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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

**RECEIVED**

OCT 23 2012

**SC Court of Appeals**

Case No. 2010-CP-43-1499

Melvin Muldrow,

Appellant,

v.

Herman Muldrow,

Respondent.

RECORD ON APPEAL

Charles T. Brooks, III  
The Brooks Law Offices, LLC  
Post Office Box 3512  
Sumter, South Carolina 29150  
803-418-5708  
Attorney for Appellant

Thomas E. Player, Jr, Esquire  
Player & McMillan, L.L.C.  
Post Office Drawer 3690  
Sumter, South Carolina 29151  
Attorney for Respondent

ORIGINAL

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

MELVIN MULDROW

IN THE COURT OF COMMON PLEAS

RECORDED

CIVIL ACTION COVERSHEET

Plaintiff (SUL) 19 PM 12:31

2010-CP - 43- 1499

vs.

JAMES D. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

HERMAN MULDROW

Defendant(s)

(Please Print)

SC Bar #: 11762

Submitted By: Charles T. Brooks, III
Address: 309 Broad Street, Sumter, SC 29150

Telephone #: 803-418-5708

Fax #: 803-934-9618

Other:

E-mail: cbrooks@ctbrooks.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 Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), 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), 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), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), 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), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date:

7/25/2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, 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**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

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

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

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

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

RECORDED

STATE OF SOUTH CAROLINA )  
2010 JUL 15 PM 12:31 )  
COUNTY OF SUMTER )  
JAMES C. CAMPBELL )  
CLERK OF COURT )  
SUMTER COUNTY, S.C. )  
Melvin Muldrow, )

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
Case No. 2010-CP-43-\_\_\_\_\_

Plaintiff, )

v. )

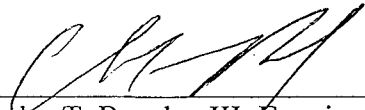
SUMMONS

Herman Muldrow, )

Defendant. )

**TO: THE DEFENDANT(S) HEREIN**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his offices at 309 Broad Street, Sumter, South Carolina 29151, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.



Charles T. Brooks, III, Esquire  
The Brooks Law Offices  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151  
803-418-5708  
ATTORNEY FOR PLAINTIFF

Sumter, South Carolina  
7/15, 2010

RECORDED

2010 JUL 19 PM 12:31

STATE OF SOUTH CAROLINA )

COUNTY OF SUMTER )

Melvin Muldrow, )

Plaintiff, )

v. )

Herman Muldrow, )

Defendant. )

) IN THE COURT OF  
) JAMES G. CAMPBELL  
) CLERK OF COURT COMMON PLEAS  
) SUMTER COUNTY, S.C.

Civil Action No.: 2010-CP-43-\_\_\_\_\_

COMPLAINT  
(Jury Trial Demanded)

The Plaintiff, complaining of the Defendants, would respectfully show unto this honorable Court as follows:

1. Plaintiff is a citizen and resident of the County of Sumter, State of South Carolina.
2. Upon information and belief, the Defendant is a citizen and resident of the County of Sumter, State of South Carolina.
3. The Defendant is the fee simple owner of a real property located in the County of Sumter, situated at 6305 Trailer Lane, Gable, South Carolina.
4. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, *S.C. Code Ann.* §§ 36-2-802 and 36-2-803 (Law. Co-op. 1976) and its plenary powers.
5. On or about March 2, 2010 while a licensee by invitation on the property owend by the Defendant(s) herein, the Plaintiff, through no fault of his own, was severely injured and/or burned when a "burn barrel" located on the property owned by the Defendant exploded in the face of the Plaintiff.
6. As a result of the above, the Plaintiff suffered injuries to his face and head, all of

which has caused and will continue to cause the Plaintiff much physical pain, mental anguish and suffering, has and will cause the Plaintiff to spend money and incur costs for medical services and other matters related to his injuries, and has and will cause the Plaintiff to lose wages and earnings.

7. The Plaintiff was a licensee on the Defendant's premises. The Defendant owed the Plaintiff the duty to discover and warn of dangerous conditions on the premises and thereafter make them safe, which the Defendant failed to do.

8. The Defendants, and each of them, knew or should have known that a dangerous condition existed.

9. Upon information and belief, the Defendants were further negligent, careless, wanton, and willful in the time and place above-mentioned, and acted with a reckless disregard for the rights of Plaintiff, in the following particulars:

In failing to keep the floors safe for customers;

a. In failing to provide safe conditions;

b. In failing to adequately discover and correct any dangerous conditions which existed;

c. In failing to adequately warn that a dangerous condition existed;

d. In such other and further particulars as the evidence at trial might show.

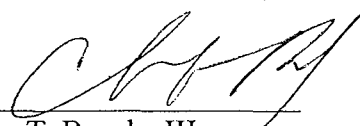
10. All or any one of the particulars enumerated above was the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

11. The Plaintiff is informed and believes that he is entitled to a judgment against Defendants for actual damages, a reasonable sum of punitive damages, the costs of prosecution

of this action, prejudgment interest, and such other and further relief as the Court may deem just and proper all in an amount in excess of twenty-five thousand dollars (\$25,000) and as will be proven at trial.

WHEREFORE, the Plaintiff prays that the Court inquire into the matters herein and grant him a judgment in a reasonable sum of actual damages, punitive damages, costs, and such other and further relief as the Court may deem just and proper, all in an amount in excess of twenty-five thousand dollars (\$25,000).

RESPECTFULLY SUBMITTED,

By: 

Charles T. Brooks III  
Attorney for the Plaintiff  
The Brooks Law Offices, LLC  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29150  
803-418-5708

Sumter, South Carolina

Dated: 7/15, 2010

**PLAYER & McMILLAN, L.L.C.**  
**ATTORNEYS AT LAW**

305 NORTH MAIN STREET  
POST OFFICE DRAWER 3690  
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.  
Marvin E. McMillan, Jr.

August 27, 2010

Telephone: (803) 775-2306  
Facsimile: (803) 436-5960  
email:  
tomplayer@sc.rr.com  
chipmcmillan@sc.rr.com

Mr. Charles T. Brooks, III  
The Brooks Law Offices  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151

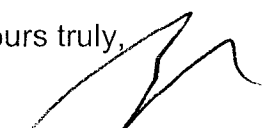
RE: Auto Owners & Muldrow vs. Muldrow  
C/A No.: 2010-CP-43-1499

Dear Charles:

Enclosed please find the Answer in the above case.

Best regards.

Yours truly,

  
Thomas E. Player, Jr.

TEP, Jr./jv  
Enclosure

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	CIVIL ACTION NO.: 2010-CP-43-1499
Melvin Muldrow,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	
Herman Muldrow,	)	
Defendant.	)	
_____	)	

The Defendant, answering the Complaint, alleges:

**FOR A FIRST DEFENSE**

1. This Defendant denies each allegation of the Complaint not herein specifically admitted;
2. The allegations of Paragraphs 1, 2, 3, and 4 are admitted.
3. Only so much of Paragraph 5 is admitted as alleges that on the date mentioned therein, the Plaintiff was burned while burning debris in a "burn barrel".
4. Only so much of Paragraph 6 is admitted as alleges that the Plaintiff suffered some injury with accompanying pain but the degree and extent thereof as in addition to the medical costs are denied for lack of information as to the extent thereof.
5. Paragraph 7 is denied.
6. Paragraphs 8, 9, 10 and 11 are denied.

**FOR A SECOND DEFENSE:**

7. This Defendant denies any negligent conduct on his part which proximately caused the Plaintiff's injury but alleges that the Plaintiff was negligent, grossly negligent and reckless and

that such conduct on the Plaintiff's part contributed to any alleged negligence on the part of the Defendant as a proximate cause of any injury received by the Plaintiff in one or more of the following particulars:

- a. In failing to exercise a degree of caution commensurate with burning activities.
- b. In failing to exercise a degree of caution that an ordinarily prudent person would exercise under the same conditions.

The conduct on the part of the Plaintiff contributed as a proximate cause to the Plaintiff's alleged injury and such conduct represents more than 50% of the total negligence, recklessness and willfulness which resulted in the injuries and therefore, the Plaintiff is barred from recovery. Alternatively, the conduct of the Plaintiff should be compared with that of the Defendant and any damages awarded to the Plaintiff reduced proportionately.

WHEREFORE having fully answered, the Defendant prays that the Complaint be dismissed.

PLAYER & MCMILLAN, L.L.C.



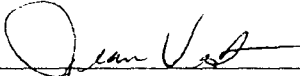
---

THOMAS E. PLAYER, JR.  
ATTORNEY FOR THE DEFENDANT  
305 NORTH MAIN STREET  
POST OFFICE DRAWER 3690  
SUMTER, SC 29151-3690  
(803) 775-2306

CERTIFICATE OF SERVICE

This is to certify that a copy of Answer in the foregoing matter was deposited in the United States mail, with first class postage affixed thereto, addressed to the following attorneys of record:

Charles T. Brooks, III  
The Brooks Law Offices  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151

  
\_\_\_\_\_  
Jean Vest

August 27, 2010

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER ) 2010-CP-43-1499

MELVIN MULDROW, )  
Plaintiff, )

**COPY**

vs. )

**DEPOSITION**

**OF:**

**MELVIN MULDROW**

HERMAN MULDROW, )  
Defendant. )

The deposition of **MELVIN MULDROW** was taken pursuant to Notice and agreement of counsel under the South Carolina Rules of Civil Procedure, before Frank L. Newcomb, a Notary Public in and for the State of South Carolina, in Sumter, South Carolina, on Tuesday, February 8, 2011, commencing at 3:05 P.M.

**APPEARANCES OF COUNSEL:**

For the Plaintiff: Charles T. Brooks, III, Esquire

For the Defendant: Thomas E. Player, Jr., Esquire

---

**FRANK L. NEWCOMB**  
Court Reporter  
111 North Main Street  
Sumter, South Carolina 29150  
**(803) 775-7549**

**I N D E X:**

WITNESS:

**MELVIN MULDROW**

ATTORNEY:

MR. PLAYER: . . . . . 3 . . . . . 31

**E X H I B I T I N D E X:**

Defendant's Exhibit #1: (Aerial Photograph of Scene) Page 31

**\*\*Mr. Player kept Defendant's Exhibit #1 in his possession\*\***

1. It was stipulated by and between counsel for all parties that  
2. all objections are pursuant to the South Carolina Rules of Civil  
3. Procedure.

4. It was further stipulated that the reading and signing of the  
5. deposition by the witness was waived by all parties.

6.

7. (After being duly sworn **MELVIN MULDROW** testified as follows: )

8.

9.

**EXAMINATION BY MR. PLAYER:**

10.

11. Q. Mr. Muldrow, I'm Tommy Player; we met just a little bit ago. I'm  
12. sure Mr. Brooks probably has explained to you we're about to do in  
13. the way of a deposition.

14. A. (Witness nods head). Yes.

15. Q. Okay, and I see you're shaking your head like this. One of the  
16. things I have to tell you is that the court reporter is taking down  
17. everything that's said, so if you would try to say "yes" or "no". And  
18. that doesn't mean you have to limit your answers to "yes" or "no",  
19. but try to use those words instead of nod of the head or a "uh-huh"  
20. or "huh-uh", okay?

21. A. Okay.

22. Q. All right, good enough. Now I'm going to ask you some questions  
23. about your lawsuit, and before I get into the details of that I'm  
24. going to ask you a few questions about your background. Those  
25. are legitimate questions. I'm not doing that just to be nosy about

1. your personal life, but if we have to pick a jury in this case I need
2. to know a little bit about who you're related to and so forth, 'cause
3. we don't want your family members on a jury. So that's why I'm
4. asking you these series of questions about your background, okay?
5. A. Yes, sir.
6. Q. I'm not trying to get nosy. Tell me your date of birth, please, sir.
7. A. 3/21/47.
8. Q. '47, okay. And were you born in Sumter County?
9. A. I think I was born in Sumter County.
10. Q. Okay, and what part of the county ... I know you live out in the
11. area where we call Dabb's Crossroads and the Sardinia area.
12. A. Yes, sir.
13. Q. I believe, isn't that correct?
14. A. Yes, sir.
15. Q. And is that the part of the county that you grew up in?
16. A. Yes, sir.
17. Q. All right, tell me where you attended school?
18. A. Walker-Gamble.
19. Q. Walker-Gamble? In Clarendon County?
20. A. Yes, sir.
21. Q. Okay, and did you graduate from high school?
22. A. Yes, sir.
23. Q. Where did you graduate from school?
24. A. Walker-Gamble.
25. Q. Same school.

1. A. Same school.
2. Q. And what year, that would've been about '65?
3. A. '66.
4. Q. '66, okay. And did your parents live in the same area that you live
5. in now?
6. A. Yes, sir.
7. Q. Okay, what is that, 527?
8. A. 527.
9. Q. Right. And your parents, are they still living?
10. A. My mother.
11. Q. Your mother's still living?
12. A. My father passed.
13. Q. Okay. What's your mother's name?
14. A. Ada Muldrow.
15. Q. Ada?
16. A. Ada Muldrow.
17. Q. And your father's name was what?
18. A. Melvin Muldrow.
19. Q. Okay, so you're Melvin, Jr.?
20. A. Yes, sir.
21. Q. All right. Did your father farm or did he work in the city?
22. A. He farmed worked
23. Q. All right.
24. A. He job worked some.
25. Q. I'm sorry?

1. A. He farmed some and job worked.
2. Q. All right, and where did he work when he was job working?
3. A. Santee Print.
4. Q. Santee Print.
5. A. Yes, sir.
6. Q. Did he work there a long time?
7. A. Pretty good. About twenty or thirty years.
8. Q. Okay, worked anyplace else other than Santee Print that you know
9. of?
10. A. That's the only place.
11. Q. And he worked the far, too?
12. A. Yes, sir.
13. Q. Now did he have his own far or did he work for someone else?
14. A. No, he was farming some of my uncle's land, too.
15. Q. Some of your uncle's land?
16. A. Yes, sir.
17. Q. What's your uncle's name?
18. A. Carnell Muldrow.
19. Q. Carnell?
20. A. Carnell Muldrow.
21. Q. Does your mother still live out near you out there in the country?
22. A. Yes, sir.
23. Q. Okay, and tell me how big a family you had. How many children
24. did your parents have?
25. A. One sister and five brothers.

1. Q. Five brothers.
2. A. Yes, sir.
3. Q. All of them still living?
4. A. Well one got run over, a bus run over him and the rest of 'em
5. living.
6. Q. A bus ran over him when he was a child?
7. A. Yes, sir.
8. Q. Do they live here in Sumter County, your sister and your brothers?
9. A. My sister, she living in Aiken now.
10. Q. She does?
11. A. Yes, sir.
12. Q. Okay, how about your brothers, other brothers?
13. A. One in Sumter on Thomas Drive and ...
14. Q. What's his name?
15. A. McKinley Muldrow.
16. Q. And is he married?
17. A. Yes, sir.
18. Q. What's his wife's **maiden** name?
19. A. Barbara ... Barbara Muldrow.
20. Q. What was her name before she was married?
21. A. Mmm ...
22. Q. And if you don't know that's fine.
23. A. I can't remember.
24. Q. I'm sorta like you, you and I are about the same age. I've got a
25. couple of years on you, but I can't remember things like I used to.

1. So don't be scared to say "I don't remember," all right? So that's
2. perfectly legitimate if I ask you something that you don't
3. remember ...
4. A. Yes, sir.
5. Q. ... the answer to, okay? Now, your family are members of a church
6. out there country?
7. A. Yes, sir.
8. Q. Which church y'all attend?
9. A. Goodwill Presbyterian.
10. Q. And Goodwill is over there between Dabb's Crossroads and
11. Mayesville?
12. A. Yes, sir.
13. Q. Okay, you've been members there all your life?
14. A. You talking about me?
15. Q. Yeah. Or your family?
16. A. Yes.
17. Q. Okay. All right, now, you graduated from high school in '66, what
18. did you do after you finished high school?
19. A. I graduated school in 1966 and I went to Santee Print and got me a
20. job.
21. Q. And how long did you work there?
22. A. About 40 years. About 40.
23. Q. 40 years!
24. A. Yes, sir.
25. Q. Uh-huh (affirmative response), you must've started down there

1. when they opened, didn't you?
2. A. Yes, sir.
3. Q. And are you retired now or do you still work there?
4. A. I'm retired now.
5. Q. How long you been retired?
6. A. I retired in 2006.
7. Q. I see. Okay, did you ever work anyplace else other than Santee
8. Print?
9. A. A little bit on the farm and that's all, you know?
10. Q. Okay, and are you married?
11. A. Separated.
12. Q. Separated form your wife?
13. A. Yes, sir.
14. Q. You been married more than one time?
15. A. One time, that's all.
16. Q. One time. What's your wife's name?
17. A. Ethel Muldrow.
18. Q. And what was her maiden name?
19. A. McFadden.
20. Q. And is her family from down in that area, as well?
21. A. From Alcolu.
22. Q. Alcolu, okay. And do you have children?
23. A. No, sir.
24. Q. No children?
25. A. No children.

1. Q. All right. I don't know whether I ever got an answer about
2. whether your other brothers were living in Sumter County or not.
3. You said one lives on Thomas Drive?
4. A. Yes, sir.
5. Q. And you got other brothers that live in Sumter County other than
6. your brother Herman?
7. A. One on 527, name is Reynolds Muldrow.
8. Q. Reynolds?
9. A. Reynolds Muldrow.
10. Q. Okay, and so that's it then, huh? That's all your brothers?
11. A. There's one in Florida.
12. Q. You got a brother in Florida?
13. A. Yes.
14. Q. And his name's what?
15. A. Ervin.
16. Q. Ervin?
17. A. Yeah.
18. Q. Okay. All right, tell me this - you've probably got a lot of relatives
19. in Sumter County?
20. A. Yes.
21. Q. Your mother's maiden name was what?
22. A. Burgess.
23. Q. Burgess?
24. A. Yes, sir.
25. Q. Tell me, and again, I'm not trying to test your memory, but the last

1. names of relatives of yours who live in Sumter County, either by
2. blood or marriage, who live in Sumter County. Like you gave me
3. your mother's maiden name Burgess. Give me the **last** names of
4. some of your other relatives that live in Sumter County. Your
5. cousins, or nieces, nephews, that sort of thing is what I'm looking
6. for.
7. A. Um, let's see, uh ... Uh ... Aunt Ceil.
8. Q. What's her last name?
9. A. Uh, she was a Muldrow.
10. Q. You know what ... She's not a Muldrow now?
11. A. Um, I didn't understand.
12. Q. Is she married?
13. A. Her husband passed.
14. Q. And what was his name, his last name?
15. A. Fred Muldrow.
16. Q. Oh, okay, so she was married to ... All right. Well just understand
17. my questions. I'm asking you for the last name, like Muldrow,
18. Burgess, or McFadden. The last names of some of your other
19. relatives, if you can tell me some of them.
20. A. Let's see, uh ... That's about all I can remember right now.
21. Q. That's fine. That's okay. Now did your wife -- Well tell me how
22. long you've been separated from your wife.
23. A. About ... Let's see, about 8 years, somewhere along in there.
24. Q. Okay. Did she work anyplace in Sumter during the time that you
25. and she were married?

1. A. B & D.
2. Q. B & D?
3. A. Yes.
4. Q. She still employed there?
5. A. Yes.
6. Q. Okay.
7. A. Far as I know.
8. Q. Anyplace else that you know of that's she's worked in Sumter?
9. A. No, sir.
10. Q. All right. Do you still do some farm work?
11. A. Did I do some farm work?
12. Q. Do you still some now?
13. A. No, sir.
14. Q. You retired from that, too.
15. A. No, sir, I ain't do no more farm work 'cause I got injured on my
16. job and I can't do nothing else.
17. Q. Okay, when did you get injured on the job?
18. A. In 2006, I think.
19. Q. And what kind of injury was that?
20. A. Machine. A machine ran over my foot.
21. Q. Did it break your foot?
22. A. It mashed - it break all the toes. It mashed it pretty good.
23. Q. Is that right?
24. A. Yes, sir.
25. Q. And you had a Workers' Compensation claim, I guess, did you not?

1. A. Um, let's see. Uh, I'm unemployed.
2. Q. Well I understand that.
3. A. Yeah.
4. Q. I understand. Did you file a claim for that injury with Workers' Compensation and get some money as a result of that injury to your foot?
5. Q. I understand. Did you file a claim for that injury with Workers' Compensation and get some money as a result of that injury to your foot?
6. Q. I understand. Did you file a claim for that injury with Workers' Compensation and get some money as a result of that injury to your foot?
7. A. Yes, sir.
8. Q. Okay, and you hadn't been back to work since then?
9. A. Since then I ain't been back to work.
10. Q. And did you apply for Social Security after you couldn't go back to work?
11. Q. And did you apply for Social Security after you couldn't go back to work?
12. A. Yes, sir.
13. Q. All right. Now do you have any hobbies? Do you hunt? Fish? That sort of thing?
14. Q. All right. Now do you have any hobbies? Do you hunt? Fish? That sort of thing?
15. A. Well I hunt every now and then and stuff like that.
16. Q. Do you have dogs or you still-hunt, or what you ...
17. A. Well I've got one dog.
18. Q. Beg your pardon?
19. A. One dog.
20. Q. A hunting dog or just a yard dog?
21. A. Just a dog.
22. Q. I see.
23. A. Yes, sir.
24. Q. What kind of hunting do you do when you go hunting?
25. A. Rabbit hunting.

1. Q. Rabbit hunting, all right. And how often do you do that?
2. A. Oh, about two times out the year.
3. Q. About twice a year?
4. A. Yes, sir.
5. Q. Did you go hunting this year, this past year?
6. A. No, sir, I didn't go hunting this year.
7. Q. You didn't?
8. A. No, sir.
9. Q. Any particular reason you didn't go?
10. A. Well walking on my feet, I can't hardly do too much now.
11. Q. It's hard to get around?
12. A. Yes, sir.
13. Q. Okay. Now you live on family property, do you not, out in the
14. country?
15. A. Yes, sir.
16. Q. Okay, and who does that property belong to? Do you have your
17. own property or does it belong to your mother or ... ?
18. A. Well I've got my own property. My mother have their own and
19. Herman have his own, too.
20. Q. Okay.
21. A. Yes, sir.
22. Q. All right, you live on a road called Trailer Lane?
23. A. Yes, sir, 6285 Trailer Lane.
24. Q. All right. Okay, now tell me about this accident that happened.
25. Tell me what happened.

1. A. Okay, I was in my brother's yard raking up leaves, straw and
2. clean up the yard, and I was putting it - we was burning it. And
3. so, after I raked the leaves and straw I started picking up the
4. sticks and I had 'em in my arm and I ram it down in the drum and
5. something - something exploded, I couldn't remember.
6. Q. Uh-huh (affirmative response).
7. A. And that's all.
8. Q. All right, now you say you were raking the yard.
9. A. Yes, sir.
10. Q. You were raking **your** yard or your brother's yard?
11. A. My brother's yard. I was helping him out.
12. Q. I see.
13. A. And I just help him, you know, help him every now and then if he
14. asks me.
15. Q. Uh-huh (affirmative response. Okay, now what time of day was
16. this?
17. A. In the afternoon.
18. Q. In the afternoon?
19. A. Yes, sir.
20. Q. All right, and you were raking up leaves and putting them in a burn
21. barrel.
22. A. Yes, sir.
23. Q. Is that a 55-gallon drum or something like that?
24. A. 55.
25. Q. Yeah. And tell me about whether there - was there a fire going in

1. that burn barrel ...
2. A. Yes, sir.
3. Q. ... when you got over to your brother's house that day?
4. A. Oh, I was ... I ...
5. Q. Or did you start the fire?
6. A. Yes.
7. Q. You started the fire?
8. A. Yes.
9. Q. All right, go ahead. I'm not going to ... Don't let me interrupt your
10. answer.
11. A. Okay. He was putting some stuff in it and, you know, I don't know
12. what it was 'cause right after I put them sticks in there that's -
13. something exploded. I don't know what it was. I couldn't
14. remember.
15. Q. I see. I understand. All right, let's go back. I'm just trying to get
16. my facts straight. Tell me first of all what you remember about
17. going to your brother's house that day. Did he come get you and
18. ask you to come help him or you just went over to your brother's
19. house, or what now?
20. A. I was at my back door and I walked over there.
21. Q. I see.
22. A. And then he asked me to help him.
23. Q. All right, well what was he doing when you saw him, the first time
24. you saw him that day?
25. A. Oh he was getting some stuff and putting in the trash - in the trash

1. drum ...
2. Q. Uh-huh (affirmative response).
3. A. ... and me and him was out there together.
4. Q. I see.
5. A. Yes, sir.
6. Q. Now before you got over there he was already putting stuff in the
7. drum?
8. A. Yes.
9. Q. Okay, and could you see what he was putting in there, where he
10. was getting it from?
11. A. No, sir.
12. Q. Was he getting sticks and leaves up out the yard or was he getting
13. something else?
14. A. I was getting the sticks and the leaves up out the yard and he was,
15. you know, he was out there with me.
16. Q. I understand. All right, when you first went over there was the
17. fire already burning in the trash can?
18. A. I start - I start - I started the fire.
19. Q. You started the fire?
20. A. Yes, sir, with them leaves and straw.
21. Q. Okay.
22. A. And then I started picking up the sticks and stuff.
23. Q. All right, sir, when you started the fire, was there anything already
24. in the drum when you started it?
25. A. I really - I really didn't pay it no attention.

1. Q. You didn't pay any attention to it.
2. A. That's right.
3. Q. And has that drum got a hole in the bottom of it or you just start
4. something and throw it down in the drum?
5. A. And no hole.
6. Q. Okay.
7. A. Yes.
8. Q. Were there any sticks in the drum when you started the fire?
9. A. No, sir.
10. Q. Okay. You started it with the sticks and the leaves that you raked
11. up, is that how you started it?
12. A. Yes, sir.
13. Q. All right. And you would rake leaves and pick up sticks and that
14. sort of thing and when you got a handful, or whatever, you'd put it
15. in the drum? Is that what you were doing?
16. A. Yes, sir, when I rake it up and I move this hand here.
17. Q. You were using a rake?
18. A. And my hand.
19. Q. And your hand.
20. A. Yes, sir.
21. Q. And when you'd rake up a handful you'd put that in the drum.
22. A. Yes, sir.
23. Q. Okay, and was your brother doing the same thing?
24. A. No, sir, he was just out in the yard with me. He was picking up,
25. you know, some little stuff like paper out there with me. So I was

1.           doing the most of it.
2.    Q.    Picking up paper out the yard?
3.    A.    Yes, sir.
4.    Q.    And was he doing the same thing you were doing, did he have a
5.           rake and ...
6.    A.    No, sir.
7.    Q.    He would just pick it up with his hand?
8.    A.    No, sir, he didn't have no rake.
9.    Q.    He'd just pick it up with his hand?
10.   A.    Yes.
11.   Q.    All right.
12.   A.    I was doing the ...
13.   Q.    You were doing the heavy work and he was doing the light work?
14.   A.    Yes, sir.
15.   Q.    Okay. All right, and tell me what happened. And I know it's not
16.           funny, I was just being light. I know it wasn't funny what
17.           happened to you. But go ahead and tell me about it.
18.   A.    Just?
19.   Q.    Tell me what you remember. You said you put some sticks down
20.           in that barrel and something blew up, is that right?
21.   A.    Yes, sir.
22.   Q.    And that's the last thing you remember?
23.   A.    That's - about them sticks - that's all I can remember.
24.   Q.    All right, what's the **next** thing you **do** remember after that?
25.   A.    Uh, when it - when it - when it hit me side my face and got my ear

1. and stuff and right here and back in behind my ear there.
2. Q. Uh-huh (affirmative response).
3. A. When it hit me it was ... See, I couldn't remember nothing.
4. Q. When you say it hit you,-something hit you other than a flash of
5. fire?
6. A. I don't - it was burning and I got the flash of fire, it just got here
7. and I just had to get out the way, that's all I can remember.
8. Q. That's all you remember?
9. A. Yes, sir.
10. Q. Okay. You went to the hospital down in Manning, I believe.
11. A. Yes.
12. Q. How did you get down there, your brother take you?
13. A. My brother.
14. Q. Okay.
15. A. And ...
16. Q. Then what happened from there?
17. A. Then they told me, said I had to go to Charleston to, you know,
18. 'cause, you know, it was burnt bad.
19. A. Uh-huh (affirmative response).
20. A. Eyes, you know, swelling up and stuff?
21. Q. Right.
22. A. And I couldn't, I mean, I was swelling so bad I couldn't see.
23. Q. So they took you to Charleston?
24. A. Yes.
25. Q. In an ambulance, or how did you get down there?

1. A. Well my brother took me down there.
2. Q. Your brother took you down.
3. A. Yes, sir.
4. Q. Okay. And they treated you down in Charleston?
5. A. Yes.
6. Q. How long did you stay in Charleston?
7. A. Well they did it one day.
8. Q. One day.
9. A. Yes. And my brother drove me back.
10. Q. Okay.
11. A. They had, you know, they had my face covered, covered with, uh,
12. when they work on me, it was covered like a mask 'til they send me
13. back the same day after the ...
14. Q. So you didn't stay overnight in Charleston?
15. A. No, sir.
16. Q. And you went back home?
17. A. Yes, sir.
18. Q. Now you went down to Augusta at some point in time didn't you?
19. A. Augusta? No, sir.
20. MR. PLAYER: He didn't go to Augusta?
21. HERMAN MULDROW: Huh-uh (negative response).
22. MR. PLAYER: Can we go off the record?
- 23.
24. **(Brief off-the-record discussion)**
25. Q. All right, so they put that mask on you, so to speak, and you didn't

1. have to say overnight.
2. A. No, sir, I didn't have to stay overnight.
3. Q. But you had to go back down two or three times, didn't you?
4. A. Yes, sir.
5. Q. What did they do to you when you went back down there?
6. A. They just - they just check my, uh, you know, my face and that
7. mask that was on there and, you know?
8. Q. Keep changing that? They would change it when you would go
9. down there?
10. A. Change it. I went in there and they, you know, make sure, you
11. know, it was okay.
12. Q. Don't have any infection and that sort of thing.
13. A. No infection, that's right.
14. Q. all right, sir.
15. A. Yes, sir.
16. Q. You know how many times you went down there?
17. A. I think about four times.
18. Q. Did you have any other problems other than the burns that you had
19. on your face?
20. A. I had my ears and when I get up my eyes be blurry, you know?
21. Q. Your eyes are blurry now? Have you had any ...
22. A. If I go out in the sun.
23. Q. Have you been to a doctor to see about your eyes?
24. A. No, sir.
25. Q. Have any treatment for your eyes?

1. A. No, sir, not yet.
2. Q. All right. And did the doctors down in Charleston look at your
3. eyes?
4. A. No, sir.
5. Q. To see if there's anything wrong with them?
6. A. No, sir.
7. Q. All right. Do you - you don't have any plans to go to an eye doctor,
8. do you, to see about your eyes?
9. A. No, I don't have no, uh ... I'm going to have to get some kind of,
10. you know, it's expensive to go to the doctor to let them check `em
11. out. My insurance is out.
12. Q. Are you drawing your Social Security?
13. A. Yes, sir.
14. Q. All right, are you on Medicare?
15. A. No, sir, huh-uh (negative response), I'm not on Medicare.
16. Q. You don't have a Medicare card yet?
17. A. No, sir.
18. Q. When did you start getting your Social Security?
19. A. Umm ...
20. Q. I guess you started when you were 62 or when you quit at Santee
21. Print?
22. A. I was 62, I think ... I think, now.
23. Q. So you didn't go on Social Security disability when you hurt your
24. foot, then.
25. A. Um, well, the doctor put me on disability when I hurt my foot, Mr.

1. Cahill.
2. Q. Beg your pardon?
3. A. Mr. Cahill? He said I couldn't do no more work.
4. Q. Well the reason I'm asking you those questions is if you went on
5. disability, once you go on disability Social Security, you can go get
6. your Medicare, I believe it's after a year or so that you can get your
7. Medicare card.
8. A. Yeah?
9. Q. So you might should look into that. I'm not trying to give you legal
10. advice or anything, you've got your lawyer here, but that thought
11. occurs to me. You don't have any appointments now to go back
12. to the doctor? You don't have to go back to Charleston anymore
13. do you?
14. A. No, sir.
15. Q. All right. Now, I was looking to see if you've got any scarring, and
16. you pointed to something behind your ear?
17. A. Oh, you want to look at it exact to see. See back there?
18. Q. Yeah, I see that.
19. A. Yeah.
20. Q. Now, you got any other scars that are visible or that you notice,
21. 'cause it looks like you got a pretty good result?
22. A. Right here, there's a little burn here, too.
23. Q. On your hands?
24. A. Yes, sir.
25. Q. Let me see what you're talking about.

1. A. Right there.
2. Q. Okay. All right. I see you're missing a thumb. That didn't
3. happen in ...
4. A. No, sir.
5. Q. How did you lose your thumb?
6. A. Uh, well, me and my father was working together and then he be
7. lifting up a tractor and he pulled the wrong lever and it clipped it
8. off.
9. Q. Goodness! How old were you when that happened?
10. A. About 12, something along ...
11. Q. 4 years old?
12. Q. About 12 years.
13. Q. **12** years old!
14. A. Yes, sir. Yeah.
15. Q. So you've learned to live without that thumb a long time ago, huh?
16. A. Well when I get ready to do something I didn't miss it na'er bit.
17. Q. All right. Well I'm glad that your injury wasn't any worse than it
18. was. Looks like you got a pretty good result from the doctors down
19. in Charleston.
20. A. Yes I did.
21. Q. Don't see any **facial** scars. The one back behind your ear ...
22. A. The one back here that's ...
23. Q. Does it bother you any way, that one back behind your ear?
24. A. It did ... It was bothering me for a while and then sometimes, you
25. know, I can turn my head like that and I can feel, you know ...

1. Q. You can feel it back there?
2. A. ... pull, like, you know?
3. Q. Kind of pulls a little tighter, the skin is a little tighter there?
4. A. Yes, sir.
5. Q. Okay. And other than that and what's on you hands, you don't
6. really have any other scarring, then.
7. A. No, sir.
8. Q. Got anything on your chest or anything, any burns on your chest?
9. A. No, sir.
10. Q. Were you wearing a long-sleeved shirt that day?
11. A. Uh, I was wearing a short-sleeve, you know, right up here?
12. Q. Uh-huh (affirmative response). And what you got was - I guess
13. you got it on your hands 'cause you were sticking the stuff down in
14. the barrel, huh?
15. A. Yes, sir.
16. Q. Okay. All right, other than the tightness in that scar, you got any
17. other - you told me about your blurred vision that you think was
18. somehow caused by that. Do you wear glasses?
19. A. No, sir.
20. Q. Any other problems that we haven't talked about that resulted from
21. that burn?
22. A. I have a little light headache every now and then.
23. Q. Little headache?
24. A. Yes, sir, every now and then.
25. Q. Uh-huh (affirmative response). When you - you say that you don't

1. remember anything shortly after the explosion took place. When
2. was the first time you came back to your senses after that
3. explosion? Were you still there in your brother's yard or were you
4. on the way to Charleston, or Manning I guess it was?
5. A. Let me see now. Let me get this right. I'm hard - I can't think,
6. but I was - my brother took me. I didn't get the understanding of
7. what you were saying just while ago now.
8. Q. When's the - after the explosion took place, what's the next thing
9. you remember?
10. A. Oh, I - I - I just, you know, it just a shock.
11. Q. Were you still in the yard, though, when you came back to your
12. senses?
13. A. Yes, sir.
14. Q. Before you got in the car to go to Manning.
15. A. Yes, sir.
16. Q. Okay.
17. A. Before we got in the car to go to Manning.
18. Q. All right. Okay, and when it exploded did it knock you off your
19. feet?
20. A. I know it tipped me a little.
21. Q. I beg your pardon?
22. A. Tipped me a little bit.
23. Q. Tipped you - tilted you back a little bit?
24. A. Yes, sir.
25. Q. You didn't fall down?

1. A. I didn't fall down.
2. Q. Okay. Was your brother nearby when that happened?
3. A. Yes, sir.
4. Q. All right, did you ever see what exploded?
5. A. No, sir.
6. Q. You never saw anything?
7. A. No, sir.
8. Q. Okay, did you talk to your brother about it? Did he tell you what
9. happened, or he investigate it?
10. A. I talked to him but I don't remember what he told me.
11. Q. I see.
12. A. My brother Herman there.
13. Q. Okay. So as far as you seeing or whatever, you don't know what
14. caused the explosion.
15. A. No, sir, I don't know what caused it to explode.
16. Q. Okay. All right, let me get my bearing kinda straight here a little
17. bit. I'm going to show you an aerial photograph and this is a
18. picture of where you live and where your brother lives. (Counsel
19. presents photograph to witness).
20. A. Yes, sir.
21. Q. This is Trailer Lane right here.
22. A. That's right, yes.
23. Q. And can you point out on there where your house is and where
24. your brother's house is?
25. A. Mmm, that look like - that look like my trailer there (witness points

1. on photograph).
2. Q. Okay, you live in a mobile home?
3. A. Yes, sir.
4. Q. Okay. And where would your brother's house be if that's your
5. house?
6. A. Not too far from here. I can't hardly, uh, recognize it on here.
7. Let's see now.
8. Q. Now this looks like a house here (counsel points on photograph).
9. A. You talking about right here (witness points on photograph).
10. Q. Right here (counsel points on photograph).
11. A. It'd be a big white house.
12. Q. All right, this is the road that goes back to 527 this way.
13. A. Yes.
14. Q. Come off of 527 and go back here, here's your trailer.
15. A. That's my trailer. Okay, and you turn here ...
16. Q. And you turn right here and go up here to your brother's house?
17. A. That's my brother's house there (witness points on photograph).
18. Q. Okay, can you - as best you can, can you look at picture and
19. looking at your trailer and your brother's house ...
20. A. Yes.
21. Q. ... kinda pinpoint for me where that burn ...
22. A. I could look - I could look from here to my brother's house.
23. Q. You can see all the way through there, right?
24. A. Yes.
25. Q. All right, where was that burn barrel?

1. A. Oh, over there. Okay so, that burn barrel right side that ...
2. Q. Is it between your house and your brother's house?
3. A. No, it was on his property.
4. Q. I understand, but is it between ...
5. A. Yes.
6. Q. It's not on the other side of his house. It's between your house
7. and his house?
8. A. Yes, sir. Two drums. They still there. They ...
9. Q. Sort of back toward the woods there?
10. A. Yes, sir.
11. Q. Now do you use that burn barrel yourself for you ...
12. A. No, sir ...
13. Q. ... to burn your trash?
14. A. ... I don't have no burn barrel.
15. Q. Okay, you don't use his burn barrel when you burn your trash?
16. A. No, sir.
17. Q. All right, now look right in here. It looks to me like some buildings
18. in here (counsel points on photograph), what is that in there?
19. A. Oh, that his barn at his house.
20. Q. Your brother's barn?
21. A. Yes.
22. Q. Okay. All right, can you take my pen and sort of put an "X", just
23. put an "X" right in there where you think the burn barrel would be.
24. A. All right, that's my trailer here, that burn barrel is ...
25. Q. Looks like this is the edge of the woods there.

1. A. Right. This is me over here. Just right there I think (witness marks  
2. on photograph).

3. Q. Okay.

4. A. I think.

5. Q. All right.

6. A. This one here is so small.

7. Q. I understand. I proud of you for not having to wear glasses to do  
8. that. Put your initials right there. Can you put your initials out  
9. here in the open where we can ...

10. A. You talking about right here (witness points on photograph)?

11. Q. Yeah, that'll be fine.

12. A. (Witness marks on photograph). Yeah, as old as I is, my memories  
13. ain't like it used to be.

14. Q. Well I can't give you much encouragement that it's going to get  
15. any better. All right, I have to ask you this question, Mr. Muldrow,  
16. I ask this of everybody I take a deposition of: You ever been  
17. convicted of any criminal act?

18. A. No, sir.

19. Q. Okay.

20. MR. PLAYER: All right, that's all I have for you. Thank you.

21. MR. BROOKS: I don't have any questions.

22.

23. **(Defendant's Exhibit # 1 - Marked)**

24.

25. (The deposition was concluded at 3:39 P. M.)

STATE OF SOUTH CAROLINA )  
COUNTY OF LEE )

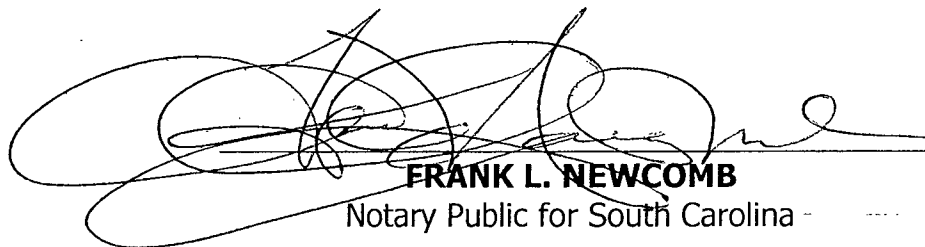
**NOTARY  
CERTIFICATE**

I, **FRANK L. NEWCOMB**, a Notary Public in and for the State of South Carolina, do hereby certify that on Thursday, February 8, 2011, there did appear before me **MELVIN MULDROW** as a witness in the aforementioned-captioned case; that said witness was sworn in by me to tell the truth, the whole truth and nothing but the truth, and examined in said case;

That the foregoing testimony was taken by me and thereafter reduced to writing under my supervision and the foregoing thirty-one (31) pages contain a full, true and accurate transcript of all testimony of said witness and all questions propounded thereto;

That I am not of kin or in anywise associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this 23<sup>rd</sup> day of August, 2011.

 (LS)  
**FRANK L. NEWCOMB**  
Notary Public for South Carolina

My Commission Expires:  
March 9, 2014

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS  
2010-CP-43-1499

MELVIN MULDROW, )  
Plaintiff, )  
vs. )  
HERMAN MULDROW, )  
Defendant. )  
\_\_\_\_\_ )

**COPY**

**DEPOSITION**

**OF:**

**HERMAN MULDROW**

The deposition of **HERMAN MULDROW** was taken pursuant to Notice and agreement of counsel under the South Carolina Rules of Civil Procedure before Frank L. Newcomb, a Notary Public in and for the State of South Carolina, in Sumter, South Carolina, on Thursday, February 8, 2011, commencing at 3:40 P.M.

**APPEARANCES OF COUNSEL:**

For the Plaintiff: Charles T. Brooks, III, Esquire  
For the Defendant: Thomas E. Player, Jr., Esquire

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**FRANK L. NEWCOMB**  
Court Reporter  
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**(803) 775-7549**

I N D E X:

WITNESS:           **HERMAN MULDROW**

ATTORNEY:

MR. BROOKS:	.	.	3	-	8
MR. PLAYER:	.	.	8	-	11

1. It was stipulated by and between counsel for all parties that  
2. all objections are pursuant to the South Carolina Rules of Civil  
3. Procedure.

4. It was further stipulated that the reading and signing of the  
5. deposition by the witness was waived by all parties.

6.  
7. (After being duly sworn **HERMAN MULDROW** testified as  
8. follows: )

9.  
10.

**EXAMINATION BY MR. BROOKS:**

11.

12. Q. Mr. Muldrow, we've met before; I'm Charles Brooks, I represent  
13. your brother Melvin in this lawsuit we brought against you. I'm  
14. going to ask you some questions about the incident that took place,  
15. I believe it was about March 10, 2010, in your yard, is that correct?

16. A. That's correct.

17. Q. And this was your property that he came on, is that correct?

18. A. That's correct.

19. Q. And it was at your request that he come onto the property?

20. A. Yes, uh-huh (affirmative response) (witness nods head yes).

21. Q. And he was coming over there to help you clean up the yard, is  
22. that correct?

23. A. That's correct, uh-huh (affirmative response).

24. Q. And he normally - this has been a routine thing, he'd come over  
25. there at your request just to clean up the yard. This isn't like the

1. first time this ever happened that he'd come over there and help
2. you clean up the yard.
3. A. Yes, he's been doing that quite some time, yeah.
4. Q. Okay. And the 55-gallon drum, or whatever the gallons were, they
5. were actually on your property?
6. A. Yeah, there's two of 'em.
7. Q. Okay.
8. A. You know, they've been there for quite some time.
9. Q. Okay, and they belong to you?
10. A. Yeah, I placed them there and everything.
11. Q. Okay.
12. A. Uh-huh (affirmative response).
13. Q. Now as far as whatever was in there, it was in there before Melvin
14. came over there, is that correct?
15. A. Uh, apparently it did, you know, because ... Or I would be
16. uncertain in regards to that because he and I both were, you know,
17. putting objects in those cans.
18. Q. Uh-huh (affirmative response).
19. A. And so, to say it was, you know, not knowing what it was that
20. exploded would, you know, would be, um, something I couldn't
21. see.
22. Q. Do you know what it was that exploded?
23. A. I don't have any idea. You know, normally I have household trash
24. in those drums and all of the yard cleanings, etcetera, goes in
25. there, too. So, you know, to specifically say what was in there, I

1.           wouldn't know.
2.    Q.    Okay. Now it's fair to say you could've placed things in there
3.           before Melvin even came over there, is that correct?
4.    A.    Oh, absolutely. Absolutely. Yeah.
5.    Q.    Okay, and you just don't remember.
6.    A.    Right. Right.
7.    Q.    Okay. And when the explosion happened it covered his face and
8.           hands?
9.    A.    Uh-huh (affirmative response) (witness nods head yes).
10.   Q.    And you're the one who took him to the hospital?
11.   A.    My baby brother.
12.   Q.    Your baby brother is the one who took him to the hospital?
13.   A.    Right, Reynolds.
14.   Q.    Okay, but you're the one called everybody's attention - put the
15.           things in place to get him the medical attention?
16.   A.    That's correct.
17.   Q.    Okay. Now Melvin had talked about starting the fire. Was it he
18.           that started the fire?
19.   A.    Yes, uh-huh (affirmative response) (witness nods head yes).
20.   Q.    But this was something he normally would do with the drum
21.           before, right?
22.   A.    Yeah, he would start a fire once, you know, once they get up to a
23.           certain level, you know, you've got to burn 'em down.
24.   Q.    Right.
25.   A.    So that's why he started it.

1. Q. And this explosion had never happened before?
2. A. No, we never had anything happen out there.
3. Q. Even though he had started the fire, this is a routine thing. You
4. called him over there, come help you clean up stuff in the yard and
5. he's putting stuff in there and you're putting stuff in there and he
6. starts that fire. I mean, that's not like a one-time thing, that's been
7. an occasional thing to ever go on.
8. A. Right. Right.
9. Q. So the fact that it exploded was a shock to you and him, is that
10. right?
11. A. Absolutely.
12. Q. Okay. And that was obviously not something that he would expect
13. or you would expect?
14. A. No, it was totally out of the --.
15. Q. Okay. After, you know, your brother Reynolds took him to the
16. hospital, you never found out what it was in the barrel that caused
17. the explosion?
18. A. Never did. I went to examine it, but, you know, to pinpoint what
19. it was, you know, I never could pinpoint it. but I know when it
20. exploded a whole bunch of debris and everything came out of
21. there, like, you know, household cans and stuff. You know, 'cause
22. out in the country we don't have city dumps, you know, people
23. coming by and picking it up. We've got to put it in the cans.
24. Q. But it's fair to say it wasn't because he started the fire.
25. A. No.

1. Q. Because he had started a fire on numerous occasions.
2. A. Oh yeah.
3. Q. And nothing like that had happened.
4. A. Right.
5. Q. Okay. And when he was coming over there, he was coming over
6. there to benefit you, is that right?
7. A. Yeah. Yeah. Obviously the terrain that I have to cover I need
8. some help, as much as I can get.
9. Q. And I think Mr. Player kind of mentioned this, he was doing the
10. heavy lifting and you were kind of sort of doing a little bit of the
11. lighter load. And again, like Mr. Player said, we're not making too
12. much fun of the situation, the accident, but is that pretty much
13. been the general operation? Because this wasn't a one-time thing.
14. A. Right.
15. Q. Melvin would come over at your request and help ...
16. A. Uh-huh (affirmative response) (witness nods head yes).
17. Q. ... do various things.
18. A. Yeah, and I'd give him stipends, you know, money to, you know,
19. whatever, to subsidize, you know, because he's on a fixed income.
20. Q. And that's why when this thing happened you wanted to make sure
21. he got his medical attention that he needed to take care of the
22. burns, is that right?
23. A. Oh, absolutely. Because, once, you know, I saw him and the
24. **condition**, you know, at the onset of it was, you know, it looked
25. pretty horrible to me, you know, and obviously it had to be

1. addressed.
2. Q. Okay. All right.
3. MR. BROOKS: I don't have any other questions.
- 4.

5. **EXAMINATION BY MR. PLAYER:**

- 6.
7. Q. Let me just ask you a few questions, Mr. Muldrow.
8. A. All right.
9. Q. The aerial photograph that your brother looked at, it's marked as
10. Defendant's Exhibit #1 in his deposition.
11. A. Uh-huh (affirmative response).
12. Q. And you see where he put an "X" giving the location of the burn
13. barrel? Is that **approximately** correct?
14. A. If we - as identifying this as the Trailer Lane and this is where, you
15. know, the offset, the spur that goes to my house, yeah.
16. Q. Is that your house right there (counsel points on photograph)?
17. A. Um, I can't ... Yeah! Yeah, this **is** - this is my residence looking
18. at the ...
19. Q. Right.
20. A. This is an aerial photo from the top, that's right.
21. Q. And he put an "X" here (counsel points on photograph) at the right
22. edge of the woods between your house and his trailer, which he
23. pointed out, back here.
24. A. Uh-huh (affirmative response).
25. Q. Is that the approximate location of it?

1. A. I think it's somewhere right in this area right here (witness points
2. on photograph).
3. Q. Okay.
4. A. Yeah, because it's much closer to **my** residence than it is to his.
5. Q. All right.
6. A. So I think that he is coming off of that spur there, well, adjacent
7. to **his** residence, but this is where this conduit of my yard comes
8. back through here.
9. Q. Right.
10. A. Uh-huh (affirmative response).
11. Q. When this explosion took place were you **in the yard**?
12. A. Yes, uh-huh (affirmative response).
13. Q. And were you near your brother?
14. A. In close proximity. I guess, you know, it's not too big a yard and,
15. you know, I mean, as far as width is concerned. Length it's pretty
16. long from side-to-side. But in close proximity, twenty, thirty feet,
17. somewhere in that neighborhood.
18. Q. Did you hear an explosion?
19. A. Yes, uh-huh (affirmative response).
20. Q. And did - you said something about some debris came out of the
21. barrel when it exploded, is that right?
22. A. Right. right.
23. Q. Now did that debris blow up out of the barrel, was it burning debris
24. there in the yard or was this some of the sticks and leaves that
25. your brother was putting in there at the time the explosion

1.            occurred, or do you know?
2.    A.    Looked like it was some household cans, you know. I mean, some
3.            of those things that we dumps in there ...
4.    Q.    Right.
5.    A.    ... out of the household. Looked like it was some household cans
6.            out there along with other particles of paper, and it looked like
7.            some plastic and stuff was smoking.
8.    Q.    And this was outside the barrel?
9.    A.    Outside of the barrel and ...
10.   Q.    Okay.
11.   A.    ... in close proximity.
12.   Q.    Was there any damage done to the barrel by the explosion?
13.   A.    In reference to putting a hole in it or something like that?
14.   Q.    Yeah. Anything.
15.   A.    No, there wasn't any, you know, I guess it was just was the top
16.            being off of it, you know.
17.   Q.    Okay, and this is just a regular 55-gallon drum with the top off?
18.   A.    Yeah, there's two of them there. Right, I have two 55-gallon
19.            drums with the top off.
20.   Q.    Okay. Now, you and I haven't had much conversation before
21.            today. Tell me how long **you** have lived in that vicinity down there
22.            and what's your background?
23.   A.    Basically all my life. I'm a college graduate. And I started out, as
24.            a matter of fact, at Santee Print working my way through college.
25.   Q.    Is that right?

1. A. That's right. And after college I changed career and went into  
2. human services. And from human services I got into mental  
3. health and I was a clinical counselor, and that's where I finished up  
4. at.

5. Q. And where were you employed most of your career?

6. A. At Pee Dee Mental Health; Disabilities and Special Needs, both in  
7. Florence and Bishopville.

8. Q. Uh-huh (affirmative response).

9. A. I did more of that **type** of work in those two or three areas.

10. Q. And where did you attend your higher education?

11. A. Claflin College in Orangeburg.

12. Q. And did you finish high school at Walker-Gamble, as well?

13. A. No, I didn't. I did it over at Eastern.

14. Q. Okay.

15. A. It's now R. E. Davis, but I did it at Eastern.

16. Q. Right.

17. A. Yeah.

18. Q. And what year did you finish?

19. A. In 1970.

20. Q. Well I'm a Mayewood graduate, so --.

21. A. Okay. That's all right.

22. MR. PLAYER: Okay, I think that's all I have. Thank you.

23. MR. BROOKS: Nothing further.

24.

25. (The deposition was concluded at 3:50 P. M.)

STATE OF SOUTH CAROLINA )  
COUNTY OF LEE )

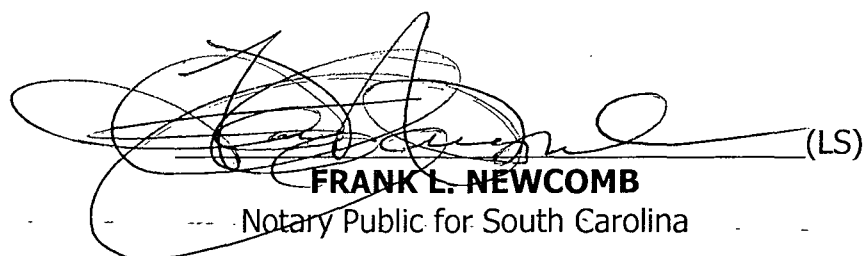
**NOTARY  
CERTIFICATE**

I, **FRANK L. NEWCOMB**, a Notary Public in and for the State of South Carolina, do hereby certify that on Tuesday, February 8, 2011, there did appear before me **HERMAN MULDROW** as a witness in the aforementioned-captioned case; that said witness was sworn in by me to tell the truth, the whole truth and nothing but the truth, and examined in said case;

That the foregoing testimony was taken by me and thereafter reduced to writing under my supervision and that the foregoing eleven (11) pages contain a full, true and accurate transcript of all testimony of said witness and all questions propounded thereto.

That I am not of kin or in anywise associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this 24<sup>th</sup> day of August, 2011.

 (LS)  
**FRANK L. NEWCOMB**  
Notary Public for South Carolina

My Commission Expires:  
March 9, 2014

Melvin Muldrow,  
 Plaintiff  
vs.

CASE NO. 2010-CP-43-1499

Herman Muldrow,

Defendant

check box above indicating submitting party

RECORDED  
2011 AUG 10 PM 2: 01  
JAMES D. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

**MOTION INFORMATION FORM  
AND COVER SHEET**

<u>Name, S.C. Bar No. &amp; Address of Plaintiff's Attorney</u>		<u>Name, S.C. Bar No. &amp; Address of Defendant's Attorney</u>	
Telephone:	Fax:	Thomas E. Player, Jr., Esquire SC Bar #: 4478	
e-mail:	Other:	305 N. Main Street	
		PO Drawer 3690	
		Sumter, South Carolina 29151-3690	
		Telephone: (803)775-2306 Fax: (803) 436-5960	
		e-mail: tomplayer@sc.rr.com	

- MOTION HEARING REQUESTED (attach written Motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)


**SECTION I: Hearing Information**

Nature of Motion: Notice and Motion for Summary Judgment  
Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed: YES / NO

**SECTION II: Motion Type**

- Written Motion attached
- Form Motion -

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

  
 \_\_\_\_\_  
 Signature of Attorney for Plaintiff / Defendant

\_\_\_\_\_  
 August 10, 2011  
 Date Submitted

**SECTION III: Motion Fee**

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

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.
- Other: \_\_\_\_\_

\_\_\_\_\_  
 JUDGE

CODE: \_\_\_\_\_ DATE: \_\_\_\_\_

**CLERK'S VERIFICATION**

DATE FILED

Collected by: \_\_\_\_\_  
(print name)

- MOTION FEE COLLECTED: \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \_\_\_\_\_

RECORDED

2011 AUG 10 PM 2:00

JAMES D. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER ) FOR THE THIRD JUDICIAL CIRCUIT

Melvin Muldrow,

Plaintiff,

vs.

Herman Muldrow,

Defendant.

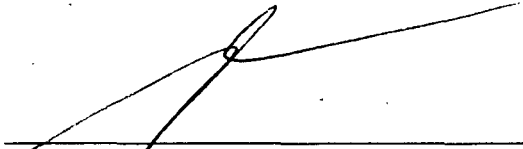
**NOTICE AND MOTION FOR SUMMARY  
JUDGMENT**

TO THE PLAINTIFF AND HIS ATTORNEY:

The Defendant moves for Summary Judgment pursuant to Rule 56 SCRPC, asserting that no genuine issue of material fact exists as to whether any negligent act or omission of the Defendant, Herman Muldrow, contributed to the injury claimed by the Plaintiff and that the Defendant, is entitled to Judgment as a matter of law.

This motion will be supported by the Pleadings, Discovery Responses and Depositions.

Respectfully submitted,

  
THOMAS E. PLAYER, JR.  
ATTORNEY FOR THE DEFENDANT  
PLAYER & MCMILLAN, LLC  
POST OFFICE DRAWER 3690  
SUMTER, SOUTH CAROLINA 29151-3690

RECORDED

2011 AUG 10 PM 2:01

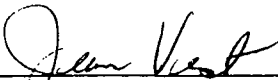
STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
) FOR THE THIRD JUDICIAL CIRCUIT  
) CLERK OF COURT  
) SUMTER COUNTY, SOUTH CAROLINA )  
COUNTY OF SUMTER ) NUMBER: 2010 -CP-43-1499

Melvin Muldrow, )  
)  
Plaintiff, )  
)  
vs. )  
)  
Herman Muldrow, )  
)  
Defendant. )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

This is to certify that a copy of Notice and Motion for Summary Judgment in the foregoing matter was deposited in the United States mail, with first class postage affixed thereto, addressed to the following attorney of record :

Mr. Charles T. Brooks, III  
The Brooks Law Offices  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151

  
\_\_\_\_\_  
Jean Vest  
Assistant to Thomas E. Player, Jr.

August 9, 2011

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )  
Melvin Muldrow )  
Plaintiff, )  
-vs- )  
Herman Muldrow )  
Defendant. )  
\*\*\*\*\*

RECORDED  
2011 SEP 30 11:00  
IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Memorandum in Opposition to Motion for  
Summary Judgment

C/A #: 2010-CP-43-1499

To: Thomas E. Player, Jr., Attorney for the Defendant:

The Plaintiff, by and through her counsel, Charles T. Brooks III, responds to the Defendant's Motion for Summary Judgment as filed with this Court on August 10, 2011 and makes his opposition to this Motion in this matter, as follows:

Under South Carolina law, "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks &

Recreation Comm., 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). If "the parties vehemently dispute the inferences and conclusions to be drawn from the undisputed facts, . . . that simply establishes that summary judgment is not appropriate[.]"

Montgomery v. CSX Transp., Inc., 656 S.E.2d 20, 29 (S.C. 2008).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.

Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues." Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008). "If triable issues exist, those issues must go to the jury."

Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003).

"Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Id.

(internal quotation marks omitted); accord Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002); Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); Baughman v. American Telephone and Telegraph Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

The South Carolina Supreme Court recently clarified earlier confusion about whether a scintilla of evidence is sufficient to defeat summary judgment. Hancock v. Mid-South Management Co., Inc., 673 S.E.2d 801, 802-3 (S.C. 2009). In Hancock, the Court held that "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Id. at 803. More than a

scintilla is required only in cases requiring heightened burdens of proof or applying federal law. Id. Accordingly, when the ordinary burden of proof is applicable, only a scintilla of evidence is required to withstand summary judgment. Id.

In this case, the Plaintiff was injured on the defendant's property while there for the defendant's benefit. Clearly there is evidence exhibited in the attachments of the Defendant's liability in this matter.

RESPECTFULLY SUBMITTED



Charles T. Brooks, III  
309 Broad Street  
Sumter, SC 29150  
(803) 418-5708  
Attorney for Plaintiff

Dated: 9/30/2011

RECORDED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
2011 SEP 30 PM 1:00 ) THIRD JUDICIAL CIRCUIT  
COUNTY OF SUMTER )

JAMES C. CAMPBELL )  
CLERK OF COURT ) CA #: 2010-CP-43-1499  
SUMTER COUNTY, S.C. )

Melvin Muldrow

Plaintiff, )

-vs- )

Herman Muldrow )

Defendant. )

) Exhibits in Support of Plaintiff's  
) Memorandum in Opposition of  
) Defendant's Motion for Summary  
) Judgment

\*\*\*\*\*

1. Deposition of Herman Muldrow
2. Affidavit of Melvin Muldrow

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS  
2010-CP-43-1499

MELVIN MULDROW, )  
Plaintiff, )  
 )  
vs. )  
 )  
HERMAN MULDROW, )  
Defendant. )  
\_\_\_\_\_ )

**COPY**  
**DEPOSITION**  
**OF:**  
**HERMAN MULDROW**

The deposition of **HERMAN MULDROW** was taken pursuant to Notice and agreement of counsel under the South Carolina Rules of Civil Procedure before Frank L. Newcomb, a Notary Public in and for the State of South Carolina, in Sumter, South Carolina, on Thursday, February 8, 2011, commencing at 3:40 P.M.

**APPEARANCES OF COUNSEL:**

For the Plaintiff: Charles T. Brooks, III, Esquire  
For the Defendant: Thomas E. Player, Jr., Esquire

---

**FRANK L. NEWCOMB**  
Court Reporter  
111 North Main Street  
Sumter, South Carolina 29150  
**(803) 775-7549**

I N D E X:

WITNESS:           HERMAN MULDROW

ATTORNEY:

MR. BROOKS:	.	.	3	-	8
MR. PLAYER:	.	.	8	-	11

1. It was stipulated by and between counsel for all parties that  
2. all objections are pursuant to the South Carolina Rules of Civil  
3. Procedure.

4. It was further stipulated that the reading and signing of the  
5. deposition by the witness was waived by all parties.

6.  
7. (After being duly sworn **HERMAN MULDROW** testified as  
8. follows: )

9.  
10. **EXAMINATION BY MR. BROOKS:**

11.  
12. Q. Mr. Muldrow, we've met before; I'm Charles Brooks, I represent  
13. your brother Melvin in this lawsuit we brought against you. I'm  
14. going to ask you some questions about the incident that took place,  
15. I believe it was about March 10, 2010, in your yard, is that correct?  
16. A. That's correct.  
17. Q. And this was your property that he came on, is that correct?  
18. A. That's correct.  
19. Q. And it was at your request that he come onto the property?  
20. A. Yes, uh-huh (affirmative response) (witness nods head yes).  
21. Q. And he was coming over there to help you clean up the yard, is  
22. that correct?  
23. A. That's correct, uh-huh (affirmative response).  
24. Q. And he normally - this has been a routine thing, he'd come over  
25. there at your request just to clean up the yard. This isn't like the

1. first time this ever happened that he'd come over there and help
2. you clean up the yard.
3. A. Yes, he's been doing that quite some time, yeah.
4. Q. Okay. And the 55-gallon drum, or whatever the gallons were, they
5. were actually on your property?
6. A. Yeah, there's two of 'em.
7. Q. Okay.
8. A. You know, they've been there for quite some time.
9. Q. Okay, and they belong to you?
10. A. Yeah, I placed them there and everything.
11. Q. Okay.
12. A. Uh-huh (affirmative response).
13. Q. Now as far as whatever was in there, it was in there before Melvin
14. came over there, is that correct?
15. A. Uh, apparently it did, you know, because ... Or I would be
16. uncertain in regards to that because he and I both were, you know,
17. putting objects in those cans.
18. Q. Uh-huh (affirmative response).
19. A. And so, to say it was, you know, not knowing what it was that
20. exploded would, you know, would be, um, something I couldn't
21. see.
22. Q. Do you know what it was that exploded?
23. A. I don't have any idea. You know, normally I have household trash
24. in those drums and all of the yard cleanings, etcetera, goes in
25. there, too. So, you know, to specifically say what was in there, I

1.           wouldn't know.
2.    Q.    Okay. Now it's fair to say you could've placed things in there
3.           before Melvin even came over there, is that correct?
4.    A.    Oh, absolutely. Absolutely. Yeah.
5.    Q.    Okay, and you just don't remember.
6.    A.    Right. Right.
7.    Q.    Okay. And when the explosion happened it covered his face and
8.           hands?
9.    A.    Uh-huh (affirmative response) (witness nods head yes).
10.   Q.    And you're the one who took him to the hospital?
11.   A.    My baby brother.
12.   Q.    Your baby brother is the one who took him to the hospital?
13.   A.    Right, Reynolds.
14.   Q.    Okay, but you're the one called everybody's attention - put the
15.           things in place to get him the medical attention?
16.   A.    That's correct.
17.   Q.    Okay. Now Melvin had talked about starting the fire. Was it he
18.           that started the fire?
19.   A.    Yes, uh-huh (affirmative response) (witness nods head yes).
20.   Q.    But this was something he normally would do with the drum
21.           before, right?
22.   A.    Yeah, he would start a fire once, you know, once they get up to a
23.           certain level, you know, you've got to burn 'em down.
24.   Q.    Right.
25.   A.    So that's why he started it.

1. Q. And this explosion had never happened before?
2. A. No, we never had anything happen out there.
3. Q. Even though he had started the fire, this is a routine thing. You
4. called him over there, come help you clean up stuff in the yard and
5. he's putting stuff in there and you're putting stuff in there and he
6. starts that fire. I mean, that's not like a one-time thing, that's been
7. an occasional thing to ever go on.
8. A. Right. Right.
9. Q. So the fact that it exploded was a shock to you and him, is that
10. right?
11. A. Absolutely.
12. Q. Okay. And that was obviously not something that he would expect
13. or you would expect?
14. A. No, it was totally out of the --.
15. Q. Okay. After, you know, your brother Reynolds took him to the
16. hospital, you never found out what it was in the barrel that caused
17. the explosion?
18. A. Never did. I went to examine it, but, you know, to pinpoint what
19. it was, you know, I never could pinpoint it. but I know when it
20. exploded a whole bunch of debris and everything came out of
21. there, like, you know, household cans and stuff. You know, 'cause
22. out in the country we don't have city dumps, you know, people
23. coming by and picking it up. We've got to put it in the cans.
24. Q. But it's fair to say it wasn't because he started the fire.
25. A. No.

1. Q. Because he had started a fire on numerous occasions.
2. A. Oh yeah.
3. Q. And nothing like that had happened.
4. A. Right.
5. Q. Okay. And when he was coming over there, he was coming over there to benefit you, is that right?
- 6.
7. A. Yeah. Yeah. Obviously the terrain that I have to cover I need
8. some help, as much as I can get.
9. Q. And I think Mr. Player kind of mentioned this, he was doing the
10. heavy lifting and you were kind of sort of doing a little bit of the
11. lighter load. And again, like Mr. Player said, we're not making too
12. much fun of the situation, the accident, but is that pretty much
13. been the general operation? Because this wasn't a one-time thing.
14. A. Right.
15. Q. Melvin would come over at your request and help ...
16. A. Uh-huh (affirmative response) (witness nods head yes).
17. Q. ... do various things.
18. A. Yeah, and I'd give him stipends, you know, money to, you know,
19. whatever, to subsidize, you know, because he's on a fixed income.
20. Q. And that's why when this thing happened you wanted to make sure
21. he got his medical attention that he needed to take care of the
22. burns, is that right?
23. A. Oh, absolutely. Because, once, you know, I saw him and the
24. **condition**, you know, at the onset of it was, you know, it looked
25. pretty horrible to me, you know, and obviously it had to be

1. addressed.

2. Q. Okay. All right.

3. MR. BROOKS: I don't have any other questions.

4.

5. **EXAMINATION BY MR. PLAYER:**

6.

7. Q. Let me just ask you a few questions, Mr. Muldrow.

8. A. All right.

9. Q. The aerial photograph that your brother looked at, it's marked as  
10. Defendant's Exhibit #1 in his deposition.

11. A. Uh-huh (affirmative response).

12. Q. And you see where he put an "X" giving the location of the burn  
13. barrel? Is that **approximately** correct?

14. A. If we - as identifying this as the Trailer Lane and this is where, you  
15. know, the offset, the spur that goes to my house, yeah.

16. Q. Is that your house right there (counsel points on photograph)?

17. A. Um, I can't ... Yeah! Yeah, this **is** - this is my residence looking  
18. at the ...

19. Q. Right.

20. A. This is an aerial photo from the top, that's right.

21. Q. And he put an "X" here (counsel points on photograph) at the right  
22. edge of the woods between your house and his trailer, which he  
23. pointed out, back here.

24. A. Uh-huh (affirmative response).

25. Q. Is that the approximate location of it?

1. A. I think it's somewhere right in this area right here (witness points
2. on photograph).
3. Q. Okay.
4. A. Yeah, because it's much closer to **my** residence than it is to his.
5. Q. All right.
6. A. So I think that he is coming off of that spur there, well, adjacent
7. to **his** residence, but this is where this conduit of my yard comes
8. back through here.
9. Q. Right.
10. A. Uh-huh (affirmative response).
11. Q. When this explosion took place were you **in the yard**?
12. A. Yes, uh-huh (affirmative response).
13. Q. And were you near your brother?
14. A. In close proximity. I guess, you know, it's not too big a yard and,
15. you know, I mean, as far as width is concerned. Length it's pretty
16. long from side-to-side. But in close proximity, twenty, thirty feet,
17. somewhere in that neighborhood.
18. Q. Did you hear an explosion?
19. A. Yes, uh-huh (affirmative response).
20. Q. And did - you said something about some debris came out of the
21. barrel when it exploded, is that right?
22. A. Right. right.
23. Q. Now did that debris blow up out of the barrel, was it burning debris
24. there in the yard or was this some of the sticks and leaves that
25. your brother was putting in there at the time the explosion

1.           occurred, or do you know?
2.    A.    Looked like it was some household cans, you know. I mean, some
3.           of those things that we dumps in there ...
4.    Q.    Right.
5.    A.    ... out of the household. Looked like it was some household cans
6.           out there along with other particles of paper, and it looked like
7.           some plastic and stuff was smoking.
8.    Q.    And this was outside the barrel?
9.    A.    Outside of the barrel and ...
10.   Q.    Okay.
11.   A.    ... in close proximity.
12.   Q.    Was there any damage done to the barrel by the explosion?
13.   A.    In reference to putting a hole in it or something like that?
14.   Q.    Yeah. Anything.
15.   A.    No, there wasn't any, you know, I guess it was just was the top
16.           being off of it, you know.
17.   Q.    Okay, and this is just a regular 55-gallon drum with the top off?
18.   A.    Yeah, there's two of them there. Right, I have two 55-gallon
19.           drums with the top off.
20.   Q.    Okay. Now, you and I haven't had much conversation before
21.           today. Tell me how long **you** have lived in that vicinity down there
22.           and what's your background?
23.   A.    Basically all my life. I'm a college graduate. And I started out, as
24.           a matter of fact, at Santee Print working my way through college.
25.   Q.    Is that right?

1. A. That's right. And after college I changed career and went into
2. human services. And from human services I got into mental
3. health and I was a clinical counselor, and that's where I finished up
4. at.
5. Q. And where were you employed most of your career?
6. A. At Pee Dee Mental Health; Disabilities and Special Needs, both in
7. Florence and Bishopville.
8. Q. Uh-huh (affirmative response).
9. A. I did more of that **type** of work in those two or three areas.
10. Q. And where did you attend your higher education?
11. A. Claflin College in Orangeburg.
12. Q. And did you finish high school at Walker-Gamble, as well?
13. A. No, I didn't. I did it over at Eastern.
14. Q. Okay.
15. A. It's now R. E. Davis, but I did it at Eastern.
16. Q. Right.
17. A. Yeah.
18. Q. And what year did you finish?
19. A. In 1970.
20. Q. Well I'm a Mayewood graduate, so --.
21. A. Okay. That's all right.
22. MR. PLAYER: Okay, I think that's all I have. Thank you.
23. MR. BROOKS: Nothing further.
- 24.
25. (The deposition was concluded at 3:50 P. M.)

STATE OF SOUTH CAROLINA )  
COUNTY OF LEE )

**NOTARY  
CERTIFICATE**

I, **FRANK L. NEWCOMB**, a Notary Public in and for the State of South Carolina, do hereby certify that on Tuesday, February 8, 2011, there did appear before me **HERMAN MULDROW** as a witness in the aforementioned-captioned case; that said witness was sworn in by me to tell the truth, the whole truth and nothing but the truth, and examined in said case;

That the foregoing testimony was taken by me and thereafter reduced to writing under my supervision and that the foregoing eleven (11) pages contain a full, true and accurate transcript of all testimony of said witness and all questions propounded thereto.

That I am not of kin or in anywise associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this 24<sup>th</sup> day of August, 2011.

 (LS)  
**FRANK L. NEWCOMB**  
Notary Public for South Carolina

My Commission Expires:  
March 9, 2014



State of South Carolina        )  
  )  
County of Sumter                )  
  )

Melvin Muldrow,  
Plaintiff

Motions Hearing  
2010-CP-43-01499

vs.

Herman Muldrow,  
Defendant

May 20, 2012  
Sumter, S.C.

Before the Honorable W. Jeffrey Young, Judge.

A P P E A R A N C E S:

Mr. Charles T. Brooks, III,  
Attorney for Plaintiff

Mr. Thomas E. Player, Jr.  
Attorney for Defendant

Margaret T. Sullivan,  
Court Reporter

1 THE COURT: Mr. Brooks, and, Mr. Player.

2 MR. PLAYER: I am going to hand up the the  
3 original deposition of the Plaintiffs.

4 THE COURT: Is this the one that is  
5 attached to your motion?

6 MR. PLAYER: I believe that is Mr. Brooks'  
7 affidavit that has the deposition attached.

8 THE COURT: The record will reflect this  
9 is the deposition of Melvin Muldrow original was  
10 opened by the court on December 12, 2011.  
11 Mr. Player, you may proceed.

12 MR. PLAYER: Judge, this is specifically  
13 I hand up, I think it is important. The  
14 deposition in this case, the Plaintiff and his  
15 brother. And they live next door to each other.  
16 And they burn trash in a 55 gallon drum in the  
17 back yard. And we took depositions in February of  
18 2011. This incident occurred, I believe, in March  
19 of 2010. We took his deposition right after, a  
20 year later.

21 And in that time the Plaintiff said that  
22 they were putting trash in this barrel. And there  
23 was an explosion of sorts that resulted in his  
24 getting burned. And I asked the Plaintiff on  
25 deposition, do you know what -- if he knew what

1       caused the explosion. His response was, he didn't  
2       know what caused it. And that while he talked to  
3       his brother, he couldn't remember anything that  
4       his brother had said about the cause of the  
5       explosion.

6               On that same day, we took the deposition,  
7       Mr. Brooks took the deposition of his brother, the  
8       Defendant. And I'll hand up portions of that  
9       deposition. And he was questioned in the same  
10      fashion if he knew what caused the blow-up, the  
11      explosion. His response was no; that they both  
12      put things in the barrel, and he didn't know what  
13      caused it. Now of course Mr. Brooks has since,  
14      after we filed this motion for summary judgment;  
15      filed an affidavit by his client to the effect  
16      that in a conversation with this brother. And his  
17      brother claims the explosion was caused by some  
18      aerosol cans he put in, Your Honor.

19             THE COURT: In your earlier argument  
20      that's a sham affidavit. The affidavit that  
21      contradicts your own client.

22             MR. PLAYER: Judge, and I am not going to  
23      repeat that argument because you just heard this  
24      morning. And I know it is kind of fresh in your  
25      mind. But I will say that the authority on that

1 case of course is the Kate Hockley versus  
2 Administrator. Our own Clerk of Courts have said  
3 it is not sham affidavit because it didn't  
4 contradict. And it gives clear, Judge, that it  
5 contradicts the deposition testimony. Deposition  
6 and discovery and that sort of thing to know what  
7 you have got to be confronted with. The Clerk of  
8 Courts have used that term sham affidavit, I'll be  
9 happy to use that, Your Honor.

10 THE COURT: It's kind of like one of us  
11 has got to take liability here.

12 MR. PLAYER: It's got to have name, so.

13 THE COURT: So they had a lighting flash  
14 and realized that he had happened to have owned  
15 the aerosol can? After the summary judgment  
16 motion?

17 MR. BROOKS: It appears now that it is my  
18 time to go ahead and respond, Judge. It's my  
19 position that that is not actually contradicted in  
20 these affidavits. If you recall, in Mr. Melvin  
21 Muldrow's affidavit that Mr. Player has handed to  
22 you, my client indicates; yes, but I don't  
23 remember. That's not necessarily saying, oh, that  
24 we don't know.

25 Now obviously, Judge, I did attach a copy

1 of Mr. Herman Muldrow's affidavit. I also do have  
2 an original of his deposition. I attached a copy  
3 of the deposition. And also what happens is,  
4 after these individuals, and Mr. Player knows  
5 this. When they came -- when I sent a letter to  
6 Melvin Muldrow to come to the deposition, who do  
7 you think brings Melvin Muldrow? His ride is his  
8 brother.

9 THE COURT: Sure, I was thinking the same  
10 thing.

11 MR. BROOKS: And I am surprised in my  
12 sense of judgment today. And, judge, and so when,  
13 you know, when we ask the questions and Mr. Player  
14 asks the questions, Mr. Herman Muldrow, they go  
15 home. And my client puts in his affidavit, and  
16 it's not a sham affidavit, Judge. It's completely  
17 credible.

18 THE COURT: I remember based on my  
19 conversation with my brother on the way home.

20 MR. BROOKS: Well and not so much in the  
21 affidavit to say, that I, Melvin Muldrow.

22 THE COURT: Right.

23 MR. BROOKS: He says, my brother has  
24 indicated that this is what has happened as a  
25 result subsequent to the deposition. Now, Judge,

1 now you might find and say well, I don't know if  
2 this is credible. But what we are here today is  
3 summary judgment is not an issue of credibility.  
4 It's an issue of whether or not the existence of  
5 such evidence. That is the question. And we put  
6 forth to you that the existence of this evidence  
7 is present.

8 Now credibility, that's for a jury to  
9 decide. Okay. But the existence of that  
10 evidence---

11 THE COURT: But what in essence if I rule  
12 this is a sham affidavit, then you have nothing to  
13 present to counter.

14 MR. BROOKS: But our position is, it's not  
15 a sham affidavit that evidence does exist.  
16 Evidence does exist of Mr. Herman Muldrow's  
17 liability. Credible or incredible that's for a  
18 jury to determine.

19 THE COURT: No, credible or incredible the  
20 sham affidavit is for me to determine.

21 MR. BROOKS: No, no, I said it's not a  
22 sham affidavit. It's present. It's not  
23 contradictory. And we -- our position is that the  
24 court should not rule it's some sham affidavit.  
25 It's not last minute. If you look, it's been

1 clocked in way before today. It's our position---

2 THE COURT: After your motion for summary  
3 judgment was filed.

4 MR. BROOKS: Well that's correct. It's  
5 after, that's correct. Because obviously I don't  
6 have a crystal ball to know that the Defendant  
7 wanted to file a motion for summary judgment in  
8 order to go out and get an affidavit.

9 THE COURT: Well, what you're proposing  
10 is, you're basically saying is because something  
11 happened somebody is liable it's res ipsa  
12 loquitur.

13 MR. BROOKS: No, that's not what I am  
14 saying Judge. The affidavit by Mr. Melvin Muldrow  
15 says what Herman told him. That's not res ipsa  
16 loquitur.

17 THE COURT: I will think about it. I will  
18 take it under advisement and let you know.

19 ---End of Requested Transcript of Record--  
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third 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 proceedings had and evidence introduced in the Court of Common Pleas/nonjury on December 12, 2011, in Sumter County, Sumter, South Carolina.

I do further that I am neither kin, counsel nor interest to any party hereto.

5/20/12   
DATE

COURT REPORTER  
My Commission expires: 9/7/21

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

FORM 4

JUDGMENT IN A CIVIL CASE

RECORDED

2012 JAN -6 AM 11:22  
 CASE NO. 2010 CP-43-1499

Melvin Muldrow

JAMES C. CAMPBELL  
 CLERK OF COURT  
 SUMTER COUNTY, S.C.  
 Herman Muldrow

CERTIFIED TRUE COPY  
 OF ORIGINAL FILED

*Thomas E. Player, Jr.*  
 DEPUTY CLERK OF COURT  
 SUMTER COUNTY  
 SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Thomas E. Player, Jr.

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Herman Muldrow	Melvin Muldrow	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

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

*[Signature]*  
Circuit Court Judge

2156  
Judge Code

1/6/12  
Date

For Clerk of Court Office Use Only

This judgment was entered on the 6 day of Jan, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Jan, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*[Signature]*  
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS  
) FOR THE THIRD JUDICIAL CIRCUIT  
2012 JAN - 6 / AM 11:32  
) NO: 2010-CP-43-1499

Meivin Muldrow,  
  
Plaintiff,

) JAMES CAMPBELL  
) CLERK OF COURT  
) SUMTER COUNTY, S.C.

CERTIFIED COPY  
DEPUTY CLERK OF COURT  
SUMTER COUNTY, SOUTH CAROLINA

vs.

**ORDER GRANTING SUMMARY  
JUDGMENT**

Herman Muldrow,  
  
Defendant.

This case originates from a burn injury claimed to have been suffered by Plaintiff as he was helping his brother, the Defendant, with yard work at the Defendant's residence. The injury resulted, according to Plaintiff, when an explosion occurred as plaintiff was placing trash into a 55 gallon drum being used to burn the debris.

The defendant has moved for Summary Judgment, contending the pleadings and discovery indicate the absence of any genuine issue of material fact. The defendant maintains that the discovery shows an absence of any evidence as to the cause of the alleged explosion. The Plaintiff submitted a post-deposition affidavit whereby Plaintiff purports to attribute to the Defendant incriminating statements as to the cause of the explosion.

**SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate when the "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC; Bowen v. Lee Process Sys. Co. 342 S.C. 232, 536 S.E.2d 86 (Ct. App. 2000). "Summary judgment should be granted when plain, palpable and undisputed facts exist upon which reasonable minds cannot differ." Bowen, 536 S.E.2d at 87. A motion for summary judgment should not be granted when "further inquiry into the facts is desirable to clarify the application of the law." Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).

The party seeking summary judgment has the burden of clearly establishing, with use of the record properly before the court, the absence of a triable issue of fact. Standard Fire Ins. Co. v. Marine Contracting and Towing, 301 S.C. 418, 392 S.E.2d 460 (1990); Baughman v. American Tel., 306 S.C. 101, 410 S.E.2d 537 (1991). To determine whether an issue of fact exists, the court must view the evidence and all ambiguities, conclusions, and inferences arising from the evidence in a light most favorable to the non-moving party. Bowen, 536 S.E.2d at 87. Once the moving party shows a lack of evidentiary support for the nonmoving party's claims, the nonmoving party cannot simply rest upon mere allegations or denials in the pleadings but must come forward with facts showing there is a genuine issue for trial in order to avoid summary judgment. Baughman, 410 S.E.2d at 545. In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Turner v. Milliman 392 S.C. 116, 122, 708 S.E.2d 766, 769 (S.C.,2011)

## DISCUSSION

South Carolina has consistently refused to adopt the doctrine of *res ipsa loquitur* although it is the law in many other jurisdictions. In this State it is well settled that the burden rests upon the party to prove negligence. This burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence. In order for a plaintiff to recover damages, he must prove by the greater weight or preponderance of the evidence not only the injury but also that it was caused by the actionable negligence of the defendant. King v. J. C. Penney Co. 238 S.C. 336, 339-340, 120 S.E.2d 229, 230 (S.C.1961)

The depositions of the Plaintiff and Defendant were taken in February, 2010. Both testified that they did not know what caused the explosion. The Plaintiff also testified that he could not recall any statements made by the Plaintiff as to the cause. The Summary Judgment motion was filed on October 3, 2011. In opposition to the motion, the Plaintiff



presented his affidavit to the effect that sometime after the depositions, he recalled that his brother told him that aerosol cans had been placed in the drum.

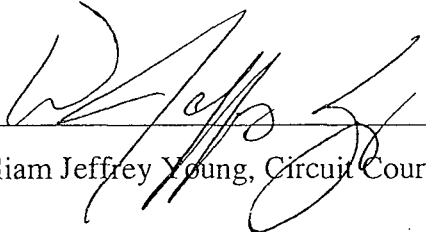
Defendant argues that the affidavit contradicts the deposition testimony and, consequently, should not be considered by the court.

Regarding the competing affidavit rule, our Supreme Court has stated: "We find persuasive the reasoning of federal case law. Federal courts, including the Fourth Circuit, have held a court may disregard a subsequent affidavit as a 'sham', that is, as not creating an issue of fact for purposes of summary judgment, by submitting the subsequent affidavit to contradict that party's own prior sworn statement." Cothran v. Brown 357 S.C. 210, 218, 592 S.E.2d 629, 633 (S.C., 2004)

The Plaintiff's affidavit contradicts his own deposition testimony and, therefore, its content is not considered by the court in ruling upon this motion.

The deposition testimony of the parties discloses no evidence from which a reasonable inference may be drawn that Plaintiff's injury was proximately caused by the negligence of the Defendant.

It is, therefore, **ORDERED** that the defendant's motion for summary judgment is granted.

  
\_\_\_\_\_  
William Jeffrey Young, Circuit Court Judge

Date 28 Dec 2011

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
Honorable W. Jeffrey Young

---

Case No: 2010-CP-43-1499

Melvin Muldrow . . . . . Appellant

V.

Herman Muldrow . . . . . Respondent

---

NOTICE OF APPEAL

Melvin Muldrow appeals the Order Granting Summary Judgment of the Honorable William Jeffrey Young dated December 28, 2011. Appellant received Notice of entry of this Order on January 9, 2012.

February 6, 2012



---

Charles T. Brooks, III  
309 Broad St.  
Post Office Box 3512  
Sumter, South Carolina 29151  
(803) 418-5708  
Attorney for Appellant

Other Counsel on Record:

Thomas E. Player, Jr. Esquire  
Player and McMillan, LLC  
Post Office Drawer 3690  
Sumter, South Carolina, 29151

NOTICE OF APPEAL IN A CIVIL CASE  
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
The Honorable W. Jeffrey Young

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Case No: 2010-CP-43-1499

Melvin Muldrow..... Appellant  
S.C.D.C. No.:

v.

Herman Muldrow..... Respondent

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PROOF OF SERVICE

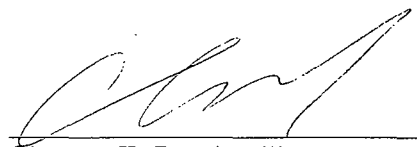
I, the undersigned, do hereby certify that on this 6<sup>th</sup> day of February, 2012, I served the foregoing Notice of Appeal, Order Granting Summary Judgment, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 6, 2012 addressed to the following as indicated below:

South Carolina Court of Appeals  
State of South Carolina  
Post Office Box 11629  
Columbia, South Carolina, 29211

Thomas E. Player, Jr. Esquire  
Player and McMillan, LLC  
Post Office Drawer 3690  
Sumter, South Carolina, 29151

James C. Campbell  
Clerk of Court, Sumter County  
141 North Main Street  
Sumter, South Carolina, 29150

Dated: February 6, 2012



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Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

RECORDED

OCT 23 2012

SC COURT OF APPEALS

Case No. 2010-CP-43-1499

Melvin Muldrow,

Appellant,

v.

Herman Muldrow,

Respondent.

PROOF OF SERVICE

I do hereby certify that I have this 19<sup>th</sup> day of October 2012, served a copy of the Record on Appeal, as well as a Proof of Service, by depositing a copy of the same in the United States mail, with first class postage affixed thereon, addressed as follows:

Thomas E. Player, Jr, Esquire  
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Sumter, South Carolina  
October 19, 2012