

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871

Appellate Case No. 2019-002091

China Construction America of South Carolina, Inc., ... Respondent,

v.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators,
Manfred Sprenger and Patricia Sprenger, ... Petitioners.

APPENDIX
VOLUME I

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne, III
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260-1110

Attorneys for Respondent

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Petitioners

RECEIVED

JAN 09 2020

S.C. SUPREME COURT

INDEX

Order denying rehearing	1
Opinion of Court of Appeals 2019-UP-304	3
Petition for Rehearing of Petitioners.	13
Appellant's Brief of Appellant/Respondent - China.	30
Respondent's Final Brief of Respondents/Appellants - MSPS & Sprengers	66
Appellant's Final Brief of Respondents/Appellants - MSPS & Sprengers.	84
Respondent's Brief of Appellant/Respondent - China	94
Appellant's Reply Brief of Appellant/Respondent - China	119
Record on Appeal	130

The South Carolina Court of Appeals

China Construction America of South Carolina, Inc.,
Appellant/Respondent,

v.

MS Production Solutions LLC a/k/a MSPS Steel
Fabricators, Manfred Sprenger and Patricia Sprenger,
Respondents/Appellants.

Appellate Case No. 2016-001787

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff

J.

Paul E. Short, Jr.

J.

H. Brown

J.

Columbia, South Carolina

cc:

Caitlin Creswick Heyward, Esquire
Henry Pickett Wall, Esquire

FILED

November 27, 2019

APPENDIX 2

Robert Crum Osborne, III, Esquire
J. Falkner Wilkes, Esquire

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

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

China Construction America of South Carolina, Inc.,
Appellant/Respondent,

v.

MS Production Solutions LLC a/k/a MSPS Steel
Fabricators, Manfred Sprenger and Patricia Sprenger,
Respondents/Appellants.

Appellate Case No. 2016-001787

Appeal From Greenville County
Charles B. Simmons, Jr., Circuit Court Judge

Unpublished Opinion No. 2019-UP-304
Submitted December 1, 2018 – Filed August 21, 2019

**AFFIRMED IN PART, REVERSED IN PART AND
REMANDED**

Caitlin Creswick Heyward and Henry Pickett Wall, both
of Bruner Powell Wall & Mullins, LLC, of Columbia,
and Robert Crum Osborne, III, of Parker Poe Adams &
Bernstein, LLP, of Charleston, all for
Appellant/Respondent.

J. Falkner Wilkes, of Greenville, for
Respondents/Appellants.

APPENDIX 4

PER CURIAM: China Construction America of South Carolina, Inc. (China Construction) appeals the master-in-equity's order setting aside transfers of funds from MS Production Solutions, LLC, a/k/a MSPS Steel Fabricators (MSPS) to Patricia Sprenger (Patricia) because the conveyances violated the Statute of Elizabeth, and declining to set aside transfers of funds to Manfred Sprenger (Manfred). On appeal, China Construction argues the master erred by: (1) declining to set aside transfers from MSPS to Manfred as fraudulent and in violation of the Statute of Elizabeth, (2) limiting China Construction's recovery to fraudulent transfers made after the lawsuit's filing date, (3) declining to enter judgment against Patricia individually, and (4) failing to make a finding as to whether a perfected security interest existed in MSPS's deposit accounts and order an execution on the deposit accounts. MSPS cross-appealed, arguing the master erred by finding the transfers from MSPS to Patricia were without consideration and were fraudulent in violation of the Statute of Elizabeth. We affirm in part, reverse in part, and remand for further proceedings.

FACTS

On April 2, 2014, China Construction filed a complaint alleging breach of contract, breach of warranty, indemnity, negligence, unfair and deceptive trade practices, and promissory estoppel against MSPS. This action arose from a contract requiring MSPS to fabricate and deliver steel required for China Construction's project renovating a high school building. China Construction filed a motion for an order of default against MSPS, which the circuit court granted on August 5, 2014. On December 24, 2014, the circuit court found in favor of China Construction against MSPS in the amount of \$657,137.30. Thereafter, the circuit court filed a rule to show cause and order of reference on May 5, 2015, referring the case to the master and ordering MSPS was "restrained and enjoined from making any transaction or transfer . . . which is not exempt from execution"

On June 2, 2015, the master held a hearing regarding the supplemental proceedings. At the hearing, Manfred testified he was the sole owner of MSPS and paid himself a salary of \$7,000 in addition to an occasional bonus. He explained he occasionally wrote checks from his personal account to MSPS "to pay the bills" and MSPS would eventually pay him back. Manfred described these transfers as loans, but did not retain any documentation evidencing the loan. He explained his bonuses would be paid from any money the company could spare; however, he stated he had not received a bonus in "the last couple of years . . . because . . . the economy was bad." The master continued the hearing to allow the parties to look

APPENDIX 5

through additional discovery and ordered Manfred was not allowed to sell or convey anything out of the normal course of business, transfer anything, or incur new debt without the approval of both parties' attorneys.

In his deposition, Manfred testified he received the court's rule to show cause and acknowledged that MSPS was prohibited from making any transfers. He stated the \$60,000 payment from MSPS to Patricia on May 27, 2015, was a repayment of a past loan. Manfred also asserted MSPS was repaying him for the \$350,000 he "[brought] to the table in order to buy [the] company." He stated he had not been fully repaid for his initial loan; however, he had "no specific documents [of the loan repayments] since [MSPS was] a family business." Manfred also testified the payments from MSPS to himself and Patricia represented his salary and repayments for his loans to MSPS "to help the company's cash flow[.]" He stated Patricia was never an employee of MSPS.

In her deposition, Patricia stated she was not an employee of MSPS. She testified the checks from MSPS were written to her because it was easier for her to deposit the money than Manfred. She stated she received a \$60,000 check from MSPS, some of which she sent to her mother in Germany to help with family members' funeral costs; however, she testified she kept approximately \$50,000 in cash in her home. Patricia stated she paid the family bills with the \$7,000 payments Manfred "t[ook] out for his work at [MSPS]." She asserted the February 4, 2014, payment of \$6,000 from their personal checking account to MSPS was to cover paychecks for MSPS employees. Patricia also testified Manfred did not tell her why he wrote her a check for \$60,000 from MSPS.

On September 23, 2015, China Construction filed a motion for execution and to set aside fraudulent transfers, requesting the master set aside and order an execution on all transfers to Patricia and Manfred, order Manfred and Patricia return all transfers as partial satisfaction of the judgment against MSPS, and order an accounting of all transfers.

On October 2, 2015, the master held a hearing regarding China Construction's motion to set aside fraudulent transfers. During the supplemental proceedings the master directed MSPS "to take all reasonable efforts to recapture th[e] \$50,000" in cash in the possession of Patricia and Manfred, which Patricia testified they kept in their bedroom, within seven days. The master also explained "transfers may not be made outside of the normal course of business" and if loans were necessary, they must be "legitimate transactions with a [p]romissory [n]ote and . . . a paper trail" Thereafter, at a November 18, 2015 hearing, Manfred testified the only action he took to recover the funds which were transferred to Patricia was to write

APPENDIX 6

a letter from MSPS to himself and Patricia requesting the funds be returned to MSPS. He also explained he and Patricia only had \$8,000 in cash in their home, not \$50,000 as Patricia previously stated. Manfred testified he loaned MSPS \$25,000 in either June or July. However, he explained there was no written promissory note for the loan because that has never been MSPS's practice. Pursuant to China Construction's motions, the master granted China Construction leave to join Manfred and Patricia as necessary parties to the action and ordered MSPS to deposit \$8,000 into a trust account to preserve the funds until further proceedings regarding the transfers.

On March 2, 2016, the master held a hearing regarding China Construction's motion to set aside MSPS's fraudulent transfers. Manfred testified MSPS made payments to Patricia because it was "easier to write the check[s] directly to [Patricia]" and she would deposit the checks in their joint checking account. He admitted MSPS's company ledger did not reflect any checks written to himself. Manfred stated it was not uncommon for him to put his own money into MSPS's business account to "keep the cash flow going" and to pay the payroll and suppliers. He explained he loaned MSPS \$40,000 in March 2015 and \$25,000 in July 2015 from his personal account to keep the business's account from carrying a negative balance. Manfred testified MSPS owed him approximately \$180,000 because since 2013 he has not taken his full salary. He asserted MSPS wrote a \$60,000 check to Patricia for Manfred's salary from January to June and repayment of the \$40,000 loan he made in March 2015. At the hearing, Benjamin O'Dell, Manfred and Patricia's Certified Public Accountant, testified Patricia did not claim any money transferred to her from MSPS as income.

On June 7, 2016, the master filed an order setting aside the transfers to Patricia, and declining to set aside the transfers to Manfred. The master found the transfers to Patricia were fraudulent because they were not based upon valuable consideration, and set aside all transfers from MSPS to Patricia which occurred after the date the lawsuit was filed. The master declined to set aside transfers to Manfred based on its finding that the transfers to Manfred were not fraudulent because they were based upon valuable consideration and the evidence showed Manfred often made emergency loans to MSPS and was occasionally repaid without documentation.

STANDARD OF REVIEW

"Our scope of review for a case heard by a [m]aster-in-[e]quity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543

(1989). "A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." *Oskin v. Johnson*, 400 S.C. 390, 396-97, 735 S.E.2d 459, 463 (2012). "An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies." *Id.* at 397, 735 S.E.2d at 463.

LAW/ANALYSIS

I. CHINA CONSTRUCTION'S APPEAL

A. TRANSFERS TO MANFRED

China Construction argues the master erred by finding the transfers from MSPS to Manfred were not fraudulent and not in violation of the Statute of Elizabeth. It contends the conveyances were made with intent to defraud creditors and MSPS failed to prove the transfers were made for valuable consideration. We agree.

The Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken . . . to be clearly and utterly void

S.C. Code Ann. § 27-23-10(A) (2007).

"Our courts have set aside conveyances for existing creditors . . . in two instances." *First Citizens Bank & Tr. Co. v. Park at Durbin Creek, LLC*, 419 S.C. 333, 340, 797 S.E.2d 409, 413 (Ct. App. 2017). "First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration." *Oskin*, 400 S.C. at 397, 735 S.E.2d at 463.

[W]he[n] the challenged transfer was made for [] valuable consideration, it will be set aside if the plaintiff

establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee.

First Citizens, 419 S.C. at 340, 797 S.E.2d at 413 (second and third alterations in original) (quoting *Mathis v. Burton*, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995)).

[W]he[n] the transfer was [] made [without] valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

Id (third and fourth alterations in original).

The master erred by failing to set aside MSPS's transfers to Manfred. *See Oskin*, 400 S.C. at 397, 735 S.E.2d at 463 ("An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies"). The evidence indicates the transfers from MSPS to Manfred were made for valuable consideration because they were considered payment for Manfred's work for MSPS as its sole owner. However, the record supports a finding MSPS intended to defraud creditors. *See First Citizens*, 419 S.C. at 340, 797 S.E.2d at 413 ("[W]he[n] the challenged transfer was made for [] valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee." (second and third alterations in original) (quoting *Mathis*, 319 S.C. at 264-65, 460 S.E.2d at 408)). MSPS's general ledgers from 2012 and 2013 do not reflect any transfers to Manfred. Moreover, the first evidence of a transfer to Manfred was on August 12, 2015, after MSPS was restrained from selling anything or making transfers outside the normal course of business by the rule to show cause filed on May 5, 2015, and the master's oral ruling at the June 2, 2015 hearing. Although the master found Manfred "often made loans to MSPS that were necessary to keep the business bank accounts from having a negative

APPENDIX 9

balance[.]" the only evidence of payments from Manfred to MSPS found in the record were in November 2014, February 2015, and July 2015 for a total of \$105,000. Moreover, the general ledgers from 2012 and 2013 do not reflect any transfer from MSPS to Manfred. Therefore, the evidence in the record does not reflect that transfers to Manfred were in the normal course of MSPS's business. The amount and dates of the transfers to Manfred were not consistent; MSPS transferred \$7,000 on September 22, 2015, and then transferred \$14,000 the following day. Moreover, from November to December of 2015, MSPS made two \$10,000 transfers and one \$2,800 transfer. Since the filing of this action on April 2, 2014, evidence in the record shows \$105,000 in payments from Manfred and Patricia's personal account to MSPS; however, the transfers from MSPS to Manfred and Patricia total \$279,393.84. While MSPS argues the loans to MSPS were necessary to keep the company's accounts from carrying a negative balance, the loans on November 24, 2014, February 26, 2015, and July 15, 2015, totaling \$105,000 would not have been necessary had MSPS not transferred \$70,000 on September 29, 2014, and \$60,000 on May 27, 2015, to Patricia for a total of \$130,000. Accordingly, we believe that sufficient evidence exists to show MSPS made the transfers to Manfred with the intent of defrauding its creditors.

As to whether the grantor was indebted at the time of the transfer, this factor was met by the circuit court's final judgment against MSPS for \$657,137.30. Regarding whether the grantor's intent is imputable to the grantee, we believe MSPS's intent to defraud China Construction is imputable to Manfred because he was the sole owner and president of MSPS with sole control of the MSPS bank account.

Although the transfers from MSPS to Manfred were based upon valuable consideration, clear and convincing evidence proves MSPS intended to defraud creditors. Accordingly, we find that the transfers to Manfred should be set aside and the master's order should be reversed on this issue.

B. LIMITED RECOVERY

China Construction argues the master erred by only setting aside the transfers made by MSPS after the present lawsuit was filed. We disagree.

Although it is not necessary to limit the determination of fraudulent transfers to those after the entry of judgment, it is "necessary that the debt should have been in existence or the right of action have accrued at or before the time of the transfer." *Matthews v. Montgomery*, 193 S.C. 118, 7 S.E.2d 841, 848 (1940). While it is

possible the debt or obligation accrued prior to the filing of the lawsuit at the time MSPS breached its contract with China Construction, no evidence in the record established when the breach occurred. No evidence exists that the breach occurred on August 12, 2013, as China Construction argues. China Construction's complaint does not specify a date on which MSPS breached their contract. Further, the contract does not specify a date for delivery of the goods. In its order of judgment, the circuit court found MSPS "failed to deliver a majority of the steel [required] under the [c]ontract." It also found half of the steel which was delivered, was defective. However, the circuit court did not make a finding as to when the breach of contract occurred. Thus, the date of the breach of contract cannot be determined by the evidence in the record. Moreover, no evidence in the record indicates MSPS was aware of the debt or obligation before the lawsuit was filed. Although China Construction argues MSPS received and sent correspondence regarding its breach of contract, no correspondence dated before the lawsuit was filed exists in the record. Accordingly, the evidence establishes the debt existed or the right of action accrued at the time the lawsuit was filed. We find no error. *See Oskin*, 400 S.C. at 397, 735 S.E.2d at 463 ("An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies.").

C. SECURITY INTEREST IN AND EXECUTION ON MSPS'S DEPOSIT ACCOUNTS

China Construction argues the master erred by failing to make a finding as to whether a perfected security interest in MSPS's deposit accounts existed. It also asserts the master erred by failing to issue an order of execution on MSPS's deposit accounts and directing the funds in the deposit accounts be transferred to China Construction.

Based upon the evidence in the record, we cannot determine whether China Construction is entitled to execute on the deposit account or whether China Construction had a perfected security interest in the deposit account. The master declined to make a finding as to the relevant security interests in the deposit account and did not order an execution on deposit accounts. We cannot determine from the evidence in the record what assets remain in the MSPS deposit account. Moreover, although the master noted "there is a significant question concerning the security interests" of the deposit account, the master declined to make any findings as to which creditors had a security interest or the priority of their security interests. Therefore, there is insufficient evidence in the record to make a determination on this issue. *See Brayboy v. Clark Heating Co. Inc.*, 306 S.C. 56,

409 S.E.2d 767 (1991) (remanding for further proceedings to clarify the Workers' Compensation Commission's findings); *Pack v. S.C. Dep't of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009) (remanding for further proceedings when the Workers' Compensation Commission failed to detail its factual findings on the record); *Seago v. Horry Cty.*, 378 S.C. 414, 663 S.E.2d 38 (2008) (remanding for further proceedings when relevant information could not be determined by the evidence on the record). Accordingly, we remand this issue for further proceedings.

II. MSPS'S APPEAL

MSPS argues the master erred by setting aside the transfers from MSPS to Patricia because they were made for valuable consideration and no evidence of an intent to defraud creditors existed. We disagree.

Clear and convincing evidence supports the master's ruling setting aside the transfers from MSPS to Patricia because the transfers were not based upon valuable consideration. Patricia did not provide evidence in the record to prove the alleged fraudulent conveyances were bona fide and based upon valuable consideration. *See Coleman v. Daniel*, 261 S.C. 198, 208, 199 S.E.2d 74, 79 (1973) ("Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing [testimony]." (quoting *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816 (1937))). Both Manfred and Patricia testified Patricia was never an employee of MSPS. Further, Manfred and Patricia's accountant testified Patricia did not claim the money she received from MSPS on her taxes. Accordingly, the transfers from MSPS to Patricia were not based upon valuable consideration. *See First Citizens*, 419 S.C. at 340, 797 S.E.2d at 413 ("[W]he[n] the transfer was [] made [without] valuable consideration . . . the transfer will be set aside if . . . (1) the grantor was indebted . . . at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness . . . in full" (third and fourth alterations in original) (quoting *Mathis*, 319 S.C. at 264-65, 460 S.E.2d at 408)). First, MSPS was indebted at the time of the transfers to Patricia because MSPS had breached a contract with China Construction and the circuit court subsequently entered a judgment against MSPS. Second, MSPS's conveyances to Patricia were voluntary because Manfred claimed he transferred the money to Patricia as his salary and Patricia stated she deposited all of Manfred's paychecks. Finally, as to the final factor, whether the grantor failed to retain sufficient property to pay the

indebtedness, MSPS failed to retain sufficient funds to satisfy the \$657,137.30 judgment.

Additionally, although China Construction argues the master erred by declining to enter judgment against Patricia individually, the master's order sufficiently allows China Construction to "execute on any non-exempt assets of Patricia up to \$221,593.84[,] which represents the transfers from MSPS to Patricia" The master's order allows China Construction to levy and execute on any of Patricia's non-exempt property, up to the amount of the transfers from MSPS to Patricia, which were set aside by the master. Therefore, the master ordered a remedy which is sufficient to permit China Construction to recover assets from Patricia equal to the amount of the fraudulent transfers from MSPS to Patricia. Clear and convincing evidence supports a finding that the master's order is a sufficient remedy to allow China Construction to recover the \$221,593.94 fraudulently transferred to Patricia.

We find the master did not err by setting aside the transfers from MSPS to Patricia because they were made without valuable consideration and declining to enter judgment against Patricia individually. This portion of the order is affirmed.

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.¹

HUFF, SHORT, and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

**The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871**

Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc., ... Appellant/Respondent,

v.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators, ...
Manfred Sprenger and Patricia Sprenger, ... Respondents-Appellants.**

PETITION FOR REHEARING

RECEIVED
OCT 08 2019
SC Court of Appeals

**J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
jfalcknerwilkes@gmail.com**

Counsel for Respondent/Appellants

PETITION FOR REHEARING

Pursuant to SCRAP Rule 221 the Respondent/Appellants hereby move this Court to reconsider its opinion and grant the Appellant a rehearing in this case based on the following:

- I. THE COURT ERRED IN FINDING THAT TRANSFERS FROM MSPS TO MANFRED SPRENGER WERE MADE WITH THE INTENT TO DEFRAUD ITS CREDITORS.

This Court ruled that MSPS made payments to Manfred Sprenger with the intent to defraud its creditors. The Court based its ruling on a finding that the amount and dates of the transfers to Sprenger were not consistent and only began to occur after the initiation of the case. The Court's opinion overlooks relevant facts that not only show that the pattern of emergency loans and repayments occurred years prior to this action, but that loans and repayments also followed a predictable pattern linked to the balance of the MSPS operating account and its immediate outstanding obligations. In light of the evidence overlooked or misperceived, the Court's ruling that payments to Sprenger were made with the intent to defraud creditors was in error.

Contrary to the Court's findings, the MSPS General Ledger shows that the practice by MSPS of making and repaying emergency loans to and from Sprenger existed at least far back as 2012, which was prior to China's

APPENDIX 15

relationship with MSPS and years before this litigation. 826-827. Although the source of the deposits are not explicitly indicated in the general ledger, it is easy to identify transfers from Sprenger to MSPS as they follow in the same pattern and even amounts as seen subsequent to the China litigation. Loans from Sprenger show as deposits in even amounts and occur at a time when, without them, MSPS would otherwise be unable to cover all of the checks written within that same week, if not on same day.

On May 30, 2012 MSPS wrote a \$50,000 check to Patricia Sprenger¹. 826. On June 25, 2012 MSPS made a deposit of \$60,000. This deposit corresponded to a low balance in the MSPS account and was necessary to ensure MSPS would be able to cover all of the checks that followed that week. 826-827. This occurred again on July 16, 2012 with a \$40,000 deposit into the MSPS account when the balance dropped to only \$16,076.54. 827. Then on July 18, 2012, after its account balance had increased substantially, and the bills had been paid, MSPS wrote Patricia Sprenger a \$170,000 check. 827. Again, MSPS deposited \$25,000 on October 3, 2012, when its account balance was down to \$16,487.03. 830. All of the deposits were timed to cover low

¹Checks to Manfred to repay loans were also made out to Patricia as she made all of the deposits into the personal account.

balances, and the payments to Sprenger made when the account balance was sufficient for MSPS to repay the loan. 829. All of the deposits showed the same type of entry, and although they did not state the source, it is clear that they were not from customer payments as each customer deposit is clearly identified as such. 823-840. Contrary to the Court's findings, this pattern of emergency loans and repayments were part of the normal course of business for MSPS for years, and not something that was created after the litigation simply as a means to defraud creditors.

The payments at issue in this case stem from a long standing course of business MSPS has engaged in for years. The record shows a pattern of critically low balances in MSPS's operating account that are followed by an infusion of money loaned from Sprenger. This pattern of emergency loans and repayments that has continued from 2012 to the present are clearly out of necessity rather than any intent to defraud China. 433-435; 478. Contrary to the court's findings, there is ample evidence in record to show that the practice of borrowing and repaying money from Sprenger not only pre-dated the litigation, but China's involvement with MSPS entirely.

The court's finding that the repayment of loans constituted the intent to defraud rests heavily on its finding that the loans to MSPS, totaling \$105,000

APPENDIX 17

that were made between November 2014 through July of 2015, would not have been necessary but for the \$130,000 in repayments made between September 2014 to May of 2015. This reasoning is flawed as the ongoing need for loans, and their repayment, was simply a cycle in which MSPS operated. This cycle was the normal course of business for MSPS, and although it was probably a poor business practice, it was MSPS's normal business practice nonetheless. The Court's opinion picks apart this cycle to find an intent to defraud.

In dissecting MSPS's normal business cycle the Court blames the need for loans on the existence of prior repayment of the loans.² This is clearly not the case as the record shows that loan repayments never triggered the critically low balances but became part of pattern of trying to keep the MSPS at operating levels. Repayments occurred when the accounts had returned to a sufficient balance with loans being made again if income lagged for the month. In February of 2015 Sprenger loaned \$40,000 of personal money to MSPS to cover bills. R. 257-258; 261-265; 600-602; 845; 855. Near the end of

² Additionally, under the Court's reasoning that loan repayments in the amount of \$130,000 contributed to the need for additional loans, and somehow constituted evidence of an intent to defraud, it was still error to set aside more than \$130,000 in transfers.

May of 2015 MSPS repaid the \$40,000. 261-263; 268-269; 603; 855. Then in July he loaned money to MSPS again. R. 267; 609. The record shows that cycle of loans and repayments were simply part of MSPS's less than ideal, but regular business practice. As a result, the repayments themselves did not create the need for loans and therefore, do not support the Court's finding as to an intent to defraud.

The Statute of Elizabeth authorizes avoidance of fraudulent transfers.

See Mathis v. Burton, 319 S.C. 261, 460 S.E.2d 406 (S.C.Ct.App.1995).

Fraudulent conveyances can be set aside in two instances: First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Gentry v. Lanneau, 54 S.C. 514, 32 S.E. 523 (S.C.1899). Here payments at issue were given in exchange for valuable consideration. The pattern of emergency loans and repayments existed years before this litigation, which shows that the cycle of loans and repayments at issue were made without the intent to defraud. The court therefore erred in finding that these transfers should be set aside.

II. THE COURT'S OPINION OVERLOOKS OVERWHELMING EVIDENCE THAT MSPS MADE HUSBAND'S SALARY CHECKS PAYABLE IN THE WIFE'S NAME SIMPLY TO ALLOW HER TO ENDORSE AND DEPOSIT THE CHECKS.

The Court's opinion rests on the implicit finding that the checks at issue were not compensation for Manfred Sprenger's work. The Court overlooks the fact that all of the evidence in record is completely to the contrary. Despite the checks being made out to Patricia Sprenger, all of these checks clearly represented Manfred Sprenger's salary and compensation. That being the case, they were given in exchange for Manfred's work, and therefore, valuable consideration. Making the checks payable to Patricia rather than Manfred was merely a convenience to allow Patricia to endorse and deposit her husband's pay check into their joint personal account. The record overwhelmingly supports this fact.

The record shows that MSPS was obligated to pay Manfred Sprenger a \$12,000 a month salary as compensation for his work. R. 854-855. Due to cash flow Manfred's salary was reduced over time to \$6,000 or \$7,000 a month. R. 167; 855. Manfred testified that his compensation was paid by the company through checks made out to Patricia. R. 168-169; 176. The testimony of Manfred and Patricia were consistent in that Manfred put her

name on the checks to make it for his wife to deposit them in their joint personal account. R. 211-212; 414-418. This was customary even prior to MSPS's involvement with China. R. 254-255; 823-840. Joint tax returns show that the income represented by checks made out to Patricia was declared as "business income" on the Schedule C and the CPA that prepared the returns testified that the income represented by those checks was attributed to Manfred. R. 270-287. All of the evidence indicates that the challenged checks represented Manfred's salary and were made payable to Patricia simply so she could endorse and deposit them into their joint account. The Court's opinion overlooks that there is no evidence to the contrary.

As this was an established pattern of conduct predating MSPS's involvement with CCA, the mere continuation of the practice subsequent to MSPS's litigation with China fails to show any intent to defraud.

IV. THE COURT ERRED IN HOLDING THAT A LACK OF EVIDENCE REQUIRED THE ISSUE OF SECURITY INTEREST AND EXECUTION BE REMANDED.

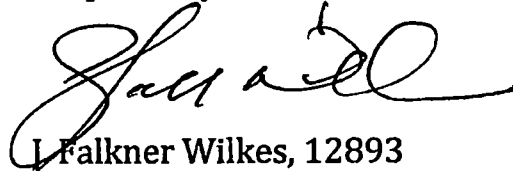
This Court's opinion holds that there is insufficient evidence to determine the existence and priority of any liens on MSPS deposit accounts. The Court overlooks evidence in record showing that the Small Business Loan

Source, LLC (SBL) holds a security interest in all of the assets of MSPS. 517-556; 680-715. The SBL security agreement provides a security interest in all accounts of MSPS. 517-556; 680-715. A corresponding UCC financing statement includes all of MSPS accounts. 793-822. While the Master stated that the status of other liens and encumbrances were questionable, the record is sufficient for this Court to find that execution by China is barred by the prior attachment of interest by the Small Business Loan Source, LLC. Remand on the issue is therefore unnecessary given the SBA loan documentation in record.

CONCLUSION

Based on the foregoing the Appellant moves this Court to reconsider its opinion and grant a rehearing in this case.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Respondent/Appellants

October 7, 2019.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

**The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871**

RECEIVED
OCT 08 2019
SC Court of Appeals

Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc., . . Appellant/Respondent,

v.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators,
Manfred Sprenger and Patricia Sprenger, ... Respondents-Appellants.**

CERTIFICATE OF SERVICE

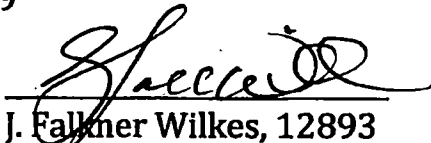
I certify that on the 7th day of October, 2019, I served the Petition for Rehearing of the Respondents-Appellants and Certificate(s) on the Appellant/Respondent by placing a copy of same into the United States Mail, first class postage pre-paid, addressed to counsel of record as indicated below, and by facsimile if so indicated:

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne, III
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260-1110
via facsimile also to: (803) 254-5719

and to:

APPENDIX 23

Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201
via facsimile also to: (803) 734-1839



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondent/Appellants

October 7, 2019.

APPENDIX 24

BLANK PAGE DUE TO PRINTING ERROR

APPENDIX 25

BLANK PAGE DUE TO PRINTING ERROR

BLANK PAGE DUE TO PRINTING ERROR

BLANK PAGE DUE TO PRINTING ERROR

APPENDIX 28

BLANK PAGE DUE TO PRINTING ERROR

BLANK PAGE DUE TO PRINTING ERROR

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No.: 2014-CP-23-01871

China Construction America of South Carolina, Inc..... Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants

APPELLANT'S BRIEF OF APPELLANT/RESPONDENT

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas**

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No.: 2014-CP-23-01871

China Construction America of South Carolina, Inc..... Appellant/Respondent,

vs.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants**

APPELLANT'S BRIEF OF APPELLANT/RESPONDENT

**Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
*Attorneys for Appellant/Respondent***

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal.....	1
Statement of the Case	2
Facts	4
Standard of Review.....	10
Arguments	
1. THE MASTER IN EQUITY COMMITTED REVERSIBLE ERROR IN FINDING THE TRANSFERS FROM MSPS TO MANFRED SPRENGER WERE NOT FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10.	10
2. THE MASTER IN EQUITY COMMITTED REVERSIBLE ERROR WHEN IT LIMITED APPELLANT'S RECOVERY TO FRAUDULENT TRANSFERS THAT OCCURRED AFTER THE DATE APPELANT'S LAWSUIT WAS FILED.....	13
3. THE MASTER IN EQUITY ERRED WHEN IT DETERMINED THAT THE TRASNFRS FROM MSPS TO PATRICIA SPRENGER WERE FRAUDULENT BUT FAILED TO ENTER A JUDGMENT AGAINST PATRICIA SPRENGER INDIVIDUALLY, WHO WAS A PARTY TO THE SUPPLMENTAL PROCEEDINGS	19
4. THE MASTER IN EQUITY ERRED WHEN IT FAILED TO MAKE A FINDING THAT THERE IS NO PERFECTED SECURITY INTEREST IN THE DEPOSIT ACCOUNTS OF MS PRODUCTION SOLUTIONS, LLC AND FAILED TO ENTER AN ORDER OF EXECUTION ON THE SAME AND DIRECTING BANK OF AMERICA TO DELIVER ON FUNDS ON DEPOSIT TO CCA.....	23
Conclusion	25
Appendix I	27

APPENDIX 33

TABLE OF AUTHORITIES

CASES

<i>Albertson v. Robinson</i> , 371 S.C. 311, 317-18, 638 S.E.2d 81, 84 (2006)	17, 18
<i>Buchanan v. Buchanan</i> , 266 Va. 207, 585 S.E.2d 533 (2003)	20
<i>Coleman v Daniel</i> , 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973)	12, 14, 15
<i>Deer Island Lumber Co. v. Virginia-Carolina Chemical Co.</i> , 111 S.C. 299, 97 S.E. 833 (S.C. 1919)	23
<i>Durham v. Blackard</i> , 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)	11
<i>Farmer Co-op. Ass'n v. Strunk</i> , 671 F.2d 391, 395 (10th Cir. 1982).....	15
<i>First State Sav. & Loan Ass'n v. Nodine</i> , 291 S.C. 445, 450, 354 S.E.2d 51, 54 (1987)	12
<i>Freedman's Saving & Trust Co. v. Earle</i> , 110 U.S. S.Ct. 226, 229, 28 L.Ed. 301 (1884).....	25
<i>Furman Univ. v. Waller</i> , 124 S.C. 68-----, 117 S.E. 356, 358 (1923).....	12
<i>Gilchinsky v. Nat'l Westminster Bank</i> , 732 A. 2d, 490 (1999).....	15
<i>In re Ducate</i> , 369 B.R. 251 (Bankr. D.S.C. 2007).....	15
<i>In re Jones</i> , 397 B.R. 765, 770 (Bankr. D.S.C. 2008)	15
<i>In re Schmit</i> , 71 B.R. 587, 590 (Bankr. D. Minn. 1987)	15
<i>Johnson v Service Mgmt.</i> , 319 S.C. 165, 459 S.E.2d 900 (S.C. Ct. App. 1995)	24
<i>Joslin v. Lopez</i> , 309 A.D.2d 837, 765 N.Y.S.2d 895 (N.Y. Appl. Div. 2d Dep't 2003) ...	20, 22
<i>Lynn v. International Broth. Of Firemen and Oilers</i> , 228 S.C. 357, 90 S.E.2d 204 (1955).	20
<i>Marine Midland Bank v. Murkoff</i> , 120 A.D.2d 122, 508 N.Y.S.2d 17 (N.Y. App. Div. 1986	20
<i>Mathis v. Burton</i> , 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995)	11, 13
<i>Matthews v. Montgomery</i> , 193 S.C. 118, 133, 7 S.E.2d 841, 848 (1940)	17
<i>McManus v. Bank of Greenwood</i> , 171 S.C. 84, 171 S.E. 473 (1933)	23

APPENDIX 34

<i>Oskin v. Johnson</i> , 400 S.C. 390, 396, 397, 735 S.E.2d 459, 463 (2012).....	10,11
<i>Pickney v. Warren</i> , 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).....	10
<i>Price v. Hawkins</i> , 247 Va. 32, 439 S.E.2d 382 (1994)	20,21
<i>Royal z Lanes, Inc. v. Collins Holding Corp.</i> , 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999).....	14
<i>Suber v. Chandler</i> , 18 S.C. 526 (1883)	13

STATUTES

S.C. Code Ann. § 15-39-410.....	20
S.C. Code Ann. § 27-23-10.....	11, 14, 19
S.C. Code Ann. § 27-23-10(A)	11
S.C. Code Ann. § 36-9-102(29).....	24
S.C. Code Ann. § 36-9-102(52)(A)	25
S.C. Code Ann. § 36-9-104.....	23
S.C. Code Ann. § 36-9-104(a)(2)-(3)	24
S.C. Code Ann. § 36-9-314(a)	24
S.C. Code Ann. § 36-9-314(a)	24
S.C. Code Ann. § 36-9-317(a).....	25

APPENDIX 35

STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER IN EQUITY ERR IN FINDING THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO MANFRED SPRENGER WERE NOT FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10?
2. DID THE MASTER IN EQUITY ERR WHEN IT LIMITED APPELLANT'S RECOVERY TO FRAUDULENT TRANSFERS THAT OCCURRED AFTER THE DATE APPELLANT'S LAWSUIT WAS FILED?
3. DID THE MASTER IN EQUITY ERR WHEN IT DETERMINED THAT THE TRANSFERS FROM MS PRODUCTION SOLUTIONS TO PATRICIA SPRENGER WERE FRAUDULENT BUT FAILED TO ENTER A JUDGMENT AGAINST PATRICIA SPRENGER INDIVIDUALLY, WHO WAS A PARTY TO THE SUPPLEMENTAL PROCEEDINGS?
4. DID THE MASTER IN EQUITY ERR WHEN IT FAILED TO MAKE A FINDING THAT THERE IS NO PERFECTED SECURITY INTEREST IN THE DEPOSIT ACCOUNTS OF MS PRODUCTION SOLUTIONS, LLC AND FAILED TO ORDER EXECUTION ON THE SAME?

STATEMENT OF THE CASE

Appellant-Respondent China Construction America of South Carolina Inc. (“CCA”) commenced this action on April 2, 2014, seeking damages for breach of contract for failure to manufacture and deliver steel in accordance with the terms of the subcontract with Respondent-Appellant MS Production Solutions, LLC. (“MSPS”). (R. pp. 40-61). By letter dated May 29, 2014 and filed June 3, 2014, MSPS attempted to respond to CCA’s Complaint. (R. pp. 62-65). However, because MSPS failed to properly answer or otherwise appear and an Order of Default was entered against MSPS on July 31, 2014 and filed on August 5, 2014. (R. pp. 4-5).

A damages hearing was held on November 17, 2014 before the Honorable G. Garrison Hill. (R. p. 74). An Order of Judgment was entered against MSPS on December 23, 2014 and filed on December 24, 2014. (R. pp. 34-37). An Amended Order of Judgment in the amount of \$657,137.30 was subsequently entered against MSPS on January 28, 2015 and filed on January 29, 2015. (R. pp. 38-39). Execution was issued on the amended judgment (hereinafter “the Judgment”) and thereafter returned *nulla bona* by the sheriff of Greenville County.

CCA then commenced supplemental proceedings to examine the defendant and execute on MSPS’s assets to satisfy the \$657,137.30 judgment. On May 5, 2015, a Rule to Show Cause and Order of Reference referring the matter to the Greenville County Master-In-Equity was filed. (R. pp. 1-3). On May 5, 2015, CCA filed a Verified Petition for Supplemental Proceedings. (R. pp. 66-68). A supplemental proceedings hearing was held on June 2, 2015. (R. pp. 161-91).

After it became clear that MSPS diverted a significant amount of MSPS funds to Manfred Sprenger and Patricia Sprenger, CCA filed a Motion for Execution and to Set Aside Fraudulent Transfers on September 23, 2015, and a hearing was held on October 2, 2015 before the Greenville County Master In Equity. (R. pp. 76-135; R. pp. 192-218). At the direction of the Master-in-

APPENDIX 37

Equity, CCA filed a Motion to Join Respondents-Appellants Manfred Sprenger and Patricia Sprenger as parties to the Supplemental Proceedings on October 12, 2015. (R. pp. 149-53). By Order dated October 27, 2015, the Court held in abeyance the determination of the fraudulent nature of the transfers. (R. pp. 6-9). A hearing was held on CCA's Motion to Join on November 18, 2015, at which Manfred Sprenger and Patricia Sprenger were both represented individually by counsel. On December 23, 2015, the Court entered an Order joining Manfred Sprenger and Patricia Sprenger as parties. (R. pp. 13-18).

A final hearing on CCA's Motion to Execute and Set Aside Transfers was held on March 2, 2016. (R. pp. 241-90), and the Court entered an Order setting aside certain fraudulent conveyances on June 7, 2016. (R. pp. 19-31). The parties all filed respective motions to reconsider (R. pp. 154-56; R. pp. 157-60). The Master-in-Equity denied both motions. (R. pp. 32-33).

CCA served its Notice of Appeal on August 29, 2016, seeking review of the June 7, 2016 Order on Motion to Set Aside Conveyances and the Order denying CCA's Rule 59(e) Motion filed on August 2, 2016. On September 1, 2016, MSPS, Manfred Sprenger and Patricia Sprenger served their Notice of Cross-Appeal.

FACTS

This Appeal arises out of CCA's attempt to set aside and execute on approximately \$361,393.84 of MS Production Solutions, LLC ("MSPS") funds that were fraudulently conveyed/transferred to Manfred Sprenger and Patricia Sprenger in an effort to avoid CCA's Judgment against it as well as the funds remaining in the MSPS corporate bank account. Respondent/Appellant Manfred Sprenger ("Manfred") is the sole principal and owner of MSPS. Respondent/Appellant Patricia Sprenger ("Patricia") is Manfred's wife, and at all relevant times was not an employee of MSPS. (R. p. 169:13-20; R. p. 412:12-22). Each of the transfers at issue to Manfred and Patricia Sprenger occurred while the lawsuit or supplemental proceedings were ongoing/pending.¹

On December 12, 2012, CCA and MSPS entered into a Contract in the amount of \$1,093,242.89 for MSPS to manufacture and deliver steel for a construction project at Irmo High School ("the Project"). (R. pp. 40-61). Throughout the Project, MSPS delayed the Project, failed to deliver a majority of the steel under the Contract, and delivered defective and non-conforming steel. (R. pp. 38-39). After it became clear that a conflict arose between CCA and MSPS regarding MSPS's non-performance and defective work, Manfred Sprenger began writing checks from the MSPS bank account made payable to Patricia Sprenger without consideration. (R. pp. 274:16-275:8; R. pp. 62-64). It is undisputed that Patricia Sprenger was not an employee of MSPS.

Over the course of about seven months, from August 29, 2013 to March 27, 2014, MSPS fraudulently transferred \$82,000.00 of MSPS funds to Patricia Sprenger (the "pre-lawsuit transfers"), \$47,000.00 of which was transferred on March 27, 2014, just 7 days prior to CCA's

¹ For ease of reference, CCA prepared a chart summarizing the dates of the transfers in relation to the filing of pleadings and various motions in the underlying lawsuit. This summary is attached to this Brief as Appendix I. All evidence relating to the transfers and the filings are included in the Record before the Court and cited to in the Appendix. (See Appendix I).

APPENDIX 39

filing its lawsuit against MSPS. (R. p. 301; R. pp. 69-73). Patricia Sprenger deposited the MSPS funds into a joint bank account located at First Citizens Bank that she and Manfred Sprenger owned together. (R. pp. 291-335).

On April 2, 2014, CCA filed a Complaint against MSPS for damages arising out of MSPS's failure to manufacture and deliver the structural steel for certain additions and renovations to Irmo High School pursuant to its contract with CCA. (R. pp. 40-61). CCA's damages exceeded \$400,000.00. *Id.* On April 28, 2014, MSPS transferred an additional \$7,000.00, fraudulently and without consideration, of MSPS funds to Patricia Sprenger. (R. p. 108; Appendix I).

On May 2, 2014, MSPS was served with a copy of the Summons Complaint. (R. p. 65). MSPS did not answer or otherwise properly respond to CCA's Complaint.² On July 25, 2014, CCA served its Motion for Default on MSPS. (R. pp. 69). From May 14, 2014 to July 30, 2014, a little over two months and after MSPS was served the Complaint, MSPS fraudulently transferred an additional \$42,600 of MSPS funds to Patricia Sprenger, \$27,000 of which was transferred just 5 days after MSPS was served with CCA's Motion for Default. (R. p. 112; Appendix I).

An Order of Default was entered against MSPS on July 31, 2014 and filed on August 5, 2014. (R. pp. 4-5). From August 27, 2014 to December 22, 2014, after the Order of Default was served on MSPS, MSPS fraudulently transferred an additional \$98,000.00 from the MSPS account to Patricia Sprenger, \$70,000.00 of which was transferred just two weeks after MSPS received

² After counsel for CCA notified MSPS of its intent to file a lawsuit against it, MSPS responded by letter to the Clerk of Court of Greenville County, which was signed by Manfred Sprenger and dated May 29, 2014 (prior to the filing of the lawsuit) and filed July 3, 2014 generally objecting CCA's claims against it. (R. pp. 62-6).

notice of the damages hearing.³ (R. pp. 275:9-276:7; R. p. 117; R. pp. 74-75). A damages hearing was held on November 17, 2014 and MSPS did not appear.

On December 24, 2014, CCA obtained a judgment against MSPS. (R. pp. 34-37). And on January 29, 2015, an Amended Order of Judgment was entered against Defendant MSPS in the amount of \$657,137.30. (R. pp. 38-39). The fraudulent transfers to Patricia Sprenger continued through December of 2015. (Appendix I).

However, shortly after MSPS was served CCA's Verified Petition for Supplemental Proceedings on April 13, 2015, and after a Rule to Show Cause was issued on May 1, 2015, Manfred Sprenger began fraudulently transferring MSPS funds directly to himself as well. (Appendix I; R. pp. 66-68). Notwithstanding the court's Order refraining and enjoining MSPS from making any transaction or transfer or other disposition of property belonging to it which is not exempt from execution pending further Order of the court, Manfred Sprenger continued his self-dealing effort. (R. pp. 1-3; Appendix I).

A supplemental proceeding hearing was held on June 2, 2015. (R. pp. 161-91). At the hearing, Manfred testified that his wife was not an employee of MSPS and the company does not pay him a salary (R. pp. 168:20-169:20). CCA moved to execute on the assets of MSPS and the MSPS account at Bank of America. (R. p. 187:13-21). However, the hearing was held open to allow the parties to engage in additional discovery, and the court reminded Manfred of MSPS's obligation to refrain from transferring company assets outside the normal course of business. (R. pp. 188:22-189:20). In spite of the court's Order, Manfred continued transferring money to himself and his wife. From August 12, 2015 to December 7, 2015, Manfred fraudulently

³ CCA served its Notice of Motion and Motion for Damages Hearing on MSPS on September 4, 2014. (R. pp. 74-75). On September 11, 2014, Manfred Sprenger was notified via US Mail that a damages hearing was to take place on November 17, 2014.

APPENDIX 41

transferred an additional \$57,800.00 of MSPS funds to himself while simultaneously continuing to transfer funds to his wife. (R. p. 292; R. pp 315-31; Appendix I). Notably, after the Supplemental Proceedings Hearing and after Manfred and Patricia were served a subpoena *duces tecum* to appear for their depositions. Manfred Sprenger began writing checks payable to himself from the MSPS Bank Account instead of to his wife. (R. p. 291; R. pp. 448-54; Appendix I).⁴

Manfred and Patricia Sprenger were deposed on September 21, 2015. (R. pp. 336-459). At her deposition, Patricia Sprenger was questioned regarding a \$60,000.00 transfer to her dated May 27, 2015 and her subsequent cash withdrawal from her First Citizens account for \$50,000.00 on June 4, 2014. (R. p. 430:1-23, R. p. 441:17-23). In order to conceal the location of the cash, Manfred Sprenger interjected and attempted to prevent Patricia Sprenger from testifying. *Id.* However, Patricia's testimony revealed that she and Manfred had stored at least \$50,000.00 in cash in the bedroom of their home, the same cash that had been withdrawn from First Citizens Bank. *Id.*

The day after the depositions, Manfred Sprenger wrote himself a second check from the MSPS account for \$7,000.00. (R. p. 305). On September 22, 2015, CCA filed a Motion for Execution and to Set Aside Fraudulent Transfers and Request for Expedited Hearing. (R. pp. 76-135). That same day, Manfred Sprenger wrote himself a third check from the MSPS account, this time for \$14,000.00. (R. p. 316).

A hearing was held on CCA's Motion to Execute and Set Aside Fraudulent Transfers on October 2, 2015. (R. pp. 192-218). By the time the hearing was scheduled, 11 days after Manfred and Patricia's depositions, Manfred Sprenger and MSPS claimed only \$8,500.00 in cash remained

⁴ On July 31, 2015, Manfred Sprenger was served a Subpoena *Duces Tecum* to appear for his deposition. However, only the Subpoena *Duces Tecum* to Patricia was included as an Exhibit at the March 2, 2016 final hearing on the Motion to Execute and Set Aside Fraudulent Transfers.

in the home. (R. p. 197:4-20). The Court heard arguments from counsel regarding the fraudulent nature of the transfers to both Patricia and Manfred, which MSPS claimed were “loan repayments” with a complete lack of documentation. (R. pp. 208:4-211:15). Notably, the court cautioned MSPS regarding transfers and repayments for any “loans” absent proper documentation. (R. pp. 216:2-217:1). Four days later, on October 6, 2015, CCA served its Motion to Join Manfred Sprenger and Patricia Sprenger as parties to the Supplemental Proceedings. (R. pp. 149-53). That same day, Manfred transferred another \$7,000.00 of MSPS funds to himself. (R. p. 319).

On October 8, 2015, the court entered an order on CCA’s Motion to Set Aside Conveyances, which was filed on October 13, 2015. (R. pp. 6-9). CCA moved to amend the October 8th Order, and the court filed an Amended Order on CCA’s Motion to Execute and Set Aside Fraudulent Transfers on October 27, 2015. (R. pp. 10-12). The Court held the determination of the fraudulent nature of the transfers in abeyance and again reminded MSPS that “it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any ‘loans’ or ‘capital contributions’ not evidenced by any note or other proper loan documentation.” (R. p. 11). The Court also noted that “while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.” (R. p. 12).

On November 18, 2015, a hearing was held on CCA’s Motion to Join Manfred Sprenger and Patricia Sprenger as parties. (R. pp. 219-40). Manfred and Patricia Sprenger were represented at the hearing individually by counsel. (R. p. 221:21-23). That very same day, and in direct defiance of the court’s October 13 and October 27, 2015 Orders, Manfred Sprenger wrote himself a check from the MSPS bank account for \$10,000.00. (R. p. 326; R. pp. 19-31; R. pp. 38-39).

APPENDIX 43

Finally, on December 3, 2015 and December 7, 2015, Manfred Sprenger wrote himself two more checks from the MSPS account for \$10,000 and \$2,800 respectively. (R. p. 331; R. p. 330).

The Court granted CCA's Motion to Join Manfred and Patricia Sprenger as parties by order dated December 21, 2015 and filed December 23, 2015. (R. pp. 13-18). In its Order, the Court conceded that "it appears that many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed." (R. p. 14).

Manfred and Patricia were present at the final hearing on CCA's Motion to Execute and Set Aside Transfers, which was held on March 2, 2016. (R. pp. 241-90). At the hearing, MSPS took the position that all company assets, including the MSPS deposit account, that could satisfy CCA's judgment are secured by a loan held by Small Business Loan source, LLC ("SBL") in the amount of \$1,457,000.00 and is perfected by a UCC financing statement. (R. pp. 499-556). At all relevant times, MSPS has remained current on the small business loan. (R. pp. 164:20-165:3). CCA sought execution of the money in the MSPS deposit account and the fraudulent transfers to Manfred and Patricia Sprenger, arguing that SBL does not have a perfected security interest in the MSPS deposit account or the fraudulent transfers of cash. (R. pp. 277:5-279:22). The court entered a final order setting aside only the post-filing transfers to Patricia Sprenger but expressly declined to enter a judgment against her for the same. The order was silent as to CCA's entitlement to MSPS's deposit account. (R. pp. 19-31).

STANDARD OF REVIEW

The evidentiary standard governing fraudulent conveyance claims brought under the Statute of Elizabeth is the clear and convincing standard. Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012). An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies. Id. “In an appeal from an action in equity, [an appellate court] has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence.” Pinckney v. Warren, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

ARGUMENT

- I. THE MASTER IN EQUITY COMMITTED REVERSIBLE ERROR IN FINDING THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO MANFRED SPRENGER WERE NOT FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10.

Between August 12, 2015 and December 7, 2015, MSPS transferred a total of \$57,800.00 to Manfred Sprenger. (R. p. 292; R. pp. 315-31; Appendix I). Each of the transfers from MSPS to Manfred took place well after the judgment was entered against MSPS. Id. In fact, despite not making any transfers to Manfred Sprenger in the previous two years, MSPS began making the transfers to Manfred shortly after the first supplemental proceedings hearing in this matter was held. (R. p. 313; Appendix I). The Master In Equity incorrectly determined that these transfers should not be set aside as fraudulent transfers. It is well-established in South Carolina that a debtor may not transfer or convey property to frustrate or impede a creditor. To that point, the Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just

APPENDIX 45

and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10(A) (2007). Our courts have applied the Statute of Elizabeth to set aside conveyance in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. **Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full-not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.**

Mathis v. Burton, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting Durham v. Blackard, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)) (emphasis added); see also Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012).

Manfred Sprenger failed to establish valuable consideration for the transfers from MSPS to himself; therefore, the Master In Equity erred in finding the transfers not subject to execution. In the absence of valuable consideration, the party seeking to set aside a transfer does not need to prove fraudulent intent. Id. A transfer should be set aside if the transferor was indebted when the transfer was made, there was no consideration for the transfer and the indebted party fails to retain assets or property to satisfy the judgment. Id. Furthermore, it is well-settled that “where a conveyance to a

family member or close relative is attacked on account of its voluntary character, the law imposes a duty of the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing evidence.” First State Sav. & Loan Ass’n v. Nodine, 291 S.C. 445, 450, 354 S.E.2d 51, 54 (1987) (citing Coleman v. Daniel, 261 S.C. 198, 199 S.E.2d 74 (1973)). The Master In Equity did not specify whether the burden shifted to Manfred Sprenger, the transferee, to establish valuable consideration and the bona fides of the transfers. However, the same logic and reasoning that justifies shifting the burden of proof to the transferee when dealing with transfers between family members or close relatives should be applied when a business owner transfers assets from the business to himself.

Here, Manfred Sprenger failed to prove there was valuable consideration and he further failed to demonstrate that the transfers were bona fide.⁵ Under South Carolina law, “consideration...may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.” Furman Univ. v. Waller, 124 S.C. 68, 117 S.E. 356, 358 (1923). Manfred Sprenger failed to show that he either received a benefit or suffered a detriment from the transfers from MSPS to himself. Given that Manfred Sprenger retained total control over the money regardless of the account in which it was held, Manfred Sprenger was in the exact same position before and after the transfers to himself. The funds were simply in a different account.

The only argument offered by Manfred Sprenger supporting the contention that there was valuable consideration was that the transfers from MSPS to himself were loan repayments from loans he previously made to MSPS. (R. pp. 208:4-211:15). However, Manfred Sprenger offered no documentation supporting the loans and could not provide details regarding when and how

⁵ Black’s Law Dictionary defines bona fide as “[m]ade in good faith; without fraud or deceit”. Black’s Law Dictionary 81 (4th pocket ed. 2011).

APPENDIX 47

much money he loaned to the company. (R. p. 26). Despite making a finding that Manfred Sprenger failed to introduce records documenting the alleged loans and that Manfred Sprenger improperly commingled business and personal assets, the lower court ruled that the transfers from MSPS to Manfred Sprenger should not be set aside as fraudulent transfers. (*Id.* at 25-26). The only reasoning provided by the Court in support of its ruling was that bank records showed that Manfred Sprenger had made "loans" to MSPS which were necessary to keep the business bank account from having a negative balance on several occasions. (*Id.* at 26). Regardless of whether Manfred Sprenger had loaned money to MSPS, Manfred Sprenger impermissibly chose to repay himself prior to paying his creditors.⁶ CCA's judgment lien against MSPS takes priority over Manfred Sprenger, an unsecured creditor. Therefore, even taking Manfred Sprenger's allegations regarding the loans as true, the "repayments" should be set aside. The limited evidence in support of his argument that the transfers were loan repayments does not amount to the clear and convincing evidence required by South Carolina case law. Therefore, the lower court erred in ruling that the transfers were not subject to execution.

Even assuming that there was consideration for the transfers, which CCA denies, the transfers from MSPS to Manfred Sprenger should still be set aside as fraudulent transfers. If a transfer alleged to be fraudulent is found to have been supported by valuable consideration, it may still be set aside if the transferor was (1) indebted at the time of the transfer; (2) the transfers were made with an intent to delay or defraud creditors and (3) the transferor failed to retain sufficient funds to satisfy the judgment against it. *See Mathis*, 319 S.C. at 264-65, 460 S.E.2d at 408. Here, it is undisputed that the transfers from MSPS to Manfred Sprenger were made after the judgment was entered against MSPS. The earliest transfer from MSPS to Manfred Sprenger was made on

⁶ "The principal of justice demands that one shall be just before he is generous." *Suber v. Chandler*, 18 S.C. 526 (1883).

August 12, 2015, nearly nine months after the Order of Judgment was entered against MSPS. (R. pp. 34-37; R. p. 291). It is also undisputed that MSPS failed to retain sufficient funds to satisfy CCA's judgment against it. Throughout supplemental proceedings, MSPS has consistently maintained that it has no assets which can be applied towards CCA's judgment. Thus, the only issue for the court to determine is whether the transfers were made with the "intent or purpose to delay, hinder, or defraud" CCA from collecting on its judgment. See S.C. Code Ann. § 27-23-10.

In determining whether a debtor acted with the requisite intent to establish a fraudulent conveyance, courts often evaluate the particular circumstances of the transfer for "badges of fraud." Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) ("Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as 'badges of fraud.' The badges tend to excite suspicions as to the Bona fides of a challenged conveyance."). The presence of one or more badge of fraud creates a rebuttable presumption of intent to defraud. See Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999). In Coleman, our Supreme Court stated the following regarding the badges of fraud:

The facts which are recognized indicia of fraud are numerous, and no court could pretend to anticipate or catalog them all. Among the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

Id. (citing 37 Am.Jur.(2d), Fraudulent Conveyances, § 10 (1968)); see also In re Jones, 397 B.R. 765, 770 (Bankr. D.S.C. 2008); In re Ducate, 369 B.R. 251 (Bankr. D.S.C. 2007). The circumstance of MSPS's transfers to Manfred Sprenger meet nearly all of the badges of fraud listed

APPENDIX 49

above.⁷ “Although the presence of a single factor, i.e., badge of fraud, may cast suspicion on the transferor’s intent, the confluence of several in one transaction generally provides conclusive evidence of an actual intent to defraud.” Gilchinsky v. Nat’l Westminster Bank, 732 A.2d 482, 490 (1999). Here, MSPS (1) was indebted to CCA at the time of the transfers; (2) transferred the funds to its owner, a person in a close relationship with the business, (3) began transferring funds to Manfred Sprenger after CCA initiated supplemental proceedings, (4) attempted to conceal the transfers from CCA, (5) departed from ordinary practice by transferring the funds to Manfred Sprenger, (6) reserved the benefit of the funds by transferring them to its owner and (7) retained possession of the funds. The presence of these badges of fraud surrounding MSPS’ post judgment transfers reveal its “actual intent to hinder, delay, or defraud” CCA from collecting on its judgment.

Establishing that a debtor acted with actual intent to hinder, delay or defraud a creditor is rarely proven by direct evidence. In re Schmit, 71 B.R. 587, 590 (Bankr. D. Minn. 1987). It is typically inferred from the facts and circumstances of the debtor’s conduct. Id.; see also Farmers Co-op. Ass’n v. Strunk, 671 F.2d 391, 395 (10th Cir.1982) (“Fraudulent intent of course may be established by circumstantial evidence, or by inferences drawn from a course of conduct.”). The circumstances of this case show that MSPS, through its owner, took deliberate steps to prevent CCA from collecting its judgment. The contradictory testimony and the actions taken by Manfred Sprenger and his wife, Patricia Sprenger, are both strong evidence of their intent to prevent CCA from collecting its judgment. For example, during the supplemental proceedings hearing on June 2, 2015, Manfred Sprenger testified that he did not pay himself a salary from the MSPS business account. (R. p. 168:22-25). However, at the March 2, 2016 hearing, Manfred Sprenger then stated

⁷ One of the badges of fraud satisfied is lack of consideration. CCA takes the position that the transfers at issue were not made on valuable consideration. *See supra* p. 11. However, as this section of the brief assumes, *arguendo*, that there was consideration, CCA will only address the other badges of fraud that are present.

APPENDIX 50

that he had a set salary from MSPS. (R. pp. 259:22-260:25). The change in testimony conveniently came after Manfred Sprenger's first explanation for the transfers from MSPS to himself was attacked by CCA. Manfred Sprenger's attempt to limit his wife's deposition testimony also demonstrates his fraudulent intent and blatant effort to obstruct CCA's collection effort.

During her deposition, Patricia Sprenger was questioned regarding the amount of cash kept in the Sprenger home. (R. p. 430:1-23). In order to conceal the amount and location of the cash, Manfred Sprenger interjected and attempted to prevent Patricia Sprenger from testifying. *Id.* Manfred Sprenger's failure to mention that he had a significant amount of cash in his bedroom along with his attempts to prevent Patricia Sprenger from providing truthful testimony is further proof that he took steps to hinder or delay CCA's collection efforts.

Manfred Sprenger's continued disregard for the court's rulings should also be noted. Judge Simmons October 8, 2015 Order enjoined MSPS from making any transfers "outside the ordinary course of business, including but not limited to, repayment of any 'loans' or 'capital contributions'...." (R. p. 11). Over the course of the next two months, MSPS transferred nearly \$23,000.000 to Manfred Sprenger, a direct violation of Judge Simmons' Order. Viewed as a whole, Manfred Sprenger's contradictory and evasive testimony, his efforts to impede discovery and his conscious disregard for the court's rulings demonstrates "actual intent to hinder, delay, or defraud" CCA from collecting on its judgment. The law does not condone such action. This Court should find that the transfers from MSPS to Manfred Sprenger totaling \$57,800.00 should be set aside as fraudulent transfers and enter a judgment against Manfred Sprenger individually for the same.

II. THE MASTER IN EQUITY COMMITTED REVERSIBLE ERROR WHEN IT LIMITED APPELLANT'S RECOVERY TO FRAUDULENT TRANSFERS THAT OCCURRED AFTER THE DATE APPELLANT'S LAWSUIT WAS FILED.

The Master In Equity found that CCA was only entitled to execute on transfers from MSPS which occurred after CCA's lawsuit was filed. (R. pp. 24-25).⁸ This was error. South Carolina case law is clear that, for the purposes of the Statute of Elizabeth, "it is only necessary that the debt should have been in existence or the right of action have accrued at or before the time of the transfer." Albertson v. Robinson, 371 S.C. 311, 317-18, 638 S.E.2d 81, 84 (2006) (quoting Matthews v. Montgomery, 193 S.C. 118, 133, 7 S.E.2d 841, 848 (1940)). Further, in determining "whether a person is such an existing creditor as can invoke the protection of the statute *the inception of the debt or obligation is the time which controls*; and not the date of the subsequent entry of judgment." Id. (emphasis added).

In Albertson, a creditor sought to set aside an alleged fraudulent transfer from a husband to his wife which took place prior to a judgment being filed against the husband. Id. at 313-15, 638 S.E.2d at 82-83. The lower court ruled that the transfer was not a fraudulent transfer because the husband was not indebted to the creditor at the time of the transfer. Id. at 315, 638 S.E.2d at 83. The Court of Appeals reversed and ruled that the transfer should have been voided as a fraudulent transfer. Id. In Albertson, like the present case, the husband's debt arose from the breach of a construction contract. Id. at 314, 638 S.E.2d at 82. In ruling that the transfer from the husband to his wife should be set aside, the Court of Appeals found the operative date, "[t]he inception of the debt or obligation", to be the date the husband breached his contract with the plaintiffs. Id. at 317, 638 S.E.2d 84. In this case, the damages hearing judge found that MSPS

⁸ In its Order, the court noted that "the court chooses not to go behind the date of the filing of the lawsuit based on the unique facts of this case". (R. p. 25). The court failed to identify the "unique facts" that formed a basis for its decision to limit the transfers to after the date the lawsuit was filed and denied CCA's Motion to Reconsider seeking clarification of the same.

breached its contract with CCA on August 12, 2013, well before CCA filed suit in April of 2014.⁹ Pursuant to South Carolina case law, August 12, 2013 represents the “[t]he inception of the debt or obligation”. *Id.* Accordingly, the lower court erred in limiting CCA’s recovery to transfers occurring after the lawsuit was filed on April 2, 2014.

In total, the lower court ruled that \$82,000.00 in transfers from MSPS to Patricia Sprenger occurring prior to the filing of the lawsuit were not subject to execution.¹⁰ (R. p. 25; Appendix I). While CCA submits that every transfer from MSPS to Manfred or Patricia Sprenger occurring after August 12, 2013 should be set aside as a fraudulent transfer, two transfers from MSPS to Patricia Sprenger on March 27, 2014, deserve special attention. These transfers, totaling \$47,000.00, are notable in that they came less than one week prior to CCA filing suit against MSPS. There is no dispute that MSPS was on notice of CCA’s claims prior to the March 27, 2014 transfers from MSPS to Patricia Sprenger. MSPS had received correspondence regarding CCA’s claims and even responded to CCA’s letter. (R. p. 275:2-8). The lower court’s determination that CCA is only entitled to transfers after it filed suit against MSPS is unsupported by South Carolina case law. Furthermore, given that the lower court failed to provide its reasoning for choosing the day the lawsuit was filed as the operative date, it appears to be an arbitrary date without justification. This is especially true given that MSPS was clearly on notice of CCA’s claims prior

⁹ The Amended Order of Judgment filed on January 29, 2014 mistakenly indicates that MSPS’ breach of contract occurred on August 12, 2014. This was typographical error which should have been August 12, 2013. As the Order indicates that prejudgment interest accrued for 462 days prior to the entry of the Order of Judgment, it is clear that the Court ruled that the breach occurred on August 12, 2013. (R. p. 39).

¹⁰ As a point of clarification, the lower court found that all of the transfers from MSPS to Patricia Sprenger alleged to be fraudulent by CCA should be set aside except those occurring prior to the filing of the lawsuit on April 2, 2014.

APPENDIX 53

to the lawsuit being filed. This Court should find that CCA is entitled to set aside all transfers from MSPS from August 12, 2013 by virtue of the fraudulent transfers.

III. THE MASTER IN EQUITY ERRED WHEN IT DETERMINED THAT THE TRANSFERS FROM MSPS TO PATRICIA SPRENGER WERE FRAUDULENT BUT FAILED TO ENTER A JUDGMENT AGAINST PATRICIA SPRENGER INDIVIDUALLY, WHO WAS A PARTY TO THE SUPPLEMENTAL PROCEEDINGS.

CCA is entitled to a judgment against Patricia Sprenger for the funds MSPS fraudulently transferred to her. The Court found the transfers to Patricia Sprenger were fraudulent transfers within the meaning of S.C. Code § 27-23-10 but erred when it failed to provide an adequate a remedy to CCA to recover the same. Specifically, the Court found

MSPS improperly transferred its assets into the hands of Patricia. Petitioner is entitled to a full examination of Patricia to determine her assets. Petitioner shall be entitled to execute on any non-exempt assets of Patricia up to \$221,593.84 which represents the transfers from MSPS to Patricia dating from April 2, 2014, the date this lawsuit was filed, until December 24, 2015...

It is further ordered that Petitioner be entitled to a full examination of Patricia within 30 days from the entry of this Order to determine if any assets that were improperly transferred from MSPS to Patricia remain. The *petitioner is entitled to recover any remaining* non-exempt assets from those improperly transferred from MSPS to Patricia between April 2, 2014 and December 24, 2015, up to \$221,593.94....*However, this Order shall not be construed as a judgment against Patricia.*"

(R. pp. 24, 27, emphasis added).

S.C. Code § 15-39-410 provides "[t]he judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied." As such, funds proven prima facie to belong to a judgment debtor in the hands of a third party may be reached in supplementary

proceedings. Lynn v. International Broth. of Firemen and Oilers, 228 S.C. 357, 90 S.E.2d 204 (1955).

The issue in this case is in regard to the method the court may order those funds be applied to satisfy the judgment. While South Carolina courts have not spoken on this issue, other jurisdictions have held “a money judgment against the transferee may also be an available form of substitute relief where the transferee has disposed of the wrongfully conveyed property in some manner which makes it impossible to return.” Joslin v. Lopez, 309 A.D.2d 837, 765 N.Y.S.2d 895 (N.Y. App. Div. 2d Dep’t 2003); Marine Midland Bank v. Murkoff, 120 A.D.2d 122, 508 N.Y.S.2d 17 (N.Y. App. Div. 1986); see also Buchanan v. Buchanan, 266 Va. 207, 585 S.E.2d 533 (2003); Price v. Hawkins, 247 Va. 32, 439 S.E.2d 382 (1994).

In a case involving similar facts, The Supreme Court of Virginia upheld the decision of a lower court to enter a judgment against third party transferees of cash. Price v. Hawkins, 247 Va. 32, 439 S.E.2d 382 (1994). In that case, the plaintiff-creditor claimed the defendant-debtor fraudulently transferred various amounts of cash to the debtor’s girlfriend and two sons in an effort to avoid the plaintiff’s judgment and in violation of Virginia’s fraudulent and voluntary conveyances statute. The court held a judgment against the third party transferees for the full amount of the conveyances was proper because “a mere declaration...that the cash transfers are ‘void; is meaningless in terms of relief to the defrauded creditor in this case” because “cash money has been transferred and, if merely ordered to return money to the court, the transferees may refuse to do so, or claim that the money transferred has been spent and is no longer available. In effect, the defrauded creditor in this case is without any effective remedy...unless personal judgments are entered against the defrauders.” Id. at 37-38.

APPENDIX 55

It is imperative to remember that the asset at issue in the case is cash, which is personal property and not real property. Similar to Price, the assets that were fraudulently transferred to Patricia was cash from the MSPS corporate bank account that was deposited into a joint personal account owned by Manfred and Patricia and located at First Citizens Bank. (R. p. 291-335, R. pp. 417:13-420:13). As the wife of Manfred Sprenger, the principal and owner of the debtor, MSPS, Patricia was an “insider transferee” of the funds. Manfred Sprenger and Patricia Sprenger would then withdraw the fraudulently transferred funds in cash. (R. p. 85-86). In fact, Patricia Sprenger testified at her deposition that she and Manfred Sprenger had at least \$50,000.00 in cash in their home bedroom. (R. p. 430:11-23). However, by the time a hearing could be held (11 days after Patricia Sprenger’s deposition), Manfred Sprenger and MSPS claimed only \$8,500.00 in cash remained available. (R. p. 197:4-20).¹¹ All the while, the Sprengers continually depleted the balance in their First Citizens account. (R. p. 438:1-12).

The remedy the Master-In-Equity ordered, an examination of Patricia’s assets to determine if “any remaining non-exempt assets from those improperly transferred from MSPS to Patricia,” is effectively no remedy at all. The Court’s refusal to enter a judgment against Patricia Sprenger for the value of the funds she fraudulently accepted from MSPS leaves CCA with no practical ability to collect the money owed and does nothing but incentivize a judgment debtor to transfer cash subject to execution to third parties, withdraw the money and hold it in a safe somewhere. A

¹¹ By Amended Order dated October 26, 2015 and filed October 27, 2015, the Court found that Manfred Sprenger “appears to have some access to the \$50,000.00 in cash”, ordered MSPS to exercise all reasonable efforts to recover the \$50,000.00 to be held in trust by counsel for MSPS, and noted that “Manfred Sprenger and Patricia Sprenger....are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.” (R. pp. 11-12). Despite admitting at least \$8,500 in cash remained in the home, MSPS refused to remit those funds to its attorney to be held in trust and forcing CCA to file a Motion for Contempt and to Impose Sanctions. (R. pp. 136-37). After a hearing on CCA’s Motion, MSPS ultimately turned over \$8,000.00 to its attorney to be held in trust.

judgment in this case is proper because the transferee has disposed of the property in a manner which makes it impossible to return.

This is not a situation where a transferee sells real estate to a third party and the third party takes the property subject to the judgment creditor's lien, in which case the court can unravel the transfer of property. In that instance, the judgment creditor has a remedy available against the subsequent purchaser by forcing it to return the property. See e.g. Joslin v. Lopez, 309 A.D.2d 837, 765 N.Y.S.2d 895 (N.Y. App. Div. 2d Dep't 2003). Here, MSPS cannot recover cash Patricia has fraudulently obtained and disposed of.

MSPS argues the only way which it may reach the funds fraudulently transferred to Patricia Sprenger in partial satisfaction of the judgment would be to obtain a judgment against her individually. Patricia Sprenger was properly joined in the supplemental proceedings as a third party transferee of approximately \$361,393.84 of MSPS funds. (R. pp. 149-51; R. pp. 13-17). On November 18, 2015, a hearing was held on CCA's Motion to Join, at which Patricia Sprenger was individually represented by counsel. (R. p. 221:21-22). Patricia Sprenger had a fair opportunity to raise any defense and did not move to reconsider or appeal the Court's order joining her as a party to the supplemental proceedings. Therefore, a Judgment should be entered against Patricia Sprenger in the amount fraudulently transferred to Patricia Sprenger, including but not limited to, those transfers that occurred prior to the filing of the lawsuit in this case.

IV. THE MASTER IN EQUITY ERRED WHEN IT FAILED TO MAKE A FINDING THAT THERE IS NO PERFECTED SECURITY INTEREST IN THE DEPOSIT ACCOUNTS OF MS PRODUCTION SOLUTIONS, LLC AND FAILED TO ISSUE AN ORDER OF EXECUTION ON THE SAME AND DIRECTING BANK OF AMERICA TO DELIVER ALL FUNDS ON DEPOSIT TO CCA.

The court erred when it failed to order the funds in the MSPS corporate bank account be delivered to CCA in satisfaction of the judgment. CCA argued at length at the March 2, 2016 hearing that it was entitled to execute on the monies in the MSPS corporate bank account and

APPENDIX 57

raised this issue again in its Motion to Reconsider. (R. pp. 277:5-280:3; R. p. 155). However, the court simply held that “petitioner is not entitled to set aside the payments” from the MSPS account to Manfred Sprenger and left undecided CCA’s request to execute on the remaining monies in the MSPS account, which were never transferred to Manfred Sprenger and is still available to the company today. (R. p. 25).¹²

CCA was entitled to execute on the funds in the MSPS bank account because no perfected security interest exists in the cash on hand in the MSPS corporate bank account, nor is the money in the corporate account subject to any statutory exemption. It is well established that customary deposits in a bank creates debts owed by the bank to the depositor and may be reached through supplementary proceedings. McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933); Deer Island Lumber Co. v. Virginia-Carolina Chemical Co., 111 S.C. 299, 97 S.E. 833 (S.C. 1919). Johnson v. Service Mgmt., 319 S.C. 165, 459 S.E.2d 900 (S.C. Ct. App. 1995). Section 36-9-102(29) of the South Carolina Commercial Code defines “deposit account” as “a demand, time, savings, passbook, or similar account maintained with a bank.” To perfect its interest in the debtor’s deposit account, the Lender must gain “control” over the debtor’s deposit account. S.C. Code Ann. §36-9-314(a)-(b).¹³ A secured party may perfect its security interest in a deposit account by having “control” of the account by (a) having a three-party control agreement among

¹² Notably, the Court acknowledged in its Order Setting Aside Fraudulent Conveyances that “Petitioner clarified that it only sought to execute on MSPS’ deposit accounts and the cash it alleged was improperly transferred out of MSPS and currently being held in the Sprenger’s home. Petitioner referred the Court to S.C. Code §36-9-104, which states that a security interest in deposit accounts is only perfected through control.” (R. p. 25). However, the Court failed to rule entirely on the funds remaining in the MSPS account.

¹³ S.C. Code Ann. §36-9-314(a) provides: “[a] security interest ... deposit accounts... may be perfected by control of the collateral under Section ... 36-9-104...”. S.C. Code Ann. §36-9-314(b) further provides that “[a] security interest in...deposit accounts...is perfected by control under Section...36-9-104...when the secured party obtains control and remains perfected by control only while the secured party retains control.”

the debtor, the secured party and the depositary bank pursuant to which the depositary bank agrees to follow the secured party's directions regarding the distribution of funds in the account without further consent of the debtor or (b) being the "customer" of the depositary bank with respect to the deposit account (i.e. the deposit account is the secured party's account rather than the debtor's account). S.C. Code. Ann. §36-9-104(a)(2)-(3).

It is undisputed that Small Business Loan Source, LLC ("SBL" or "Lender") holds a security interest in a majority of MSPS's assets pursuant to its Security Agreement. (R. pp. 499-552). The Security Agreement does provide that SBL holds a security interest in "all...accounts...and other rights to monies from the Premises and or the businesses and operations conducted by Mortgagor" and "all of Mortgagor's accounts now owned or hereafter acquired" (R. pp. 499-552). The description of collateral in the SBL UCC financing statement also includes "all accounts" and "deposit accounts." (R. pp. 553-56). However, because deposit accounts must be perfected by control and cannot be perfected by filing a financing statement, the Lender does not have a perfected security interest in the MSPS deposit account. SBL is not the bank with which the deposit account is maintained; the deposit account is maintained at Bank of America. (R. p. 267:13-16; R. pp. 465-85). Finally, SBL does not own MSPS's deposit account and no a control agreement exists between SBL, Bank of America and MSPS and Manfred Sprenger. (R. pp. 267:13-268:19).

Because SBL did not exercise the requisite control over the deposit account and CCA moved for execution on the deposit account, CCA achieved a legal preference and priority over the funds that account. See Freedman's Saving & Trust Co. v. Earle, 110 U.S. S.Ct. 226, 229, 28 L.Ed. 301 (1884) ("It is the execution first begun to be executed, unless otherwise regulated by statute, which is entitled to priority"). As such, SBL does not have a perfected security interest in

the deposit account and CCA takes free of SBL's security interest because it became a lien creditor¹⁴ when it moved to execute on all non-exempt assets of MSPS. S.C. Code Ann. §36-9-317(a).¹⁵ Therefore, the court erred when it did not execute against the MSPS deposit account or issue an order directing Bank of America to deliver to CCA all funds on deposit in the MSPS account.

CONCLUSION

For the reasons stated above, this Court should reverse the lower court's holding that CCA cannot recover the post-judgment fraudulent transfers to Manfred Sprenger and the pre-lawsuit transfers to Patricia Sprenger and direct the lower court to enter a judgment against Manfred and Patricia Sprenger for the same. Respondents-Appellants presented no evidence, other than offering testimony which directly contradicted prior sworn testimony, to refute CCA's overwhelming evidence that the transfers were fraudulent and intended to hinder or prevent CCA from collecting on its judgment against MSPS. Furthermore, the lower court erred when it failed to rule that MSPS's corporate deposit account is subject to execution. This action should be remitted to the Master-In-Equity for an order directing Bank of America to deliver to CCA all funds on deposit in MSPS's corporate bank account and for a judgment to be entered in favor of CCA against Manfred Sprenger and Patricia Sprenger in the amount of \$361,393.84.

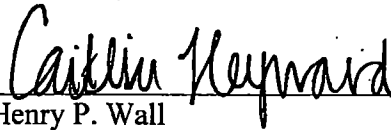
¹⁴ S.C. Code Ann. §36-9-102(52)(A) defines "lien creditor" as "a creditor that has acquired a lien on the property involved by attachment, levy, or the like."

¹⁵ S.C. Code Ann. §36-9-317(a) provides in relevant part: "[a] security interest...is subordinate to the rights of...a person that become a lien creditor before the earlier of the time the security interest....is perfected..."

APPENDIX 60

Respectfully submitted,

**BRUNER, POWELL, WALL
& MULLINS, LLC**


Henry P. Wall

Caitlin Creswick Heyward

Robert C. Osborne

1735 St. Julian Place, Suite 200

P.O. Box 61110

Columbia, South Carolina 29260

(803) 252-7693

Attorneys for Appellant-Respondent

October 16, 2017

APPENDIX 61

APPENDIX I TO INITIAL BRIEF OF APPELLANT-RESPONDENT

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
1.	8/29/2013	53663		Patricia Sprenger	\$7,000.00	R. p. 296
2.	9/27/2013	53716		Patricia Sprenger	\$7,000.00	R. p. 297
3.	10/30/2013	53751		Patricia Sprenger	\$7,000.00	R. p. 298
4.	11/26/2013	53784		Patricia Sprenger	\$7,000.00	R. p. 299
5.	2/25/2014	53894		Patricia Sprenger	\$7,000.00	R. p. 300
6.	3/27/2014	53948		Patricia Sprenger	\$40,000.00	R. p. 301
7.	3/27/2014	53946		Patricia Sprenger	\$7,000.00	R. p. 302
	4/2/2014		Lawsuit Filed			R. pp 41-46
8.	4/28/2014	54042		Patricia Sprenger	\$7,000.00	R. p. 303
	5/2/2014		Affidavit of Service of Lawsuit			R. p. 65
9.	5/14/2014	54079		Patricia Sprenger	\$1,600.00	R. p. 304
10.	5/29/2014	54084		Patricia Sprenger	\$7,000.00	R. p. 305
	5/29/2014		MSPS Response to Complaint			R. pp. 62-64
11.	6/24/2014	54119		Patricia Sprenger	\$7,000.00	R. p. 69
	7/25/2014		Notice of Motion and Motion for Default Served			R. p. 69
	7/29/2014		Notice of Motion and Motion for Default Filed			R. p.69
12.	7/30/2014	54165		Patricia Sprenger	\$27,000.00	R. p. 307
	8/5/14		Order of Default Filed			R. pp. 34-35

APPENDIX 62

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
13.	8/27/2014	54191		Patricia Sprenger	\$7,000.00	R. p.308
	9/5/2014		Motion for Damages Hearing Filed			R. pp. 74-75
14.	9/29/2014	54255		Patricia Sprenger	\$70,000.00	R. p. 309
15.	9/29/2014	54252		Patricia Sprenger	\$7,000.00	R. p. 310
16.	11/3/2014	54283		Patricia Sprenger	\$7,000.00	R. p. 311
	11/17/14			Damages Hearing Held		R. p. 38
17.	12/22/2014	54341		Patricia Sprenger	\$7,000.00	R. p. 312
	12/24/2014		Order of Judgment Filed			R. pp. 34-37
	1/29/2015		Amended Order of Judgment Filed			R. pp. 38-39
	4/13/2015		VP for Supplemental Proceedings			R. pp. 66-68
	5/1/2015		Rule to Show Cause Entered			R. pp. 1-3
18.	5/27/2015	54522		Patricia Sprenger	\$60,000.00	R. p. 313
	6/2/2015		Supplemental Proceeding Hearing			R. pp. 161-91
	6/4/2015			Patricia \$50,000.00 cash withdrawal from First Citizens Account		R. p. 86
19.	6/23/2015	54548		Patricia Sprenger	\$7,000.00	R. p. 314
	7/31/2015		Subpoena Duces Tecum-Patricia			R. pp. 463-65

APPENDIX 63

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
20.	8/12/2015	54598		Manfred Sprenger	\$7,000.00	R. p. 292
	9/21/2015		Deposition of Manfred, Patricia and 30(b)(6) of MSPS			R. pp. 401-59
	9/22/2015		CCA's Motion for Execute and Set Aside Fraudulent Transfers			R. pp. 76-135
21.	9/22/2015	55055		Manfred Sprenger	\$7,000.00	R. p. 315
22.	9/23/2015	55057		Manfred Sprenger	\$14,000.00	R. p. 316
23.	9/24/2015	54806		Patricia Sprenger	\$499.56	R. p. 317
	10/2/2015		Hearing on Motion to Set Aside Fraudulent Transfers			R. pp. 192-218
24.	10/6/2015	55060		Manfred Sprenger	\$7,000.00	R. p. 319
	10/6/2015		Motion to Join Manfred and Patricia as Parties			R. pp. 149-53
25.	10/8/2015	55701		Patricia Sprenger	\$499.56	R. p. 320
	10/13/2015		First Order on Motion to Set Aside Fraudulent Conveyances			R. pp. 6-9
26.	10/15/2015	55708		Patricia Sprenger	\$499.56	R. p. 321
	10/19/2015		Motion for Contempt and Sanctions			R. pp. 136-48
27.	10/22/2015	55716		Patricia Sprenger	\$499.56	R. p. 322
	10/26/2015		Amended Order on Motion to Set			

APPENDIX 64

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
			Aside Fraudulent Conveyances			R. pp. 10-12
28.	10/29/2015	55723		Patricia Sprenger	\$499.56	R. p. 323
29.	11/5/2015	55730		Patricia Sprenger	\$499.56	R. p. 324
30.	11/12/2015	55737		Patricia Sprenger	\$499.56	R. p. 325
	11/18/15		Hearing on Motion to Join Parties			R. pp. 219-40
31.	11/18/2015	55118		Manfred Sprenger	\$10,000.00	R. p. 326
32.	11/19/2015	55743		Patricia Sprenger	\$499.56	R. p. 327
33.	11/27/2015	55749		Patricia Sprenger	\$499.56	R. p. 328
34.	12/3/2015	55139		Manfred Sprenger	\$10,000.00	R. p. 331
35.	12/3/2015	55757		Patricia Sprenger	\$499.56	R. p. 329
36.	12/7/2015	55140		Manfred Sprenger	\$2,800.00	R. p. 330
37.	12/10/2015	55766		Patricia Sprenger	\$499.56	R. p. 332
38.	12/17/2015	55774		Patricia Sprenger	\$499.56	R. p. 333
39.	12/24/2015	55782		Patricia Sprenger	\$499.56	R. p. 334
40.	12/24/2015	55790		Patricia Sprenger	\$499.56	R. p. 335
TOTAL					\$361,393.84	

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
OCT 16 2017
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc.....Appellant/Respondent,

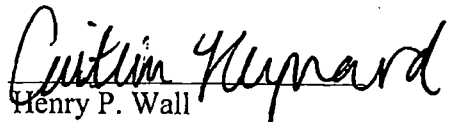
vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Brief of
Appellant/Respondent complies with Rule 211(b) SCACR.

October 16, 2017



Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

APPENDIX 66

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

**The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871**

Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc., ... Appellant/Respondent,

v.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators,
Manfred Sprenger and Patricia Sprenger, ... Respondents-Appellants.**

**RESPONDENTS' FINAL BRIEF
OF RESPONDENTS/APPELLANTS**

RECEIVED

NOV 03 2017

SC Court of Appeals

**J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondent/Appellants**

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

**The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871**

Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc., ... Appellant/Respondent,

v.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators,
Manfred Sprenger and Patricia Sprenger, ... Respondents-Appellants.**

**RESPONDENTS' FINAL BRIEF
OF RESPONDENTS/APPELLANTS**

**J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondent/Appellants**

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	3
Statement of the Case (procedural history is set forth in Appellant's Brief of App/Resp)	
Facts (relevant facts included in argument)	
Standard of Review	4
Arguments	
I. THE MASTER'S RULING THAT TRANSFERS FROM MSPS TO MANFRED SPRENGER WERE NOT FRAUDULENT IS SUPPORTED BY THE FACTS.	5
II. THE MASTER'S LIMITATION OF RECOVERY PRIOR TO THE FILING OF THE LAWSUIT WAS SUPPORTED BY THE FACTS.	9
III. THE MASTER'S RULING NOT TO ENTER A JUDGMENT AGAINST PX IN SUPPLEMENTAL PROCEEDINGS WAS PROPER WHERE PX WAS NOT A PARTY IN THE UNDERLYING ACTION OR JUDGMENT IN THE CIRCUIT COURT.	10
IV. THE MASTER'S RULING WAS NOT IN ERROR WHERE EXECUTION AGAINST THE OPERATING ACCOUNT OF MSPS WOULD NOT HAVE SUBSTANTIALLY REDUCED THE DEBT AND WOULD HAVE ENDED THE VIABILITY OF THE ON-GOING BUSINESS.	13
Conclusion	15

TABLE OF AUTHORITIES

Cases

Albertson v. Robinson, 371 S.C. 311, 638 S.E.2d 81 (2006)	9
Ballard v. Roberson, 399 S.C. 588, 733 S.E.2d 107 (2012)	5
Carroll v. Page, 264 S.C. 345, 215 S.E.2d 203 (1975)	15
Future Group. II v. Nationsbank, 478 S.E.2d 45, 324 S.C. 89 (1995)	7
Future Group II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996)	8
Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937)	8
Gentry v. Lanneau, 54 S.C. 514, 32 S.E. 523 (S.C.1899)	6
Gordon v. Lancaster, 419 S.C. 48, 795 S.E.2d 857 (Ct. App. 2016), reh'g denied (Feb. 16, 2017)	5
Joslin v. Lopez, 309 A.D.2d 837, 765 N.Y.S.2d 895 (N.Y.App.Div.2003)	12
Lynn v. International Brotherhood of Firemen & Oilers, 228 S.C. 357, 90 S.E.2d 204, 206 (1955)	14
Manufacturers & Traders Trust Co. v Lauer's Furniture Acquisition, 226 AD2d 1056 (1996) .	12
Marine Midland Bank v Murkoff	12
Hamilton Natl. Bank v Halsted, 134 NY 520 (1892)	12
Mathis v. Burton, 319 S.C. 261, 460 S.E.2d 406 (S.C.Ct.App.1995)	6
McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933)	14
Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012)	5
Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E.2d 116 (1975)	14
Prudential Ins. Co. of America v. Wadford, 102 S.E.2d 889, 232 S.C. 476 (1958)	13

APPENDIX 70

Shayne of Miami, Inc. v. Greybow, Inc., 232 S.C. 161, 101 S.E.2d 486 (1957) 7

State ex rel. Daniel v. Strong, 185 S.C. 27, 192 S.E. 671 (1937) 15

Statutes

S.C.Code Ann. § 15-39-410 11,14

S.C.Code Ann. § 15-35-180 13

S.C. Code Ann. § 15-39-80 13

S.C.Code Ann. § 15-39-310 14

S.C. Code Ann. Section 30-7-10 13

Tennessee C.A. § 66-3-309(a)(2) 12

Other Authority

30 Am.Jur.2d Executions & Enforcement of Judgments § 651 (1994) 14

STATEMENT OF ISSUES ON APPEAL

1. Is the Master's decision in refusing to set aside transfers from MSPS to Manfred Sprenger supported by the record?
2. Is the Master's decision to limit the Appellant's recovery to transfers after a specific date supported by the record?
3. Is the Master's decision in refusing to enter a in personum judgment against the transferee of certain transfers supported by the record?
4. Is the Master's decision in refusing to execute on the operating account of MSPS supported by the record?
5. Are there any additional sustaining grounds appearing in the record on which to affirm the decision of the Master?

ARGUMENT**I. THE MASTER'S RULING THAT TRANSFERS FROM MSPS TO MANFRED SPRENGER WERE NOT FRAUDULENT IS SUPPORTED BY THE FACTS.***Standard of Review*

The evidentiary standard governing fraudulent conveyance claims brought under the Statute of Elizabeth is the clear and convincing standard. Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012). "An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a *de novo* standard of review applies." *Id.* "However, this broad scope [of review] does not relieve the appellant of his burden to show that the trial court erred in its findings[,] ... [and] we are not required to disregard the findings of the trial judge, who was in a better position to determine the credibility of the witnesses." Ballard v. Roberson, 399 S.C. 588, 593, 733 S.E.2d 107, 109 (2012). Gordon v. Lancaster, 419 S.C. 48, 59, 795 S.E.2d 857, 863 (Ct. App. 2016), *reh'g denied* (Feb. 16, 2017).

Discussion

In this case the Master refused to set aside certain payments made by MSPS to Manfred Sprenger. The Master's decision rests in part on a finding that the payments were in exchange for valuable consideration and bona fide. The record supports the Master's findings. The record shows payments from MSPS to Manfred Sprenger that constituted the repayment of emergency loans necessary to allow the company to continue to operate. R. 26. Although the court noted the lack of formalities in documentation, the court was convinced that the transfers constituted the bona fide repayments of emergency loans and refused to set them aside.

APPENDIX 73

The Statute of Elizabeth authorizes avoidance of fraudulent transfers. See Mathis v. Burton, 319 S.C. 261, 460 S.E.2d 406 (S.C.Ct.App.1995). Fraudulent conveyances can be set aside in two instances: First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full — not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt. Gentry v. Lanneau, 54 S.C. 514, 32 S.E. 523 (S.C.1899). Here, the court found that the transfers to Manfred were the repayment of loans made to the company to keep its account from going into the negative. The record supports that finding.

Manfred Sprenger testified that he often put his own money in the company to cover bills and that the loans would be paid back shortly thereafter. R. 233. Mr. Sprenger also testified that it was not his practice to make formal loan documents for the money he provided the company on such a short term basis. R. 233. The record shows that the short term loans were a common practice over the life of the company and repayments by checks pre-dated MSPS's involvement with China. R. 350; 352-353. In February of 2015 Mr. Sprenger deposited \$40,000 of his personal money for MSPS to pay bills. R. 257-258; 261-265; 600-602; 845; 855. Near the end of May of 2015 MSPS repaid the \$40,000, along with \$20,000 of Mr. Sprenger's back pay. R. 261-

APPENDIX 74

263; 268-269; 603; 855. The \$60,000 check was written to Patricia Sprenger to be deposited into their joint account. R. 261-263; 859; 862. On June 4, 2015 the Sprengers made a withdrawal from their joint personal account in the amount of \$50,000 to keep as cash to pay personal bills and use "to help the business". R. 25. \$25,000 of the \$50,000 was put back into the business the following July. R. 267; 609. Manfred Sprenger testified that the 27,000, 60,000 and 70,000 to Mrs. Sprenger were loan repayments from personal loans to help with cash flow. R. 386-387. Transfers from MSPS to Mrs. Sprenger were either loan repayments or salary for Mr. Sprenger. Mr. Sprenger. Depo. R. 388. It was common practice for money to go back and forth from the Sprenger's joint personal account to the MSPS account when MSPS needed additional operating funds. Mrs. Sprenger Depo. R. 419-422. Based on this evidence the Master found that Mr. Sprenger repeatedly put his personal money into MSPS to meet MSPS obligations and that the challenged transfers were constituted repayments of those loans. R. 26. The record supports this finding.

The emergency loans to MSPS constitute valuable consideration for the challenged transfers to Mr. Sprenger. Consideration may be said to consist in any benefit to the promisor, or in a loss or detriment to the promise. Anything which confers benefit on the party promising, or is loss or inconvenience to the party to whom the promise is made, is a sufficient consideration. It is not controlling that the consideration should be a benefit to the promisor. *See Shayne of Miami, Inc. v. Greybow, Inc.*, 232 S.C. 161, 101 S.E.2d 486 (1957); *Future Group. II v. Nationsbank*, 478 S.E.2d 45, 324 S.C. 89 (1995). Challenged transfers of inventory, operating funds, business, and salary by debtor-corporation to its president and other alleged insiders were supported by valuable consideration and, thus, could not be set aside under South Carolina's

APPENDIX 75

Statute of Elizabeth. S.C.Code 1976, § 27-23-10. Here, the emergency loans by Manfred to MSPS were valuable consideration for the subsequent transfers by MSPS to repay those loans.

Where challenged transfers are made in exchange for valuable consideration, those transfers are exempt from the Statute of Elizabeth unless an actual intent to defraud is proven. Here record fails to show an intent to defraud as to the loan repayments to the Sprengers. It is well-settled under S.C. Code Ann. § 27-23-10(A) (Supp.1998) that where there is valuable consideration, a transfer may be set aside as a fraudulent conveyance only if there is an actual intent to defraud creditors imputable to the grantee. Future Group II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996) (citing Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937)). Here the record shows an established pattern of business conduct where Mr. Sprenger would provide emergency loans to MSPS which would then be repaid as cash flow permitted. This practice predated MSPS involvement with CCA. R. 256-259. Subsequent to the initiation of the case the court specifically allowed Mr. Sprenger to continue to make transactions that were in the normal course of business, which all of the loans and loan repayments were. R. 189. As all of these transactions were consistent with well established MSPS business practices predating the issue with CCA, the occurrence of the challenged transactions at any particular time does not constitute evidence of an intent to defraud. Because consideration existed and MSPS lacked the intent to defraud, the Statute of Elizabeth does not apply to the transfers of funds to the Sprengers as repayment of loans. The Master's findings that the transfers to Manfred were supported by consideration and bona fide are supported by the record. The refusal to set aside the transfers was therefore without error.

II. THE MASTER'S LIMITATION OF RECOVERY PRIOR TO THE FILING OF THE LAWSUIT WAS SUPPORTED BY THE FACTS.

In this case the Master limited the Plaintiff's recovery to transfers to Patricia Sprenger occurring subsequent to the date of the filing of the underlying action. Based on the facts of this case, the limitation is supported by the record. The initial contract date between the MSPS and CCA was December 12, 2012. CCA did not file an action until April 2, 2014. While CCA seeks to establish an operative date preceding the filing of the action, its brief does not state exactly when it "became clear that a conflict arose between CCA and MSPS". While CCA attempts to rely on the underlying circuit court's judgment to establish an operative date for its claim, the only date referenced as to the breach in the Amended Order of Judgment is August 12, 2014. While CCA asserts that this is a typographical error, CCA made no motion to correct the alleged error. Having not moved to alter or amend, appeal, or otherwise seek relief under Rule 60, the finding as to the date of breach being August 12, 2014 constitutes the law of the case and does not support CCA's argument on any earlier operative date for application of its Statute of Elizabeth argument.

In Albertson, cited by the Appellant, the court found that the inception of the debt or obligation arose with the breach of contract which was found to be in 2000. The challenged conveyance came two years later, and after the entry of the default in the underlying breach of contract action. There was in Albertson, no question or ambiguity as to the date of the breach. Here, in addition to the uncertainty as to the date of breach, the excluded transfers all occurred not only prior to the date of the entry of default, but prior to the filing of the underlying action. Here, if the Amended Order of Judgement leaves any question as to the date of breach, the date

APPENDIX 77

CCA became an existing creditor is a question of fact for the Master. The Master's ruling to exclude transfers prior to the date of filing is therefore not inconsistent with the facts or the reasoning in Albertson. See Albertson v. Robinson, 371 S.C. 311, 638 S.E.2d 81 (2006).

The record supports the trial court's decision not to set aside transfers prior to the filing of the action based on the lack of any showing of fraud. CCA complains of transfers of \$82,000 made between August 29, 2013 and March 27, 2014. Of the \$82,000, \$47,000 was transferred on March 27, 2014. While CCA implies bad faith because of the proximity of the payment to CCA's filing, the record fails to support that claim as such transfers were common business practice predating its involvement with CCA. A review of the MSPS general ledger show similar transfers dating back as early 2012, well before any involvement with CCA. R. 823-831.

Although close in proximity to the filing, the payment of the \$47,000 is clearly the repayment of an emergency loan and/or salary consistent with MSPS's existing business practices. Here the record shows that those transfers were either bona fide back pay for Mr. Sprenger or the repayment of emergency loans from Mr. Sprenger. The Master's decision to exclude any transfers prior to the date of filing is supported by the record.

III. THE MASTER'S RULING NOT TO ENTER A JUDGMENT AGAINST Mrs. Sprenger IN SUPPLEMENTAL PROCEEDINGS WAS PROPER WHERE Mrs. Sprenger WAS NOT A PARTY IN THE UNDERLYING ACTION OR JUDGMENT IN THE CIRCUIT COURT.

Whether a person not a party to the underlying action or judgment in the circuit court is subject to a money judgment through supplemental proceedings is a novel issue in South Carolina. In this case Patricia Sprenger was not a defendant in the underlying circuit breach of contract action. No judgment was entered against her in the circuit court. Ms. Sprenger is the

transferee in a challenge under the South Carolina's Statute of Elizabeth and was joined in the supplemental proceedings as a necessary party. Mrs. Sprenger lacked sufficient notice that CCA sought a personal judgment against her. Based on the record, the court refused to enter an *in personam* judgment against Mrs. Sprenger. The Master's ruling was consistent with the facts and equitable under the circumstances.

Pursuant to S.C. Code Section 15-39-410 [t]he judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied. S.C. Code Ann. § 15-39-410. In this case Patricia Sprenger was not the judgment debtor and she was joined in the supplemental proceedings as the named transferee on a series of challenged transfers. By statute the court is allowed to order any property of the judgment debtor (MSPS), whether in the hands of the debtor or a transferee, to be applied toward satisfaction of the judgment. This much the court did, which is the full extent of what is allowed by statute. There appears to be no case reported in South Carolina that has extended the authority of the Master to apply the assets of a third party against the debt of the judgment debtor, or to enter a personal judgment against a third party.

The remedy provided under 15-39-410 is to void the fraudulent conveyance to allow recovery of the object of the transfer. While the historical remedy under the Statute of Elizabeth is to void the fraudulent conveyance, a few states have allowed the creditor to seek compensatory damages from a transferee as an alternative form of relief. In Tennessee, an attachment or other provisional remedy is available against the asset or other property of the transferee, but this is

APPENDIX 79

pursuant to an express statutory provision. *See* T.C.A. § 66-3-309(a)(2). South Carolina does not have such a provision. In New York “a money judgment against the transferee may be an available form of substitute relief where the transferee has disposed of the wrongfully conveyed property in some manner *which makes it impossible for return.*” Joslin v. Lopez, 309 A.D.2d 837, 839, 765 N.Y.S.2d 895 (N.Y.App.Div.2003) (*emphasis added*). But even in New York the relief to which a defrauded creditor is entitled in an action to set aside a fraudulent conveyance is generally limited to setting aside the conveyance of the property which would have been available to satisfy the judgment had there been no conveyance (*see* Manufacturers & Traders Trust Co. v. Lauer's Furniture Acquisition, 226 AD2d 1056 [1996]; Marine Midland Bank v. Murkoff, *supra*; *see also* Hamilton Natl. Bank v. Halsted, 134 NY 520 [1892]). Any substitute relief under the above cases would presumably be available only upon a showing that the setting aside the conveyance would not allow recovery by the creditor. Here, the Master denied a personal judgment against Mrs. Sprenger, finding instead that the appropriate remedy was to set aside certain transfers and grant full examination of Mrs. Sprenger to pursue recovery of the transferred assets. This is not only in accord with South Carolina law, it is consistent with the theory of substitute remedy.

Until CCA has established that the object of the voided transactions are unrecoverable, a personal judgment as a substitute remedy is inappropriate. It is evident from the court's order that CCA failed to show that the assets were unrecoverable from Mrs. Sprenger. As a result, even under the theory of substitute relief, the court ordered an appropriate remedy.

IV. THE MASTER'S RULING WAS NOT IN ERROR WHERE EXECUTION AGAINST THE OPERATING ACCOUNT OF MSPS WOULD NOT HAVE SUBSTANTIALLY REDUCED THE DEBT AND WOULD HAVE ENDED THE VIABILITY OF THE ON-GOING BUSINESS.

The Master's order is silent as to CCA's request to execute on the operating account of MSPS. Instead, the Master set aside certain transfers totaling \$221,593.94. It is not disputed that the Small Business Loan Source, LLC (SBL) holds a security interest in the assets of MSPS. R. 517-556; 680-715. The SBL security agreement provides a security interest in all accounts of MSPS. R. 517-556; 680-715. A corresponding UCC financing statement includes all of MSPS accounts. R. 553-336; 793-822. In fashioning equitable relief the court found that the status of other liens and encumbrances was questionable: R. 26.

S.C. Code Ann. Section 30-7-10 provides, in pertinent part, that all mortgages or other liens on real or personal property, or both, created by law or by agreement of the parties, shall be valid so as to affect the rights of the subsequent creditors from the day and hour when they are recorded. It is well settled that a mortgage lien has priority over a subsequent judgment lien. *Id.*; Prudential Ins. Co. of America v. Wadford, 102 S.E.2d 889, 232 S.C. 476 (1958). Further, a prior unsatisfied judgment lien has priority over a subsequent judgment lien. S.C. Code Ann. Section 30-7-10. In this case, the SBA liens and security interests preceded any claim by CCA.

Judgments generally are enforced by way of writs of execution issued to the sheriff. See S.C. Code Ann. § 15-35-180 (1976) (providing that judgments requiring the payment of money or the delivery of real or personal property "may be enforced in those respects by execution as provided in this Title."); S.C. Code Ann. § 15-39-80 (setting forth the requirements for the contents of the execution, including that it be directed to the sheriff and intelligibly refer

APPENDIX 81

to the judgment, stating the court, the county in which the judgment roll or transcript is filed, and the amount of the judgment). If a judgment is unsatisfied, the judgment creditor may institute supplementary proceedings to discover assets. S.C.Code Ann. § 15-39-310. In addition to their discovery functions, supplementary proceedings "furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action." Lynn v. International Brotherhood of Firemen & Oilers, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955).

The relationship between a general depositor and his bank is that of creditor and debtor, and money deposited, unless put into a special account or specifically designated to be kept separate, becomes the property of the bank and goes into its general account. Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E.2d 116 (1975). The funds on deposit thus are no longer the personal property of the depositor; instead, the depositor has a chose in action against the bank for recovery of the deposit. McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933); *see also* 30 Am.Jur.2d Executions & Enforcement of Judgments § 651 (1994) (customary deposits in a bank create debts owed by the bank to the depositor and may be reached through supplementary proceedings). Therefore, the money in the MSPS account could not be reached through execution and levy, but only through supplemental proceedings. *See* McManus, 171 S.C. at 88, 171 S.E. at 474.

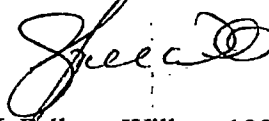
After conducting supplementary proceedings, the trial court *may* order non-exempt property of the judgment debtor in the hands of a third party or owed to the judgment debtor to be applied toward satisfaction of the judgment. S.C.Code Ann. § 15-39-410 (*emphasis added*). Supplemental proceedings are equitable in nature and by statute, the Master has discretion in determining whether to order property to be applied toward satisfaction of the judgment. The

record shows that execution on the accounts of MSPS would not have substantially reduced the amount owed to CCA and would have likely caused the collapse of MSPS as an on-going business. 'In applying the doctrines of equity, the equities of both sides are to be considered, and each case must be decided on its own particular facts.' Carroll v. Page, 264 S.C. 345, 349, 215 S.E.2d 203, 205 (1975). Equity owes its birth to the desire to look beneath the rigid rules of the law—to seek substantial justice. State ex rel. Daniel v. Strong, 185 S.C. 27, 192 S.E. 671, 681 (1937). In this case, given the record, the Master's ruling was equitable and therefore, not reversible error.

CONCLUSION

Based on the foregoing, the decision of the Master as to the above issues should be affirmed.

Respectfully submitted,



J. Falkner Wilkes, 12893

114 Whitsett Street

Greenville, SC 29601

(864) 282-1292

Counsel for Respondent/Appellants

November 2, 2017.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

**The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871**

Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc., ... Appellant/Respondent,

v.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators,
Manfred Sprenger and Patricia Sprenger, ... Respondents-Appellants.**

**APPELLANTS' FINAL BRIEF
OF RESPONDENTS/APPELLANTS**

RECEIVED

NOV 03 2017

SC Court of Appeals

RECEIVED

NOV 03 2017

SC Court of Appeals

**J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondents/Appellants**

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

**The Honorable Charles B. Simmons, Jr., Master-in-Equity
Common Pleas Case No.: 2014-CP-23-01871**

Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc., ... Appellant/Respondent,

v.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators,
Manfred Sprenger and Patricia Sprenger, ... Respondents-Appellants.**

**APPELLANTS' FINAL BRIEF
OF RESPONDENTS/APPELLANTS**

**J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondents/Appellants**

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	3
Statement of the Case (procedural history is set forth in Appellant's Brief of App/Resp)	
Facts (relevant facts included in argument)	
Standard of Review	4
Arguments	
I. THE MASTER ERRED IN FINDING TRANSFERS FROM MSPS TO PATRICIA SPRENGER WERE WITHOUT CONSIDERATION.	4
Conclusion	9

TABLE OF AUTHORITIES

Cases

Anderson & Assocs., Pa v. S. Textile Knitters De Hond. Sewing Inc. (In re S. Textile Knitters), 65 Fed.Appx. 426, 437 (4th Cir.2003)	7
Cilco Cement Corp. v. White, 55 A.D.2d 668, 390 N.Y.S.2d 178 (2d Dep't 1976)	7
Future Group II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996)	8
Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937)	8
Gentry v. Lanneau, 54 S.C. 514, 32 S.E. 523 (S.C.1899)	5
In re Diplomat Const., Inc., No. 09-68613-MGD, 2013 WL 5591918 (Bankr. N.D. Ga. Aug. 6, 2013)	7
In re Southern Textile Knitters, 65 Fed.Appx. 426 (4th Cir.2003).	6
Kennedy Funding, Inc. v. Pawleys Island N., LLC (S.C. App., 2015).	4
Mathis v. Burton, 319 S.C. 261, 460 S.E.2d 406 (S.C.Ct.App.1995)	4
Mills v. Everest Reinsurance Co., 410 F.Supp.2d 243 (S.D.N.Y.2006).	7
Oskin v. Johnson, 400 S.C. 390, 735 S.E.2d 459, 463 (2012)	4

Statutes

S.C. Code § 15-39-410	8
S.C. Code Ann. § 27-23-10	8
S.C. Code 33-8-300(a)	6

Federal Statutes

Bankr.Code, 11 U.S.C.A. § 548	6

STATEMENT OF ISSUES ON APPEAL

1. Did the Master err in setting aside transfers from MSPS to Patricia Sprenger?
2. Did the Master err in finding that the challenged transfers were without consideration?
3. Did the Master err in applying the proper standard in analyzing the challenged transfers?

ARGUMENT**I. THE MASTER ERRED IN FINDING TRANSFERS FROM MSPS TO PATRICIA SPRENGER WERE WITHOUT CONSIDERATION.***Standard of Review*

A clear and convincing evidentiary standard applies to fraudulent conveyance claims brought under the Statute of Elizabeth. Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). "An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies." *Id.* Kennedy Funding, Inc. v. Pawleys Island N., LLC (S.C. App., 2015).

Discussion

In this case the Master set aside all transfers from MSPS to Patricia Sprenger that occurred between April 2, 2014 and December 24, 2015. This was based on a finding that these payments were without valuable consideration. The Master's ruling overlooks clear evidence that these payments represented compensation to Manfred Sprenger for his employment at MSPS. The Master's ruling is unsupported by the record and therefore in error.

The Statute of Elizabeth authorizes avoidance of fraudulent transfers. *See Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406 (S.C.Ct.App.1995). Fraudulent conveyances can be set aside in two instances: First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be

APPENDIX 89

proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full — not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt. Gentry v. Lanneau, 54 S.C. 514, 32 S.E. 523 (S.C.1899)). In the present case, based on a finding that checks made out to Patricia Sprenger lacked consideration, the court applied the latter analysis. R. 24. This was clearly erroneous.

The record shows that MSPS was obligated to pay Manfred Sprenger a \$12,000 a month salary as compensation for his work. R. 854-855. Mr. Sprenger's compensation initially was about \$12,000 a month, but due to cash flow, that amount was reduced over time to \$8,000 or \$9,000. 19/100; R. 855. At the time of the first hearing Mr. Sprenger testified that he was receiving about \$7,000 a month salary. R. 167. Mr. Sprenger testified that his compensation was paid by the company through checks made out to his wife Patricia. R. 168-169; 176. The testimony of Manfred and Patricia were consistent in that Manfred put her name on the checks to make it for his wife to deposit them in their joint personal account. R. 211-212; 414-418. It was customary, even prior to MSPS's involvement with China Construction of America (CCA), for Manfred's salary checks to be made payable to Patricia instead of Manfred. R. 254-255; 823-840. The company records, dating back a year prior to any involvement CCA, showed a pattern of monthly checks in the amount of \$8,000 made out to Patricia throughout 2012. After 2012 that amount decreased to \$7,000 a month but the checks continued to be made out to Patricia instead of Manfred. R. 854-855. Only Manfred worked at MSPS and although the checks were made payable to Patricia, they were Manfred's salary. R. 261; 854-858. Joint tax returns show that the

APPENDIX 90

income represented by checks made out to Patricia was declared as "business income" on the Schedule C. The CPA that prepared the returns testified that the income represented by those checks was attributed to Manfred. R. 270-287. All of the evidence indicates that the challenged checks, made out to Patricia Sprenger, were for Manfred's regular salary.

A review of the record shows that at times MSPS was unable to pay Manfred's salary monthly, but would make up the payments when the cash flow allowed. R. 855. The company ledger shows that the MSPS paid no monthly salary between December of 2013 and the end of May of 2014. At the end of May 2014 MSPS issued a check to Patricia for \$60,000. R. 854-855. Again from January through May of 2015 Manfred Sprenger did not receive any salary until MSPS issued a \$60,000 check, the majority of which was his back pay. R. 356-358; 269-270; 859-866. Consistent with the long established practice the \$60,000 check for back pay was written to Patricia Sprenger to be deposited into Manfred and Patricia's joint personal account. R. 181; 859-866.

The payment of salary constitutes valuable consideration for the challenged transfers to Patricia Sprenger. Under the Statute of Elizabeth transfers for salary in exchange for employment is considered valuable consideration. In a case interpreting South Carolina's Statute of Elizabeth the yearly salary and bonus of Chapter 7 debtor-corporation's president, totaling less than \$250,000.00 for the head of a \$13 million company which had historically been very profitable, represented good faith compensation and bonus for president's service, and not an improper transfer under the Bankruptcy Code or South Carolina law. Bankr.Code, 11 U.S.C.A. § 548; S.C.Code 1976, §§ 27-23-10(A), 33-8-300(a). In re Southern Textile Knitters, 65 Fed.Appx. 426, 437 (4th Cir.2003).

APPENDIX 91

Similarly, services and typical employee contributions in management of a business have been found to constitute value. Where the evidence established that the amount of transfers corresponds to a reasonably comparable salary range for a hotel manager an economic benefit was found to have been conferred by work and services provided. There the court found that without the work, the company would have needed an employee with a similar scope of work. Although compensation was made in a non-traditional way, the evidenced showed that both sides of the transaction had intentions and expectations that the defendant would act as the debtor's employee. *See In re Diplomat Const., Inc.*, No. 09-68613-MGD, 2013 WL 5591918, at *6 (Bankr. N.D. Ga. Aug. 6, 2013)

Generally, payments of compensation for services are presumed to be for fair consideration, and in order for a trustee to avoid them he must establish that the salary payments were in bad faith or the payments were excessive in light of the Defendants' employment responsibilities. *See e.g., Anderson & Assocs., Pa v. S. Textile Knitters De Hond. Sewing Inc. (In re S. Textile Knitters)*, 65 Fed.Appx. 426, 437 (4th Cir.2003); *Cilco Cement Corp. v. White*, 55 A.D.2d 668, 668, 390 N.Y.S.2d 178 (2d Dep't 1976) (holding that the salary paid to the president of the company was not a fraudulent conveyance because there was "no evidence that his salary was either excessive or unreasonable, or that the corporation did not receive full value in return."); *See also Mills v. Everest Reinsurance Co.*, 410 F.Supp.2d 243, 254 (S.D.N.Y.2006). In the present case Mr. Sprenger's services at MSPS were valuable consideration for the subsequent transfers to Patricia as compensation for that work.

Where challenged transfers are made in exchange for valuable consideration, those transfers are exempt from the Statute of Elizabeth unless an actual intent to defraud is proven.

APPENDIX 92

Here MSPS's method of paying Manfred's salary by issuing monthly checks to Patricia was consistent in amount and method, and pre-dated any involvement with CCA by over a year. R. 256-259; 823-840. It is well-settled under S.C. Code Ann. § 27-23-10(A) (Supp.1998) that where there is valuable consideration, a transfer may be set aside as a fraudulent conveyance only if there is an actual intent to defraud creditors imputable to the grantee. Future Group II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996) (citing Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937)). The established pattern of business conduct predating MSPS's involvement with CCA removes any question as to intent. Additionally, subsequent to the initiation of the case the court specifically allowed MSPS to continue to make transactions that were in the normal course of business, which to MSPS included the amount, timing and method of payment for Manfred's salary. R. 189. As all of these transactions were consistent with well established MSPS business practices predating any issue with CCA, the occurrence of the challenged transactions do not constitute evidence of an intent to defraud. Because consideration existed and the record fails to establish the intent to defraud, the Statute of Elizabeth does not apply to the transfers of funds to Patricia as payment of Manfred's salary. The Master's setting aside of those transactions was therefore error.

Additionally, as salary, the payments by MSPS to Patricia for Manfred's salary should be exempt from execution. See S.C. Code § 15-39-410, *Property which may be ordered to be applied to execution*: "The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, *except that the earnings of the debtor for his personal services cannot be so applied*. Setting aside transactions that constitute the payment

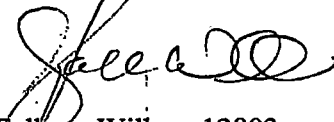
APPENDIX 93

of Manfred's salary violates S.C. Code § 15-39-410. The Master erred in setting aside the payments of MSPS representing Manfred's salary.

CONCLUSION

Based on the foregoing the decision of the Master setting aside transfers representing Mr. Springer's salary should be reversed.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondents/Appellants

November 2, 2017.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas**

The Honorable Charles B. Simmons, Jr., Master-in-Equity

**Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787**

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.**

RESPONDENT'S BRIEF OF APPELLANT/RESPONDENT

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.

RESPONDENT'S BRIEF OF APPELLANT/RESPONDENT

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Facts	4
Standard of Review	5
Arguments	
1. THE MASTER-IN-EQUITY CORRECTLY HELD THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO PATRICIA SPRENGER WERE NOT BASED UPON VALUABLE CONSIDERATION AND ARE FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10.....	5
2. APPELLANTS FAILED TO PRESERVE OR OTHERWISE ABANDONED THEIR REMAINING ISSUES ON APPEAL	13
Conclusion	15
Appendix I	16

TABLE OF AUTHORITIES

CASES

<i>Coleman v Daniel</i> , 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973)	8, 10, 11
<i>Durham v. Blackard</i> , 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993), ...	7, 8, 12
<i>Elam v. S.C. Dep't of Transp.</i> , 361 S.C. 9, 602 S.E.2d 772 (2004)	13
<i>Farmers Co-op. Ass'n v. Strunk</i> , 671 F.2d 391 (10th Cir. Kan. 1982).....	10
<i>First State Sav. & Loan Ass'n v. Nodine</i> , 291 S.C. 445, 450, 354 S.E.2d 51, 54 (1987)	8
<i>Furman Univ. v. Waller</i> , 124 S.C. 68, 117 S.E. 356, 358 (1923).....	8
<i>Gardner v. Kriven</i> , 184 S.C. 37, 191, S.E. 814 (1937)	6
<i>Gilchinsky v. Nat'l Westminster Bank</i> , 732 A. 2d, 490 (1999).....	11
<i>Johnson v. Lloyd</i> , 407 S.C. 610, 757 S.E.2d 705 (2014)	13
<i>In re Ducate</i> , 369 B.R. 251 (Bankr. D.S.C. 2007).....	11
<i>In re Jones</i> , 397 B.R. 765, 770 (Bankr. D.S.C. 2008)	11
<i>In re Schmit</i> , 71 B.R. 587, 590 (Bankr. D. Minn. 1987)	10
<i>Johnson v Service Mgmt.</i> , 319 S.C. 165, 459 S.E.2d 900 (S.C. Ct. App. 1995)	24
<i>Johnson v. Lloyd</i> , 407 S.C. 610, 757 S.E.2d 705 (2014)	13
<i>Mathis v. Burton</i> , 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995)	7
<i>Oskin v. Johnson</i> , 400 S.C. 390, 396, 397, 735 S.E.2d 459, 463 (2012).....	5, 7
<i>Pinckney v. Warren</i> , 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).....	5
<i>Royal z Lanes, Inc. v. Collins Holding Corp.</i> , 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999).....	10
<i>State v. Hoffman</i> , 312 S.C. 386, 440 S.E.2d 869 (1994)	13
<i>State v. Stahlnecker</i> , 386 S.C. 609, 690 S.E.2d 565 (2010)	13
<i>State v. Wise</i> , 359 S.C. 14, 596 S.E.2d 475 (2004)	13

APPENDIX 98

Woody v. Dean, 24 S.C. 499 (1886) 8, 12

STATUTES

S.C. Code Ann. § 15-39-410.....14

S.C. Code Ann. § 27-23-10(A) 6, 7

APPENDIX 99

STATEMENT OF ISSUES ON APPEAL

1. IS THE MASTER IN EQUITY'S FINDING THAT THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO PATRICIA SPRENGER WERE NOT BASED UPON VALUABLE CONSIDERATION AND ARE FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10 SUPPORTED BY THE RECORD?

STATEMENT OF THE CASE

Appellant-Respondent China Construction America of South Carolina Inc. ("CCA") commenced this action on April 2, 2014, seeking damages for breach of contract for failure to manufacture and deliver steel in accordance with the terms of the subcontract with Respondent-Appellant MS Production Solutions, LLC ("MSPS"). (R. pp. 40-61). By letter dated May 29, 2014 and filed June 3, 2014, MSPS attempted to respond to CCA's Complaint. (R. pp. 62-64). MSPS's Response to the Complaint did not constitute a valid answer and MSPS did not otherwise appear. An Order of Default was entered against MSPS on July 31, 2014 and filed on August 5, 2014. (R. pp. 4-5).

A damages hearing was held on November 17, 2014 before the Honorable G. Garrison Hill. (R. pp. 74-75). An Order of Judgment was entered against MSPS on December 23, 2014 and filed on December 24, 2014. (R. pp. 34-37). An Amended Order of Judgment in the amount of \$657,137.30 was subsequently entered against MSPS on January 28, 2015 and filed on January 29, 2015. (R. pp. 38-39). Execution was issued on the amended judgment (hereinafter "the Judgment") and thereafter returned *nulla bona* by the sheriff of Greenville County.

CCA commenced supplemental proceedings to examine the defendant and execute on MSPS's assets to satisfy the Judgment. On May 5, 2015, a Rule to Show Cause and Order of Reference referring the matter to the Greenville County Master In Equity was filed. (R. pp. 1-3). On May 5, 2015, CCA filed a Verified Petition for Supplemental Proceedings. (R. pp. 66-68). A supplemental proceedings hearing was held on June 2, 2015. (R. pp. 161-91).

After it became clear that MSPS diverted a significant amount of MSPS funds to Manfred and Patricia Sprenger, CCA filed a Motion for Execution and to Set Aside Fraudulent Transfers on September 23, 2015. (R. pp. 76-135). A hearing on CCA's Motion was held on October 2, 2015

APPENDIX 101

before the Greenville County Master-In-Equity. (R. pp. 192-218). At the direction of the Master-In-Equity, CCA filed a Motion to Join Respondents-Appellants Manfred and Patricia Sprenger as parties to the Supplemental Proceedings on October 12, 2015. (R. pp. 149-53). By Order dated October 27, 2015, the court held in abeyance the determination of the fraudulent nature of the transfers. (R. pp. 6-9). The court heard CCA's Motion to Join on November 18, 2015, and Manfred and Patricia Sprenger were both represented individually by counsel. (R. pp. 219-40). On December 23, 2015, the court entered an Order joining Manfred and Patricia Sprenger as parties. (R. pp. 13-18).

A final hearing on CCA's Motion to Execute and Set Aside Transfers was held on March 2, 2016 (R. pp. 241-90), and the court entered an Order setting aside certain fraudulent conveyances on June 7, 2016. (R. pp. 19-31). The parties all filed respective motions to reconsider the June 7, 2016 Order. (R. pp. 154-56; R. pp. 157-60). The Master In Equity denied both motions. (R. pp. 32-33).

CCA served its Notice of Appeal on August 29, 2016, seeking review of the June 7, 2016 Order setting aside certain fraudulent conveyances and the August 2, 2016 Order denying CCA's Rule Motion to Reconsider. On September 1, 2016, Appellants/Respondents MSPS, Manfred and Patricia Sprenger served their Notice of Cross-Appeal.

FACTS

This Appeal arises out of CCA's attempt to set aside and execute on approximately \$361,393.84 of MS Production Solutions, LLC ("MSPS") funds that were fraudulently diverted by MSPS to Manfred and Patricia Sprenger in an effort to avoid CCA's Judgment against it. Respondent/Appellant Manfred Sprenger ("Manfred") is the sole principal and owner of MSPS. Respondent/Appellant Patricia Sprenger ("Patricia") is Manfred's wife, and at all relevant times was not an employee of MSPS. (R. p. 169:13-20; R. p. 412:12-22).

MSPS fraudulently transferred cash from the MSPS corporate bank account at Bank of America to Patricia for no consideration. From August 29, 2013 through December 24, 2015, MSPS wrote thirty-three (33) separate checks payable to Patricia for various amounts ranging from as little as \$499.56 and as much as \$70,000.00 each.¹ (R. pp. 291-335; R. pp. 417:13-420:13; Appendix I). MSPS transferred \$303,393.84 to Patricia in total. Patricia deposited the checks into a personal joint bank account at First Citizens Bank that she owned with Manfred. Manfred and Patricia routinely withdrew the funds in large sums of cash from their First Citizens account, maintaining a low account balance at the bank. (R. pp. 85-86). As the wife of the sole the principal and owner of the judgment debtor, MSPS, Patricia was an "insider transferee" of the funds.

When questioned regarding the location of the funds at her deposition, Patricia testified that she and Manfred had at least \$50,000.00 of MSPS funds in cash in their bedroom at their home. (R. p. 430:11-23). Records from First Citizens Bank show Patricia withdrew the \$50,000.00 in cash from her joint bank account only two days after CCA examined Manfred regarding MSPS's assets at the first supplemental proceeding hearing. (R. p. 485). However, by

¹ For ease of reference, CCA prepared a chart summarizing the dates of the transfers in relation to the filing of pleadings and various motions in the underlying lawsuit. This summary is attached to this Brief as Appendix I. All evidence relating to the transfers and the filings are included in the Record on Appeal and is cited in the Appendix. (See Appendix I).

the time a hearing could be held on CCA's Motion to Execute (11 days after Patricia Sprenger's deposition), Manfred and MSPS claimed only \$8,500.00 in cash remained. (R. p. 197:4-20; Appendix I). Meanwhile, Manfred and Patricia continued to siphon MSPS funds for their personal use and deplete the balance in their First Citizens account throughout the supplemental proceedings. (R. p. 394:1-12; Appendix I).

STANDARD OF REVIEW

The evidentiary standard governing fraudulent conveyance claims brought under the Statute of Elizabeth is the clear and convincing standard. Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012). An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies. Id. "In an appeal from an action in equity, [an appellate court] has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." Pinckney v. Warren, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

ARGUMENT

- I. THE MASTER-IN-EQUITY CORRECTLY HELD THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO PATRICIA SPRENGER WERE NOT BASED UPON VALUABLE CONSIDERATION AND ARE FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10.

From August 29, 2013 through April 2, 2014, the date CCA's Complaint was filed, MSPS transferred \$82,000.00 to Patricia (the "pre-Lawsuit transfers"). (R. pp. 291-335; Appendix I; R. p. 24). From April 3, 2014, the day after the Complaint was filed, through December 24, 2015, MSPS transferred an additional \$221,593.84 to Patricia (the "post-Lawsuit transfers"). Id. Patricia

received \$303,393.84 in total from MSPS. Patricia was not an employee of MSPS at the time of the transfers.² (R. p. 169:13-20; R. p. 412:12-22).

The Master-In-Equity correctly determined that both the pre-Lawsuit and post-Lawsuit transfers to Patricia were fraudulent transfers. Specifically, the Master held the transfers to Patricia were not based upon valuable consideration; therefore, a finding on fraudulent intent was not necessary. (R. pp. 24-25). However, the Master set aside only the \$221,593.84³ in post-Lawsuit transfers to Patricia. Id.

It is well-established in South Carolina that a debtor may not transfer or convey property to frustrate or impede a creditor. Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937). To that point, the Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or

² At the final hearing, Manfred testified that Patricia suddenly became an MSPS employee in September 2015, after CCA filed its Motion to Set Aside the fraudulent transfers. (R. pp. 309:22-310:8; Appendix I). According to MSPS, Patricia earned a total of \$3,600 in wages from September 2015 through December of 2015. (R. pp. 867-68). However, there is no evidence or testimony in the record demonstrating that Patricia worked in any capacity for MSPS to earn those payments as legitimate wages. While Manfred testified that Patricia was employed because she was “spending time” at MSPS, Patricia did not testify at the March 2, 2016 hearing regarding her new employment. (R. pp. 309:22-310:8). In sum, MSPS transferred a total of \$303,393.84 to Patricia, \$299,793.84 of which was transferred when Patricia was indisputably not an employee of MSPS. As to the remaining \$3,600 MSPS contends are Patricia’s wages, the only evidence before the court was the transferor’s own testimony that Patricia became an MSPS employee in September 2015. CCA contends Patricia continued to receive funds from MSPS after September of 2015 even though she was not actually an employee. As CCA notes herein, where a conveyance is made to a close family member, the burden is on the transferee and not the transferor to establish valuable consideration and the bona fides of the transaction by clear and convincing evidence. Without testimony from Patricia regarding her employment and earnings, Patricia failed to meet her burden. Therefore, CCA is entitled to set aside the entire \$303,393.84 transferred to Patricia from MSPS.

³ The Master-In-Equity set aside all of the \$221,593.84 of MSPS funds transferred to Patricia after CCA’s Complaint was filed, which included the \$3,600 MSPS claimed Patricia earned as wages in September-December 2015. (R. pp. 26-27).

purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10(A) (2007). Our courts have applied the Statute of Elizabeth to set aside conveyance in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. **Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.**

Mathis v. Burton, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting Durham v. Blackard, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)) (emphasis added); see also Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012).

The Master-In-Equity correctly held MSPS and Patricia failed to establish valuable consideration for the post-Lawsuit transfers from MSPS to Patricia. In the absence of valuable consideration, the party seeking to set aside a transfer does not need to prove fraudulent intent. *Id.* A transfer should be set aside if the transferor was indebted when the transfer was made, there was no consideration for the transfer and the indebted party fails to retain assets or property to satisfy the

APPENDIX 106

judgment. *Id.* Furthermore, it is well-settled that “where a conveyance to a family member or close relative is attacked on account of its voluntary character, the law imposes a duty of the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing evidence.” *First State Sav. & Loan Ass’n v. Nodine*, 291 S.C. 445, 450, 354 S.E.2d 51, 54 (1987) (citing *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74 (1973) (emphasis added)). Consideration is defined as “some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.” *Furman Univ. v. Waller*, 124 S.C. 68, 117 S.E. 356, 358 (1923).

Manfred, as the sole principal and owner of MSPS, caused MSPS to transfer \$303,393.84 of MSPS funds to his wife. (Appendix I). Therefore, the burden shifted to Patricia, the transferee, to establish valuable consideration and the bona fides of the transfers. Patricia failed to prove there was valuable consideration and she further failed to demonstrate that the transfers were bona fide.

It is undisputed that the checks at issue were made payable to Patricia and not Manfred. Patricia testified that she never loaned MSPS any money.⁴ (R. p. 419: 1-17). Both Manfred and Patricia testified that Patricia was never an employee of MSPS. (R. p. 412:12-22; R. p. 169:13-20). The compensation agreement MSPS relies upon was between Manfred on behalf of MSPS and himself; it was not between MSPS and Patricia. (R. pp. 854-57). Therefore, it cannot be said that the transfers from MSPS to Patricia were in satisfaction of any purported obligation of MSPS to Manfred. For that same reason, the transfers from MSPS to Patricia cannot satisfy any obligation of MSPS to repay unsecured, undocumented loans by Manfred to MSPS. As such, the transfers to Patricia were not based upon valuable consideration.

⁴ Even if the transfers from MSPS to Patricia could somehow satisfy MSPS’s obligation to repay loans from Manfred to MSPS, Manfred and MSPS were not entitled to repay those obligations over CCA’s judgment. *Durham v. Blackard*, 313 S.C. 432, 438 S.E.2d 259 (Ct. App. 1993) (“a debtor must be just before he is generous”); *Woody v. Dean*, 24 S.C. 499 (1886).

Despite Manfred's self-serving testimony, the record reflects that Manfred and Patricia never received a salary from MSPS. (R. pp. 869-71). The accountant who prepared individual and corporate tax returns for Manfred, Patricia and MSPS testified that Patricia did not claim the money MSPS transferred to her as taxable income. (R. p. 271:6-10). Notably, however, Manfred did not either. (R. pp. 557-75; R. pp. 576-92). A simple review of Manfred and Patricia's individual tax returns demonstrates that neither Manfred nor Patricia claimed any income or withholdings for wages in the years 2012, 2013 or 2014 (R. pp. 557-75; R. pp. 576-92), nor are they listed as employees on MSPS's own employee quarterly wage reports for the years 2013 or 2014. (R. pp. 869-71, R. pp. 241-90).⁵ Therefore, consistent with his testimony at the first supplemental proceeding hearing on June 2, 2015, it was never the practice MSPS to pay Manfred a salary. (R. pp. 168:20-169:11). At the June 2, 2016 hearing, Manfred testified that MSPS suddenly hired Patricia as an employee in September 2015, immediately after the depositions and after CCA moved to set aside the fraudulent transfers. (R. pp. 265:22-266:8; Appendix I). MSPS transferred a total of \$73,484.28 of MSPS funds to Patricia in 2015; however, MSPS's 2015 annual employee wage summary indicates Patricia earned a maximum of \$3,600.00 in wages for the entire year. (R. pp. 867-68).

Finding the transfers lacked consideration, the Master-In-Equity held a finding of fraudulent intent was not necessary to set aside the post-Lawsuit transfers to Patricia. (R. p. 24). However, even assuming valuable consideration existed, which it did not, the evidence in this case clearly supports an alternative finding of fraudulent intent. Establishing that a debtor acted with

⁵ Without citing the Record, Respondents/Appellants inaccurately represent in their initial brief that "the tax returns show income represented by the checks made out to Patricia was declared as 'business income' on the Schedule C." (App. Initial Brief of Resp./App. p.6). MSPS's accountant provided no testimony in that regard, and payments from MSPS to Patricia are not business income to MSPS a matter of common sense. Nevertheless, a plain reading of the relevant tax returns indicates the payments to Patricia were not claimed as wages paid by MSPS to Manfred or Patricia as W-2 employees, and Manfred and Patricia did not claim any wages as income on their personal returns. (R. pp. 557-75; R. pp. 576-92).

actual intent to hinder, delay or defraud a creditor is rarely proven by direct evidence. In re Schmit, 71 B.R. 587, 590 (Bankr. D. Minn. 1987). It is typically inferred from the facts and circumstances of the debtor's conduct. Id.; see also Farmers Co-op. Ass'n v. Strunk, 671 F.2d 391, 395 (10th Cir.1982) ("Fraudulent intent of course may be established by circumstantial evidence, or by inferences drawn from a course of conduct.").

In determining whether a debtor acted with the requisite intent to establish a fraudulent conveyance, courts often evaluate the particular circumstances of the transfer for "badges of fraud." Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) ("Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as 'badges of fraud.' The badges tend to excite suspicions as to the Bona fides of a challenged conveyance."). The presence of one or more badge of fraud creates a rebuttable presumption of intent to defraud. See Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999). In Coleman, our Supreme Court stated the following regarding the badges of fraud:

The facts which are recognized indicia of fraud are numerous, and no court could pretend to anticipate or catalog them all. Among the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

Id. (citing 37 Am.Jur.(2d), Fraudulent Conveyances, § 10 (1968)); see also In re Jones, 397 B.R. 765, 770 (Bankr. D.S.C. 2008); In re Ducate, 369 B.R. 251 (Bankr. D.S.C. 2007). "Although the presence of a single factor, i.e., badge of fraud, may cast suspicion on the transferor's intent, the

APPENDIX 109

confluence of several in one transaction generally provides conclusive evidence of an actual intent to defraud.” Gilchinsky v. Nat’l Westminster Bank, 732 A.2d 482, 490 (1999).

The circumstances of MSPS’s transfers to Patricia meet at nearly all of the badges of fraud listed above. First, MSPS was indebted to CCA at the time of each transfer to Patricia. All of the transfers occurred after MSPS breached its contract with CCA, and the majority of the transfers occurred after CCA filed its Complaint against MSPS. (R. pp. 38-39; R. pp. 40-61; Appendix I). Manfred routinely transfers money from the MSPS bank account to himself and Patricia as he pleases, claiming the transfers are compensation for his salary or are unsecured and undocumented loan repayments. (R. pp. 420:7-421:14) Without documentation, it is impossible to determine what Manfred contends he loaned MSPS, what remains to be repaid and what Manfred is owed as salary or back-pay. (R. pp. 208:4-211:15) In reality, the records prove Manfred’s deliberate efforts to siphon money from the MSPS bank account by transferring large sums (as much as \$70,000 in a single transfer) to Patricia for his own benefit and in a calculated attempt avoid CCA’s judgment. (R. p. 291-335; Appendix I). Manfred was forced to return some of the money to the MSPS account on several occasions (which he characterizes as “loans”) to keep the business bank accounts from having a negative balance, a natural consequence of Manfred’s mismanagement and self-dealing. (R. p. 26). While MSPS continued to make unsecured “loan repayments” to Manfred and Patricia⁶ throughout the supplemental proceedings and in violation of the Rule to Show Cause, MSPS never made a single payment toward CCA’s judgment. The law does not allow a business to repay its members for undocumented “loans” prior to paying judgment creditors. Durham v. Blackard, 313 S.C. 432, 438 S.E.2d 259 (Ct. App. 1993) (“a debtor must be just before he is generous”); Woody v. Dean, 24 S.C. 499 (1886).

⁶ Notably, Patricia testified at her deposition that she has never made a loan to MSPS. (R. p. 375:1-17).

The remaining badges of fraud are clearly present. In less than 2.5 years, Manfred caused MSPS to transfer \$303,393.84 of MSPS funds to his wife, a person in a close relationship with the business. (Appendix I). Many of the transfers to Patricia occurred on or near significant dates related to the Lawsuit.⁷ *Id.* MSPS attempted to conceal the transfers from CCA when Manfred attempted to thwart Patricia's deposition testimony regarding the location of the cash.⁸ (R. p. 430:1-22). MSPS departed from ordinary practice by transferring the funds to Patricia, particularly as to the larger transfers that occurred at opportune times throughout the Lawsuit. MSPS reserved the benefit of the funds by transferring them to Patricia, who deposited the funds in a joint account she held with its owner. Finally, MSPS retained possession of the funds through Manfred, who shared a home with Patricia where the funds were either kept in cash or left in a joint bank account that he owned.

The circumstances of this case and the presence of these badges of fraud surrounding MSPS' transfers reveal its "actual intent to hinder, delay, or defraud" CCA from collecting on its judgment. The contradictory testimony and the actions taken by Manfred and his wife, Patricia, are both strong evidence of their intent to prevent CCA from collecting its judgment.

⁷ From March 2014 to May 2015, MSPS wrote checks payable to Patricia in the following amounts: \$40,000.00, \$27,000.00, \$70,000.00 and \$60,000.00. (R. p. 301; R. p. 307; R. p. 309; R. p. 313; Appendix I). As found by the trial court, these checks were written close to significant dates in the Lawsuit. (Appendix I). The \$40,000 check was written less than a week before CCA filed its Complaint against MSPS. (R. pp. 40-61). The \$27,000.00 check was written less than a week before the Order of Default Judgment was entered. (R. pp. 34-35). The \$70,000.00 check was written approximately two weeks after MSPS was served with notice of the damages hearing. (R. pp. 74-75). Finally, the \$60,000.00 check was written on May 27, 2015, one week before the first supplemental proceeding hearing. (R. pp. 161-91).

⁸ During her deposition, Patricia was questioned regarding the amount of cash kept in the Sprenger's home. (R. p. 430:1-22). In order to conceal the amount and location of the cash, Manfred interjected and attempted to prevent Patricia from testifying. *Id.* Manfred's failure to mention that he had a significant amount of cash in his bedroom along with his attempts to prevent Patricia from providing truthful testimony is further proof that he took steps to hinder or delay CCA's collection efforts.

II. RESPONDENTS/APPELLANTS FAILED TO PRESERVE OR OTHERWISE ABANDONED THEIR REMAINING ISSUES ON APPEAL.

Respondents/Appellants failed to properly preserve or otherwise abandoned their remaining issues on appeal. "For an issue to be properly preserved it has to be raised and ruled on by the trial court." State v. Stahlnecker, 386 S.C. 609, 690 S.E.2d 565 (2010) (citing State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004)). A party must file a Rule 59(e), SCRCR, motion to preserve an issue the trial court fails to rule on. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). An issue not properly preserved cannot be raised for the first time on appeal. Johnson v. Lloyd, 407 S.C. 610, 757 S.E.2d 705 (2014) (citing State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994)).

Respondents/Appellants define three issues in Appellants' Initial Brief of Respondents/Appellants: (1) Did the Master err in setting aside transfers from MSPS to Patricia Sprenger, (2) Did the Master err in finding that the challenged transfers were without consideration, and (3) Did the Master err in applying the proper standard in analyzing the challenged transfers. (Appellants' Initial Brief of Respondents/Appellants, p.3). Of those three, only the second issue challenging the Master's finding that the transfers to Patricia lacked valuable consideration was raised by Respondents/Appellants, ruled upon by the lower court and substantively argued in Appellants Initial Brief of Respondents/Appellants. (R. pp. 157-60; R. p. 32).

Respondents/Appellants failed to preserve the first and third issues defined in Respondents/Appellants' Statement of Issues on Appeal. In Appellants Initial Brief, Respondents/Appellants argue for the first time that the transfers from MSPS to Patricia are exempt from execution pursuant to S.C. Code § 15-39-410. (App. Initial Brief of Resp/App. pp.

8-9).⁹ Whether a transfer is subject to a statutory exemption and whether a transfer is fraudulent or based upon valuable consideration are distinct issues of law and fact. Respondents/Appellants did not raise the statutory exemption or the issue regarding the applicable standard of proof in Respondents/Appellants' Motion to Reconsider the June 7, 2016 Order. (R. pp. 157-60). Finally, Respondents/Appellants failed to substantively brief or argue their third issue on appeal, abandoning it entirely. Because Appellants failed to argue that the transfers to Patricia are "earnings of the debtor" exempt from execution pursuant to S.C. Code § 15-39-410 until their brief to the Court of Appeals, and because Appellants failed to raise the issues regarding the standard of proof applied by the Master in both their Motion to Reconsider and Initial Brief, these issues are, respectfully, not preserved for appellate review.

Without waiving its argument relating to the preservation of these issues on appeal, CCA contends the Master-in-Equity applied the appropriate standard of proof in finding the transfers to Patricia were without consideration. (R. pp. 19-31). CCA further contends that the transfers to Patricia are not exempt under S.C. Code § 15-39-410 even if MSPS could show the payments to Patricia were loan repayments or compensation for Manfred's salary, which it cannot. S.C. Code § 15-39-410 provides "[t]he judge may order any property of the judgment debtor, not exempt from execution, in the hands of either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except the earnings of the debtor for his personal service cannot be so applied." (Emphasis added). Here, neither Manfred nor Patricia are the Judgment debtor. MSPS is the judgment debtor, and Manfred and Patricia are third parties

⁹ While Appellants broadly characterize their first issue on appeal as "whether the master erred in setting aside the transfers from MSPS to Patricia", substantively Appellants argue that the master erred in setting aside the transfers because they are exempt pursuant to S.C. Code Ann. 15-39-410 as "earnings of the judgment debtor". (Appellants' Initial Brief of Respondents/Appellants pp. 3, 8-9) (emphasis added).

APPENDIX 113

holding the property of the judgment debtor. (see R. pp. 34-35). Any salary attributable to Manfred are not the earnings of MSPS; therefore, neither Manfred nor MSPS can claim the transfers are exempt from execution.

CONCLUSION

For the reasons stated above, this Court should affirm the lower court's holding that the transfers from MSPS to Patricia Sprenger are fraudulent transfers that are not based upon valuable consideration and direct the lower court to enter a judgment against Patricia for \$303,393.84. Appellant's remaining issues on appeal should be dismissed on basis that they are not preserved for appellate review.

Respectfully submitted,

**BRUNER, POWELL, WALL
& MULLINS, LLC**



Henry P. Wall
Caitlin Creswick Heyward
Robert C. Osborne
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Attorneys for Appellant-Respondent

October 16, 2017

APPENDIX 114

APPENDIX I TO INITIAL BRIEF OF APPELLANT-RESPONDENT

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
1.	8/29/2013	53663		Patricia Sprenger	\$7,000.00	R. p. 296
2.	9/27/2013	53716		Patricia Sprenger	\$7,000.00	R. p. 297
3.	10/30/2013	53751		Patricia Sprenger	\$7,000.00	R. p. 298
4.	11/26/2013	53784		Patricia Sprenger	\$7,000.00	R. p. 299
5.	2/25/2014	53894		Patricia Sprenger	\$7,000.00	R. p. 300
6.	3/27/2014	53948		Patricia Sprenger	\$40,000.00	R. p. 301
7.	3/27/2014	53946		Patricia Sprenger	\$7,000.00	R. p. 302
	4/2/2014		Lawsuit Filed			R. p. 40
8.	4/28/2014	54042		Patricia Sprenger	\$7,000.00	R. p. 303
	5/2/2014		Affidavit of Service of Lawsuit			R. p. 65
9.	5/14/2014	54079		Patricia Sprenger	\$1,600.00	R. p. 304
	5/29/2014		MSPS Response to Complaint			R. p. 62
10.	5/29/2014	54084		Patricia Sprenger	\$7,000.00	R. p. 305
11.	6/24/2014	54119		Patricia Sprenger	\$7,000.00	R. p. 506
	7/25/2014		Notice of Motion and Motion for Default Served			R. p. 69
	7/29/2014		Notice of Motion and Motion for Default Filed			R. p. 69
12.	7/30/2014	54165		Patricia Sprenger	\$27,000.00	R. p. 307

APPENDIX 115

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
	8/5/14		Order of Default Filed			R. pp. 34-35
13.	8/27/2014	54191		Patricia Sprenger	\$7,000.00	R. p. 308
	9/5/2014		Motion for Damages Hearing Filed			R. pp. 74-75
14.	9/29/2014	54255		Patricia Sprenger	\$70,000.00	R. p. 309
15.	9/29/2014	54252		Patricia Sprenger	\$7,000.00	R. p. 310
16.	11/3/2014	54283		Patricia Sprenger	\$7,000.00	R. p. 311
	11/17/14		Damages Hearing Held			R. p. 38
17.	12/22/2014	54341		Patricia Sprenger	\$7,000.00	R. p. 312
	12/24/2014		Order of Judgment Filed			R. pp. 34-37
	1/29/2015		Amended Order of Judgment Filed			R. pp. 38-39
	4/13/2015		VP for Supplemental Proceedings			R. pp. 66-68
	5/1/2015		Rule to Show Cause Entered			R. p. 1-3
18.	5/27/2015	54522		Patricia Sprenger	\$60,000.00	R. p. 313
	6/2/2015		Supplemental Proceeding Hearing			R. pp. 161-91
	6/4/2015			Patricia \$50,000.00 cash withdrawal from First Citizens Account		R. p. 86
19.	6/23/2015	54548		Patricia Sprenger	\$7,000.00	R. p. 314

APPENDIX 116

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
	7/31/2015		Subpoena Duces Tecum- Patricia			R. p. 463-65
20.	8/12/2015	54598		Manfred Sprenger	\$7,000.00	R. p. 292
	9/21/2015		Deposition of Manfred, Patricia and 30(b)(6) of MSPS			R. p. 401-59
	9/22/2015		CCA's Motion for Execute and Set Aside Fraudulent Transfers			R. pp. 76-135
21.	9/22/2015	55055		Manfred Sprenger	\$7,000.00	R. p. 315
22.	9/23/2015	55057		Manfred Sprenger	\$14,000.00	R. p. 316
23.	9/24/2015	54806		Patricia Sprenger	\$499.56	R. p. 317
	10/2/2015		Hearing on Motion to Set Aside Fraudulent Transfers			R. pp. 192-218
24.	10/6/2015	55060		Manfred Sprenger	\$7,000.00	R. p. 319
	10/6/2015		Motion to Join Manfred and Patricia as Parties			R. pp. 149-53
25.	10/8/2015	55701		Patricia Sprenger	\$499.56	R. p. 320
	10/13/2015		First Order on Motion to Set Aside Fraudulent Conveyances			R. pp. 6-9
26.	10/15/2015	55708		Patricia Sprenger	\$499.56	R. p. 321
	10/19/2015		Motion for Contempt and Sanctions			R. pp. 136-48

APPENDIX 117

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
27.	10/22/2015	55716		Patricia Sprenger	\$499.56	R. p. 322
	10/26/2015		Amended Order on Motion to Set Aside Fraudulent Conveyances			R. pp. 10-12
28.	10/29/2015	55723		Patricia Sprenger	\$499.56	R. p. 323
29.	11/5/2015	55730		Patricia Sprenger	\$499.56	R. p. 324
30.	11/12/2015	55737		Patricia Sprenger	\$499.56	R. p. 325
	11/18/15		Hearing on Motion to Join Parties			R. pp. 219-40
31.	11/18/2015	55118		Manfred Sprenger	\$10,000.00	R. p. 326
32.	11/19/2015	55743		Patricia Sprenger	\$499.56	R. p. 327
33.	11/27/2015	55749		Patricia Sprenger	\$499.56	R. p. 328
34.	12/3/2015	55139		Manfred Sprenger	\$10,000.00	R. p. 331
35.	12/3/2015	55757		Patricia Sprenger	\$499.56	R. p. 329
36.	12/7/2015	55140		Manfred Sprenger	\$2,800.00	R. p. 330
37.	12/10/2015	55766		Patricia Sprenger	\$499.56	R. p. 332
38.	12/17/2015	55774		Patricia Sprenger	\$499.56	R. p. 333
39.	12/24/2015	55782		Patricia Sprenger	\$499.56	R. p. 334
40.	12/24/2015	55790		Patricia Sprenger	\$499.56	R. p. 335
TOTAL					\$361,393.84	

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

RECEIVED
OCT 16 2017
SC Court of Appeals

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondent's Brief of
Appellant/Respondent complies with Rule 211(b) SCACR.

October 16, 2017



Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas**

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No.: 2014-CP-23-01871

China Construction America of South Carolina, Inc..... Appellant/Respondent,

vs.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants**

APPELLANT'S REPLY BRIEF OF APPELLANT/RESPONDENT

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas**

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No.: 2014-CP-23-01871

China Construction America of South Carolina, Inc..... Appellant/Respondent,

vs.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants**

APPELLANT'S REPLY BRIEF OF APPELLANT/RESPONDENT

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal.....1

Statement of the Case 2

Arguments

1. RESPONDENT-APPELLANT MSPS DID NOT PROPERLY PRESERVE FOR
APPEALLATE REVIEW ITS ARGUMENTS REGARDING THE DATE OF
BREACH OR THE SCRIVENER’S ERROR IN THE AMENDED ORDER OF
JUDGMENT. 3

Conclusion 6

TABLE OF AUTHORITIES

CASES

<i>Albertson v. Robinson</i> , 371 S.C. 311, 317-18, 638 S.E.2d 81, 84 (2006)	5
<i>Anonymous v. State Board of Medical Examiners</i> , 323 S.C. 360, 473 S.E.2d 870, 879 (Ct. App. 1996)	3
<i>Murphy v. Hagan</i> , 227 S.C. 334, 271 S.E.2d 311 (1980)	3
<i>Trotter v. Trane Coil Facility</i> , 393 S.C. 637, 651, 714 S.E.2d 289, 296 (2011)	23

APPENDIX 123

STATEMENT OF ISSUES ON APPEAL

- I. RESPONDENT-APPELLANT MSPS DID NOT PROPERLY PRESERVE FOR APPELLATE REVIEW ITS ARGUMENTS REGARDING THE DATE OF BREACH OR THE SCRIVNERS ERROR IN THE AMENDED ORDER OF JUDGMENT.

STATEMENT OF THE CASE

Respondent-Appellant MS Production Solutions, LLC (“MSPS”) filed Respondent’s Initial Brief on May 17, 2017, received by Appellant-Respondent China Construction America of South Carolina, Inc. (“CCA”) on May 22, 2017. Appellant CCA files this Reply to Respondent MSPS’s Initial Brief.

ARGUMENT

- I. RESPONDENT-APPELLANT MSPS DID NOT PROPERLY PRESERVE FOR APPELLATE REVIEW ITS ARGUMENTS REGARDING THE DATE OF BREACH OR THE SCRIVENER'S ERROR IN THE AMENDED ORDER OF JUDGMENT.

MSPS attempts to argue for the first time on appeal that the transfers from MSPS to Patricia Sprenger before the filing of the lawsuit are not subject to execution because of a minor typographical error in the Amended Order of Judgment. MSPS's argument is not properly before this Court, nor is it supported by the record. As a rule, where the record does not reflect a point has been raised or decided in the lower court, that point cannot be considered on appeal for the first time. Murphy v. Hagan, 275 S.C. 334, 271 S.E.2d 311 (1980); Anonymous v. State Board of Medical Examiners, 323 S.C. 360, 473 S.E.2d 870, 879 (Ct. App. 1996).

After MSPS failed to file a responsive pleading or appear at the damages hearing, an Amended Order of Judgment was entered against MSPS. (R. pp. 38-39). Pursuant to the Order, CCA was awarded pre-judgment interest on the outstanding debt, which the court calculated from the date of the breach of the contract to the date of the judgment. Id. Specifically, the court ordered that "Plaintiff is entitled to interest on this debt at the contract rate of 8.75% annum, for a total interest of \$49,855.16 (August 12, 2014-November 17, 2014, 462 days at the per diem rate of \$107.97". (R. p. 39) (emphasis added). The findings in the Amended Order of Judgment were based upon testimony and evidence presented by CCA at the damages hearing, at which MSPS chose not to appear. Id. Ignoring the fact that Order plainly states that the pre-judgment interest was calculated for a period of 462 days,¹ MSPS attempts to argue for the first time on appeal that

¹Only 97 days of pre-judgment interest would have been awarded had the Court intended to award pre-judgment interest from August 12, 2014. It is clear the date in the Order is a scrivener's error. Generally, a clerical error is defined as a mistake in writing or copying. As applied to judgments and decrees, it is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function. As such this Court may correct mistakes or clerical errors in its

the date of breach occurred on August 12, 2014 (over four months after the Complaint was filed) instead of August 12, 2013, insisting that it is now “the law of the case” that the date of breach occurred in August of 2014.

MSPS’s argument that it is the law of the case must be that MSPS breached its contract four months after the Complaint was filed is absurd, defies logic, and is contrary to the understanding of the parties throughout the supplemental proceedings as evidenced by the transcripts and the record in this case. MSPS ignores the fact that CCA filed its Motion to Execute and Set Aside Fraudulent Transfers on September 23, 2015, seeking to execute and set aside all fraudulent transfers to Manfred and Patricia after August 12, 2013 (the date of breach) through May 27, 2015 and included an index identifying the date and amount of each transfer. (R. pp. 76-135).²

From the outset, it was clear to MSPS that CCA sought to set aside all transfers to Patricia Sprenger from the date of the breach forward, as the only defense MSPS offered as to the pre-lawsuit transfers was its argument that the transfers either represented repayments for undocumented loans or Manfred’s salary. This was also the Court’s understanding as evidenced by its Order joining Manfred and Patricia Sprenger as parties to the supplemental proceedings, finding that “Petitioner maintains the transfers to Patricia Sprenger from MSPS are in excess of \$282,600.00. *It appears that many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed.*”

own process or make it conform to the record, and there is no explicit time limit for the correction of clerical errors. Trotter v. Trane Coil Facility, 393 S.C. 637, 651, 714 S.E.2d 289, 296 (2011).

² CCAs Motion to Execute and Set Aside provides as follows: “After commencing these supplemental proceedings, Petitioners discovered that ***from at least August 2013, the date of Defendant’s breach, to May 20, 2015***, the owner of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00.” (R. p. 77). (emphasis added).

(emphasis added) (R. p. 13). MSPS did not move to amend or correct the December 23, 2015 Order.

At the final hearing on CCA's Motion to Execute and Set Aside Fraudulent Transfers, CCA provided the court with an updated index of transfers through December 2015, evidencing a total of \$361,393.84 in transfers from MSPS to Manfred and Patricia after MSPS breached its contract with CCA, and CCA moved to execute on the same. (R. p. 291). By that time, CCA had already deposed Manfred Sprenger and Patricia Sprenger regarding the pre-lawsuit transfers, engaged in written discovery, and offered bank records pre-dating the Complaint to the Court. MSPS presented oral arguments as to why it contended CCA was not entitled to execute on the \$361,393.84 in transfers. (R. pp. 241-90). Notably, MSPS did not argue that MSPS did not breach its contract in 2013³ or that the scrivener's error in the Amended Order of Judgment precluded CCA from recovering transfers that occurred prior to the filing of the Complaint. MSPS's failure to raise this issue before the trial court leaves it unpreserved for appeal.

It is well settled that, for the purpose of the Statute of Elizabeth, "it is only necessary that the debt should be been in existence or the right of action have accrued at or before the time of the transfer." Albertson v. Robinson, 371 S.C. 311, 317-18, 638 S.E.2d 81, 84 (2006). Here, the right of action accrued when MSPS breached its contract with CCA. Likewise, interest accrues at the time a sum certain becomes due, which was awarded to CCA as of August 12, 2013. It is clear from the Record that all relevant times, MSPS did not contest CCA's position that the date of breach occurred in August 2013 as evidenced by the Amended Order of Judgment. As a rule, points of law, theories, issues and arguments not brought to the attention of the lower court need not be,

³ Regardless, MSPS's failure to file a responsive pleading or appear until the commencement of supplemental proceedings precluded MSPS from arguing as to the merits of CCA's breach of contract claim. CCA obtained an Order of Default and an Order of Judgment against MSPS as to the allegations and causes of action in the Complaint.

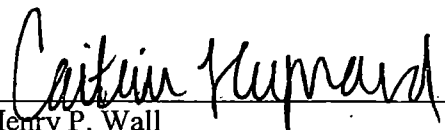
and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Therefore, MSPS's argument as to the pre-Complaint transfers to Patricia Sprenger fails as a matter of law. To the extent this Court is inclined to entertain MSPS's new defense theory, CCA requests the Court correct the clear scrivener's error regarding the date of breach and direct the circuit court to correct its records to reflect this change.

CONCLUSION

For the reasons stated above and in Appellant's Initial Brief of Appellant-Respondent, this Court should reverse the lower court's holding that CCA cannot recover the post-judgment fraudulent transfers to Manfred Sprenger and the pre-lawsuit transfers to Patricia Sprenger and direct the lower court to enter a judgment against Manfred Sprenger and Patricia Sprenger for the same. Furthermore, the lower court erred when it failed to rule the Master-In-Equity for an order directing Bank of America to deliver to CCA all funds on deposit in MSPS's corporate bank account and for a judgment to be entered in favor of CCA against Manfred Sprenger and Patricia Sprenger in the amount of \$361,393.84.

Respectfully submitted,

**BRUNER, POWELL, WALL
& MULLINS, LLC**


Henry P. Wall
Caitlin Creswick Heyward
Robert C. Osborne
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Attorneys for Appellant-Respondent

October 16, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc. Appellant/Respondent,

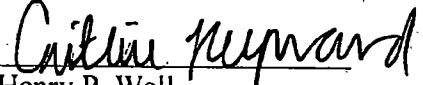
vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Reply Brief of
Appellant/Respondent complies with Rule 211(b) SCACR.

October 16, 2017


Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

**MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.**

AMENDED RECORD ON APPEAL
VOLUME I

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondents/Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.

AMENDED RECORD ON APPEAL

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondents/Appellants

INDEX

Rule to Show Cause and Order of Reference of May 5, 2015.....	1
Order of August 5, 2014.....	4
Order of October 13, 2015.....	6
Amended Order of October 27, 2015.....	10
Order of December 23, 2015.....	13
Order of June 7, 2016.....	19
Order of August 2, 2016.....	32
Order of Judgment of December 24, 2014.....	34
Amended Order of Judgment of January 29, 2015.....	38
Appellant/Respondent's Complaint.....	40
Respondents/Appellants' Answer.....	62
Affidavit of Service of Complaint.....	65
Verified Petition for Supplemental Proceedings.....	66
Appellant/Respondent's Notice of Motion and Motion for Order of Default.....	69
Appellant/Respondent's Notice of Motion and Motion for Damages Hearing.....	74
Appellant/Respondent's Motion for Execution and Set Aside Fraudulent Transfers.....	76
Appellant/Respondent's Motion for Contempt and Sanction.....	136
Appellant/Respondent's Notice of Motion and Motion to Join Parties.....	149
Appellant/Respondent's Motion to Alter or Amend.....	154
Respondent/Appellant's Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e).....	157

Testimony

Transcript of Testimony from June 2, 2015.....161

Transcript of Testimony from October 2, 2015.....192

Transcript of Testimony from November 18, 2015.....219

Transcript of Testimony from March 2, 2016.....241

Plaintiff's Exhibits

1. Tab 3.....291

2. Tab 7.....336

3. Tab 8.....401

4. Tab 9.....460

5. Tab 11.....499

6. Tab 12.....553

7. Tab 13.....557

8. Tab 14.....576

Defendant's Exhibits

October 2, 2015 Hearing

1.....593

2.....595

3.....600

4.....603

5.....609

6.....624

7.....641

8.....648

9.....680

10.....716

11.....724

12.....726

13.....735

March 2, 2016 Hearing

1.....742

2.....758

3.....793

APPENDIX 134

4.....	797
5.....	804
6.....	810
7.....	817
8.....	823
9.....	832
10.....	841
11.....	845
12.....	849
13.....	850
14.....	855
15.....	859
16.....	862
17.....	867
18.....	869
19.....	872
Certificate of Appellant.....	873

FILED-CLERK OF COURT
 STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE PAUL B. WICKENSIMER
 2015 MAY 5 PM 4 27
 China Construction America
 Of South Carolina, Inc.
 Plaintiffs,
 vs.
 MS Production Solutions LLC
 A/k/a MSPS Steel Fabricators
 Defendants.

**RULE TO SHOW CAUSE AND
 ORDER OF REFERENCE**
 (Case. NO.: 2014-CP-23-1871)

Judgment having been rendered, an Execution issued, a *Nulla Bona* return made to said Execution, the Petitioner having moved for an examination of the Respondent, pursuant to the provisions of §15-39-310, *et seq.*, as amended; it is therefore,

ORDERED that MS Production Solutions LLC a/k/a MSPS Steel Fabricators, DO APPEAR before The Honorable Charles B. Simmons, Jr., Master-In-Equity for Greenville County, Greenville County Courthouse, 305 East North Street, Courtroom 5, Greenville, South Carolina, on the 2nd day of June, 2015, at 2:30 a.m.(p.m.), to answer under oath concerning your assets; TO SHOW CAUSE why your property should not be applied towards satisfaction of the Judgment set out in the Petition; to SHOW CAUSE why a Receiver of Respondent's property should not be appointed, pursuant to the provisions of § 15-39-430, *et seq.* South Carolina Code Ann. (Law. Co-op. 1976).

The Master-in-Equity will entertain and rule upon all motions necessary to dispose of this

matter, to include but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt and has authority to enter a Final Order. Any appeal from the Master-in-Equity is directly to the Supreme Court.

IT IS FURTHER ORDERED that the Respondent is hereby restrained and enjoined from making any transaction or transfer or other disposition of property belonging to him/it which is not exempt from execution pending further Order of this Court.

YOU ARE FURTHER ORDERED PRODUCE A COPY OF THE FOLLOWING DOCUMENTS TO COUNSEL FOR PLAINTIFF ON, OR BEFORE, FIVE (5) BUSINESS DAYS BEFORE THIS HEARING:

1. Bank statements for all bank accounts owned in whole or in part by Defendants for the past year.
2. Pay stubs for the past five (5) years.
3. Federal and State Tax returns for the past five (5) years.
4. Insurance Policies [home, automobile, real estate, etc...].
5. Records of any real estate owned, either in whole or in part.
6. Records of vehicles and boats.
7. Any inventories of personal property.
8. Copies of any contracts entitling you to payment of money.
9. Any personal financial statements prepared for any reasons either by your self or by any independent sources, with any applicable notes attached thereto from the past five (5) years and, if not reflected in such statements, a complete description of any and all contingent liabilities, including guarantees, by you.
10. Any and all year-end financial statements of any corporation, partnership, trust, or other business entity in which you hold directly or indirectly a 10% interest (balance sheet statements and statement of income and expenses) audited and unaudited for the last three years of the respective entities with any applicable notes attached thereto and any subsequently prepared

APPENDIX 137

financial reports or statements prepared by the entity or on its behalf for any reason.

11. Any and all documents and financial records that relate to, refer to, or describe, recount, or are in any way related to any transfer of or pledge, hypothecation, gift, assignment, or granting of a security interest in assets owned or controlled by him, made by him, or on his behalf in excess of One Hundred Dollars (\$100) in any single transaction from the past five (5) years to the present, and any and all documents and financial records that relate to, refer to, to describe the disposition of proceeds, promissory notes, or other evidence of indebtedness or consideration received from such transfers, pledges, etc.
12. Any and all documents and financial records that relate to, refer to, or describe any and all transactions between him and members of his family.
13. Any and all documents and financial records, including appraisals which relate to, refer to, or describe or substantiate any valuation of assets disclosed in your financial statements/records produced under paragraph 11 above, and the manner of valuation or fixing of value of such assets, prepared either by you or by any third party or entity relating to these assets.
14. Any and all documents which relate to, or recount or describe any pending or potential claim against you or against any entity referenced in paragraph 10 above, whether or not currently in litigation, together with any and all documents which relate to, recount, or describe any judgments held against you or any entity referenced in paragraph 10.
15. Any and all documents which relate to, refer to, or describe any trust in which you are a beneficiary, including any financial statements of the aforesaid trust and the dispositive provisions of the trust as relates to you and members of your family.

IF YOU DO NOT APPEAR IT MAY RESULT IN THE APPOINTMENT OF A RECEIVER AND AWARDING THE PLAINTIFF/PETITIONER SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUESTED. YOU MAY ALSO BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.

Greenville, South Carolina

1 MAY, 2015

s/Robin B. Stilwell
Presiding Circuit Court Judge, Greenville County
STILWELL/2158

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

China Construction America
Of South Carolina, Inc.)

Plaintiffs,)

vs.)

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case NO.: 2014-CP-23-1871

**ORDER OF DEFAULT
AGAINST MS PRODUCTION
SOLUTIONS LLC**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 5 PM 3:50

TO: THE DEFENDANT MS PRODUCTION SOLUTIONS LLC A/K/A MSPS STEEL FABRICATORS:

THIS MATTER CAME before the Court upon Motion of Plaintiff China Construction America of South Carolina, Inc. ("Plaintiff"), for an Order of Default against the Defendant, MS Production Solutions LLC A/k/a MSPS Steel Fabricators ("Defendant").

IT APPEARS from the Affidavit of Default filed by counsel for the Plaintiff that the Summons and Complaint were properly served upon the Defendant and that no Answer, Motion, Notice of Appearance or other responsive pleading has been filed with the Court or served on Plaintiff by the Defendant within the time prescribed by law.

IT FURTHER APPEARS, and I so hold, that the Defendant is in default herein and that the Plaintiff is therefore entitled to an Order of Default/~~Entry of Default~~ to be entered against the above-named Defendant.

IT FURTHER APPEARS, and I so hold, that upon motion of the Plaintiff, the Plaintiff will be entitled to a hearing to set the damages in this case.

Dr

ENTERED COMPUTER

APPENDIX 139

IT FURTHER APPEARS, and I so hold that the Plaintiff in this matter has complied with Rule 55 of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that an Order of Default be entered against the Defendant and that upon Motion by the Plaintiff, the Plaintiff be entitled to the relief this Court deems proper.

AND IT IS SO ORDERED.



Presiding Judge
Thirteenth Judicial Circuit

Dated: 7/31/14

Greenville, South Carolina



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CIVIL ACTION NO.: 2014-CP-23-1871

China Construction America of South
Carolina, Inc.,

Petitioner,

v.

MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,

Respondent.

**ORDER ON MOTION TO SET ASIDE
CONVEYANCES**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2015 OCT 13 AM 11 38

This matter came before me on October 2, 2015, 2:00 PM, pursuant to a Motion for Order Setting Aside Fraudulent Conveyances and Executing on Certain Property.

Present at the hearing were Plaintiff's counsel, Caitlin Heyward, and Defendant's counsel, Rhett Burney. This Court heard extensive argument from both lawyers.

BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. Respondent did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against Respondent in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners maintain that from at least August, 2013 to May 2015, the owner and sole proprietor of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. At the supplemental proceedings hearing held on June 2, 2015, Mr. Sprenger testified that his wife is



not an employee of the company. Notwithstanding being served a copy of the Rule to Show Cause, Petitioner contends that Respondent transferred an additional \$60,000 from the MSPS Bank of America account to Patricia Sprenger on May 27, 2015 in violation of this Court's Order enjoining Respondent from making any transaction or transfer or other disposition of property which is not exempt from execution.

Patricia Sprenger testified at her deposition on September 21, 2015, that she withdrew a substantial portion of the monies transferred to her from MSPS in cash and is storing approximately \$50,000.00 of that money at the home she shares with Manfred Sprenger, the Principal of MSPS. Respondent disputes the characterization of these monies and the availability of the funds, contending they were repayments for un-documented loans made to the LLC.

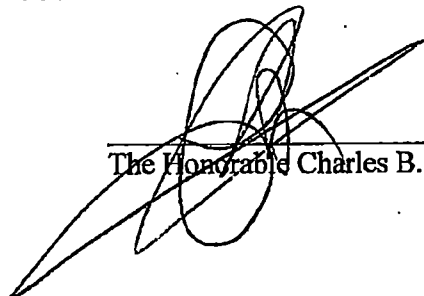
Based on the record before me, arguments by the lawyers and their submitted written materials, I make the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the issues before me and the parties hereto.
2. Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS") has made some amount of cash or check transfers to Patricia Sprenger.
3. Manfred Sprenger, the Principal and Sole Proprietor of MSPS, appears to have some degree of access to the \$50,000.00 in cash transferred from the MSPS account to Patricia Sprenger. However, and important to note, is that neither Manfred Springer nor Patricia Sprenger are parties to this lawsuit.
4. Respondent is reminded that it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any "loans" or "capital contributions" not evidenced by any note or other proper loan documentation.



5. Until a judicial determination can be made as to the fraudulent nature of the transfers, if any, MSPS is directed to exercise reasonable efforts to recover the \$50,000.00 transferred to Patricia Sprenger on May 27, 2015. Whatever such funds are recovered, those funds shall be held in trust at the law office of Turner and Burney, PC on or before October 9, 2015. Further, and while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED.


The Honorable Charles B. Simmons

Greenville, South Carolina

10/8, 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2301871

China Construction America Of South Carolina Inc vs. MS Production Solutions LLC

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
OCT 13 2015 11:32 AM

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order on Motion to Set Aside Conveyances in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 13th day of October, 2015.

Court Reporter:

PRESIDING JUDGE -

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
Caitlin Creswick Heyward 1735 St. Julian Place, Suite 200 Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC
233 Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 China Construction America of South)
 Carolina, Inc.,)
)
 Petitioner,)
)
 v.)
)
 MS Production Solutions LLC a/k/a)
 MSPS Steel Fabricators,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO.: 2014-CP-23-1871

AMENDED
 ORDER ON MOTION TO SET ASIDE
 CONVEYANCES

FILED-CLERK OF COURT
 GREENVILLE S.C.
 PAUL B. WICKENBARGER
 2015 OCT 27 PM 4 17

This matter came before me on October 2, 2015, 2:00 PM, pursuant to a Motion for Order Setting Aside Fraudulent Conveyances and Executing on Certain Property.

Present at the hearing were Plaintiffs counsel, Caitlin Heyward, and Defendant's counsel, Rhett Burney. This Court heard extensive argument from both lawyers.

BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. Respondent did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against Respondent in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners maintain that from at least August, 2013 to May 2015, the owner and sole proprietor of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. At the supplemental proceedings hearing held on June 2, 2015, Mr. Sprenger testified that his wife is



not an employee of the company. Notwithstanding being served a copy of the Rule to Show Cause, Petitioner contends that Respondent transferred an additional \$60,000 from the MSPS Bank of America account to Patricia Sprenger on May 27, 2015 in violation of this Court's Order enjoining Respondent from making any transaction or transfer or other disposition of property which is not exempt from execution.

Patricia Sprenger testified at her deposition on September 21, 2015, that she withdrew a substantial portion of the monies transferred to her from MSPS in cash and is storing approximately \$50,000.00 of that money at the home she shares with Manfred Sprenger, the Principal of MSPS. Respondent disputes the characterization of these monies and the availability of the funds, contending they were repayments for un-documented loans made to the LLC.

Based on the record before me, arguments by the lawyers and their submitted written materials, I make the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the issues before me and the parties hereto.
2. Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS") has made some amount of cash or check transfers to Patricia Sprenger.
3. Manfred Sprenger, the Principal and Sole Proprietor of MSPS, appears to have some degree of access to the \$50,000.00 in cash transferred from the MSPS account to Patricia Sprenger. However, and important to note, is that neither Manfred Springer nor Patricia Sprenger are parties to this lawsuit.
4. Respondent is reminded that it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any "loans" or "capital contributions" not evidenced by any note or other proper loan documentation.



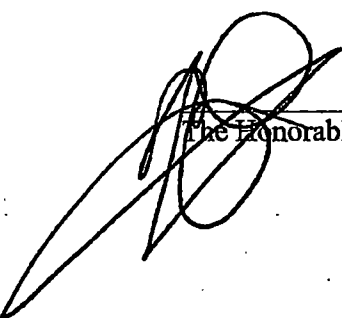
5. Until a judicial determination can be made as to the fraudulent nature of the transfers, if any, MSPS is directed to exercise reasonable efforts to recover the \$50,000.00 transferred to Patricia Sprenger on May 27, 2015. Whatever such funds are recovered, those funds shall be held in trust at the law office of Turner and Burney, PC on or before October 9, 2015. Further, and while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.

6. This Court has not at this time rendered any decision(s) regarding the propriety or impropriety of the purported fraudulent transfers. The determination of the fraudulent nature of the transfers is held in abeyance until further order of this Court.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

Greenville, South Carolina

10/26 2015



The Honorable Charles B. Simmons

APPENDIX 147

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
China Construction America of South Carolina, Inc.,	)	
Petitioner,	)	
v.	)	
MS Production Solutions LLC a/k/a MSPS Steel Fabricators,	)	
Respondent.	)	

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 DEC 23 AM 11 20

THIS MATTER came before me for hearing on November 18, 2015, pursuant to (1) a Motion to Join Manfred Sprenger and Patricia Sprenger as parties, (2) a Motion to Quash and Motion for Protective Order, and (3) a Motion for Contempt. Appearing on behalf of Plaintiff was Caitlin E. Creswick, Esquire. Rhett D. Burney appeared on behalf of Respondent, Manfred Sprenger and Patricia Sprenger.

Based on the record before me, arguments by the lawyers, and their submitted written materials, I make the following findings of facts and conclusions of law:

Petitioner's Motion to Join Manfred Sprenger and Patricia Sprenger as Parties

- (1) On July 31, 2014, an Order of Default was entered against Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS").
- (2) After granting Petitioner's motion for damages hearing, the court entered an Amended Order of Judgment against MSPS in the amount of \$657,137.30 on January 29, 2015.
- (3) Petitioner's judgment was recorded against Respondent, and the Respondent has not made any payments toward the Judgment.



- (4) Execution has been issued to the Sheriff of Greenville County against Respondents and the writ has been returned NULLA BONA.
- (5) This Court held a hearing in these Supplemental Proceedings on June 2, 2015, during which Manfred Sprenger testified on behalf of MSPS.
- (6) During the hearing, Manfred Sprenger testified that he transferred certain funds to his wife, Patricia Sprenger, for no consideration, from the MSPS company bank account. While Plaintiff disagrees, he testified these funds represented his paycheck. The Court need not rule on this issue at this point.
- (7) Petitioner maintains the transfers to Patricia Sprenger from MSPS are in excess of \$282,600.00.
- (8) It appears that many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed.
- (9) Petitioner contends Respondent transferred \$60,000.00 in the form of a check made payable to Patricia Sprenger on May 27, 2015, after Respondent was served with a Rule to Show Cause on May 13, 2015, enjoining Respondent from transferring the company assets.
- (10) According to Plaintiff, Patricia Sprenger testified during her deposition on September 21, 2015 that she had \$50,000.00 of the May 27, 2015 transfer in cash in her home. This will be an issue that will be decided at future hearings and viewed in light of previously issued Orders.
- (11) The proposed Respondents/additional parties are citizens of Greenville County, South Carolina.

- (12) On September 23, 2015, Plaintiff filed a motion to set aside the fraudulent transfers, and this Court held that the relief sought (i.e., the return of the property to the judgment debtors) cannot be accorded among those already parties to these proceedings.
- (13) Manfred Sprenger and Patricia Sprenger claim an interest in the property transferred and the disposition of this action in their absence may (i) as a practical matter impair or impede their ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.
- (14) Based upon the aforesaid, and arguments of Counsel, Petitioner is hereby granted leave to join Manfred Sprenger and Patricia Sprenger as necessary parties to this Supplemental Proceeding.

Respondent's Motion to Quash

- (1) On October 21, 2015, Respondent filed a Motion to Quash and for Protective Order regarding a subpoena served on Saunders O'Dell, PA on October 6, 2014 and seeking information related to the accounting records of Manfred Sprenger, Patricia Sprenger, and MS Production Solutions, LLC.
- (2) I hereby limit Petitioner's subpoena to all documents and information that Saunders and O'Dell, PA relied upon in preparing the tax returns from October 2012, 18 months prior to the filing of the lawsuit, to present.
- (3) Any information labeled confidential or that constitutes a trade secret or price list is to be designated as CONFIDENTIAL and may only be disclosed or made available to "Qualified Persons" who are defined to consist exclusively of:
 - a. The Court and its personnel;

- b. Partners and associates of attorneys employed by the law firms of record representing the parties in these Supplemental Proceedings, and the respective clerical, paralegal, and secretarial staff employed or contracted by such law firms whose function require access to said CONFIDENTIAL MATERIAL for the purpose of these Supplemental Proceedings;
- c. Court reporters employed in connection with these Supplemental Proceedings;
- d. Any mediator, arbitrator or other person employed as part of any alternative dispute resolution; and
- e. Any other consultant or professional counsel for either party reasonably determines needs to be shown such CONFIDENTIAL MATERIAL to assist counsel in these supplemental proceedings, including but not limited to accountants, forensic accounts, and consultants, expert consultants, and/or expert witnesses.

Petitioner's Motion for Contempt

- (1) An Order was entered on October 8, 2015, directing Respondent to exercise all reasonable efforts recover funds transferred to Patricia Sprenger from Respondent's account.
- (2) On October 22, 2015, Petitioner filed a Motion to Compel Respondent to comply with the October 8, 2015 Order and to hold Respondent in contempt of court and to impose sanctions.
- (3) On November 16, 2015, Respondent filed a Return to Petitioner's Motion for Contempt and sought attorneys' fees.
- (4) Based on the testimony from Manfred Sprenger, the Principal of MS Production Solutions, LLC, this Court orders Respondent to deposit \$8,000.00 into the trust account

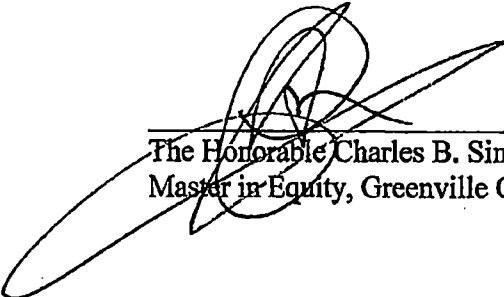
of Rhett D. Burney, Esq. on or before November 20, 2015 to preserve said funds until such further proceedings can be had regarding the transfers.

- (5) Respondent's request for attorneys' fees is denied.

AND IT IS SO ORDERED.

Date: 12/2/15

Greenville, South Carolina



The Honorable Charles B. Simmons
Master in Equity, Greenville County

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2301871

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2015 DEC 23 PM 11:21

China Construction America Of South Carolina Inc vs. MS Production Solutions LLC

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Ruling on Multiple Motions in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 23rd day of December, 2015.

Court Reporter:

PRESIDING JUDGE -

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
 Caitlin Creswick Heyward 1735 St. Julian Place, Suite 200 Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC
 233 Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
	)	
China Construction America of South Carolina, Inc.,	)	
	)	
Petitioner,	)	ORDER SETTING ASIDE FRAUDULENT CONVEYANCES
	)	
v.	)	
	)	
MS Production Solutions, LLC a/k/a	)	
MSPS Steel Fabricators, Manfred	)	
Sprenger and Patricia Sprenger,	)	
	)	
Respondents.	)	
	)	

THIS MATTER came before me for hearing on March 2, 2016, pursuant to Petitioner China Construction America of South Carolina, Inc.'s ("Petitioner" or "China") Motion to Set Aside Fraudulent Transfers. Appearing on behalf of Petitioner was Robert C. Osborne, III. Rhett D. Burney appeared on behalf of Respondents, MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS"), Manfred Sprenger ("Manfred") and Patricia Sprenger ("Patricia"). The Court heard testimony from Manfred Sprenger and Benjamin O'Dell as well as extensive argument from both lawyers. In addition to the testimony and argument of counsel, in reaching its decision, the Court reviewed the exhibits entered into evidence, the testimony of Manfred Sprenger from the earlier supplemental proceedings hearing and the deposition testimony of Manfred and Patricia Sprenger.

FACTUAL BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. MSPS did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against MSPS in the amount of \$657,137.30.

Petitioner commenced Supplemental Proceedings and a Rule to Show Cause was entered against MSPS on May 1, 2015. A Supplemental Proceedings hearing was held on June 2, 2015 and the court heard testimony from Manfred Sprenger. Notably, Manfred testified that his wife, Patricia, was not an employee of MSPS, nor an owner of MSPS. Petitioner took the depositions of both Manfred and Patricia on September 21, 2015. During her deposition, Patricia testified that although she was not an employee of MSPS, checks from the MSPS account were frequently made payable to her. Additionally, she testified the checks were written to her rather than Manfred because she was the one who would deposit the checks and it was easier for her to do so at the bank if the checks were in her name. Patricia further testified that she would make cash withdrawals from the Sprenger's personal account and keep the cash in their home. At her deposition, Patricia testified that she thought she had approximately \$50,000.00 in cash at her home. In his deposition, Manfred also testified that Patricia was not an employee of MSPS and that he was the sole owner of MSPS. Addressing the cash kept in their home, Manfred alleged that the amount was significantly less than \$50,000.00.

Following the depositions, Petitioner filed its Motion to Set Aside Fraudulent Transfers. A hearing on the motion was held on October 2, 2015. Petitioner argued that MSPS had fraudulently transferred money out of the company in an effort to avoid paying the judgment against it. Following the hearing, on October 27, 2015, this Court entered an order instructing MSPS to exercise reasonable efforts to recover the \$50,000.00 Patricia testified to in her deposition. This Court deferred ruling on the issue of the fraudulent transfers until a later date.

Another hearing involving the parties was held on November 18, 2015. At that hearing, Petitioner moved to add Manfred and Patricia Sprenger as parties to the action. Petitioner also moved to hold MSPS in contempt of the order entered on October 27, 2015 for failing to take

reasonable steps to recover the money Patricia testified to in her deposition. The court also addressed Respondent's Motion to Quash and for a Protective Order regarding a subpoena Petitioner served on Saunders O'Dell, P.A. seeking information related to the accounting records of MSPS, Manfred Sprenger and Patricia Sprenger. On December 23, 2016 the Court entered an Order joining Manfred and Patricia Sprenger as parties to the Supplemental Proceedings. Ruling on Petitioner's Motion for Contempt, the court ordered that MSPS deposit \$8,000.00 into the trust account of its attorney until such further proceedings can be had regarding the transfers. Addressing the Motion to Quash and for a Protective Order, the Court limited the subpoena to records relied on by Saunders O'Dell in preparing the tax returns of the Respondents from October 2012 forward. The court also ordered that the records be labeled as confidential and only available for review to certain limited persons, including counsel for both parties. The Court again deferred on ruling on Petitioner's Motion to Set Aside Fraudulent Transfers until the parties had an opportunity to review the documents from Saunders O'Dell.

On March 2, 2016, the court addressed the merits of Petitioner's Motion to Set Aside Fraudulent Transfers. Petitioner asserted that from August 2013 to December 2015, Manfred wrote numerous checks to himself and Patricia, totaling \$361,393.84. Petitioner contends the payments from MSPS to Manfred and Patricia are fraudulent transfers in violation of S.C. Code §27-23-10 (referred to hereinafter as the "Statute of Elizabeth"). The Respondents contend the checks were written to reimburse Manfred for money he injected into the company to keep it running and also for his salary.

The transfers at issue can be divided into two categories. First, there are checks written from MSPS to Patricia dating from August 2013 to December 2015. In addition, there are checks from MSPS written to Manfred during that same period. In total, the checks alleged to be fraudulent transfers by Petitioner equal \$361,393.84. An index of all the transfers alleged by the

Petitioner to be fraudulent transfers is attached hereto as **Exhibit A**.

DISCUSSION

South Carolina's prohibition on fraudulent transfers/fraudulent conveyances, the Statute of Elizabeth, provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code § 27-23-10 (emphasis added). In *Durham v. Blackard*, the Court of Appeals, interpreting the Statute of Elizabeth, held that conveyances can be set aside in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full-not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993).

A. Checks From MSPS to Patricia Sprenger

Petitioner argues that the transfers from MSPS to Patricia should be set aside as fraudulent transfers because they were made with both fraudulent intent and because they were not based upon valuable consideration. Petitioner contends that these payments were fraudulent because MSPS intended to transfer money out of the business in an effort to avoid its creditors. Petitioner argues the payments to Patricia were not supported by valuable consideration because both she and Manfred previously testified that she was not an employee of MSPS. Finally, Petitioner argues that the timing of certain transfers near significant dates in the lawsuit evidence MSPS' intent to hinder, delay or defraud Petitioner from collecting its judgment.¹ The Respondents argue that the payments to Patricia were salary or loan repayments to Manfred. Respondents contend Manfred wrote the checks to Patricia so she could deposit into their joint bank account. Therefore, they were based upon valuable consideration and not made with fraudulent intent. Based on the record before me, witness testimony and the arguments of counsel, I find that the transfers to Patricia were not based upon valuable consideration, even though Manfred contends the checks were for his salary. The payments to Patricia are set aside as fraudulent transfers.

Due to the close relationship between MSPS and Patricia Sprenger, "the law imposes a duty on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing [testimony]." *Coleman v. Daniel*, 261 S.C. 198, 208, 199 S.E.2d 74, 79 (1973). Patricia has not provided the Court with sufficient evidence establishing that the transfers alleged to be fraudulent were bona fide and based upon valuable consideration. To the

¹ From March 2014 to May 2015, MSPS wrote checks to Patricia in the following amounts: \$40,000.00, \$27,000.00, \$70,000.00 and \$60,000.00. These checks are written close to significant dates in the lawsuit. The \$40,000.00 check was written less than a week before Petitioner filed suit. The \$27,000.00 check was written less than a week before the Order of Default Judgment was entered. The \$70,000.00 check was written approximately two weeks after MSPS was served with notice of the damages hearing. Finally, the \$60,000.00 check was written a week before the Supplemental Proceedings hearings began.

contrary, at their depositions, both Manfred and Patricia testified that Patricia was never an employee of MSPS. Manfred also testified that she was not an employee during the supplemental proceedings hearing. Furthermore, Respondents' accountant testified that Patricia was not an employee of MSPS for tax purposes. He further testified that Patricia was not taxed for the checks she received, but rather Manfred claimed the checks as his income. I find Respondent's argument that the checks were, in substance, salary intended for Manfred to be without sufficient evidentiary support.

Under the unique facts of this case and due to the absence of valuable consideration, a finding of fraudulent intent is not necessary. See *Durham v. Blackard*, 313 S.C. at 437, 438 S.E.2d at 262. Petitioner has shown that (1) MSPS was indebted at the time of the transfers to Patricia²; (2) the transfers were voluntary, i.e., not based upon valuable consideration; and (3) MSPS failed to retain sufficient assets to satisfy the judgment. See *id.* Nothing more is required for the court to set aside the transfers pursuant to the Statute of Elizabeth.

Although the funds transferred to Patricia are no longer in the hands of MSPS, the judgment debtor, South Carolina law still provides a basis for recovery. Pursuant to S.C. Code 15-39-410, a judge may order property of the judgment debtor which is currently in the hands of another person to be applied towards the debt. I find that MSPS improperly transferred its assets into the hands of Patricia. Petitioner is entitled to a full examination of Patricia to determine her assets. Petitioner shall be entitled to execute on any non-exempt assets of Patricia up to \$221,593.84 which represents the transfers from MSPS to Patricia dating from April 2, 2014, the date this lawsuit was filed, until December 24, 2015. See Exhibit A. The court finds that upon the filing

² The fact that Petitioner's judgment was not in place prior to some of the transfers at issue is irrelevant. "It is only necessary that the debt should have been in existence or the right of the action have [sic] accrued at or before the time of the transfer. It may be reduced to a judgment at a later date." *Albertson v. Robinson*, 371 S.C. 311, 317, 638 S.E.2d 81, 84 (2006).

of the lawsuit, MSPS was clearly on notice of Petitioner's claims and the transfers from MSPS to Patricia after that date should be set aside. The court chooses not to go behind the date of the filing of the lawsuit based on the unique facts of this case.

B. Transfers From MSPS to Manfred Sprenger

Petitioner also argues that transfers from MSPS to Manfred should be set aside as fraudulent transfers. Petitioner argues that MSPS made these payments to keep money out of the company so as to make collecting the judgment against MSPS impossible. MSPS set forth a number of arguments in support of its position that Petitioner is not entitled to set the payments from MSPS to Manfred. MSPS contends that regardless of this Court's finding on whether the payments were fraudulent transfers, a blanket mortgage covering all of MSPS assets precludes Petitioner from executing on any of MSPS' assets. MSPS also argues that the payments were repayments for personal loans that Manfred provided to MSPS in order to keep the business operating. As such, there were based upon valuable consideration and not made with fraudulent intent.

In response, Petitioner argues that the mortgagee's security interest in MSPS' deposit accounts and in the cash Patricia testified that was in their home was not perfected. Petitioner clarified that it only sought to execute on MSPS' deposit accounts and the cash it alleged was improperly transferred out of MSPS and currently being held in the Sprenger's home. Petitioner referred the Court to S.C. Code § 36-9-104 which states that a security interest in deposit accounts is only perfected through control. Petitioner also argues that a security interest in cash is also only perfected by possession or control. Furthermore, Petitioner contends that MSPS kept no documentation evidencing the loans from Manfred to MSPS such that it could prove that the payments were in fact due back to Manfred. Respondents argued that a one owner limited liability company was not required to execute loan documents when the money being loaned to the company was being loaned by the sole owner of the company. Finally, Petitioner argues that

even if these transfers were loan repayments, Manfred, acting as the controlling member of MSPS, impermissibly chose to repay himself before paying his creditors. Petitioner argues that Manfred is an unsecured creditor of MSPS and Petitioner's judgment lien took priority over the alleged debt owed back to Manfred. The Respondents argued that without the cash being deposited into MSPS account by Manfred the company could not survive. Additionally, the Respondents argued that had Manfred intended to defraud creditors he would not have put his own money into the company to keep it running. The Respondents further argued that Manfred was entitled to a salary and presented records showing many months where he did not pay himself because the company had poor cash flow.

Despite the lack of records evidencing the loans and the fact that Manfred failed to properly differentiate his individual assets from those of MSPS, I find that the transfers from MSPS to Manfred should not be aside as fraudulent transfers. First, there is a significant question concerning the security interests noted above, second, from the bank records admitted into evidence clearly show that Manfred often made loans to MSPS that were necessary to keep the business bank accounts from having a negative balance. On more than one occasion, without the loans from Manfred, MSPS' bank account would have had a negative balance. And, the evidence also shows that Manfred would be repaid some of these amounts, albeit without proper documentation, by MSPS.

Therefore, I find and so hold that Petitioner is not entitled to set aside the payments from MSPS to Manfred.

ORDER

For the reasons set forth herein, this Court hereby sets asides up to \$221,593.84 in payments from MSPS to Patricia as fraudulent transfers dating from April 2, 2014 (the date the

APPENDIX 161

lawsuit was filed) through December 24, 2015. It is ordered that the \$8,000.00 put into the trust account of counsel for the Respondents following the November 18, 2015 hearing be paid to Petitioner within thirty (30) days of the entry of this Order. It is further ordered that Petitioner be entitled to a full examination of Patricia within 30 days from the entry of this Order to determine if any assets that were improperly transferred from MSPS to Patricia remain. The Petitioner is entitled to recover any remaining non-exempt assets from those improperly transferred from MSPS to Patricia between April 2, 2014 and December 24, 2015, up to \$221,593.94

This Order shall remain valid until Petitioner either recovers the \$221,593.84 in assets hereby found to be fraudulent transfers or the judgment against MSPS is satisfied. However, this Order shall not be construed as a judgment against Patricia. It is intended only to allow the Petitioner to recover the assets improperly transferred from MSPS to Patricia, up to \$221,592.84.

IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW EXHIBIT 'A'

ELECTRONICALLY FILED - 2016 Jun 07 4:57 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2301871

EXHIBIT A

2014-CP-23-01871
 Order Setting Aside Fraudulent Conveyances
 Exhibit A- Index of Transfers

INDEX OF TRANSFERS

	Date	Check No.	Payable To The Order Of	Amount
1.	8/29/2013	53663	Patricia Sprenger	\$7,000.00
2.	9/27/2013	53716	Patricia Sprenger	\$7,000.00
3.	10/30/2013	53751	Patricia Sprenger	\$7,000.00
4.	11/26/2013	53784	Patricia Sprenger	\$7,000.00
5.	2/25/2014	53894	Patricia Sprenger	\$7,000.00
6.	3/27/2014	53948	Patricia Sprenger	\$40,000.00
7.	3/27/2014	53946	Patricia Sprenger	\$7,000.00
8.	4/28/2014	54042	Patricia Sprenger	\$7,000.00
9.	5/14/2014	54079	Patricia Sprenger	\$1,600.00
10.	5/29/2014	54084	Patricia Sprenger	\$7,000.00
11.	6/24/2014	54119	Patricia Sprenger	\$7,000.00
12.	7/30/2014	54165	Patricia Sprenger	\$27,000.00
13.	8/27/2014	54191	Patricia Sprenger	\$7,000.00
14.	9/29/2014	54255	Patricia Sprenger	\$70,000.00
15.	9/29/2014	54252	Patricia Sprenger	\$7,000.00
16.	11/3/2014	54283	Patricia Sprenger	\$7,000.00
17.	12/22/2014	54341	Patricia Sprenger	\$7,000.00
18.	5/27/2015	54522	Patricia Sprenger	\$60,000.00
19.	6/23/2015	54548	Patricia Sprenger	\$7,000.00

ELECTRONICALLY FILED - 2016 Jun 07 4:57 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2301871

APPENDIX 164

20.	8/12/2015	54598	Manfred Sprenger	\$7,000.00
21.	9/22/2015	55055	Manfred Sprenger	\$7,000.00
22.	9/23/2015	55057	Manfred Sprenger	\$14,000.00
23.	9/24/2015	54806	Patricia Sprenger	\$499.56
24.	10/6/2015	55060	Manfred Sprenger	\$7,000.00
25.	10/8/2015	55701	Patricia Sprenger	\$499.56
26.	10/15/2015	55708	Patricia Sprenger	\$499.56
27.	10/22/2015	55716	Patricia Sprenger	\$499.56
28.	10/29/2015	55723	Patricia Sprenger	\$499.56
29.	11/5/2015	55730	Patricia Sprenger	\$499.56
30.	11/12/2015	55737	Patricia Sprenger	\$499.56
31.	11/18/2015	55118	Manfred Sprenger	\$10,000.00
32.	11/19/2015	55743	Patricia Sprenger	\$499.56
33.	11/27/2015	55749	Patricia Sprenger	\$499.56
34.	12/3/2015	55139	Manfred Sprenger	\$10,000.00
35.	12/3/2015	55757	Patricia Sprenger	\$499.56
36.	12/7/2015	55140	Manfred Sprenger	\$2,800.00
37.	12/10/2015	55766	Patricia Sprenger	\$499.56
38.	12/17/2015	55774	Patricia Sprenger	\$499.56
39.	12/24/2015	55782	Patricia Sprenger	\$499.56
40.	12/24/2015	55790	Patricia Sprenger	\$499.56
TOTAL				\$361,393.84

ELECTRONICALLY FILED - 2016 Jun 07 4:57 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2301871



Greenville Common Pleas

Case Caption: China Construction America Of South Carolina Inc vs. MS
Production Solutions LLC , defendant, et al
Case Number: 2014CP2301871
Type: Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2016-06-07 16:28:50 page 13 of 13

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
		2014-CP-23-01871
China Construction America of South	)	
Carolina, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
	)	ORDER
	)	
MS Production Solutions LLC a/k/a	)	
MSPS Steel Fabricators, Manfred	)	
Sprenger and Patricia Sprenger,	)	
	)	
Defendants.	)	

The Court issued its Order filed June 7, 2016 dealing with a myriad of issues relative to Plaintiff attempting to collect a previously entered judgment. Plaintiff and Defendants have filed motions pursuant to Rule 59(e), S.C.R.C.P.

In that the respective motions, as well as telephone conference calls with counsel, sufficiently set forth the basis of the respective motions, a formal hearing with oral arguments is not necessary. See, Pollard v. County of Florence, 444 S.E.2d 534 (S.C. App. 1994).

The Court finds that the Order filed June 7, 2016 sufficiently encompasses and addresses the issues raised in the Rule 59 motions. As such, both motions are denied.

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE ON PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: China Construction America Of South Carolina Inc vs. MS
Production Solutions LLC , defendant, et al
Case Number: 2014CP2301871
Type: Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2016-08-02 11:26:44 page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

China Construction America
Of South Carolina, Inc.)

Plaintiffs,)

vs.)

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case. NO.: 2014-CP-23-1871

ORDER OF JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIME
2014 DEC 24 AM 10 49

WLE

THIS MATTER came before the undersigned for a damages hearing on November 16, 2014 at 11:03 AM. Appearing on behalf of Plaintiff was Caitlin E. Creswick, Esquire. Defendant did not appear.

Counsel for Plaintiff called one witness, Peng Yang, a representative of China Construction America of South Carolina, Inc . Mr. Yang testified that the Defendant MS Production Solutions LLC ("MSPS") and Plaintiff entered into a Contract in the amount of \$1,093,242.89 for the Defendants to deliver steel for a construction project at Irmo High School ("the Project"). Mr. Yang further testified that Defendant was paid \$1,005,958.53 before being terminated for cause. Evidence was presented showing that the Defendant failed to deliver a majority of the steel under the Contract. Defendant did deliver some steel, over half of which was defective. The cost to fix the defective steel and to obtain cover for the non-delivered steel was \$537,700.76. The evidence demonstrated that the difference between the remaining balance on Plaintiffs' Construction Contract, \$87,284.36, and the cost to obtain cover was \$450,416.40.

It further appears, and I so hold, that the Plaintiff is entitled to interest on this

JH
192

debt at the contract rate of 8.75% annum, for total interest of \$49,885.16 (August 12, 2014–November 17, 2014, 462 days at the per diem rate of \$107.97).

Additional evidence demonstrated that MSPS caused the project to delay 5 months for which Plaintiff has incurred additional costs as well as attorneys fees. Pursuant to the Contract, it also appears, and I so hold, Plaintiff is entitled to \$150,000 in costs for delay and \$6,835.74 in attorney's fees as a result of Defendant's actions.

At the conclusion of all testimony and the presentation of evidence, Counsel for Plaintiff requested that this Court enter a Judgment against the Defendants in the amount of \$657,137.30.

Defendant did not appear at the hearing and thus offered no testimony or documentary evidence disputing the damages claimed by Plaintiffs.

BASED ON THE EVIDENCE AND TESTIMONY presented at the damages hearing, I **FIND AND HOLD** that the greater weight of the evidence showed that Judgment should be entered against the Defendants in the amount of the \$657,137.30.

IT IS THEREFORE ORDERED that a Judgment be entered in favor of China Construction America of South Carolina, Inc. against the Defendants, MS Production Solutions, LLC in the amount of \$657,137.30.

AND IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

Columbia, South Carolina

December 23, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2301871

China Construction
America Of South Carolina
Inc

MS Production Solutions
LLC

MSPS Steel Fabricators

FILED-CLERK OF COURT
GREENVILLE
PAUL B. WICK
2014 DEC 24
wlf

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **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)
China Construction America Of South Carolina Inc	MS Production Solutions LLC	\$657,137.30

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.

2138

12/23/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 12-24-14, and a copy mailed first class or placed in the appropriate attorney's box on 12/29/14 to attorneys of record or to parties (when appearing pro se) as follows:

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
Caitlin Creswick Heyward 1735 St. Julian Place, Suite 200
 Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC 233
 Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
 Court - Clerk of Court

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

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators

Defendant.

IN THE COURT OF COMMON PLEAS

Case. NO.: 2014-CP-23-1871

ENTERED COMPUTER

AMENDED ORDER OF JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 JAN 29 PM 4:25

THIS MATTER came before the undersigned for a damages hearing on November 11, 2014 at 11:03 AM. Appearing on behalf of Plaintiff was Caitlin E. Creswick, Esquire. Defendant did not appear.

Counsel for Plaintiff called one witness, Peng Yang, a representative of China Construction America of South Carolina, Inc. Mr. Yang testified that the Defendant MS Production Solutions LLC ("MSPS") and Plaintiff entered into a Contract in the amount of \$1,093,242.89 for the Defendants to deliver steel for a construction project at Irmo High School ("the Project"). Mr. Yang further testified that Defendant was paid \$1,005,958.53 before being terminated for cause. Evidence was presented showing that the Defendant failed to deliver a majority of the steel under the Contract. Defendant did deliver some steel, over half of which was defective. The cost to fix the defective steel and to obtain cover for the non-delivered steel was \$537,700.76. The evidence demonstrated that the difference between the remaining balance on Plaintiffs' Construction Contract, \$87,284.36, and the cost to obtain cover was \$450,416.40.

It further appears, and I so hold, that the Plaintiff is entitled to interest on this

Copy mailed to Attorney per
Weston Jones #172

Verified

debt at the contract rate of 8.75% annum, for total interest of \$49,885.16 (August 12, 2014–November 17, 2014, 462 days at the per diem rate of \$107.97).

Additional evidence demonstrated that MSPS caused the project to delay 5 months for which Plaintiff has incurred additional costs as well as attorneys fees. Pursuant to the Contract, it also appears, and I so hold, Plaintiff is entitled to \$150,000 in costs for delay and \$6,835.74 in attorney's fees as a result of Defendant's actions.

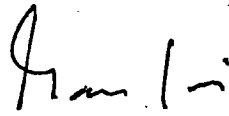
At the conclusion of all testimony and the presentation of evidence, Counsel for Plaintiff requested that this Court enter a Judgment against the Defendant in the amount of \$657,137.30.

Defendant did not appear at the hearing and thus offered no testimony or documentary evidence disputing the damages claimed by Plaintiffs.

BASED ON THE EVIDENCE AND TESTIMONY presented at the damages hearing, I **FIND AND HOLD** that the greater weight of the evidence showed that Judgment should be entered against the Defendant in the amount of the \$657,137.30.

IT IS THEREFORE ORDERED that a Judgment be entered in favor of China Construction America of South Carolina, Inc. against the Defendant, **MS Production Solutions, LLC a/k/a MSPS Steel Fabricators** in the amount of \$657,137.30.

AND IT IS SO ORDERED.



Presiding Judge
13 Judicial Circuit

Columbia, South Carolina

January 28, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

China Construction America
Of South Carolina, Inc.)

Plaintiff)

Vs.)

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO

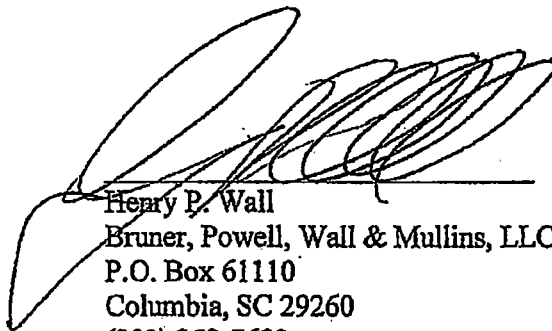
2014-CP-23-1871

SUMMONS
(Jury Trial Demanded)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. HORTON-CLERK
2014 APR 2 PM 4 31

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the undersigned subscriber at Post Office Box 61110, Columbia, South Carolina 29260, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Henry P. Wall
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for China Construction America of S.C.
Inc.

Columbia, South Carolina
March 31st 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF GREENVILLE	)	CASE NO	
China Construction America Of South Carolina, Inc.	)		2014-CP-23-1871
Plaintiff	)	COMPLAINT	
	)	(Jury Trial Demanded)	
Vs.	)		
MS Production Solutions LLC A/k/a MSPS Steel Fabricators	)		
Defendant.	)		

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. HARRISON
2014 APR 2 PM 4 31

Plaintiff, China Construction America of South Carolina, Inc. ("CCA"), complaining of the Defendant, MS Production Solutions LLC ("MSPS") would show:

GENERAL FACTUAL AND JURISDICTIONAL ALLEGATIONS

1. CCA is a South Carolina corporation engaged in the business of general construction contracting.
2. MSPS is, upon information and belief, a South Carolina corporation engaged in the business of steel fabrication and manufacture with its principal place of business in Greenville County.
3. Proper Jurisdiction and venue lies in this court as the Defendant is a domestic corporation and Greenville County is Defendant's principal location.
4. CCA previously entered into a contract with School District Five of Lexington and Richland Counties ("the District") for the construction of additions and renovations to Irmo High School ("the Project") pursuant to a sealed bid submitted to the District.

5. CCA relied in part upon a bid or price quotation it had received from MSPS in submitting its bid to the District.
6. CCA issued a notice of intent to award a contract to MSPS on or about November 16, 2012 (see attached exhibit A) based upon MSPS's bid and promise to fabricate and deliver the steel required to complete the Project for the price of \$986,212.00, plus taxes. Subsequently, China and MSPS executed a written contract pursuant to which MSPS agreed to fabricate and deliver the steel required to complete the Project for the lump sum, firm-fixed price of \$986,212.00, plus taxes. A true copy of the contract is attached at exhibit B.
7. Among other things, the contract required MSPS to manufacture and deliver the structural steel requirements for the Project in accordance with the Project plans and specifications and according to the schedule of CCA. MSPS further expressly and impliedly warranted the steel to be supplied under the contract. MSPS further agreed to indemnify CCA from and against any and all manner of damages or losses to CCA which would result from MSPS's breach, including attorney's fees and consequential damages.
8. The contract required MSPS to:
 - a. fabricate and deliver the materials in a timely manner;
 - b. fabricate the materials in a good, adequate, and workmanlike manner, free of defect and missing components;
 - c. perform the contract in good faith and in cooperation with CCA;
 - d. perform the contract work in manner so as not to delay, impair, impede, or hinder CCA;
 - e. deliver materials in accordance with the Project requirements;
 - f. properly pay for labor, materials, equipment and other services arising from MSPS's scope of work;

- g. indemnify and reimburse CCA for any damages or losses CCA may incur as a consequence of MSPS's negligence, a failure to perform, or breach of the obligations of the contract;
 - h. complete the contract work without suspension or abandonment;
 - i. comply with the implied obligation of good faith and fair dealing.
8. This court has jurisdiction over this matter as Defendant's principal place of business is Greenville County.

BY WAY OF A FIRST CAUSE OF ACTION
(Breach of Contract)

9. During the course of the Project, MSPS breached the contract by:
- a. failing to fabricate and deliver the materials in a timely manner and abandoning the Project;
 - b. failing to fabricate the materials in a good, adequate and workmanlike manner;
 - c. failing to perform the contract in good faith and cooperate with CCA;
 - d. failing to perform the contract in a manner so as to avoid delay, impairing, impeding or hindering CCA;
 - e. failing to deliver materials in accordance with the Project requirements, and in particular, requiring CCA to pay extra storage fees, additional payments and double payments as a condition to performance and delivery in an extortionate and deceitful manner;
 - f. failing to properly pay for labor, materials, equipment and other services arising from MSPS's scope of work;
 - g. failing to indemnify and reimburse CCA for the damages or losses CCA incurred as a consequence of MSPS's negligence, a failure to perform, or breach of the obligations of the contract;
 - h. failing to complete the contract and refund the unearned payments MSPS has received;

- i. failing to comply with the implied obligation of good faith and fair dealing.
- j. Withholding from CCA materials which CCA had already paid for.
- 10. MSPS abandoned the Project and anticipatorily repudiated the contract with CCA.
- 11. CCA terminated MSPS for default and obtained cover.
- 12. As a consequence of the foregoing, CCA has been damaged in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial, for which MSPS is liable.

BY WAY OF A SECOND CAUSE OF ACTION
(Breach of Warranty)

13. MSPS expressly and impliedly warranted that its materials would conform to the Project requirements, that its materials would be fit for the purpose of the Project and be sufficient to complete the full scope of work as per the Project plans and specifications.

14. MSPS breached the warranties in that the materials did not fully conform to the Project requirements, were not fit for the purpose of the Project and the materials it provided were not sufficient and adequate to complete the full and entire scope of work as per the Project plans and specifications.

15. As a consequence of the foregoing breach of warranty, CCA has been damaged and MSPS is liable to CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial.

BY WAY OF A THIRD CAUSE OF ACTION
(Indemnity)

16. MSPS agreed to indemnify CCA for any added costs, including fees and expenses arising from MSPS's failure to complete the contract in whole or in part,

17. MSPS is therefore liable to CCA for all costs China has reasonably incurred arising from or related to MSPS's failure to complete the contract, including reasonable attorney's fees.

18. As a consequence of the foregoing, CCA has been damaged and MSPS is liable to CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars) to include attorney's fees and expenses of litigation, the exact amount to be proven at trial.

BY WAY OF A FOURTH CAUSE OF ACTION
(Negligence)

19. MSPS owed a duty of care to CCA to safeguard, protect, store, and safely deliver materials which CCA had purchased and paid for in accordance with the contract until the materials arrived at the Project site (F.O.B).

20. MSPS failed to exercise due care in the safeguarding, storage, and delivery of the materials and MSPS's breach of this duty proximately caused CCA to be damaged thus requiring CCA to acquire materials from alternate sources which were lost, misplaced, damaged, destroyed, stolen and/or mis-manufactured due to MSPS's negligence.

21. As a consequence of the foregoing negligence, CCA has been damaged and MSPS is liable to CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial.

BY WAY OF A FIFTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

22. MSPS engaged in unfair and deceptive trade practices in performing this contract, and MSPS has in the past engaged in such practices repetitively or such practices have the propensity of repetition and therefore adversely affect the public interest to wit:

a. MSPS fabricates materials for buyers and then, having taken advance payments and deposits, extorts and demands additional payments from customers, including CCA in order to merely increase its profits to the detriment of the general public at large, particularly builders of public construction projects;

b. MSPS fabricates materials for buyers and then, demands and extorts additional undisclosed "storage fees" and other hidden charges from its customers, including CCA, in order to merely increase its profits to the detriment of the general public at large, particularly builders of public construction projects;

23. MSPS has therefore knowingly and intentionally violated the South Carolina Unfair Trade Practices Act, S. C. Code §39-5-10 (et. seq.) and is liable to CCA for actual damages, treble damages, and attorney's fees in an amount in excess of \$300,000.00 (three hundred thousand dollars), the exact amount to be proven at trial.

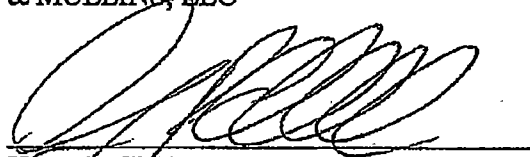
BY WAY OF A SIXTH CAUSE OF ACTION
(Promissory Estoppel)

24. As an alternative cause of action, in the event that the contract between the parties were to be determined to be void or voidable, CCA reasonably relied upon the price quote of MSPS in incorporating MSPS's bid into the over-all bid for the Project.

26. MSPS is therefore estopped to deny the obligation to deliver the steel to the Project and MSPS's failure to deliver the materials has damaged CCA in an amount in excess of \$300,000.00 (three hundred thousand dollars), for which MSPS is liable, the exact amount to be proven at trial.

WHEREFORE, The Plaintiff, CCA prays for judgment against MSPS for actual, special, consequential and treble damages in an amount in excess of \$400,000.00 (four hundred thousand dollars), the exact amount to be proven at trial, for attorney's fees and for the costs of this action, for a trial by jury, and for such other and further relief as this Court deems just and proper.

BRUNER, POWELL WALL
& MULLINS, LLC



Henry P. Wall
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693; (803) 254-5719 (fax)

*Attorneys for the Plaintiff,
China Construction America of S.C. Inc.*

Columbia, South Carolina
March 31, 2014

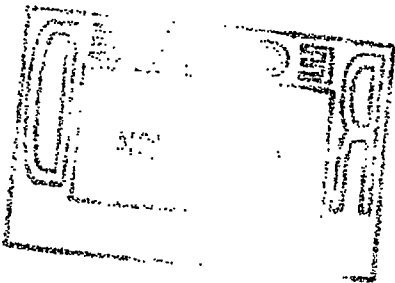


EXHIBIT A



China Construction America of South Carolina, Inc.

700 Saturn Parkway, Columbia, SC 29212 Tel: (803) 771-2777 Fax: (803) 771-2377

November 16, 2012

MSPS Steel Fabricator
233 Beverly Road
Greenville, SC 29609

Phone: 864-244-6505

Fax: 864-244-0837

Attn: Manfred Sprenger <manfred@szabosteel.com>

RE: Intent to Award
Additions & Renovations to Irmo High School

Dear Mr. Sprenger,

Base on Intent to Award received from District Five of Lexington & Richland Counties, China Construction intends to enter into a contract agreement with your firm for furnishing materials for the following portion of work as defined by plans, specifications, addendums and alternates:

<u>Specification</u>	<u>Description</u>
05-1200	Structural Steel Framing (Material only)
05-2100	Steel Joist Framing (Material only)
05-3100	Steel Decking (Material only)
05-5000	Metal Fabrications (Material only)
05-5100	Metal Stairs (Material only)
05-5213	Pipe and Tube Railings (Material only)
05-7113	Fabricated Metal Spiral Stairs (Material only)
05-7300	Decorative Metal Railings (Material only)

for a lump sum of \$986,212.00 (FOB jobsite) plus taxes, which includes all materials, fabrications, engineering, delivery, testing, taxes, insurance, license, fees and permit to complete all the work mentioned above in accordance with the drawings and specs. Alternate No. 1-3 have been accepted and included in the above price. The above price includes Aluminum entry gate per A0.81, Aluminum Ornamental fence at Field House roof stair per A8.81.

Under separate cover a formal Purchase Order will be issued for your execution.

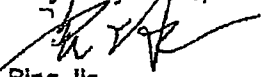
CCASC's Contact on this project:

Project Manager	Superintendent
Adam Whitley	Jeff Whitfield
Phone: 803-771-2777	Cell: 803-600-5655
Cell: 803-600-7331	

Please proceed with required submittals, schedule of values, personnel assignments, insurance certificates, emergency contact numbers etc., as may be required by your portion of the work.

We look forward to a successful project with your participation.

Very Truly Yours,



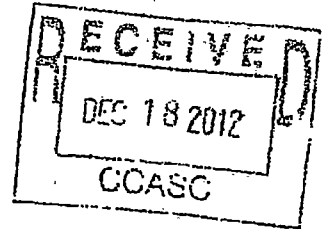
Bing Jia
Preconstruction Manager
China Construction America of South Carolina, Inc.

EXHIBIT B

APPENDIX 186



China Construction America Of SC
700 Saturn Pkwy
Columbia, SC 29212
Ph: (803)771-2777



Purchase Order

To : MSPS Steel Fabricator
233 Beverly Road
Greenville, SC 29609
ATTN: Manfred Sprenger
Ship To : 6030 Wescott Road
Columbia SC 29212
Attn : China Const.

Order # : IHSAD-MSPSF-01
Date : 12/07/12
Job : Irmo High School
Additions & Renovations

Description :

05-1200	Structural Steel Framing (Material only)
05-2100	Steel Joist Framing (Material only)
05-3100	Steel Decking (Material only)
05-5000	Metal Fabrications (Material only)
05-5100	Metal Stairs (Material only)
05-5213	Pipe and Tube Railings (Material only)
05-7113	Fabricated Metal Spiral Stairs (Material only)
05-7300	Decorative Metal Railings (Material only)

Ordered By	Delivery Date	Ship Via	F.O.B	Terms
CCASC			jobsite	Net 30 days

Description	Quantity	Unit	Rate	Amount	Tax (7%)
Steel materials (see exhibit #4 for details)	1	LS	\$986,212.00	\$986,212.00	\$69,034.84

China Construction America Of SC Date 12-20-2012
MSPS Steel Fabricator Total: \$986,212.00 \$69,034.84
12-12-12 Date



China Construction America of SC, Inc.
Terms and Conditions

Attachment #1

Project: Additions & Renovations to Irmo High School

Terms and Conditions

1. Contract Documents

The contract documents consist of (1) this agreement; (2) modifications issued subsequent to the execution of the agreement between the Owner and CCASC, which is related to this agreement; (3) modifications to this agreement issued after execution of this agreement; (4) other documents acknowledged by both parties.

All provisions of the Contract Documents for the project, in any fashion whatsoever, to this Order are incorporated herein by reference and made a part hereof. With respect to the work covered by this Order and in the performance hereof, Supplier shall assume all the obligations and risks which CCASC has assumed towards the Owner pursuant to the provisions of the above referenced Contract Documents. The Contract Documents are available for inspection by the Supplier during normal working hours at CCASC's office. In case of any dispute between CCASC and Supplier, in any way relating to or arising from any act or omission of the Owner or involving the Contract Documents, Supplier agrees to be bound to CCASC to the same extent that CCASC is bound to the Owner by the terms of the Contract Documents.

2. Material and Workmanship

Supplier expressly warrants that all material and work covered by this Order will conform to the Contract Documents and that it will be merchantable, of good material and workmanship, free of latent defect, and fit and sufficient for purposes for which it is ordered by CCASC. Warranties required by the Contract Documents will begin to run from the date specified in the Contract Documents.

3. Time of Performance

Supplier shall furnish materials within the scheduled time as called for on the face of this Order or in the Contract Documents and any failure by Supplier to so furnish materials shall give CCASC the right to cancel any undelivered balance of this Order without additional charge to CCASC. TIME IS OF THE ESSENCE in the performance of this Order. Supplier shall give CCASC 48 hours notice of all deliveries and said deliveries shall be made during working hours between 7:00 AM and 3:00 PM, or as requested by CCASC.

4. Liability and Indemnification

Supplier shall be liable to CCASC and shall indemnify CCASC for any added costs (including court costs and attorneys' fees) CCASC incurs as a result of, arising out of, or in connection with the performance of this Order or due to Supplier's failure, for whatever reason, to perform any of its obligations under this Order, in whole or in part, in accordance with its terms. This indemnity applies regardless of any active and/or passive negligent act or omission of CCASC or its agents or employees. Supplier, however, shall not be obligated under this Order to indemnify CCASC for the sole negligence or willful misconduct of CCASC or its agents or employees.

5. Supply Bonds

- ☐ Supplier shall furnish a supply bond to CCASC on the form attached hereto and in the amount reflected thereon from a corporate surety company acceptable to CCASC.
- ☐ The premium for said bond will be paid directly by CCASC as an addition to the price of this



China Construction America of SC, Inc

Project: Additions & Renovations to Irmo High School

Provide all materials, fabrications, engineering, testing, taxes, insurance, license, fees, permit and submittals, samples, insurance, close-out documents, etc. to complete all the work listed in Purchase Order in accordance with the plans, specifications, addendums, alternate 1, 2, 3 and Construction Schedule issued by CCASC for the captioned project. The prices will be unchanged throughout the completion of the project. Purchase Order including its attachments supersedes all prior proposals, negotiations, and other documents, either written or oral.

Attachments

- Exhibit #1 - Terms and Conditions
- Exhibit #2 - Insurance Requirements
- Exhibit #3 - Jobsite Direction
- Exhibit #4 - Scope of work

Initial: 
Initial: TR



China Construction America of SC, Inc Terms and Conditions

Attachment #1

Order.

- ☐ The premium for the supply bond is included in the price of this Order.
- ☐ Supply bond not required.

6. Termination

CCASC shall have the right to terminate all or any part of this Order for convenience by providing Supplier with a written notice of termination, which shall be effective upon receipt by Supplier. If this Order is terminated for convenience, Supplier shall be paid as its sole and exclusive remedy the amount representing costs which are due from the Owner for Supplier's materials or work, as provided in the Contract Documents, conditioned upon and after payment therefore by the Owner to CCASC.

If Supplier shall fail to perform any obligations under this Order, CCASC may terminate Supplier's performance of all or any part of this Order for default. In the event of such termination, CCASC may, in addition to all other rights and remedies, which shall continue unabated, purchase substitute items or services elsewhere and hold Supplier liable for any excess costs incurred. Should it be determined that a termination for default was improper, such termination shall be deemed a termination for convenience and Supplier's sole and exclusive remedy shall be as provided in the case of termination for convenience.

7. Inspection and Acceptance

a. Supplier shall provide appropriate facilities at all reasonable times for inspection by CCASC or Owner of the work and materials provided under this Order, whether at the Project site or at any place where such work or materials may be in preparation, manufacture, storage, or installation. Supplier shall promptly replace or correct any work or materials which CCASC or Owner shall reject as failing to conform to the requirements of this Order, whether or not CCASC and/or the Owner previously accepted the materials and/or the work. If Supplier does not so provide replacements or make corrections within the time set forth in the Contract documents, or if a time is not set forth therein, within (14) days after receipt of written notice from CCASC, CCASC shall have the right to make the corrections and Supplier shall be liable to CCASC for the cost thereof. If, in the opinion of CCASC, is not expedient to correct or replace all or any part of rejected work or materials, then CCASC, at its option, may deduct from the payments due, or to become due, to Supplier such amount as, in CCASC's reasonable judgment, will represent (i) the difference between the fair value of the rejected work and materials and the value thereof if it complied with this Order, or (ii) the cost of correction, whichever CCASC determines is more appropriate.

b. Supplier's remedy for wrongful rejection of work pursuant to Section a. shall be limited to CCASC's remedy under the Contract Documents if rejection is by the Owner or by CCASC at request of the Owner. CCASC shall be liable for Supplier's increased direct costs caused by wrongful rejection of materials or work, if the Owner was not involved in the rejection.

c. The work shall be accepted according to the terms of the Contract Documents. Unless expressly agreed by CCASC in writing, entrance and use by Owner or CCASC shall not constitute acceptance of the materials or work.

8. Delivery

Supplier shall insure and be responsible for the items provided hereunder until such time as they have been delivered and unloaded at their destination and accepted by CCASC.

9. Liens

Supplier agrees to furnish, prior to any payments hereunder, evidence satisfactory to CCASC,



China Construction America of SC, Inc Terms and Conditions

Attachment #1

the Owner or both that payment has been made for all labor and materials used in filling Order. If requested, Supplier shall furnish at the time of payment a bill of sale and a release of liens on CCASC's standard form. In the event liens or claims of any kind are filed by anyone in relation to this Order, Supplier shall have the lien or claim discharged, within three (3) days of receipt of written notice, by posting a bond or other security, and if not so discharged, CCASC may discharge the lien or claim and hold Supplier responsible for all costs in connection therewith, including attorney's fees.

10. Patents

In the event that any third party asserts against CCASC or Owner a claim for patent infringement, royalties or licensing fees with respect to use or sale of items purchased herein, Supplier agrees to indemnify CCASC or Owner for all costs, damages and expenses, including court costs and attorney's fees.

11. Acceptance of Order

This Order may only be accepted by Supplier's signing and returning to CCASC the acknowledgment copy of this Order within 10 days after the date of this Order. No modification of the terms of this Order shall be effective unless and until expressly accepted by CCASC in writing.

12. Complete Agreement

This Order represents the entire agreement between the parties hereto with respect to the matters covered herein. No other previous agreements, representations, proposals, bid, warranties, or other matters, oral or written, shall be deemed to bind to parties hereto.

13. Changes

CCASC may, at any time, unilaterally or by agreement with Supplier, without notice to the sureties, make changes in the work covered by this Order. Payment on account of such changes in any way relating to or arising from any act or omission of the Owner or involving the Contract Documents shall only be made if, when and to the extent CCASC receives payment from the Owner on account of the change. This is a condition precedent to entitlement. Changes directed by CCASC independent of the Owner and the Contract Documents shall be paid for in accordance with the payment terms set forth herein. Supplier agrees to provide any certifications reasonably required by CCASC and/or the Contract Documents including certification of claims, and to indemnify CCASC for any and all liability arising from any false or misleading certifications submitted by Supplier.

14. Withholding and Payment

CCASC may withhold amounts otherwise due under this Order, or under any other arrangement between the parties, to cover CCASC's reasonable estimate of any costs, liquidated damages or liability CCASC has incurred or may incur for which Supplier may be responsible under this Order or under any other arrangement between the parties. Appropriate adjustments to withholdings shall be made when the exact amounts owed are determined. Payment to Supplier expressly is conditioned upon receipt by CCASC of payment from the Owner for the materials and/or work provided by Supplier pursuant to this Order.

15. On-Site Work

If Supplier's workers will be at the jobsite at any time, Suppliers agrees to adhere to the safety requirements of CCASC and to provide adequate proof of Workers' Compensation Insurance.

16. Approvals

Supplier shall deliver to CCASC copies of shop drawings, cuts, samples, material lists and other submissions required by CCASC, the Owner, or the Contract Documents within sufficient time so as not to delay performance of the Project. CCASC's review of shop drawings, cuts, samples, material



China Construction America of SC, Inc Terms and Conditions

Attachment #1

lists and other submission shall not relieve the Supplier from responsibility for errors of any sort therein, or from the necessity of furnishing any work required by the Contract Documents.

17. Taxes

Except as otherwise provided by this Order and/or the Contract Documents, Supplier agrees to pay and comply with and hold CCASC harmless against the payment of all Federal, State and local contributions, taxes, duties or premiums, arising out of this Order, including use or other duties or taxes of whatever nature levied or assessed against the Owner, CCASC or Supplier arising out of this Order, including interest of penalties.

18. Title and Risk of Loss

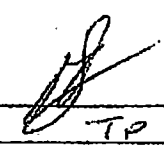
Title to all material to be supplied under this Order shall be transferred free and clear of all encumbrances and Supplier shall retain no legal or equitable interest in any such material. Title shall pass to CCASC or, if the contract Documents so provide, the Owner upon the earliest of (a) delivery, (b) payment, or (c) the time set forth in the Contract Documents. Regardless of title, Supplier shall have the sole responsibility for risk of loss with respect to the materials until final acceptance by the Owner or CCASC.

19. Liability Insurance and Worker's Com.

As a company policy, CCASC require the Supplier to provide a copy of liability insurance certificate and list CCASC, the Architect and the Owner as additional insured. Also, a copy of worker's com. certificate shall be provided to CCASC for file.

20. Submittals

In conformance with the schedule established by CCASC, furnish all shop drawings, schedules, samples, technical data, or other specified information required for the Owner's and/or Architect's approval. In the event of a disapproved substitution, the Supplier will be solely responsible to provide the specified materials/ equipment in accordance with CCASC's Schedule.

Initial: 

Initial: TP



China Construction America of SC, Inc.
Insurance Requirements

Attachment #2

Project: Additions & Renovations to Irmo High School

Insurance Requirements

China Construction America of SC, Inc. requires all Subcontractors and/or Suppliers to carry liability insurance according to the contract documents.

The Insurance Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of work until date of final payment and termination of any coverage required to be maintained after final payment.

Liability Insurance shall include all major divisions of coverage and be on a Commercial basis including the following:

1. Premises – Operations.
2. Independent Contractor's Protective.
3. Products and Completed Operations.
4. Personal and Advertising Injury.
5. Contractual, including specified provision for Supplier's obligations under Terms and Conditions (Attachment #1)
6. Broad Form Property Damage including Completed Operations.
7. Owned, Non-Owned and Hired Motor Vehicles.

The insurance shall be not less than the following limits, or greater if required by law or other provisions of this Contract:

- (1) Commercial General Liability:

(a) General Aggregate (per project)	\$1,000,000
(b) Products/Completed Operations	\$1,000,000
(c) Personal and Advertising Injury	\$1,000,000
(d) Each Occurrence	\$1,000,000
(e) Fire Damage (Any one Fire)	\$50,000
(f) Medical Expense (Any one person)	\$5,000
- (2) Business Auto Liability (including All Owned, Non-Owned, and Hired Vehicles):

(a) Combined Single Limit	\$1,000,000
OR	
(b) Bodily Injury & Property Damage (each)	\$750,000
- (3) Worker's Compensation:

(a) State	Statutory
(b) Employer's Liability	\$100,000 Per Accident
	\$500,000 Disease, Policy Limit
	\$100,000 Disease, Each Employee

**China Construction America of SC, Inc.
Insurance Requirements****Attachment #2**

Certificates of Insurance shall be in the form of the latest edition of the ACORD 25S and shall be filed with Contractor prior to commencement of the Work. In addition to Certificates of Insurance, the Subcontractor/Supplier shall supply a written endorsement to the Subcontractor/Supplier's general liability insurance policy that names Owner, the Architect and China Construction America of SC, Inc. as additional insured. The endorsement shall provide that the Subcontractor /Supplier's liability insurance shall be primary, and that any liability insurance of Contractor shall be secondary and noncontributory.

For informational purposes, the Subcontractor/Supplier is advised that Worker's Compensation Insurance is required for all Owners and executive officers of entities incorporated in the State of South Carolina.

The Aggregate Limits of Insurance required herein shall apply in total, to this Subcontract/PO only. This shall be indicated on the insurance certificate or an attached policy amendment.

The insurance policies and certificates of Insurance required by this Subcontract /PO shall contain a provision that no material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such Certificates of Insurance shall have effect unless the Contractor has been given at least thirty (30) days' prior written notice. Subcontractor/Supplier shall provide a minimum of thirty (30) days written notice to Contractor of any proposed reduction of coverage limits, including every coverage limit identified above, or substitution of insurance carriers.

In no event shall any failure of the Contractor to receive certified copies or certificates of policies required under this Subcontract /PO or to demand receipt of such certified copies or certificates prior to the Subcontractor/Supplier's commencing the Work be construed as a waiver by the Contractor of Subcontractor/Supplier's obligations to obtain insurance pursuant to this document. The obligation to procure and maintain any insurance required herein is a separate responsibility of the Subcontractor/ Supplier and independent of the duty to furnish a certified copy or certificate of such insurance policies.

It is Subcontractor/Supplier's responsibility to carry Property Insurance to protect him against loss or damage of materials and equipments on the site (not incorporated into the construction), stored off site or in transit.

The Subcontractor/Supplier must list the Owner, the Architect and China Construction America of SC, Inc. as additional insured.

Initial: _____

Initial: _____



China Construction America of SC, Inc
Scope of Work

Attachment Number Three (4)

Project: Additions & Renovations to Irmo High School

Scope of Work

Supply and deliver all the following materials in Purchase Order in accordance with the plans, specifications, addendums, alternates and Construction Schedule issued by CCASC for the captioned project, and provide submittals, insurance, close-out documents, etc. The Purchase Order including its attachments supersedes all prior proposals, negotiations, and other documents, either written or oral.

Section 051200 – Structural Steel Framing (Material only)
Section 052100 – Steel Joist Framing (Material only)
Section 053100 – Steel Decking (Material only)
Section 055000 – Metal Fabrications (Material only)
Section 055100 – Metal Stairs (Material only)
Section 055213 – Pipe and Tube Railings (Material only)
Section 057113 – Fabricated Metal Spiral Stairs (Material only)
Section 057300 – Decorative Metal Railings (Material only)

The Scope of Work shall include, but is not necessarily limited to, the following items:

1. Furnish structural steel members, including steel beams, columns, tubes, catwalk framing, steel lintels, connection plates and angles, shear studs, threaded rods, anchor bolts, connection bolts, nuts, and washers as shown or required by drawings and specifications.
2. Provide steel lintels, brick relieving angles, bent plates, perimeter angles, roof angles and channels as required by drawings and specifications.
3. Provide shop priming or galvanizing finishes for steel materials as required by specifications.
4. Furnish steel joists, joist permanent and temporary bracing, bridging, anchors, bolts, nuts and other accessories as required by drawings and specifications.
5. Furnish metal roof deck, composite floor deck, noncomposite form deck, deck angles, deck closures and accessories such as deck screws as shown or required by drawings and specifications.
6. Furnish all the miscellaneous metals except stainless steel as shown or required by drawings and specifications, including, but not limited to the followings: roof ladders, shipping ladders per A1.32, auditorium sign framing per 2/S1.37, cage ladder per A1.31, elevator pit ladders, removable steel grate ramp & landing per 2/A5.36, wall bracing per 6,7,9,10/S0.03, DBA at slab edge per 5, 6/S0.05, new bracing for existing bar joist per S3.11, S3.21, perforated panel at stair X per A8.34, steel grating platforms at Auditorium & Field house, floor opening frame per 7/S0.05, RTU supports per 5/S0.04, elevator hoist beams & sills, bollards, roof opening frame per 10/S0.04, framings in existing roof per 3/S3.21.
7. Furnish metal stairs with rails, wiremesh panels and all other necessary components as shown or required by drawings and specifications.



China Construction America of SC, Inc Scope of Work

Attachment Number Three (4)

8. Furnish all the pipe railings and the accessories as per drawings and specifications, including handrails, guardrails, rails for stairs, roof top guardrails per A1.24, etc.
9. Furnish metal spiral stairs with all accessories as per drawings and specifications.
10. Furnish aluminum entry gate per A0.81 and aluminum ornamental fence & gate at Field House roof stair per A8.81.
11. Provide design calculations with engineering stamps, and provide field measurements as necessary on stairs and rails prior to fabrication.
12. Supplier understands this is a multi-phased project requiring multiple deliveries. Supplier will work with CCASC in order to accommodate the project master schedule. Should supplier fails to achieve and maintain the Construction Schedule provided by CCASC, The supplier agrees that from the compensation to be paid, the general contractor shall retain as liquidated damages the amount of \$1000.00 per calendar day, for each calendar day that the actual construction time required to achieve Final Completion exceeds the specified or adjusted Subcontract Time for Final Completion as outlined in Construction Schedule.

Initial: _____

Initial: _____



MS Production Solutions LLC
Steel Fabricator

ENTERED COMPUTER

Certified mail

Thursday, May 29, 2014

Att: Court of Commons Pleas
Mr. Paul Wickensimer

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL A. WICKENSIMER
2014 JUN 3 AM 9 45

Please give to Judge and attach to filed case No.

Case No: 2014-CP-23-1871

Ladies and Gentlemen of the Court

MSPS would like to respond as follows to the claim filed by China Construction a company owned by the Republic of China.

1. MSPS received a schedule from above company which forced MSPS to have fabrication drawings made in a short period of time.
2. MSPS was able to get the drawings for the field house and fabricated per supplied schedule. China Construction failed to receive the building construction permit for months. MSPS stored the material for the field house until May 2013. This material per schedule was supposed to be delivered Feb. 2013.
3. MSPS completed the delivery for all Cate modifications/ renovations on time.
4. MSPS submitted the fabrication drawings to China Construction a company owned by the Republic of China in Jan 2013 per schedule.



MS Production Solutions LLC
Steel Fabricator

China Construction failed to return the drawings to MSPS in time and MSPS received the drawings in May 2013.

5. The Master schedule received from MSPS did call for the steel delivery for the Auditorium to start in July 2013. Due to the massive delays not caused by MSPS caused by China Construction MSPS was harmed financially in the \$ 500,000.00 range. MSPS was unable to take new work due to the size of the project but was harmed since there was this massive delay.
6. The steel was fabricated and stored at MSPS property for 7 months.
7. MSPS never did receive any updated schedule form China Construction.
8. MSPS was unable to finish the project since the stairs and cat walk drawings have not been approved and MSPS received thos approved as late as Dec. 2013. This was when the steel was supposed to be already installed.
9. The balance on the purchase order was \$ 180,000.00 at the time China construction sent a 48hr notice which MSPS accepted. MSPS had to get new work in and was unable to wait for China construction to submit drawings.

This balance should have allowed China Construction to purchase the balance of material somewhere else as they threatened in their 48hr notice.

China Construction had a person in charge of drawings and submittals from Feb 2013 until end of July 2013 which did not have a clue about construction.



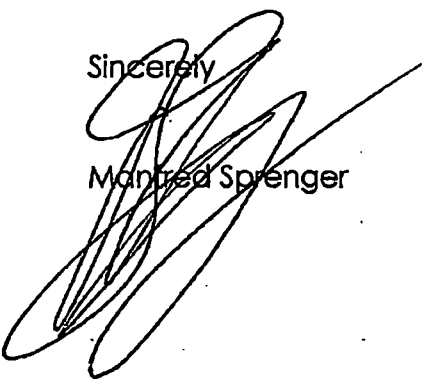
MS Production Solutions LLC

Steel Fabricator

10. I would hope that the court will not decide to allow just anyone to have a judgment without having to proof first that what they claim they have is legal and correct. Otherwise anybody can file a judgment and if the money is not there for expensive lawyers and long drawn case which can cost a fortune the person who does file the claim will get money if this is based on truth or not.

11. If this is the case we are having a serious problem with the legal system.

Sincerely


Manfred Sprenger

AFFIDAVIT OF SERVICE

COPY

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2014-CP-23-1871

FILED - CLERK OF COURT

GREENVILLE CO. S.C.

PAUL B. WICKENSIMER

Plaintiff:

CHINA CONSTRUCTION AMERICA OF S.C., INC.

2014 MAY 12 AM 8 54

vs.

Defendant:

MS PRODUCTION SOLUTION, LLC

For:

Bruner, Powell, Robbins, Wall & Mullins, LLC

PO Box 61110

Columbia, SC 29260

Received by A Woman's Touch, LLC to be served on MS Production Solution, LLC c/o Manfred Spregner as Registered Agent, 233 Beverly Road, Greenville, Greenville County, SC 29609.

I, Florence Burns, being duly sworn, depose and say that on the 2nd day of May, 2014 at 11:24 am, I:

served a CORPORATION by delivering a true copy of the CIVIL ACTION COVERSHEET, SUMMONS, COMPLAINT and EXHIBITS A & B with the date and hour of service endorsed thereon by me, to: Marcell Spregner as Project Manager (Son) for MS Production Solution, LLC, at the address of: 233 Beverly Road, Greenville, Greenville County, SC 29609, and informed said person of the contents therein, in compliance with state statutes.

Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

Description of Person Served: Age: 34, Sex: m, Race/Skin Color: white, Height: 6', Weight: 185, Hair: salt & pepper, Glasses: n

I certify that I am a U.S. Citizen, over the age of 18, have no interest in the above action, and have proper authority in the jurisdiction in which this service was made. The person receiving the process was informed of its content.

Casey M. Evans
Notary Public
State of South Carolina, County of Anderson
Commission Expires Feb. 19, 2018

Subscribed and Sworn to before me on the 5th day of May, 2014 by the affiant who is personally known to me.

Casey M. Evans
NOTARY PUBLIC

My Commission expires:

2/19/2018

Florence Burns

Florence Burns
Process Server

A Woman's Touch, LLC
214 River Oaks Circle
Piedmont, SC 29673
(864) 444-9168

Our Job Serial Number: AWT-2014000258
Ref: 9-948.131

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
China Construction America)
Of South Carolina, Inc.)
)
Plaintiffs,)
)
vs.)
)
MS Production Solutions LLC)
A/k/a MSPS Steel Fabricators)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

**VERIFIED PETITION FOR
SUPPLEMENTAL PROCEEDINGS**
(Case. NO.: 2014-CP-23-1871)

PETITIONER WOULD RESPECTFULLY SHOW:

That heretofore Petitioner recovered and recorded judgment against Respondent MS Production Solutions LLC a/k/a MSPS Steel Fabricators ("Respondent") as hereinafter set forth; and that there is still due and owing on said judgment the sum indicated, Respondent having failed and refused to satisfy same:

JUDGMENT ENTERED: January 28, 2015 in Greenville County
JUDGMENT ROLL # : 2014-CP-23-1871
AMOUNT DUE : \$657.137.30, plus interest as accrued

1. That execution thereafter was duly issued to the Sheriff of Greenville County against Respondent and said Sheriff has returned same NULLA BONA.
2. That upon information and belief, the Respondent has assets in the County not exempt from levy which Respondent unjustly refuses to apply toward satisfaction of said judgment.
3. That Petitioner is informed and believes that it is entitled under the law and statutes to have an examination of Respondent in supplementary proceedings and to ascertain and discover any and all property and assets, real, personal, or mixed, and wheresoever situated,

belonging to Respondent; or in which Respondent could claim any interest, solely or in conjunction with any person, firm, or corporation or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt.

4. In addition, Petitioner is entitled to the appointment of a receiver of Respondent for any and all of the aforesaid property, assets, or effects which are so discovered or revealed in order to carry said judgment into effect.

WHEREFORE Petitioner prays that this court do inquire into the matters hereinabove alleged and that it issue such order or orders granting relief to which Petitioner believes it is entitled, for all expended and statutory costs allowable for this proceeding, and for such other and further relief and remedies as may be allowable and which the Court may deem proper.

And further Petitioner requests this matter be referred to the Master-in-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure with authority to enter a final order with any appeal being directly to the South Carolina Supreme Court.

BRUNER, POWELL, WALL & MULLINS, LLC



Joey R. Floyd

Henry P. Wall

Caitlin C. Heyward

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803) 252-7693

Attorneys for Petitioner

China Construction America of South Carolina, Inc.

April 13, 2015

VERIFICATION

PERSONALLY appears Caitlin C. Heyward, who first being duly sworn, deposes and says that he is the attorney for the Petitioning judgment creditor and that he has read the foregoing Petition and knows the contents thereof and the same are true of his own knowledge except to matters alleged therein on information and belief, and as to these, he believes it to be true, that he is the attorney for the Petitioner and is authorized to make this oath on their behalf.

Caitlin Heyward
Caitlin C. Heyward
Attorney for the Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 13 DAY OF April, 2015

L. M. Wan
Notary Public for South Carolina
My Commission Expires: 01/22/2012

APPENDIX 203

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

China Construction America
Of South Carolina, Inc.

Plaintiffs,

vs.

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators.

Defendants.

IN THE COURT OF COMMON PLEAS

Case NO.: 2014-CP-23-1871

NOTICE OF MOTION AND MOTION
FOR ORDER OF DEFAULT
AGAINST MS PRODUCTION
SOLUTIONS LLC

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 JUL 29 PM 9 03

**TO: THE DEFENDANT MS PRODUCTION SOLUTIONS LLC A/K/A MSPS STEEL
FABRICATORS**

The Plaintiffs, China Construction America of South Carolina, Inc., by and through their undersigned attorneys hereby, move for an Order of Default/Entry of Default against the Defendant MS Production Solutions LLC A/k/a MSPS Steel Fabricators in the above-captioned case pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. The Motion is based upon the pleadings and the Affidavit of Default filed with the Clerk of Court's Office.

**BRUNER, POWELL,
WALL & MUELLINS, LLC**

Henry P. Wall
Post Office Box 61110
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29204
(803) 252-7693
Attorney for the Plaintiffs

July 25, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 China Construction America)
 Of South Carolina, Inc.)
)
 Plaintiffs,)
)
 vs.)
)
 MS Production Solutions LLC)
 A/k/a MSPS Steel Fabricators)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Case NO.: 2014-CP-23-1871

**ORDER OF DEFAULT
 AGAINST MS PRODUCTION
 SOLUTIONS LLC**

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL E. WICKENHAGEN
 2014 AUG 5 PM 3 52

TO: THE DEFENDANT MS PRODUCTION SOLUTIONS LLC A/K/A MSPS STEEL FABRICATORS:

THIS MATTER CAME before the Court upon Motion of Plaintiff China Construction America of South Carolina, Inc. ("Plaintiff"), for an Order of Default against the Defendant, MS Production Solutions LLC A/k/a MSPS Steel Fabricators ("Defendant").

IT APPEARS from the Affidavit of Default filed by counsel for the Plaintiff that the Summons and Complaint were properly served upon the Defendant and that no Answer, Motion, Notice of Appearance or other responsive pleading has been filed with the Court or served on Plaintiff by the Defendant within the time prescribed by law.

IT FURTHER APPEARS, and I so hold, that the Defendant is in default herein and that the Plaintiff is therefore entitled to an Order of Default/Entry of Default to be entered against the above-named Defendant. *JSW*

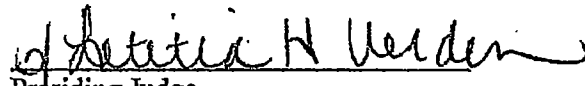
IT FURTHER APPEARS, and I so hold, that upon motion of the Plaintiff, the Plaintiff will be entitled to a hearing to set the damages in this case.

JSW

IT FURTHER APPEARS, and I so hold that the Plaintiff in this matter has complied with Rule 55 of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that an Order of Default be entered against the Defendant and that upon Motion by the Plaintiff, the Plaintiff be entitled to the relief this Court deems proper.

AND IT IS SO ORDERED.


Presiding Judge
Thirteenth Judicial Circuit

Dated: 7/31/14
Greenville, South Carolina

APPENDIX 206

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
China Construction America)
Of South Carolina, Inc.)
)
Plaintiffs,)
)
vs.)
)
MS Production Solutions LLC)
A/k/a MSPS Steel Fabricators)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case. NO.: 2014-CP-23-1871

AFFIDAVIT OF DEFAULT & NON-MILITARY SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKERSHAM
2014 JUL 29 PM 9 03

I, Henry P. Wall, being first duly sworn, depose and say as follows:

1. I am a Member of the firm of Bruner, Powell, Wall & Mullins, LLC in Columbia, South Carolina, and our firm represents the Plaintiff, China Construction America of South Carolina, Inc. ("Plaintiff"), in the above-captioned matter.

2. As evidenced by the Affidavit of Service attached hereto as "Exhibit A", the Civil Action Coversheet, Summons and Verified Complaint in this action was served on the Defendant MS Production Solutions LLC A/k/a MSPS Steel Fabricators ("Defendant") on May 12, 2014.

3. More than thirty (30) days have elapsed since the service of the Complaint on the Defendant and no reply, motion, notice of appearance, request for extension, or responsive pleadings have been served on Plaintiff by this same Defendant or his counsel within the time prescribed by Rule 55 of the South Carolina Rules of Civil Procedure.

4. More than thirty (30) days have elapsed since the service of the Complaint on this Defendant and no appearance has been made by this Defendant or its counsel in this action, thus

relieving Plaintiff of the requirement under Rule 55(b)(2) of the South Carolina Rules of Civil Procedure of providing the Defendant three (3) days' notice prior to its application for default judgment.

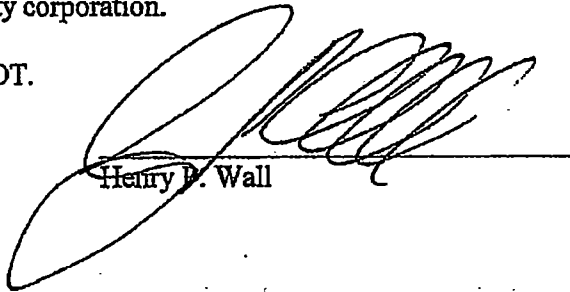
5. I am informed and believe that this same Defendant is now in default under the South Carolina Rules of Civil Procedure 6 and 55.

6. I am familiar with the provisions of 50 U.S.C.A. App. Sect. 520, Soldiers and Sailors Civil Relief Act of 1940, and to induce the Court to enter a default judgment against this same Defendant, represents to the Court that from my file in this matter, and upon information and belief, the Defendant is not in the military service of the United States and is not entitled to the protection of the Soldiers and Sailors Civil Relief Act of 1940, nor any amendments thereto. Moreover, the Defendant is a limited liability corporation.

FURTHER AFFIANT SAYETH NOT.

SWORN TO BEFORE ME
this _____ day of _____, 2014

_____(L.S.)
Notary Public for South Carolina
My Commission expires _____(SEAL)


Henry D. Wall

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

China Construction America
of South Carolina, Inc.)

Plaintiff)

Vs.)

MS Production Solutions LLC
A/k/a MSPS Steel Fabricators)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO 2014-CP-23-1871

**NOTICE OF MOTION AND
MOTION FOR DAMAGES HEARING**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 5 PM 2 13

WILL YOU PLEASE TAKE NOTICE that the Plaintiff China Construction America of South Carolina, Inc., by and through its undersigned counsel, hereby moves the Honorable Court for a hearing to determine the amount of damages to which it is entitled pursuant to an Order of Default entered against Defendant MS Production Solutions LLC in the above-captioned case pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. This Motion is based upon the Order of Judgment signed by the Honorable Letitia H. Verdin for the Thirteenth Judicial Circuit on July 31, 2014 and filed on August 4, 2014, a copy of which is attached hereto as "Exhibit A". Plaintiff hereby moves for a damages hearing to be set for this action.

BRUNER, POWELL, WALL & MULLINS, LLC

Carlin E. Creswick

Carlin E. Creswick

Henry P. Wall

Post Office Box 61110

1735 St. Julian Place, Suite 200

Columbia, South Carolina 29204

(803) 252-7693

Attorney for the Plaintiff

September 4, 2014
Columbia, South Carolina

ENTERED COMPUTER

Scanned

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CASE NO 2014-CP-23-1871
China Construction America of South Carolina, Inc.	)	
Plaintiff	)	
Vs.	)	
MS Production Solutions LLC A/k/a MSPS Steel Fabricators	)	
Defendant.	)	

CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 SEP 5 PM 2 13

I, the undersigned employee of the law office of Bruner, Powell, Wall and Mullins, LLC,
Attorneys for Plaintiff, do hereby certify that on September 4th, 2014, I have served a copy of the
foregoing Notice of Motion and Motion for Damages Hearing in connection with the above-
referenced case placing the same in the U.S. mail, postage paid to:

Manfred Spregner
MS Production Solutions LLC
233 Beverly Rd.
Greenville, SC 29609

Nancy Stagg

Nancy Stagg

Columbia, South Carolina

FILED-CLEAR OF COURT		
STATE OF SOUTH CAROLINA	GREENVILLE CO. S	IN THE COURT OF COMMON PLEAS
PAUL B. WICKENS		
COUNTY OF GREENVILLE	)	Case. NO.: 2014-CP-23-1871
	2015 SEP 23 PM 1 59	
China Construction America	)	
Of South Carolina, Inc.	)	
	)	
Plaintiffs,	)	NOTICE OF MOTION AND MOTION
	)	FOR EXECUTION AND TO SET ASIDE
vs.	)	FRAUDULENT TRANSFERS AND
	)	REQUEST FOR EXPIDTED HEARING
MS Production Solutions LLC	)	
A/k/a MSPS Steel Fabricators	)	
	)	
Defendants.	)	

NOTICE IS HEREBY GIVEN that Plaintiff China Construction America Of South Carolina, Inc. ("China Construction") by and through its undersigned counsel, will move before The Honorable Charles B. Simmons, Jr., Master-in-Equity, as soon as the Court will allow this motion to be heard due to the exigent circumstances stated herein,¹ for an order setting aside fraudulent transfers by Defendant of non-exempt property pursuant to S.C. Code Ann. § 27-23-10(A). The debtor is an LLC and is not entitled to any exemptions provided in the Homestead Exemption statute.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed this action on April 2, 2014. Plaintiff prayed for damages in excess of \$400,000.00 in its Complaint. The defendant did not answer or otherwise respond to Plaintiff's

¹ Plaintiff is seeking to execute on cash which Defendant fraudulently transferred to Patricia Sprenger, who testified during her deposition on September 21, 2015, that she withdrew the money in cash from her personal account and is keeping at least \$50,000.00 of it in the bedroom of her home. (Withdrawal slips attached hereto as Exhibit A); Dep. Patricia Sprenger, p. 30:1-31:9, 38:17-23, excerpts attached hereto as Exhibit B). The funds are cash, liquid assets, easily

Complaint and was held in default. On January 29, 2015, after a damages hearing, the judge filed an Amended Order of Judgment against Defendant in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners discovered that from at least August, 2013, the date of Defendant's breach, to May 2015,² the owner of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. At the supplemental proceedings hearing, Mr. Sprenger testified that his wife is not an employee of the company and the payments were made without consideration. (Tr. p. 9:12-20, Excerpts from Hearing Transcript attached hereto as **Exhibit C**; See also Patricia Sprenger Dep. 12:6-22, **Exhibit B**). Manfred Sprenger also withdrew \$25,000 from the MSPS Bank of America Account on October 2, 2014. A list and copies of the checks written from the MSPS account are attached hereto as **Exhibit D**. A copy of the \$25,000.00 withdrawal is attached hereto as **Exhibit E**. Not only was MSPS insolvent at the time the checks were written, these checks were written pre-judgment, post-judgment, and some of the checks were written after the Rule to Show Cause was issued (filed May 5, 2015 and served May 13, 2015), MSPS knew about the pending litigation and MSPS knew it owed Plaintiff money.

A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. (A copy of the Rule to Show Cause and Affidavit of Service are attached hereto as **Exhibit F**). Notwithstanding being served a copy of the Rule to Show Cause, Defendant fraudulently transferred an additional \$60,000 from the MSPS Bank of America account to his wife on May 27, 2015 in violation of this Court's order enjoining defendant from making any transaction or

transferrable, and subject to execution without any available exemption.

² Plaintiff has received banking records for January 1, 2012- May 2015. Plaintiff is awaiting supplemental banking records from May 2015 to present.

transfer or other disposition of property which is not exempt from execution. Mr. Sprenger testified that he knowingly transferred money to himself in spite of the judgment against MSPS.³ (Manfred Sprenger Dep. 5:8-6:20; 46:1-13, excerpts from Manfred Sprenger Dep. attached hereto as Exhibit G).

As such, Plaintiff moves for an order setting aside all of the fraudulent transfers by Defendant of non-exempt property pursuant to S.C. Code Ann. § 27-23-10(A). In total, the Plaintiff respectfully requests that this court set aside \$314,600.00 in fraudulent transfers.

ARGUMENT

It is well-established in South Carolina that a debtor may not transfer or convey property to frustrate or impede a creditor. To that point, the Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10(A) (2007). Our courts have applied the Statute of Elizabeth to set

³ Manfred and Patricia both testified that they are continuing to receive payments from MSPS despite the Rule to Show Cause. Manfred testified he has received at least one \$14,000.00 payment since June of 2015 (Manfred Sprenger Dep. 11:25-13:3, Exhibit G) and Patricia testified she has received at least two additional \$7,000 payments since June of 2015 (Patricia

aside conveyance in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

Mathis v. Burton, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting Durham v. Blackard, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)); see also Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). Funds proven prima facie to belong to a judgment debtor in the hands of a third party may be reached in supplementary proceedings. Lynn v. International Broth. of Firemen and Oilers, 228 S.C. 357, 90 S.E.2d 204 (1955).

Furthermore, Defendant acted with the requisite intent to establish a fraudulent conveyance. Courts often evaluate the particular circumstances of the transfer for “badges of fraud.” Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) (“Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as ‘badges of fraud.’ The badges tend to excite suspicions as to the Bona fides of a challenged conveyance.”); see also In re Addison, 540 F.3d 805, 811-12 (8th Cir. 2008). South Carolina has generally recognized the following badges of fraud:

[I]nsolvency or indebtedness of the transferor, lack of consideration

Sprenger Dep. 33:23-34:1, Exhibit B).

for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property. Id.; see also In re Jones, 397 B.R. 765, 770 (Bankr. D.S.C. 2008); In re Ducate, 369 B.R. 251 (Bankr. D.S.C. 2007).

Here, all transfers to Patricia Sprenger constitute fraudulent transfers because she is not and has never been employed by MSPS, and Defendant testified that those transfers were made absent any valuable consideration. Patricia is has a close relationship between the transferor as she is the wife of Manfred Sprenger, the President of MSPS. Further, the debtor is retaining possession of the property at his home in his bedroom and is allowing his wife to spend the funds as she sees fit.

Many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed. Immediately prior to China filing this lawsuit, MSPS transferred \$40,000 to Patricia Sprenger on March 27, 2014. China Construction filed this lawsuit against MSPS on April 2, 2014. In addition to several \$7,000 transfers post-filing, checks for \$27,000, \$60,000, and \$70,000 were made payable to Patricia Sprenger on July 30, 2014, May 27, 2015 and September 29, 2014 respectively. Ms. Sprenger testified that she "does not trust banks" and deposits the cash into a joint account she maintains with Manfred Sprenger. (Patricia Sprenger Dep. p. 17:13-18:11, **Exhibit B**). She then withdraws the cash, leaving a low balance in her First Citizens account, and stores the cash in her home. (**Exhibit A**). Mr. Sprenger testified that he has access to the funds and uses them as he needs it. When Patricia Sprenger was questioned regarding the location of the cash at the September 21, 2015 deposition, Mr. Sprenger interrupted the deposition and attempted to thwart

Ms. Sprenger's answer:

Q: You're not sure out of the \$60,000 how much is in cash?

A: I think around 50.

Q: 50?

A: Yeah.

Q: You have \$50,000 in cash right now?

A: Yeah, I think.

Q: Is it at your home?

A: Yes.

Q: Where in your home?

MR. SPRENGER: We are not going to say that because that's—

MS. HEYWARD: Excuse me. You may not speak. You're not being deposed at this time.

THE WITNESS: In my bedroom.

(Patricia Sprenger Dep. 30:6-20, Exhibit B).

The circumstances of MSPS's voluntary post-judgment transfers to Patricia Sprenger meet at least seven of the nine badges of fraud. "Although the presence of a single factor, i.e. badge of fraud, may cast suspicion on the transferor's intent, the confluence of several in one transaction generally provides conclusive evidence of actual intent to defraud." Gilchinsky v. Nat'l Westminster Bank, 732 A.2d 482, 490 (N.J. 1999). MSPS (1) was indebted to Plaintiff at the time of the post-judgment transfers; (2) did not receive any consideration for the e transfers, as Defendant simply transferred the money from the corporate account to the wife of its

principal, who is a non-employee of MSPS; (3) transferred the funds to Patricia Sprenger, the person with whom the company President clearly has the closest relationship; (4) Manfred Sprenger reserved the benefit of the funds for himself personally and for MSPS as he saw fit; (5) retained possession of the funds; (6) was insolvent at the time of the transfers; and (7) is concealing the funds by keeping them in cash at the home of Manfred and Patricia Sprenger and refusing remit the funds to its attorney to hold in trust.

As such, Plaintiff requests an Order

- (1) setting aside and executing against all monies and transfers to Patricia Sprenger and Manfred Sprenger as set forth herein, including but not limited to the \$50,000.00 in cash at the home of Manfred and Patricia Sprenger;
- (2) directing Manfred Sprenger and Patricia Sprenger to pay all monies and transfers to Plaintiff that each received by way of the transfers from MSPS, including but not limited to the \$50,000.00 in cash in their home, as partial satisfaction of the judgment against MSPS; and
- (3) Directing Manfred Sprenger and Patricia Sprenger to provide an accounting of all monies transferred to them, including but not limited to the \$50,000.00 in cash in their home.

The grounds for this Motion are as follows:

- (1) Plaintiff obtained a judgment against Defendant;
- (2) Defendant has failed to take any action to stay execution of the judgments against them;
- (3) S.C. Code Ann. 15-39-410 provides that the Court can order "any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied";
- (4) Plaintiff is informed and believes that the intentional efforts of Manfred Sprenger and Patricia Sprenger to delay, deceive and hinder the collection of the judgment coupled with any further delay will substantially impair Plaintiff's ability to collect on its judgment against MSPS.

BRUNER, POWELL, WALL & MULLINS, LLC


Caitlin Creswick Heyward

Joey R. Floyd

Post Office Box 61110

1735 St. Julian Place, Suite 200

Columbia, South Carolina 29204

(803) 252-7693

Attorney for the Plaintiff

September 22, 2015

Columbia, South Carolina

EXHIBIT A

APPENDIX 219

MANFRED SPRENGER
PATRICIA R SPRENGER
PA 50534-5000
300 SHADMARK CIRCLE
SIMPSONVILLE, SC 29080

04-03-14 DATE

Branch 422
Seq 24
Batch 004594
Date 04/03/14

04/03/14 422040 0017 480534345809CC 57,000.00

First Citizens

P. Sprenger

DDADebl - (04/03/2014)

MANFRED SPRENGER
PATRICIA R SPRENGER
PA 50534-5000
300 SHADMARK CIRCLE
SIMPSONVILLE, SC 29080

04-21-14 DATE

Branch 422
Seq 40
Batch 004518
Date 04/21/14

04/21/14 422042 0020 480534345809CC 56,000.00

First Citizens

P. Sprenger

DDADebl - (04/21/2014)

MANFRED SPRENGER
PATRICIA R SPRENGER
PA 50534-5000
300 SHADMARK CIRCLE
SIMPSONVILLE, SC 29080

04-24-14 DATE

Branch 422
Seq 24
Batch 004546
Date 04/24/14

04/24/14 422042 0017 480534345809CC 520,000.00

First Citizens

P. Sprenger

DDADebl - (04/24/2014)

SPRENGER
* 480534345809
DATE 5/5/14
061662

05/05/14 422042 0017 480534345809CC 51545.63

First Citizens

P. Sprenger

DDADebl - (05/15/2014)

MANFRED SPRENGER
PATRICIA R SPRENGER
PA 50534-5000
300 SHADMARK CIRCLE
SIMPSONVILLE, SC 29080

11-13-14 DATE

Branch 422
Seq 8
Batch 005937
Date 11/13/14

11/13/14 422041 0051 480534345809CC 520,000.00

First Citizens

P. Sprenger

DDADebl - (11/13/2014)

FIRST CITIZENS
CHECKING / SAVINGS / NOWA MISCELLANEOUS DEBIT
BR 00

11/13/14
1079803

* 480534345709
* 53 \$ 29739

DDADebl - (11/13/2014)

Seq 24 Batch 4,334
Branch 422
Seq 24
Batch 004594
Date 04/03/14

(Back)

Seq 40 Batch 4,313
Branch 422
Seq 40
Batch 004518
Date 04/21/14

(Back)

Seq 24 Batch 4,343
Branch 422
Seq 24
Batch 004546
Date 04/24/14

(Back)

Seq 24 Batch 4,337
Branch 422
Seq 24
Batch 004594
Date 05/15/14

(Back)

Seq 8 Batch 4,337
Branch 422
Seq 8
Batch 005937
Date 11/13/14

(Back)

Seq 8 Batch 4,337
Branch 422
Seq 8
Batch 005937
Date 11/13/14

(Back)

APPENDIX 220

FIRST CITIZENS CHECKING / SAVINGS / IRMA MISCELLANEOUS DEBIT BK08

1152916

06/15/15

Patricia Sprenger

* 480534345809

* 53 \$ 1339.16

DDADebit - (06/08/2015)

MANFRED SPRENGER PATRICIA R SPRENGER 1481

06-04-15

Cash \$ 500.00

Patricia Sprenger

First Citizens

DDADebit - (06/10/2015)

MANFRED SPRENGER PATRICIA R SPRENGER 1305

07-15-13

Cash \$ 400.00

Patricia Sprenger

First Citizens

DDADebit - (07/15/2013)

MANFRED SPRENGER PATRICIA R SPRENGER 1313

08-21-13

Cash \$ 1,500.00

Patricia Sprenger

First Citizens

DDADebit - (08/21/2013)

FIRST CITIZENS CHECKING / SAVINGS / IRMA MISCELLANEOUS DEBIT BK08

7/16/13

Patricia Sprenger

* 480534345809

* 53 \$ 989.00

DDADebit - (07/16/2013)

Branch 422

Sec 41

Batch 007560

Date 06/10/15

(Back)

Branch 422

Sec 41

Batch 007560

Date 06/10/15

(Back)

Branch 422

Sec 25

Batch 002420

Date 07/15/13

(Back)

Branch 422

Sec 11

Batch 002740

Date 08/21/13

(Back)

Branch 422

Sec 08

Batch 002441

Date 07/16/13

(Back)

EXHIBIT B

1 get into it, is why you're here today. We are
2 talking about some transfers that were made to you
3 personally.

4 A. I'm a homemaker.

5 Q. Okay. We'll get there.

6 All right. Mr. Sprenger testified in
7 court back in June that you have never worked for
8 MSPS. Is that correct?

9 A. I go only sometimes in for cleaning the
10 business and put things on paper in folders. This
11 is all what I do sometimes, not there often.

12 Q. Okay. So you're not an employee of MSPS?

13 A. No, I'm not.

14 Q. You have never been an employee of MSPS?

15 A. No, I've never been.

16 Q. You've never been paid as an employee of
17 MSPS?

18 A. No, I never get money.

19 Q. Okay. You never had a W2 ---

20 A. No.

21 Q. -- with MSPS?

22 A. No.

23 Q. Okay. Do you have access to the MSPS
24 business account, checking account?

25 A. Only I can sign checks, but I don't know

Patricia Sprenger 9/21/15

16

1 everything we say.

2 A. Okay.

3 Q. So I know the tendency in normal
4 conversation is to respond and sometimes we talk
5 over each other, but for the purposes of the
6 record, so it will read clearly, I'll try and wait
7 for you to finish what you have to say if you wait
8 for me to finish what I have to say.

9 Okay. So it's your testimony today that
10 the check that's written in your name for \$7,000 --

11 A. Yes.

12 Q. -- is not actually for you, it's for your
13 husband, it's his salary?

14 A. Yes.

15 Q. Do you recall -- if you flip to the second
16 page of Exhibit 3, do you recall this check dated
17 4/28/2014 in the amount of \$7,000 made out to you
18 in your name?

19 A. Yes.

20 Q. Did you deposit that check in a bank
21 account?

22 A. I deposit this, yes, in our private
23 account.

24 Q. In your private account?

25 A. Yes.

1 Q. Okay. Do you recognize the check on
2 page 3 dated May 14, 2014?

3 A. Yes.

4 Q. That's in the amount of \$1,600, correct?

5 A. It's my name on, yes.

6 Q. Right. Do you know why that number is
7 different than the usual \$7,000 number?

8 A. No, I don't know, no.

9 Q. You don't know why you get --

10 A. No.

11 Q. -- that money?

12 A. No.

13 Q. Okay. Flip to page 6, the sixth page of
14 that document. It's a check in the amount of
15 \$27,000 made out to you?

16 A. Yes.

17 Q. Do you recognize that document?

18 A. Yes.

19 Q. That's a check made out to you in your
20 name?

21 A. Yes.

22 Q. Which you deposited in your personal
23 account?

24 A. Yes.

25 Q. Would that be your account at First

1 Citizens?

2 A. Our account.

3 Q. It --

4 A. Our private account.

5 Q. That would be your private account at

6 First Citizens?

7 A. My husband and mine.

8 Q. It's a joint account?

9 A. Yes.

10 Q. The joint account at First Citizens?

11 A. Yeah.

12 Q. Okay. Do you have any idea why this check
13 was written?

14 A. Yes.

15 Q. Why?

16 A. He gave me the check because it was
17 easier. It's his money. When he puts his name in,
18 a lot of time he forgets signing the check, and
19 this is I say, can you put my name in? Then I
20 don't have to remember him signing the check. And
21 why he put -- gave me \$27,000, I don't know.

22 Q. You don't know?

23 A. No.

24 Q. Okay.

25 A. He says I have to put this in the bank.

1 Q. How much -- do you have any of the money
2 in cash at this time?

3 A. Yes.

4 Q. How much?

5 A. I'm not exactly sure.

6 Q. You're not exactly sure out of \$60,000 how
7 much is in cash?

8 A. I think around 50.

9 Q. 50?

10 A. Yeah.

11 Q. You have \$50,000 in cash right now?

12 A. I think, yeah.

13 Q. Is it at your home?

14 A. Yes.

15 Q. Where in your home?

16 MR. SPRENGER: We are not going to say
17 that because that's --

18 MS. HEYWARD: Excuse me. You may not
19 speak. You're not being deposed at this time.

20 THE WITNESS: In my bedroom.

21 BY MS. HEYWARD:

22 Q. In your bedroom?

23 A. Yes.

24 Q. So you've spent approximately \$10,000 of
25 the \$60,000 on other things like bills. Is that

Patricia Sprenger 9/21/15

31

1 correct?

2 A. Not bills. I didn't say bills. I pay my
3 bills with my --

4 Q. The 7,000?

5 A. The \$7,000, what he takes out for his work
6 at the company.

7 Q. Okay.

8 A. Because we have to pay the bills with
9 something.

10 Q. Other than the First Citizens account, do
11 you have any other bank accounts in the United
12 States?

13 A. No.

14 Q. Do you have any bank accounts outside of
15 the United States?

16 A. No.

17 Q. Do you have any private investment
18 accounts?

19 A. Me?

20 Q. Yes.

21 A. Not me.

22 Q. Personally.

23 A. I don't know, no. I don't have stuff like
24 this.

25 Q. Stock?

1 Q. Okay. So First Citizens is your only
2 banking relationship?

3 A. It is only my banking. I don't have
4 another bank account.

5 Q. Do you loan anybody any money? Do you
6 enter into any loan transactions?

7 A. No.

8 Q. No, okay.

9 Since June 2015, has MSPS written you any
10 more checks?

11 A. June 2000 -- I think was one month he
12 didn't pay. Now, I can tell you, yes, I took
13 \$7,000 for putting in the bank account from the
14 60,000, yeah, because one month he was not paying
15 because he didn't have the money for paying.

16 Q. Okay. So from the 60,000 you -- I'm
17 sorry. Go ahead. You can finish.

18 A. Last month -- end of last month or
19 beginning of this month, he -- yeah, he paid \$7,000
20 again, but we put -- I put that money back from the
21 60,000 because he was -- he didn't have the money
22 he said.

23 Q. Since June you've received one \$7,000
24 check?

25 A. June, July, August. One or two. I

Patricia Sprenger 9/21/15

34

1 can't -- I have to check. I have to look up.

2 Q. Okay. Any other checks for any other
3 amount of money?

4 A. No.

5 Q. Does MSPS give you any other kind of
6 payment in the form of -- does MSPS pay your cell
7 phone bill or any of your other bills?

8 A. No. I pay all of it with this money, the
9 7,000, all bills from home.

10 Q. So that's the only kind of --

11 A. Yes, yes.

12 Q. Okay. Just for the record, I'm going to
13 finish that. I know that you know what I'm going
14 to ask.

15 But the \$7,000 checks and the checks in
16 the other amounts that we've mentioned, those are
17 the only types of contributions or payments that
18 you receive from MSPS. Is that correct?

19 A. Yes.

20 Q. Okay. Just briefly. This is Exhibit 4.

21 (DEPO. EXH. 4, Copies of Checks, was
22 marked for identification.)

23 BY MS. HEYWARD:

24 Q. Ms. Sprenger, I just handed you what I've
25 marked as Plaintiff's Exhibit Number 4. Do you

APPENDIX 230

Patricia Sprenger 9/21/15

38

1 A. Yeah, I think this is the same. Sometimes
2 I take out and sometimes I take back.

3 Q. Okay. 4/24/14, there's one that's
4 significantly larger in the amount of \$29,000. Do
5 you know where that money is?

6 A. I think I took this out, but then
7 sometimes he need -- put cash back in his business
8 account. When you look on his business account,
9 then you can see sometimes he puts cash back, and
10 this is when he needs it for paying because we are
11 not leaving this much money on the private account
12 because I don't trust the banks anymore.

13 Q. I understand. I'm just trying to
14 determine if that money is available in cash in
15 your home?

16 A. No, no, it's not.

17 Q. How much cash do you have in your home?

18 A. I think \$50,000 right now.

19 Q. Okay. So of the \$60,000 check that you
20 recently received, you have \$50,000 and that is the
21 entire amount of cash --

22 A. This is all what I have -- what we have at
23 home.

24 Q. Is that also your testimony in regard to
25 the first check on page 4 in the amount of

EXHIBIT C

1 can afford it as a company.

2 Q Whenever you do good on a job or something like that?

3 A Yeah.

4 Q Kick yourself some money? Is that what you'll do?

5 A Yeah.

6 Q About how often do you do that?

7 A Recently -- the last couple of years, not because we all
8 know the economy was bad. The last three months I even didn't
9 write my wife a check because there was no -- that's why I had to
10 borrow the money to the company to be able to pay the current
11 bills.

12 Q What's your wife's position with the company?

13 A None. She's my wife. She helps out at the office
14 occasionally, yes.

15 Q But she's not an employee?

16 A She's not an official employee on the payroll.

17 Q But you make the checks payable to your wife?

18 A Yeah.

19 Q On a monthly basis?

20 A Yeah.

21 Q When do you typically pay that \$7,000 to your wife: first
22 of the month, end of the month?

23 A It varies, whenever -- I like to do it at the end of the
24 month but since general contractors' checks usually come in at
25 the end of a month, and we know how reliable they are, it might

APPENDIX 233

INDEX OF TRANSFERS TO PATRICIA SPRENGER

1.	8/29/2013	\$7,000.00
2.	9/27/2013	\$7,000.00
3.	10/30/2013	\$7,000.00
4.	11/26/2013	\$7,000.00
5.	2/25/2014	\$7,000.00
6.	3/27/2014	\$40,000.00
7.	3/27/2014	\$7,000.00
8.	4/28/2014	\$7,000.00
9.	5/14/2014	\$1,600.00
10.	5/29/2014	\$7,000.00
11.	6/24/2014	\$7,000.00
12.	7/30/2014	\$27,000.00
13.	8/27/2014	\$7,000.00
14.	9/29/2014	\$70,000.00
15.	9/29/2014	\$7,000.00
16.	11/3/2014	\$7,000.00
17.	12/22/2014	\$7,000.00
18.	5/27/2015	\$60,000.00
TOTAL		\$289,600.00

Bank of America

Capture Date: 10/01/2013 Sequence #: 2292579707

CASH ONLY IF ALL CHECKS LOCK! SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
67-448/533

53716

9/27/2013

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

2013 Intuit, Inc. All rights reserved. 1-800-828-7448

[illegible]

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
09/30/2013	000006700127723	53201487	-1	N		FIRST-CITIZENS BANK
09/30/2013	000006700127723	53100300	Undetermined	Y		FIRST-CITIZENS BANK
10/01/2013	002292579707	112002080	Co1 Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

No Payee Endorsements Found

CASH ONLY IN ALL CIRCULARS SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING ON COPY/NO

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
67-448539

53751

10/30/2013

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

VOID IN 60 DAYS

MEMO

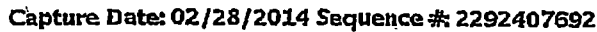
[illegible]

Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
11/01/2013	000006700039876	53201487	-1	N		FIRST-CITIZENS BANK
11/01/2013	000006700039876	53100300	Undetermined	Y		FIRST-CITIZENS BANK
11/04/2013	002992149475	112002080	Col Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
11/27/2013	000006700121656	53201487	-1	N		FIRST-CITIZENS BANK
11/27/2013	000006700121656	53100300	Undetermined	Y		FIRST-CITIZENS BANK
11/29/2013	003492589370	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found



Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
02/27/2014	000006700050362	53201487	-1	N		FIRST-CITIZENS BANK
02/27/2014	000006700050362	53100300	Undetermined	Y		FIRST-CITIZENS BANK
02/28/2014	002292407692	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ONLY IF ALL CHECK SECURITY FEATURES LISTED ON BACK ARE CATCHED TO TAMPERING OR COPIES
 MS Production Solutions LLC
 233 Beverly Road
 Greenville, SC 29609
 854-244-5505
 BANK OF AMERICA, NA
 97-448/539
 53948
 3/27/2014
 PAY TO THE ORDER OF Patricia Sprenger \$ 40,000.00
 Forty Thousand and 00/100 DOLLARS
 Patricia Sprenger
 308 Shagbark Circle
 Simpsonville SC 29680
 MEMO
 [MICR LINE]

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
03/31/2014	000006700106884	53201487	-1	N		FIRST-CITIZENS BANK
03/31/2014	000006700106884	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/01/2014	003692767781	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ON HAND FULL SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

MS Production Solutions LLC
1233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
87-448/539

53946

3/27/2014

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

A TAMPER RESISTANT SECURITY AREA A

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

Handwritten signature and date 3/27/14 are visible over the memo field.

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
03/31/2014	000006700106885	53201487	-1	N		FIRST-CITIZENS BANK
03/31/2014	000006700106885	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/01/2014	003692767782	112002080	Col Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

CASH ONLY. NO ALL-PURPOSE SECURITY FEATURES LIMITED ON BACK. NO SALES OR PURCHASES OF COPIES.

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29608
864-244-8505

BANK OF AMERICA, NA
Aiken, SC 29801
67-440339

54042

4/28/2014

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

A WATER-RESISTANT TOUCHSCREEN

Patricia Sprenger
308 Shegbar Circle
Simpsonville SC 29680

MFMO

VOID after 60 days

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
04/29/2014	000006700065340	53201487	-1	N		FIRST-CITIZENS BANK
04/29/2014	000006700065340	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/30/2014	002692250909	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
05/15/2014	000006700061736	53201487	-1	N		FIRST-CITIZENS BANK
05/15/2014	000006700061736	53100300	Undetermined	Y		FIRST-CITIZENS BANK
05/16/2014	003592802278	112002080	Co1 Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

CASH ON HAND ALL CLASSIC SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPIING
 MS Production Solutions LLC
 233 Beverly Road
 Greenville, SC 29609
 864-244-6505
 BANK OF AMERICA, NA
 Aiken, SC 29801
 87-440/538
 54084
 5/29/2014
 PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00
Seven Thousand and 00/100 DOLLARS
 Patricia Sprenger
 308 Shagbark Circle
 Simpsonville SC 29680
 MEMO
 [Redacted]

[illegible]

Mon Jul 06 17:40:48 EDT 2015

CASH ONLY / ALL OTHER FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING
 MS Production Solutions LLC
 233 Beverly Road
 Greenville, SC 29609
 864-244-6505
 BANK OF AMERICA, NA
 Aiken, SC 29801
 803-648-5230
 54119
 6/24/2014
 PAY TO THE ORDER OF Patricia Sprenger \$7,000.00
 Seven Thousand and 00/100 DOLLARS
 A TAMPER RESISTANT TO-GRABBER A
 Patricia Sprenger
 308 Shagbark Circle
 Simpsonville SC 29680
 Valid for 90 days
 MEMO

[illegible]

Mon Jul 06 17:40:43 CDT 2015

APPENDIX 245



Capture Date: 08/04/2014 Sequence #: 4092069795

M3 Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-6505		BANK OF AMERICA, NA Aiken, SC 29801 87-448/530	54165 7/30/2014
PAY TO THE ORDER OF <u>Patticia Sprenger</u>		\$ <u>27,000.00</u>	
Twenty-Seven Thousand and 00/100		DOLLARS	
A TAMPER RESISTANT CHECK			
MEMO: [Redacted]			
As the guarantor, I have secured this check with my personal assets. To learn how to protect your business, call our check fraud experts at 1-800-SAB-472 or www.bankofamerica.com.			
Branch 422, Sept 15, Batch 905035, Date: 08/01/14			
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE			
SIGNATURE: <u>Patticia Sprenger</u>			

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
08/01/2014	000006700144615	53201487	-1	N		FIRST-CITIZENS BANK
08/01/2014	000006700144615	53100300	Undetermined	Y		FIRST-CITIZENS BANK
08/04/2014	004092069795	112002080	Co1 Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ONLY * SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COUPLING

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
AKEN, SC 29801
87-448/539

54191

8/27/2014

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

A TAMPER RESISTANT SIGNATURE AREA

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

Valid for 90 days

MEMO

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
09/04/2014	000006700207606	53201487	-1	N		FIRST-CITIZENS BANK
09/04/2014	000006700207606	53100300	Undetermined	Y		FIRST-CITIZENS BANK
09/05/2014	003092679726	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ONLY • FALG • CHIT • LORA • SECURITY FEATURE • LISTED ON BACK • ELUCATE • NO TAMPERING • NO COPYING

MS Production Solutions LLC
 233 Beverly Road
 Greenville, SC 29609
 864-244-6505

BANK OF AMERICA, NA
 Aiken, SC 29801
 87-448/539

54255

9/28/2014

PAY TO THE ORDER OF Patricia Sprenger \$ 70,000.00

Seventy Thousand and 00/100 DOLLARS

Patricia Sprenger
 308 Shagbark Circle
 Simpsonville SC 29680

A TAMPER RESISTANT TONER AREA

Valid for 90 days

MEMO

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
10/01/2014	000006700045269	53201487	-1	N		FIRST-CITIZENS BANK
10/01/2014	000006700045269	53100300	Undetermined	Y		FIRST-CITIZENS BANK
10/02/2014	003192670987	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ONLY - ALL OTHERS MUST BE DEPOSITED IN A SECURED LOCATION. SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR FORGING.		54252
MS Production Solutions LLC 233 Beverly Road Greenville, SC 29605 864-244-5505		BANK OF AMERICA, NA Aiken, SC 29801 87-448/630
PAY TO THE ORDER OF <u>Patricia Sprenger</u>		9/29/2014
Seven Thousand and 00/100		\$ --7,000.00
Patricia Sprenger 308 Shagbark Circle Simpsonville SC 29680		DOLLARS
MEMO		VOID WHEN COPIED
ENDORSE HERE		DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
Branch 422 Seq: 94 Batch: 005523 Date: 10/9/14		Patricia Sprenger
As the issuer, this check is voided. No Secure Plus check will be cashed. Your risk of fraud is reduced.		To learn how to protect your business, call our e-check fraud experts at 1-800-560-0139 or visit www.integritycheck.com
REPLICATING, FORGING OR ALTERING THIS CHECK IS EXTREMELY DIFFICULT DUE TO CHECKLOCK™ SECURITY FEATURES.		VOID WHEN COPIED
Security Features: Microprint Lines Chemically Sensitive Paper Fugitive Ink on Back Toner Residual Toner Area Variable Features Variable Features VOID WHEN COPIED		VOID WHEN COPIED
VOID WHEN COPIED		VOID WHEN COPIED

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
10/01/2014	000006700045270	53201487	-1	N		FIRST-CITIZENS BANK
10/01/2014	000006700045270	53100300	Undetermined	Y		FIRST-CITIZENS BANK
10/02/2014	003192670988	112002080	Co1 Bank	N		BANK OF AMERICA, NA.
No Payee Endorsements Found						

MEMO

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
AXEN, SC 29601
67-448539

54283

11/3/2014

PAY TO THE ORDER OF Patricia Sprenger \$ **7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

VOID WHEN USED

VOID WHEN USED

[illegible]

Mon Jul 06 17:40:43 CDT 2015
116

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-6505		BANK OF AMERICA, NA Aiken, SC 29801 87-448/638		54341
PAY TO THE ORDER OF Patricia Spranger		\$ 7,000.00		12/22/2014
Seven Thousand and 00/100		DOLLARS		A TAMPER RESISTANT TONER CARTRIDGE
Patricia Spranger 308 Shagbark Circle Simpsonville SC 29680		Void Check by days		1
[Redacted Signature]				
[Redacted Address]				
[Redacted Phone Number]				
[Redacted Email Address]				
[Redacted Social Security Number]				
[Redacted Date of Birth]				
[Redacted Date of Issuance]				
[Redacted Date of Expiration]				
[Redacted Date of Cancellation]				
[Redacted Date of Renewal]				
[Redacted Date of Termination]				
[Redacted Date of Revocation]				
[Redacted Date of Suspension]				
[Redacted Date of Reinstatement]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				
[Redacted Date of Appeal]				
[Redacted Date of Hearing]				
[Redacted Date of Decision]				
[Redacted Date of Final Order]				
[Redacted Date of Enforcement]				
[Redacted Date of Compliance]				
[Redacted Date of Non-Compliance]				
[Redacted Date of Sanction]				

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/29/2014	000006700155638	53201487	-I	N		FIRST-CITIZENS BANK
12/29/2014	000006700155638	53100300	Undetermined	Y		FIRST-CITIZENS BANK
12/30/2014	003692776258	112002080	Co1 Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
05/29/2015	000006700066443	53201487	-1	N		FIRST-CITIZENS BANK
05/29/2015	000006700066443	53100300	Undetermined	Y		FIRST-CITIZENS BANK
06/01/2015	004092616344	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America

Capture Date: 10/02/2014 Sequence #: 3742827687

Bank of America

☒ Checking ☐ Savings ☐ Withdrawal ☒ DEBIT

Please Check Proper Box.

Not Negotiable - Withdrawals are permitted only through Payment to the depositor.

Name and Address: MS Production Solution, Inc Date: 10/2/14

233 Beverly Rd

Greenville SC 29609

Telephone No. (N/A)

twenty five thousand 00/100 Dollars

Save time in line and help us avoid errors. The next time you make a withdrawal, please use your pre-printed withdrawal slips for your account.

☒ Customer Signature

Total Withdrawal

For SC Use Only



Seq: 264
Batch: 501831
Date: 10/02/14

10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35
10/02/2014 10:35

Seq: 00264 10/02/14
B17: 501831 CC: 0057331700
WT: 01 LTPS: Atlanta ET
SC: Fine Retail SC-302-547

Electronic Endorsements		Bank #	Endrs Type	TRN	RRC	Bank Name
Date	Sequence					
10/02/2014	3742827687	11000138	-1	Y		BANK OF AMERICA, NA
No Payee Endorsements Found						

EXHIBIT F

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE PAUL B. WICKENSIMER
2015 MAY 5 PM 4 27
China Construction America
Of South Carolina, Inc.
Plaintiffs,
vs.
MS Production Solutions LLC
A/k/a MSPS Steel Fabricators
Defendants.

RULE TO SHOW CAUSE AND
ORDER OF REFERENCE
(Case. NO.: 2014-CP-23-1871)

Judgment having been rendered, an Execution issued, a *Nulla Bona* return made to said Execution, the Petitioner having moved for an examination of the Respondent, pursuant to the provisions of §15-39-310, *et seq.*, as amended; it is therefore,

ORDERED that MS Production Solutions LLC a/k/a MSPS Steel Fabricators, DO APPEAR before The Honorable Charles B. Simmons, Jr., Master-In-Equity for Greenville County, Greenville County Courthouse, 305 East North Street, Courtroom 5, Greenville, South Carolina, on the 2nd day of June, 2015, at 2:30 a.m.(p.m.), to answer under oath concerning your assets; TO SHOW CAUSE why your property should not be applied towards satisfaction of the Judgment set out in the Petition; to SHOW CAUSE why a Receiver of Respondent's property should not be appointed, pursuant to the provisions of § 15-39-430, *et seq.* South Carolina Code Ann. (Law. Co-op. 1976).

The Master-in-Equity will entertain and rule upon all motions necessary to dispose of this

matter, to include but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt and has authority to enter a Final Order. Any appeal from the Master-in-Equity is directly to the Supreme Court.

IT IS FURTHER ORDERED that the Respondent is hereby restrained and enjoined from making any transaction or transfer or other disposition of property belonging to him/it which is not exempt from execution pending further Order of this Court.

YOU ARE FURTHER ORDERED PRODUCE A COPY OF THE FOLLOWING DOCUMENTS TO COUNSEL FOR PLAINTIFF ON, OR BEFORE, FIVE (5) BUSINESS DAYS BEFORE THIS HEARING:

1. Bank statements for all bank accounts owned in whole or in part by Defendants for the past year.
2. Pay stubs for the past five (5) years.
3. Federal and State Tax returns for the past five (5) years.
4. Insurance Policies [home, automobile, real estate, etc...].
5. Records of any real estate owned, either in whole or in part.
6. Records of vehicles and boats.
7. Any inventories of personal property.
8. Copies of any contracts entitling you to payment of money.
9. Any personal financial statements prepared for any reasons either by your self or by any independent sources, with any applicable notes attached thereto from the past five (5) years and, if not reflected in such statements, a complete description of any and all contingent liabilities, including guarantees, by you.
10. Any and all year-end financial statements of any corporation, partnership, trust, or other business entity in which you hold directly or indirectly a 10% interest (balance sheet statements and statement of income and expenses) audited and unaudited for the last three years of the respective entities with any applicable notes attached thereto and any subsequently prepared

financial reports or statements prepared by the entity or on its behalf for any reason.

11. Any and all documents and financial records that relate to, refer to, or describe, recount, or are in any way related to any transfer of or pledge, hypothecation, gift, assignment, or granting of a security interest in assets owned or controlled by him, made by him, or on his behalf in excess of One Hundred Dollars (\$100) in any single transaction from the past five (5) years to the present, and any and all documents and financial records that relate to, refer to, to describe the disposition of proceeds, promissory notes, or other evidence of indebtedness or consideration received from such transfers, pledges, etc.
12. Any and all documents and financial records that relate to, refer to, or describe any and all transactions between him and members of his family.
13. Any and all documents and financial records, including appraisals which relate to, refer to, or describe or substantiate any valuation of assets disclosed in your financial statements/records produced under paragraph 11 above, and the manner of valuation or fixing of value of such assets, prepared either by you or by any third party or entity relating to these assets.
14. Any and all documents which relate to, or recount or describe any pending or potential claim against you or against any entity referenced in paragraph 10 above, whether or not currently in litigation, together with any and all documents which relate to, recount, or describe any judgments held against you or any entity referenced in paragraph 10.
15. Any and all documents which relate to, refer to, or describe any trust in which you are a beneficiary, including any financial statements of the aforesaid trust and the dispositive provisions of the trust as relates to you and members of your family.

IF YOU DO NOT APPEAR IT MAY RESULT IN THE APPOINTMENT OF A RECEIVER AND AWARDING THE PLAINTIFF/PETITIONER SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUESTED. YOU MAY ALSO BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.

Greenville, South Carolina

1 MAY, 2015

s/Robin B. Stilwell
Presiding Circuit Court Judge, Greenville County
STILWELL/2158

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE COUNTY THE COURT OF COMMON PLEAS
PAUL D. WICKENSIMER

COUNTY OF GREENVILLE)
2015 MAY 5 PM 4 27)
China Construction America)
Of South Carolina, Inc.)
Plaintiffs,)
vs.)
MS Production Solutions LLC)
A/k/a MSPS Steel Fabricators)
Defendants.)

**VERIFIED PETITION FOR
SUPPLEMENTAL PROCEEDINGS**
(Case. NO.: 2014-CP-23-1871)

PETITIONER WOULD RESPECTFULLY SHOW:

That heretofore Petitioner recovered and recorded judgment against Respondent MS Production Solutions LLC a/k/a MSPS Steel Fabricators ("Respondent") as hereinafter set forth; and that there is still due and owing on said judgment the sum indicated, Respondent having failed and refused to satisfy same:

JUDGMENT ENTERED: January 28, 2015 in Greenville County
JUDGMENT ROLL # : 2014-CP-23-1871
AMOUNT DUE : \$657,137.30, plus interest as accrued

1. That execution thereafter was duly issued to the Sheriff of Greenville County against Respondent and said Sheriff has returned same NULLA BONA.
2. That upon information and belief, the Respondent has assets in the County not exempt from levy which Respondent unjustly refuses to apply toward satisfaction of said judgment.
3. That Petitioner is informed and believes that it is entitled under the law and statutes to have an examination of Respondent in supplementary proceedings and to ascertain and discover any and all property and assets, real, personal, or mixed, and wheresoever situated,

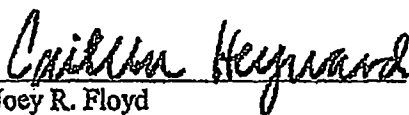
belonging to Respondent; or in which Respondent could claim any interest, solely or in conjunction with any person, firm, or corporation or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt.

4. In addition, Petitioner is entitled to the appointment of a receiver of Respondent for any and all of the aforesaid property, assets, or effects which are so discovered or revealed in order to carry said judgment into effect.

WHEREFORE Petitioner prays that this court do inquire into the matters hereinabove alleged and that it issue such order or orders granting relief to which Petitioner believes it is entitled, for all expended and statutory costs allowable for this proceeding, and for such other and further relief and remedies as may be allowable and which the Court may deem proper.

And further Petitioner requests this matter be referred to the Master-in-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure with authority to enter a final order with any appeal being directly to the South Carolina Supreme Court.

BRUNER, POWELL, WALL & MULLINS, LLC



Joey R. Floyd

Henry P. Wall

Caitlin C. Heyward

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803) 252-7693

Attorneys for Petitioner

China Construction America of South Carolina, Inc.

April 13, 2015

VERIFICATION

PERSONALLY appears Caitlin C. Heyward, who first being duly sworn, deposes and says that he is the attorney for the Petitioning judgment creditor and that he has read the foregoing Petition and knows the contents thereof and the same are true of his own knowledge except to matters alleged therein on information and belief, and as to these, he believes it to be true, that he is the attorney for the Petitioner and is authorized to make this oath on their behalf.

Caitlin Heyward
Caitlin C. Heyward
Attorney for the Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 13 DAY OF April, 2015

L. M. War
Notary Public for South Carolina
My Commission Expires: 01/22/2012

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2014-CP-23-1871 Court Date: 6/2/2015 2:30 pm

Plaintiff:

CHINA CONSTRUCTION AMERICA OF SOUTH CAROLINA, INC.

vs.

Defendant:

MS PRODUCTION SOLUTION, LLC A/K/A MSPS STEEL FABRICATORS

For:

Bruner Powell

PO Box 61110

Columbia, SC 29260

Received by A Woman's Touch, LLC to be served on MS Production Solutions, LLC a/k/a MSPS Steel Fabricators c/o Registered Agent Manfred Sprenger, 233 Beverly Road, Greenville, Greenville County, SC 29609.

I, Florence Burns, being duly sworn, depose and say that on the 13th day of May, 2015 at 9:29 am, I:

served a REGISTERED AGENT by delivering a true copy of the RULE TO SHOW CAUSE AND ORDER OF REFERENCE, VERIFIED PETITION FOR SUPPLEMENTAL PROCEEDINGS, and PETITIONER'S FIRST SET OF POST-JUDGMENT INTERROGATORIES TO MS PRODUCTION SOLUTION LLC A/K/A MSPS STEEL FABRICATORS with the date and hour of service endorsed thereon by me, to: Manfred Sprenger as Registered Agent at the address of: 233 Beverly Road, Greenville, Greenville County, SC 29609 on behalf of MS Production Solutions, LLC a/k/a MSPS Steel Fabricators, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 65, Sex: M, Race/Skin Color: White, Height: 5'9", Weight: 210, Hair: Grey, Glasses: Y

I certify that I am a U.S. Citizen, over the age of 18, have no interest in the above I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 13th day of May, 2015 by the affiant who is personally known to me.

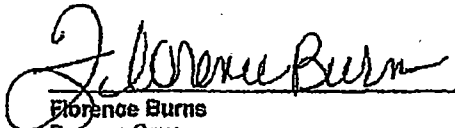

NOTARY PUBLIC

My Commission expires:

Sarah J. Burns, Notary Public

State of South Carolina,

My Commission Expires 9/9/2021


Florence Burns
Process Server

A Woman's Touch, LLC
214 River Oaks Circle
Piedmont, SC 29673
(864) 444-9168

Our Job Serial Number: AWT-2015000451
Ref: 9-948.131

EXHIBIT G

Manfred Sprenger 9/21/15

11

1 \$350,000, and then when -- as my wife said, when I
2 need the money again, I'll pay -- I give it back to
3 the company as a loan again.

4 Q. So this is just determined by you.
5 There's no formal -- most people, most business
6 people, keep a paper trail so when they get audited
7 or when they file taxes it is clear where the money
8 is coming in and where the money's coming out. Is
9 it your testimony today that does not exist?

10 A. There is a paper trail. There is a check
11 written to me. My accountant does my annual tax
12 return, so he knows of -- he can see in my
13 bookkeeping that there's checks written to me.
14 It's called member draw. So what other means of
15 documents are you referring to?

16 Q. A loan document between you and the
17 corporation.

18 A. Maybe I need to make -- as my lawyer
19 advised me after the \$7,000 dispute here to --
20 which I -- before out of convenience I wrote it to
21 my wife. It was always written to me. But it was
22 convenient. And now I changed it back as since my
23 lawyer advised me to do so, to make it, again,
24 payable to Manfred Sprenger instead of --

25 Q. Have you since paid yourself money since

1 the hearing in June?

2 A. I think two maximum. This month I haven't
3 paid myself. Last month I got -- I think once in
4 July I didn't.

5 Q. Okay. How much money did you pay
6 yourself?

7 A. Maybe \$14,000.

8 Q. \$14,000?

9 A. Yeah.

10 Q. And where is that money now?

11 A. In my wife's account -- in our personal
12 account.

13 Q. Your personal account doesn't have very
14 much money in it. I'll represent that to you.

15 A. Uh-huh.

16 Q. Is it in cash?

17 A. That's what you asked my wife already.

18 Yes, there's cash at home.

19 Q. So the \$14,000 that you recently paid
20 yourself in the last two months is in cash?

21 A. Recently since May.

22 Q. What about since June?

23 A. June, I would have to go back and see
24 exactly how many pay -- or how much I paid myself,
25 but what I'm saying is the 7,000 monthly payment

1 I'm trying to pay monthly haven't happened the
2 last -- since June frequently every month. Maybe
3 was once or twice maximum.

4 Q. In the last four weeks, did you pay
5 yourself?

6 A. No.

7 Q. In the last eight weeks, did you pay
8 yourself?

9 A. No.

10 Q. In the last 12 weeks, did you pay
11 yourself?

12 A. Oh, the last eight weeks. Sorry. Except
13 the \$7,000 -- I think I paid myself in
14 August \$7,000.

15 Q. Okay.

16 A. And I don't -- I need to go back in
17 June or July, but I don't think I did in July. I
18 think in June I did, but not in July.

19 Q. Okay. So if I were to count up all of the
20 money that you've paid yourself since you purchased
21 the company, anything over \$350,000, what is that?

22 A. Profit.

23 Q. Profit?

24 A. Uh-huh.

25 Q. Okay.

Manfred Sprenger 9/21/15

46

1 A. We discussed it already, yes. When I felt
2 that I could, I wrote a check to my wife and hope
3 that we can finally pay ourselves back what we
4 borrowed the company.

5 Q. You are aware that there is a -- over a
6 \$500,000 judgment against MSPS at this time?

7 A. There is, yes.

8 Q. Right. Did you feel that the company
9 could write you a \$60,000 check in May? Did you
10 feel the company was in a position to do that
11 knowing you had a 500,000 -- \$560,000 judgment?
12 How do you determine if the company can pay you?

13 A. I just did, I guess.

14 Q. You just do?

15 A. Yeah.

16 Q. You have other judgments against you too,
17 don't you?

18 A. Do what now?

19 Q. There are other judgments against you. Is
20 that correct?

21 A. I don't know.

22 Q. You don't know?

23 A. Are there? I'm sure you do know.

24 Q. You don't know if there are judgments
25 against -- as the president of MSPS, you are not

FILED IN THE COURT OF COMMON PLEAS
 STATE OF SOUTH CAROLINA GREENVILLE CO. S.C.
 COUNTY OF GREENVILLE PAUL B. WICKENS, CLERK
 Civil Action No.: 2014-CP-23-1871
 2015 SEP 23 PM 1:59
 China Construction America
 of South Carolina, Inc.
 Plaintiffs,
 v.
 MS Production Solutions LLC
 a/k/a MSPS Steel Fabricators
 Defendants.

CERTIFICATE OF SERVICE

I, Annie Rich, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on this 22nd day of September, 2015, I served the Notice of Motion and Motion to Set Aside Fraudulent Transfers and Request for Expedited Hearing upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rhett Burney, Esquire
 Turner & Burney
 628 N.E. Main Street
 Simpsonville, SC

Annie Rich
 Annie Rich

Columbia, South Carolina

APPENDIX 267

BRUNER, POWELL, WALL & MULLINS, LLC - A PROFESSIONAL LIMITED LIABILITY COMPANY ~ ATTORNEYS AT LAW ~ COLUMBIA, SC 29260-1110

44390

DATE	DESCRIPTION	INVOICE #	AMOUNT	DEDUCTION	NET AMOUNT
09/22/15	CLERK OF COURT, GREENVILLE COUNTY FILING FEE - MOTION TO SATISFY FRAUDULENT TRANS - #9-948.131	9-948.131	25.00		25.00

CHECK DATE 09/22/15	CONTROL NUMBER 44390	TOTALS ► Gross: 25.00 Ded: 0.00 Net: 25.00

PLEASE DETACH THIS REMITTANCE ADVICE BEFORE DEPOSITING CHECK

BRUNER, POWELL, WALL & MULLINS, LLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
P.O. BOX 61110 803/252-7693
COLUMBIA, SC 29260-1110

FIRST CITIZENS BANK
AND TRUST COMPANY OF SOUTH CAROLINA
COLUMBIA, SC
67-604-539

CHECK NO. 44390

DATE 09/22/15 CHECK AMOUNT *****\$25.00

PAY

*** TWENTY-FIVE & 00/100 DOLLARS

TO THE
ORDER
OF:

CLERK OF COURT, GREENVILLE COUNTY
202 COURTHOUSE
305 E. NORTH STREET
GREENVILLE, SC 29601

GENERAL ACCOUNT

William Mullins

Details on back

STATE OF SOUTH CAROLINA	FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL E. WILKINSON	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	2015 OCT 22 PM 12 45	
China Construction America Of South Carolina, Inc.	)	
	)	
Plaintiffs,	)	NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANT TO COMPLY WITH THIS COURT'S ORDER, TO HOLD DEFENDANT IN CONTEMPT OF COURT AND TO IMPOSE SANCTIONS
vs.	)	
MS Production Solutions LLC A/k/a MSPS Steel Fabricators	)	
	)	
Defendants.	)	(Case. NO.: 2014-CP-23-1871)

TO: RHETT BURNEY, COUNSEL FOR DEFENDANT

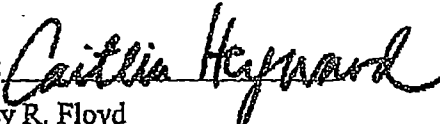
YOU WILL PLEASE TAKE NOTICE that the Plaintiff, China Construction America Of South Carolina, Inc. ("China Construction"), by and through its undersigned counsel, will move before the Greenville County Master in Equity, at the Greenville County Master in Equity's Office, located at 305 East North Street, Greenville, SC, on the tenth (10th) day after service hereof, or as soon thereafter as the Court may schedule, for an Order to Compel the Defendant to comply with this Court's Order issued October 8, 2015 and filed October 13, 2015 ("Order") because the Defendant has failed to recover or turn over any of the \$60,000.00 to Rhett D. Burney to be held in trust. China Construction further moves for an Order to hold Defendant in Contempt of Court and to award sanctions, including but not limited to, attorney's fees and costs of this motion, based upon the Defendant's repeated, willful and intentional failure to comply with the orders of this Court.

The undersigned certifies that she consulted with counsel for the Defendants in a good faith

effort to resolve the subject-matter of this motion prior to filing the same.

An Order was entered on October 8, 2015, directing Defendant to exercise all reasonable efforts to recover the \$60,000.00 transferred to Patricia Sprenger from Defendant's account. (Exhibit A). Defendant was to turn over all funds recovered to Rhett Bruney, Esq., counsel for Defendant, to be held in trust until a judicial determination could be made as to Plaintiff's entitlement to the funds. Counsel for Defendant indicated that Defendant has failed to turn over any monies pursuant to the October 8, 2015 Order because "the Sprengers take the position that the money is theirs." (Exhibit B). By failing to exercise any efforts to recover the transferred monies, Defendant is attempting to substitute its own judgment for the Court's and make its own determination as to who is entitled to the funds transferred from Defendant's account. As such, Defendant is refusing to comply and acting in willful violation of this Court's Order.

BRUNER, POWELL, WALL & MULLINS, LLC

By: 
Joey R. Floyd
Caitlin C. Heyward
1735 St. Julian Place, Suite 200
Post Office Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Attorneys for Plaintiff

October 19, 2015

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
China Construction America of South
Carolina, Inc.,
Petitioner,
v.
MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,
Respondent.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-23-1871

ORDER ON MOTION TO SET ASIDE
CONVEYANCES

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WILKINSON
2015 OCT 13 PM 11:38

This matter came before me on October 2, 2015, 2:00 PM, pursuant to a Motion for Order Setting Aside Fraudulent Conveyances and Executing on Certain Property.

Present at the hearing were Plaintiff's counsel, Caitlin Heyward, and Defendant's counsel, Rhett Burney. This Court heard extensive argument from both lawyers.

BACKGROUND

Petitioner filed this action on April 2, 2014. Petitioner prayed for damages in excess of \$400,000.00 in its Complaint. Respondent did not answer or otherwise respond to Petitioner's Complaint and was held in default. On January 29, 2015, after a damages hearing, the Circuit Court filed an Amended Order of Judgment against Respondent in the amount of \$657,137.30. After commencing these supplemental proceedings, Petitioners maintain that from at least August, 2013 to May 2015, the owner and sole proprietor of MSPS, Manfred Sprenger, wrote numerous checks to his wife, Patricia Sprenger, totaling in excess of \$282,600.00. A Rule to Show Cause and Order of Reference was entered by this Court on May 1, 2015. At the supplemental proceedings hearing held on June 2, 2015, Mr. Sprenger testified that his wife is

not an employee of the company. Notwithstanding being served a copy of the Rule to Show Cause, Petitioner contends that Respondent transferred an additional \$60,000 from the MSPS Bank of America account to Patricia Sprenger on May 27, 2015 in violation of this Court's Order enjoining Respondent from making any transaction or transfer or other disposition of property which is not exempt from execution.

Patricia Sprenger testified at her deposition on September 21, 2015, that she withdrew a substantial portion of the monies transferred to her from MSPS in cash and is storing approximately \$50,000.00 of that money at the home she shares with Manfred Sprenger, the Principal of MSPS. Respondent disputes the characterization of these monies and the availability of the funds, contending they were repayments for un-documented loans made to the LLC:

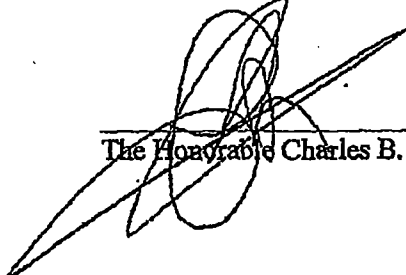
Based on the record before me, arguments by the lawyers and their submitted written materials, I make the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the issues before me and the parties hereto.
2. Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS") has made some amount of cash or check transfers to Patricia Sprenger.
3. Manfred Sprenger, the Principal and Sole Proprietor of MSPS, appears to have some degree of access to the \$50,000.00 in cash transferred from the MSPS account to Patricia Sprenger. However, and important to note, is that neither Manfred Springer nor Patricia Sprenger are parties to this lawsuit.
4. Respondent is reminded that it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any "loans" or "capital contributions" not evidenced by any note or other proper loan documentation.



5. Until a judicial determination can be made as to the fraudulent nature of the transfers, if any, MSPS is directed to exercise reasonable efforts to recover the \$50,000.00 transferred to Patricia Sprenger on May 27, 2015. Whatever such funds are recovered, those funds shall be held in trust at the law office of Turner and Burney, PC on or before October 9, 2015. Further, and while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED.



The Honorable Charles B. Simmons

Greenville, South Carolina

10/8 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2301871

China Construction America Of South Carolina Inc vs. MS Production Solutions LLC

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; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order on Motion to Set Aside Conveyances in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 13th day of October, 2015.

Court Reporter:

PRESIDING JUDGE -

Henry Pickett Wall PO Box 61110 Columbia, SC 29260
Caftlin Creswick Heyward 1735 St. Julian Place, Suite 200 Columbia, SC 29204

Manfred Sprenger MS Production Solutions LLC
233 Beverly Rd Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

EXHIBIT B

Caitlin Heyward

From: rdburney@gmail.com on behalf of Rhett Burney [rdburney@turnerandburney.com]
Sent: Friday, October 16, 2015 8:52 AM
To: Caitlin Heyward
Subject: Re: China/MSPS

It's my understanding the Sprengers take the position the money is theirs. -Have you seen a copy of which order the judge signed?

Rhett D. Burney | Attorney | Turner & Burney, P.C.

628 N.E. Main Street
Simpsonville, SC
p: 864-228-1616 | f: 864-228-6722 | email: rdburney@turnerandburney.com
www.turnerandburney.com

On Fri, Oct 16, 2015 at 8:38 AM, Caitlin Heyward <cheyward@brunexpowell.com> wrote:
Mr. Burney,

Please respond to my inquiry regarding the status of the funds in trust.

Sent from my iPhone

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 13th JUDICIAL CIRCUIT
FILED - CLERK OF COURT)
GREENVILLE) CASE NO.: 2014-CP-23-1871
PAUL B. WICKENSIMER)
China Construction America Of South) MOTION AND ORDER INFORMATION
Carolina, Inc.)
2015 OCT 22 PM 12 45)
Plaintiff,) FORM AND COVERSHEET
vs.)
MS Production Solutions LLC a/k/a MSPS)
Steel Fabricators)
Defendant.)

Plaintiff's Attorney: Caitlin C. Heyward, Bar No. 101158 Address: 1735 St. Julian Place, Suite 200 P.O. Box 61110 Columbia, SC 29260 Phone: (803) 252-7693 Fax _____ E-mail: cheyward@brunerpowell.com Other: _____	Defendant's Attorney: Rhett D. Burney, Bar No. _____ Address: 628 NE Main Street Simpsonville, SC 29681 Phone: 864-228-1616 Fax _____ E-mail: rdburney@turnerandburney.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to compel, to hold defendant in contempt of court and to impose sanctions Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 10/19/2015 Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, 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

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) S.C. Civil Action No.: 2014-CP-23-1871

China Construction America
of South Carolina, Inc. 2015 OCT 22 PM 12 45

Plaintiffs,

v.

CERTIFICATE OF SERVICE

MS Production Solutions LLC
a/k/a MSPS Steel Fabricators

Defendants.

I, Annie Rich, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on this 19th day of October, 2015, I served the Notice of Motion and Motion to Compel Defendant to Comply with This Court's Order, to Hold Defendant in Contempt of Court and to Impose Sanctions upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rhett Burney, Esquire
Turner & Burney
628 N.E. Main Street
Simpsonville, SC

Annie Rich
Annie Rich

Columbia, South Carolina

BRUNER, POWELL, WALL & MULLINS, LLC

JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III

* Of Counsel
** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: ARICH@BRUNERPOWELL.COM

October 19, 2015

Via U.S. Mail

The Honorable Charles B. Simmons, Jr.
Greenville County Master in Equity
305 East North Street, Suite 313
Greenville, SC 29601

RECEIVED

OCT 21 2015

GREENVILLE COUNTY
MASTER IN EQUITY

Re: China Construction America of S.C., Inc. v. MS Production Solution, LLC
C/A No.: 2014-CP-23-1871
Our File No.: 9-948.131

Dear Judge Simmons:

Enclosed please find an original and one (1) copy of the *Notice of Motion and Motion to Compel Defendant to Comply with this Court's Order, to hold Defendant in Contempt of Court and to Impose Sanctions*, and a \$25.00 check made payable to the Greenville County Master-in-Equity. I ask that you return one filed copy to me in the envelope provided.

Thank you for your attention to this matter. If you should have any questions, please do not hesitate to call me.

With my kindest regards, I am,

Sincerely,

Annie Rich

Annie Rich

Legal Assistant to Caitlin C. Heyward

CCH/ar

Enclosures

CC: Rhett Burney, Esquire
Pei Tang

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
China Construction America of South)
Carolina, Inc.,)
Petitioners,)
v.)
MS Production Solutions, LLC a/k/a)
MSPS Steel Fabricators,)
Respondents.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-23-1871

**NOTICE OF MOTION AND
MOTION TO JOIN PARTIES**

FILED
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 OCT 12 PM 2:07

The Petitioner, China Construction America of South Carolina, Inc. ("China Construction"), by and through its undersigned counsel, hereby gives notice that it will move on the tenth (10th) day after service hereof, or at such time thereafter as the Court schedules, before The Honorable Charles B. Simmons, Master-In-Equity for Greenville County, 305 E. North Street, Greenville, South Carolina, for an order pursuant to Rule 19, SCRCF, joining Manfred Sprenger and Patricia Sprenger as parties to these Supplemental Proceedings because they are indispensable parties for the purpose of adjudicating Petitioners' claims that the Respondents made transfers of monies which should be set aside pursuant to South Carolina law. The grounds for the motion are as follows:

(1) On July 31, 2014, an Order of Default was entered against Respondent MS Production Solutions, LLC a/k/a MSPS Steel Fabricators ("MSPS").

(2) After granting Petitioner's motion for damages hearing, the court entered an Amended Order of Judgment against MSPS in the amount of \$657,137.30 on January 29, 2015.

(3) Petitioner's judgment was recorded against Respondent, and the Respondent has not made any payments toward the Judgment.

(4) Execution has been issued to the Sheriff of Greenville County against Respondents and the writ has been returned same NULLA BONA.

(5) This Court held a hearing in these Supplemental Proceedings on June 2, 2015, during which Manfred Sprenger testified on behalf of MSPS.

(6) During the hearing, Manfred Sprenger testified that he transferred \$7,000 monthly to his wife, Patricia Sprenger, for no consideration from the MSPS company bank account.

(7) In addition, a subpoena of the bank records of MSPS revealed that Manfred Sprenger transferred substantial additional amounts of money in the form of checks made payable to the Patricia Sprenger, all of which were deposited and withdrawn in cash from the personal joint bank account of Manfred and Patricia Sprenger.

- a. The transfers to Patricia Sprenger are in excess of \$282,600.00.
- b. Many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed.
- c. Notably, on May 27, 2015, Respondent transferred \$60,000.00 in the form of a check made payable to Patricia Sprenger, after Respondent was served with a Rule to Show Cause on May 13, 2015, enjoining Respondent from transferring the company assets.
- d. Patricia Sprenger testified during her deposition on September 21, 2015 that she still has \$50,000.00 of the May 27, 2015 transfer in cash in her home.
- e. Even in the face of the Rule to Show Cause, Respondent continued to write additional monthly checks to Patricia Sprenger without consideration.

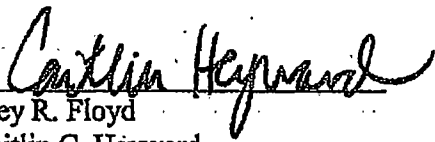
(8) Petitioners are informed and believe all of the transfers set forth above should be set aside pursuant to the Statute of Elizabeth, S.C. Code Ann. § 27-23-10(A) (2007), and other applicable law.

(9) The proposed Respondents/additional parties are citizens of Greenville County, South Carolina.

(10) Because Plaintiff's motion to set aside fraudulent transfers, filed on September 23, 2015, seeks an order setting aside the transfers of property described above, the relief sought (i.e., the return of the property to the judgment debtors) cannot be accorded among those already parties to these proceedings. Petitioners are informed and believe the proposed Respondents claim an interest in the property transferred and that the disposition of the action in their absence may (i) as a practical matter impair or impede their ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

WHEREFORE, Petitioners pray that the Court issue an order joining Manfred Sprenger and Patricia Sprenger as Respondents to these proceedings.

BRUNER, POWELL, WALL & MULLINS, LLC


Joey R. Floyd
Caitlin C. Heyward
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693
Attorneys for Petitioner

October 6, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

China Construction America Of South Carolina, Inc.)

☒ Plaintiff)

v.)

Ms Production Solutions Llc A/K/A Msps Steel)

Fabricators)

☐ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-23-1871

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
CLERK OF COURT
GREENVILLE, S.C.
PAUL A. WOODENSIEMER
OCT 12 PM 2 07

Plaintiff's Attorney:

Caitlin Creswick Heyward, Bar No. 101158

Address:

PO Box 61110, Columbia, SC 29204

phone: 803-252-7693 fax: 803-254-5719

e-mail: cheyward@brunerpowell.com other:

Defendant's Attorney:

N/A, Bar No.

Address:

phone:

fax:

e-mail:

other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Join Parties

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Caitlin Heyward
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 6, 2016

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00 to the clerk of court

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 China Construction America of South)
 Carolina, Inc.,)
)
 Petitioners,)
)
 v.)
)
 MS Production Solutions, LLC a/k/a)
 MSPS Steel Fabricators,)
)
 Respondents.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-23-1871

CERTIFICATE OF SERVICE

FILED-C
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 OCT 12 PM 2 07

I, Annie Rich, an employee of Bruner, Powell, Wall & Mullins, LLC, do hereby certify that on this 6th day of October, 2015, I served the attached **NOTICE OF MOTION AND MOTION TO JOIN PARTIES** in the above-referenced case upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rhett Burney, Esquire
 Turner & Burney
 628 N.E. Main Street
 Simpsonville, SC
Attorneys for the Respondent

Ms. Patricia Sprenger
 307 Shagbark Circle
 Simpsonville, SC 29680
VIA CERTIFIED MAIL

Mr. Manfred Sprenger
 307 Shagbark Circle
 Simpsonville, SC 29680
VIA CERTIFIED MAIL

Annie Rich
 Annie Rich

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
China Construction America of South Carolina, Inc.,	)	
Petitioner,	)	NOTICE OF MOTION AND MOTION TO ALTER OR AMEND
v.	)	
MS Production Solutions LLC a/k/a	)	
MSPS Steel Fabricators, Manfred	)	
Spenger and Patricia Sprenger	)	
Respondent.	)	

TO: DEFENDANT AND HIS ATTORNEY.

PLEASE TAKE NOTICE that Petitioner, through its undersigned counsel, will move before the Honorable Charles B. Simmons, Master-In-Equity for Greenville County, at the Greenville County Courthouse, ten (10) days from the service hereof or at such other time and place as may be designated by the Court, for an Order of the Court, pursuant to Rule 59(e), SCRCF, altering or amending that certain Decree of the Honorable Charles B. Simmons, in the above-captioned action dated June 7, 2016 (a copy of which is attached hereto) and received by Petitioner's Counsel by electronic notification on June 7, 2016.

Petitioner will move that the Order on Motion to Set Aside Fraudulent Conveyances be altered or amended upon the following grounds:

1. The Court erred in finding the transfers from the Defendant MS Production Solutions, LLC to Manfred Sprenger were not fraudulent transfers within the meaning of §27-23-10.
2. The Court erred in limiting Petitioner's recovery to fraudulent transfers dating from April 2, 2014, the date the lawsuit was filed, through December 24, 2015.
3. The Court erred in limiting Petitioner's recovery to transfers made from MS Production

Solutions, LLC to Patricia Sprenger from April 2, 2014, the date the lawsuit was filed, to December 24, 2015.

4. The Court failed to identify the "unique facts" that justify limiting recovery of the fraudulent transfers prior to the date of this lawsuit.
5. The Court failed to make a determination that there is no perfected security interest in the cash Patricia testified is in her home pursuant to S.C. Code § 36-9-104.
6. The Court failed to make a determination that there is no perfected security interest in the deposit accounts of Defendant MS Production Solutions, LLC pursuant to S.C. Code § 36-9-104.
7. The Court failed to make a determination that Petitioner is entitled to execute upon the deposit accounts of Defendant MS Production Solutions, LLC.
8. The Court failed to consider that Ms. Sprenger was made a party to this lawsuit and was aware of the judgment against MS Production Solutions at the time she accepted many of the fraudulent transfers. Petitioner is not obligated to chase down money fraudulently obtained by Patricia Sprenger or determine whether Patricia Sprenger is still in possession of the money.
9. Petitioner is entitled to a judgment against Ms. Sprenger should she not repay all monies owed within thirty (30) days of this Court's Order or within a reasonable time as the Court may require.

[SIGNATURE PAGE TO FOLLOW]

BRUNER POWELL WALL & MULLINS, LLC

BY: s/s Caitlin Creswick Heyward
Henry P. Wall
Caitlin Creswick Heyward
Robert C. Osborne
1735 St. Julian Place, Suite 200 (29204)
P.O. Box 61110
Columbia, SC 29260
(803) 254-7693

Date: June 16, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2014-CP-23-1871
	)	
China Construction America of South	)	
Carolina, Inc.,	)	
	)	
	)	MOTION TO RECONSIDER,
Plaintiff,	)	ALTER OR AMEND
	)	PURSUANT TO RULE 59(e),SCRCP
	)	
v.	)	
	)	
MS Production Solutions LLC a/k/a	)	
MSPS Steel Fabricators, Manfred	)	
Sprenger, and Patricia Sprenger	)	
	)	
Defendants.	)	

TO THE HONORABLE CHARLES B. SIMMONS, JR.:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorney, hereby move before the Presiding Charles B. Simmons, Jr. Master in Equity, Thirteenth Judicial Circuit, for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure reconsidering, altering, or amending the Order Setting Aside Fraudulent Conveyances recorded in the Greenville County Clerk of Court's office on June 7, 2016. A copy of the Order Setting Aside Fraudulent Conveyances is attached and incorporated herein by reference.

Defendants ask that the court reconsider, alter, and/or amend the Order Setting Aside Fraudulent Conveyances based upon the following grounds:

1. The Honorable Trial Court erred in finding that the checks written to Patricia Sprenger by MS Production Solutions LLC (hereinafter referred to as "MSPS") from April 2, 2014 through December 24, 2015 as shown on Attachment "A" of the order were a fraudulent conveyance.
2. That the Honorable Trial Court erred in finding that the checks written to Patricia Sprenger by MSPS from April 2, 2014 through December 24, 2015 lacked consideration.

3. That the Honorable Trial Court erred in finding that the checks written to Patricia Sprenger by MSPS from April 2, 2014 through December 24, 2015 lacked consideration when the evidence showed that such payments were actually salary payments for her husband, Manfred Sprenger.
4. The Honorable Trial Court erred in ordering that the \$8,000.00 held in trust by Defendants' attorney be paid to the Plaintiff.
5. The Honorable Trial Court erred in ordering that the \$8,000.00 held in trust be paid to Plaintiff rather than returned to Manfred Sprenger.
6. The Honorable Trial court erred in failing to find that the payments made to Patricia Sprenger by MSPS were actually payments for Manfred Sprenger's salary when such payments were taxed as Manfred Sprenger's income per his accountant.
7. The Honorable Trial court erred in finding that there was no valuable consideration for the payments made to Patricia Sprenger, even though both Manfred Sprenger, Patricia Sprenger, the accountant, and MSPS's historical pay schedule supported the position that the payments were for Manfred Sprenger's salary.
8. The Honorable Trial court erred in allowing Patricia Sprenger's assets to be used to repay the money she received from MSPS without Patricia being served any pleadings putting her on notice that such was being requested by the Plaintiff.
9. The Honorable Trial court erred in requiring Patricia Sprenger to return \$221,592.84 (or that her assets be used to satisfy the \$221,592.84 she received from MSPS.)
10. The Honorable Trial court erred in requiring Patricia Sprenger to return any money (or requiring that her assets be taken) to satisfy the \$221,592.84 she received from MSPS when she was never put on notice of the litigation pending between China and MSPS,

nor was she informed that the money she was receiving from MSPS could be ordered to be returned.

11. The Honorable Trial court erred in requiring Patricia Sprenger to return the money (or that her assets be used to satisfy the \$221,592.84 she received from MSPS) that she received from MSPS beginning April 2, 2014 when no evidence was presented to show when the contract dispute between China Construction and MSPS began.
12. The Honorable Trial court erred in requiring Patricia Sprenger to return the money that she received from MSPS beginning April 2, 2014 (or that her assets be used to satisfy the \$221,592.84 she received from MSPS) when no evidence was presented to show when MSPS breached its contract with the Plaintiff.
13. That the Honorable Trial court erred in requiring Patricia Sprenger to return the money she was paid by MSPS (or that her assets be used to satisfy the \$221,592.84 she received from MSPS) without first having an action filed against her by a receiver as required by S.C. Code Section 15-39-460.
14. That although the Honorable Trial Court found that its order was not a judgment against Patricia Sprenger, the order has the erroneous effect of a judgment as it authorizes Patricia Sprenger's assets to be seized in order to repay the money transferred to her by MSPS.
15. That the Honorable Trial Court erred by excluding a finding from its order that MSPS is insolvent.

Respectfully submitted,

TURNER & BURNEY, P.C.

/s/ Rhett D. Burney
Attorney for Defendants
628 NE Main Street
Simpsonville, SC 29681
Ph.: (864) 228-1616
Fax: (864) 228-6722
Email: rdburney@turnerandburney.com

APPENDIX 293

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of
South Carolina, Inc.,
Plaintiff,

vs.

MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,
Defendant.

TRANSCRIPT OF TESTIMONY

June 2, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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

Caitlin Creswick Howard, Esquire
Joey R. Floyd, Esquire
Attorneys for the Plaintiff

Rhett D. Burney, Esquire
Attorney for the Defendant

Wanda E. Fudge, CCR
Court Reporter

1 BY THE COURT: Y'all ready to move into testimony?

2 MR. FLOYD: Yes, Your Honor. May it please the Court.

3 BY THE COURT: For the record, this is 2014-1871, China
4 Construction versus MS Production. Here today on supplemental
5 proceedings.

6 And the original judgment was a little over \$657,000.00,
7 correct?

8 MR. FLOYD: Yes, Your Honor.

9 BY THE COURT: Has any portion of that been paid or credited?

10 MR. FLOYD: None, Your Honor.

11 BY THE COURT: Okay. All right. Anything before your client
12 comes around?

13 MR. BURNEY: No, sir.

14 BY THE COURT: All right. Sir, if you would come around to
15 the witness stand and bring any documents you might have with
16 you.

17 **MANFRED SPRINGER**, BEING FIRST DULY SWORN, TESTIFIED AS
18 FOLLOWS:

19 BY THE COURT: If you'll state your full name.

20 THE WITNESS: Manfred Springer.

21 BY THE COURT: Mr. Springer, what is your capacity with MS
22 Production Solutions, LLC?

23 THE WITNESS: Owner/President.

24 BY THE COURT: All right. Thank you, sir.

25 MR. FLOYD: May it please the Court, Your Honor?

1 BY THE COURT: Yes, sir.

2 DIRECT EXAMINATION BY MR. FLOYD:

3 Q Mr. Springer, my name is Joey Floyd, and I represent the
4 Plaintiff in this case, China Construction America of South
5 Carolina, Inc. I'm going to be asking you a series of questions
6 about your assets here today. Some of these documents you may
7 have there in front of you, some of them I may have here. We'll
8 try to work as best we can with these exhibits if that's okay
9 with you.

10 Can you tell me who the members of MS Production Solutions,
11 LLC are?

12 A It's just me.

13 Q Just you. And does MS -- I'm going to call it MSPS. Does
14 that suit you?

15 A That's shorter and easier.

16 Q Yeah. So, when I refer to MSPS today, I'm going to be
17 talking about MS Production Solutions, LLC.

18 A I understand.

19 Q Does MSPS do business as any different trade names?

20 A When MSPS Production Solution purchased the company in 2007,
21 the company name was Zabel Steel or D.P. Dillon and they did
22 business under Zabel Steel. That was the original company owner.
23 So, I did all of the d/b/a as Zabel Steele.

24 Q All right. Do you also do business as MSPS Steel
25 Fabricators?

1 A No. It's just called -- since it's shorter, it's just
2 easier--

3 Q MSPS?

4 A --to say MSPS.

5 Q All right. You have produced a spreadsheet showing various
6 equipment. Are you familiar with that?

7 A Yes.

8 Q Does MSPS own all of that equipment?

9 A MSPS does own all of that or Small Business Loan does.

10 Q Is there a loan that you're talking about?

11 A It's a small business loan when I purchased the company.

12 Q And who is that small business loan through?

13 A Right now -- it has been sold a couple of time as is usually
14 the case -- but right now it's First Bank out of St. Louis.

15 MR. FLOYD: Presumably, that's the information that I didn't
16 get?

17 MR. BURNEY: Yeah. I've got---

18 MR. FLOYD: That's fine. We'll probably continue it.

19 MR. BURNEY: All right.

20 Q Now, tell me about this small business loan here. Is it --
21 do they have a Security Agreement in all of this stuff?

22 A Yes, sir.

23 Q Is there a filed UCC as well?

24 A Oh, God! There were so many documents signed. I know there
25 was personal security and all of that as small business loans

1 work, I guess.

2 Q Are you current on the loan today?

3 A Yes. May I say something?

4 Q Sure.

5 A It just was reduced, agreed by First Bank, to a lesser
6 amount for the balance of the year due to economy. That's a
7 monthly amount.

8 Q What's your monthly obligation?

9 A \$5,500 at this point.

10 Q How much was it before it was reduced?

11 A \$14,500. I don't -- that's just rough numbers. It's not to
12 the decimal.

13 Q Roughly \$14,000?

14 A Yeah, yeah.

15 Q But nowadays, it's down to \$5,500?

16 A \$5,500.

17 Q And where would you have been paying this loan out of? What
18 bank account?

19 A Bank of America.

20 Q All right. Tell me about the loan that the SBA -- you call
21 it a SBA loan?

22 A Yes.

23 Q Does it have a mortgage on a building as well?

24 A It has everything: receivables, property, the building, the
25 equipment, everything.

1 Q Okay. We'll go through that when we get to it. All right.

2 So, you bank with Bank of America?

3 A Yes, sir.

4 Q You have a checking account there, right?

5 A Yes, sir.

6 Q Do you have any other banking relationships?

7 A Currently?

8 Q Right.

9 A MSPS? No.

10 Q How about you individually?

11 A Me?

12 Q Where do you bank, individually?

13 A It's MSPS, right, who's on trial here or is that relevant
14 where I bank individually?

15 Q Yes, sir. I think it is.

16 THE WITNESS: It is?

17 BY THE COURT: Mr. Springer, you have a very fine lawyer. If
18 he objects, then he's going to tell me he objects. We'll leave
19 the lawyering up to them today. Okay?

20 THE WITNESS: Okay. All right.

21 A It's First Citizens.

22 Q First Citizens Bank?

23 A Yeah.

24 Q Do you keep your personal account separate from your
25 business account?

APPENDIX 299

- 1 A Yeah.
- 2 Q How much do you pay yourself a month?
- 3 A \$7,000.
- 4 Q Do you take any of your business money that you receive and
5 put it in First Citizens Bank?
- 6 A I pay a bonus occasionally or if I put money back into the
7 business, which obviously has to happen to pay the bills
8 occasionally, then I take that money back out again later. Yes.
- 9 Q All right. That was probably not a good question that I
10 asked. I'm going to ask again. Do you take receivables that you
11 get from third parties and put that money in First Citizens Bank?
- 12 A No, sir.
- 13 Q Have you ever done that?
- 14 A No, sir.
- 15 Q You were just talking about some loans, that you loaned the
16 company money from time to time?
- 17 A Yes, sir.
- 18 Q Do you sign notes when you do that?
- 19 A No.
- 20 Q Do you just transfer money---
- 21 A I just transfer a check from First Citizens into the Bank of
22 America account, and then later I take it out again.
- 23 Q Do you write checks or do you do wire transfers?
- 24 A Checks.
- 25 Q So, all of those types of loans would be -- I would see

1 evidence of checks?

2 A Yes, sir.

3 Q When was the last time you loaned the company money?

4 A I'm guessing, but I think it was about February of this
5 year.

6 Q And has the company paid you back?

7 A The company paid me back.

8 Q How much did you loan the company?

9 A \$40,000.

10 Q How often do you do these types of loans on an annual basis?

11 A Maybe once a year.

12 Q So, if I see a -- I'll see \$7,000 checks written from Bank
13 of America to you personally?

14 A Uh-huh (affirmative).

15 Q And they'll be a handwritten check, right?

16 A No, a printed check.

17 Q A printed check, but you will deposit that in First
18 Citizens?

19 A That's correct.

20 Q Do you pay yourself bonuses, you say?

21 A Occasionally, yes.

22 Q How do you determine how much the bonuses are?

23 A It's -- if there is money which I can spare from the
24 company, I just -- because I don't pay myself salary. I pay to
25 my wife. And those bonuses are just maybe \$20,000 for me when I

APPENDIX 301

1 can afford it as a company.

2 Q Whenever you do good on a job or something like that?

3 A Yeah.

4 Q Kick yourself some money? Is that what you'll do?

5 A Yeah.

6 Q About how often do you do that?

7 A Recently -- the last couple of years, not because we all
8 know the economy was bad. The last three months I even didn't
9 write my wife a check because there was no -- that's why I had to
10 borrow the money to the company to be able to pay the current
11 bills.

12 Q What's your wife's position with the company?

13 A None. She's my wife. She helps out at the office
14 occasionally, yes.

15 Q But she's not an employee?

16 A She's not an official employee on the payroll.

17 Q But you make the checks payable to your wife?

18 A Yeah.

19 Q On a monthly basis?

20 A Yeah.

21 Q When do you typically pay that \$7,000 to your wife: first
22 of the month, end of the month?

23 A It varies, whenever -- I like to do it at the end of the
24 month but since general contractors' checks usually come in at
25 the end of a month, and we know how reliable they are, it might

1 be middle of next month when I can pay her.

2 Q All right. Does MSPS have any other bank accounts besides
3 this one bank account at Bank of America?

4 A No.

5 Q No payroll account?

6 A No.

7 Q Everything is done out of the single---

8 A Yes, yes.

9 Q How many employees does MSPS have?

10 A Six.

11 Q By my calculations, you've gone through about \$300,000 over
12 the past year in your bank account? Does that sound about right,
13 from deposits?

14 A Deposits and bill payments, yeah, that sounds about right.

15 Q How much do you have in your account today?

16 A As of today? \$16,000 or \$17,000.

17 BY THE COURT: And this is the corporate account, correct?

18 THE WITNESS: Yes, Your Honor.

19 Q We're talking about your---

20 A Yes, Bank of America, MS Production account.

21 Q Does MSPS have credit cards?

22 A Yes.

23 Q Where are the credit cards? Discover, Visa?

24 A Oh, Visa.

25 Q All Visa cards?

APPENDIX 303

1 A American Express.

2 Q So, you have a Visa card and an American Express card?

3 A Yes, sir.

4 Q Are those strictly used for business purposes?

5 A Mainly, yes.

6 Q Are there any personal expenses on those?

7 A No.

8 Q All right. Does MSPS own any vehicles?

9 A No.

10 Q Has it owned any vehicles?

11 A At the time when I bought the company, it owned four
12 vehicles. They are very old and not functioning anymore.

13 Q Did you sell them?

14 A They're out in the yard.

15 Q Are they running?

16 A No.

17 Q Did you just quit using them?

18 A Yes. Well, maybe I need to explain a little bit because
19 when I bought the company, this company made exclusively stairs
20 and rails, and they delivered their own material to job sites. I
21 changed the company to structural steel company, and I use
22 subcontractors to ship the material, trucking companies.

23 Q Do you have a particular trucking company that you use all
24 of the time?

25 A One is called Plumley, the other one is called STi. STi,

1 yes. There's three or four.

2 Q Of your main go-to carriers that you use?

3 A Yeah. Well, we get the prices to compare.

4 Q All right. Does MSPS own any trucks?

5 A No.

6 Q Does it deliver any of its own stuff?

7 A Yes. I did in the back of my truck.

8 Q In your truck?

9 A Yeah.

10 Q But you own your truck personally?

11 A Uh-huh (affirmative).

12 Q Does the company---

13 THE COURT REPORTER: Is that a yes?

14 THE WITNESS: Yes. I'm sorry. Yes.

15 Q We have to answer verbally so she can pick up the answers.

16 A I understand.

17 Q She's been incredibly patient. Usually they yell at you
18 whenever you answer too many times nonverbally.

19 A You know, the habit is huh-huh, no, uh-uh---

20 Q That's what we do in everyday conversation. Does MSPS have
21 any trailers that it uses?

22 A No, sir.

23 Q So, all of this hauling is subcontracted out?

24 A Yes, sir.

25 Q Does the company pay for your vehicle?

1 A No, sir.

2 Q Does the company give you a vehicle stipend?

3 A No, sir.

4 Q Does it give anybody a vehicle stipend?

5 A No, sir.

6 Q Does your company -- or does the company pay for your wife's
7 vehicle?

8 A No, sir.

9 Q Anybody's vehicle?

10 A No, sir.

11 Q Does the company have a 401(k) program?

12 A No, sir.

13 Q Does it have any stocks?

14 A No, sir.

15 Q Does it have any money market accounts?

16 A No, sir.

17 Q Has it contributed any money to any retirement account?

18 A No, sir.

19 Q IRAs and that sort of stuff?

20 A No, sir.

21 Q Do you have an IRA?

22 A No, sir.

23 Q Does your wife have an IRA?

24 A No, sir.

25 Q Do you have any retirement funds at all?

1 A No, sir, the company.

2 Q The company is your anticipated retirement?

3 A Yes, sir.

4 Q How much do you currently owe on the small business loan?

5 A It's definitely a million, fifty-one I believe.

6 Q A million dollars?

7 A \$1,051,000.

8 Q And it has a mortgage on the building; is that right?

9 A It has what?

10 Q Does it have a mortgage on a building?

11 A Yes.

12 Q That you own?

13 A Yes.

14 Q So, MSPS owns the building?

15 A No, no, no. Well, the building on the property, yes. MSPS

16 does not own a building.

17 Q Who owns the building?

18 A What building are you referring to?

19 Q You indicated to me earlier, just a few minutes ago, that

20 this small business loan has a mortgage on some property. Does

21 MSPS own any land?

22 A The land which the fabrication shop is on, yes.

23 Q Okay.

24 A But that's owned by a small business loan.

25 Q Whose name is the property titled in?

1 A MS Production Solution.

2 Q LLC?

3 A Yes.

4 Q It's in the name of the LLC?

5 A Yes.

6 Q However, the bank has a lien against the mortgage?

7 A That's correct.

8 Q What's the value of that property?

9 A I think this year's tax value was \$225,000.

10 Q Is there a building on it as well?

11 A Yes.

12 Q Have you had it appraised recently?

13 A No, sir.

14 Q When was the last time you had it appraised?

15 A Small business loan dated 2007.

16 Q What was the appraised value?

17 A Land and building, \$280,000 it says right here. I have it

18 right in front of me.

19 Q Is there any additional collateral that secures that loan

20 beyond the land?

21 A Equipment.

22 Q The equipment?

23 A Yes, sir.

24 Q Is there any other collateral?

25 A No, sir.

1 Q Did you pledge your house, your personal residence?

2 A The equity in the house, yes.

3 Q They have a second mortgage on your home?

4 A Second mortgage on my house, yes.

5 Q How much is the second mortgage?

6 A There is no second mortgage. I don't know how that works,

7 but we had to -- we have a first mortgage with Wells Fargo, and I

8 bought the house for \$425,000. I think -- this might not be

9 accurate, but Wells Fargo account is about 350. So, whatever the

10 difference from the resale value, I would guess would go to small

11 business loan.

12 Q So, you write Wells Fargo a check every month for your

13 personal residence?

14 A Yes, sir.

15 Q And is that personal residence titled in your name?

16 A Yes, sir.

17 Q Or is it in your wife's name?

18 A My name.

19 Q Exclusively your name?

20 A I really don't recollect.

21 Q Okay. Does MSPS pay your mortgage for you?

22 A No, sir.

23 Q It's paid out of your personal account?

24 A Yes, sir.

25 Q How much is your mortgage payment every month?

APPENDIX 309

1 A Oh, I don't know. My wife does it every month. I really
2 don't know. I think it's around \$2,000 but, again, I don't write
3 that check. My wife does it.

4 Q Is the account that you put your paycheck in that is written
5 to your wife, is that in your name or in your wife's name?

6 A In mine and my wife's.

7 Q It's a joint account?

8 A Yes.

9 Q Do you have any other banking relationships besides the
10 banking relationship that you have with First Citizens
11 personally?

12 A Me?

13 Q Yes.

14 A I don't think so. I wouldn't -- no.

15 Q Do you have a bank account at Wells Fargo?

16 A Yes. Well, no bank account, the mortgage account.

17 Q Do you have -- sometimes they will require you to open an
18 account---

19 A No. We have no bank account there.

20 Q So, to the best of your knowledge, as you sit here today,
21 the only personal bank account that you have is an account at
22 First Citizens?

23 A Yes.

24 Q Do you also have a savings account at First Citizens,
25 personally?

1 A Personally, no.

2 Q Does MSPS have a savings account somewhere?

3 A No.

4 Q Okay. All right. Let's talk about your jobs right now.

5 What active jobs does MSPS have today?

6 A Currently, we are working on a movie theater in North
7 Augusta. It's 80 percent complete. And the next project -- and
8 again, I don't know for sure because general contractors are very
9 unreliable when it comes to their schedule -- should be in
10 Brevard, a housing building. And then after that, we have a
11 hotel, a Hyatt, in Flexport, Virginia. That's it.

12 Q So, you currently have three projects?

13 A Working on one. I only can work one after the other. I'm a
14 small company.

15 Q So, you are currently working on the movie theater?

16 A Yes, sir.

17 Q But you haven't started the two: the Brevard housing project
18 nor the hotel in West Virginia, right?

19 A Which, as I said, Brevard housing should start towards the
20 end of June and then the hotel some time in August.

21 Q All right. So, how much is your receivable on the movie
22 theater project? How much are you owed?

23 A How much -- do I what now?

24 Q How much is MSPS owed on the movie theater?

25 A \$100,000.

APPENDIX 311

1 Q All right. What else are you owed money on or what else is
2 MSPS owed money on?

3 A Do we want to go back a couple of years?

4 Q Well, let's start with the most current outstanding
5 receivable and we'll---

6 A Currently, it's just for the approval drawings for the next
7 project, Brevard, since the drawing is coming close. So, that is
8 currently \$8,000 for the Brevard project for drawings which we
9 made already for approval.

10 Q And the general contractor on that project is Brantley
11 Construction; is that right?

12 A Yes, sir.

13 Q Who's the general contractor on the movie theater?

14 A Pinkerton & Law out of Atlanta.

15 Q All right.

16 A Now, we want to go back to what is owed to MSPS?

17 Q On the hotel in West Virginia, are you owed any money on
18 that at this point in time?

19 A No.

20 Q Okay. So, yes, let's work backwards, the most recent
21 receivable and work backwards.

22 A Yeah. Well, in 2011 a general contractor didn't pay MSPS
23 \$550,000.

24 Q Who?

25 A D.S. Simmons out of North Carolina. In 2012, a general

1 contractor didn't pay MSPS \$75,000, and the project manager sat
2 across the table at the meeting and said, "Manfred, what you
3 going to do, sue me over \$75,000? The lawyers cost you more."

4 Q Who is that?

5 A Out of Winston Salem. I forgot the name, but I can get you
6 that name.

7 Q Did you sue them?

8 A Why do you think I did not hire a lawyer when it came to
9 China Construction? I went to lawyers and they told me that they
10 want \$30,000 check right upfront so they could start looking into
11 the case, and I couldn't afford that at that time.

12 Q Okay.

13 A It's that simple.

14 Q So, that's two receivables. Did you have more receivables?

15 A Over the many years, yes. And it's always smaller amounts,
16 and the general contractors tell you straight into your face,
17 "Manfred, that's what we billed into our profit already."

18 Q Do you have some sort of report that you can run that will
19 show me the receivables?

20 A The old ones?

21 Q Yes.

22 A Those old -- yeah.

23 Q 2012, 2013, 2014?

24 A There was even a court here -- a court case with D.S.
25 Simmons for \$550,000.

1 Q Who is MSPS' insurance agent?

2 A What insurance are you referring to?

3 Q All insurance.

4 A Worker's comp and liability?

5 Q Yes.

6 A Oh my goodness!! Is it State? No---

7 Q IPF Corporation, IPFS Corporation?

8 A Yeah, I think.

9 Q What are they supplying you with?

10 A Worker's comp and liability insurance. It's a program out
11 of Columbia.

12 Q Okay. Do you have other insurance that you use?

13 A No.

14 Q Who insures your property or MSPS's property for casualty
15 insurance such as fire, flood, that sort of stuff?

16 A That's liability insurance I would think?

17 Q That's a general liability policy, but I don't know --
18 that's a property and casualty. Do you have an insurance agent
19 that you use--

20 A Yes.

21 Q --to help you with that? Who is that?

22 A The one I just referred to, I have to give you the name.
23 He's out of Columbia. I didn't know that I -- Rhett, did I give
24 you that information? I don't think so.

25 Q Are you doing something right now for Benning Construction

1 Company?

2 A Yeah. That's the movie theater in North Augusta.

3 Q I see a recent invoice in here for about \$166,000?

4 A That's correct.

5 Q So, it's not \$100,000? That should be \$166,000?

6 A No. That's paid and the invoices have been, the material
7 that was paid about a week ago and I paid all of the material
8 with that. And the \$100,000 that I referred to was what still
9 open--

10 Q They still owe you? ...

11 A --on that project and I billed just now for the stairs which
12 \$35,000 and I have to bill, because the materials just came in,
13 for two big material which is another \$30,000, and then I will
14 have to bill for the seating area steel which is about \$40,000.

15 Q So, as you sit here today, this invoice is dated 4/24/2015
16 for \$166,695.57, you're telling me you've been paid that money?

17 A Yes, sir.

18 Q Okay. Where did you deposit that money?

19 A I didn't deposit in the full amount because they paid me as
20 the truckloads got billed. So, that bill got split up into four
21 different payments so that the total then ended up being
22 \$166,--- yes.

23 Q Sometime between April 24, 2015 and today's date, we should
24 see four deposits or four checks from Benning Construction
25 totaling \$166,000?

1 A Yes.

2 Q Would that money have been deposited into MSPS's bank
3 account at Bank of America?

4 A Yes, sir.

5 BY THE COURT: Mr. Floyd, just for time management, the
6 matter was only set for thirty minutes. I've got other matters
7 at 3:00.

8 MR. FLOYD: I was keenly aware of that.

9 BY THE COURT: All right.

10 MR. FLOYD: That's why -- did you see me check the time just
11 a few minutes ago?

12 BY THE COURT: I didn't see that.

13 MR. FLOYD: I did. I checked the time just to make sure. I
14 thought that it was---

15 BY THE COURT: Good lawyers normally do. So, I appreciate
16 that.

17 Q Are you familiar with a set of post-judgment interrogatories
18 and Requests for Production being served upon you?

19 A No.

20 Q Did you get served a packet for this hearing?

21 A Oh, yes, sir. Yes.

22 Q Did you read all of that stuff?

23 A Yes, sir and then I met with my counsel.

24 Q Okay. So, you gave him whatever it was that you had, right?

25 A Yes.

APPENDIX 316

1 Q Okay.

2 A As far as I am aware, yes.

3 Q You said the package that you were served with providing you
4 with notice of the hearing, you gave all of that stuff to your---

5 A Yes.

6 Q So, your lawyer should have it. If he doesn't, I'll make
7 sure he does.

8 A Yes.

9 Q Tell me who your suppliers are, who do you pay for steel?

10 A It's different ones. DuBose Steel is my main supplier, then
11 Saginaw Steel---

12 Q Where are they from?

13 A DuBose is from Rosewood, North Carolina, and Saginaw Steel,
14 I believe, is from Columbia, South Carolina. And Sisken, they
15 are from Spartanburg, South Carolina.

16 Q How do you spell that?

17 A Sisken, S-i-s-k-e-n.

18 Q Any other suppliers that you would be paying bills?

19 A Paint.

20 Q Paint?

21 A Yes, paint; Porter here in Greenville or PNG, I think, is
22 their short name. Detailers---

23 Q Detailers?

24 A Making drawings, different ones.

25 Q That's not a company name. You're talking about just a

1 group of people that are detailers?

2 A People, companies, small companies which make drawings for
3 me.

4 Q Drawings?

5 A Drawings, yes.

6 Q How many of those are there?

7 A I usually go between two or three.

8 Q What are their names?

9 A They are in India, Mac Tech Steel is one, and the other one
10 is AK -- please, I'm just going off my memory. That might be
11 wrong.

12 Q That's two. Is there another one that you can think of?

13 A Yeah. There's BJ Design.

14 Q And all of these companies are located in India?

15 A Yes, sir.

16 Q Are there any other suppliers that you would be paying money
17 to or MSPS would be paying money to?

18 A Suppliers for trucking companies.

19 Q We talked about a few of those.

20 A Yeah.

21 Q Anybody else that you can think of? As I go through your
22 checks, I want to understand who you're paying, who MSPS is
23 paying.

24 A Suppliers, at this point, no; probably power bill, and phone
25 bill and things like that.

1 Q Do you own an interest in any other LLCs?

2 A There's one company which is called MSPS Group but has zero
3 sales, zero -- when the tax return is being filed, it's always
4 zero. The reason why this company has had to be made was I had a
5 401(k) from my previous work and they insisted that this money is
6 being moved into the small business loan. So, in order to get
7 this money out, I had to make this company which then could,
8 before I was able to make MS Production Solution, to handle the
9 401(k) money which was \$155,000.

10 Q What did you do with that money?

11 A It went into, as working capital, into the company and that
12 was part of the requirement -- what you see here working capital
13 approximately \$188,000 was a requirement from SBA loan that I
14 bring so much working capital personally.

15 Q So, you liquidated your retirement account to have capital?

16 A Yes, sir.

17 Q All right. When did you take out that SBA loan?

18 A When? 2007; signature was August 17, 2007.

19 Q All right.

20 MR. FLOYD: Judge, there are, I think, some SBA documents, I
21 don't think, we have but I want to get those and look at those,
22 and I would also like for the Court to remind him, Mr. Springer,
23 of the injunction that's in place about the LLC. To the extent we
24 can, I would like to move to execute on these assets unless they
25 are indeed subject to some other security interest.

1 BY THE COURT: All right. Before I hear on that, any
2 questions of Mr. Springer?

3 MR. BURNEY: No, I don't have any questions.

4 BY THE COURT: Are you finished with Mr. Springer?

5 MR. FLOYD: Per our affidavit, I do want to hold open as we
6 continue to sift---

7 BY THE COURT: Thank you, Mr. Springer. You can go back and
8 have a seat.

9 THE WITNESS: Thank you.

10 (witness excused)

11 BY THE COURT: All right. Now, I would be glad to hear from
12 you, Mr. Floyd.

13 MR. FLOYD: Okay. Judge, these assets that I discovered
14 today -- there are some assets. I'm not sure what's in the box
15 here with the SBA loan and all of that sort of stuff, but for
16 purposes of securing China Construction's position, I would like
17 to move to execute on those assets.

18 BY THE COURT: Specifically, what assets are you referring
19 to?

20 MR. FLOYD: The equipment of the company and the bank
21 account that he's testified that he has at Bank of America.

22 BY THE COURT: Is there any valuation on the equipment?

23 MR. FLOYD: He has provided an evaluation, about \$191,000,
24 roughly.

25 BY THE COURT: All right. Be glad to hear from you.

1 MR. BURNEY: Your Honor, I don't think that valuation is
2 correct. I think that is what he's referring to, that \$191,000,
3 that was the purchase price back in 2007. There's an SBA loan of
4 a balance of a million dollars. Of course, it's guaranteed by
5 the federal government. They control all of that. Of course,
6 they've got liens on the real estate; they've got liens on the
7 inventory; they've got liens on the equipment; they have liens on
8 the accounts receivable; they have liens on the bank accounts;
9 they have a lien on everything. So, if you were going to require
10 all of that to be liquidated, I think you're going to have to
11 make the federal government come in here and state their position
12 on why their secured lien would not take priority over a judgment
13 out there.

14 BY THE COURT: All right. So, is the SBA -- I'm assuming
15 it's of record and properly recorded?

16 MR. BURNEY: It is, yes.

17 BY THE COURT: And do you know when it was recorded?

18 Mr. Floyd, have you seen whatever he's referring to?

19 MR. FLOYD: I haven't. No, Your Honor.

20 MR. BURNEY: I've got a disk of all of that. I thought we
21 had previously sent that to him by way of a disk, Your Honor.

22 BY THE COURT: All right. Let me suggest this. I'm going to
23 continue the restraining order and give Mr. Floyd a chance to
24 look through the documents, and then we can either do a telephone
25 conference call or reconvene if necessary.

1 So, Mr. Springer, let me tell you what this means from a
2 practical matter. You're going to continue to do business, try
3 to be as successful as you can. But you can't sell anything, or
4 convey anything, or transfer anything or incur any new debt
5 without your attorney as well as the attorney for China
6 Construction being aware and agreeing to it. This just maintains
7 the status quo until the attorneys have an opportunity to go
8 through all of the exhibits.

9 Is 30 days realistic, Mr. Floyd?

10 MR. FLOYD: I would like to have 45 just so I can do some
11 research and all of that.

12 BY THE COURT: Any problem with that?

13 MR. BURNEY: That's fine. Judge, just so I'm clear so he's
14 clear, when you say sell anything, you mean sell assets, not
15 sell---

16 BY THE COURT: Absolutely, yes. Thank you.

17 MR. BURNEY: Because that's what he does.

18 BY THE COURT: Anything outside the normal course of
19 business.

20 MR. BURNEY: Right.

21 BY THE COURT: All right. Mr. Floyd, if you would prepare a
22 short Order, share it with counsel and then email it directly to
23 my court reporter.

24 So, is there anything else we need on the record at this
25 point?

APPENDIX 322

1 MR. FLOYD: There's just some outstanding discovery, and
2 they've got time to respond to that. I was just making sure he's
3 got it.

4 BY THE COURT: Okay. All right. If y'all run into any
5 hiccups or problems, a conference call normally gets things
6 resolved.

7 MR. FLOYD: Yes, sir.

8 MR. BURNEY: Thank you.

9 BY THE COURT: All right. Thank y'all so much.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

APPENDIX 323

The undersigned, Wanda E. Fudge, Court Reporter, Office of Master in Equity for Greenville County, South Carolina do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina on the 2nd of June 2015.

I do further certify that I am neither of kin, counsel, nor interest to any parties hereto.

June 26, 2015

Wanda F. Swartz

Wanda E. Fudge; CCR

Certified Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of
South Carolina, Inc.,

Plaintiff,

vs.

MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,

Defendants.

TRANSCRIPT OF TESTIMONY

October 2, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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

Caitlin C. Heyward, Esquire
Attorney for the Plaintiff

Rhett D. Burney, Esquire
Attorney for Defendant

Wanda E. Fudge, CCR
Court Reporter

APPENDIX 325

1 BY THE COURT: Anything we need to chat about before we go on
2 record?

3 MR. BURNEY: No, Judge, just that my client's here. He's
4 got the flu. So, I have him out in the lobby area if that's
5 okay. If I need him, I'll call him.

6 BY THE COURT: Well, if you want him in here, sitting on the
7 very back row, I'm okay with that too.

8 MR. BURNEY: Well, I figured we would all be okay keeping
9 him out there.

10 BY THE COURT: All right. Then for the record, this is
11 2014-1871, China Construction versus MS Productions.

12 This arises out of a judgment, from what I understand, that
13 was entered January 29th of this year in a little bit in excess of
14 \$657,000.

15 So, I think I understand the purpose of the motion, but if
16 you could just state on behalf of Plaintiff what is being sought
17 here this afternoon with this particular motion.

18 MS. HEYWARD: Yes, Your Honor. I prepared a notebook just
19 for ease of reference. I have given a copy to opposing counsel...
20 May I approach?

21 BY THE COURT: Certainly. Is this something you want marked
22 as an exhibit?

23 MS. HEYWARD: Yes. You can go ahead and mark it as an
24 exhibit.

25 BY THE COURT: All right. Just hand it to my court reporter

1 then.

2 Mark it as Plaintiff's 1 for today's date.

3 (Notebook of Exhibits, 1 through 10, entered into evidence
4 as Plaintiff's Exhibit No. 1)

5 BY THE COURT: All right. Be glad to hear from you then.

6 MS. HEYWARD: You'll find in the notebook in Tab 6 a copy of
7 the motion that I filed with the Court. I believe you already
8 have it. Essentially, China Construction obtained a judgment
9 against the Defendant for \$650,000, in excess of that. The
10 Defendant never appeared. We held supplemental proceedings
11 before Your Honor, and Joey Floyd in our office took testimony of
12 Mr. Manfred Sprenger who is the sole proprietor of the Defendant
13 who testified that he had been making \$7,000 payments to his wife
14 for no consideration on a monthly basis. We contend that those
15 were fraudulent transfers, and we held the proceedings open so
16 that we could continue discovery. Throughout that discovery
17 process, I discovered that there were several significant
18 transfers that were made in addition to the \$7,000 monthly
19 transfers.

20 On May 1st of 2015, a Rule to Show Cause was entered. It was
21 filed on May 5th. On May 15th the Rule to Show Cause was served,
22 and on May 27th MSPS caused a \$60,000 check made payable to
23 Patricia Sprenger from the corporate account to be deposited into
24 the joint bank account of Manfred Sprenger and his wife Patricia
25 Sprenger.

APPENDIX 327

1 BY THE COURT: All right. Now, Manfred Sprenger is the sole
2 member of the LLC, correct?

3 MS. HEYWARD: Yes. That's correct.

4 BY THE COURT: Patricia Sprenger is his wife?

5 MS. HEYWARD: That's right. And they have a joint account.
6 The check was written to his wife and deposited in her account---

7 BY THE COURT: All right. But neither Manfred nor Patricia
8 Sprenger individually are parties to this lawsuit at this point?

9 MS. HEYWARD: No, they're not but the principal of the
10 corporation is the one that's causing the transfers to be made,
11 and he also has access to the money.

12 BY THE COURT: Okay.

13 MS. HEYWARD: Which I also included the full transcript of
14 both his deposition, Mr. Sprenger's deposition, and Mrs.
15 Sprenger's deposition as well as the transcript of the hearing
16 back in June before Your Honor. I will point you to some of that
17 testimony in a moment, but those are tabs 1, 2, and 4 in the
18 notebook that I handed you.

19 So, \$50,000 was then withdrawn shortly after the \$60,000
20 check was made from the individual account. At the deposition
21 Mrs. Sprenger admitted to keeping \$50,000 of that money in cash
22 in her bedroom. So, I filed a motion for an expedited hearing
23 because we contend that the fraudulent transfer that's not
24 secured by the Small Business loan -- the UCC filing statement is
25 included in the notebook as Exhibit 7; it does not cover cash nor

1 does the Security Agreement of the Small Business loan which is
2 Tab 5.

3 We are first in time -- the Defendant claims that we are not
4 entitled to the money because there are other judgments out there
5 that were filed before us, but we are first in time in regards to
6 the cash fraudulent transfers and we are entitled to those.

7 There are several other arguments that Defendant makes. The
8 first one is that the Statute of Elizabeth has no application to
9 these facts. I believe the transfer of cash money into -- from a
10 corporate account to a personal account that the fraudulent
11 transfer does apply under the Statute of Elizabeth. I just
12 received opposing counsel's Brief two days ago, but I'm happy to
13 brief that issue for the Court if you would like me to.

14 BY THE COURT: Let me kind of -- it helps me and I think
15 perhaps would be cleaner on the record if we kind of tried to go
16 issue by issue.

17 MS. HEYWARD: Okay.

18 BY THE COURT: So, first, as relates to today's hearing,
19 your client is seeking these cash funds that have come via the
20 LLC into Patricia Sprenger's possession?

21 MS. HEYWARD: That's right. And we have -- if you go to Tab
22 6, we have a summary of what those are. It would be Tab 6,
23 Exhibit D. There's a total there at the bottom, \$289,600 in the
24 total in fraudulent transfers that we're seeking at this point.

25 BY THE COURT: And is your client seeking that these funds

1 be held in an escrow account pending further discovery and
2 further court proceedings or is your client seeking that they be
3 paid towards the judgment?

4 MS. HEYWARD: We're seeking that they be paid towards the
5 judgment, especially the \$50,000 that was admitted to being in
6 the couple's home. I'm especially concerned with the judgment
7 that was made in violation of the Court's Rule to Show Cause and
8 injunction that was placed upon Mr. Sprenger. He testified he
9 understood he was enjoined from transferring money and he did it
10 anyway after the injunction, and that was \$60,000; \$10,000 of
11 that is unaccounted for and not admitted to being in possession
12 of Defendant or his wife, but they did admit that they have
13 access to \$50,000.

14 I will say that since the deposition that we held last week,
15 Mr. Sprenger has now provided a conflicting affidavit to his
16 testimony and he now claims that he can only account for \$8,500,
17 but that does not conform with the testimony of his wife. It
18 doesn't surprise me that he's now claiming he doesn't know where
19 that money is after the fact, but we contend that it is in his
20 possession.

21 BY THE COURT: All right. Is there an issue -- because I
22 understand the Plaintiff's position in part is that Patricia
23 Sprenger has these liquid assets, correct?

24 MS. HEYWARD: Right.

25 BY THE COURT: Any concern over the fact that the Court is

1 being asked to grant relief against a nonparty?

2 MS. HEYWARD: I believe that the Court may grant relief in
3 this case because it is the principal at this company that is
4 causing the transfers to be made and, in fact, has access to the
5 transfers that are made. They're in his joint account and/or his
6 home. He testified that he uses the money as he pleases. He has
7 just as much access to that as she does, and he can, just as he
8 caused the transfers to be made, he can cause the money to come
9 back to try to -- to the Plaintiff.

10 BY THE COURT: All right.

11 MS. HEYWARD: I'm happy to file a motion to add them as
12 parties to this lawsuit, but---

13 BY THE COURT: Let me hear from Mr. Burney. Issue or not an
14 issue?

15 MR. BURNEY: Well, I think under the statute, 15-39-460, you
16 have to file an action against an individual to claim that they
17 have funds that they're trying to seek. So, I think that would
18 be an issue, but, Your Honor, I don't even think we get that far
19 once we start looking at the facts and the sources of this money
20 and why the transfers were being made, and I'll address that now
21 if you want me to.

22 BY THE COURT: Yes. Let me hear from you.

23 MR. BURNEY: Let me -- let me just hand to the Court
24 quickly a timeline.

25 BY THE COURT: I've read the materials. At least, in part,

1 it's your client's position that he has loaned money to the LLC.
2 He has gotten money back from the LLC. His salary has been
3 withheld. He's gotten salary later in the form of cash, and I
4 think Mrs. Sprenger says the same thing. So, I'm familiar with
5 that part of it.

6 MR. BURNEY: Sure and that's great. And that timeline I
7 gave you kind of, for us visual people, kind of shows how the
8 transfers have been made. If we look at that \$40,000 and the
9 \$25,000, Your Honor, that was put into the account this year,
10 you'll see under the exhibits that we provided to the Court, the
11 bank statements -- if Mr. Sprenger had not put that money in,
12 there would have been a negative balance in the company on both
13 of those months by several thousand dollars each time.

14 There's about five or six employees to this business. He's
15 one of them, a small business. So, he's having to put money into
16 the business to keep it running. When you start looking at a
17 fraudulent transfer, if there was going to be fraud, he wouldn't
18 be putting his own money into the company. That wouldn't make
19 any sense. He's simply doing it because if nobody else did,
20 there would not be any money to run this company. He puts the
21 money in; they buy materials; materials are then manufactured,
22 sold to the customer; and he gets his money that he loaned the
23 company back out.

24 BY THE COURT: I think that's typical in a lot of LLCs. I
25 understand that. Where are the Promissory Notes to establish

1 those transactions?

2 MR. BURNEY: They don't. They don't. It's just he looks
3 at himself as the company because he's the -- it's so small. He
4 doesn't go through the process of doing a Promissory Note.

5 BY THE COURT: Once funds go into the LLC, then wouldn't a
6 creditor have priority over those claims or it goes back to the
7 member of an LLC without some type of paper trail?

8 MR. BURNEY: Well, I think their paper trail is just the
9 pure transactions and the intent. If they had -- their intent is
10 to get it back because if we're not there, the company wouldn't
11 keep running. So, they hope that, "Hey, if you see our bank
12 statements are not going to add up at the end of the month and
13 it's going to be in the red, then why would we not put money into
14 the account to keep it running?" It's simply a small-man
15 operation---

16 BY THE COURT: Again, I don't debate that at all, but do you
17 have some authority that says once the funds flow into the LLC
18 that a creditor would not have at that point some type of
19 priority position?

20 MR. BURNEY: I don't have -- no, I don't have any authority
21 that would say that. I think you start looking at the intent at
22 that point in time for the money. You know, why is it being put
23 in there? Like I say, if he had the intent to defraud, he
24 wouldn't put money in. He would be taking more money out. He
25 would be paying himself more than \$7,000 a month. He would be

1 paying his wife. He would be paying everybody other than
2 creditors.

3 BY THE COURT: All right. How do you respond to Ms.
4 Heyward's argument that \$60,000 he paid out after the Restraining
5 Order was issued by this Court about no transfers outside of the
6 normal course of business?

7 MR. BURNEY: Well, that is their course of business. He
8 puts money in; he puts money out. So, when you tell him, "Don't
9 do anything that's not in the normal course of business," that
10 was his normal course of business, being a small operation. If
11 he's not putting money in, the business does not last because his
12 cash flow isn't as much throughout the year to allow that to
13 happen.

14 BY THE COURT: All right. Let me hear from you -- and I
15 think you've already addressed this. Let's say that the Court
16 finds a basis -- just purely for the sake of argument on a rainy
17 Friday afternoon -- to order that the funds be held in trust
18 pending litigation of these issues. Can the Court in the current
19 procedural status direct the Court -- the LLC to give the money
20 back?

21 MR. BURNEY: I don't think you can. I don't think you can.
22 I don't know how the LLC would get it back. I guess we're -- how
23 is the LLC going to tell the Sprengers to give the money back?
24 Obviously, the Court can. I think you have to name them as a
25 party. But then that brings us to the situation of that \$50,000

1 is not there. Ms. Heyward said that they said it was there. If
2 you look at the depositions -- I can pull those out for you --
3 but especially Mr. Sprenger's -- I just pulled the applicable
4 part.

5 Page 44 where he's asked about the \$50,000, Ms. Heyward
6 says:

7 "And is it also your testimony that \$50,000 in cash in your
8 home?"

9 Mr. Sprenger says, "I do not know that. Just me and my wife
10 are married 36 years. We trust each other. All our lives, joint
11 checking accounts, not as we know it is, it's usually now these
12 days that he has their account. We always trusted each other."

13 So, they're just using that account -- excuse me -- that
14 cash just to run the household. It's a typical husband/wife
15 situation where they're not accounting for that because there's
16 really no need. That's just how they operate.

17 BY THE COURT: All right. In her deposition, did Patricia
18 Sprenger say, "Yeah, I've got the fifty"?

19 Ms. Heyward?

20 MS. HEYWARD: Yes, Your Honor. She said that in her
21 deposition which is Tab 2, page 30, line 6 to 8,"

22 "You're not exactly sure out of \$60,000 how much is in cash?"

23 "I think around 50.

24 "50?"

25 "Yeah.

1 "You have \$50,000 in cash right now?

2 "I think, yeah.

3 "Is it at your home?

4 "Yes.

5 "Where in your home?

6 "MR. SPRENGER: We are not going to say that because
7 that's---"

8 And I interrupt and I say, "You may not speak. You're not
9 being deposed at this time.

10 "THE WITNESS: In my bedroom."

11 MR. BURNEY: And that's -- if you look at his affidavit,
12 one, he interrupted her because he didn't want people to know
13 they have cash in the house but, two, he had taken that \$25,000
14 out of that cash which he put in -- you'll see on the timeline --
15 July 15th. It's also shown in our Exhibit 5 of what we presented
16 to the Court earlier this week.

17 Again, if you go back at the bank records and look, if he
18 had not put that \$25,000 back into the account which was cash,
19 they would have been about \$4- or \$5,000 in the hole in their
20 bank account -- excuse me -- the company's bank account that
21 month.

22 BY THE COURT: All right.

23 MR. BURNEY: And then we have the whole situation where
24 he's not paying himself because the money is not there. He
25 missed several months -- and you'll see in that timeline, he

1 didn't take the first paycheck out until June of this year. Now,
2 if you started getting into the simple math, Your Honor, of what
3 he put into the company to help it float, that \$40,000 and that
4 \$25,000, you've got \$65,000 he put into the company this year to
5 keep it running. And then if you look at the \$7,000 that he
6 should be getting every month as his pay -- the company still
7 owes him money for this year. You can see that in Exhibit 1 of
8 ours where still as of August, he had \$47,000 in what he has not
9 paid himself.

10 So, it's not as clean as we would all like it, to have
11 Promissory Notes and all of that, but this is how these people
12 have been operating this small business and that's just how it's
13 done. A larger business, you've got more hands in the fire
14 holding on to things and more accountants. This is just how
15 they've run the small family business.

16 BY THE COURT: All right. Help me understand, Mr. Burney --
17 I know in one part of your memo you state that Manfred Sprenger
18 had used \$25,000 to pay off a judgment that had priority?

19 MR. BURNEY: Yes, sir. If you look at -- I'm assuming that
20 you received our notebook.

21 BY THE COURT: Yes, sir.

22 MR. BURNEY: Okay. If you look at Exhibit 5 -- I'm sorry --
23 Exhibit 7, that's the -- let me turn to it as well -- it should
24 say -- you see like a withdrawal slip that says Bank of America?

25 BY THE COURT: Yes, sir.

1 MR. BURNEY: \$25,000 on October 2, 2014. He went in and got
2 a cashier's check out of the Bank of America account which,
3 you'll see, the next page is to Stewart and Crouch. Do you see
4 that?

5 BY THE COURT: Yes, sir.

6 MR. BURNEY: And then you should have the other information
7 after that sending it to Dick Stewart, the \$25,000 to pay off a
8 lien they had against him previously.

9 BY THE COURT: All right. Ms. Heyward, what's the
10 significance, if anything, of payment of this judgment?

11 MS. HEYWARD: I questioned Mr. Sprenger about the withdrawal
12 slip during his deposition. I showed him a copy of it and asked
13 him if it was normal for him to withdraw \$25,000 in cash from the
14 business account, and he told me it was a deposit during the
15 deposition. I then confirmed it actually was a withdrawal and
16 for the first time when I received the admission from Mr. Burney
17 that I received a Satisfaction of Judgment and the corresponding
18 documents to show that it was paid towards that.

19 So, we are willing to give on that \$25,000 -- we think that
20 was back in October of 2014 -- and the \$50,000 most recent
21 transfer was in May of this year and the withdrawal of \$50,000
22 was in June of this year. So, I don't believe that money to pay
23 off that judgment came from that \$60,000. That money is still
24 there.

25 I want to direct a few other points, but I'll let Mr. Burney

1 continue if you have some more questions.

2 MR. BURNEY: Just -- I think we're looking at two different
3 \$25,000. We had \$25,000 that we put into the company this year.
4 That other \$25,000 went to pay off that lien. That's a
5 completely different---

6 BY THE COURT: In 2014?

7 MR. BURNEY: Yeah. That's a nonissue really.

8 BY THE COURT: Okay. All right. Let me -- before I let you
9 sit down, Mr. Burney, let me hear your argument a little bit more
10 on that the Statute of Elizabeth does not apply to liquid assets
11 such as money.

12 MR. BURNEY: Well, I think, one, in this situation the only
13 way it could apply is if there was some type of lack of
14 consideration even to get to that point concerning liquid monies.
15 But then I think we have to look at the priority of the mortgage
16 that we have with the federal government or the SBA, and it says
17 -- and we've outlined in our -- give it to the Court -- the
18 different pages of that mortgage. We pledge revenues, profits,
19 purchase orders, deposits, and all kinds of stuff. So, they
20 would -- that should be their money if, in fact, this were a
21 fraudulent transfer, but even then you start dealing with
22 priorities of the other lienholders.

23 BY THE COURT: All right. Let me ask, Ms. Heyward, is there
24 any issue over that the SBA loan has priority over your
25 client's---

1 MS. HEYWARD: No. The SBA loan does not have priority over
2 fraudulent transfers in cash. The SBA loan does not apply to
3 cash. The Security Agreement doesn't cover cash. The UCC
4 Agreement doesn't cover cash. We are first in time, the first in
5 right as to the fraudulent cash transfers.

6 BY THE COURT: All right. Obviously, I've not seen the UCC
7 or the terms and conditions of the SBA documents--

8 MS. HEYWARD: They are included in my notebook, on Tab 7 and
9 Tab 5.

10 BY THE COURT: All right. So, you're -- is the argument
11 then that the UCC and the other related documents, including the
12 note and mortgage, it's not a broad every asset everywhere, no
13 matter what type of lien or coverage?

14 MS. HEYWARD: It covers quite a bit. It does. It covers
15 inventory, the property the business is on, but it does not -- it
16 specifically does not cover cash.

17 BY THE COURT: Mr. Burney?

18 MR. BURNEY: It's his money. If you look at page 3 of the
19 mortgage, it says it covers, "all rents, revenues, issues,
20 profits, proceeds, income, royalties, accounts, health insurance
21 receivables, escrows, letter-of-credit rights, security deposits,
22 impounds, reserves, tax refunds and other rights to monies."
23 That's pretty broad. I think it covers everything. But, again,
24 I don't even think we get to that point because I don't think
25 there's a fraudulent conveyance. It's just a simple---

1 BY THE COURT: And I understand that. Okay. All right.
2 Now, Ms. Heyward, I would be glad to hear from you. You said you
3 had several other points you wanted me to hear?

4 MS. HEYWARD: I do. As to Mr. Burney's point as to no
5 consideration, I believe that's part of his argument, as to why
6 the Statute of Elizabeth doesn't apply, the first time that we
7 heard from Mr. Sprenger, he testified that he doesn't pay himself
8 a salary. If you turn to Tab 4 if you look at page 8, the bottom
9 of the page, line 20:

10 "Do you pay yourself bonuses, you say?

11 "Occasionally, yes.

12 "How do you determine how much the bonuses are?

13 "It's -- if there is money which I can spare from the
14 company, it's just because I don't pay myself salary."

15 He then had his wife testify and he testified that the
16 \$7,000 checks that are made out monthly to his wife are for his
17 salary after we had supplemental proceedings. He then also says
18 the same thing in another affidavit conflicting his testimony,
19 that it's more convenient for him to come up with some kind of
20 consideration argument. He's testified multiple times, as his
21 wife, throughout both depositions and the supplemental
22 proceedings hearing -- and in fact, in his affidavit, that his
23 wife was never an employee of the company. She received these
24 checks for no consideration. You don't simply pay a check to a
25 third party in payment to yourself.

1 He also conveyed that he's made all of these loans to the
2 company. There's not one documentation whatsoever. He's just
3 trying to stay judgment-free. He just decides willy-nilly when
4 he can take money in and when he can take money out. There are
5 several other judgments against him. He's just trying to remain
6 judgment proof by not keeping money in the corporate account, not
7 keeping money in his personal account, keeping it in his bedroom,
8 under his mattress, wherever to try to defraud this Court. He's
9 even doing it in the space of the injunction put on him back in
10 May.

11 I'm not sure what else could be evidence of a fraudulent
12 transfer in this case. He has pretty much done everything there
13 is to satisfy the elements of that which I outlined in my Brief.
14 I'm not sure what else he could do to prove that these are
15 fraudulent transfers.

16 And I also found it interesting opposing counsel produced to
17 me some of the tax returns of the Defendant. If you turn to Tab
18 8, there's his 2013 tax return, individual tax return. The
19 business does not file separately. So, this is Manfred and
20 Patricia Sprenger. If you look at line 7, wages, salaries and
21 tips, nothing. There's no withholding tax. There's nothing.
22 He's not paying himself a salary. If you look down at business
23 income or loss, \$50,000 (sic) and that corresponds with the
24 fourth page of the tax return, line 31, \$50,000.

25 He is basically just siphoning money from the company. He's

1 not taking a salary. He's not paying taxes on his salary. So,
2 if he's now claiming he's taking a salary, he's either lying on
3 his tax returns or he's lying in his deposition. And that's also
4 consistent with the 2014 tax return, if you flip to Tab 9, wages,
5 salaries, tips, line 7, there's no salary listed there. I have
6 not yet received the 2015 tax return, but I anticipate that in a
7 continuing obligation to post-judgment interrogatories and
8 requests for production once these are completed, we will receive
9 those.

10 Mrs. Sprenger testified that \$70,000 check to her was not a
11 loan on page 19 of her deposition. Mr. Sprenger has consistently
12 held that there are no loan documents. I'm just -- this man is
13 siphoning money from the corporation and trying to hide it from
14 its creditors. He knows and he testified that he knows that
15 China has a judgment against him, but he doesn't believe that we
16 had to be paid, and that's just not the way it goes.

17 BY THE COURT: All right. Anything else then on behalf of
18 China Construction?

19 MS. HEYWARD: I have a case here -- Durham v. Blackard which
20 I would like to hand up to the Court, somewhat analogous
21 situation, just stands for the longstanding proposition that one
22 must be just before one is generous. And in this case, Mr.
23 Sprenger has testified and made clear that it's more important to
24 him that he be paid for whatever loans he claims he's made to the
25 company before -- which have no documentation -- before China

1 gets paid on its judgment.

2 He also -- just one more brief point -- in his deposition he
3 claims that he's also repaying himself for capital contributions
4 he made to the company. He initially stated that the SBA loan
5 required him to pay \$188,000 in capital -- at the supplemental
6 proceedings hearing, page 26, line 13 to 14. That number
7 increased to \$350,000 in his deposition. There's no
8 documentation or backup that he made any kind of capital
9 contribution in the amount of \$350,000.

10 In fact, if you look at Tab 10 at the Operating Agreement
11 and you flip to page 3, Capital Provisions provide that Manfred
12 Sprenger provide only \$1,000 in capital contributions to the
13 company. So, as far as any right to be repaid for that, there's
14 simply no documentation. I would be interested if Defendant can
15 provide me with that, for his right to receive that.

16 BY THE COURT: All right. Anything else then from
17 Plaintiff?

18 MS. HEYWARD: No, Your Honor.

19 BY THE COURT: All right. Mr. Burney?

20 MR. BURNEY: I'll just work backwards, on that \$350,000
21 it's actually \$300,000 and that's -- it's one of our exhibits
22 that we put in, the very last exhibit with priorities of liens.

23 The tax returns, Your Honor, we put those in there just to
24 show you that Mrs. Sprenger is not an employee because they
25 didn't get the dual income tax credit. That's just accounting,

1 how they do it as far as showing his income, either his wages or
2 showing it as business income or loss from the company.

3 As far as to explain why these checks were written to
4 Patricia Sprenger, it was attached to our memo, her deposition,
5 page 18 and his deposition, page 11, she says in answer to her
6 question:

7 "He gave me the check because it was easier. It's his
8 money. When he puts his name in, a lot of time he forgets
9 signing the checks, and this is I say, can you put my name in?
10 Then I don't have to remember him signing the check."

11 And he explains in his deposition, he just does it because
12 he thought -- these people are both German. They had a
13 translator there for her. They thought that in order to deposit
14 money, your name has to be on the check. I've explained to him
15 now that doesn't have to be done. But you'll also see that in
16 these \$7,000 or any checks that he's written to her, they don't
17 include that as her income. She gets no income whatsoever.

18 But if you look back at all of the records -- I can argue
19 this all day long -- it's just he's putting money in to keep the
20 business running. I can assure you, he doesn't wish that were
21 the case. He wishes cash flow were such that the money was
22 always there, but it's not in some months. Otherwise, he would
23 be getting his -- he would pay himself every month. You see
24 that's not happening either. So, it's not a fraudulent transfer.
25 It's just bad accounting on their part because it's a small

1 business.

2 BY THE COURT: All right. Anything else then?

3 MR. BURNEY: No, sir.

4 BY THE COURT: All right. Here's what I'm going to do,
5 first, obviously, there's great controversy on both sides of
6 what, where, when, why and how. However, what I'm going to do is
7 to avoid funds being dissipated or secreted, I'm going to direct
8 that the LLC take all reasonable efforts to recapture this
9 \$50,000 within 7 days.

10 I don't think the Court has jurisdiction over Patricia
11 Sprenger or, for that fact, Manfred Sprenger. I certainly
12 anticipate, based on what counsel has told me today, that they
13 will be added in the very near future. I would certainly hope
14 that Mrs. Sprenger does not dissipate or secrete the funds.

15 And what I'm going to do, since there is such a significant
16 controversy, I'm going to direct that those funds that are
17 captured be placed in Mr. Burney's trust account.

18 All I'm trying to do is maintain the status quo and avoid
19 and prevent the funds being secreted or dissipated that may or
20 may not ultimately be paid out to Plaintiff in this matter. It
21 does appear that there are issues with the SBA, UCC and related
22 documents.

23 So, not necessarily asking if either one of you agree with
24 me because chances are you don't, but any clarification needed?
25 Ms. Heyward?

1 MS. HEYWARD: No, Your Honor. Seven days---

2 BY THE COURT: Clock starts today. And if you would do a
3 short Order and email it to my court reporter.

4 Again, the Court, I'm finding, does not have jurisdiction
5 over the individuals, but the Court clearly has jurisdiction over
6 the LLC and the LLC needs to exercise, as I noted, reasonable
7 efforts to have those funds paid into Mr. Burney's trust account.

8 MS. HEYWARD: Would the Court be willing to note that the
9 principal of the corporation has access to the funds currently?

10 BY THE COURT: Sure. You can put that in the proposed Order
11 you're going to send up.

12 Mr. Burney, any clarification needed?

13 MR. BURNEY: Yes. My apologies.

14 BY THE COURT: That's fine.

15 MR. BURNEY: Obviously, you heard my position that we state
16 that the \$50,000 is not there. Okay. So, in all reasonable
17 efforts -- I don't want there to -- I'm just trying to think
18 ahead and it will probably hit me when I walk out of here -- the
19 issues that that could cause.

20 BY THE COURT: That's why I'm leaving it purposely a little
21 bit on the vague side which is never a good thing for a court to
22 do, but once Patricia Sprenger is made a party, if it turns out
23 that she secreted, dissipated, whatever the label you put on them
24 on the funds, then she does so at her risk, but at this point I
25 don't have any jurisdiction over her to make a specific finding

1 one way or the other.

2 MR. BURNEY: Sure. And can we also put in the Order that
3 there is a genuine dispute over how much money was actually---

4 BY THE COURT: I'm just basing it on -- I'm basing that
5 \$50,000 on her deposition testimony, but certainly have no
6 problem with there being a footnote that the parties disagree
7 over that amount as well.

8 MR. BURNEY: Right because his testimony conflicted with
9 hers.

10 BY THE COURT: There are plenty of conflicts in this case.

11 MS. HEYWARD: Your Honor--

12 BY THE COURT: Yes, ma'am.

13 MS. HEYWARD: --just briefly, in my motion, I also requested
14 that we set aside all of the other transfers as well and request
15 an accounting.

16 BY THE COURT: Again, at this point, what I'm trying to do
17 is preserve what appears to be liquid assets. It may turn out
18 you're entirely correct and once these individuals are made
19 parties, then the Court will have everybody in front of it. Due
20 process rights will be satisfied. So, at this point, I'm
21 reaching out for that \$50,000.

22 Again, if you will put in the Order, the Court reminds the
23 parties that transfers may not be made outside of the normal
24 course of business, and the Court will certainly scrutinize any
25 transfers and reserves the right to make findings as appropriate

1 and necessary relative to contempt of court.

2 MS. HEYWARD: In regards to the claimed loan repayment, can
3 we also direct appropriation not to repay any alleged loans to
4 Mr. Sprenger individually or Mrs. Sprenger until it can be
5 determined judicially as to his right to those repayments just to
6 prevent the appropriate assets from being diluted?

7 BY THE COURT: Mr. Burney?

8 MR. BURNEY: If the company owes him money and they've been
9 paying it in the course of normal business throughout, then I
10 don't see where that -- I don't see how the Court can stop that.
11 And then we have from now on -- again, I told the Court that
12 there are cash flow issues with this business. We're still going
13 to have to loan this company money, and I'm hearing from the
14 Court that if we do a Promissory Note and then pay ourselves
15 back, that's the only way we're going to operate. Otherwise---

16 BY THE COURT: Moving ahead, absolutely, the Court expects
17 once -- and I know that many times people don't do it -- but once
18 you invite the state to incorporate an LLC, then you are holding
19 yourselves to that standard of being a separate and independent
20 corporation and that's certainly -- if there are legitimate
21 transactions with a Promissory Note and there's a paper trail,
22 then, yes, that's one thing but if -- I think counsel for
23 Plaintiff certainly has a valid right to say all of this going
24 back and forth, taking out of one pocket and putting in another
25 pocket, it's just not appropriate when there's a significant

1 judgment out there. I think that's a valid statement of law.

2 MR. BURNEY: And we may have to fight over the wording of
3 the Order. I know the Court---

4 BY THE COURT: Oh, certainly.

5 MR. BURNEY: Bear with us.

6 BY THE COURT: Y'all are good lawyers and if y'all get hung
7 up on some wordsmithing, we'll do a conference call.

8 MR. BURNEY: That will be fine.

9 BY THE COURT: But hopefully you will at least have gotten
10 what my intent is at this point.

11 All right. Thank y'all very much.

12 MR. BURNEY: Thank you.

13 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
14
15
16
17
18
19
20
21
22
23
24
25

The undersigned, Wanda E. Fudge, Court Reporter, Office of Master in Equity for Greenville County, South Carolina do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina on the 2nd of October 2015.

I do further certify that I am neither of kin, counsel, nor interest to any parties hereto.

February 15, 2016

Wanda E. Fudge

Wanda E. Fudge, CCR

Certified Court Reporter

APPENDIX 351

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of
South Carolina, Inc.,

Plaintiff,

vs.

MS Production Solutions, LLC,
et al,

Defendants.

TRANSCRIPT OF TESTIMONY

November 18, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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

Caitlin Heyward, Esquire
Attorney for the Plaintiff

Rhett Burney, Esquire
Attorney for the Defendant

Danette P. Hanks, CCR
Court Reporter

1 THE COURT: This is 2014-1871. We're here today on
2 ongoing supplemental proceedings. From my review of the file, I
3 think there are three different motions to be heard today. There
4 may be more, but I just want to go through what I have and then
5 hear from counsel before we move into the substance of the
6 motions.

7 First, we have China Construction's motion of October 12th,
8 2015 to join Manfred and Patricia Sprenger. And we also have
9 China Construction's motion of October 22, 2015 seeking to compel
10 sixty thousand dollars, and also for contempt and sanctions. And
11 then finally we have MS Production's motion to quash the subpoena
12 that Plaintiff has served on Saunders O'Dell, who apparently is
13 the accountant of the Defendant Respondent.

14 So, are there any other motions that need to be addressed at
15 this point?

16 MR. BURNEY: No, Your Honor.

17 MS. HEYWARD: Unless subsequent to determining those
18 motions if you'd like to address the fraudulent nature of the
19 transfers and make a ruling on that, or if you want to set
20 another hearing on that. That's up to you. But we're prepared
21 to have that heard today, as well.

22 THE COURT: Assuming the motion is granted; it may or
23 may not be. I haven't heard the arguments of very fine counsel.
24 Are you ready to move into the substantive issues or ---

25 MR. BURNEY: We are.

1 THE COURT: Okay. Then is Patricia Sprenger present?

2 MR. BURNEY: No, Your Honor.

3 THE COURT: All right. Then let me hear from you on
4 the motion to join.

5 MS. HEYWARD: I filed this motion to join the
6 individuals, Manfred and Patricia Sprenger. MS Production
7 Solutions is a Defendant in this lawsuit and we conducted several
8 discovery depositions, one of each Patricia and Manfred Sprenger,
9 in which both testified that money from the company account was
10 transferred to Patricia Sprenger by check made payable to her,
11 deposited into the joint account that Manfred and Patricia share,
12 and then withdrawn in cash and held in their home.

13 And a significant portion of that money is being held at
14 their residence. There's testimony indicating about fifty
15 thousand dollars in cash was being held at the residence. And we
16 contend that that is -- those transfers are fraudulent and which
17 are subject to the judgment that my client has against MS
18 Production Solutions. And we feel at this time it's necessary to
19 join the individuals, as well as the corporation, in order to
20 access those funds.

21 THE COURT: All right. First, Mr. Burney, are you
22 representing Manfred Sprenger and Patricia Sprenger?

23 MR. BURNEY: Yes, sir, individually, I am.

24 THE COURT: Then I'll be glad to hear your argument on
25 whether they should be joined. And as I recall from the motion,

1 joinder is sought under Rule 19.

2 MR. BURNEY: Judge, we think the only reason they --
3 that they should not be joined is that the Court should first
4 determine whether or not there was a fraudulent transfer.
5 However, if the Court determines that it's necessary to join
6 them, then it should be only for the limited purpose of being
7 able to set aside a fraudulent transfer; nothing else. We're not
8 getting into any more discovery. We've been through plenty of
9 discovery. But just to give the Court jurisdiction over them in
10 case the Court determines that there is some type of fraudulent
11 transfer. Not some -- not to look at them as a party, as MS
12 Productions is a party, where we're subject to the supplemental
13 proceedings, subject to the discovery and all of that. But just
14 for purposes of the Court exercising jurisdiction if the Court
15 determines a fraudulent transfer.

16 THE COURT: So let me ask, from Plaintiff's standpoint,
17 is it -- is joinder sought solely on the premise or position that
18 there have been fraudulent transfers of the funds?

19 MS. HEYWARD: It's on the premise that the individuals
20 have access and control of the money that was fraudulently
21 transferred to them. And because of the nature of the transfers,
22 it's cash, it's a liquid asset. You know, it can come and go. I
23 think continued discovery might actually be necessary in this
24 case. If the money is gone now, we need to figure out where it
25 is.

1 THE COURT: So does that help narrow your understanding
2 of what the motion is?

3 MR. BURNEY: It does. But again, one, I think before
4 the Court can order them to do anything, it would have to find
5 that there's a fraudulent transfer. And two, I think she said
6 that we're going to have ongoing discovery. We've already taken
7 their depositions. They've already provided all their bank
8 records and their returns. This case does have to end sometime,
9 Your Honor, as far as discovery.

10 THE COURT: I agree with that. Then I'm going to grant
11 the motion. I don't think I can make a determination one way or
12 the other on the fraudulent conveyance without the parties
13 involved particularly here, Manfred Sprenger and Patricia
14 Sprenger. And I think Rule 19 requires liberal construction.
15 But I will limit it to the allegations that have been raised that
16 these certain transfers of cash have been done violative of the
17 Statute of Elizabeth at 27-23-10(A), and at this point for no
18 other purpose.

19 So, again, that kind of, I guess, brings me back to my
20 earlier question. And I know there are still two outstanding
21 motions. But do both counsel wish to proceed on the fraudulent
22 conveyances or allegations of fraudulent conveyances here today?

23 MS. HEYWARD: Yes, Your Honor.

24 THE COURT: Okay. With the understanding that
25 apparently Patricia Sprenger, who has now been added, is not

1 present.

2 MS. HEYWARD: Yes, Your Honor.

3 THE COURT: All right.

4 MR. BURNEY: Judge, I would love to do it today, but I
5 came prepared to argue these three and didn't bring the whole
6 file as far as our exhibits that we would submit, as well.

7 THE COURT: I thought you just told me you wanted to
8 have the substance heard today?

9 MR. BURNEY: Your Honor, I meant the substance of these
10 three motions.

11 THE COURT: Okay.

12 MR. BURNEY: I'm sorry, Your Honor.

13 THE COURT: All right. Then let me hear from you on
14 the motion to quash the subpoena on Saunders O'Dell.

15 MR. BURNEY: Sure. Your Honor, I don't know whether or
16 not you have a copy of the subpoena in front of you.

17 THE COURT: Yes, sir, I do.

18 MR. BURNEY: It's very extensive. Saunders O'Dell is
19 the CPA of MS Productions. They've asked for letters, emails,
20 notes, messages, voicemail and such. I think it should be
21 limited in scope; one, as to just asking -- to be simply put, ask
22 for the supporting documentation of what O'Dell relied upon in
23 preparing the tax returns for MSPS. It would be much more
24 simple, rather than getting into this lengthy discovery that
25 they've asked for. They've also asked for the time period of

1 2012 through 2015. Judgment wasn't entered until 2015, so I'd
2 ask the Court to limit it in scope, as well. Also, what we have
3 provided O'Dell would be customer lists; just the names of people
4 that we've dealt with, our pricing sheets as to how we go out and
5 bid and such, and any type of supplier list, as well.

6 What we've talked about, Your Honor, is a confidentiality
7 agreement that the information that we -- if we do provide it,
8 the Court orders us to provide it, that it just be limited to the
9 eyes of the Court, the eyes of counsel, and if they want to hire
10 any experts to review it, as well, but not to allow it to be seen
11 by China Construction. Their construction company, they can take
12 this information that we have that we provided to our accountant
13 and then use it in their competitive nature against us. So we're
14 asking -- we don't have any problems producing the limited nature
15 of what has been provided to the CPA for purposes of preparing
16 the tax returns. But in addition to that, we think it should
17 just be for counsel's eyes only and any experts and not their
18 client.

19 THE COURT: All right. So from Plaintiff's standpoint,
20 is the information sought relative to the tax returns and what
21 documents the accounting firm relied upon to prepare those?

22 MS. HEYWARD: Yes. There are several red flags that
23 jumped out at us when we reviewed the tax returns. And the
24 backup to those tax returns we're extremely interested in. One
25 example is Manfred is claiming that the seven thousand dollar

1 transfers to his wife were payments to himself for his salary,
2 which he actually never claimed on his tax returns; that he
3 received any sort of salary. So he's not paying taxes on his
4 salary. I mean there are just several other areas that we want
5 to explore, and we believe that we're entitled to all of the
6 backup and everything that was provided to the accountant in
7 preparing these tax returns. Plaintiff's -- I mean, Defense
8 counsel is correct that the judgment wasn't entered in 2015, but
9 the breach of contract occurred and the money became due to China
10 in 2012. So we are looking at all of the transfers and all of
11 the money that was moved from 2012 forward. And we are perfectly
12 willing to enter into a confidentiality agreement. I don't think
13 withholding the information from my client is something that we
14 are willing to agree to.

15 Our client is entitled to have all records that are produced
16 in discovery in this case in order to make an informed decision
17 moving forward in this matter. Our client is a general
18 contractor. Defendant is a steel supplier subcontractor. Our
19 client never actually plans on going into business with the
20 Defendant again, and they're not competitors. He's a hired sub
21 in an area that our client doesn't work in. We're a GC. We just
22 supervise.

23 So from that perspective, the limiting aspect of the
24 subpoena, limiting that to just lawyers only doesn't make sense
25 to me.

1 THE COURT: All right. Here's what I'm going to do on
2 that motion. I do think Exhibit A is somewhat on the broad side.
3 I am going to require or allow all information that the
4 accountants relied upon in preparation of the tax returns. I'm
5 going to specifically exclude anything that is arguably a trade
6 secret or pricing information or otherwise confidential under the
7 Code. Also, I will enter into a Confidentiality Order that at
8 this point it's for attorneys' eyes only, as well as any forensic
9 experts that are necessary.

10 Do either one of you recall the date the lawsuit was filed?

11 MS. HEYWARD: April 2nd, 2014.

12 THE COURT: Okay. I will allow the information for
13 eighteen months prior to the lawsuit being filed through the
14 present time.

15 Let me ask you, and I'm not trying to invite new issues, but
16 I notice the subpoena is requiring the accountants to appear in
17 Columbia. Is that an issue?

18 MR. BURNEY: Judge, I guess they would have to speak to
19 that. I don't see the necessity of them appearing in Columbia if
20 they produce this information.

21 THE COURT: Well, I'm trying to be a little proactive
22 and avoid ---

23 MR. BURNEY: Sure. Let me ...

24 THE COURT: --- other issues.

25 MR. BURNEY: Judge, the subpoena I have just says that

1 they're to produce and permit this inspection at a place --
 2 obviously I'm just assuming that was intended that the
 3 information be sent there and not that they appear there to
 4 present that information. If I'm incorrect, Ms. Heyward, I'm
 5 sure will ---

6 MS. HEYWARD: That's correct, Your Honor.

7 THE COURT: So you're wanting at this point documents
 8 only and not a deposition?

9 MS. HEYWARD: That's correct.

10 THE COURT: Okay. All right. Then I appreciate y'all
 11 clarifying that.

12 And let me ask you, on the other motion, on the Order to
 13 Compel, is that something we should go into here this morning or
 14 is it better to address all of that at the same time when Manfred
 15 Sprenger and Patricia Sprenger are present to testify?

16 Obviously what I don't want to do is have a situation where,
 17 you know, Mr. Sprenger testified to A, says he gave the funds to
 18 Ms. Sprenger and Ms. Sprenger is not present and then we've got
 19 to come back at some later date and replot the same ground that
 20 we have plowed earlier.

21 Y'all are good lawyers so I'll listen to you on guidance.

22 MS. HEYWARD: Well, at the time the Order was entered
 23 into, it was against MSPS, so this motion to compel is in
 24 relation to MSPS and not the individuals. And the issue is
 25 whether or not they put forth -- MSPS put forth reasonable

1 efforts to obtain the funds. Like I mentioned in my motion,
2 these funds are liquid; they're in cash. I think each passing
3 day is tough for my client because that money can be spent,
4 transferred, moved somewhere else.

5 THE COURT: So do you wish to call Mr. Sprenger?

6 MS. HEYWARD: I do.

7 THE COURT: Sir, if you'd come around to the witness
8 stand, please, sir. Place your left hand on the bible and raise
9 your right hand.

10 Do you swear to tell the truth, whole truth and nothing but
11 the truth?

12 MR. SPRENGER: I do.

13 THE COURT: Thank you. Come around and have a seat,
14 please, sir.

15 And if you'll state your full name.

16 THE WITNESS: Manfred Sprenger.

17 THE COURT: Will you spell Sprenger for my court
18 reporter.

19 THE WITNESS: S-P-R-E-N-G-E-R.

20 THE COURT: All right. Thank you, sir.

21 All right. Your witness.

22 MANFRED SPRENGER,

23 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MS. HEYWARD:

1 Q. Mr. Sprenger, are you aware of the Order that was issued on
2 October 8th of this year directing MSPS to put forth all
3 reasonable efforts to recover cash that was transferred to
4 Patricia Sprenger?

5 A. Yes, I am. My lawyer advised me.

6 Q. And what efforts did you put forward to obtain those funds?

7 A. Say that again.

8 Q. What efforts did the company MSPS put forward to obtain
9 those funds?

10 A. I asked -- like I wrote a letter as MSPS to my wife and me
11 to return the funds to the company, which had been loaned from me
12 to the company.

13 Q. So you live with your wife; right?

14 A. Yes. I do.

15 Q. And you are also the principal of MSPS; correct?

16 A. Yes.

17 Q. Your wife testified that the cash was in the home that you
18 share with her; is that correct?

19 A. Yeah, I believe so, after you led her to that amount; yeah.

20 Q. And you testified that you had access to those funds?

21 A. I have access to everything we do have. I'm married since
22 thirty-six years and we have never had any secrets from each
23 other.

24 Q. Right. And so your reasonable efforts is that you signed a
25 letter to yourself saying that you ---

APPENDIX 363

1 THE COURT: Is there a phone going off?

2 MR. SPRENGER: Oh, sorry.

3 THE COURT: Chris, if you'll take his phone, please,
4 ma'am.

5 MR. SPRENGER: I'm very sorry.

6 THE COURT: That's fine.

7 THE BAILIFF: Is it on?

8 MR. SPRENGER: I'll turn it off. Hold on one second.
9 I'm very sorry. I forgot.

10 THE COURT: Yes, sir. You can give the phone to my
11 bailiff. Thank you.

12 All right. Go ahead.

13 Q. So all you did to recover the funds was write a letter to
14 yourself and your wife signed by you saying that you should do
15 something; is that correct?

16 A. That is what my lawyer advised me to do that the Court asked
17 that I -- that MSPS takes reasonable effort to protect the money;
18 yes.

19 Q. Do you recall submitting an Affidavit sometime prior to
20 October -- the October 8th Order?

21 A. Can you repeat that?

22 Q. You submitted an Affidavit?

23 A. Yes.

24 Q. And do you recall in that Affidavit after the testimony in
25 which your wife -- after your wife testified that there was fifty

1 thousand dollars in your home that you indicated there was eight
2 thousand dollars in your home?

3 A. That's correct; yes. Because we went back -- you were
4 leading my wife to come up with the fifty thousand and it was not
5 her, you lead her because of her English. And then I went back
6 home and verified the amount and that is what I put in the
7 Affidavit.

8 Q. An interpreter was present at that deposition; isn't that
9 correct?

10 A. That's correct. But you were leading. Is it sixty, is it
11 forty, is it fifty? And then my wife said ---

12 Q. Mr. Sprenger, I'm not going to argue with you at this time.
13 The deposition transcript reads how it reads.

14 A. All right.

15 Q. Did you make any effort to obtain even that eight thousand
16 dollars and give it to Mr. Burney?

17 A. That was a loan I gave to MS Production Solutions to keep
18 paying salaries and bills.

19 Q. So you didn't return the eight thousand dollars because you
20 believed it wasn't ---

21 MR. BURNEY: Judge, I'm going to object. The issue is
22 whether or not MSPS took reasonable efforts; not whether Manfred
23 Sprenger individually had any duty to comply with the Court
24 Order.

25 THE COURT: Well, he's the -- he is MSPS. So noted for

1 the record. Go ahead. Overruled.

2 Q. So you made your own determination that China Construction
3 was not entitled to that money and that's why you didn't give it
4 to your client (verbatim); isn't that correct?

5 A. Because it was a my -- a loan from me to the company, which
6 the company paid me back.

7 Q. Are you aware ---

8 A. And also, if you will go and -- you have all the bank
9 records; correct? If you would look in there in June and July, I
10 paid the company back twenty-five thousand dollars -- or loaned
11 it again to the company to be able to pay bills again.

12 Q. Mr. Sprenger, is there a note evidencing a loan? Any loan
13 to ---

14 MR. BURNEY: Judge, again, we're beyond the scope of a
15 motion to compel.

16 THE COURT: I think that's a relevant inquiry.

17 Q. Is there a note evidencing a loan between you and MSPS?

18 A. As the Judge said, I am MSPS and I'm Manfred. And am I
19 entitled to a regular monthly pay since I lead the company and
20 run the company?

21 THE COURT: Mr. Sprenger, if you will answer the
22 question. Is there a written promissory note?

23 THE WITNESS: No, there has never been -- that practice
24 has been done over all those years; that I loan the company money
25 when the company needed it, or borrow ---

1 Q. Are you aware that the language of the October 8th Order
2 ordered you to return the money in trust so a judicial
3 determination can be made as to the nature of the money?

4 A. Uh-huh (Affirmative). But I ---

5 Q. But you made that determination instead of the Judge; is
6 that correct?

7 A. As my lawyer advised me, he said that I need to write this
8 letter to myself, reasonable efforts, which I did. And then
9 since I haven't gotten paid -- or since I did not receive salary,
10 I don't know what the legal term I should call it, since I'm the
11 company owner. I call it a monthly salary like we all get and
12 supposed to get. In the month of October, that money was used to
13 pay our bills, our personal like mortgages and you have a record
14 of those bank records, as well.

15 MS. HEYWARD: No further questions, Your Honor.

16 THE COURT: All right. Mr. Burney, any questions?

17 (WHEREUPON, Defendant Exhibit Number 1 was marked for
18 identification.)

19 CROSS EXAMINATION

20 BY MR. BURNEY:

21 Q. Mr. Sprenger, let me show you Defendant's Exhibit Number 1.
22 Is that the letter that you wrote on behalf of MS Productions
23 Solutions LLC to you and your wife requesting funds?

24 A. Yes, sir.

25 Q. That was dated when?

1 A. October 7th, 2015.

2 Q. Are those the reasonable efforts you believe that you are
3 required to take as the owner of MSPS to ---

4 A. Yes.

5 Q. --- obtain those funds?

6 A. That's correct.

7 MR. BURNEY: Your Honor, I move to introduce
8 Defendant's Exhibit 1.

9 (WHEREUPON, Defendant Exhibit Number 1 was admitted into
10 evidence.)

11 Q. And is that letter asking you and your wife to return any
12 funds that they may have -- that you may have that belong to
13 MSPS?

14 A. Yes, sir.

15 Q. And you individually, did you take the position that any
16 funds that you have are your individual funds and not MSPS's
17 funds?

18 A. Can you repeat that?

19 Q. Did you take the position individually that any funds that
20 you had in your home were your funds and not MSPS's funds?

21 A. Yes, sir.

22 MR. BURNEY: That's all I have, Your Honor.

23 THE COURT: All right. Anything else?

24 MS. HEYWARD: Just one brief question.

25 Under tab 12, this is attached to my motion.

1 (WHEREUPON, Plaintiff Exhibit Number 1 was marked for
2 identification.)

3 REDIRECT EXAMINATION

4 BY MS. HEYWARD:

5 Q. Mr. Sprenger, has your attorney showed you a copy of this;
6 do you know?

7 A. (Affirmative nod.)

8 THE COURT: Is that a yes?

9 MR. SPRENGER: Yes. I'm sorry.

10 THE COURT: Thank you. Yes, sir.

11 MS. HEYWARD: I'd like to move this email into evidence
12 as Plaintiff's Exhibit 1.

13 (WHEREUPON, Plaintiff Exhibit Number 1 was admitted into
14 evidence.)

15 Q. And is it true that this email states that it's my
16 understanding the position -- the Strengers take the position
17 it's theirs?

18 A. Uh-huh (Affirmative).

19 Q. And that's why you didn't return the money?

20 A. Uh-huh (Affirmative).

21 MS. HEYWARD: No further questions.

22 THE COURT: That's a yes?

23 MR. SPRENGER: Yes, sir.

24 THE COURT: All right. Thank you.

25 Anything else of Mr. Sprenger?

1 MS. HEYWARD: No, Your Honor.

2 MR. BURNEY: No, Your Honor.

3 THE COURT: All right. Thank you, sir, you can step
4 down.

5 All right. Anything else then for the record on behalf of
6 Plaintiff?

7 MS. HEYWARD: Just, Your Honor, I believe it's clear
8 that Mr. Sprenger decided to take this matter into his own hands
9 instead of allowing the Court to come up with a solution and make
10 a judicial determination as to the fraudulent nature of the
11 funds. And that's why he didn't turn it over to his attorney,
12 which is not reasonable and in direct violation of your October
13 8th Order.

14 THE COURT: All right. Mr. Burney?

15 MR. BURNEY: Judge, your Order did not order the
16 Sprengers to return any money. Your Order simply said that until
17 a judicial determination can be made, MSPS is to take reasonable
18 efforts to obtain that money. The only thing they can do is
19 write a letter and then the Sprengers individually took the
20 position that's not MSPS's money. There was nothing in your
21 Order that required the return of any money. So to find MSPS in
22 contempt of your Order would be to interpret your Order in a way
23 that it's not even written. They were just ordered to take
24 reasonable efforts.

25 THE COURT: All right. Here's what I'm going to do now

1 that the Sprengers are parties. Eight thousand dollars has to be
2 paid into your trust fund within forty-eight hours. It's going
3 to be held pending the outcome of the litigation.

4 Any discovery that needs to get done needs to get done, and
5 we need to get this thing resolved within the next ninety days at
6 the outside. If we need to have a hearing on the merits with
7 full examination of Manfred Sprenger and Patricia Sprenger -- and
8 I'll tell you, I am concerned that if there's no written note,
9 you know, I think the law is pretty clear that the individuals
10 don't get priority over creditors' claims. But we'll address
11 that at some later date.

12 So anything else we need to address at this point, Ms.
13 Heyward?

14 MS. HEYWARD: No, Your Honor. Just we're ready to
15 proceed on the merits as soon as Mr. Burney is and you are. And
16 we're ready to get that scheduled. We are absolutely ready to
17 get this case behind us, so ...

18 THE COURT: All right. Well, then if you can move as
19 expeditiously as possible with the Saunders O'Dell issue and then
20 if y'all will get with Ms. Kimbrell, my docket coordinator, and
21 let's try to get this set sometime in January, of course, working
22 around very fine lawyers' busy schedules.

23 And then, Ms. Heyward, if you'll prepare a short Order for
24 today's hearing and send a copy, of course, to Mr. Burney. And
25 then, you know, the subpoena does need to be limited, as was

1 stated earlier on the record.

2 So Mr. Burney, any clarification needed at this point?

3 MR. BURNEY: No, Your Honor.

4 THE COURT: Okay. All right. Yes, ma'am?

5 MS. HEYWARD: Just one moment, briefly, Your Honor.

6 Would you like me to prepare a proposed Confidentiality Order?

7 THE COURT: I'm going to trust that you and Mr. Burney
8 are going to be able to agree on that.

9 MS. HEYWARD: Okay. Thank you.

10 THE COURT: All right. Thank you.

11 MR. BURNEY: Thank you.

12

13

14 (Email from Mr. Burney to Ms. Heyward dated 10/16/15 entered
15 as Plaintiff Exhibit Number 1.)

16 (Letter from MS Production Solution to Mr. and Mrs. Sprenger
17 dated 10/07/15 entered as Defendant Exhibit Number 1.)

18

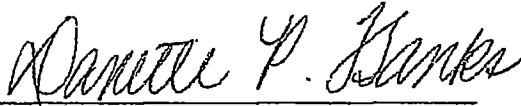
19

20 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

1 The undersigned, Danette P. Hanks, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 18th day
8 of November, 2015.

9 I do further certify that I am neither of kin, counsel, nor
10 interest to any parties hereto.

11 February 11, 2016

12 
13

14 Danette P. Hanks, CCR

15 Certified Court Reporter
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-01871

China Construction America of
South Carolina, Inc.,

Plaintiff,

vs.

MS Production Solutions LLC a/k/a
MSPS Steel Fabricators,

Defendants.

TRANSCRIPT OF TESTIMONY

March 2, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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

Robert C. Osborne, III, Esquire
Attorney for the Plaintiff

Rhett D. Burney, Esquire
Attorney for Defendant

Wanda E. Fudge, CCR
Court Reporter

INDEX

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Manfred Sprenger				
Mr. Burney	4			
Mr. Osborne		26		
Benjamin Davis O'Dell				
Mr. Burney	29			

EXHIBITS

	<u>Page</u>
P-1 Notebook	30
D-1 Mortgage, Security Agreement for the Small Business Loan Source, LLC Filed Copy	5
D-2 Mortgagee, Security Agreement for the Small Business Loan Source, LLC Certified Copy	10
D-3 UCC Financing Statement	11
D-4 Guaranty Agreement of Patricia Sprenger	12
D-5 Small Business Administration Note	12
D-6 Guaranty Agreement of Manfred Sprenger	12
D-7 Small Business Administration Unconditional Limited Guarantee	12
D-8 General Ledger for MSPS as of December 31, 2012	14
D-9 General Ledger for MSPS as of December 31, 2013	14
D-10 First Citizens Bank Statement	16

EXHIBITS (Continued)

	<u>Page</u>
D-11 Bank of America Bank Statement	16
D-12 Bank of America Deposit Slip	18
D-13 Bank of America Bank Statement for July 2015	18
D-14 Summary from 2013 Through 2015	20
D-15 First Citizens Bank Statement Dated June 12, 2015	22
D-16 Bank of America Bank Statement Dated June 30, 2015	22
D-17 MS Production Employee Pay Record	24
D-18 MS Production Employee Quarterly Contribution Report	24
D-19 Copies of Checks	26

1 BY THE COURT: Anything we need to discuss before we go on
2 record?

3 MR. OSBORNE: No, sir, Your Honor.

4 MR. BURNEY: No, Your Honor.

5 BY THE COURT: Okay. All right. This is 2014-01871, the
6 matter of China Construction versus MS. Production and others.

7 Gentlemen, from what I understand, the motion today that's
8 being heard was the one that was filed September 23, 2015 to set
9 aside transfers?

10 MR. OSBORNE: Yes, sir.

11 BY THE COURT: Okay.

12 MR. BURNEY: Your Honor, I thought this was the final
13 hearing for the supplemental proceedings.

14 BY THE COURT: Well, I think we probably end up at the same
15 place.

16 MR. OSBORNE: I think so. I think -- we -- it was my
17 understanding this would, you know, be the final hearing and we
18 would make arguments about the fraudulent conveyances.

19 BY THE COURT: Okay... Are you wanting to take some testimony
20 here this morning?

21 MR. OSBORNE: Your Honor, I think -- he's sworn testimony
22 three times. I wasn't planning to put him on the stand. I think
23 we've had enough, if I can just go right into my argument.

24 BY THE COURT: Anything you want to have on the record via
25 testimony?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 MR. BURNEY: Yes, sir.

2 BY THE COURT: Okay. You can go ahead and call your
3 witness.

4 MR. BURNEY: Thank you. I call Manfred Sprenger.

5 MANFRED SPRENGER, BEING FIRST DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 BY THE COURT: Thank you, if you would come around and have
8 a seat, please, sir. (complies)

9 And if you'll state your full name, please.

10 THE WITNESS: Manfred Sprenger.

11 BY THE COURT: All right. Your witness.

12 MR. BURNEY: Thank you.

13 DIRECT EXAMINATION BY MR. BURNEY:

14 Q Mr. Sprenger, you are the owner of MS Productions, LLC?

15 A That's correct.

16 Q I show you -- you are the owner of MS Productions, LLC?

17 A Yeah.

18 Q Let me show you what's been marked as Defendant's Exhibit
19 No. 1. Is that the mortgage to the Small Business
20 Administration?

21 A Yes, sir.

22 Q Is that mortgage currently in place where you owe money or
23 your company owes money to the Small Business Administration?

24 A Yes, sir.

25 Q And the original amount of the mortgage, was it \$1,457,000?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A Yeah. Roughly, yeah.

2 Q What is the balance now?

3 A Approximately \$1,000,000.

4 MR. BURNEY: Your Honor, I would move at this time to
5 introduce Defendant's Exhibit No. 1.

6 BY THE COURT: All right.

7 MR. OSBORNE: No objection.

8 (Mortgage, Security Agreement for the Small Business Loan
9 Source, LLC, filed copy entered into evidence as Defendant's
10 Exhibit No. 1).

11 Q You and your wife both signed this mortgage as well; is that
12 correct?

13 A That's correct.

14 Q Is that because the two of you put up one of your houses -- or
15 your house as collateral?

16 A Yes, sir.

17 Q You also signed personal Guaranties for this loan?

18 A That's correct.

19 Q Under the terms of the mortgage, did you give the Federal
20 Government, the SBA, a security interest in the real estate from
21 which your business is situated?

22 A That's correct. Yes.

23 Q Turn to page 3 of the mortgage -- I've highlighted some
24 portions for you -- on page 3 does it set out what types of
25 property the SBA has a security interest in?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A Yes, it does.

2 Q Go down to the first full paragraph 3, can you read that to
3 me as far as what the bank has a security interest in?

4 A "Together with all rents, revenues, issues, profits,
5 proceeds, income, royalties, accounts, including health-care
6 insurance receivables, escrows, letter-of-credit rights (each as
7 defined in the Code hereinafter defined), security deposits,
8 impounds, reserves, tax refunds and other rights to monies from
9 the Premises and/or the businesses and operations conducted by
10 Mortgagor thereon, to be applied against the Indebtedness
11 (hereinafter defined); provided, however, that Mortgagor, so long
12 as no Event of Default (as hereinafter defined) has occurred
13 hereunder, may collect rent as it becomes due, but not more than
14 one (1) month in advance thereof."

15 Q And then the last paragraph, does it further set out what
16 the bank has a security interest in?

17 A "Together with all fixtures"---

18 Q Just answer that and then---

19 A Oh, yes, yes. Sorry.

20 Q And does it give the Federal Government a security interest
21 in the equipment?

22 A Yes, sir.

23 Q Machinery, lighting, and goes through a whole litany of
24 other property?

25 A Yes, sir.

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 Q Let's turn to page 4, the second full paragraph or the third
2 paragraph on the page, what else do you -- does MS Productions,
3 LLC give the SBA a security interest in? Can you read that for
4 me as well?

5 A This paragraph?

6 Q Yes.

7 A "Together with all Mortgagor's accounts now owned or
8 hereafter created or acquired as relate to the Premises,
9 including, without limitation, all of the following now owned or
10 hereinafter created or acquired by Mortgagor: (i) accounts,
11 contract rights, health-care-insurance receivables, book debts,
12 notes, drafts, and other obligations or indebtedness owing to the
13 Mortgagor arising from the sale, lease or exchange of goods or
14 other property and/or the performance of services; (ii) the
15 Mortgagor's rights in, to and under all purchase orders for
16 goods, services or other property; (iii) the Mortgagor's rights
17 to any goods, services or other property represented by any of
18 the foregoing; (iv) monies to become due to the Mortgagor under
19 all accounts (sic) for the sale, lease or exchange of goods or
20 other property and/or the performance of the services including
21 the right to payment of any interest or finance charges in
22 respect thereof (whether or not yet earned by performance on the
23 part of the Mortgagor)."

24 Q So, even contracts that the company had---

25 A Yes, sir.

APPENDIX 381

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 Q Now, when you purchased the land and you purchased the
2 company was that at the same time that this document was signed?

3 A This here?

4 Q Yes, the mortgage.

5 A Yes, sir.

6 Q Turn to page 33 of this document -- page 43, it's entitled
7 Purchase Money Mortgage.

8 BY THE COURT: I'm sorry, what page?

9 MR. BURNEY: I'm sorry, Your Honor, page 33, paragraph 43.

10 BY THE COURT: Page 33?

11 MR. BURNEY: Yes, sir.

12 BY THE COURT: All right. Help me out.

13 MR. BURNEY: I will substitute this mortgage for that one.

14 BY THE COURT: All right.

15 MR. OSBORNE: I think I'm missing a full copy as well.

16 MR. BURNEY: It's the same copy.

17 MR. OSBORNE: Okay.

18 THE WITNESS: You can read mine.

19 BY THE COURT: All right.

20 Q Please read paragraph 43.

21 A "Purchase Money Mortgage. (As to Tract I): This Mortgage
22 is given, at least in part, to secure a loan for the purchase
23 money for the Mortgaged Property. As a purchase money mortgage
24 it is entitled to all privileges afforded such under Applicable
25 Law."

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 Q And it's Tract I is that the business? You have two tracts.
2 Is Tract I the business property?

3 A Yes, sir.

4 Q Tract II is your personal home?

5 A Yes, sir.

6 MR. BURNEY: Your Honor, I don't know how you want to handle
7 this as far as marking it into evidence. That's evidentially a
8 portion of the mortgage that is recorded. This is the entire
9 mortgage. We can put them both in if the Court desires.

10 BY THE COURT: What's your preference?

11 MR. BURNEY: I realize it didn't print out that way.

12 MR. OSBORNE: I guess we'll---

13 MR. BURNEY: Put both in.

14 BY THE COURT: Let's just put the full copy. I'm going to
15 return this to you and have my court reporter mark what you have
16 now as Defendant's 1.

17 MR. BURNEY: That is showing that it's recorded. This is
18 the unrecorded one they executed at the time of closing.

19 BY THE COURT: All right. Do you need a recorded copy?

20 MR. OSBORNE: We can stipulate to it.

21 BY THE COURT: Okay.

22 MR. BURNEY: My apologies.

23 BY THE COURT: That's fine. So, Wanda, if you will -- let's
24 go ahead and mark the copy as Defendant's 2 since Defendant's 1
25 has some recording information on it.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

China Construction America of South Carolina, Inc.....Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents/Appellants.

**AMENDED RECORD ON APPEAL
VOLUME II**

Henry P. Wall
Caitlin C. Heyward
Robert C. Osborne III
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
P: (803) 252-7693
F: (803) 254-5719
Attorneys for Appellant/Respondent

J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Respondents/Appellants

INDEX

Rule to Show Cause and Order of Reference of May 5, 2015.....	1
Order of August 5, 2014.....	4
Order of October 13, 2015.....	6
Amended Order of October 27, 2015.....	10
Order of December 23, 2015.....	13
Order of June 7, 2016.....	19
Order of August 2, 2016.....	32
Order of Judgment of December 24, 2014.....	34
Amended Order of Judgment of January 29, 2015.....	38
Appellant/Respondent's Complaint.....	40
Respondents/Appellants' Answer.....	62
Affidavit of Service of Complaint.....	65
Verified Petition for Supplemental Proceedings.....	66
Appellant/Respondent's Notice of Motion and Motion for Order of Default.....	69
Appellant/Respondent's Notice of Motion and Motion for Damages Hearing.....	74
Appellant/Respondent's Motion for Execution and Set Aside Fraudulent Transfers.....	76
Appellant/Respondent's Motion for Contempt and Sanction.....	136
Appellant/Respondent's Notice of Motion and Motion to Join Parties.....	149
Appellant/Respondent's Motion to Alter or Amend.....	154
Respondent/Appellant's Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e).....	157

Testimony

Transcript of Testimony from June 2, 2015.....	161
Transcript of Testimony from October 2, 2015.....	192
Transcript of Testimony from November 18, 2015.....	219
Transcript of Testimony from March 2, 2016.....	241

Plaintiff's Exhibits

1. Tab 3.....	291
2. Tab 7.....	336
3. Tab 8.....	401
4. Tab 9.....	460
5. Tab 11.....	499
6. Tab 12.....	553
7. Tab 13.....	557
8. Tab 14.....	576

Defendant's Exhibits

October 2, 2015 Hearing

1.....	593
2.....	595
3.....	600
4.....	603
5.....	609
6.....	624
7.....	641
8.....	648
9.....	680
10.....	716
11.....	724
12.....	726
13.....	735

March 2, 2016 Hearing

1.....	742
2.....	758
3.....	793

APPENDIX 386

4.....	797
5.....	804
6.....	810
7.....	817
8.....	823
9.....	832
10.....	841
11.....	845
12.....	849
13.....	850
14.....	855
15.....	859
16.....	862
17.....	867
18.....	869
19.....	872
Certificate of Appellant.....	873

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 (Mortgage, Security Agreement for the Small Business Loan
2 Source, LLC, certified copy entered into evidence as Defendant's
3 Exhibit No. 2)

4 Q Mr. Sprenger, I'm going to show you what's been marked as
5 Defendant's Exhibit No. 3. Is that the UCC Statement?

6 A That's correct.

7 Q Financing Statement?

8 A That's correct.

9 Q At the very bottom I've highlighted what the bank has a
10 security interest in. Can you read that for me, please?

11 A The whole paragraph?

12 Q Yes, sir.

13 A "All of the business personal property of the debtor at or
14 arising out of the following location, or wherever located
15 including without limitation all accounts, chattel paper,
16 inventory, equipment, instruments, investment property,
17 documents, deposit accounts, letter of credit rights, general
18 intangibles, furniture, building materials and fixtures at or
19 arising out of that location, whether any of the foregoing is
20 owned now or acquired later; all accessions, additions,
21 replacements and substitutions relating to any of the foregoing;
22 all records of any kind relating to the foregoing: all proceeds
23 relating to any of the foregoing (including insurance, lawsuits,
24 general intangibles, and account proceeds) and all remedies or
25 claims with respect to any thereof."

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 MR. BURNEY: Your Honor, I would move at this time to
2 introduce Defendant's Exhibit No. 3.

3 BY THE COURT: All right.

4 (UCC Financing Statement entered into evidence as
5 Defendant's Exhibit No. 3)

6 Q Mr. Sprenger, I'm going to show you Defendant's Exhibit 4,
7 5, 6 and 7. As far as 6 and 7, are those the personal Guaranties
8 signed by you and your wife in order to get this loan from the
9 SBA?

10 A Yes, sir.

11 Q You understand how a personal Guarantee works?

12 A Yes, sir.

13 Q How does it work?

14 A If left unpaid, the Small Business loan, it would be all of
15 my personal property in jeopardy.

16 Q So, the bank required you and your wife to give a personal
17 Guarantee in order for extra backing of this loan?

18 A That's correct.

19 Q And Exhibit No. 5, is that the note to the United States
20 Small Business Administration?

21 A That's correct, yes.

22 Q And that is dated August of 2007?

23 A That's correct.

24 MR. BURNEY: Your Honor, I would move at this time to
25 introduce Defendant's Exhibits 4, 5, 6, and 7.

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 BY THE COURT: All right. Thank you, sir..

2 (Guaranty Agreement of Patricia Sprenger entered into
3 evidence as Defendant's Exhibit No. 4)

4 (Small Business Administration Note entered into evidence as
5 Defendant's Exhibit No. 5)

6 (Guaranty Agreement of Manfred Sprenger entered into
7 evidence as Defendant's Exhibit No. 6)

8 (Small Business Administration Unconditional Limited
9 Guarantee entered into evidence as Defendant's Exhibit No. 7)

10 Q Now, when did MS Productions get involved with China
11 Construction?

12 A The contract -- I go by memory now, I don't have it in front
13 of me -- but the contract, as far as I recall, was signed
14 December 22, 2012.

15 Q When did you start doing work for China Construction?

16 A Right about the, in the new year of 2013, right immediately
17 because the project was already late.

18 Q Let's get to payments to your wife, Patricia. She's here
19 with us today?

20 A Yes, sir.

21 Q Now, MS Productions has made payments to your wife; is that
22 correct?

23 A That's correct.

24 Q During the time that MS Productions was making payments to
25 your wife was it also making payments to you?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A No, sir.

2 Q Why is that?

3 A Well, now I guess I get to embarrass myself, I was just too
4 lazy to go to the bank and get the money -- deposit the money
5 myself. So, for me it was just easier to write the check
6 directly to her and she brought it to the bank. It was our
7 personal joint checking account.

8 Q How long was your company writing checks to Patricia rather
9 than to you?

10 A Well, I wrote the checks from the beginning of the business
11 in 2007 to myself, probably around -- I went back and looked --
12 September of 2011.

13 Q Let me show you what has been marked as Defendant's Exhibit
14 No. 8 and 9. Are these the documents provided by your CPA to the
15 subpoena issued by China?

16 A Yeah.

17 Q Is this the ledger from your company?

18 A Yes, sir.

19 Q Now, Defendant's Exhibit No. 8 is that the ledger for the
20 year of 2012?

21 A Yes.

22 Q And Exhibit No. 9 is that the ledger for December -- excuse
23 me -- through the year of 2013?

24 A That's correct.

25 Q These documents were kept in the course of your business?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A Yes, sir.

2 MR. BURNEY: Your Honor, I would move at this time to
3 introduce Defendant's Exhibit Nos. 8 and 9.

4 BY THE COURT: All right. Thank you.

5 (General Ledger for MSPS as of December 31, 2012 entered
6 into evidence as Defendant's Exhibit No. 8)

7 (General Ledger for MSPS as of December 31, 2013 entered
8 into evidence as Defendant's Exhibit No. 9)

9 Q And we've highlighted those checks written to Patricia in
10 both of these exhibits. Do you see these highlights?

11 A Yes.

12 Q If we would look through both ledgers would you see any
13 checks written to Manfred Sprenger?

14 A No, none whatsoever.

15 Q Was it customary, even before you got involved with China to
16 write checks to Patricia Sprenger?

17 A Yes.

18 Q How many owners are there of MS Productions?

19 A One.

20 Q And that is you?

21 A That is me, yes.

22 Q How many employees do you have at any given time?

23 A I would say average eight, depends on the workload.

24 Q Tell the Court briefly what type of business you are in.

25 A I fabricate steel, structural steel for a building. Just

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 one example for the Court, I built the Croc Center here in town,
2 all of the steel inside the building.

3 Q So, people come to you, and builders, and contractors come
4 to your company and they need steel to make a structure?

5 A Yes, sir.

6 Q Then you go and buy steel and manufacture it to fit the
7 specifications that the structure needs?

8 A Yes, sir.

9 Q And you sell the steel to the contractor or builder?

10 A Yes, sir.

11 Q Now, is it uncommon for you to put money into your business
12 from your own personal account?

13 A No. It's not uncommon.

14 Q Why would you have to put money in from your own personal
15 account into the business?

16 A Usually when there's high cash flow due to different things;
17 when contractors don't pay, which is very common, on time and
18 stretch out the payment to me, and to keep the cash flow going
19 and to keep the payroll paying and my suppliers.... They don't wait
20 for me. I have terms with them and me telling them I haven't
21 gotten paid yet won't fly with them. So, I have to put money for
22 my cash flow purpose.

23 Q Let me show you what's been marked as Defendant's Exhibit
24 No. 10 and 11. Is Defendant's Exhibit No. 10, is that a bank
25 statement from your account that you have with Patricia, your

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 wife?

2 A That's correct.

3 Q That's at First Citizens?

4 A That's correct.

5 Q Is Defendant's Exhibit No. 11 the Bank of America account
6 that your company has?

7 A That's correct.

8 MR. BURNEY: Your Honor, I would move at this time to
9 introduce Defendant's Exhibit No. 10 and 11.

10 BY THE COURT: All right.

11 (First Citizens Bank Statement entered into evidence as
12 Defendant's Exhibit No. 10)

13 (Bank of America Bank Statement entered into evidence as
14 Defendant's Exhibit No. 11)

15 Q So, both of these statements are they for the month of May
16 -- excuse me -- March of 2014 -- February through March 2015?

17 A That's correct.

18 Q The first statement shown as Defendant's Exhibit No. 10 from
19 First Citizens, on the second page does it show a check written
20 from your account, check number 1421 on February 26th in the
21 amount of \$40,000?

22 A That's correct.

23 Q And that's from your own personal account?

24 A That's correct.

25 Q If we look at Defendant's Exhibit No. 11 which is the Bank

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 of America account on the second page of that document, there was
2 \$40,000 deposited into the Bank of America account for your
3 business?

4 A Yes, sir.

5 Q So, is it your position that the money was transferred from
6 your personal account to the business account?

7 A That's correct.

8 Q Is that common or uncommon?

9 A That is common.

10 Q Let's look at the balance of that Bank of America account,
11 the business account, ending balance of that, was it \$39,380.88?

12 A Yes.

13 Q If you had not put the \$40,000 into the business account
14 that month, what would your balance have been?

15 A Negative a thousand, roughly.

16 Q Let me show you Defendant's Exhibit No. 12 and 13. Is
17 Defendant's Exhibit No. 12 a deposit slip from the Bank of
18 America for \$25,000?

19 A Yes, sir.

20 Q And if we look at Defendant's Exhibit No. 13, is that the
21 bank statement from MS Production Solutions?

22 A That's correct.

23 MR. BURNEY: Your Honor, I would move at this time to
24 introduce Defendant's Exhibit No. 12 and 13.

25 BY THE COURT: All right.

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 (Bank of America Deposit Slip entered into evidence as
2 Defendant's Exhibit No. 12)

3 (Bank of America Bank Statement for July 2015 entered into
4 evidence as Defendant's Exhibit No. 13)

5 Q And if we look at Defendant's Exhibit No. 13, do you see the
6 \$25,000 being deposited on July 15, 2015?

7 A Yes, sir.

8 Q Was that cash that was put into the business?

9 A Yes, sir.

10 Q And where did that cash come from?

11 A Famously called under the mattress.

12 Q Explain that for me. Is this cash that you kept at your
13 house?

14 A We keep cash at our house.

15 Q If we look at the balance of the company's account at Bank
16 of America as shown on Defendant's Exhibit No. 13 for the month
17 July 15 through July 31st, what is the ending balance?

18 A \$21,759 (sic).

19 Q If you had not put in the \$25,000 would your company have
20 had a negative balance?

21 A Yes, sir.

22 Q Now, do you pay yourself?

23 A Yes, I do.

24 Q What is your -- do you have a set draw or set payment that
25 you pay yourself every month?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A An agreement I made at the very beginning of when I
2 purchased the business, agreement with MSPS, that I should get --
3 it lies out what my duties are, and my benefits, and pay, and in
4 there it states I should get \$12,000 per month plus health
5 insurance and vacation and the whole -- whatever an employee
6 expects to get paid. The \$12,000 I can't pay myself that every
7 month or at all in the last couple of years due to the economy as
8 we all know. So, at this point it is, I think, \$7- or \$8,000,
9 \$10,000. It changes, varies.

10 Q Let me show you Defendant's Exhibit No. 14. Did you prepare
11 this?

12 A Yes, sir.

13 Q Does this show a summary of your payments throughout the
14 past couple of years from your company to you?

15 A Yes, sir.

16 Q You mentioned that you had a salary of \$12,000 a month?

17 A Yes, sir.

18 Q Have you been taking that salary of \$12,000 a month?

19 A Not lately, no.

20 Q The past couple of years approximately how much have you
21 been paying yourself monthly?

22 A Average, I would say about eight-and-a-half, \$9,000,
23 average. On average, yeah.

24 MR. BURNEY: Your Honor, I would move at this time to
25 introduce Defendant's Exhibit No. 14.

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 BY THE COURT: All right. Thank you.

2 (Summary From 2013 through 2015 entered into evidence as
3 Defendant's Exhibit No. 14)

4 Q Defendant's Exhibit No. 14 does it set out how much your
5 company should have paid you and how much you have actually been
6 paid?

7 A That's correct.

8 Q When it shows how much you have been paid, are those the
9 checks that were written to Patricia Sprenger?

10 A Those are the checks written to Patricia, yes, sir.

11 Q And have you calculated on the first page how much the
12 company actually owes to you?

13 A At this point, roughly, \$180,000.

14 Q Is that through the years 2013, '14 and '15?

15 A Yes, sir.

16 Q Is that because the months that the company did not pay you
17 a salary?

18 A That's correct.

19 Q If you look at page 2 of that document, it shows the year
20 January 2015 through December 2015, does it show the money going
21 into MS Productions from you?

22 A From me, yes, the \$40,000 we talked about earlier which I
23 put in.

24 Q Is that in the column that says "Manfred"?

25 A It says the column "Manfred to MSPS."

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 Q And then in the next column, it says payments to Manfred?

2 A Yes, sir.

3 Q It has a payment to you of \$60,000?

4 A Back in June.

5 Q That check was actually written to Patricia?

6 A Written to Patricia, yes.

7 Q It was deposited into your account?

8 A Into the First Citizens joint account, yes, sir.

9 Q What does that \$60,000 represent?

10 A That \$60,000 represents the salary payment which I haven't
11 received from January until June plus the \$40,000 I put in in
12 March which is not even enough for that to cover that.

13 Q So, does your company often play catch-up with what it
14 should have paid you but was unable to pay because it didn't have
15 the money?

16 A Yes, sir.

17 Q Let me show you Defendant's Exhibit No. 15 and 16. Is
18 Defendant's Exhibit No. 15 your joint account with your wife at
19 First Citizens?

20 A Yes, sir.

21 Q And Defendant's Exhibit 16 the Bank of America account for
22 your company?

23 A Yes, sir.

24 Q If you look at Defendant's Exhibit No. 15 does it show the
25 \$60,000 being deposited into your joint account?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A Yes, sir.

2 Q And Defendant's Exhibit No. 16 does it show the \$60,000
3 coming out of the business account?

4 A Yes, sir.

5 Q That's check number 54522?

6 A Yes.

7 MR. BURNEY: Your Honor, I would move at this time to
8 introduce Defendant's Exhibit No. 15 and 16.

9 BY THE COURT: All right.

10 (First Citizens Bank Statement dated June 12, 2015 entered
11 into evidence as Defendant's Exhibit No. 15)

12 (Bank of America Bank Statement dated June 30, 2015 entered
13 into evidence as Defendant's Exhibit No. 16)

14 MR. OSBORNE: Your Honor, this is the first -- we've gone
15 over these checks before and this is the first time they've been
16 indicated that they're salary. Sworn testimony in the past has
17 said these were loan repayments.

18 BY THE COURT: You can certainly cross-examine him on that.

19 MR. BURNEY: I think I moved to introduce---

20 BY THE COURT: Yes, sir.

21 Q Let's go to the \$60,000. What was the \$60,000 for?

22 A The \$60,000 is to catch-up for salaries and the \$40,000 I
23 put back into the company in March.

24 Q So, in June 2015 your company wrote a check out of its
25 account that you deposited into your joint account, \$60,000?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A Yes, sir.

2 Q That was in June 2015?

3 A Correct.

4 Q But previously, in February 2015, you put money in of
5 \$40,000?

6 A That's correct.

7 Q If we look at the spreadsheet that you have prepared on page
8 2 where it breaks down the month had you even taken a salary from
9 January through May?

10 A No, nothing.

11 Q It is your contention that your company's playing catch-up?

12 A That's correct.

13 Q If we look again on the pages on this document that you
14 prepared does it go through the years 2014 as well?

15 A Yes.

16 Q And 2013?

17 A Yes.

18 BY THE COURT: Gentlemen, I want us to be mindful of time,
19 but the matter was only set for 45 minutes. That's what the
20 requested time was. I can give you a little more time, but we
21 need to be sensitive.

22 MR. BURNEY: I'm almost done with him. I'm sorry, Your
23 Honor. I thought we had you for the full morning. My apologies.

24 Q Let me show you what's been marked as Defendant's 17 and 18.
25 Do you recognize these documents?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A Yes, sir.

2 Q These documents were provided by your CPA to China
3 Construction?

4 A Yes, sir.

5 Q Do they show your employees and what your employees were
6 paid throughout the year?

7 A Yes, sir.

8 MR. BURNEY: Your Honor, I would move at this time to
9 introduce Defendant's 17 and 18 into evidence.

10 BY THE COURT: All right. Thank you, sir.

11 (MS Production Employee Pay Record entered into evidence as
12 Defendant's Exhibit No. 17)

13 (MS Production Employee Quarterly Contribution Report
14 entered into evidence as Defendant's Exhibit No. 18)

15 Q If we look at Defendant's Exhibit 18. This is the year
16 2012? Is this for the year 2012?

17 A Yes, sir.

18 Q Does it show what you paid your employees during that year?

19 A Yes, sir.

20 Q Is Patricia Sprenger listed on there at all?

21 A No, sir.

22 Q And the next Exhibit is for the year 2015?

23 A Yes, sir.

24 Q Does it show Patricia Sprenger as being -- receiving money
25 at that time?

MANFRED SPRENGER-DIRECT BY MR. BURNEY

1 A Yes, sir.

2 Q Did you eventually employ Patricia?

3 A Yes, I did.

4 Q When approximately was that?

5 A September or October of last year.

6 Q Why did you employ her?

7 A Because of the time she's spending and we need her there is
8 becoming more and more.

9 Q Let me show you Defendant's Exhibit 19. Do you see the
10 check dated June 4, 2015 in the amount of \$50,000?

11 A Yes, I do.

12 Q Is that for cash?

13 A Yes, it is.

14 Q Is that written out of your account that you have with your
15 wife at First Citizens?

16 A That's correct.

17 Q Did you also write checks for cash out of your individual
18 account that you have with your wife?

19 A Yeah.

20 Q What's the purpose of that?

21 A Just like to keep what I need at home and pay all bills,
22 just for personal bills.

23 Q Would you use this money to help the business?

24 A Also, yes.

25 MR. BURNEY: Your Honor, I would introduce Defendant's

MANFRED SPRENGER-CROSS BY MR. OSBORNE

1 Exhibit No. 19.

2 A Can I add something? 25,000 of this money went back into
3 the business in July of last year.

4 (Copies of Checks entered into evidence as Defendant's
5 Exhibit No. 19)

6 Q Is that the deposit slip that we have---

7 A Yes.

8 Q Is that the deposit shown in Defendant's Exhibit No. 12?

9 A Yes.

10 MR. BURNEY: That's all I have, Your Honor.

11 BY THE COURT: All right. Your witness.

12 CROSS-EXAMINATION BY MR. OSBORNE:

13 Q Mr. Sprenger, where does MS Production bank?

14 A Where?

15 Q What bank?

16 A Bank of America.

17 Q Who holds the mortgage for the property?

18 A Small Business loan.

19 Q It's not Bank of America?

20 A No.

21 Q Does the Small Business loan, do they have any sort of
22 agreement where they have control over your account at Bank of
23 America?

24 A Yes. They have control of all of my receivables and all of
25 my contracts---

MANFRED SPRENGER-CROSS BY MR. OSBORNE

1 Q If they -- you're telling me if they wanted to they could
2 talk to Bank of America and they would have the authority to take
3 money out of your account at any point?

4 A I don't think so. That's what we read to them. They have
5 access to all of my cash, my contracts, my equity and all of
6 that.

7 Q Do you have any sort of agreement that has -- between ---
8 that Bank of America has that says you give the SBA the ability
9 to come into your account and take money?

10 A I don't recall a written statement. The mortgage agreement
11 states they have access to all of my receivables and all of my
12 equity.

13 Q It says that but, in practice, if they tried to come in and
14 take money out of your account---

15 A I don't know how the law works in practice with that other
16 than what I signed with the Small Business loan.

17 Q The Small Business loan, they don't have possession of the
18 cash that you keep in your house, do they?

19 A No.

20 Q Mr. Burney brought up a check that was written in May of
21 this year, a \$60,000 check. Do you remember talking about that?

22 A Yes.

23 Q Do you remember having your deposition taken in September?

24 A Yes, sir.

25 Q You were asked about that check. You were asked by Ms.

MANFRED SPRENGER-CROSS BY MR. OSBORNE

1 Heyward: "Do you recall writing a check to your wife in the
2 amount of \$60,000 on May 27, 2015?"

3 What did you answer?

4 A "I do."

5 Q She asked you: "Why did you do that?"

6 A "Like I always do when I take money and frequently do as you
7 probably saw"---

8 THE COURT REPORTER: Can you start over? I can't---

9 THE WITNESS: Oh, the microphone. I'm sorry.

10 THE COURT REPORTER: I couldn't hear you.

11 THE WITNESS: I'm sorry.

12 A Could I take this---

13 Q Yes. So, Ms. Heyward asked you about the check on May 27,
14 2015. And you---

15 A "I do."

16 Q And she asked why you wrote that check. How did you answer?

17 A "Like I always do when I take money and frequently do as you
18 probably saw before."

19 Q So, when you say you "take money", that means you've loaned
20 money to the company and you're taking it back?

21 A No. When I pay myself, I have not received salaries.

22 Q Does this say anything about salary?

23 A No. It doesn't specifically say salary, no.

24 Q It says you were paying yourself back for money you took
25 from -- that you gave to the company?

BENJAMIN DAVIS O'DELL--DIRECT BY MR. BURNEY

1 A My services --, that year, as we just went through, I didn't
2 receive any salary from the month January until June.

3 Q But in your deposition you didn't say anything about salary,
4 did you?

5 A Not specifically salary, no.

6 MR. OSBORNE: Your Honor, I think that's all I have for Mr.
7 Sprenger. I would like to get into my argument.

8 BY THE COURT: All right. Any other questions?

9 MR. BURNEY: None of him. I have a quick witness, Your
10 Honor.

11 BY THE COURT: All right. You can have a seat, sir. Yes,
12 sir.

13 (witness excused)

14 BENJAMIN DAVIS O'DELL, BEING FIRST DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 BY THE COURT: Thank you. Come around and have a seat,
17 please.

18 If you'll state your full name.

19 THE WITNESS: Sure. Benjamin Davis O'Dell.

20 DIRECT EXAMINATION BY MR. BURNEY:

21 Q Mr. O'Dell, what do you do for a living?

22 A I am a CPA.

23 Q Are you the person who prepared the tax returns for Mr.
24 Sprenger's company?

25 A Yes, sir.

BENJAMIN DAVIS O'DELL--DIRECT BY MR. BURNEY

1 Q Is it your company that responded to the subpoena of China
2 Construction for the records?

3 A Yes, sir.

4 Q Are you familiar with his tax returns?

5 A Yes.

6 Q Does his wife claim any money written to her from the
7 company as income?

8 A No, sir.

9 Q Is she taxed on that?

10 A No, sir.

11 MR. BURNEY: That's all I have of this witness, Your Honor.

12 MR. OSBORNE: Nothing from me, Your Honor.

13 BY THE COURT: All right. I appreciate you coming in.

14 MR. BURNEY: Your Honor, he's under subpoena. I don't think
15 we'll need him anymore, if he may be excused.

16 BY THE COURT: Mr. O'Dell, you're free to go.

17 THE WITNESS: Thank you.

18 BY THE COURT: Yes, sir.

19 (witness excused)

20 BY THE COURT: All right. Anything else then for the record
21 as far as testimony or evidence?

22 MR. OSBORNE: I would like to put this notebook in as an
23 exhibit.

24 BY THE COURT: All right.

25 (Notebook entered into evidence as Plaintiff's Exhibit No.

1 1)

2 BY THE COURT: Just for the record, if you could give a
3 brief explanation of what's in that large notebook.

4 MR. OSBORNE: It has filings from this case, deposition
5 transcripts -- it's also got an index at the front -- but
6 basically filings, deposition transcripts -- a lot of the stuff
7 is duplicate of what Mr. Burney's put in. It's got the UCC
8 Financing Statements, and then there are a couple of cases that
9 I've included that I may reference today.

10 BY THE COURT: Okay. All right.

11 MR. OSBORNE: Your Honor, getting into my argument, as you
12 know, we've been here before, but we contend that since 2013 MSPS
13 has made over \$360,000 in fraudulent transfers to Manfred and
14 Patricia Sprenger.

15 Our motion is based on the Statute of Elizabeth which
16 basically says that transactions or transfers can be set aside in
17 two instances: one, when there's no consideration and second,
18 when there is consideration but there's fraudulent intent.

19 I guess to address first the \$7- and \$14,000 transfer---

20 BY THE COURT: All right. Let me -- and I apologize for
21 interrupting, but I know I'm interrupting you -- Defendant, at
22 least in one of their filings, argues that the Statute of
23 Elizabeth is limited solely to real estate transfers. What's
24 your position on that?

25 MR. OSBORNE: I would agree that most of the time it comes

1 up in real estate transfers, but there's South Carolina case law
2 where it applies to transfers of assets outside of a company. I
3 think it's -- I didn't print that case out. It's Dufresne v.
4 Hilton Head -- it's something with Hilton Head Island, and it
5 dealt with a company that transferred all of their assets out of
6 the company. That case was actually overruled, but it was
7 overruled on other grounds. They had a grossly inadequate
8 standard for consideration. But that's the one offhand I can
9 remember, but they have applied the Statute of Elizabeth outside
10 of real estate transactions.

11 BY THE COURT: Mr. Burney, let me ask you, is it still your
12 client's position that the Statue of Limitation (sic) does not
13 apply to anything other than real estate conveyances?

14 MR. BURNEY: Well, the Statute of Elizabeth has been
15 codified. I think it kind of goes back through the position that
16 the Statute of Elizabeth only applies to real estate conveyances.

17 BY THE COURT: Well, I know you're taking that position. I
18 want to know what the law says.

19 MR. BURNEY: If you look at the statute, it gives a broad
20 explanation of what it applies to.

21 MR. OSBORNE: In the language in the statute, it says goods,
22 chattels -- I mean, the beginning phrase of the statute starts
23 off with about every sort of property that you could have.

24 BY THE COURT: Well, y'all are protected on the record on
25 that. From my independent review of the law, it appears that the

1 case of Gerard which is 365 S.C. 151 -- it was reversed on other
2 grounds -- but in that case it appeared to be a rather broad
3 interpretation of the Statute of Elizabeth including assets other
4 than real property.

5 Then also there is a United States District Court decision
6 that came out in September of 2015, PCS Nitrogen. All I have is
7 a Westlaw cite which is 2015WL5122878 where Judge Seymour, in
8 ruling on any number of other issues, specifically held that cash
9 transfers are avoidable as fraudulent conveyances under the
10 Statute of Limitations (sic) in South Carolina.

11 So, both the state court and federal court -- I'm going to
12 take that issue off the table, but I wanted to make sure that
13 both of y'all had it protected on the record in case this does
14 need to go up.

15 Now, all right.

16 MR. OSBORNE: I'll start with the \$7- and \$14,000 transfers,
17 we heard that these were made to Patricia. They were made when
18 she was not an employee of the company. We would say those are
19 without consideration... That's all we need to prove there. We
20 don't have to prove fraudulent intent. They were made to someone
21 who wasn't an employee of the company and, therefore, they can't
22 have consideration.

23 Then also in supplemental proceedings, Mr. Sprenger
24 testified that he didn't even take a salary. So, how he can say
25 now that those were his salary? It contradicts what he's

1 previously testified to.

2 More importantly, though, I think there are the large
3 transfers, and those tend to happen at opportune times for Mr.
4 Sprenger. The first one that we'll point to was on March 27,
5 2014. He wrote a \$40,000 check to his wife, and that was about
6 four days before China first filed suit against him. There had
7 been correspondence back and forth between our client and Mr.
8 Sprenger. He knew that they were about to file a lawsuit.

9 The next transfer is a \$27,000 check to Patricia, and that
10 was on July 30, 2014. On July 27, our firm sent Mr. Sprenger a
11 copy of our motion for a default judgment. So, it's right around
12 the time he would have received that letter, he makes a \$27,000
13 payment to Patricia. Then there's -- September 29, 2014 there's
14 a \$70,000 check to Patricia and this was---

15 BY THE COURT: I'm sorry, that was when again?

16 MR. OSBORNE: September 29, 2014.

17 BY THE COURT: All right.

18 MR. OSBORNE: That was \$70,000 and that was about two weeks
19 after he received notice of the damages hearing in this case.
20 Then in November 2014 -- these kind of go -- there are the checks
21 and then there are also the cash withdrawals. On November 13,
22 2014 there was the \$20,000 cash withdrawal from the First
23 Citizens account, and that was five days before the damages
24 hearing.

25 Then we have the Rule to Show Cause that was issued on May

1 1st. May 27, 2015 there was a \$60,000 check to Patricia. The
2 supplemental proceedings hearing was 5 days later, on June 2nd---

3 BY THE COURT: Is all of this in Plaintiff's 1?

4 MR. OSBORNE: Yes, sir. I'm not sure if it's all --
5 everything's there. I'm not sure if I, you know, put a timeline
6 actually in there.

7 BY THE COURT: Okay.

8 MR. OSBORNE: Then on June 4th, two days after the
9 supplemental proceedings hearing, that's when a cash withdrawal
10 of \$50,000 was made by Patricia. Then on November 18th, which is
11 the same day that there was the last hearing in which you
12 reminded Mr. Sprenger not to make any transfers out of the
13 ordinary course, he writes a \$10,000 check to himself. Then on
14 December 3, 2015 he also writes a \$10,000 check to himself.

15 So, we submit that all of these transfers, they come at very
16 opportune times for him. There's not a -- looking back -- you
17 know, unless there's something coming up, he's not making these
18 sort of transfers.

19 We understand that he now argues that these are loan
20 repayments, but there's no documentation of the loan. There's no
21 notes evidencing how much he's owed, how much he hasn't been paid
22 back.

23 On that point, he knows he has other judgments against him
24 and even if they are loan repayments, he doesn't have -- it's not
25 his choice to choose who he pays back first. We're a judgment

1 creditor. He basically sits in the shoes of an unsecured
2 creditor. He doesn't have a note. He doesn't have a security
3 interest. We submit our judgment lien has priority over his
4 unsecured loan.

5 Moving into the -- I know Mr. Burney has talked about the
6 SBA Security Agreement, and there is a Security Agreement. We're
7 not going after anything that's inventory, any equipment. We
8 want the money in the deposit accounts and the cash that's in his
9 home. They don't have a perfected security interest over the
10 deposit accounts or the cash. To have a perfected security
11 interest in the deposit account, they have to have control and
12 that means either the secured party has to be the bank itself
13 that holds the mortgage or they have to have some sort of
14 agreement that says, "We, the SBA, can come in at any time and
15 take that money out of the account, no questions asked." They
16 have the agreement -- there's nothing with the Bank of America
17 that says the SBA can come in and take money in and out of the
18 account, and that's the only way to perfect a security interest
19 in the deposit account, is by control.

20 BY THE COURT: So, is it your client's contention that they
21 are not seeking against assets of the LLC, but they are seeking
22 what your client contends are fraudulent conveyances made by the
23 LLC to Patricia Sprenger?

24 MR. OSBORNE: I think we're -- I wouldn't limit it to we're
25 not seeking assets of the LLC, but we're not seeking assets of

1 the LLC that the SBA has a perfected security interest in.

2 BY THE COURT: Well, has there been any evidence that the
3 LLC has any assets?

4 MR. OSBORNE: They transfer money back and forth.

5 BY THE COURT: Well, I'm talking about like fixed assets,
6 Other than the cash that we've been here on, real property,
7 equipment, things of that nature.

8 MR. OSBORNE: Well, they have -- they have the real
9 property. We know that. And I'm sure in his business they have
10 equipment that's used, and we're not going after that. We
11 understand---

12 BY THE COURT: Okay. That's what -- I just wanted to make
13 sure I understood that.

14 MR. OSBORNE: Yes, sir. You know, the SBA they have --
15 their financing statement, that's a perfected security interest
16 in that inventory, or equipment, whatever it is, but even though
17 it says cash deposit accounts, they don't have a perfected
18 security interest in that. The only way they can do that is by
19 having control of the bank account, which they don't. And the
20 only way they can have a perfected security interest in the cash
21 is to have possession of the cash.

22 In your folder that I handed up, I printed out some sections
23 of the UCC, Article 9 that go through those sections.

24 I know it wasn't really mentioned here today, but there's
25 been the argument that because Mr. Sprenger has other judgments

1 out, we have to sit behind those judgments and we can't execute.
 2 That's just not the case. There's the Diligent Creditor Rule
 3 which says, you know, "We've spent the time trying to find these
 4 assets. We don't have to wait behind a judgment that's ahead of
 5 us until we can do anything. We put the time in to find the
 6 assets, and we're entitled to those." If there was a fight and
 7 there were two creditors going over the same pot, you know, that
 8 may come into play but that's not the case here.

9 I would also like to -- for evidence of his fraudulent
 10 intent, Courts use the badges of fraud. I'm sure you're familiar
 11 with those, but if you look at them, there's a case, the Coleman
 12 case which is in your notebook, and it goes through seven
 13 different factors. I think we hit pretty much nearly all of
 14 them. He was indebted at the time to us when he made the
 15 transfers. We argued that he didn't receive consideration
 16 especially for the \$7,000 transfers. He transferred the funds to
 17 a person who he has a close relationship with.

18 He reserved the benefit of those funds because he's
 19 testified that he would take the money, the cash, that was
 20 sitting in the house and use it as he deemed fit. Then he tried
 21 to conceal it from us. I mean, he was taking money out of his
 22 bank account and putting them under his mattress.

23 He can say that he doesn't trust banks, but it seems like he
 24 only doesn't trust banks when he has somebody coming after him
 25 because there are plenty of times where we see, going through

APPENDIX 416

1 these bank records, that he's got a substantial amount of money
2 in the bank. So, I think his argument that he doesn't trust
3 banks doesn't hold much weight.

4 BY THE COURT: All right. What impact, if any, does the
5 fact that the course of conduct prior to the contract with China
6 Construction was these, you know, very loose -- that's probably a
7 generous phrase -- a very loose transfer between the LLC, and
8 himself, and his wife as far as the transfer in and out of funds?

9 MR. OSBORNE: There may be a history of that, but that
10 doesn't change the fact that he -- he basically made unsecured
11 loans to his company. When he incorporates in South Carolina,
12 there are certain formalities that he has to abide by and if he
13 doesn't, he stands to face the consequences of those. So, when
14 he makes a loan to the company, he could have taken a security
15 interest. He could have filed a UCC Filing Statement saying, "I
16 loaned the company money," and he could have taken collateral --
17 he would have been behind to the SBA, but he could have taken
18 collateral and that would have protected his interest.

19 BY THE COURT: And I don't disagree with you at all, but
20 does the fact that they were doing this before the dealings with
21 China impact the Court's interpretation of the badges of fraud or
22 does it at some point -- as you've done such a good job arguing
23 -- that starting, I think, in March of 2014, shortly before the
24 filing of the lawsuit, at that point does what has been just
25 sloppy business then become a fraudulent conveyance moving

1 forward?

2 MR. OSBORNE: I think it's important to note too that he has
3 a history of having judgments against him. He's admitted that he
4 has prior judgments and, you know -- he knows what's going on at
5 this point and, you know, he knows that if he keeps his bank
6 accounts low, that's probably going to keep creditors away
7 because they seem like it's not worth going to chase after. So,
8 I don't think that changes anything. I think he has a history of
9 having judgments and he's probably learned at this point the best
10 way to deal with that and to try to keep creditors from staying
11 off his back.

12 BY THE COURT: All right. Let me ask another question,
13 moving -- let's assume, just for the sake of our question right
14 now, that the evidence supports your client's position.
15 Obviously, the purpose of supplemental proceedings is to locate
16 assets and have them seized and liquidated toward satisfaction of
17 your client's judgment. What happens if there is evidence to
18 support your client's position but the funds are gone? What does
19 the relief look like?

20 MR. OSBORNE: We would like an Order saying that all of the
21 transfers that he made he needs to pay to us.

22 BY THE COURT: What if he didn't -- what if he says, "I
23 don't have any money"?

24 MR. OSBORNE: We would like to have as much as he has.

25 BY THE COURT: But has there been any evidence that funds

1 are still being held -- I know there's deposition testimony, I
2 think, of \$50,000 that's been in controversy. What evidence is
3 there that these monies still exists, this cash still exists?

4 MR. OSBORNE: We can't say that there's, you know, cash in
5 his house. We just -- there's evidence of him moving money from
6 the company continuously. And we think, you know, if he did that
7 and he didn't take -- didn't write a note, didn't secure his loan
8 -- basically, he can't pick and choose to say, "I'm going to pay
9 myself back first."

10 BY THE COURT: I really do, I agree with that. I think
11 that's an accurate statement of law. But let's say that there is
12 an Order, says, "All right, husband and wife, these "x" dollars
13 were inappropriately, improperly given. You've got to give them
14 back." And then if they say, you know, "Not only do we disagree,
15 Simmons, with your ruling, the money's gone."

16 MR. OSBORNE: If that were the case, we would be open to
17 give him a certain amount of time to try to get those funds up
18 under the condition that he have to do more than, you know, maybe
19 write a letter to the company like he did in the past. We want
20 him to make an effort and try to get us the money that we think
21 we're owed. I know, you know, we can't -- if the money's not
22 there, the money's not there. But I think a strong Order from
23 Your Honor saying that he has a certain amount of time to hand
24 over those assets would be enough. We understand we can't say,
25 "You need to give us all of this money tomorrow." But we would

1 be open to allowing him a certain amount of time to hand over the
2 money and if he needs to get a couple contracts, we can make that
3 where money coming into the account -- or to the business is
4 ordered by you to come to us.

5 BY THE COURT: All right. Anything else you want on the
6 record before I hear from opposing counsel?

7 MR. OSBORNE: Nothing, Your Honor, other than, you know,
8 this is -- it's clear -- we understand that there are challenges
9 with small businesses but, you know, that doesn't give him the
10 right to just throw out any sort of corporate formalities. We
11 think the fact that he's picking and choosing to pay himself back
12 while he has other creditors out there, that it's not equitable
13 and it runs contrary to the law.

14 BY THE COURT: All right. Be glad to hear from you.

15 MR. BURNEY: Your Honor, first, they have not pled
16 fraudulent conveyance. All they did was file a supplemental
17 proceedings. So, I don't think the Court can even address that,
18 but we'll act as though the Court can.

19 As far as corporate formalities, this is an LLC. This is
20 nothing other than a sole proprietorship that just has a certain
21 tax status with the government. So, there are no corporate
22 formalities. If it were a corporation, I would agree that he
23 would need to have some type of note signed for tax purposes
24 because the IRS would require that. They don't require that with
25 an LLC, Your Honor.

1 Fraudulent conveyances, they're just -- what they're failing
2 to do is to look at the whole picture. We've handed to the Court
3 the spreadsheet that my client has prepared to show the months
4 that he does not get paid. We've shown that he's had to float
5 this company. Why would there -- if he were trying to defraud
6 anybody, why would he be putting \$40,000 of his own cash into the
7 company to keep it running? Why would he put his own \$25,000 of
8 cash into the company to keep it running? He would just keep it
9 all but if he were trying to defraud the company.

10 We've given you an index of transfers, Your Honor, showing
11 three-hundred-and-something-thousand dollars beginning in 2013
12 going to Patricia Sprenger. Mr. Sprenger testified that he was
13 just too lazy to write himself a check, gave that money to his
14 wife, which she deposited into the exact same account that he
15 would have deposited the money to had he written the check to
16 him.

17 His CPA testified that they didn't even include that money
18 on Mrs. Sprenger's tax return. She wasn't taxed on that and
19 didn't claim it. The reason why is because he has taken that
20 money as his salary; otherwise, they wouldn't have claimed
21 anything.

22 And if you look through -- when we start talking about the
23 badges of fraud and departure -- they have to show departure from
24 the usual method of business. The usual method of business over
25 the years is to write the checks to Patricia Sprenger. They were

1 doing that since 2012. Should they have been doing that? I
2 don't think they're prevented from doing that. But when you
3 start dealing with small businesses that employ very few people,
4 he's having to float his company. There are months that he's not
5 taking any money.

6 BY THE COURT: But yet he didn't -- I mean, he said to the
7 state, "I want you to recognize this business as a separate
8 entity, an LLC."

9 MR. BURNEY: Right.

10 BY THE COURT: "But yet I want to continue treating it like
11 it's my personal bank account, and I don't have notes. I don't
12 have agreements. I don't have corporate minutes that support all
13 of this." Can he have it both ways?

14 MR. BURNEY: Well, he can have it both ways because it's not
15 required. It's a small business. As an LLC, you don't have to
16 have that corporate formality. He's getting that protection as
17 an LLC from lawsuits and such individually that a sole
18 proprietorship wouldn't necessarily have, but he wasn't using
19 that as his own personal bank account. Is he supposed to work
20 for free? He's not working for free. We see where the money's
21 coming out every month. The checks are just written to her, put
22 into their joint account. If you took all of those checks out,
23 he has no income at that point in time. I don't think the Court
24 can force him to work for free. He's entitled to an income.

25 Would I have liked to have all of those checks written to

1 Manfred Sprenger throughout -- yeah, I would have but I don't
2 have that. And if it would have been a corporation, I think we
3 would have a bigger problem with that, Your Honor.

4 But I think it's -- I know -- I understand the position --
5 they want to say all of these transfers are fraudulent because
6 that's all they have to go on because they can't get past the
7 priority of the SBA which has the secured interest in everything.
8 We presented that to the Court. But if you would go back and you
9 see where the accounts are short \$40,000, \$25,000, but for him
10 putting money back in, how can that be fraudulent? When you see
11 that he writes a check back to his wife and to him for \$60,000,
12 if you look through the records, you see where he put \$40,000 in
13 the months before and he hadn't taken a salary for the first six
14 months of that year. So, if they are a fraudulent transfer, he
15 would be doing it a different way than what they're doing at this
16 point in time.

17 Surely, if they were filing taxes to the Federal Government
18 and if that were truly Mrs. Sprenger's income, they would have
19 claimed that as income on the tax returns, not his. So, if
20 there's a fraudulent transfer, who are they defrauding if they're
21 telling the Federal Government that's his money and he's lending
22 money back to the company?

23 BY THE COURT: Is there evidence that these funds are in
24 existence?

25 MR. BURNEY: The funds you're saying he took out of the

1 company? No. There's no evidence that that money's there. He
2 would pay himself. They would put money into the joint account.
3 They would use that for their personal household expenses, and
4 they would take money out as cash. That's how they've done it
5 over the years, and they're entitled to do that because,
6 otherwise, if you found these transfers to Patricia were
7 fraudulent, then you've said that he can't pay himself in any
8 form or fashion and I don't think the Court can say he's got to
9 work for free.

10 If you just switch the names to them, he's paying the
11 income, as he stated, that he would be paying himself just by
12 virtue of being the owner of the company. He's the last person
13 to get fed because he's got to pay for supplies. He's got to pay
14 for his employees. And that's just how they've run the business
15 over the years, not to defraud anybody. If that were to be the
16 case, they wouldn't have started paying Patricia until after they
17 got into trouble. But as Mr. Sprenger told you, since 2011,
18 they've been doing that.

19 BY THE COURT: All right. Anything else then for the
20 record?

21 MR. OSBORNE: I have one more point, Your Honor.

22 BY THE COURT: Yes, sir.

23 MR. OSBORNE: One, there's the \$8,000 in the trust account.
24 So, we know that money's there.

25 BY THE COURT: Is that money still there?

1 MR. BURNEY: It's in my trust account. But again, we take
2 the position that it's his money. That was in their house.

3 BY THE COURT: All right.

4 MR. OSBORNE: Then also -- the thing about the salary is how
5 far back are we going to go? Are we going to go all of the way
6 back to 2007 and say, "You missed a month back then and now we
7 can catch up." I think we've got to draw a line somewhere, and
8 we can't just use the argument that, "I missed a salary here and
9 now I'm going to return it." The fact that he says an LLC
10 doesn't have to have any sort of formalities, I mean, it's
11 separate and distinct. He gets the protection of not being
12 personally liable for things, but now he wants to argue that --
13 he basically can't have his cake and eat it too.

14 I think that's it, Your Honor.

15 BY THE COURT: All right. Gentlemen, if y'all would give me
16 a couple of weeks to look over this small library y'all have been
17 kind enough to bestow upon me, and then probably what I will do
18 is just do a telephone conference call.

19 And I do appreciate having good lawyers and some interesting
20 issues here. So, I will have my docket coordinator get in touch
21 with you soon.

22 Gentlemen, if y'all wouldn't mind going through the exhibits
23 with my court reporter just to make sure that they're all staying
24 here.

25 All right. Thank you so much.

1 MR. BURNEY: Thank you, Your Honor.

2 MR. OSBORNE: Thank you, Your Honor.

3 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The undersigned, Wanda E. Fudge, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 2nd of
8 March 2016.

9 I do further certify that I am neither of kin, counsel, nor
10 interest to any parties hereto.

11 October 4, 2016

12
13 Wanda E. Fudge

14 Wanda E. Fudge, CCR

15 Certified Court Reporter
16
17
18
19
20
21
22
23
24
25

INDEX OF TRANSFERS

	Date	Check No.	Payable To The Order Of	Amount
1.	8/29/2013	53663	Patricia Sprenger	\$7,000.00
2.	9/27/2013	53716	Patricia Sprenger	\$7,000.00
3.	10/30/2013	53751	Patricia Sprenger	\$7,000.00
4.	11/26/2013	53784	Patricia Sprenger	\$7,000.00
5.	2/25/2014	53894	Patricia Sprenger	\$7,000.00
6.	3/27/2014	53948	Patricia Sprenger	\$40,000.00
7.	3/27/2014	53946	Patricia Sprenger	\$7,000.00
8.	4/28/2014	54042	Patricia Sprenger	\$7,000.00
9.	5/14/2014	54079	Patricia Sprenger	\$1,600.00
10.	5/29/2014	54084	Patricia Sprenger	\$7,000.00
11.	6/24/2014	54119	Patricia Sprenger	\$7,000.00
12.	7/30/2014	54165	Patricia Sprenger	\$27,000.00
13.	8/27/2014	54191	Patricia Sprenger	\$7,000.00
14.	9/29/2014	54255	Patricia Sprenger	\$70,000.00
15.	9/29/2014	54252	Patricia Sprenger	\$7,000.00
16.	11/3/2014	54283	Patricia Sprenger	\$7,000.00
17.	12/22/2014	54341	Patricia Sprenger	\$7,000.00
18.	5/27/2015	54522	Patricia Sprenger	\$60,000.00
19.	6/23/2015	54548	Patricia Sprenger	\$7,000.00
20.	8/12/2015	54598	Manfred Sprenger	\$7,000.00
21.	9/22/2015	55055	Manfred Sprenger	\$7,000.00
22.	9/23/2015	55057	Manfred Sprenger	\$14,000.00
23.	9/24/2015	54806	Patricia Sprenger	\$499.56
24.	10/6/2015	55060	Manfred Sprenger	\$7,000.00
25.	10/8/2015	55701	Patricia Sprenger	\$499.56
26.	10/15/2015	55708	Patricia Sprenger	\$499.56
27.	10/22/2015	55716	Patricia Sprenger	\$499.56
28.	10/29/2015	55723	Patricia Sprenger	\$499.56
29.	11/5/2015	55730	Patricia Sprenger	\$499.56
30.	11/12/2015	55737	Patricia Sprenger	\$499.56
31.	11/18/2015	55118	Manfred Sprenger	\$10,000.00
32.	11/19/2015	55743	Patricia Sprenger	\$499.56
33.	11/27/2015	55749	Patricia Sprenger	\$499.56
34.	12/3/2015	55139	Manfred Sprenger	\$10,000.00
35.	12/3/2015	55757	Patricia Sprenger	\$499.56
36.	12/7/2015	55140	Manfred Sprenger	\$2,800.00
37.	12/10/2015	55766	Patricia Sprenger	\$499.56
38.	12/17/2015	55774	Patricia Sprenger	\$499.56
39.	12/24/2015	55782	Patricia Sprenger	\$499.56
40.	12/24/2015	55790	Patricia Sprenger	\$499.56
TOTAL				\$361,393.84

APPENDIX 428

CASH ONLY IF ALL OTHER SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
AIKEN, SC 29801
67-448/539

54598

8/12/2015

PAY TO THE ORDER OF Manfred Sprenger \$ **7,000.00**

Seven Thousand and 00/100 ***** DOLLARS

A TAMPER RESISTANT TONER AREA

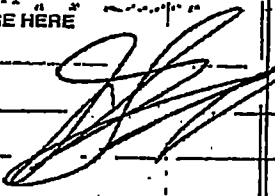
Manfred Sprenger
308 Shagbark Circle
Simpsonville, SC 29680

VOID after 90 days

MEMO

Details on Back

Intuit CheckLock® Secure Check

ENDORSE HERE			
			
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE RESERVED FOR F.P.A. & C.A. INSTITUTION USE			
Branch: 422 Seq: 14 Batch: 008188 Date: 08/18/15			
As the issuer, this CheckLock™ Secure Plus check may help reduce your risk of fraud and liability. To learn how to protect your business, call our check fraud experts at 1-800-548-0239 or visit www.intuitmarket.com/fraudcenter			
REPLICATING, FORGING OR ALTERING THIS CHECK IS EXTREMELY DIFFICULT DUE TO CheckLock™ SECURITY FEATURES <table border="0"> <tr> <td style="vertical-align: top;"> SECURITY FEATURES: Multi-Colored Prismatic Background CheckLock™ Watermark Heat Sensitive Ink Security Border or Microprint Lines Chemically Sensitive Paper Fugitive Ink on Back Toner Adhesion Tamper Resistant Toner Area Visible Fibers Invisible Fibers VOID Indication Security Weave on Backer </td> <td style="vertical-align: top;"> DO NOT ORIGINATE IF: • Pattern of ink on back of check does not vary in color from edge to edge • Word "CheckLock™" is not visible in paper when held to light • Pink color does not fade & reappear when rubbed or polished on • "INTUIT CHECKLOCK™ SECURITY SYSTEM" not visible in magnification • Stars or circles appear on front or back • Ink on back looks pink or has disappeared • Prismatic toner appears tampered with • Information appears broken or scratched and/or while there is any sign of paper damage • Red and blue fibers are not visible • White or blue fibers are not visible under ultraviolet light • "VOID" does not appear clearly to the left of this message • "ORIGINAL DOCUMENT" cannot be read </td> </tr> </table>		SECURITY FEATURES: Multi-Colored Prismatic Background CheckLock™ Watermark Heat Sensitive Ink Security Border or Microprint Lines Chemically Sensitive Paper Fugitive Ink on Back Toner Adhesion Tamper Resistant Toner Area Visible Fibers Invisible Fibers VOID Indication Security Weave on Backer	DO NOT ORIGINATE IF: • Pattern of ink on back of check does not vary in color from edge to edge • Word "CheckLock™" is not visible in paper when held to light • Pink color does not fade & reappear when rubbed or polished on • "INTUIT CHECKLOCK™ SECURITY SYSTEM" not visible in magnification • Stars or circles appear on front or back • Ink on back looks pink or has disappeared • Prismatic toner appears tampered with • Information appears broken or scratched and/or while there is any sign of paper damage • Red and blue fibers are not visible • White or blue fibers are not visible under ultraviolet light • "VOID" does not appear clearly to the left of this message • "ORIGINAL DOCUMENT" cannot be read
SECURITY FEATURES: Multi-Colored Prismatic Background CheckLock™ Watermark Heat Sensitive Ink Security Border or Microprint Lines Chemically Sensitive Paper Fugitive Ink on Back Toner Adhesion Tamper Resistant Toner Area Visible Fibers Invisible Fibers VOID Indication Security Weave on Backer	DO NOT ORIGINATE IF: • Pattern of ink on back of check does not vary in color from edge to edge • Word "CheckLock™" is not visible in paper when held to light • Pink color does not fade & reappear when rubbed or polished on • "INTUIT CHECKLOCK™ SECURITY SYSTEM" not visible in magnification • Stars or circles appear on front or back • Ink on back looks pink or has disappeared • Prismatic toner appears tampered with • Information appears broken or scratched and/or while there is any sign of paper damage • Red and blue fibers are not visible • White or blue fibers are not visible under ultraviolet light • "VOID" does not appear clearly to the left of this message • "ORIGINAL DOCUMENT" cannot be read		
Listed and not listed check security features exceed industry standards.   Intuit Market has security features that exceed industry standards.			

APPENDIX 430

DEPOSIT TICKET

MANFRED SPRENGER
PATRICIA R SPRENGER

PH. 884-248-4708
308 SHAGBARK CIRCLE
SIMPSONVILLE, SC 29680

DATE 08-14-15
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

SIGN HERE IF CASH RECEIVED FROM DEPOSIT

First Citizens
First Citizens Bank & Trust Company, NC

DO NOT USE DEPOSIT TICKET ROUTING # FOR
AUTOMATIC PAYMENTS USE VOIDED CHECK

87-604/538
422

CASH —

CHECKS 545.98

7,000.00

CHECKS OR TOTAL
FROM OTHER SIDE —

NET DEPOSIT SUB TOTAL —

1 LESS CASH —

NET DEPOSIT \$

7,000.00

01

ADDITIONAL CHECK LISTING SPACE

CHECKS
LIST SEPARATELY

DOLLARS

CENTS

Branch: 422

Seq: 13

Batch: 008188

Date: 08/18/15

DD \$7,000.00

THIS TOTAL
MUST BE
ENTERED ON
OTHER SIDE

CURRENT ACCOUNT - FOR FMA - INSTITUTIONS USE ONLY

x	1's	
x	2's	
x	5's	
x	10's	
x	20's	
x	50's	
x	100's	
TOTAL \$		

08/18/15

3

Bank of America

Capture Date: 09/05/2013 Sequence #: 3792573870

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
87-448533

58663

8/29/2013

PAY TO THE ORDER OF **Patricia Spranger** \$ **7,000.00**

Seven Thousand and 00/100 ***** DOLLARS

Patricia Spranger
308 Shagbark Circle
Simpsonville SC 29680

ENDORSE HERE
Patricia Spranger

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
REMOVED ONLY BY THE BANK

Branch: 422
Seq: 178
Batch: 002853
Date: 09/04/13

As the issuer, the bank guarantees the funds on this check. To learn how to open a new account, visit bankofamerica.com.

SECURITY FEATURES
Check for the following security features:
- Microprint: The words "BANK OF AMERICA" are printed in tiny dots.
- Color: The words "BANK OF AMERICA" are printed in tiny dots.
- Watermark: The words "BANK OF AMERICA" are printed in tiny dots.
- Security Thread: The words "BANK OF AMERICA" are printed in tiny dots.
- Hologram: The words "BANK OF AMERICA" are printed in tiny dots.
- Magnetic Ink: The words "BANK OF AMERICA" are printed in tiny dots.
- Security Features: The words "BANK OF AMERICA" are printed in tiny dots.

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
09/04/2013	000006700086145	53201487	-1	N		FIRST-CITIZENS BANK
09/04/2013	000006700086145	53100300	Undetermined	Y		FIRST-CITIZENS BANK
09/05/2013	003792573870	112002080	Co Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
09/30/2013	000006700127723	53201487	-I	N		FIRST-CITIZENS BANK
09/30/2013	000006700127723	53100300	Undetermined	Y		FIRST-CITIZENS BANK
10/01/2013	002292579707	112002080	Co1 Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America

Capture Date: 11/04/2013 Sequence #: 2992149475

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
67-448339

10/30/2013

PAY TO THE ORDER OF Patricia Sprenger

\$ 7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

VOID ANYTIME AFTER 60 DAYS

ENDORSE HERE
Patricia Sprenger

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

Branching 422
Seq: 3159
Batch: 0033921
Date: 11/01/13

As the issuer, you are responsible for the security of the funds you issue. To learn how to protect your funds, visit www.bankofamerica.com

SECURITY FEATURES
Helping protect your money on a daily basis, Bank of America's security features are designed to help you keep your money safe. Security features include:
• Microprint: Tiny dots that form a pattern around the serial number.
• Color Shift: The color of the serial number changes when you tilt the note.
• Watermark: A faint image of the person on the note that you can see without using a magnifying glass.
• Security Thread: A strong, woven thread that runs through the note.
• Ultraviolet: The note glows under ultraviolet light.

Electronic Endorsements		Bank #	Endrs Type	TRN	RRC	Bank Name
Date	Sequence					
11/01/2013	000006700039876	53201487	-1	N		FIRST-CITIZENS BANK
11/01/2013	000006700039876	53100300	Undetermined	Y		FIRST-CITIZENS BANK
11/04/2013	002992149475	112002080	Co1 Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

Bank of America

Capture Date: 11/29/2013 Sequence #: 3492589370

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-8505

BANK OF AMERICA, NA
67-118/539

53784

11/29/2013

PAY TO THE ORDER OF **Patricia Sprenger** \$ **7,000.00**

Seven Thousand and 00/100

Patricia Sprenger
306 Shagbark Circle
Simpsonville SC 29680

MEMO

DATE: 11/27/13

Seq: 2453
Batch: 003492589370

DATE: 11/27/13

WRITE STATE OR SIGN BELOW THIS LINE

Patricia Sprenger

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
11/27/2013	000006700121656	53201487	-1	N		FIRST-CITIZENS BANK
11/27/2013	000006700121656	53100300	Undetermined	Y		FIRST-CITIZENS BANK
11/29/2013	003492589370	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
02/27/2014	000006700050362	53201487	-1	N		FIRST-CITIZENS BANK
02/27/2014	000006700050362	53100300	Undetermined	Y		FIRST-CITIZENS BANK
02/28/2014	002292407692	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found



Capture Date: 04/01/2014 Sequence #: 8692767781

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-5505

BANK OF AMERICA, NA
67-418/338

53948

3/27/2014

PAY TO THE ORDER OF **Patricia Sprenger** \$ **40,000.00**

Forty Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

As the state of Georgia is a "check cashing" state, it is required that the check be cashed by a bank or a check cashing service. If you are not a bank or a check cashing service, you must cash the check for the payee. If you are a bank or a check cashing service, you must cash the check for the payee. If you are not a bank or a check cashing service, you must cash the check for the payee. If you are a bank or a check cashing service, you must cash the check for the payee.

Branch: 422
Seq: 473
Batch: 004360
Date: 03/31/14

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

ENDORSE HERE

Patricia Sprenger

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
03/31/2014	000006700106884	53201487	-1	N		FIRST-CITIZENS BANK
03/31/2014	000006700106884	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/01/2014	003692767781	112002080	Co1 Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America



Capture Date: 04/01/2014 Sequence #: 8692767782

MS Production Solutions LLC
2333 Beverly Road
Greenville, SC 29609
864-244-5505

BANK OF AMERICA, NA
87-448539

58946
3/27/2014

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

Value

ENDORSE HERE
Patricia Sprenger

Do NOT WRITE, STAMP OR SIGN BELOW THIS LINE

Branch 432
Sec 474
Batch 004360
Date: 03/31/14

As the owner of this check, I hereby certify that the signature of Patricia Sprenger is valid and that the amount of \$7,000.00 is correct.

Signature of Patricia Sprenger

Patricia Sprenger

308 Shagbark Circle
Simpsonville SC 29680

03/31/2014

000006700106885

53201487

-1

Undetermined

Co1 Bank

Bank Name
FIRST-CITIZENS BANK
FIRST-CITIZENS BANK
BANK OF AMERICA, NA

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
03/31/2014	000006700106885	53201487	-1	N		FIRST-CITIZENS BANK
03/31/2014	000006700106885	53100300	Undetermined	Y		FIRST-CITIZENS BANK
04/01/2014	003692767782	112002080	Co1 Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ON HAND, INVENTORY, SECURITIES, AND OTHER ASSETS LISTED ON BACK HEREIN. NO TAX DEDUCTIONS OR CREDITS.
 MS Production Solutions LLC
 233 Beverly Road
 Greenville, SC 29503
 864-244-5505
 BANK OF AMERICA, NA
 Aiken, SC 29801
 803-448-5339
 54042
 4/28/2014
 PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00
Seven Thousand and 00/100 DOLLARS
 Patricia Sprenger
 308 Shegark Circle
 Simpsonville SC 29680
 A. TAMM REISSANT TONER AREA
 Valid for 30 days
 MEMO

[illegible]

303

Bank of America

Capture Date: 05/16/2014 Sequence #: 3592802278

[illegible]

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
05/15/2014	000006700061736	53201487	-1	N		FIRST-CITIZENS BANK
05/15/2014	000006700061736	53100300	Undetermined	Y		FIRST-CITIZENS BANK
05/16/2014	003592802278	112002080	CoI Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America

Capture Date: 06/03/2014 Sequence #: 2192318386

[illegible]

Electronic Endorsements						
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
06/02/2014	000006700213949	53201487	-1	N		FIRST-CITIZENS BANK
06/02/2014	000006700213949	53100300	Undetermined	Y		FIRST-CITIZENS BANK
06/03/2014	002192318366	112002080	Col Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

Bank of America

Capture Date: 06/26/2014 Sequence #: 192494710

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-6505		BANK OF AMERICA, NA Aiken, SC 29801 87-449/539	54119 6/24/2014
PAY TO THE ORDER OF Patricia Sprenger		\$ 7,000.00	
Seven Thousand and 00/100		DOLLARS	
Patricia Sprenger 308 Shagbark Circle Simpsonville SC 29680		[Signature]	
MEMO			

As the issuer, this check locks in
 Secure Plus check, now help reduce
 your risk of fraud and liability.
 To learn how to control your business,
 call our check fraud experts at
 1-800-541-4371 or visit
 www.bankofamerica.com/fraudcenter

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

Patricia Sprenger

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
06/25/2014	000006700035940	53201487	-1	N		FIRST-CITIZENS BANK
06/25/2014	000006700035940	53100300	Undetermined	Y		FIRST-CITIZENS BANK
06/26/2014	000192494710	112002080	Co Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America

Capture Date: 08/04/2014 Sequence #: 4092069795

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-6303		BANK OF AMERICA, NA Aiken, SC 29801 87-440/539	64165 7/30/2014
PAY TO THE ORDER OF Patticia Sprenger		\$ 27,000.00	
Twenty Seven Thousand and 00/100		DOLLARS	
A TAMPER RESISTANT FORM			
VOID after 90 days			
MEMO:			
[Redacted]			
Do NOT WRITE, STAMP OR SIGN BELOW THIS LINE			
Branch 422 Seq: 156 Batch: 905036 Date: 08/01/14			
As the writer, this Secure Five check is your risk of loss. To learn how to protect call our check fraud 1-800-538-4222 www.bankofamerica.com			
Look for yellow return if liability. your business. supports all it visit if you prefer			
BELOW THIS LINE			
[Redacted]			

Electronic Endorsements					
Date	Sequence	Bank #	Endrs Type	TRN	RRC
08/01/2014	000006700144615	53201487	-1	N	
08/01/2014	000006700144615	53100300	Undetermined	Y	
08/04/2014	004092069795	112002080	Col Bank	N	
No Payee Endorsements Found					
Bank Name					
FIRST-CITIZENS BANK					
FIRST-CITIZENS BANK					
BANK OF AMERICA, NA					

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
09/04/2014	000006700207606	53201487	-1	N		FIRST-CITIZENS BANK
09/04/2014	000006700207606	53100300	Undetermined	Y		FIRST-CITIZENS BANK
09/05/2014	003092679726	112002080	Co1 Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

[illegible]

Mon Jul 06 17:40:43 CDT 2015

[illegible]

Mon Jul 06 17:40:43 CDT 2015

Bank of America

Capture Date: 11/06/2014 Sequence #: 2692317861

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29603
884-244-8505

BANK OF AMERICA, NA
ARLEN, SC 29601
87-48/539

54283

11/3/2014

PAY TO THE ORDER OF Patricia Sprenger \$ 7,000.00

Seven Thousand and 00/100 DOLLARS

Patricia Sprenger
308 Shagbark Circle
Simpsonville SC 29680

MEMO

VOID AFTER 60 DAYS

As the issuer, this security plus check is your risk of loss. To learn how to protect your business, visit our website at www.bankofamerica.com

Branch: 222
Sec: 291
Batch: 005
Date: 11/03/14

4805XXXX
58804

ENDORSE HERE
Patricia Sprenger

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

REMIC-100

REPLICATING SECURITY PLUS CHECK AFTER SECURITY FEATURES DIFFICULTY DUE TO COMPLEXITY OF SECURITY FEATURES

High-Quality Paper
Security Features
Microprint
Color-Shift Ink
Watermark
Hologram
Security Thread
Security Glue
Security Seal
Security Strip
Security Window
Security Mark
Security Line
Security Dot
Security Star
Security Circle
Security Square
Security Triangle
Security Diamond
Security Hexagon
Security Octagon
Security Ellipse
Security Rectangle
Security Trapezoid
Security Parallelogram
Security Rhombus
Security Kite
Security Arrow
Security Star
Security Circle
Security Square
Security Triangle
Security Diamond
Security Hexagon
Security Octagon
Security Ellipse
Security Rectangle
Security Trapezoid
Security Parallelogram
Security Rhombus
Security Kite
Security Arrow

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
11/05/2014	000006700025956	53201487	-1	N		FIRST-CITIZENS BANK
11/05/2014	000006700025956	53100300	Undetermined	Y		FIRST-CITIZENS BANK
11/06/2014	002692317861	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

Bank of America

Capture Date: 12/30/2014 Sequence #: 3692776258

MS Production Solutions LLC 233 Bavaria Road Greenville, SC 29608 864-244-6505		BANK OF AMERICA, NA Aiken, SC 29801 803-448-6300	54341 12/22/2014
PAY TO THE ORDER OF Patricia Sprenger		\$7,000.00	
Seven Thousand and 00/100		DOLLARS	
Patricia Sprenger 308 Shagbark Circle Simpsonville SC 29680		VOID CANNOT BE USED	
As the signer, this check is subject to the terms and conditions of the check. The signer is responsible for the accuracy of the information provided. The signer is not responsible for the accuracy of the information provided by the bank. To learn how to protect your business, call our check fraud experts at 1-800-548-0233 or visit www.bankofamerica.com/fraudcenter			

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/29/2014	000006700155638	53201487	-1	N		FIRST-CITIZENS BANK
12/29/2014	000006700155638	53100300	Undetermined	Y		FIRST-CITIZENS BANK
12/30/2014	003692776258	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

[illegible]

313

Bank of America



Capture Date: 06/26/2015 Sequence #: 4092864954

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-8605		BANK OF AMERICA, NA Aiken, SC 29801 87-448/538	54548 6/23/2015
PAY TO THE ORDER OF <u>Patricia Sprenger</u>		\$ <u>7,000.00</u>	
Seven Thousand and 00/100		DOLLARS	
Patricia Sprenger 308 Shagbark Circle Simpsonville SC 29680		Void after 60 days	
MEMO			
[Redacted]			
As the Issuer, this check Lock™ Secure Plus check to help reduce your risk of fraud and liability. To learn how to protect your business, call our e-Pay line at 1-800-508-0235 or visit www.fraudprevention.com			
Branch: 422 Date: 06/25/15 Branch: 00722 Date: 06/25/15			
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE			
ENDORSE HERE Patricia Sprenger			

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
06/25/2015	000006700065896	53201487	-1	N		FIRST-CITIZENS BANK
06/25/2015	000006700065896	53100300	Undetermined	Y		FIRST-CITIZENS BANK
06/26/2015	004092864954	112002080	Col Bank	N		BANK OF AMERICA, NA

No Payee Endorsements Found

CASH ONLY IF ALL CHECKLOCK SECURITY FEATURES LISTED ON BACK. INDICATE NO TAMPERING ON COPY/NO

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-5505

BANK OF AMERICA, NA
AIKEN, SC 29801
87-448538

55067

9/23/2015

PAY TO THE ORDER OF Manfred Sprenger \$ 14,000.00

Fourteen Thousand and 00/100 DOLLARS

Manfred Sprenger
308 Shagbark Circle
Simpsonville, SC 29680

VOID AFTER 60 DAYS

MEMO Salary Jan & Feb 2015

[illegible]

316
Fri Oct 02 23:09:25 CDT 2015

[illegible]

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
09/25/2015	000006700031495	53100300	-1	N		FIRST-CITIZENS BANK
09/25/2015	000006700031495	53100300	Undetermined	Y		FIRST-CITIZENS BANK
09/28/2015	002792272908	112002080	CoI Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
AKEN, SC 29801
67-448539

54812

10/1/2015

PAY TO THE ORDER OF Patricia Sprenger \$ 499.56

Four Hundred Ninety-Nine and 56/100 DOLLARS

Patricia Sprenger
308 Shagbark Cir
Simpeonville, SC 29880

Valid after 60 days

1/1/11, Pay Period: 09/20/2015 - 09/26/2015

[illegible]

318



Capture Date: 10/09/2015 Sequence #: 2292870200

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29608 864-244-5505		BANK OF AMERICA, NA Aiken, SC 29801 87-449/530		55060 10/6/2015
PAY TO THE ORDER OF Manfred Sprenger		\$ 7,000.00		DOLLARS 10/6/2015
Seven Thousand and 00/100		DOLLARS		
Manfred Sprenger 308 Shagbark Circle Simpsonville SC 29680				
VOID COUNTERFEIT PROTECTED AGAINST FRAUD				
MEMO				
[Redacted]				
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE				
ENDORSE HERE				
AS THE ISSUER I SECURELY SIGN THIS CHECK WITH MY SIGNATURE AND SEAL OR SIGNATURE AND SEAL OR SIGNATURE AND SEAL OR SIGNATURE				
THIS CHECK IS EXTREMELY SECURE. IT IS PROTECTED AGAINST FRAUD. IT IS PROTECTED AGAINST FRAUD. IT IS PROTECTED AGAINST FRAUD. IT IS				
NO Electronic Endorsements Found NO Payee Endorsements Found				

[illegible]

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
854-244-6505

BANK OF AMERICA, NA
Aiken, SC 29801
814-443-223

55708

10/15/2015

PAY TO THE ORDER OF Patricia Sprenger

Four Hundred Ninety-Nine and 55/100

\$ 499.56

DOLLARS

Patricia Sprenger
308 Shegark Cir
Simpsonville, SC 29680

VOID AGAINST FRAUD

MEMO Pay Period: 10/02/2015 - 10/08/2015

VOID after 60 days

321



Capture Date: 10/29/2015 Sequence #: 3492746802

[illegible]

No Electronic Endorsements Found
No Payee Endorsements Found

Bank of America

Capture Date: 11/03/2015 Sequence #: 2792633889

MS Production Solutions LLC 233 Daveny Road Greenville, SC 29609 864-244-8605		BANK OF AMERICA NA AKEN, SC 29821 87-443,539		65723
PAY TO THE ORDER OF Patricia Sprenger		10/29/2015		
Four Hundred Ninety-Nine and 56/100		\$ 499.56		
Patricia Sprenger 308 Shagbark Cir Simpsonville, SC 29680		DOLLARS		
Pay Period: 10/16/2015 - 10/22/2015		Valid after 90 days		

053106300<
ACCT# *****5809
2015-11-02
0888063012
13631504
Mobile Deposit

Patricia Sprenger

No Electronic Endorsements Found.
No Payee Endorsements Found

NO Production Solutions LLC
 233 Unwey Road
 Greenville, SC 29609
 864-244-0505

BANK OF AMERICA, N.A.
 ARLIN, SC 29001
 87-440933

55730

11/5/2015

PAY TO THE ORDER OF Patricia Sprenger \$ 400.00
 Four Hundred Ninety-Nine and 00/100

Patricia Sprenger
 308 Shagbark Cir
 Simpsonville, SC 29680

VOID AFTER 90 DAYS

MEMO Pay Period: 10/23/2016 - 10/29/2015

2053100300<
 Acct# *****5805
 2015-11-09
 0888085806
 138825493
 Mobile Deposit

325.



Capture Date: 11/20/2015 Sequence #: 3692014420

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-6505		BANK OF AMERICA, NA Aiken, SC 29801 87-442433		55118 11/18/2015
PAY TO THE ORDER OF Manfred Sprenger		\$ 10,000.00		
Ten Thousand and 00/100		DOLLARS		
Manfred Sprenger 808 Shagbark Circle Simpsonville SC 29680		Void after 60 days		
MEMO: [Redacted]				
ENDORSE HERE DO NOT WRITE OR SIGN BELOW THIS LINE				
Branch: 386 Seq: 507 Batch: 000003 Date: 11/19/15				
As the issuer, I declare that the information on the front of this check is true and correct. To sign this check, I must be the issuer or authorized signatory. If I am the issuer, I must sign in blue or black ink. If I am an authorized signatory, I must sign in blue or black ink and my name must appear on the front of the check. If I am the issuer or authorized signatory, I must sign in blue or black ink and my name must appear on the front of the check. If I am the issuer or authorized signatory, I must sign in blue or black ink and my name must appear on the front of the check.				

No Electronic Endorsements Found
 No Payee Endorsements Found

NS Production Solutions LLO
233 Davenly Road
Greenville, SC 29609
084-244-0506

BANK OF AMERICA, NA
AP/LL, SC 29601
87-412512

55743

11/10/2016

PAY TO THE ORDER OF Patricia Spronger

Four Hundred Ninety-Nine and 60/100

\$ 499.60

PATRICIA SPRONGER
308 SHAGBARK CIR
SIMPSONVILLE, SC 29080

VOID AFTER 60 DAYS

Pay Period: 11/08/2016 - 11/14/2016

[illegible]

327

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
804-244-6505

BANK OF AMERICA, NA
AKEN, SC 29201
87-442-339

55749

11/27/2015

PAY TO THE ORDER OF Patricia Sprenger \$499.56

Four Hundred Ninety-Nine and 56/100 DOLLARS

Patricia Sprenger
308 Shagbark Cir
Simpsonville, SC 29880

VOIDED AGAINST PAYEE

MEMO Pay Period: 11/15/2015 - 11/21/2015

VOID after 60 days

328

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29603
864-244-8505

BANK OF AMERICA, NA
Aiken, SC 29801
87-448-530

55757

12/3/2015

PAY TO THE ORDER OF Patricia Sprenger

Four Hundred Ninety-Nine and 55/100

\$ 499.58

DOLLARS

Patricia Sprenger
308 Shagbark Cir
Simpsonville, SC 29680

VOID AFTER 60 DAYS

Pay Period: 11/20/2015 - 11/26/2015

[illegible]

329

[illegible]

330

Bank of America

Capture Date: 12/11/2015 Sequence #: 3092346466

MS Production Solutions LLC 233 Beverly Road Greenville, SC 29609 864-244-6508		BANK OF AMERICA, NA Aiken, SC 29801 87-488639		55139 12/3/2015
PAY TO THE ORDER OF Manfred Sprenger		\$ 10,000.00		
Ten Thousand and 00/100		DOLLARS		
Manfred Sprenger 308 Shagbark Circle Simpsonville SC 29680		Void after to date		
[Signature]				
[Redacted Address]				
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE				
ENDORSE HERE				
[Signature]				
Branch 3863 Seq 78 Batch 000893 Date 12/10/15				
As the issuer, I certify that the security features of this check are as follows: To learn more, call 1-800-938-6633 or visit www.bankofamerica.com				
SECURITY FEATURES: • Watermark • Microprint • Color-shifting Ink • Security Thread • Security Glue • Security Paper • Security Features				
THIS CHECK IS EXTREMELY DIFFICULT TO COUNTERFEIT. SECURITY FEATURES DO NOT:				
• Pay for less than the face value • Pay for more than the face value • Pay for a different amount • Pay for a different person • Pay for a different date • Pay for a different location • Pay for a different purpose • Pay for a different reason • Pay for a different time • Pay for a different place • Pay for a different way • Pay for a different how • Pay for a different what • Pay for a different who • Pay for a different where • Pay for a different when • Pay for a different why • Pay for a different how • Pay for a different what • Pay for a different who • Pay for a different where • Pay for a different when • Pay for a different why				

No Electronic Endorsements Found
 No Payee Endorsements Found

Capture Date: 12/16/2015 Sequence #: 2292336494

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
854-244-6505

BANK OF AMERICA, NA
Aiken, SC 29801
67-440-3339

55766

12/10/2015

PAY TO THE ORDER OF Patricia Sprenger \$1,499.56

Four Hundred Ninety-Nine and 56/100 DOLLARS

18 PROTECTED AGAINST FRAUD

Patricia Sprenger
309 Shagbark Cir
Simpsonville, SC 29680

Valid after 90 days

Pay Period: 11/27/2015 - 12/03/2015

No Electronic Endorsements Found
No Payee Endorsements Found

MS Production Solutions LLC
233 Beverly Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
Aiken, SC 29801
87-445339

65774

12/17/2015

PAY TO THE ORDER OF Patricia Spranger \$499.68

Four Hundred Ninety-Nine and 56/100

PATRICIA SPRINGER
300 SHAGBARK CIR
SIMPSONVILLE, SC 29680

18 PROTECTED AGAINST COUNTERFEITING

DOLLARS

VOID after 90 days

Pay Period: 12/01/2015 - 12/10/2015

[illegible]

333

334.

MS Production Solutions LLC
233 Dorely Road
Greenville, SC 29609
864-244-6505

BANK OF AMERICA, NA
ASHEVILLE, NC 28601
07-448-330

55790

12/24/2015

PAY TO THE ORDER OF Patricia Sprenger \$499.56

Four Hundred Ninety-Nine and 56/100

PATRICIA SPRENGER
308 SHAGBARK CIR
SIMPSONVILLE, SC 29680

16 PROTECTED / SA ST. PA. 05 DOLLARS

VOID AFTER 60 DAYS

NEED
Pay Period: 12/18/2015 - 12/24/2015

33.5

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF GREENVILLE

3
4 CHINA CONSTRUCTION AMERICA
OF SOUTH CAROLINA, INC.,

5 Plaintiffs,

6 Case No.: 2014-CP-23-1871

7 vs

8 MS PRODUCTION SOLUTIONS LLC
a/k/a MSPS STEEL FABRICATORS,

9 Defendants.

10 D E P O S I T I O N

11 WITNESS: MANFRED SPRENGER

12 DATE: Monday, September 21, 2015

13 TIME: 11:10 a.m.

14 LOCATION: Law Offices of
15 Turner & Burney, P.C.
628 NE Main Street
16 Simpsonville, South Carolina

17 TAKEN BY: Attorneys for the Plaintiffs

18 REPORTED BY: GINA M. JOHNSON
Certified Shorthand Reporter
19 Registered Professional Reporter

20
21
22
23 -----
Gina M. Smith Court Reporting, LLC
24 117 Harmon Creek Court
Lexington, SC 29072
25 803-359-5705

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF
3 CHINA CONSTRUCTION AMERICA OF SOUTH
CAROLINA, INC.:

4 BRUNER, POWELL, WALL & MULLINS, LLC
5 BY: CAITLIN CRESWICK HEYWARD, ESQ.
1735 St. Julian Place, Suite 200
6 P.O. Box 61110
Columbia, SC 29260-1110

7
8 ATTORNEYS FOR DEFENDANT
9 MS PRODUCTION SOLUTIONS LLC a/k/a MSPS
STEEL FABRICATORS:

10 TURNER & BURNEY, P.C.
BY: RHETT D. BURNEY, ESQ.
628 NE Main Street
11 Simpsonville, SC 29681

12

13

14 (INDEX AT REAR OF TRANSCRIPT)

15

16

17

18

19

20

21

22

23

24

25

1 STIPULATION: It is stipulated by
2 and between Counsel that this deposition is being
3 taken in accordance with the South Carolina Rules
4 of Civil Procedure, and that the deponent does not
5 waive the right to read and sign the deposition
6 transcript.

7 - - - - -

8 MANFRED SPRENGER, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MS. HEYWARD:

12 Q. Good morning, Mr. Sprenger.

13 A. Good morning.

14 Q. I'm just going to start by asking you if
15 you recall receiving a notice of deposition to
16 appear here today?

17 A. Yes, I answered the door and received mine
18 and my wife's.

19 Q. Yes. You received one individually,
20 right?

21 A. Yes, mine and my wife's.

22 Q. And your wife's.

23 And also as the 30(b)(6) deponent of MS
24 Production Solutions. Is that correct?

25 A. What now?

APPENDIX 475

Manfred Sprenger 9/21/15

4

1 Q. I subpoenaed the company or --

2 A. Yeah, yeah.

3 Q. -- after I noticed the company, you're
4 here on behalf of the company?

5 A. Yes.

6 Q. Is that right?

7 Are you familiar with this document? I'll
8 represent to you that's the notice of deposition
9 for MS Production Solutions requesting the person
10 most knowledgeable regarding the five points listed
11 below on page 1.

12 A. Yeah.

13 Q. Have you read this document?

14 A. No, I haven't seen it or I haven't read it
15 before.

16 Q. Go ahead and read it and then look up at
17 me when you're finished.

18 A. Okay. Okay.

19 Q. Are you the person most knowledgeable to
20 speak on points 1 through 5?

21 A. Yes, I am.

22 Q. Okay. I also noticed MS Machine Tools
23 Incorporated?

24 A. Uh-huh.

25 Q. Do you recall that?

1 A. Yes.

2 Q. Are you the person most knowledgeable to
3 speak on behalf of MS Machine Tools as well?

4 A. Yes.

5 (DEPO. EXH. 5, Rule to Show Cause and
6 Order of Reference, was marked for identification.)

7 BY MS. HEYWARD:

8 Q. Okay. All right. Mr. Sprenger, I'm going
9 to go ahead and start with this document,
10 Plaintiff's Exhibit 5, I believe. Do you recognize
11 this document?

12 A. Yeah. I think that was just what I gave
13 you, my lawyer.

14 Q. This is a rule to show cause or order of
15 reference. Do you recall being served with this
16 document?

17 A. I don't think I was at the office present
18 when this was served.

19 Q. Okay. Please review that document.

20 MR. BURNEY: We'll stipulate he received
21 it.

22 BY MS. HEYWARD:

23 Q. Okay. You received it?

24 A. Okay.

25 Q. All right. This is an affidavit of

1 service indicating that you were served with this
2 document?

3 A. Yeah. Me personally, I don't think I was
4 there that day.

5 Q. Okay. It says you were, but we've
6 stipulated.

7 A. Okay.

8 Q. If you could turn to page 2. Page 2, that
9 highlighted portion right there, can you read that
10 for me, please?

11 A. It is further ordered that the respondent
12 is hereby restrained and enjoined from making any
13 transaction or transfer or other disposition of
14 property belonging to him/it not exempt from
15 execution pending further order from this Court.

16 Q. Okay. You're familiar that an injunction
17 was placed on MS Production Solutions from
18 transferring any assets or making any transfers?

19 A. I would think that's what that says, yes.

20 Q. Okay.

21 A. But I'm not a lawyer, so I assume that's
22 what is meant here.

23 Q. Okay. And this -- this document is dated
24 May 1, 2015. Is that correct?

25 A. Yeah, May 5th it says here, but --

1 Q. Appears it was filed on May 5th, signed on
2 May 1st.

3 Okay. I'm going to hand you what has
4 previously been marked as Plaintiff's Exhibit 3.
5 Do you have a copy of that? It starts with --

6 A. All those checks?

7 Q. Checks to Patricia?

8 A. Uh-huh.

9 Q. Flip to the last page, please. This check
10 is dated May 27, 2015. Is that correct?

11 A. That's correct.

12 Q. That would be after the date the
13 injunction was placed on you. Is that correct?

14 A. That's correct.

15 Q. Do you recall writing a check to your wife
16 in the amount of \$60,000 on May 27, 2015?

17 A. I do.

18 Q. Why did you do that?

19 A. Like I always do when I take money, and
20 frequently do as you probably saw before --

21 Q. Yes.

22 A. -- take money from the company, pay it to
23 me because I loaned the company a lot of money when
24 I bought the business. So I'm trying to get paid
25 back, which until now it didn't work so well.

1 Q. What -- is your testimony that this is
2 payment -- repayment of a loan --

3 A. Yeah.

4 Q. -- that you made?

5 A. \$350,000 I had to -- was my -- was a
6 conditions of small business loan I had to bring in
7 order to get -- buy the company.

8 Q. Do you have any loan documents evidencing
9 that?

10 A. With the company?

11 Q. Between you and MSPS.

12 A. Yes, it was at the day I bought the
13 business, I think MS -- MS Machine Tool, the only
14 function the company has was to retrieve my 401K
15 money without having to pay the taxes, and that
16 money went straight into MSPS at the lawyer the day
17 we signed, and MSPS Machine Tool owned shares of MS
18 Production Solution.

19 Q. Okay. I'm trying to determine exactly how
20 you can track this \$60,000 check, how you can
21 exactly link it up to a specific loan that you made
22 to the company?

23 A. Well, it's me. Manfred owns MS Machine
24 Tool, MS Production Solution. Manfred's 401K
25 account --

1 Q. Okay.

2 A. -- got cleaned out in order to buy the
3 company. So since this is a small business and not
4 a huge corporation, that's just how it works. You
5 know, I just tried to get my money back, and as you
6 see there, it goes forth and keeps going forth and
7 back between the personal account and my business
8 account.

9 Q. So is it your testimony that that was
10 repayment for the capital contribution that you
11 made to purchase the business?

12 A. As I said before, I'm trying to get
13 repayment. It does not work so well as of yet due
14 to the economy. I'm trying to get repaid the
15 \$350,000 I had to bring to the table in order to
16 buy my company.

17 Q. So you were trying to get repaid for the
18 amount of money -- the purchase amount that you
19 personally put towards buying the company?

20 A. That's correct.

21 Q. Is that correct?

22 A. That's correct.

23 Q. Okay. Tell me exactly how you -- tell me
24 exactly how the company was capitalized from the
25 beginning.

APPENDIX 481

Manfred Sprenger 9/21/15

10

1 A. The company was capitalized with a small
2 business loan of one million 400 something.

3 Q. Right.

4 A. And I had to bring as a condition of small
5 business loan \$350,000 worth of what they call
6 working capital.

7 Q. So your all-in contribution was \$350,000?

8 A. Yes.

9 Q. And that's it?

10 A. That's it.

11 Q. Okay. How do you keep track of how much
12 money has been repaid to you of that \$350,000?

13 A. That's what I'm trying to say, it didn't
14 work so far. There is nothing -- there is no
15 specific documents since this is a family business.

16 Q. Okay. Well, according to you you've
17 gotten repaid at least \$60,000?

18 A. Yes.

19 Q. What else have you been repaid?

20 A. Amounts before -- you saw before those
21 other amounts in there, but according to this
22 document, it goes back into the business as well.
23 There is two checks in there for \$40,000 each which
24 go back into the business.

25 So I take money out, try to repay my

1 \$350,000, and then when -- as my wife said, when I
2 need the money again, I'll pay -- I give it back to
3 the company as a loan again.

4 Q. So this is just determined by you.
5 There's no formal -- most people, most business
6 people, keep a paper trail so when they get audited
7 or when they file taxes it is clear where the money
8 is coming in and where the money's coming out. Is
9 it your testimony today that does not exist?

10 A. There is a paper trail. There is a check
11 written to me. My accountant does my annual tax
12 return, so he knows of -- he can see in my
13 bookkeeping that there's checks written to me.
14 It's called member draw. So what other means of
15 documents are you referring to?

16 Q. A loan document between you and the
17 corporation.

18 A. Maybe I need to make -- as my lawyer
19 advised me after the \$7,000 dispute here to --
20 which I -- before out of convenience I wrote it to
21 my wife. It was always written to me. But it was
22 convenient. And now I changed it back as since my
23 lawyer advised me to do so, to make it, again,
24 payable to Manfred Sprenger instead of --

25 Q. Have you since paid yourself money since

1 the hearing in June?

2 A. I think two maximum. This month I haven't
3 paid myself. Last month I got -- I think once in
4 July I didn't.

5 Q. Okay. How much money did you pay
6 yourself?

7 A. Maybe \$14,000.

8 Q. \$14,000?

9 A. Yeah.

10 Q. And where is that money now?

11 A. In my wife's account -- in our personal
12 account.

13 Q. Your personal account doesn't have very
14 much money in it. I'll represent that to you.

15 A. Uh-huh.

16 Q. Is it in cash?

17 A. That's what you asked my wife already.
18 Yes, there's cash at home.

19 Q. So the \$14,000 that you recently paid
20 yourself in the last two months is in cash?

21 A. Recently since May.

22 Q. What about since June?

23 A. June, I would have to go back and see
24 exactly how many pay -- or how much I paid myself,
25 but what I'm saying is the 7,000 monthly payment.

1 I'm trying to pay monthly haven't happened the
2 last -- since June frequently every month. Maybe
3 was once or twice maximum.

4 Q. In the last four weeks, did you pay
5 yourself?

6 A. No.

7 Q. In the last eight weeks, did you pay
8 yourself?

9 A. No.

10 Q. In the last 12 weeks, did you pay
11 yourself?

12 A. Oh, the last eight weeks. Sorry. Except
13 the \$7,000 -- I think I paid myself in
14 August \$7,000.

15 Q. Okay.

16 A. And I don't -- I need to go back in
17 June or July, but I don't think I did in July. I
18 think in June I did, but not in July.

19 Q. Okay. So if I were to count up all of the
20 money that you've paid yourself since you purchased
21 the company, anything over \$350,000, what is that?

22 A. Profit.

23 Q. Profit?

24 A. Uh-huh.

25 Q. Okay.

APPENDIX 485

Manfred Sprenger 9/21/15

14

1 A. That's what I would call it.

2 Q. If you'd been paid -- if you've paid
3 yourself \$350,000 since you purchased the company,
4 wouldn't that extinguish any money the company owes
5 to you for any capital contribution that you made?

6 A. Would I be not allowed as the company
7 owner to have a member withdraw every so often from
8 the company? Is that illegal?

9 Q. I'm asking you --

10 A. No, is that illegal?

11 Q. You do not get to ask the questions in
12 this deposition. I'm the lawyer. I ask the
13 questions. You're the witness.

14 A. Okay.

15 Q. You answer them.

16 A. All right.

17 Q. I'm asking you have you satisfied the
18 amount of capital contribution that you've made to
19 the company, the \$350,000?

20 A. No, no, no. And as you stated before, if
21 you add up all the money over the eight years,
22 what -- the checks written to MSPS other than the
23 \$7,000, which is considered pay -- monthly pay,
24 not -- that's not considered repayment of loan.
25 That's a monthly paycheck.

1 Other than the \$7,000, if you add all
2 those checks up written to Manfred and you add all
3 the checks back up here which are written from
4 Manfred back to the business within the eight
5 years, you will come to find out that the company
6 has not paid Manfred at all for the \$350,000.

7 Q. Does MSPS pay for your cell phone?

8 A. Yes.

9 Q. Does it pay for your employees' cell
10 phones?

11 A. No. Well, for my daughter's which is --
12 she's an employee -- because she has to use it
13 occasionally, and it used to pay for my son's,
14 Marcell, but he's no longer employed, so no.

15 Q. Okay. Do you keep copies of those bills?

16 A. Yeah.

17 Q. If I asked for those, would you be --

18 A. Yeah.

19 Q. -- able to retrieve them for me?

20 A. Of course.

21 Q. You testified in June that there's six
22 employees of MSPS. Do you recall that?

23 A. Uh-huh.

24 Q. Who are they?

25 A. Right now it's Marco Sprenger, Kevin

1 Sprenger, Dave Schemanski, Diana Sprenger, and I
2 forgot the -- I know his name is Blake, but don't
3 ask me now for his last name. If you have
4 paychecks, I'm sure it's in there.

5 Q. What's the first name?

6 A. Blake.

7 Q. Blake?

8 A. Blake or something.

9 Q. Do you -- do they get paid hourly or
10 salary?

11 A. Hourly.

12 Q. Do you have W2 records for all of your
13 employees?

14 A. Yes.

15 Q. If I ask for those, could you provide
16 them?

17 A. They are created by my accountant, yes.

18 Q. So you could retrieve those for me?

19 A. Yeah.

20 Q. How much are they paid hourly?

21 A. It varies from between 13 and \$18 an hour.

22 Q. Okay. Have you given copies of any of
23 that to your lawyer?

24 A. No.

25 Q. No, okay.

1 A. Have I? Well, have I?

2 MR. BURNEY: If you don't have it, I don't
3 have it.

4 BY MS. HEYWARD:

5 Q. Okay. I don't have it.

6 A. Okay.

7 Q. Were there any changes in employment from
8 August 2014 to present?

9 A. August 2014?

10 Q. Yes.

11 A. I'm in a line of business where there is
12 constant changes, so if you ask me -- yeah,
13 there's -- Blake is new. Another one left. So
14 there's constant -- but how many, I would have to
15 go back and see.

16 Q. Okay. I would be able to determine that
17 from your payroll records?

18 A. Yeah, you will see different names.

19 Q. Are you the only one who writes checks
20 from the MSPS bank account?

21 A. Yes.

22 Q. Your wife testified earlier that she
23 writes checks?

24 A. She occasionally signs paychecks. That's
25 it.

1 Q. Why does she do that?

2 A. When I'm not here, people want to get
3 paid.

4 Q. She's not an employee of the company?

5 A. No.

6 Q. Never has been?

7 A. Never has been.

8 Q. Does your wife have authority to withdraw
9 money?

10 A. Say that again.

11 Q. Does she have authority to withdraw money
12 from the MSPS bank account?

13 A. She does not have a card or anything like
14 that. She has the cosign authority, but she can
15 sign checks.

16 Q. She cannot withdraw?

17 A. No.

18 Q. If there were withdrawals, would those be
19 improper?

20 A. If there were withdrawals from the
21 business account?

22 Q. If your wife withdrew money from the
23 business account, would that be -- would that
24 surprise you?

25 A. Yeah, because I wouldn't know how.

1 Q. Okay. Do you keep track of the
2 withdrawals that you make from the business
3 account?

4 A. Yeah.

5 Q. Do you keep track of why you're
6 withdrawing the money? If you withdraw cash, do
7 you write down -- keep track of why?

8 A. Yeah. Yeah.

9 Q. Okay.

10 (DEPO. EXH. 6, Copies of Withdrawals, was
11 marked for identification.)

12 BY MS. HEYWARD:

13 Q. All right. This is Plaintiff's Exhibit 6.
14 I've just pulled some examples of some withdrawals
15 from the MSPS Bank of America account. The first
16 amount on page 1 is for \$366.55. Do you recognize
17 that document?

18 A. No.

19 Q. Is that your signature?

20 A. Yes.

21 Q. Would that be something you would normally
22 withdraw, that amount?

23 A. No. That's so weird.

24 Q. That's weird?

25 A. Yeah.

1 Q. Would there be any way for you to
2 determine what that was for?

3 A. I would have to go back and -- what was
4 it, '14 -- into my accounting and see what it was.

5 Q. What kind of accounting are you referring
6 to?

7 A. QuickBooks.

8 Q. You have QuickBooks?

9 A. Yes.

10 Q. Have you provided a copy of your
11 QuickBooks accounting to your lawyer?

12 A. No.

13 Q. Would you be willing to do that? Would
14 you please provide that to your lawyer?

15 A. I will have to discuss this with my
16 lawyer.

17 Q. Okay. But you could if I asked you for
18 it?

19 A. Yeah.

20 Q. Okay. Flip to the second page. Is it
21 unusual for you to withdraw \$25,000 from the MSPS
22 corporate account?

23 A. That's not a withdrawal.

24 Q. What is that?

25 A. That's a deposit, a cash deposit, I think.

1 No, never would I withdraw that much cash from the
2 business account. That's a cash deposit.

3 Q. Okay. Explain that to me.

4 A. That's what my wife told you that we have
5 the -- when I go home and say, hey, I need to pay
6 bills, bills are due, give me money, and she give
7 me however much I tell her to give me.

8 Q. So this is --

9 A. Yeah, that's a deposit. That's a cash
10 deposit. That was -- yeah.

11 MR. BURNEY: Let me interrupt you. You
12 said a cash --

13 THE WITNESS: A deposit.

14 MR. BURNEY: Spell that for me.

15 THE WITNESS: D-E-P-O-S-I-T.

16 MR. BURNEY: Okay.

17 BY MS. HEYWARD:

18 Q. Deposit.

19 A. Oh, deposit.....

20 Q. Okay. I thought you said deficit. I'm
21 sorry.

22 A. Deposit.

23 Q. Okay. So this is one of the cash deposits
24 into the account?

25 A. Yeah.

1 Q. And you believe this comes from your First
2 Citizens account?

3 A. That money was cash, so it was -- no. I
4 don't know. It must come from my house, you know,
5 where we keep cash as my wife figured out.

6 Q. Okay. What did you need in October of
7 last year \$25,000 for?

8 A. To pay bills.

9 Q. What kind of --

10 A. Company bills.

11 Q. What kind of bills?

12 A. Material, steel since some companies -- my
13 suppliers don't want to make -- write checks
14 with -- like China Construction would be one. They
15 refuse to make joint checks with China Construction
16 due to the reputation.

17 So then I have to pay those suppliers with
18 my money instead of what I like to do on bigger
19 projects like this one was joint check with the
20 general contractor, but my suppliers all refuse to
21 do that with China Construction due to their
22 reputation.

23 Q. Okay. So would your QuickBooks account
24 reflect where this money went?

25 A. Yeah.

1 Q. Would the QuickBooks account reflect the
2 deposit?

3 A. Yeah.

4 Q. All right. Is that also what the next
5 page is, \$550?

6 A. Now you're testing my memory. Again, it
7 will be -- and I don't even -- 550 would not be a
8 cash deposit.

9 Q. These are just some examples. I know that
10 you probably don't remember the specifics of it and
11 that's okay. I'm just trying to understand what
12 they are.

13 A. Yeah, yeah.

14 Q. So this would be a cash deposit?

15 A. Probably, yes.

16 Q. Okay. Have you purchased or sold any
17 company equipment since June?

18 A. No.

19 Q. Have you made any more loans to the
20 company since June?

21 A. Loans?

22 Q. Loans.

23 A. I would have to check, but I think I
24 needed some money in July.

25 Q. By you need money, do you mean the company

APPENDIX 495

Manfred Sprenger 9/21/15

24

1 needed money?

2 A. The company, yeah, sorry, the company
3 needed money.

4 Q. How much money did the company need?

5 A. I need to check before I say something
6 wrong.

7 Q. Where would you -- where would you check
8 to find out?

9 A. In my accounting, in my QuickBooks.

10 Q. In your QuickBooks account?

11 A. Or in the bank's --

12 Q. Okay.

13 A. -- statement.

14 Q. Does MSPS have a board of directors?

15 A. No.

16 Q. No. It's just you?

17 A. We are five employees.

18 Q. Do you file annual reports?

19 A. Board of directors costs money normally.

20 Q. Right. Do you file annual reports with
21 the Secretary of State?

22 A. No.

23 Q. No.

24 Do you have any officers?

25 A. Me.

- 1 Q. You.
- 2 Do you ever pay yourself dividends?
- 3 A. No.
- 4 Q. No.
- 5 A. I'm trying to get my loan paid.
- 6 Q. Does MSPS have a credit card account at
- 7 Lowe's?
- 8 A. Yeah, as I said at court already, yes.
- 9 Q. Does MSPS have a BMW Bank of America
- 10 credit card account?
- 11 A. BMW credit card account, yes.
- 12 Q. And you make the payments on that account
- 13 with a check?
- 14 A. To that --
- 15 Q. On the Bank of America BMW account, how --
- 16 A. I have a BMW credit card.
- 17 Q. Right.
- 18 A. Is that with Bank of America? I don't
- 19 know.
- 20 Q. I thought it was with Bank of America.
- 21 A. No.
- 22 Q. I could be wrong.
- 23 A. No.
- 24 Q. The BMW credit card?
- 25 A. Yeah.

1 Q. That's a company credit card?

2 A. That is -- it says my name on there. It
3 says Manfred Sprenger. Well, let me see to make
4 sure. Manfred Sprenger. So it's mine.

5 Q. It's yours individually?

6 A. Yes.

7 Q. Does the company pay that credit card off?

8 A. Yeah, because we buy a lot of material
9 with that card.

10 Q. So you use the card both individually and
11 for corporate --

12 A. No, I don't use it individually.

13 Q. Okay. But it's in your name individually?

14 A. Yes.

15 Q. Not in the company's name?

16 A. Yes.

17 Q. You only use it for corporate purposes?

18 A. Yes.

19 Q. Do you access the statements of those
20 accounts --

21 A. Yes.

22 Q. -- on that account?

23 You testified at the hearing that MSPS did
24 not pay for your personal car. Is that still
25 correct?

1 A. Yeah.

2 Q. Does MSPS pay for your auto insurance?

3 A. I think, but I'm not sure. I need to
4 check. I don't know.

5 Q. Okay. Let's go ahead and mark this as
6 Plaintiff's Exhibit Number 7.

7 (DEPO. EXH. 7, Copies of Checks, was
8 marked for identification.)

9 BY MS. HEYWARD:

10 Q. Flip to the last page.

11 A. Oh, that's not a car insurance. That is
12 a -- that is the insurance company who does our --
13 or did our liability. I think it was back then a
14 small amount for -- but I can get you the record --
15 for stored material when -- again, we come back to
16 those wonderful general contractors.

17 When I have contractors which are not
18 credit worthy with my suppliers, I have to buy the
19 steel, I fabricate it, and then I store it in my
20 yard, which happened with China Construction too.

21 And they did not need that material for
22 six months due to their internal screw-up of
23 employees, that all drawings were wrong, everything
24 was messed up, and that's when I need to show them
25 that -- an insurance which is called stored

1 material insurance.

2 Q. Okay. So this auto owner's insurance --

3 A. Yeah.

4 Q. -- is --

5 A. They do something to that. I think that's
6 what that is.

7 Q. Okay. Does MSPS have an account with Mass
8 Mutual?

9 A. Who?

10 Q. Mass Mutual.

11 A. What is that?

12 Q. It's a financial company like you might
13 get --

14 A. Again, I know there is different companies
15 out there who offer different services, but there
16 is no investment account, if you're asking that,
17 with a Mass Mutual.

18 Q. Right. Well, there's certainly regular
19 payment to Mass Mutual?

20 A. Oh, yeah. See, then it's probably a --
21 it's either my liability or my workers' comp
22 insurance.

23 Q. Can you find out for me?

24 A. I certainly can.

25 Q. And could you pull any kind of documents

1 reflecting any insurance agreement that you have
2 with Mass Mutual --

3 A. Yeah.

4 Q. -- if I asked you to?

5 A. Yeah.

6 MR. BURNEY: Can I interrupt? When you
7 say you when you answer her questions, make sure
8 you differentiate between you personally and you as
9 your company.

10 THE WITNESS: If I say for me, it's -- me
11 is the company and the company's me. It's a small
12 business.

13 BY MS. HEYWARD:

14 Q. I understand. Just for the record, I'm
15 asking about company accounts, company insurance.

16 A. Company account with Mass Mutual, yes.

17 Q. Right. Okay.

18 A. I think -- well, I think there's also a
19 life insurance policy with Mass Mutual -- I don't
20 know who they are called because the small business
21 loans, one of their conditions is that you have to
22 have a life insurance policy in their name. So
23 that could be that, but --

24 Q. That could be that, okay.

25 All right. I'm going to list some

1 individuals, and I need you to tell me who they
2 are.

3 A. Okay.

4 Q. Keith Gibson?

5 A. A former employee.

6 Q. When did he leave MSPS?

7 A. July last year, I think.

8 Q. What did he do for the company?

9 A. What did he what?

10 Q. What did he do for the company?

11 A. He was a steel fabricator.

12 Q. Shane Gibson?

13 A. His son. He worked for me for a while.

14 Q. When did he work for MSPS?

15 A. I think he was there twice, one time in
16 '13, end of '13, and then in spring of '14 again.

17 Q. John Ziegler?

18 A. Same, he worked for me, painter, helper.

19 Q. Curt Henson?

20 A. Former employee, fabricator.

21 Q. Kevin Sprenger?

22 A. Current employee, son.

23 Q. Marco Sprenger?

24 A. Current employee, son.

25 Q. Diana Sprenger?

- 1 A. Current employee, daughter.
- 2 Q. Edward Gibson?
- 3 A. Who?
- 4 Q. Edward Gibson.
- 5 A. I need to check if he was.
- 6 Q. That's fine.
- 7 A. It's probably the other -- Keith Gibson's
- 8 other son. I think he was there for one or two
- 9 days, so I am not sure.
- 10 Q. Marcell Sprenger?
- 11 A. Son. Not employed anymore.
- 12 Q. Daryl Terry?
- 13 A. Daryl Terry. Daryl Terry. I don't know.
- 14 That doesn't sound familiar that name.
- 15 Q. Ronnie Lee?
- 16 A. Who?
- 17 Q. Ronnie Lee.
- 18 A. Ronnie Lee.
- 19 Q. No?
- 20 A. No.
- 21 Q. That's okay if you don't remember.
- 22 Joseph Bryant?
- 23 A. No.
- 24 Q. Brian F. Duckett?
- 25 A. No. Well, no.

1 Q. You don't remember who that is?

2 A. No.

3 Q. Nathanie Paul Bishop?

4 A. No.

5 Q. Christopher Corbett?

6 A. Chris Corbett.

7 Q. You don't --

8 A. I don't recall.

9 Q. Okay. I just wanted to get it for the
10 record.

11 A. Oh, yeah, yeah, yeah, I know. I'm
12 supposed to say yes or no. Sorry. I don't recall
13 those names. I really don't.

14 Q. Okay. Robert States?

15 A. Robert States? No.

16 Q. And Jimmy Fowler?

17 A. Jimmy Fowler, no.

18 Q. You don't recall, okay.

19 All right. I've got some companies listed
20 here to which it appears MS Production Solution
21 writes checks regularly.

22 A. Okay.

23 Q. I just want to establish for what purpose.

24 A. Okay.

25 Q. LDI Reproprinting Center?

1 A. They print my shop drawings and big
2 documents.

3 Q. Okay. BB&T Financial, why do you write
4 checks to them?

5 A. Oh, that's a long story. That's 2012 I
6 believe or '11. I had another wonderful general
7 contractor like China Construction. They elected
8 not to pay me \$550,000. The last check they wrote
9 me was -- and I used to be until January of 2012 --
10 '11 -- no, '12 with BB&T, and they gave me the last
11 check -- well, just to back up for a little bit.

12 That's how general contractors work. They
13 made me work overtime during Christmas, and me and
14 my wife went to there and even painted and loaded
15 trucks during Christmas holidays just to get them
16 on time to their job site. The last truck arrived
17 January 12th. I remember that because 9th is my
18 birthday.

19 They get -- they paid that check a week
20 before. When the last truck arrived, they
21 cancelled the contract, and since they were also
22 affiliated with BB&T, they told bank of -- BB&T to
23 pull that money back. That's how wonderful
24 companies are. So they pulled that last check they
25 owed me or they paid me back out of my BB&T

1 account.

2 Q. You have a BB&T account?

3 A. I had. It's closed. It's done.

4 Q. When was it closed?

5 A. 2012.

6 MR. BURNEY: Is that you or --

7 THE WITNESS: The company. Sorry. The
8 company.

9 BY MS. HEYWARD:

10 Q. The company had a BB&T account?

11 A. The company, yeah. So that is -- after
12 the BB&T did that, I obviously said that's not
13 acceptable because my checks started to bounce I
14 paid to suppliers. I had suppliers call me. And
15 here is a general contractor, and I think you --
16 maybe you recall in court I mentioned that.

17 Q. I do recall that.

18 A. There's a general contractor walking away
19 with \$550,000 of my money.

20 Q. So I should not see any of the checks to
21 BB&T after 2012?

22 A. No.

23 Q. Would you be able to explain why there are
24 checks after 2012?

25 A. To BB&T? That is to that credit card. I

1 still make payments on that card. That's a credit
2 card. It's a -- it's a card, an overdraft card,
3 which used to be back then, and just keep paying
4 monthly back to them.

5 Q. So you do have an account with BB&T --

6 A. Bank card, yes.

7 Q. The company --

8 A. Yes.

9 Q. -- has an account with BB&T Financial, an
10 overdraft protection account --

11 A. Yes.

12 Q. -- card?

13 A. Yes, a card --

14 Q. Do you --

15 A. -- which you will not see any money being
16 withdrawn from that account. You will see just
17 monthly payments going in.

18 Q. Okay.

19 A. And I think the balance is \$6,000.

20 Q. I'm going to skip over some of these.

21 Does the company have a Home Depot credit
22 card?

23 A. Uh-huh. Yes.

24 Q. What is BJ Design Services?

25 A. That's a detailing company out of Texas I