truslow and me a pdf copy of the ROA with page numbers on the bottom. I intend to file the Appellant's brief and the Record on Appeal with the Court as the rules of procedure require, and within the time frame the Court has required. I also intend to provide Mr. Truslow with exactly what I have to work with. I do not intend to take advantage, and have not taken advantage, of any issue regarding these matters. The truth is that Mr. Truslow knowingly created this situation, and is now doing everything he can to capitalize on his own misconduct. To date, the Appellant has met her obligation to provide Mr. Truslow the ROA as the orders of this Court and the rules require. Mr. Truslow has what I have - a full and complete copy of the ROA that was hand-delivered and served on him within the time periods required by this Court. It does not include the page numbers at the bottom of each page as the printer is inserting those numbers after making certain the mess Mr. Truslow intentionally created is corrected. If Mr. Truslow was truly concerned about the time limits and page numbers, he would have been much more considerate in the first instance. He was not. It is not much of a leap to conclude that Mr. Truslow is taking every conceivable action to avoid having these matters heard on the merits; and violating his obligations of candor and truthfulness in the process. His assertions are untrue and violate, at the minimum, the spirit and intent of both Rules 407, Rule 3.3 and 3.4 of the SCACR.

As to Ms. Ballard's Affidavit that Mr. Truslow provided to the Court, I am at a complete loss. I have not discussed the matter with Desa. She did not contact me nor anyone in my office prior to filing her Affidavit. It is obvious [hopefully] that Desa did not have knowledge of the facts including the fact that he had provided hundreds of pages of documents that we had to reorder and 'white-out' comments and numerous other unrelated markings so that the page numbers could be inserted and the pages placed in the correct order - as best we can. I cannot speculate as to her motives or comment otherwise except to say I am very disappointed she did not contact me prior to the filing of the Affidavit. I trust that the Court will consider the fact that

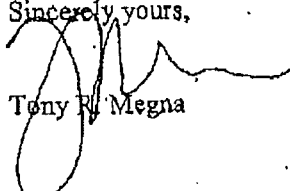
The Honorable Tanya Gee
South Carolina Court of Appeals
March 1, 2011
Page 3 of 3

Desa failed to contact anyone at my office, did not know or understand the hundreds of documents that Mr. Truslow included in the Record of Appeal that were unrelated to the appeal, did not know or understand the hundreds of documents that had to be 'whited-out' on the bottoms so that the numbers could be inserted by the printer, and did not take into account the hundreds of documents included in the Record on Appeal on matters that had been 'stayed' by un-appealed orders of the Trial Court, and that Mr. Truslow actually agreed to the ROA as 'acceptable' to him as noted on the attached letter. Again, I can only surmise that Mr. Truslow provided but partial information to Desa as he consistently has done with this Court and the Trial Court. And, unfortunately, instead of verifying the matters, simply accepted Mr. Truslow's assertions- again, apparently providing only partial truths in violation of Rules 3.3 and 3.4 as noted above. I have attached a letter sent to her this date.

In closing, please inform the Court the ROA was, indeed, served on the Appellee within the time limits as the Court required and as verified by the attached Affidavit of Ms. Hobbs. I expect the pdf version of the ROA [that was timely served and hand-delivered to Mr. Truslow as required by this Court] with correct page numbers on the bottom of each page of the ROA to be available to both me and Mr. Truslow by the end of this week. The ROA is not due to be filed with the Court until Thursday, March 10, 2011. Mr. Truslow will have several days to complete and file his brief - as will I; and he will have access to the ROA that this Court will have. I intend to file my brief timely. There is no excuse for Mr. Truslow not to do the same.

Again, please accept my apologies for these matters. But, I have no control over Mr. Truslow's continuing misconduct and untruthfulness.

Sincerely yours,



Tony R. Megna

cc: Douglas N. Truslow, Esquire
Gina Lee
Desa Ballard

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge
L. Casey Manning, Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

James A. Anasti,.....Respondent,

v.

Lance Wilson, Willis Goodwin,
Gina Anasti Lee, Richland
County Clerk of Court,.....Defendants,

Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court are.....Respondents,

And Gina L. Anasti Lee is the.....Appellant.

EXHIBIT 3

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

C/A No. 09-02854-JW

Gina Anasti Lee,

Chapter 13

Debtor(s).

**ORDER CONDITIONING AND
CONFIRMING PLAN**

This matter comes before the Court for confirmation of the Amended Chapter 13 Plan ("Plan") filed on March 24, 2010 by Gina Anasti Lee ("Debtor"). After notice and a hearing, the Court makes the following findings of fact and conclusions of law.

Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on April 16, 2009. The case was subsequently converted to a case under chapter 13. On August 5, 2009, Debtor filed a chapter 13 plan. The plan has been amended a number of times during the course of the case and confirmation has previously been denied because the plan under consideration did not meet the requirements of 11 U.S.C. § 1325(a). The Court finds that further amendment of the Plan would delay distributions to creditors and would not be in the best interest of the parties.

A central part of the Plan is represented by certain nonstandard language set forth in Part III, Subsection A, which addresses contingent litigation regarding property located at 2325 Two Notch Road, Columbia, South Carolina ("Property"). This Property is the subject of state court litigation and appeals to the United States District Court regarding the establishment of Debtor's interest in the Property. Debtor proposes in the Plan to continue such litigation, and upon the establishment of her interest in the Property, to sell the Property under the direction of the Court with all proceeds of the sale to be turned over to the Trustee for appropriate distribution to all creditors who have filed timely

proofs of claim with the Court after the Court determines the amount, if any, for attorney's fees and costs that are due to counsel for Debtor.

The Court believes it is in the best interests of all parties in interest for the Plan to be confirmed but finds that portions do not meet the requirements for confirmation or should otherwise be adjusted or conditioned by this Order. Therefore, the Court finds as follows:

- (1) The provision indicating that the opposing party in state court, James Anasti, has waived claims for monetary damages is not approved. The evidence indicates that while Mr. Anasti has not and may not intend to file a claim for prepetition debt, he does not waive any post petition claim(s), including any claim for costs or damages associated with the ongoing state court litigation and federal appeals.
- (2) The provision indicating that "all proceeds of the sale [shall] be turned over to the Trustee for appropriate distribution to all creditors who have filed timely proofs of claim with the Court" provides for no deduction of any type from the proceeds for Debtor. Therefore, the Court confirms that Debtor shall receive no distribution or deduction of any type from the sale of the Property unless all claims are paid in full.
- (3) To the extent that Part III, Subsection A, may be read to provide for the deduction of attorney's fees and costs for Debtor's counsel before any turnover of proceeds to the Trustee, it is not approved. At the hearing, Debtor's counsel recognized that any allowance of fees or costs would have to be approved in advance by the Court based upon an application pursuant to 11

U.S.C. § 330. Fees and costs shall not be paid according to the schedule provided in Part IV, Subsection A of the Plan. Therefore, all proceeds shall be immediately turned over to the Trustee with any payment of approved fees and costs paid thereafter.

- (4) Claims of unsecured creditors shall be paid in full to the extent sufficient funds are received from any sale of the Property.

The Court finds that the remaining provisions of the Plan comply with the provisions of Chapter 13 and with all other applicable provisions of the Bankruptcy Code and that all fees and charges to be paid before confirmation have been paid. Accordingly,

IT IS ORDERED THAT:

1. Subject to the provisions of this Order, the Amended Chapter 13 Plan filed on March 24, 2010 is confirmed; and
2. Debtor shall not incur indebtedness nor sell, encumber, or otherwise transfer any interest in estate property outside the ordinary course of business without approval of the Court.

AND IT IS SO ORDERED.

**FILED BY THE COURT
04/15/2010**



Entered: 04/16/2010

Chief US Bankruptcy Court Judge
District of South Carolina

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL(S) FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr. Circuit Court Judge
L. Casey Manning, Circuit Court Judge

RECEIVED
MAY 09 2011
SC Court of Appeals

CIVIL ACTION NO.: 2007-CP-40-0576

James A. Anasti,

Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti
Lee, Richland County Clerk of Court,

Defendants,

Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court are

Respondents

And Gina Anasti Lee is the

Appellant.

AFFIDAVIT OF DOUGLAS N. TRUSLOW

PERSONALLY APPEARED BEFORE ME, DOUGLAS N. TRUSLOW, who
being duly sworn, deposes and says (in his words):

I have been continuously practicing law since 1975 and have an "AV" rating.

I devoted substantial work to this appeal. My hourly rate is \$295.00 and my
billing associated with this appeal is attached. The time spent is accurate and was
necessary under the circumstances. The client was unable to pay, so there has been a
contingency of payment.

The case was obviously decided favorably to my client on the grounds submitted
by my client.

The record in this appeal clearly shows that opposing counsel was uncivil and
found to be untruthful.

The appeal representation is from January 8, 2008 through May 1, 2011 (when I received notice that the appeal had been dismissed).

Summary:

Hours by attorney necessary devoted to appeal: 606

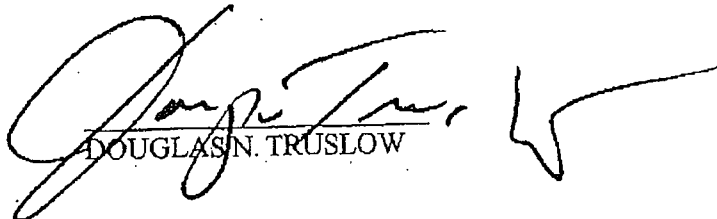
Hours by paralegal necessary devoted to appeal: 78

Costs: \$4,112.56

Time records are attached.

The undersigned did not handle the efforts to lift the bankruptcy stay (now believed to be on Appeal by Attorney Megna to the Fourth Circuit), but he is informed and believes that the fees associated with that issue exceeded \$30,000.00 and were caused by Attorney Megna's actions.

In summary, Appellant's attorney engaged in extensive unprofessional and unethical acts, caused extensive delay and unfairly and needlessly caused the Respondent to suffer losses. Respondent seeks a hearing on the issues.



DOUGLAS N. TRUSLOW

SWORN TO AND SUBSCRIBED BEFORE ME

this ____ day of _____, 2011

Notary Public for South Carolina

My Commission Expires: _____

Truslow & Truslow, PA

Post Office Box 1465
Columbia, SC 29202-1465

Ph:(803)256-6276

Fax:(803)256-7659

James Anasti
237 D King Street
Charleston, SC
29401

May 6, 2011

Attention:

File #: 06-059

Inv #: Sample

RE: Anasti v. Lee

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jan-08-08	1/8/08 - 1/23/08: Preparation of Motion to Dismiss (Appeal is late). Memorandum including exhibits.	12.00	3,540.00	DNT
Feb-12-08	Review of file regarding submission, law, facts and ethical issues	2.00	590.00	DNT
	Telephone conference with Desa Ballard regarding issues raised	0.20	59.00	DNT
	Telephone conference with Curtis Dowling regarding companion case.	0.20	59.00	DNT
	Preparation of letter and revisions after reviewing transcript	1.75	516.25	DNT
Feb-13-08	Preparation of letter to Megna and revisions based on transcripts and follow up	1.00	295.00	DNT
	Telephone conference with Desa Ballard regarding Appeal and ethics issues.	0.50	147.50	DNT
Mar-10-08	Review of proposal and issues	0.50	147.50	DNT
	Telephone conference with Mr. Earle	0.30	88.50	DNT
Mar-20-08	Conference with client	1.50	442.50	DNT

Invoice #:	Sample	Page 2		May 6, 2011
Mar-24-08	Preparation of letter and f/u re: hearing	2.00	590.00	DNT
Mar-28-08	Travel to Court re: hearing date on Motion	0.60	177.00	DNT
	Preparation of various letter(s) and faxes	0.20	59.00	DNT
	Telephone conference with Mr. Dowling and Mr. Earle	0.40	118.00	DNT
Mar-29-08	Research and preparation for hearing	2.50	737.50	DNT
Mar-31-08	Preparing for hearing	4.30	1,268.50	DNT
Apr-01-08	Preparing for hearing	2.00	590.00	DNT
	Preparing for hearing	2.50	737.50	DNT
	Preparation of Memo and Proposed Order	1.00	50.00	ADH
Apr-02-08	Working on argument	6.00	1,770.00	DNT
	Preparation of Memorandum	2.50	125.00	ADH
	Preparation for evidentiary hearing	3.00	150.00	ADH
Apr-03-08	Travel to Court; hearing; working on Order, etc. No appearance by Megna and he cannot be located.	6.50	1,917.50	DNT
	Meeting with David Byrd	2.00	590.00	DNT
	Attendance at hearing	1.00	50.00	ADH
Apr-04-08	Delivery of Order to Court of Appeals	0.50	147.50	DNT
	Telephone conference with client (x2)	1.00	295.00	DNT
Apr-07-08	Working on response to Defendant Appellant's Motion and follow up research re: jurisdiction; telephone conference with David Byrd and Dowling	6.00	1,770.00	DNT
Apr-08-08	Follow up regarding Order preparation and research re: service of hearing notice and issues involved	2.00	590.00	DNT

	Preparation of Draft Order re: Motion to Reconsider	1.00	50.00	ADH
Apr-10-08	Telephone conference with attorneys in other cases and follow up	3.00	885.00	DNT
	Preparation of copies and fax to Attorney's Firm	0.50	25.00	ADH
Apr-11-08	Telephone conference with law firm and follow up; telephone conference with attorney's regarding other cases.	3.00	885.00	DNT
Apr-14-08	Review of incoming correspondence and follow up letter	1.50	442.50	DNT
	Legal research on issues relating to Appeal and ethics	1.00	295.00	DNT
	Telephone conference with Desa Ballard regarding ethics issues	0.30	88.50	DNT
	Preparation of letter to Desa Ballard and copying of documents	0.50	25.00	ADH
Apr-15-08	Telephone conference with Celeste Jones' office and follow up	0.50	147.50	DNT
	Review of documents and internet research	3.00	885.00	DNT
Apr-16-08	Telephone conference with Jones and follow up	0.30	88.50	DNT
	Review of documents	1.50	442.50	DNT
Apr-17-08	Telephone call to Circuit Court re: hearing or reconsideration	0.10	29.50	DNT
	Research (Appeal)	1.00	295.00	DNT
	Telephone conference with Court of Appeals	0.10	29.50	DNT
	Research on motions and jurisdiction	2.50	737.50	DNT
Apr-22-08	Extensive work of reviewing incoming correspondence and file; telephone conferences with Matthews and Court re: hearing and follow up letters	4.50	1,327.50	DNT

Invoice #:	Sample	Page 4	May 6, 2011	
	Preparation of letters	1.00	75.00	ADH
Apr-23-08	Preparation of various letters and follow up	2.50	187.50	ADH
Apr-24-08	Preparation of letters and revisions to Motion	2.00	100.00	ADH
Apr-25-08	Preparation of Exhibits	0.50	25.00	ADH
Apr-26-08	Working on Appeal issues and question of jurisdiction	3.50	1,032.50	DNT
Apr-28-08	Working on detailed Memo re: Appeal with documentation	5.00	1,475.00	DNT
	Revision of Return and Exhibits; preparation for filing, copying and cover letters; preparation of Respondent's Motion for Costs and Fees, itemized statement of fees and costs, and Memorandum in Support of Motion for Costs and Fees	7.00	350.00	ADH
	Preparation of Respondent's Motion for Costs & Fees, itemized statement of fees and costs, and Memorandum in Support of Motion for Costs & Fees	4.00	300.00	ADH
Apr-29-08	Working on case/Appeal and Motions. Revisions on Return and copies of Exhibits; filing with Court of Appeals	3.00	885.00	DNT
	Revisions to Return and copies of Exhibits; filing with Court of Appeals	4.00	200.00	ADH
Apr-30-08	Working on Appeal	2.00	590.00	DNT
	Legal research re; ethics issue (additional issues based on Megna's claims)	2.00	590.00	DNT
May-02-08	Telephone conference with Desa Ballard re: legal issues and f/u	1.50	442.50	DNT
May-06-08	Review of incoming information and research re: notice and service	2.50	737.50	DNT
May-07-08	Research April 28 case and Rule 60	2.00	590.00	DNT
May-08-08	Research of notice and conversation with McCauley regarding resolution by Arbitration or Mediation	1.00	295.00	DNT

Invoice #:	Sample	Page	5	May 6, 2011
May-12-08	Telephone conference with Court re: Motion hearing and status	0.20	59.00	DNT
	Telephone conference with Appeals Court re: status and need to respond	0.25	73.75	DNT
May-14-08	Research re: Court of Appeals and what to do re: outstanding Motions	1.00	295.00	DNT
May-15-08	Review of incoming correspondence	0.10	29.50	DNT
	Telephone conference with Earle re: rent	0.20	59.00	DNT
May-20-08	Preparation of responses to Defendant's letters	1.75	516.25	DNT
	Preparation of letters (x3)	1.00	75.00	ADH
May-22-08	Telephone conference(s) with McNair Law Firm re: files, status on Appeal and legal issue	1.00	295.00	DNT
Jun-02-08	Review of incoming correspondence and follow up	0.20	59.00	DNT
Jun-10-08	Telephone conference with Earle's office re: status	0.25	73.75	DNT
	Telephone conference with Dowling's office re: status	0.25	73.75	DNT
Jun-20-08	Review of incoming correspondence and telephone conference with Ballard re: appeal, case status, ethical issues claimed by Megna (x2)	0.30	88.50	DNT
Jun-23-08	Preparing for hearing, Order, Brief, Exhibits, etc.	8.00	2,360.00	DNT
Jun-24-08	Travel to Court to review Clerk's file for update of filings	1.00	295.00	DNT
Jun-25-08	Working on case for hearing including outline of argument	2.00	590.00	DNT
Jun-30-08	Detailed work on draft and redraft of Order, exhibits and research, etc.	4.00	1,180.00	DNT
Jul-01-08	Review Order and additional documents	2.00	590.00	DNT

Invoice #:

Sample

Page 6

May 6, 2011

(	Working on case (see details from Court of Appeals files)	4.00	1,180.00	DNT
Jul-07-08	Follow up research re: notice and Rule 5	2.50	737.50	DNT
	Office conference with Desa Ballard regarding additional ethical issues needlessly arised by Megna and Matthews	1.50	442.50	DNT
Jul-08-08	Review of documents for hearing	1.00	295.00	DNT
	Telephone conference with clerk re: hearing	0.20	59.00	DNT
Jul-10-08	Working on case; travel to Court re:hearing	2.00	590.00	DNT
	Preparation of Affidavit of Amanda Hilley	1.00	75.00	ADH
Jul-11-08	Revise brief and research	4.00	1,180.00	DNT
Jul-14-08	Legal research and appeal/motions prep	4.00	1,180.00	DNT
Jul-15-08	Working on Motion(s)	1.50	442.50	DNT
(Jul-17-08	Revise exhibits, etc.	3.00	885.00	DNT
Jul-21-08	Preparation for hearing	1.00	295.00	DNT
	Telephone conference with Dick Harpootlian	0.25	73.75	DNT
Jul-22-08	Office conference with staff and follow up re:hearing and information for Harpootlian	1.00	295.00	DNT
Jul-23-08	Telephone conference with Dick Harpootlian	0.20	59.00	DNT
Jul-28-08	Review of incoming correspondence, preparation of letters, and telephone conference with Desa Ballard regarding appeal and issues	3.00	885.00	DNT
Jul-31-08	Telephone conference with Judge Manning's office to schedule Motions hearing and telephone conference with Harpootlian's assistant. Postponed at last minute by Megna's and Matthewa actions to delay case.	0.20	15.00	ADH
(Aug-04-08	Preparation of letter to Harpootlian, faxing and copying cc's	0.75	56.25	ADH

Invoice #:

Sample

Page 7

May 6, 2011

Invoice #:	Sample	Page	7	May 6, 2011
Aug-19-08	Preparation of letter to Earle re: property matter on Appeal	0.20	15.00	ADH
Sep-03-08	Preparation and revision of letter to Harpootlian per Douglas N. Truslow	0.50	37.50	ADH
Sep-05-08	Review of dates re: SOL and revision of letter. Research issues on Appeal.	1.30	383.50	DNT
Sep-15-08	Office conference with Ballard	0.75	221.25	DNT
	Preparation of letter	0.10	7.50	ADH
Sep-22-08	Preparation for hearing and preparation for redrafting of proposed Order	3.50	1,032.50	DNT
Sep-23-08	Preparation for revision of Order and review of other case	2.00	590.00	DNT
Sep-29-08	Case prep and more research on needless issues raised by Megna	2.00	590.00	DNT
Sep-30-08	Revision of document	2.00	150.00	ADH
Oct-02-08	Preparation for Argument and Court	3.50	1,032.50	DNT
Oct-06-08	Revision of proposed Order in light of various alternative arguments raised by Megna	1.50	442.50	DNT
Oct-09-08	Preparation of Brief	1.00	295.00	DNT
Feb-09-09	Working on major tax issues regarding Appeal and delays caused by Megna	2.75	811.25	DNT
	Telephone conference with Tom Earle	0.20	59.00	DNT
	Preparation of letter	0.10	29.50	DNT
	Preparation of letter to Richland County Tax Assessor and follow up	0.50	37.50	ADH
Apr-03-09	Travel to Court re: Order	1.00	295.00	DNT
Apr-06-09	Telephone conference and follow up with client; filings, mailings, etc and purchase info regarding appeal	4.50	1,327.50	DNT

Apr-07-09	Various emails and follow up	2.30	678.50	DNT
	Telephone calls to Harpootlian regarding remand of Appeal (x6)	0.30	88.50	DNT
	Follow up with David Byrd and emails re: purchase and problems from Appeal	1.70	501.50	DNT
Apr-08-09	Misc. work re: real estate; delays in Appeal and issues created	2.50	737.50	DNT
Apr-09-09	Telephone conference with Harpootlian and follow up letter	0.25	73.75	DNT
Apr-13-09	Telephone conference with David Byrd, telephone conference with Streater, revision of settlement letter and review of file regarding damages from delay on Appeal	4.00	1,180.00	DNT
Apr-14-09	Working on same issues. Delays by Megna are causing serious damages to client and he may lose property.	4.00	1,180.00	DNT
Apr-15-09	Working on appeal issues and letters re: ethics issue	3.75	1,106.25	DNT
Apr-16-09	Working on letter, etc., conference with D. Ballard, etc.	3.50	1,032.50	DNT
Apr-17-09	Review and revision of letter	0.50	147.50	DNT
Apr-18-09	Review of incoming correspondence (x2) re: Appeal and Bankruptcy	0.50	147.50	DNT
	Research of "stay" law	2.50	737.50	DNT
	Preparation of letter	0.20	59.00	DNT
Apr-20-09	Research on Bankruptcy, stay regarding Appeal; conference with Emmits and Licati and preparation of letter	3.00	885.00	DNT
Apr-21-09	Research re: stay and effect	0.50	147.50	DNT
Apr-22-09	Working on Bankruptcy regarding Appeal and telephone conference with Earle, telephone conference with Byrd regarding Appeal delays	3.25	958.75	DNT

Invoice #:	Sample	Page 9	May 6, 2011		
Apr-23-09	Review of file re: bankruptcy and Appeal; send to Licata	0.25	73.75	DNT	
	Office conference with staff regarding problems with Megna and delay	0.25	73.75	DNT	
	Preparation of letter	0.30	88.50	DNT	
Apr-24-09	Review of Appeal file and follow up; telephone conference with Court of Appeals; preparation of letter	2.50	737.50	DNT	
Apr-28-09	Research re: tax and discharge in bankruptcy regarding Appeal	2.00	590.00	DNT	
Apr-30-09	Misc work; conferences with Licata, review of Court letter, research of law re: appeal	2.75	811.25	DNT	
May-05-09	Working on ethics issue and bankruptcy problems/Appeal; telephone conference with Steve Licata and client	3.50	1,032.50	DNT	
May-06-09	Conference with Andy S. and S. Licata and follow up; preparation of emails on effect of bankruptcy on Appeal	4.00	1,180.00	DNT	
May-11-09	Office conference with Byrd re: tenant, taxes and Appeal.	0.75	221.25	DNT	
	Telephone conference with Earle	0.20	59.00	DNT	
May-18-09	Telephone conference with Court of Appeals and preparation of Brief and research on Hobbs Affidavit	4.00	1,180.00	DNT	
May-19-09	Drafting of proposed return and follow up	2.00	590.00	DNT	
May-20-09	Revise Brief	1.50	442.50	DNT	
May-26-09	Review of incoming correspondence and follow up, working on Brief and telephone conference with Ballard and Licata	4.00	1,180.00	DNT	
	Preparation of Return to Memorandum	1.50	112.50	ADH	
May-27-09	Research on Bankruptcy and Appeal	1.50	442.50	DNT	
	Telephone conference with Licata	0.25	73.75	DNT	

Invoice #:	Sample	Page	10	May 6, 2011
(	Revision of Brief (x3)	1.00	295.00	DNT
	Preparation of letters copying documents to Ballard and Licata, Return to Appellants Memo, cover letter and certificate of service	2.50	187.50	ADH
May-28-09	Preparation of letter and follow up	0.50	37.50	ADH
May-29-09	Various work as result of Megna's emails, etc.	2.50	737.50	DNT
Jun-01-09	Various work re: Megna email and letters; and emailing Desa and Steve	2.00	590.00	DNT
Jun-08-09	Review of file re: Appeal and Bankruptcy and follow up	0.25	73.75	DNT
Jun-18-09	Review of incoming correspondence	0.25	73.75	DNT
	Telephone conference with Court	0.25	73.75	DNT
	Telephone conference with Licata	0.25	73.75	DNT
(Jul-14-09	Telephone conference with Licata	0.10	29.50	DNT
	Review of incoming correspondence from Megna and response with Licata and follow up	0.50	147.50	DNT
Aug-11-09	Telephone conference with bankruptcy attorney Licata re: offer and status of bankruptcy and Appeal	0.50	147.50	DNT
Aug-12-09	Review of incoming coorespondence re: bankruptcy, settlement, offer, response and effect on Appeal	0.25	73.75	DNT
Sep-17-09	Bankruptcy Court and follow up with Licata and review of emails	1.75	516.25	DNT
Sep-18-09	Review files and telephone conference with Licata regarding Bankruptcy suit - not served; impact on Appeal	1.50	442.50	DNT
Jan-03-10	Emailing of ethics question	0.40	0.00	NDT
Jan-04-10	Telephone conference with client (x2) and emailing attorney	1.00	295.00	DNT
(	Research of ethics issue	0.50	147.50	DNT

Invoice #:	Sample	Page 11		May 6, 2011
	Telephone call from client	0.10	20.00	NDT
	Review of file re: ethics answer/duty to report per Appeal and Order	0.50	100.00	NDT
Jan-14-10	Misc re: Court of Appeals research, etc.	0.50	147.50	DNT
	Editing Brief/report	1.00	200.00	NDT
Jan-15-10	Revision of letter and follow up	1.50	442.50	DNT
Jan-16-10	Preparation of letter and follow up re: possible settlement of issues - effect on Appeal and bankruptcy	3.00	885.00	DNT
	Letter to Court of Appeals; drafting of Order; review of letter from Bankruptcy Court	0.60	120.00	NDT
Jan-17-10	Research on all bankruptcy issues and effect on Appeal	4.00	1,180.00	DNT
	Phone conference with Licata and 3 emails	0.50	147.50	DNT
Jan-18-10	Revision of letter to Court of Appeals and review of Appeal file and consult with Neal D. Truslow	2.00	590.00	DNT
	Draft of letter to Court of Appeals and review of file	1.30	260.00	NDT
Jan-19-10	Telephone conference with Earle	0.25	73.75	DNT
	Telephone conference with Dowling	0.25	73.75	DNT
	Telephone conference with Jones re: "stay"	0.25	73.75	DNT
Jan-20-10	Review of incoming correspondence	0.10	20.00	NDT
	Review of Court Rule 269 and email	0.10	20.00	NDT
Jan-25-10	Preparation of letter to Court	0.25	18.75	ADH
Feb-10-10	Appeal issues as it relates to Bankruptcy and telephone calls with Licata and follow up	5.00	1,475.00	DNT
	Preparation of letter, fax and copies to Court of Appeals; follow up	2.00	150.00	ADH

Invoice #:	Sample	Page 12		May 6, 2011
Feb-12-10	Various emails (3) with client re: succession plan in context of Appeals and delay	0.50	147.50	DNT
Feb-15-10	Responding to Megna's emails; research re: stay; Licata re: bankruptcy and two letters; new ethics issues	2.75	811.25	DNT
Feb-18-10	Note to Appeal file after telephone conference with Steve Licata last evening	0.30	88.50	DNT
Feb-19-10	Review of incoming correspondence	0.10	29.50	DNT
	Review of file	0.20	59.00	DNT
	Telephone conference with S. Licata to confirm	0.25	73.75	DNT
	Preparation of letter to Court of Appeals	0.75	221.25	DNT
Feb-24-10	Drafting of letter to Court of Appeals; review of Court of Appeals Order of 2/19/10	1.50	300.00	NDT
	Review of file; drafting & editing letter	0.40	80.00	NDT
Feb-25-10	Various work on Appeal issue and responses to Megna emails	2.00	590.00	DNT
	Preparation of Motion for Reconsideration	1.00	75.00	ADH
Feb-28-10	Legal research re: interlocutory appeals; telephone call to Ashley Stratton; review and follow up	1.60	320.00	NDT
Mar-01-10	Revision of Motions to Court of Appeals; telephone conference with Desa Ballard	1.50	442.50	DNT
	Preparation of second motion and follow up	1.50	442.50	DNT
	Revisions to Motion for Reconsideration and delivery to Court of Appeals	2.00	150.00	ADH
Mar-02-10	Preparation and revisions to Motion to Dismiss	1.00	75.00	ADH
Mar-05-10	Additional changes to Motion to Dismiss	1.50	112.50	ADH
Mar-07-10	Review of incoming correspondence from Court of Appeals and follow up	0.25	73.75	DNT

Invoice #:	Sample	Page	13	May 6, 2011
	Working on Appeal	3.00	885.00	DNT
Mar-08-10	Various emails; telephone conference with Steve Licata (x2)	0.50	147.50	DNT
	Working on Appeal and Statement of Facts	7.50	2,212.50	DNT
Mar-09-10	Review of emails (x3)	0.25	73.75	DNT
	Telephone conference with Steve Licata re: case, award, federal court, law	0.50	147.50	DNT
	Revision of Appeal Statement	3.00	885.00	DNT
	Working on Appeal and Statement of Facts	4.00	1,180.00	DNT
Mar-10-10	Working on Appeal (trying to frame issues with supporting facts)	4.50	1,327.50	DNT
Mar-13-10	Working on Appeal and Facts of Case	4.50	1,327.50	DNT
Mar-14-10	Working on Appeal and Facts of Case	4.50	1,327.50	DNT
Mar-15-10	Working on Appeal and Facts of Case. Made more difficult by Megna obstreperous actions.	6.00	1,770.00	DNT
Mar-17-10	Preparation of corrections/revisions of Initial Brief	4.00	300.00	ADH
Mar-22-10	Editing of initial brief	3.60	720.00	NDT
Mar-26-10	Running total of time from 3/18-3/26 - working on Appeal and deadlines	21.00	6,195.00	DNT
Mar-27-10	3/27/10 - 4/02/10 - Finishing work on initial Appeal and extensive time on transcript materials	15.00	4,425.00	DNT
Mar-29-10	Editing of Brief	2.00	400.00	NDT
Mar-30-10	Editing of Brief	2.50	500.00	NDT
Apr-01-10	Editing of Brief	2.30	460.00	NDT
Apr-03-10	Work on Final Brief; letter; and Designation Of Matter To Be Included On The Record On Appeal - problems created by Megna	2.00	590.00	DNT

Invoice #:	Sample	Page	14	May 6, 2011
Apr-05-10	Hand-delivery of Briefs, et. al	1.00	200.00	NDT
Apr-06-10	Various emails and review of file regarding Megna's continuing misconduct	3.75	1,106.25	DNT
Apr-07-10	Telephone conference with Licata; emails; telephone conference with Earle	2.50	737.50	DNT
	Checking on Megna's fax with Court of Appeals and follow up	0.25	73.75	DNT
Apr-08-10	Detailed review of Arbitration transcript; research record on Appeal and emails with client; meeting with Derrick re: sale regarding Appeal	4.50	1,327.50	DNT
Apr-10-10	Working on Appellant issues and getting record research	2.00	590.00	DNT
Apr-14-10	Misc work on Appeal issue and follow up on Bankruptcy and Appeal; Megna delay issues	2.00	590.00	DNT
May-13-10	Review of incoming correspondence; review of file; telephone conference re: Anderson Order and follow up re: Appeal	1.00	295.00	DNT
Jun-14-10	Review of various emails, etc from last two weeks regarding Megna and uncivil actions	2.50	737.50	DNT
Jun-16-10	Preparation and revision of letter to Megna	0.25	18.75	ADH
Jun-23-10	Emails from Megna (x10)	0.50	100.00	NDT
	Response to emails (x6)	0.60	120.00	NDT
	Follow up on demands from opposing counsel	0.30	60.00	NDT
Jun-25-10	Working on Motion, letter, etc. Follow up on Megna's demands.	2.50	737.50	DNT
	Various emails, consideration of response(s) re: appeal. insults, etc (ultimately did not respond)	2.50	737.50	DNT
Jun-28-10	Preparation of Memorandum in Support	2.00	150.00	ADH
Jun-29-10	Working on Motion caused by Megna's failure to follow rules	4.00	1,180.00	DNT

Invoice #:	Sample	Page 15	May 6, 2011		
Jun-30-10	Review of email	0.20	59.00	DNT	
	Working on revisions to Brief	2.00	590.00	DNT	
	Preparation of Motion to Dismiss and Memorandum in Support	4.00	300.00	ADH	
Jul-01-10	Review of memos and Appeal by Megna and follow up (based on his false claims).	2.00	590.00	DNT	
	Revision and completion of Motion and memo in light of Appeal of Judge Anderson's Order to the 4th Circuit	1.75	516.25	DNT	
Jul-05-10	Appeal issue	2.50	737.50	DNT	
Jul-06-10	Appeal and misc issues; various communications with client and Byrd. Delays by Megna.	4.00	1,180.00	DNT	
Jul-07-10	Review of incoming correspondence from Court and follow up	0.10	29.50	DNT	
	Follow up revisitions of Response to Motion to Extend	0.50	147.50	DNT	
Jul-08-10	Preparation of Return and Reply to Megna's delay tactics	1.00	295.00	DNT	
Jul-09-10	Various emails, Motions, etc.	3.50	1,032.50	DNT	
Jul-12-10	Working on various Motions and problems created by Megna. Preparations of additional correction and revisions to Return and Reply.	2.00	590.00	DNT	
Jul-13-10	Preparation of additional corrections and revisions to Return and Reply	1.00	295.00	DNT	
Jul-14-10	Preparation of additional corrections and revisions to Return and Reply	5.00	1,475.00	DNT	
Jul-15-10	Working on Appeal Motions. Preparation of additional corrections and revisions to Return and Reply; preparation of Exhibits, copies, highlighting and mailing.	6.00	1,770.00	DNT	
Jul-16-10	Working on Appeal Motions. Preparation of additional corrections and revisions to Return and Reply; preparation of Exhibits, copies, highlighting and mailing.	6.00	1,770.00	DNT	

Invoice #:	Sample	Page 16	May 6, 2011		
Jul-21-10	Review of incoming correspondence from Megna and forward and responses	1.00	295.00	DNT	
Jul-22-10	Responses to emails and insults from Megna and his claims of unethical conduct	2.00	590.00	DNT	
Jul-23-10	Misc work re: letter, etc.	2.00	590.00	DNT	
Jul-28-10	Various responses to Megna's recent filings	2.00	590.00	DNT	
Aug-05-10	Review of incoming correspondence and research of response. Preparation of letter to Court of Appeals re: Megna's letter.	1.20	354.00	DNT	
Aug-18-10	Review of incoming correspondence	0.10	29.50	DNT	
	Telephone conference with Ballard (x2)	0.20	59.00	DNT	
	Research on whether to respond	0.25	73.75	DNT	
Aug-26-10	Review of Court Order	0.10	29.50	DNT	
Aug-30-10	Preparation and revision of letter	0.50	147.50	DNT	
	Preparation of letter to Megna and follow up	1.00	75.00	ADH	
Aug-31-10	Revision and put on yet another schedule caused by Megna	1.00	295.00	DNT	
Sep-01-10	Working on Appeal and new issues raised by Megna	4.00	1,180.00	DNT	
Sep-02-10	Working on Appeal and telephone conference with Licata	2.50	737.50	DNT	
Sep-08-10	Telephone conference with Licata and follow up regarding effect of Appeal on Bankruptcy	0.25	73.75	DNT	
	Preparation of letter, etc.	0.50	147.50	DNT	
Sep-16-10	Misc work on Appeal	0.50	147.50	DNT	
Sep-17-10	Preparation of letter	0.20	59.00	DNT	
Sep-20-10	Preparation of letter re: appeal and follow up	0.50	147.50	DNT	

Invoice #:	Sample	Page	17	May 6, 2011
	Preparation of letter and fax coversheet. Follow up.	0.40	30.00	ADH
Sep-25-10	Dealing with Megna's filings and Memo and research	4.50	1,327.50	DNT
Sep-28-10	Response to Motions under time table	6.00	1,770.00	DNT
Sep-29-10	Response to Motions and discussions with D. Ballard regarding more Appeal issues caused by Megna	6.00	1,770.00	DNT
Sep-30-10	Review/edit Reply to Megna's 9/23/10 Motion(s)	1.50	300.00	NDT
Oct-01-10	Review/edit Reply to Megna's 9/23/10 Motion(s)	2.10	420.00	NDT
Oct-04-10	Misc work re: Megna emails and filings	1.00	295.00	DNT
Oct-07-10	Responding to Megna issue	2.00	590.00	DNT
	Preparation of corrections to letter and follow up	0.50	37.50	ADH
Oct-08-10	Telephone call to Court and preparation of letter	0.30	88.50	DNT
Oct-11-10	Preparation of letter to Megna and follow up regarding time tables and Appeal issues	0.50	37.50	ADH
Dec-07-10	Preparation of letter to Tom Earle and Court of Appeals. Follow up.	0.50	37.50	ADH
	Preparation of letter to Court of Appeals	0.50	37.50	ADH
Dec-13-10	Preparation of letter to Megna	0.20	15.00	ADH
Dec-15-10	Pulling documents for DNT & Megna to complete Appeal	2.00	150.00	ADH
Dec-16-10	Preparation of letter to Megna	0.75	56.25	ADH
Dec-17-10	Preparation of corrections to letter	0.50	37.50	ADH
Dec-21-10	Preparation of Return to Motion of Appellant	3.00	225.00	ADH
	Preparation of corrections to letter	0.10	7.50	ADH

Invoice #:

Sample

Page 18

May 6, 2011

Dec-22-10	Preparations of corrections to letters, preparation of proof of service and mailings	3.00	225.00	ADH
Jan-03-11	Preparation of letter	0.10	7.50	ADH
Jan-11-11	Preparation of letter to Court	0.10	7.50	ADH
Jan-13-11	Travel to SC Court of Appeals to file document	0.50	37.50	ADH
	Preparation of letters; copies of pleadings	0.25	18.75	ADH
Jan-18-11	Preparation of letter & corrections	0.20	15.00	ADH
	Travel to SC Court of Appeals to file	0.50	37.50	ADH
	Preparation of letters and mailing out copies of filed documents	0.25	18.75	ADH
Jan-19-11	12/15/10-1/19/11: Summary of work--final brief; record on Appeal; research; bond; letters; telephone conference with Steve Licata & Desa Ballard; drafting and redrafting of Response to Motion; stay research, etc.	32.10	9,469.50	DNT
Jan-24-11	Preparation of letter to Megna & certified mail	0.10	7.50	ADH
Jan-26-11	Preparation of 2 letters and 2 coversheets. Follow up.	0.50	37.50	ADH
Feb-04-11	Various work and conferences with J. James and R. Jossey and follow up regarding comparison cases and ethics issues	4.00	1,180.00	DNT
Feb-07-11	Telephone conference with Desa and follow up re: Appeal, et. al.	1.50	442.50	DNT
Feb-16-11	Preparation of letter to Megna	0.25	18.75	ADH
Feb-20-11	Working on Appeal under deadlines	4.50	1,327.50	DNT
Feb-21-11	Working on Appeal	2.50	737.50	DNT
Feb-22-11	Working on Final Brief	5.00	1,475.00	DNT

Invoice #:	Sample	Page 19		6, 2011
Feb-23-11	Research re: untimely & review of what Appellant sent and follow up	5.00	1,450.00	DNT
Feb-24-11	Working on Appeal and new issues created by Megna	3.00	885.00	DNT
Feb-25-11	Revision of letter; conference with Licata, Ballard; preparation of letters & Affidavit	3.00	885.00	DNT
Mar-01-11	Review and responding and research re: Megna's 3/1/11 letter	3.75	1,106.25	DNT
Mar-02-11	Further follow up to Megna's letter; DB, Licata, research etc. and especially ethics issues	4.50	1,327.50	DNT
Mar-03-11	Review all that Appellant sent; D. Ballard; COA (Eliz.) re: due date and certificate; drafting docs and letters	5.25	1,548.75	DNT
Mar-04-11	Working on Motion issues	6.00	1,770.00	DNT
	Preparation of corrections to Motion to Dismiss	0.75	56.25	ADH
Mar-06-11	Working on Motion	1.50	442.50	DNT
Mar-07-11	Revision of Motion and research	2.00	590.00	DNT
	Telephone conference with J.J. and follow up	0.50	147.50	DNT
	Preparation of corrections to Motion to Dismiss and follow up	0.75	56.25	ADH
Mar-08-11	Revise motion regarding Megna's non-compliance with Rules	1.00	295.00	DNT
Mar-14-11	Review of Brief and research of multiple issues created by Megna	6.50	1,917.50	DNT
	Telephone conference with J.J.	0.30	88.50	DNT
	Correspondence to Megna	0.10	7.50	ADH
Mar-15-11	Prepare letter; conference with J.J.; research issues (multiple) and follow up	2.00	590.00	DNT
	Correspondence to Ms. Gee	0.10	7.50	ADH

Invoice #:	Sample	Page 20		May 6, 2011
Mar-16-11	Preparation of appeal matters, motions, letters. Research on case issues.	1.50	442.50	DNT
Mar-17-11	Working on Appeal	8.00	2,360.00	DNT
Mar-21-11	Working on appeal. Travel to court to review documents. Prepare affidavit.	2.75	811.25	DNT
Mar-22-11	Revise affidavit. Send e-mails related to case. Follow up.	1.50	442.50	DNT
Mar-23-11	Check status of Dowling's case with Megna as it imports on this case. Follow up.	0.50	147.50	DNT
Mar-25-11	Research on cases cited in Atty. Megna's 3/22/11 pleadings	3.00	885.00	DNT
Mar-28-11	Telephone call with J.J. and follow up	0.25	73.75	DNT
	Review of letters, memos and materials from Atty. Megna	0.75	221.25	DNT
	Correspondence to court	0.10	7.50	ADH
Mar-30-11	Various work on reviewing file; follow up with client	1.50	442.50	DNT
	Preparation of letter and mailing to Megna	0.20	15.00	ADH
Mar-31-11	Review of incoming correspondence from Atty. Megna and follow up	0.75	221.25	DNT
Apr-01-11	Telephone call with CJ regarding status of other cases where Megna claims other attorneys are unethical	0.50	147.50	DNT
	Review of incoming correspondence from Atty. Megna	0.10	29.50	DNT
Apr-04-11	Preparation of Appeal. T/C (x2) with client.	3.00	885.00	DNT
Apr-05-11	Telephone call with James re appeal, status of case and follow up	0.75	221.25	DNT
Apr-06-11	Follow up regarding client's extended complaint regarding appeal (Megna) and how much Megna and Matthews are needlessly wasting time.	1.00	295.00	DNT

Apr-11-11	Review of incoming correspondence and follow up	0.25	73.75	DNT
May-01-11	Receipt of Order and follow up.	0.50	147.50	DNT
	Totals	682.80	\$181,562.00	

DISBURSEMENTS

	Filing Fee	310.20
	Miscellaneous	183.40
	Photocopies	1,840.29
	Postage	483.95
Apr-10-07	Service of Process (Lee)	45.00
Jul-12-07	Copies of documents - Deposition transcripts & Court reporter fee	542.00
Aug-21-07	Copies of documents - Deposition transcripts & Court reporter fee	209.00
Aug-30-07	Motion Fee	25.00
Oct-25-07	Transcript of Record (9/19 hearing)	77.25
Dec-19-07	Expert Examination	990.00
Jan-22-08	Motion Fee (Appeal)	25.00
Feb-18-08	Expert Examination	540.00
Feb-29-08	Filing Fee - Application for Ejectment	40.00
Apr-23-08	Copies of documents - Clerk of Court	0.80
May-13-08	Expert Examination	90.00
Jun-23-08	Expert Examination	60.00
Mar-01-10	Filing Fee - Motion fee	25.00
Mar-31-10	Filing Fee - Motion fee	25.00
Jul-29-10	Expert Examination	9.12
Oct-11-10	Expert Examination	51.29
Dec-13-10	Appellant Brief preparation	577.20
Mar-07-11	Expert Examination	360.00
Mar-21-11	Copies of documents	127.31
	Totals	\$6,636.81
	Total Fee & Disbursements	\$188,198.81
	Balance Now Due	\$188,198.81

TAX ID Number 57-0859340

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Ex Parte:

Desa Ballard

In re:

Pee Dee Health Care P.A.,

Plaintiff,

Vs.

Estate of Hugh S. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-16-0332

Scott B. Suggs
CERTIFIED COPY
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

MOTION FOR SANCTIONS

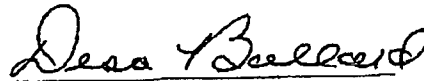
FILED
2011 AUG -5 PM 1:14
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Non-party Desa Ballard hereby moves, pursuant to Rule 11(a), SCRCPP, for an award of reasonable expenses incurred by the undersigned in responding to a subpoena issued by a former agent of the plaintiff herein. In support of the motion, the undersigned will show:

1. To the best of my knowledge, I am not a witness, party or counsel to any party in this action.
2. On or about July 30, 2011, my office was served with a subpoena, a copy of which is attached hereto as Exhibit 1, seeking production of certain materials.
3. On or about August 3, 2011, my office received, via regular U.S. mail, a letter and check, copies of which are attached collectively as Exhibit 2.
4. On or about August 4, 2011, after seeking and obtaining relevant information about the instant case and confirming the lack of relevance of any materials requested from me, I prepared and served Objections to the subpoena on Benjamin R. Matthews, Esquire, who is represented by the online records from the Darlington County Clerk

of Court as co-counsel for the Plaintiff. A copy of the Objections is attached as Exhibit 3.

5. I am informed and believe that the subpoena was issued in bad faith and for an improper purpose.
6. I expended approximately two (2) hours in reviewing and responding to the subpoena. I bill for my legal services at \$400 per hour. I will pay a motion fee of \$25.00 for filing this motion.
7. Should a hearing be necessary on this motion, I will expend additional time traveling to Darlington and appearing at any hearing, which travel and appearance will cost me billing on other matters at a rate of \$400 per hour.
8. I request an award of sanctions against Mr. Megna, who issued the subpoena, in an appropriate amount.



Desa Ballard
BALLARD WATSON WEISSENSTEIN
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

RESPONDING PRO SE

August 4, 2011

FILED
2011 AUG -5 PM 1:14
SCOTT B. SUGGS
CLERK OF COURT, R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-16-0332

Ex Parte:)

Desa Ballard)

In re:)

Pee Dee Health Care P.A.,)

Plaintiff,)

Vs.)

Estate of Hugh S. Thompson)

Defendant.)

TRUE COPY
CERTIFICATE OF SERVICE
J. B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

The undersigned certifies that he has, this date, caused to be served a copy of the Motion for Sanctions upon active counsel for Plaintiff and counsel for Defendant in this matter via by regular U.S. mail delivery by depositing the document in the United States Mail, with sufficient first class postage affixed, addressed as follows:

John J. James, II, Esquire
Post Office Box 507
Darlington, South Carolina 29540

Jon Rene Josey, Esquire
Post Office Box 5478
Florence, South Carolina 29502

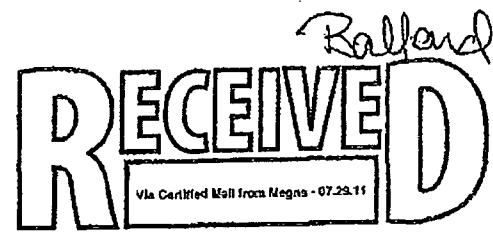
Benjamin R. Matthews, Esquire
3400 West Avenue
Columbia, South Carolina 29203

FILED
2011 AUG -5 PM 1:14
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.



Andrew L. Johnson
Paralegal

August 4, 2011



TO: The named party on the attached subpoena

PLEASE BE ADVISED THAT the attached subpoena is intended to reasonable in scope and is not intended to place an undue burden upon you. In fact, it has but one request as noted below. The undersigned is open to any reasonable request you may have to minimize the burden or expense on you in responding to the subpoena. For instance, you may provide the documents in electronic format on a CD(s) in pdf format or by email in pdf format. In addition, you need not appear in person at the place of production or inspection as noted on the subpoena if you provide the documents prior to the date on the subpoena. If you cannot reasonably respond to the subpoena by August 17, 2011, please let me know, and we will make reasonable arrangements to accommodate your concerns.

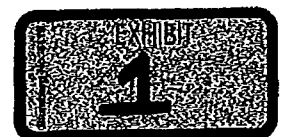
In sum, all that is requested is that you provide the documents in your possession as noted on this request. The documents you provide will serve as your attestation that you have responded to the subpoena in good faith. If you have any reasonable request that will ease your burden or expense in responding to the subpoena, or any other question, please contact me by email at tmegna@gmail.com. You may also contact me directly by telephone at 803.606.5983. I will be out of the office for the next several days but will make every effort to respond to your concerns expeditiously.

Your cooperation is appreciated, and I look forward to hearing from you.

Tony R. Megna
Attorney at Law
3400 West Avenue
Columbia, SC 29203
Office: 803.254.3676 [please ask for Kathy]

July 27, 2010.

FILED
2011 AUG -5 PM 1:14
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
CHARLESTON COUNTY, S.C.



PROOF OF SERVICE

SERVED	DATE PLACE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 46, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT _____ COURT IN THE COUNTY OF RICHLAND
PEE DEE HEALTH CARE, PA, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

ESTATE OF HUGH S. THOMPSON, Defendant Case Number: 10-cv-16-0332

Pending in DARLINGTON County

TO: Desa Ballard

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY _____	COURTROOM _____
_____	DATE AND TIME _____

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION _____	DATE AND TIME _____

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

See Exhibit A.

PLACE <u>201 Cashua Street, Darlington, SC 29532</u>	DATE AND TIME <u>Wed, August 17, 2011 , @ 11:00 a.m.</u>

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES _____	DATE AND TIME _____

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES

Tony R. Megna, Attorney for Plaintiff

July 27, 2011

Attorney/Issuing Officer's Signature

Date

Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:

3400 West Avenue, Columbia, SC 29203 [email: tmegna@gmail.com]; telephone: 803.606.5983

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number:

EXHIBIT A TO SUBPOENA

TO: The named party on the attached subpoena

PLEASE BE ADVISED THAT the attached subpoena is intended to reasonable in scope and is not intended to place an undue burden upon you. In fact, it has but one request as noted below. The undersigned is open to any reasonable request you may have to minimize the burden or expense on you in responding to the subpoena. For instance, you may provide the documents in electronic format on a CD(s) in pdf format or by email in pdf format. In addition, you need not appear in person at the place of production or inspection as noted on the subpoena if you provide the documents prior to the date on the subpoena. If you cannot reasonably respond to the subpoena by August 17, 2011, please let me know, and we will make reasonable arrangements to accommodate your concerns.

In sum, all that is requested is that you provide the documents in your possession as noted on this request. The documents you provide will serve as your attestation that you have responded to the subpoena in good faith. If you have any reasonable request that will ease your burden or expense in responding to the subpoena, or any other question, please contact me by email at tmegna@gmail.com. You may also contact me directly by telephone at 803.606.5983. I will be out of the office for the next several days but will make every effort to respond to your concerns expeditiously.

Your cooperation is appreciated, and I look forward to hearing from you.

Pursuant to the SC Rules of Civil Procedure, Plaintiff hereby requests that the Defendants produce for inspection and copying the documents specified below at the office of the Attorney for the Plaintiffs, or by sending such documents to Tony R. Megna at 3400 West Avenue,

Columbia, SC 29203, within 30 days from the date of service of this request, or by emailing the documents in pdf format to tmegna@gmail.com or by mailing the documents in pdf format on a CD(s). Please respond to the subpoena in the manner most convenient and cost effective for you.

DEFINITIONS

For purposes of this request for the subpoenaed production of documents, the following definitions apply:

- A. "Defendant" or "Defendants" and/or the "party named in this subpoena" refers to the party named in this subpoena and/or defendants named in this lawsuit, as well as any other person or entity in either of their agency or employ. This definition is intended to be construed broadly to include by any person who consults with, is employed by or has any other agency relationship, implied or express, with the Defendants and/or the party named in this subpoena.
- B. "Documents" includes records; books; papers; contracts; memoranda; invoices; correspondence; notes; minutes of any meetings, including meetings with agents or employees; instructions; guides; compilations of rules, regulations, or policies; daybooks; calendars; photographs; telegrams; messages; drawings; charts; graphs; other writings; recording tapes; recording discs; mechanical or electronic information storage or recording elements; and any other "documents" as that word is defined in Rule 34 of the Federal Rules of Civil Procedure, and in particular 'electronic evidence' including but not limited to e-mails, instant messages or other means of electronic communication. Please note that Rule 34, S.C.R.Civ.P., requires that the Defendants and/or the party named on the subpoena, as producing parties, are responsible for translating the information into a form readable to the Plaintiff, as the

discovering party. It is requested that electronic documents be provided in pdf format.

- C. "Relate" or "relating to" is defined as showing, reflecting, referring to, constituting, evidencing, or concerning in any way all or any portion of the subject matter of the facts, contentions, or matter.
- D. "Person" means any natural person, group of natural persons, corporation, partnership, government agency or board, association, proprietorship, organization, or any other legal entity.
- E. "Non-identical copies" means any copy of a document that is not identical to any other copy thereof, by reason of any alterations, marginal notes, comments, or other material contained thereon or attached thereto, or otherwise.
- F. A Document is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34, S.C.R.Civ.P. A document specifically includes data compilations from which information can be obtained, translated, if necessary, by the party named in this subpoena through detection devices into reasonably usable form -- regardless of where such data compilations located. A draft or nonidentical copy is a separate document within the meaning of this term.

INSTRUCTIONS

1. These requests apply to all documents in the possession, custody, or control of any party named in the attached subpoena regardless of their location and regardless of whether such documents are held by a defendant's agents, employees, representatives, attorneys, independent contractor's, paid consultants, unpaid consultants, or any other person.

2. These requests are continuing in nature. In the event the party named in this subpoena become aware of or acquire possession, custody, or control of additional responsive documents, the party named in this subpoena shall promptly produce such additional documents for inspection and copying.
3. All "non-identical copies" of every document whose production is sought shall be separately produced.
4. All documents produced in response to an individual request shall be physically segregated from documents produced in response to any other requests, and the request to which they are responsive shall be specifically identified. If a document is responsive to more than one request, each of the requests to which the document is responsive shall be specified.
5. In producing the documents, all documents which are physically attached to each other shall be left so attached. Documents which are segregated or separated from other documents, whether by inclusion in binders, files, sub-files, or by use of dividers, tabs, or other methods, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained in the file where found.
6. If an objection to a request is based upon a claim of privilege, attorney-work product, or any other basis, identify in writing each document so withheld by providing at least the following information:
 - a. the title and the subject matter of the document;
 - b. the title and the position of the sender of the document;
 - c. the identity and position of each person who participated in the preparation of the document or on whose behalf the document was prepared;

- d. the identity and position of all persons (1) to whom the document was addressed, (2) to whom the document was sent, (3) who have seen the document, (4) who have possession or custody of the document, and (5) who have had disclosed to them any of the contents of the documents; and
- e. a detailed statement of the basis for withholding the document, including facts establishing any claim of privilege, facts showing that the privilege has not been waived, and the status of the person claiming the privilege.
- f. Identify and produce all segregable portions of any responsive document to which a claim of privilege, attorney work product, or other basis for withholding the document does not apply.
- g. Identify all responsive documents that have been lost, discarded, or destroyed. In so doing, state the type of document, its date, the approximate date it was lost, discarded, or destroyed, and the identity of each person having knowledge of the contents thereof.

REQUESTS FOR PRODUCTION

- 1. Please identify all persons answering these requests for production. Please include a brief description of each person's involvement or status, if any, with the Defendants and/or the party named in this subpoena.
- 2. Please identify and produce, if any, all documents, including but not limited to emails, written communications, text messages, facsimiles, etc., and as defined hereinabove, that you obtained from or provided to the following individuals:
 - a. Douglas N. Truslow

- b. Desa Ballard
- c. Jay James
- d. J. Renee Josey
- e. Kenneth P. Woodington
- f. David Byrd
- g. Steve Licata
- h. Andy Savage
- i. Carolina Whitehead Streater
- j. Ashley Berry Stratton
- k. Pam Jolly
- l. Any and partners, associates, employees, or agents of the McNair Law Firm
- m. Any and partners, associates, employees, or agents of Law Firm of Turner Padgett
Graham and Laney, P.A.
- n. John Joseph McCauley
- o. Thomas George Earle
- p. Curtis W. Dowling

PLEASE BE ADVISED that the documents requested under the accompanying subpoena are limited to documents regarding (a) Pee Dee Health Care, P.A., (b) Tony R. Megna, (c) Benjamin R. Matthews, (d) Alexander H. Cohen, M.D., and/or (d) other persons known to you, upon reasonable investigation, to be employees of Pee Dee Health Care, P.A.

PLEASE BE FURTHER ADVISED that this request is limited to documents you obtained by you on or after January 1, 2008. To ease any burden and/or expense on you, please do not produce documents you have formerly produced and provided to the Plaintiff,

Pee Dee Health Care, P.A. Instead, please note and identify such documents and the date you formerly produced them.



Tony R. Megna
Attorney at Law
3400 West Avenue
Columbia, SC 29203
Office: 803.254.3676 [please ask for Katie]

July 27, 2010.

Matthews and Megna, LLC

Attorneys and Counselors at Law

3400 West Avenue

Columbia, SC 29203

TELEPHONE: 803-799-1700

E-mail: tmegna@gmail.com

August 1, 2011

Desa Ballard
226 State Street
West Columbia, SC 29069

Re: Estate of Hugh S. Thompson
Case No: 10-CP-16-0332

Dear Ms. Ballard:

Enclosed please find a check in the amount of Thirty-Five and No/100 (\$35.00) Dollars to cover fees associates with the Subpoena recently served upon you by mail. This check was inadvertently left out of the Subpoena mailed to you on Thursday, July 27, 2011.

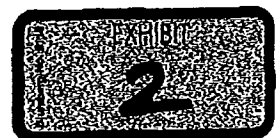
Sincerely yours,

Mark Matthews

Mark Matthews

TRUE CERTIFIED COPY
SCOTT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

FILED
2011 AUG -5 PM 1:14
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.



WARNING: DO NOT CASH THIS INTUIT® Check, Lock™ SECURE CHECK IF ANY FEATURES LISTED ON BACK INDICATE TAMPERING OR COPYING

Genesis Healthcare, Inc.

226 State Street
West Columbia, SC 29069
(803) 241-0570

\$ 35.00

Desa Ballard
226 State Street
West Columbia, SC 29069

MEMO

Case# 10-CP-16-0332 - Estate of Hugh S. Thompson

⑈001292⑈ ⑆053906041⑆08313 4158101⑈

Genesis Healthcare, Inc
Desa Ballard

Date	Type	Reference
8/1/2011	Bill	10-CP-16-0332

Original Amt.
35.00

Balance Due
35.00

8/1/2011

Discount

Payment

35.00

Check Amount

35.00

RECEIVED
Via U.S. Mail from Monge - 08.03.11

1292



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

Thursday, August 04, 2011

Via U.S. Mail Only

Benjamin R. Matthews, Esquire
Matthews & Megna, LLC
3400 West Avenue
Columbia, South Carolina 29203

Re: *Pee Dee Health Care, PA v. Estate of Hugh S. Thompson*
Case No.: 10-CP-16-0332

Dear Mr. Matthews:

Pursuant to Rule 45(c)(2)(B), SCRCP, enclosed for service upon you is an Objection to Subpoena, in response to a subpoena issued by Tony R. Megna on or about July 27, 2011. I am informed and believe that Mr. Megna has been disqualified as acting for plaintiff in this action. I consulted the online information at the Clerk of Court's office in Darlington and determined that you remain active as counsel for Plaintiff, so I am serving this objection on you.

My motions for sanctions will be forthcoming. With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

FILED
2011 AUG -5 PM 1:14
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.



STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Ex Parte:

Desa Ballard

In re:

Pee Dee Health Care P.A.,

Plaintiff,

Vs.

Estate of Hugh S. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-0332

FILED
JUL 28 2011
CLERK OF COURT
DARLINGTON COUNTY, S.C.

OBJECTION TO SUBPOENA

Non-party Desa Ballard hereby objects to producing any documents or materials identified in a subpoena issued in this matter dated July 27, 2011, received by her office via certified mail on July 30, 2011, in accordance with the provisions of Rule 45(c)(2)(B) and (d)(2), SCRPC.

1. The subpoena is issued from the improper county in violation of Rule 45(a)(2), SCRPC and Rule 45(b)(2), SCRPC.
2. The materials requested, to the extent they exist, are not likely to be relevant, in violation of Rule 26(b)(1), SCRPC.
3. Exhibit A to the Subpoena "requests that the Defendants produce" certain materials, and the recipient of this subpoena is not a Defendant in the referenced action.
4. The recipient is informed and believes that the officer who executed the subpoena has been disqualified as counsel in the instant action and has no authority to issue the subpoena.

5. On information and belief, the subpoena attempts to inquire into privileged communications had between the undersigned and Douglas N. Truslow, which communications occurred and continue to incur in connection with advice rendered by the undersigned to Mr. Truslow in connection with an unrelated case.
6. The undersigned has regular professional communications with various individuals named in the subpoena from time to time on a variety of topics, most of which cannot possibly be relevant to the instant case.

You are hereby notified that the undersigned will seek sanctions for the cost of responding to this subpoena from the proper court.



Desa Ballard
BALLARD WATSON WEISSENSTEIN
Post Office Box 6338
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

RESPONDING *PRO SE*

August 4, 2011

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Ex Parte:

Desa Ballard

In re:

Pee Dee Health Care P.A.,

Plaintiff,

Vs.

Estate of Hugh S. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2010-16-0332

TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/RMO
DARLINGTON COUNTY, S.C.

CERTIFICATE OF SERVICE

2011 AUG -5 PM 1:14
SCOTT B. SUGGS
CLERK OF COURT/RMO
DARLINGTON COUNTY, S.C.

FILED

The undersigned certifies that he has, this date, caused to be served a copy of the **Objection to Subpoena** upon active counsel for Plaintiff in this matter via by regular U.S. mail delivery by depositing the document in the United States Mail, with sufficient first class postage affixed, addressed as follows:

Benjamin R. Matthews, Esquire
Matthews & Megna, LLC
3400 West Avenue
Columbia, South Carolina 29203

Andrew L. Johnson

Andrew L. Johnson
Paralegal

August 4, 2011

Common Pleas
Clerk : Scott B. Suggs
1 Public Square, Rm B-4
Darlington, SC 29532
(843) 398-4330

Received From: Matthews, Benjamin Rushton
Matthews & Megna, LLC
Columbia, SC 29203

Date : 8/5/2011
RECEIPT # 10829
Clerk: c16lbryant

Paying for: Ballard, Desa

Transaction Type: Payment

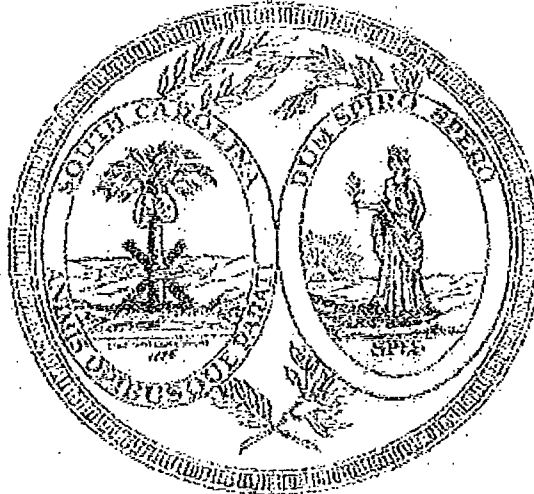
Reference # 1095

Payment Type: Check \$25.00

Comment:

Total Paid \$25.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2010CP1600332	Pa Pee Dee Health Care VS Hugh S Estate Thompson	\$25.00	\$25.00	\$0.00



Total Cases: 1

\$25.00

\$25.00

\$0.00

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JAMES A. ANASTI,)
)
Plaintiff,)
)
vs.)
)
LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
And RICHLAND COUNTY)
CLERK OF COURT,)
)
Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

**AMENDED MOTION FOR
RULE 11, SCRC¹**

TO: TONY R. MEGNA, BENJAMIN R. MATTHEWS, and MATTHEWS AND MEGNA,
LLC, ATTORNEYS FOR DEFENDANT GINA L. ANASTI LEE:

PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned attorney, on the 10th day after service hereof or at such time and place as the Court may set, will move for Rule 11, SCRC¹ sanctions to be rendered against Defendant Lee's counsel.²

The grounds for the Motion are, *inter alia*, that;

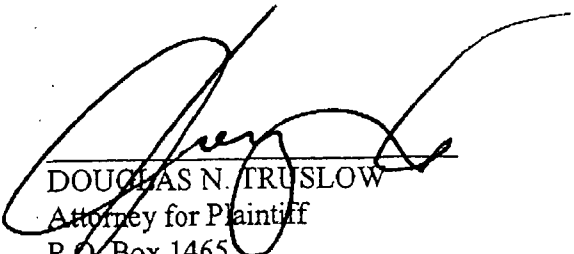
1. Lee's counsel interjected frivolous defenses, pleadings and Affidavits and otherwise engaged in wrongful conduct, the result of which has been to harm Plaintiff.
2. Summary Judgment has been granted and Lee's appeals and other actions by her attorneys have been determined with finality adverse to their claims (excepting a damages hearing against Defendants Wilson and Goodwin).
3. Damages and sanctions are expected to exceed \$500,000.00 and a status conference needs to be conducted before hearings are held.

The undersigned counsel for Plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.

(Signature on following page.)

¹ The original Motion was filed November 7, 2007 and has not yet been heard (because of Lee's Appeal -- dismissed and remitted October 7, 2011). This motion is intended to supplement the prior motion so as to make clear that sanctions are not sought against Defendant Lee at this juncture and to make clear that sanctions are sought against Lee's attorneys only.

² Defendant Lee is in bankruptcy and she is therefore not a necessary party to these proceedings at this juncture.



DOUGLAS N. TRUSLOW

Attorney for Plaintiff

P.O. Box 1465

Columbia, South Carolina 29202

(803) 256-6276

Fax (803) 256-7659

Columbia, South Carolina

Nov 21, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,)

WILLIS GOODWIN,)

GINA L. ANASTI LEE,)

And RICHLAND COUNTY)

CLERK OF COURT,)

Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

CERTIFICATE OF SERVICE

I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail, postage prepaid to the following address:

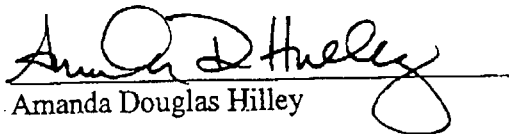
Tony R. Megna, Esquire
3400 West Ave.
Columbia, SC 29203

Matthews & Megna, LLC
3400 West Ave.
Columbia, SC 29203

Benjamin R. Matthews, Esquire
3400 West Ave.
Columbia, SC 29203

Thomas G. Earle, Esquire
Seigler Earle and Ellsworth
1735 Saint Julian Place #103
Columbia, SC 29204

DOCUMENT(S): 1. *Amended Motion for Rule 11, SCRC*


Amanda Douglas Hilley

Columbia, South Carolina

November 22, 2011

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

JAMES A. ANASTI,)

Docket Number: 2007-CP-40-0576

Plaintiff,)

vs.)

**MOTION TO QUASH AND
FOR PROTECTION AND
OTHER RELIEF**

LANCE WILSON,)

WILLIS GOODWIN,)

GINA L. ANASTI LEE,)

And RICHLAND COUNTY)

CLERK OF COURT,)

Defendants.)

INTRODUCTION

The undersigned seeks protection from the Court relative to "discovery" misconduct of "Plaintiff" (sic)/Tony Megna ("Megna"), ostensibly utilized by him in the name of his (former) client Defendant Gina Anasti Lee (whose involvement in this case has conclusively ended). As well, Plaintiff seeks the imposition of sanctions, including fees and costs, disqualification of Megna to participate as an attorney in this case and for such other and further relief as the Court may find proper.

Specifically, although his former client's (Lee) case has been conclusively adjudicated (and no action can be taken against her because of her bankruptcy(s) – in which Megna was her attorney and in which his malfeasance appears to have significantly contributed to her financial distress),¹ Megna is now attempting to engage in "discovery" in her name, to include taking the deposition of Plaintiff's counsel and his paralegal, as well as to retake the deposition of Plaintiff, to take the deposition of a bankruptcy attorney (who successfully assisted Plaintiff in lifting Lee's bankruptcy stay so that her appeal could be

¹ He represented her in a separate "companion case" in which he lost because, *inter alia*, he appears to have allowed the pertinent statute of limitations to expire and he clearly missed the time to appeal in the within case (see Order of the Court in the "companion case" filed by Wilson and Goodwin against Lee, as well as the Orders of Judge Manning dated April 3, 2008 and April 1, 2009 and the per curium decision of the Court of Appeals dismissing Megna's appeal in that it was untimely). The verdict rendered against Lee in the "companion case" exceeded \$200,000.

concluded) and to otherwise exceed the bounds of discovery in any event.² Also, Megna is attempting to use this case as a means to gather evidence for an unrelated case (in which he has specifically been disqualified by the Court from participating) and in which there is also a separate pending, preexisting sanctions motion filed against him by non-party/non-witness Desa Ballard – relative to Megna’s continued misuse of the legal process. In that unrelated case, Megna attempted to subpoena Ms. Ballard’s attorney files and work product (and those of other attorneys). His conduct was especially egregious because Megna had previously been disqualified from acting as an attorney in that case, based on specific ethical considerations (the subpoenas were all quashed by the Court *sua sponte*). Apparently being dissatisfied with the Court’s Order(s), he is now attempting to use the same tactic in this case to circumvent the Court’s Order(s) in the Darlington case and to continue to misuse SCRCF as a platform to acquire proprietary, private, privileged information relative to the activities of attorneys Celeste Jones, Rene Josey, Jay James, Kenneth Woodington and Desa Ballard in totally unrelated cases in which he (Megna) may have some interest as an opposing attorney, in which he has a financial stake and/or in which he is an actual party defendant being sued by one of them.

RELEVANT BACKGROUND

The undersigned represents Plaintiff. Megna previously represented Defendant Lee.³ Plaintiff was granted Summary Judgment in **October, 2007** against all Defendants as to liability. Upon receipt of the Order granting Summary Judgment, Plaintiff promptly filed a Motion for Rule 11 sanctions against Megna personally. Sanctions were sought against Megna personally due to the fact that he had deliberately presented and advanced claims that he clearly knew were frivolous, if not blatantly dishonest, and which were

² Megna is also apparently attempting to use this case as a platform to take the depositions of, *inter alia*, attorneys Desa Ballard, Celeste Jones, Rene Josey and Jay James, as well as to engage in a fishing expedition to gather information relative to the activities of these attorneys in unrelated cases.

³ Lee has now been adjudicated bankrupt and is otherwise no longer a party. In fact, Megna has claimed in submissions to the Court(s) that Lee is not and cannot be a party to these proceedings. Further, Summary Judgment was granted against Lee (in favor of Plaintiff Anasti), and the case was not overturned on Appeal. Specifically, Megna’s appeal was dismissed (per curiam decision) in that Megna “beyond a reasonable doubt” filed it out of time; Megna’s Petition for Writ of Certiorari was likewise denied, and all Megna’s multiple appeals to the Federal District Court and Fourth Circuit Court of Appeals (in the ostensible name of Lee) were likewise denied – per curiam decision.

interposed by him for ulterior, illegitimate reasons.⁴ A hearing date was scheduled for early **January, 2008** relative to the Rule 11 sanctions motion pending against Megna. Just before that January, 2008 hearing date, Megna filed an (untimely) appeal, thereby preventing a damages hearing from being heard and, more pertinent to these proceedings, preventing the sanctions motion against Megna from being heard. Extensive legal machinations were thereafter employed by Megna to further delay the pending sanctions motion against him from being addressed, but his multiple appeals were consistently found by all courts addressing them to be without merit and they were ultimately dismissed (per curium decisions). In that regard, Megna's Petition for Writ of Certiorari to the South Carolina Supreme Court was denied, as were Megna's multiple appeals to the Federal District Court and Fourth Circuit Court of Appeals (which clearly appear to have been interposed by Megna specifically so as to continue to delay the imposition of sanctions against him).⁵

Upon it being determined by multiple Courts that, by late 2011, Megna had exhausted all appeals and avenues that could have possibly been exploited to further delay the imposition of sanctions against him, a status conference was held on **January 18, 2012** (over Megna's objection).⁶ At the status conference, the primary issues to be addressed related to scheduling a damages hearing (against Defendants Wilson and Goodwin alone) and the pending sanctions hearing against Megna alone. It was decided, agreed and confirmed at that time that the damages hearing against Defendants Wilson and Goodwin would be held first, and it was tentatively scheduled for March 12, 2012. It was tentatively scheduled in that Wilson and Goodwin's attorney, Thomas Earle, was experiencing serious health issues and it was unknown if his health would allow him to continue in the case.⁷ At the status conference, it was also acknowledged and confirmed

⁴ Available evidence clearly establishes that Megna proposed that Lee present defenses that he knew without question to be dishonest.

⁵ This opinion is supported by the fact that, given her bankruptcy (a) Lee could never benefit by the course of action taken by Megna and (b) neither the bankruptcy trustees nor any creditor joined in Megna's activities.

⁶ Megna had argued that the case remained stayed by virtue of Lee's bankruptcy – see his November 3, 2011 letter submitted to the court of Common Pleas and prior letters to the South Carolina Court of Appeals, subsequent to the Bankruptcy Court ordering that Lee's bankruptcy stay was lifted.

⁷ Mr. Earle in fact has taken a turn for the worse, and an Order relieving him as the attorney for Wilson and Goodwin has been granted and the damages hearing has been continued for ninety days. The sanctions hearing will be heard at a subsequent date.

that there was no need (nor was it appropriate) for Megna to participate in the damages hearing against Wilson and Goodwin, precisely because of Lee's bankruptcy and because the case against her had been concluded. It was also decided and agreed at the time of the status conference that a sanctions hearing against Megna alone was to be set at a later date, after the damages hearing, and that a list of witnesses was to be exchanged. Plaintiff has complied, and Megna has been provided with a tentative witness list as well as the substance of their testimony.⁸ Megna has not submitted anything to Plaintiff in this regard.

During the last week of February, 2012, Wilson and Goodwin's attorney's law partner reported to Megna that Mr. Earle was hospitalized, in intensive care and in a coma. In conjunction, Mr. Earle's law partner indicated that substitute counsel for Wilson and Goodwin would necessarily have to be found. Upon receiving that information, Megna immediately and in bad faith "noticed" Mr. Earle (by email (sic) and purportedly by regular mail) for the taking of the depositions of Plaintiff's counsel, his paralegal and the attorney who represented Plaintiff in Lee's bankruptcy for the ensuing week (on less than ten days notice), notably doing so at a time when he (a) knew that he had not complied with SCRPC, (b) knew that Wilson and Goodwin's attorney Mr. Earle certainly would not receive the notice, nor could he attend, (c) knew that such a notice would impose an unnecessary and unreasonable burden on Mr. Earle's law firm and/or impose an unreasonable burden on Wilson and Goodwin and likely on any substitute counsel and (d) knew that no discovery sought by Megna was authorized or permitted in this case or in the Darlington case (in which he had been disqualified). He unquestionably sent the referenced subpoenas to an address for Plaintiff's counsel that he knew to not exist (see his Certificate of Service). Furthermore, he arbitrarily set all the depositions at the exact same time without prior notice, such as to make it appear that he wanted to cause further discord and inconvenience.

Aside from the fact that discovery is not permitted or authorized at this juncture, especially by Lee, Megna has exceeded the scope of discovery.⁹ Megna's depositions were not properly noticed and the subpoenas issued by Megna were from Darlington for a

⁸ Since the sanctions hearing is based on a Motion, it is anticipated that it will most likely be conducted by affidavit testimony.

⁹ Interrogatories alone, with subparts, appear to have exceeded the number (50) permitted.

Richland County case. Further, Megna's submissions contain significant, alarming irregularities, not the least of which he has noticed depositions on less than ten days notice, for a place that does not exist and he has asserted that he is representing the Plaintiff (sic). The "discovery" related documents from Megna are attached and, aside from other, major violations of the rules and a lack of professional courtesy, Megna's submissions demonstrate an alarming number of other errors reflecting his continuing inattention to even rudimentary professional competence.¹⁰ Megna should not be allowed to continue with his abusive tactics.

Further, Megna seeks "discovery" under the auspices of this case in what appears to be a ploy to gather information relative to a separate, distinct and unrelated Darlington case filed by Pee Dee Health Care (2010-CP-16-0332) in which he, Megna, is specifically disqualified to act as an attorney (see three separate Orders of Judge Baxley). Mr. Josey and Mr. James are involved in that case, and Megna seeks private, irrelevant information about them and their activities. He is also apparently attempting to use depositions and discovery in this Richland County case for use in a completely separate, distinct and unrelated Florence County case (Lower Florence Hospital, et al. v. Megna, et al., 2008-CP-21-706) in which he is or has been an actual, personal party defendant. Celeste Jones is, or has been, the attorney suing Megna personally, and he is seeking private, irrelevant information about her and her client(s). Megna is also attempting to use this case to gather information in another completely separate, distinct and unrelated case in which he is involved (Pee Dee Health Care v. Sanford, Health and Human Services, et al.) - in which, although it is beyond the scope of this motion, he should probably be disqualified (Mr. Woodington's case -- in which Megna is CEO of Pee Dee Health Care and is simultaneously acting as its attorney -- similar conduct for which he was disqualified in the Darlington case). As with the other attorneys, neither Mr. Woodington's activities nor the activities of his clients have

¹⁰ The list is long, but includes Megna noticing depositions at a place that does not exist, using an inaccurate telephone number for his office, sending mail to a non-existent address where he knew the undersigned was unlikely to receive it, submitting documents containing numerous typos, confusing parties as well as failing to indicate on whose behalf he was issuing subpoenas, using an address that he previously claimed he had not used since 2008, etc.

anything to do with the within case.¹¹ At the risk of being redundant, it is stressed that those cases, those parties and those attorneys have nothing to do with this case. The issues involved in the respective cases appear to be markedly different and neither Plaintiff nor his attorney, paralegal and the bankruptcy attorney is a party. Megna's efforts to use this case as a basis to acquire private, proprietary and privileged information relative to other attorneys and their clients in other, unrelated cases in which he is involved is transparently and grossly improper.

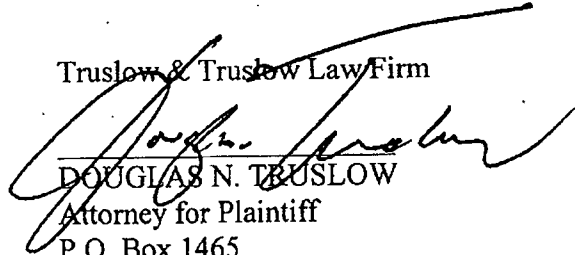
RELIEF REQUESTED

Judges Baxley and Manning are two Circuit Court Judges who are likely to be the most familiar with this matter. Their Orders (attached), as well as an Order of Judge Waites, tend to show a continuing pattern of bad faith on the part of Megna. Plaintiff respectfully requests that; (a) the issues herein be put before Judge Baxley and/or Judge Manning (or some other appropriate judge), (b) for a hearing on the within motion for protection, (c) that Megna's subpoenas be quashed and (d) that he be excluded from further participation in this case (other than as a person against whom sanctions are being sought). Plaintiff and the undersigned seek the imposition of fees and other sanctions against Megna and/or Pee Dee Health Care as the Court may find appropriate.

Respectfully Submitted,

Columbia, South Carolina
March 8, 2012

Truslow & Truslow Law Firm


DOUGLAS N. TRUSLOW

Attorney for Plaintiff

P.O. Box 1465

Columbia, SC 29202

(803) 256-6276

Fax (803) 256-7659

douglastruslow@truslowlaw.com

¹¹ To the undersigned's knowledge, all the referenced attorneys (excepting Megna) are known to be honorable and thoroughly professional. Further, and without waiving any rights or privileges that may exist, the undersigned has no information reflecting that any one them or their clients have done anything improper in dealing with him, Megna or Lee (or anyone else).

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF DARLINGTON

James A. Anasti, Plaintiff

v.

Lance Wilson, et. al., Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 07-CP-40-0576

Pending in RICHLAND County

** It has been
banned by
the Court from
participating
in this
case*

TO: Douglas N. Truslow

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION 3400 West Avenue, Columbia, SC 29203	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

PLACE 3400 WEST AVENUE, COLUMBIA, SC 29203	DATE AND TIME March 6, 2012 @ 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF DARLINGTON

James A. Anasti, Plaintiff

v.

Lance Wilon et. al., Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 07-CP-40-0576

Pending in RICHLAND County

*He has been
banned from
participating
in this
case by
the court*

TO Steve Licata

☒ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

3400 West Avenue, Columbia, SC 29203

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

PLACE

3400 WEST AVENUE, COLUMBIA, SC 29203

DATE AND TIME March 6, 2012 @ 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

*same
exact
time as
set for
two other
depos. times*

STATE OF SOUTH CAROLINA

James A. Anasti,

Plaintiff,

vs.

Lance Wilson, Willis Goodwin, Gina L.
Anasti Lee, Richland County Clerk of
Court,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 07-CP-40-0576

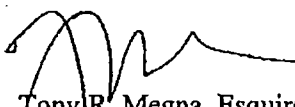
The undersigned hereby certifies, on the date indicated below, copies of the following documents in the above-captioned matter were mailed to the below-named by United States Mail, first class, postage prepaid.

1. Plaintiff's First Set of Interrogatories and Production of Documents

Douglas N. Truslow
944 Richland Street
Suite 4
Columbia, SC 29201

Thomas G. Earle
1735 Saint Julian Place # 103
Columbia, SC 29204-2402

*This is not my address &
never has been - he
constantly does this despite my
numerous written complaints
to him to send communication
to my wife
rather*


Tony R. Megna, Esquire
Attorney at Law
3400 West Avenue
Columbia, SC 29203
Office: 803.254.3676

← ? FAX line

February 28, 2012.

STATE OF SOUTH CAROLINA

James A. Anasti,

Plaintiff,

vs.

Lance Wilson, Willis Goodwin, Gina
L. Anasti Lee, Richland County Clerk
of Court,

Defendants.

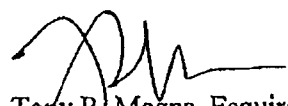
IN THE COURT OF COMMON
PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 07-CP-40-0576

NOTICE OF DEPOSITIONS

Pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, by and through undersigned counsel, Plaintiff shall take the deposition of Amanda Hilley, Douglas N. Truslow, and Steve Licata. The depositions shall be held at the offices of the undersigned beginning at 10:00 a.m., Thursday, March 6, 2012, and will continue until complete.

*all at the
same time*
*Not proper/undue
notice*


Tony R. Megna, Esquire
Benjamin R. Matthews, Esquire
3400 Maxcy Street
Columbia, SC 29203
803.799.1700
tmegna@gmail.com

*No such
address
exists to
my knowledge.*

February 28, 2012.

has he received?

STATE OF SOUTH CAROLINA

James A. Anasti,

Plaintiff,

vs.

Lance Wilson, Willis Goodwin, Gina
L. Anasti Lee, Richland County Clerk
of Court,

Defendants.

IN THE COURT OF COMMON
PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 07-CP-40-0576

CERTIFICATION OF SERVICE

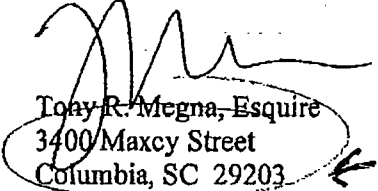
The undersigned hereby certifies that on the indicated below, a copy of the Plaintiff's
Notice of Deposition upon the Defendant by delivering a copy first class mail, postage
prepaid to

✓ Douglas N. Truslow
✓ 944 Richland Street
✓ Suite 4
Columbia, SC 29201

Thomas G. Earle
1735 Saint Julian Place # 103
Columbia, SC 29204-2402

*He knows this is not
my address*

He knows Tom is in a coma / in ICU


Tony R. Megna, Esquire
3400 Maxcy Street
Columbia, SC 29203
803.799.1700
tmegna@gmail.com

*No such
address*

February 28, 2012.

Amanda Hilley

From: Tony R. Megna [tmegna@gmail.com]
Sent: Tuesday, February 28, 2012 11:28 AM
To: → Douglas N. Truslow — *Knows it is blocked*
Cc: → Tom Earle; Steven B. Licata; Amanda Hilley
Subject: Anasti v Lee - Damages hearing
Attachments: Notices of depos - subpoenas.pdf

Douglas:

Please find attached copies of subpoenas, notices of deposition (pertaining to you, Ms. Hilley and Steve as you informed the Court they were witnesses you intended to call), interrogatories and request for production of documents in regard to your requested damages hearing. I will be sending them out today and wanted to get the documents to you by email first as a matter of professional courtesy.

I am more than happy to take the depositions at your office if it would be more convenient for any or all of you. I am also willing to continue them if the time is not convenient. As Steven is also being subpoenaed to have his deposition taken, I am copying this email to him and making the same offers to let me know if another time is more convenient. Please let me know.

Also, I received a call from Tom Earle's partner last week. He stated Tom was in a medically-induced coma at Richland Memorial Hospital. He indicated Mr. Goodwin and Mr. Wilson would be obtaining new counsel. ~~I received the motion this morning requesting Tom be relieved as counsel. I would appreciate you letting me know if you intend to inform the Court of the matter as the damages hearing has been scheduled for March 12, 2012 and it was my understanding from the status conference that the damages hearing would be postponed until at least after the middle of March - depending on Tom's health. As this is your motion, and you apparently have had conversations with Tom, I believe it most appropriate for you to inform the Court of the issues with him. Obviously, we will all keep in our thoughts and prayers. Please let me know if I can assist in any manner. Tom is a fine man, and I am obviously concerned, as I am sure are you, that the interests of clients as well as Tom are protected.~~

Finally, I would appreciate you letting me know if you intend to call any other witnesses so that I can notice their depositions prior the hearing.

Best regards, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

This message is intended for the use of the person or entity to which it is addressed and may contain information, including legal and/or health information, that is privileged, confidential, and the disclosure of

STATE OF SOUTH CAROLINA

James A. Anasti,

Plaintiff,

vs.

Lance Wilson, Willis Goodwin, Gina
L. Anasti Lee, Richland County Clerk
of Court,

Defendants.

IN THE COURT OF COMMON
PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 07-CP-40-0576

DEFENDANT LEE'S FIRST SET
OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS

PLEASE TAKE NOTICE that plaintiff, by the undersigned attorney, hereby requests,
pursuant to SCRCF Rule 33 that Defendant respond to the following interrogatories.

INSTRUCTIONS AND DEFINITIONS

1. A Person is defined as any natural person or any business, legal or governmental entity or association.
2. Identify means, when referring to a person, to give, to the extent known, the persons full name, his/her present resident and/or business address and telephone number, and if that is not known, the answer shall so state; in lieu of his/her present residence and/or business address, his/her last known residence and/or business address and the last known date when he/she resided there.
3. Identify means, when referring to legal authorities, to give, to the extent known, the full and complete citation of the legal authority asserted.

*Not first & he
has exceeded
the number
is my agent,
As to the
part of the case
As to the
case
is given &
she does not
own the car
she is in
bankruptcy*

4. Identify means, when referring to policy positions or practices [written or unwritten] of the Defendant, to give, to the extent known, all information regarding the policy, practice, or practice, including but not limited to identifying any documents that evidence the policy, practice or procedure. If no document evidences the policy, practice, or procedure, explain how the policy, practice or procedure was developed, how the policy, practice or procedure is actually used and by whom, and who, if anyone, has the discretion to apply or not to apply the policy, practice, or procedure.
5. Identify means, when referring to communications by and/or among individuals, the Defendant to give, to the extent known, all information regarding the communication(s) referred, including but not limited to details of the communications as well as the identities of the parties to the communications and further identifying all documents evidencing the communications.
6. When referring to documents, identify means to give, to the extent known: (i) the title, heading or caption of such document, if any; (ii) the identifying number(s), letter(s), or any combination thereof, if any, and the significance or meaning of such; (iii) type of document; (iv) general subject matter; (v) date of the document; (vi) author(s), address(es), and recipient(s).
7. A document is defined to be synonymous in meaning and equal in scope to the usage of this term in the SRCP Rules of Civil Procedure. A document specifically includes data compilations from which information can be obtained, translated, if necessary, by the Defendants through detection devices into reasonably usable form – regardless of where such data compilations located. A draft or nonidentical copy is a separate document within the meaning of this term.

8. Parties means the plaintiff or defendant as well as a party's full or abbreviated name or pronoun referring to a party mean the party and/ where applicable, its officers, directors, employees, or agents. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation but is intended to include agents, employees, consultants, etc. of the Defendants.
9. Concerning means relating to, referring to, describing, evidencing, or constituting.
10. Should defendant claim privilege for any documents about which information or inspection is requested by any of the following interrogatories, such documents shall be described in a manner sufficient for identification including the date, author, all recipients, and identity of each party receiving a copy of the document and the subject matter thereof, as well as all person who have reviewed and/or read the document regardless of their affiliation with the Defendants, and in addition to supplying the above-named information concerning such documents, shall indicate that Defendants claim privilege therefore and Defendants shall state the ground on which the claim of privilege rests.
11. All interrogatories herein are continuing in nature, so as to require defendant to supplement or amend her responses in accordance with the SCRCF.
12. CMS administers the Medicare and Medicaid programs under the direction of the direction of the Department Of Health and Human Services.

Danington 155.00 - not involved in this case.
Flonance

INTERROGATORIES AND REQUEST FOR PRODUCTION

1. Please identify all persons answering these interrogatories, and specify which interrogatory was answered by whom.

2. Please identify all persons answering the Plaintiff's Request for Production of Documents, and specify which request for production was prepared and answered by whom.

3. Please identify and produce all documents you intend to at the damages hearing.

4. Please produce all documents and communications [electronic and/or hard-copy] that relate to and/or reference in any manner Tony R. Megna, Pee Dee Health Care, P.A., Gina Lee, or related parties that you [Douglas Truslow and/or James Anasti] have provided to or have been provided by Celeste Jones, Jay James, Kenneth Woodington, Renee Josey and/or Desa Ballard and/or their agents.

*Dr. Light &
Florence
15/10/1*

5. Please identify and produce all documents and communications [electronic and/or hard-copy] that relate to and/or reference in any manner Tony R. Megna, Pee Dee Health Care, P.A., Gina Lee, or related parties that you [Douglas Truslow and/or James Anasti] have provided to or have been provided by any person.

6. Please identify all persons with knowledge of or information relevant to the subject matters as stated in the Defendant Anasti's request for damages further provide a description that fully and completely describes the content of such knowledge or information.

7. Please identify all persons which Defendants intend to call as experts at trial, and specify the subject matter upon which each expert is expected to testify, giving a statement regarding the substance of the facts and opinions to which the expert is expect to testify at trial and a summary of the grounds for each fact.

*? Case Anasti
her is
over!*

8. Please identify and produce all documents in support of all damages, however defined, you intend to request be ordered against S. Lee and or her agents.

7 CASE 1:51-1157-1
over 8
US Bankruptcy
he has
17 reported
assented to
the
County

9. If you intend to request damages for any matters that have occurred in federal court, please explain the basis of the jurisdiction of the state circuit court to order such damages.

noted

10. Please identify all persons which Defendants intend to call as fact witnesses at trial, and specify the subject matter upon which each witness is expected to testify, giving a statement regarding the substance of the facts to which the witness is expect to testify at trial and a summary of the grounds for each opinion.

Tony R. Megna
Attorney at Law
1815 Fulmer Road
Blythewood, SC 29016
Office: 803-799.1700 ←

This is the address
he told his to be
the County he
has not used
in a long
while since
early
2008

February 28, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES A. ANASTI,

Plaintiff,

vs.

LANCE WILSON,
WILLIS GOODWIN,
GINA L. ANASTI LEE,
And RICHLAND COUNTY
CLERK OF COURT,

Defendants.

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

ORDER

RICHLAND COUNTY
FILED
2009 APR -1 PM 3:51
JEANETTE W. McBRIDE
C.C.P. & C.S.

IN RE:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kihard, Jr. Circuit Court Judge

CIVIL ACTION NO.: 2007-CP-40-0576

James A. Anasti,.....Respondent,

v.

Lance Wilson, Willis Goodwin,
Gina Anasti Lee, Richland
County Clerk of Court,.....Defendants,

Of Whom Lance Wilson, Willis Goodwin and
Richland County Clerk of Court are.....Respondents,

And Gina L. Anasti Lee is the.....Appellant.

THIS MATTER CAME BEFORE ME on October 2, 2008, pursuant to the South Carolina Court of Appeals Order dated June 19, 2008, in which this Court was directed to conduct a hearing on Appellant Gina L. Anast Lee's Motion to Alter or Amend this Court's Order dated April 3, 2008, said Motion being filed April 7, 2008 pursuant to SCRPC 59(e).^{1 2}

FINDINGS, CONCLUSIONS AND DISPOSITION

Having heard extensive arguments and carefully considered all supporting documents and pleadings, as well as all the asserted basis(es) for Appellant's pending 59(e) Motion, I find and conclude that it should be and is denied in that;

- I. Appellant did in fact receive notice of the hearing held April 3, 2008 that was in writing, properly transmitted, reasonable under the circumstances and in compliance with due process.
- II. Appellant did in fact timely receive the Order granting partial Summary Judgment dated October 26, 2007, as determined and set forth in this Court's Order dated April 3, 2008, but she failed to thereafter timely file a 59(e) Motion to Alter or Amend (eg. her untimely 59(e) Motion of November 20, 2007, relative to the Court's October 26, 2007 Order) and she failed to timely file a Notice of Appeal (untimely filed on January 4, 2008).
- III. For the reasons set forth in the Order dated April 3, 2007, which are adopted by reference herein.
- IV. For the reasons set forth in the Order herein.

¹ The pending 59(e) Motion filed April 7, 2008 was not previously considered because (a) the case was then on Appeal and had been remanded on March 18, 2008 for an evidentiary hearing only, (b) subsequent to this Court's Order dated April 3, 2008, the Appeal was dismissed by Order dated April 16, 2008, (c) Appellant filed a Motion pursuant to SCACR 221 on April 22, 2008, apparently confirming that she was taking the position that the matter was then exclusively before the Court of Appeals for a resolution, (d) Appellant had previously submitted (in writing) that this Court was without jurisdiction to hear her 59(e) Motion, (e) no copy of the 59(e) Motion was submitted to me by the moving party, as required by Rule 59(e), prior to dismissal of the Appeal and (f) for the reasons that are apparent for footnote 6.

² In Appellant's Rule 59(e) Motion, she seeks to have this Court set aside its April 3, 2008 Order as improvidently granted and to hold an evidentiary hearing as to when her counsel (Magna) received the Court's Order dated October 26, 2007, granting partial Summary Judgment.

PROCEDURAL HISTORY

For the purposes of the within Order, the pertinent procedural history of the case reflects that;

- a) Partial Summary Judgment was granted to Respondent (Plaintiff herein) James Anasti by Order of the Honorable J. Ernest Kinard, Jr. dated October 26, 2007. That Order was filed on October 26, 2007 and mailed to respective counsel by the Richland County Clerk of Court on Monday, October 29, 2007.
- b) On November 20, 2007, Appellant filed a Motion to Alter or Amend Judge Kinard's Order pursuant to SCRCP 59(e).³
- c) On December 5, 2007, Judge Kinard denied Appellant's Rule 59(e) Motion, *sua sponte*.⁴
- d) On January 4, 2008, Appellant filed a Notice of Intent to Appeal.
- e) On January 22, 2008, Respondent Anasti filed a Motion to Dismiss Appellant's Appeal on the grounds that it was not timely filed.
- f) On March 18, 2008, the South Carolina Court of Appeals remanded the matter, with written notice to all counsel, for an evidentiary hearing as to the date when Appellant Lee's counsel (Megna) received the Order granting partial Summary Judgment. The accompanying transmittal letter from the Clerk of Court of the Court of Appeals to respective counsel directed that Respondent's counsel was to schedule a hearing "as soon as possible". Thereafter, Respondent's counsel requested (in writing) a hearing, and Appellant's counsel was copied with that request.
- g) On March 28, 2008 an evidentiary hearing date was set by this Court for April 3, 2008, and Respondent Anasti's counsel was directed to notify opposing counsel of the hearing date, which I have found and concluded

³ Appellant's Motion did not set forth an irregular date of receipt of Judge Kinard's Order granting partial Summary Judgment (or any date of receipt whatsoever for that matter).

⁴ Appellant's November 20, 2007 59(e) Motion was not received by Judge Kinard until December 3, 2007 because Appellant had addressed and mailed it to an incorrect address for Judge Kinard.

that he did, promptly and properly by the most reasonable means under the circumstances.⁵

- h) On April 3, 2008, the said evidentiary hearing was held, an Order was issued by the undersigned and it was promptly filed with the South Carolina Court of Appeals on April 4, 2008.
- i) On April 7, 2008, counsel for Appellant (Magna) filed yet another Motion with the Richland County Clerk of Court pursuant to SCRCP 59(e), requesting a rehearing of the evidentiary hearing of April 3, 2008, and representing that (a) he never received any notice of the said evidentiary hearing and (b) no notice had been sent.
- j) On April 10, 2008 Appellant's counsel wrote to the Court, asserting that all motions were stayed pending the Appeal.
- k) On April 16, 2008, the South Carolina Court of Appeals dismissed Appellant's Appeal.
- l) On April 22, 2008, Appellant filed a Motion to Rehear, Alter or Amend pursuant to SCACR 221(a) and at that time did Appellant make the Court of Appeals aware that her 59(e) Motion of April 7, 2008 had been filed.
- m) By Order dated June 19, 2008, the Court of Appeals again remanded the matter for a hearing on Appellant's pending (April 7, 2008) 59(e) Motion, and the within Order is issued pursuant to that Order of the South Carolina Court of Appeals.⁶

⁵ Appellant's counsel (Magna) has asserted, *inter alia*, that at both his law office/home and at his non-law office business he was experiencing difficulty receiving mail from the U.S. Post Office in a timely manner (and relied on that assertion as a basis for his apparent late filing of Appellant's November 20, 2007 59(e) motion, as well as his apparent late filing of Appellant's Notice of Appeal), and he also asserted that he had purposely chosen to limit or avoid contact with Anasti's counsel. While rejecting that Magna had any reasonable basis for purposefully avoiding contact with opposing counsel, I have found that written notice to Magna of the evidentiary hearing ultimately held on April 3, 2008 by fax at the same fax number he had used for years, with proof of both a successful fax text confirmation and a sent/received fax receipt journal is and was clearly appropriate notice under the circumstances with which Respondent's counsel was faced, especially given the arguments, affidavits and documents previously submitted to the South Carolina Court of Appeals and this Court, and also given the written notice to Magna on March 18, 2008 that a hearing was to be held "as soon as possible".

⁶ Subsequent to the Court's Order of April 3, 2008 and subsequent to dismissal of the Appeal on April 16, 2008, Ben Matthews was added as co-counsel with attorney Magna on Appellant's behalf and upon the matter being remanded on June 19, 2008 for another evidentiary hearing, Magna then requested protection from the Court (for vacations) for both he and Matthews for the period of June 27, 2008 through July 27, 2008. Then, the day before the matter was scheduled to be heard (July 22, 2008), Richard Harpootlian was

NOTICE OF THE APRIL 3, 2008 HEARING

As a basis(s) for Appellant's pending 59(e) Motion to Alter or Amend, Appellant's counsel (Megna) first asserted that no notice of the April 3, 2008 hearing was sent and that he did not receive any notice whatsoever for the hearing. Specifically, Megna asserted:

1. he "completely denies the existence of any notice provided" to him, "by any means" (emphasis added by the Court).

And;

2. "Any assertion that the undersigned had any notice of a March 28, 2008. (sic) hearing before this Court is absolutely untrue and completely false." (emphasis added by the Court)

And;

3. "...no such notice has been sent (emphasis added by the Court) to his office or home."

I find each of those assertions by Megna to be untrue and in fact belied by overwhelming evidence to the contrary.

On March 28, 2008, this Court set the date of April 3, 2008 for the evidentiary hearing relative to when Megna received Judge Kinard's October 26, 2007 Order granting partial Summary Judgment (which Order Megna first claimed to have not timely received on January 4, 2008 – long after his November 20, 2007 Rule 59 (e) Motion was denied by Judge Kinard, long after misrepresenting to Judge Thomas W. Cooper, Jr. and opposing counsel on December 5, 2007 that he had in fact filed a 59(e) Motion within a week to ten days of the date the Summary Judgment Order was filed and only after being put on specific notice that his November 20, 2007 59(e) motion was untimely (see transcript in the "companion case"/Arbitration hearing of December 5, 2007, page 193 in conjunction with page 23), and directed Respondent Anasti's counsel to notify opposing

added as additional co-counsel for Appellant and he was permitted to set a time for the hearing that would allow him to be prepared and which would not conflict with other counsel's schedules, with the result being that there were further delays in having the matter concluded. Matthews did not appear for the within hearing and no reason was given for his absence.

⁷ At all pertinent times, Megna's only "law office" was his home at 1815 Palmer Rd., Blythewood, SC.

counsel, which I find beyond a doubt that he promptly did in writing by fax dated March 28, 2008. I further find and conclude that the March 18, 2008 written notice from the Court of Appeals (which Megna does not deny timely receiving) that a hearing was to be set as soon as possible and also specifically the written, faxed notice of March 28, 2008 for the April 3, 2008 hearing that were provided to Megna were both proper and reasonable under the circumstances. Evidence proving both transmission to and receipt by Megna on March 28, 2008 of written notice for the April 3, 2008 hearing has clearly been established by successful fax text transmission confirmation to his published fax number (753-9004) and also by sent/received fax journal confirmation to the same number. The March 28, 2008 notice of hearing was in fact sent by fax on that day to the exact same fax number Megna had listed and published in the South Carolina Bar Directory, on his correspondence, on pleadings previously prepared by him and subsequently on his signed April 7, 2008 59(e) Motion Cover Sheet. Without a doubt, other faxes had previously and/or subsequently been transmitted to (and received by) Megna by Respondent's counsel and/or other members of the South Carolina Bar at the exact same fax number without any complaint, objection or attempt by Megna for correction, and there was no evidence presented reflecting that Megna had notified the Clerk(s) of Court, opposing counsel, counsel in other cases or the South Carolina Bar that notice should not be sent to that fax number (or that Megna was not using that fax number).

In a letter faxed to Respondent's counsel (by Megna from an undisclosed fax number) dated April 22, 2008, Megna clearly appears to have ultimately acknowledged that Respondent's counsel did in fact send him specific written notice on March 28, 2008 (for the April 3, 2008 evidentiary hearing) to his law office fax number (753-9004), and Megna cannot truthfully deny that notice of the April 3, 2008 evidentiary hearing was in fact sent to and received by him at the very same fax number he had listed and represented to be his law office fax number (753-9004). However, Megna then asserted in his April 22, 2008 letter, as the basis for non-appearance at the evidentiary hearing on April 3, 2008, that Respondent's counsel had utilized a fax number (753-9004) for Megna "that is not in active use" and that "the recent confusion over the April 3, 2008 Order entered by Judge Manning was apparently caused by your (Respondent's

counsel) office faxing me notice on March 28, 2008 to a number that had not been in active use for a long while." (emphasis added by the Court). I stress that the fax number (753-9004) that Megna claims to have "not been in active use for a long while" prior to March 28, 2008 is in fact the identical fax number he had listed on his April 7, 2008 Motion Cover Sheet (signed by Megna) that accompanied his April 7, 2008 Motion pursuant to Rule 59(e). Respondent's counsel promptly responded to Megna's April 22, 2008 fax and again provided supporting evidence completely disproving Megna's claims and assertions that notice of the hearing had not been sent or received or that Megna had not used his fax number "for a long while". Further, Megna has presented no documentary evidence that his fax number (753-9004) listed with the South Carolina Bar and utilized by him in his Motion of April 7, 2008 and which clearly has been used by him for a number of years on various of his law office letterheads, correspondence, emails and pleadings had ever been out of service or not used "for a long while" (such as a cancellation of service, his sent/received fax journal records, a new fax listing, his payment records for his fax service, a notice to other counsel or Courts, etc.), despite being requested (in writing) to do so.

Based on the overwhelming evidence presented, as well as the lack of any believable documentary evidence or affidavits produced by Megna to the contrary, I find and conclude that Megna was and had been actively using fax number 753-9004 on March 28, 2008, prior to March 28, 2008 ("for a long while" -- more than three years) and in fact subsequent to March 28, 2008.

I have considered, in juxtaposition to Megna's assertions that he had no notice of the April 3, 2008 hearing, the entire record including but not limited to Respondent's Return with accompanying exhibits filed in the South Carolina Court of Appeals on April 29, 2008, as well the exhibits submitted in conjunction with Respondent's Motion to Dismiss the Appeal and all the pleadings, documentary evidence and affidavits before me, and I find them to provide overwhelming evidence of the lack of credibility of Megna as to all contested issues.

SERVICE PURSUANT TO SCRCP 5

As an excuse for non-appearance for the April 3, 2008 evidentiary hearing, Megna first claimed on April 7, 2008 that no notice of the hearing was sent to him by "any means", and he also claimed that no notice of the hearing was received by him at "his office or home".⁴ Once it was clearly established that in fact notice of the hearing had been both sent to and received by Megna on March 28, 2008, he then claimed on April 22, 2008 that notice of the hearing had been sent to him at a fax number (753-9004) that he had not used "in a long while". That claim has also clearly been proven to be false because he was using that same exact fax number for years prior to March 28, 2008, on March 28, 2008 and subsequent to March 28, 2008 (for at least approximately a month). Megna now claims that, even if he did in fact receive notice of the April 3, 2008 hearing on March 28, 2008, as well as prior written notice from the South Carolina Court of Appeals that a hearing was to be scheduled as soon as possible, those facts should be considered irrelevant because the notice of the hearing was not in strict compliance with the terms of SCRCP 5.⁵

In the context of Rule 5 and if it were applicable, an analysis of the facts as I find them to be establishes that Megna was at all pertinent times engaged in non-legal business activities, usually out of the Columbia area during normal work weeks, and he only practiced law (as a sole practitioner) on a limited basis (such as Court appointed cases) from his home/"law office". At all pertinent times, he represented on his legal stationery that his law office was at 1815 Fulmer Road, Blythewood, SC (his home) and that his law office fax number was 753-9004. He received his legal mail at his home/law office. He prepared his own correspondence and pleadings and he docketed his own calendar. Megna has sworn under oath that he was and had been purposefully avoiding contact with Respondent's counsel for some time, and he submitted evidence, though not believable, that Respondent's counsel was "stalking" him or his family at his home/law office by virtue of, *inter alia*, sending letters to Megna (at his published law office address) and by virtue of confirming for the Court that Megna's home was in fact his

⁴ This last claim is the essence of the argument presented on behalf of Appellant by Mr. Harpootlian and he has made abundantly clear that he is representing Appellant only and not Mr. Megna.

"law office". Under these circumstances in which Megna already knew on or about March 18, 2008 that the evidentiary hearing was to be set as soon as possible, I find that prompt written notice to Megna of the April 3, 2008 evidentiary hearing date by fax on March 28, 2008 with both fax text confirmation and sent/received fax journal confirmation was certainly reasonable, proper and in compliance with due process, especially given Megna's claim that the U.S. Post Office was not promptly delivering his mail.

I find and conclude that Appellant had notice of the April 3, 2008 hearing by March 28, 2008 that was both express and implied. Further Appellant had constructive notice of the hearing, and her counsel should have had inquiry notice as well in that the circumstances reflect that Megna knew or should have known that an evidentiary hearing was imminent by virtue of the Court of Appeals' March 18, 2008 Order remanding the case for a hearing as "soon as possible" and by virtue of Respondent's subsequent written request for a hearing, yet Megna apparently did nothing to ever check on the status of the matter. In addition and perhaps more compelling, and given that Megna had in fact received written, specific notice of the April 3, 2008 hearing on March 28, 2008, he made no timely objection to the matter being heard on April 3, 2008, nor did he claim any irregularity, nor did he appear or timely assert that the notice given for the April 3, 2008 hearing was in anyway defective or prejudicial. Finally and most compelling, Appellant has not suffered any prejudice because I had previously considered and now have reconsidered all that has been submitted on Appellant's behalf, and I reiterate that on all contested issues I continue to find Appellant's claims to be totally without merit.

I find and conclude that Appellant's reliance on Dedes v. Strickland, 307 S.C. 152, 414 S.E.(2d) 132 (1992) is both misplaced and distinguishable in that, *inter alia*, in Dedes, all counsel in fact appeared for a Summary Judgment hearing; counsel timely objected to hearing the matter on short notice with no meaningful opportunity to present affidavits; counsel's request for an opportunity to submit opposing affidavits was denied and the rights of the party were in fact prejudiced thereby. Such distinguishing factors are compared to the instant case in which Appellant's counsel did not appear or raise any objection whatsoever until after the April 3, 2008 Order was issued; Appellant has been afforded a full and complete opportunity to submit (and did submit) affidavits, and

Appellant was encouraged to make a full and complete argument and record, which has been done, and which I have considered and reconsidered. Furthermore, Appellant was also allowed to set and schedule the within hearing for October 2, 2008, after having it continued from its original hearing date of July 22, 2008 and Appellant's counsel (Mr. Harpootlian) appeared to have been very well prepared. Therefore, Appellant has not suffered any prejudice under the circumstances.

TIMELY RECEIPT OF OCTOBER 26, 2007 ORDER

After providing Appellant with another full opportunity to be heard, nothing credible, believable or favorable to Appellant has been presented that would compel me to reverse the findings and conclusions set forth in my April 3, 2008 Order⁹, and I reiterate and incorporate the terms of that Order herein by reference, with special emphasis on the transcript in the "companion" case in which, in diametrical opposition to what Megna has now represented to this Court and the South Carolina Court of Appeals relative to the critical date when he received the Court's October 26, 2007 Order (eg. his current claim that he only received the Order on Saturday, November 10, 2007), whereas Megna previously represented to the Court (Arbitrator Thomas W. Cooper, Jr. and opposing counsel at an Arbitration hearing on December 5, 2007) that he had in fact received written notice of the October 26, 2007 Order within a week or ten (10) days of that date (because he falsely claimed to have filed his 59(e) Motion within a week or ten days of the October 26, 2007 Order - see transcript of hearing TR 28, L 14-20).¹⁰

NOW, THEREFORE, IT IS ORDERED that Appellant's 59(e) Motion to Alter or Amend filed April 7, 2008 is denied in that;

⁹ Despite being requested to do so (in writing), Megna has failed to produce the envelope in which the October 26, 2007 Order was mailed to him (which he has acknowledged to have received) by the Richland County Clerk of Court (which would have exhibited a US Mail date stamp), nor has he produced a date stamp or any other record establishing the date of actual receipt by him, nor has he produced any other calendar/time table docketing record(s) (reflecting when he received the Order) that he may have theoretically maintained as a component of his law practice.

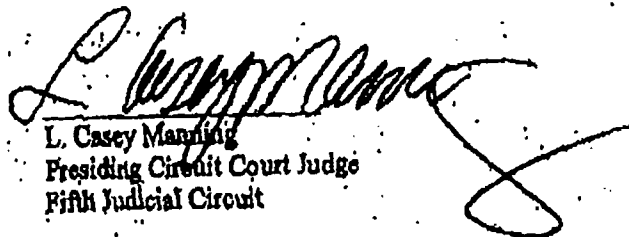
¹⁰ As well, I have taken notice of all of the content of the Arbitration award in the "companion case".

- a) Appellant's counsel (Megna) clearly received reasonable notice of the April 3, 2008 hearing, to which he did not appear or timely object, and he has no legitimate excuse or basis for his non-appearance. Regardless, his client has suffered no prejudice by his initial non-appearance based on my review and reconsideration of this entire matter.
- b) I have considered and reconsidered all submissions by or on behalf of Appellant in any event, and I remain convinced that my April 3, 2008 Order and all findings and conclusions of law were correct and proper as further expanded on and explained herein.
- c) Appellant's counsel (Megna) received written notice of the October 26, 2007 Order granting partial Summary Judgment more than ten (10) days prior to his untimely 59(c) Motion filed November 20, 2007 and more than thirty (30) days prior to his untimely Notice of Appeal dated January 4, 2008.

AND IT IS SO ORDERED;

Columbia, South Carolina

April 1, 2008


L. Casey Manning
Presiding Circuit Court Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JAMES A. ANASTI,)
Plaintiff/Respondent,)

vs.)

LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
And RICHLAND COUNTY)
CLERK OF COURT,)
Defendants,)

OF WHOM GINA L. ANASTI LEE)
Is Appellant.)

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

ORDER

FILED
2008 APR -3 PM 4:13
BARBARA A. SCOTT
C.C.C. & G.S.

THIS MATTER CAME BEFORE ME on April 3, 2008 pursuant to an Order of the South Carolina Court of Appeals dated March 18, 2008 requiring an evidentiary hearing as to when Appellant Gina Lee's counsel (Megna) received the Order granting Summary Judgment herein. Present representing the Plaintiff James A. Anasti (Respondent) was Douglas N. Truslow. As well, Thomas Earle was present representing Wilson and Goodwin. Neither the Appellant nor her attorney (Megna) were present, and in that regard, the Court was presented with documentary proof that Megna was put on specific notice of the date and time of the within hearing on March 28, 2008. Regardless of Appellant's and Megna's absence however, I have considered all previous submissions to the Court by or on behalf of Appellant, including pleadings, affidavits, evidence and memoranda presented to the South Carolina Court of Appeals.¹

Having considered the record, including the pleadings, affidavits, memoranda and evidence presented, as well as the representations and arguments of counsel who were present, I find and conclude as follows:

¹ The Clerk of Court was merely the holder of certain funds deposited pursuant to a South Carolina Department of Transportation Condemnation (case 2002-CP-40-6062) and its presence was not required.

1. The Honorable Ernest Kinard issued an Order granting James Anastasi (hereinafter Anastasi) Summary Judgment on Friday, October 26, 2007.
2. The Order granting Summary Judgment was promptly and properly filed and entered into the Richland County Clerk of Court's records on October 26, 2007, then mailed to respective counsel by the Richland County Clerk on Monday, October 29, 2007 and received by Anastasi's and Goodwin and Wilson's attorneys on November 1, 2007 and October 31, 2007 respectively. The said Order was likewise received by Megna on or about the same date as received by other counsel of record, but pursuant to S.C.R.C.P. 6(e), and giving Megna the benefit of the doubt, receipt of written notice of the Order granting Summary Judgment shall be and is deemed effective as of November 3, 2007.
3. A closely related case involving issues pertaining to the same real estate at issue herein e.g. "companion case" in which Megna was involved as counsel for Lee (Wilson and Goodwin v. Lee, 04-CP-40-5333) was set for trial on October 29, 2007; Megna has represented in writing that he appeared in Court at that time and that he checked on the status of the instant case on that date. I find and conclude that, if he did as he represented, he was on further notice of the Order granting Summary Judgment being issued on October 26, 2007.
4. On or about November 7, 2007, Anastasi's counsel provided Megna with additional written notice that the Court had previously issued an Order granting Summary Judgment by virtue of a letter and Motion for Rule 11 sanctions that was duly served.
5. On November 20, 2007, Megna filed a Motion for Reconsideration of the October 26, 2007 Order granting Summary Judgment to Anastasi, which was received by Anastasi's counsel on November 26, 2007 and received by Judge Kinard on December 3, 2007.
6. Relative to receipt of the written notice of the Court's Order granting Summary Judgment that was mailed by the Richland County Clerk of Court on October 29, 2007, there is a rebuttable presumption of fact of

prompt receipt of properly addressed mail with postage attached, Bakala v. Bakala, 576 SE2d 156, 352 SC 612 (2003); Weir V. Citicorp National Services, 435 SE2d 864, 312 SC 54 (1993) e.g. the "mailbox rule", and Megna has not contested that the Court's Order granting Summary Judgment was properly mailed, nor has he denied actual receipt. Therefore, it is beyond dispute that the Court's Order was both mailed and received by Megna. However, Megna appears to argue that the written notice was not mailed on the date represented by the Clerk of Court, or that it was not delivered in a prompt manner. The Court may take Judicial Notice of the usual course of the mails CJS Evidence §43. Also, it is noted that failure to acknowledge receipt, ignorance of delivery or failure to read one's mail does not nullify the fact or presumption of receipt to be afforded under the circumstances. See CJS Evidence §155, et seq.

7. Megna is not engaged in the full time practice of law. Rather, he practices sporadically from his home in Blythewood, S.C. (Richland County), where he receives his mail, prepares his own pleadings and correspondence and personally undertakes responsibility for calendaring significant dates and deadlines. Further, Megna is engaged in employment outside of the Richland County area and he regularly travels out of the area during normal week days.
8. Taking into consideration the fact of the filing of Megna's Motion for Reconsideration, it is beyond a doubt that he received the Court's Order granting Summary Judgment but, in the Motion for Reconsideration, Megna did not set forth any date of receipt, irregular or otherwise, of the Court's Order granting Summary Judgment, nor has he ever produced the envelope in which said Order was delivered to him, nor has he produced any document time stamping the date of receipt of the Order, nor has he provided any other evidence supporting his claim of late receipt of the Order (such as documentation from the United States Post Office, or a letter to the Court or opposing counsel notifying them of late receipt), excepting his Affidavit(s), pleadings and written memoranda (subsequent

to his Notice of Appeal) that I have considered. In fact, the first time Megna raised any issue regarding a late receipt of the Court's Order was at the time he filed the Notice of Appeal (that was out of time).²

9. The Court denied Lee's Motion for Reconsideration *sua sponte* on December 5, 2007.
10. On January 4, 2008, Lee filed the Notice of Intent to Appeal.
11. I find and conclude that Megna received written notice of the Court's Order much more than ten days prior to the filing of his Motion for Reconsideration, even when all "grace periods" are factored in pursuant to S.C.R.C.P. 6(e).
12. Perhaps most compelling, in the closely related case that was litigated on December 5, 2007 e.g. the "companion case", Megna represented to the Court and opposing counsel that:

"within a week after he (Judge Kinard) filed the Order, a week to ten days after he filed the Order... the Motion to Reconsider was filed".

Thus, by his own words, Megna acknowledged and admitted that he received the Order dated October 26, 2007 within a week to ten days after it was issued, (but he seriously misrepresented the time when he filed his Motion for Reconsideration). And just as egregious if not more so, in the instant case Megna now makes representations relative to the date he received the Order granting Summary Judgment inconsistent with his prior adamant and strident representations made to the trier of fact (Judge Thomas W. Cooper) and opposing counsel in the trial of the "companion case".³

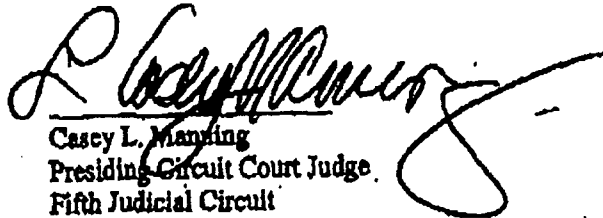
13. I find and conclude that Megna is not at all credible as to any contested issue, specifically including the date he now (in this case) alleges he received the Court's Order granting Summary Judgment, and he is and

² On December 5, 2007 opposing counsel in the "companion case" alerted Megna that his Motion for Reconsideration was too late.

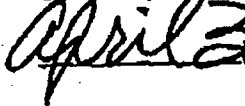
³ I have considered in full context all appropriate pages of the transcript in the "companion case" that is of record as Exhibit 10 to Respondent's Memorandum in Support of the Motion to Dismiss.

should be equitably, judicially and legally estopped to deny timely receipt of the Court's Order dated October 26, 2007 within a week to ten days after the Order was filed e.g. receipt by November 6, 2007 at the latest. In essence, I do not believe the assertions of Megna relative to any contested issue and find that Megna had written notice of Court's Order granting Summary Judgment on November 1, 2007, on November 3, 2007 and by November 6, 2007 and on November 12, 2007 factoring in all possible "grace periods" in a light most favorable to him and without regard to his claim of having personally checked with the Clerk of Court on the status of the case on October 29, 2007. In making these findings and conclusions, I have considered Megna's serious and repeated inattention to detail, which is well documented and of record, as well as his repeated and gross misrepresentations to the Court, as well as his unwarranted, unjustified and untrue attacks on opposing counsel who clearly appears to have been remarkably restrained and professional in the representation of his client and in dealing with Megna under the circumstances.

AND IT IS SO ORDERED.


Casey L. Manning
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina

 2008

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

C/A No. 09-02854-JW

Chapter 13

Gina Anasti Lee,

Debtor(s).

**ORDER DENYING MOTION TO
STAY ORDERS PENDING APPEAL**

This matter comes before the Court upon Debtor's Motion to Stay Orders Pending Appeal ("Motion") pursuant to Fed. R. Bankr. P. 8005. On November 9, 2009, the Court entered an order granting James Anasti's ("Anasti") Amended Motion Seeking 11 U.S.C. § 362(d) Relief pursuant to § 362(d)(1) so that the state court could finalize its determination of Debtor's claims under state law to the real property identified as 2325 Two Notch Road, Columbia, SC 29202 (the "Property"). Thereafter, on December 21, 2009, the Court granted in part and denied in part Debtor's Motion to Alter or Amend Judgment and entered an Amended Order Granting 11 U.S.C. § 362(d) Relief to Anasti based on § 362(d)(1).

In her Motion, Debtor asserts that the Court should stay the granting of relief because the Court failed to recognize her standing as a debtor-in-possession to pursue actions pursuant to 11 U.S.C. § 544. Debtor claims the state trial court order was not a final order and thus, is not enforceable.¹

To determine whether to issue a stay pending appeal under Rule 8005, the Court must examine the following four factors: (1) that Debtor, as the moving party, will likely prevail on the merits of the appeal; (2) that the Debtor will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay. In re Tubular Techs., LLC, C/A No. 06-00228-JW, slip op. (Bankr.

¹ Debtor also notes that should the Court stay its previous orders and allow the Adversary Proceeding to move forward, she would seek to amend her complaint to add a cause of action for equitable subordination.

D.S.C. Jul. 18, 2006) (citations omitted). The party seeking a stay pending appeal bears the burden of showing each factor, and the failure to satisfy any one of the factors precludes the establishment of a stay. Id.

In a prior state court proceeding, Anasti was determined to be the title holder of the Property based on a deed recorded in 1978. Despite admitting that she conveyed any prior interest she would have claimed in the Property to third parties in 2000, Debtor asserted an interest under certain state law claims, including adverse possession, laches, and estoppel. After a full contested proceeding in which Debtor was represented, the state court confirmed the title to the Property in Anasti. The state court order did not transfer title from Debtor, but rather, it merely declared that Debtor never obtained title. Debtor appealed that ruling.

It is apparent that one of the primary reasons Debtor filed for bankruptcy relief was to escape the consequence of the state court order and any determination that the order was final due to the untimely appeal filed by Debtor or her counsel. Debtor initially filed a Chapter 7 case, but soon after the Chapter 7 trustee declared the case to contain no assets and decided not to pursue any interest Debtor claimed in the Property, Debtor voluntarily converted the case to Chapter 13. In her Chapter 13 case, Debtor proposes to sell the Property upon this Court's determination of her interest under the same state law theories presented in the state court proceeding. While Debtor makes much of her standing and desire to pursue her claimed interest for the benefit of her creditors, the Court notes that the Chapter 13 Trustee, who would normally embrace or require pursuit of an action to benefit creditors, has not objected to Anasti having relief from the stay.

As previously indicated, the state court order did not transfer the Property from Debtor, it merely recognized Anasti's prior interest. Even if the Court ignored the state court order, before the Property could be sold, the Court would have to determine Debtor's claim to the Property under the same state law theories which were fully litigated in state court. Debtor insists the state court order

should be ignored because it is not final. However, although Debtor is the party who filed the appeal in state court, when faced with issues of the timeliness of her appeal and possible issues of attorney error, she filed bankruptcy to prohibit a final ruling.

For all the reasons stated previously, including judicial economy, this Court believes it is best for the state court to finalize the appeal. If the appellate court affirms the trial court or determines the state court order is otherwise final, then Debtor has no interest in the Property that can be administered in this Court. However, if by reversal or remand, the state appellate court finds Debtor has an interest in the Property, then pursuant to this Court's order, the automatic stay would apply to that interest and effectively return consideration of the Debtor's interest in the Property to this Court. In this way, neither Debtor nor creditors are prejudiced by relief from stay.

In her Motion, Debtor does not set forth grounds to satisfy each of the factors listed above; rather, she reasserts her arguments for why relief from the automatic stay should not be granted to Anasti. Regardless, an evaluation of the factors supports the denial of the Motion. Anasti continues to be substantially harmed by delay in this proceeding and would be further harmed by a stay pending appeal; in contrast, Debtor's interest in the Property remains protected if she has any interest under South Carolina law. Debtor is unlikely to prevail on appeal, and public interest is not served by Debtor's motion in this case. Furthermore, the Court has conducted two hearings in this matter and the related Adversary Proceeding (No. 09-80133) pertaining to the same issues raised in this Motion, and has evaluated Debtor's arguments in its Orders entered on November 9, 2009, and December 21, 2009. As the Court indicated in its earlier orders, the issues concerning Debtor's claim to the Property have been comprehensively reviewed in state court, the state court order has been appealed, and a resolution in the pending state appellate proceedings would provide this Court with a final determination of state law regarding Debtor's claim to the Property. Accordingly, the Court finds that further delay and argument from the parties is unnecessary and denies the Motion.

AND IT IS SO ORDERED.

Form 4

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Pee Dee Health Care, P.A.,

Plaintiff,

v.

Estate of Hugh S. Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2010-CP-16-0332

ORDER DISMISSING PLAINTIFF'S
MOTION TO RECONSIDER THE ORDER
GRANTING SUMMARY JUDGMENT
(Ending Case)

FILED
JAN 11 4 PM 2:19
COURT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

This matter is before the Court on Plaintiff's putative SCRCP 59(e) Motion for Reconsideration of an Order dated September 1, 2011, which granted summary judgment in favor of Defendant. Plaintiff filed the present Motion to Reconsider on September 13, 2011. On September 19, 2011, Defendant filed a Response to Plaintiff's Motion for Reconsideration. Plaintiff then filed a Reply to Defendant's Response on September 20, 2011. All of these filings, as well as previous Orders issued in this case, have been considered by the Court in reaching its decision. As will be explained below, attorney Megna was not authorized to file the present motion on Plaintiff's behalf. Therefore, Plaintiff's Motion for Reconsideration under SCRCP 59(e) is **DISMISSED AS IMPROPER**.

On April 15, 2011, this Court issued an Order disqualifying Plaintiff's counsel, Tony R. Megna, from representing Plaintiff in this matter because Mr. Megna is a necessary witness in the case. Subsequently, in response to Plaintiff's motion to reconsider that ruling, the Court modified this disqualification to avoid any prejudice to Plaintiff, and permitted attorney Megna to argue the then outstanding Summary Judgment Motions. The Court made it clear that this was a limited appearance only, further stating in an Order dated August 12, 2011, that "all motions, subpoenas, and filings signed only by disqualified counsel, Tony R. Megna, and made subsequent to... June 17, 2011... are hereby **QUASHED**."

By filing and signing the present putative Motion for Reconsideration, Plaintiff's counsel disregarded the Court's previous Orders disqualifying him from representing Plaintiff and then granting him a limited appearance for the sole purpose of arguing an outstanding Motion for Summary Judgment. Plaintiff has other counsel of record (Benjamin R. Matthews, Esq.) that could have, but did not, execute the present Motion for Reconsideration. Rule 1.1(b) of the SCRCP requires that every pleading, motion, or other paper filed by a party represented by counsel must be executed by an attorney of record for that party. Plaintiff continues to be represented by Mr. Matthews, not by Mr. Megna. Accordingly, Mr. Megna's motion is unauthorized under the Rules of South Carolina Civil Procedure and is therefore **DISMISSED AS VOID ab initio**.

TRUE CERTIFIED COPY
JAN 11 4 PM 2:19
COURT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA,)
)
)
COUNTY OF DARLINGTON.)

IN THE COURT OF COMMON PLEAS
2010-CP-16-0332

Pee Dee Health Care, P.A.,)
)
Plaintiff,)
)
vs.)
)
Estate of Hugh S. Thompson,)
)
Defendant.)

ORDER DISQUALIFYING
PLAINTIFF'S COUNSEL TONY R. MEGNA

FILED
2011 APR 19 PM 2:10
SCOTT B. SESS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

 This is an action originally filed in the Probate Court wherein the Plaintiff is attempting to recover reimbursement from the Defendant estate for losses in Medicare reimbursements allegedly occasioned by the actions of Dr. Hugh S. Thompson during his period of practice with Plaintiff. Counsel for the Defendant has now moved this Court for an Order disqualifying Plaintiff's counsel Tony R. Megna.. This motion is based upon the Rules of Professional Conduct, as found in SCACR 407, and supporting case law. Plaintiff filed a response to the motion on March 11, 2011, and the matter was heard by the Court on March 16, 2011. After consideration of all the pleadings, motions, exhibits, and the arguments of counsel, the Court finds that Attorney Megna should be disqualified from further representation of the Plaintiff in this matter. This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

(1) Counsel Tony R. Megna has identified himself as the Chief Executive Officer ("CEO") of Plaintiff Pee Dee Health Care, P.A. ("PDHC"). In addition to such identification made to the Court at the March 16th hearing, the response of PDHC to the pending motion to

(5) Even if PDHC were not at fault, communications between PDHC and Thompson about the Medicare claim and appeals process are relevant to the issues raised in this case. At least in part, PDHC's claim to equitable indemnification also depends upon showing that Dr. Thompson was provided timely notification and an opportunity to participate and help defend the claim Medicare made against PDHC. This is because one who seeks equity must do equity.⁵

(6) Disqualification of Mr. Megna will not work a substantial hardship. This matter is early in the discovery phase. No depositions have been taken. Thus, there is minimal extra expense or loss of time, if any. Both Mr. Megna and attorney Benjamin Matthews have made appearances on behalf of PDHC in this action; indeed, it is Mr. Matthews who executed the complaint in this Court. Further, Mr. Megna represented to the Court that the Plaintiff has 75-80 employees; the Court finds that Plaintiff has the resources to add additional counsel if needed.

CONCLUSIONS OF LAW

Jan 4 (A) In South Carolina, an attorney cannot "act as an advocate at a trial in which the lawyer is likely to be a necessary witness," unless the issue about which the attorney will testify (1) is uncontested, (2) relates to the nature or the value of the legal services rendered, or (3) disqualification would work a substantial hardship on the attorney's client. Rule of Prof. Conduct 3.7, SCACR 407. Rule 3.7 is absolute; only when one of the three delineated exceptions applies may a witness also serve as an advocate. 1 S. C. Juris. *Attorney and Client* § 53; ROBERT M. WILCOX, South Carolina Legal Ethics § 9.1.1. An adversary, such as the Estate of Dr. Thompson, has an obligation to immediately move for disqualification when there is an issue of the opposing advocate's position as a witness. Comment (1), RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 108.

⁵ *Accord Otis Elevator, Inc. v. Hardin Constr. Co. Group*, 316 S.C. 292, 296-97 450 S.E.2d 41, 44 (1994)(allowing indemnification where "indemnitee gave the indemnitor notice and an opportunity to participate in the litigation....").

(B) The first two exceptions allowed by Rule of Professional Conduct 3.7, SCACR 407, are not applicable here. Mr. Megna's testimony relates, in part, to contested communications with the decedent at the heart of the claims and defenses in this case. In addition, Mr. Megna's testimony relates to contested administrative issues of Medicare compliance (such as employee screening, due diligence, and record keeping) and the contested issue of Plaintiff's alleged damages. Mr. Megna's testimony does not relate to "legal services rendered" in this Court of Common Pleas matter.

(C) The hardship exception of Rule 3.7 provides no relief here. A South Carolina District Court has noted that the hardship exception to Rule 3.7 should be construed very narrowly. Brown v. Daniel, 180 F.R.D. 298, 302 (D.S.C. 1998). Simple extra expense or the loss of time that is inherent in any disqualification is not a substantial hardship. To find substantial hardship, "courts have required something beyond the normal incidents of changing counsel, such as the loss of extensive knowledge of a case based upon a long-term relationship between the client and counsel and substantial discovery conducted in the actual litigation." Id. Here, the normal incidents of changing counsel are not even present as Rule 3.7(b) will allow for Mr. Megna's non-witness partner Mr. Matthews to continue in his existing representation of PDHC.

(D) The Dead Man Statute⁶ does not change Mr. Megna's status as a fact witness in this case under Rule 3.7 of the Rules of Professional Conduct – regardless of how it might apply in the ultimate trial of this matter. Moreover, the Dead Man Statute has no effect upon the discoverability of information allegedly known by Megna as a fact witness.⁷

⁶ The Dead Man Statute, codified in South Carolina at S.C. Code § 19-11-20, is an evidentiary rule that relates to the competency of a witness to testify about certain matters. The statute exists to prevent interested parties from offering self-serving, incontrovertible testimony that may be unreliable. Harris v. Berry, 231 S.C. 201, 98 S.E.2d 251 (1957); Trimmier v. Thomson, 41 S.C. 125, 19 S.E. 291 (1894). Specifically, a competency objection may be raised by the decedent's representatives to prohibit a person or party with an interest in the matter from testifying about communications or transactions with another person who is deceased at the time of such testimony. See, e.g., Estate of Revis by Revis v. Revis, 326 S.C. 470, 484 S.E.2d 112 (Cl. App. 1997) ("The 'dead man's' statute is an exception to the general rule of witness competency. It is to be read restrictively, and the party requesting its use bears the burden of establishing its applicability.").

⁷ While the competency objection may be waived by the decedent's representatives at trial, the Court of Appeals has previously held that a discovery deposition regarding the communications between a decedent and an interested person or party does not "open the door" or waive the availability of the objection at trial. Thomas v. Taylor, 300 S.C. 127, 386 S.E.2d 630 (Cl. App. 1989) (Sanders, Chief Judge) (Relying, in part, on SCRPC 32(d)(3)(A) which provides that "Objections to the competency of a witness ... are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time."). Obviously, Dr. Thompson's death cannot be removed or obviated "before or during" any Megna deposition so waiver is not possible at a deposition. PDHC's assertion that the statute acts as a complete bar to any examination is belied, however, by the statute's own provision for "opening the door" to otherwise incompetent testimony. See, e.g., Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997).

(E) Mr. Megna's role as general counsel to PDHC does not change Mr. Megna's status as a fact witness in this case under Rule 3.7 of the Rules of Professional Conduct – regardless of how this status might trigger evidentiary privileges. While PDHC asserts that privileges attach to anything and everything that Mr. Megna might say, thereby freeing him to act only as counsel, this Court concludes that the potential application of attorney-client privilege⁸ does not preclude anything and everything that Mr. Megna might say as a witness.

PDHC's complaint is that decedent Thompson did not disclose information to PDHC or gave wrong information to PDHC – in part through its CEO Tony Megna. Under the guise of privilege, Mr. Megna cannot avoid examination on the disclosures and communications made to him that he now claims were tortious.⁹

In further support of the court's decision, focusing narrowly on PDHC's exhibit HH submitted in response to the motion to disqualify, there is nothing in that alleged Thompson letter to Mr. Megna that indicates that Thompson is seeking legal advice. Furthermore, that communication has already been divulged by PDHC as part of its complaint – so even if it arguably related to legal advice needed by PDHC at the time, that privilege has clearly been

⁸ South Carolina has long recognized the attorney-client privilege against the disclosure of confidential communications by a client to his attorney. State v. Love, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). The privilege applies only to "confidential disclosures by a client to an attorney made in order to obtain legal assistance." Fisher v. United States, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 186 (1980). The burden is on the proponent of the privilege to demonstrate its applicability. United States v. Jones, 696 F.2d 1069, 1072 (4th Cir. 1982). The party asserting the attorney-client privilege must establish not only that the attorney-client relationship existed, but also that the particular communication at issue is privileged and that the privilege was not waived. Cameron v. Gen. Motors Corp., 158 F.R.D. 581, 584 (D.S.C. 1994), vacated by, in part In re Gen. Motors Corp., No. 94-2435, 1995 U.S. App. LEXIS 41270 (4th Cir. 1995).

⁹ The precise boundaries of any applicable privilege are not before the court in this motion. As noted by the Defendant, however, PDHC may have implicitly waived any possible remaining or existing privilege by placing the subject of communications and disclosures between the decedent and Mr. Megna (on behalf of PDHC) into controversy. See Duplan Corp. v. Deering Milliken, Inc., 397 F.Supp. 1146, 1161 (D.S.C. 1975). See also In re Long Point Road Ltd. P'ship, No. 93-72769-JW, 1997 Bank. LEXIS 2403, at *9-10 (Bankr. D.S.C. Sept. 8, 1997); see also Hearn v. Rhay, 68 F.R.D. 574, 580 (E.D. Wash. 1975). Fairness is the underlying touchstone for implicit waiver; the rationale is that privileged materials ought not be used as both a shield and sword. See In re: United Supermarkets, Inc., 36 S.W.3d 619, 621 (Tex. Ct. App. 2000) ("a party who is seeking affirmative relief should not be permitted to maintain an action, and at the same time, maintain evidentiary privileges that protect from discovery outcome determinative information not otherwise available to the other party."); see also Hangards, Inc. v. Johnson & Johnson, 413 F. Supp. 926, 929 (N.D. Cal. 1976) ("a party may not insist on the protection of the attorney-client privilege for damaging communications while disclosing other selected communications because they are self-serving").

waived by its disclosure. Thus, Mr. Megna is now subject to examination as to details of that document.

More broadly, the privilege would only extend to Mr. Megna's communications where the medical practice of PDHC is seeking legal advice. The privilege would not extend to Mr. Megna when acting in the capacity of CEO of the medical practice; for example, Mr. Megna's communications with third parties such as government regulators, insurers, and Medicare program administrators is clearly not privileged and would be relevant to issues in this case. Likewise, questions directed to the CEO's knowledge of business operations, finances, and damages would not infringe upon privileged communications. Further, the existence of other persons who may also have knowledge in these areas does not remove Mr. Megna from the witness list prohibited by Rule 3.7.

mb
7
(F) The work-product privilege also does not preclude anything and everything that Mr. Megna might say as a witness. The work-product doctrine seeks to protect things or information "prepared in anticipation of litigation or for the trial ..." SCRCP 26(b)(3). Specifically, the rule protects "against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." The work-product doctrine does not, however, extend to anything and everything an attorney might have done – particularly when acting in the capacity of a CEO of a medical practice.¹⁰

¹⁰ The work-product privilege applies only to "attorneys' or legal representatives mental impressions, conclusions, opinions, or legal theories authored in anticipation of litigation." Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643, 668 (10th Cir. 2006). Fact work product is not absolutely privileged and discovery of fact or non-opinion work product may be compelled in some circumstances. In re Qwest Communications Int'l. Inc., 450 F.3d 1179, 1186 (10th Cir. 2006). "Work product which is primarily factual in nature is not absolutely immune from discovery under the rule. At best, it receives a qualified protection which is overcome if the opposing party shows substantial need of the material and inability to obtain it elsewhere without undue hardship." Transit Authority of River City v. Vinson, 703 S.W.2d 482, 486 (Ky. App. 1985); see also Duffy v. Wilson, 289 S.W.3d 555, 559 (Ky. 2009).

While the Court can address specific assertions of privilege if and when they arise, the Defendant correctly points out that the work-product doctrine is limited to protecting such things in the context of the litigation to which the information relates – *not other litigation*. Accord Kirschbaum v. WRGSB Assocs., No. 97-5532, 1998 U.S. Dist. LEXIS 8860, at *3 (E.D. Pa. June 18, 1998). In this case, the Defendant is not interested in Mr. Megna's thoughts about the present litigation with the Estate; rather, its interest is in the litigation with Medicare. The litigation with Medicare is now concluded and the work product protection, if applicable at all, would only apply in the context of that litigation – protecting against disclosure to Medicare.

Even where applicable, Rule 26(b)(3) provides for an exception when a party is "unable without undue hardship to obtain the substantial equivalent of the materials by other means." Absent some audio recording, the only means to get the substantial equivalent of Dr. Thompson's alleged conversations with the CEO of PDHC is to ask the surviving party to those conversations.



CONCLUSION

This is the type of factual scenario for which Rule 3.7 was written. Mr. Megna is the CEO of the Plaintiff organization and is an owner with a financial stake in the outcome of this litigation. By his position alone, Mr. Megna is central to the issues involved in this case. In addition, Mr. Megna was intimately involved in the relationship between Plaintiff and the Decedent Hugh S. Thompson, and was responsible for many decisions that were made regarding the employment relationship between the two parties. Mr. Megna's knowledge of these important facts assure that his testimony will be necessary in this case.

The Court is not persuaded by the Plaintiff's assertions of various privileges. Even if applicable in some limited context, the applicability of any particular privilege does not change

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
2010-CP-16-0332

Pee Dee Health Care, P.A.,
Plaintiff,
v
Estate of Hugh S. Thompson,
Defendant.

ORDER DENYING PLAINTIFF'S 59(E)
MOTION FOR RECONSIDERATION OF
ORDER DISQUALIFYING COUNSEL AND
QUASHING ALL MOTIONS, SUBPOENAS,
AND FILINGS SIGNED ONLY BY
DISQUALIFIED COUNSEL TONY R.
MEGNA AND ISSUED AFTER JUNE 17, 2011

This matter is before the Court on Plaintiff's SCRPC 59(e) Motion for Reconsideration of an Order dated April 15, 2011, which disqualified Plaintiff's counsel from representing Plaintiff in this matter. Plaintiff filed the present motion to reconsider on May 2, 2011. On May 20, 2011, Defendant filed a Motion to Dismiss Plaintiff's Rule 59(e) motion and Memorandum in Opposition to Plaintiff's Motion. Plaintiff then filed a Reply to Defendant's Motion in Opposition on May 26, 2011. All these filings have been considered by the Court in reaching this decision.

On July 19, 2011, the Court conducted a hearing on this matter as well as cross motions for Summary Judgment filed by both parties. Prior to this hearing, in its Notice of Hearing dated June 17, 2011, and to avoid any prejudice to Plaintiff, the Court permitted Plaintiff's disqualified counsel to argue the outstanding Summary Judgment Motions before it would render a decision on Plaintiff's 59(e) Motion. The Court took all three Motions under advisement. The Cross-Motions for Summary Judgment remain under advisement as of the date of this Order.

After careful consideration of the extensive record submitted by both parties, as well as the arguments heard on July 19, Plaintiff's Motion for Reconsideration under SCRPC 59(e) is **DENIED**.

The findings of fact and conclusions of law in the Order Disqualifying Counsel are replete. Thus, the Court declines to offer additional reasoning for its decision to uphold that determination, without alteration.

However, the Court does find that its decision to allow Plaintiff's counsel oral argument on previously-filed Summary Judgment Motions did not attenuate its Order of Disqualification. The Court granted Plaintiff's counsel a limited appearance only. Therefore, all motions, subpoenas, and filings signed only by disqualified-counsel, Tony R. Megna, and made subsequent to the Notice of Hearing dated June 17, 2011 in which the Court formally announced the parameters of its accommodation to Plaintiff and its counsel, are hereby **QUASHED**.

Plaintiff's remaining counsel is Ordered to personally serve a copy of this Order on all parties affected by the Court's decision herein, including counsel for Defendant, within 5 days of service from the Clerk of Court.

DARLINGTON COUNTY, S.C.
CLERK OF COURT/RMC
TRUE CERTIFIED COPY

FILED
JUL 15 AM 10:41
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JAMES A. ANASTI,)

Plaintiff,)

vs.)

LANCE WILSON,)

WILLIS GOODWIN,)

GINA L. ANASTI LEE,)

And RICHLAND COUNTY)

CLERK OF COURT,)

Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

CERTIFICATE OF SERVICE

FILED
2012 MAR -9 AM 10:43
JENNIFER W. BRIDGE
S.C.P. & G.S.

I, Amanda Douglas Hilley, paralegal for Douglas N. Truslow, Esquire, attorney for Plaintiff, certify I have this date served the foregoing document(s) on the individual(s) listed below by placing a copy in the United States Mail, postage prepaid to the following address:

Tony R. Megna, Esquire
3400 West Ave.
Columbia, SC 29203

Willis Goodwin
1000 Windsor Shores Drive
Columbia, S.C. 29222

Lance Wilson
149 Blarney Lane
Columbia, SC 29223

DOCUMENT(S):

1. *Motion to Quash and For Protection and Other Relief*


Amanda Douglas Hilley

Columbia, South Carolina
March 9, 2012

COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
)
)
PEE DEE HEALTH CARE, PA)
 Plaintiff,)
 vs.)
)
ESTATE OF HUGH S. THOMPSON)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-16-0332

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

and Jon Rene Josey, Esq.
 PO Box 5478
 Florence, SC 29502
 (P)(843) 656-4451 (F)(843) 413-5818

Plaintiff's Attorney: Benjamin Matthews, Bar No. _____ Address: 3400 West Ave., Columbia, SC 29203 Phone: 799-1700 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <i>X</i> John James, Esquire, Bar No. _____ Address: P.O. Box 507, Darlington, SC 29540 Phone: 843-393-3881 Fax 843-393-3089 E-mail: _____ Other: _____

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

SECTION I: Hearing Information

Nature of Motion: MOTION FOR SANCTIONS
 Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____

SECTION III: Motion Fee

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

JUDGE'S SECTION

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

CLERK'S VERIFICATION

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

Non-Party Moving Party
Douglas R. Trushin
PO Box 1465
Columbia, S.C. 29202
803-256-6276
douglasrtrushin@a
trushin@
com

FILED
 2012 MAR 12 PM 12:04
 SCOTT B. SUGGS
 CLERK OF COURT/R.D.D.
 DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)
Ex Parte:)
Douglas N. Truslow)
In re:)
Pee Dee Health Care P.A.,)
Plaintiff,)
vs.)
Estate of Hugh S. Thompson,)
Defendant.)

IN THE COURT OF COMMON PLEAS
Case No.: 2010-CP-16-0332

MOTION FOR SANCTIONS

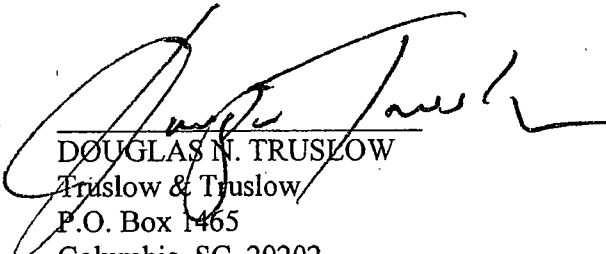
FILED
2012 MAR 12 PM 12:04
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Non-Party Douglas N. Truslow hereby moves, pursuant to Rule 11(a) and Rule 45, SCRCF, for an award of reasonable expenses incurred by the undersigned in responding to subpoenas issued by a former agent Tony Megna ("Megna") of the Plaintiff herein. The subpoenas issued by Megna are for Plaintiff's counsel, his paralegal and an attorney assisting in a bankruptcy case. In support of the motion, the undersigned will show:

1. To my knowledge, I am not involved as a witness or counsel to any party in this action (except possibly for non-party Desa Ballard who has pending a similar sanctions motion against Megna).
2. On or about February 28, 2012, Megna indicated I was being served with discovery and a subpoena, a copy of which are attached hereto as Exhibit 1, seeking information about others and production of certain materials.
3. On or about March 9, 2012, after reviewing his files confirming the lack of relevance of any materials requested from me, I prepared and served Objections to the subpoena on Benjamin R. Matthews, Esquire, who is represented by the online records from Darlington County Clerk of Court as

counsel for the Plaintiff. A copy of the Objection is attached and is being filed contemporaneously (Exhibit 2).

4. I am informed and believe that the subpoena was issued in bad faith and for an improper purpose.
5. I have expended more than eight (8) hours reviewing various files and addressing the issues. I bill for my legal services at \$300.00 per hour and \$400.00 per hour in the event of the need to expedite matters such as occurred herein because of Megna's misconduct. I will pay a motion fee of \$25.00 in filing this motion.
6. Should a hearing be necessary on this motion, I will expend additional time traveling to Darlington and appearing at any hearing, which travel and appearance will cost me billing on other matters at a rate of at least \$300.00 per hour.
7. I request an award of sanctions against Plaintiff, Mr. Megna (who issued the subpoena) and against Mr. Matthews if he participated in, allowed or is deemed to have approved of the conduct of Megna and otherwise engaged in gross misconduct in an appropriate amount. I am also seeking to have the subpoenas quashed.


DOUGLAS N. TRUSLOW
Truslow & Truslow
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276
Fax: (803) 256-7659
douglastruslow@truslowlaw.com

-Responding *Pro Se*

Columbia, South Carolina

Mar 9, 2012

FILED
2012 MAR 12 PM 12:04
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Ex Parte:)

Douglas N. Truslow)

In re:)

Pee Dee Health Care P.A.,)

Plaintiff,)

vs.)

Estate of Hugh S. Thompson,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-16-0332

EXHIBIT 1

FILED
2012 MAR 12 PM 12:04
SCOTT B. SUGGS
CLERK OF COURT/R.D.O.
DARLINGTON COUNTY, S.C.

8. Parties means the plaintiff or defendant as well as a party's full or abbreviated name or pronoun referring to a party mean the party and/ where applicable, its officers, directors, employees, or agents. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation but is intended to include agents, employees, consultants, etc. of the Defendants.
9. Concerning means relating to, referring to, describing, evidencing, or constituting.
10. Should defendant claim privilege for any documents about which information or inspection is requested by any of the following interrogatories, such documents shall be described in a manner sufficient for identification including the date, author, all recipients, and identity of each party receiving a copy of the document and the subject matter thereof, as well as all person who have reviewed and/or read the document regardless of their affiliation with the Defendants, and in addition to supplying the above-named information concerning such documents, shall indicate that Defendants claim privilege therefore and Defendants shall state the ground on which the claim of privilege rests.
11. All interrogatories herein are continuing in nature, so as to require defendant to supplement or amend her responses in accordance with the SCRCF.
12. CMS administers the Medicare and Medicaid programs under the direction of the direction of the Department Of Health and Human Services.

Danington 15502 - not involved in this case.
or
Florence

INTERROGATORIES AND REQUEST FOR PRODUCTION

1. Please identify all persons answering these interrogatories, and specify which interrogatory was answered by whom.

2. Please identify all persons answering the Plaintiff's Request for Production of Documents, and specify which request for production was prepared and answered by whom.
3. Please identify and produce all documents you intend to at the damages hearing.
4. Please produce all documents and communications [electronic and/or hard-copy] that relate to and/or reference in any manner Tony R. Megna, Pee Dee Health Care, P.A., Gina Lee, or related parties that you [Douglas Truslow and/or James Anasti] have provided to or have been provided by Celeste Jones, Jay James, Kenneth Woodington, Renee Josey and/or Desa Ballard and/or their agents. *object - she has submitted motion pending against Megna.*
5. Please identify and produce all documents and communications [electronic and/or hard-copy] that relate to and/or reference in any manner Tony R. Megna, Pee Dee Health Care, P.A., Gina Lee, or related parties that you [Douglas Truslow and/or James Anasti] have provided to or have been provided by any person.
6. Please identify all persons with knowledge of or information relevant to the subject matters as stated in the Defendant Anasti's request for damages further provide a description that fully and completely describes the content of such knowledge or information.
7. Please identify all persons which Defendants intend to call as experts at trial, and specify the subject matter upon which each expert is expected to testify, giving a statement regarding the substance of the facts and opinions to which the expert is expect to testify at trial and a summary of the grounds for each fact. *CASE AGAINST her is over!*
8. Please identify and produce all documents in support of all damages, however defined, you intend to request be ordered against S. Lee and or her agents.

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF DARLINGTON

James A. Anasti, Plaintiff

v.

Lance Wilson, et. al., Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 07-CP-40-0576

Pending in RICHLAND County

** He has been
banned by
the Court from
participating
in this
case*

TO: Douglas N. Truslow

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

3400 West Avenue, Columbia, SC 29203

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

PLACE

3400 WEST AVENUE, COLUMBIA, SC 29203

DATE AND TIME March 6, 2012 @ 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF DARLINGTON

James A. Anasti, Plaintiff

v.

Lance Wilson et. al., Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 07-CP-40-0576

Pending in RICHLAND County

*He has been
banned from
participating
in this
case by
the court*

TO Steve Licata

☒ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

3400 West Avenue, Columbia, SC 29203

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

PLACE

3400 WEST AVENUE, COLUMBIA, SC 29203

DATE AND TIME March 6, 2012 @ 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

*same
as not
the as
set for
two other
depositions*

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Ex Parte:)

Douglas N. Truslow)

In re:)

Pee Dee Health Care P.A.,)

Plaintiff,)

vs.)

Estate of Hugh S. Thompson,)

Defendant.)

IN THE COURT OF COMMON PLEAS
Case No.: 2010-CP-16-0332

EXHIBIT 2

FILED
2012 MAR 12 PM 12:04
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
Ex Parte:)
)
Douglas N. Truslow)
)
In re:)
)
Pee Dee Health Care P.A.,)
)
Plaintiff,)
)
vs.)
)
Estate of Hugh S. Thompson,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
Case No.: 2010-CP-16-0332

OBJECTION TO SUBPOENA

FILED
2012 MAR 12 PM 12:04
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

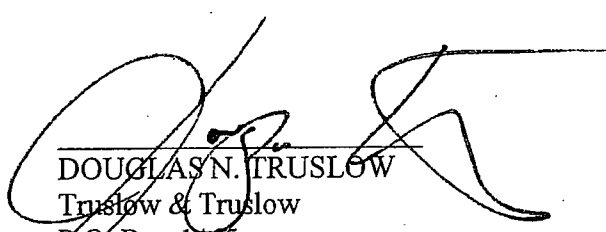
Non-party Douglas N. Truslow hereby objects to producing any documents or materials identified in all subpoenas issued in this matter by Tony Megna and dated February 28, 2012 (in accordance with the provisions of SCRCR Rule 45(c)(2)(B) and (d)(2)).

1. The subpoena is issued from the improper county in violation of SCRCR Rule 45(a)(2) and 45(b)(2).
2. The materials demanded by Megna, to the extent they exist, would not be relevant, in violation of SCRCR Rule 26(b)(1).
3. The recipient of this subpoena and those subpoenas submitted to his paralegal and to another attorney assisting the undersigned and/or his client are not Defendants in the referenced action.
4. The recipient is informed and believed that the officer (Megna) who executed the subpoena has been disqualified as counsel in the instant action and had no authority to issue the subpoena.
5. On information and belief, the subpoena attempts to inquire into irrelevant, proprietary, work product and/or privileged communications between the

undersigned and others, which communications occurred and continue to incur in connection with advice rendered in an unrelated case.

6. The undersigned has regular professional communications with various individuals from time to time on a variety of topics, most of which cannot possibly be relevant to the instant case and Megna's attempt to delve into them is improper.
7. Plaintiff and its disqualified attorney (Megna) are attempting to use the platform of a separate case to violate the Court's Order(s) disqualifying Megna (see supporting motion filed in Richland County).

You are hereby notified that the undersigned will seek sanctions for the cost of responding to this subpoena from the proper Court.



DOUGLAS N. TRUSLOW
Truslow & Truslow
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276
Fax: (803) 256-7659
douglastruslow@truslowlaw.com

Responding *Pro Se*

Columbia, South Carolina

Mar 9, 2012

FILED
2012 MAR 12 PM 12:05
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Ex Parte:)

Douglas N. Truslow)

In re:)

Pee Dee Health Care P.A.,)

Plaintiff,)

vs.)

Estate of Hugh S. Thompson,)

Defendant.)

IN THE COURT OF COMMON PLEAS
Case No.: 2010-CP-16-0332

OBJECTION TO SUBPOENA

FILED
2012 MAR 12 PM 12:07
SCOTT B. SUGGS
CLERK OF COURT/ROD.
DARLINGTON COUNTY, S.C.

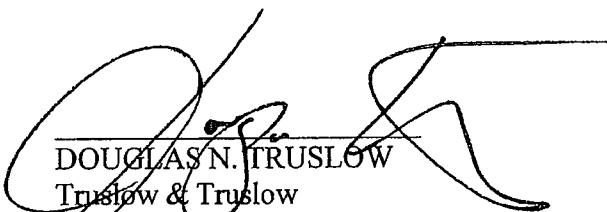
Non-party Douglas N. Truslow hereby objects to producing any documents or materials identified in all subpoenas issued in this matter by Tony Megna and dated February 28, 2012 (in accordance with the provisions of SCRCF Rule 45(c)(2)(B) and (d)(2)).

1. The subpoena is issued from the improper county in violation of SCRCF Rule 45(a)(2) and 45(b)(2).
2. The materials demanded by Megna, to the extent they exist, would not be relevant, in violation of SCRCF Rule 26(b)(1).
3. The recipient of this subpoena and those subpoenas submitted to his paralegal and to another attorney assisting the undersigned and/or his client are not Defendants in the referenced action.
4. The recipient is informed and believed that the officer (Megna) who executed the subpoena has been disqualified as counsel in the instant action and had no authority to issue the subpoena.
5. On information and belief, the subpoena attempts to inquire into irrelevant, proprietary, work product and/or privileged communications between the

undersigned and others, which communications occurred and continue to incur in connection with advice rendered in an unrelated case.

6. The undersigned has regular professional communications with various individuals from time to time on a variety of topics, most of which cannot possibly be relevant to the instant case and Megna's attempt to delve into them is improper.
7. Plaintiff and its disqualified attorney (Megna) are attempting to use the platform of a separate case to violate the Court's Order(s) disqualifying Megna (see supporting motion filed in Richland County).

You are hereby notified that the undersigned will seek sanctions for the cost of responding to this subpoena from the proper Court.



DOUGLAS N. TRUSLOW
Truslow & Truslow
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276
Fax: (803) 256-7659
douglastruslow@truslowlaw.com

Responding *Pro Se*

Columbia, South Carolina

March 9, 2012

FILED
2012 MAR 12 PM 12:07
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JAMES A. ANASTI,)
)
Plaintiff,)
)
vs.)
)
LANCE WILSON,)
)
WILLIS GOODWIN,)
)
GINA L. ANASTI LEE,)
)
And RICHLAND COUNTY)
)
CLERK OF COURT,)
)
Defendants.)

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 2007-CP-40-0576

**MOTION TO QUASH AND
FOR PROTECTION AND
OTHER RELIEF**

FILED
2012 MAR 12 PM 12:07
SCOTT B. SUEGGS
CLERK OF COURT, R.O.D.
DARLINGTON COUNTY, S.C.

INTRODUCTION

The undersigned seeks protection from the Court relative to “discovery” misconduct of “Plaintiff” (sic)/Tony Megna (“Megna”), ostensibly utilized by him in the name of his (former) client Defendant Gina Anasti Lee (whose involvement in this case has conclusively ended). As well, Plaintiff seeks the imposition of sanctions, including fees and costs, disqualification of Megna to participate as an attorney in this case and for such other and further relief as the Court may find proper.

Specifically, although his former client’s (Lee) case has been conclusively adjudicated (and no action can be taken against her because of her bankruptcy(s) – in which Megna was her attorney and in which his malfeasance appears to have significantly contributed to her financial distress),¹ Megna is now attempting to engage in “discovery” in her name, to include taking the deposition of Plaintiff’s counsel and his paralegal, as well as to retake the deposition of Plaintiff, to take the deposition of a bankruptcy attorney (who successfully assisted Plaintiff in lifting Lee’s bankruptcy stay so that her appeal could be

¹ He represented her in a separate “companion case” in which he lost because, *inter alia*, he appears to have allowed the pertinent statute of limitations to expire and he clearly missed the time to appeal in the within case (see Order of the Court in the “companion case” filed by Wilson and Goodwin against Lee, as well as the Orders of Judge Manning dated April 3, 2008 and April 1, 2009 and the per curium decision of the Court of Appeals dismissing Megna’s appeal in that it was untimely). The verdict rendered against Lee in the “companion case” exceeded \$200,000.

concluded) and to otherwise exceed the bounds of discovery in any event.² Also, Megna is attempting to use this case as a means to gather evidence for an unrelated case (in which he has specifically been disqualified by the Court from participating) and in which there is also a separate pending, preexisting sanctions motion filed against him by non-party/non-witness Desa Ballard – relative to Megna’s continued misuse of the legal process. In that unrelated case, Megna attempted to subpoena Ms. Ballard’s attorney files and work product (and those of other attorneys). His conduct was especially egregious because Megna had previously been disqualified from acting as an attorney in that case, based on specific ethical considerations (the subpoenas were all quashed by the Court *sua sponte*). Apparently being dissatisfied with the Court’s Order(s), he is now attempting to use the same tactic in this case to circumvent the Court’s Order(s) in the Darlington case and to continue to misuse SCRCF as a platform to acquire proprietary, private, privileged information relative to the activities of attorneys Celeste Jones, Rene Josey, Jay James, Kenneth Woodington and Desa Ballard in totally unrelated cases in which he (Megna) may have some interest as an opposing attorney, in which he has a financial stake and/or in which he is an actual party defendant being sued by one of them.

RELEVANT BACKGROUND

The undersigned represents Plaintiff. Megna previously represented Defendant Lee.³ Plaintiff was granted Summary Judgment in **October, 2007** against all Defendants as to liability. Upon receipt of the Order granting Summary Judgment, Plaintiff promptly filed a Motion for Rule 11 sanctions against Megna personally. Sanctions were sought against Megna personally due to the fact that he had deliberately presented and advanced claims that he clearly knew were frivolous, if not blatantly dishonest, and which were

² Megna is also apparently attempting to use this case as a platform to take the depositions of, *inter alia*, attorneys Desa Ballard, Celeste Jones, Rene Josey and Jay James, as well as to engage in a fishing expedition to gather information relative to the activities of these attorneys in unrelated cases.

³ Lee has now been adjudicated bankrupt and is otherwise no longer a party. In fact, Megna has claimed in submissions to the Court(s) that Lee is not and cannot be a party to these proceedings. Further, Summary Judgment was granted against Lee (in favor of Plaintiff Anasti), and the case was not overturned on Appeal. Specifically, Megna’s appeal was dismissed (per curiam decision) in that Megna “beyond a reasonable doubt” filed it out of time; Megna’s Petition for Writ of Certiorari was likewise denied, and all Megna’s multiple appeals to the Federal District Court and Fourth Circuit Court of Appeals (in the ostensible name of Lee) were likewise denied – per curiam decision.

interposed by him for ulterior, illegitimate reasons.⁴ A hearing date was scheduled for early **January, 2008** relative to the Rule 11 sanctions motion pending against Megna. Just before that January, 2008 hearing date, Megna filed an (untimely) appeal, thereby preventing a damages hearing from being heard and, more pertinent to these proceedings, preventing the sanctions motion against Megna from being heard. Extensive legal machinations were thereafter employed by Megna to further delay the pending sanctions motion against him from being addressed, but his multiple appeals were consistently found by all courts addressing them to be without merit and they were ultimately dismissed (per curium decisions). In that regard, Megna's Petition for Writ of Certiorari to the South Carolina Supreme Court was denied, as were Megna's multiple appeals to the Federal District Court and Fourth Circuit Court of Appeals (which clearly appear to have been interposed by Megna specifically so as to continue to delay the imposition of sanctions against him).⁵

Upon it being determined by multiple Courts that, by late 2011, Megna had exhausted all appeals and avenues that could have possibly been exploited to further delay the imposition of sanctions against him, a status conference was held on **January 18, 2012** (over Megna's objection).⁶ At the status conference, the primary issues to be addressed related to scheduling a damages hearing (against Defendants Wilson and Goodwin alone) and the pending sanctions hearing against Megna alone. It was decided, agreed and confirmed at that time that the damages hearing against Defendants Wilson and Goodwin would be held first, and it was tentatively scheduled for March 12, 2012. It was tentatively scheduled in that Wilson and Goodwin's attorney, Thomas Earle, was experiencing serious health issues and it was unknown if his health would allow him to continue in the case.⁷ At the status conference, it was also acknowledged and confirmed

⁴ Available evidence clearly establishes that Megna proposed that Lee present defenses that he knew without question to be dishonest.

⁵ This opinion is supported by the fact that, given her bankruptcy (a) Lee could never benefit by the course of action taken by Megna and (b) neither the bankruptcy trustees nor any creditor joined in Megna's activities.

⁶ Megna had argued that the case remained stayed by virtue of Lee's bankruptcy – see his November 3, 2011 letter submitted to the court of Common Pleas and prior letters to the South Carolina Court of Appeals, subsequent to the Bankruptcy Court ordering that Lee's bankruptcy stay was lifted.

⁷ Mr. Earle in fact has taken a turn for the worse, and an Order relieving him as the attorney for Wilson and Goodwin has been granted and the damages hearing has been continued for ninety days. The sanctions hearing will be heard at a subsequent date.

that there was no need (nor was it appropriate) for Megna to participate in the damages hearing against Wilson and Goodwin, precisely because of Lee's bankruptcy and because the case against her had been concluded. It was also decided and agreed at the time of the status conference that a sanctions hearing against Megna alone was to be set at a later date, after the damages hearing, and that a list of witnesses was to be exchanged. Plaintiff has complied, and Megna has been provided with a tentative witness list as well as the substance of their testimony.⁸ Megna has not submitted anything to Plaintiff in this regard.

During the last week of February, 2012, Wilson and Goodwin's attorney's law partner reported to Megna that Mr. Earle was hospitalized, in intensive care and in a coma. In conjunction, Mr. Earle's law partner indicated that substitute counsel for Wilson and Goodwin would necessarily have to be found. Upon receiving that information, Megna immediately and in bad faith "noticed" Mr. Earle (by email (sic) and purportedly by regular mail) for the taking of the depositions of Plaintiff's counsel, his paralegal and the attorney who represented Plaintiff in Lee's bankruptcy for the ensuing week (on less than ten days notice), notably doing so at a time when he (a) knew that he had not complied with SCRCR, (b) knew that Wilson and Goodwin's attorney Mr. Earle certainly would not receive the notice, nor could he attend, (c) knew that such a notice would impose an unnecessary and unreasonable burden on Mr. Earle's law firm and/or impose an unreasonable burden on Wilson and Goodwin and likely on any substitute counsel and (d) knew that no discovery sought by Megna was authorized or permitted in this case or in the Darlington case (in which he had been disqualified). He unquestionably sent the referenced subpoenas to an address for Plaintiff's counsel that he knew to not exist (see his Certificate of Service). Furthermore, he arbitrarily set all the depositions at the exact same time without prior notice, such as to make it appear that he wanted to cause further discord and inconvenience.

Aside from the fact that discovery is not permitted or authorized at this juncture, especially by Lee, Megna has exceeded the scope of discovery.⁹ Megna's depositions were not properly noticed and the subpoenas issued by Megna were from Darlington for a

⁸ Since the sanctions hearing is based on a Motion, it is anticipated that it will most likely be conducted by affidavit testimony.

⁹ Interrogatories alone, with subparts, appear to have exceeded the number (50) permitted.

Richland County case. Further, Megna's submissions contain significant, alarming irregularities, not the least of which he has noticed depositions on less than ten days notice, for a place that does not exist and he has asserted that he is representing the Plaintiff (sic). The "discovery" related documents from Megna are attached and, aside from other, major violations of the rules and a lack of professional courtesy, Megna's submissions demonstrate an alarming number of other errors reflecting his continuing inattention to even rudimentary professional competence.¹⁰ Megna should not be allowed to continue with his abusive tactics.

Further, Megna seeks "discovery" under the auspices of this case in what appears to be a ploy to gather information relative to a separate, distinct and unrelated Darlington case filed by Pee Dee Health Care (2010-CP-16-0332) in which he, Megna, is specifically disqualified to act as an attorney (see three separate Orders of Judge Baxley). Mr. Josey and Mr. James are involved in that case, and Megna seeks private, irrelevant information about them and their activities. He is also apparently attempting to use depositions and discovery in this Richland County case for use in a completely separate, distinct and unrelated Florence County case (Lower Florence Hospital, et al. v. Megna, et al., 2008-CP-21-706) in which he is or has been an actual, personal party defendant. Celeste Jones is, or has been, the attorney suing Megna personally, and he is seeking private, irrelevant information about her and her client(s). Megna is also attempting to use this case to gather information in another completely separate, distinct and unrelated case in which he is involved (Pee Dee Health Care v. Sanford, Health and Human Services, et al.) - in which, although it is beyond the scope of this motion, he should probably be disqualified (Mr. Woodington's case -- in which Megna is CEO of Pee Dee Health Care and is simultaneously acting as its attorney -- similar conduct for which he was disqualified in the Darlington case). As with the other attorneys, neither Mr. Woodington's activities nor the activities of his clients have

¹⁰ The list is long, but includes Megna noticing depositions at a place that does not exist, using an inaccurate telephone number for his office, sending mail to a non-existent address where he knew the undersigned was unlikely to receive it, submitting documents containing numerous typos, confusing parties as well as failing to indicate on whose behalf he was issuing subpoenas, using an address that he previously claimed he had not used since 2008, etc.

anything to do with the within case.¹¹ At the risk of being redundant, it is stressed that those cases, those parties and those attorneys have nothing to do with this case. The issues involved in the respective cases appear to be markedly different and neither Plaintiff nor his attorney, paralegal and the bankruptcy attorney is a party. Megna's efforts to use this case as a basis to acquire private, proprietary and privileged information relative to other attorneys and their clients in other, unrelated cases in which he is involved is transparently and grossly improper.

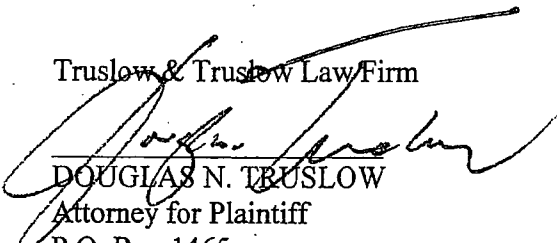
RELIEF REQUESTED

Judges Baxley and Manning are two Circuit Court Judges who are likely to be the most familiar with this matter. Their Orders (attached), as well as an Order of Judge Waites, tend to show a continuing pattern of bad faith on the part of Megna. Plaintiff respectfully requests that; (a) the issues herein be put before Judge Baxley and/or Judge Manning (or some other appropriate judge), (b) for a hearing on the within motion for protection, (c) that Megna's subpoenas be quashed and (d) that he be excluded from further participation in this case (other than as a person against whom sanctions are being sought). Plaintiff and the undersigned seek the imposition of fees and other sanctions against Megna and/or Pee Dee Health Care as the Court may find appropriate.

Respectfully Submitted,

FILED
2012 MAR 12 PM 12:07
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
CHARLINGTON COUNTY, S.C.
Columbia, South Carolina
March 8, 2012

Truslow & Truslow Law Firm


DOUGLAS N. TRUSLOW

Attorney for Plaintiff

P.O. Box 1465

Columbia, SC 29202

(803) 256-6276

Fax (803) 256-7659

douglastruslow@truslowlaw.com

¹¹ To the undersigned's knowledge, all the referenced attorneys (excepting Megna) are known to be honorable and thoroughly professional. Further, and without waiving any rights or privileges that may exist, the undersigned has no information reflecting that any one them or their clients have done anything improper in dealing with him, Megna or Lee (or anyone else).