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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Honorable Maite Murphy

Case No. 2010-CP-18-2127

Burbage Smoak .....Respondent

v.

George Mitchell ..... Appellant

RECORD OF APPEAL

Willie B. Heyward  
27 Gamecock Ave., Ste. 200  
Charleston, SC 29407  
(843) 225-8754  
Attorney for Appellant, George Mitchell

Other Counsel of Record:

Jeff Weathers  
Law Office of Jeffrey S. Weathers  
PO Box 755  
Moncks Corner, SC 29461  
Attorney for Respondent

RECEIVED

JAN 18 2013

SC Court of Appeals

**ORIGINAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Honorable Maite Murphy

---

Case No. 2010-CP-18-2127

---

Burbage Smoak ..... Respondent

v.

George Mitchell ..... Appellant

---

RECORD OF APPEAL

---

Willie B. Heyward  
Heirs Property Law Center, LLC  
27 Gamecock Ave., Suite 200  
Charleston, SC 29407  
Attorney for Appellant

**RECEIVED**

DEC 18 2012

**SC Court of Appeals**



26

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

JUDGMENT IN A CIVIL CASE

2006cp1801510

Burbage Smoak

George Mitchell

PLAINTIFF(S)

DEFENDANT(S)

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 12b, SCRPC;  RULE 41a SCRPC (VOL NONSUIT);  RULE 43k, 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 the Court.

Order of Judgment

Dated AT ST. GEORGE, SC THIS 6th DAY OF JUNE 2007

*C Cheryl Graham*

CHERYL GRAHAM  
CLERK OF COURT

By: Rosalee Baldwin, Senior Court Clerk

THIS JUDGMENT WAS ENTERED ON THE 6th DAY OF JUNE, 2007  
AND A COPY WAS MAILED FIRST CLASS THIS 6th DAY OF JUNE, 2007  
TO ATTORNEY OF RECORD OR TO PARTIES WHEN APPEARING PRO SE  
AS FOLLOWS:

Pif. Atty.  
James E. Reeves

Def. Atty.

(1)

FILED-RECU  
2007 JUN -6 AM 5:5  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

Burbage Smoak,

Plaintiff,

vs.

George Mitchell

Defendant.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT  
C' NO.: 06-CP-18-1510

ORDER OF JUDGMENT

FILED COPY  
2007 JUN -6 PM 4:59  
CLERK OF COURT  
DORCHESTER COUNTY

This matter comes before me on Plaintiff's Motion for Summary Judgment. The Parties have consented to the below referenced Judgment in resolution of this matter.

Accordingly, it is thereby Ordered that:

1. The parties agreed that the Defendant enter into a Confession of Judgment in the amount of Thirty Four Thousand Dollars (\$34,000.00);
2. The Defendant is ordered to vacate the real property, which is the subject matter of this action, no later than forty-five (45) days from the date of the signing of this Order;
3. The Defendant is ordered to remove all personal property of any type belonging to, or under the control of, the Defendant from the above-referenced real property no later than forty-five (45) days from the date of the signing of this Order; and

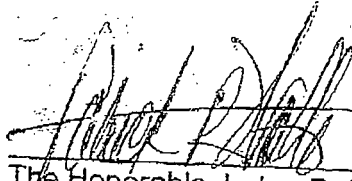
AW 1/2

(2)

This Order is subject to the Contempt powers and authorities vested in this Court.

IT IS SO ORDERED.

Date: May 24, 2007

  
The Honorable Judge Patrick R. Watts

WE CONSENT:

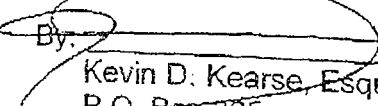
Date: 5/22/07

JAMES E. REEVES, P.A.

By: James E. Reeves  
James E. Reeves, Esquire  
400 North Cedar Street  
Summerville, South Carolina 29483  
(843) 832-7337  
Attorney for Plaintiff

Date: 05-22-07

KEARSE LAW FIRM, LLC

By:   
Kevin D. Kearse, Esquire  
P.O. Box 365  
Moncks Corner, SC 29461  
(843) 899-5111  
Attorney for Defendant

2/2

(3)

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT

CERTIFIED COPY  
2012 MAY -9 PM 2:33

Burbage Smoak, ) CASE NUMBER 2010-CP-18-2127

*Christina ...*  
CLERK OF COURT  
DORCHESTER COUNTY

Plaintiff, )  
)  
-VS- )  
)  
George Mitchell, )  
)  
Defendant. )  
\_\_\_\_\_ )

FINAL ORDER AND JUDGMENT

FILED & RECORDED  
2012 MAY -9 PM 2:22  
CLERK OF COURT  
DORCHESTER COUNTY

Plaintiff instituted this action to declare a Bond for Title between the parties breached, to confirm quiet title to the Real Property hereinafter described in the name of the Plaintiff and to enjoin the Defendant, his heirs, successors and assigns, from claiming any interest in, and from using or maintaining any portion of said Real Property which is the subject of this action.

This matter was heard on November 9, 2011, at the Dorchester County Courthouse. The record before me indicates that the parties hereto and the subject matter are within the jurisdiction of this Court and that all parties have been properly served.

The hearing was attended by Plaintiff and his counsel, Jeffrey S. Weathers, and the Defendant and his counsel, Willie B. Heyward.

Based upon the evidence in the record as well as the evidence taken and received by me at the hearing of this matter, I find and conclude as follows:

**FINDINGS OF FACT:**

1. The Summons and Complaint were filed on August 3, 2010.
2. The Defendant Mitchell was served with a copy of the Summons and Complaint, and he filed an Answer and Counterclaim on or about November 9, 2010.

3. The real property which is the subject of this action is situated in the County of Dorchester, State of South Carolina and is fully described as follows:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, if any, situate, lying and being near Ridgeville, County of Dorchester, State of South Carolina, known and designated as Lot 1, Measuring and Containing 5.06 acres, more or less, and being more fully shown and delineated on that certain plat entitled " PLAT DEPICTING A PORTION OF TMS 096-00-00-013 OWNED BY RILEY & RILEY ABOUT TO BE CONVEYED TO BURBAGE SMOAK..." dated April 13, 2000, prepared by Ashley Surveying, Inc., recorded in the Office of the RMC for Dorchester County, SC in Plat Cabinet J, Page 160; reference is hereby craved to said plat and same is made a part and parcel of this description.

BEING a portion of the same property conveyed to the Grantor herein by Deed of Riley & Riley, a Partnership, dated May 5, 2000, recorded in the Office of the RMC for Dorchester County, SC in Book 2421, Page 228.

Dorchester County TMS #: **107000112.000**

4. On or about March 15, 2001, the parties entered into a Bond for Title pertaining to real property having Dorchester TMS # **107000112.000** (formerly having Dorchester County TMS # 096-00-00-013 [a portion thereof]). Said Agreement was entered into evidence by the Plaintiff without objection.

5. In and by the terms of the Bond for Title it was provided that during the first five (5) years following the execution of the Agreement Defendant/Buyer shall pay to Plaintiff/Seller a monthly payment of Three Hundred Seventy-Nine and 87/100ths Dollars (\$379.87) payable on the first day of each month. Said Bond for Title further provided that at the end of the five (5) year period Defendant would pay Plaintiff all amounts remaining due and owing under the terms of the Bond for Title in a one-time balloon payment.

6. By a prior Order of Judgment in Case Number: 2006-CP-18-1510, dated

May 24, 2007, and filed with this Court on June 6, 2007, a copy of which was entered into evidence by the Plaintiff without objection, it was previously determined that Defendant had failed to comply with the terms of the Bond for Title, and, further, that Defendant was indebted to the Plaintiff in the amount of Thirty-Four Thousand and 00/100ths Dollars (\$34,000.00) and should remove himself and his belongings from the subject property.

7. I have reviewed the Answer of the Defendant in which he asserted he had made all required payments to Plaintiff and should be entitled to a conveyance of the property. Based upon the documentary evidence provided by both parties, as well as based upon the testimony of both parties, however, I find that Defendant has not complied with the payment terms and other terms of the Bond for Title, either before or after the prior Order of this Court, and that he therefore remains in breach of the same.

8. Prior to trial Plaintiff waived his right to seek a monetary judgment or any deficiency judgment against the Defendant, instead simply asking this Court to declare the Bond for Title breached and to extinguish and terminate any right, whether legal or equitable, which the Defendant could claim in the subject property. Plaintiff further sought the immediate removal of Defendant, his personal property, and anyone claiming any interest under him from the subject premises.

9. All documents mentioned hereinabove and/or entered into evidence at trial are incorporated by reference and were considered in my decision.

#### **CONCLUSIONS OF LAW**

Based upon the Findings of Fact and the testimony and evidence presented in this matter, I therefore conclude by clear and convincing evidence as follows:

1. The Plaintiff is entitled to the relief sought in the Complaint and is entitled to an Order quieting title in his name.

---

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over the parties and the real property which is the subject matter of this action.

2. Defendant is in default of the terms of the Bond for Title, and that the Bond for Title is therefore hereby declared void and no longer binding on either party.

3. Plaintiff, by his stipulation, is not entitled to any monetary judgment against the Defendant.

4. The Plaintiff is the sole owner of the Property hereinabove described.

5. No later than thirty (30) days from the date of this Order Defendant shall remove himself and all of his personal property from the subject premises at his sole expense. Any property remaining on the property after thirty (30) days from the date of this Order shall be deemed abandoned, and Plaintiff shall have the right to dispose of said property in any manner he sees fit.


NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff is the sole owner of the premises described to the exclusion of all others and its fee simple title therein is hereby confirmed.

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED that Defendant and his heirs, successors and assigns shall be forever barred from asserting any right, title, or interest in any portion of the hereinabove described property.

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED that in the event

Defendant fails to remove from the subject premises himself, his belongings and anyone claiming an interest or license to the premises under or from him within the time frame set forth above, the Sheriff of Dorchester County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the Plaintiff in full, quiet and peaceable possession of said premises without delay, and to keep Plaintiff or his assigns in such peaceable possession.

AND IT IS SO ORDERED THIS 9<sup>th</sup> DAY OF May, 2012.

  
\_\_\_\_\_  
Honorable Maite Murphy  
Judge of the First Judicial Circuit

St. George, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHLSTER )  
 )  
 )  
Burbage Smoak, )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
 )  
George Mitchell, )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Civil Case No: 2010-CP-18- 2127

**COMPLAINT**  
(Breach of Contract, Collections,  
Declaratory Judgment, Quiet Title)

Non-Jury

CERTIFIED COPY  
2010 AUG - 3 PM 4:30  
Clerk of Court  
DORCHESTER COUNTY

The Plaintiff, complaining of the acts and omissions of the Defendant, hereby alleges that:

GENERAL ALLEGATIONS

1. The Plaintiff is a resident and citizen of the County of Berkeley, State of South Carolina.
2. Upon information and belief, the Defendant is a resident and citizen of the County of Dorchester, State of South Carolina.
3. The property which is the subject of this action is located in Dorchester County, South Carolina.
4. This Honorable Court is vested with jurisdiction over the parties and the subject matter hereinafter set forth.
5. On or about March 15, 2001, the parties entered into a Bond for Title pertaining to real property having Dorchester TMS # 096-00-00-013. Said Agreement is attached hereto, identified as Exhibit "A" and incorporated herein by reference.

6. In and by the terms of the Bond for Title it is provided that during the first five (5) years following the execution of the Agreement Defendant/Buyer shall pay to Plaintiff/Seller a monthly payment of Three Hundred Seventy-Nine and 87/100ths Dollars (\$379.87) payable on the first day of each month. Said Bond for Title further provided that at the end of the five (5) year period Defendant would pay Plaintiff all amounts remaining due and owing under the terms of the Bond for Title in a one-time balloon payment.

7. Defendant Buyer has failed to make the required monthly payments since 2005, and continues to refuse to make such payments despite repeated demands from Plaintiff. No

8. In and by the terms of the Bond for Title it is provided that should Buyer be more than ten (10) days late in making any monthly payment a late fee of Thirty-Five Dollars (\$35.00) shall be added to unpaid monthly installment. Yes

9. In and by the terms of the Agreement to Buy and Sell Real Estate it is provided that should Defendant default in the performance of his duties under the Agreement, Plaintiff shall, *inter alia*, have the right to take immediate possession of the premises to the exclusion of Defendant and any claiming under or through him, and it is further provided that the contract and any interest Defendant claims in the subject property shall be deemed extinguished by the acts or omissions constituting the default. In  
In accordance  
Contract

FOR A FIRST CAUSE OF ACTION  
(Breach of Contract/Collection of Unpaid Installments)

10. The foregoing Paragraphs are hereby incorporated by reference and realleged as if set forth herein verbatim.

11. The parties entered into a Bond for Title pertaining to real estate on or about March 15, 2001, which required, among other obligations, that Defendant make monthly payments

and one balloon payment to Plaintiff.

12. Defendant has failed to tender the required monthly payments to Plaintiff despite repeated demands from Plaintiff, however, Defendant remains on the subject property.

*pay some*

13. Defendant's failure to pay the monthly installments, late fees and taxes on the property constitutes a material breach of the Bond for Title.

14. As a result of Defendant's breach of the Bond for Title Plaintiff is informed and believes that he is entitled to an award of actual damages in an amount to be determined by the trier of fact, including, but not limited to, all unpaid monthly instalments accruing prior to her leaving the premises with interest thereon; late fees; and the costs of this action including reasonable attorneys fees. Alternatively, Plaintiff is informed and believed that it is entitled to an order removing Defendant from the property and prohibiting Defendant to reenter the same, plus a reasonable amount for rent and the costs of this action including reasonable attorney's fees as provided by the Bond for Title.

*NO*

FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment Action to Declare Contract Breached and to Extinguish and Foreclose Defendant's Right in the Property/Quiet Title)

15. The foregoing Paragraphs are hereby incorporated by reference and realleged as if set forth herein verbatim

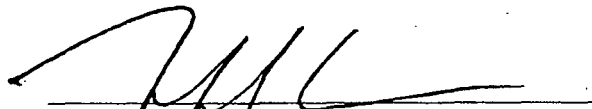
16. As a result of the acts and omissions of Defendant as set forth hereinabove, Plaintiff further prays for an order declaring the Bond for Title of March 15, 2001, breached by Defendant, and on the basis of the aforesaid breach Plaintiff also seeks an order from this Honorable Court terminating and/or extinguishing any right, whether legal, equitable or both, which Defendant may have in the subject property and quieting title into Plaintiff.

*NO*

**WHEREFORE**, the Plaintiff requests that:

1. The Court order Defendant to deliver possession of the disputed lands to Plaintiff;
2. The Court order Defendant to remove any personal property, mobile homes, outbuildings and other items or possessions which he may have placed on the property at his sole expense;
3. The Court permanently enjoin Defendant from the use or attempted use of the disputed land;
4. The Court award Plaintiff compensation for the actual damages and losses he has incurred and sustained as a result of the actions and omissions of Defendant;
5. The Court issue a declaratory judgment order foreclosing Plaintiff's interest, if any, in the property and quieting title in favor of Plaintiff;
6. The Court award Plaintiff reasonable attorneys fees and the costs of this action; and
7. The Court issue such other and further relief as it may deem proper and equitable.

PEAGLER & WEATHERS, PA



Jeffrey S. Weathers  
Attorneys for the Plaintiff  
113 Broughton Road, P.O. Box 1840  
Moncks Corner, SC 29461  
(843) 899-7877/577-5465

At Moncks Corner, South Carolina

This 27 day of July, 2010

STATE OF SOUTH CAROLINA )

COUNTY OF DORCHESTER )

BURBAGE SMOAK, )

Plaintiff(s) )

vs. )

GEORGE MITCHELL, )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010 - CP - 18 - 2127

(Please Print)
Submitted By: JEFFREY S. WEATHERS, ESQ.
Address: POST OFFICE BOX 1840
MONCKS CORNER, SC 29461

SC Bar #: 13497
Telephone #: 843-899-7877
Fax #: 843-899-7687
Other:
E-mail: JEFF@PEAGLERWEATHERS.COM

NOTE: The cover sheet and 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 cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts: Breach of Contract (140)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)

- Inmate Petitions: PCR (500), Sexual Predator (510), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture (840), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Pharmaceuticals (630), Unfair Trade Practices (640), Other (699)

Submitting Party Signature:

[Handwritten Signature]

Date:

7/27/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Florence, Horry, Lexington, Richland, Greenville\*\*, and Anderson\*\*

\*\* Contact Respective County Clerk of Court for modified ADR Program Rules

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 filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224<sup>th</sup> 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 the Appointment of a Neutral" on or before the 224<sup>th</sup> day after the filing of this 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 the action.
3. Case 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 the Court within ten (10) days after the ADR conference had 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.**



Plaintiff's Complaint and therefore demands strict proof thereof.

**FIFTH:**       **THAT** the Defendant admits those allegations contained in Paragraphs Two (2), Three (3), Four (4) and Eight (8) of the Plaintiff's Complaint.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT  
AND BY WAY OF COUNTERCLAIM:**

**SIXTH:**       **THAT** the Defendant is informed and believes that the terms of the land sales contract ("Bond for Title") has been waived by the Plaintiff's and that the Defendant has made substantial payments toward purchasing the subject property.

**SEVENTH:**   **THAT** the Defendant is further informed and believes that the Plaintiff has accepted over \$20,000 in payments from the Defendant through the Bankruptcy Trustee and to require the Plaintiff's specific performance upon the remainder of the purchase price.

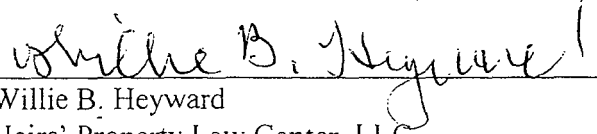
**EIGHTH:**     **THAT** all parties be responsible for their own attorney fees in regards to this action.

**WHEREFORE**, having fully answered the Plaintiff's Complaint,

Defendant prays that the Court ascertain their respective interest in the subject property and allow him the opportunity to complete the purchase of said parcel of land and recognize the payments that he has already tendered the Plaintiff toward said purchase.

**SIGNATURE PAGE FOLLOWS**

RESPECTFULLY SUBMITTED.



Willie B. Heyward  
Heirs' Property Law Center, LLC  
27 Gamecock Ave, Suite 200  
North Charleston, SC 29407  
(843) 225-8754  
Attorney for Defendant

North Charleston, South Carolina  
November 8 2010

*November 08 2010*

*Jeffery S. Weathers Esq  
PO Box 1840  
Moncks Corner, SC 29461*

*Re: Burbage Smoak Vs George Mitchell  
Case Number: 2010-CP-18-2127*

*Dear Attorney Weathers,*

*Enclosed please find a copy of the Answer in regards to the above  
referenced matter. Please feel free to call our office if you any questions.*

*Have a wonderful day,*

*Tijuana Jackson  
Legal Assistant for  
Willie B Heyward  
Attorney for George Mitchell*

**THE HEIRS PROPERTY LAW CENTER, LLC**

2148 Dorchester Road., Suite A  
North Charleston, South Carolina 29405  
Telephone (843) 225-8754  
Fax (843) 225-8765

**FAX COVER SHEET**

To: Jefferey S Weathers Esq.

From: Willie B. Heyward

YOUR FAX NO.: (843-899-7687

YOUR PHONE NO.: (843) 899-7877

Re: Burbage Smoak Vs George Mitchell , et al.

Case No.: 2010-CP-18-2127

NO. OF PAGES: 4

COPY OF ANSWER TO COMPLIANT IN THE ABOVE REFERENCED  
MATTER

OUR FAX NO.: (843) -225-8765

OUR PHONE NO: (843)-225-8754  
(843) 568-4679 (mobile)

REPLY TO: Willie B. Heyward.

DATE: NOVEMBER 8, 2010

TIME: 4 :06

**THANK YOU!**

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Civil Case No: 2010-CP-18-2127

Burbage Smoak, )  
 )  
Plaintiff, )

**REPLY**

vs. )

George Mitchell, )  
 )  
Defendant. )  
\_\_\_\_\_ )

The Plaintiff herein, responding to the counterclaim of Defendant, would show and allege as follows:

1. Each and every allegation of the Counterclaim not hereinafter specifically admitted is denied.
2. Paragraphs Six (6) through Eight (8) are denied, and Plaintiff demands strict proof of the same.

**AS A FIRST AFFIRMATIVE DEFENSE**

3. Further answering the Counterclaim, and as a further defense thereto, Plaintiff alleges that Defendant's Counterclaim fails to state facts sufficient to constitute a cause of action against Plaintiff, and it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure or, alternatively, Rule 56 of the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Counterclaim of Defendant, Plaintiff prays for the same to be dismissed with costs. Additionally Plaintiff reasserts his

entitlement to the relief sought in Plaintiff's Complaint, and hereby prays for the same.

PEAGLER & WEATHERS, P. A.

BY: 

Jeffrey S. Weathers  
Post Office Box 1840  
Moncks Corner, SC 29461  
(843) 899-7877  
Fax # (843) 899-7687

ATTORNEY FOR PLAINTIFF

Moncks Corner, South Carolina  
November 9, 2010

STATE OF SOUTH CAROLINA

)IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

)FOR THE FIRST JUDICIAL CIRCUIT

)

)Civil Case No.: 2010-CP-18-2127

Burbage Smoak,

)

Plaintiff,

)

)

vs.

)

**AFFIDAVIT OF DEFENDANT**

)

**GEORGE MITCHELL**

)

George Mitchell,

)

Defendant

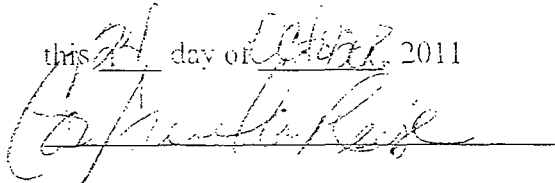
)

- 
1. I am the Defendant in the above-captioned matter.
  2. I have paid over \$20,000.00 to the Plaintiff, Burbage Smoak, for purchase of the subject property.
  3. I have tried, to no avail to contact the Plaintiff to pay the remainder of the contract price.
  4. I have expended a significant amount of money improving the property, including installing a septic tank, installing a well, clearing the land; all for the purpose of placing my mobile home on the property.

  
 GEORGE MITCHELL

Sworn to before me

this 21 day of October, 2011



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires 7/28/2012



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1 THE CLERK: This is Burbage Smoak verses George  
2 Mitchell.

3 THE COURT: Good morning, gentlemen.

4 MR. HEYWARD: Good morning.

5 THE COURT: We're on the record. This is Burbage Smoak  
6 verses George Mitchell, civil action number 2010-CP-18-2127.  
7 Present for the plaintiff is -- could everybody identify  
8 yourselves, please.

9 Mr. Weathers.

10 MR. WEATHERS: Jeff Weathers for the plaintiff, Burbage  
11 Smoak.

12 MR. SMOAK: I'm Burbage Smoak.

13 THE COURT: Thank you.

14 And the defendant, you're Mr. Mitchell.

15 MR. HEYWARD: I'm Willie Heyward representing Mr.  
16 Mitchell. He stepped out. He should be right back.

17 THE COURT: Okay. You okay going -- do you want to wait  
18 for him? Did he just step to the restroom or something?

19 MR. HEYWARD: He just stepped to the restroom.

20 THE COURT: Okay. We'll wait for him to get started  
21 just to make sure he doesn't miss out on anything.

22 MR. HEYWARD: Thank you, Your Honor.

23 THE COURT: While we're waiting do y'all want to pre-  
24 mark any exhibits or anything like that? Do you have any?

25 MR. HEYWARD: Yes. We can do that.

1 (Plaintiff's Exhibit No. 1, Chapter  
2 13 plan, was marked for ID only.)

3 (Plaintiff's Exhibit No. 2, court  
4 order, was marked for ID only.)

5 (Plaintiff's Exhibit No. 3,  
6 document, was marked for ID only.)

7 COURT REPORTER: Plaintiff's one, two and three for ID.

8 THE COURT: There we go. Mr. Mitchell come on up. Your  
9 attorney is sitting right over here.

10 (Defendant's Exhibit No. 1,  
11 bankruptcy payments, was marked for ID only.)

12 (Defendant's Exhibit No. 2,  
13 receipts for payments, was marked for ID only.)

14 COURT REPORTER: Defendant's Exhibit Nos. 1 and 2 for  
15 ID.

16 THE COURT: Thank you.

17 Gentlemen, are you ready to proceed?

18 MR. HEYWARD: Yes, ma'am.

19 MR. WEATHERS: Yes, ma'am.

20 THE COURT: Mr. Weathers, would you care to make a brief  
21 opening statement?

22 MR. WEATHERS: Yes, ma'am.

23 This is one that could all but be heard as a motion  
24 hearing. This is an action to declare a bond for title in  
25 default, and to extinguish any interest Mr. Mitchell may

1 have in the property.

2 Sometimes -- this started in 2001. Sometime prior to  
3 2006, Mr. Mitchell went into default. Mr. Smoak actually  
4 brought a prior action back in 2006. It resulted in a  
5 judgment signed by Judge Watts indicating Mr. Mitchell owed  
6 \$34,000 at that time. And also that he was to vacate the  
7 property within 45 days. That order was issued on June 6,  
8 2007. The following month Mr. Mitchell filed bankruptcy.  
9 In August 2007 that plan confirmed. As part of that plan  
10 Mr. Mitchell made 58 monthly payments to Mr. Smoak in the  
11 amount of \$717. Sometime on or before September, 2009, Mr.  
12 Mitchell stopped making payments, the bankruptcy was  
13 dismissed in December, 2009 after only 28 of the 58 months.  
14 My rudimentary math that left \$21,510 remaining to Mr. Smoak  
15 based upon what the bankruptcy judge had ordered. Since the  
16 dismissal of the bankruptcy in 2009, there have been no  
17 additional payments to Mr. Smoak.

18 I sent discovery back in, I believe June or July. I  
19 have not gotten any evidence of payment after discharge of  
20 bankruptcy.

21 Just to be clear to the Court, we're not seeking a  
22 monetary judgment here today. We just want Mr. Mitchell  
23 evicted from the property and to have any interest he may  
24 have legal or equitable extinguished so we have clear title  
25 again.

1 THE COURT: What was the original basis for him to be on  
2 the property, he leased it?

3 MR. WEATHERS: It was a bond for title. It was executed  
4 in 2001. I believe the purchase price was about \$37,500 at  
5 the time. A pretty high rate of interest though with a  
6 balloon payment.

7 Like I said, prior litigation in 2006, the end of 2007,  
8 actually in the consent order that the amount owed at that  
9 time was \$34,000.

10 THE COURT: You said that.. I'm sorry.

11 Mr. Heyward, would you care to make an opening?

12 MR. HEYWARD: Yes, Your Honor.

13 I wasn't privy to the prior action when this judgment  
14 was entered against Mr. Mitchell and I've recently been  
15 advised of this confession of judgment, however, in  
16 plaintiff's complaint there is no mention of the prior  
17 judgment or a confession of judgment in the complaint. The  
18 complaint simply states that there was a bond for title,  
19 there was a contract between the parties, what the terms  
20 were and that the defendant had breached those terms.

21 My question is are we here today to -- are we going to  
22 ratify if there's a contract, because with this judgment the  
23 plaintiff has the power to enforce the judgment because the  
24 judgment states that the court retains jurisdiction and the  
25 court can enforce the judgment against Mr. Mitchell if

1 plaintiff so chooses to do so, however, he brought an  
2 entirely new action and this new action states that there is  
3 a contract between the parties. The contract was breached  
4 and therefore Mr. Mitchell should vacate the property and  
5 vacate this possession.

6 So I'm here today on behalf of my client and to  
7 basically question our posture here today. Are we dealing  
8 with the prior judgment and they're trying to enforce that  
9 because this is a new case number, a new case or are we here  
10 today on this new matter saying that there is a contract  
11 between the parties, that, in fact, it was breached and then  
12 we deal with those issues.

13 I also have, if I may, Your Honor, a return to  
14 Plaintiff's Motion for Summary Judgment. It also -- if  
15 we're going -- my position, my client's position is that  
16 they're trying to re-litigate an issue that was decided a  
17 number of years ago, and that because of the doctrine of Res  
18 Judicata, it has been a merger of those issues. They can't  
19 litigate it because at the time the original judgment was  
20 entered, my client had expended substantial amount of funds  
21 to Mr. Burbage. However, there is a \$34,000 confession of  
22 judgment. Now, he's expended additional over \$20,000 in  
23 funds to Mr. Burbage, and now they want -- excuse me -- now  
24 they want to come before the court and ask that that  
25 confession of judgment now be enforced through this court

1 and through bringing a new action.

2 So they either -- either the old judgment is what we're  
3 here for or there has been some sort of ratification there  
4 is on this new contract of saying there exists preferably a  
5 contract between the parties, there's been a breach and  
6 they're seeking the remedies as he said before that he  
7 vacate the property and remove -- since he also have a  
8 mobile home on the property, that he moves his personal  
9 possessions.

10 THE COURT: Okay. Mr. Weathers, I anticipate that your  
11 clients testimony will clear up these issues?

12 MR. WEATHERS: Your Honor, this as far as the posture of  
13 this, the prior order of Judge -- I wasn't involved in that  
14 litigation either. The old order, in my opinion, was not  
15 the best drafted, because it -- well, it addressed the  
16 amount of money he owed, it addressed the eviction of Mr.  
17 Mitchell from his property it failed to address any legal  
18 equitable interest he may have in that property. So now the  
19 title insurance companies aren't willing to let him sell the  
20 property, Mr. Smoak, until that's cleared up. So that's  
21 really why we had to bring a second litigation. We're using  
22 this order of judgment as a -- your basic Res Judicata on  
23 the default. Of course, that was modified by the bankruptcy  
24 order and then when he did not comply with the bankruptcy  
25 terms of 58 months, he only went 28, that left, you know,

1 Mr. Smoak in the position of being able to come back and re-  
2 litigate the additional monies owed.

3 Again, whether it's \$5 or \$20,000, we're not worried  
4 about the money. We just want the property back so we can  
5 move on.

6 THE COURT: Yes, sir.

7 You're ready to call your first witness?

8 MR. WEATHERS: Yes, ma'am. I'll call Burbage Smoak.

9 THE COURT: Mr. Smoak, will you please come around.

10 Please raise your right hand.

11 (WHEREUPON, Burbage Smoak, after  
12 being duly sworn testified as follows.)

13 THE COURT: Thank you. Please be seated and state your  
14 full name and spell your last name for the record.

15 MR. SMOAK: My name is Burbage H. Smoak. The last name  
16 is spelled S-m-o-a-k.

17 BURBAGE SMOAK - DIRECT EXAMINATION

18 BY MR. WEATHERS:

19 Q Mr. Smoak, do you own property located in Dorchester  
20 County having the TMS number 0960000013?

21 A Yes

22 Q At some point did you enter into a contract with Mr.  
23 Mitchell for the sale of that property?

24 A Yes, I did.

25 Q I'm going to show you what has been marked as

1 Plaintiff's Exhibit No. 2, and ask if you recognize that  
2 document?

3 A Yes. This is the bond for title I gave Mr. Mitchell.

4 Q Okay. Did the bond for title require certain monthly  
5 payments?

6 A Yes, it did.

7 Q And what were those?

8 A Well, the amount of the monthly payment was \$379.87.

9 Q And what was the term of payment?

10 A That he would pay every month for 60 months and if he  
11 was late there would be a \$35 late fee.

12 Q Was there also a balloon payment at the end of those 60  
13 months?

14 A Yes, there was.

15 Q Okay. Who was responsible for taxes under that bond  
16 for title?

17 A Mr. Mitchell was.

18 Q Okay. At sometime prior to 2006, did Mr. Mitchell fail  
19 to make payment for taxes and or installment payments?

20 A Yes. He fell behind in all his payments.

21 Q Okay. As a result of that did you institute a lawsuit  
22 against Mr. Mitchell to collect those back payments and  
23 declare the bond for title void?

24 A Well, I'd like to state here that after a period of  
25 time I did, but before that I waived several payments and

1 tried every way in the world to work with Mr. Mitchell. I  
2 know he will verify that. Even at times said, look, forget  
3 about two or three months payments. Just start from here  
4 and make your payments in a timely manner. So yes, to  
5 answer your question I did institute an action against him.

6 Q Okay. As the result of that lawsuit was an order  
7 issued at the conclusion of it? I'm going to show you this  
8 to see if you've seen that before?

9 A Yes, I have.

10 Q Okay. Does that order indicate that Mr. Mitchell owed  
11 you money as of the date of that order?

12 A Yes, it does.

13 Q And what was that amount owed?

14 A That was \$34,000.

15 Q Okay. What were the other terms contained in that  
16 order?

17 A That he would remove all of his personal property  
18 within 45 days?

19 Q Did he do that?

20 A No, he did not.

21 Q Has he paid you that \$34,000?

22 A No, he has not.

23 Q Okay. At any time, subject to that order, were you  
24 notified by the Bankruptcy Court of a filing by Mr.  
25 Mitchell?

1 A Yes, I was.

2 Q Okay. Did you file a creditor's claim at that time?

3 A Yes.

4 Q Okay. And that was based on that order that you have  
5 in front of you?

6 A Yes.

7 Q Did the bankruptcy court contact you about setting up  
8 monthly payments with you?

9 A Yes.

10 Q Okay. What was the amount of those payments, if you  
11 recall?

12 A I don't recall exactly.

13 Q I'll show you what's been marked as Plaintiff's Exhibit  
14 No. 1, Page 2, to see if you've seen this before?

15 A Yes, I've seen this before. The answer is \$717.00 per  
16 month.

17 Q Okay, and would you turn back to the first page and  
18 identify that document for the Court, please?

19 A It just says Chapter 13 Plan and related motions.

20 Q Okay, and what was the term of the bankruptcy plan, how  
21 many months was that supposed to last?

22 A It was 58 months.

23 Q Okay. At any time subsequent to that were you notified  
24 by the bankruptcy court of a dismissal of Mr. Mitchell's  
25 bankruptcy?

1 A Yes, I was.

2 Q And when did that occur?

3 A Approximately a year after that.

4 Q Okay, and had he made his payments the complete time  
5 that he was in bankruptcy to you or had he missed some  
6 payments?

7 A No. I got sporadic payments from the trustee during  
8 that period of time.

9 Q Okay. At any time subsequent to the dismissal of the  
10 bankruptcy in December of 2009, has Mr. Mitchell made any  
11 payments to you?

12 A No.

13 Q Has he approached you about making the payments?

14 A No, he has not.

15 Q Who's paid the taxes on this property since 2006?

16 A I have.

17 Q Has Mr. Mitchell offered to reimburse you for those  
18 taxes?

19 A No.

20 Q As we sit here today what are you asking the Court for,  
21 what type of relief?

22 A As we discussed earlier, I know there's a recession,  
23 people having a tough time. Mr. Mitchell apparently  
24 couldn't make his payments over a period of time. I'm just  
25 asking him to sign the property back over to me since he was

1 unable to fulfill his obligations and remove his property  
2 off of it, so I can sell the property to someone else.

3 MR. WEATHERS: Your Honor, at this time I'd like to move  
4 the three exhibits into evidence. I believe Mr. Heyward has  
5 seen them. And then that's all I have.

6 Mr. Smoak, if you would answer any questions Mr.  
7 Heyward may have.

8 THE COURT: Mr. Heyward, do you have any objection to  
9 the exhibits.

10 MR. HEYWARD: No objection, Your Honor.

11 THE COURT: Thank you. They are admitted, then.

12 (Plaintiff's Exhibit No. 1, Chapter  
13 13 plan, was marked and entered.)

14 (Plaintiff's Exhibit No. 2,  
15 documents were marked and entered.)

16 (Plaintiff's Exhibit No. 3,  
17 documents, were marked and entered.)

18 THE COURT: Please answer any questions Mr. Heyward may  
19 have.

20 MR. SMOAK: Yes, ma'am.

21 BURBAGE SMOAK - CROSS EXAMINATION

22 BY MR. HEYWARD:

23 Q Mr. Smoak, you're still the owner of this property; is  
24 that correct?

25 A Yes, sir.

1 Q When you entered into this bond for title the actual  
2 title to the property would not be conveyed to Mr. Mitchell  
3 until he had paid the contract amount; is that correct?

4 A That's correct.

5 Q When you and Mr. Mitchell entered into this contract,  
6 was the property -- what was the condition of the property?

7 A It was pristine property, had large timber on it, giant  
8 trees, was on a bluff, probably about a 20 to 30 foot drop-  
9 off going towards the Four-hole Swamp, but it was high land,  
10 most of it.

11 Q Did it have a septic system?

12 A No.

13 Q Did it have a water well?

14 A No.

15 Q You are aware that Mr. Mitchell presently lives on that  
16 property?

17 A I'm not, but I know he did move on the property at the  
18 time, subsequent to the sale.

19 Q We talked about this confession of judgment, the -- how  
20 much money has Mr. Mitchell tendered to you, if any, before  
21 this confession of judgment?

22 A He made some sporadically. I've got my records I can  
23 refer to how many, how much money I received.

24 Q Your guess would be -- the payments were approximately  
25 \$400 a month, would be \$4800 a year. He probably paid

1 \$3,000 the first year, in 2000, and on down to the last few  
2 years he didn't pay anything. So I would say maybe a half  
3 of what he had obligated to pay.

4 MR. HEYWARD: May I approach?

5 THE COURT: Yes, go ahead.

6 BY MR. HEYWARD:

7 Q Mr. Smoak, I'd like you to look at what's been marked  
8 Defendant's Exhibit No. 2, please?

9 A Yes.

10 Q And tell the Court if you recognize that?

11 A This is copies of -- looks like some money orders or  
12 checks that were written to me.

13 Q By whom?

14 A Says land payment. I don't see where it says by whom  
15 on this, maybe you can help me with that.

16 Q Right, but it does say land payment?

17 A It does say land payment.

18 Q Okay. The amounts on those receipts, are they uniform  
19 or are they different amounts?

20 A They're different amounts.

21 Q On that first page would you tell the Court just those  
22 amounts that are on the first page?

23 A \$379.89, \$415.89, and \$379.89.

24 Q Thank you, sir. And you do remember receiving those  
25 payments?

1 A Yes, I received all the payments, I feel sure, that Mr.  
2 Mitchell has sent and I'll be glad to review those and see  
3 if they tally up with my tally.

4 Q Will you be surprised if I told you it's about \$18,000?

5 A No, that would sound about right.

6 Q Mr. Smoak, if you would review the document that's been  
7 marked as Plaintiff's Exhibit No. 1, for me, please?

8 A Okay.

9 Q You stated that Mr. -- do you recognize it?

10 A No.

11 Q You don't. You stated that Mr. Mitchell was in  
12 bankruptcy and you were notified by the trustee and you  
13 submitted a creditors claim?

14 A I was notified, yeah, when he went in bankruptcy when I  
15 went to the Magistrate's Court to have him evicted. Yes.

16 Q Okay. Now, the amount that Mr. Mitchell paid per month  
17 was how much, again?

18 A The amount from where?

19 Q From the bankruptcy, from the trustee, how much were  
20 you getting?

21 A Supposed to get \$717 per month.

22 Q If you can look at Plaintiff's Exhibit No. 1, please.

23 A Okay.

24 Q Do you see the section where it says claims listing?

25 A Yes.

1 Q And that first listing under claims listing, is that  
2 you?

3 A That's correct.

4 Q And does it say monthly payment; do you see that  
5 column?

6 A Yes.

7 Q And what is that monthly payment?

8 A It says \$717.

9 Q And principle paid; do you see that?

10 A Yes.

11 Q And how much principle was paid?

12 A It says nineteen two eight-five.

13 Q And the amount of claim; what was that amount of claim?

14 A It says \$34,503.

15 Q And the interest paid was how much?

16 A It says, \$3,984.

17 Q Thank you, sir. And Mr. Smoak, the original contract  
18 that you entered into with Mr. Mitchell back in March of  
19 2001; what was the total amount of that contract that she  
20 would pay back?

21 A The bond for title was \$34,500.

22 Q And that was signed back in 2001; is that correct?

23 A That is correct. That was signed March, 2001.

24 Q And in 2007, the amount owed is still \$34,503.20; is  
25 that correct?

1 A That's correct.

2 Q Mr. Smoak, as of this order that directed Mr. Mitchell  
3 to vacate the property, remove his personal possessions  
4 including his mobile home, it said that he had 45 days to do  
5 so; is that correct?

6 A That's according to my recollection, yes, sir.

7 Q Once his 45 days expired was he still in possession of  
8 the property?

9 A Was he still living out there, probably so. When I  
10 went by here I saw his property, his mobile home was still  
11 there. I don't know where he was living.

12 Q What actions did you take on your part to enforce that  
13 order to have him vacate that property and return possession  
14 to you?

15 A What actions did I take. I was probably still lenient,  
16 hoping he was going to take 60 days or maybe 90 days, you  
17 know. I mean, I was not going to go out there at the end of  
18 the 45 day and say, you know, Mr. Mitchell, you know you've  
19 got to get out of here. The man had the order. I was  
20 hoping he would do the right thing and I have bent over  
21 backwards like I always have to him. You know, he wants 45  
22 days, give him 90 days. Hopefully, -- six months, go ahead.

23 Q So there was some conversation between yourself and Mr.  
24 Mitchell concerning the terms of the contractual agreement  
25 between you that you saw -- you were lenient with those

1 terms, you were trying to work with him; is that it?

2 A There was no conversation between me and Mr. Mitchell.  
3 I wouldn't recognize him if I saw him. My attorney ask me  
4 if I saw him, was that him. There were no conversations.  
5 In my mind I was willing to give him more time. You asked  
6 me why didn't I pursue getting him off after 45 days.

7 Q I see.

8 A So I just gave him an extended period of time.

9 Q So this was just a unilateral decision on your part.  
10 There was no conversation between you and Mr. Mitchell  
11 concerning the contract --

12 A Right.

13 Q -- and him vacating after the 45 days?

14 A That's correct.

15 Q Okay. Have you ever notified Mr. Mitchell that the  
16 contract, because the terms of the contract were breached  
17 that he was now in default and he had to vacate?

18 A The terms of the contract I went over with him and, you  
19 know, the attorney went over with him when he got the bond  
20 for title was that he was two months behind in arrears, he  
21 would be considered a tenant and he would, you know, not  
22 have the privileges that he had under the bond for title.  
23 And so, you know, he was considered a tenant from back in  
24 the first six months after he was two or three months  
25 behind, but no, I've not have any conversation with him. He

1 had access to attorneys. Every time I tried to evict him he  
2 had an attorney. So I'm sure he knew the terms of the  
3 contract, or felt like he did.

4 Q All right. How many times have you tried to evict him?

5 A Once. And that was when he declared bankruptcy. I went  
6 down to the Magistrate's Court and they said, no, he's in  
7 bankruptcy. I said, well, what can I do now. And that's  
8 when we went through the bankruptcy situation. That was  
9 like four years or three or four years after he stopped  
10 making payments.

11 Q Three or four years after --

12 A Right.

13 Q So there was -- and let me be clear on this. There was  
14 a three or four year period in which he didn't make any  
15 payments?

16 A Well, he made some sporadically. If you'll tell me  
17 that date of the magistrate's court hearing I can probably  
18 tell you how much he paid, you know, the two years prior to  
19 that. It might have been two payment, it might have been  
20 six payments, but it wasn't many payments.

21 Q I have no idea about the Magistrate's hearing.

22 A When the bankruptcy --

23 Q What I'm asking you is this --

24 A Yes.

25 Q -- once you got this judgment that he vacate the

1 property, he was still in possession; is that correct? He  
2 was still living there?

3 A As far as I know he had not left the property.

4 Q And you testified that you didn't make any -- I want to  
5 be clear, you didn't make any actions to have him --

6 A No. No.

7 Q Okay. During that time period after you got the  
8 judgment, did he pay you any monies before he went into  
9 bankruptcy?

10 A What date was that judgment, can you give me that and  
11 I'll have a better handle on it. You said the judgment was  
12 the \$34,000 judgment. I think I've got a copy of it here.  
13 Looks like the date on this thing was June 6, 2007.

14 According to my records in 2007 -- well, let's go back to  
15 2006. 2006, I received from Mr. Mitchell \$875. In 2007, I  
16 received zero. In 2008, he was in bankruptcy court and I  
17 received a total of \$9510, which I have cancelled checks  
18 right here. That's my records and I will be happy to look  
19 at any records in dispute of that.

20 Q Now, after you were informed that he was discharged  
21 from bankruptcy --

22 A Yes.

23 Q -- besides this present action, if I'm not mistaken --  
24 do you know the year he was discharged?

25 A No, I don't. '08, maybe, '07. Probably about the same

44

1 time I contacted --

2 Q If you could look at Defendant's Exhibit No. 1, again.

3 A Okay.

4 Q In the upper right-hand corner does it show the date  
5 that it was dismissed?

6 A 11/13/2007. That's passed -- 2008 has passed

7 Q Do you see 2009?

8 A Confirmed after confirmation 12/19/2009.

9 Q All right. Thank you, sir. So from 2009 until this  
10 present action, have you made any actions to have him  
11 evicted?

12 A I've talked to an attorney.

13 Q Have you talked to Mr. Mitchell?

14 A No.

15 Q Okay. Did you send him or anyone on your behalf send  
16 him any writing?

17 A No.

18 Q And any of these payments have you ever returned to Mr.  
19 Mitchell saying that he was in default and you were no  
20 longer accepting payments?

21 A What's the question now, I needed to notify him that he  
22 was in default?

23 Q I'm asking, have you ever done that?

24 A I don't know if I've personally done it. Yeah, I did.  
25 I stopped by there one time and told him he knew it was in

1 default.

2 Q You stopped by and told him?

3 A I think I went by there one time. His son was there.

4 Q So you told him or you told his son?

5 A Again, it's been a long time. I don't know. I think I  
6 told him. He was in the yard.

7 Q So you've seen him before?

8 A Mr. Mitchell?

9 Q Yes.

10 A Yes, sir. I think that's the last time I saw Mr.  
11 Mitchell. I believe. I may have seen him some time since  
12 then, but I think that was it.

13 Q Mr. Smoak, you're asking the Court today to remove any  
14 interest. equitable interest that Mr. Mitchell may have in  
15 the property and vacate your property so that you could then  
16 have sole possession again and do whatever you want to with  
17 this property; is that correct?

18 A Yes, sir. That's correct.

19 Q And from the time this bond for title was signed in  
20 2001, March 15, 2001, until today, how much money -- give me  
21 a guess, if you can, has Mr. Mitchell tendered to you in  
22 relation to this property?

23 A Well, according to my records, approximately, counting  
24 the \$9500 I got from the trustee about \$33,000.

25 Q And how much did you get from the trustee, again,

1 please?

2 A \$9510, which is my figures. Your figures are different  
3 from that, but I'll be glad to see -- some discrepancy  
4 there. I tried to keep up with -- I mean, he would send  
5 payments and --

6 Q I understand. Let me let you look at Exhibit No. 1,  
7 again.

8 A Right.

9 Q If you could, look at the section again, designated  
10 claims listed?

11 A I see that.

12 Q And Burbage Smoak, your name is listed, is it not?

13 A That's correct.

14 Q And the amount of principle paid, what's that amount?

15 A It says, \$19,285.14.

16 Q And interest paid, what is that amount?

17 A It says \$3,984.03.

18 Q And is that over \$20,000?

19 A Yes, it is, but as I said, I would dispute those  
20 numbers.

21 Q Okay. And just to clarify, the Court, should the Court  
22 award you what you've asked for, Mr. Mitchell vacates, moves  
23 his mobile home. You would have received around \$35,000 and  
24 in improvements done to the property and Mr. Mitchell would  
25 receive what?

1 A What would he receive?

2 Q Yes, sir.

3 MR. SMOAK: Your Honor, if I can elaborate on this, may  
4 I say something?

5 THE COURT: You can answer the question and then if you  
6 want to explain it you can.

7 MR. SMOAK: Okay.

8 A He wouldn't receive anything other than what he's  
9 already taken off the property. He cut the timber. Like I  
10 said, it was a pristine five acres. You know, when I had  
11 the property I didn't cut the timber. Without notifying me,  
12 which was -- it was my property. I don't know how he got  
13 somebody in the timber industry to cut it, since it wasn't  
14 his. I don't know where that money went, how much it was.  
15 I don't know, but they came in there and pretty well  
16 destroyed the property, the beauty of it. It's an entrance  
17 to Four Hole Swamp Plantation owned by Mr. Angel Taylor  
18 (sp). Mr. Taylor has been after me for the last several  
19 years. He has to go by this every day, what the man has  
20 done to my five acres. He's looked it up in the courthouse.  
21 He says it's in my name. You know, he wants me to do  
22 something. I said, I've been trying to do something for the  
23 last five or six years and I can't get the man to leave and  
24 he won't pay me. So basically he's lived there rent free  
25 for the past four or five years and he's paid very little

1 the first three or four years. So from 2001 to 2011, 10  
2 years if he's been just paying the mobile home rent of \$250  
3 a month he would have paid that \$34,000. He just been  
4 paying 12 percent interest on the money he borrowed for me  
5 to start with the \$34,000, he'd probably have paid that  
6 money. No, he won't leave with any money but I think he's  
7 gotten more than the value of the amount of money he's paid.

8 Q The timber, have you ever brought a claim against Mr.  
9 Mitchell for the timber that he cut off of your property?

10 A No, I did not.

11 Q Could he have moved, in your opinion, could he have  
12 moved a mobile home on the property without cutting any  
13 timber?

14 A Yes, sir. The mobile home was on the property when he  
15 cut the timber.

16 Q And how much timber did he cut?

17 A He cut the whole thing, as far as I know.

18 Q He cut five acres of timber?

19 A Cut the five acres.

20 Q Okay. And you never brought any claim against him for  
21 the timber?

22 A I didn't want to do that to Mr. Mitchell. I feel for  
23 him and his family. He cut the timber, he must have had  
24 some reason, but it wasn't right.

25 Q Did you have a look at the complaint that your lawyer

1 filed on your behalf?

2 A I'm sure I have. Yeah, I looked at it.

3 Q Do you remember anything in that complaint that said  
4 there was a claim against Mr. Mitchell for cutting your  
5 timber on your land?

6 A I'm sure there wasn't because I don't know that I even  
7 told him about it. I'm not making claim against him cutting  
8 the timber, you know. I've tried to bend over backwards  
9 every way I could on this thing, so no, I'm not claiming the  
10 amount of money. I'm sure it's already gone. I feel like it  
11 is.

12 Q Let me ask you a little bit about this bond for title?

13 A Yes, sir.

14 Q The -- and I'm trying to find out the mechanics for  
15 this bond for title. The -- by its terms it states -- do  
16 you have a copy of that?

17 A Yes, sir, I do.

18 Q Okay. It does state a principle amount of \$37,500; is  
19 that correct?

20 A That's correct.

21 Q And a \$3,000 down payment?

22 A Yes, sir.

23 Q And the buyer shall obtain a survey and a septic tank  
24 from DHEC?

25 A Yes.

1 Q And he did all those things, to your knowledge,  
2 correct?

3 A I don't have any personal know, but since the mobile  
4 home is there I assume he did get a septic tank for it.

5 Q And you do have some -- as you look at Paragraph 5, and  
6 it states, has some -- you indicate how old the mobile home  
7 may be and so on and so forth?

8 A Yes, I do.

9 Q Okay. Who drafted this bond for title Mr. Mitchell or  
10 you did?

11 A The attorney that did the closing. Deborah Cain (sp).  
12 She's -- her name's on the witness thing.

13 Q And it also states that upon the seller, upon you  
14 receiving your payment then you are to execute a general  
15 warranty deed for the property to the buyer, who in this  
16 case is Mr. Mitchell; is that correct?

17 A Yes, sir. That was the whole point. I wouldn't give  
18 him title to it until he paid the full amount and once he  
19 paid that I would give him fee simple title to the property.

20 Q Paragraph 7, also says that if the buyer missed two  
21 payments consecutively when due or failed to comply with the  
22 covenants in this contract, then he become a tenant at will?

23 A That is correct.

24 Q So let me ask you a hypothetical?

25 A Yes, sir.

1 Q If I paid you \$37,000 and I got down to that last \$500  
2 and I missed two consecutive payments would I be in default  
3 of this agreement?

4 A If you missed two consecutive payments according to  
5 that paragraph you would be in default, yes.

6 Q Let me also ask you, are you interested in the property  
7 or are you interested in being paid for the property?

8 A At this point, I am interested in the property. I have  
9 no confidence that I'll ever be paid by Mr. Mitchell. After  
10 10 years and since this bond for title has been enforced --  
11 no, I just want my property back.

12 MR. WEATHERS: Just one moment.

13 THE COURT: Thank you.

14 BY MR. WEATHERS:

15 Q Just one more question, Mr. Smoak.

16 A Yes, sir.

17 Q As of today is there a contract between yourself and  
18 Mr. Mitchell?

19 A I'll have to refer that to my attorney. The bond for  
20 title is all I have that said he'd do what he's supposed to  
21 do and he hadn't done it. Since that time he's been in  
22 default, he's been through bankruptcy. I don't know. I'd  
23 have to ask an attorney that.

24 MR. WEATHERS: No further questions.

25 THE COURT: Thank you.

1 Yes, sir.

2 MR. HEYWARD: Very briefly, Your Honor.

3 THE COURT: Just to back up one second. Did you  
4 formerly move to introduce your exhibits as documents?

5 MR. HEYWARD: Thank you, Your Honor.

6 Your Honor, I'd like to enter into evidence Defendant's  
7 Exhibit No. 1, a printout of the bankruptcy matter that the  
8 defendant George Mitchell entered into and was discharged on  
9 December 19, 2009. Also I like to -- without objection?

10 MR. WEATHERS: Without objection to all of them.

11 THE COURT: Thank you.

12 MR. HEYWARD: I'd also like to enter Defendant's Exhibit  
13 No. 2, a receipts to the plaintiff, Mr. Burbage Smoak, for  
14 various amounts and having notations for land payments.

15 THE COURT: Thank you.

16 (Defendant's Exhibit No. 1,  
17 printout bankruptcy payments, was marked and entered.)

18 (Defendant's Exhibit No. 2,  
19 receipts of payments, was marked and entered.)

20 BURBAGE SMOAK - REDIRECT EXAMINATION

21 BY MR. WEATHERS:

22 Q Mr. Smoak, what was the interest rate of the bond for  
23 title?

24 A It was 12 percent.

25 Q Okay. If there were late payments were you entitled to

1 late fees?

2 A Yes \$35.

3 Q And if you had to bring an action to enforce your  
4 rights in the agreement were you entitled to attorneys fees?

5 A Yes.

6 Q What about taxes? Who was responsible for those?

7 A Mr. Mitchell was.

8 Q This looks like it was signed March 15, 2001. There  
9 was a balloon payment; is that correct?

10 A That's correct?

11 Q After how many years was that?

12 A That was after 60 months.

13 Q And that would be 2006?

14 A 2006 it should have been paid off in full. Yes, sir.

15 Q I would ask you if you could read the first three  
16 sentences of Paragraph 7 for me?

17 A On the bond for title?

18 Q Yes, sir.

19 A Should the buyer miss two payments consecutively when  
20 due and fail to comply with conditions of the covenants and  
21 agreements set forth in this agreement, the amounts paid by  
22 them may be retained by the seller as the consideration for  
23 making this agreement and the seller shall be released from  
24 all obligation in law or equity to convey the property.

25 Q That's fine.

1 A Okay.

2 Q This prior litigation against Mr. Mitchell over this  
3 bond for title, was he represented by an attorney?

4 A I think so.

5 Q As to the order of judge -- I'm not sure which exhibit  
6 that's numbered? I believe it's Exhibit No. 2.

7 A Okay.

8 Q Could you look on the second page for me, please?

9 A Okay.

10 Q Who is the second signature on there?

11 A The judge's signature?

12 Q Not the judge, the second attorney?

13 A Mr. Kevin D. Kearse, (sp) Esquire.

14 Q And what does it say below his contact information?

15 A Attorney for the defendant.

16 Q Okay... Will you turn to the first page for me and look  
17 at the caption at the top. Who was the defendant in that  
18 action?

19 A Mr. George Mitchell.

20 Q Mr. Smoak you had to file a claim affirmatively with  
21 the bankruptcy court; is that correct?

22 A Yes.

23 Q Was that claim accepted by the bankruptcy court?

24 A Yes, I think so.

25 Q To your knowledge, was there any objection by Mr.

1 Mitchell's attorney or the bankruptcy trustee to your claim?

2 A No.

3 Q You never received any kind of objection from the court  
4 or had to go to a hearing over it?

5 A No.

6 Q Thank you.

7 MR. WEATHERS: That's all I have.

8 THE COURT: Okay. You may step down, Mr. Smoak.

9 Any other witnesses, Mr. Weathers?

10 MR. WEATHERS: No, Your Honor.

11 THE COURT: Thank you.

12 Mr. Heyward, do you wish to call any witnesses?

13 MR. HEYWARD: Yes, I do, Your Honor. I'd like to call  
14 Mr. George Mitchell.

15 THE COURT: Mr. Mitchell, if you'd please raise your  
16 right hand.

17 (WHEREUPON, George Mitchell, after  
18 being duly sworn testified as follows.)

19 THE COURT: Thank you. Please be seated and state your  
20 full name and spell your last name for the record, please.

21 MR. MITCHELL: Yes, Your Honor. My name is George  
22 Mitchell, and the last name is M-i-t-c-h-e-l-l.

23 GEORGE MITCHELL - DIRECT EXAMINATION

24 BY MR. HEYWARD:

25 Q Mr. Mitchell, where do you work?

1 A Golden Trip Transfer Trucking.

2 Q Please repeat?

3 A Golden Trip Transfer Trucking.

4 Q Trucking?

5 A Yes.

6 Q How long have you been with the trucking company?

7 A Golden Trip?

8 Q Is it Golden Trip?

9 A Golden Trip.

10 Q Okay. How long have you been with them?

11 A A year and about three months, now.

12 Q What did you do before that?

13 A I was driving a truck, my own truck, at the time. I was  
14 self-employed.

15 Q Let's talk a little bit about this bond for title that  
16 you entered into with the plaintiff, Mr. Burbage Smoak.

17 When you entered into this contract -- do you have a copy of  
18 the contract?

19 A Yes.

20 Q You do?

21 A Yes.

22 Q Do you have one on your person?

23 A No, not now.

24 MR. HEYWARD: This one isn't marked, Your Honor.

25 THE COURT: Any objection, Mr. Weathers?

1 MR. WEATHERS: No, Your Honor.

2 (Defendant's Exhibit No. 3, bond  
3 for title, was marked for ID only.)

4 THE COURT: Thank you.

5 BY MR. HEYWARD:

6 Q Mr. Mitchell, I'd like you to look at what's been  
7 marked as Defendant's No. 3. Can you tell the Court you  
8 recognize?

9 A Yes, I do.

10 Q And what do you recognize it to be?

11 A The bond for title.

12 Q Between you and Mr. Smoak?

13 A A contract, I'm buying, purchasing the property.

14 Q Could you tell the Court the circumstances concerning  
15 that; when was the first time you saw the property, when was  
16 the first time you talked to Mr. Smoak?

17 A I don't remember the year. He give me a tour of the  
18 property. And I told him I was interested in buying some  
19 land. And he said, you know, he had it already surveyed and  
20 he showed me on the property he had to sell, and this piece  
21 that I had an interest in.

22 Q So Mr. Smoak took you to the property and showed it to  
23 you?

24 A He did.

25 Q At the time he showed you the property were there trees

1 on the property?

2 A There were trees on the property.

3 Q Okay. Was there a mobile home on the property?

4 A There was nothing but just the land. No mobile home.

5 Q No mobile home on the land?

6 A No, sir.

7 Q Did you notice was any septic tank or well on the  
8 property?

9 A No septic or well.

10 Q Now, after Mr. Smoak showed you the property you and  
11 Mr. Smoak agreed on a price?

12 A Yes.

13 Q And y'all agreed on the terms?

14 A Yes.

15 Q And the terms were acceptable to you since you signed  
16 it, correct?

17 A Yes.

18 Q Was it your intention when you signed this contract to  
19 carry out the terms of the contract in paying Mr. Smoak what  
20 you owed him for the property?

21 A Yes.

22 Q Did you miss any payments?

23 A I did.

24 Q How many payments did you miss?

25 A I don't remember exactly, but I did miss some payments.

1 Q You missed some payments?

2 A Yes.

3 Q When you missed payments did Mr. Smoak notify you of  
4 those missed payments?

5 A Yes.

6 Q And how did he notify you?

7 A He had sent a letter of all the payments that he said  
8 was missing. He said for me to send the receipts so he can  
9 compare them. And I did so. And it went on from there.  
10 But he would never send any receipts to me saying he  
11 received payment from me. So I would have to keep my own  
12 receipts showing that I paid.

13 Q At any time did Mr. Smoak before this prior hearing  
14 where you got a judgment against you, but did Mr. Smoak ever  
15 tell you or notify you that you were in default and that he  
16 was going to take some sort of action to correct it?

17 A Before the judgment?

18 Q That's correct?

19 A No, he never did.

20 Q So you never got a letter from him; he never came to  
21 the house?

22 A No, not concerning anything -- just leaving the  
23 property.

24 Q And you said there were trees on the property?

25 A Yes.

1 Q And how large is this parcel?

2 A The trees?

3 Q No. How large is the lot, the parcel that you live on?

4 A It's -- the piece is like a lot. It's a lot, as far as  
5 in a neighborhood.

6 Q Okay. Can you look at the document that you have in  
7 your hand; do you see the legal description?

8 A I'm sorry, I don't understand you?

9 Q Is there, on that first page, does -- do you see a  
10 paragraph that describes the property and indicates how  
11 large the property is?

12 A No, I don't.

13 Q Well -- and if I may read the legal description and you  
14 tell is if you agree with what I'm saying or disagree with  
15 what I'm saying.

16 All that certain, piece, parcel, and tract of land  
17 situate, lying and being in Dorchester County, South  
18 Carolina, containing five and six thousandths acres, and it  
19 has 5.006 in parentheses, more or less designated as Lot 1,  
20 and being a portion of TMS number 09600-0-0013 for further  
21 reference see attached plat.

22 Is that your understand of the description of the  
23 property that you entered into agreement with Mr. Smoak?

24 A Yes.

25 Q So five acres?

1 A Yes.

2 Q How much or what portion of those five acres do you  
3 actually occupy?

4 A Like I said, about a lot -- just one lot area. The rest  
5 of the acres is wooded.

6 Q Okay. Do you utilize the remainder of the property at  
7 all?

8 A No.

9 Q Have you cut trees off of the parcel?

10 A Yes.

11 Q And what area did you cut the trees from?

12 A I cut the trees from the front and some in the back.

13 Q If you were to estimate the area that you cut, would  
14 you say it was an acre, two acres, three acres or the entire  
15 five acres that you cut?

16 A It was about an acre, maybe an acre and a-half. All  
17 the trees were not cut.

18 Q When were you discharged from bankruptcy, Mr. Mitchell?

19 A I don't remember the day, the year. I believe about a  
20 year ago.

21 Q Now, you were discharged from bankruptcy, was it your  
22 understanding that you still owed Mr. Smoak some money?

23 A Yes.

24 Q Okay. Did you make any attempts to notify Mr. Smoak or  
25 to pay him the money owed?

1 A I made one attempt to call. I would always get his  
2 voice mail. I would never be able to get him on the phone.  
3 That was it. Until I contacted you. That's the end of  
4 making an attempt to try to contact him.

5 Q Did he ever try to contact you?

6 A No. It was difficult to get in touch with Mr. Smoak by  
7 phone. I never did went by his place because you ask  
8 permission to go by somebody's place.

9 MR. HEYWARD: Your Honor, I'd like to admit Defense  
10 Exhibit No. 3, which is the bond for title between Burbage  
11 Smoak and George Mitchell.

12 THE COURT: Any objection, Mr. Weathers?

13 MR. WEATHERS: No, Your Honor.

14 THE COURT: Thank you.

15 (Defendant's Exhibit No. 3, bond  
16 for title, was marked and entered.)

17 BY MR. HEYWARD:

18 Q Now, Mr. Mitchell, you've made a number of payments  
19 over the years?

20 A Yes.

21 Q Okay. And tell the Court how much money do you owe, do  
22 you still owe Mr. Smoak for this property?

23 A Well, after doing the math I really don't believe I owe  
24 him that much at all. I can't come up with an exact figure,  
25 but I believe I've paid him just about the balance I was

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1 charged for the property. And if there's anything else that  
2 I may have owed, I wouldn't know anything about it.

3 Q Should there be an accounting on how much you have paid  
4 Mr. Smoak and how much you still owe Mr. Smoak, would you be  
5 able and willing to pay him the amount that's still  
6 outstanding on this property?

7 A Yes.

8 Q Are you married Mr. Mitchell?

9 A Yes.

10 Q Do you have children?

11 A Yes.

12 Q Do they live with you?

13 A Not at the present time.

14 Q Are there any plans for them to live with you?

15 A Yes.

16 Q Thank you. No further questions. Please answer any  
17 questions opposing counsel may have or the Court may have.

18 THE COURT: Thank you.

19 GEORGE MITCHELL - CROSS EXAMINATION

20 BY MR. WEATHERS:

21 Q Mr. Mitchell, you indicated you attempted to pay Mr.  
22 Smoak after you were discharged from bankruptcy; is that  
23 correct?

24 A I said I made an attempt to contact him.

25 Q I guess it wasn't a discharge. The case was dismissed,

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1 but looking at my records, I represent that you were served  
2 with the lawsuit we're here about today, on October 10,  
3 2010. At any time since then have you tried to contact me  
4 or my office to purchase this property?

5 A I believe my attorney did.

6 Q You instructed your attorney about contacting an offer  
7 to purchase this property?

8 A When I received that letter from your office I went to  
9 my attorney and handed him the letter and from then I  
10 believe he contacted you. I don't know what happened from  
11 then.

12 Q Okay. What was the offer amount you were going to make,  
13 do you recall?

14 A Well, first of all I had to figure out what actually  
15 was owed on the property, if any, at all. So there was no  
16 amount to offer.

17 Q Okay. So you've never submitted any amount to offer to  
18 buy or sell the real estate subject to your dismissal from  
19 bankruptcy?

20 A I don't quite understand what you're asking me, sir?

21 Q Have you submitted any offer to purchase the property  
22 or tendered any funds to try to purchase the property since  
23 you were dismissed from bankruptcy in 2009?

24 A As far as paying him off?

25 Q Right.

1 A Yes, though my attorney. I've tried to bring this to  
2 an end.

3 Q The first action where Mr. Smoak sued you back in 2006,  
4 did you have an attorney then?

5 A Yes.

6 Q And when you filed bankruptcy did you have an attorney  
7 for that?

8 A Yes

9 Q Have you made any payments since your discharge from  
10 bankruptcy or your dismissal from bankruptcy?

11 A No.

12 Q Okay. I'm going to look at your Defendant's Exhibit  
13 No. 1, which your attorney provided to the Court, and if you  
14 would look on this first line -- I know it's small --

15 A Where, right here?

16 Q Yeah. The first creditor listed?

17 A I believe I see it right there. What is it you want me  
18 to look at?

19 Q Who is the first creditor?

20 A Burbage Smoak.

21 Q And what was the claim amount?

22 A \$34,503.20.

23 Q Okay, a little bit over thirty-five five hundred. How  
24 much does it say you paid in principle?

25 A The principle what page?

1 Q I believe it's the one your attorney had checked?

2 A \$19,000 -- I see right here, \$19,285.14. And then  
3 there's another one on the side of it, \$15,000.

4 Q Okay, the total claim was a little over \$30,000 and  
5 you've paid down the principle \$19,000. There's a  
6 substantial sum left remaining isn't there?

7 A If you go by these figures, yes.

8 Q And those are the figures your attorney provided to the  
9 bankruptcy court. Do you have reason to contest those?

10 A Well, yes, from the payments that I've previously made  
11 before this.

12 Q And I asked you if you had an attorney in those prior  
13 two actions where the amount was determined to be \$34,000  
14 you owed prior to bankruptcy, you said you did have an  
15 attorney; correct?

16 A Before the bankruptcy?

17 Q Right.

18 A Yes.

19 Q Both actions?

20 A Yes.

21 Q So assuming those numbers are correct, you still owe  
22 Mr. Smoak \$15,000, \$16,000?

23 A If you go by these documents, yes.

24 Q And no other payments have been made since your  
25 bankruptcy.

1 A No.

2 MR. WEATHERS: That's all I have, Your Honor.

3 THE COURT: Thank you.

4 Any redirect, Mr. Heyward?

5 MR. HEYWARD: Yes. Just one --

6 GEORGE MITCHELL - REDIRECT EXAMINATION

7 BY MR. HEYWARD:

8 Q Mr. Mitchell have you ever tried to get financing to  
9 pay off any amount owed to Mr. Smoak concerning this  
10 property?

11 A Yes, I did.

12 Q And what were the results of your attempts?

13 A The attempt was the same thing. I could not get in  
14 touch with Mr. Smoak. He would not return phone calls, and  
15 not just from me. The people who I went to and they was  
16 going to do the financing and put the land and everything in  
17 it, and Mr. Smoak would have his money complete. And at  
18 this time, I tried, the sales lady tried, and finally at the  
19 last minute, Mr. Smoak -- she was able to get in touch with  
20 him.

21 Q Do you know the result of that conversation?

22 A Not quite, but she said she was trying to find out --  
23 get in touch with him so he can send some information on the  
24 final payoff and what else was owed on the property so it  
25 could be taken care of. At that time, nothing transpired

1 from that.

2 Q And Mr. Smoak, plaintiff's attorney, asked you whether  
3 or not you had an attorney in this prior action, and you  
4 answered in the affirmative; is that correct?

5 A Yes.

6 Q And who was your lawyer?

7 A For the bankruptcy, Kevin Kearse (sp).

8 Q Kevin Kearse. Mr. Mitchell I would like for you to  
9 have a look at a letter. Do you recognize that letter?

10 A Yes, I do.

11 Q Was that a letter you received from Mr. Kearse?

12 A Yes, it is.

13 Q Was it after or before this prior judgment?

14 A This judgment here now the only one -- I mean --

15 Q Did you receive that letter after the prior action --

16 A Yes.

17 Q -- the confession of judgment?

18 A Yes, I did.

19 Q So this is a letter from him after the prior action?

20 A Yes.

21 Q Did he, at any time, advise you to get financing or  
22 refinancing or attempt to?

23 A Yes, he did.

24 Q And did you follow his advice?

25 A I did.

1 Q Okay, and that was unsuccessful?

2 A Yes.

3 Q Did they need -- they meaning whoever was going to do  
4 the financing, did they need Mr. Burbage's cooperation?

5 A Yes, they did.

6 Q And was that cooperation forthcoming?

7 A No.

8 (Defendant's Exhibit No. 5  
9 document, was marked for ID only.)

10 THE COURT: Without objection?

11 MR. WEATHERS: Yes, Your Honor.

12 THE COURT: Thank you.

13 BY MR. HEYWARD:

14 Q Mr. Mitchell, plaintiff's attorney also asked how much  
15 money you thought you owed Mr. Smoak.

16 A Yes.

17 Q If it is determined that you still owe Mr. Smoak money  
18 to purchase this property, once again, would you be willing  
19 and able to pay off the remaining amount due on this bond  
20 for title so that you can get a warranty deed from Mr. Smoak  
21 for this property?

22 A Yes.

23 MR. HEYWARD: No further questions, Your Honor.

24 MR. WEATHERS: Your Honor, I just have one, if I may?

25 THE COURT: Sure.

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GEORGE MITCHELL - RE-CROSS EXAMINATION

BY MR. WEATHERS:

Q Mr. Mitchell, from whom were you going to get financing?

A Clayton Mobile Home.

Q Okay. And have you spoken to them recently about that?

A Not recently. This was during the time before all of this took place, the judgment.

Q Okay, I was reading the letter from Kevin Kearse, your attorney, it said you were going to get financing earlier from the Federal Credit Union; is that correct?

A I don't know anything about that one.

Q Okay. Do you have any other judgments against you right now?

A Yes.

Q Okay. Who has that?

A I don't remember the bank.

Q Would it be the South Carolina Federal Credit Union, by chance?

A Yes.

Q Actually, let me just show you this. I'll mark it as Plaintiff's Exhibit No. 4, I believe.

THE COURT: any objections?

MR. HEYWARD: No objections.

THE COURT: Thank you.

1 (Plaintiff's Exhibit No. 4,  
2 document was marked and entered.)

3 BY MR. WEATHERS:

4 Q If you would read the caption in the plaintiff verses  
5 defendant, please?

6 A South Carolina Federal Credit Union, plaintiff, George  
7 Mitchell, defendant.

8 Q Okay. If you would read Paragraphs 1 and 2 regarding  
9 the amounts of the judgment?

10 A (No response.)

11 Q I'm sorry, the numbered paragraphs one and two.

12 A It says the amount of \$15,833.60. That's it.

13 Q And is there interest, also?

14 A Plus interest at the rate of 15.99 percent.

15 Q Okay. How about that second paragraph, costs and other  
16 assessments against you?

17 A You want me to read it?

18 Q Yeah, if you would.

19 A It says costs is taxed by the clerk -- including  
20 responsible -- attorney fees up to 15 percent of the  
21 balance. \$2,375 and --

22 Q And does that also accrue with interest?

23 A I don't see that.

24 Q Okay. Can you tell me the date of that judgment?

25 A October 17.

1 Q It's actually a little bit easier to read down at the  
2 bottom where the judge signed it or the clerk.

3 A October 15, 2003.

4 Q Okay. Thank you.

5 MR. WEATHERS: I'd like to move that in, Your Honor.

6 THE COURT: Thank you.

7 (Plaintiff's Exhibit No. 4,  
8 document, was marked and entered.)

9 THE COURT: You may step down, Mr. Mitchell. Thank you.

10 MR. MITCHELL: All right.

11 MR. HEYWARD: We have no further witnesses, Your Honor.

12 THE COURT: Thank you.

13 Gentlemen, do you wish to make any closing remarks, if  
14 you feel necessary?

15 MR. WEATHERS: I think we've covered about everything,  
16 Your Honor.

17 THE COURT: All right. Thank you.

18 Gentlemen, upon review of the evidence -- Mr. Mitchell,  
19 certainly I understand that we have very difficult financial  
20 times, which makes it a hardship sometimes to be able to  
21 make payments as you've contracted to do, and certainly your  
22 attorney has done an admirable job in representing your side  
23 of this case and what your position is. But this Court  
24 finds, based -- that the plaintiff has established his claim  
25 by a preponderance of the evidence. It's clear based upon

1 Mr. Mitchell's own testimony that he breached the bond for  
2 title contractual agreement and based upon that breach he  
3 became a tenant at that time. Mr. Smoak has been very  
4 patient and forthcoming about his attempts to get this  
5 matter resolved as well, and although he feels he has tried,  
6 he feels sorry for you, he does, I believe have met his  
7 burden of proof here to establish his claim.

8 So Mr. Weathers if you will please prepare a proposed  
9 order I will be happy to sign it.

10 MR. WEATHERS: Yes, Your Honor.

11 MR. HEYWARD: Thank you, Your Honor.

12 THE COURT: Thank you. Y'all have a good day.

13 (This proceeding was concluded.)  
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST 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 HEARING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF NOVEMBER, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

August 6, 2012

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Final Notice: Article will be returned to sender on

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576 Haven  
Delivered By and Date

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Post Office™ (See back) Date: Time: *Heagler & Weathers*

Letter  For Delivery: (Enter total number of items delivered by service type.)  If checked, you or your agent must be present at time of delivery to sign for item.

Large envelope, magazine, catalog, etc.  For Notice Left: (Check applicable item) Article Number(s) 700811400002 49333506

Parcel  Express Mail®  Insured Mail

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Other:  Registered Mail™  Signature Confirmation™

Article Requiring Payment Amount Due

Postage Due  COD  Customs \$

Final Notice: Article will be returned to sender on 9-10

Notice Left Section  
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Mitchell  
576 Haven  
Delivered By and Date

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100 BROUGHTON RD.  
RIDGEVILLE CORNER, SC 29461

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7:54  
a.m.


George L. Mitchell  
576 Haven Rd.  
Ridgeville, SC 29472

VIA HAND DELIVERY

70

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<b>07-03665-JW GEORGE LORENZO MITCHELL</b> (xxx-xx-2556)  Trustee: James M. Wyman	576 HAVEN RD. • RIDGEVILLE • SC • 29472  Attorney: J STEVEN HUGGINS	\$1,100.00 MO	Bar Date(s):	11/13/2007 (has passed) 1/2/2008 (has passed)
			Confirmed:	8/23/2007
			Case Status:	DISMISSED AFTER CONFIRMATION (12/19/2009)

**Payee Summary**

Number of Claims	8
Total Amount Claimed	\$70,527.55
Total Amount Scheduled	\$54,193.05
Total Principal Paid	\$23,218.67
Total Principal Owed	\$17,289.05
Total Principal Due	\$810.00
Total Interest Paid	\$3,984.03
Total Interest Due	\$0.00

**Claim Breakdown**

	Priority	Secured	Unsecured	Other
Claimed	\$5,701.30	\$34,503.20	\$30,323.05	
Scheduled	\$2,074.00	\$35,000.05	\$16,719.00	
Principal Paid	\$3,933.53	\$19,285.14	\$0.00	
Principal Owed	\$1,767.77	\$15,218.06	\$303.22	
Principal Due	\$0.00	\$810.00	\$0.00	
Interest Paid	\$0.00	\$3,984.03	\$0.00	
Interest Due	\$0.00	\$0.00	\$0.00	
Monthly Payment	\$243.00	\$747.00	\$0.00	
Collateral	\$0.00	\$0.00	\$0.00	

**Claims Listing**

Name (Acct)	Clm #	Filed	Desc	Mo Pymt	Prin Paid	Prin Owed	Clm Amt	Schd Amt	Int Paid	Int Due
BURBAGE H SMOAK (xxxxxxxHELL)	3	✓	SECURED	\$717.00	\$19,285.14	\$15,218.06	\$34,503.20	\$34,000.00	\$3,984.03	\$0.00
ASSET ACCEPTANCE LLC (2556)	4		SECURED	\$30.00	\$0.00	\$0.00	\$0.00	\$1,400.05	\$0.00	\$0.00
INTERNAL REVENUE SERVICE (xxxxxxxx2556)	6	✓	PRIORITY	\$0.00	\$1,859.53	\$1,767.77	\$3,627.30	\$0.00	\$0.00	\$0.00
SC FEDERAL CREDIT UNION (xxxxxxxx9-21)	1	✓	UNSECURED	\$0.00	\$0.00	\$279.71	\$27,971.26	\$16,500.00	\$0.00	\$0.00
ASSET ACCEPTANCE LLC (xxxxxxxx0484)	2	✓	UNSECURED	\$0.00	\$0.00	\$14.05	\$1,405.32	\$0.00	\$0.00	\$0.00
SCE&G (0017)	5		UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$219.00	\$0.00	\$0.00
INTERNAL REVENUE SERVICE (xxxxxxxx2556)	7	✓	UNSECURED	\$0.00	\$0.00	\$9.46	\$946.47	\$0.00	\$0.00	\$0.00

**Attorney Listing**

Name	Description	Level	Fee in Plan	Fee Paid Outside	Fee Paid to Date	Initial Amount	Monthly Payment	Fee Remaining
J STEVEN HUGGINS	ATTORNEY FEE	22	\$2,074.00	\$926.00	\$2,074.00	\$0.00	\$243.00	\$0.00

**Clerk Fees Listing**

No Clerk Names have been established for to this case.

**Debtor Refund**

Name	Description	Level	Refund Amount	Amount Paid	Amount Owed
GEORGE LORENZO MITCHELL	DEBTOR REFUND	0	\$0.00	\$0.00	\$0.00

177

**Claim Payout**

Creditor Type	Cost	No Cost	SubTotal	Total
Notice / Filing Fees				
Secured	\$15,218.06		\$15,218.06	\$16,451.96
Secured Arrears				
Unsecured	\$303.22		\$303.22	\$327.81
Priority	\$1,767.77		\$1,767.77	\$1,911.10
Attorney				
Continuing Debt Arrears				
Totals	\$17,289.05		\$17,289.05	\$18,690.86
			Balance on Hand:	
			Totals Less Balance on Hand:	\$18,690.86
Continuing Payments				
Regular Payments	\$717.00		\$717.00	\$775.14

The balance disclosed on this page is not the payoff figure and does not represent the funds needed to pay the case in full. An audit must be completed by the Trustee's office to ascertain the actual payoff amount.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

GEORGE LORENZO MITCHELL

576 HAVEN RD.  
RIDGEVILLE, SC 29472

Debtor

CASE NO: 07-03665-JW

(CHAPTER 13)

CHAPTER 13 TRUSTEE'S OBJECTION TO  
DEBTOR'S MOTION TO RECONSIDER DISMISSAL

**TRUSTEE'S OBJECTION TO DEBTOR'S MOTION TO RECONSIDER DISMISSAL**

James M. Wyman, the Chapter 13 Trustee in the within case, objects to the Debtor's Motion to Reconsider this Court's Order dismissing the case for failure to make payments for the following reason(s):

The Debtor's case was dismissed on December 21, 2009 and the Motion to Reconsider was not filed until January 04, 2010.

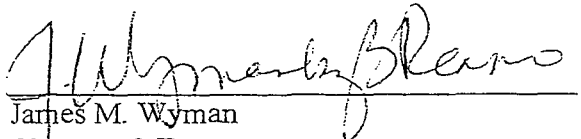
Additionally, pursuant to the Debtor's Chapter 13 plan, the Debtor's should have paid \$33,000.00 through January 2010. To date they have made payments totalling \$29,334.00; therefore there is a deficiency in payments in the amount of \$3,666.00. Such deficiency must be cured by sending \$3,666.00, in the form of a money order or cashier's check prior to 1/14/2010 to:

James M. Wyman, Trustee  
P.O. Box 110  
Memphis, TN 38101-0110

Furthermore, the Trustee requests that, if the Motion to Reconsider is granted, this case may be dismissed without further notice or hearing, if the Debtor fail(s) to make future payments as they become due.

Finally, the Trustee requests that, if the case is dismissed by future Order of this Court, for any reason, the dismissal shall be with prejudice, and the Debtor will be barred from filing any reorganization bankruptcy case for a period of one year.

Dated: January 08, 2010

  
James M. Wyman  
Chapter 13 Trustee

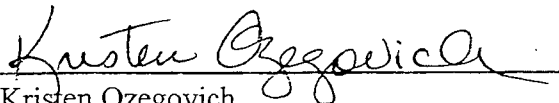
CERTIFICATE OF SERVICE

The below hereby certifies that s/he served the attached document on the parties listed below by placing the same in the United States mail with proper postage affixed thereto and addressed as follows:

GEORGE LORENZO MITCHELL  
576 HAVEN RD.  
RIDGEVILLE, SC 29472

J STEVEN HUGGINS  
2170 ASHLEY PHOSPHATE ROAD  
FIRST CITIZENS BLDG., STE 405  
CHARLESTON, SC 29406

Date: January 08, 2010

  
Kristen Ozegovich  
Chapter 13 Office

## RECEIPT HISTORY

Receipt Date	Description	Source	Amount
8/6/07	MONEY ORDER FROM DEBTOR	93243647553	\$100.00
8/6/07	MONEY ORDER FROM DEBTOR	93243647542	\$1,000.00
9/5/07	MONEY ORDER FROM DEBTOR	8973997885	\$100.00
9/5/07	MONEY ORDER FROM DEBTOR	8973997874	\$1,000.00
10/8/07	MONEY ORDER FROM DEBTOR	11121678876	\$1,000.00
10/8/07	MONEY ORDER FROM DEBTOR	11121678887	\$100.00
11/6/07	MONEY ORDER FROM DEBTOR	11118567317	\$1,000.00
11/6/07	MONEY ORDER FROM DEBTOR	11118567328	\$100.00
12/7/07	MONEY ORDER FROM DEBTOR	11469349787	\$100.00
12/7/07	MONEY ORDER FROM DEBTOR	11469349776	\$1,000.00
1/8/08	MONEY ORDER FROM DEBTOR	111186818268	\$100.00
1/8/08	MONEY ORDER FROM DEBTOR	11118618257	\$1,000.00
2/7/08	MONEY ORDER FROM DEBTOR	11914963154	\$100.00
2/7/08	MONEY ORDER FROM DEBTOR	11914963143	\$1,000.00
3/7/08	MONEY ORDER FROM DEBTOR	12222753197	\$100.00
3/7/08	MONEY ORDER FROM DEBTOR	12222753208	\$1,000.00
4/7/08	MONEY ORDER FROM DEBTOR	11472621096	\$1,000.00
4/7/08	MONEY ORDER FROM DEBTOR	11472621107	\$100.00
5/6/08	MONEY ORDER FROM DEBTOR	11916619716	\$100.00
5/6/08	MONEY ORDER FROM DEBTOR	11916619672	\$1,000.00
6/9/08	MONEY ORDER FROM DEBTOR	11915050127	\$1,000.00
6/9/08	MONEY ORDER FROM DEBTOR	11915050138	\$100.00
7/8/08	MONEY ORDER FROM DEBTOR	11915068836	\$100.00
7/8/08	MONEY ORDER FROM DEBTOR	11915068825	\$1,000.00
8/8/08	MONEY ORDER FROM DEBTOR	11915041746	\$100.00
8/8/08	MONEY ORDER FROM DEBTOR	11915041735	\$1,000.00
9/9/08	MONEY ORDER FROM DEBTOR	12231170651	\$1,000.00
9/9/08	MONEY ORDER FROM DEBTOR	12231170662	\$100.00
10/9/08	MONEY ORDER FROM DEBTOR	12229968598	\$600.00
10/9/08	MONEY ORDER FROM DEBTOR	201205329083	\$500.00
11/13/08	MONEY ORDER FROM DEBTOR	16410374280	\$750.00

11/13/08	MONEY ORDER FROM DEBTOR	201205342415	\$350.00
1/6/09	MONEY ORDER FROM DEBTOR	55849196887	\$200.00
1/6/09	MONEY ORDER FROM DEBTOR	201285668309	\$900.00
2/9/09	MONEY ORDER FROM DEBTOR	201313482414	\$50.00
2/9/09	MONEY ORDER FROM DEBTOR	201313497650	\$50.00
2/9/09	MONEY ORDER FROM DEBTOR	201313497649	\$1,000.00
3/3/09	MONEY ORDER FROM DEBTOR	201401887050	\$1,000.00
3/3/09	MONEY ORDER FROM DEBTOR	201401887060	\$100.00
4/3/09	MONEY ORDER FROM DEBTOR	201190694122	\$1,000.00
4/3/09	MONEY ORDER FROM DEBTOR	201190694133	\$100.00
5/19/09	MONEY ORDER FROM DEBTOR	16416732960	\$700.00
5/19/09	MONEY ORDER FROM DEBTOR	201455916508	\$400.00
7/2/09	MONEY ORDER FROM DEBTOR	16416744658	\$650.00
7/2/09	MONEY ORDER FROM DEBTOR	201535315223	\$450.00
7/31/09	MONEY ORDER FROM DEBTOR	16410379511	\$950.00
7/31/09	MONEY ORDER FROM DEBTOR	201535322109	\$150.00
10/2/09	MONEY ORDER FROM DEBTOR	201663629244	\$100.00
10/2/09	MONEY ORDER FROM DEBTOR	201663629233	\$1,000.00
11/5/09	MONEY ORDER FROM DEBTOR	201754546477	\$1,000.00
11/5/09	MONEY ORDER FROM DEBTOR	201699286800	\$467.00
12/15/09	MONEY ORDER FROM DEBTOR	201850788623	\$1,000.00
12/15/09	MONEY ORDER FROM DEBTOR	14008127581	\$467.00
			<b>Total: \$29,334.00</b>



(New Construction)

buyer. The seller shall deliver a good fee simple marketable title to the real estate being conveyed to buyer.

7. Should the buyer miss two payments consequently when due or fail to comply with the conditions, covenants and agreements set forth in this agreement, the amounts paid by them may be retained by the seller as the consideration for making this agreement and the seller shall be released from all obligation in law or equity to convey the property and any occupancy of the property by buyer shall be deemed to be and be a tenancy at the pleasure of the seller and buyer shall never acquire and expressly waive any and all rights or claims of title because of such possession.

8. Should the seller sue the buyer to enforce this agreement or any of its terms, the buyer shall pay a reasonable attorney fee of not less than Fifteen (15%) percent and all expenses in connection with it. Should the buyer sue the seller to enforce this agreement or any of its terms, the seller shall pay a reasonable attorney of not less than Fifteen (15%) percent and all expenses in connection with it.

9. The waiver by the seller of any covenant, condition or agreement contained in this agreement shall not vitiate the same or any other covenant, condition or agreement contained in this agreement and the terms, conditions, covenants and agreements set forth in this agreement shall apply to and bind the heirs, successors, and assigns of each of the parties.

In witness whereof, this 15 day of March 2001.

Deborah E. Kane

Burbage H. Smoak  
Burbage H. Smoak (Seller)

Budney Francis

George Mitchell  
George Mitchell (Buyer)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Honorable Maite Murphy

Case No. 2010-CP-18-2127

Burbage Smoak.....Respondent

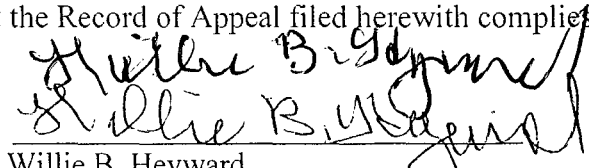
v.

George Mitchell.....Appellant

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record of Appeal filed herewith complies with  
Rule 210(g), SCACR.

November 13, 2012



Willie B. Heyward  
Heirs' Property Law Center, LLC  
277 Gamecock Ave., Suite 200  
Charleston, S.C. 29407  
(843) 225-8754  
Attorney for the Appellant