

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2018-CP-10-0872
Appellate Case No. 2019-002002

RECEIVED
APR 07 2020
SC Court of Appeals

Patricia B. Holliday.....Appellant,

v.

Ross S. Holliday.....Respondent.

RECORD ON APPEAL

Matthew E. Tillman, Esq.
WOMBLE BOND DICKINSON (US) LLP
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Attorneys for the Appellant

F. Truett Nettles, II, Esq.
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405
Telephone (843) 577-6726

Alice F. Paylor, Esq.
Bijan Ghom, Esq.
Rosen Hagood, LLC
P.O. Box 893
Charleston, SC 29402
Telephone: (843) 577-5460
Attorneys for Respondent

INDEX OF RECORD ON APPEAL

ORDERS

Order Granting Summary Judgment filed October 11, 2019.....	1
Order denying Motion to Alter or Amend filed November 25, 2019	9

PLEADINGS

Defendants' Motion for Summary Judgment and Memorandum in Support of Motion filed June 11 2019	12
Plaintiff's Memorandum in Opposition to Motion for Summary Judgment filed September 24, 2019	91
Plaintiff's Supplemental Memorandum in Opposition to Motion for Summary Judgment filed September 30, 2019	222
Plaintiff's Motion to Reconsider or Alter/Amend, including exhibits, filed October 29, 2019	251
Plaintiff's Reply to Memorandum in Opposition to Motion to Reconsider, Including exhibits, filed November 5, 2019	258

TRANSCRIPT

Transcript of Proceedings before The Honorable Deadra L. Jefferson on September 27, 2019	263
---	-----

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Patricia B. Holliday,

Plaintiff,

vs.

Ross S. Holliday,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-10-872

2018

ORDER

Presiding Judge:
Plaintiff's Attorney:
Defendant's Attorney:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Matthew Tillman, Esq.
Alice Paylor, Esq.
September 27, 2019
Elizabeth Harris

FILED
2019 OCT 11 PM 12:56
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court for a hearing on September 27, 2019, on Defendant's Motion for Summary Judgment, filed June 11, 2019. The Court finds that there is no genuine issue of material fact and that, as a matter of law, Defendant's Motion for Summary Judgment is Granted.

FINDINGS OF FACT

On June 18, 2004, the National Bank of South Carolina ("NBSC") loaned \$2 million to Warren Holliday ("Warren"), the now deceased ex-husband of Plaintiff, Patricia Holliday ("Patricia"), and the father of Defendant, Ross Holliday ("Ross"). That loan was secured by a business asset owned by Warren. On that same day, Warren loaned the \$2 million to Ross, who gave a Promissory Note payable to "Warren P. Holliday and Patricia B. Holliday, as joint tenants or the survivor of them, or order..." Patricia testified that she was included as an obligee on the

1/10/18
JPG

Promissory Note because she "was married to Warren. It was a joint asset." Deposition of Patricia Holliday at 39-40. At all times until the NBSC note was repaid in full, Warren had possession of the original Promissory Note. Patricia never had possession of the note. Patricia testified that Warren had demanded payment from Ross in the time period of 2005 to 2007. Id. at 32.

In 2013, Patricia filed for divorce from Warren. On December 9, 2013, Warren and Patricia were divorced by Order of the Family Court, which adopted the Marital Settlement Agreement that Warren and Patricia had executed prior to the entry of the divorce. The Family Court Order provided that "[t]he personal property acquired by and between the parties during the marriage has been equitably divided to their mutual satisfaction." The Marital Settlement Agreement provided that Warren, his successors, heirs and assigns would pay to Patricia \$16,000 per month for her life, that Patricia would own the family home and most of the married couple's personal effects, and that she would have a life insurance policy on Warren's life in the amount of \$645,000. In exchange, Patricia gave up all claims to any business property of Warren, as well as all personal property in Warren's possession and not specifically mentioned in the agreement. The agreement provides in pertinent part:

"Whereas, the parties now consider it to be in their respective best interests to settle all issues between themselves and all matters heretofore arising or hereafter to arise from their marital union; they have reached a permanent, complete, and final agreement; ... and they desire that [the agreement] shall constitute the total agreement between them, both now and following any divorce which either might obtain, with respect to all matters which were raised or could have been raised between the parties hereto, other than the issue of divorce itself."

"The parties do hereby waive, release and forever acquit, and do hereby discharge each other, their administrators, successors, heirs, assigns of and from any and all suits actions, causes of action, claims, demands, damages (known, unknown, foreseen and unforeseen), ... including, but not limited to, those resulting from or arising out of the marital relationship between Warren and Patricia, their marriage, separation or divorce, or any tort, or other legal or equitable claim (except those

2 

arising from a breach of this Agreement) from the beginning of the world to the date of this Agreement.

"The parties agree that Warren shall retain and continue full ownership and interest in any and all [of his] companies and other business assets which Warren holds at this time. Patricia hereby relinquishes and waives any claim she may have in or against these business assets, except as provided in the Patricia Anne Holliday Trust [which provided for the \$16,000 monthly payments]. Warren shall retain sole authority to manage these business assets personally, or at his sole discretion, delegate or appoint management of these business assets to a person holding durable power of attorney."

"Except to the extent set forth in this Agreement, Warren and Patricia have made a physical division of all other personal property acquired during the marriage, including, but not limited to, household furnishings, appliances, bank accounts, retirement accounts, money situated in other accounts, jewelry, sporting equipment and all other personal property of value. The parties each release the other from all claims of interest to any monies or assets in the possession of the other... Each shall retain sole ownership of all such properties in his or her possession or titled in his or her name unless such property is made the property of the other pursuant to the terms of this Agreement."

"Warren and Patricia each waive any claim of inheritance or right that they may be entitled to by virtue of the SC Probate Code to share in the other's estate... Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement."

Ross made payments to Warren, but not to Patricia. In early 2016, prior to Warren's death, the loan from NBSC was paid off in full. In September of 2016, Warren died and, in his will, left all of his business properties and personal assets to his heirs, Ross and his brother, Lea Holliday. On July 12, 2017, Patricia's lawyer made a demand that Ross repay the \$2 million note. On February 19, 2018, Patricia initiated this action to collect from Ross on the note.

CONCLUSIONS OF LAW

A. Summary Judgment Standard

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule

3 

56(c), SCRPC; Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. . . . Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Evidence, however, is not sufficient to overcome summary judgment if it is introduced "solely in a vain attempt to create an issue of fact that is not genuine." Main v. Corley, 316 S.E.2d 406, 407 (S.C. 1984). The Court finds that the material facts are not in dispute and that this matter is ripe for summary judgment.

B. Release

The Promissory Note at issue in this case is personal property of value and a "negotiable instrument" as defined by the Negotiable Instruments Section of the South Carolina Commercial Code. See S.C. Code Ann. § 36-3-104. As provided by § 36-3-604, a person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument in either of two ways: (1) an intentional voluntary act or (2) agreeing not to sue or otherwise renouncing rights against the party by a signed record. See S.C. Code Ann. § 36-3-604(a). In this case, as demonstrated in this section and the following, Plaintiff's interest in the Note was released in multiple ways.

4 

First, the Marital Settlement Agreement, by its terms, resolved all issues of ownership of marital assets. As even Plaintiff recognized, the Promissory Note at issue herein was a marital asset. Marital property is defined as all real and personal property acquired by the parties during marriage and owned as of the date of filing or commencement of marital litigation regardless of how title is held. S.C. Code Ann. § 20-3-630(A). Equitable distribution of marital assets is based on a recognition that marriage is, among other things, an economic partnership. Johnson v. Johnson, 296 S.C. 289, 293, 372 S.E.2d 107, 109 (Ct. App. 1988). When a marriage ends, division of the property acquired is determined by the guiding equities set forth in Section 20-3-620 of the South Carolina Code. Id. Similarly, South Carolina law recognizes that a beneficiary may contract away her beneficiary interest through a separation or property settlement agreement, even if the beneficiary designation is not formally changed. Estate of Revis v. Revis, 326 S.C. 470, 477, 484 S.E.2d 112, 116 (Ct. App. 1997).

It is undisputed that the loan made to Ross was done during the marriage of Patricia and Warren. All debts and receivables arising during the marriage of the parties constitutes marital property. When Warren and Patricia obtained a divorce, they entered into a Marital Settlement Agreement that gave Warren all property (whether personal or business) that was not specifically given to Patricia. Patricia expressly released Ross—who is an heir, personal representative, successor and assignee of Warren—from “all suits, actions, causes of action” that result from or arise out of the “marital relationship ... from the beginning of the world to the date of this agreement.” In addition, Patricia released any claims to the Note repeatedly throughout the document. The release specifically says that “Warren Holliday shall remain solely liable for any and all business debts that Warren has incurred” and that “Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement.”

5 

The Family Court's act of entering the Agreement into the Final Divorce Decree estops Plaintiff from asserting a claim to this Note. See S.C. Code Ann. § 20-7-420(2) (Supp. 1998) (granting family court exclusive jurisdiction over all legal and equitable rights of parties in actions in and to the real and personal property of the marriage); see also S.C. Code Ann. § 20-3-130(G) (Supp. 1998) ("The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve [an] agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements."); Moseley v. Mosier, 279 S.C. 348, 353, 306 S.E.2d 624, 627 (1983).

The Court finds that the language of the Marital Settlement Agreement provides that Patricia expressly released any and all claims she had to the marital assets, both business and personal of Patricia and Warren, except as provided in the Agreement. The Court concludes that Patricia has no claim to, or interest in, the Promissory Note at issue in this matter.

At the hearing before the Court, Patricia argued that S.C. Code § 62-2-507(c)(2) somehow preserved her interest in the Promissory Note despite the terms of the Marital Settlement Agreement. That Section states in pertinent part:

(c) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former spouse has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and

6 

loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents. [Emphasis added.]

Because there were express terms in a Court Order, the Court finds that Patricia released her interest in the Promissory Note under the terms of this statute.

C. Statute of Limitations

The Defendant contends Patricia's claim are also barred under the applicable Statute of Limitations. He contends that S.C. Code § 36-3-118 requires that a plaintiff bring an action within six years after a demand for payment has been made or within ten (10) years of the date of the note if no payments have been made. Patricia argued that no payments were made to her and that she had no knowledge that any payments had ever been made by Ross to Warren. Thus Defendant argues, Patricia went thirteen (13) years without requesting payments on the Note or even inquiring as to whether the Note had been, or was being, paid.

Patricia argued that Ross had testified that he had made payments in 2005 through 2007 and another payment in 2010 after Warren's demand for payment. Defendant argues that under the applicable statutes of limitations, even if these payments retriggered the start of the limitations period, Patricia's action in 2018 was well after six (6) years after Ross made his last payment to Warren.

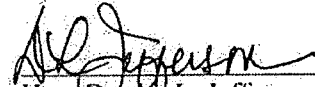
The Court has concluded that Plaintiff is barred from suing for breach of contract in this case due to the Marital Settlement Agreement as explained above. Since this issue is dispositive the Court declines to address the merits of the Defendant's statute of limitations argument on summary judgment.

CONCLUSION

Based on the undisputed facts and conclusions of law, it is hereby ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

7 7/18


IT IS SO ORDERED.


Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

October 10, 2019.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Patricia B. Holliday,	)	Case No.: 2018-CP-10-00872
Plaintiff,	)	
vs.	)	ORDER ON PLAINTIFF'S MOTION
Ross S. Holliday,	)	TO ALTER/AMEND JUDGMENT
Defendant.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiffs' Attorney:	Matthew Tillman, Esq.
Defendant's Attorney:	Alice Paylor, Esq.
Date of Hearing:	September 27, 2019
Court Reporter:	Elizabeth Harris

THIS MATTER comes before the Court by way of Plaintiff's Motion to Reconsider, Alter, or Amend Judgment pursuant to Rule 59 (e), SCRCP, filed October 29, 2019. Plaintiff asks the Court to Amend its Order, filed October 11, 2019 Granting Defendant's Motion for Summary Judgment. Plaintiff filed her Motion to Reconsider on October 29, 2019. Defendant filed his response in opposition to Plaintiff's Motion on November 1, 2019, and Plaintiff filed her Reply to Defendant's opposition on November 5, 2019. Having considered Plaintiff's Motion, as well as the various interests balanced by the Court at the time of the ruling, Plaintiff's Motion to Reconsider, Alter, or Amend is hereby Denied.¹

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

Plaintiff’s Motion seeks only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of the Motion to Alter or Amend the Judgment. Plaintiff has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, Plaintiff’s Motion is heard and respectfully Denied.

IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

November _____, 2019
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Patricia B Holliday VS Ross S Holliday

Case Number: 2018CP1000872

Type: Order/Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2019-11-22 14:12:48 page 3 of 3

ELECTRONICALLY FILED - 2019 Nov 25 10:05 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000872

This motion will be further supported by the pleadings and affidavits previously filed, as well as affidavits and deposition transcripts to be filed herein, and a memorandum of law to be filed with this Court.

WHEREFORE, Defendant moves this Court to grant summary judgment in his favor and against Plaintiff as to the Plaintiff's only cause of action against Defendant for breach of contract, and to award Defendant such other and further relief as the Court may deem just and proper.

By: 
Alice F. Paylor
Bijan Ghom
ROSEN HAGOOD LLC
P.O. Box 893
Charleston, SC 29402
(843) 577-6726
apaylor@rosenhagood.com
bghom@rosenhagood.com

Truett F. Nettles
FINKEL LAW FIRM
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405
(843) 577-5460
tnettles@finkellaw.com

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
June 11, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Patricia B. Holliday,

Plaintiff,

vs.

Ross S. Holliday,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-872

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF HIS MOTION FOR
SUMMARY JUDGMENT**

2019 JUN 11 11 33 AM
FILED
CLERK OF COURT
PH 3:32

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Ross S. Holliday ("Ross") hereby submits this Memorandum in Support of his Motion for Summary Judgment. Plaintiff claims that the Defendant, her son, failed to repay a \$2 million promissory note, dated June 8, 2004, to her and Defendant's father, Warren Holliday. Defendant is entitled to summary judgment for each of the following reasons, any one of which entitles Defendant to summary judgment:

- I. Plaintiff gave no consideration to Ross for the note and, thus, cannot sue for breach of contract.
- II. The only consideration even alleged by Plaintiff was from her deceased ex-husband's "marital assets." In 2013, nine (9) years after the loan and note, Plaintiff expressly released any and all claims arising out of the "marital relationship." See Exhibit A, Marital Settlement Agreement, p. 3. At that same time, Plaintiff released all claims to the property of Mr. Holliday "to the benefit of the heirs, personal representatives, executors, administrators, successors, and assigns of the parties hereto." See Exhibit A, Marital Settlement Agreement, p. 11. Irrespective of Plaintiff's express release, her designation as a beneficiary of the Promissory Note was also eliminated upon divorce per S.C. Code § 62-2-507.
- III. Ross made payments to both Mr. Holliday and to NBSC, which had loaned to Warren Holliday the \$2 million provided to Ross, in accordance with a collateral agreement that Ross made with Warren Holliday. As provided by § 36-3-117, the payments made

by Ross under his agreement with his father paid off the NBSC loan and such payments constitute a defense to enforcement of the Note.

- IV. Plaintiff's claim is barred by the relevant statute of limitations and/or the equitable doctrine of laches. See S.C. Code Ann. § 36-3-118.

UNDISPUTED FACTS¹

On June 18, 2004, Warren Holliday obtained a \$2 million line of credit that he obtained from the National Bank of South Carolina ("NBSC") and drew down the entire \$2 million to provide to his son Defendant Ross Holliday, who signed a Promissory Note for said loan. See Exhibit B, Deposition of Plaintiff (Page 13); Exhibit C, Deposition of Defendant (Page 18). Plaintiff was included as an obligee on the Promissory Note as an estate planning tool. See Exhibit B, Deposition of Plaintiff (Pages 39-40); Exhibit C, Deposition of Defendant (Page 78). Nine (9) years after the execution of this Note, Plaintiff sought and obtained a divorce and her share of the marital assets from Warren Holliday. After the divorce, Warren Holliday took steps to remove Plaintiff from his estate planning documents. However, Mr. Holliday never intended for Plaintiff to have the ability to sue on the Note after the divorce. See Exhibit C, Deposition of Defendant (Page 74).

As evidence of Warren Holliday's intention, he and Patricia Holliday executed at least three agreements providing that the parties release each and all claims to the "marital assets" except as directly specified in the divorce proceedings. As her marital share, Plaintiff received considerable property and assets which Warren Holliday had accumulated in his businesses while married to Plaintiff. While married to Plaintiff, Plaintiff received the marital residence valued in excess of \$750,000. She retained a car, household furnishings, and other valuable personal items.

¹ For purposes of this motion only, Defendant assumes that the evidence must be construed in the light most favorable to the Plaintiff.

Pursuant to the Marital Settlement Agreement and the Divorce Decree, Plaintiff is receiving \$16,000 per month for life from the Marital Trust.

The Marital Settlement Agreement (Exhibit A herewith), dated August 9, 2013, contains numerous statements that Plaintiff had no claim to any property arising during her marriage other than as set forth in that agreement.² Likewise, the Marital Settlement Agreement is littered with protections for Ross Holliday—who is Warren Holliday's heir, personal representative, and successor to his businesses. Despite these provisions—which expressly manifest Plaintiff's intention to release any and all claims against Warren Holliday, his heirs, or his property—Plaintiff has brought this action to recover money on a loan provided by Warren Holliday to his son Ross who is also his heir *and* personal representative.

Not only did Plaintiff relinquish her right to enforce this Note in her divorce proceedings, Ross and Warren Holliday made an agreement that all available resources would be used to satisfy the line of credit with NBSC—which was the loan used to grant the funds to Ross Holliday. Similarly, Ross made other payments directly to Warren Holliday in partial payment of the loan, along with extensive management services for Warren Holliday's businesses which services created income that enabled Mr. Holliday to repay the line of credit from NBSC. At that time, Warren Holliday told Ross that his obligation on the Note had been fulfilled. See Exhibit C, Deposition of Defendant (Pages 34-35). Plaintiff does not dispute that Ross made payments to NBSC and Warren Holliday directly:

² "The parties do hereby waive; release and forever acquit, and do hereby discharge each other, their administrators, successors, heirs, assigns of and from any and all suits, actions, causes of action, claims, demands, damages (known, unknown, foreseen, and unforeseen), costs, expenses, compensation, and all consequential damages, including, but not limited to those resulting from or arising out of the marital relationship between Warren and Patricia, their marriage, separation or divorce, or any tort, or other legal or equitable claim (except those arising from a breach of this Agreement) from the beginning of the world to the date of this Agreement. The parties hereby expressly waive and release any claim either party may have in or against the Probate Estate of the other party pursuant to a Will, a spousal election or any other provision of the S.C. Probate Code." Marital Settlement Agreement, p. 3, Para. B.

Q. Do you know whether or not Warren instructed Ross to make payments on the \$2 million loan?

A. He did call him on a couple of occasions, because we were in need of money. And I think, at that time, interest was almost 13,000. You know, as the loan paid down, the interest, of course, duly went down. And, so, you know...

See Exhibit B, Deposition of Plaintiff (Page 32:1 to 32:7).

Although Plaintiff has admitted that Mr. Holliday instructed Ross to make payments, Plaintiff generally had no idea what was happening with regard to the note.³ In addition to *admittedly* relinquishing her rights to this Note in several documents, and the fact that she *admittedly* offered nothing in exchange for the loan to Ross, Plaintiff has been downright lazy—sleeping on her purported “right to payment” for over a decade. Prior to 2017, she had not done or said *anything* to enforce any rights she might have had. See Exhibit B, Deposition of Plaintiff (Page 34-35). If thirteen years of inaction and silence does not invoke the equitable doctrine of laches, it would be difficult to envision a situation that could.

STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. Where the record is devoid of any allegation or evidence tending to show there is a material fact in issue, the moving party is entitled to summary judgment as a matter of law. Milligan v. Liberty Life Ins. Co., 313 S.C. 478, 481, 443 S.E.2d 381, 382 (1994); Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 117, 410 S.E.2d 537, 546 (1991) (“[B]ald allegations are insufficient to create a genuine issue of fact.”); George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 593, 545 S.E.2d 500, 505 (2001) (“The party

³ In Plaintiff’s deposition, she essentially takes the position that she gave nothing for this loan, knew nothing about it—whether it was paid off or not—yet is *still* entitled to payment. See Exhibit B, Deposition of Plaintiff (Page 10) (explaining that she has no idea whether Ross paid off the Note or not).

opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.”). Thus, a plaintiff cannot rely upon the mere allegations of her complaint, but instead, plaintiff must disclose facts showing the court the existence of a genuine issue of fact. Dyer v. Moss, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985).

ARGUMENT

I. Plaintiff cannot sue for breach of contract since she failed to offer any consideration for the loan made by Warren Holliday to Ross Holliday.

Plaintiff requests relief for a breach of contract. The necessary elements of a contract are offer, acceptance, and valuable consideration. Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, 357 S.C. 363, 368, 593 S.E.2d 170, 173 (Ct. App. 2004). Of course, all parties must be obligated under a contract in order for it to be enforceable. Alala v. Peachtree Plantations, Inc., 292 S.C. 160, 167, 355 S.E.2d 286, 290 (Ct. App. 1987). When a party seeks to enforce a contract, the party must have offered consideration for the promise it seeks to enforce, “for equity will not compel a party to be generous.” Black v. Gettys, 238 S.C. 167, 186, 119 S.E.2d 660, 669 (1961). To recover for breach of contract, or any cause of action in South Carolina, Plaintiff must have been injured in a legal sense. Parker v. Brown, 195 S. C. 35, 48, 10 S. E. 2d 625, 630 (1940) (explaining the applicability of *damnum absque injuria* where there is no legal injury).

While Warren Holliday had substantial assets at the time he desired to loan Ross \$2,000,000, he did not have the cash on hand necessary to make the loan. Mr. Holliday requested that NBSC extend a line of credit so that he could provide the loan to Ross.⁴ Plaintiff did not contribute property, money, or other assets in making the loan to Ross. Nor did Plaintiff have any

⁴ To be sure, the Promissory Note and the NBSC line of credit were executed within 24 hours of one another. See Exhibit D, Promissory Note; Exhibit E, NBSC Loan.

obligation or liability to the bank. Plaintiff was not even a party to the bank loan. Plaintiff admits these facts. See Exhibit B, Deposition of Plaintiff (Page 13).

Since Plaintiff never gave consideration for the Note, she has not been injured in the legal sense and is barred by the doctrine of *damnum absque injuria*. Consideration is an essential element for a breach of contract claim, and without it, Plaintiff must be barred from recovering on her breach of contract claim. At best, her interest in the Note is one of expectancy. As discussed in the next section, Plaintiff waived her expectancy interest by entering into the property settlement agreement with her late husband, Warren P. Holliday. Estate of Revis by Revis v. Revis, 326 S.C. 470, 477, 484 S.E.2d 112, 116 (Ct. App. 1997).

II. In addition, Plaintiff cannot recover on the Promissory Note because (1) she released her claim to the marital property in her Marital Settlement Agreement, and (2) § 62-2-507 revoked any claim to the Note by law.

As an initial matter, the Promissory Note at issue in this case is a "negotiable instrument" as defined by the Negotiable Instruments Section of the South Carolina Commercial Code. See S.C. Code Ann. § 36-3-104. As provided by § 36-3-604, a person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument in two ways: (1) an intentional voluntary act or (2) agreeing not to sue or *otherwise renouncing rights against the party by a signed record*. See S.C. Code Ann. § 36-3-604(a) (emphasis added).

Second, with respect to § 62-2-507 addressed in subsection B, there is an important policy consideration relevant to the Marital Settlement Agreement. In both scenarios, whether by formalizing the agreement in a marital settlement document or by operation of statutory law, the law seeks to cut off any and all financial rights and duties as a result of the divorce. As stated in the Reporter's Comment, "[t]his section effectuates a decedent's presumed intent: without a contrary indication by the decedent, a former spouse will not receive any probate or nonprobate

transfer as a result of the decedent's death.” See S.C. Code Ann. § 62-2-507; see also Protective Life Ins. Co. v. LeClaire, No. 7:17-CV-00628-AMQ, 2018 WL 3222796, at *4 (D.S.C. July 2, 2018) (“[T]he statute and the associated legislative notes shows that the South Carolina Legislature intended for a divorce or annulment to revoke the disposition or appointment of property, including beneficiary interests to a former spouse, unless expressly provided otherwise.”). And this policy concern is not unique to South Carolina, as the United States Supreme Court has said, many states have addressed this concern over time. Sveen v. Melin, 138 S. Ct. 1815, 1819, 201 L. Ed. 2d 180 (2018) (citing to South Carolina’s § 62-2-507 as an example). In Sveen, the Supreme Court eloquently explained the purpose of these statutes and why it is obvious when considering the decedent’s intent:

The underlying idea was that the typical decedent would no more want his former spouse to benefit from his pension plan or life insurance than to inherit under his will. A wealth transfer was a wealth transfer—and a former spouse (as compared with, say, a current spouse or child) was not likely to be its desired recipient. *Id.*

There is nothing in the record to suggest that the decedent, Mr. Holliday, intended for Plaintiff to recover on this Note. In fact, and as addressed in subsection A, the Marital Settlement expressly conveys the opposite. As the Supreme Court said, a decedent spouse is unlikely to have wanted his former spouse to be a recipient of a wealth transfer. A decedent spouse is even *more* unlikely to have wanted his former spouse to receive a wealth transfer *at the expense* of his chosen beneficiary (Defendant).

A. **Plaintiff expressly released her claims to the property of Warren P. Holliday, as well as any claims against him or his heirs, in the Marital Settlement Agreement between her and her ex-husband, Mr. Holliday.**

Plaintiff renounced rights against both her ex-husband and Ross in a signed (and filed) record. Plaintiff did so *over and over* again in the Marital Settlement Agreement. On the very first page, it says “the parties ... settle all issues between themselves and all matters heretofore

arising or hereafter to arise from their marital union; they have reached a permanent, complete, and final agreement ... with respect to all matters which were raised or could have been raised between the parties hereto." See Exhibit A, Marital Settlement Agreement, p. 1. Most importantly, Plaintiff executed a General Release of Liability on page 3 of the Settlement Agreement. Due to its importance and clear language, the relevant provision has been extracted and included here:

B. **GENERAL RELEASE OF LIABILITY.** The parties do hereby waive, release and forever acquit, and do hereby discharge each other, their administrators, successors, heirs, assigns of and from any and all suits, actions, causes of action, claims, demands, damages (known, unknown, foreseen, and unforeseen), costs, expenses, compensation, and all consequential damages, including, but not limited to, those resulting from or arising out of the marital relationship between Warren and Patricia, their marriage, separation or divorce, or any tort, or other legal or equitable claim (except those arising from a breach of this Agreement) from the beginning of the world to the date of this Agreement. The parties hereby expressly waive and release any claim either party may have in or against the Probate Estate of the other party pursuant to a Will, a spousal election or any other provision of the S.C. Probate Code.

In the above provision, Plaintiff released Warren Holliday's "administrators, successors, heirs, assigns" from "all suits, actions, causes of action," etc. that result from or arise out of the "marital relationship ... from the beginning of the world to the date of this agreement." Plaintiff did not stop there. On page 11, the Agreement states: "there are no representations, warranties, promises, covenants, or undertakings other than those expressly set forth herein." On that page, the Agreement continues to say "[t]here are no representations or warranties other than those expressly set forth herein, and this Agreement shall be binding upon and shall inure to the benefit of the

heirs, personal representatives, executors, administrators, successors, and assigns of the parties hereto.”

Ross Holliday inherited substantial assets from his late father, Warren P. Holliday. He is also the personal representative of the Estate of Warren P. Holliday. He is also an assignee/successor given that Mr. Holliday chose Ross to manage and receive income from his various companies.⁵ Plaintiff holds all of those titles; therefore, Plaintiff expressly waived any and all claims against Ross Holliday.

Not only has Plaintiff released any claims against Ross, Plaintiff has repeatedly signed documents acknowledging that she has no right to Warren Holliday’s property. On page 7 of the Marital Settlement Agreement, it states she releases and waives “any and all right, title, or interest he or she has, or may have had, to any trust funds, inheritances, accounts, gifts, or property of any kind inherited by the other party, or gifted to the other party, or held in trust for the benefit of that party, except as may be specifically provided herein.” On page 6 of the Marital Settlement Agreement, Plaintiff “hereby relinquishes and waives any claim she may have in or against these business assets, except as provided in the Patricia Anne Holliday Trust.” If her release to such property still remains unclear, see page 8, where the Agreement further states that “Warren Holliday shall remain solely liable for any and all business debts that Warren has incurred.” Then, again on page 9, it says “Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement.” A signed record could not be more clear on this point.

Plaintiff expressly released all rights to property stemming from her marriage with Warren Holliday—which most obviously includes the Note (as admitted by Plaintiff in her deposition, page 17-18). To be sure, the Holliday Financial Arrangements Agreement (“Financial

⁵ Interestingly, Plaintiff likewise chose Defendant to manage her financial assets. See Exhibit F, Holliday Financial Arrangements Agreement.

Agreement”), signed by Patricia on March 7, 2012, provides yet another example. On the top of page 2, the Financial Agreement clearly states that Plaintiff and her ex-husband “intend that their financial dealings will henceforth be separate.” See Exhibit F, Holliday Financial Arrangements Agreement. On page 4, the parties agreed that the agreement is the “entire agreement of Warren and Patricia as to the matters set forth herein, and there are no representations, warranties, promises, covenants, understandings or undertakings other than those set forth herein.” See Exhibit F, Holliday Financial Arrangements Agreement. That agreement, which is signed by Ross Holliday as well as Patricia and Warren, provides that Ross will take over the management of Warren’s businesses, as well as of Patricia’s and Warren’s personal assets and needs.

The most baffling part of Plaintiff’s claim to the Note is that she does not deny that she understood what the phrase “administrators, successors, heirs, assigns” means. See Exhibit B, Deposition of Plaintiff (Page 18). She does not deny that the consideration given for this Note was from the marital assets. She actually admits this in several places. See Exhibit B, Deposition of Plaintiff (Pages 17-18, 39); see Pl. Resp. to Def. First RFA (“Plaintiff and her ex-husband Warren Holliday provided the loan from their marital assets.”). She even contends that this was a “business transaction.” See Exhibit B, Deposition of Plaintiff (Page 41). As quoted above, the Marital Settlement Agreement expressly states that Plaintiff “hereby relinquishes and waives any claim she may have in or against these **business assets**, except as provided in the Patricia Anne Holliday Trust.” Further still, it states that “Warren Holliday shall remain solely liable for any and all business debts that Warren has incurred.”

Given the above, it defies logic to insinuate that Plaintiff has a right to collect on this Note. South Carolina law recognizes that a beneficiary may contract away her beneficiary interest through a separation or property settlement agreement, even if the beneficiary designation is not

formally changed. Estate of Revis by Revis v. Revis, 326 S.C. 470, 477, 484 S.E.2d 112, 116 (Ct. App. 1997). When a separation agreement provides general language of release without specifically addressing the policy/account providing the expectancy interest (like in the Marital Settlement Agreement), a named beneficiary is precluded from recovery when she intends for the general waiver to apply to the expectancy interest. Stribling v. Stribling, 369 S.C. 400, 407, 632 S.E.2d 291, 294 (Ct. App. 2006) (noting that there is no distinction between the expectancy interest in various contractual documents when determining the issue of a release).

B. Regardless of whether the Marital Settlement Agreement constituted a signed record relinquishing her rights to the Note, and releasing her claims against Ross, § 62-2-507 eliminated her interest in the promissory note.

As addressed above, South Carolina law *already* allowed for a divorce to serve as a revocation prior to the enactment of § 62-2-507. Stribling, 369 S.C. 400, 407, 632 S.E.2d 291, 294. Nonetheless, South Carolina's enactment of § 62-2-507 further enforced this rule in statute.

Subsection (c)(2) of § 62-2-507 provides that "a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship." See S.C. Code Ann. § 62-2-507(c)(2) (emphasis added). The Promissory Note at issue in this case has the right of survivorship language in it. When the parties got divorced, Plaintiff's interest was voided.

Plaintiff's counsel has previously contended, and will likely argue, that since § 62-2-507(c)(2) became effective after the divorce was finalized, it has no effect on the Note. While it is true that the divorce was finalized before the effective date of the statute, the statute was intended to be retroactive. See Protective Life Ins. Co. v. LeClaire, No. 7:17-CV-00628-AMQ, 2018 WL

3222796, at *4 (D.S.C. July 2, 2018) (“[T]he statute and the associated legislative notes⁶ show that the South Carolina Legislature intended for a divorce or annulment to revoke the disposition or appointment of property, including beneficiary interests to a former spouse, unless expressly provided otherwise. The statute applies to all judicial proceedings concerning estates of decedents and trusts commenced on or after the effective date of January 1, 2014. As the Decedent passed away after the effective date, the instant matter must be considered within the purview of the statute.”). Thus, the statute applies here, where the decedent passed away after the effective date.

Plaintiff must be barred from enforcing the Note given that (1) she released claims to the marital assets which she claimed was consideration for the Note; (2) she released claims against the heirs, personal representative, and assignee of Mr. Holliday; and (3) any purported interest in the Note was voided by § 62-2-507(c)(2).

III. Ross made payments to Warren Holliday and to NBSC in accordance with the parties' agreement, and pursuant to § 36-3-117, such payments are a defense to enforcement of the Note.

Addressed above, the Promissory Note at issue in this case is a “negotiable instrument” as defined by the South Carolina Commercial Code. See S.C. Code Ann. § 36-3-104. § 36-3-117 provides a defense to enforcement when the obligation of the party to pay the instrument was modified, supplemented, or nullified by a separate agreement. See S.C. Code Ann. § 36-3-117.

Ross made an agreement with his father, Warren Holliday, to use all available resources to satisfy the NBSC line of credit—which was the loan used to grant the funds to Ross Holliday. Similarly, Ross made some payments directly to Warren Holliday in partial payment of the loan.

⁶ See S.C. Code Ann. § 62-2-507 (“This section effectuates a decedent’s presumed intent: without a contrary indication by the decedent, a former spouse will not receive any probate or nonprobate transfer as a result of the decedent’s death.”).

As the person charged with operating Warren Holliday's business interests, Ross Holliday worked without getting appropriate compensation in order to make repayment of the NBSC loan possible. Furthermore, Warren Holliday acknowledged that Ross Holliday's debt to him was satisfied in full by writing on the note, "paid in full." Unfortunately, Ross Holliday can no longer find the note marked "paid in full." See Exhibit C, Deposition of Defendant (Pages 16, 35-36, etc.).

Plaintiff does not deny this. In her deposition, Plaintiff was asked whether Ross ever made payments on the loan. She responded: "I really couldn't say, because I had no involvement with the record keeping for the amusement company anymore or -- I know personally none was given to me." See Exhibit B, Deposition of Plaintiff (Page 10). When asked if her ex-husband ever instructed Ross to make payments on the loan, she answered affirmatively. See Exhibit B, Deposition of Plaintiff (Page 32:1 to 32:13). Plaintiff also testified at one point in her deposition that she did not know whether the loan was paid off or not. Plaintiff later testified that the "loan was, in fact, satisfied." See Exhibit B, Deposition of Plaintiff (Page 38:3 to 38:13). Plaintiff's sister, Martha Brouters, is her only disclosed witness. That witness offers nothing to refute the testimony that Mr. Holliday made a demand for payment and/or told Ross that the Note was paid-in-full. See Exhibit G, Deposition of Martha Brouters. While Ms. Brouters testified that she found it "hard to believe" that Warren Holliday wrote paid in full on a copy of the note, she could not say whether that was true or not; admitted that Ross and Warren Holliday were involved in collateral ventures together that they were expecting a significant return on investment; and further admitted that "[i]f he made any payments while he was with his ongoing venture, I don't know." See Exhibit G, Deposition of Martha Brouters (Pages 40; 42; 46-47). Since there is no testimony or evidence that controverts the assertion that both Ross and Patricia made regarding Warren's

demand for payment, and since the NBSC loan was in fact paid-in-full, summary judgment should be granted for Defendant.

IV. Plaintiff's claims are barred by the relevant statute of limitations and the equitable doctrine of laches.

The statute of limitations applicable to negotiable instruments such as the Promissory Note at issue in this case bars Plaintiff's action for two reasons. See S.C. Code Ann. § 36-3-118. First, subsection (b) requires that an action be brought within six years after a demand for payment.⁷ See S.C. Code Ann. § 36-3-118(b). Plaintiff testified that Warren instructed Ross to make payments on the note. See Exhibit B, Deposition of Plaintiff (Page 32:1 to 32:7); see also (Pages 33:23 to 34:11). Ross similarly testified that his father made a "demand for payment in 2005." See Exhibit C, Deposition of Defendant (Page 37). If Warren made a demand for payment in 2005, which is uncontested in the record, then the time to bring a lawsuit on the note expired six years after the demand—2011. Even if Warren never made a demand for payment—which is uncontested testimony here—subsection (b) provides that "an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years." See S.C. Code Ann. § 36-3-118(b). Plaintiff herself has not received any interest or payments, nor has she made a demand for payment at any point prior to this lawsuit more than 10 years. The payments made by Ross to Warren Holliday were made between 2005 and 2007. See Exhibit C, Deposition of Defendant (Page 23). Plaintiff does not deny this. See Exhibit B, Deposition of Plaintiff (Page 31:20 to 31:25). Therefore, Plaintiff is barred even under the 10 year standard,

⁷ There is no question that the Promissory Note was "payable on demand" since its very terms say so. See Exhibit D, Promissory Note. A promise or order is "payable on demand" if it "(1) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (2) does not state any time of payment." See S.C. Code Ann. § 36-3-108.

since direct payments by Ross Holliday to Mr. Holliday were last made in 2007⁸ and the Complaint wasn't filed until February 20, 2018.

Aside from the *uncontested* testimony that Warren made a demand for payment well before the statutory bar of six years, and aside from the *uncontested* testimony that Ross has not directly made a payment for more than the statutory period of ten years, Plaintiff's apathy and downright laziness should prevent recovery on this Note. See Pee Dee Health Care, P.A. v. Estate of Thompson, 424 S.C. 520, 537, 818 S.E.2d 758, 767 (2018). The doctrine of laches prevents a party—who has knowledge of her rights but fails to seasonably assert them—from enforcing said rights when doing so would cause her adversary “to incur expenses or enter into obligations or otherwise detrimentally change his position.” *Id.* Plaintiff divorced the later Warren Holliday in 2013, but waited until after his death to commence this lawsuit. Plaintiff knew Mr. Holliday would object to her recovery on the Note. Most importantly, Plaintiff has known about this loan from the time of its making and has never denied knowledge of her rights in the Note. Nonetheless, Plaintiff's testimony is replete with admissions of inactivity, negligence, and general lack of awareness. See, e.g., Exhibit B, Deposition of Plaintiff (responding to Defendant's counsel as to why she took so long to request payment, Plaintiff said she “assumed” it was being paid). Equity does not reward a person who goes a period of 13 years without requesting payments on a purported \$2M Note or inquiring whether it had been paid.⁹ As shown above, Plaintiff testified that she does not even know if the loan has been paid off in full or not. Plaintiff's failure to enforce her rights has essentially ambushed Ross. Prior to this lawsuit, Ross believed the Note was paid

⁸ Plaintiff's sister, the bookkeeper for Mr. Holliday from approximately April 2011 to July 2015, claims that Ross made no payments on the Note during her time there, but is unsure whether he made payments prior to her employment. See Exhibit G, Deposition of Martha Brouthers, (page 40).

⁹ This can likely be attributed to the fact that she gave nothing of value; has suffered no legal damage; and the fact that her claim is disingenuous, at best.

off in full, and Plaintiff's delay confirmed this for him over the years. Due to Plaintiff's unreasonable delay, if the note is not satisfied as Plaintiff claims, Ross has been damaged by his loss of the note marked "paid in full," as well as the loss of necessary bank records and other documents necessary to show his payments. In addition, under Plaintiff's theory, he has incurred interest over a long span of time, because Plaintiff failed to timely assert her right to repayment. As further evidence of damage by delay, Ross made business capital decisions in his role as a business manager under the assumption that this loan had been paid off. Ross would certainly be prejudiced by enforcing a 15 year old Note that has been accruing interest throughout its life and would require a large payment in the immediate future.

CONCLUSION

Plaintiff gave no consideration to Defendant, and therefore, cannot enforce the Note. Plaintiff released all of her claims to the Note in her divorce from Warren P. Holliday. Defendant has provided services and other benefits to Warren P. Holliday and such activity by Defendant is grounds for satisfaction of the Note pursuant to § 36-3-117. Plaintiff's claim is also barred by the relevant Statute of Limitations and/or doctrine of laches. Being represented by legal counsel in the divorce proceeding, Plaintiff obtained a very generous marital settlement; yet now, Plaintiff seeks to double-dip. For all these reasons, Defendant Ross S. Holliday respectfully requests that this Court GRANT his Motion for Summary Judgment. If this Court does not grant Defendant's Motion in whole, Defendant requests that this Court grant his Motion in part in accordance with the payments made on the Note and services rendered to Plaintiff.

[SIGNATURE ON FOLLOWING PAGE]

By: 
Alice F. Paylor
Bijan Ghom
ROSEN HAGOOD, LLC
P.O. Box 893
Charleston, SC 29402
(843) 577-6726
apaylor@rosenhagood.com
bghom@rosenhagood.com

Truett F. Nettles
FINKEL LAW FIRM
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405
(843) 577-5460
tnettles@finkellaw.com

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
June 11, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MARITAL SETTLEMENT AGREEMENT

This Agreement made and entered into this 9th day of August, 2013, in Charleston, South Carolina, by and between Patricia Anne Holliday ("Patricia") and Warren Phillip Holliday ("Warren").

WITNESSETH:

WHEREAS, the parties hereto are husband and wife, having been lawfully married on September 10, 1966, in Charleston, South Carolina, and four children have been born of this marriage: Pamela Giselle Holliday Wallin, Mark Bennett Holliday, Ross Samuel Holliday, and Warren Lea Holliday and these children are now emancipated, adult persons and the parties to this Agreement have no continuing legal obligation to any of them and no other children will be born of this marriage; and,

WHEREAS, the parties have lived separate and apart since February, 2011; and,

WHEREAS, the parties now consider it to be in their respective best interests to settle all issues between themselves and all matters heretofore arising or hereafter to arise from their marital union; they have reached a permanent, complete, and final agreement; they now wish to reduce their agreement to writing; and they desire that it shall constitute the total agreement between them, both now and following any divorce which either might obtain, with respect to all matters which were raised or could have been raised between the parties hereto, other than the issue of divorce itself (this "Agreement"); and,

WHEREAS, Patricia is represented by Alan D. Toporek, Esquire of Charleston, South Carolina and Warren is represented by F. Truett Nettles, II, Esquire of Charleston, South Carolina. The parties acknowledge that they have each had adequate opportunity to consult with their attorneys, accountants,

WPI/PAH CBH

Holliday Settlement Agreement
Page 1 of 13



financial advisors or other professionals and the parties acknowledge that they have been competently and properly represented and they believe they have been fully advised of all their rights and responsibilities hereunder; and,

WHEREAS, both parties now waive their right to formal discovery and acknowledge that each is reasonably familiar with the financial ability, income, debts, expenses, worth, and assets of the other based upon knowledge obtained during the marriage, discussions between the parties, access to legal and financial records, and the advice and counsel of their respective attorneys or other professionals; and,

WHEREAS, the parties stipulate that they are not entering into this Agreement as a result of any duress or undue influence but rather as the natural consequence of the breakdown of their marriage; they further acknowledge that each party has freely, actively, and fully taken part in the negotiations over a reasonable period of time; each party fully accepts the terms and conditions hereof; and each party believes and considers the same to be fair, just, and equitable under all relevant circumstances.

NOW, THEREFORE, in exchange for valuable consideration and mutual covenants and promises, the undersigned, Patricia Anne Holliday and Warren Phillip Holliday, hereby covenant and agree as follows:

I. RIGHT TO LIVE SEPARATE AND APART AND NON-INTERFERENCE

A. **RIGHT TO LIVE APART.** Upon and after execution of this Agreement, Warren and Patricia shall have the right, at all times, to continue to live separate and apart from each other for the remainder of their respective natural lives and to reside at such place or places and with such person or persons as either may see fit, and each party shall be free from any interference, marital authority, or control, direct or indirect, by the other party. Both Warren and Patricia, as though sole and unmarried, shall have

WPH:XYH PAH 

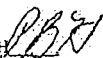
Holliday Settlement Agreement
Page 2 of 13

the right to carry on or conduct and/or engage in any employment, business, profession, or trade, free from any control, restraint, and/or interference, directly or indirectly, by the other.

B. **GENERAL RELEASE OF LIABILITY.** The parties do hereby waive, release and forever acquit, and do hereby discharge each other, their administrators, successors, heirs, assigns of and from any and all suits, actions, causes of action, claims, demands, damages (known, unknown, foreseen, and unforeseen), costs, expenses, compensation, and all consequential damages, including, but not limited to, those resulting from or arising out of the marital relationship between Warren and Patricia, their marriage, separation or divorce, or any tort, or other legal or equitable claim (except those arising from a breach of this Agreement) from the beginning of the world to the date of this Agreement. The parties hereby expressly waive and release any claim either party may have in or against the Probate Estate of the other party pursuant to a Will, a spousal election or any other provision of the S.C. Probate Code.

C. **PERSONAL KNOWLEDGE.** The parties hereby declare and represent that in making this agreement, release and settlement, each relies wholly upon his or her own judgment, belief, and knowledge of the nature, extent, and effect of this Agreement, and that each has not been influenced to any extent whatsoever in the making of this release by any representations or statements regarding the entire matter or by persons, firms, agents, attorneys, or corporations representing them.

D. **COMPROMISE OF DISPUTED CLAIMS.** Each party understands that this settlement is a compromise of disputed claims and that any payment to or by each or either of them is not to be construed as an admission of any liability for such payment or obligation.

WPH:UT HPAH 

Holliday Settlement Agreement
Page 3 of 13

E. UNDERSTANDING OF THE AGREEMENT. Each party has carefully read this Agreement and each has had the same explained to them by their legal counsel. Each knows the contents hereof and signs this settlement agreement as their own free act, fully realizing that execution of this instrument will bar any further claim by each against the other and any heirs and all other persons, agents, and attorneys who are or who might be liable, including all those persons and entities named hereinabove, except as specifically set forth herein.

F. RESTRAINT FROM HARASSMENT. The parties agree to be restrained from harassing, assaulting, threatening, interfering with, or intimidating each other or the other party, their attorneys, accountants, experts or any other person advising or representing them.

II. SEPARATE MAINTENANCE OR ALIMONY

A. MONTHLY PAYMENTS. Warren shall be personally obligated to pay or cause to be paid to Patricia the total sum of Sixteen Thousand Dollars (\$16,000.00) per month, retroactive to June 1, 2013. In calculating any arrearage, Warren shall receive a credit for payments made to Patricia during June and July 2013 and a credit for personal Social Security benefits of Warren paid to Patricia during that time. This obligation shall be terminated upon the death of Patricia or her marriage. The parties agree that each shall keep and retain any benefits or entitlements that either party may have with regard to Social Security, Medicare or any other federal or state benefit or entitlement for which either party may qualify. In order to assure and administer these monthly payments, Warren has created "The Patricia Anne Holliday Trust" simultaneously with the execution of this Agreement. The sole asset of that trust shall be a "preferred" membership interest in Zeezrom Properties, LLC. The LLC shall make monthly "preferred" distributions

WPH: [Signature] PAH: [Signature]

Holliday Settlement Agreement
Page 4 of 13

to the Trust in the amount of \$16,000.00. Pamela Giselle Holliday Wallin and Ross Samuel Holliday shall be co-Trustees of this Trust. The Trustees will distribute those funds to Patricia according to the terms of the Trust. Both parties have reviewed the terms of that Trust and agree to the terms set forth therein.

B. **LIFE INSURANCE.** In order to provide Patricia with further and additional support after the death of Warren, Patricia shall remain the designated beneficiary on the Life Insurance Policy on the life of Warren with Mass Mutual, Policy No.: 7-641-848. The death benefit on this policy is and shall remain at a minimum of \$700,000.00. Warren, owner of that policy, shall not make any changes to the beneficiary without the written consent of Patricia. Warren shall pay annual premiums on this whole Life Insurance Policy. If Patricia predeceases Warren, the alternative or successor beneficiaries shall be the inter-vivos Trust established by Warren and designated on the Life Insurance Policy.

III. EQUITABLE APPORTIONMENT AND DIVISION OF PROPERTY

A. **MARITAL ABODE.** The parties last resided together as husband and wife at the marital residence located at 1209 Manor Lane Mt. Pleasant, South Carolina 29464, TMS # 559-01-00-042. That residential property is legally owned by a Trust of which Patricia is the Trustee. The parties agree that Patricia shall retain and enjoy sole and exclusive use and possession of this residential property pursuant to the terms of the Trust. Warren hereby relinquishes and waives any claim he may have to that residential, real property.

B. **VEHICLES.** Patricia is presently the owner of two vehicles: (1) A 2008 Lexus, Model LS460, VIN JTHVL46F785038994 and (2) A 2003 Chevrolet, Model K15/BL truck, VIN

WPH: [initials] PAH: [initials]

Holliday Settlement Agreement
Page 5 of 13

3GNFK16Z43G129639. Patricia shall retain ownership and the exclusive possession of these vehicles.

Warren hereby relinquishes and waives any claim he may have to these motor vehicles.

C. **HOUSEHOLD GOODS.** The parties agree that Patricia shall retain, possess and own substantially all household goods, furniture, fixtures and appliances, except for the accumulation of precious metals. The parties agree that these precious metals shall be divided equally between Warren and Patricia. Warren shall have thirty (30) days from the date hereof to remove any additional personal items which still remain at the residence.

D. **BUSINESS ASSETS.** Warren presently owns or holds an interest in several limited liability companies, corporations or other business entities, a schedule of which is attached hereto as Exhibit A. The parties agree that Warren shall retain and continue full ownership and interest in any and all such companies and other business assets which Warren holds at this time. Patricia hereby relinquishes and waives any claim she may have in or against these business assets, except as provided in the Patricia Anne Holliday Trust. Warren shall retain sole authority to manage these business assets personally, or at his sole discretion, delegate or appoint management of these business assets to a person holding durable power of attorney, management agreement, appointment or election as officer, trustee or any other lawful manner.

E. **ACCOUNTS.** Warren and Patricia each have their own, separate checking accounts. The parties agree that any joint checking accounts, money market accounts, retirement accounts, annuities, saving accounts or any other type of account have been liquidated and no other funds or money remain in any such account. Each party shall retain exclusive control and ownership of their respective personal

WPH:DPH PAM 

Holliday Settlement Agreement
Page 6 of 13

checking accounts. Each party relinquishes and waives any claim that they may have on or upon an account of the other party.

F. **TRUST FUNDS AND OTHER GIFTED OR INHERITED PROPERTY.** The parties release and waive any and all right, title, or interest he or she has, or may have had, to any trust funds, inheritances, accounts, gifts, or property of any kind inherited by the other party, or gifted to the other party, or held in trust for the benefit of that party, except as may be specifically provided herein.

G. **OTHER ITEMS OF PROPERTY.** Except to the extent set forth in this Agreement, Warren and Patricia have made a physical division of all other personal property acquired during the marriage, including, but not limited to, household furnishings, appliances, bank accounts, retirement accounts, money situated in other accounts, jewelry, sporting equipment, and all other personal property of value. The parties each release the other from all claims of interest to any monies or assets in the possession of the other or titled in the name of the other party unless stated otherwise herein. Each shall retain sole ownership of all such properties in his or her possession or titled in his or her name unless such property is made the property of the other pursuant to the terms of this Agreement. Furthermore, unless stated otherwise herein, each shall bear all costs and expenses related to the properties which each takes sole ownership of pursuant to this Agreement.

H. **DEBTS.** The parties each represent to the other that there are no outstanding debts or obligations upon which the other party might be obligated or liable. The parties additionally agree that all debts and liabilities incurred by each of them since their separation shall be the sole and separate responsibility of the party incurring such debt, and each holds the other free and harmless from

WPK:OT:PAH



Holliday Settlement Agreement
Page 7 of 13

responsibility for repayment of such indebtedness. In the event debts or liabilities are discovered after the date of this Agreement and are not addressed specifically by this Agreement, the party who incurred the debt or liability shall be solely and separately obligated to pay the same, and shall hold the other party free and harmless therefrom. The parties specifically agree that Patricia shall be solely liable on all credit card debt which she has incurred. Warren Holliday shall remain solely liable for any and all business debts that Warren has incurred.

IV. MEDICAL INSURANCE COVERAGE

Each party will be solely responsible for maintaining their own health insurance coverage and for payment of their individual, non-covered medical expenses and each agrees to hold the other party harmless from any liability thereon.

V. ATTORNEYS' FEES

Each party agrees to be solely responsible for payment of their respective attorney's fees and each agrees to hold the other harmless from any liability associated therewith.

VI. INCOME TAXES

Warren and Patricia hereby agree to hold the other party harmless from, and to indemnify the other party, against, any loss, damages, expense, or liability, including deficiency assessments, penalties and interest, which such party may incur or be subject to by reason of any false, misleading or incomplete statement made, failure or neglect to disclose any income which should have or should be included, fact or information, whether or not false, misleading or incomplete, furnished or to be furnished, or act performed by or to be performed by such other party or any failure to make a statement, furnish a fact or information or perform an act with respect to any federal, state or local income tax return filed or to be filed

WPH:JTH PAH

Holliday Settlement Agreement

Page 8 of 13

by the parties, or any entities controlled by either of them, or any adjustment or amendment thereto both for jointly and separately filed taxes. Warren and Patricia are in the process of filing a joint tax return for the year 2012. Warren will be solely and personally responsible for any and all tax liability specified in the Federal or State tax returns for the year 2012. The parties shall file income tax returns separately for the year 2013. Each party shall be responsible for their own, respective tax liabilities which may be specified in the 2013 tax returns.

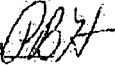
VII. RELEASE OF ESTATE CLAIMS.

Warren and Patricia each waive any claim of inheritance or right that they may be entitled to by virtue of the South Carolina Probate Code to share in the other's estate pursuant to South Carolina Code §62-2-201 or any other applicable statute. Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement. After execution of this Agreement by Warren and Patricia, their rights to inherit one from the other shall be terminated except as provided otherwise herein.

VIII. RELEASE AND INDEMNITY

The parties agree to hold the other harmless from any and all claims, suits, actions, causes or actions, notes, mortgages or debts of any kind arising from each of their personal expenses or debts from the date of this Agreement going forward, except for the obligations each to the other. To the extent that either of them has signed notes, contracts, or other documents or participated in various business transactions related assets allocated to the other pursuant to this Agreement, the party allocated such asset holds the other harmless from any and all claims, actions, suits or other obligations arising from those notes, obligations or holdings. Each shall be solely, separately, and exclusively responsible for any costs, expenses and obligations, related to the assets allocated to each party herein.

WPH/OPH PAH



Holliday Settlement Agreement
Page 9 of 13

IX. SEVERABILITY

Should any provision of this Agreement be held or deemed to be unenforceable, voidable or void, the remaining provisions of this Agreement shall nevertheless be binding upon and enforceable against the parties hereto, their executors, administrators, personal representatives and assigns.

X. WAIVERS AND MODIFICATIONS

No modification or waiver of any of the terms of this Agreement shall be valid unless submitted in writing and signed by the parties and executed in the same formality as this Agreement. No waiver or any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

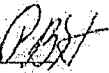
XI. HEADINGS

The headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

XII. EXECUTION OF OTHER DOCUMENTS

The parties expressly agree that, at any time hereafter, each of them shall make, execute, and deliver any and all further and other instruments or papers or things as may be reasonably required or desirable for the purpose of giving full effect to this Agreement including, but not limited to, deeds, other instruments of title, bills of sale, titles, income tax returns, tax reporting forms, and other documents necessary to effectuate the transfers of property or necessary to complete the terms and intent of this Agreement except where a specific period of time or performance is expressly set forth in this Agreement, all other acts shall be performed within thirty (30) days of signing of this Agreement.

WPH:KHPAH



Holliday Settlement Agreement
Page 10 of 13

XIII. UNDERSTANDING OF THE PARTIES

The parties acknowledge that they are entering into this Agreement freely and voluntarily having ascertained and weighed all the facts and circumstances likely to influence their judgment concerning this Agreement. Each of them understands and has given consideration to all provisions of this Agreement and no relief will be sought by either party which is inconsistent with the terms of this Agreement. This Agreement contains the entire understanding of the parties and there are no representations, warranties, promises, covenants, or undertakings other than those expressly set forth herein.

XIV. BINDING EFFECT

The foregoing contains the entire Agreement between the parties. There are no representations or warranties other than those expressly set forth herein, and this Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, executors, administrators, successors, and assigns of the parties hereto.

XV. APPROVAL, MODIFICATION, AND ENFORCEMENT

This Agreement shall, as soon as possible after execution, be submitted to the Family Court for the Ninth Judicial Circuit in Charleston County, South Carolina, for the purpose of having the Court review the terms and conditions hereof and for the issuance of an appropriate order approving these terms and conditions and making the same an order of the Court. The parties agree that, in the event this Agreement is incorporated in said decree or order, it shall be a final resolution of the rights of the parties and shall not be subject to subsequent modifications. In the event this Agreement, or any part hereof, is not approved and not made the order of the Court as aforesaid, this Agreement shall be null

WPH:OKA PAH 

Holliday Settlement Agreement
Page 11 of 13

and void and of no effect, but each party solemnly agrees to support the Court's approval of this Agreement and to do nothing in derogation hereof or in any way to discourage said approval by the Court. The parties hereby acknowledge that, in the event this Agreement is approved by the Family Court and made a part of this Court's Final Order, that the terms and provisions of this Agreement shall be enforceable by the Court's contempt powers.

XVI. GOVERNING LAW

The parties agree that the laws of the State of South Carolina shall govern the interpretation of, and the resolution of, any disputes which may arise under this Agreement; both parties submit themselves to the jurisdiction of the Family Court for the Ninth Judicial Circuit for the resolution of such disputes.

THIS AGREEMENT cannot be amended, changed, or modified without the express written consent of the parties and executed in the same formality as this Agreement.

WPHWTH PAH



Holliday Settlement Agreement

Page 12 of 13

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date and
year first shown above in this Agreement and triplicate originals have been this day executed and
delivered one to each of the parties and the third is to be filed with the Charleston County Family Court
prior to a hearing for its approval.

In the presence of:

Amie Cox
Witness

M
Witness

Patricia Anne Holliday
Patricia Anne Holliday

In the presence of:

Bernice Holmes
Witness

B. Phillips
Witness

Warren Phillip Holliday
Warren Phillip Holliday

WPH:YH:PAH *ABH*

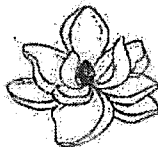
Holliday Settlement Agreement
Page 13 of 13.

Deposition of:
Patricia Holliday

**Holliday
vs.
Holliday**

CASE NO. 2017-CP-10-872

September 19, 2018



Magnolia Reporting, LLC

P.O. Box 61011
North Charleston, SC 29419
(843) 303-9141
www.MagnoliaReporting.com



Patricia Holliday - 9/19/2018

Page 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Patricia B. Holliday,

Plaintiff,

v.

Ross S. Holliday,

Defendant.

)
)
)
) Civil Action No.:
) 2017-CP-10-872
)
)
)

DEPOSITION OF: PATRICIA B. HOLLIDAY

DATE TAKEN: Wednesday, September 19, 2018

TIME: 1:50 P.M.

PLACE: Womble Bond Dickinson
12 Exchange Street
Charleston, South Carolina

REPORTED BY: MARY ANN RIDENOUR, RPR, CLR
Registered Professional Reporter,
Certified LiveNote Reporter
and Notary Public

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Patricia Holliday - 9/19/2018

Page 2 APPEARANCES REPRESENTING THE PLAINTIFF: MATTHEW E. TILLMAN, ESQUIRE Wormle Bond Dickinson 5 Exchange Street Charleston, South Carolina 29401 matthew.tillman@wbd-us.com REPRESENTING THE DEFENDANT: F. TRUETT NETTLES, II, ESQUIRE Finkel Law Firm 4000 Faber Place Drive, Suite 450 North Charleston, South Carolina 29405 nettles@finkellaw.com ALSO PRESENT: ROSS S. HOLLIDAY	Page 3 INDEX Testimony of Patricia B. Holliday Direct Examination by Mr. Nettles.....41 CERTIFICATE.....48 INDEX OF EXHIBITS Plaintiff's Exhibit No. 8 - Marital Settlement Agreement.....18 STIPULATIONS It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.
Page 4 (The deposition commenced at 1:50 p.m.) PATRICIA HOLLIDAY, SWORN: DIRECT EXAMINATION BY MR. NETTLES: Q. Is it okay if I call you Patricia? A. Sure. Q. You know I represent the defendants, or respondents, actually, defendant, your son, Ross, in this lawsuit about the promissory note, right? A. Yes. Q. And I'm going to take your deposition today. And you're under oath. What does that mean to you, when you're under oath? What does that mean? A. You have to be truthful. You're obliged to be truthful. Q. Okay. A. And you accept that responsibility of being truthful. Q. Good. So you and I can agree that everything you're going to say is true? A. Yes. Q. Like the instructions that your attorney gave to Ross in the deposition this morning, if I ask a question that's not clear, would you ask me to restate it or explain the question?	Page 5 A. Yes, I would. And could I just say one thing? I'm not trying to be Hollywood; I'm extremely light-sensitive, so... Q. I know. A. These are my bifocals, too. Q. Yeah. You wore sunglasses at the divorce hearing. A. I wear them indoors all the time, when there's any kind of bright lights. Q. That's right. Are you on any medications today? A. Today? Q. Yeah. A. Yes, I do take medications. Q. Which ones are you on, let's say the last 24 hours? A. Well, Humalog insulin, with meals. Q. Okay. A. Tresiba, long-acting, to work with my insulin, once a day. Q. Okay. A. And Prilosec for acid reflux. Q. Okay. A. Wellbutrin.

2 (Pages 2 to 5)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 6 Q. All right. I'm familiar with that one. And what else? A. I take that as a way of -- I just recently started on it, to go through nonsmoking. You know, it eliminates the cravings or whatever. Q. Is it working? A. Yes, very much. Q. How long since you had a cigarette? A. I had one at lunchtime. Q. What, is this helping you reduce your urge to smoke? A. Yes. Yes. Q. Is that the idea? A. Yes. Q. Okay. A. In fact, I used to be a chain-smoker. I don't know whether I enjoyed the smoking or the lighting up. Q. What other meds do you take? A. I take Lexapro. Q. Glaxipro? A. No, Lexapro. Q. Okay. A. L-c-x-a-p-r-o. Q. What's that about?	Page 7 A. That's an antidepressant. Q. Okay. What else? A. I take -- these have two funny names. Furosemide, F-u-r... Q. What is that about? A. That has to do with food retention. Q. Is that related to your diabetic condition? A. Yes. Yes. Q. Okay. What else? A. It's called Spiractin. It works, as well. Q. And that, again, is to help you with sugar? A. Diuretic. Q. Diuretic? A. Yeah. Q. Okay. Others? A. They just put me on one. I used to take a preventive blood pressure medication, Asenophil (ph), but they took me off because they said I really didn't need it. But it works to -- with my diuretics. And it's called -- I just started it this week. It's a short name, C-o -- I can't be sure. Q. And what does it do, blood pressure? A. Yes. Yes. But it -- it's to keep me, with these fluid pills, from becoming potassium deficient, so that I don't have to take potassium.
Page 8 Q. Okay. What else? A. I have a breather, as needed -- Q. What -- A. -- for allergies. Q. What's the name of that? A. Breo, B-r-e-o. Q. Okay. Others. A. I have a prescription for nasal spray, Astelin, A-s-t-e-l-i-n, as needed. Q. And that, again, is for? A. Allergies, uh-huh. Q. Are there any others? A. Count down. See how many you have before the two sprays, please. Five or six? Q. Well, I've got -- it's -- it's seven, I believe, because there were two there about the -- A. Oh, the two insulins, yes. But I'm talking about the pills. So take four of them off. Q. Okay. So four others and then two inhalers, or nasal spray and inhaler? A. No. Q. Is there anything else? A. No. Two and two. I take a total of six pills a day. Q. Now, do any of these pills affect your memory	Page 9 or your speech? A. No. Q. Have you had any problems with your memory in the last, I don't know, while, last year or two? A. No, sir. Q. I'm going to show you, just so we can get on the same page, Exhibit 1 from the deposition of Ross Holliday this morning. It was a copy of a Promissory Note, which I'm showing to you right now. A. Uh-huh. Q. Is that what we're -- this lawsuit is about? A. Yes, sir. Q. You agree that that is the Promissory Note? A. Yes. Q. Okay. Were you present when Ross S. Holliday signed a Promissory Note? A. I'm not sure. I don't recall. But I was aware of it, yes. Q. Your attorney wrote a demand letter on July 12, 2017, to Ross Holliday, demanding payment of this note. And it had a copy of the note, I believe, attached. Did you think, at that time, that \$2 million plus interest was due on this Promissory Note -- A. Yes, sir.

3 (Pages 6 to 9)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 10 Q. -- when your lawyer wrote that opinion? A. Yes, sir, I did. Q. So is it your opinion that no payments were ever made by Ross on this loan? A. I really couldn't say, because I had no involvement with the record keeping for the amusement company anymore or -- I know personally none was given to me. Q. So if Ross paid the two million and it went through Holliday Amusements or Zeezrom, would you know it? A. No, because I had no access to the records. Q. Well, what was the basis for your thinking that two million plus interest was due from Ross? A. Because I was never told that he had paid it off -- Q. Well -- A. -- to Warren. And I knew he hadn't paid it to me. Q. Let's follow-up on that. A. Uh-huh. Q. Did you ever get any money from Ross to pay back this Promissory Note? A. No, sir. Q. And I don't want to assume too much. You	Page 11 said, you know, you don't know the records of Holliday and Zeezrom and all that? A. I used to be -- you know, do all that in the office. Q. Yes. A. And then they -- they hired other people. And I became less involved, and more involved in other ventures that we had. Q. Yes. A. We had an auto salvage on Highway 17. And I ran that for ten years. Q. Uh-huh. You had a phone recorder in the attic, didn't you? A. Excuse me? Q. Do you remember wanting to listen in on some telephone conversations about parts getting gone from your business? A. No, I did not. Q. Okay. A. I don't even know where that came from. Q. I was representing you at the time. A. No. Q. The problem was solved, I think. That employee is gone, so... A. Well, the business is gone.
Page 12 Q. Yeah. You also had a taco business, didn't you? A. We -- we -- yes. We bought a -- Taco Trio. It was a restaurant. Actually, it was on Coleman, where the Taco Bell is now. We bought that. It was an individual that owned Taco Trio. And he wanted to retire and go back to Ohio. Q. Did you -- were you involved with running that business? A. Not physically, day-to-day, no, sir. Part of the arrangement was, he had a son that was in his late thirties, early forties. He didn't want to go with his family back to Ohio. And he pretty much was a manager or whatever. And we just agreed to keep him on. He knew how the recipes worked, and the system and all that. Q. Did you ever have a business over on the Bypass, close to that shopping center that had the bowling alley and the pool hall? I thought you had a business over there for a while. I don't know. Maybe I'm mistaken. That's okay. Were there any other businesses? A. At one time, we thought about buying that bowling -- putting a bowling alley where the skating rink was.	Page 13 Q. Uh-huh. A. Right behind the Volkswagen new car dealership. Q. Oh. On this \$2 million note, do you know where the \$2 million came from? A. Yes. Q. Where? A. It came from the bank. We pledged almost nine acres on Highway 17 North, where I had the salvage yard, which eventually became Sawgrass Technologies. Q. Were you an owner of that property at the time, legal owner? A. No. Q. Did any of this \$2 million come out of your checking account? A. No, sir. Q. Did this money come out of any account that you had an interest in, like a joint account with -- A. No. It strictly was a loan from the bank. Q. Okay. Did you sign the loan with the bank? A. No. I wasn't required to. Q. So you were not liable on that loan -- A. No. No. Q. -- to the bank? A. No.

4 (Pages 10 to 13)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 14 Q. Did you contribute anything else toward making this loan, other than money or any other thing? A. Well, I was responsible for purchasing that property, making that investment, pretty much all the -- all the properties that Warren and I bought, with the exception of one on Bees Ferry Road, that he dealt with. But we kept it a very short period of time. I secured financing, mostly owner financing, on all the properties. And managed -- you know, we had tenants. And we kept them over the years, pretty much the same tenants. Q. Well, prior to putting all of those different properties in different LLC's, were they in the name of Warren P. Holliday? A. I -- I can't remember. I think they were. And then there came a lawsuit. It was associated with video poker machines that he operated through Holliday Amusements. Q. Yes. A. And they -- I think they outlawed the use of those machines January 1st, 2000. Q. Okay. A. And this lawsuit -- I'm not sure. It was about that same time. Somebody had lost a bunch of	Page 15 money in video poker machines. And they wanted us to have to give them back monies. Anyhow, the -- I just had a -- give me a second. Q. Do you remember whose idea it was to put all the properties in the LLC's? A. Yes. Warren and I discussed it because we wanted to make sure that -- by then, things were pretty much getting close to being paid for. And that was going to be, like, our retirement income. And we didn't -- we didn't want -- if anybody -- and then, you know, most of them were restaurants and bars. And, of course, Warren had, like, a captive tenant because of the machines and owning the property. But then, when all this litigation came up about video poker and being outlawed, whatever, it just allowed -- in South Carolina -- we didn't want to have liability where somebody would come and take all of our property in the event of a lawsuit or -- or try to. So that's why we formed separate LLC's. And the easiest way to keep track of it was to use the property address or brief description of the property. Q. Okay. And that, as you recall, was 2000? A. Real close, between 2000 and 2005. Q. Okay. A. And it wasn't done like that.
Page 16 Q. All right. A. It was over a period of time. Q. Do you know why your name is on this Promissory Note? A. Yes, because Warren and I had an estate plan, individual. And, at that time, our whole idea was to build something to take care of us in our old age, because we knew with the death of video poker machines, amusement machines are -- ultimately, would not bring in enough money for us to live the way we chose to live, so -- and also, the main thrust was that we would have monies for our children and their children and -- you know, when we passed on. And if they had special medical needs in the interim, we could help. Q. Well, how was this, your name being on the Promissory Note as a payee, how was that part of your estate plan? I mean, how does this help you accomplish your -- A. Well, we took a debt-free piece of property and encumbered it with the bank, with a loan for \$2 million. Q. Right. A. We didn't have \$2 million when Warren was thinking about it buying into it himself. And we didn't want to encumber all the paid-for properties and	Page 17 require appraisals on all of them and all. And it was simple that the value -- most valuable property was 2233 Highway 17, which included Richard's Bar, next door, which ultimately got subdivided and that became 2237. Q. Yes. A. And I think that that mainly happened because of two lawsuits from Richard's. So it just made sense to keep the loan on one property -- Q. Yeah. A. -- rather than -- and then, if anything ever came up, we could sell, re-invest, or we could short-term borrow against it, any or all of them. Q. Okay. A. So... Q. Is there any other reason why your name is on this Promissory Note, that you know of, any other reason why -- A. Well, I mean -- Q. -- you're a payee? A. -- it was a marital agreement. We'd been married for many, many years. We had a common goal. That's why, even in the divorce, we -- we did not really have to argue or have any conversations about selling properties or appraising them and divvying up

5 (Pages 14 to 17)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 18 individual parcels, one to him and one to me, or to sell them and split the money, because we always had an estate plan that was going to protect us and our children. And that's why he guaranteed me through a preferred interest in Zeezrom Properties, which covered all of the properties. Q: Yes. A: Protection for my old age, even then, in the midst of a divorce. I mean, we honored each other's commitments. Little things like dividing up -- we had precious metals in two bank boxes, two different banks. We agreed just to split them right down the middle. We had cemetery lots that we agreed to split down the middle. (Discussion held off the record.) (Plaintiff's Exhibit No. 8 marked for identification.) BY MR. NETTLES: Q: We've marked this document I'm going to hand to you as Exhibit No. 8 for all of today's depositions. And it is a copy of the Marital Settlement Agreement. A: Thank you. Q: You can go ahead and flip over to the last page, first of all. And we'll say, did you sign this Marital Settlement Agreement?	Page 19 A: Yes. Q: Does that look like a copy of the agreement you reached with Warren in your divorce? A: Yes. Q: And this was made a part of the divorce decree; is that right? A: Correct. Q: And also the -- I believe it's -- no, Patricia Anne Holliday Marital Trust was also attached to the divorce decree; was it not? A: Correct. It was part of it. Q: That's where you're getting your \$16,000 a month? A: Well, I'm not sure where I'm getting it from. That's where I'm supposed to get it from. Q: But it's through that mechanism? A: Yes. And that was the intention. Q: Okay. You were represented by a lawyer in that divorce; were you not? A: Yes. Q: Alan Toporek? A: Yes, with co-counsel of David Michel. Q: I believe David Michel got involved when we went back to court about the amount of life insurance; is that right?
Page 20 A: Well, yes. But we -- I think we did have a consultation with him when we were trying to establish some of the details of the divorce and the discussions came up about the trust or whatever. But, actually, the actual person that consulted, was on record, was Heyward Carter. Because we had him look it over, the final -- there were several drafts to that. And we had Heyward Carter look those over, because he -- he drew our original estate and wills. Q: In your discussions with Warren about the divorce, was Warren mentally and intellectually competent to enter the Marital Settlement Agreement? MR. TILLMAN: Object to the form. You can answer. BY MR. NETTLES: Q: Just your opinion. I know you're not a doctor or a psychologist or whatever. A: Well, you, know it's hard. I think he had diminished capacities in that he had a lot of days where dialysis and home dialysis, even the going through the kidney transplant and all that -- and he -- he had moments when it really grabbed ahold of him, you know? His blood pressure on dialysis days would drop dramatically low. So I can't say that he fully had all	Page 21 of that going on 24/7. But he was not a dumb man or -- he was very frail, due to his illness and medications that he took to help with the, you know, antirejection of the kidney. And he also had blood clot issues. Q: Look at page three of the agreement. A: Uh-huh. Q: You see that? A: Yes, sir. Q: The first section at the top of that page is B, General Release Of Liability. Are we looking at the same spot? A: Yes, sir. Q: Did you agree not to sue your spouse for -- you both, you and Warren, not to sue each other, and you discharged each other, their administrators, successors, heirs, assigns of and from any and all suits, actions, et cetera? Did you understand that -- what that meant, that you and Warren were not going to sue each other? MR. TILLMAN: Object to the form. THE WITNESS: I'm sorry, what did you say? MR. TILLMAN: I just placed an objection on the record, but you still need to answer. THE WITNESS: Oh, okay. BY MR. NETTLES:

6 (Pages 18 to 21)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 22 1 A. Basically, Warren was concerned that I 2 wouldn't come back later with any kind of claims 3 against his management or ownership or whatever of 4 Holliday Amusements, that -- you know, in his 5 day-to-day business operations, that I wouldn't 6 interfere. 7 Q. Uh-huh. Do you know what it means when it 8 says, Hereby discharge each other, their 9 administrators, successors, heirs, and assigns, and 10 then it goes on to say discharge from what? 11 Do you know what an administrator or a 12 successor or an heir, do those words make sense to 13 you? 14 A. Oh, yes. 15 Q. You know what they are? 16 A. I'm familiar with it, yeah. 17 Q. Is Ross Holliday a successor to the late 18 Warren P. Holliday in Zeezrom Properties? 19 MR. TILLMAN: Object to the form. 20 BY MR. NETTLES: 21 A. Not that I'm aware. He was a manager, but 22 not the owner. 23 Q. Your other lawyer, Ms. Blair, has filed a 24 petition for you in the probate case? 25 A. Yes.	Page 23 1 Q. Have you read Warren's will, the one that's 2 being administered in that situation? 3 A. Are we talking about the one that Heyward 4 Carter drew up for us, the original will? 5 Q. No, no. It's a later will. 6 A. I may have glanced at it, but I don't have a 7 copy of it. 8 I found it interesting that in all of this -- 9 Warren's name was on our personal checking account, but 10 I think only two times did he ever write checks. One 11 was, like, a political contribution. He, you know, 12 didn't want it to come to his company. And the other 13 was to buy parts for a race car. And he didn't have -- 14 back then, it was "BC," before cards, credit cards. 15 And he didn't have enough cash money, so he asked me to 16 give him a check because he wasn't sure how much he was 17 going to buy or spend. 18 Other than that -- so when all that came -- 19 this kind of conversation came up -- because the house 20 was in my name, but the power bills came in his name, 21 and the phone bills. And because I was the owner of 22 the property, I was not required to put up a deposit. 23 However, I had to take -- it was very involved getting 24 his name off of it. 25 As a matter of fact, when he rented an
Page 24 1 apartment, he called -- he didn't call it his main 2 residence for the simple reason he didn't want to have 3 to put up a tenant deposit on it and he wanted to ride 4 off of that one. And the power company contacted me. 5 And I said, No, we have an agreement. We're not mixing 6 and commingling things. This house belongs to me. I 7 live in it. And his address is an apartment. And he 8 does not own it, so... 9 But I think that was one of those things. I 10 don't think that it was a malicious thing on his part. 11 That's the kind of indication he was dependent on other 12 people to take care of those kind of things, pay his 13 rent, pay his bills, you know, and somebody neglected 14 to do it. 15 Q. You read this full Marital Settlement 16 Agreement before you signed it, right? 17 A. Yes, I did. And there were still things that 18 I didn't really like, but I was getting tired. This 19 was about the third or fourth draft. 20 Q. You discussed all of your concerns with your 21 lawyers? 22 A. Yes, sir. 23 Q. Go to page six of the Marital Settlement 24 Agreement, Exhibit 8. 25 A. Yes.	Page 25 1 Q. In the second sentence of Section D, I'm 2 going to read it. And let's see if we understand it 3 and agree on it. 4 The parties agree that Warren shall retain 5 and continue full ownership and interest in any and all 6 such companies and other business assets which Warren 7 holds at this time. And Patricia hereby relinquishes 8 and waives any claims she may have in or against these 9 business assets, except as provided in the Patricia 10 Anne Holliday Trust. 11 This Promissory Note, was it a business 12 asset? 13 A. No, sir. 14 Q. What was it? 15 A. It was a personal loan. 16 Q. When you say "personal loan," you mean it 17 was, you know, a note from a person to another person; 18 is that what you mean? 19 A. Yes. It was personally from Warren and I. 20 Instead of giving him the cash money, which we didn't 21 have, as I said earlier, we pledged a piece of property 22 and gave it to him that way. 23 Q. Well, NBSC is not a person, in that sense, 24 are they? Is it? 25 A. No, Ross, the ultimate --

7 (Pages 22 to 25)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 26 Q. Oh, yeah. A. Yes. Q. But the source of the loan funds was the bank, right? A. Our credit and our asset, yes. Q. You say "our asset." At the time of your divorce, that was all going to be -- well, it was given up by you, in exchange for 16,000 a month. He gets to keep Holliday Amusements and Zeezrom, and all those other properties. Isn't that the way it worked out? A. The management of them, to assure that I got the 16,000 a month. Q. Yes. A. For life. Q. Absolutely. A. But the \$2 million note was not a part of that. Q. Well, you have made a claim against Warren Holliday's estate, have you not? MR. TILLMAN: Object to the form. BY MR. NETTLES: A. I guess, yes. In a way, yes. Yes. Q. And what is your understanding of what -- that claim you've made, what is that? A. It's -- it's because now that he's deceased,	Page 27 in this marital agreement, where he guaranteed to personally guarantee me -- I'm sorry, I'm getting a little froggy. Q. You want to have some water? A. No. I'll get a lozenge. He obligated his heirs and executors, et cetera, to comply with those, in the -- in the -- well, not in the event, when he died. If -- Q. Yes. A. If he died before me. Q. Yes. A. To assure me that, that I would always receive that. Like I said, it was -- at one point, we were talking about maybe a 6,500 to 8,000 a month in income. And rather than just diverse -- break up our portfolio, we took it to 16, which would cover taxes that I would be obligated for on that. And the -- the difference was to kind of go toward any interest in the properties. Q. Right. A. Partial or whatever. Couldn't say how much. Because at the time, I mean, it was our intention to keep properties for as long as they were profitable and guaranteed a good cash flow. But it was always our intention to, if we sold, to replace and to
Page 28 add to it. But we never seemed to get ahead financially, to add to it. And I had quit selling real estate, and so I no longer could apply my commissions as parts of down payments. Almost all of these properties, I had the listing on. Q. All right. THE WITNESS: Anybody care for a lozenge? MR. TILLMAN: No, thank you. BY MR. NETTLES: Q. Do you remember when and where you got a copy of the Promissory Note? A. Yes. I don't remember the exact date. Q. Well, approximately? A. I -- Warren -- he handed it to me. Well, he didn't hand it to me. He came home. And he had a habit of slamming the mail -- because he liked to know what was going on. So he brought the mail in when he came home. And if anything he wanted -- he just kind of went through it. The rest of it, he put on top of the counter. We have, like, a cooktop, glass. Q. Yes. A. And he would put it there. And he came home that particular day and put the note and said, Now, there's your copy.	Page 29 Q. Have you ever seen an original of the Promissory Note signed in ink pen or anything? A. Yes, I did. Q. Where did you see that? A. At 16 -- I mean, 1808 Meeting Street, his office. Q. Do you have a copy of that original, at this time? A. Yeah. I just told you, Warren came home and brought it. Q. So -- well, that was a copy, right? A. He made me a copy from that original. Q. Right. Do you have possession of the original, signed in ink? A. No, no, no. He kept it in his office. Q. Did you ever have actual, physical possession of the original Promissory Note that is the subject of this lawsuit? A. I mean, I touched it. I held it. I read it. But I never... Q. That was when you were at the Holliday offices at 1808 Meeting Street? A. Yes. Q. Well, you didn't -- did you take it out of the office?

8 (Pages 26 to 29)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 30 1 A. No. 2 Q. Okay. And as far as you know, was it 3 there -- at least, last you knew, is that where the 4 original note was? 5 A. Yeah. 6 Q. So you do not have the original, signed 7 Promissory Note -- 8 A. No. 9 Q. -- in your possession today? 10 A. No, sir. 11 MR. TILLMAN: You need a break or are you 12 okay? 13 THE WITNESS: No, no. No, no. I'm fine, 14 thank you. 15 BY MR. NETTLES: 16 Q. In the Marital Settlement Agreement, you 17 agreed not to inherit anything from Warren. Do you 18 remember that? I'll tell you where it is. Look on 19 page nine. 20 A. Are you looking under Release of Estate 21 Claims? 22 Q. Yes. Yes. 23 A. Uh-huh. 24 Q. Have you read that again today? 25 A. I'm doing it right now.	Page 31 1 Q. Okay. 2 A. Correct. 3 Q. So -- I'll just leave it right there. 4 I think you and I have agreed today that the 5 source of the money to make this loan to Ross was NBSC 6 Bank; is that right? 7 A. Yes. 8 MR. TILLMAN: Object to the form. 9 BY MR. NETTLES: 10 Q. And has that loan to NBSC been paid back? 11 A. I have no way to know. I don't have the 12 records, or access to them, let me put it that way. 13 Q. Did you make any payments to NBSC on that 14 loan? 15 A. Out of my personal checking account or 16 anything? 17 Q. Yeah, or any other source of personal 18 money? 19 A. No. No. 20 Q. Warren -- I mean, excuse me, Ross Holliday 21 testified this morning in a deposition that he made 22 payments on this \$2 million Promissory Note in the 23 years 2005 till 2007. Do you have any evidence or 24 knowledge that that did not happen? 25 A. No, I have no...
Page 32 1 Q. Do you know whether or not Warren instructed 2 Ross to make payments on the \$2 million loan? 3 A. He did call him on a couple of occasions, 4 because we were in need of money. And I think, at that 5 time, interest was almost 13,000. You know, as the 6 loan paid down, the interest, of course, duly went 7 down. And, so, you know... 8 Q. What did Warren say to him? Pay down this 9 loan? 10 A. Well, you're going to have to make some 11 effort to pay on this loan. And -- you know, and also, 12 remember, you know, interest is getting billed every 13 month. 14 Because, at that time, Ross's business with 15 Holmes Homes was in very good stead. 16 Q. Say that again. 17 A. Holmes Homes, that he put the \$2 million 18 investment -- the housing market was in a slow decline. 19 You know, it was the beginning of a trend. But they 20 had so many things going on that they were doing well. 21 They were all living in big houses, driving nice cars, 22 taking vacations, buying lavish gifts for each of 23 themselves, one to the other. 24 Q. Such as? 25 A. I think Spencer Holmes gave Ross a very	Page 33 1 valuable Rolex. There was a painting that Ross called 2 me and wanted to ask me about, because I knew something 3 about art, where he could get it, so that he could give 4 that to Spencer. 5 Q. So those were expensive items between the 6 owners? 7 A. Of the Holmes Homes, yeah, the three -- three 8 partners, yes. 9 Q. How much money do you spend on clothes every 10 month? 11 A. Every month? 12 MR. TILLMAN: Object to the form. 13 BY MR. NETTLES: 14 Q. Yeah. Or every year, if you can think of it 15 that way? 16 A. Oh, gosh. I used to spend -- I can't say. I 17 do -- I don't spend much now. My tastes have changed. 18 I mean, I've gotten older, a little more sedate. 19 Q. Your lawyer wrote this letter, which is 20 Exhibit 3 to the depositions, on July 12, 2017, last 21 summer, basically, right? 22 A. Uh-huh. 23 Q. Why did you wait until that time to make this 24 demand for payment? 25 A. Well, I just assumed all the conversations

9 (Pages 30 to 33)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 34 that I had with Warren, that when he told Ross he was going to have to start making payments and all, I just assumed that that was being done, either he was paying the interest -- I know that he was rolling over the loans. Like he said this morning, you know, you just didn't go in there and get a new loan for the same balance. As the balance declined, they usually ask for a percentage, you know, to be paid on it, and then they would renew it. And I -- I don't even remember if the interest rate was a fluctuating one with each rollover, so to speak. Q. We can learn that by looking at the loan -- A. Yeah. Yeah. Q. -- documents. But what I'm asking is, why did you wait until July 2017 to make this demand on Ross to pay you \$2 million? A. Because -- well, I had already tried to get copies of records and information about Zeezrom and other things into Warren's estate that would have affected me with these guaranteed monthly payments. Q. That's in that other lawsuit you have against Ross -- A. Yes. Q. -- and Lea about the marital trust, is that right?	Page 35 A. Correct. Correct. So I didn't -- I didn't have the wherewithal. When Ross took over the running of Holliday Amusements and related businesses, when Warren was so ill, there came a time that he really didn't want me down there interfering or, you know, inquiring as to what was going on. And so he kind of sort -- I mean, he made it real clear I was -- I was not welcome down there. Q. That is Ross made it clear? A. Yes. Q. So, what, did he ask you not to come to the office? A. Yes. And so I had no way to get information. My sister worked there, but she wouldn't breach that confidentiality and give me information, nor would I insult her and ask her for it. And he was -- it was about the time -- might have been a little after the divorce. Ross was at the house and come by, I don't know whether to look for some clothes or something for his father. And he asked for my American Express card. It was Holliday Amusements. It was a corporate card. And I hadn't been using it. I didn't feel like I was entitled to it. So -- but I just had it. Nobody asked for it. So I handed it to him. It was my understanding he was
Page 36 going to destroy it. I later found out that his wife was -- Kelly was using it. Now, whether she was signing my name or making phone purchases, there were charges on that card, after I had given it to him, that were authorized by her. So the card, in fact, was not destroyed. Q. Was that after your divorce or before, or do you remember? A. No, it was right after the divorce. Q. Before the divorce, had you used that Holliday Amusements American Express credit card? A. Yes. Q. Did you use it for things you wanted to buy? A. Yes. Q. Like clothes? A. Yes, gifts for children, grandchildren. Q. But you think that Ross's wife should not use that card, is that what you're saying? A. Correct. Because those -- she had nothing to do with running or whatever, or founding or whatever, for Holliday Amusements. She had no interest in it. The card was issued in my name. She's not Patricia B. Holliday. She's -- Q. I thought it was in the name of Holliday	Page 37 Amusements? A. That was a corporate card. Q. Yeah. A. But then it had individual accounts. And when you got a statement, it would have a statement for me, one for Warren. None of my expenses or charges on those cards, not even my gas, was written off as an expense. It was charged as income to Warren. And we shared joint filing tax returns. Q. Okay. Let me get back to this. Is there -- can you offer me any more information about why you waited until July 2017 to make this demand for 20 -- for, excuse me, \$2 million? A. Well, I had -- I had not received any accounting or information. And it did not show up as an asset on Warren's inventory of his estate, that there was money due. And I was trying to find out if there were payments made to Warren or on Warren's behalf to the bank or whatever. I mean, once you get divorced, things are hard to get, even a copy of a death certificate for a life insurance policy. Q. So I want to make sure I understand this point. You didn't know when -- when you asked your lawyer, Mr. Tillman, to write this letter in July 2017, you didn't know how much, if any, payments Ross had

10 (Pages 34 to 37)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 38 made on this note? A. Right. I had no way to know. Q. So you did not know whether it was paid or not? A. Correct. I only know that proceeds from the sale of 16 -- I mean 1808 Meeting Street -- and I don't remember how, but, anyhow, was used to pay off the final balance on that \$2 million loan to the bank. So it didn't come from Ross's personal or personal business entities, so the loan was, in fact, satisfied. But it was satisfied by the sale of Warren and I -- you know, properties that we had owned or acquired or whatever. Q. Well, at that point, when the NBSC loan was paid off, you didn't have any interest in 1808 Meeting Street, did you? A. Uh-uh. Q. You're saying no? A. Not that I know of, other than the fact that -- potential income. But it didn't make sense, you know, under Zeezrom type properties' umbrella to charge yourself rent for the space you're running your business out of. So I think, at the end of the year, there was -- the CPAs put, like -- and I think the IRS requires, like, an imputed --	Page 39 Q. Value? A. -- value that you've got -- I remember that happened out at the junkyard, the salvage yard. Q. Yeah. A. You didn't have to take the money. But you should have, if you could have. Q. Were there any other reasons why you asked your lawyer to write this letter on July 2017, to ask Ross to pay you \$2 million plus interest? Are there any other reasons why you had that note, that letter, written? A. He was my collection. I had no conversation or communication with Ross at that point. Q. Let me make sure I got this straight. You didn't contribute any of the \$2 million that was loaned to Ross, is that correct? MR. TILLMAN: Object to the form. BY MR. NETTLES: A. Well, I kind of sort of guaranteed it in the way that, at that time, I was married to Warren. It was a joint asset. We -- we shared the income and took off the deductions for expenses on our personal income tax. I said we jointly filed. I feel like, yeah, I jeopardized -- I mean, at that time, there was no discussion about separation or divorce, so I was
Page 40 looking for that to be like Warren and I had originally said. It was going to be in our retirement pool, so to speak. So I did feel as though I was being depleted of that. Q. Did Ross propose the terms of this note to you? I mean, did he say, Mom, I need \$2 million? A. It was a discussion between -- I don't remember -- recall specifically. We did have the conversation, at one time, between Warren and Ross and I about -- you know, well, us -- you know, it -- that was when it became clear that Warren was not going to invest \$2 million, encumber a piece of paid-for property. And, at the last minute, a monkey wrench was thrown into that deal. They were buying the father's share, Michael Holmes, out of Holmes Homes. And they had development loans and construction loans, and I don't know what all else. Q. Yeah. A. But they -- it was a little over \$40 million. And Warren said, Hold up. I'm -- even a third, I am not going to sign off on it. I can't. I won't risk my life's work. And your mother and I, we're just not going to do it. Q. So that's when -- A. That's when Ross said, Well, I think it's a	Page 41 good deal. We knew the people personally. It had nothing to do with that. Q. No. A. We liked them, genuinely liked them. They were in our home. Q. Yeah. A. And, you know, our boys were very close. Matter of fact, Pat Holmes was the best man for our oldest son's wedding. And Spencer was a missionary for our church in Charleston. He spent a lot of time with us. Played golf on days off from his missionary with Lea. But it was just business sense, and so we weren't gifting. There was no idea or never any intention to gift Ross \$2 million. It was a business transaction. So, by then, Ross was really confident that it could work and he was going to make it work. Q. Let me confirm something. You just said the loan was for a business transaction between Ross and the Holmes? A. Yes. And that's when Warren kind of made an announcement to the family, because we had even discussed it with the other children, that this would

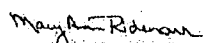
11 (Pages 38 to 41)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 42 1 be a great investment thing for our family. But then 2 he had to put his tail between his legs and say, Look, 3 I backed out. But I just want y'all to know, so 4 nothing comes up. I'm lending Ross the money. And 5 this is his deal and his deal alone. 6 And that was when there was some 7 conversation, Well, that's a lot of damn money, Daddy. 8 And he said, Yes. But don't worry. We got a 9 note. And I'm going to get Ross to sign it. 10 So that was -- it was handled in a business 11 fashion, as -- as close as you can do without bringing 12 in a bunch of Philadelphia lawyers -- 13 Q. Okay. 14 A. -- for your children. You know what I'm 15 saying? You know... 16 (Discussion held off the record.) 17 (A brief recess was taken.) 18 BY MR. NETTLES: 19 Q. You filed the divorce action against Warren 20 Holliday, didn't you? 21 A. Yes. 22 Q. And I don't recall the grounds. Was it 23 one-year separation? 24 A. Yes. 25 Q. And so you and Warren had been living apart	Page 43 1 for some time? 2 A. Yes. 3 Q. In the divorce, you got the marital abode. 4 We call it the house. 5 A. Well, I already had title to it. 6 Q. Right. But he released any claims he might 7 have had to that? 8 A. Correct. Yes, sir. 9 Q. And you got some life insurance -- 10 A. Yeah. 11 Q. -- on Warren's life? 12 A. Yes. 13 Q. And you've been paid that, right? 14 A. Yes, I received that. 15 Q. Do you recall how much you got? 16 A. On the life insurance? 17 Q. Yeah, from the insurance company? 18 A. Yeah. It was like -- I want to say 672,000, 19 something like that. 20 Q. Okay. Have you gotten \$16,000 a month from 21 the marital trust for every month since you got -- 22 A. I don't -- well, I don't know where it's come 23 from. 24 Q. No, I'm not asking that. 25 A. It's electronic.
Page 44 1 Q. I'm asking, have you received it? 2 A. Yes, I have, \$16,000 per month. 3 Q. How long did you and Warren Holliday live 4 separate and apart prior to the divorce? I mean, the 5 divorce is one year. But how long had you guys been 6 living separately? 7 A. It was probably 13, 14 months. 8 Q. Do you know where he was living in that 9 time? 10 A. Yes. Matter of fact, I visited him. He was 11 at -- it's called -- I get the Sawgrass and the 12 Sweetgrasses mixed up. 13 Q. Sweetgrass on Mathis Ferry? 14 A. Yes. Correct. Matter of fact, I'd go over 15 and helped him. 16 Q. How many times did you visit him there? 17 A. Oh, gosh. I really don't know. It was 18 probably at least once a week, minimum. 19 Q. In the deposition of Ross Holliday this 20 morning, you were here, right? 21 A. Yes. 22 Q. And you heard him say that in 2010 and '11, 23 largely because of Warren's poor health, that you and 24 Warren needed help running his businesses. Did you 25 hear Ross testify to that?	Page 45 1 A. Yes, I did hear it. 2 Q. Do you agree with that? 3 A. No. 4 Q. Did you need help? 5 A. It was appreciated, but it wasn't necessary. 6 We had competent legal and accounting people. We had 7 office help. We had collectors, et cetera, who had 8 been there for many, many years. It was almost kind of 9 like a family. 10 Q. Do you recall getting a Notice of Intent To 11 Lien from the IRS in 2011? 12 A. 2011? 13 Q. 2010 or '11? 14 A. I'm not sure about the year. I do remember 15 getting something and trying to discuss it with Warren. 16 And he... 17 Q. He what? 18 A. Well, at that time, I think that I recall we 19 were still dealing with Herb McQuire for the accounting 20 firm, so I think my natural habit would be an 21 inclination to take it down there and let him verify if 22 we owed it, you know, and whatever. And if we did, 23 then he'd call us up and say, Bring a check. 24 Q. Did you and Warren, back in the early 2000s, 25 were you behind for two years on income tax?

12 (Pages 42 to 45)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 46	Page 47
A. We always stayed a year behind. Q. Okay. Well, so were you two years behind, at one point? A. I -- I don't think so. Herbert was kind of a stickler for -- you know, we're going to file this stuff. We don't have the money. We'll let them send us a bill and then we'll -- by then, we will have bought some time. But we always got an extension. Q. Okay. Let me step outside with my client. I might be finished. MR. TILLMAN: Okay. (A brief recess was taken.) BY MR. NETTLES: Q. We don't have any further questions. Thank you, Patricia. MR. TILLMAN: I just have a couple of questions for you, Patricia. THE WITNESS: Oh, okay. MR. TILLMAN: This Marital Settlement Agreement, is that Exhibit 8? MR. NETTLES: Yes. CROSS-EXAMINATION BY MR. TILLMAN: Q. Okay. Can you tell me what the date of that agreement is? A. Yeah. Looks like the 9th of August.	Q. Of what year? A. 2013. Q. And is that approximately the date that your divorce with Warren Holliday was finalized? A. No. That would be December the 9th. Q. Of 2013? A. Yes, sir. Q. Okay. A. Like I said, there were several drafts. And, finally, we got one. We said, We'll take that one. Q. Has Ross Holliday ever provided you with evidence of any payments on the \$2 million loan? A. No, sir. Q. Okay. That's all I have. Thank you. MR. NETTLES: Wait one second. THE WITNESS: Who said, "Wait a second?" MR. NETTLES: I did. (Discussion held off the record.) MR. NETTLES: No, no further questions. (The deposition concluded at 3:19 p.m.)
Page 48 CERTIFICATE STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON: I, MARY ANN RIDENOUR, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition of Patricia B. Holliday; and that the transcript is a true record of the testimony given by the witness, and was sworn as such. I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action. WITNESS MY HAND AND OFFICIAL SEAL this 3rd day of October, 2018, in the City of Charleston, County of Charleston, State of South Carolina.  Mary Ann Ridenour, RPR, CLR, and Notary Public My commission expires: March 14, 2021 	

13 (Pages 46 to 48)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Deposition of:

Ross Holliday

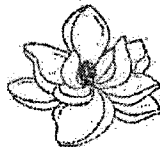
Holliday

vs.

Holliday

CASE NO. 2017-CP-10-872

September 19, 2018



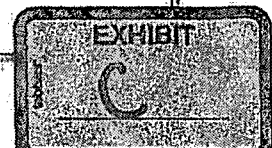
Magnolia Reporting, LLC

P.O. Box 61011

North Charleston, SC 29419

(843) 303-9141

www.MagnoliaReporting.com



1 the time --

2 A. But it was changed. And it said, "paid in
3 full."

4 Q. I understand. At the time you signed this
5 document, is this what it looked like?

6 A. Yes.

7 Q. Okay. Does this document reflect a \$2
8 million loan that was made to you?

9 A. Not just a loan, but more of an equity
10 agreement that was had by my father and myself.

11 Q. Okay. Did you receive \$2 million from your
12 father?

13 A. Yes.

14 Q. All right. As a result of receiving that \$2
15 million, did you sign this document?

16 A. Yes.

17 Q. Okay. I'm going to call this -- I understand
18 you're calling it an estate document. I'm just going
19 to call it "the note"; is that fair?

20 A. If that's simpler for you, that's fine.

21 Q. Okay. So when I talk about "the note," I'm
22 talking about this document.

23 A. Okay.

24 Q. Who negotiated the terms of the note?

25 A. My father and I did.

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

1 profits put in writing anywhere?

2 A. No. This was just a private, you know,
3 agreement between he and I.

4 Q. Did you actually receive the \$2 million?

5 A. Yes.

6 Q. And how did you receive it?

7 A. I would assume it was a wire. I'm not sure
8 if the funds were wired or cashier's check. But it
9 would have been in 2004.

10 Q. Okay. And regardless of how you received the
11 funds, who provided the funds to you?

12 A. Warren Holliday, exclusively.

13 Q. And did he do that from his own bank account
14 or do you recall?

15 A. No, he did not. He borrowed the money
16 against his business.

17 Q. Okay. And who did he borrow the money
18 from?

19 A. NBSC, the National Bank of South Carolina.

20 Q. So did the money come directly to you from
21 NBSC or did it go to Warren first and then NBSC or -- I
22 mean, I'm sorry, and then to you?

23 A. I don't recall.

24 Q. Okay. Did you --

25 A. I think -- let me think about that for a

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

1 Q. Okay. What was the amount used to pay the
2 note back?

3 A. Paid in excess of \$800,000 back to Warren
4 Holliday.

5 Q. And was that from 2005 to 2007?

6 A. Yes.

7 Q. And that money came from profit distributions
8 from Holmes Homes?

9 A. Yeah, went to me. And I paid it to Warren
10 Holliday directly.

11 Q. Did you pay all of the profit distributions
12 from Holmes Homes back to Warren Holliday or did you
13 retain some?

14 A. I retained a small amount.

15 Q. And all of those payments were made to Warren
16 Holliday between 2005 and 2007?

17 A. Yes.

18 Q. Is that fair?

19 A. Yep.

20 Q. Do you have any record of those payments?

21 A. No. Unfortunately, the bank is not able to
22 retrieve statements after seven years.

23 Q. Okay. Now let's go to Exhibit 2.

24 (Plaintiff's Exhibit No. 2 marked for
25 identification.)

1 was no further obligations required.

2 Q. Okay. And when was that?

3 A. 2010.

4 Q. Is 2010 roughly the time frame when your
5 father agreed to satisfy the note?

6 A. Yes.

7 Q. Is that roughly the time frame where you
8 received the written satisfaction of the note?

9 A. No, written satisfaction was later.

10 Q. Okay. Was it just prior to your father's
11 passing?

12 A. No, it -- well, it was substantially before
13 that. It was -- it was given at the time that NBSC was
14 paid off.

15 Q. Okay. Well, that helps.

16 A. Yeah.

17 Q. All right.

18 A. And it -- it was done because, like I said,
19 just to clear up estate items, those kinds of -- those
20 kinds of things.

21 Q. Your -- this -- did you have one conversation
22 with your mother where she agreed to satisfy the note
23 or forgive the loan?

24 A. No, there were multiple.

25 Q. And those occurred in 2010?

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

1 A. Yes. Well, 2010, 2011.

2 Q. Where did those conversations occur?

3 A. In 2010, my father was hospitalized here or,
4 sorry, in Salt Lake City. My mother was with him. She
5 stayed there for a number of months. We had numerous
6 conversations.

7 I began -- I was asked by my mother and
8 father, at that point, to go check in on their business
9 affairs, as he was gravely ill. And so I began to fly
10 back here to Charleston and to manage the businesses,
11 to try to get a pulse as to what was going on. At that
12 time, obviously, you know the businesses weren't being
13 managed well because, you know, my father was absentee,
14 being ill.

15 And it became clear they owed a large amount
16 of money to the IRS through just payments that have not
17 occurred. I'm running the business. They were
18 extremely concerned they were going to lose properties.
19 There were imminent tax liens to be placed on
20 properties and individual income taxes that had not
21 been paid.

22 I mean, my father was extremely ill before
23 2010. So he had kidney failure, was on home dialysis,
24 got a transplant in the spring of 2010. Less than six
25 months later, the kidney failed. So there had been a

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

1 substantial amount of time where the businesses were
2 not being managed and run by either of them, right? My
3 mother didn't step in, when he was sick, to run them,
4 right? I mean, they just kind of floundered.

5 So they were eminently looking at tax liens,
6 losses of property. They were in an emergency
7 situation, asked me to come in and be involved, and try
8 to help.

9 During 2011, I spent almost 32 weeks in
10 Charleston, trying to turn around and keep a ship from
11 sinking, at which time there was, as you would imagine,
12 tremendous gratitude and thanks for keeping them from,
13 you know, really what was a very dire situation.
14 Multiple times staying in her own home, having these
15 conversations with her, that, you know, I had more than
16 met the obligation and satisfied that. And both of
17 them had, obviously, verbally acknowledged that.

18 Q. And these conversations occurred in your
19 parents' home?

20 A. Parents' home, yeah.

21 Q. Roughly, how many conversations did you have
22 in which your mother agreed to forgive the loan?

23 A. More than I could count.

24 Q. And these all occurred in 2010 and 2011?

25 A. That is correct.

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

1 Q. And you did not receive anything in writing
2 from either of them at that time; is that correct?

3 A. No. The note -- my father demanded payment,
4 put a demand for payment, in 2005.

5 That was -- you know, my agreement with him
6 was, we'd get in, I'd get into this business for a
7 year, 2004, and that, you know, as soon as there were
8 profits -- he made a demand in 2004, at the end of
9 2004, 2005, and just early 2005, and said, you know, I
10 need to pay it back. And I began making payments.

11 Q. And that demand, was that in writing?

12 A. No. It was my father. I mean, he called me
13 and said, I need you to pay the loan.

14 Q. And then you paid roughly 800,000; is that
15 correct?

16 A. Yeah, in a series of payments between, you
17 know, '05, '06 and '07.

18 Q. And did he make any further demands on the
19 note after that?

20 A. No. He was very aware what was going on in
21 the real estate market, being that he owned real estate
22 himself. And he understood that I was not, at that
23 time, going to be able to make additional payments
24 after 2007. So...

25 Q. Okay. And is it fair to say that he didn't

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

1 2016, that occurred?

2 A. It was almost simultaneous, same -- you know,
3 within a day, if not the same day. My father was very
4 excited to know that NBSC had been fully resolved.

5 Q. Had you asked for him to provide that
6 paid-in-full -- a copy of the paid-in-full note?

7 A. Yeah. We decided that there would be value.
8 Because even after the divorce, Patricia was, you know,
9 constantly trying to create, you know, legal issues
10 over -- over kind of very unimportant things. And so
11 just decided that that -- you know, just keep this for
12 your files, right, for estate planning.

13 Q. But did you ask for it or he gave it to you
14 spontaneously?

15 A. We just both had talked about it, and how
16 that this is paid for. You know, he was very happy and
17 had a copy. And said, you know, We ought -- we ought
18 to do this. We ought to mark it. Here, keep a copy
19 for yourself, paid in full.

20 That was actually at his recommendation. In
21 my mind, it was resolved so long ago that I didn't
22 think about it that way. But he had offered it. So I
23 was like, Fine, that's great.

24 Q. So in your mind, it was resolved back when
25 the railroad payment was made, the railroad property

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

1 A. I have not received a copy of this document
2 prior.

3 Q. You've never seen it before?

4 A. Uh-uh. No.

5 Q. All right. Can you flip over to page four of
6 five with me.

7 Well, first of all, does this appear to be
8 the Financial Declaration of Patricia Holliday from the
9 divorce proceeding with your father?

10 A. Yeah, it does.

11 Q. And do you see that it's sworn, the signature
12 is sworn on December 9, 2013?

13 A. Yes.

14 Q. And do you see in the Other Property Section
15 where she lists debt from Ross Holliday, \$1,006,000?

16 A. I do see that that is noted.

17 Q. And had you ever seen that before?

18 A. Never.

19 Q. Okay. And so your testimony that your mom
20 did not list this debt as part of the divorce
21 proceedings was based on your understanding at the
22 time, is that right, at the time you testified?

23 A. Well, I haven't seen this, so it's said --
24 it's in error.

25 Q. I understand.

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

PROMISSORY NOTE



June 18, 2004

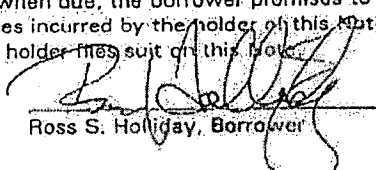
\$2,000,000

FOR VALUE RECEIVED, Ross S. Holliday, the undersigned borrower, promises to pay to Warren P. Holliday and Patricia B. Holliday, as joint tenants or the survivor of them, or order, the sum of Two Million Dollars (\$2,000,000) together with interest on the unpaid balance at the rate equal to the prime rate of National Bank of South Carolina plus one-half percent (1/2%), payable upon demand. Provided, however, in the event demand is made for payment of this Promissory Note ("Note"), then borrower shall have six (6) months following the date of such demand to complete repayment of this Note. The borrower will make all payments at such place as the holder designates in writing.

At the option of the holder of this Note until payment in full or maturity, upon default, all monies payable under this Note are due and immediately payable. The Note is in default if any payment remains unpaid beyond the date six (6) months following the date of demand for payment.

The borrower may prepay all or part of the loan without penalty. Each payment first applies to the payment of accrued interest and the balance of each payment applies to the payment of principal.

If the borrower does not pay this Note when due, the borrower promises to pay all costs of collection and reasonable attorneys fees incurred by the holder of this Note on account of such collection, whether or not the holder files suit on this Note.


Ross S. Holliday, Borrower

773348

601590 JUN 23 2004

MAXIM 2 HOLDING 1400 HARTZ DOWNS DRIVE ROAD CHARLESTON, SC 29405	MAXIM 2 HOLDING 1400 HARTZ DOWNS DRIVE ROAD CHARLESTON, SC 29405	MAXIM 2 HOLDING 1400 HARTZ DOWNS DRIVE ROAD CHARLESTON, SC 29405
BORROWER'S NAME AND ADDRESS The above named borrower shall jointly and severally	LENDER'S NAME AND ADDRESS You hereby agree to lend, its successors and assigns,	LENDER'S NAME AND ADDRESS You hereby agree to lend, its successors and assigns,

For value received, I promise to pay to you, or your order, at your address listed above the principal sum of 2,000,000.00 Dollars \$ 2,000,000.00

☒ Single Advance: I will receive all of this principal sum on 06/17/2004. No additional advances are contemplated under this note.

☒ Multiple Advance: This principal sum shown above is the maximum amount of principal I can borrow under this note. On 06/17/2004 at the rate of 4-500 %

I will receive the amount of \$ 2,000,000.00 and future principal advances are contemplated.

Conditions: The conditions for future advances are:

☒ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and applies on 06/17/2004.

☒ Closed End Credit: You and I agree that I may borrow up to the maximum only one time and subject to all other conditions.

INTEREST: I agree to pay interest on the outstanding principal balance from 06/17/2004 at the rate of 4-500 % per year and the next change in the index rate, if any.

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be BASED ON the following index rate:

LIBOR, THREE MONTH, FLOATING RATE, ONE HALF PERCENT

☒ No Index: The future rate will not be subject to any kind of external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY.

A change in the interest rate will take effect IMMEDIATELY, 9/CHANGES IN SPAC, PRIME RATE % or less than 1 % each.

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 1 % each.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☒ SAME DAY

ACCRUAL METHOD: Interest will be calculated on a 30/360 basis.

POST MATURITY DATE: I agree to pay interest on the unpaid balance of this note after maturity, and until paid in full, as stated below:

☒ On the same fixed or variable rate basis in effect before maturity (as indicated above).

☒ At a rate equal to 10 % after it is due, I agree to pay a late charge of 10 % of payment or 850.

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 10 % of payment or 850.

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above.

1000 PER ANNUAL PERCENT

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay interest in 12 payment(s) MONTHLY STARTING 06/17/2004.

☒ Principal: I agree to pay the principal in 1 payment(s) in the amount of THE ENTIRE UNPAID BALANCE.

☒ AT MATURITY: I agree to pay this note in 1 payment(s) in the amount of THE ENTIRE UNPAID BALANCE.

☐ Installments: I agree to pay this note in 1 payment(s) in the amount of THE ENTIRE UNPAID BALANCE.

and will be due 06/17/2004.

Unpaid balance of principal and interest will be due 06/17/2004.

ADDITIONAL TERMS:

☐ SECURITY: This note is separately secured by (describe separately document by type and date)

(This section is for your personal use. Please do not use a separate security document that is not shown on agreement, and not return this note.)

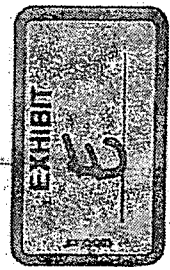
PURPOSE: The purpose of this loan is REVOLVING LINE OF CREDIT FOR BUSINESS INVESTMENTS.

SIGNATURES: I agree to the terms of this note including those on page 2. I have received a copy of today's date.

Signature for Lender: John A. W. [Signature]

Signature for Borrower: Maxim 2 Holding [Signature]

SOUTH CAROLINA, UNIVERSAL NOTE
EX-1004, 1991 Banknote System, Inc., 21, Clark, MD, Form UN-SC 3/7/003



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) FINANCIAL ARRANGEMENTS AGREEMENT

This Financial Arrangements Agreement (the "Agreement") is made and entered into among Warren P. Holliday ("Warren"), Patricia Anne Holliday ("Patricia") and Ross S. Holliday ("Ross") effective January 1st, 2012.

BACKGROUND:

Warren and Patricia were married in 1966. They have each decided that they do not wish to continue to live together, but they do not wish to get a divorce or legal separation, at least not at this time, so they have agreed on how certain financial and business matters are to be handled during the time that they intend to live apart.

Ross is one of Warren and Patricia's children and has assisted Warren and Patricia with the management of the family businesses. Ross lives in Draper, Utah, and because of the on-going state of disagreements between Warren and Patricia, and because of the state of Warren's health, Ross has had to spend an increasing amount of time in, and traveling to and from, Charleston to attend to family business affairs and to try to help his parents resolve their disagreements.

At the request of Warren and Patricia, Ross has written down the points upon which Warren and Patricia have agreed, and Ross, Warren and Patricia have asked T. Heyward Carter, Jr. ("Carter"), an attorney in Charleston who has previously drawn Wills and related documents for Warren and Patricia, to draft this Agreement for Warren and Patricia as a memorandum or documentation of the issues upon which they have agreed.

Carter has explained to Warren, Patricia and Ross that because of the legal rights which each party to a marriage in South Carolina has, there are certain legal requirements which must be met, and possibly cannot be waived, for a post-nuptial or separation agreement to be valid and enforceable. Among those requirements are that there be "full and fair disclosure" by each party to the other of all assets and liabilities, and that each party be represented and advised by separate counsel. Carter has also explained that it appears that the enforceability of a post-nuptial agreement in South Carolina may not be settled law even if such requirements are met.

Warren and Patricia have stated to Ross and to Carter, and hereby confirm, that:

1. They do not wish to incur the expense and possible emotional distress which complying with such requirements would entail;

2. They are not requesting Carter to advise or represent either of them as attorney in dealing with the other on these matters, or in any other sense, but are requesting Carter to act only as a scribe in setting forth the points on which they have agreed;

Initials *PAH*
Initials *WPH*



3. They understand and agree that this Financial Arrangements Agreement is merely a statement of the points on which they have agreed, and that it may or may not be legally binding on either of them, and that either of them might renounce it or violate any one or more of its provisions, and that in such case the other of them might not be able to enforce it or otherwise have recourse against the party renouncing or violating the Agreement.

Warren and Patricia have placed their initials here to indicate that they have read and understand, and confirm and agree with, the points numbered 1, 2 and 3, above.

WPH
WPH

PAH
PAH

Now, therefore, Warren, Patricia and Ross state that they agree as follows:

1. FINANCIAL ARRANGEMENTS

a. Warren and Patricia have each established revocable trusts, and each is the trustee of his or her own revocable trust. Warren and Patricia each agrees to resign concurrent with their execution of this Agreement as trustee of his or her own revocable trust and to appoint Ross as successor trustee. Warren and Patricia each has the right to remove and replace the trustee of his or her revocable trust, and neither is relinquishing that right by resigning as trustee and appointing Ross as successor trustee of his or her revocable trust.

b. All saving accounts, brokerage accounts, and other accounts now held jointly by Warren and Patricia will be transferred to Ross as trustee to be held as joint accounts by their revocable trusts, and such accounts will be managed by Ross as trustee for them and for their benefit. Ross shall have the authority, and the responsibility, to use such funds for the major medical expenses and other unusual or major expenses of support and maintenance which may be required for either Warren or Patricia. There shall be no attempt to make equal expenditures for Warren and Patricia from such accounts; rather, Ross shall expend sums from such accounts for the benefit of Warren or of Patricia as Ross deems in his discretion to be necessary or advisable.

c. Warren and Patricia will each open a separate bank account and Ross will make deposits from the joint revocable trust accounts to each such separate account in amounts such that the income of each of Warren and of Patricia from all sources, including, without limitation, monthly Social Security payments, dividends, interest and rents paid directly to them, total eight thousand dollars (\$8,000) per month. The amount of \$8000 per month may be increased by mutual agreement of Warren and Patricia. Deposits in such amounts will be made by Ross monthly within the first ten (10) business days of each month, unless otherwise agreed by Warren and Ross as to deposits to Warren's account, or by Patricia and Ross as to Patricia's account. Ross shall determine the nature of such payments to Warren and to Patricia; that is, whether as compensation, partnership or trust distribution, or the like.

d. Warren and Patricia understand that as long as they remain husband and wife each is legally responsible for the support and maintenance of the other, and that this agreement does not nullify that

Initials PAH
Initials WPH

right and obligation under South Carolina law. However, Warren and Patricia agree that they intend that their financial dealings will henceforth be separate and that they will take no action which will bind or obligate the other in regard to the financial dealings or obligations of themselves. They will not apply for credit or obtain loans revealing or using the social security number or any other information concerning the other of them. Each will make every effort to not create financial obligations for the other, and to be financially responsible, each living within his or her means and income.

c. Warren and Patricia agree to cooperate with each other and with Ross on tax and business issues to their mutual advantage, to continue to file joint income tax returns as long as each concurs with the manner in which such returns have been prepared (realizing and understanding that filing joint income tax returns causes each of them to be liable in most circumstances for additional taxes, interest and/or penalties which may be due), and to join in and cooperate in effecting reasonable estate planning steps. Each party has the right to have such returns reviewed by an accountant of his or her choosing before signing, and to have the costs of such review paid from their joint accounts.

f. Ross, as trustee of the revocable trusts, shall have the authority to use the assets of the trust of Warren or of Patricia to pay or to arrange for payment of large or unusual medical bills of the party from whose trust such payments are made, taking into account other resources available to or for the use of such party.

2. BUSINESS AFFAIRS

Warren and Patricia agree that Ross shall be in charge of family business affairs, to include the management of Holliday Amusement Company, Zeezrom Properties, LLC, and all other family owned entities, such as, for example, 2233 Highway 17 North, LLC, and the like. Ross shall also have authority to deal with Sawgrass Technologies, Inc. and its management and stockholders, on behalf of Warren as to Warren's stock ownership in Sawgrass Technologies, Inc., and to sign a revocable proxy giving Ross the authority to vote such stock on Warren's behalf. Ross, as trustee of the revocable trusts, shall have the authority to manage such companies and businesses, and to invest and reinvest the income and gain therefrom in the best interests of the owner of such asset or the revocable trust owning such asset, as the case may be.

3. HOME

1. Patricia's home is 1209 Manor Lane, Mount Pleasant, SC 29464 (TMS# 559-01-00-042). It is owned by Patricia's revocable trust, and will remain owned by said revocable trust as Patricia's home, to the exclusion of Warren or any other person without Patricia's express permission otherwise, until and unless Patricia shall decide to move to some other home to be owned by her or by her revocable trust.

2. Warren agrees that he will remove all of his personal property from 1209 Manor Lane within 120 days from the effective date of this Agreement at such times as are mutually agreed by Warren and Patricia, and that he will not enter said home without Patricia's prior express permission. Patricia agrees to cooperate with Warren in allowing him entry to her home at reasonable times in order for Warren to remove his personal property.

3. Patricia agrees that she will not sell or mortgage, or cause to be mortgaged or otherwise financially encumbered, 1209 Manor Lane.

4. Warren agrees to be financially responsible for, and to pay when due, the property taxes and other ad valorem taxes and charges on 1209 Manor Lane, and the premiums for fire, liability and property insurance on said residence and its contents. Warren also agrees to be financially responsible for, and to pay when due, structural repairs and costs of structural maintenance of said residence; provided, that Patricia shall give reasonable advance notice of such needed structural repairs and structural maintenance to Warren and to Ross. Patricia agrees that she shall be responsible for, and shall pay when due, all costs of cosmetic improvements and routine maintenance of said residence. Examples of structural repairs and structural maintenance are roof replacement and foundation repair. Examples of cosmetic improvements and routine maintenance are roof or siding painting and yard maintenance. Such are examples only, and are not intended to be exclusive. Warren shall also be responsible for, and shall pay when due, automobile insurance on one automobile owned by Patricia, with such coverage limits as have been routinely kept in force by Warren and Patricia in the past. Warren shall have no other liability or responsibility for the costs of maintaining an automobile for Patricia, or for providing her with an automobile.

4. MISCELLANEOUS

1. This Agreement has been prepared by Carter at the mutual request of Warren and Patricia, and of Ross. Each party hereto has had the opportunity to consult with her or his own attorney or other advisor as to the legal and financial effects of this Agreement on such party, and has chosen not to do so. Each party to this Agreement agrees that Carter has simply followed their request to commit to writing the points on which they have agreed and has not represented or attempted to represent either party in connection with this Agreement, or their rights or duties hereunder, and has not given them legal advice as to such rights or duties. Furthermore, Carter has proposed to the parties that Warren and Patricia each retain separate legal counsel to advise them and to prepare a valid and binding separation and support agreement, and that Ross has been so advised by marital law attorneys in Mount Pleasant, SC, but Warren and Patricia have chosen not to retain separate legal advice, but rather to proceed with this Agreement as a declaration of the points as to which they have agreed.

2. Although Warren and Patricia understand that this Agreement may or may not be legally binding upon them, it is the documentation of the issues upon which they have reached agreement, and they both intend to abide by the terms of this Agreement, and each will use his and her best efforts to amicably resolve any disagreements as to any of the terms hereof.

3. This Agreement contains the entire agreement of Warren and Patricia as to the matters set forth herein, and there are no representations, warranties, promises, covenants, understandings or undertakings other than those set forth herein.

4. The parties have participated in, and are treated as having drafted, this Agreement cooperatively; therefore, no party will have any ambiguity construed against him or her, and neither party will be entitled to claim the benefit of any ambiguity resulting from the drafting of this Agreement.

5. Warren and Patricia both desire to keep their personal and family finances private and confidential. As such, the parties agree to respect the privacy of and to keep confidential financial information of each other.

6. Captions of the numbered provisions of this Agreement are for convenience of reference only, and no caption shall be considered in the construction or interpretation of any provision of this

FINANCIAL ARRANGEMENTS AGREEMENT

Page 4.

Initials
Initials WPH

Agreement:

7. This Agreement may be executed in duplicate or triplicate originals, one of which may be delivered to each party, and any of the originals may be used as the original Agreement.

WITNESS our hands and seals the day and year stated below.

WITNESSES:

Shirley J. Nelson

Sandra H. Jenkins

Shirley J. Nelson

Sandra H. Jenkins

Warren P. Holliday (SEAL)
Warren P. Holliday
Date: Mar 8, 2012, 2012

Patricia A. Holliday
Patricia A. Holliday
Date: March 7, 2012

_____ (SEAL)
Ross S. Holliday
Date: _____, 2012

Initials WPH
Initials WPH

Agreement.

7. This Agreement may be executed in duplicate or triplicate originals, one of which may be delivered to each party, and any of the originals may be used as the original Agreement.

WITNESS our hands and seals the day and year stated below.

WITNESSES:

Shirley J. Nelson

Sandra H. Jenkins

Shirley J. Nelson

Sandra H. Jenkins

Holliday

March 23rd

Warren P. Holliday (SEAL)
Warren P. Holliday

Date: Mar 8, 2012, 2012

Patricia A. Holliday (SEAL)
Patricia A. Holliday

Date: March 7, 2012

Ross S. Holliday (SEAL)

Ross S. Holliday
Date: March 23rd, 2012

FINANCIAL ARRANGEMENTS AGREEMENT

Page 5

Holliday

Initials WPH
Initials WPH

STATE OF UTAH

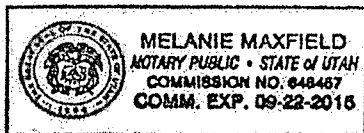
)

: ss.

COUNTY OF SALT LAKE

)

The foregoing instrument was acknowledged before me this 23rd of March, 2012
Ross S. Holliday.



Melanie Maxfield

NOTARY PUBLIC

Deposition of Martha Brouthers

1 (1 - 4)

Page 1

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF MARTHA BROUTHERS

PATRICIA B. HOLLIDAY,
Plaintiff,
vs. CASE NO. 2018-CP-10-0872
ROSS S. HOLLIDAY,
Defendant.

DEPONENT: MARTHA BROUTHERS

DATE: MAY 10, 2019

TIME: 9:50 A.M.

LOCATION: ROSEN HAGOOD
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. BOX 2129
CHARLESTON, SC 29415
843-767-6294
WWW.CLARK-ASSOCIATES.COM

Page 2

APPEARANCES

ON BEHALF OF PLAINTIFF:

WOMBLE BOND DICKINSON
BY: MATTHEW TILLMAN
Exchange Street
Charleston, SC 29401

ON BEHALF OF DEFENDANT:

ROSEN HAGOOD
BY: ALICE F. PAYLOR
BY: BIDAN GHOM
151 Meeting Street
Suite 400
Charleston, SC 29402

FINKEL LAW FIRM
BY: E. TRUETT NETTLES, II
4000 Faber Place Drive
Suite 450
North Charleston, SC 29405

ALSO PRESENT (BY PHONE): ROSS HOLLIDAY

Page 3

INDEX

WITNESS	PAGE
MARTHA BROUTHERS	4
BY MS. PAYLOR	52
BY MR. TILLMAN	55
CERTIFICATE OF REPORTER	

EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
EXHIBIT NO. 01	PROMISSORY NOTE	36

Page 4

MARTHA BROUTHERS,

being first duly sworn, testified as follows:

EXAMINATION

BY MS. PAYLOR:

Q. Good morning, Ms. Brouthers.

A. Good morning.

Q. We just met, I'm Alice Paylor.

A. Yes, ma'am.

Q. I am representing Ross Holliday in a lawsuit that has been brought against him by his mother, Patricia Holliday, and you have been listed as a witness.

A. Okay.

Q. So we've asked you to come today to answer questions. This is -- you know, it's whatever. We just want you to tell us what you know, what your best memory is. Tell us the truth. You've sworn to do that. If you need water or something to drink, let me know.

A. Sure.

Q. If you want to take a break, you let me know that also, okay?

A. Okay.

Q. I'm going to ask you some questions and if you don't understand my question, don't try to



Clark & Associates, Inc.

Page 5

1 answer it. Just let me know that you didn't
2 understand it, and I will try to restate it in a
3 more understandable way. Is that a deal?

4 A. Okay. Yes.

5 Q. Remember to always give verbal responses,
6 which you are doing, because the court reporter is
7 taking down everything that we say. And the other
8 thing, and this goes both ways, you let me finish
9 my question, and I let you finish your answer
10 before talking so she can get it down.

11 A. Gotcha.

12 Q. Okay. Please state your full name.

13 A. Martha L. Brouters.

14 Q. And what is your date of birth?

15 A. 11/14/58.

16 Q. And what is your current home address?

17 A. 1400 Shuckers Circle.

18 Q. Where's that?

19 A. Mount Pleasant.

20 Q. And how long have you lived there?

21 A. One month.

22 Q. Okay. Does anyone live there with you?

23 A. No.

24 Q. Where did you live before that?

25 A. 1513 Barquentine Drive.

Page 6

1 Q. And is that in Mount Pleasant also?

2 A. Yes, uh-huh.

3 Q. And how long did you live there?

4 A. Almost eight years.

5 Q. Okay. And do you own your current
6 residence?

7 A. No.

8 Q. Are you married?

9 A. No.

10 Q. Have you ever been married?

11 A. Yes.

12 Q. This is just for jury information.

13 A. Okay.

14 Q. What was the name of your husband?

15 A. Herbert.

16 Q. Brouters?

17 A. Johnson.

18 Q. Herbert Johnson. Okay.

19 Have you been married more than once?

20 A. No.

21 Q. Do you have any other family living in
22 Charleston County?

23 A. Oh, yeah, mm-hmm.

24 Q. Who lives here?

25 A. I have a brother, two brothers in --

Page 6

Page 8

1 actually in Charleston County I have a brother and
2 a sister.

3 Q. Okay.

4 A. And a daughter, and I may or may not have
5 nieces or nephews that I may not know whether --
6 where they reside.

7 Q. What's the last name?

8 A. For?

9 Q. Your brother.

10 A. Brouters.

11 Q. Okay. And your sister?

12 A. Holliday.

13 Q. Okay. And those are the only two who are
14 living in Charleston?

15 A. Charleston County, yeah, mm-hmm.

16 Q. Have you ever been deposed before?

17 A. No.

18 Q. Have you ever testified at a trial before?

19 A. No.

20 Q. Now, you are Patricia Holliday's sister,
21 correct?

22 A. Si, yes.

23 Q. And how often do you currently see her?

24 A. About maybe once a month, maybe once every
25 two months.

1 Q. And do you know her children?

2 A. Yes.

3 Q. And are you in contact with any of her
4 children currently?

5 A. Yes.

6 Q. With who?

7 A. Pamela and Ben. As far as communication is
8 concerned, I am not in communication with Ben or
9 Lee, the other two children of hers. However, as
10 far as I'm concerned, if they called me, I would
11 answer the phone, but it's -- it's just a lull in
12 our relationship as far as I'm concerned.

13 Q. Okay. And tell me when was the last time
14 you talked to Ben.

15 A. Ben, maybe before Christmas.

16 Q. How about Pamela; when did you talk to her
17 last?

18 A. Probably two or three weeks ago.

19 Q. And what were you all talking about? What
20 was the substance?

21 A. She was here on a visit and she was going
22 back home the next day. We're not particularly
23 close and they invited me for dinner the last night
24 before she left and it was all mundane

25 conversation, if you must know, such as shopping,

Page 9

Page 11

1 the weather. We try not to talk politics. Seems
2 to be kind of a volatile subject with her. That
3 was it.

4 Q. Okay. Did she talk about this lawsuit?

5 A. No, I have not discussed this lawsuit with
6 her, my sister, any of her other children or
7 anybody else that I know. I haven't read anything
8 about it. I don't know anything about it.

9 Q. Have you attended any court hearings?

10 A. No.

11 Q. Are you on any medications today which would
12 prevent you from giving truthful answers?

13 A. No.

14 Q. Did you do anything to prepare for this
15 deposition today?

16 A. No.

17 Q. Have you read the complaint in this case?

18 A. Hm-mm, no.

19 Q. Did you talk with anyone about this case?

20 A. No.

21 Q. Do you know what this case is about?

22 A. No.

23 Q. I'm just going to ask you some background
24 questions. Did you grow up in Charleston?

25 A. Yes.

Page 10

1 A. Is that really necessary?

2 Q. It's just background information.

3 A. Sounds like prying to me, but I'll go ahead
4 and tell you.

5 Q. It probably is prying. I apologize.

6 A. Well, you know, I still don't even quite
7 know why I'm here and all of a sudden you've
8 already got chapter 4 on Martha Brouters. I'm
9 just stating that for the record because, you know,
10 I'm here on my own volition and, you know, you're
11 getting kind of private, you know.

12 Q. Okay. Well --

13 A. I don't even know my blood type, so don't
14 ask me.

15 Q. I don't know mine either, so we're in the
16 same boat.

17 A. Okay.

18 Q. Okay. What --

19 A. I'd like to just move it along here, if you
20 don't mind.

21 Q. I'll move it along.

22 A. Okay.

23 Q. I'll move it along.

24 This lawsuit is brought by your sister
25 against her son claiming that he owes her money

1 Q. Where did you go to high school?

2 A. Wando High School.

3 Q. Did you graduate?

4 A. No.

5 Q. So you didn't go to college then, correct?

6 A. I have attended some college, yes.

7 Q. Okay. Have you gotten any degrees?

8 A. No.

9 Q. Did you ever get a GED degree?

10 A. Yes.

11 Q. Okay. When did you get a GED?

12 A. I don't remember.

13 Q. Long time ago?

14 Do you have any professional licenses or
15 certifications?

16 A. No.

17 Q. Are you currently employed?

18 A. No.

19 Q. When was the last time you were employed?

20 A. Beginning of March.

21 Q. And what were you doing then?

22 A. Bookkeeping.

23 Q. Who'd you work for?

24 A. I was with a temp agency.

25 Q. What was the name of the temp agency?

Page 12

1 under a promissory note for \$2 million.

2 A. Okay.

3 Q. Okay. So are you familiar with that
4 promissory note?

5 A. Yes, I am. If that's why we're here, yes.

6 Q. That's why we're here.

7 A. Okay.

8 Q. At some point did you work for the
9 Hollidays?

10 A. Yes.

11 Q. And when was that?

12 A. To the best of my recollection, April 2011
13 until about -- I can't remember exactly the month.
14 I want to say sometime either June or July of, I
15 believe, 2015.

16 Q. Okay. Were you an employee receiving W-2
17 wages or were you an independent contractor?

18 A. Independent.

19 Q. And how did you get the job?

20 A. Well, as you stated earlier in the record,
21 that is my sister and my brother-in-law. And I had
22 a job, very lucrative job I'd been on for ten
23 years, and she was not in good health at the time
24 and he was not in good health, Warren or Tricia.
25 And Warren subsequently went through a kidney

Page 13

transplant.

I already had a sister and a brother who had already had two or three transplants between them who had since passed and I knew that the level of care that they were going to need at their age, their children weren't living here currently, they had a business, they owned property, and I just felt with all of my background, I was better served to help my sister and my brother-in-law than to try to shortchange my employer with helping them out part-time.

You know, I'd leave for long lunches. I'd take appointments in the morning. When it came up for Warren and his transplant, I saw then that I wasn't going to be 100 percent with my employer and family leave wasn't possible because it was such a hands-on -- it was cargo ops on these big ships in the port and they had very few people in the department. Everybody mattered. And I just felt like I wasn't pulling my weight and I needed to make a decision and, of course, always family rules the roost. And I just felt like I would be better served by them and myself.

I'd already taken care of my mother and my father and three siblings basically with pretty

Page 13

had there that was coin vend.

The collectors would come in, bring in the money, count it up, make the deposits, go to the bank, and then bring me back the deposit slip and I'd record the sales for Holliday Amusement, pay their bills, order supplies, just generally try to assist wherever I could with the collectors as far as organizing service calls and answering the phone for them.

Did payroll for the guys. I'd get change when they needed it. Sometimes they'd have, you know, a backup of change and -- but not often. Mostly the collectors handled all the cash themselves. All I did was really pay bills.

Like I said, they had been ill for -- Warren had been ill for a couple of years and hadn't really been down there and I renegotiated a lot of the insurance rates and different things, helped, you know, get leases put in place on some of the properties and that sort of thing, get licenses for the machines, any kind of administrative thing that a normal administrative assistant would have been doing for Warren.

In addition to that, you know, just making sure his appointments -- he was getting to his

Page 14

much the same issues and I thought I would be walking away for about 18 months and it turned into four years.

And, I mean, it just -- they needed on-hands care, Warren especially, not Tricia so much. I didn't really do anything for her except be her sister and support her emotionally, but I felt like Warren was the one that needed the most help.

They started dating about a year before I was born, so I've never not known Warren Holliday. He's been my brother my whole life, and he's in the same bag with my four natural brothers. We've always gotten along famously. Can't say that probably about the whole family, but he and I always had a special bond and I was glad to do it.

And that's how I came to work down there and for those reasons, to be able to make sure that the assets and everything they've worked for their whole life would stay intact.

Q. Okay. So what were your job responsibilities?

A. Basically I'd get there in the morning, I'd go through the mail, anything -- any bills that needed to be paid for Holliday Amusement or for Warren personally. It was an operation that they

Page 16

appointments and taking care of himself on the side, being like a companion caregiver to him.

Q. Okay. So when you say you went there, where did you work?

A. I worked at 1808 Meeting Street at Holliday Amusement. That's where our office was.

Q. And who else worked in that office?

A. Well, Warren came in every day that he could, not every day, but most days. I would say he was there probably 40 percent of the time at least once he -- you know, was out of the hospital and nursing home situations.

They had four people that were down there collecting who were on payroll. Can't remember all their names now or anything, you know, biographical about them. And that was pretty much it, just us.

Q. What about the Holliday children; were any of them there?

A. No, no. Ross would come into town about once a month. Sometimes he had the liberty of staying for a week, sometimes just a couple of days, depending, you know. And we would discuss things and he would give me instruction on what he wanted to do and what his father -- you know, because they would talk and have an overall concept

Page 17

1 of what was going to go on and then I just assisted
2 and followed orders and conducted the business
3 day-to-day for him.

4 Q. Okay. And did Warren indicate to you that
5 Ross was helping to run the business?

6 A. Oh, yes, mm-hmm.

7 Q. And what about Patricia; did she acknowledge
8 that Ross was helping to run the business?

9 A. Yes, mm-hmm.

10 Q. What did you get paid for working?

11 A. Again, you're getting kind of personal. I
12 don't know if that's necessary, but, you know, I
13 was -- I was paid a contract wage.

14 Q. Okay. And what was the contract wage?

15 A. It ended up at \$6,000 a month.

16 Q. And who did you negotiate that with?

17 A. With Ross and Warren. Warren knew what I
18 made. Tricia knew what I made too. Full
19 disclosure. Don't have nothing to hide.

20 Q. In April of 2011, were Warren and Patricia
21 living together?

22 A. Yes.

23 Q. And do you recall when they started living
24 separate and apart?

25 A. Do you mean for irreconcilable differences

Page 18

1 Warren both.

2 Q. What kind of person was Warren Holliday?

3 A. What kind of person was he? He was a
4 complicated man, I'll be honest with you. Some
5 people loved him and some people hated him. Warren
6 was very driven to succeed in life and he was a
7 very generous person.

8 My earliest recollection of him is him
9 coming up in a '57 Chevrolet, throwing M & M's at
10 each one of us brothers and sisters as he came to
11 date my sister. And if the candy was good enough
12 and they were going to the movies, we would hide in
13 the back seat and end up during half -- halfway
14 then they would find us back there squiggling and
15 cover our eyes if something wasn't appropriate.

16 But no, he was very fair, very just. He
17 worked very hard in his life and it was for the
18 sole purpose of his family and he said that to me
19 every time we had a conversation: Martha, you
20 don't think that I'm doing all this and putting
21 myself through this simply because I need more
22 money. Hell, I'm wearing the same pants every day.
23 I'm doing this for my children. That's what he
24 said.

25 Everything he did was for the good of the

Page 19

1 or are you talking about you want me to start
2 telling you when Warren didn't reside at the house
3 because he was in the hospital or in the nursing
4 home?

5 Q. No, I meant because they weren't together.

6 A. Because they were finally gone? I want to
7 say it was sometime in September of -- must have
8 been 2014.

9 Q. Do you know when they got divorced?

10 A. I know it was around Christmastime. It was
11 December. And again, it must have been around 2014
12 because I was already gone by 2015 going towards
13 the fall. And I remember when Warren went and
14 moved all his personal possessions out; it was
15 right around his birthday, so I'd say September.

16 Q. Okay.

17 A. And it could have been '13, but it seemed
18 like it was a two-year thing from the time that I
19 really started down there. So it could have been
20 2013 or 2014. I can't remember which year, to be
21 honest with you.

22 Q. Did their separation impact your
23 relationship with Mr. Holliday?

24 A. No, it did not. It did not. Not at all. I
25 judge them only on their own merit, Tricia and

Page 20

1 group. And when I was standing there, I was part
2 of the group. That's the way he made you feel.
3 People that worked for him, worked for him for long
4 periods of time. Those boys were working for him
5 right out of high school and they're grown men
6 today. So -- you know, and their children know
7 him.

8 I've never heard anybody say anything bad
9 about Warren Holliday except, be honest with you,
10 some of his family members. But not a stranger,
11 because I feel like he's always been a fair person.
12 And that's the only reason why I would ever go.

13 Warren Holliday had no interest in anybody
14 with the last name Brouthers ever writing a check
15 out of his checkbook, I can assure you of that.

16 And there was a lot of surprised people that would
17 come in there that have known him for years and
18 say, whoa, knowing the situation with him and
19 Tricia, and say, isn't that his sister? And he
20 would say, yeah, but, you know, we cool.

21 When I was a teenager, I baby-sat all their
22 children from the time they dropped here and would
23 take them places almost to the point of being a
24 nanny during the summertime. You know, up until I
25 got to high school, I stayed with them all summer

Page 21

1 and took them places and Tricia worked and I'd be
2 in the back seat manning the babies.

3 And, you know, I guess I -- you know, we --
4 it's always been work, you know. I took care of
5 the babies. Tricia sold real estate. Warren
6 would -- you know, 12:00, okay, see you later, and
7 he might be anywhere in the state by 2:00 in the
8 morning with machines and different properties and
9 stuff that -- you know, locations and his business.

10 And, you know, I'd see him socially. He'd
11 come in the store where I worked and I'd see him on
12 the street because we'd go in different places and
13 I never had a situation where he avoided me. I
14 never avoided him. I, you know, had a great
15 relationship with him.

16 Q. Okay. That's great.

17 A. He was a good guy. Got nothing bad to say
18 about Warren Holliday.

19 Q. Super. Now, you said people were surprised
20 that you were working for him because you were
21 Patricia's sister?

22 A. Yes.

23 Q. At some point did he and Patricia -- did he
24 not want Patricia to be involved in his companies?

25 A. Oh, he never wanted Tricia to be involved in

Page 23

1 he -- he was the kind of guy, if he had something
2 in his mind, you weren't going to talk him out of
3 it. He just -- and a lot of times he wouldn't even
4 share it anyway.

5 I know one day I had a shipment come in and
6 it was this big huge box and when I opened it, it
7 was, like, 12 bubble gum machines. And I haven't
8 seen a bubble gum machine stack-up in any location
9 anywhere, not even the airport, in about 20 years.
10 It's kind of like a pay phone.

11 And he decided that he was going to do that
12 and put it in the church for the kids so that they
13 could just put in tokens and, you know, have the
14 pleasure of playing something and getting a little
15 toy or a piece of gum or candy.

16 And I said, well, what made you think of
17 that?

18 He said, the other day, he says, you know, I
19 always go places and look for a candy jar and there
20 wasn't nothing at church, so I decided to bring my
21 own.

22 So, you know, that's the kind of person he
23 was. He was very spontaneous sometimes, but it was
24 never usually for himself. He'd vacillate. He'd
25 test drive a car for months and a year and then

Page 22

1 his companies and that's a fact. Her job was to
2 run the house and to take care of the children.
3 She did work part-time selling real estate. But
4 like I said, you know, Warren -- they had different
5 perspectives of how to run a business and I think
6 that Warren was his own man.

7 He didn't really have siblings that -- you
8 know, like my sense of siblings. He had a much
9 older brother and a sister who left town pretty
10 much when he got married and went and made her life
11 and so he really never had anybody. And Warren and
12 I were very much like brother and sister. And
13 sometimes he was my daddy and sometimes he was like
14 an uncle.

15 You know, if I was getting ready to do
16 something earth shattering or leave town, which I
17 did quite often when I was young, I'd always go to
18 him and tell him and say, what do you think,
19 because he was in the business of reading people
20 and I trusted his judgment. And if he thought I
21 wouldn't be safe, he'd always tell me so. And if
22 he thought it was a good gig, he'd tell me that
23 too.

24 Q. Did Warren make his own decisions?

25 A. Yes, he did, for the most part. You know,

Page 24

1 he'd finally decide to go buy something different.
2 I mean, that's just the kind of guy he was.

3 Very complicated individual, but very
4 well-read. He was a brilliant man. He was reading
5 Carl Sagan back in the '60s. I remember every time
6 when I baby-sat, there was four or five big books.
7 on sci-fi type things or world history or something
8 like that.

9 So he continued to educate himself all
10 through his life and that's why he and I, I guess,
11 were so close because we could discuss anything.

12 Q. When was the last time you had contact with
13 Warren?

14 A. The last time I had contact with him is --
15 must have been somewhere -- it was in 2016. When
16 did he die? He died in 2016.

17 Q. September of 2016.

18 A. Yeah, okay, then it must have been about
19 June. One morning the -- because I was his contact
20 and I guess, you know, no news is good news. If I
21 didn't hear anything, then I didn't bother with it.
22 But one morning I got a call from the dialysis
23 clinic around 7:00 and they said, Martha, we just
24 want to let you know Mr. Holliday's not here.

25 So I said, okay.

Page 25

1 They said, we tried to call him.

2 So I called him right away and he always
3 would answer my call, and he did. And I said,
4 well, where are you? And actually he was in the
5 hospital at the med U having an appointment and
6 that's when he was instigating his heart valve
7 surgery.

8 And he told me about it and then later he
9 called me back and was telling me what he was going
10 to do.

11 And I said, well, you comfortable with all
12 that? And he said yes, and that's pretty much the
13 last time I had a conversation with him.

14 Q: When you talked to him, did he sound like he
15 knew what he was doing?

16 A. Oh, yes.

17 Q. Did you ever have any concern that he was
18 not mentally competent?

19 A. There was occasions he had some bad
20 judgment, oh, there's no doubt about it, yes, if
21 that's the question you're asking. He would have
22 periods, you know, because on dialysis, you know,
23 you have a tendency to be anemic because a certain
24 portion of it stays in the machine. And even
25 though it's supposed to clean out certain cells in

Page 27

26 So, you know, a lot of it was pie-in-the-sky
27 stuff and I think he lost track of his time and his
28 health. You know, his brain would be working a
29 mile a minute all the time about things, always
30 thinking about how to bring a dollar in.

31 But that's just the way he was, you know.
32 He never stopped thinking about things or being
33 progressive. But I imagine knowing that the type
34 of person that he is, and I saw this in him at one
35 point in a nursing home. When he was at Sandpiper,
36 he had kind of given up and he wouldn't go
37 exercise. He wouldn't eat. And he was really
38 going to seed.

39 And they told me, they said, you know, if he
40 doesn't get out of that bed, he's going to be a
41 dead man in a month or two or less. And that's
42 when I called Ross and we got him out of there and
43 moved him to another facility that was a little bit
44 more social, wasn't as septic and hospitalized as
45 that place was and that's when he could see the
46 benefits that possibly he'd be able to get back in
47 that car and drive again.

48 And so, you know, it's -- you know, we --
49 like I said, he was a complicated kind of guy. But
50 aren't we all?

Page 26

1 the blood, it takes away both types and you end up
2 anemic. My sister went through it for five years.

3 And so there would be some days he would
4 call me and he'd say, you know, I just -- I can't
5 make it down there and -- but he would tell me,
6 well, I'm thinking about doing this.

7 And I'd say, no, Warren, that's a bad idea.
8 Don't do that. You're not thinking straight.

9 He would get sometimes preconceived ideas
10 about where the business was going and I don't know
11 if because he was so comfortable with me being
12 there every day, knowing that Ross was pretty much
13 talking to, you know, the vendors and the lease
14 hold people that, you know, he really didn't have
15 anything to do functionally in the business that I
16 think he got kind of a second wind and was kind of
17 wanting to build it back up.

18 And I said, no, man, we're just, you know,
19 letting it ride.

20 And he'd get a little ambitious and get
21 frustrated with me and Ross both because he'd feel
22 like we were trying to talk him out of stuff. But
23 it wasn't so much that we were. It's just that,
24 you know, if you make that decision, we're going to
25 have to do it.

Page 28

1 Q. Yes, ma'am.

2 Other than Ross, did any of the Holliday
3 children work for the company?

4 A. Not that I ever knew about. One or two
5 times Lee may have come to Charleston to help
6 negotiate something with Ross or with a location
7 because he knew more about actually the amusement
8 company than Ross did because he worked with his
9 dad for four or five years before he went off to
10 school and all that, so -- and he's more mechanical
11 minded to begin with.

12 But, you know, Ross was -- by that time he
13 was married and getting his master's and working
14 for Ford and just -- he was just gone. But, you
15 know, he did come to town and do a few things. And
16 of course the boys always came to town when it was
17 time to put Warren in a different facility or get
18 him moved into a place or, you know, that sort of
19 thing.

20 Q. So you say the boys, which boys came to
21 town?

22 A. Ross and Lee.

23 Q. Ross and Lee?

24 A. Yes.

25 Q. Did Ben have anything to do -- much to do

Page 29

1 with that?

2 A. No.

3 Q. Did you ever notice any of his children try
4 to take advantage of him?

5 A. Well, you know, Warren's philosophy was --
6 he told me one day, you know, he was one of those
7 ones that, you know, you can't take it with you.
8 Well, my father believed that you could take it
9 with you, you just couldn't spend it.

10 And, you know, Warren was -- he didn't look
11 at it that way because everything he did was for
12 his kids. He bought Pamela a Porsche when she
13 graduated high school, for crying out loud. And, I
14 mean, that was, like, '78, something like that. We
15 were just coming off the energy crisis, you know.

16 We still had little kids and I thought that
17 was a little flamboyant, but, you know, that's when
18 the business started to take off. And if he had a
19 nickel and his kid wanted something, he'd spend it.
20 It didn't matter because that's all he wanted.

21 He wanted to make sure that everybody had
22 what they needed and that was the first thing he'd
23 ask me. Hey Martha, how are you doing today? Are
24 you doing all right? Have you got everything you
25 need? You know, and that was just his way, and he

Page 31

1 me. I mean, he didn't have to pick it up, but he
2 did actually show up and let me have the facility
3 and more of a fatherly, brotherly type of jaunt
4 than just handing out \$20, you know.

5 Warren never put any cash in my hand in my
6 entire life except quarters and nickels, and then
7 he taught me about interest when I was a kid. But
8 never as an adult did he ever put any cash in my
9 hand that I didn't earn. It was mostly going to
10 lunch, going to doctors, spending time with him,
11 Christmas, Thanksgiving, I went to the nursing home,
12 and I'd eat dinner with him, you know, because his
13 family was away, so, yes.

14 Q. And you've talked about Ross helping him run
15 the company after he got ill.

16 A. Yes.

17 Q. What was it like to work with Ross for you?

18 A. For me?

19 Q. Yes, ma'am.

20 A. He's my nephew. I love him and, you know,
21 he's a very gentle giant, just like his dad. He's
22 a lot like Warren. You know, we don't communicate
23 with a lot of fluff, you know. I've ridden in the
24 car with Ross for an hour or more and not had any
25 conversation.

Page 32

1 did it with friends as well.

2 And there's some people that would say that
3 they took advantage of Warren in the business world
4 too, but, you know, everybody got a little
5 something.

6 Q. Okay.

7 A. Believe you me, he always ended up on the
8 short end of the stick because nobody could ever
9 pay him back for his generosity at that time
10 because he had so much to give, you know,
11 monetarily-wise. I don't think that anybody ever
12 took advantage of him for his time or his efforts
13 as much. It was mostly cash.

14 I remember one time I was moving and I was
15 buying a little sofa and a chair and I called him.
16 He was just getting out of the hospital and he
17 bought a little truck and he didn't want to wreck
18 anything and he wanted to make sure if he did get
19 in a wreck, he had something bigger.

20 And I called him and I said, hey, you're
21 just tooling around in that truck. Why don't you
22 come over here and help me pick up this sofa and
23 love seat?

24 And everybody was aghast that he actually
25 came and did that, physically moved something with

Page 32

1 I knew what's expected of me. We share the
2 same bloodline and he knew that I was only there
3 because I cared, not because of the cash payout.
4 I'd have done it for a lot less, but that's what we
5 negotiated for it. And, you know, my time of life,
6 if I was 25 years old, it probably would have been
7 a lot less, but I wasn't, you know.

8 And -- but no, I never had any trouble
9 communicating anything with Ross that I'm aware of.
10 There's no times that, you know, I think that he
11 was ever -- you know, if there was an issue, I was
12 on the phone with him and tell him, listen, your
13 dad is this or something's happening here or
14 whatever, you know, and he'd try to come as often
15 as I could so that I wasn't frustrated because he
16 knew I was taking care of his dad and that was a
17 lot of my time.

18 Q. And did Ross's duties for the company
19 increase when Mr. Holliday's illness got worse?

20 A. Oh, yes, everybody's did, especially mine
21 because that meant that, you know, I had more -- it
22 was -- then it was 70 percent Warren and 30 percent
23 office. You know, if I went down there once a
24 week, I was good. It would take me one day to --
25 couple hours to do payroll, pay bills, make sure

Page 33

1 all the deposits were logged in, and I could do
2 that from home, bring the stuff in a bag.

3 The only reason I went down there every day
4 was because I knew after dialysis Warren would get
5 in that car and come down there and, you know, it
6 was my job to kind of keep track of what he was
7 doing and make sure he didn't get in no trouble,
8 didn't get left on the side of the road feeling
9 faint or -- you know, because he'd overdo it. He'd
10 try to do more than what he could.

11 Q. Did the dialysis weaken him, like, on the
12 day that he had it?

13 A. Oh, yeah, yeah, yeah, it does. It really
14 does. It takes a lot out of you, if you've ever
15 know anybody that's had it. And he would go and
16 eat something. He'd go in his office, take a
17 little nap, rest up a little bit. By 3:00 or so
18 he'd be ready to drive home, unless we were going
19 somewhere, we had a doctor's appointment or
20 something like that.

21 Q. Could you tell a difference between the way
22 he was on the days that he had dialysis and the
23 days he did not?

24 A. Oh, yes. Oh, yes. Yes.

25 Q. Were you involved in any way in the divorce

Page 35

1 from what I understand. The only reason I know
2 that's because I reconciled the bank accounts.

3 But I never discussed the amount with
4 Tricia. I don't -- you know, we don't talk about
5 it. I got a pretty good idea what it is and, like
6 I said, it's none of my business. If it's 60 cent
7 or \$600, it don't matter to me.

8 And in that regard, we're very separate.
9 She doesn't have keys to my house. I don't have
10 keys to her house. I can't get in there. I don't
11 go with her to the doctors. I don't take care of
12 any of her business. Never have. She's always and
13 never not functioned as a fully functioning adult.

14 Q. At that meeting did Warren make it clear
15 that he did not want Patricia involved with the
16 businesses?

17 A. No, that was kind of already a given. She
18 wasn't involved with the businesses at that point
19 anyway, but that's when he pretty much wanted to
20 make sure that we had enough money to pay her and
21 for him to be able to live on because he was
22 adamant no properties will be sold. No properties
23 will be sold. We have enough income. We have
24 enough money and that's the end of that.

25 And those rents were always meant to take

Page 36

1 settlement that Warren and Patricia reached?

2 A. In the beginning Warren and Tricia had a
3 meeting with Ross and myself actually down at
4 Holliday Amusement. That's kind of when they
5 outlined what they would do.

6 After that, the lawyers took hold of it and
7 I exited stage left. I never read any of the
8 divorce decree. I really don't know what's in it
9 because it was none of my business. You know, at
10 that point, you know, I was kind of a
11 pseudoemployee caregiver and forget the sister and
12 the brother-in-law business. When it comes to
13 finances and how people live, that's their own
14 business.

15 Q. Okay. So tell me what was discussed at that
16 meeting.

17 A. Well, they were trying to figure out an
18 equitable monthly stipend for her and it ended up
19 to be different in the beginning from that meeting.
20 And that's when Ross kind of told me, okay, now
21 every month let's make sure mom gets this money.
22 Well, after the divorce, I never took care of it
23 after that. Ross did that himself.

24 And like I said, by that time it had been to
25 court a few times and it was a different amount,

Page 36

1 care of him and Tricia in their old age. And when
2 that was done, then, to my recollection, he told me
3 just about every day of his natural life that I was
4 in his company that all of everything he owned went
5 to all of his children, all four of them.

6 Q. Let's talk about the note. And it's been
7 marked as Exhibit 1.

8 (Exhibit No. 01 marked for
9 identification.)

10 THE WITNESS: This is it? This is a
11 copy of the note?

12 Q. Yes. Have you ever seen that before?

13 A. I've seen it one time. I've seen it one
14 time.

15 Q. When did you see it?

16 A. I saw this note -- gosh, trying to think.
17 It must have been in 2011, and it could have been
18 as long as 2012. It was when Warren was still
19 staying at Sweetgrass nursing home, but he was
20 driving again. And he had gotten out of dialysis
21 and he'd called me first and he was telling me
22 about this note.

23 This was done long -- years ago, way before.
24 I was involved, in 2004. My mother had just died
25 and I was doing something different, and he called

Page 37

Page 38

me and he asked me if I would go in his file cabinet and retrieve a copy of it. He said, do you kind of know where it is?

And I said, no, but I'll find it.

He said, well, when you do, I need a copy of it. Put it in an envelope, fold it up and then put the original back.

So when he got down there, I gave it -- he came in, I gave him the envelope and I had the copy that I had pulled out. I don't know if it was an original now. I couldn't tell you. I really -- didn't really look at it. None of my business.

And I put it -- went to put it back and he -- that's when he told me, he says, make sure you put it back in a place you remember where it is. It's a very important piece of paper. This is the only thing I have to leverage to make sure my son does what I tell him to do because that money is coming back to me and Patricia.

And I said, okay, and I went and I put it back in the filing cabinet. He took his copy, and I learned later that he had actually taken that copy to Patricia, to the house, because she had asked for a copy of it, and he gave it to her. And that's the only time I ever saw it and I put it

back exactly where it was found.

Q: Did you ever hear any other discussions about the note?

A. About the note? No, I mean, it was -- after that it was -- I knew about it. Nobody really talked about it at all. The only people that talked about this note, and I don't know if it's relevant, it may not be, is Ross and I talked about it because there was still a bank note that funded this note. It was actively being amortized and paid on a monthly basis. And that was part of my job was to pay this note. And for that, that's all I knew about this note.

Q: And was that a --

A. Didn't know why it was created. I didn't know nothing else about it.

Q: I'm sorry. Go ahead.

A. I knew about the payment of this note to the bank, but I didn't know about this aspect of it. I just thought it was something Warren owed. None of my business.

Q: Okay. And was the note a note at NBSC?

A. Yes.

Q: And what did Ross tell you about paying that note off?

Page 39

Page 40

A. About paying the note off?

Q: The NBSC loan.

A. Well, as far as I know, we paid it out of Holliday Amusement. Warren paid this note and he borrowed it against the company. And that's all I really know about it.

Q: Did you make payments on that?

A. From Holliday Amusement, yes, every month. We were making interest only and then I guess about -- I think it matured about -- I came down there in April. I want to say it was, like -- seemed like it was just a few months after I came down there. It could have been the following year even. I don't remember.

But in that year, that first year that I was there is when we renegotiated the note to include the -- some of the principal as well as the interest every month. And that's when we started making the payments. And I want to say that the balance on the note was, like, 1.3 and some change and it was like 1.1 by the time I left, but we were making, like, \$13,000 payments. About 50/50 was the ratio on the interest and the principal.

Q: Are you aware of Ross making any payments on that note, on the NBSC note?

A. Him personally?

Q: Yes.

A. Not after we refinanced it at that time because the company was done and it was just a company debt. I don't know if he made any payments towards the principal. Obviously somebody did. It's a \$2 million note and it came down to 1.3, but who paid prior to that I don't know.

Q: Okay. So you don't have any knowledge what happened with the note between June -- this -- the promissory note that Ross signed in June 18, 2004, you don't have any knowledge until you started working there in 2011?

A. Right, yes.

Q: And you don't have any knowledge as to why the loan was made; is that correct?

A. Well, no, I do. I used to have another sister. She passed away in 2008. And she and my other sister, Tricia, were very close. I was close to Mary because she was, you know, needy and had bad health, but it was a triangle more than a circle.

And, you know, Mary had told me once before that they had taken a big amount of money and bankrolled Ross in a venture at that time. But in

Page 41

1 2004 I was knee deep in my own problems, so I
2 really didn't -- it was not even here. It was
3 away. I didn't know them at that time really. I
4 wasn't social with them.

5 There was probably a 15-year hiatus between
6 the time that Tricia and I parted company for all
7 practical purposes of friendship until the time we
8 came back, and that was after my sister's death.
9 And I chose to do that because she is my only
10 surviving sister, but that's really the
11 relationship that we have is now.

12 Q. Okay. Tell me about Patricia's health.

13 A. I don't really know anything about
14 Patricia's health.

15 Q. You don't know anything?

16 A. No.

17 Q. You said she was having health issues.

18 A. Well, she had bronchitis. She has that
19 every Christmas. Anybody who lives in Charleston
20 has that. I get it too. It seems like every other
21 year either I get it or she gets it because we both
22 have allergies, but that's the extent of it.

23 Q. Okay.

24 A. But I wouldn't think that it would be remiss
25 to say that she suffered from some depression

Page 42

1 basically, they had a discussion about the loan at
2 that time and Tricia mentioned about the \$2 million
3 that she was adamant that Ross make that payment,
4 give them that money back.

5 And Warren said, well, I'm not going to
6 force him to do it right at this moment, but
7 that -- and I think that's when she actually listed
8 it as an asset on her divorce financial statement.
9 I was told that. I don't even remember now. I
10 can't tell you who told me that. I don't remember
11 if Ross told me that because they had to disclose
12 all that in the family court or if I actually heard
13 it in court.

14 I was there for the first initial family
15 court and then I also was their witness to state
16 that they'd both lived separately and apart for a
17 year, so...

18 Q. Was Ross at that meeting?

19 A. At the meeting that they had --

20 Q. At the 1808 meeting?

21 A. Oh, yes, he was there. Sure, sure, sure.

22 Q. So they were talking about him paying the
23 note?

24 A. Yes.

25 Q. And Warren said he wasn't going to make him

Page 42

1 during the time here because she -- I had stepped
2 away from a very good position to come and help
3 her. That preyed on her mind. She didn't really
4 like the idea that I had taken a cut in pay and
5 moved on to help them because she was afraid that
6 I'd be left out in the cold eventually.

7 But, you know, she didn't want me to suffer
8 as a result of trying to save her and Warren and
9 that preyed on her mind. And even, you know, it
10 was -- it was a tough thing to do, you know,
11 because I really didn't know anything about their
12 business.

13 They were always very close to the chest on
14 their finances and what they did and as far as our
15 family dynamic was concerned. We didn't really
16 know what Warren and Tricia did or how they
17 managed. We weren't social in those years.

18 Q. To your personal knowledge, did Mr. Holliday
19 or Patricia Holliday ever demand that Ross make
20 payments on the note?

21 A. Not that I'm aware of. The only thing that
22 I do know is that during the course of the divorce
23 and the meeting that we had at 1808 Meeting Street
24 with just the four of us at that time to sit down
25 and decide how the divorce would be constructed

Page 43

1 do that at that time?

2 A. Well, he didn't want to put it in writing
3 because he felt like he already had the note, but
4 he said, oh, no. He said, that's a valid debt.
5 And eventually him and Ross had another venture at
6 that time.

7 And from what I understand from the time I
8 came down there, there was a lot of funds that were
9 taken that Ross borrowed to put towards this other
10 venture and Warren was under the impression that
11 there was stock issued and that he would get that
12 money back and that would take care of this note.
13 That's what I believe and that's what was discussed
14 at that meeting.

15 So that's why he said, you know, we don't
16 need to have anything further put in that. He
17 says, eventually you'll get your money and I'll get
18 my money, and that's -- you know, Ross is going to
19 be good for it. And that's the way it was
20 discussed.

21 Q. You weren't party to any other discussions
22 between Mr. Holliday and Ross Holliday about the
23 note; is that correct?

24 A. No, hm-mm, no.

25 Q. Was Ross Holliday getting paid for

Page 45

operating?

A. Yes.

Q. How did he get paid?

A. He debited money out of Zeezrom each month to his bank account. I didn't write him a paycheck or anything like that or do anything like that. Every month he did that debit on his own. He could do -- we were online with the bank.

Q. And Warren Holliday was aware that he was getting paid; is that correct?

A. Oh, yes. Yes, yes, yes, mm-hmm.

Q. Did you keep a register for the loan between Warren and Ross?

A. Well, it was in QuickBooks, so whenever he took money out or I transferred money to him, which was rare, he pretty much handled that on his own. You know, he knew what he needed. There was very few times that he would ever tell me, I need you to wire this to me or whatever.

There was another bank that we dealt with he didn't have online access and there was occasion where I would wire money to him or to the other bank that we dealt with so that he could take it out. But no, he never asked me to do anything on his behalf.

Page 47

all intentions of seeing this \$2 million back.

And he at one time expected three and four times this amount based on the venture that he had actually invested in because he told me so. And then it went south. Just prior to me coming down there, Ross left that venture.

And so, you know, I don't know what was done prior to that. If he made any payments while he was with his ongoing venture, I don't know. Somebody obviously paid down the note, but I don't know who.

But no, Warren always had every intention that all that money come back to him and more. And they were in another venture at the same time that I was down there and that's really when he was really hoping that that would again, you know, indemnify the loan eventually.

Q. What kind of venture was that?

A. I'm not really sure. It was -- because I never saw it. I never talked to anybody about it. All I know is what Ross Holliday told me about it and, you know, I'm not a real mechanical person, so I may be misstating the facts, but from what I understand, he and another person were involved in making a device and I don't want to say more than

Page 46

Q. Was Ross using money from Zeezrom for maintenance of the properties and that type of thing also?

A. There really wasn't a whole lot of maintenance because they were all pretty much rented out and everybody was on a triple net lease. Everybody knew they were responsible for their own, you know, taxes, insurance, maintenance.

There was a couple of times where we had a pipe bust in the ground outside of one property and I had to call the water department and get a plumber over there because the girl didn't have the cash to do it. But aside from that, there really was very little maintenance on any of the properties while I was there. They were pretty much on automatic pilot.

Q. Ross has testified that his father, Warren Holliday, wrote paid in full on a copy of the note. Have you ever seen a document like that?

A. No, and I find that hard to believe because Warren Holliday lived for cash. He was -- I won't say he was -- well, I'll go ahead and say it into the record, he was a greedy man, but he was very generous at the same time, so I don't want to make him out to be a real beast or anything, but he had

Page 48

that because I don't know if there's a patent outstanding. At that point he did talk about that.

I don't know if he is still involved with these people. I thought that right about the time I left he was kind of exiting stage left in that venture too, but I can't honestly say that. I don't have any knowledge of it except for just the feeling that I got from conversations.

But I -- at this point I wouldn't want to state into the record what was actually the venture about because I don't know if that's something that should be discretioned at this point.

Q. Do you have any knowledge about a piece of property on Meeting Street that Lee Holliday owned?

A. I wasn't aware of any property that Lee Holliday owned.

Q. And you don't have any knowledge that Lee Holliday gave that property to his brother Ross, do you?

A. It was on Meeting Street?

Q. Yes, ma'am.

A. Have you got an address?

Q. Not right this second.

A. Okay. Because they had several properties on Meeting Street, so I don't know which one you're

Page 49

1 talking about.

2 Q. But this is just owned by Ross.

3 A. I don't know. I'd have to know the address
4 number for me to be able to tell you clearly.

5 MR. TILLMAN: Do you mind if I -- they
6 called it the railroad property.

7 MS. PAYLOR: I was going to ask her
8 that.

9 Q. Do you recall that a property was sold to
10 CSX Railroad?

11 A. I remember a little bit about that, yes.

12 That's when Warren and Patricia were out in Utah.

13 They went out there in October of 2010, which was
14 prior to me coming to work. And it seemed like it
15 was -- I don't know if Lee Holliday ever owned it
16 or if it was Warren's property and he just acted
17 for him.

18 I can't honestly say it was before that, but
19 I do remember something discussed about that
20 property and then seems like later they sold the
21 property and I don't know, again, to who because
22 all that was done out in Utah.

23 The only thing I know is there was a certain
24 amount of money that was transferred into the
25 Zeezrom account and that was -- the footnote was

Page 51

1 thinks a lot like his dad. He's a little more
2 progressive and conservative in some issues, but,
3 to my knowledge, they had a good working
4 relationship. I never heard anybody being
5 threatened or, you know, if you don't do this my
6 way or the highway. I never heard any of that.

7 Q. And to your knowledge, Patricia Holliday did
8 not contribute cash or bind herself on the NBSC
9 loan.

10 A. That I can't tell you.

11 Q. You don't know?

12 A. I don't know.

13 Q. Okay.

14 A. Because it was a good seven years that that
15 thing was active before I came on the scene.

16 Q. Okay.

17 A. All I can tell you is once I got there and
18 we refinanced it, I made every payment to the bank
19 every month. I went to the bank and made the
20 payment at the drop window. But, you know, as far
21 as what anybody else may have done above and beyond
22 that, I don't know.

23 Q. Other than what you've told us today, do you
24 have any other knowledge regarding the note or the
25 payment thereof?

Page 51

1 that it was some proceeds from that sale, but I

2 don't know. Who actually owned the property, I
3 couldn't tell you.

4 Q. Do you recall how much it was?

5 A. No, I didn't know. I never saw a sale or
6 any kind of instruments pertaining to that sale or
7 even the ownership of the property.

8 Q. Were you working for the Hollidays when the
9 NBSC note was paid off?

10 A. No, it still had a balance when I left.

11 Q. Have you discussed the \$2 million promissory
12 note with Patricia?

13 A. No, except in the times when we were there
14 with Warren and Ross, not that I can think of
15 specifically.

16 Again, I don't ask my sister or anybody
17 about their personal business. If they start
18 reciting it, then I listen, but I don't ask them
19 questions. And a lot of times, if someone starts
20 telling me something I don't think I need to know,
21 I shut them up.

22 Q. Was Warren happy to have Ross operating
23 Zeezrom and Holliday Amusement?

24 A. I think he felt a certain comfort level
25 because Ross is very intelligent, he's educated,

Page 52

1 A. No, I think we've pretty much covered
2 everything I know.

3 MS. PAYLOR: Let me just have a short
4 discussion.

5 (Recess held.)

6 MS. PAYLOR: I have no further
7 questions.

8 BY MR. TILLMAN:

9 Q. Ms. Brouthers, I'm Matt Tillman. I
10 represent your sister, Patricia Holliday. I just
11 have a couple follow-up questions for you. While
12 you were working for the Holliday group of
13 companies, I think you testified that Ross did get
14 paid for services he provided to those companies;
15 is that correct?

16 A. Yes, yes.

17 Q. Do you recall how much he got paid?

18 A. Let's see. Well, in the beginning it wasn't
19 as much. I want to say it was, like, maybe 8,000 a
20 month because he was flying a lot. He was
21 incurring a lot of debt with airline tickets and
22 that sort of thing.

23 And then after it seemed like he started
24 coming more, it escalated. It went up to about 12,
25 I want to say somewhere between 12 and 16,

Page 53

1 somewhere in that vicinity.

2 Some months he wouldn't take anything out if
3 we didn't have it. If it was time to buy licenses
4 or, you know, we had to buy equipment or something
5 like that, you know. So it just really depended.
6 It varied.

7 And I did the same thing. You know, I was
8 kind of captain of my own destiny, so if one month
9 I didn't feel like it was comfortable to take any
10 money out of the business, I didn't either, or I'd
11 take half or whatever. So we -- you know, we both
12 did that. And -- but yeah, that's all I remember.

13 Q. Okay. And then I think you testified
14 earlier that Warren Holliday, Warren Philip
15 Holliday, the father, asked you to retain a copy of
16 the 2004 note that's Exhibit 1; is that correct?

17 A. Yes.

18 Q. And that occurred after you started working
19 at the Holliday group of companies, right?

20 A. Yes.

21 Q. So that would have been after April of 2011?

22 A. Yes, and I believe it was right about the
23 time -- well, it wasn't in the beginning of 2011.

24 I want to say it was later. It wasn't right away.

25 I want to say it was probably within the first year

Page 54

1 but closer to the end of it because the reason

2 Tricia wanted a copy of this was when they were
3 talking about getting divorced and that's when they
4 were talking about that. And that's why she wanted
5 the copy was obviously for her financial statement.

6 Q. Okay.

7 A. And he did bring it to her, from what I
8 understand.

9 MR. TILLMAN: All right. That's all I
10 have. Thank you.

11 THE WITNESS: Okay.

12 MS. PAYLOR: Thank you very much,
13 Ms. Brouthers.

14 (Deposition concluded at 11:06 a.m.)

Page 55

1 CERTIFICATE OF REPORTER

2 I, Ruth L. Mott, Registered
3 Professional Reporter, Certified Realtime Reporter,
4 and Notary Public for the State of South Carolina,
5 do hereby certify that the witness in the foregoing
6 deposition was by me duly sworn to testify to the
7 truth, the whole truth and nothing but the truth in
8 the within-entitled cause; that said deposition was
9 taken at the time and location therein stated; that
10 the testimony of the witness and all objections
11 made at the time of the examination were recorded
12 stenographically by me and were thereafter
13 transcribed by computer-aided transcription; that
14 the foregoing is a full, complete and true record
15 of the testimony of the witness and of all
16 objections made at the time of the examination; and
17 that the witness was given an opportunity to read
18 and correct said deposition and to subscribe the
19 same.

20 Should the signature of the witness not
21 be affixed to the deposition, the witness shall not
22 have availed himself of the opportunity to sign or
23 the signature has been waived.

24 I further certify that I am neither
25 related to nor counsel for any party to the cause
26 pending or interested in the events thereof.

27 Witness my hand, I have hereunto
28 affixed my official seal on May 22, 2019 at
29 Charleston, Charleston County, South Carolina.

30 Ruth L. Mott
31 Registered Professional Reporter
32 Certified Realtime Reporter
33 and Notary Public
34 My Commission expires
35 February 23, 2025

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Patricia B. Holliday,

Plaintiff,

v,

Ross S. Holliday,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE # 2018-CP-10-0872

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

FILED
2019 SEP 24 PM 4:20
JULIE A. STRONG
CLERK OF COURT

Plaintiff Patricia B. Holliday ("Patricia Holliday") hereby submits her Memorandum in Opposition to Defendant's Motion for Summary Judgment. Defendant's motion should be denied, as set forth below:

BACKGROUND

This is a very simple note collection matter that the Defendant attempts to complicate in his Motion for Summary Judgment. There are only three individuals whose conduct is relevant to this lawsuit: Warren Phillip Holliday (now deceased) and Patricia Holliday -- formerly married individuals who were holders of the subject note in joint tenancy with rights of survivorship, and Ross Holliday, their son, the person to whom the funds were loaned and the payor on the Note. For convenience, the relevant matters are set forth in the following timeline:

Date	Event	Citation
June 18, 2004	Warren P. Holliday and Patricia Holliday loan \$2,000,000 to Ross Holliday, as evidenced by the Note.	<i>Exhibit 1, Note.</i>
January 1, 2005	Ross Holliday claims to have paid \$810,000 to Warren Phillip Holliday as repayment on the loan during this time frame. There are no records of these payments.	<i>Exhibit 2, Ross Holliday Tr. at 23</i>
December 31, 2007	See above	<i>Exhibit 2, Ross Holliday Tr. at 23</i>
December 31, 2010	Ross Holliday claims to have paid \$371,613.00 to Warren Phillip Holliday as repayment on the loan on this date. There are no records of this payment.	<i>Exhibit 2, Ross Holliday Tr. at 52-53</i>
December 9, 2013	Warren P. Holliday and Patricia Holliday were divorced on this date.	<i>Exhibit 3, Marital Divorce Decree</i>
January 22, 2016	Payment of \$1,104,374.46 is made to National Bank of South Carolina. Ross Holliday claims this payment was made in satisfaction of the amounts owed on the Note.	<i>Exhibit 2, Ross Holliday Tr. at 71-75.</i>
September 26, 2016	Warren P. Holliday passed away on this date.	<i>Exhibit 2, Ross Holliday Tr. at 70.</i>
July 12, 2017	Patricia Holliday makes a demand for payment on the Note to Ross Holliday.	<i>Exhibit 4, Letter Demand</i>
February 20, 2018	Complaint filed	<i>Exhibit 5, Complaint</i>

On or about June 18, 2004, Warren Holliday and Patricia Holliday loaned \$2,000,000 to the Defendant Ross Holliday. *Exhibit 1, Note.* Warren and Patricia were joint holders of the Note with rights of survivorship. *Id.* Warren and Patricia were married at the time of the loan. The Note bears interest at the prime rate plus ½ %.

Although relevant only to this motion and not to the issues in the action, it is important for the Court to know the source of the funds. The original loan was funded by a separate loan taken out by Warren Holliday from the National Bank of South Carolina (now Synovus Bank) for \$2,000,000 (the "NBSC Loan"). *Exhibit 2, Ross Holliday Tr. at 25: 18-23.* As set forth below, the source of the subject loan to Defendant Ross Holliday is irrelevant.

Patricia Holliday has no knowledge of any repayments or forgiveness on the Note. However, Defendant Ross Holliday claims that his father orally demanded repayment in 2005, and Ross made three payments to Warren Holliday totaling roughly \$810,000 between 2005 and 2007. *Exhibit 2, Ross Holliday Tr. at 23.* Ross also claims that he made a \$371,613 payment on

December 31, 2010 upon the sale of some real property he alleges he owned. *Id.* at 52-53. Defendant Ross Holliday has no documentary proof of either payment.

Defendant Ross Holliday then alternatively claims that Warren and Patricia Holliday forgave the debt and/or that Warren agreed that the debt would be forgiven but Ross would use his best efforts to ensure that the NBSC Loan was paid off. *Id.* at 33-37; 72-73. The NBSC Loan was paid off on January 22, 2016, when Zeezrom Properties, LLC paid \$1,104,374.46 to Synovus Bank, the successor to NBSC. *Id.* at 71. This payment was funded by a capital contribution made by Warren Holliday to Zeezrom Properties, LLC – a business wholly owned by Warren Holliday. *Id.* at 72. Ross claims that this payment was in full satisfaction of the amounts owed on the Note and that his father marked the Note “paid in full”, but he does not have a copy of that alleged document. *Id.* at 73. Ross also has no written proof of any of his allegations– no cancelled checks, no bank statements, and no proof that any payments were made.

Warren and Patricia Holliday were divorced on December 9, 2013. *Exhibit 3*, Divorce Decree. Warren Holliday passed away on September 26, 2016. Patricia Holliday made a demand for payment on the Note on July 12, 2017. *Exhibit 4*, Letter Demand. Ross Holliday made no payments in response to that demand, and Patricia Holliday filed this lawsuit on February 20, 2018. *Exhibit 5*, Complaint.

SUMMARY JUDGMENT STANDARD

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue to any material fact and that the moving parties are entitled to judgment as a matter of law. Rule 56(c) SCRCP.” *Singleton v. Sherer*, 377 S.C. 185, 659 S.E. 2d 196, 197 (Ct. App. 2008). However, in determining whether summary judgment is appropriate, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Epstein v. Brown*, 363 S.C. 372, 375, 610 S.E.2d 816, 817 (2005). In cases applying a preponderance of the evidence standard, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

ARGUMENT

As an initial matter, Defendant Ross Holliday attempts to inject completely irrelevant facts into his Motion for Summary Judgment. These facts are not going to be admissible as evidence at trial, and certainly cannot be used as a basis to support summary judgment. The irrelevant facts include:

1. The source of funds for \$2,000,000 loan to Ross Holliday. Ross Holliday argues that the funds for the loan were generated from another loan made by NBSC to Warren P. Holliday. This is irrelevant. Ross Holliday admits that he received the loan, and both Patricia Holliday and Warren Holliday were holders of the Note. The source of the funds is wholly irrelevant to any issue in dispute.
2. Warren P. Holliday’s alleged forgiveness of amounts owed on the Note. Ross Holliday argues that Warren P. Holliday agreed to forgive the amounts owed on the Note. This is also irrelevant. S.C. Code § 36-3-110(d) provides that “[i]f an instrument is payable to two or more persons not alternatively, it is payable to all of

them any may be negotiated, discharged, or enforced only by all of them.” Warren P. Holliday could not have discharged Ross Holliday’s obligation.

3. References to the Marital Settlement Agreement between Warren Holliday and Patricia Holliday. Ross Holliday argues that Patricia Holliday released any interest in the loan to Ross Holliday by virtue of the release language in her Marital Settlement Agreement with Warren P. Holliday. This is an absurd statement, and the Marital Settlement Agreement will be inadmissible at trial. Patricia Holliday was a holder of the Note as a joint tenant with right of survivorship. She had her own interest as a holder that was not a marital benefit.

Even assuming the above facts are admissible at trial, Defendant Ross Holliday’s Motion for Summary Judgment must be denied, for the following reasons.

1. **Plaintiff’s claim for breach of the Note is not barred for lack of consideration.**

Defendant Ross Holliday contends that the Plaintiff’s breach of contract claim fails because she gave no consideration for the Note and merely had an “expectancy interest” as the wife of Warren P. Holliday. This argument is premised on the theory that the loan was funded by the NBSC Loan, and that Patricia Holliday was not obligated on the NBSC Loan. Defendant’s contention is absurd. All that is required under South Carolina law is that consideration is paid for the Note. The source of that consideration is irrelevant.¹

South Carolina law defines consideration broadly as, “a benefit to the party promising, or a loss or detriment to the party to whom the promise is made.” *Shayne of Miami, Inc. v. Greybow, Inc.*, 232 S.C. 161, 167, 101 S.E.2d 486, 489 (1957) (quoting 17 C.J.S. *Contracts* § 70). Consideration is not required to flow directly between the bargaining parties. *Shayne of Miami*, 232 S.C. at 167, 101 S.E.2d at 489 (1957) (“Consideration may be given to the promisor

¹ For this reason, any reference to the NBSC Loan, or who was obligated on it, will also be inadmissible at trial.

or to some other person. It matters not from whom the consideration moves or to whom it goes. If it is bargained for as the exchange for the promise, the promise is not gratuitous. A benefit to a third person is a sufficient consideration for a promise.") (citations omitted). *See also Hyman v. Ford Motor Co.*, 142 F.Supp.2d 735, 741 (D.S.C. 2001) (*quoting* Restatement (Second) of Contracts § 71(4)) ("As noted in Section 71(4) of the Restatement, 'the performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.'").

It is undisputed that Defendant Ross Holliday received the \$2,000,000 loan and that he executed the Note in return. *Exhibit 2*, Ross Holliday Tr. at 16: 11-16. This was a benefit to the party promising – Ross Holliday – and was therefore consideration. The source of the funds is irrelevant. Warren P. Holliday and Patricia Holliday were married at the time of the loan, and they were payees and holders of the Note. The Note was clearly supported by consideration. Further, any reference to Patricia Holliday having only an expectancy interest is also incorrect. Patricia Holliday is clearly a holder of the Note as "the person in possession of a negotiable instrument that is payable to . . . an identified person that is the person in possession." S.C. Code § 36-1-201(21). As the holder, she is a person entitled to enforce the instrument. S.C. Code § 36-3-301(i). For these reasons, Defendant Ross Holliday's argument that the Note was not supported by consideration must be rejected.

2. The Marital Settlement Agreement is irrelevant to the matters set forth in the lawsuit, and that agreement did not operate to discharge Defendant Ross Holliday's obligations to Patricia Holliday on the Note.

There is no question that, at the time they were married, Patricia Holliday and Warren P. Holliday were holders of the Note as joint tenants with rights of survivorship. As discussed in detail below, the only potential issue to be resolved is whether their interests in the Note were

severed by operation of S.C. Code Ann. § 62-2-507 (2014) or whether Patricia Holliday became the sole holder at the time of Warren P. Holliday's death. However, Defendant Ross Holliday contends that Plaintiff Patricia Holliday discharged Ross Holliday from his obligations on the Note by operation of the Marital Settlement Agreement adopted in the divorce decree between Patricia Holliday and Warren P. Holliday in 2013. This argument is confusing and easily dispatched.

The Marital Settlement Agreement is an agreement between Patricia Holliday and Warren P. Holliday concerning the terms of property division in their divorce. As one can plainly see from the document (attached as *Exhibit 1* to Defendant's Memorandum), the only parties and signatories to the Marital Settlement Agreement were Patricia and Warren P. Holliday. The "General Release of Liability" plainly releases only "suits, actions, causes of action, claims, demands, damages . . . resulting from or arising out of the marital relationship between Warren and Patricia . . ." See Exhibit 1 to Defendant's Memorandum at ¶ B. The Agreement also provides that Warren P. Holliday will retain all assets of the various businesses that he owned or controlled and Patricia relinquished any claim to those business assets. *Id.* at ¶ D. Defendant Ross Holliday is not a party to the Marital Settlement Agreement. The Agreement contains no reference to the Note, and does not specifically release any claims that Warren and Patricia had against Defendant Ross Holliday at the time it was executed on August 9, 2013.

Defendant Ross Holliday appears to allege that the "General Release" language set forth in the Marital Settlement Agreement "operated to release any claims on the Note against him as an 'heir' of Warren P. Holliday, or alternatively, that the Note claims were a 'business asset' that Patricia Holliday released. Defendant Ross Holliday goes so far as to state that Patricia Holliday 'released all rights to property stemming from her marriage with Warren Holliday –

which most obviously includes the Note (as admitted by the Plaintiff in her deposition, page 17-18)." See Defendant's Memorandum at 9. First, this is a mischaracterization of Patricia Holliday's testimony. She never admitted that she released her rights in the Note, nor did she admit the Note was a business asset. On the contrary, she explicitly stated that the Note was a "personal loan" from Patricia and Warren Holliday to Ross Holliday. *Exhibit 6*, Patricia Holliday Tr. at 25. In addition, the Note is clearly not a business asset of Warren Holliday. The Marital Settlement Agreement provides that business assets are those entities in which "Warren presently owns or holds an interest. See *Exhibit 1* to Defendant's Memorandum at ¶ D. The holders and payees of the Note were Warren and Patricia Holliday, individually. Therefore, it could not be a business asset released by Patricia Holliday.

Although it is not clear, it appears that Defendant Ross Holliday may argue that he is a third-party beneficiary to the Marital Settlement Agreement such that Patricia Holliday and Warren Holliday released all claims against him on the Note in that document. "A third-party beneficiary is a party that the contracting parties intend to directly benefit." *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). The Marital Settlement Agreement is silent as to the Note, and certainly contains no language releasing Ross Holliday from his obligations. Neither party has any evidence concerning Warren Holliday's intent as it relates to the Marital Settlement Agreement. Clearly, Patricia Holliday did not intend to release any claims on the Note by operation of the Marital Settlement Agreement. *Exhibit 7*, Affidavit of Patricia Holliday at ¶ 8. Therefore, there is no evidence to support Defendant Ross Holliday's assertion that the claims on the Note were released, and his motion must be denied.

3. S.C. Code Ann. § 62-2-507 did not operate to eliminate Patricia Holliday's interest in the Note.

As a joint holder of the Note with rights of survivorship, Patricia Holliday had an independent ownership interest in the Note that, unless modified, vested the entire ownership interest in the Note at the time of Warren Holliday's death. *Miller v. Miller*, 117 N.C. App. 71, 450 S.E.2d 15 (N.C. App. 1994) (note proceeds did not pass to estate of husband, but instead directly to ex-wife who was a joint holder with right of survivorship). Defendant Ross Holliday argues that S.C. Code Ann. § 62-2-507 voided Patricia Holliday's interest in the Note. This is incorrect for two reasons. First, Section 62-2-507 was effective on January 1, 2014 – after the December 9, 2013 divorce decree between Warren and Patricia Holliday. Second, even if Section 62-2-507 applies, it has nothing to do with releasing claims – it merely severed the interest of joint tenants in property at the time of divorce unless agreed by the parties. Regardless, it is clear that Section 62-2-507 cannot operate to extinguish Patricia Holliday's claims, and therefore the motion for summary judgment must be denied.²

a. S.C. Code Ann. § 62-2-507 does not apply to sever the joint right of survivorship.

S.C. Code Ann. § 62-2-507 provides, in relevant part:

(c) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage: (2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former spouse has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

² It is not necessary for the Court to determine whether or not S.C. Code Ann. § 62-2-507 applies at this time. It is clear that it cannot operate to extinguish Patricia Holliday's claims, thereby warranting summary judgment. Therefore, the trial judge may determine whether this section applied to sever the claim at the trial in this action.

Section 62-2-507 was effective as of January 1, 2014 – after the Holliday divorce was finalized. Unless the statute applies retroactively, the prior law in effect controls, and Patricia is entitled to the full value of Note as of Warren Holliday's death in 2016 by operation of her right of survivorship. *Duncan v. Investors Diversified Services, Inc.*, 285 S.C. 467, 472, 330 S.E.2d 295, 297-298 (1985) (pre- Section 62-2-507 case that held divorce did not revoke beneficiary designation in a retirement plan as a matter of public policy); see also *Miller*, 450 S.E.2d 15 (N.C. App. 1994).

Statutes are not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. *Hyder v. Jones*, 271 S.C. 85, 245 S.E. (2d) 123 (1978)). "[L]egislative intent is paramount in determining whether a statute will have prospective or retroactive application." *State v. Bolin*, 381 S.C. 557, 561, 673 S.E.2d 885, 887 (Ct. App. 2009)). When the legislative intent is not clear, courts "adhere to the presumption that statutory enactments are to be given prospective rather than retroactive application." *Id.* at 561, 673 S.E.2d at 886-87. There is nothing in the enactment of Section 62-2-507 which clearly evidences the legislature's intent that co-ownership should be severed for divorces which were finalized before the effective date. Indeed, such a result would be unfair to parties who finalized divorces prior to that date, as they presumably relied on the prior law when determining how to handle property owned with a right of survivorship. As such, Section 62-2-507 does not apply to sever the joint tenancy.

- b. Even if S.C. Code Ann. § 62-2-507 does apply to sever the joint tenancy, it does not operate as a release of Patricia Holliday's claims on the Note.**

S.C. Code Ann. § 62-2-507 is in the South Carolina probate code. It provides that "the divorce or annulment of a marriage: (2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former

spouse has no rights by survivorship.” The statute does not extinguish anything. It merely provides that divorce severs a joint right such that when one of the divorced spouses dies, the share of the joint right owned by that spouse passes to his or her estate, rather than to the former spouse through the right of survivorship. Therefore, at most, the divorce simply severed the joint tenancy such that Warren and Patricia Holliday’s respective interests became in common rather than by a right of survivorship and Warren Holliday’s interest passed to his estate at death. Patricia Holliday would still own one-half of the claim on the Note.

4. S.C. Code Ann. § 36-3-117 does not apply to the facts of this lawsuit, and certainly does not operate to bar Patricia Holliday’s claims.

Defendant Ross Holliday’s argument as it relates to S.C. Code Ann. § 36-3-117 is nonsensical and contains gross mischaracterizations of the testimony in the present case. He appears to alternatively allege that: (1) the parties orally modified the original terms of the Note by agreeing that payment of the NBSC Loan satisfied the amounts due under the Note; (2) that Ross Holliday made “some” additional payments to Warren Holliday; (3) that Warren Holliday orally agreed to satisfy the Note and marked it “paid in full,” but that the marked copy of the Note cannot be found; and (4) that Patricia Holliday agreed that the Note was paid in full.

First, all of these arguments are completely contradictory, and therefore create an issue of fact in and of themselves. Second, Patricia Holliday did not agree that the loan was paid in full, and the statement in Defendant’s motion to that effect is a mischaracterization. She only agreed that the NBSC Loan had been repaid after a business owned by Warren Holliday – and not Ross Holliday – made the payment. *Exhibit 6*, Patricia Holliday Tr. at 37-38.

Second, S.C. Code § 36-3-117 does not even apply to this fact scenario. S.C. Code § 36-3-117 provides:

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, *if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement*. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

(emphasis added). This statute section cannot apply to permit modification of the Note, for two reasons. First, the Note was not issued, nor was the loan obligation incurred, in reliance on the alleged modification to the Note. As set forth in the comments to Section 117, this is a very clear requirement for applicability under the statute:

The separate agreement might be a security agreement or mortgage or it might be an agreement that contradicts the terms of the instrument. *For example, a person may be induced to sign an instrument under an agreement that the signer will not be liable on the instrument unless certain conditions are met.* Suppose X requested credit from Creditor who is willing to give the credit only if an acceptable accommodation party will sign the note of X as co-maker. Y agrees to sign as co-maker on the condition that Creditor also obtain the signature of Z as co-maker. Creditor agrees and Y signs as co-maker with X. Creditor fails to obtain the signature of Z on the note. Under Sections 3-412 and 3-419(b), Y is obliged to pay the note, but Section 3-117 applies. In this case, the agreement modifies the terms of the note by stating a condition to the obligation of Y to pay the note. This case is essentially similar to a case in which a maker of a note is induced to sign the note by fraud of the holder. Although the agreement that Y not be liable on the note unless Z also signs may not have been fraudulently made, a subsequent attempt by Creditor to require Y to pay the note in violation of the agreement is a bad faith act. Section 3-117, in treating the agreement as a defense, allows Y to assert the agreement against Creditor, but the defense would not be good against a subsequent holder in due course of the note that took it without notice of the agreement. If there cannot be a holder in due course because of Section 3-106(d), a subsequent holder that took the note in good faith, for value and without knowledge of the agreement would not be able to enforce the liability of Y. This result is consistent with the risk that a holder not in due course takes with respect to fraud in inducing issuance of an instrument.

The subject loan was made in 2004 without any conditions related to repayment of the NBSC loan. Therefore, S.C. Code § 36-3-117 does not apply.

Further, S.C. Code § 36-3-117 requires that the instrument may only be "modified" . . . by a separate agreement of the obligor and a person entitled to enforce the instrument . . ." Under South Carolina law, Warren Holliday was not unilaterally entitled to enforce the Note. Rather, pursuant to S.C. Code § 36-3-110(d), the Note could only be negotiated, discharged or enforced by both Warren and Patricia Holliday. See S.C. Code § 36-3-110(d) ("If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them."). Indeed, comment 4 to the statute makes it clear that the note may only be negotiated by both holders:

If an instrument is payable to X and Y, neither X nor Y acting alone is the person to whom the instrument is payable. Neither person, acting alone, can be the holder of the instrument. The instrument is "payable to an identified person." The "identified person" is X and Y acting jointly.

Therefore, Patricia would have to consent to the alleged modification of the Note for the modification to be enforceable under S.C. Code § 36-3-117. She did not, and therefore any evidence that Ross Holliday and Warren Holliday agreed to modify the terms of the Note is irrelevant and inadmissible. *Exhibit 7*, Affidavit of Patricia Holliday at ¶ 4.

Finally, Defendant Ross Holliday did not personally make any payments to NBSC, and no payments were made on his behalf. Therefore, any evidence of payments made to NBSC would be irrelevant. It is uncontroverted that all payments made directly to NBSC were made by Zeezrom Properties, LLC, a company wholly owned by Warren Holliday. *Exhibit 2*, Ross Holliday Tr. at 68: 20 – 72: 21 (admitting that all payments to NBSC were made by Zeezrom Properties, LLC which was wholly owned by Warren Holliday). Ross Holliday admits that he made no payments to NBSC, but appears to argue that payments made by an entity owned by Warren Holliday served to satisfy the sums owed to Warren and Patricia Holliday. This is an absurd proposition. Evidence concerning payments made by Zeezrom Properties to NBSC is

irrelevant to any issue in this lawsuit, and are therefore inadmissible and cannot be considered in support of Defendant Ross Holliday's Motion for Summary Judgment.

5. Patricia Holliday's claim is not barred by the statute of limitations as a matter of law.

Defendant Ross Holliday argues that Patricia Holliday's claim is barred by the statute of limitations governing demand notes, S.C. Code Ann. § 36-3-118(b), which reads:

Except as provided in Subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

Ross Holliday claims that Warren P. Holliday demanded repayment in 2005, the last payment was made in 2007, and therefore both the six-year statute of limitations and ten-year statute of repose contained in Section 36-3-118(b) have expired. This is a complete mischaracterization of the testimony in this lawsuit. In fact, Patricia Holliday will be entitled to a directed verdict on Ross Holliday's statute of limitation defense.

First, testimony concerning statements made by Warren Holliday are inadmissible hearsay and are barred by the South Carolina Dead Man's Statute, S.C. Code Ann. § 19-11-20. Further, as set forth above, S.C. Code § 36-3-110(d) provides that the Note could only be negotiated, discharged or enforced by both Warren and Patricia Holliday. See S.C. Code § 36-3-110(d) ("If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them."). As such, Warren Holliday could not have unilaterally demanded payment.

Finally, the part payments allegedly made by Ross Holliday served to restart the period of limitations. Ross Holliday unequivocally testified that he made payments on the Note of

approximately \$810,000 between 2005 and 2007 and another payment totaling \$371,613.00 on December 30, 2010:

- Q. Is it your understanding that at the time Exhibit 1 was signed, and at the time you received the \$2 million loan, that your father expected that that would be repaid?
- A. Yes. Yeah, he expected to be repaid.
- Q. All right. And I think it's your contention that you did make payments on that loan, correct?
- A. Made payments and paid it in full.
- Q. And we've already talked about one set of payments from 2005 to 2007 that amounted to around 800,000; is that correct?
- A. Correct.
- Q. And do you remember the exact amount that was paid between 2005 and 2007?
- A. It was just slightly more than \$800,000.
- Q. But you don't remember an exact number?
- A. I remember \$800,000, but I think it was not 800,000 even; it was slightly more than \$800,000.

Exhibit 2, Ross Holliday Tr. at 40: 4-21.

- Q. Okay. So it looks like you sold the property on or about December 30, 2010; is that right?
- Q. And when did those discussions occur; roughly 2 in 2010?
- A. Yeah, really kind of in 2010. My dad had talked to me about it and asked that, you know, I have -- kind of handle it. That was actually one of the first things that he asked me to handle when -- you know, at the time he was getting his transplant. And, you know, they had -- they, you know, had to kind of agree to terms. CSX went back out. So I took it over and negotiated a much higher sales price from them. And they ended up closing.
- Q. Okay. And at the time -- well, obviously, if you look at Exhibit 5, at the time of the closing, you were now the owner of that property; is that correct?
- A. I was, yeah.
- Q. All right. And how did that come about?
- A. In order to help my parents, that -- like I said, they were in dire straights in 2010. My younger brother gifted me the real estate. And I sold it to the railroad, the proceeds going to my father.
- Q. Okay. Did you give anything to your brother for that --
- A. No.
- Q. -- gift?
- A. No.

- A. Yeah.
- Q. Okay. And how much -- is it fair to say, looking at the Seller's Statement, Exhibit 5, that you received a net of \$361,613.39?
- A. Correct.
- Q. Okay. And --
- A. Plus, we retained the deposit, as it shows. So there's really \$371,613.
- Q. Okay. And were all -- was all of that money paid to your father?
- A. All of it was paid to my father.
- Q. And that was in repayment of the loan?
- A. Uh-huh.
- Q. Okay. So, in other words, you didn't pay \$400,000; you paid roughly 371,000 to your father?
- A. That's right. Yeah.

Exhibit 2, Ross Holliday Tr. at 52:24 -- 53:16.

- A. It was paid to my father.
- Q. So understanding that you contend there were some -- there was some service value provided to your parents, let's just talk about just the money right now. As far as actual money paid to your father, as of this date, December 30, 2010, you got roughly 800,000 paid, back in 2005 to 2007, correct?
- A. Yep.
- Q. Plus the roughly \$371,000 proceeds from the sale of the railroad property; is that correct?
- A. Correct.
- Q. Okay. So as of December 30, 2010, or shortly thereafter, you have repaid roughly -- what is that, \$1,071,000 on the loan, \$2 million loan, made by your parents? MR. NETTLES: One million 176. BY MR. TILLMAN:
- Q. I'm sorry. You've roughly paid one million 171 on the loan?
- A. Yeah, slightly more than that. Because, like I said, it was slightly more than 800,000. But, yes.
- Q. Okay.
- A. In direct cash payments.

Exhibit 2, Ross Holliday Tr. at 55:8 - 56:4.

He also claims that payments made to NBSC between 2010 and 2016 further satisfied the amounts owed on the Note:

- Q. [Y]our father made a capital contribution to Zeezrom in the amount of about \$1.13 million, or exactly \$1.1 million --
- A. Yeah.

- Q. -- on January 22nd; is that correct?
- A. Yeah.
- Q. And then that money is paid out to satisfy the NBSC account?
- A. Yeah.
- Q. On that same day?
- A. Yeah.
- Q. And at this point, did you consider the \$2 million loan paid in full?
- A. It was paid in full at the time, like I told you, 2010 and '11. There was an agreement that that MR. NETTLES: Six? BY MR. TILLMAN:
- A. Is this Exhibit 7 or 6? That's right, because this was 5.
- Q. Right. I'm sorry. Getting back to Exhibit 6. On January 22, 2016, a payment of \$1,104,374.46 is made from Zeezrom Properties' Wells-Fargo bank account to Synovus Bank; is that correct?
- A. Correct.
- Q. And it's your understanding that that payment was made to completely satisfy the NBSC loan that your father took out in 2004?
- A. That is correct.
- Q. Why was that payment made on this date?
- A. Well, we had closed just a few days prior on another piece of real estate. We sold the property at 1808 Meeting Street and some of the surrounding parcels. And, you know, he owned that property individually, right? That was where Holliday Amusements was. That property was not -- was somewhat managed by Zeezrom, but it was technically -- you know, the ownership -- it was owned by him, as an individual. So when that closed -- I negotiated the sale of that was paid in full. My agreement is that I'd make my best efforts to resolve the obligation to NBSC. So I went out and structured a sale of 1808 Meeting Street. We sold it well, well, well above appraisal to a strategic buyer. And that provided plenty of funds. And we were able to close that out, at that time.

Exhibit 2, Ross Holliday Tr. at 72:11 – 73:6. As such, Defendant Ross Holliday plainly claims that he made payments on the Note in 2005-2007, December of 2010 and January of 2016. S.C. Code § 15-3-130 – entitled “Suits on causes saved from bar of statute by part payment or written acknowledgement” provides:

All actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.

Therefore, the part payments on the Note allegedly made by Defendant Ross Holliday served to restart the period of limitations set forth in S.C. Code Ann. § 36-3-118(b). Thus, the statute of

limitations had not expired at the time Patricia Holliday made her demand for payment in 2017. Further, ten years had not expired since the payments allegedly made by Defendant Ross Holliday were made. For these reasons, not only should Defendant Ross Holliday's motion for summary judgment be denied, but Patricia Holliday should be granted a directed verdict on the defense at trial.

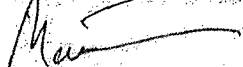
6. Patricia Holliday's breach of contract claim is not barred by the doctrine of laches.

Defendant Ross Holliday asserts that Patricia Holliday's breach of contract claim is barred by the equitable doctrine of laches. The "statute of limitations, rather than laches, is applicable to a legal as opposed to an equitable claim." *Treadaway v. Smith*, 325 S.C. 367, 378, 479 S.E.2d 849, 856 (Ct. App. 1996) citing *Edens v. Edens*, 312 S.C. 488, 435 S.E.2d 851 (1993). "Therefore, laches does not operate to bar a legal claim when the applicable statute of limitations has not run." *Id.* An action for breach of contract is a legal claim. *Id.* As such, the defense of laches does not apply.

CONCLUSION

For the reasons set forth above, Defendant Ross Holliday's motion for summary judgment must be denied.

WOMBLE BOND DICKINSON (US), LLP



Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398

Charleston, South Carolina
September 24, 2019

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2019, a copy of the foregoing *Memorandum in Opposition to Motion for Summary Judgment* was served on the Defendant herein by mailing true and correct copies thereof in the U.S. Mail, postage prepaid as follows:

F. Truett Nettles, II, Esq.
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405

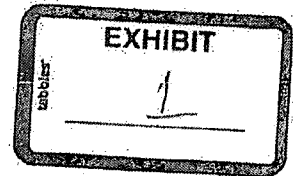
Alice F. Paylor, Esq.
Bijan Ghom, Esq.
Rosen Hagood, LLC
P.O. Box 893
Charleston, SC 29402

Attorneys for Defendant

WOMBLE BOND DICKINSON (US), LLP

Michael Miles

FILED
2019 SEP 24 PM 4:20
CLERK OF COURT
J. A. ARISTIDE



PROMISSORY NOTE

June 18, 2004

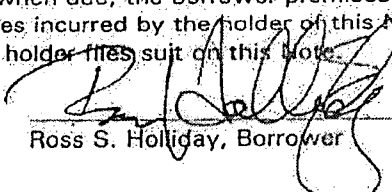
\$2,000,000

FOR VALUE RECEIVED, Ross S. Holliday, the undersigned borrower, promises to pay to Warren P. Holliday and Patricia B. Holliday, as joint tenants or the survivor of them, or order, the sum of Two Million Dollars (\$2,000,000) together with interest on the unpaid balance at the rate equal to the prime rate of National Bank of South Carolina plus one-half percent (1/2%), payable upon demand. Provided, however, in the event demand is made for payment of this Promissory Note ("Note"), then borrower shall have six (6) months following the date of such demand to complete repayment of this Note. The borrower will make all payments at such place as the holder designates in writing.

At the option of the holder of this Note until payment in full or maturity, upon default, all monies payable under this Note are due and immediately payable. The Note is in default if any payment remains unpaid beyond the date six (6) months following the date of demand for payment.

The borrower may prepay all or part of the loan without penalty. Each payment first applies to the payment of accrued interest and the balance of each payment applies to the payment of principal.

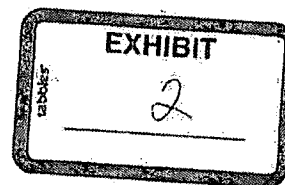
If the borrower does not pay this Note when due, the borrower promises to pay all costs of collection and reasonable attorneys fees incurred by the holder of this Note on account of such collection, whether or not the holder files suit on this Note.



Ross S. Holliday, Borrower

773348

Deposition of:
Ross Holliday



Holliday
vs.
Holliday

CASE NO. 2017-CP-10-872

September 19, 2018



Magnolia Reporting, LLC

P.O. Box 61011
North Charleston, SC 29419
(843) 303-9141
www.MagnoliaReporting.com



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Patricia B. Holliday,

Plaintiff,

v.

Ross S. Holliday,

Defendant.

DEPOSITION OF: ROSS S. HOLLIDAY

DATE TAKEN: Wednesday, September 19, 2018

TIME: 10:00 A.M.

PLACE: Womble Bond Dickinson
12 Exchange Street
Charleston, South Carolina

REPORTED BY: MARY ANN RIDENOUR, RPR, CLR
Registered Professional Reporter,
Certified LiveNote Reporter
and Notary Public

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 2 1 APPEARANCES 2 3 REPRESENTING THE PLAINTIFF: 4 MATTHEW E. TILLMAN, ESQUIRE 5 Womble Bond Dickinson 6 5 Exchange Street 7 Charleston, South Carolina 29401 8 matthew.tillman@wbd-us.com 9 10 REPRESENTING THE DEFENDANT: 11 F. TRUETT NETTLES, II, ESQUIRE 12 Finkel Law Firm 13 4000 Faber Place Drive, Suite 450 14 North Charleston, South Carolina 29405 15 tnettles@finkellaw.com 16 17 ALSO PRESENT: 18 PATRICIA B. HOLLIDAY 19 20 21 22 23 24 25	Page 3 1 INDEX 2 3 Testimony of Ross S. Holliday 4 Direct Examination by Mr. Tillman.....4 5 CERTIFICATE.....80 6 7 INDEX OF EXHIBITS 8 9 Plaintiff's Exhibit No. 1 - Promissory Note.....14 10 Plaintiff's Exhibit No. 2 - NBSC Loan Agreement.....23 11 Plaintiff's Exhibit No. 3 - 7/12/17 Letter to Ross 12 Holliday from Matt 13 Tillman.....39 14 Plaintiff's Exhibit No. 4 - 5/8/18 Email from Zions 15 Bank.....40 16 Plaintiff's Exhibit No. 5 - Seller's Statement.....49 17 Plaintiff's Exhibit No. 6 - Wells Fargo Summary.....68 18 Plaintiff's Exhibit No. 7 - Financial Declaration of 19 Patricia Holliday.....77 20 21 22 23 24 25 STIPULATIONS It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent:
Page 4 1 (The deposition commenced at 9:55 a.m.) 2 ROSS HOLLIDAY, SWORN. 3 DIRECT EXAMINATION BY MR. TILLMAN: 4 Q. Mr. Holliday, I'm Matt Tillman. I represent 5 your mother in this lawsuit involving the 2004 note. 6 Have you ever had your deposition taken 7 before? 8 A. I have. 9 Q. In South Carolina? 10 A. I have. 11 Q. Okay. Well, I'll go over the rules. This 12 may be repetitive for you, but let me go over the rules 13 for you so that you -- in case you've forgotten them. 14 Don't answer any question that you don't 15 understand. If you don't understand my question, 16 please ask me to rephrase it for you. Do you 17 understand that? 18 A. Uh-huh. Yep. 19 Q. Okay. Unless your attorney instructs you not 20 to answer, you do need to answer the question. The 21 rules require the witness to answer the question unless 22 instructed otherwise; is that fair? 23 A. That's fair. 24 Q. Okay. If you need to take a break at any 25 time, I'm happy to do it. Just tell me you need to	Page 5 1 take a break and we'll do that, okay? 2 A. Okay. 3 Q. All right. And also, one last instruction 4 is, don't look to anybody else for explanations of 5 questions and so forth. You can only ask me to 6 rephrase my question. So if you don't understand the 7 question, just ask me to rephrase it; is that fair? 8 A. Maybe. 9 Q. Well, it's the rule. 10 A. I have the right to ask counsel, I assume. I 11 can't, or no? 12 MR. NETTLES: I can't coach you during the 13 deposition. We can go out and confer, if there's 14 something that comes that up we were not aware of. But 15 this is wide open, so we're ready to go. 16 THE WITNESS: All right. 17 BY MR. TILLMAN: 18 Q. Also, just for the court reporter's help, 19 don't talk over me and I won't talk over you. In other 20 words, let me finish my question and -- 21 A. Sure. 22 Q. -- I'll let you finish your answer; is that 23 fair? 24 A. Okay. 25 Q. Okay. Tell me about the depositions that

2 (Pages 2 to 5)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 6 1 you've given in the past. What did the cases 2 involve? 3 A. A case regarding our property management 4 activities on a property. 5 Q. Was that in South Carolina? 6 A. That was in South Carolina, yeah. 7 Q. And who -- were you the property manager? 8 A. I was. 9 Q. And was it you individually or an entity? 10 A. I individually was, obviously, in the 11 deposition. But it was the entity; it was not me, 12 specifically. It was the entity that was involved in 13 the lawsuit. 14 Q. Okay. And what company was that? 15 A. Zeezrom Properties. And specifically, I 16 think it was 2233 Highway 17 North, LLC, which is one 17 of the properties and companies that is managed by 18 Zeezrom. 19 Q. So 2233 was the plaintiff in that case? 20 A. No. 21 Q. Who was the plaintiff? 22 A. We were the defendant. 23 Q. Right. Who was the plaintiff? 24 A. I don't remember the plaintiff's name. 25 Q. What year was it, roughly?	Page 7 1 A. Probably five years ago, but I can't tell you 2 exactly when. 3 Q. Right. And was it in Charleston County? 4 A. Yes. 5 Q. Okay. Have you ever, you or your companies, 6 ever been involved in any other lawsuits? 7 A. I, myself, I have. Companies -- the ones 8 that I manage or my own companies? 9 Q. Either one. 10 A. Yes. 11 Q. Okay. First, let's talk about the lawsuits 12 against you, individually. And I know about the 13 litigation going on right now with Mr. Nettles as your 14 attorney. You don't have to go over that. 15 A. Okay. 16 Q. Are there any other lawsuits you've been 17 involved in, individually? 18 A. Over the years, yes. 19 Q. Okay. What's the first one that comes to 20 your mind? 21 A. I mean, ten, 12 years ago, we had a lawsuit 22 in a dispute over buying a piece of property. 23 Q. Was that in South Carolina? 24 A. No. 25 Q. Was it in Utah?
Page 8 1 A. It was. 2 Q. Okay. What county was that lawsuit in? 3 A. Most likely, Salt Lake County, maybe Utah 4 County. But I believe it's Salt Lake County. 5 Q. All right. Who was the dispute with? 6 A. A land developer selling us land. 7 Q. Okay. And what was the nature of the 8 dispute? 9 A. They broke the contract because the value of 10 the land had substantially increased and they did not 11 want to sell it to us at the lower contracted amount. 12 Q. Okay. What other lawsuits have you been 13 involved in, individually? 14 A. As an individual, that -- let me -- let me 15 back up to the other one for a second. That was 16 actually our real estate company suing that land 17 developer, so that was not me as an individual suing. 18 Q. I understand. 19 A. As an individual, I don't believe I've been 20 involved in one, other than the current litigation here 21 in Charleston County, at this time. 22 Q. What was the name of the company that was 23 involved in the litigation in Utah? 24 A. Holmes Homes. 25 Q. H-o-l-m-e-s, Homes?	Page 9 1 A. Yes. And whether it was them or one of the 2 subsidiary companies, I can't say for sure. It was a 3 long time ago. 4 Q. Have any of the companies that you manage or 5 own in South Carolina been involved in any litigation? 6 A. Zeezrom Properties has been, yeah. 7 Q. Okay. And what were those? Let's start with 8 the first one that comes to your mind. 9 A. Richard's Bar and Grill. There was an event 10 there, and there was an effort, a misguided effort, to 11 try to include us as the property owner and place 12 liability upon us, even though we were not directly 13 involved and had no operational control on their 14 business. We weren't involved in their business. It 15 was a reaching effort to try to include us in a lawsuit 16 over a fight that occurred in the bar. 17 Q. Okay. And that was in Charleston County? 18 A. That was in Charleston County. 19 Q. Any others that you can think of involving 20 Zeezrom? 21 A. I think there was one additional case around 22 Richard's Bar, but I'm not really clear about all the 23 details on that. 24 Q. Okay. And was that in Charleston County? 25 A. It was in Charleston County.

3 (Pages 6 to 9)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 10 1 Q. Can you just -- any other lawsuits involving 2 Zeezrom? 3 A. Not during the time I was managing it. 4 Q. Okay. How about any companies that you own 5 in South Carolina, have they been involved in any 6 lawsuits? 7 A. No. 8 Q. Okay. Explain to me what Zeezrom does. What 9 is its business? 10 A. Zeezrom is a company that holds individual 11 properties. It's kind of a real estate holding 12 company. And its main assets are a number of LLC's 13 that individually own properties. And it oversees the 14 management, rent collection, just the real -- general 15 real estate activities of those properties. 16 Q. Okay. 17 A. So leasing activities, just everything needed 18 to, you know, run a small kind of boutique real estate, 19 you know, leasing company. 20 Q. And who are the owners or the members of 21 Zeezrom, LLC? 22 A. It was Warren Holliday. 23 Q. Your father, Warren Holliday? 24 A. My father, Warren Phillip Holliday, yeah. 25 And, now, I am the owner, and my brother, Lea Holliday,	Page 11 1 Warren Lea Holliday, Lea, L-c-a, Holliday, are the 2 owners of Zeezrom Properties. 3 Q. When did you and your brother become owners 4 of Zeezrom? 5 A. It was after my father passed, through his 6 estate. 7 Q. Okay. And so Zeezrom fulfills the property 8 management duties for its various LLC's under it; is 9 that fair? 10 A. Correct. 11 Q. And prior to your father's passing, was he 12 the sole owner of Zeezrom, LLC? Excuse me, sole member 13 of Zeezrom, LLC? 14 A. Yes. 15 Q. Okay. Let's talk about just a few background 16 questions. Did you go to college? 17 A. Yes. 18 Q. Where did you go? 19 A. I went to Brigham Young University. I later 20 went and got an MBA at Thunderbird, which is an 21 international business school in Glendale, Arizona. 22 Q. Okay. Have you had any other post high 23 school education? 24 A. No. 25 Q. And did you go to high school here in
Page 12 1 Charleston? 2 A. I did. 3 Q. Where did you graduate? 4 A. I went to Wando High School, in Mount 5 Pleasant. 6 Q. Okay. What year did you graduate? 7 A. 1992. 8 Q. And today you live in Salt Lake City; is that 9 right? 10 A. I live in a suburb of Salt Lake City. 11 Q. And are you married? 12 A. I am married. 13 Q. What's your wife's name? 14 A. Her name is Kelly. 15 Q. Do you have any children? 16 A. I do have four children. 17 Q. All right. Are you involved in any social 18 clubs or churches? 19 A. I am a member of a church, the Church of 20 Jesus Christ of Latter Day Saints. I'm a member -- by 21 social clubs, like professional organizations or -- 22 Q. Professional organizations, social clubs, 23 like the Elks Lodge, those type things? 24 A. Oh, yeah; not necessarily social clubs, but 25 professional clubs in the home building industry. And	Page 13 1 I'm a member and involved in the leadership of those 2 organizations. 3 Q. Okay. Can you list those organizations for 4 me, as best you can recall? 5 A. So I'm a national director for the National 6 Association of Homebuilders. 7 Q. Okay. 8 A. I am the president-elect of the Salt Lake 9 Home Building Association. 10 Q. Okay. 11 A. Previously, I've been on the board of the 12 State of Utah's Home Building Association. 13 Q. Okay. 14 A. I'm appointed by the governor of the State of 15 Utah as a construction commissioner. And I am the vice 16 chairman of the Construction Commission for the State 17 of Utah. 18 Q. Okay. Any others? 19 A. None others that come to mind, no, sir. 20 Q. All right. So I take it that you are a 21 homebuilder in Utah? 22 A. Yes. 23 Q. And do you have a general contractor's 24 license there? 25 A. I do.

4 (Pages 10 to 13)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 14 1 Q. And what is the name of the company that 2 you -- do you own the company? 3 A. I own a number of construction companies. 4 Q. And they're all in Utah? 5 A. Yes. 6 Q. Do you do any construction work here in South 7 Carolina? 8 A. Yes, for Zeezrom Properties. We remodel the 9 properties. I don't do the construction, but I 10 organize it. We typically would hire a local 11 contractor who carries out the work here. 12 Q. Okay. So none of your Utah companies do the 13 work here in South Carolina? 14 A. No. 15 Q. All right. I'm going to hand you what we're 16 going to mark as Exhibit No. 1. 17 (Plaintiff's Exhibit No. 1 marked for 18 identification.) 19 BY MR. TILLMAN: 20 Q. Just ask, can you identify Exhibit 1 for me? 21 A. This is an estate planning document that my 22 father and I put together. 23 Q. Okay. What's it titled? 24 A. It is titled, Promissory Note. 25 Q. Okay. Is that your signature on the	Page 15 1 document? 2 A. It appears to be. 3 Q. Do you remember signing this document? 4 A. Well, not this exact document. But a 5 document like this, yes. 6 Q. Okay. Does this document -- well, do you 7 remember signing a promissory note dated June 18, 2004, 8 with a \$2 million principle amount? 9 A. We drafted an estate document together, to 10 memorialize an agreement that he and I had, yes. 11 Q. Okay. And do you remember signing that 12 document? 13 A. Yes. 14 Q. Okay. Does this appear to be an accurate 15 copy of that document? 16 A. Could be. I can't say for sure, because I 17 don't -- I don't know the source of it. I don't 18 know -- I don't know -- I don't know much about it. 19 Q. Well, if you want to take a minute and read 20 it, and let me know if there are any terms in this 21 document that you think are -- that are inaccurate or 22 changed from when you signed it? 23 A. There was a document like this, but it was 24 marked "paid in full." 25 Q. I understand that. But I'm talking about at
Page 16 1 the time -- 2 A. But it was changed. And it said, "paid in 3 full." 4 Q. I understand. At the time you signed this 5 document, is this what it looked like? 6 A. Yes. 7 Q. Okay. Does this document reflect a \$2 8 million loan that was made to you? 9 A. Not just a loan, but more of an equity 10 agreement that was had by my father and myself. 11 Q. Okay. Did you receive \$2 million from your 12 father? 13 A. Yes. 14 Q. All right. As a result of receiving that \$2 15 million, did you sign this document? 16 A. Yes. 17 Q. Okay. I'm going to call this -- I understand 18 you're calling it an estate document. I'm just going 19 to call it "the note"; is that fair? 20 A. If that's simpler for you, that's fine. 21 Q. Okay. So when I talk about "the note," I'm 22 talking about this document. 23 A. Okay. 24 Q. Who negotiated the terms of the note? 25 A. My father and I did.	Page 17 1 Q. And that would be Warren Phillip Holliday? 2 A. Warren Phillip Holliday. 3 Q. And, generally, what was the purpose of this 4 note and the loan? 5 A. To buy a construction company in Salt Lake 6 City. That was the purpose of the funds. 7 Q. And who was making the purchase of the 8 construction company? 9 A. Initially, Warren Holliday was. And it 10 became clear that he would have to sign on the personal 11 guarantees of the business, which would have been 12 construction loans in excess of \$40 million. And he 13 was not, at that time, willing to do that. 14 Q. So is it fair to say that you're the one that 15 bought into the business? 16 A. Yeah. At his recommendation, I bought into 17 the business, would work there and manage it. 18 Q. And did Warren Phillip Holliday ever have an 19 ownership interest in that business? 20 A. Not a -- not a formal one. I was the one 21 that was, you know, listed on the -- in the business, 22 so to speak. But he and I had agreed that if it went 23 well that we would -- there would be a sharing of 24 profits with him after some period of time. 25 Q. And was that agreement regarding sharing

5 (Pages 14 to 17)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 18 1 profits put in writing anywhere? 2 A. No. This was just a private, you know, 3 agreement between he and I. 4 Q. Did you actually receive the \$2 million? 5 A. Yes. 6 Q. And how did you receive it? 7 A. I would assume it was a wire. I'm not sure 8 if the funds were wired or cashier's check. But it 9 would have been in 2004. 10 Q. Okay. And regardless of how you received the 11 funds, who provided the funds to you? 12 A. Warren Holliday, exclusively. 13 Q. And did he do that from his own bank account 14 or do you recall? 15 A. No, he did not. He borrowed the money 16 against his business. 17 Q. Okay. And who did he borrow the money 18 from? 19 A. NBSC, the National Bank of South Carolina. 20 Q. So did the money come directly to you from 21 NBSC or did it go to Warren first and then NBSC or -- I 22 mean, I'm sorry, and then to you? 23 A. I don't recall. 24 Q. Okay. Did you -- 25 A. I think -- let me think about that for a	Page 19 1 minute. I believe the money would have been sent 2 directly from NBSC, on his behalf. 3 Q. Okay. Do you have any of the documents that 4 show that? 5 A. No, not from 2004. 6 Q. Okay. Did you take the money and invest it 7 in the construction company? 8 A. Yes. 9 Q. And what was the name of the construction 10 company? 11 A. It was Holmes Homes. 12 Q. And are you still an owner of that company? 13 A. I am not. 14 Q. And who were -- okay. First of all, is it 15 fair to say you were an owner of that company? 16 A. Yes. 17 Q. And what percentage interest did the two 18 million buy? 19 A. A third of the business. 20 Q. And did you invest in the business in 2004? 21 A. Yes. 22 Q. Okay. What happened to that investment, just 23 generally, in your words? 24 A. Things went well. And, you know, it was 25 profitable, made good money, all the way up until the
Page 20 1 end of 2007, which was the start of the real estate 2 crisis. 2008 through 9, it became worse and worse. 3 And, at that time, you know, the business was extremely 4 distressed, as has been well documented as to what 5 happened during that time period, across -- just kind 6 of across the country. But we were no different. 7 Q. Did the business go under? 8 A. No. It teetered. It teetered. It went 9 right to the edge. But it also ultimately ended up 10 surviving. 11 Q. Is it still a going concern? 12 A. It is a going concern. 13 Q. But you are no longer an owner? 14 A. I am no longer an owner. 15 Q. Were you bought out of your ownership 16 interest? 17 A. I don't know if I'd call it "bought out." 18 Q. Let me change the way I ask that. 19 A. Yeah. 20 Q. How did you go about getting rid of your 21 ownership interest? 22 A. I exited the business. 23 Q. Okay. 24 A. I exited the business in exchange for a 25 release of debt obligations of the business and removal	Page 21 1 of personal guarantees. 2 Q. Okay. Did you receive any funds upon your 3 exit? 4 A. Nominal. Very, very small. 5 Q. How much? 6 A. I think probably less than \$100,000. 7 Q. When did that occur? 8 A. Primarily -- we memorialized the agreement, I 9 want to say 2010. 10 Q. Okay. And is Holmes Homes a Utah entity? 11 A. They are. 12 Q. Do they do any work in South Carolina, as far 13 as you know? 14 A. No. 15 Q. I'm going to hand you what is going to be 16 marked as Exhibit 2. Well, hold on. Let's stick with 17 Exhibit 1 for a minute. 18 Are the terms set forth on Exhibit 1 an 19 accurate depiction of the repayment terms that you 20 agreed upon with your father? 21 A. There were other implied items that were not 22 included herein. 23 Q. Okay. What are the -- well, first of all, 24 did you agree to the terms that are in this document? 25 A. Generally, yes.

6 (Pages 18 to 21)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 22 1 Q. Okay. And so what were the other implied 2 terms to which you just referred? 3 A. Probably the biggest one was that, you know, 4 I was running this business and, you know, the 5 expectation was that it would -- you know, both his and 6 mine, that it would be highly profitable, and that 7 should it -- you know, should -- should it make a lot 8 of money, that I would share in that, that equity, with 9 my father. 10 Q. And when you say "this business," you're 11 referring to Holmes Homes? 12 A. Holmes Homes, yeah. 13 Q. And were -- did you ever receive profit 14 distributions from Holmes Homes, when times were 15 good? 16 A. Yes. And those were used to -- those were 17 used to pay back the loan. 18 Q. Okay. When did you receive those profit 19 distributions? 20 A. 2005 through 2007. 21 Q. Okay. And roughly how much did you receive 22 from Holmes Homes as profit distributions? 23 A. I don't know -- I don't know the exact 24 amount, but I just know the amount that was used to pay 25 the note back.	Page 23 1 Q. Okay. What was the amount used to pay the 2 note back? 3 A. Paid in excess of \$800,000 back to Warren 4 Holliday. 5 Q. And was that from 2005 to 2007? 6 A. Yes. 7 Q. And that money came from profit distributions 8 from Holmes Homes? 9 A. Yeah, went to me. And I paid it to Warren 10 Holliday directly. 11 Q. Did you pay all of the profit distributions 12 from Holmes Homes back to Warren Holliday or did you 13 retain some? 14 A. I retained a small amount. 15 Q. And all of those payments were made to Warren 16 Holliday between 2005 and 2007? 17 A. Yes. 18 Q. Is that fair? 19 A. Yep. 20 Q. Do you have any record of those payments? 21 A. No. Unfortunately, the bank is not able to 22 retrieve statements after seven years. 23 Q. Okay. Now let's go to Exhibit 2. 24 (Plaintiff's Exhibit No. 2 marked for 25 identification.)
Page 24 1 BY MR. TILLMAN: 2 Q. And this, Mr. Holliday, is a set of documents 3 that you all produced in discovery. And just ask for 4 you to review it and let me know what Exhibit 2 is. 5 A. Appears to be a loan agreement between Warren 6 Holliday and National Bank of South Carolina. 7 Q. Okay. I'm sorry to keep doing this. Let me 8 jump back to Exhibit 1 for just a minute. I missed one 9 question on that. 10 Did you understand, at the time that you 11 signed this document entitled Promissory Note, that 12 Patricia Holliday was a payee on the note? 13 A. No, I -- my recollection was that this was an 14 agreement between my father and I. But for estate 15 planning purposes, in the event that he passed away 16 suddenly or unexpectedly, there would be something at, 17 you know, at that time or shortly thereafter, that 18 would indicate a need to figure out how to -- how to 19 return some funds. 20 Q. Okay. But did you understand that regardless 21 of the background, that she was a payee on the actual 22 note? 23 A. No. 24 Q. Okay. So it comes to you as a surprise that 25 the note had her as a payee?	Page 25 1 A. Yes. 2 Q. Did you read the note when you signed it? 3 A. Yes. But it was, what, 14 years ago? 4 Q. Okay. 5 A. So... 6 Q. But you're not contesting that this Exhibit 7 1 -- 8 A. It has her name on it, yeah. 9 Q. You're not contesting that it's been altered 10 in any way, is that correct, from the time you signed 11 it? 12 A. I'm not saying it's been altered. But I'm 13 not saying it's a genuine copy. That I don't know. 14 Q. Okay. Do you have a copy of this note that 15 doesn't look like this? 16 A. That doesn't look like that? I don't believe 17 so, no. 18 Q. Okay. Back to Exhibit 2. These are the NBSC 19 loan documents; is that correct? 20 A. Correct. 21 Q. And is this the loan by which the \$2 million 22 was borrowed to fund the loan to you? 23 A. Correct. Yes. 24 Q. And is it fair to say that 2233 Highway 17 25 North, Mount Pleasant was put up as collateral for this

7 (Pages 22 to 25.)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 26 1 loan? 2 A. I'd have to look through the loan documents. 3 At some point with NBSC, it was. And -- but that was 4 my understanding. 5 Q. Okay. Do you know who owned 2233 Highway 17 6 North, Mount Pleasant at the time? 7 A. My father did. 8 Q. And do you know who owns that property now? 9 A. I do. 10 Q. You own it personally or through a company? 11 A. We own it through Zeezrom Properties. 12 Zeezrom Properties owns the LLC that holds title to 13 that property. 14 Q. Okay. And are you aware that your father -- 15 well, let's just look at the document. If you'd flip 16 over to the portion of this exhibit that is entitled, 17 Guaranteed By Corporation. 18 A. Yes. 19 Q. Okay. Do you see that? 20 A. Yep. 21 Q. Okay. What corporation guaranteed this 22 loan? 23 A. It says, Holliday Amusement Company. 24 Q. And it's signed by your father as president; 25 is that fair?	Page 27 1 A. That is fair. 2 Q. And do you know who owned Holliday Amusement 3 Company, Inc. at the time? 4 A. Yeah, my father, Warren Holliday, 5 exclusively. 6 Q. All right. Did you have to provide any 7 information or documents as part of the loan 8 application process for this loan? 9 A. Not -- not specifically, as forward it to the 10 bank. But they wanted to understand the intent of the 11 source of funds, where they're going to be used for, as 12 you can imagine. So there was discussion regarding 13 where the funds would be utilized. 14 Q. Okay. Did you have direct conversations with 15 NBSC? 16 A. Not -- not early in 2004, no. 17 Q. Did you -- 18 A. Later, I did. 19 Q. Okay. When you say "later," when? 20 A. I met with my father. And it was Eddie 21 Tuttle, who was a branch manager in charge of preparing 22 the loan packages. We met a number of times. 23 Q. And was that before the money was loaned or 24 after? 25 A. It was probably -- yeah, it was after.
Page 28 1 Q. And what was the purpose of the meeting? 2 A. Just generally, how are things going? You 3 know, wanted an update. 4 Q. Did the bank ever attempt to call that loan? 5 When I say "that loan," I mean the NBSC loan. 6 A. No. There was never -- they never made a 7 demand for payment or to terminate the loan. It would 8 roll over every year or two. It was kind of more like 9 a line of credit loan. So you'd have to, in essence, 10 kind of reapply. And -- but, no, they never -- they 11 never said they didn't want to make the loan. They, 12 you know, they made a continuous loan from 2004, for 13 quite some time. 14 Q. And how many times did you meet with Eddie 15 Tuttle? 16 A. I don't recall an exact number, but probably 17 less than ten. 18 Q. Okay. And when did those meetings occur, 19 roughly? You can just give me years. 20 A. Yeah, in that -- you know, during the 2000s, 21 leading up to -- I don't know when he -- he exited the 22 bank, kind of retired, in essence. So I don't know. 23 Kind of through the 2000s. 24 Q. And the 800,000, roughly 800,000 that you say 25 you paid to Warren Holliday between 2005 and 2007, was	Page 29 1 that paid directly to him or was it paid to NBSC? 2 A. It was paid to Warren Holliday. 3 Q. Okay. Do you know if that money was then 4 paid to NBSC? 5 A. I believe it was. 6 Q. Do you have any documentation showing that, 7 one way or another? 8 A. No. 9 Q. Did you have any discussions with NBSC after 10 you exited Holmes Homes? 11 A. Not immediately thereafter. But we had a 12 reapplication of the loan where we had to reapply for 13 the loan. Like I said, it was like a line of credit. 14 So, yeah, met with them. 15 Q. Did you ever have to disclose to NBSC that 16 you had exited Holmes Homes? 17 A. No. It was never -- never a concern for 18 them. 19 Q. Okay. And I'm trying to understand that. I 20 think your testimony was that you were meeting with 21 NBSC because they were wanting to understand what was 22 going on with the loan funds, or did I mishear that? 23 A. Not -- not with the loan funds. I mean, they 24 wanted to know the nature of where the funds were 25 going. But they were well collateralized. And so, no,

8 (Pages 26 to 29)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 30 1 their -- you know, they would just meet, you know, see 2 if we had other needs, did we have other lending needs? 3 We would meet with them, like I said, when it was time 4 to reup the loan. So we would just have kind of normal 5 meetings with them. They'd ask us to, you know, send 6 them stuff. Hey, send us a tax return. We've got to 7 reup the loan. And, you know, there were -- at times, 8 they required an application to be made. 9 Q. And did you handle filling out the 10 application or did your father? 11 A. Starting around 2010, I managed all of that 12 exclusively, as my father became very ill. 13 Q. Do you have any of those documents? 14 A. The only documents we have are the ones that 15 have been provided so far. 16 Q. Do you know how much was still owed on the 17 NBSC loan when you started managing it? 18 A. I don't know the exact amount. 19 Q. Do you have a ballpark figure? 20 A. I -- a million two, a million three. But 21 I -- like I said, I don't recall exactly. It would 22 depend exactly when you would consider that I took 23 over. You know, like I said, my father was sick in 24 2010. That's where I became involved, towards the end 25 of 2010, in really running his business affairs.	Page 31 1 Q. Okay. So let's be more precise, then. 2 Starting in -- beginning in 2011, you were now running 3 your father's affairs; is that fair? 4 A. Yes. Yeah. 5 Q. At that time, how much was still owed on the 6 NBSC loan? 7 A. I don't know exactly, at that point of time. 8 I don't know. 9 Q. Okay. And you gave me a 1.2 to \$1.3 million 10 figure. Was that when you first started running your 11 father's affairs or was it later on, or do you 12 remember? 13 A. I don't. I'd have to try to go look that up 14 or find a way to get back -- or, you know, back to that 15 point in time. But I don't know that exactly, at that 16 time. 17 Q. Okay. On Exhibit 1, the Promissory Note, did 18 you and your father ever alter this note in writing, in 19 any way? 20 A. He had provided, at a later date, that it was 21 paid in full. 22 Q. Is that the only alteration to the note that 23 you can recall? 24 A. That is my understanding. 25 Q. All right. And when you say he provided that
Page 32 1 it was paid in full, what does that mean to you? 2 A. That I had no obligation to him for this 3 amount of money. 4 Q. Did he actually write "paid in full" on the 5 note or did he give you a separate satisfaction? 6 A. I believe -- I don't recall exactly. But 7 there was a moment in time when the -- when the NBSC 8 loan was paid off, where, you know, I had gone above 9 and beyond in resolving this. 10 Q. Did your father give you anything in writing 11 that denoted that this note was paid in full? 12 A. There was a copy of the note that said "paid 13 in full." 14 Q. And is it fair to say that you don't have 15 that copy in your possession? 16 A. I don't have it in my possession, no. 17 Q. Did he give it to you? 18 A. Yes. 19 Q. What happened to it? 20 A. We don't know. We're trying to find it. 21 Q. Do you -- well, what did you do with it 22 immediately after you got it? 23 A. He -- he had actually retained it. 24 Q. So -- okay. Was it or was it not ever given 25 to you?	Page 33 1 A. It was. 2 Q. It was physically given to you? 3 A. Yeah. 4 Q. Okay. After it was physically given to you, 5 what did you do with it? 6 A. I believe it was placed in a file in our 7 office. 8 Q. When you say "our office," where is that? 9 A. The office where we manage Zeezrom Properties 10 and Holliday Amusements, our Charleston office. 11 Q. What's the address of that office? 12 A. At the time, it was 1808 Meeting Street. 13 Q. And fair to say you don't know what happened 14 to it after that? 15 A. No. We moved. 16 Q. Okay. 17 A. We moved. A lot of things were cleaned out, 18 as we moved. 19 Q. And did your mother ever mark the note paid 20 in full or give you a satisfaction of the note? 21 A. No, because she wasn't involved in it. 22 Q. Did your mother ever verbally agree to 23 satisfy the note? 24 A. She had told me, at the time that my father 25 was very sick, that her and my father felt that there

9 (Pages 30 to 33)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 34 1 was no further obligations required. 2 Q. Okay. And when was that? 3 A. 2010. 4 Q. Is 2010 roughly the time frame when your 5 father agreed to satisfy the note? 6 A. Yes. 7 Q. Is that roughly the time frame where you 8 received the written satisfaction of the note? 9 A. No, written satisfaction was later. 10 Q. Okay. Was it just prior to your father's 11 passing? 12 A. No, it -- well, it was substantially before 13 that. It was -- it was given at the time that NBSC was 14 paid off. 15 Q. Okay. Well, that helps. 16 A. Yeah. 17 Q. All right. 18 A. And it -- it was done because, like I said, 19 just to clear up estate items, those kinds of -- those 20 kinds of things. 21 Q. Your -- this -- did you have one conversation 22 with your mother where she agreed to satisfy the note 23 or forgive the loan? 24 A. No, there were multiple. 25 Q. And those occurred in 2010?	Page 35 1 A. Yes. Well, 2010, 2011. 2 Q. Where did those conversations occur? 3 A. In 2010, my father was hospitalized here or, 4 sorry, in Salt Lake City. My mother was with him. She 5 stayed there for a number of months. We had numerous 6 conversations. 7 I began -- I was asked by my mother and 8 father, at that point, to go check in on their business 9 affairs, as he was gravely ill. And so I began to fly 10 back here to Charleston and to manage the businesses, 11 to try to get a pulse as to what was going on. At that 12 time, obviously, you know the businesses weren't being 13 managed well because, you know, my father was absentee, 14 being ill. 15 And it became clear they owed a large amount 16 of money to the IRS through just payments that have not 17 occurred. I'm running the business. They were 18 extremely concerned they were going to lose properties. 19 There were imminent tax liens to be placed on 20 properties and individual income taxes that had not 21 been paid. 22 I mean, my father was extremely ill before 23 2010. So he had kidney failure, was on home dialysis, 24 got a transplant in the spring of 2010. Less than six 25 months later, the kidney failed. So there had been a
Page 36 1 substantial amount of time where the businesses were 2 not being managed and run by either of them, right? My 3 mother didn't step in, when he was sick, to run them, 4 right? I mean, they just kind of floundered. 5 So they were eminently looking at tax liens, 6 losses of property. They were in an emergency 7 situation, asked me to come in and be involved, and try 8 to help. 9 During 2011, I spent almost 32 weeks in 10 Charleston, trying to turn around and keep a ship from 11 sinking, at which time there was, as you would imagine, 12 tremendous gratitude and thanks for keeping them from, 13 you know, really what was a very dire situation. 14 Multiple times staying in her own home, having these 15 conversations with her, that, you know, I had more than 16 met the obligation and satisfied that. And both of 17 them had, obviously, verbally acknowledged that. 18 Q. And these conversations occurred in your 19 parents' home? 20 A. Parents' home, yeah. 21 Q. Roughly, how many conversations did you have 22 in which your mother agreed to forgive the loan? 23 A. More than I could count. 24 Q. And these all occurred in 2010 and 2011? 25 A. That is correct.	Page 37 1 Q. And you did not receive anything in writing 2 from either of them at that time; is that correct? 3 A. No. The note -- my father demanded payment, 4 put a demand for payment, in 2005. 5 That was -- you know, my agreement with him 6 was, we'd get in, I'd get into this business for a 7 year, 2004, and that, you know, as soon as there were 8 profits -- he made a demand in 2004, at the end of 9 2004, 2005, and just early 2005, and said, you know, I 10 need to pay it back. And I began making payments. 11 Q. And that demand, was that in writing? 12 A. No. It was my father, I mean, he called me 13 and said, I need you to pay the loan. 14 Q. And then you paid roughly 800,000; is that 15 correct? 16 A. Yeah, in a series of payments between, you 17 know, '05, '06 and '07. 18 Q. And did he make any further demands on the 19 note after that? 20 A. No. He was very aware what was going on in 21 the real estate market, being that he owned real estate 22 himself. And he understood that I was not, at that 23 time, going to be able to make additional payments 24 after 2007. So... 25 Q. Okay. And is it fair to say that he didn't

10 (Pages 34 to 37)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 38 1 agree to satisfy -- to forgive or acknowledge that the 2 loan was satisfied immediately after that \$800,000- 3 payment? 4 A. No. It was shortly thereafter, in 2010 and 5 '11, when he was in dire need of help and he asked me 6 to run his affairs. And, you know, his biggest concern 7 was paying off NBSC. And so I went to work 8 relentlessly trying to pay off NBSC. 9 So, at that time, he said, Listen, we're 10 square. You don't owe us any more money. I 11 appreciate that you're the only one in our family who 12 can do this and are willing to do it. 13 So I began to run those things, right? And 14 run all those business affairs. And we did that. And 15 we were ultimately able to pay off the NBSC note in 16 January 2016. It was paid in full. 17 Q. It's after that, that you received this 18 written satisfaction? 19 A. Yeah. 20 Q. And the written satisfaction of the note -- 21 and I apologize if this is a repeat. Was that a 22 paid-in-full mark on the note itself or was it a 23 separate document? 24 A. It was on a copy, because the original -- we 25 did not have the original. And it was on a copy. And	Page 39 1 it just said "paid in full." 2 Q. And was it signed by your father? 3 A. No. It just said, "paid in full." 4 Q. I'm going to hand you what we're going to 5 mark as Exhibit 3. 6 (Plaintiff's Exhibit No. 3 marked for 7 identification.) 8 BY MR. TILLMAN: 9 Q. And ask if you recognize this document? 10 A. Yes. 11 Q. Okay. What is Exhibit 3? 12 A. It's an erroneous demand being made to pay a 13 loan to someone that was not owed the money. 14 Q. Okay. Let me ask it this way: Was it a 15 demand from my office for payment on the loan from 16 Patricia Holliday; is that fair? 17 A. It was an erroneous effort to demand payment. 18 Q. Upon receiving this document, Exhibit 3, did 19 you make any payments to Patricia Holliday? 20 A. No, because she was not entitled to any 21 payments. 22 Q. Did you receive this demand in July of 23 2017? 24 A. Yes. 25 Q. Let's take a quick break.
Page 40 1 (Discussion held off the record.) 2 (A brief recess was taken.) 3 BY MR. TILLMAN: 4 Q. We're back on the record. Is it your 5 understanding that at the time Exhibit 1 was signed, 6 and at the time you received the \$2 million loan, that 7 your father expected that that would be repaid? 8 A. Yes. Yeah, he expected to be repaid. 9 Q. All right. And I think it's your contention 10 that you did make payments on that loan, correct? 11 A. Made payments and paid it in full. 12 Q. And we've already talked about one set of 13 payments from 2005 to 2007 that amounted to around 14 800,000; is that correct? 15 A. Correct. 16 Q. And do you remember the exact amount that was 17 paid between 2005 and 2007? 18 A. It was just slightly more than \$800,000. 19 Q. But you don't remember an exact number? 20 A. I remember \$800,000, but I think it was not 21 800,000 even; it was slightly more than \$800,000. 22 Q. Okay. I'm going to hand you what's going to 23 be marked as Exhibit 4. 24 (Plaintiff's Exhibit No. 4 marked for 25 identification.)	Page 41 1 BY MR. TILLMAN: 2 Q. This was a document that we received in your 3 discovery responses. Can you explain to me what this 4 is? 5 A. I had made a request for bank statements 6 and -- from Zions Bank, where I banked at the time, and 7 I no longer bank there, asking them if they could go 8 back and retrieve any old bank statements at that time. 9 And they could not. 10 Q. And the payments to your father between 2005 11 and 2007 were made out of a Zions Bank account? 12 A. Correct. 13 Q. This is the information you were trying to 14 obtain from Zions; is that correct? 15 A. Yes. 16 Q. And is Zions Bank in Utah? 17 A. Yes. 18 Q. And they were unable to find the records; is 19 that correct? 20 A. They just don't keep records that long. 21 Q. Were those payments to your father reflected 22 in any of your personal tax returns or documents given 23 to your tax accountant at the time? 24 A. No. I think they were just payments back to 25 my father.

11 (Pages 38 to 41)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 42 1 Q. So is it fair to say that those payments were 2 not reflected in any of the materials that you 3 submitted to the IRS in your personal tax returns? 4 A. Sure. I earned the income from Holmes Homes, 5 filed taxes based on that income, and then I took the 6 money and I passed the cash on. So, yes, it's 7 reflected in the taxes. Taxes were paid on all of 8 those -- all of those monies. 9 Q. There were no deductions or those repayments 10 weren't treated as some sort of expense; is that 11 fair? 12 A. Right, no. 13 Q. And did you get paid on a K-1 from Holmes 14 Homes or was it some other document or -- I'm sorry, 15 were the payments from Holmes Homes reflected on a K-1 16 or some other IRS document? 17 A. At the end of the year, we would file our 18 corporate filings. And, you know, we had an S corp. 19 We had LLC's. There were a number of entities where we 20 were building and selling. 21 Q. And did those entities separately make 22 distributions to you or was it from one entity? 23 A. Was primarily from one. 24 Q. And that is Holmes Homes? 25 A. Yes.	Page 43 1 Q. And is Holmes Homes an LLC? 2 A. It's an S corp. 3 Q. Do you have any of the records reflecting 4 those payments from Holmes Homes? 5 A. No. 6 Q. Do you have any documents which show payments 7 from yourself to Warren Holliday in the 2005-to-2007 8 time frame? 9 A. No. Being that it's past the seven-year tax 10 window, no. 11 Q. Is it fair to say you didn't personally 12 retain any records from Zions Bank, either in paper 13 form or electronically, from the 2005-to-2007 time 14 frame? 15 A. No. All that stuff's been thrown out and 16 shredded, years ago. 17 Q. Okay. Did you make any other payments on the 18 note and loan other than the roughly 800,000 paid 19 between 2005 and 2007? 20 A. Yes. We had a small piece of property that 21 was sold to CSX Railroad. And those funds were 22 provided to my father. 23 Q. Okay. Any other payments? And those -- that 24 was -- 25 A. It was around 2010. Maybe it was 2011. I
Page 44 1 think it was the end of 2010. 2 Q. Okay. I have some documents on that. We'll 3 look at that. 4 A. Yeah. 5 Q. But were those payments made for the purpose 6 of repaying this \$2 million loan? 7 A. Well, when we had discussed it with my 8 father, he said that we were clear. And I said, Well, 9 you know, the one remaining thing that we have is that. 10 And we provided the extra -- that \$400,000 to him. 11 And, really, at that point, we were done. 12 Q. Okay. And that payment -- 13 A. It resolved. 14 Q. -- was made to your father? That payment -- 15 A. Yeah. Yeah. 16 Q. Do you have any written evidence of that 17 payment? 18 A. We provided that. 19 Q. Okay. Did you make any other payments on 20 this loan, on the \$2 million loan? 21 A. We just finished off the payments to NBSC, 22 made payments through the business activities and paid 23 it off in total in 2016, January 2016. It was paid 24 off. 25 Q. Okay. So other than the 800 -- roughly	Page 45 1 800,000 paid between 2005 and 2007, the proceeds from 2 the sale of the railroad company, the railroad 3 properties, in roughly 2010, and the payments to NBSC 4 in 2016, were any other payments made on this \$2 5 million loan? 6 A. No. Because, like I said, it was satisfied 7 at the time around the railroad, right? I mean, they 8 were -- both acknowledged that, multiple times, that no 9 money -- additional money was owed. I assumed the 10 responsibility to continue to resolve the financial 11 burden with NBSC, took that over, and began making, 12 like I said -- and solved that. 13 Q. Did you personally, not through companies, 14 you personally, make any payments to NBSC? 15 A. Companies I was controlling and managing -- 16 yeah, I -- through those companies, yes. But, no. I, 17 as an individual, Ross Holliday, did not mail NBSC 18 any -- you know, or make any payments to them, no, 19 after -- after the CSX Railroad closing, in that time 20 frame, general time frame, no. 21 Q. Have you requested the NBSC records from that 22 loan? Do you know if your attorney has subpoenaed 23 those records or if you asked for them informally? 24 A. Be more specific. What type of -- 25 Q. The payment records showing how that loan was

12 (Pages 42 to 45)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 46 1 paid off? 2 A. Well, we have it, because I wired the money 3 to them, to pay it off. We had a real estate closing 4 that closed in January. And within a day or two, a few 5 days, we wired -- we asked them for a payoff. They 6 provided us a payoff at NBSC. And we wired them the 7 money and closed out the loan. 8 Q. Did NBSC provide monthly statements to you 9 after you took over the control of your father's 10 affairs? 11 A. Sure. We got monthly bank statements from 12 them, if that's what you mean. They didn't necessarily 13 invoice us for the loan. I think they -- there was a 14 time period where I think maybe they did. They would 15 send kind of a monthly payment, you know, obligation. 16 But didn't seem like they always did that. And I think 17 it was primarily because of the -- yeah, I think they 18 did, for a period of time. 19 Q. And did you retain those documents? 20 A. I wouldn't think so. I don't know. 21 Q. Okay. Well, were the statements being sent 22 to you? 23 A. No, not -- they were sent -- we kept -- you 24 know, they were a South Carolina lender. We kept the 25 payments going to where Zeezrom Properties was located.	Page 47 1 Q. And -- okay. And did you actually see those 2 statements or did they go to someone else? 3 A. We had someone, an office manager, who kind 4 of would handle that kind of stuff, and write those 5 checks, and do that, do those kinds of affairs. We've 6 had multiple, over -- during that time period. And 7 they would just write the check for me. 8 Q. Okay. 9 A. I would authorize them to make that payment. 10 Q. Was the office manager a Zeezrom Properties 11 employee? 12 A. Yeah, they were. They were an employee of -- 13 I don't know if it was technically Holliday. I think 14 it was more Holliday Amusement, actually. 15 Q. And who were those office managers? 16 A. There was a lady named Kathy, who was there 17 in 2010, when I began to be involved in the business. 18 And then we hired Martha Brothers and -- shortly 19 thereafter. I want to say 2011. She was there through 20 2015. And then we went and had a CPA who would come in 21 and actually write the checks, as opposed to having an 22 office manager. 23 Q. Who was the CPA? 24 A. The company is called Business Advisory 25 Services.
Page 48 1 Q. Are they a local Charleston -- 2 A. They are, yeah. 3 Q. Who was the individual with whom you 4 coordinated with Business Advisory Services? 5 A. Her name is Tammera Hale. 6 Q. Are they still -- is that H-a-i-l? 7 A. A-I-e. 8 Q. Okay. And is Business Advisory Services 9 still providing services to -- 10 A. Yeah. 11 Q. -- these various companies? 12 A. Yeah. 13 Q. And do you remember Kathy's last name? 14 A. Bushnell, Bushell, something of that nature. 15 I honestly don't know -- 16 Q. Okay. 17 A. -- the exact spelling. 18 Q. So Business Advisory Services would have 19 received some of these NBSC statements before that loan 20 was paid off; is that fair? 21 A. I don't know that we always received loan 22 statements. We were just consistently making a 23 payment. I think, at different times, there were 24 different amounts. 25 Q. Okay. I'm going to mark as Exhibit 5 a group	Page 49 1 of documents related to the 0.362-acre Meeting Street 2 property. 3 (Plaintiff's Exhibit No. 5 marked for 4 identification.) 5 BY MR. TILLMAN: 6 Q. Can we just call that "the railroad 7 property", is that fair? 8 A. Yeah. 9 Q. Okay. And Exhibit -- 10 MR. NETTLES: Exhibit 5? 11 MR. TILLMAN: 5, yeah. 12 BY MR. TILLMAN: 13 Q. Okay. Just generally tell me the story 14 behind the railroad property, as you remember it. 15 A. They had negotiated for a period of time. 16 They were trying to -- they had -- this is a sliver of 17 grass on Meeting Street, where the railroad runs 18 somewhat adjacent to the property. They needed to 19 change the angle slightly, needed to come onto the 20 property. They had reached out in some form or fashion 21 in 2010, to us, and, you know, just kind of went back 22 and forth. 23 When there were discussions regarding, you 24 know, that we were paid up, talked with my father very 25 specifically and just said, you know -- this -- this

13 (Pages 46 to 49)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 50 1 piece of property was actually owned by my younger 2 brother, Warren Lea Holliday. He was on the title of 3 the property. 4 Q. Okay. When did Warren Lea Holliday become 5 the owner of the property? 6 A. Oh, I don't know, 25 years ago. He was in 7 his probably early twenties. He's 40, early forties. 8 Twenty years ago. At least 20 years ago, maybe 25. 9 Q. Okay. And who owned it before he did, do you 10 know? 11 A. I don't. I don't remember the individual's 12 name. 13 Q. It was somebody related to you? 14 A. No. 15 Q. Do you remember how much Warren paid for the 16 property, Warren Lea Holliday, paid for the property? 17 A. No. 18 Q. And so it sounds like CSX needed this 19 property for some realignment; is that fair? 20 A. Yeah. But they were kind of 21 on-again-off-again. I mean, it was -- it was, quite 22 frankly, kind of a long thing. They weren't a hundred 23 percent sure they needed it, so they went back and 24 forth. I mean, there were a lot of discussions, 25 on-again-off-again, so...	Page 51 1 Q. And when did those discussions occur, roughly 2 in 2010? 3 A. Yeah, really kind of in 2010. My dad had 4 talked to me about it and asked that, you know, I 5 have -- kind of handle it. That was actually one of 6 the first things that he asked me to handle when -- you 7 know, at the time he was getting his transplant. And, 8 you know, they had -- they, you know, had to kind of 9 agree to terms. CSX went back out. So I took it over 10 and negotiated a much higher sales price from them. 11 And they ended up closing. 12 Q. Okay. And at the time -- well, obviously, if 13 you look at Exhibit 5, at the time of the closing, you 14 were now the owner of that property; is that correct? 15 A. I was, yeah. 16 Q. All right. And how did that come about? 17 A. In order to help my parents, that -- like I 18 said, they were in dire straights in 2010. My younger 19 brother gifted me the real estate. And I sold it to 20 the railroad, the proceeds going to my father. 21 Q. Okay. Did you give anything to your brother 22 for that -- 23 A. No. 24 Q. -- gift? 25 A. No.
Page 52 1 Q. Was that gift a taxable event? 2 A. Yeah. There was a gift return and everything 3 filed with it. 4 Q. Why didn't your brother just gift it to your 5 parents, if they were the ones in dire straights? 6 A. Well, I was the one that owed the money, so 7 it made sense for me to -- to -- to, you know, pay my 8 father back. 9 As I had indicated, there were tremendous 10 financial harm going on in the real estate market at 11 that time. I had a very -- I had some very substantial 12 losses, tax losses. And by him gifting it to me, it 13 gave me the opportunity to give my parents more money. 14 Because if he would have sold the property, he would 15 have had a larger tax gain and there would have been 16 less proceeds to go to them. But I had enough to 17 offset the tax, in formal losses. And so it was just 18 an effort to get them more money. 19 Q. All right. So it was gifted to you, for you 20 to use the money to pay on the loan, essentially? 21 A. That's right. 22 Q. And is that what happened? 23 A. Yeah. 24 Q. Okay. So it looks like you sold the property 25 on or about December 30, 2010; is that right?	Page 53 1 A. Yeah. 2 Q. Okay. And how much -- is it fair to say, 3 looking at the Seller's Statement, Exhibit 5, that you 4 received a net of \$361,613.39? 5 A. Correct. 6 Q. Okay. And -- 7 A. Plus, we retained the deposit, as it shows. 8 So there's really \$371,613. 9 Q. Okay. And were all -- was all of that money 10 paid to your father? 11 A. All of it was paid to my father. 12 Q. And that was in repayment of the loan? 13 A. Uh-huh. 14 Q. Okay. So, in other words, you didn't pay 15 \$400,000; you paid roughly 371,000 to your father? 16 A. That's right. Yeah. 17 Q. Okay. Did you -- 18 A. But I also didn't -- you know, I didn't take 19 a commission, right? So, you know, there was all those 20 other factors. So if you factor all the commissions 21 that I've gifted and didn't collect on behalf of this, 22 you know... 23 Q. And when I asked you earlier about whether 24 there was documentation of the payment made to your 25 father, you said, Well, we produced all that.

14 (Pages 50 to 53)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 54 1 I'll be fair to you; I read the documents and 2 I see these documents where you received this money as 3 a result of that sale. But I didn't see documents 4 showing where it was paid over to Warren. Do you 5 recall having any documents where you -- that evidenced 6 the actual payment to Warren Holliday, your father, 7 Warren Holliday? 8 A. I would think -- I would think that there 9 are. Either this money was directly transferred to 10 him -- 11 Q. Okay. 12 A. -- or it came to me and was immediately 13 transferred over. 14 Q. And just based -- and, at this time, were you 15 managing your father's affairs? 16 A. Yeah. 17 Q. And so what bank account of his would it have 18 gone into? 19 A. It would have -- at the time, I think they 20 were using a combination of Bank of South Carolina and 21 NBSC. Those are the banks I -- yeah.. 22 Q. And was this roughly \$371,000 transferred 23 directly to NBSC as repayment of the NBSC loan or was 24 it paid to your father and then -- 25 A. It was paid to my father.	Page 55 1 Q. All right. Was it paid by check to both of 2 your parents or just your father? 3 Let me rephrase that, I'm sorry, because you 4 didn't say it was paid by a check. 5 Was it -- was the money to paid to both of 6 your parents or just to your father? 7 A. It was paid to my father. 8 Q. So understanding that you contend there were 9 some -- there was some service value provided to your 10 parents, let's just talk about just the money right 11 now. As far as actual money paid to your father, as of 12 this date, December 30, 2010, you got roughly 800,000 13 paid, back in 2005 to 2007, correct? 14 A. Yep. 15 Q. Plus the roughly \$371,000 proceeds from the 16 sale of the railroad property; is that correct? 17 A. Correct. 18 Q. Okay. So as of December 30, 2010, or shortly 19 thereafter, you have repaid roughly -- what is that, 20 \$1,071,000 on the loan, \$2 million loan, made by your 21 parents? 22 MR. NETTLES: One million 176. 23 BY MR. TILLMAN: 24 Q. I'm sorry. You've roughly paid one million 25 171 on the loan?
Page 56 1 A. Yeah, slightly more than that. Because, like 2 I said, it was slightly more than 800,000. But, yes. 3 Q. Okay. 4 A. In direct cash payments. 5 Q. Okay. When you say "direct cash payments," 6 was there any other consideration paid at that time, 7 prior to that date? 8 A. Just even items like this, where I didn't -- 9 you know, I forfeited commissions on behalf -- to 10 make -- make deals work and things like that. 11 Q. Have you quantified that nonmonetary 12 compensation that you're contending was paid to -- or 13 was given to repay the loan? 14 A. It would be hard -- would be hard to put an 15 exact number to it. Like I said, 2011, you know, I 16 spent 30 weeks here. So what's that worth? Fly in on 17 Sunday, Monday. Fly out on Thursday, Friday. Spent 30 18 weeks. Someone with my background, my skills, to do 19 something like that, you'd pay hundreds of -- hundreds 20 of thousands of dollars to. 21 Q. At the time, were you employed otherwise? 22 A. I had business activities going, yes. 23 Q. What business activities? And let me be more 24 precise. You were flying in and out of Charleston, 25 helping your parents in the 2010-to-2011 time frame,	Page 57 1 correct? 2 A. Yep. 3 Q. And that's what I'm referring to. 4 A. Right. 5 Q. That's the date -- 6 A. Sure. 7 Q. -- I'm referring to. What business 8 activities did you have going on during that period? 9 A. We had -- upon leaving Holmes Homes, in that 10 kind of early, you know, mid 2010, I began -- I set up 11 a number of other businesses that I began to 12 transition. One was a construction company, Element 13 Homes. One was a -- just a number of -- Holliday 14 Holdings. Just a -- just a number of businesses were 15 set up. And began the work of moving forward in those 16 businesses. 17 Q. And were those all in Utah? 18 A. They were. 19 Q. Did you receive any compensation or profit 20 distributions from any of those companies in 2010 and 21 2011? 22 A. Quite frankly, I didn't get a whole lot of 23 work done in them, you know, honestly. I had to kind 24 of put them aside, in order to come and do this. So 25 there was very little, nominal things coming out of

15 (Pages 54 to 57)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 58 1 that. Unfortunately, I set them up. I began going 2 that way. In the summer of 2010 -- and by -- when my 3 dad -- by the time the fall had come, and he was in 4 Utah, in a hospital, all that had to be put on hold. 5 So, for me, the opportunity cost of that was extremely 6 high. 7 Q. What is Element Construction Company? 8 A. It's build -- build residential properties. 9 Q. Is it still a going concern? 10 A. It is. 11 Q. All right. You still building homes through 12 that entity? 13 A. Uh-huh. 14 Q. Okay. When you were helping your parents 15 out, in the 2010-to-2011 time frame, were you an 16 employee of any of the businesses that your father or 17 both of them owned? 18 A. No. I was not an employee of -- like, 19 Zeezrom Properties or Holliday Amusement, those 20 businesses? 21 Q. Right. 22 A. No, I was not a W-2'd employee. 23 Q. Were you an owner of any of those 24 businesses? 25 A. Not at the time.	Page 59 1 Q. Did you receive any compensation from any of 2 the businesses that your father or mother had an 3 interest in, during the 2010-2011 time frame? 4 A. Obviously, those businesses were -- you know, 5 I paid for a number of my own airfare and whatnot, to 6 help. But they began to transition, as we got them 7 financially stable, to start paying the expenses of the 8 comings and goings. And there were reimbursements of 9 expenses. And then, as it got a little bit further on, 10 it was able to pay a little bit of income to me for 11 just the property management activities, at that time. 12 But, initially, it could not. They were not in a 13 financial position to be able to do that. 14 Q. When did you start receiving income payments 15 from businesses owned by your father and/or mother? 16 A. May have been some nominal amounts in 2011. 17 But, really, it was 2012 that I think it was kind of a 18 consistent thing, amounts of money for property 19 management. 20 Q. Who was receiving equity income, like, profit 21 distributions and those sort of things, from Holliday 22 Amusements in 2010 and 2011? 23 A. My father was. 24 Q. Were you? 25 A. No.
Page 60 1 Q. Same question for Zeezrom Properties. 2 A. Yeah. Just like I said, some nominal ones. 3 And sometimes there were -- you know, listen, the ship 4 was sinking. So there were times when, you know, 5 Holliday Amusement would pay the ticket for me to come 6 out. When I was here, you know, I was helping both 7 businesses. They weren't, you know, exclusive. I 8 mean, we were trying to help both. Sometimes, you 9 know, Zeezrom had a little extra money, then that could 10 reimburse expenses. Sometimes it was Holliday 11 Amusement. We tried to divide that, as we went, to try 12 to not have it just hit one company. But, honestly, 13 really, it got down to who had enough cash to pay, 14 because they were in a bad way. 15 Q. Did any of the companies that are -- that 16 make up part of Zeezrom's portfolio make any payments 17 to you during those 2010-2011 time frame? 18 A. No. 19 Q. All right. Did your father own any other 20 businesses in 2010 or 2011, other than Holliday 21 Amusements or Zeezrom Properties? 22 A. There was a time when there was a little 23 company kind of affiliated with Holliday Amusement 24 called Hope, LLC. But I think that was shut down 25 shortly thereafter.	Page 61 1 Q. What did that company do? 2 A. Same thing. It was just like Holliday 3 Amusement. I think it was just a -- I never really 4 understood why that was set up. But, yeah. But, to my 5 knowledge, there's no others. 6 Q. Did you receive any payments of any -- 7 A. No, no, no. Sorry, let me take that back. 8 Warren Holliday did have ownership in a company called 9 Sawgrass. He did hold stock in a company called 10 Sawgrass. 11 Q. Okay. Did you receive any payments from 12 Hope, LLC or Sawgrass? 13 A. Not from Hope. During -- are we talking the 14 same time period, 2010-11? 15 Q. Correct? 16 A. I don't believe I received any payments from 17 Sawgrass during that time. 18 Q. Did you receive any payments from Sawgrass 19 afterwards? 20 A. Yes. I joined their board and received some 21 payments for being on the board. Well, not even 22 initially. My father actually received all those 23 payments. But after he was deceased, I mean, around 24 the time he was deceased, I began to receive those 25 payments for kind of a board fee, for being on the

16 (Pages 58 to 61)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 62 1 board. 2 Q. Did you receive any compensation directly 3 from your father or your mother when you were helping 4 manage the affairs in 2010 and 2011? 5 A. From them directly, as individuals? 6 Q. Correct. 7 A. There may have been a few things here -- I 8 don't know, small, nominal amounts. I mean, I don't 9 know if there was a time when there was a small amount 10 of money given to me. 11 Q. When you say "small" or "nominal amounts," 12 what are you talking about? 13 A. \$5,000 or less. 14 Q. Did you receive any additional promises of 15 inheritance or estate type monies from your parents as 16 a result of your work in 2010 and 2011? 17 A. No. I think mainly that, you know, they -- 18 that the value that I had created for them was worth 19 financially a lot more to them than the remaining money 20 that was owed. At the time, Zeezrom Properties 21 probably was bringing in \$100,000. They only had -- 22 they didn't -- most of the properties weren't leased. 23 So when we got formal leases, raised everything to 24 market rates, all of a sudden, Zeezrom Properties began 25 to, you know, bring in, you know, 4, \$500,000 a year.	Page 63 1 And that increase was much, much greater than, you 2 know, any additional amount owed to them at that time. 3 Q. Do you have the documents showing Zeezrom's 4 revenue during that time frame, 2010-2011? 5 A. I would -- I would assume they would just be 6 in the -- kind of in that accounting system, yeah. 7 Q. Who is Zeezrom's accountant; do you know? 8 Or, let me -- 9 A. At that time, it was Herbert McGuire. 10 Q. What company was Herbert with? 11 A. He was a CPA. Let me say this. He was the 12 CPA that prepared the tax returns, but he was not doing 13 bookkeeping. 14 Q. Okay. Who was doing the bookkeeping? 15 A. Kathy, that we had talked about. Later, 16 Martha Brothers. They were kind of inputting. You 17 know, checks came in, they deposited them. You know, 18 when there were expenses, you know, wrote out checks 19 for expenses. So they did the bookkeeping, per se. 20 And -- yeah. 21 Q. Okay. And do you have those records 22 electronically or in paper form? 23 A. Probably not in paper, but I would assume 24 they -- we would have a QuickBooks kind of accounting 25 that would have it. One of the challenges was, when I
Page 64 1 became involved, was to kind of clean that up and get a 2 little bit more organized. 3 Q. During the 2010 and 2011 time frame, did 4 Holliday Amusements bring in revenue? 5 A. Yeah. 6 Q. Okay. Do you remember how much? 7 A. You know, revenue in terms of total sales -- 8 Q. Sales? 9 A. -- or income? 10 Q. Sales? 11 A. Sales, yeah. No; that business was kind of 12 in a downward trend since 2000. But during that time, 13 it was about \$800,000 of revenue, top-line revenue. 14 Q. What -- did it have any net income? 15 A. Close to, you know, 50 grand to 100 grand, a 16 year. 17 Q. Who were the paid employees for Holliday 18 Amusements, if any? 19 A. Paid back then? 20 Q. Yeah, in the 2010-to-2011 time frame? 21 A. There was a Carl Ashfelter. A fellow named 22 Joe. And I don't remember Joe's last name. I'll 23 remember that in a second. Rick. There was another 24 clerk or one additional employee, and then the office 25 manager, Kathy. So there were about five people.	Page 65 1 Q. And did Holliday Amusements' business pick up 2 after 2010 to 2011, or did it continue to decline? 3 A. No, it just continued to decline. The video 4 game and mobile apps world has pretty much ruined the 5 video game business. And digital -- you know, music is 6 free. You can get a free app and play what you want. 7 Q. Right. 8 A. So nobody pays for it, really, anymore. It's 9 been just a really slow decline. 10 Q. And, again, you didn't receive any payments 11 as an employee or contractor from Holliday Amusements 12 during 2010 to 2011? 13 A. Not as -- like I said, I was never W-2'd, no. 14 There were reimbursements and things like that, and 15 whatnot. But... 16 Q. Sawgrass Technologies, what do they do? 17 A. They make ink, specifically a type of ink 18 called -- it's a sublimation ink. It's a water-based 19 ink that you transfer it onto materials through heat. 20 Q. Who was the CPA for Holliday Amusements back 21 in the 2010-to-2011 time frame? 22 A. Herbert McGuire was. 23 Q. Okay. Same thing for Sawgrass? 24 A. No. They used somebody else. 25 Q. Your father wasn't an exclusive -- wasn't the

17 (Pages 62 to 65)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 66 1 sole owner of Sawgrass? 2 A. No. 3 Q. Okay. Did you take over management of 4 Sawgrass Technologies during 2010-2011? 5 A. We don't manage that business. I mean, they 6 have their own team of people. It's run by a CEO. We 7 don't -- we -- my dad, at the time, was a private 8 investor from 20 years back. And, you know, he was not 9 involved in the operations of that business on a 10 day-to-day basis, in any way, shape or form, so... 11 Q. So your father was just basically receiving 12 passive income from that business? 13 A. No. They were trying to grow the business 14 for some time. And, actually, it had really not 15 produced. It produced income. But the decision was to 16 try to grow the business, so they kept the income 17 inside of the business, and grow it and grow it. And 18 so he didn't really -- he didn't receive income from 19 them. I think they're... 20 Q. Looking back to Exhibit 5, this payment that 21 was made to your father after the sale of the railroad 22 property, did you receive any confirmation of that 23 payment or do you have any documents showing 24 confirmation of that payment? 25 A. I'm not sure what we've sent you. You'd have	Page 67 1 to show me what we've sent you. But I see the closing 2 statement. I see the... 3 Q. All right. Let me ask you this way: Have 4 you sent to us every document that you have -- 5 A. Every document that's in the file that we 6 have -- 7 Q. Let me finish that question. 8 A. -- in our possession. 9 Q. Let me finish that question real quick. 10 A. Sorry. 11 Q. Have you sent to us every document that you 12 have related to the sale of the railroad property and 13 any payments made to Warren or Patricia Holliday as a 14 result of that sale? 15 A. I don't know about every document, just the 16 ones that we had in our possession. There may -- you 17 know, obviously, there could be other documents that we 18 don't have in the file. I'm not going to say that 19 that's the entire list of documents. I'm just saying 20 what we had, we provided. 21 Q. Okay. That's fair. 22 Are you okay to keep going or do you want a 23 break? 24 A. Yeah, I'm good. I might want some water, in 25 a minute.
Page 68 1 Q. Why don't we take quick break? 2 (A brief recess was taken.) 3 BY MR. TILLMAN: 4 Q. Have you ever had a South Carolina real 5 estate license? 6 A. No. 7 Q. Have you ever had a South Carolina property 8 manager's license? 9 A. Specific to -- no. 10 Q. All right. So we've established, as of 11 roughly December 2010, you've made monetary payments of 12 about one-point -- or \$1,170,000 to Warren Holliday as 13 repayment on the note; is that fair? 14 A. Yes. 15 Q. Okay. And we're about to talk about -- well, 16 let me mark this as Exhibit 6. 17 (Plaintiff's Exhibit No. 6 marked for 18 identification.) 19 BY MR. TILLMAN: 20 Q. Exhibit 6 is a document that you all provided 21 in discovery, that I believe is the bank account 22 statement showing the payoff of the NBSC loan; is that 23 fair? I can direct you to where I'm talking about. 24 Right here, second page. 25 A. Yeah. Yes.	Page 69 1 Q. Okay. And this -- that payment to NBSC, 2 which is now Synovus; is that correct? 3 A. Correct. 4 Q. That payment was made January 22, 2016; is 5 that correct? 6 A. That is correct. 7 Q. All right. So between December 30 of 2010 8 and January the -- January 22 of 2016, did you make any 9 payments to Warren Holliday related to the \$2 million 10 loan, monetary payments? 11 A. No. 12 Q. Okay. Did you make any monetary payments to 13 NBSC on the loan that Warren Holliday took out, that we 14 discussed earlier? 15 A. Through Zeezrom Properties, they did, yes. 16 Q. Do you have those records? 17 A. Yeah. 18 Q. Okay. During that time frame, again, between 19 December 30, 2010 and January 22, 2016, approximately 20 how much money was paid from Zeezrom? 21 A. For -- sorry. Let me make sure I heard the 22 dates right. Sorry. 23 Q. I may have just misspoke. Between December 24 30, 2010, which is the date the railroad property money 25 was paid to your father, correct?

18 (Pages 66 to 69)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 70 1 A. Yeah. 2 Q. And January 22 of 2016, which was when the 3 \$1.1 million payment was made to NBSC, how much was 4 paid, either -- from Zeezrom to NBSC on that loan? 5 A. I don't know. I mean, there were monthly 6 payments made on a monthly basis. I don't -- I don't 7 have that in front of me right now. 8 Q. Okay. At that time, who was the owner of 9 Zeezrom Properties? 10 A. Warren Holliday was the owner of Zeezrom 11 Properties. 12 Q. And that's your father? 13 A. Yeah. 14 Q. Was he the only owner during that time 15 frame? 16 A. Yeah. 17 Q. And I'm sorry for asking this, but what date 18 did your father pass? 19 A. That's okay. He passed on September 26th of 20 2016. 21 Q. Okay. So getting back to Exhibit 7. Your 22 father was still alive when this payment was made; is 23 that correct? 24 A. Yeah. 25 Q. All right. So--	Page 71 1 MR. NETTLES: Six? 2 BY MR. TILLMAN: 3 A. Is this Exhibit 7 or 6? That's right, 4 because this was 5. 5 Q. Right. I'm sorry. Getting back to Exhibit 6 6. 7 On January 22, 2016, a payment of 8 \$1,104,374.46 is made from Zeezrom Properties' 9 Wells-Fargo bank account to Synovus Bank; is that 10 correct? 11 A. Correct. 12 Q. And it's your understanding that that payment 13 was made to completely satisfy the NBSC loan that your 14 father took out in 2004? 15 A. That is correct. 16 Q. Why was that payment made on this date? 17 A. Well, we had closed just a few days prior on 18 another piece of real estate. We sold the property at 19 1808 Meeting Street and some of the surrounding 20 parcels. And, you know, he owned that property 21 individually, right? That was where Holliday 22 Amusements was. That property was not -- was somewhat 23 managed by Zeezrom, but it was technically -- you know, 24 the ownership -- it was owned by him, as an individual. 25 So when that closed -- I negotiated the sale of that
Page 72 1 property. And when it closed, it went to him, 2 personally. And then, as you can see, as you look on 3 that bank statement, the funds were transferred over 4 into the Zeezrom account as a capital contribution. 5 And then it was -- those funds were used to pay off 6 NBSC. 7 Q. Okay. So the funds were transferred as a 8 capital contribution from your father; is that 9 correct? 10 A. Yeah. 11 Q. All right. So your father made a capital 12 contribution to Zeezrom in the amount of about \$1.1 13 million, or exactly \$1.1 million -- 14 A. Yeah. 15 Q. -- on January 22nd; is that correct? 16 A. Yeah. 17 Q. And then that money is paid out to satisfy 18 the NBSC account? 19 A. Yeah. 20 Q. On that same day? 21 A. Yeah. 22 Q. And at this point, did you consider the \$2 23 million loan paid in full? 24 A. It was paid in full at the time, like I told 25 you, 2010 and '11. There was an agreement that that	Page 73 1 was paid in full. My agreement is that I'd make my 2 best efforts to resolve the obligation to NBSC. So I 3 went out and structured a sale of 1808 Meeting Street. 4 We sold it well, well, well above appraisal to a 5 strategic buyer. And that provided plenty of funds. 6 And we were able to close that out, at that time. 7 Q. And 1808 Meeting Street, was that owned by 8 your father? 9 A. It was owned by Warren Holliday, 10 individually. 11 Q. Okay. And then, sometime after this payment 12 is made on January 22, 2016, it's your testimony that 13 Warren Holliday provided you a copy of our note, which 14 is Exhibit 1, with a marked "paid in full" on it? 15 A. Yes. But it was agreed to that this was paid 16 in full before. But that was -- Patricia's litigious 17 nature, he gave me a copy of that. And, you know, this 18 was resolved, you know, a long, long time ago. 19 Q. How did he deliver the copy of the note with 20 "paid in full" on it to you? 21 A. I was with him, in his home. 22 Q. So he delivered it to you by hand? 23 A. Yeah. I was in his presence. I was there 24 with him. 25 Q. Do you recall how long after January 22,

19 (Pages 70 to 73)

MAGNOLIA REPORTING, LLC (843) 303-9141
www.MagnoliaReporting.com

Page 74 1 2016, that occurred? 2 A. It was almost simultaneous, same -- you know, 3 within a day, if not the same day. My father was very 4 excited to know that NBSC had been fully resolved. 5 Q. Had you asked for him to provide that 6 paid-in-full -- a copy of the paid-in-full note? 7 A. Yeah. We decided that there would be value. 8 Because even after the divorce, Patricia was, you know, 9 constantly trying to create, you know, legal issues 10 over -- over kind of very unimportant things. And so 11 just decided that that -- you know, just keep this for 12 your files, right, for estate planning. 13 Q. But did you ask for it or he gave it to you 14 spontaneously? 15 A. We just both had talked about it, and how 16 that this is paid for. You know, he was very happy and 17 had a copy. And said, you know, We ought -- we ought 18 to do this. We ought to mark it. Here, keep a copy 19 for yourself, paid in full. 20 That was actually at his recommendation. In 21 my mind, it was resolved so long ago that I didn't 22 think about it that way. But he had offered it. So I 23 was like, Fine, that's great. 24 Q. So in your mind, it was resolved back when 25 the railroad payment was made, the railroad property	Page 75 1 was made? 2 A. I think for all parties it was resolved back 3 then. But, yeah. 4 Q. Okay. And, again, I want to make sure I 5 understand your testimony on this. Your testimony is 6 that your mother verbally forgave the debt, the two 7 million -- her portion of the \$2 million debt back in 8 2010 and 2011; is that correct? 9 A. It was not forgiven. There was no debt -- 10 quote, debt forgiveness. It was that I had provided 11 other services that had satisfied it. 12 Q. Okay. So -- 13 A. I think that's an important difference. 14 Q. I understand. So it was your mother's 15 testimony that -- I'm sorry, it's your testimony your 16 mother verbally agreed the loan was satisfied back in 17 2010? 18 A. Yes. But, you know, to be clear, the loan 19 was from my dad, not from my mom. 20 Q. I understand. 21 A. She was aware that my dad had provided funds, 22 you know, that he and I had this business kind of 23 transaction. But she was aware that there was no 24 further obligation. 25 Q. And is that to say that you don't have
Page 76 1 anything in writing that showed your mother had agreed 2 to satisfy any interest that she may have had in the 3 loan? 4 A. No, other than the fact that I stayed at her 5 house, ran her business, and kept her from losing her 6 personal residence. I mean, you know, she was on the 7 edge of being financially destitute, until I became 8 involved in the business. 9 Q. I understand your position. I just want to 10 make sure. You didn't get anything writing, is that 11 fair? 12 A. No. It was my mom. I was staying at her 13 house for a year of my life. No, these were all -- 14 these were extensive verbal conversations every 15 evening. You know, we would talk at dinner. I'd come 16 run the business affairs. No, it wasn't in writing. 17 Q. Okay. And other than the paid in full -- the 18 copy of the note that had "paid in full" marked on it, 19 you'd never received anything in writing from your 20 father related to satisfaction of the loan, either, is 21 that correct? 22 A. Well, there was -- there were other levels of 23 satisfaction, where it was -- you know, just to be -- 24 no. Even in their divorce proceedings, it said that 25 there was -- everything was paid in full.	Page 77 1 Q. But I just want to focus specifically on -- 2 A. But it lists me as an heir in that divorce 3 proceeding, so that there was no additional amounts of 4 money or that there was nothing... 5 Q. Well, actually, let me hand you what I'll 6 mark -- I don't really have -- I'll let Truett look at 7 it first. 8 MR. TILLMAN: If you need talk about him 9 about it, that's fine. 10 MR. NETTLES: Yep, good. 11 MR. TILLMAN: You good? 12 MR. NETTLES: This the only one you've got? 13 MR. TILLMAN: That's only one I've got, yeah. 14 MR. NETTLES: I'd like to carry that with me. 15 We can make some copies. 16 (Discussion held off the record.) 17 (A brief recess was taken.) 18 (Plaintiff's Exhibit No. 7 marked for 19 identification.) 20 BY MR. TILLMAN: 21 Q. I've handed you, Mr. Holliday, what I've 22 marked as Exhibit 7, and ask that -- do you recognize 23 this document? 24 (Discussion held off the record.) 25 BY MR. TILLMAN:

20 (Pages 74 to 77)

1 A. I have not received a copy of this document
2 prior.
3 Q. You've never seen it before?
4 A. Uh-uh. No.
5 Q. All right. Can you flip over to page four of
6 five with me.
7 Well, first of all, does this appear to be
8 the Financial Declaration of Patricia Holliday from the
9 divorce proceeding with your father?
10 A. Yeah, it does.
11 Q. And do you see that it's sworn, the signature
12 is sworn on December 9, 2013?
13 A. Yes.
14 Q. And do you see in the Other Property Section
15 where she lists debt from Ross Holliday, \$1,006,000?
16 A. I do see that that is noted.
17 Q. And had you ever seen that before?
18 A. Never.
19 Q. Okay. And so your testimony that your mom
20 did not list this debt as part of the divorce
21 proceedings was based on your understanding at the
22 time, is that right, at the time you testified?
23 A. Well, I haven't seen this, so it's said --
24 it's in error.
25 Q. I understand.

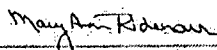
1 A. But I had not seen it.
2 Q. Okay.
3 A. No, it's the first time I've seen this.
4 Q. All right. Okay. I think that's all I have.
5 I really appreciate your time today. I don't know if
6 Truett may have a question or two for you, as well.
7 MR. NETTLES: Let me just look at this a
8 second. I don't have any questions.
9 MR. TILLMAN: All right. Thank you.
10 (The deposition concluded at 11:53 a.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 CERTIFICATE
3 STATE OF SOUTH CAROLINA:
4 COUNTY OF CHARLESTON:

5 I, MARY ANN RIDENOUR, Registered Professional
6 Reporter and Notary Public, State of South Carolina at
7 Large, certify that I was authorized to and did
8 stenographically report the foregoing deposition of
9 Ross S. Holliday; and that the transcript is a true
10 record of the testimony given by the witness, and was
11 sworn as such.

12 I further certify that I am not a relative,
13 employee, attorney or counsel of any of the parties,
14 nor am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action.

17 WITNESS MY HAND AND OFFICIAL SEAL, this 3rd day of
18 October, 2018, in the City of Charleston, County of
19 Charleston, State of South Carolina.

20
21 
22 Mary Ann Ridenour, RPR, CLR
23 and Notary Public
24 My commission expires:
25 March 14, 2021



A				
A-l-e 48:7	62:4 76:16	33:10 59:22	assumed 45:9	54:14 78:21
a.m 1:10 4:1	affiliated 60:23	60:21 64:4,18	attempt 28:4	basically 66:11
79:10	ago 7:1,21 9:3	65:11,20 71:22	attorney 4:19	basis 66:10 70:6
able 23:21 37:23	25:3 43:16	Amusements'	7:14 45:22	began 35:7,9
38:15 59:10,13	50:6,8,8 73:18	65:1	80:12,14	37:10 38:13
73:6	74:21	and/or 59:15	authorize 47:9	45:11 47:17
absentee 35:13	agree 21:24	angle 49:19	authorized 80:6	57:10,11,15
account 18:13	33:22 38:1	Ann 1:13 80:4	aware 5:14	58:1 59:6
41:11 54:17	51:9	80:23	26:14 37:20	61:24 62:24
68:21 71:9	agreed 3:18	answer 4:14,20	75:21,23	beginning 31:2
72:4,18	17:22 21:20	4:20,21 5:22		bchalf 19:2
accountant	34:5,22 36:22	anybody 5:4	B 1:2 2:14	53:21 56:9
41:23 63:7	73:15 75:16	anymore 65:8	back 8:15 22:17	believe 8:4,19
accounting 63:6	76:1	apologize 38:21	22:25 23:2,3	19:1 25:16
63:24	agreement 3:9	app 65:6	23:12 24:8	29:5 32:6 33:6
accurate 15:14	15:10 16:10	appear 15:14	25:18 31:14,14	61:16 68:21
21:19	17:25 18:3	78:7	35:10 37:10	best 13:4 73:2
acknowledge	21:8 24:5,14	appears 15:2	40:4 41:8,24	beyond 32:9
38:1	37:5 72:25	24:5	49:21 50:23	biggest 22:3
acknowledged	73:1	application 27:8	51:9 52:8	38:6
36:17 45:8	airfare 59:5	30:8,10	55:13 61:7	bit 59:9,10 64:2
action 1:4 80:14	alive 70:22	appointed 13:14	64:19 65:20	board 13:11
80:15	alter 31:18	appraisal 73:4	66:8,20 70:21	61:20,21,25
activities 6:4	alteration 31:22	appreciate	71:5 74:24	62:1
10:15,17 44:22	altered 25:9,12	38:11 79:5	75:2,7,16	Bond 1:11 2:4
56:22,23 57:8	amount 8:11	approximately	background	bookkeeping
59:11	15:8 22:24,24	69:19	11:15 24:21	63:13,14,19
actual 24:21	23:1,14 30:18	apps 65:4	56:18	borrow 18:17
54:6 55:11	32:3 35:15	Arizona 11:21	bad 60:14	borrowed 18:15
additional 9:21	36:1 40:16	Ashfelter 64:21	ballpark 30:19	25:22
37:23 45:9	62:9 63:2	aside 57:24	bank 3:11 18:13	bought 17:15,16
62:14 63:2	72:12	asked 35:7 36:7	18:19 23:21	20:15,17
64:24 77:3	amounted 40:13	38:5 45:23	24:6 27:10	boutique 10:18
address 33:11	amounts 48:24	46:5 51:4,6	28:4,22 41:5,6	branch 27:21
adjacent 49:18	59:16,18 62:8	53:23 74:5	41:7,8,11,16	break 4:24 5:1
Advisory 47:24	62:11 77:3	asking 41:7	43:12 46:11	39:25 67:23
48:4,8,18	Amusement	70:17	54:17,20 68:21	68:1
affairs 30:25	26:23 27:2	assets 10:12	71:9,9 72:3	brief 40:2 68:2
31:3,11 35:9	47:14 58:19	Association 13:6	banked 41:6	77:17
38:6,14 46:10	60:5,11,23	13:9,12	banks 54:21	Brigham 11:19
47:5 54:15	61:3	assume 5:10	bar 9:9,16,22	bring 62:25 64:4
	Amusements	18:7 63:5,23	based 42:5	bringing 62:21

broke 8:9	49:6	80:18	51:16 57:24	confer 5:13
brother 10:25	called 37:12	check 18:8 35:8	58:3 60:5	confirmation
11:3 50:2	47:24 60:24	47:7 55:1,4	76:15	66:22,24
51:19,21 52:4	61:8,9 65:18	checks 47:5,21	comes 5:14 7:19	connected 80:14
Brothers 47:18	calling 16:18	63:17,18	9:8 24:24	consider 30:22
63:16	capital 72:4,8,11	children 12:15	coming 57:25	72:22
build 58:8,8	Carl 64:21	12:16	comings 59:8	consideration
building 12:25	Carolina 1:1,12	Christ 12:20	commenced 4:1	56:6
13:9,12 42:20	2:5,10 4:9 6:5	church 12:19,19	commission	consistent 59:18
58:11	6:6 7:23 9:5	churches 12:18	13:16 53:19	consistently
burden 45:11	10:5 14:7,13	CIRCUIT 1:1	80:24	48:22
Bushell 48:14	18:19 21:12	City 12:8,10	commissioner	constantly 74:9
Bushnell 48:14	24:6 46:24	17:6 35:4	13:15	construction
business 9:14,14	54:20 68:4,7	80:17	commissions	13:15,16 14:3
10:9 11:21	80:2,5,18	Civil 1:4	53:20 56:9	14:6,9 17:5,8
17:11,15,17,19	carries 14:11	clean 64:1	COMMON 1:1	17:12 19:7,9
17:21 18:16	carry 77:14	cleaned 33:17	companies 6:17	57:12 58:7
19:19,20 20:3	case 4:13 6:3,19	clear 9:22 17:10	7:5,7,8 9:2,4	contend 55:8
20:7,22,24,25	9:21	34:19 35:15	10:4 14:3,12	contending
22:4,10 30:25	cases 6:1	44:8 75:18	45:13,15,16	56:12
35:8,17 37:6	cash 42:6 56:4,5	clerk 64:24	48:11 57:20	contention 40:9
38:14 44:22	60:13	close 64:15 73:6	60:15	contesting 25:6
47:17,24 48:4	cashier's 18:8	closed 46:4,7	company 6:14	25:9
48:8,18 56:22	CEO 66:6	71:17,25 72:1	8:16,22 10:10	continue 45:10
56:23 57:7	CERTIFICATE	closing 45:19	10:12,19 14:1	65:2
64:11 65:1,5	3:5	46:3 51:11,13	14:2 17:5,8	continued 65:3
66:5,9,12,13	Certified 1:14	67:1	19:7,10,12,15	continuous
66:16,17 75:22	certify 80:6,11	CLR 1:13 80:23	26:10,23 27:3	28:12
76:5,8,16	chairman 13:16	clubs 12:18,21	45:2 47:24	contract 8:9
businesses 35:10	challenges 63:25	12:22,24,25	57:12 58:7	contracted 8:11
35:12 36:1	change 20:18	coach 5:12	60:12,23 61:1	contractor 14:11
57:11,14,16	49:19	collateral 25:25	61:8,9 63:10	65:11
58:16,20,24	changed 15:22	collateralized	compensation	contractor's
59:2,4,15 60:7	16:2	29:25	56:12 57:19	13:23
60:20	charge 27:21	collect 53:21	59:1 62:2	contribution
buy 17:5 19:18	Charleston 1:1	collection 10:14	completely	72:4,8,12
buyer 73:5	1:12 2:5,10 7:3	college 11:16	71:13	control 9:13
buying 7:22	8:21 9:17,18	combination	concern 20:11	46:9
	9:24,25 12:1	54:20	20:12 29:17	controlling
	33:10 35:10	come 13:19	38:6 58:9	45:15
	36:10 48:1	18:20 36:7	concerned 35:18	conversation
	56:24 80:2,17	47:20 49:19	concluded 79:10	34:21
C				
C 2:1 80:1,1				
call 16:17,19				
20:17 28:4				

conversations 27:14 35:2,6 36:15,18,21 76:14	create 74:9 created 62:18 credit 28:9 29:13 crisis 20:2 CSX 43:21 45:19 50:18 51:9 current 8:20	2:8 6:22 deliver 73:19 delivered 73:22 demand 28:7 37:4,8,11 39:12,15,17,22 demanded 37:3 demands 37:18 denoted 32:11 depend 30:22 depiction 21:19 Deponent 3:20 deposit 53:7 deposited 63:17 deposition 1:8 4:1,6 5:13 6:11 79:10 80:7 depositions 5:25 destitute 76:7 details 9:23 developer 8:6,17 dialysis 35:23 Dickinson 1:11 2:4 difference 75:13 different 20:6 48:23,24 digital 65:5 dinner 76:15 dire 36:13 38:5 51:18 52:5 direct 3:3 4:3 27:14 56:4,5 68:23 directly 9:12 18:20 19:2 23:10 29:1 54:9,23 62:2,5 director 13:5 disclose 29:15 discovery 24:3 41:3 68:21	discussed 44:7 69:14 discussion 27:12 40:1 77:16,24 discussions 29:9 49:23 50:24 51:1 dispute 7:22 8:5 8:8 distressed 20:4 distributions 22:14,19,22 23:7,11 42:22 57:20 59:21 divide 60:11 divorce 74:8 76:24 77:2 78:9,20 document 14:21 15:1,3,4,5,6,9 15:12,15,21,23 16:5,7,15,18 16:22 21:24 24:11 26:15 38:23 39:9,18 41:2 42:14,16 67:4,5,11,15 68:20 77:23 78:1 documentation 29:6 53:24 documented 20:4 documents 19:3 24:2 25:19 26:2 27:7 30:13,14 41:22 43:6 44:2 46:19 49:1 54:1,2,3,5 63:3 66:23 67:17,19 doing 24:7 63:12	63:14 dollars 56:20 downward 64:12 drafted 15:9 Drive 2:10 duties 11:8 E E 2:1,1,3 3:1 80:1,1 earlier 53:23 69:14 early 27:16 37:9 50:7,7 57:10 earned 42:4 Eddie 27:20 28:14 edge 20:9 76:7 education 11:23 effort 9:10,10,15 39:17 52:18 efforts 73:2 either 7:9 36:2 37:2 43:12 54:9 70:4 76:20 electronically 43:13 63:22 Element 57:12 58:7 Elks 12:23 Email 3:11 emergency 36:6 eminently 36:5 employed 56:21 employee 47:11 47:12 58:16,18 58:22 64:24 65:11 80:12,13 employees 64:17 ended 20:9 51:11
--	---	--	--	--

entire 67:19	excess 17:12	35:18,22 58:5	51:20 52:8	Firm 2:9
entities 42:19,21	23:3		53:10,11,15,25	first 7:11,19 9:8
entitled 24:11	exchange 1:12	F	54:6,24,25	18:21 19:14
26:16 39:20	2:4 20:24	F 2:9 80:1	55:2,6,7,11	21:23 31:10
entity 6:9,11,12	excited 74:4	Faber 2:10	58:16 59:2,15	51:6 77:7 78:7
21:10 42:22	exclusive 60:7	fact 76:4	59:23 60:19	79:3
58:12	65:25	factor 53:20	61:22 62:3	five 7:1 64:25
equity 16:9 22:8	exclusively	factors 53:20	65:25 66:11,21	78:6
59:20	18:12 27:5	failed 35:25	69:25 70:12,18	flip 26:15 78:5
erroneous 39:12	30:12	failure 35:23	70:22 71:14	floundered 36:4
39:17	Excuse 11:12	fair 4:22,23 5:7	72:8,11 73:8	fly 35:9 56:16,17
error 78:24	exhibit 3:8,9,9	5:23 11:9	74:3 76:20	flying 56:24
ESQUIRE 2:3,9	3:11,12,12,13	16:19 17:14	78:9	focus 77:1
essence 28:9,22	14:16,17,20	19:15 23:18	father's 11:11	foregoing 80:7
essentially 52:20	21:16,17,18	25:24 26:25	31:3,11 34:10	forfeited 56:9
established	23:23,24 24:4	27:1 31:3	46:9 54:15	forgave 75:6
68:10	24:8 25:6,18	32:14 33:13	fee 61:25	forgive 34:23
estate 8:16	26:16 31:17	37:25 39:16	fellow 64:21	36:22 38:1
10:11,15,18	39:5,6,11,18	42:1,11 43:11	felt 33:25	forgiven 75:9
11:6 14:21	40:5,23,24	48:20 49:7	fight 9:16	forgiveness
15:9 16:18	48:25 49:3,9	50:19 53:2	figure 24:18	75:10
20:1 24:14	49:10 51:13	54:1 67:21	30:19 31:10	forgotten 4:13
34:19 37:21,21	53:3 66:20	68:13,23 76:11	file 33:6 42:17	form 43:13
46:3 51:19	68:16,17,20	fall 58:3	67:5,18	49:20 63:22
52:10 62:15	70:21 71:3,5	family 38:11	filed 42:5 52:3	66:10
68:5 71:18	73:14 77:18,22	far 21:12 30:15	files 74:12	formal 17:20
74:12	EXHIBITS 3:7	55:11	filings 42:18	52:17 62:23
evening 76:15	exit 21:3	Fargo 3:12	filling 30:9	forth 5:5 21:18
event 9:9 24:15	exited 20:22,24	fashion 49:20	financial 3:13	49:22 50:24
52:1	28:21 29:10,16	father 10:23,24	45:10 52:10	forties 50:7
evidence 44:16	expectation 22:5	11:5 14:22	59:13 78:8	forward 27:9
evidenced 54:5	expected 40:7,8	16:10,12,25	financially 59:7	57:15
exact 15:4 22:23	expense 42:10	21:20 22:9	62:19 76:7	four 12:16 78:5
28:16 30:18	expenses 59:7,9	24:14 26:7,14	80:15	frame 34:4,7
40:16,19 48:17	60:10 63:18,19	26:24 27:4,20	find 31:14 32:20	43:8,14 45:20
56:15	expires 80:24	30:10,12,23	41:18	45:20 56:25
exactly 7:2	explain 10:8	31:18 32:10	fine 16:20 74:23	58:15 59:3
30:21,22 31:7	41:3	33:24,25 34:5	77:9	60:17 63:4
31:15 32:6	explanations 5:4	35:3,8,13,22	finish 5:20,22	64:3,20 65:21
72:13	extensive 76:14	37:3,12 39:2	67:7,9	69:18 70:15
Examination	extra 44:10 60:9	40:7 41:10,21	finished 44:21	frankly 50:22
3:3 4:3	extremely 20:3	41:25 43:22	Finkel 2:9	57:22
		44:8,14 49:24		

free 65:6,6	51:21 52:13	26:17,21	25:24 26:5	13:12 35:23
Friday 56:17	given 6:1 32:24	guarantees	hire 14:10	36:14,19,20
front 70:7	33:2,4 34:13	17:11 21:1	hired 47:18	73:21
fulfills 11:7	41:22 56:13		hit 60:12	homebuilder
full 15:24 16:3	62:10 80:9	H	hold 21:16 58:4	13:21
31:21 32:1,4	Glendale 11:21	H-a-i-148:6	61:9	Homebuilders
32:11,13 33:20	go 4:11,12 5:13	H-o-l-m-e-s 8:25	holding 10:11	13:6
38:16 39:1,3	5:15 7:14	Hale 48:5	Holdings 57:14	homes 8:24,25
40:11 72:23,24	11:16,18,25	hand 14:15	holds 10:10	19:11 21:10
73:1,14,16,20	18:21 20:7,20	21:15 39:4	26:12	22:11,12,14,22
74:19 76:17,18	23:23 31:13	40:22 73:22	Holliday 1:2,6,8	23:8,12 29:10
76:25	35:8 41:7 47:2	77:5 80:16	2:14 3:2,10,13	29:16 42:4,14
fully 74:4	52:16	handed 77:21	4:2,4 10:22,23	42:15,24 43:1
fund 25:22	going 7:13 14:15	handle 30:9 47:4	10:24,25 11:1	43:4 57:9,13
funds 17:6 18:8	14:16 16:17,18	51:5,6	11:1 17:1,2,9	58:11
18:11,11 21:2	20:11,12 21:15	happened 19:22	17:18 18:12	honestly 48:15
24:19 27:11,13	21:15 27:11	20:5 32:19	23:4,10,12,16	57:23 60:12
29:22,23,24	28:2 29:22,25	33:13 52:22	24:2,6,12	Hope 60:24
43:21 72:3,5,7	35:11,18 37:20	happy 4:25	26:23 27:2,4	61:12,13
73:5 75:21	37:23 39:4,4	74:16	28:25 29:2	hospital 58:4
further 34:1	40:22,22 46:25	hard 56:14,14	33:10 39:16,19	hospitalized
37:18 59:9	48:25 51:20	harm 52:10	43:7 45:17	35:3
75:24 80:11	52:10 56:22	heard 69:21	47:13,14 50:2	house 76:5,13
	57:8 58:1,9	heat 65:19	50:4,16 54:6,7	hundred 50:22
G	67:18,22	heir 77:2	57:13 58:19	hundreds 56:19
gain 52:15	goings 59:8	held 40:1 77:16	59:21 60:5,10	56:19
game 65:4,5	good 19:25	77:24	60:20,23 61:2	
general 10:14	22:15 67:24	help 5:18 36:8	61:8 64:4,17	I
13:23 45:20	77:10,11	38:5 51:17	65:1,11,20	identification
generally 17:3	governor 13:14	59:6 60:8	67:13 68:12	14:18 23:25
19:23 21:25	graduate 12:3,6	helping 56:25	69:9,13 70:10	39:7 40:25
28:2 49:13	grand 64:15,15	58:14 60:6	71:21 73:9,13	49:4 68:18
genuine 25:13	grass 49:17	62:3	77:21 78:8,15	77:19
getting 20:20	gratitude 36:12	helps 34:15	80:8	identify 14:20
51:7 70:21	gravely 35:9	Herbert 63:9,10	Holmes 8:24	II 2:9
71:5	great 74:23	65:22	19:11 21:10	ill 30:12 35:9,14
gift 51:24 52:1,2	greater 63:1	hereto 3:19	22:11,12,14,22	35:22
52:4	Grill 9:9	Hey 30:6	23:8,12 29:10	imagine 27:12
gifted 51:19	group 48:25	high 11:22,25	29:16 42:4,13	36:11
52:19 53:21	grow 66:13,16	12:4 58:6	42:15,24 43:1	immediately
gifting 52:12	66:17,17	higher 51:10	43:4 57:9	29:11 32:22
give 28:19 32:5	guaranteed	highly 22:6	home 12:25 13:9	38:2 54:12
32:10,17 33:20		Highway 6:16		imminent 35:19

implied 21:21 22:1	instructs 4:19 intent 27:10	June 15:7	32:8,20 33:13 35:12,13 36:13	Lea 10:25 11:1,1 50:2,4,16
important 75:13	interest 17:19 19:17 20:16,21	K	36:15 37:5,7,9 37:17 38:6	leadership 13:1
inaccurate 15:21	59:3 76:2	K-1 42:13,15	42:18 44:9	leading 28:21
include 9:11,15	interested 80:15	63:15 64:25	45:18,22 46:15	leased 62:22
included 21:22	international 11:21	Kathy's 48:13	46:20,24 47:13	leases 62:23
income 35:20 42:4,5 59:10	invest 19:6,20	keep 24:7 36:10	48:15,21 49:21	leasing 10:17,19
59:14,20 64:9	investment 19:22	41:20 67:22	49:24,25 50:6	leaving 57:9
64:14 66:12,15	investor 66:8	74:11,18	50:10 51:4,7,8	legal 74:9
66:16,18	invoice 46:13	keeping 36:12	51:8 52:7	lender 46:24
increase 63:1	involve 6:2	Kelly 12:14	53:18,19,22	lending 30:2
increased 8:10	involved 6:12 7:6,17 8:13,20	kept 46:23,24	56:9,15 57:10	let's 7:11 9:7 11:15 21:16
INDEX 3:7	8:23 9:5,13,14	66:16 76:5	57:23 59:4	23:23 26:15
indicate 24:18	10:5 12:17	kidney 35:23,25	60:3,4,6,7,9	31:1 39:25
indicated 52:9	13:1 30:24	kind 10:11,18	62:8,9,17,25	55:10
individual 8:14 8:17,19 10:10	33:21 36:7	20:5 28:8,10	62:25 63:2,7	Letter 3:9
35:20 45:17	47:17 64:1	28:22,23 30:4	63:17,17,18	levels 76:22
48:3 71:24	66:9 76:8	36:4 46:15	64:7,15 65:5	liability 9:12
individual's 50:11	involving 4:5 9:19 10:1	47:3,4 49:21	66:8 67:15,17	license 13:24 68:5,8
individually 6:9	IRS 35:16 42:3	50:20,22 51:3	70:5 71:20,23	liens 35:19 36:5
6:10 7:12,17	42:16	51:5,8 57:10	73:17,18 74:2	life 76:13
8:13 10:13	issues 74:9	57:23 59:17	74:4,8,9,11,16	line 28:9 29:13
71:21 73:10	items 21:21 34:19 56:8	60:23 61:25	74:17 75:18,22	list 13:3 67:19 78:20
individuals 62:5		63:6,16,24	76:6,15,23	
industry 12:25		64:1,11 74:10	79:5	listed 17:21
informally 45:23		75:22	knowledge 61:5	listen 38:9 60:3
information 27:7 41:13	J	kinds 34:19,20 47:5	L	lists 77:2 78:15
inheritance 62:15	January 38:16	know 7:12 10:18	L-e-a 11:1	litigation 7:13 8:20,23 9:5
initially 17:9	44:23 46:4	10:19 15:17,18	lady 47:16	litigious 73:16
59:12 61:22	69:4,8,8,19	15:18,18,20	Lake 8:3,4 12:8	little 57:25 59:9
ink 65:17,17,18	70:2 71:7	17:21 18:2	12:10 13:8	59:10 60:9,22 64:2
65:19	72:15 73:12,25	19:24 20:3,17	17:5 35:4	live 12:8,10
inputting 63:16	Jesus 12:20	21:13 22:3,4,5	land 8:6,6,10,16	LiveNote 1:14
inside 66:17	Joe 64:22	22:7,23,23,24	large 35:15 80:6	LLC 6:16 10:21 11:12,13 26:12
instructed 4:22	Joe's 64:22	24:4,17 25:13	larger 52:15	43:1 60:24 61:12
instruction 5:3	joined 61:20	26:5,8 27:2	Law 2:9	LLC's 10:12
	JUDICIAL 1:1	28:3,12,20,21	lawsuit 4:5 6:13	
	July 39:22	28:22 29:3,24	7:21 8:2 9:15	
	jump 24:8	30:1,1,5,7,16	lawsuits 7:6,11	
		30:18,23 31:7	7:16 8:12 10:1 10:6	
		31:8,14,15		

11:8 42:19	53:3 66:20	23:24 39:6	memorialized	55:5,10,11
loan 3:9 16:8,9	looks 52:24	40:23,24 49:3	21:8	59:18 60:9
17:4 22:17	lose 35:18	68:17 73:14	met 27:20,22	62:10,19 69:20
24:5 25:19,21	losing 76:5	76:18 77:18,22	29:14 36:16	69:24 72:17
25:22 26:1,2	losses 36:6 52:12	market 37:21	mid 57:10	77:4
26:22 27:7,8	52:12,17	52:10 62:24	million 15:8	monies 42:8
27:22 28:4,5,5	lot 22:7 33:17	married 12:11	16:8,11,15	62:15
28:7,9,11,12	50:24 57:22	12:12	17:12 18:4	monthly 46:8,11
29:12,13,22,23	62:19	Martha 47:18	19:18 25:21	46:15 70:5,6
30:4,7,17 31:6	lower 8:11	63:16	30:20,20 31:9	months 35:5,25
32:8 34:23		Mary 1:13 80:4	40:6 44:6,20	mother 4:5
36:22 37:13	M	80:23	45:5 55:20,22	33:19,22 34:22
38:2 39:13,15	mail 45:17	materials 42:2	55:24 69:9	35:4,7 36:3,22
40:6,10 43:18	main 10:12	65:19	70:3 72:13,13	59:2,15 62:3
44:6,20,20	making 17:7	Matt 3:10 4:4	72:23 75:7,7	75:6,16 76:1
45:5,22,25	37:10 45:11	MATTHEW 2:3	mind 7:20 9:8	mother's 75:14
46:7,13 48:19	48:22	matthew.tillm...	13:19 74:21,24	Mount 12:4
48:21 52:20	manage 7:8 9:4	2:5	mine 22:6	25:25 26:6
53:12 54:23	17:17 33:9	MBA 11:20	minute 15:19	moved 33:15,17
55:20,20,25	35:10 62:4	McGuire 63:9	19:1 21:17	33:18
56:13 68:22	66:5	65:22	24:8 67:25	moving 57:15
69:10,13 70:4	managed 6:17	mean 7:21 18:22	misguided 9:10	multiple 34:24
71:13 72:23	30:11 35:13	28:5 29:23	mishear 29:22	36:14 45:8
75:16,18 76:3	36:2 71:23	32:1 35:22	missed 24:8	47:6
76:20	management	36:4 37:12	misspoke 69:23	music 65:5
loaned 27:23	6:3 10:14 11:8	45:7 46:12	mobile 65:4	
loans 17:12	59:11,19 66:3	50:21,24 60:8	mom 75:19	N
local 14:10 48:1	manager 6:7	61:23 62:8	76:12 78:19	N 2:1 3:1
located 46:25	27:21 47:3,10	66:5 70:5 76:6	moment 32:7	name 6:24 8:22
Lodge 12:23	47:22 64:25	meet 28:14 30:1	Monday 56:17	12:13,14 14:1
long 9:3 41:20	manager's 68:8	30:3	monetary 68:11	19:9 25:8 48:5
50:22 73:18,18	managers 47:15	meeting 28:1	69:10,12	48:13 50:12
73:25 74:21	managing 10:3	29:20 33:12	money 18:15,17	64:22
longer 20:13,14	30:17 45:15	49:1,17 71:19	18:20 19:1,6	named 47:16
41:7	54:15	73:3,7	19:25 22:8	64:21
look 5:4 25:15	March 80:24	meetings 28:18	23:7 27:23	national 13:5,5
25:16 26:2,15	mark 14:16	30:5	29:3 32:3	18:19 24:6
31:13 44:3	33:19 38:22	member 11:12	35:16 38:10	nature 8:7 29:24
51:13 72:2	39:5 48:25	12:19,20 13:1	39:13 42:6	48:14 73:17
77:6 79:7	68:16 74:18	members 10:20	45:9,9 46:2,7	NBSC 3:9 18:19
looked 16:5	77:6	memorialize	52:6,13,18,20	18:21,21 19:2
looking 36:5	marked 14:17	15:10	53:9 54:2,9	25:18 26:3
	15:24 21:16			27:15 28:5

29:1,4,9,15,21	25:25 26:6	October 80:17	53:2,6,9,14,17	owned 26:5 27:2
30:17 31:6	Notary 1:15	offered 74:22	54:11 55:18	37:21 50:1,9
32:7 34:13	80:5,23	office 33:7,8,9	56:3,5 58:14	58:17 59:15
38:7,8,15	note 3:8 4:5	33:10,11 39:15	61:11 63:14,21	71:20,24 73:7
44:21 45:3,11	14:24 15:7	47:3,10,15,22	64:6 65:23	73:9
45:14,17,21	16:19,21,24	64:24	66:3 67:21,22	owner 9:11
46:6,8 48:19	17:4 22:25	OFFICIAL	68:15 69:1,12	10:25 11:12
54:21,23,23	23:2 24:11,12	80:16	69:18 70:8,19	19:12,15 20:13
68:22 69:1,13	24:22,25 25:2	offset 52:17	70:21 72:7	20:14 50:5
70:3,4 71:13	25:14 31:17,18	Oh 12:24 50:6	73:11 75:4,12	51:14 58:23
72:6,18 73:2	31:22 32:5,11	okay 4:11,19,24	76:17 78:19	66:1 70:8,10
74:4	32:12 33:19,20	5:1,2,24,25	79:2,4	70:14
necessarily	33:23 34:5,8	6:14 7:5,11,15	old 41:8	owners 10:20
12:24 46:12	34:22 37:3,19	7:19 8:2,7,12	on-again-off-a...	11:2,3
need 4:20,24,25	38:15,20,22	9:7,17,24 10:4	50:21,25	ownership 17:19
24:18 37:10,13	43:18 68:13	10:8,16 11:7	one-point 68:12	20:15,21 61:8
38:5 77:8	73:13,19 74:6	11:15,22 12:6	ones 7:7 30:14	71:24
needed 10:17	76:18	13:3,7,10,13	52:5 60:2	owns 26:8,12
49:18,19 50:18	noted 78:16	13:18 14:12,23	67:16	
50:23	number 10:12	14:25 15:6,11	open 5:15	P
needs 30:2,2	14:3 27:22	15:14 16:7,11	operational 9:13	P 2:1,1
negotiated 16:24	28:16 35:5	16:17,21,23	operations 66:9	packages 27:22
49:15 51:10	40:19 42:19	18:10,17,24	opportunity	page 68:24 78:5
71:25	56:15 57:11,13	19:3,6,14,22	52:13 58:5	paid 15:24 16:2
net 53:4 64:14	57:14 59:5	20:23 21:2,10	opposed 47:21	23:3,9 28:25
Nettles 2:9 5:12	numerous 35:5	21:23 22:1,18	order 51:17	29:1,1,2,4
7:13 49:10		22:21 23:1,23	57:24	31:21 32:1,4,8
55:22 71:1	O	24:7,20,24	organizations	32:11,12 33:19
77:10,12,14	obligation 32:2	25:4,14,18	12:21,22 13:2	34:14 35:21
79:7	36:16 46:15	26:5,14,19,21	13:3	37:14 38:16
never 28:6,6,10	73:2 75:24	27:14,19 28:18	organize 14:10	39:1,3 40:11
28:11 29:17,17	obligations	29:3,19 31:1,9	organized 64:2	40:17 42:7,13
61:3 65:13	20:25 34:1	31:17 32:24	original 38:24	43:18 44:22,23
76:19 78:3,18	obtain 41:14	33:4,16 34:2	38:25	45:1 46:1
NINTH 1:1	obviously 6:10	34:10,15 37:25	ought 74:17,17	48:20 49:24
nominal 21:4	35:12 36:17	39:11,14 40:22	74:18	50:15,16 53:10
57:25 59:16	51:12 59:4	43:17,23 44:2	oversees 10:13	53:11,15 54:4
60:2 62:8,11	67:17	44:12,19,25	owe 38:10	54:24,25 55:1
nonmonetary	occur 21:7 28:18	46:21 47:1,8	owed 30:16 31:5	55:4,5,7,11,13
56:11	35:2 51:1	48:8,16,25	35:15 39:13	55:24 56:6,12
normal 30:4	occurred 9:16	49:9,13 50:4,9	45:9 52:6	59:5 64:17,19
North 2:10 6:16	34:25 35:17	51:12,21 52:24	62:20 63:2	69:20,25 70:4
	36:18,24 74:1			72:17,23,24

73:1,14,15,20 74:16,19 76:17 76:18,25 paid-in-full 38:22 74:6,6 paper 43:12 63:22,23 parcels 71:20 parents 51:17 52:5,13 55:2,6 55:10,21 56:25 58:14 62:15 parents' 36:19 36:20 part 27:7 60:16 78:20 parties 3:19 75:2 80:12 parties' 80:13 pass 70:18 passed 11:5 24:15 42:6 70:19 passing 11:11 34:11 passive 66:12 Patricia 1:2 2:14 3:13 24:12 39:16,19 67:13 74:8 78:8 Patricia's 73:16 pay 22:17,24 23:1,11 37:10 37:13 38:8,15 39:12 46:3 52:7,20 53:14 56:19 59:10 60:5,13 72:5 payee 24:12,21 24:25 paying 38:7 59:7 payment 28:7	37:3,4 38:3 39:15,17 44:12 44:14,17 45:25 46:15 47:9 48:23 53:24 54:6 66:20,23 66:24 69:1,4 70:3,22 71:7 71:12,16 73:11 74:25 payments 23:15 23:20 35:16 37:10,16,23 39:19,21 40:10 40:11,13 41:10 41:21,24 42:1 42:15 43:4,6 43:17,23 44:5 44:19,21,22 45:3,4,14,18 46:25 56:4,5 59:14 60:16 61:6,11,16,18 61:21,23,25 65:10 67:13 68:11 69:9,10 69:12 70:6 payoff 46:5,6 68:22 pays 65:8 people 64:25 66:6 percent 50:23 percentage 19:17 period 17:24 20:5 46:14,18 47:6 49:15 57:8 61:14 personal 17:10 21:1 41:22 42:3 76:6	personally 26:10 43:11 45:13,14 72:2 Phillip 10:24 17:1,2,18 physically 33:2 33:4 pick 65:1 piece 7:22 43:20 50:1 71:18 place 1:11 2:10 9:11 placed 33:6 35:19 plaintiff 1:3 2:2 6:19,21,23 plaintiff's 3:8,9 3:9,11,12,12 3:13 6:24 14:17 23:24 39:6 40:24 49:3 68:17 77:18 planning 14:21 24:15 74:12 play 65:6 PLEAS 1:1 Pleasant 12:5 25:25 26:6 please 4:16 plenty 73:5 Plus 53:7 55:15 point 26:3 31:7 31:15 35:8 44:11 72:22 portfolio 60:16 portion 26:16 75:7 position 59:13 76:9 possession 32:15 32:16 67:8,16	post 11:22 precise 31:1 56:24 prepared 63:12 preparing 27:21 presence 73:23 PRESENT 2:13 president 26:24 president-elect 13:8 pretty 65:4 Previously 13:11 price 51:10 primarily 21:8 42:23 46:17 principle 15:8 prior 11:11 34:10 56:7 71:17 78:2 private 18:2 66:7 probably 7:1 21:6 22:3 27:25 28:16 50:7 62:21 63:23 proceeding 77:3 78:9 proceedings 76:24 78:21 proceeds 45:1 51:20 52:16 55:15 process 27:8 produced 24:3 53:25 66:15,15 professional 1:14 12:21,22 12:25 80:4 profit 22:13,18 22:22 23:7,11 57:19 59:20	profitable 19:25 22:6 profits 17:24 18:1 37:8 promises 62:14 promissory 3:8 14:24 15:7 24:11 31:17 properties 6:15 6:17 9:6 10:11 10:13,15 11:2 14:8,9 26:11 26:12 33:9 35:18,20 45:3 46:25 47:10 58:8,19 60:1 60:21 62:20,22 62:24 69:15 70:9,11 Properties' 71:8 property 6:3,4,7 7:22 9:11 11:7 26:8,13 36:6 43:20 49:2,7 49:14,18,20 50:1,3,5,16,16 50:19 51:14 52:14,24 55:16 59:11,18 66:22 67:12 68:7 69:24 71:18,20 71:22 72:1 74:25 78:14 provide 27:6 46:8 74:5 provided 18:11 30:15 31:20,25 43:22 44:10,18 46:6 55:9 67:20 68:20 73:5,13 75:10 75:21
--	---	---	---	--

providing 48:9	54:1	receiving 16:14	62:19	74:24 75:2
Public 1:15 80:5	reading 3:19	39:18 59:14,20	remember 6:24	resolving 32:9
80:23	ready 5:15	66:11	15:3,7,11	respective 3:19
pulse 35:11	real 8:16 10:11	recess 40:2 68:2	31:12 40:16,19	responses 41:3
purchase 17:7	10:14,15,18	77:17	40:20 48:13	responsibility
purpose 17:3,6	20:1 37:21,21	recognize 39:9	49:14 50:11,15	45:10
28:1 44:5	46:3 51:19	77:22	64:6,22,23	result 16:14 54:3
purposes 24:15	52:10 67:9	recollection	remodel 14:8	62:16 67:14
put 14:22 18:1	68:4 71:18	24:13	removal 20:25	retain 23:13
25:25 37:4	realignment	recommendati...	rent 10:14	43:12 46:19
56:14 57:24	50:19	17:16 74:20	repaid 40:7,8	retained 23:14
58:4	really 9:22 30:25	record 23:20	55:19	32:23 53:7
Q	36:13 44:11	40:1,4 77:16	repay 56:13	retired 28:22
quantified 56:11	51:3 53:8	77:24 80:9	repaying 44:6	retrieve 23:22
question 4:14,15	59:17 60:13	records 41:18,20	repayment	41:8
4:20,21 5:6,7	61:3 65:8,9	43:3,12 45:21	21:19 53:12	return 24:19
5:20 24:9 60:1	66:14,18 77:6	45:23,25 63:21	54:23 68:13	30:6 52:2
67:7,9 79:6	79:5	69:16	repayments 42:9	returns 41:22
questions 5:5	reapplication	referred 22:2	repeat 38:21	42:3 63:12
11:16 79:8	29:12	referring 22:11	repetitive 4:12	reup 30:4,7
quick 39:25 67:9	reapply 28:10	57:3,7	rephrase 4:16	revenue 63:4
68:1	29:12	reflect 16:7	5:6,7 55:3	64:4,7,13,13
QuickBooks	recall 13:4 18:14	reflected 41:21	report 80:7	review 24:4
63:24	18:23 28:16	42:2,7,15	REPORTED	Richard's 9:9,22
quite 28:13	30:21 31:23	reflecting 43:3	1:13	Rick 64:23
50:21 57:22	32:6 54:5	regarding 6:3	Reporter 1:14	rid 20:20
quote 75:10	73:25	17:25 27:12	1:14 80:5	Ridenour 1:13
R	receive 16:11	49:23	reporter's 5:18	80:4,23
R 2:1 80:1	18:4,6 21:2	regardless 18:10	represent 4:4	right 5:3,10,16
railroad 43:21	22:13,18,21	24:20	REPRESENT...	6:23 7:3,13 8:5
45:2,2,7,19	37:1 39:22	Registered 1:14	2:2,8	12:9,17 13:20
49:6,14,17	57:19 59:1	80:4	request 41:5	14:15 16:14
51:20 55:16	61:6,11,18,24	reimburse 60:10	requested 45:21	20:9 27:6
66:21 67:12	62:2,14 65:10	reimbursements	require 4:21	31:25 34:17
69:24 74:25,25	66:18,22	59:8 65:14	required 30:8	36:2,4 38:13
raised 62:23	received 18:10	related 49:1	34:1	40:9 42:12
ran 76:5	34:8 38:17	50:13 67:12	residence 76:6	45:7 51:16
rates 62:24	40:6 41:2	69:9 76:20	residential 58:8	52:19,21,25
reached 49:20	48:19,21 53:4	relative 80:11,13	resolve 45:10	53:16,19 55:1
reaching 9:15	54:2 61:16,20	release 20:25	73:2	55:10 57:4
read 15:19 25:2	61:22 76:19	relentlessly 38:8	resolved 44:13	58:11,21 60:19
	78:1	remaining 44:9	73:18 74:4,21	65:7 67:3

68:10,24 69:7	satisfaction 32:5	separate 32:5	15:3,7,11	2:10 4:9 6:5,6
69:22 70:7,25	33:20 34:8,9	38:23	simpler 16:20	7:23 9:5 10:5
71:3,5,21	38:18,20 76:20	separately 42:21	simultaneous	14:6,13 18:19
72:11 74:12	76:23	September 1:9	74:2	21:12 24:6
78:5,22 79:4,9	satisfied 36:16	70:19	sinking 36:11	46:24 54:20
roll 28:8	38:2 45:6	series 37:16	60:4	68:4,7 80:2,5
Ross 1:6,8 3:2,9	75:11,16	service 55:9	sir 13:19	80:18
4:2 45:17	satisfy 33:23	services 47:25	situation 36:7	speak 17:22
78:15 80:8	34:5,22 38:1	48:4,8,9,18	36:13	specific 45:24
roughly 6:25	71:13 72:17	75:11	six 35:24 71:1	68:9
22:21 28:19,24	76:2	set 21:18 24:2	skills 56:18	specifically 6:12
34:4,7 36:21	Sawgrass 61:9	40:12 57:10,15	slightly 40:18,21	6:15 27:9
37:14 43:18	61:10,12,17,18	58:1 61:4	49:19 56:1,2	49:25 65:17
44:25 45:3	65:16,23 66:1	seven 23:22	sliver 49:16	77:1
51:1 53:15	66:4	seven-year 43:9	slow 65:9	spelling 48:17
54:22 55:12,15	saying 25:12,13	shape 66:10	small 10:18 21:4	spent 36:9 56:16
55:19,24 68:11	67:19	share 22:8	23:14 43:20	56:17
RPR 1:13 80:23	says 26:23	sharing 17:23,25	62:8,9,11	spontaneously
ruined 65:4	school 11:21,23	ship 36:10 60:3	social 12:17,21	74:14
rule 5:9	11:25 12:4	shortly 24:17	12:22,24	spring 35:24
rules 4:11,12,21	se 63:19	38:4 47:18	sold 43:21 51:19	square 38:10
run 10:18 36:2,3	SEAL 80:16	55:18 60:25	52:14,24 71:18	stable 59:7
38:6,13,14	second 8:15	show 19:4 43:6	73:4	start 9:7 20:1
66:6 76:16	64:23 68:24	67:1	sole 11:12,12	59:7,14
running 22:4	79:8	showed 76:1	66:1	started 30:17
30:25 31:2,10	Section 78:14	showing 29:6	solved 45:12	31:10
35:17	see 26:19 30:1	45:25 54:4	somebody 50:13	Starting 30:11
runs 49:17	47:1 54:2,3	63:3 66:23	65:24	31:2
	67:1,2 72:2	68:22	somewhat 49:18	State 1:1 13:12
S	78:11,14,16	shows 53:7	71:22	13:14,16 80:2
S 1:6,8 2:1 3:2	seen 78:3,17,23	shredded 43:16	soon 37:7	80:5,18
42:18 43:2	79:1,3	shut 60:24	sorry 18:22 24:7	statement 3:12
80:8	sell 8:11	sick 30:23 33:25	35:4 42:14	53:3 67:2
Saints 12:20	Seller's 3:12	36:3	55:3,24 61:7	68:22 72:3
sale 45:2 54:3	53:3	sign 16:15 17:10	67:10 69:21,22	statements
55:16 66:21	selling 8:6 42:20	signature 14:25	70:17 71:5	23:22 41:5,8
67:12,14 71:25	send 30:5,6	78:11	75:15	46:8,11,21
73:3	46:15	signed 15:22	sort 42:10 59:21	47:2 48:19,22
sales 51:10 64:7	sense 52:7	16:4 24:11	sounds 50:18	stayed 35:5 76:4
64:8,10,11	sent 19:1 46:21	25:2,10 26:24	source 15:17	staying 36:14
Salt 8:3,4 12:8	46:23 66:25	39:2 40:5	27:11	76:12
12:10 13:8	67:1,4,11	signing 3:19	South 1:1,12 2:5	stenographica...
17:5 35:4				

80:7	surrounding	teetered 20:8,8	three 30:20	70:8,14 72:24
step 36:3	71:19	tell 4:25 5:25 7:1	thrown 43:15	73:6,18 78:22
stick 21:16	surviving 20:10	49:13	Thunderbird	78:22 79:3,5
stipulated 3:18	sworn 4:2 78:11	ten 7:21 28:17	11:20	times 22:14
STIPULATIO...	78:12 80:10	terminate 28:7	Thursday 56:17	27:22 28:14
3:17	Synovus 69:2	terms 15:20	ticket 60:5	30:7 36:14
stock 61:9	71:9	16:24 21:18,19	Tillman 2:3 3:3	45:8 48:23
story 49:13	system 63:6	21:24 22:2	3:10 4:3,4 5:17	60:4
straights 51:18		51:9 64:7	14:19 24:1	title 26:12 50:2
52:5	T	testified 78:22	39:8 40:3 41:1	titled 14:23,24
strategic 73:5	T 80:1,1	testimony 3:2	49:5,11,12	tnettles@fink...
Street 1:12 2:4	take 4:24 5:1	29:20 73:12	55:23 68:3,19	2:11
33:12 49:1,17	13:20 15:19	75:5,5,15,15	71:2 77:8,11	today 12:8 79:5
71:19 73:3,7	19:6 39:25	78:19 80:9	77:13,20,25	told 33:24 72:24
structured 73:3	53:18 61:7	Thank 79:9	79:9	top-line 64:13
stuff 30:6 47:4	66:3 68:1	thanks 36:12	time 1:10 4:25	total 44:23 64:7
stuff's 43:15	taken 1:9 4:6	They'd 30:5	8:21 9:3 10:3	transaction
sublimation	40:2 68:2	thing 44:9 50:22	16:1,4 17:13	75:23
65:18	77:17	59:18 61:2	17:24 20:3,5	transcript 3:19
submitted 42:3	talk 5:19,19 7:11	65:23	24:10,17 25:10	80:8
subpoenaed	11:15 16:21	things 12:23	26:6 27:3	transfer 65:19
45:22	55:10 68:15	19:24 28:2	28:13 30:3	transferred 54:9
subsidiary 9:2	76:15 77:8	33:17 34:20	31:5,7,15,16	54:13,22 72:3
substantial 36:1	talked 40:12	38:13 51:6	32:7 33:12,24	72:7
52:11	49:24 51:4	56:10 57:25	34:4,7,13	transition 57:12
substantially	63:15 74:15	59:21 62:7	35:12 36:1,11	59:6
8:10 34:12	talking 15:25	65:14 74:10	37:2,23 38:9	transplant 35:24
suburb 12:10	16:22 61:13	think 6:16 9:19	40:5,6 41:6,8	51:7
sudden 62:24	62:12 68:23	9:21 15:21	41:23 43:8,13	treated 42:10
suddenly 24:16	Tammera 48:5	18:25,25 21:6	45:7,19,20	tremendous
suing 8:16,17	tax 30:6 35:19	29:20 40:9,20	46:14,18 47:6	36:12 52:9
Suite 2:10	36:5 41:22,23	41:24 44:1	49:15 51:7,12	trend 64:12
Summary 3:12	42:3 43:9	46:13,14,16,17	51:13 52:11	tried 60:11
summer 58:2	52:12,15,17	46:20 47:13	54:14,19 56:6	true 80:8
Sunday 56:17	63:12	48:23 54:8,8	56:21,25 58:3	Truett 2:9 77:6
sure 5:21 9:2	taxable 52:1	54:19 59:17	58:15,25 59:3	79:6
15:16 18:7	taxes 35:20 42:5	60:24 61:3	59:11 60:17,22	try 9:11,15
42:4 46:11	42:7,7	62:17 66:19	61:14,17,24	31:13 35:11
50:23 57:6	team 66:6	74:22 75:2,13	62:9,20 63:2,4	36:7 60:11
66:25 69:21	technically	79:4	63:9 64:3,12	66:16
75:4 76:10	47:13 71:23	third 19:19	64:20 65:21	trying 29:19
surprise 24:24	Technologies	thousands 56:20	66:7,14 69:18	32:20 36:10
	65:16 66:4			

38:8 41:13	update 28:3	50:16 54:4,6,7	65:15	28:20 29:14
49:16 60:8	use 52:20	61:8 67:13	wide 5:15	31:4 33:3
66:13 74:9	Utah 7:25 8:3,23	68:12 69:9,13	wife's 12:13	34:16 36:20
turn 36:10	13:15,17,21	70:10 73:9,13	willing 17:13	37:16 38:19
Tuttle 27:21	14:4,12 21:10	wasn't 33:21	38:12	40:8 44:4,15
28:15	41:16 57:17	65:25,25 76:16	window 43:10	44:15 45:16
twenties 50:7	58:4	water 67:24	wire 18:7	46:17 47:12
Twenty 50:8	Utah's 13:12	water-based	wired 18:8 46:2	48:2,10,12
two 19:17 28:8	utilized 27:13	65:18	46:5,6	49:8,11 50:20
30:20 46:4	V	way 19:25 20:18	witness 4:21	51:3,15 52:2
75:6 79:6	v 1:5	25:10 29:7	5:16 80:9,16	52:23 53:1,16
type 12:23 45:24	value 8:9 55:9	31:14,19 39:14	Womble 1:11	54:16,21 56:1
62:15 65:17	62:18 74:7	58:2 60:14	2:4	60:2 61:4 63:6
typically 14:10	various 11:8	66:10 67:3	words 5:20	63:20 64:5,11
U	48:11	74:22	19:23 53:14	64:20 67:24
Uh-huh 4:18	verbal 76:14	we'll 5:1 44:2	work 14:6,11,13	68:25 69:17
53:13 58:13	verbally 33:22	we're 5:15 14:15	17:17 21:12	70:1,13,16,24
Uh-uh 78:4	36:17 75:6,16	32:20 38:9	38:7 56:10	72:10,14,16,19
ultimately 20:9	vice 13:15	39:4 40:4	57:15,23 62:16	72:21 73:23
38:15	video 65:3,5	68:15	world 65:4	74:7 75:3
unable 41:18	W	we've 30:6 40:12	worse 20:2,2	77:13 78:10
understand 4:15	W-2'd 58:22	47:5 66:25	worth 56:16	year 6:25 12:6
4:15,17 5:6	65:13	67:1 68:10	62:18	28:8 37:7
8:18 15:25	waived 3:20	Wednesday 1:9	wouldn't 46:20	42:17 62:25
16:4,17 24:10	Wando 12:4	weeks 36:9	write 32:4 47:4	64:16 76:13
24:20 27:10	want 8:11 15:19	56:16,18	47:7,21	years 7:1,18,21
29:19,21 75:5	21:9 28:11	Wells 3:12	writing 18:1	23:22 25:3
75:14,20 76:9	47:19 65:6	Wells-Fargo	31:18 32:10	28:19 43:16
78:25	67:22,24 75:4	71:9	37:1,11 76:1	50:6,8,8 66:8
understanding	76:9 77:1	went 11:19,20	76:10,16,19	Yep 4:18 23:19
26:4 31:24	wanted 27:10	12:4 17:22	written 34:8,9	26:20 55:14
40:5 55:8	28:3 29:24	19:24 20:8	38:18,20 44:16	57:2 77:10
71:12 78:21	wanting 29:21	23:9 38:7	wrote 63:18	Young 11:19
understood	Warren 10:22	47:20 49:21	X	younger 50:1
37:22 61:4	10:23,24 11:1	50:23 51:9	X 3:1	51:18
unexpectedly	17:1,2,9,18	60:11 72:1	Y	Z
24:16	18:12,21 23:3	73:3	yeah 6:6 9:6	Zeezrom 6:15,18
Unfortunately	23:9,12,15	weren't 9:14	10:24 12:24	9:6,20 10:2,8
23:21 58:1	24:5 27:4	35:12 42:10	17:16 20:19	10:10,21 11:2
unimportant	28:25 29:2	50:22 60:7	22:12 23:9	11:4,7,12,13
74:10	43:7 50:2,4,15	62:22	25:8 27:4,25	14:8 26:11,12
University 11:19		whatnot 59:5		33:9 46:25

47:10 58:19 60:1,9,21 62:20,24 69:15 69:20 70:4,9 70:10 71:8,23 72:4,12 Zeezrom's 60:16 63:3,7 Zions 3:11 41:6 41:11,14,16 43:12	26:5 171 55:25 176 55:22 18 15:7 1808 33:12 71:19 73:3,7 19 1:9 1992 12:7	38:4 43:25 44:1 45:3 47:17 49:21 51:2,3,18 52:25 55:12,18 57:10,20 58:2 59:22 60:20 62:4,16 64:3 65:2,12 68:11 69:7,19,24 72:25 75:8,17 2010-'11 61:14 2010-2011 59:3 60:17 63:4 66:4 2010-to-2011 56:25 58:15 64:20 65:21 2011 31:2 35:1 36:9,24 43:25 47:19 56:15 57:21 59:16,22 60:20 62:4,16 64:3 65:2,12 75:8 2012 59:17 2013 78:12 2015 47:20 2016 38:16 44:23,23 45:4 69:4,8,19 70:2 70:20 71:7 73:12 74:1 2017 39:23 2017-CP-10-872 1:4 2018 1:9 80:17 2021 80:24 22 69:4,8,19 70:2 71:7 73:12,25 2233 6:16,19	25:24 26:5 22nd 72:15 23 3:9 25 50:6,8 26th 70:19 29401 2:5 29405 2:10	6 63:12 68:16,17 68:20 71:3,6 683:12 7 73:13 70:21 71:3 77:18,22 7/12/17 3:9 773:13 8 803:5 800 44:25 800,000 23:3 28:24,24 37:14 38:2 40:14,18 40:20,21,21 43:18 45:1 55:12 56:2 64:13 9 920:2 78:12 9:55 4:1
0 0.362-acre 49:1 05 37:17 06 37:17 07 37:17	2 23:9 15:8 16:7 16:11,14 18:4 21:16 23:23,24 24:4 25:18,21 40:6 44:6,20 45:4 55:20 69:9 72:22 75:7 20 50:8 66:8 2000 64:12 2000s 28:20,23 2004 4:5 15:7 18:9 19:5,20 27:16 28:12 37:7,8,9 71:14 2005 22:20 23:5 23:16 28:25 37:4,9,9 40:13 40:17 41:10 43:19 45:1 55:13 2005-to-2007 43:7,13 2007 20:1 22:20 23:5,16 28:25 37:24 40:13,17 41:11 43:19 45:1 55:13 2008 20:2 2010 21:9 30:11 30:24,25 34:3 34:4,25 35:1,3 35:23,24 36:24	3 33:9 39:5,6,11 39:18 30 52:25 55:12 55:18 56:16,17 69:7,19,24 32 36:9 361,613.39 53:4 371,000 53:15 54:22 55:15 371,613 53:8 393:10 3rd 80:16	3 33:9 39:5,6,11 39:18 30 52:25 55:12 55:18 56:16,17 69:7,19,24 32 36:9 361,613.39 53:4 371,000 53:15 54:22 55:15 371,613 53:8 393:10 3rd 80:16	4 43:3,11 40:23 40:24 62:25 403:11 17:12 50:7 400,000 44:10 53:15 4000 2:10 450 2:10 493:12
1 13:8 14:16,17 14:20 21:17,18 24:8 25:7 31:17 40:5 73:14 1,006,000 78:15 1,071,000 55:20 1,104,374.46 71:8 1,170,000 68:12 1.170.3 72:12 72:13 1.2 31:9 1.3 31:9 10:00 1:10 100 64:15 100,000 21:6 62:21 11 38:5 72:25 11:53 79:10 12 1:12 7:21 143:8 25:3 80:24 176:16 25:24	1 13:8 14:16,17 14:20 21:17,18 24:8 25:7 31:17 40:5 73:14 1,006,000 78:15 1,071,000 55:20 1,104,374.46 71:8 1,170,000 68:12 1.170.3 72:12 72:13 1.2 31:9 1.3 31:9 10:00 1:10 100 64:15 100,000 21:6 62:21 11 38:5 72:25 11:53 79:10 12 1:12 7:21 143:8 25:3 80:24 176:16 25:24	5 52:4 3:12 48:25 49:3,10,11 51:13 53:3 66:20 71:4 5,000 62:13 5/8/18 3:11 50 64:15 500,000 62:25	5 52:4 3:12 48:25 49:3,10,11 51:13 53:3 66:20 71:4 5,000 62:13 5/8/18 3:11 50 64:15 500,000 62:25	

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JULIE J. ARMSTRONG)
CLERK OF COURT)
PATRICIA HOLLIDAY,)

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
Case No.: 2013-DR-10-2434

BY Plaintiff,)

versus)

WARREN PHILIP HOLLIDAY,)

Defendant.)

FINAL ORDER
AND
DECREE OF DIVORCE

PRESIDING JUDGE:

J. McMahon

DATE OF HEARING:

December 9, 2013

PLAINTIFF'S ATTORNEY:

Alan D. Toporek, Esquire

DEFENDANT'S ATTORNEY:

F. Truett Nettles II, Esquire

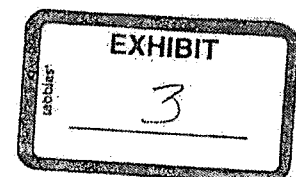
COURT REPORTER:

Missy Brown

This matter came to be heard before me on December 9, 2013, for Final Hearing. Present and appearing in Court this date were the Plaintiff and her attorney of record, Alan D. Toporek, and Defendant and his attorney of record, F. Truett Nettles II. At the call of the case, the Parties, by and through their attorneys, presented to the Court a document dated August 9, 2013 entitled Marital Settlement Agreement, which had been executed by the Parties, which purports to resolve all issues by and between the Parties with the exception of the ultimate divorce. The Parties also presented to the Court a document entitled the Patricia Anne Holliday Marital Trust, which was executed by the Trustees, Ross Samuel Holliday and Pamela Giselle Holliday Wallin. Lastly, the parties the parties presented an executed document entitled Addendum to the Marital Settlement Agreement dated October, 3013..

The Trust instrument is designed to provide benefits to the Plaintiff in the event the Defendant predeceases her.

Prior to taking testimony, the Court attempted to affect a reconciliation to the Parties, but was unsuccessful in its efforts.



The Parties read an additional addendum to the Marital Agreement into the record:

1. The personal property acquired by and between the parties during the marriage has been equitably divided to their mutual satisfaction.
2. The Parties have also agreed that the alimony payments contained in the Marital Agreement shall be due and payable on or before the 15th day of each and every month.

The Parties and their corroborating witness were sworn and testimony taken from each. Based upon the testimony of the Parties and the corroborating witness, the Court makes the following Findings of Fact:

1. That the Plaintiff and Defendant are the citizens and residents of the Charleston County, State of South Carolina, and have been residing herein for a period in excess of one year prior to the commencement of this action;
2. That the Plaintiff and Defendant are husband and wife, having been married on September 10, 1966;
3. That there were four children born to the marriage, namely, Pamela Giselle Holliday Wallin, Mark Bennett Holliday, Ross Samuel Holliday, and Warren Lee Holliday, all of whom are emancipated;
4. That the Parties have lived separate and apart without cohabitation since on or about February, 2011, thereby entitling the Plaintiff to a divorce, a vinculo matrimonii, of and from the Defendant, on the statutory grounds of one year continuous separation;
5. That the Parties were examined fully regarding their understanding of the executed Marital Agreement, the Addendum to the Marital Agreement and document entitled The Patricia Anne Holliday Marital Trust. The Parties entered these Agreements voluntarily, without duress, and after having been fully apprized of the financial status of one another.

The Court finds that the Marital Agreement, the Addendum to the Marital Agreement and the Trust Agreement are fair and equitable, and that the Marital

Agreement and Addendum to the Marital Agreement shall be made the Order of the Court, and that the Parties shall equally be bound by the Patricia Anne Holliday Marital Trust.

Based on the foregoing, it is ORDERED, ADJUDGED, and DECREED that the Plaintiff be granted a divorce, , a vinculo matrimonii, of and from the Defendant, on the statutory grounds of one year continuous separation;

It is further ORDERED, ADJUDGED, and DECREED that the Marital Agreement, the Addendum to the Marital Agreement, copies of which are attached hereto and by reference made a part hereof, be, and are hereby made, the Order of this Court;

It is further, ORDERED, ADJUDGED, and DECREED that the Parties are to be bound by that certain document entitled the Patricia Anne Holliday Marital Trust; a copy of which is attached hereto and by reference made a part hereof.

AND IT IS SO ORDERED!



THE HONORABLE JUDGE

This 9 day of Dec, 2013

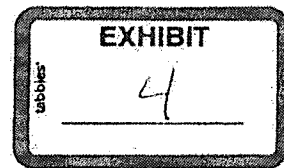
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & J.
BY  DEPUTY CLERK

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP

5 Exchange Street
Charleston, SC 29401

Mailing Address:
Post Office Box 999
Charleston, SC 29402
Telephone: (843) 722-3400
Fax: (843) 723-7398
www.wcsr.com



Matthew E. Tillman
Attorney at Law
Direct Dial: 843-720-4629
E-mail: mtillman@wcsr.com

Certified Article Number

9414 7266 9904 2073 2634 17

SENDERS RECORD

July 12, 2017

Certified Mail/Return Receipt and

Regular U.S. Mail

Ross S. Holliday
14051 Sage Hollow Drive
Draper, Utah 84020

*RE: \$2,000,000 Note dated June 18, 2004 from Ross Holliday to Warren P. Holliday
and Patricia B. Holliday*

Dear Mr. Holliday:

As stated in my prior letter, this law firm represents Patricia B. Holliday. With respect to collection of amounts owed on the promissory note dated June 18, 2004 in the original principal amount of \$2,000,000, (the "Note") given by you (the "Borrower") in favor of Warren P. Holliday and Patricia B. Holliday ("Lender"). This is an attempt to collect a debt owed to Lender and any information obtained will be used for that purpose.

My prior letter contains a clerical error. That letter indicates that the balance due on the Note must be paid on or before January 11, 2017. It should read that the balance is due on or before January 11, 2018.

Lender waives none of its rights and remedies and hereby expressly reserves all rights and remedies it may have against Borrower under the Note and all other documents evidencing or securing repayment of the Note and granted by law or equity, including, without limitation, the right to collect from Borrowers default interest, attorneys' fees and costs, and all other expenses Lender may incur by reason of Borrower's default and the acceleration and any failure to pay the above sums when due.



Ross S. Holliday
July 12, 2017
Page 2

You may send payment to Patricia Holliday by check mailed to my attention at 5 Exchange Street, Charleston, South Carolina 29401.

Sincerely,

Womble Carlyle Sandridge & Rice, LLP

A handwritten signature in black ink, appearing to read "Matt Tillman".

Matt Tillman.

cc: Patricia Holliday (email only)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Patricia B. Holliday

Plaintiff(s)

vs.

Ross S. Holliday

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 CP - 10 - 872

Submitted By: Matthew E. Tillman
Address: Womble Bond Dickinson (US), LLP
5 Exchange Street
Charleston SC 29401

SC Bar #: 70338
Telephone #: 843-722-3400
Fax #: 843-723-7398
Other:
E-mail: matthew.tillman@wbd-us.com



NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☒ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature:

Matt Tillman

Date:

2/19/18

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

SCCA / 234 (02/2018)

Page 1 of 2

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO. 2017-CP-_____

Patricia B. Holliday,)

) Plaintiff,)

vs.)

Ross S. Holliday,)

) Defendants.)

SUMMONS

2018 FEB 20 AM 10:39
JULIA S. DICKINSON
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend and to serve a copy of your Answer to the Complaint upon the subscriber at his office, 5 Exchange Street, Charleston, South Carolina 29407, within thirty (30) days after service hereof, except as to the United States of America, which shall have sixty (60) days, exclusive of the date of service. If you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint, and judgment by default will be rendered against you for the relief demanded in the Complaint.

WOMBLE BOND DICKINSON (US), LLP

Matthew Tillman

Matthew Tillman, SC Bar No. 70338

5 Exchange Street

P.O. Box 999

Charleston, SC 29402

Telephone (843) 722-3400

Facsimile (843) 723-7398

Charleston, South Carolina

February 14, 2018

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-_____

Patricia B. Holliday,)
)
Plaintiff,)
)
vs.)
)
Ross S. Holliday,)
)
Defendants.)
)

COMPLAINT
(Jury Trial Demanded)

2018 FEB 20 AM 10:39
BY JUDGE
CLERK
CLERK

The Plaintiff, Patricia B. Holliday ("**Plaintiff**"), complaining of the Defendant, Ross S. Holliday, ("**Defendant**"), alleges and states as follows:

1. Plaintiff is a resident and citizen of Charleston County, South Carolina.
2. Defendant is, upon information and belief, a resident and citizen of the State of Utah.
3. This action concerns collection of amounts owed on a note signed by Defendant in South Carolina. All amounts owed under the note are required to be paid to South Carolina residents in South Carolina. Therefore, this Court has personal and subject matter jurisdiction over the parties to this action. Further, venue is proper pursuant to S.C. Code Ann. § 15-7-10.

AS A FIRST CAUSE OF ACTION
(Breach of Contract)

4. Plaintiff incorporates the foregoing allegations.
5. On or about June 18, 2004, Plaintiff and Warren P. Holliday loaned \$2,000,000 to the Defendant in South Carolina.
6. The loan was evidenced by a Promissory Note ("Note") executed and delivered by the Defendant on or about June 18, 2004. The Note is attached as Exhibit 1.

7. Agents for the Defendant have made representations that Defendant made some payments required under the Note to Warren Holliday. Upon information and belief, those payments were made in the years 2011 or 2012.

8. Upon information and belief, there remains a balance outstanding under the Note that has not been repaid by the Defendant.

9. On July 12, 2017, Plaintiff transmitted a letter to Defendant, in which she demanded payment of all amounts outstanding under the Note.

10. The Defendant made no payments in response to the demand, and is in default on the terms of the Note.

11. Plaintiff has provided Defendant with all notices required under the Note.

12. Plaintiff is entitled to recover her reasonable attorneys' fees and costs of collection in enforcing her rights under the Note.

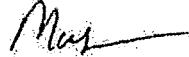
13. As a proximate result of Defendant's breach of the Note, Defendant owes Plaintiff an amount to be determined by the trier of fact, plus reasonable attorneys' fees and costs of collection.

WHEREFORE, Plaintiff prays for the following relief:

(a) Payment of all sums owed to Plaintiff pursuant to the Note, plus reasonable attorneys' fees and costs of collection, with interest accruing on the foregoing amounts at the contract rate until judgment is obtained and thereafter at the post-judgment legal rate; and,

(b) Granting Plaintiff such other and further relief as this Court may deem just and proper.

WOMBLE BOND DICKINSON (US), LLP



Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398

Charleston, South Carolina
February 14, 2018

ATTORNEYS FOR PLAINTIFF



PROMISSORY NOTE

June 18, 2004

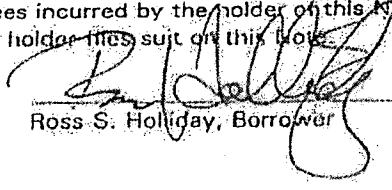
\$2,000,000

FOR VALUE RECEIVED, Ross S. Holliday, the undersigned borrower, promises to pay to Warren P. Holliday and Patricia B. Holliday, as joint tenants or the survivor of them, or order, the sum of Two Million Dollars (\$2,000,000) together with interest on the unpaid balance at the rate equal to the prime rate of National Bank of South Carolina plus one-half percent (1/2%), payable upon demand. Provided, however, in the event demand is made for payment of this Promissory Note ("Note"), then borrower shall have six (6) months following the date of such demand to complete repayment of this Note. The borrower will make all payments at such place as the holder designates in writing.

At the option of the holder of this Note until payment in full or maturity, upon default, all monies payable under this Note are due and immediately payable. The Note is in default if any payment remains unpaid beyond the date six (6) months following the date of demand for payment.

The borrower may prepay all or part of the loan without penalty. Each payment first applies to the payment of accrued interest and the balance of each payment applies to the payment of principal.

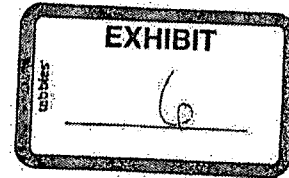
If the borrower does not pay this Note when due, the borrower promises to pay all costs of collection and reasonable attorneys fees incurred by the holder of this Note on account of such collection, whether or not the holder files suit on this Note.



Ross S. Holliday, Borrower

773348

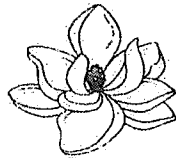
Deposition of:
Patricia Holliday



**Holliday
vs.
Holliday**

CASE NO. 2017-CP-10-872

September 19, 2018



Magnolia Reporting, LLC

P.O. Box 61011
North Charleston, SC 29419
(843) 303-9141
www.MagnoliaReporting.com



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Patricia B. Holliday,

Plaintiff,

v.

Ross S. Holliday,

Defendant.

)
)
)
) Civil Action No.:
) 2017-CP-10-872
)
)
)
)

DEPOSITION OF: PATRICIA B. HOLLIDAY

DATE TAKEN: Wednesday, September 19, 2018

TIME: 1:50 P.M.

PLACE: Womble Bond Dickinson
12 Exchange Street
Charleston, South Carolina

REPORTED BY: MARY ANN RIDENOUR, RPR, CLR
Registered Professional Reporter,
Certified LiveNote Reporter
and Notary Public

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

MATTHEW E. TILLMAN, ESQUIRE
Womble Bond Dickinson
5 Exchange Street
Charleston, South Carolina 29401
matthew.tillman@wbd-us.com

REPRESENTING THE DEFENDANT:

F. TRUETT NETTLES, II, ESQUIRE
Finkel Law Firm
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405
tnettles@finkellaw.com

ALSO PRESENT:

ROSS S. HOLLIDAY

I N D E X

Testimony of Patricia B. Holliday

Direct Examination by Mr. Nettles.....4

CERTIFICATE.....48

I N D E X
INDEX OF EXHIBITS

Plaintiff's Exhibit No. 8 - Marital Settlement
Agreement.....18

STIPULATIONS

It is hereby stipulated and agreed by and between
the parties hereto, through their respective counsel,
that the reading and signing of the transcript is
waived by the Deponent.

1 (The deposition commenced at 1:50 p.m.)

2 PATRICIA HOLLIDAY, SWORN.

3 DIRECT EXAMINATION BY MR. NETTLES:

4 Q. Is it okay if I call you Patricia?

5 A. Sure.

6 Q. You know I represent the defendants, or
7 respondents, actually, defendant, your son, Ross, in
8 this lawsuit about the promissory note, right?

9 A. Yes.

10 Q. And I'm going to take your deposition today.
11 And you're under oath.

12 What does that mean to you, when you're under
13 oath? What does that mean?

14 A. You have to be truthful. You're obliged to
15 be truthful.

16 Q. Okay.

17 A. And you accept that responsibility of being
18 truthful.

19 Q. Good. So you and I can agree that everything
20 you're going to say is true?

21 A. Yes.

22 Q. Like the instructions that your attorney gave
23 to Ross in the deposition this morning, if I ask a
24 question that's not clear, would you ask me to restate
25 it or explain the question?

1 A. Yes, I would.

2 And could I just say one thing? I'm not
3 trying to be Hollywood; I'm extremely light-sensitive,
4 so...

5 Q. I know..

6 A. These are my bifocals, too.

7 Q. Yeah. You wore sunglasses at the divorce
8 hearing.

9 A. I wear them indoors all the time, when
10 there's any kind of bright lights.

11 Q. That's right.

12 Are you on any medications today?

13 A. Today?

14 Q. Yeah.

15 A. Yes, I do take medications.

16 Q. Which ones are you on, let's say the last 24
17 hours?

18 A. Well, Humalog insulin, with meals.

19 Q. Okay.

20 A. Tresiba, long-acting, to work with my
21 insulin, once a day.

22 Q. Okay.

23 A. And Prilosec for acid reflux.

24 Q. Okay.

25 A. Wellbutrin.

1 Q. All right. I'm familiar with that one. And
2 what else?

3 A. I take that as a way of -- I just recently
4 started on it, to go through nonsmoking. You know, it
5 eliminates the cravings or whatever.

6 Q. Is it working?

7 A. Yes, very much.

8 Q. How long since you had a cigarette?

9 A. I had one at lunchtime.

10 Q. What, is this helping you reduce your urge to
11 smoke?

12 A. Yes. Yes.

13 Q. Is that the idea?

14 A. Yes.

15 Q. Okay.

16 A. In fact, I used to be a chain-smoker. I
17 don't know whether I enjoyed the smoking or the
18 lighting up.

19 Q. What other meds do you take?

20 A. I take Lexapro.

21 Q. Glaxipro?

22 A. No, Lexapro.

23 Q. Okay.

24 A. L-e-x-a-p-r-o.

25 Q. What's that about?

1 A. That's an antidepressant.

2 Q. Okay. What else?

3 A. I take -- these have two funny names.

4 Furosemide, F-u-r...

5 Q. What is that about?

6 A. That has to do with food retention.

7 Q. Is that related to your diabetic condition?

8 A. Yes. Yes.

9 Q. Okay. What else?

10 A. It's called Spiractin. It works, as well.

11 Q. And that, again, is to help you with sugar?

12 A. Diuretic.

13 Q. Diuretic?

14 A. Yeah.

15 Q. Okay. Others?

16 A. They just put me on one. I used to take a
17 preventive blood pressure medication, Asenophil (ph),
18 but they took me off because they said I really didn't
19 need it. But it works to -- with my diuretics. And
20 it's called -- I just started it this week. It's a
21 short name, C-o -- I can't be sure.

22 Q. And what does it do, blood pressure?

23 A. Yes. Yes. But it -- it's to keep me, with
24 these fluid pills, from becoming potassium deficient,
25 so that I don't have to take potassium.

1 Q. Okay. What else?

2 A. I have a breather, as needed --

3 Q. What --

4 A. -- for allergies.

5 Q. What's the name of that?

6 A. Breo, B-r-e-o.

7 Q. Okay. Others.

8 A. I have a prescription for nasal spray,

9 Astelin, A-s-t-e-l-i-n, as needed.

10 Q. And that, again, is for?

11 A. Allergies, uh-huh.

12 Q. Are there any others?

13 A. Count down. See how many you have before the
14 two sprays, please. Five or six?

15 Q. Well, I've got -- it's -- it's seven, I
16 believe, because there were two there about the --

17 A. Oh, the two insulins, yes. But I'm talking
18 about the pills. So take four of them off.

19 Q. Okay. So four others and then two inhalers,
20 or nasal spray and inhaler?

21 A. No.

22 Q. Is there anything else?

23 A. No. Two and two. I take a total of six
24 pills a day.

25 Q. Now, do any of these pills affect your memory

1 or your speech?

2 A. No.

3 Q. Have you had any problems with your memory in
4 the last, I don't know, while, last year or two?

5 A. No, sir.

6 Q. I'm going to show you, just so we can get on
7 the same page, Exhibit 1 from the deposition of Ross
8 Holliday this morning. It was a copy of a Promissory
9 Note, which I'm showing to you right now.

10 A. Uh-huh.

11 Q. Is that what we're -- this lawsuit is
12 about?

13 A. Yes, sir.

14 Q. You agree that that is the Promissory Note?

15 A. Yes.

16 Q. Okay. Were you present when Ross S. Holliday
17 signed a Promissory Note?

18 A. I'm not sure. I don't recall. But I was
19 aware of it, yes.

20 Q. Your attorney wrote a demand letter on July
21 12, 2017, to Ross Holliday, demanding payment of this
22 note. And it had a copy of the note, I believe,
23 attached. Did you think, at that time, that \$2 million
24 plus interest was due on this Promissory Note --

25 A. Yes, sir.

1 Q. -- when your lawyer wrote that opinion?

2 A. Yes, sir, I did.

3 Q. So is it your opinion that no payments were
4 ever made by Ross on this loan?

5 A. I really couldn't say, because I had no
6 involvement with the record keeping for the amusement
7 company anymore or -- I know personally none was given
8 to me.

9 Q. So if Ross paid the two million and it went
10 through Holliday Amusements or Zeezrom, would you know
11 it?

12 A. No, because I had no access to the records.

13 Q. Well, what was the basis for your thinking
14 that two million plus interest was due from Ross?

15 A. Because I was never told that he had paid it
16 off --

17 Q. Well --

18 A. -- to Warren. And I knew he hadn't paid it
19 to me.

20 Q. Let's follow-up on that.

21 A. Uh-huh.

22 Q. Did you ever get any money from Ross to pay
23 back this Promissory Note?

24 A. No, sir.

25 Q. And I don't want to assume too much. You

1 said, you know, you don't know the records of Holliday
2 and Zeezrom and all that?

3 A. I used to be -- you know, do all that in the
4 office.

5 Q. Yes.

6 A. And then they -- they hired other people.
7 And I became less involved, and more involved in other
8 ventures that we had.

9 Q. Yes.

10 A. We had an auto salvage on Highway 17. And I
11 ran that for ten years.

12 Q. Uh-huh. You had a phone recorder in the
13 attic, didn't you?

14 A. Excuse me?

15 Q. Do you remember wanting to listen in on some
16 telephone conversations about parts getting gone from
17 your business?

18 A. No, I did not.

19 Q. Okay.

20 A. I don't even know where that came from.

21 Q. I was representing you at the time.

22 A. No.

23 Q. The problem was solved, I think. That
24 employee is gone, so...

25 A. Well, the business is gone.

1 Q. Yeah. You also had a taco business, didn't
2 you?

3 A. We -- we -- yes. We bought a -- Taco Trio.
4 It was a restaurant. Actually, it was on Coleman,
5 where the Taco Bell is now. We bought that. It was an
6 individual that owned Taco Trio. And he wanted to
7 retire and go back to Ohio.

8 Q. Did you -- were you involved with running
9 that business?

10 A. Not physically, day-to-day, no, sir. Part of
11 the arrangement was, he had a son that was in his late
12 thirties, early forties. He didn't want to go with his
13 family back to Ohio. And he pretty much was a manager
14 or whatever. And we just agreed to keep him on. He
15 knew how the recipes worked, and the system and all
16 that.

17 Q. Did you ever have a business over on the
18 Bypass, close to that shopping center that had the
19 bowling alley and the pool hall? I thought you had a
20 business over there for a while. I don't know. Maybe
21 I'm mistaken. That's okay.

22 Were there any other businesses?

23 A. At one time, we thought about buying that
24 bowling -- putting a bowling alley where the skating
25 rink was.

1 Q. Uh-huh.

2 A. Right behind the Volkswagen new car
3 dealership.

4 Q. Oh. On this \$2 million note, do you know
5 where the \$2 million came from?

6 A. Yes.

7 Q. Where?

8 A. It came from the bank. We pledged almost
9 nine acres on Highway 17 North, where I had the salvage
10 yard, which eventually became Sawgrass Technologies.

11 Q. Were you an owner of that property at the
12 time, legal owner?

13 A. No.

14 Q. Did any of this \$2 million come out of your
15 checking account?

16 A. No, sir.

17 Q. Did this money come out of any account that
18 you had an interest in, like a joint account with --

19 A. No. It strictly was a loan from the bank.

20 Q. Okay. Did you sign the loan with the bank?

21 A. No. I wasn't required to.

22 Q. So you were not liable on that loan --

23 A. No. No.

24 Q. -- to the bank?

25 A. No.

1 Q. Did you contribute anything else toward
2 making this loan, other than money or any other
3 thing?

4 A. Well, I was responsible for purchasing that
5 property, making that investment, pretty much all
6 the -- all the properties that Warren and I bought,
7 with the exception of one on Bees Ferry Road, that he
8 dealt with. But we kept it a very short period of
9 time. I secured financing, mostly owner financing, on
10 all the properties. And managed -- you know, we had
11 tenants. And we kept them over the years, pretty much
12 the same tenants.

13 Q. Well, prior to putting all of those different
14 properties in different LLC's, were they in the name of
15 Warren P. Holliday?

16 A. I -- I can't remember. I think they were.
17 And then there came a lawsuit. It was associated with
18 video poker machines that he operated through Holliday
19 Amusements.

20 Q. Yes.

21 A. And they -- I think they outlawed the use of
22 those machines January 1st, 2000.

23 Q. Okay.

24 A. And this lawsuit -- I'm not sure. It was
25 about that same time. Somebody had lost a bunch of

1 money in video poker machines. And they wanted us to
2 have to give them back monies. Anyhow, the -- I just
3 had a -- give me a second.

4 Q. Do you remember whose idea it was to put all
5 the properties in the LLC's?

6 A. Yes. Warren and I discussed it because we
7 wanted to make sure that -- by then, things were pretty
8 much getting close to being paid for. And that was
9 going to be, like, our retirement income. And we
10 didn't -- we didn't want -- if anybody -- and then, you
11 know, most of them were restaurants and bars. And, of
12 course, Warren had, like, a captive tenant because of
13 the machines and owning the property. But then, when
14 all this litigation came up about video poker and being
15 outlawed, whatever, it just allowed -- in South
16 Carolina -- we didn't want to have liability where
17 somebody would come and take all of our property in the
18 event of a lawsuit or -- or try to. So that's why we
19 formed separate LLC's. And the easiest way to keep
20 track of it was to use the property address or brief
21 description of the property.

22 Q. Okay. And that, as you recall, was 2000?

23 A. Real close, between 2000 and 2005.

24 Q. Okay.

25 A. And it wasn't done like that.

1 Q. All right.

2 A. It was over a period of time.

3 Q. Do you know why your name is on this
4 Promissory Note?

5 A. Yes, because Warren and I had an estate plan,
6 individual. And, at that time, our whole idea was to
7 build something to take care of us in our old age,
8 because we knew with the death of video poker machines,
9 amusement machines are -- ultimately, would not bring
10 in enough money for us to live the way we chose to
11 live, so -- and also, the main thrust was that we would
12 have monies for our children and their children and --
13 you know, when we passed on. And if they had special
14 medical needs in the interim, we could help.

15 Q. Well, how was this, your name being on the
16 Promissory Note as a payee, how was that part of your
17 estate plan? I mean, how does this help you accomplish
18 your --

19 A. Well, we took a debt-free piece of property
20 and encumbered it with the bank, with a loan for \$2
21 million.

22 Q. Right.

23 A. We didn't have \$2 million when Warren was
24 thinking about it buying into it himself. And we
25 didn't want to encumber all the paid-for properties and

1 require appraisals on all of them and all. And it was
2 simple that the value -- most valuable property was
3 2233 Highway 17, which included Richard's Bar, next
4 door, which ultimately got subdivided and that became
5 2237.

6 Q. Yes.

7 A. And I think that that mainly happened because
8 of two lawsuits from Richard's. So it just made sense
9 to keep the loan on one property --

10 Q. Yeah.

11 A. -- rather than -- and then, if anything ever
12 came up, we could sell, re-invest, or we could
13 short-term borrow against it, any or all of them.

14 Q. Okay.

15 A. So...

16 Q. Is there any other reason why your name is on
17 this Promissory Note, that you know of, any other
18 reason why --

19 A. Well, I mean --

20 Q. -- you're a payee?

21 A. -- it was a marital agreement. We'd been
22 married for many, many years. We had a common goal.
23 That's why, even in the divorce, we -- we did not
24 really have to argue or have any conversations about
25 selling properties or appraising them and divvying up

1 individual parcels, one to him and one to me, or to
2 sell them and split the money, because we always had an
3 estate plan that was going to protect us and our
4 children. And that's why he guaranteed me through a
5 preferred interest in Zeezrom Properties, which covered
6 all of the properties.

7 Q. Yes.

8 A. Protection for my old age, even then, in the
9 midst of a divorce. I mean, we honored each other's
10 commitments. Little things like dividing up -- we had
11 precious metals in two bank boxes, two different banks.
12 We agreed just to split them right down the middle. We
13 had cemetery lots that we agreed to split down the
14 middle.

15 (Discussion held off the record.)

16 (Plaintiff's Exhibit No. 8 marked for
17 identification.)

18 BY MR. NETTLES:

19 Q. We've marked this document I'm going to hand
20 to you as Exhibit No. 8 for all of today's depositions.
21 And it is a copy of the Marital Settlement Agreement.

22 A. Thank you.

23 Q. You can go ahead and flip over to the last
24 page, first of all. And we'll say, did you sign this
25 Marital Settlement Agreement?

1 A. Yes.

2 Q. Does that look like a copy of the agreement
3 you reached with Warren in your divorce?

4 A. Yes.

5 Q. And this was made a part of the divorce
6 decree; is that right?

7 A. Correct.

8 Q. And also the -- I believe it's -- no,
9 Patricia Anne Holliday Marital Trust was also attached
10 to the divorce decree; was it not?

11 A. Correct. It was part of it.

12 Q. That's where you're getting your \$16,000 a
13 month?

14 A. Well, I'm not sure where I'm getting it from.
15 That's where I'm supposed to get it from.

16 Q. But it's through that mechanism?

17 A. Yes. And that was the intention.

18 Q. Okay. You were represented by a lawyer in
19 that divorce; were you not?

20 A. Yes.

21 Q. Alan Toporek?

22 A. Yes, with co-counsel of David Michel.

23 Q. I believe David Michel got involved when we
24 went back to court about the amount of life insurance;
25 is that right?

1 A. Well, yes. But we -- I think we did have a
2 consultation with him when we were trying to establish
3 some of the details of the divorce and the discussions
4 came up about the trust or whatever.

5 But, actually, the actual person that
6 consulted, was on record, was Heyward Carter. Because
7 we had him look it over, the final -- there were
8 several drafts to that. And we had Heyward Carter look
9 those over, because he -- he drew our original estate
10 and wills.

11 Q. In your discussions with Warren about the
12 divorce, was Warren mentally and intellectually
13 competent to enter the Marital Settlement Agreement?

14 MR. TILLMAN: Object to the form. You can
15 answer.

16 BY MR. NETTLES:

17 Q. Just your opinion. I know you're not a
18 doctor or a psychologist or whatever.

19 A. Well, you, know it's hard. I think he had
20 diminished capacities in that he had a lot of days
21 where dialysis and home dialysis, even the going
22 through the kidney transplant and all that -- and he --
23 he had moments when it really grabbed ahold of him, you
24 know? His blood pressure on dialysis days would drop
25 dramatically low. So I can't say that he fully had all

1 of that going on 24/7. But he was not a dumb man or --
2 he was very frail, due to his illness and medications
3 that he took to help with the, you know, antirejection
4 of the kidney. And he also had blood clot issues.

5 Q. Look at page three of the agreement.

6 A. Uh-huh.

7 Q. You see that?

8 A. Yes, sir.

9 Q. The first section at the top of that page is
10 B, General Release Of Liability.

11 Are we looking at the same spot?

12 A. Yes, sir.

13 Q. Did you agree not to sue your spouse for --
14 you both, you and Warren, not to sue each other, and
15 you discharged each other, their administrators,
16 successors, heirs, assigns of and from any and all
17 suits, actions, et cetera?

18 Did you understand that -- what that meant,
19 that you and Warren were not going to sue each other?

20 MR. TILLMAN: Object to the form.

21 THE WITNESS: I'm sorry, what did you say?

22 MR. TILLMAN: I just placed an objection on
23 the record, but you still need to answer.

24 THE WITNESS: Oh, okay.

25 BY MR. NETTLES:

1 A. Basically, Warren was concerned that I
2 wouldn't come back later with any kind of claims
3 against his management or ownership or whatever of
4 Holliday Amusements, that -- you know, in his
5 day-to-day business operations, that I wouldn't
6 interfere.

7 Q. Uh-huh. Do you know what it means when it
8 says, Hereby discharge each other, their
9 administrators, successors, heirs, and assigns, and
10 then it goes on to say discharge from what?

11 Do you know what an administrator or a
12 successor or an heir, do those words make sense to
13 you?

14 A. Oh, yes.

15 Q. You know what they are?

16 A. I'm familiar with it, yeah.

17 Q. Is Ross Holliday a successor to the late
18 Warren P. Holliday in Zeezrom Properties?

19 MR. TILLMAN: Object to the form.

20 BY MR. NETTLES:

21 A. Not that I'm aware. He was a manager, but
22 not the owner.

23 Q. Your other lawyer, Ms. Blair, has filed a
24 petition for you in the probate case?

25 A. Yes.

1 Q. Have you read Warren's will, the one that's
2 being administered in that situation?

3 A. Are we talking about the one that Heyward
4 Carter drew up for us, the original will?

5 Q. No, no. It's a later will.

6 A. I may have glanced at it, but I don't have a
7 copy of it.

8 I found it interesting that in all of this --
9 Warren's name was on our personal checking account, but
10 I think only two times did he ever write checks. One
11 was, like, a political contribution. He, you know,
12 didn't want it to come to his company. And the other
13 was to buy parts for a race car. And he didn't have --
14 back then, it was "BC," before cards, credit cards.
15 And he didn't have enough cash money, so he asked me to
16 give him a check because he wasn't sure how much he was
17 going to buy or spend.

18 Other than that -- so when all that came --
19 this kind of conversation came up -- because the house
20 was in my name, but the power bills came in his name,
21 and the phone bills. And because I was the owner of
22 the property, I was not required to put up a deposit.
23 However, I had to take -- it was very involved getting
24 his name off of it.

25 As a matter of fact, when he rented an

1 apartment, he called -- he didn't call it his main
2 residence for the simple reason he didn't want to have
3 to put up a tenant deposit on it and he wanted to ride
4 off of that one. And the power company contacted me.
5 And I said, No, we have an agreement. We're not mixing
6 and commingling things. This house belongs to me. I
7 live in it. And his address is an apartment. And he
8 does not own it, so...

9 But I think that was one of those things. I
10 don't think that it was a malicious thing on his part.
11 That's the kind of indication he was dependent on other
12 people to take care of those kind of things, pay his
13 rent, pay his bills, you know, and somebody neglected
14 to do it.

15 Q. You read this full Marital Settlement
16 Agreement before you signed it, right?

17 A. Yes, I did. And there were still things that
18 I didn't really like, but I was getting tired. This
19 was about the third or fourth draft.

20 Q. You discussed all of your concerns with your
21 lawyers?

22 A. Yes, sir.

23 Q. Go to page six of the Marital Settlement
24 Agreement, Exhibit 8.

25 A. Yes.

1 Q. In the second sentence of Section D, I'm
2 going to read it. And let's see if we understand it
3 and agree on it.

4 The parties agree that Warren shall retain
5 and continue full ownership and interest in any and all
6 such companies and other business assets which Warren
7 holds at this time. And Patricia hereby relinquishes
8 and waives any claims she may have in or against these
9 business assets, except as provided in the Patricia
10 Anne Holliday Trust.

11 This Promissory Note, was it a business
12 asset?

13 A. No, sir.

14 Q. What was it?

15 A. It was a personal loan.

16 Q. When you say "personal loan," you mean it
17 was, you know, a note from a person to another person;
18 is that what you mean?

19 A. Yes. It was personally from Warren and I.
20 Instead of giving him the cash money, which we didn't
21 have, as I said earlier, we pledged a piece of property
22 and gave it to him that way.

23 Q. Well, NBSC is not a person, in that sense,
24 are they? Is it?

25 A. No, Ross, the ultimate --

1 Q. Oh, yeah.

2 A. Yes.

3 Q. But the source of the loan funds was the
4 bank, right?

5 A. Our credit and our asset, yes.

6 Q. You say "our asset." At the time of your
7 divorce, that was all going to be -- well, it was given
8 up by you, in exchange for 16,000 a month. He gets to
9 keep Holliday Amusements and Zeezrom, and all those
10 other properties. Isn't that the way it worked out?

11 A. The management of them, to assure that I got
12 the 16,000 a month.

13 Q. Yes.

14 A. For life.

15 Q. Absolutely.

16 A. But the \$2 million note was not a part of
17 that.

18 Q. Well, you have made a claim against Warren
19 Holliday's estate; have you not?

20 MR. TILLMAN: Object to the form.

21 BY MR. NETTLES:

22 A. I guess, yes. In a way, yes. Yes.

23 Q. And what is your understanding of what --
24 that claim you've made, what is that?

25 A. It's -- it's because now that he's deceased,

1 in this marital agreement, where he guaranteed to
2 personally guarantee me -- I'm sorry, I'm getting a
3 little froggy.

4 Q. You want to have some water?

5 A. No. I'll get a lozenge.

6 He obligated his heirs and executors, et
7 cetera, to comply with those, in the -- in the -- well,
8 not in the event, when he died. If --

9 Q. Yes.

10 A. If he died before me.

11 Q. Yes.

12 A. To assure me that, that I would always
13 receive that. Like I said, it was -- at one point, we
14 were talking about maybe a 6,500 to 8,000 a month in
15 income. And rather than just diverse -- break up our
16 portfolio, we took it to 16, which would cover taxes
17 that I would be obligated for on that. And the -- the
18 difference was to kind of go toward any interest in the
19 properties.

20 Q. Right.

21 A. Partial or whatever. Couldn't say how much.

22 Because at the time, I mean, it was our
23 intention to keep properties for as long as they were
24 profitable and guaranteed a good cash flow. But it was
25 always our intention to, if we sold, to replace and to

1 add to it. But we never seemed to get ahead
2 financially, to add to it.

3 And I had quit selling real estate, and so I
4 no longer could apply my commissions as parts of down
5 payments. Almost all of these properties, I had the
6 listing on.

7 Q. All right.

8 THE WITNESS: Anybody care for a lozenge?

9 MR. TILLMAN: No, thank you.

10 BY MR. NETTLES:

11 Q. Do you remember when and where you got a copy
12 of the Promissory Note?

13 A. Yes. I don't remember the exact date.

14 Q. Well, approximately?

15 A. I -- Warren -- he handed it to me. Well, he
16 didn't hand it to me. He came home. And he had a
17 habit of slamming the mail -- because he liked to know
18 what was going on. So he brought the mail in when he
19 came home. And if anything he wanted -- he just kind
20 of went through it. The rest of it, he put on top of
21 the counter. We have, like, a cooktop, glass.

22 Q. Yes.

23 A. And he would put it there. And he came home
24 that particular day and put the note and said, Now,
25 there's your copy.

1 Q. Have you ever seen an original of the
2 Promissory Note signed in ink pen or anything?

3 A. Yes, I did.

4 Q. Where did you see that?

5 A. At 16 -- I mean, 1808 Meeting Street, his
6 office.

7 Q. Do you have a copy of that original, at this
8 time?

9 A. Yeah. I just told you, Warren came home and
10 brought it.

11 Q. So -- well, that was a copy, right?

12 A. He made me a copy from that original.

13 Q. Right. Do you have possession of the
14 original, signed in ink?

15 A. No, no, no. He kept it in his office.

16 Q. Did you ever have actual, physical possession
17 of the original Promissory Note that is the subject of
18 this lawsuit?

19 A. I mean, I touched it. I held it. I read it.
20 But I never...

21 Q. That was when you were at the Holliday
22 offices at 1808 Meeting Street?

23 A. Yes.

24 Q. Well, you didn't -- did you take it out of
25 the office?

1 A. No.

2 Q. Okay. And as far as you know, was it
3 there -- at least, last you knew, is that where the
4 original note was?

5 A. Yeah.

6 Q. So you do not have the original, signed
7 Promissory Note --

8 A. No.

9 Q. -- in your possession today?

10 A. No, sir.

11 MR. TILLMAN: You need a break or are you
12 okay?

13 THE WITNESS: No, no. No, no. I'm fine,
14 thank you.

15 BY MR. NETTLES:

16 Q. In the Marital Settlement Agreement, you
17 agreed not to inherit anything from Warren. Do you
18 remember that? I'll tell you where it is. Look on
19 page nine.

20 A. Are you looking under Release of Estate
21 Claims?

22 Q. Yes. Yes.

23 A. Uh-huh.

24 Q. Have you read that again today?

25 A. I'm doing it right now.

1 Q. Okay.

2 A. Correct.

3 Q. So -- I'll just leave it right there.

4 I think you and I have agreed today that the
5 source of the money to make this loan to Ross was NBSC
6 Bank; is that right?

7 A. Yes.

8 MR. TILLMAN: Object to the form.

9 BY MR. NETTLES:

10 Q. And has that loan to NBSC been paid back?

11 A. I have no way to know. I don't have the
12 records, or access to them, let me put it that way.

13 Q. Did you make any payments to NBSC on that
14 loan?

15 A. Out of my personal checking account or
16 anything?

17 Q. Yeah, or any other source of personal
18 money?

19 A. No. No.

20 Q. Warren -- I mean, excuse me, Ross Holliday
21 testified this morning in a deposition that he made
22 payments on this \$2 million Promissory Note in the
23 years 2005 till 2007. Do you have any evidence or
24 knowledge that that did not happen?

25 A. No, I have no...

1 Q. Do you know whether or not Warren instructed
2 Ross to make payments on the \$2 million loan?

3 A. He did call him on a couple of occasions,
4 because we were in need of money. And I think, at that
5 time, interest was almost 13,000. You know, as the
6 loan paid down, the interest, of course, duly went
7 down. And, so, you know...

8 Q. What did Warren say to him? Pay down this
9 loan?

10 A. Well, you're going to have to make some
11 effort to pay on this loan. And -- you know, and also,
12 remember, you know, interest is getting billed every
13 month.

14 Because, at that time, Ross's business with
15 Holmes Homes was in very good stead.

16 Q. Say that again.

17 A. Holmes Homes, that he put the \$2 million
18 investment -- the housing market was in a slow decline.
19 You know, it was the beginning of a trend. But they
20 had so many things going on that they were doing well.
21 They were all living in big houses, driving nice cars,
22 taking vacations, buying lavish gifts for each of
23 themselves, one to the other.

24 Q. Such as?

25 A. I think Spencer Holmes gave Ross a very

1 valuable Rolex. There was a painting that Ross called
2 me and wanted to ask me about, because I knew something
3 about art, where he could get it, so that he could give
4 that to Spencer.

5 Q. So those were expensive items between the
6 owners?

7 A. Of the Holmes Homes, yeah, the three -- three
8 partners, yes.

9 Q. How much money do you spend on clothes every
10 month?

11 A. Every month?

12 MR. TILLMAN: Object to the form.

13 BY MR. NETTLES:

14 Q. Yeah. Or every year, if you can think of it
15 that way?

16 A. Oh, gosh. I used to spend -- I can't say. I
17 do -- I don't spend much now. My tastes have changed.
18 I mean, I've gotten older, a little more sedate.

19 Q. Your lawyer wrote this letter, which is
20 Exhibit 3 to the depositions, on July 12, 2017, last
21 summer, basically, right?

22 A. Uh-huh.

23 Q. Why did you wait until that time to make this
24 demand for payment?

25 A. Well, I just assumed all the conversations

1 that I had with Warren, that when he told Ross he was
2 going to have to start making payments and all, I just
3 assumed that that was being done, either he was paying
4 the interest -- I know that he was rolling over the
5 loans. Like he said this morning, you know, you just
6 didn't go in there and get a new loan for the same
7 balance. As the balance declined, they usually ask for
8 a percentage, you know, to be paid on it, and then they
9 would renew it. And I -- I don't even remember if the
10 interest rate was a fluctuating one with each rollover,
11 so to speak.

12 Q. We can learn that by looking at the loan --

13 A. Yeah. Yeah.

14 Q. -- documents. But what I'm asking is, why
15 did you wait until July 2017 to make this demand on
16 Ross to pay you \$2 million?

17 A. Because -- well, I had already tried to get
18 copies of records and information about Zeezrom and
19 other things into Warren's estate that would have
20 affected me with these guaranteed monthly payments.

21 Q. That's in that other lawsuit you have against
22 Ross --

23 A. Yes.

24 Q. -- and Lea about the marital trust; is that
25 right?

1 A. Correct. Correct. So I didn't -- I didn't
2 have the wherewithal. When Ross took over the running
3 of Holliday Amusements and related businesses, when
4 Warren was so ill, there came a time that he really
5 didn't want me down there interfering or, you know,
6 inquiring as to what was going on. And so he kind of
7 sort -- I mean, he made it real clear I was -- I was
8 not welcome down there.

9 Q. That is Ross made it clear?

10 A. Yes.

11 Q. So, what, did he ask you not to come to the
12 office?

13 A. Yes. And so I had no way to get information.
14 My sister worked there, but she wouldn't breach that
15 confidentiality and give me information, nor would I
16 insult her and ask her for it.

17 And he was -- it was about the time -- might
18 have been a little after the divorce. Ross was at the
19 house and come by, I don't know whether to look for
20 some clothes or something for his father. And he asked
21 for my American Express card. It was Holliday
22 Amusements. It was a corporate card. And I hadn't
23 been using it. I didn't feel like I was entitled to
24 it. So -- but I just had it. Nobody asked for it. So
25 I handed it to him. It was my understanding he was

1 going to destroy it. I later found out that his wife
2 was -- Kelly was using it. Now, whether she was
3 signing my name or making phone purchases, there were
4 charges on that card, after I had given it to him, that
5 were authorized by her. So the card, in fact, was not
6 destroyed.

7 Q. Was that after your divorce or before, or do
8 you remember?

9 A. No, it was right after the divorce.

10 Q. Before the divorce, had you used that
11 Holliday Amusements American Express credit card?

12 A. Yes.

13 Q. Did you use it for things you wanted to
14 buy?

15 A. Yes.

16 Q. Like clothes?

17 A. Yes, gifts for children, grandchildren.

18 Q. But you think that Ross's wife should not use
19 that card; is that what you're saying?

20 A. Correct. Because those -- she had nothing to
21 do with running or whatever, or founding or whatever,
22 for Holliday Amusements. She had no interest in it.
23 The card was issued in my name. She's not Patricia B.
24 Holliday. She's...

25 Q. I thought it was in the name of Holliday

1 Amusements?

2 A. That was a corporate card.

3 Q. Yeah.

4 A. But then it had individual accounts. And
5 when you got a statement, it would have a statement for
6 me, one for Warren. None of my expenses or charges on
7 those cards, not even my gas, was written off as an
8 expense. It was charged as income to Warren. And we
9 shared joint filing tax returns.

10 Q. Okay. Let me get back to this. Is there --
11 can you offer me any more information about why you
12 waited until July 2017 to make this demand for 20 --
13 for, excuse me, \$2 million?

14 A. Well, I had -- I had not received any
15 accounting or information. And it did not show up as
16 an asset on Warren's inventory of his estate, that
17 there was money due. And I was trying to find out if
18 there were payments made to Warren or on Warren's
19 behalf to the bank or whatever. I mean, once you get
20 divorced, things are hard to get, even a copy of a
21 death certificate for a life insurance policy.

22 Q. So I want to make sure I understand this
23 point. You didn't know when -- when you asked your
24 lawyer, Mr. Tillman, to write this letter in July 2017,
25 you didn't know how much, if any, payments Ross had

1 made on this note?

2 A. Right. I had no way to know.

3 Q. So you did not know whether it was paid or
4 not?

5 A. Correct. I only know that proceeds from the
6 sale of 16 -- I mean 1808 Meeting Street -- and I don't
7 remember how, but, anyhow, was used to pay off the
8 final balance on that \$2 million loan to the bank. So
9 it didn't come from Ross's personal or personal
10 business entities, so the loan was, in fact, satisfied.
11 But it was satisfied by the sale of Warren and I -- you
12 know, properties that we had owned or acquired or
13 whatever.

14 Q. Well, at that point, when the NBSC loan was
15 paid off, you didn't have any interest in 1808 Meeting
16 Street, did you?

17 A. Uh-uh.

18 Q. You're saying no?

19 A. Not that I know of, other than the fact
20 that -- potential income. But it didn't make sense,
21 you know, under Zeezrom type properties' umbrella to
22 charge yourself rent for the space you're running your
23 business out of. So I think, at the end of the year,
24 there was -- the CPAs put, like -- and I think the IRS
25 requires, like, an imputed --

1 Q. Value?

2 A. -- value that you've got -- I remember that
3 happened out at the junkyard, the salvage yard.

4 Q. Yeah.

5 A. You didn't have to take the money. But you
6 should have, if you could have.

7 Q. Were there any other reasons why you asked
8 your lawyer to write this letter on July 2017, to ask
9 Ross to pay you \$2 million plus interest? Are there
10 any other reasons why you had that note, that letter,
11 written?

12 A. He was my collection. I had no conversation
13 or communication with Ross at that point.

14 Q. Let me make sure I got this straight. You
15 didn't contribute any of the \$2 million that was loaned
16 to Ross; is that correct?

17 MR. TILLMAN: Object to the form.

18 BY MR. NETTLES:

19 A. Well, I kind of sort of guaranteed it in the
20 way that, at that time, I was married to Warren. It
21 was a joint asset. We -- we shared the income and took
22 off the deductions for expenses on our personal income
23 tax. I said we jointly filed. I feel like, yeah, I
24 jeopardized -- I mean, at that time, there was no
25 discussion about separation or divorce, so I was

1 looking for that to be like Warren and I had originally
2 said. It was going to be in our retirement pool, so to
3 speak. So I did feel as though I was being depleted of
4 that.

5 Q. Did Ross propose the terms of this note to
6 you? I mean, did he say, Mom, I need \$2 million?

7 A. It was a discussion between -- I don't
8 remember -- recall specifically. We did have the
9 conversation, at one time, between Warren and Ross and
10 I about -- you know, well, us -- you know, it -- that
11 was when it became clear that Warren was not going to
12 invest \$2 million, encumber a piece of paid-for
13 property. And, at the last minute, a monkey wrench was
14 thrown into that deal. They were buying the father's
15 share, Michael Holmes, out of Holmes Homes. And they
16 had development loans and construction loans, and I
17 don't know what all else.

18 Q. Yeah.

19 A. But they -- it was a little over \$40 million.
20 And Warren said, Hold up. I'm -- even a third, I am
21 not going to sign off on it. I can't. I won't risk my
22 life's work. And your mother and I, we're just not
23 going to do it.

24 Q. So that's when --

25 A. That's when Ross said, Well, I think it's a

1 good deal.

2 We knew the people personally. It had
3 nothing to do with that.

4 Q. No.

5 A. We liked them, genuinely liked them. They
6 were in our home.

7 Q. Yeah.

8 A. And, you know, our boys were very close.
9 Matter of fact, Pat Holmes was the best man for our
10 oldest son's wedding. And Spencer was a missionary for
11 our church in Charleston. He spent a lot of time with
12 us. Played golf on days off from his missionary with
13 Lea.

14 But it was just business sense, and so we
15 weren't gifting. There was no idea or never any
16 intention to gift Ross \$2 million. It was a business
17 transaction.

18 So, by then, Ross was really confident that
19 it could work and he was going to make it work.

20 Q. Let me confirm something. You just said the
21 loan was for a business transaction between Ross and
22 the Holmes?

23 A. Yes. And that's when Warren kind of made an
24 announcement to the family, because we had even
25 discussed it with the other children, that this would

1 be a great investment thing for our family. But then
2 he had to put his tail between his legs and say, Look,
3 I backed out. But I just want y'all to know, so
4 nothing comes up. I'm lending Ross the money. And
5 this is his deal and his deal alone.

6 And that was when there was some
7 conversation, Well, that's a lot of damn money, Daddy.

8 And he said, Yes. But don't worry. We got a
9 note. And I'm going to get Ross to sign it.

10 So that was -- it was handled in a business
11 fashion, as -- as close as you can do without bringing
12 in a bunch of Philadelphia lawyers --

13 Q. Okay.

14 A. -- for your children. You know what I'm
15 saying? You know...

16 (Discussion held off the record.)

17 (A brief recess was taken.)

18 BY MR. NETTLES:

19 Q. You filed the divorce action against Warren
20 Holliday, didn't you?

21 A. Yes.

22 Q. And I don't recall the grounds. Was it
23 one-year separation?

24 A. Yes.

25 Q. And so you and Warren had been living apart

1 for some time?

2 A. Yes.

3 Q. In the divorce, you got the marital abode.
4 We call it the house.

5 A. Well, I already had title to it.

6 Q. Right. But he released any claims he might
7 have had to that?

8 A. Correct. Yes, sir.

9 Q. And you got some life insurance --

10 A. Yeah.

11 Q. -- on Warren's life?

12 A. Yes.

13 Q. And you've been paid that, right?

14 A. Yes, I received that.

15 Q. Do you recall how much you got?

16 A. On the life insurance?

17 Q. Yeah, from the insurance company?

18 A. Yeah. It was like -- I want to say 672,000,
19 something like that.

20 Q. Okay. Have you gotten \$16,000 a month from
21 the marital trust for every month since you got --

22 A. I don't -- well, I don't know where it's come
23 from.

24 Q. No, I'm not asking that.

25 A. It's electronic.

1 Q. I'm asking, have you received it?

2 A. Yes, I have, \$16,000 per month.

3 Q. How long did you and Warren Holliday live
4 separate and apart prior to the divorce? I mean, the
5 divorce is one year. But how long had you guys been
6 living separately?

7 A. It was probably 13, 14 months.

8 Q. Do you know where he was living in that
9 time?

10 A. Yes. Matter of fact, I visited him. He was
11 at -- it's called -- I get the Sawgrass and the
12 Sweetgrasses mixed up.

13 Q. Sweetgrass on Mathis Ferry?

14 A. Yes. Correct. Matter of fact, I'd go over
15 and helped him.

16 Q. How many times did you visit him there?

17 A. Oh, gosh. I really don't know. It was
18 probably at least once a week, minimum.

19 Q. In the deposition of Ross Holliday this
20 morning, you were here, right?

21 A. Yes.

22 Q. And you heard him say that in 2010 and '11,
23 largely because of Warren's poor health, that you and
24 Warren needed help running his businesses. Did you
25 hear Ross testify to that?

1 A. Yes, I did hear it.

2 Q. Do you agree with that?

3 A. No.

4 Q. Did you need help?

5 A. It was appreciated, but it wasn't necessary.
6 We had competent legal and accounting people. We had
7 office help. We had collectors, et cetera, who had
8 been there for many, many years. It was almost kind of
9 like a family.

10 Q. Do you recall getting a Notice of Intent To
11 Lien from the IRS in 2011?

12 A. 2011?

13 Q. 2010 or '11?

14 A. I'm not sure about the year. I do remember
15 getting something and trying to discuss it with Warren.
16 And he...

17 Q. He what?

18 A. Well, at that time, I think that I recall we
19 were still dealing with Herb McGuire for the accounting
20 firm, so I think my natural habit would be an
21 inclination to take it down there and let him verify if
22 we owed it, you know, and whatever. And if we did,
23 then he'd call us up and say, Bring a check.

24 Q. Did you and Warren, back in the early 2000s,
25 were you behind for two years on income tax?

1 A. We always stayed a year behind.

2 Q. Okay. Well, so were you two years behind, at
3 one point?

4 A. I -- I don't think so. Herbert was kind of a
5 stickler for -- you know, we're going to file this
6 stuff. We don't have the money. We'll let them send
7 us a bill and then we'll -- by then, we will have
8 bought some time. But we always got an extension.

9 Q. Okay. Let me step outside with my client. I
10 might be finished.

11 MR. TILLMAN: Okay.

12 (A brief recess was taken.)

13 BY MR. NETTLES:

14 Q. We don't have any further questions. Thank
15 you, Patricia.

16 MR. TILLMAN: I just have a couple of
17 questions for you, Patricia.

18 THE WITNESS: Oh, okay.

19 MR. TILLMAN: This Marital Settlement
20 Agreement, is that Exhibit 8?

21 MR. NETTLES: Yes.

22 CROSS-EXAMINATION BY MR. TILLMAN:

23 Q. Okay. Can you tell me what the date of that
24 agreement is?

25 A. Yeah. Looks like the 9th of August.

1 Q. Of what year?

2 A. 2013.

3 Q. And is that approximately the date that your
4 divorce with Warren Holliday was finalized?

5 A. No. That would be December the 9th.

6 Q. Of 2013?

7 A. Yes, sir.

8 Q. Okay.

9 A. Like I said, there were several drafts. And,
10 finally, we got one. We said, We'll take that one.

11 Q. Has Ross Holliday ever provided you with
12 evidence of any payments on the \$2 million loan?

13 A. No, sir.

14 Q. Okay. That's all I have. Thank you.

15 MR. NETTLES: Wait one second.

16 THE WITNESS: Who said, "Wait a second?"

17 MR. NETTLES: I did.

18 (Discussion held off the record.)

19 MR. NETTLES: No, no further questions.

20 (The deposition concluded at 3:19 p.m.)
21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, MARY ANN RIDENOUR, Registered Professional
Reporter and Notary Public, State of South Carolina at
Large, certify that I was authorized to and did
stenographically report the foregoing deposition of
Patricia B. Holliday; and that the transcript is a true
record of the testimony given by the witness, and was
sworn as such.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 3rd day of
October, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.



Mary Ann Ridenour

Mary Ann Ridenour, RPR, CLR
and Notary Public
My commission expires:
March 14, 2021

A	17:21 18:21,25	17:25	48:8	bought 12:3,5
A-s-t-e-i-n 8:9	19:2 20:13	appreciated	B-r-e-o 8:6	14:6 46:8
abode 43:3	21:5 24:5,16	45:5	back 10:23 12:7	bowling 12:19
Absolutely	24:24 27:1	approximately	12:13 15:2	12:24,24
26:15	30:16 46:20,24	28:14 47:3	19:24 22:2	boxes 18:11
accept 4:17	ahead 18:23	argue 17:24	23:14 31:10	boys 41:8
access 10:12	28:1	arrangement	37:10 45:24	breach 35:14
31:12	ahold 20:23	12:11	backed 42:3	break 27:15
accomplish	Alan 19:21	art 33:3	balance 34:7,7	30:11
16:17	allergies 8:4,11	Asenophil 7:17	38:8	breather 8:2
account 13:15	alley 12:19,24	asked 23:15	bank 13:8,19,20	Breo 8:6
13:17,18 23:9	allowed 15:15	35:20,24 37:23	13:24 16:20	brief 15:20
31:15	American 35:21	39:7	18:11 26:4	42:17 46:12
accounting	36:11	asking 34:14	31:6 37:19	bright 5:10
37:15 45:6,19	amount 19:24	43:24 44:1	38:8	bring 16:9 45:23
accounts 37:4	amusement 10:6	asset 25:12 26:5	banks 18:11	bringing 42:11
acid 5:23	16:9	26:6 37:16	Bar 17:3	brought 28:18
acquired 38:12	Amusements	39:21	bars 15:11	29:10
acres 13:9	10:10 14:19	assets 25:6,9	basically 22:1	build 16:7
action 1:4 42:19	22:4 26:9 35:3	assigns 21:16	33:21	bunch 14:25
48:14,15	35:22 36:11,22	22:9	basis 10:13	42:12
actions 21:17	37:1	associated 14:17	BC 23:14	business 11:17
actual 20:5	Ann 1:13 48:4	assume 10:25	becoming 7:24	11:25 12:1,9
29:16	48:23	assumed 33:25	Bees 14:7	12:17,20 22:5
add 28:1,2	Anne 19:9 25:10	34:3	beginning 32:19	25:6,9,11
address 15:20	announcement	assure 26:11	behalf 37:19	32:14 38:10,23
24:7	41:24	27:12	believe 8:16 9:22	41:14,16,21
administered	answer 20:15	Astelin 8:9	19:8,23	42:10
23:2	21:23	attached 9:23	Bell 12:5	businesses 12:22
administrator	antidepressant	19:9	belongs 24:6	35:3 44:24
22:11	7:1	attic 11:13	best 41:9	buy 23:13,17
administrators	antirejection	attorney 4:22	bifocals 5:6	36:14
21:15 22:9	21:3	9:20 48:12,14	big 32:21	buying 12:23
affect 8:25	anybody 15:10	August 46:25	bill 46:7	16:24 32:22
age 16:7 18:8	28:8	authorized 36:5	billed 32:12	40:14
agree 4:19 9:14	anymore 10:7	48:6	bills 23:20,21	Bypass 12:18
21:13 25:3,4	apart 42:25 44:4	auto 11:10	24:13	
45:2	apartment 24:1	aware 9:19	Blair 22:23	C
agreed 3:15	24:7	22:21	blood 7:17,22	C 2:1 48:1,1
12:14 18:12,13	apply 28:4		20:24 21:4	C-o 7:21
30:17 31:4	appraisals 17:1	B	Bond 1:11 2:4	call 4:4 24:1
agreement 3:11	appraising	B 1:2,8 3:2	borrow 17:13	32:3 43:4
		21:10 36:23		45:23

called 7:10,20 24:1 33:1 44:11 capacities 20:20 captive 15:12 car 13:2 23:13 card 35:21,22 36:4,5,11,19 36:23 37:2 cards 23:14,14 37:7 care 16:7 24:12 28:8 Carolina 1:1,12 2:5,10 15:16 48:2,5,18 cars 32:21 Carter 20:6,8 23:4 case 22:24 cash 23:15 25:20 27:24 cemetery 18:13 center 12:18 certificate 3:5 37:21 Certified 1:14 certify 48:6,11 cetera 21:17 27:7 45:7 chain-smoker 6:16 changed 33:17 charge 38:22 charged 37:8 charges 36:4 37:6 Charleston 1:1 1:12 2:5,10 41:11 48:2,17 48:18 check 23:16	45:23 checking 13:15 23:9 31:15 checks 23:10 children 16:12 16:12 18:4 36:17 41:25 42:14 chose 16:10 church 41:11 cigarette 6:8 CIRCUIT 1:1 City 48:17 Civil 1:4 claim 26:18,24 claims 22:2 25:8 30:21 43:6 clear 4:24 35:7,9 40:11 client 46:9 close 12:18 15:8 15:23 41:8 42:11 clot 21:4 clothes 33:9 35:20 36:16 CLR 1:13 48:23 co-counsel 19:22 Coleman 12:4 collection 39:12 collectors 45:7 come 13:14,17 15:17 22:2 23:12 35:11,19 38:9 43:22 comes 42:4 commenced 4:1 commingling 24:6 commission 48:24 commissions	28:4 commitments 18:10 common 1:1 17:22 communication 39:13 companies 25:6 company 10:7 23:12 24:4 43:17 competent 20:13 45:6 comply 27:7 concerned 22:1 concerns 24:20 concluded 47:20 condition 7:7 confident 41:18 confidentiality 35:15 confirm 41:20 connected 48:14 construction 40:16 consultation 20:2 consulted 20:6 contacted 24:4 continue 25:5 contribute 14:1 39:15 contribution 23:11 conversation 23:19 39:12 40:9 42:7 conversations 11:16 17:24 33:25 cooktop 28:21 copies 34:18	copy 9:8,22 18:21 19:2 23:7 28:11,25 29:7,11,12 37:20 corporate 35:22 37:2 correct 19:7,11 31:2 35:1,1 36:20 38:5 39:16 43:8 44:14 counsel 3:16 48:12,14 Count 8:13 counter 28:21 County 1:1 48:2 48:17 couple 32:3 46:16 course 15:12 32:6 court 1:1 19:24 cover 27:16 covered 18:5 CPAs 38:24 cravings 6:5 credit 23:14 26:5 36:11 CROSS-EXA... 46:22	days 20:20,24 41:12 deal 40:14 41:1 42:5,5 dealership 13:3 dealing 45:19 dealt 14:8 death 16:8 37:21 debt-free 16:19 deceased 26:25 December 47:5 decline 32:18 declined 34:7 decree 19:6,10 deductions 39:22 defendant 1:7 2:8 4:7 defendants 4:6 deficient 7:24 demand 9:20 33:24 34:15 37:12 demanding 9:21 dependent 24:11 depleted 40:3 Deponent 3:17 deposit 23:22 24:3 deposition 1:8 4:1,10,23 9:7 31:21 44:19 47:20 48:7 depositions 18:20 33:20 description 15:21 destroy 36:1 destroyed 36:6 details 20:3 development 40:16
--	---	--	---	---

diabetic 7:7	doing 30:25	37:16	far 30:2	frail 21:2
dialysis 20:21,21	32:20	et 21:17 27:6	fashion 42:11	froggy 27:3
20:24	door 17:4	45:7	father 35:20	full 24:15 25:5
Dickinson 1:11	draft 24:19	event 15:18 27:8	father's 40:14	fully 20:25
2:4	drafts 20:8 47:9	eventually 13:10	feel 35:23 39:23	funds 26:3
died 27:8,10	dramatically	evidence 31:23	40:3	funny 7:3
difference 27:18	20:25	47:12	Ferry 14:7 44:13	Furosemide 7:4
different 14:13	drew 20:9 23:4	exact 28:13	file 46:5	further 46:14
14:14 18:11	Drive 2:10	Examination	filed 22:23 39:23	47:19 48:11
diminished	driving 32:21	3:3 4:3	42:19	
20:20	drop 20:24	exception 14:7	filing 37:9	G
Direct 3:3 4:3	due 9:24 10:14	exchange 1:12	final 20:7 38:8	gas 37:7
discharge 22:8	21:2 37:17	2:4 26:8	finalized 47:4	General 21:10
22:10	duly 32:6	excuse 11:14	finally 47:10	genuinely 41:5
discharged	dumb 21:1	31:20 37:13	financially 28:2	getting 11:16
21:15		executors 27:6	48:15	15:8 19:12,14
discuss 45:15	E	Exhibit 3:10 9:7	financing 14:9,9	23:23 24:18
discussed 15:6	E 2:1,1,3 3:1	18:16,20 24:24	find 37:17	27:2 32:12
24:20 41:25	48:1,1	33:20 46:20	fine 30:13	45:10,15
discussion 18:15	earlier 25:21	EXHIBITS 3:8	finished 46:10	gift 41:16
39:25 40:7	early 12:12	expense 37:8	Finkel 2:9	gifting 41:15
42:16 47:18	45:24	expenses 37:6	firm 2:9 45:20	gifts 32:22 36:17
discussions 20:3	easiest 15:19	39:22	first 18:24 21:9	give 15:2,3
20:11	effort 32:11	expensive 33:5	Five 8:14	23:16 33:3
Diuretic 7:12,13	either 34:3	expires 48:24	flip 18:23	35:15
diuretics 7:19	electronic 43:25	explain 4:25	flow 27:24	given 10:7 26:7
diverse 27:15	eliminates 6:5	Express 35:21	fluctuating	36:4 48:9
dividing 18:10	employee 11:24	36:11	34:10	giving 25:20
divorce 5:7	48:12,13	extension 46:8	fluid 7:24	glanced 23:6
17:23 18:9	encumber 16:25	extremely 5:3	follow-up 10:20	glass 28:21
19:3,5,10,19	40:12		food 7:6	Glaxipro 6:21
20:3,12 26:7	encumbered	F	foregoing 48:7	go 6:4 12:7,12
35:18 36:7,9	16:20	F 2:9 48:1	form 20:14	18:23 24:23
36:10 39:25	enjoyed 6:17	F-u-r 7:4	21:20 22:19	27:18 34:6
42:19 43:3	enter 20:13	Faber 2:10	26:20 31:8	44:14
44:4,5 47:4	entities 38:10	fact 6:16 23:25	33:12 39:17	goal 17:22
divorced 37:20	entitled 35:23	36:5 38:10,19	formed 15:19	goes 22:10
divvying 17:25	ESQUIRE 2:3,9	41:9 44:10,14	forties 12:12	going 4:10,20
doctor 20:18	establish 20:2	familiar 6:1	found 23:8 36:1	9:6 15:9 18:3
document 18:19	estate 16:5,17	22:16	founding 36:21	18:19 20:21
documents	18:3 20:9	family 12:13	four 8:18,19	21:1,19 23:17
34:14	26:19 28:3	41:24 42:1	fourth 24:19	25:2 26:7
	30:20 34:19	45:9		28:18 32:10,20

34:2 35:6 36:1 40:2,11,21,23 41:19 42:9 46:5 golf 41:12 good 4:19 27:24 32:15 41:1 gosh 33:16 44:17 gotten 33:18 43:20 grabbed 20:23 grandchildren 36:17 great 42:1 grounds 42:22 guarantee 27:2 guaranteed 18:4 27:1,24 34:20 39:19 guess 26:22 guys 44:5	27:6 held 18:15 29:19 42:16 47:18 help 7:11 16:14 16:17 21:3 44:24 45:4,7 helped 44:15 helping 6:10 Herb 45:19 Herbert 46:4 hereto 3:16 Heyward 20:6,8 23:3 Highway 11:10 13:9 17:3 hired 11:6 Hold 40:20 holds 25:7 Holliday 1:2,6,8 2:14 3:2 4:2 9:8,16,21 10:10 11:1 14:15,18 19:9 22:4,17,18 25:10 26:9 29:21 31:20 35:3,21 36:11 36:22,24,25 42:20 44:3,19 47:4,11 48:8 Holliday's 26:19 Hollywood 5:3 Holmes 32:15,17 32:25 33:7 40:15,15 41:9 41:22 home 20:21 28:16,19,23 29:9 41:6 Homes 32:15,17 33:7 40:15 honored 18:9	hours 5:17 house 23:19 24:6 35:19 43:4 houses 32:21 housing 32:18 Humalog 5:18	insurance 19:24 37:21 43:9,16 43:17 intellectually 20:12 Intent 45:10 intention 19:17 27:23,25 41:16 interest 9:24 10:14 13:18 18:5 25:5 27:18 32:5,6 32:12 34:4,10 36:22 38:15 39:9 interested 48:15 interesting 23:8 interfere 22:6 interfering 35:5 interim 16:14 inventory 37:16 invest 40:12 investment 14:5 32:18 42:1 involved 11:7,7 12:8 19:23 23:23 involvement 10:6 IRS 38:24 45:11 issued 36:23 issues 21:4 items 33:5	34:15 37:12,24 39:8 junkyard 39:3
H habit 28:17 45:20 hall 12:19 hand 18:19 28:16 48:16 handed 28:15 35:25 handled 42:10 happen 31:24 happened 17:7 39:3 hard 20:19 37:20 health 44:23 hear 44:25 45:1 heard 44:22 hearing 5:8 heir 22:12 heirs 21:16 22:9		I idea 6:13 15:4 16:6 41:15 identification 18:17 II 2:9 ill 35:4 illness 21:2 imputed 38:25 inclination 45:21 included 17:3 income 15:9 27:15 37:8 38:20 39:21,22 45:25 INDEX 3:8 indication 24:11 individual 12:6 16:6 18:1 37:4 indoors 5:9 information 34:18 35:13,15 37:11,15 inhaler 8:20 inhalers 8:19 inherit 30:17 ink 29:2,14 inquiring 35:6 instructed 32:1 instructions 4:22 insulin 5:18,21 insulins 8:17 insult 35:16	J January 14:22 jeopardized 39:24 joint 13:18 37:9 39:21 jointly 39:23 JUDICIAL 1:1 July 9:20 33:20	K keep 7:23 12:14 15:19 17:9 26:9 27:23 keeping 10:6 Kelly 36:2 kept 14:8,11 29:15 kidney 20:22 21:4 kind 5:10 22:2 23:19 24:11,12 27:18 28:19 35:6 39:19 41:23 45:8 46:4 knew 10:18 12:15 16:8 30:3 33:2 41:2 know 4:6 5:5 6:4 6:17 9:4 10:7 10:10 11:1,1,3 11:20 12:20 13:4 14:10 15:11 16:3,13 17:17 20:17,19 20:24 21:3 22:4,7,11,15 23:11 24:13 25:17 28:17 30:2 31:11 32:1,5,7,11,12 32:19 34:4,5,8 35:5,19 37:23 37:25 38:2,3,5 38:12,19,21 40:10,10,17 41:8 42:3,14 42:15 43:22

44:8,17 45:22 46:5 knowledge 31:24	5:3 lighting 6:18 lights 5:10 liked 28:17 41:5 41:5 listen 11:15 listing 28:6 litigation 15:14 little 18:10 27:3 33:18 35:18 40:19 live 16:10,11 24:7 44:3 LiveNote 1:14 living 32:21 42:25 44:6,8 LLC's 14:14 15:5,19 loan 10:4 13:19 13:20,22 14:2 16:20 17:9 25:15,16 26:3 31:5,10,14 32:2,6,9,11 34:6,12 38:8 38:10,14 41:21 47:12 loaned 39:15 loans 34:5 40:16 40:16 long 6:8 27:23 44:3,5 long-acting 5:20 longer 28:4 look 19:2 20:7,8 21:5 30:18 35:19 42:2 looking 21:11 30:20 34:12 40:1 Looks 46:25 lost 14:25	lot 20:20 41:11 42:7 lots 18:13 low 20:25 lozenge 27:5 28:8 lunchtime 6:9	McGuire 45:19 meals 5:18 mean 4:12,13 16:17 17:19 18:9 25:16,18 27:22 29:5,19 31:20 33:18 35:7 37:19 38:6 39:24 40:6 44:4 means 22:7 meant 21:18 mechanism 19:16 medical 16:14 medication 7:17 medications 5:12,15 21:2 meds 6:19 Meeting 29:5,22 38:6,15 memory 8:25 9:3 mentally 20:12 metals 18:11 Michael 40:15 Michel 19:22,23 middle 18:12,14 midst 18:9 million 9:23 10:9,14 13:4,5 13:14 16:21,23 26:16 31:22 32:2,17 34:16 37:13 38:8 39:9,15 40:6 40:12,19 41:16 47:12 minimum 44:18 minute 40:13 missionary 41:10,12 2:5	mistaken 12:21 mixed 44:12 mixing 24:5 Mom 40:6 moments 20:23 money 10:22 13:17 14:2 15:1 16:10 18:2 23:15 25:20 31:5,18 32:4 33:9 37:17 39:5 42:4,7 46:6 monies 15:2 16:12 monkey 40:13 month 19:13 26:8,12 27:14 32:13 33:10,11 43:20,21 44:2 monthly 34:20 months 44:7 morning 4:23 9:8 31:21 34:5 44:20 mother 40:22
L L-e-x-a-p-r-o 6:24 Large 48:6 largely 44:23 late 12:11 22:17 lavish 32:22 Law 2:9 lawsuit 4:8 9:11 14:17,24 15:18 29:18 34:21 lawsuits 17:8 lawyer 10:1 19:18 22:23 33:19 37:24 39:8 lawyers 24:21 42:12 Lea 34:24 41:13 learn 34:12 leave 31:3 legal 13:12 45:6 legs 42:2 lending 42:4 let's 5:16 10:20 25:2 letter 9:20 33:19 37:24 39:8,10 Lexapro 6:20,22 liability 15:16 21:10 liable 13:22 Lien 45:11 life 19:24 26:14 37:21 43:9,11 43:16 life's 40:22 light-sensitive		M machines 14:18 14:22 15:1,13 16:8,9 mail 28:17,18 main 16:11 24:1 making 14:2,5 34:2 36:3 malicious 24:10 man 21:1 41:9 managed 14:10 management 22:3 26:11 manager 12:13 22:21 March 48:24 marital 3:10 17:21 18:21,25 19:9 20:13 24:15,23 27:1 30:16 34:24 43:3,21 46:19 marked 18:16 18:19 market 32:18 married 17:22 39:20 Mary 1:13 48:4 48:23 Mathis 44:13 matter 23:25 41:9 44:10,14 MATTHEW 2:3 matthew.tillm... 2:5		N N 2:1 3:1 name 7:21 8:5 14:14 16:3,15 17:16 23:9,20 23:20,24 36:3 36:23,25 names 7:3 nasal 8:8,20 natural 45:20 NBSC 25:23 31:5,10,13 38:14 necessary 45:5 need 7:19 21:23 30:11 32:4

40:6 45:4 needed 8:2,9 44:24 needs 16:14 neglected 24:13 Nettles 2:9 3:3 4:3 18:18 20:16 21:25 22:20 26:21 28:10 30:15 31:9 33:13 39:18 42:18 46:13,21 47:15 47:17,19 never 10:15 28:1 29:20 41:15 new 13:2 34:6 nice 32:21 nine 13:9 30:19 NINTH 1:1 nonsmoking 6:4 North 2:10 13:9 Notary 1:15 48:5,23 note 4:8 9:9,14 9:17,22,22,24 10:23 13:4 16:4,16 17:17 25:11,17 26:16 28:12,24 29:2 29:17 30:4,7 31:22 38:1 39:10 40:5 42:9 Notice 45:10	obligated 27:6 27:17 obliged 4:14 occasions 32:3 October 48:17 offer 37:11 office 11:4 29:6 29:15,25 35:12 45:7 offices 29:22 OFFICIAL 48:16 Oh 8:17 13:4 21:24 22:14 26:1 33:16 44:17 46:18 Ohio 12:7,13 okay 4:4,16 5:19 5:22,24 6:15 6:23 7:2,9,15 8:1,7,19 9:16 11:19 12:21 13:20 14:23 15:22,24 17:14 19:18 21:24 30:2,12 31:1 37:10 42:13 43:20 46:2,9 46:11,18,23 47:8,14 old 16:7 18:8 older 33:18 oldest 41:10 once 5:21 37:19 44:18 one-year 42:23 ones 5:16 operated 14:18 operations 22:5 opinion 10:1,3 20:17 original 20:9	23:4 29:1,7,12 29:14,17 30:4 30:6 originally 40:1 other's 18:9 outlawed 14:21 15:15 outside 46:9 owed 45:22 owned 12:6 38:12 owner 13:11,12 14:9 22:22 23:21 owners 33:6 ownership 22:3 25:5 owning 15:13 P P 2:1,1 14:15 22:18 p.m 1:10 4:1 47:20 page 9:7 18:24 21:5,9 24:23 30:19 paid 10:9,15,18 15:8 31:10 32:6 34:8 38:3 38:15 43:13 paid-for 16:25 40:12 painting 33:1 parcels 18:1 part 12:10 16:16 19:5,11 24:10 26:16 Partial 27:21 particular 28:24 parties 3:16 25:4 48:12 parties' 48:13	partners 33:8 parts 11:16 23:13 28:4 passed 16:13 Pat 41:9 Patricia 1:2,8 3:2 4:2,4 19:9 25:7,9 36:23 46:15,17 48:8 pay 10:22 24:12 24:13 32:8,11 34:16 38:7 39:9 payee 16:16 17:20 paying 34:3 payment 9:21 33:24 payments 10:3 28:5 31:13,22 32:2 34:2,20 37:18,25 47:12 pen 29:2 people 11:6 24:12 41:2 45:6 percentage 34:8 period 14:8 16:2 person 20:5 25:17,17,23 personal 23:9 25:15,16 31:15 31:17 38:9,9 39:22 personally 10:7 25:19 27:2 41:2 petition 22:24 ph 7:17 Philadelphia 42:12 phone 11:12	23:21 36:3 physical 29:16 physically 12:10 piece 16:19 25:21 40:12 pills 7:24 8:18 8:24,25 Place 1:11 2:10 placed 21:22 Plaintiff 1:3 2:2 Plaintiffs 3:10 18:16 plan 16:5,17 18:3 Played 41:12 PLEAS 1:1 please 8:14 pledged 13:8 25:21 plus 9:24 10:14 39:9 point 27:13 37:23 38:14 39:13 46:3 poker 14:18 15:1,14 16:8 policy 37:21 political 23:11 pool 12:19 40:2 poor 44:23 portfolio 27:16 possession 29:13 29:16 30:9 potassium 7:24 7:25 potential 38:20 power 23:20 24:4 precious 18:11 preferred 18:5 prescription 8:8 present 2:13
---	---	--	---	--

9:16 pressure 7:17,22 20:24 pretty 12:13 14:5,11 15:7 preventive 7:17 Prilosec 5:23 prior 14:13 44:4 probably 44:7 44:18 probate 22:24 problem 11:23 problems 9:3 proceeds 38:5 Professional 1:14 48:4 profitable 27:24 promissory 4:8 9:8,14,17,24 10:23 16:4,16 17:17 25:11 28:12 29:2,17 30:7 31:22 properties 14:6 14:10,14 15:5 16:25 17:25 18:5,6 22:18 26:10 27:19,23 28:5 38:12 properties' 38:21 property 13:11 14:5 15:13,17 15:20,21 16:19 17:2,9 23:22 25:21 40:13 propose 40:5 protect 18:3 Protection 18:8 provided 25:9 47:11 psychologist	20:18 Public 1:15 48:5 48:23 purchases 36:3 purchasing 14:4 put 7:16 15:4 23:22 24:3 28:20,23,24 31:12,32:17 38:24 42:2 putting 12:24 14:13 Q question 4:24,25 questions 46:14 46:17 47:19 quit 28:3 R R 2:1 48:1 race 23:13 ran 11:11 rate 34:10 re-invest 17:12 reached 19:3 read 23:1 24:15 25:2 29:19 30:24 reading 3:16 real 15:23 28:3 35:7 really 7:18 10:5 17:24 20:23 24:18 35:4 41:18 44:17 reason 17:16,18 24:2 reasons 39:7,10 recall 9:18 15:22 40:8 42:22 43:15 45:10,18 receive 27:13	received 37:14 43:14 44:1 recess 42:17 46:12 recipes 12:15 record 10:6 18:15 20:6 21:23 42:16 47:18 48:9 recorder 11:12 records 10:12 11:1 31:12 34:18 reduce 6:10 reflux 5:23 Registered 1:14 48:4 related 7:7 35:3 relative 48:11,13 Release 21:10 30:20 released 43:6 relinquishes 25:7 remember 11:15 14:16 15:4 28:11,13 30:18 32:12 34:9 36:8 38:7 39:2 40:8 45:14 renew 34:9 rent 24:13 38:22 rented 23:25 replace 27:25 report 48:7 REPORTED 1:13 Reporter 1:14 1:14 48:5 represent 4:6 represented 19:18	representing 2:2 2:8 11:21 require 17:1 required 13:21 23:22 requires 38:25 residence 24:2 respective 3:16 respondents 4:7 responsibility 4:17 responsible 14:4 rest 28:20 restate 4:24 restaurant 12:4 restaurants 15:11 retain 25:4 retention 7:6 retire 12:7 retirement 15:9 40:2 returns 37:9 Richard's 17:3,8 ride 24:3 Ridenour 1:13 48:4,23 right 4:8 5:11 6:1 9:9 13:2 16:1,22 18:12 19:6,25 24:16 26:4 27:20 28:7 29:11,13 30:25 31:3,6 33:21 34:25 36:9 38:2 43:6 43:13 44:20 rink 12:25 risk 40:21 Road 14:7 Rolex 33:1 rolling 34:4	rollover 34:10 Ross 1:6 2:14 4:7,23 9:7,16 9:21 10:4,9,14 10:22 22:17 25:25 31:5,20 32:2,25 33:1 34:1,16,22 35:2,9,18 37:25 39:9,13 39:16 40:5,9 40:25 41:16,18 41:21 42:4,9 44:19,25 47:11 Ross's 32:14 36:18 38:9 RPR 1:13 48:23 running 12:8 35:2 36:21 38:22 44:24 S S 1:6 2:1,14 9:16 sale 38:6,11 salvage 11:10 13:9 39:3 satisfied 38:10 38:11 Sawgrass 13:10 44:11 saying 36:19 38:18 42:15 says 22:8 SEAL 48:16 second 15:3 25:1 47:15,16 section 21:9 25:1 secured 14:9 sedate 33:18 see 8:13 21:7 25:2 29:4 seen 29:1
--	--	---	--	--

sell 17:12 18:2	sister 35:14	stayed 46:1	tail 42:2	20:1,19 23:10
selling 17:25	situation 23:2	stead 32:15	take 4:10 5:15	24:9,10 31:4
28:3	six 8:14,23 24:23	stenographica...	6:3,19,20 7:3	32:4,25 33:14
send 46:6	skating 12:24	48:7	7:16,25 8:18	36:18 38:23,24
sense 17:8 22:12	slamming 28:17	step 46:9	8:23 15:17	40:25 45:18,20
25:23 38:20	slow 32:18	stickler 46:5	16:7 23:23	46:4
41:14	smoke 6:11	stipulated 3:15	24:12 29:24	thinking 10:13
sentence 25:1	smoking 6:17	STIPULATIO...	39:5 45:21	16:24
separate 15:19	sold 27:25	3:14	47:10	third 24:19
44:4	solved 11:23	straight 39:14	taken 1:9 42:17	40:20
separately 44:6	somebody 14:25	Street 1:12 2:4	46:12	thirties 12:12
separation	15:17 24:13	29:5,22 38:6	talking 8:17	thought 12:19
39:25 42:23	son 4:7 12:11	38:16	23:3 27:14	12:23 36:25
September 1:9	son's 41:10	strictly 13:19	tastes 33:17	three 21:5 33:7
Settlement 3:10	sorry 21:21 27:2	stuff 46:6	tax 37:9 39:23	33:7
18:21,25 20:13	sort 35:7 39:19	subdivided 17:4	45:25	thrown 40:14
24:15,23 30:16	source 26:3 31:5	subject 29:17	taxes 27:16	thrust 16:11
46:19	31:17	successor 22:12	Technologies	till 31:23
seven 8:15	South 1:1,12 2:5	22:17	13:10	Tillman 2:3
share 40:15	2:10 15:15	successors 21:16	telephone 11:16	20:14 21:20,22
shared 37:9	48:2,5,18	22:9	tell 30:18 46:23	22:19 26:20
39:21	space 38:22	sue 21:13,14,19	ten 11:11	28:9 30:11
shopping 12:18	speak 34:11 40:3	sugar 7:11	tenant 15:12	31:8 33:12
short 7:21 14:8	special 16:13	Suite 2:10	24:3	37:24 39:17
short-term	specifically 40:8	suits 21:17	tenants 14:11,12	46:11,16,19,22
17:13	speech 9:1	summer 33:21	terms 40:5	time 1:10 5:9
show 9:6 37:15	Spencer 32:25	sunglasses 5:7	testified 31:21	9:23 11:21
showing 9:9	33:4 41:10	supposed 19:15	testify 44:25	12:23 13:12
sign 13:20 18:24	spend 23:17	sure 4:5 7:21	testimony 3:2	14:9,25 16:2,6
40:21 42:9	33:9,16,17	9:18 14:24	48:9	25:7 26:6
signed 9:17	spent 41:11	15:7 19:14	thank 18:22	27:22 29:8
24:16 29:2,14	Spiractin 7:10	23:16 37:22	28:9 30:14	32:5,14 33:23
30:6	split 18:2,12,13	39:14 45:14	46:14 47:14	35:4,17 39:20
signing 3:16	spot 21:11	Sweetgrass	thing 5:2 14:3	39:24 40:9
36:3	spouse 21:13	44:13	24:10 42:1	41:11 43:1
simple 17:2 24:2	spray 8:8,20	Sweetgrasses	things 15:7	44:9 45:18
sir 9:5,13,25	sprays 8:14	44:12	18:10 24:6,9	46:8
10:2,24 12:10	start 34:2	sworn 4:2 48:10	24:12,17 32:20	times 23:10
13:16 21:8,12	started 6:4 7:20	system 12:15	34:19 36:13	44:16
24:22 25:13	State 1:1 48:2,5		37:20	tired 24:18
30:10 43:8	48:18	T	think 9:23 11:23	title 43:5
47:7,13	statement 37:5,5	T 48:1,1	14:16,21 17:7	tnettles@fink...
		taco 12:1,3,5,6		

2:11	21:6 22:7	37:22 42:3	wedding 41:10	yeah 5:7,14 7:14
today 4:10 5:12	30:23 33:22	43:18	Wednesday 1:9	12:1 17:10
5:13 30:9,24	Uh-uh 38:17	wanted 12:6	week 7:20 44:18	22:16 26:1
31:4	ultimate 25:25	15:1,7 24:3	welcome 35:8	29:9 30:5
today's 18:20	ultimately 16:9	28:19 33:2	Wellbutrin 5:25	31:17 33:7,14
told 10:15 29:9	17:4	36:13	went 10:9 19:24	34:13,13 37:3
34:1	umbrella 38:21	wanting 11:15	28:20 32:6	39:4,23 40:18
top 21:9 28:20	understand	Warren 10:18	weren't 41:15	41:7 43:10,17
Toporek 19:21	21:18 25:2	14:6,15 15:6	wherewithal	43:18 46:25
total 8:23	37:22	15:12 16:5,23	35:2	year 9:4 33:14
touched 29:19	understanding	19:3 20:11,12	wife 36:1,18	38:23 44:5
track 15:20	26:23 35:25	21:14,19 22:1	wills 20:10	45:14 46:1
transaction	urge 6:10	22:18 25:4,6	witness 21:21,24	47:1
41:17,21	use 14:21 15:20	25:19 26:18	28:8 30:13	years 11:11
transcript 3:16	36:13,18	28:15 29:9	46:18 47:16	14:11 17:22
48:8	usually 34:7	30:17 31:20	48:9,16	31:23 45:8,25
transplant 20:22		32:1,8 34:1	Womble 1:11	46:2
trend 32:19	V	35:4 37:6,8,18	2:4	
Tresiba 5:20	v 1:5	38:11 39:20	words 22:12	Z
tried 34:17	vacations 32:22	40:1,9,11,20	wore 5:7	Zeezrom 10:10
Trio 12:3,6	valuable 17:2	41:23 42:19,25	work 5:20 40:22	11:2 18:5
true 4:20 48:8	33:1	44:3,24 45:15	41:19,19	22:18 26:9
TRUETT 2:9	value 17:2 39:1	45:24 47:4	worked 12:15	34:18 38:21
trust 19:9 20:4	39:2	Warren's 23:1,9	26:10 35:14	
25:10 34:24	ventures 11:8	34:19 37:16,18	working 6:6	0
43:21	verify 45:21	43:11 44:23	works 7:10,19	
truthful 4:14,15	video 14:18 15:1	wasn't 13:21	worry 42:8	1
4:18	15:14 16:8	15:25 23:16	wouldn't 22:2,5	19:7
try 15:18	visit 44:16	45:5	35:14	1:50 1:10 4:1
trying 5:3 20:2	visited 44:10	water 27:4	wrench 40:13	11 44:22 45:13
37:17 45:15	Volkswagen	way 6:3 15:19	write 23:10	12 1:12 9:21
two 7:3 8:14,16	13:2	16:10 25:22	37:24 39:8	33:20
8:17,19,23,23		26:10,22 31:11	written 37:7	13 44:7
9:4 10:9,14	W	31:12 33:15	39:11	13,000 32:5
17:8 18:11,11	wait 33:23 34:15	35:13 38:2	wrote 9:20 10:1	14 44:7 48:24
23:10 45:25	47:15,16	39:20	33:19	16 27:16 29:5
46:2	waited 37:12	we'll 18:24 46:6		38:6
type 38:21	waived 3:17	46:7 47:10	X	16,000 19:12
	waives 25:8	we're 9:11 24:5	X 3:1	26:8,12 43:20
U	want 10:25	40:22 46:5		44:2
uh-huh 8:11	12:12 15:10,16	We've 18:19	Y	17 11:10 13:9
9:10 10:21	16:25 23:12	wear 5:9	y'all 42:3	17:3
11:12 13:1	24:2 27:4 35:5		yard 13:10 39:3	18 3:11

38:6,15	43:3			
19 1:9	40 40:19			
1st 14:22	4000 2:10			
	450 2:10			
2	48 3:5			
29:23 13:4,5,14				
16:20,23 26:16	5			
31:22 32:2,17	52:4			
34:16 37:13				
38:8 39:9,15	6			
40:6,12 41:16	6,500 27:14			
47:12	672,000 43:18			
20 37:12				
2000 14:22	7			
15:22,23				
2000s 45:24	8			
2005 15:23	8 3:10 18:16,20			
31:23	24:24 46:20			
2007 31:23	8,000 27:14			
2010 44:22				
45:13	9			
2011 45:11,12	9th 46:25 47:5			
2013 47:2,6				
2017 9:21 33:20				
34:15 37:12,24				
39:8				
2017-CP-10-872				
1:4				
2018 1:9 48:17				
2021 48:24				
2233 17:3				
2237 17:5				
24 5:16				
24/7 21:1				
2940 12:5				
29405 2:10				
3				
3 33:20				
3:19 47:20				
3rd 48:16				
4				

FILED
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JULIE J. ARMSTRONG)
CLERK OF COURT)
PATRICIA HOLLIDAY,)
Plaintiff,)

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
Case No.: 2013-DR-10-2434

versus)

WARREN PHILIP HOLLIDAY,)

Defendant.)

FINAL ORDER
AND
DECREE OF DIVORCE

PRESIDING JUDGE:

J. McMahon

DATE OF HEARING:

December 9, 2013

PLAINTIFF'S ATTORNEY:

Alan D. Toporek, Esquire

DEFENDANT'S ATTORNEY:

F. Truett Nettles II, Esquire

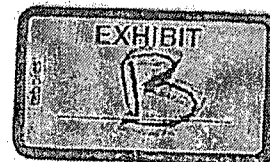
COURT REPORTER:

Missy Brown

This matter came to be heard before me on December 9, 2013, for Final Hearing. Present and appearing in Court this date were the Plaintiff and her attorney of record, Alan D. Toporek, and Defendant and his attorney of record, F. Truett Nettles II. At the call of the case, the Parties, by and through their attorneys, presented to the Court a document dated August 9, 2013 entitled Marital Settlement Agreement, which had been executed by the Parties, which purports to resolve all issues by and between the Parties with the exception of the ultimate divorce. The Parties also presented to the Court a document entitled the Patricia Anne Holliday Marital Trust, which was executed by the Trustees, Ross Samuel Holliday and Pamela Giselle Holliday Wallin. Lastly, the parties the parties presented an executed document entitled Addendum to the Marital Settlement Agreement dated October, 3013.

The Trust instrument is designed to provide benefits to the Plaintiff in the event the Defendant predeceases her.

Prior to taking testimony, the Court attempted to affect a reconciliation to the Parties, but was unsuccessful in its efforts.



The Parties read an additional addendum to the Marital Agreement into the record:

1. The personal property acquired by and between the parties during the marriage has been equitably divided to their mutual satisfaction.
2. The Parties have also agreed that the alimony payments contained in the Marital Agreement shall be due and payable on or before the 15th day of each and every month.

The Parties and their corroborating witness were sworn and testimony taken from each. Based upon the testimony of the Parties and the corroborating witness, the Court makes the following Findings of Fact:

1. That the Plaintiff and Defendant are the citizens and residents of the Charleston County, State of South Carolina, and have been residing herein for a period in excess of one year prior to the commencement of this action;
2. That the Plaintiff and Defendant are husband and wife, having been married on September 10, 1966;
3. That there were four children born to the marriage, namely, Pamela Giselle Holliday Wallin, Mark Bennett Holliday, Ross Samuel Holliday, and Warren Lee Holliday, all of whom are emancipated;
4. That the Parties have lived separate and apart without cohabitation since on or about February, 2011, thereby entitling the Plaintiff to a divorce, a vinculo matrimonii, of and from the Defendant, on the statutory grounds of one year continuous separation;
5. That the Parties were examined fully regarding their understanding of the executed Marital Agreement, the Addendum to the Marital Agreement and document entitled The Patricia Anne Holliday Marital Trust. The Parties entered these Agreements voluntarily, without duress, and after having been fully apprized of the financial status of one another.

The Court finds that the Marital Agreement, the Addendum to the Marital Agreement and the Trust Agreement are fair and equitable, and that the Marital

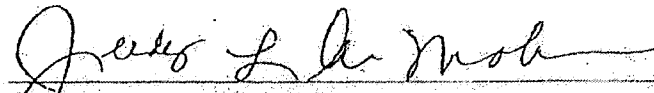
Agreement and Addendum to the Marital Agreement shall be made the Order of the Court, and that the Parties shall equally be bound by the Patricia Anne Holliday Marital Trust.

Based on the foregoing, it is ORDERED, ADJUDGED, and DECREED that the Plaintiff be granted a divorce, , a vinculo matrimonii, of and from the Defendant, on the statutory grounds of one year continuous separation;

It is further ORDERED, ADJUDGED, and DECREED that the Marital Agreement, the Addendum to the Marital Agreement, copies of which are attached hereto and by reference made a part hereof, be, and are hereby made, the Order of this Court;

It is further, ORDERED, ADJUDGED, and DECREED that the Parties are to be bound by that certain document entitled the Patricia Anne Holliday Marital Trust, a copy of which is attached hereto and by reference made a part hereof.

AND IT IS SO ORDERED!

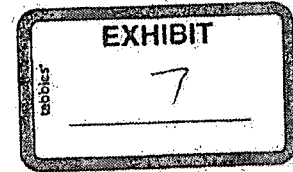

THE HONORABLE JUDGE

This 9 day of Dec 2013

Charleston, South Carolina

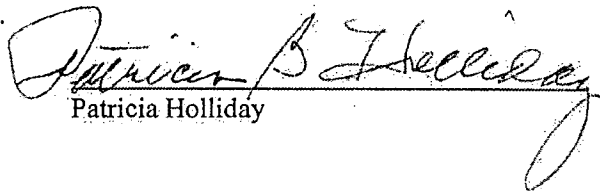
ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. COURT
BY  DEPUTY CLERK

AFFIDAVIT OF PATRICIA HOLLIDAY

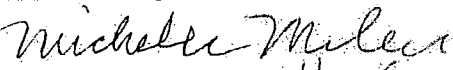


I, Patricia Holliday, hereby swear under penalty of perjury under the laws of the State of South Carolina that the following are true and correct statements:

1. I over the age of 18 and am competent to provide the statements set forth in this affidavit.
2. I have personal knowledge concerning all statements made in this affidavit.
3. I am a holder of the Promissory Note dated June 18, 2004, which was signed by Ross Holliday.
4. I have never agreed to discharge Ross Holliday's obligations under the Promissory Note, nor have I agreed to modify the terms of the Promissory Note.
5. I have never acknowledged that the amounts owed on the Promissory Note are paid in full by Ross Holliday.
6. I signed the Marital Settlement Agreement dated August 9, 2013 between myself and Warren P. Holliday.
7. At the time I signed Marital Settlement Agreement, the amounts owed on the Promissory Note were outstanding.
8. The intent of the Marital Settlement Agreement was to memorialize the distribution of assets between myself and Warren P. Holliday in our divorce.
9. I did not intend to release any claims against Ross Holliday on the Promissory Note by signing the Marital Settlement Agreement.


Patricia Holliday

Sworn to and subscribed before me
this 23 day of September, 2019

By: 
Print: Michelle Miller

Notary Public for South Carolina
My Commission Expires: 5/28/23

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Patricia B. Holliday,

Plaintiff,

v.

Ross S. Holliday,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE # 2018-CP-10-0872

PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT

FILED
2019 SEP 30 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff Patricia B. Holliday ("Patricia Holliday") hereby submits her Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment. Defendant's motion should be denied, as set forth below.

ARGUMENT

1. **CONTRARY TO ARGUMENTS MADE BY DEFENSE COUNSEL, THE MARITAL SETTLEMENT AGREEMENT DOES NOT ASSIGN TO WARREN HOLLIDAY ALL MARITAL PROPERTY NOT OTHERWISE SPECIFICALLY ADDRESSED. RATHER, IT PROVIDES THAT WARREN AND PATRICIA HOLLIDAY HAVE AGREED TO A DIVISION OF ALL NON-SPECIFIED PROPERTY AND WAIVE CLAIMS AGAINST EACH OTHER FOR THAT PROPERTY. IT DOES NOT MENTION THE NOTE, AND THEREFORE, AT BEST, THERE IS AN ISSUE OF FACT CONCERNING WHO WAS ENTITLED TO ENFORCE THE NOTE AFTER THE DIVORCE.**

A. The Marital Settlement Agreement does not transfer ownership of the Note.

The Marital Settlement was signed on August 9, 2013 and incorporated by reference into the Divorce Decree of Warren and Patricia Holliday on December 9, 2013. *See Exhibit A* to Plaintiff's Motion and *Exhibit 3* to Defendant's Memorandum in Response (also attached as *Exhibit 1* hereto). It is undisputed that, at the time the Marital Settlement Agreement was

entered, Warren and Patricia Holliday were joint holders of the Note with rights of survivorship. It is also undisputed that Ross Holliday owed amounts on the Note as of that date. It is also undisputed that the Note is not specifically referenced in the Marital Settlement Agreement and there is no "catch all" provision which vests ownership of unidentified assets in Warren Holliday.

At the hearing on this matter, the Defendant portrayed the Marital Settlement Agreement as assigning all marital property not otherwise addressed to Warren Holliday and that Patricia Holliday released all claims to that marital property. That is an inaccurate depiction of the contents of the Marital Settlement Agreement. Rather, the Marital Settlement Agreement provides that assets not specifically identified had been divided by Warren and Patricia and that they each released the other from any claims to those divided assets. There is no "catch all" provision. The Note was not addressed in the Marital Settlement Agreement, and was not addressed otherwise. Therefore, there is no evidence that Patricia agreed to provide Warren with sole ownership of the Note, and no evidence that she released her ownership of the Note to Warren. She still owns the Note, and has the right to enforce it.

The Marital Settlement Agreement provides for seven categories of property to be divided in the Equitable Apportionment and Division of Property section. See Marital Settlement Agreement at § 3. The categories are generally described as follows:

- A. Marital Abode. — This section provides that this asset shall be owned by a trust benefitting Patricia Holliday. **This section does not apply to the Note.**
- B. Vehicles. — This section identifies two specific vehicles and provides that Patricia Holliday will retain ownership and Warren Holliday relinquishes any claim to those vehicles. **This section does not apply to the Note.**

- C. Household Goods. – This section provides for division of household goods and precious metals. **This section does not apply to the Note.**
- D. Business Assets. – This section provides that “Warren presently owns or holds an interest in several limited liability companies, corporations or other business entities, a schedule of which is attached hereto as Exhibit A. The Parties agree that Warren shall retain and continue full ownership and interest in any and all such companies and other business assets which Warren holds at this time.” The Defendant alleges that the Note was a business asset, but plainly is not. It was not listed in Exhibit A, and was not held by one of Warren Holliday’s limited liability companies, corporations or other business entities. It was a Note held personally by Warren and Patricia Holliday.¹ **Therefore, this section does not apply to the Note.**
- E. Accounts. – This section provides that Warren and Patricia retain control of their own individual financial accounts. **This section does not apply to the Note.**
- F. Trust Funds and Other Inherited Property. This section provides that Warren and Patricia will retain all trust funds and inherited property they individually own. **This section does not apply to the Note.**
- G. Other Items of Property. – This section provides for distribution of “all other personal property acquired during the marriage, including, but not limited to, household furnishings, appliances, bank accounts, retirement accounts, money situated in other accounts, jewelry, sporting equipment, and all other personal property of value.” **Therefore, to the extent the Note was marital property, it falls within this category of property.** As to these items of property, the Agreement provides that

¹ Patricia Holliday specifically testified that the Note represented a “personal loan.” See Exhibit 6 to Plaintiff’s Memorandum in Opposition at 25.

“Warren and Patricia have made a physical division of [the property]”, and that “the parties each release the other from all claims of interest to any monies or assets in the possession of the other or titled in the name of the other party unless stated otherwise herein.” While the Note falls within this category of property, there is no evidence that Warren and Patricia agreed to a division of the Note. It was therefore left unresolved (or ambiguous).

H. Debts. This section relates to debts and obligations that Warren and Patricia incurred, and not money owed to them. **This section does not apply to the Note.**

If at all, the Note falls within the “Other Items of Property” section of marital property, but was not addressed by the parties. Therefore, it is just as likely that Warren Holliday agreed to waive his rights to the Note as it was for Patricia to do the same. The fact is, the Note was not addressed, and therefore it is simply an improper assumption to presume that Patricia Holliday agreed that Warren Holliday would own the Note and waived her rights in it. Indeed, Patricia Holliday expressly states that she did not agree to waive her claim to the Note in the Marital Settlement Agreement. *Exhibit 7* to Plaintiff’s Memorandum in Opposition to Motion for Summary Judgment at ¶ 9. This testimony is further bolstered by the Financial Declaration filed by Patricia Holliday in the divorce action, in which she specifically notes her share of the “Debt from Ross Holliday.” *Exhibit 2*, Financial Declaration.

B. South Carolina law provides for division of property held with a right of survivorship where, as here, property is not addressed in a divorce decree.

As set forth in Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment, prior to the enactment of S.C. Code § 62-2-507 on January 1, 2014, a divorce did not operate to sever the survivorship interest in the joint property unless specifically addressed in a marital agreement. *Duncan v. Investors Diversified Services, Inc.*, 285 S.C. 467,

472, 330 S.E.2d 295, 297-298 (1985) (pre- Section 62-2-507 case that held divorce did not revoke beneficiary designation in a retirement plan as a matter of public policy); *Miller v. Miller*, 117 N.C. App. 71, 450 S.E.2d 15 (N.C. App. 1994) (note proceeds did not pass to estate of husband, but instead directly to ex-wife who was a joint holder with right of survivorship). Section 62-2-507 provides, in relevant part:

Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage: (2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship . . .

(emphasis added). As set forth above, the Marital Settlement Agreement does not contain express terms relating to the division of the Note. Therefore, the only issue is whether the prior law or Section 62-2-507 applies², and that application of the law will determine whether Patricia Holliday took the entire right to the Note at Warren Holliday's death or simply one-half of the Note by operation of the severance provision set forth in Section 62-2-507. Stated simply, there is absolutely no evidence that Warren and Patricia Holliday intended that Warren would retain sole ownership of the Note at the time of the divorce and therefore the Court cannot grant a summary judgment motion presuming that non-existent fact.

² As set forth in Plaintiff's Memorandum in Opposition to Motion for Summary Judgment, statutes are not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. *Hyder v. Jones*, 271 S.C. 85, 245 S.E. (2d) 123 (1978)). "[L]egislative intent is paramount in determining whether a statute will have prospective or retroactive application." *State v. Bolin*, 381 S.C. 557, 561, 673 S.E.2d 885, 887 (Ct. App. 2009)). When the legislative intent is not clear, courts "adhere to the presumption that statutory enactments are to be given prospective rather than retroactive application." *Id.* at 561, 673 S.E.2d at 886-87. Therefore, Section 62-2-507 may not be applied to sever the interest in the Note, and Patricia Holliday became the sole holder of the Note as the survivor upon the death of Warren Holliday.

2. PATRICIA HOLLIDAY DID NOT NEED TO MAKE A CLAIM AGAINST WARREN HOLLIDAY'S ESTATE IN ORDER TO ESTABLISH HER CLAIM ON THE NOTE.

As set forth above, the Note was not addressed in the Marital Settlement Agreement or otherwise. Therefore, after the divorce, Patricia Holliday and Warren Holliday either (1) continued to be joint holders with rights of survivorship, or (2) had their interests severed pursuant to S.C. Code § 62-2-507 such that each of them owned one-half of the right to claim on the Note. Under the first scenario, Patricia Holliday took automatic, non-probate ownership of the entire Note as a holder upon the death of Warren Holliday. *Estate of Chappell v. Gillespie*, 327 S.C. 617, 491 S.E.2d 267 (Ct. App. 1997) (co-owner of bank account entitled to account proceeds upon death and amounts did not pass to decedent's estate). Under the second scenario, the survivorship right was severed upon the divorce, such that Patricia owned one-half of the Note. Her one half interest was no longer dependent on Warren, and therefore she need not make a claim on his estate. Simply put, Patricia Holliday's interest in the Note never passed to Warren.

3. DEFENDANT'S ARGUMENTS IN SUPPORT OF A WAIVER IN THE MARITAL SETTLEMENT AGREEMENT MUST BE REJECTED.

A. The General Release of Claims in the Marital Settlement Agreement did not apply to release Patricia's interest in the Note.

In his Memorandum, the Defendant argues that Patricia Holliday transferred her claim to ownership of the Note to Warren Holliday and then released her claims in the mutual "General Release of Claims." This argument is a fallacy premised on an incorrect assumption that defense counsel encouraged the Court to make. The General Release of Claims is a mutual release between Warren and Patricia Holliday of "suits, actions, causes of action, claims, demands, damages . . . resulting from or arising out of the marital relationship between Warren and Patricia

See Exhibit 1 to Defendant's Memorandum at ¶ B. It does not mention the Note, and the Note is not a claim resulting from the marital relationship. The Note is a private transaction by which Warren and Patricia loaned money to Ross Holliday and received the Note in return. The General Release does not release that claim. Further, even if it did, there is no way to tell who retained ownership of the Note and received a release from the other. As set forth above, the Note was not addressed by the parties.

B. The Note was not a "business asset" of Warren Holliday, as set forth by the Defendant.

The Defendant argues that the Note was a "business asset" of Warren Holliday, as that term is defined in Section III.D of the Marital Settlement Agreement, and was therefore an asset of Warren Holliday after the divorce. As set forth above, the Note was not one of the "several limited liability companies, corporations or other business entities" that defined the "business assets" of Warren Holliday in the Marital Settlement Agreement. It was a personal holding of Warren and Patricia Holliday which was not addressed in the Marital Settlement Agreement and was therefore not vested in Warren Holliday. Likewise, this renders any discussion of Ross Holliday's involvement in Warren Holliday's businesses or Patricia Holliday's release of rights to Warren Holliday's property completely irrelevant. The Note was not Warren Holliday's sole property, before or after the divorce, as a business asset or otherwise.

C. The Financial Arrangements Agreement is irrelevant.

The Defendant attached a Financial Arrangements Agreement to his Memorandum to establish that Warren and Patricia Holliday "intend that their financial dealings will henceforth be separate" and that Ross took over certain of his parents' financial dealings. This is completely irrelevant to the question of the parties' intent with respect to ownership of the Note.

It contains no mention of the Note, and no reference to a release of any claims on the Note by any party.

D. Ross Holliday is not a third-party beneficiary of the Marital Settlement Agreement by virtue of being an "heir."

The Defendant argues that Patricia Holliday released her claims on the Note by agreeing to the General Release of "claims arising out of the marital relationship" against "each other, their administrators, successors, heirs and assigns" As set forth above, the Note is not addressed, and is not a claim arising out of the marital relationship. It was a personal loan to a third-party, Ross Holliday. Therefore, the Marital Settlement Agreement is, at best, ambiguous on this point.

Further, Ross Holliday cannot prevail as an alleged third-party beneficiary of the Marital Settlement Agreement. "A third-party beneficiary is a party that the contracting parties intend to directly benefit." *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). The Marital Settlement Agreement is silent as to the Note, and certainly contains no language releasing Ross Holliday from his obligations. Neither party has any evidence concerning Warren Holliday's intent as it relates to the Marital Settlement Agreement. Clearly, Patricia Holliday did not intend to release any claims on the Note by operation of the Marital Settlement Agreement. *Exhibit 7* to Plaintiff's Memorandum in Opposition to Motion for Summary Judgment, Affidavit of Patricia Holliday at ¶ 8. Therefore, there is no evidence to support Defendant Ross Holliday's assertion that the claims on the Note were released.

E. Patricia Holliday's interest in the Note was an outright ownership interest, not an expectancy or beneficial interest, and therefore the "General Release of Claims" did not operate to release her claims on the Note.

Incredibly, the Defendant argues that Patricia Holliday contracted away her "beneficiary interest" in the Note. This is complete nonsense. Patricia Holliday was a holder and joint owner

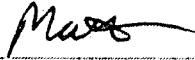
of the Note. She had a legal, not beneficial, interest. Further, she very clearly did not contract away her interest in the Note. For this reason, the cases cited by the Defendant are completely unhelpful.

In *Estate of Revis by Revis v. Revis*, 326 S.C. 470, 477, 484 S.E.2d 112, 116 (Ct. App. 1997), the Court held that a life insurance beneficiary could contract away her beneficial interest in a separation agreement. This has no application to the facts of this case, where Patricia Holliday held a legal interest and very clearly did not contract away that interest. In *Stribling v. Stribling*, 369 S.C. 400, 632 S.E.2d 291 (Ct. App. 2006), the Court held that an ex-wife had specifically waived any interest in her former husband's individual retirement account in a separation agreement. This case dealt with a specific waiver of property clearly belonging to the husband as an owner. Patricia Holliday is herself a holder and owner of the Note. Therefore, *Stribling* is not controlling, nor even helpful.

CONCLUSION

Patricia Holliday is, and at all times was, a personal holder and owner of a legal interest in the Note. She did not transfer her claims to Warren Holliday in the Marital Settlement Agreement, expressly or by implication, and therefore did not waive her claims on the Note. Therefore, for the reasons set forth above, Defendant Ross Holliday's motion for summary judgment must be denied.

WOMBLE BOND DICKINSON (US), LLP



Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398

Charleston, South Carolina
September 30, 2019

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2019, a copy of the foregoing *Supplemental Memorandum in Opposition to Motion for Summary Judgment* was served on the Defendant herein by mailing true and correct copies thereof in the U.S. Mail, postage prepaid as follows:

F. Truett Nettles, II, Esq.
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405

Alice F. Paylor, Esq.
Bijan Ghom, Esq.
Rosen Hagood, LLC
P.O. Box 893
Charleston, SC 29402

Attorneys for Defendant

WOMBLE BOND DICKINSON (US), LLP



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MARITAL SETTLEMENT AGREEMENT

This Agreement made and entered into this 9th day of August, 2013, in Charleston, South Carolina, by and between Patricia Anne Holliday ("Patricia") and Warren Phillip Holliday ("Warren").

WITNESSETH:

WHEREAS, the parties hereto are husband and wife, having been lawfully married on September 10, 1966, in Charleston, South Carolina, and four children have been born of this marriage: Pamela Giscelle Holliday Wallin, Mark Bennett Holliday, Ross Samuel Holliday, and Warren Lea Holliday and these children are now emancipated, adult persons and the parties to this Agreement have no continuing legal obligation to any of them and no other children will be born of this marriage; and,

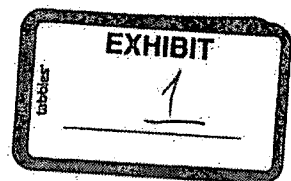
WHEREAS, the parties have lived separate and apart since February, 2011; and,

WHEREAS, the parties now consider it to be in their respective best interests to settle all issues between themselves and all matters heretofore arising or hereafter to arise from their marital union; they have reached a permanent, complete, and final agreement; they now wish to reduce their agreement to writing; and they desire that it shall constitute the total agreement between them, both now and following any divorce which either might obtain, with respect to all matters which were raised or could have been raised between the parties hereto, other than the issue of divorce itself (this "Agreement"); and,

WHEREAS, Patricia is represented by Alan D. Toporek, Esquire of Charleston, South Carolina and Warren is represented by P. Truett Nettles, II, Esquire of Charleston, South Carolina. The parties acknowledge that they have each had adequate opportunity to consult with their attorneys, accountants,

WITNESSES: PBH
WP/PAH

Holliday Settlement Agreement
Page 1 of 13



financial advisors or other professionals and the parties acknowledge that they have been competently and properly represented and they believe they have been fully advised of all their rights and responsibilities hereunder; and,

WHEREAS, both parties now waive their right to formal discovery and acknowledge that each is reasonably familiar with the financial ability, income, debts, expenses, worth, and assets of the other based upon knowledge obtained during the marriage, discussions between the parties, access to legal and financial records, and the advice and counsel of their respective attorneys or other professionals; and,

WHEREAS, the parties stipulate that they are not entering into this Agreement as a result of any duress or undue influence but rather as the natural consequence of the breakdown of their marriage; they further acknowledge that each party has freely, actively, and fully taken part in the negotiations over a reasonable period of time; each party fully accepts the terms and conditions hereof; and each party believes and considers the same to be fair, just, and equitable under all relevant circumstances.

NOW, THEREFORE, in exchange for valuable consideration and mutual covenants and promises, the undersigned, Patricia Anne Holliday and Warren Phillip Holliday, hereby covenant and agree as follows:

I. RIGHT TO LIVE SEPARATE AND APART AND NON-INTERFERENCE

A. RIGHT TO LIVE APART. Upon and after execution of this Agreement, Warren and Patricia shall have the right, at all times, to continue to live separate and apart from each other for the remainder of their respective natural lives and to reside at such place or places and with such person or persons as either may see fit, and each party shall be free from any interference, marital authority, or control, direct or indirect, by the other party. Both Warren and Patricia, as though sole and unmarried, shall have

WPH:XTA-PAH 

Holliday Settlement Agreement
Page 2 of 13

the right to carry on or conduct and/or engage in any employment, business, profession, or trade, free from any control, restraint, and/or interference, directly or indirectly, by the other.

B. **GENERAL RELEASE OF LIABILITY.** The parties do hereby waive, release and forever acquit, and do hereby discharge each other, their administrators, successors, heirs, assigns of and from any and all suits, actions, causes of action, claims, demands, damages (known, unknown, foreseen, and unforeseen), costs, expenses, compensation, and all consequential damages, including, but not limited to, those resulting from or arising out of the marital relationship between Warren and Patricia, their marriage, separation or divorce, or any tort, or other legal or equitable claim (except those arising from a breach of this Agreement) from the beginning of the world to the date of this Agreement. The parties hereby expressly waive and release any claim either party may have in or against the Probate Estate of the other party pursuant to a Will, a spousal election or any other provision of the S.C. Probate Code.

C. **PERSONAL KNOWLEDGE.** The parties hereby declare and represent that in making this agreement, release and settlement, each relies wholly upon his or her own judgment, belief, and knowledge of the nature, extent, and effect of this Agreement, and that each has not been influenced to any extent whatsoever in the making of this release by any representations or statements regarding the entire matter or by persons, firms, agents, attorneys, or corporations representing them.

D. **COMPROMISE OF DISPUTED CLAIMS.** Each party understands that this settlement is a compromise of disputed claims and that any payment to or by each or either of them is not to be construed as an admission of any liability for such payment or obligation.

WPH:JPH:PAH *[Signature]*

Holliday Settlement Agreement
Page 3 of 13

E. UNDERSTANDING OF THE AGREEMENT. Each party has carefully read this Agreement and each has had the same explained to them by their legal counsel. Each knows the contents hereof and signs this settlement agreement as their own free act, fully realizing that execution of this instrument will bar any further claim by each against the other and any heirs and all other persons, agents, and attorneys who are or who might be liable, including all those persons and entities named hereinabove, except as specifically set forth herein.

F. RESTRAINT FROM HARASSMENT. The parties agree to be restrained from harassing, assaulting, threatening, interfering with, or intimidating each other or the other party, their attorneys, accountants, experts or any other person advising or representing them.

II. SEPARATE MAINTENANCE OR ALIMONY

A. MONTHLY PAYMENTS. Warren shall be personally obligated to pay or cause to be paid to Patricia the total sum of Sixteen Thousand Dollars (\$16,000.00) per month, retroactive to June 1, 2013. In calculating any arrearage, Warren shall receive a credit for payments made to Patricia during June and July 2013 and a credit for personal Social Security benefits of Warren paid to Patricia during that time. This obligation shall be terminated upon the death of Patricia or her marriage. The parties agree that each shall keep and retain any benefits or entitlements that either party may have with regard to Social Security, Medicare or any other federal or state benefit or entitlement for which either party may qualify. In order to assure and administer these monthly payments, Warren has created "The Patricia Anne Holliday Trust" simultaneously with the execution of this Agreement. The sole asset of that trust shall be a "preferred" membership interest in Zeezrom Properties, LLC. The LLC shall make monthly "preferred" distributions

WPH:MS PAR *PAH*

Holliday Settlement Agreement
Page 4 of 13

to the Trust in the amount of \$16,000.00. Pamela Giselle Holliday Wallin and Ross Samuel Holliday shall be co-Trustees of this Trust. The Trustees will distribute those funds to Patricia according to the terms of the Trust. Both parties have reviewed the terms of that Trust and agree to the terms set forth therein.

B. **LIFE INSURANCE.** In order to provide Patricia with further and additional support after the death of Warren, Patricia shall remain the designated beneficiary on the Life Insurance Policy on the life of Warren with Mass Mutual, Policy No. 7-641-848. The death benefit on this policy is and shall remain at a minimum of \$700,000.00. Warren, owner of that policy, shall not make any changes to the beneficiary without the written consent of Patricia. Warren shall pay annual premiums on this whole Life Insurance Policy. If Patricia predeceases Warren, the alternative or successor beneficiaries shall be the inter-vivos Trust established by Warren and designated on the Life Insurance Policy.

III. EQUITABLE APPORTIONMENT AND DIVISION OF PROPERTY

A. **MARITAL ABODE.** The parties last resided together as husband and wife at the marital residence located at 1209 Menor Lane Mt. Pleasant, South Carolina 29464, TMS # 559-01-00-042. That residential property is legally owned by a Trust of which Patricia is the Trustee. The parties agree that Patricia shall retain and enjoy sole and exclusive use and possession of this residential property pursuant to the terms of the Trust. Warren hereby relinquishes and waives any claim he may have to that residential, real property.

B. **VEHICLES.** Patricia is presently the owner of two vehicles: (1) A 2008 Lexus, Model LS460, VIN JTHVL46F785058994 and (2) A 2003 Chevrolet, Model K15/BL truck, VIN

WPH: [Signature] PAH: [Signature]

Holliday Settlement Agreement
Page 5 of 13

3GNFK16Z43G129639. Patricia shall retain ownership and the exclusive possession of these vehicles.

Warren hereby relinquishes and waives any claim he may have to these motor vehicles.

C. **HOUSEHOLD GOODS.** The parties agree that Patricia shall retain, possess and own substantially all household goods, furniture, fixtures and appliances, except for the accumulation of precious metals. The parties agree that these precious metals shall be divided equally between Warren and Patricia. Warren shall have thirty (30) days from the date hereof to remove any additional personal items which still remain at the residence.

D. **BUSINESS ASSETS.** Warren presently owns or holds an interest in several limited liability companies, corporations or other business entities, a schedule of which is attached hereto as Exhibit A. The parties agree that Warren shall retain and continue full ownership and interest in any and all such companies and other business assets which Warren holds at this time. Patricia hereby relinquishes and waives any claim she may have in or against these business assets, except as provided in the Patricia Anne Holliday Trust. Warren shall retain sole authority to manage these business assets personally, or at his sole discretion, delegate or appoint management of these business assets to a person holding durable power of attorney, management agreement, appointment or election as officer, trustee or any other lawful manner.

E. **ACCOUNTS.** Warren and Patricia each have their own, separate checking accounts. The parties agree that any joint checking accounts, money market accounts, retirement accounts, annuities, saving accounts or any other type of account have been liquidated and no other funds or money remain in any such account. Each party shall retain exclusive control and ownership of their respective personal

WPH:DPH PAH



Holliday Settlement Agreement
Page 6 of 13

checking accounts. Each party relinquishes and waives any claim that they may have on or upon an account of the other party.

F. **TRUST FUNDS AND OTHER GIFTED OR INHERITED PROPERTY.** The parties release and waive any and all right, title, or interest he or she has, or may have had, to any trust funds, inheritances, accounts, gifts, or property of any kind inherited by the other party, or gifted to the other party, or held in trust for the benefit of that party, except as may be specifically provided herein.

G. **OTHER ITEMS OF PROPERTY.** Except to the extent set forth in this Agreement, Warren and Patricia have made a physical division of all other personal property acquired during the marriage, including, but not limited to, household furnishings, appliances, bank accounts, retirement accounts, money situated in other accounts, jewelry, sporting equipment, and all other personal property of value. The parties each release the other from all claims of interest to any monies or assets in the possession of the other or titled in the name of the other party unless stated otherwise herein. Each shall retain sole ownership of all such properties in his or her possession or titled in his or her name unless such property is made the property of the other pursuant to the terms of this Agreement. Furthermore, unless stated otherwise herein, each shall bear all costs and expenses related to the properties which each takes sole ownership of pursuant to this Agreement.

H. **DEBTS.** The parties each represent to the other that there are no outstanding debts or obligations upon which the other party might be obligated or liable. The parties additionally agree that all debts and liabilities incurred by each of them since their separation shall be the sole and separate responsibility of the party incurring such debt, and each holds the other free and harmless from

WPH:JH PAR 

Holliday Settlement Agreement

Page 7 of 13

responsibility for repayment of such indebtedness. In the event debts or liabilities are discovered after the date of this Agreement and are not addressed specifically by this Agreement, the party who incurred the debt or liability shall be solely and separately obligated to pay the same, and shall hold the other party free and harmless therefrom. The parties specifically agree that Patricia shall be solely liable on all credit card debt which she has incurred. Warren Holliday shall remain solely liable for any and all business debts that Warren has incurred.

IV. MEDICAL INSURANCE COVERAGE

Each party will be solely responsible for maintaining their own health insurance coverage and for payment of their individual, non-covered medical expenses and each agrees to hold the other party harmless from any liability thereon.

V. ATTORNEYS' FEES

Each party agrees to be solely responsible for payment of their respective attorney's fees and each agrees to hold the other harmless from any liability associated therewith.

VI. INCOME TAXES

Warren and Patricia hereby agree to hold the other party harmless from, and to indemnify the other party, against any loss, damages, expense, or liability, including deficiency assessments, penalties and interest, which such party may incur or be subject to by reason of any false, misleading or incomplete statement made, failure or neglect to disclose any income which should have or should be included, fact or information, whether or not false, misleading or incomplete, furnished or to be furnished, or act performed by or to be performed by such other party or any failure to make a statement, furnish a fact or information or perform an act with respect to any federal, state or local income tax return filed or to be filed

WPH: [Signature] PAH: [Signature]

Holliday Settlement Agreement
Page 8 of 13

by the parties, or any entities controlled by either of them, or any adjustment or amendment thereto both for jointly and separately filed taxes. Warren and Patricia are in the process of filing a joint tax return for the year 2012. Warren will be solely and personally responsible for any and all tax liability specified in the Federal or State tax returns for the year 2012. The parties shall file income tax returns separately for the year 2013. Each party shall be responsible for their own, respective tax liabilities which may be specified in the 2013 tax returns.

VII. RELEASE OF ESTATE CLAIMS

Warren and Patricia each waive any claim of inheritance or right that they may be entitled to by virtue of the South Carolina Probate Code to share in the other's estate pursuant to South Carolina Code §62-2-201 or any other applicable statute. Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement. After execution of this Agreement by Warren and Patricia, their rights to inherit one from the other shall be terminated except as provided otherwise herein.

VIII. RELEASE AND INDEMNITY

The parties agree to hold the other harmless from any and all claims, suits, actions, causes or actions, notes, mortgages or debts of any kind arising from each of their personal expenses or debts from the date of this Agreement going forward, except for the obligations each to the other. To the extent that either of them has signed notes, contracts, or other documents or participated in various business transactions related assets allocated to the other pursuant to this Agreement, the party allocated such asset holds the other harmless from any and all claims, actions, suits or other obligations arising from those notes, obligations or holdings. Each shall be solely, separately, and exclusively responsible for any costs, expenses and obligations, related to the assets allocated to each party herein.

WPH/OPH PAJ

Holliday Settlement Agreement

Page 9 of 13

IX. SEVERABILITY

Should any provision of this Agreement be held or deemed to be unenforceable, voidable or void, the remaining provisions of this Agreement shall nevertheless be binding upon and enforceable against the parties hereto, their executors, administrators, personal representatives and assigns.

X. WAIVERS AND MODIFICATIONS

No modification or waiver of any of the terms of this Agreement shall be valid unless submitted in writing and signed by the parties and executed in the same formality as this Agreement. No waiver or any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

XI. HEADINGS

The headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

XII. EXECUTION OF OTHER DOCUMENTS

The parties expressly agree that, at any time hereafter, each of them shall make, execute, and deliver any and all further and other instruments or papers or things as may be reasonably required or desirable for the purpose of giving full effect to this Agreement including, but not limited to, deeds, other instruments of title, bills of sale, titles, income tax returns, tax reporting forms, and other documents necessary to effectuate the transfers of property or necessary to complete the terms and intent of this Agreement except where a specific period of time or performance is expressly set forth in this Agreement, all other acts shall be performed within thirty (30) days of signing of this Agreement.

WPH:DPH:PAH



Holliday Settlement Agreement
Page 10 of 13

XIII. UNDERSTANDING OF THE PARTIES

The parties acknowledge that they are entering into this Agreement freely and voluntarily having ascertained and weighed all the facts and circumstances likely to influence their judgment concerning this Agreement. Each of them understands and has given consideration to all provisions of this Agreement and no relief will be sought by either party which is inconsistent with the terms of this Agreement. This Agreement contains the entire understanding of the parties and there are no representations, warranties, promises, covenants, or undertakings other than those expressly set forth herein.

XIV. BINDING EFFECT

The foregoing contains the entire Agreement between the parties. There are no representations or warranties other than those expressly set forth herein, and this Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, executors, administrators, successors, and assigns of the parties hereto.

XV. APPROVAL, MODIFICATION, AND ENFORCEMENT

This Agreement shall, as soon as possible after execution, be submitted to the Family Court for the Ninth Judicial Circuit in Charleston County, South Carolina, for the purpose of having the Court review the terms and conditions hereof and for the issuance of an appropriate order approving these terms and conditions and making the same an order of the Court. The parties agree that, in the event this Agreement is incorporated in said decree or order, it shall be a final resolution of the rights of the parties and shall not be subject to subsequent modifications. In the event this Agreement, or any part hereof, is not approved and not made the order of the Court as aforesaid, this Agreement shall be null

WPH:WBA PAF 

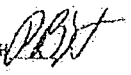
Holliday Settlement Agreement
Page 11 of 13

and void and of no effect, but each party solemnly agrees to support the Court's approval of this Agreement and to do nothing in derogation hereof or in any way to discourage said approval by the Court. The parties hereby acknowledge that, in the event this Agreement is approved by the Family Court and made a part of this Court's Final Order, that the terms and provisions of this Agreement shall be enforceable by the Court's contempt powers.

XVI. GOVERNING LAW

The parties agree that the laws of the State of South Carolina shall govern the interpretation of, and the resolution of, any disputes which may arise under this Agreement; both parties submit themselves to the jurisdiction of the Family Court for the Ninth Judicial Circuit for the resolution of such disputes.

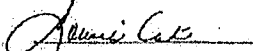
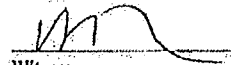
THIS AGREEMENT cannot be amended, changed, or modified without the express written consent of the parties and executed in the same formality as this Agreement.

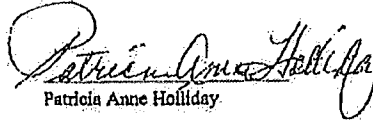
WHR/TH PAR 

Holliday Settlement Agreement
Page 12 of 13

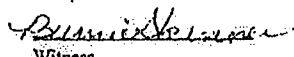
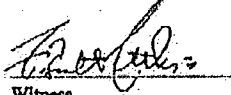
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date and
year first shown above in this Agreement and triplicate originals have been this day executed and
delivered one to each of the parties and the third is to be filed with the Charleston County Family Court
prior to a hearing for its approval.

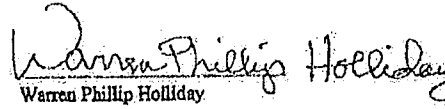
In the presence of:

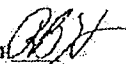

Witness

Witness


Patricia Anne Holliday

In the presence of:


Witness

Witness


Warren Phillip Holliday

WPH:WPH PAH 

Holliday Settlement Agreement
Page 13 of 13

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FILED

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

PATRICIA HOLLIDAY

2013 DEC 10 AM 9:29

FINANCIAL DECLARATION
OF PATRICIA HOLLIDAY

vs.

WARREN PHILLIP HOLLIDAY

JULIE J. ARMSTRONG
CLERK OF COURT

Defendant. Docket No. 2013-DR-10-2434

EXHIBIT

2

HUSBAND/FATHER		WIFE/MOTHER	
Address		Address	1209 Manor Lane Mt. Pleasant, SC 29464
Age		Age	70
Occupation		Occupation	Retired Realtor
Employer		Employer	N/A
Employer Address		Employer Address	N/A

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment		
Overtime, Tips, Commission, Bonuses		
Pensions, Retirement, and Annuities income		
Additional Employment income		
Social Security Benefits (SSA) and VA Benefits		
Disability and Worker's Compensation Benefits		
Unemployment and AFDC		
Spousal or Child Support (from other marriage/relationship)		
Dividends, Interest, Trust Income, and Capital Gains		
Rental Income and Business Profits		
Other (Specify):		
TOTAL GROSS MONTHLY INCOME		

Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax		
State Income Tax		
Social Security and Medicare Tax (FICA)		
Self-Employment Tax		
Health and Dental Insurance (Adult)		
Health and Dental Insurance (Child)		
Union Dues		
Voluntary Retirement Contribution (401(k), 457, IRA)		
Mandatory Retirement Contribution		
Savings Plan		
Other (Specify):		
TOTAL MONTHLY DEDUCTIONS		

SCCA 430 (12/2009)

1 of 5

NET MONTHLY INCOME		
--------------------	--	--

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included. _____)

MONTHLY EXPENSES ⁵	Husband/Father	Wife/Mother
Residential Rent Payment		
Note or Mortgage Payment on Residence(s)		
Food and Household Supplies ⁶		
Utilities, Water, and Garbage Collection		
Telephone and Cellular Phone		
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		
Life Insurance Premiums (not deducted from paycheck)		
Child Support (from other relationship)		
Work Related Day Care		
Spousal Support (from prior marriage)		
Auto Payment		
Auto Insurance, taxes, gasoline, and maintenance ⁷		
SUBTOTAL:		
Real Property Tax on Residence(s)		
Maintenance for household ⁸		
Adult Clothing		
Children's Clothing ⁹		
Cable Television, Satellite, and Internet/Online Services		
Laundry and Dry Cleaning ¹⁰		
Medical and Dental Expenses (not paid by insurance)		
Prescriptions, Glasses, and Contacts (not paid by insurance)		
Children's incidental expenses ¹¹		
School lunches, supplies, field trips, and fees ¹²		
Entertainment ¹³		
Adult incidental expenses ¹⁴		
All installment payments ¹⁵		
Other (Specify): House Insurance and condo regime fee		
SUBTOTAL:		
TOTAL MONTHLY EXPENSES		

Installment Loan Payments Section

Creditor	For	Monthly Payments	Balance	Owed by

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶

Are you currently in Bankruptcy? ☐ YES ☐ NO

Are any obligations listed above, including mortgage and note payments, in arrears? ☐ YES ☐ NO

If yes, please list the obligations in arrears.

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s)			
Money in Savings Account(s), Credit Union, Money Market, or Cert. of Dep.			
Value of Voluntary Retirement Account(s)			
Value of Pension Account			
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds			
Value of Privately Held Stocks and Other Business			
Value of Real Estate - Net of Mortgage Balances			
Value of All Other Property ¹⁷			
TOTAL ASSETS			

Any Non Marital Property Known to Parties

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present market Value
N/A				

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section¹⁸

Owner	Name of Institution	Type of Account	Balance

--	--	--	--

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁹

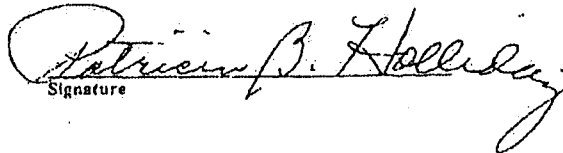
Name of Company	Number of Shares/Type of Account	Value
N/A		

Real Estate Section²⁰

Owner	Address	Value	Mortgage Balance	Mortgage Equity

Other Property Section²¹

Owner	Description of Asset	Value	Loan Balance	Equity
WIFE	DEBT from Ross Holliday	\$1,006,000.00	\$1,000,006.00	\$1,006,000.00


 Signature

Sworn to before me this 5 of Dec 2013
 SCCA 430 (12/2009)

2013

 (SEAL)
Notary Public for South Carolina
My commission expires: 9/9/23

Custodial Parent (if applicable): _____

1. A recent paystub should be attached to the Financial Declaration. To compute Principal Earnings from Employment, first determine whether you are paid semi-monthly, biweekly, or weekly. If you are paid semi-monthly, multiply the gross amount of your pay check by two. If you are paid biweekly, multiply the gross amount of your pay check by 26 and then divide by 12. If you are paid weekly, multiply the amount of your paycheck by 52 and divide by twelve. Round to the nearest whole dollar.
2. To compute Overtime, Tips, Commission, and/or Bonuses, take an average of your monthly earnings from overtime, tips, commission, bonuses, etc. from the past three years or the length of employment if employed less than three years (including this year).
3. To compute State, Local, and Social Security Tax deductions, use the same formula used to compute principal earnings in endnote 1 above, or consult or have your attorney consult an accountant.
4. Net monthly Income is equal to Total Gross Monthly Income minus Total Monthly Deductions.
5. Do not include any expense in the Monthly Expenses section that has already been included in the Deductions from Gross Monthly Income on page one of the Declaration.
6. Food Expense is to include the cost of groceries, toiletries, cleaning supplies, and casual eating out.
7. Auto Expenses are to include gasoline, oil changes, tune-ups, tire replacement, maintenance, and related items.
8. Maintenance for Household is to include appliance and household repairs, landscaping, house cleaning, pest control, pool service, alarm service, and other related items.
9. Clothing Expense is to include shoes and clothing purchases, clothing repair and alterations, and related items.
10. Laundry Expense is to include the cost of laundry service, dry cleaning, and related items.
11. Children's Incidental Expenses are to include allowance, summer camp, baby sitters, lessons, activities, participatory sports, and related items.
12. School Expense is to include tuition, supplies, field trips, dues, tutors, locker rentals, school lunches, and other related items.
13. Entertainment is to include movies, theater, vacations, sporting events, compact discs, digital video discs, and related items.
14. Adult Incidental Expenses are to include cosmetics, hair and nail care, books, magazines, newspapers, business dues, memberships, pets, charity, religious dues or tithes, gifts, bank charges, hobbies, and related items.
15. All Installment Loan Payments is the total amount itemized in Installment Loan Payments Section, which should include all loan payments not already listed as a monthly expense. Examples: home equity loan, credit cards, etc.
16. Indicate which spouse legally owes the payment (husband, wife, or joint).
17. Other property is to include automobiles (minus loan balance), boats (minus loan balance), furniture, furnishings, china,

silver, jewelry, collectibles, and other personal property.

18. Itemize Financial Accounts such as checking, savings, credit union, money market, or certificate of deposit accounts in the Financial Accounts Section.

19. Itemize Publicly Held Stocks, Bonds, Securities, Stock Options and Mutual Funds (excluding retirement accounts) in the Publicly Held Stocks, Bonds, Securities, Mutual Funds Section.

20. Itemize each parcel of Real Estate in the Real Estate Section.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE # 2018-CP-10-0872

Patricia B. Holliday,

Plaintiff,

**PLAINTIFF'S MOTION TO
RECONSIDER AND/OR ALTER OR
AMEND ORDER GRANTING SUMMARY
JUDGMENT**

v.

Ross S. Holliday,

Defendants.

Pursuant to South Carolina Rule of Civil Procedure 59, Plaintiff Patricia B. Holliday ("Patricia Holliday") hereby moves for a reconsideration and reversal of the Court's October 11, 2019 Order granting summary judgment to the Defendant.¹ In the alternative, Patricia Holliday seeks an amendment to the Order to clarify the basis of the ruling.

This is not a situation in which Patricia Holliday seeks to collect as a beneficiary on a life insurance policy or as a 401k beneficiary. Rather, Patricia Holliday was a joint holder of the Note with right of survivorship. She had her own independent ownership rights in the Note which were not dependent on Warren Holliday. The Order misconstrues her ownership rights, and that error pollutes all of the factual and legal findings set forth in the Order. For that reason, the Order contains incorrect factual findings and mischaracterizations of the law.

The arguments in support of this motion, which will be supplemented by later memorandum, are as follows:

¹ Undersigned counsel received notice of the Order on October 23, 2019 via email from his client who had been checking the online docket. No notice was sent by the Clerk of Court prior to this date.

ARGUMENT

1. **The Order is based on an incorrect assumption, that the Marital Settlement Agreement unambiguously transfers Patricia Holliday's interest in the Note to Warren Holliday and was then released.**

The Order is completely based on one grossly incorrect factual assumption: "When Warren and Patricia obtained a divorce, they entered into a Marital Settlement Agreement that gave Warren all property (whether personal or business) that was not specifically given to Patricia." This is a fiction created by defense counsel that the Court adopted. Indeed, the Marital Settlement Agreement lacks a "catch all provision" transferring all assets not otherwise directly assigned to Patricia to Warren. Furthermore, the Note is not a business asset as specifically defined in the Marital Settlement Agreement.

As set forth in Patricia Holliday's Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment, the Marital Settlement Agreement clearly does not transfer to Warren Holliday all property not specifically given to Patricia. Rather, as acknowledged in the Order, the Marital Settlement Agreement provides:

Warren and Patricia have made a physical division of all other personal property acquired during their marriage, including, but not limited to, household furnishings, appliances, bank accounts, retirement accounts, money situated in other accounts, jewelry, sporting equipment, and all other personal property of value . . . [and] . . . the parties each release the other from all claims of interest to any monies or assets in the possession of the other or titled in the name of the other party unless stated otherwise herein.

This is the provision under which the Note would fall. There is no evidence in the record that any physical division of the Note was agreed to by Warren and Patricia, much less any division that granted Patricia Holliday's interest in the Note to Warren. The only evidence of the parties' intent is found: (1) in the Affidavit of Patricia Holliday, in which she stated that she did not agree to release claims on the Note by operation of the Marital Settlement Agreement; and (2) in the

Financial Declaration submitted by the Patricia Holliday on December 10, 2013 – several months after the Marital Settlement Agreement – in which Patricia Holliday claims ownership of her interest as a legal holder of the Note. See *Exhibit 7* to Memorandum in Opposition; *Exhibit 2* to Supplemental Memorandum.

The Court can only issue an order granting summary judgment if the Marital Settlement Agreement unambiguously transferred Patricia Holliday's interest in the Note to Warren Holliday. Indeed, where an agreement is clear on its face and unambiguous, "the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001). However, a contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. *Id.* The determination of the parties' intent is then a question of fact. *Id.*

The Marital Settlement Agreement provides that Patricia Holliday and Warren Holliday "made a physical division of personal property." However, the Defendant provided no evidence to determine that Patricia Holliday's interest in the Note was transferred to Warren. Rather, the only evidence in the record shows that Patricia Holliday retained her ownership interest in the Note. Therefore, at best, the issue of the parties' intent as it relates to the Note is ambiguous and requires determination by the finder of fact. For that reason, summary judgment is improper.

2. The Order incorrectly provides that Patricia Holliday directly released claims against Ross Holliday under the Note.

Although it is unclear from the Order, it appears as if the Court may have ruled that Patricia Holliday released Ross Holliday from his obligations to her under the Note because he is

an "heir" of Warren Holliday. *See* Order, p. 5. First, it is undisputed that Ross Holliday is not a party to the Marital Settlement Agreement. Therefore, to the extent he claims a release, he does so as a purported third-party beneficiary of the agreement. A third-party beneficiary is a party that the contracting parties intended to directly benefit. *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988). The contract must contain specific language evidencing an intent by the parties to confer a substantial benefit on the alleged third-party beneficiary. *Windsor Green Owners Ass'n v. Allied Signal, Inc.*, 362 S.C. 12, 19, 605 S.E.2d 750, 753 (Ct. App. 2004). The Marital Settlement Agreement does not contain any language evidencing an intent to release Ross Holliday's obligations on the Note. Further, Patricia Holliday expressly stated that she did not intent such a result by signing the Marital Settlement Agreement. *See Exhibit 7* to Memorandum in Opposition to Motion for Summary Judgment.

Second, the Marital Settlement Agreement does not define the word "heir" and the Defendant did not submit any evidence that Ross Holliday is an "heir" as contemplated by the Marital Settlement Agreement.

For these reasons, summary judgment is improper.

3. The Order incorrectly interprets S.C. Code Ann. § 36-3-604.

The Court held that Patricia Holliday discharged Ross Holliday's obligation on the Note, as a matter of law, pursuant to S.C. Code Ann. § 36-3-604. This holding evidences a complete misreading of the statute.

S.C. Code Ann. § 36-3-604 provides, in relevant part:

- (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating

discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

A plain reading of the statute makes it clear that the discharge must be made by some direct act related to the Note itself. The "person entitled to enforce an instrument," *i.e.* Patricia Holliday, must mark the instrument or renounce her rights against Ross Holliday by a signed record. This is made clear in *In re Washington*, 581 B.R. 150, 158 (Bkrcty. D.S.C. 2017), the only case to interpret the statute. In that case, the court held that the issuance of an IRS Form 1099-C "Cancellation of Debt" was insufficient to evidence a cancellation of amounts owed on a guaranty pursuant to S.C. Code Ann. § 36-3-604, particularly where there was no evidence that that guaranty or related loan documents had been delivered to the debtor as discharge of the debt or intentionally destroyed or marked cancelled. *Id.* Patricia Holliday certainly did not discharge Ross Holliday's liability by signing an ambiguous Marital Settlement Agreement with a third party (Warren Holliday) that contains no reference to the Note, much less an intent to discharge. For this reason, the Court should reverse its order granting summary judgment.

4. The Order incorrectly characterized Patricia Holliday's argument under S.C. Code Ann. § 62-2-507.

The Court incorrectly held that counsel for Patricia Holliday attempted to salvage her claim by arguing that S.C. Code Ann. § 62-2-507 preserved her interest in the Note. This is another obvious misstatement inserted in the proposed order by defense counsel.

Counsel for Patricia Holliday argued (correctly) that the only purely legal issue that the Court would have to determine is whether S.C. Code Ann. § 62-2-507, which became law after the divorce, operated to sever the right of survivorship between Patricia and Warren Holliday. This assumes (correctly) that the previous Marital Settlement Agreement did not operate to extinguish any claims on the Note. Further, the answer to that question has no direct bearing on

Defendant's motion for summary judgment. It simply must be addressed by the trial judge to determine whether Patricia Holliday is entitled to the entire claim on the Note as survivor of Warren Holliday (if § 62-2-507 does not apply) or one-half of the claim (if § 62-2-507 does apply).

5. The Order incorrectly cited law concerning the release of a beneficiary interest through a property settlement agreement.

As set forth above, the Order presumes that Patricia Holliday is a beneficial holder of the Note, rather than a legal owner. This is absolutely incorrect. A "beneficial interest" is a "right or expectancy (such as a trust or an estate) as opposed to legal title to that thing." Black's Law Dictionary 149 (7th ed. 1999). Patricia Holliday was, and is, a legal holder of the Note. She had a legal right to enforce it, and was not a beneficiary. Therefore, Warren Holliday had no greater rights in the Note than Patricia. Stated differently, it is just as likely that Warren Holliday released his interest in the Note to Patricia by operation of the Marital Settlement Agreement as the opposite is true. Therefore, the citations to case law concerning release of a beneficial interest in a marital agreement are wholly improper, as is summary judgment as a remedy.

CONCLUSION

Patricia Holliday is, and at all times was, a personal holder and owner of a legal interest in the Note. She did not transfer her claims to Warren Holliday in the Marital Settlement Agreement, expressly or by implication, and therefore did not waive her claims on the Note. Therefore, for the reasons set forth above, the Order granting Defendant's Motion for Summary Judgment must be reconsidered and reversed.

WOMBLE BOND DICKINSON (US) LLP

s/Matthew Tillman

Charleston, South Carolina
October 29, 2019

Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Patricia B. Holliday,
Plaintiff,

v.

Ross S. Holliday,
Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE # 2018-CP-10-0872

**PLAINTIFF'S REPLY TO DEFENDANT'S
MEMORANDUM IN OPPOSITION TO
MOTION TO RECONSIDER AND/OR
ALTER OR AMEND ORDER GRANTING
SUMMARY JUDGMENT**

Plaintiff Patricia B. Holliday ("Patricia Holliday") hereby briefly replies to Defendant's Memorandum in Opposition to Motion to Reconsider. The Defendant's memorandum plainly demonstrates why summary judgment is not an appropriate remedy in this matter. Indeed, it contradicts the very basis of Defendant's motion, assumes facts not in evidence that should be stricken, and incorrectly quotes the statute upon which the Defendant relies in making his argument that Patricia Holliday assigned and released her rights on the Note.

1. The Defendant Contradicts The Statements Made By Counsel In The Summary Judgment Hearing And In The Proposed Summary Judgment Order Signed By The Court.

In the Defendant's original motion for summary judgment, he states that Patricia Holliday released any claims to marital property not otherwise addressed in the Marital Settlement Agreement. Def. Mot. at. pg. 10. Defendant's counsel made the same argument repeatedly at the hearing on Defendant's motion for summary judgment.¹ Then, the proposed order drafted by defense counsel and signed by the Court, provides: "[w]hen Warren and

¹ The hearing transcript has been ordered, but has not been provided by the court reporter as of the date of filing.

Patricia obtained a divorce, they entered into a Marital Settlement Agreement that gave Warren all property (whether personal or business) that was not specifically given to Patricia.” Order at pg. 5.

Now, faced with Plaintiff’s correct argument (supported by evidence) that the Marital Settlement Agreement is plainly ambiguous regarding disposition of the Note, the Defendant has pivoted to a new argument: that it is clear the parties intended that Patricia Holliday released her claim to the Note because Warren Holliday retained possession of the original Note after the divorce. The Defendant supports this statement by injecting entire paragraphs of “facts,” much of which are simply characterizations or are not even in evidence.² Simply put, either the Marital Settlement Agreement is unambiguous or it is not. The Defendant should not have to recite facts not in evidence and change its argument if the Marital Settlement Agreement is unambiguous and capable of a simple legal interpretation by the Court. Therefore, since the Defendant has proven that determining whether Patricia Holliday released her Note claims pursuant to the Marital Settlement Agreement requires an interpretation of the facts surrounding that transaction, summary judgment is improper.

2. Defendant’s Motion And The Court’s Summary Judgment Order Are Based on The Applicability of S.C. Code § 36-3-604; the Defendant Abandons That Argument And Cites the Wrong Statute When Attempting to Counter Plaintiff’s Argument That There is No Discharge Pursuant To § 36-3-604.

As set forth in Patricia Holliday’s motion to reconsider, S.C. Code § 36-3-604 makes it clear that the discharge of an obligation such as the Note must be made by some direct act related to the Note itself. Indeed, the statute requires the holder to discharge the obligation “(i) by an

² For instance, Defendant’s characterization of the “generous” award to Patricia Holliday in the Marital Settlement Agreement is a biased characterization without factual context. It is also untrue. Further, the entire first paragraph of page 3 is defense counsel’s attempt to insert prejudicial statements not in evidence. There are no citations to the record, and for good reason. Those statements are not supported by facts in the record. Those statements should be disregarded and stricken.

intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.”³ None of these events occurred in the present case. Indeed, had one of these events occurred, there would be no factual dispute. That is the very purpose of the statute.⁴

To counter Patricia Holliday's argument, the Defendant curiously attempts to pivot to the argument that Patricia Holliday need not discharge her obligation under S.C. Code § 36-3-604 because “Defendant's obligation was only to Warren” after the Marital Settlement Agreement was signed. The entire basis of the Court's summary judgment order is that Patricia Holliday directly discharged Ross Holliday's obligation on the Note pursuant to § 36-3-604. Order at pg. 4. This is yet another example of Defendant's malleable summary judgment theory that cannot withstand scrutiny. To exacerbate the confusion, the Defendant then cites language from S.C. Code § 62-2-507 for the proposition that the statute only applies “[e]xcept as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals . . .” Section 62-2-507 does not apply to determine whether Patricia Holliday has discharged her obligation, and is wholly unrelated to S.C. Code § 36-3-604. As with his argument concerning the language of the Marital Settlement Agreement, the Defendant undermines the very basis of the summary judgment order. As such, that order must be reversed.

³ There is no evidence that Patricia Holliday renounced her rights to the Note against Ross Holliday – i.e. the party obligated under the Note – in any signed record.

⁴ For instance, had Patricia Holliday assigned her rights to Warren Holliday or otherwise discharged Ross Holliday's obligations by marking the Note, the intent of the parties would be clear. None of that happened, and for good reason. The parties did not intend that Patricia Holliday would renounce or waive her rights on the Note by virtue of the Marital Settlement Agreement.

3. The Plaintiff's Claim is Not Barred by the Statute of Limitations.

Although it was not the basis of the Court's order granting summary judgment, the Defendant again argues that the Plaintiff's claim is barred by the statute of limitations. As set forth in the Plaintiff's memorandum in opposition to motion for summary judgment, Defendant plainly claims that he made payments on the Note in 2005-2007, December of 2010 and January of 2016. S.C. Code § 15-3-130 – entitled "Suits on causes saved from bar of statute by part payment or written acknowledgement" provides:

All actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.

Therefore, the Defendant's alleged part payments on the Note serve as evidence to prevent the bar of the statute of limitations, and it is therefore an issue of fact.

CONCLUSION

The Court's order granting summary judgment is based on two main theories: (1) the Marital Settlement Agreement is unambiguous and Patricia Holliday clearly assigned her rights in the Note and released those rights pursuant to the agreement; and (2) by operation of S.C. Code Ann. § 36-3-604, Patricia Holliday discharged her rights under the Note by signing the Marital Settlement Agreement. Both theories were shown to be incorrect in Patricia Holliday's Motion to Reconsider, and Defendant's subsequent attempts to change the argument and inject facts not in the record simply support Plaintiff's position. For these reasons, the Court should amend its order and deny Defendant's Motion for Summary Judgment.

WOMBLE BOND DICKINSON (US) LLP

s/Matthew Tillman

Charleston, South Carolina
November 5, 2019

Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Plaintiff

In The Court of Common Pleas
Ninth Judicial Circuit
2018-CP-10-00872

Defendant.

Transcript of Record

September 27, 2019
Charleston, South Carolina

The Honorable Deadra L. Jefferson, Judge

Matthew Tillman, Esquire
Attorney for the Plaintiff

Alice F. Paylor, Esquire
Bijan Khaladj-Ghom, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
----------------------------	-----------------

Certificate Page.	35
---------------------------	----

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
------------	--------------------	------------

	No exhibits introduced.	
--	-------------------------	--

1 THE COURT: This is *Patricia B. Holliday vs. Ross S.*
2 *Holliday*, 2018-CP-10-872. It's before the court on
3 defendant Ross S. Holliday's motion for summary judgment,
4 which was filed on June 11th of 2019.

5 Who is appearing on behalf of the plaintiff?

6 MR. TILLMAN: Matthew Tillman, Your Honor.

7 THE COURT: And who's appearing on behalf of the
8 defendant, Ross Holliday?

9 MS. PAYLOR: Alice Paylor, along with Bijan Ghom,
10 G-h-o-m.

11 THE COURT: Thank you. We have a court reporter from
12 Columbia, so I'm trying to make sure she has everything
13 straight.

14 The defendant may proceed with this motion.

15 MS. PAYLOR: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 MS. PAYLOR: Your Honor, I represent the defendant,
18 Ross Holliday. He is actually the son of the plaintiff,
19 Patricia Holliday. Back in 2004, he borrowed -- he asked
20 his father to lend him some money so he could go into a
21 business where he lived in Utah, and his father put
22 together -- he borrowed from NBSC, which was secured by one
23 of his properties that he owned. He was in the business of
24 managing properties and renting them and that type of
25 thing, and he borrowed \$2 million from NBSC on June 18,

1 2004, and he then loaned it to his son, defendant Ross
2 Holliday. And I'm just going to use their first names
3 since they're all ---

4 THE COURT: That's fine.

5 MS. PAYLOR: Warren, who was the father, secured the
6 loan with a piece of -- to NBSC with a piece of real
7 property that he owned. Ms. Holliday, Patricia, testified
8 that she was included as an obligee on the note, solely for
9 estate planning purposes, and that it was a business
10 transaction. The note states that Ross, quote:

11 Promises to pay to Warren and Patricia as joint
12 tenants or the survivor of them for order the sum
13 of \$2 million, together with interest.

14 And then it went on to describe that:

15 Provided, however, in the event demand is made
16 for payment of this promissory note, then
17 borrower shall have six months from the --
18 following the date of such demand to complete
19 repayment of this note. The note is in default
20 if any payment remains unpaid beyond the date six
21 months following the date of demand for payment.

22 At all times, Your Honor, Warren Holliday held the
23 original note. No one has the original note today, not
24 Patricia Holliday and not Ross Holliday.

25 THE COURT: When you say no one has the original note,

1 you mean the bank? The bank of course ---

2 MS. PAYLOR: Well, no.

3 THE COURT: ---- has the original note.

4 MS. PAYLOR: I'm talking about the note between the
5 Hollidays and Ross Holliday. There is a copy that I know
6 was attached to the complaint as Exhibit 1. It's just a
7 one-page simple note.

8 Patricia testified in her deposition that Warren
9 demanded that Ross make payments on the note or pay the
10 note around 2005 to 2007. Patricia never made a demand on
11 the note until 2017, a year after Warren died in 2016. On
12 December 9th ---

13 THE COURT: I assume she made a request at the behest
14 of his estate.

15 MS. PAYLOR: Excuse me? I'm sorry.

16 THE COURT: I assume she made -- any requests she made
17 were at the behest of his estate?

18 MR. TILLMAN: No. They got divorced and I'm just
19 getting to that.

20 THE COURT: Oh. Okay.

21 MS. PAYLOR: I apologize.

22 THE COURT: That's okay.

23 MS. PAYLOR: It's a little complicated but it's not
24 really.

25 THE COURT: Okay.

1 MS. PAYLOR: On December 9, 2013, Warren and Patricia
2 were divorced by order of the family court, which adopted a
3 marital settlement agreement as part of the court's order.
4 In the settlement agreement, Warren agreed to pay Patricia
5 \$16,000 for the rest of her life, and he bound his company
6 to make her payments. And if he predeceased her, then the
7 payments would continue to be made.

8 THE COURT: Was it alimony or ---

9 MS. PAYLOR: \$16,000 a month ---

10 THE COURT: ---- equitable distribution? Was it
11 alimony or equitable distribution?

12 MS. PAYLOR: It was equitable distribution.

13 THE COURT: Okay.

14 MS. PAYLOR: She received that. In addition, she got
15 a life insurance policy on his life, and she received
16 \$670,000 from that after his death. She also got the
17 marital home and whatever personal assets -- all of the,
18 the family furniture and all of that stuff.

19 And in the agreement, the agreement never specifically
20 mentioned this promissory note, but the family court order
21 provided that, quote:

22 The personal property acquired by and between the
23 parties during the marriage has been equitably
24 divided to their mutual satisfaction.

25 And then the marital agreement was made an order of

1 the court. The marital agreement, I'm just going to read
2 you some portions, and it is part of the record. It said:

3 The parties agree that Warren shall retain and
4 continue full ownership and interest in any and
5 all of his companies and other business assets
6 which Warren holds at this time. Patricia hereby
7 relinquishes and waives any claim she may have in
8 or against these business assets except as
9 provided in the Patricia Ann Holliday trust.

10 Which set forth that she was going to get the \$16,000
11 a month payment, as well as the, the life insurance was in
12 the agreement.

13 Warren shall retain sole authority to manage
14 these business assets personally, or at his sole
15 discretion delegate or appoint management of
16 these business assets to a person holding a
17 durable power of attorney, et cetera.

18 Patricia expressly waived any claim that she had to
19 all of his business assets, one of which was the promissory
20 note.

21 THE COURT: Did it actually say that?

22 MS. PAYLOR: The marital settlement agreement did not
23 specifically say anything about the promissory note. It
24 said that he got every business asset in exchange for her
25 getting the \$16,000 a month.

1 THE COURT: How was this a business asset when it's in
2 their individual names?

3 MS. PAYLOR: I'm sorry?

4 THE COURT: How is this a business asset when it's in
5 their individual names?

6 MS. PAYLOR: Well, she testified that it was a
7 business transaction but there's another ---

8 THE COURT: So, you're saying that she testified at
9 court that this was a promissory -- this promissory note
10 was considered a business asset?

11 MS. PAYLOR: No. She testified in her deposition that
12 it was a business transaction, that Warren was -- had a
13 business transaction with his son and he used an asset of
14 his business entities to secure the 2 million loan that he
15 got, \$2 million loan, but there is ---

16 THE COURT: Let me ask what might seem fundamental.
17 Is this money still owed to the bank?

18 MS. PAYLOR: No. That's been paid.

19 THE COURT: That's been paid off altogether?

20 MS. PAYLOR: Yes, ma'am.

21 THE COURT: Who paid that off? Did he have some kind
22 of life insurance that paid off all his debts when he ---

23 MS. PAYLOR: No. It was paid off before his death
24 actually.

25 THE COURT: Okay.

1 MS. PAYLOR: It was paid off through -- I mean, this
2 is -- kind of gets into kind of the -- what might be a
3 factual question, which is why I wasn't going into it.

4 THE COURT: Well, I need to know that.

5 MS. PAYLOR: Well, okay. Ross Holliday, there was a
6 family agreement where before they got divorced, Mr. and
7 Ms. Holliday agreed that Ross would manage their affairs
8 basically, and they had both set up trusts and they
9 appointed him as the trustee to make sure that they had
10 enough money to live off of and their medicals were taken
11 care of and to run the business. So, he was told that any
12 money that he got out of the business should be used to pay
13 off the NBSC loan to the extent it was not needed to
14 provide for either one of them. So, in his running of the
15 business, he accumulated enough money to pay it off.

16 The -- there's another provision of the marital
17 settlement agreement which deals with personal property
18 that is not a business asset, Your Honor, and it says in
19 there:

20 Except to the extent set forth in this agreement,
21 Warren and Patricia have made a physical division
22 of all other personal property acquired during
23 the marriage, including but not limited to
24 household furnishings, appliances, bank accounts,
25 retirement accounts, money situated in other

1 accounts, jewelry, sporting equipment, and all
2 other personal property of value.

3 This promissory note was a personal property of value.

4 The parties each release the other from all
5 claims of interest to any monies or assets in the
6 possession of the other. Each shall retain sole
7 ownership of all such properties in his or her
8 possession or titled in his or her name unless
9 such property is made the property of the other
10 pursuant to the terms of this agreement.

11 So, the promissory note was personal property of value
12 in the possession of Warren. So, Patricia gave up any
13 rights she had to the promissory note when she signed this
14 marital agreement.

15 In addition, we have a statute of limitations
16 argument, Your Honor. Well, just to kind of get back, she
17 did say that it was a joint asset. She further testified
18 that that she, quote:

19 Was married to Warren. It was a joint asset. It
20 was going to be in our retirement pool.

21 She stated that the note was, quote: Was a marital
22 agreement.

23 THE COURT: What confuses me, and maybe you can give
24 me clarity, and I'm just going to use myself as an example.
25 If my child was starting a business and they say they

1 needed \$2 million, but they really don't have the ability
2 or the wherewithal to borrow it, and I borrow it and let
3 them use it for that purpose, isn't the sole purpose of the
4 agreement to repay the loan?

5 MS. PAYLOR: There's no doubt about that.

6 THE COURT: So, the loan's been repaid. So, that's
7 why I asked that question, and I'm trying to figure out
8 what else -- the whole purpose of this agreement was to
9 make sure I borrowed this money and I need to make sure you
10 repay it, and I need to make sure that since I'm the
11 guarantor and I'm held to it, that I'm going to be able to
12 repay it.

13 MS. PAYLOR: Yes, ma'am.

14 THE COURT: If you default and then I'm going to have
15 some recourse against you to get my money back. The four
16 corners of this document I don't think support any
17 contention of the individual liability because you're going
18 to be able to introduce parole testimony about the
19 intention of what that note was meant to accomplish. So,
20 I'm a little -- I guess I'm getting ahead of the ---

21 MS. PAYLOR: Well, you're, you're, you're right.

22 THE COURT: It just confuses me.

23 MS. PAYLOR: The note -- the money was loaned to him.
24 Unfortunately, as we all know in 2008, 2009, the economy
25 crashed and my client's business crashed along with it.

1 So, he ---

2 THE COURT: So, are they saying that he used their
3 assets to pay off the note and he still owes the money? Is
4 that right?

5 MS. PAYLOR: They aren't saying anything. Warren,
6 Warren left everything to Ross and Lee, two of his
7 children.

8 THE COURT: Okay.

9 MS. PAYLOR: And he had Ross running his business
10 prior to that time, and there's testimony from Ross that,
11 that he -- that his father told him you get that loan paid
12 off and your -- the promissory note is satisfied.

13 THE COURT: Okay. So, it was an oral agreement about
14 the loan?

15 MS. PAYLOR: Correct, but what, but what we're saying
16 also, Your Honor, is that Patricia gave up any rights she
17 had ---

18 THE COURT: Yeah, I understand that part. Basically
19 you're ---

20 MS. PAYLOR: Okay.

21 THE COURT: --- saying waiver, release.

22 MS. PAYLOR: Right.

23 THE COURT: That she had no entitlement ---

24 MS. PAYLOR: Under that agreement.

25 THE COURT: --- under the -- that the family court

1 order judicially estops her from taking an opposite
2 position about what the source of the funds were and how it
3 was to be done. I didn't say that as articulately as I was
4 thinking it.

5 MS. PAYLOR: Okay. Yeah.

6 THE COURT: I think you follow what I'm saying.

7 MS. PAYLOR: So, that, that, and then the other, the
8 other argument we have is that under the statute of
9 limitations for a note like this, if it's a demand note and
10 no payments been made and you don't bring an action within
11 ten years, then the statute bars your going after the
12 debtor, and this note ---

13 THE COURT: When is it your contention she knew or
14 should have known with reasonable diligence that the
15 statute started running?

16 MS. PAYLOR: Well, I mean, it's a ten-year statute of
17 limitations.

18 THE COURT: I mean, when do you, when do you contend
19 the statute started to run? What date?

20 MS. PAYLOR: The ten-year statute started to run when
21 the note was signed. She testified ---

22 THE COURT: How can you make -- okay.

23 MS. PAYLOR: She testified she got no payments during
24 that ten-year period.

25 THE COURT: Oh. I see what you're saying. So, each

1 -- well, so each act of nonpayment is default.

2 MS. PAYLOR: Well, if you make a payment -- and I'll
3 give you -- and that's kind of the second part of it
4 because she's claiming that she got no payments period.

5 THE COURT: Well, you know, the banks always take the
6 position that they can wait and even if you fail to make
7 that very last payment, that each act of nonpayment is an
8 act of default.

9 MS. PAYLOR: Oh, I ---

10 THE COURT: And it's within their discretion whenever
11 they want to make it due and payable.

12 MS. PAYLOR: Well, yeah, and that's what, that's what
13 this note said. It said that once a demand was made --
14 which Patricia testified that Warren told her he had made a
15 demand in 2005, 2006, somewhere in there.

16 THE COURT: That was before the divorce, though.

17 MS. PAYLOR: Yes, that was, and by the terms of the
18 note, once a demand is made, he had six years to repay it
19 and he didn't. There's no question about that because he
20 didn't get -- the whole -- the note to NBSC didn't get
21 repaid until 2016. So ---

22 THE COURT: And they didn't hold him in default?

23 MS. PAYLOR: Well, by the terms of the note, he was in
24 default.

25 THE COURT: I mean, but the bank never filed an action.

1 against him?

2 MS. PAYLOR: Well, no, no. The bank's, the bank's not
3 a party to this case.

4 THE COURT: I mean, I understand that, but you can't
5 ignore the ---

6 MS. PAYLOR: Well, they, they were getting paid
7 actually.

8 THE COURT: Okay. I was about to say because I can't
9 see ---

10 MS. PAYLOR: But ---

11 THE COURT: --- a bank waiting all that time to get
12 paid.

13 MS. PAYLOR: No. Well, they kept rolling it over and
14 they, they did get paid, and it was secured by a piece of
15 property.

16 THE COURT: Okay.

17 MS. PAYLOR: So, they had security, and so she's, you
18 know, she's claiming that he had an obligation under the
19 note to pay her and Warren, and that's the way the note
20 reads.

21 THE COURT: But really the crux of your argument is
22 that it was disposed of, all property was disposed of in
23 the family court proceeding.

24 MS. PAYLOR: Yes, ma'am.

25 THE COURT: And anything she didn't raise at that

1 time, she waived.

2 MS. PAYLOR: Yes, ma'am.

3 THE COURT: And that that provision you read to me in
4 the order is a waiver of all of that property.

5 MS. PAYLOR: Correct. That, that's my best argument.
6 I think it's a winner, yes, ma'am. I think we do have a
7 backup statute of limitations argument, but I think the
8 marital settlement agreement resolves everything and under
9 that theory, the note was -- went to Warren and he could do
10 with it as he would. And if it's still out there, Ross and
11 Lee inherited it because they are the heirs under the will.
12 Thank you, Your Honor.

13 THE COURT: You're welcome.

14 All right, Mr. Tillman, would you like to respond?

15 MR. TILLMAN: Yes, ma'am. How are you?

16 THE COURT: I'm well. How are you?

17 MR. TILLMAN: I'm doing well.

18 This marital agreement issue can be disposed of really
19 quickly. This loan was made as joint tenants with a right
20 of survivorship, and it wasn't addressed in the marital
21 agreement.

22 THE COURT: Well, it really was because, you know, the
23 family court -- and I served on family court.

24 MR. TILLMAN: Right.

25 THE COURT: Most people don't know how much power a

1 family court judge has. Actually in a lot of instances,
2 especially when it comes to property in a marital
3 situation, has more power than a circuit judge. It can
4 appoint a receiver; you can take over somebody's company.

5 So, the statute says that the family court has
6 complete jurisdiction over all personalty that is a part of
7 the marriage, and that's why it's incumbent on the parties,
8 especially when you have what could best be referred to as
9 a savings clause. It's not the best example, but if you
10 don't specifically talk about it and you lump -- you then
11 say everything else, basically what the agreement says,
12 everything else we haven't mentioned, that is considered
13 personalty. It belongs to him. I don't think you can now
14 take a opposite position on that ---

15 MR. TILLMAN: Well, that's, that's not what the ---

16 THE COURT: --- because it was incumbent on her due
17 diligence to have raised this promissory note and to have
18 said no, this is a part of our personalty and it needs to
19 be divided just like a bank account.

20 MR. TILLMAN: Right, Your Honor, but the, the marital
21 settlement agreement does not give to him notes that they
22 held in joint ---

23 THE COURT: Doesn't have to. It doesn't have to give
24 it to him.

25 MR. TILLMAN: But the ---

1 THE COURT: But when she says I give up everything
2 else, I've gotten what I want, everything I haven't
3 mentioned belongs to him, that's basically, in common
4 parlance, that's what that paragraph says.

5 MR. TILLMAN: I, I disagree, Your Honor. They, they
6 held this note as joint tenants with a right of
7 survivorship, and the marital settlement agreement says I
8 don't give up my rights in the note or anything else like
9 that.

10 THE COURT: Where does it say that?

11 MR. TILLMAN: Well, it doesn't say that specifically,
12 but it needs to specifically say, include -- to -- in order
13 for them to get summary judgment, the marital settlement
14 agreement needs to specifically include ---

15 THE COURT: What case supports that?

16 MR. TILLMAN: I, I don't have one off the top of my
17 head, but, but, Your Honor, we're talking about a specific
18 right of hers as a joint tenant with right of survivorship
19 in -- and the marital settlement agreement does not give to
20 him the, the rights as the creditor under the marital
21 settlement agreement.

22 THE COURT: That is considered -- any debt is
23 considered an asset of a business, and he got everything
24 from the business. It doesn't have to be mentioned
25 specifically.

1 MR. TILLMAN: Well, it wasn't a business asset. It
2 was their personal assets. The -- this was owed to them
3 individually.

4 THE COURT: Same thing. She said everything I haven't
5 mentioned -- I've gotten everything I want. Everything I
6 have not mentioned belongs to him. You don't have to
7 specify. That would be like going through a house and
8 listing every tchotchke, then -- and going back and saying
9 well, you know, I didn't list my gravy boat and, therefore,
10 I want it because I did not specifically give up my right
11 to my gravy boat, and that's just not how the family court
12 operates.

13 MR. TILLMAN: But, Your Honor, they were entitled to
14 this as joint holders with, with right to survivorship.

15 THE COURT: Which they submitted all of their property
16 to the jurisdiction of the family court. You don't get to
17 parcel it out. You don't get to say, well, I'm going to
18 deal with some of my stuff over here in family court and
19 then when it suits me, I'm going to come over to circuit
20 court and deal with the stuff that I think -- that defeats
21 the whole purpose of family court statutorily having
22 exclusive jurisdiction over all marital property, and that
23 was marital property.

24 MR. TILLMAN: But at, at best, Your Honor, we have an
25 issue of intent about whether they intended this property

1 to be as part of -- and I, and I'll give you a statutory
2 reference. Let me, let me find it, Your Honor.

3 THE COURT: Sure.

4 MR. TILLMAN: Okay, 62-2-507 is a statute that was
5 passed January 1st. It was effective January 1, 2005 --
6 2014, excuse me. That's a probate court section, and
7 basically what that says ---

8 THE COURT: That doesn't, that ---

9 MR. TILLMAN: Your Honor, will you please ---

10 THE COURT: Yeah, I'm going to listen, but probate
11 court does not override what happens in family court when
12 it deals with assets.

13 MR. TILLMAN: I understand but, but what it says in
14 that section is that, that the property held as a joint
15 tenant, which is what happened here because with the right
16 of survivorship -- because as Your Honor knows, a joint
17 tenancy with the right of survivorship means the one that
18 dies first gets the -- excuse me, the one that doesn't die
19 first gets the entire right to the property. So, in other
20 words, if it survives when Warren died, Patricia got the
21 entire right to the property. That's, that's the point of
22 it.

23 The statute says that at the time of divorce, that
24 right is automatically severed. So, it's clear that the
25 probate code basically says that, that when that -- unless

1 the divorce decree specifically mentions how that's going
2 to be handled, when the, when the one spouse dies -- or,
3 excuse me, when the parties divorce, that right is severed
4 such that they hold it essentially as tenants-in-common.
5 They would each own half a note. Before that ---

6 THE COURT: If I follow your logic, she should have
7 filed a claim when his estate was opened. You don't come
8 over here to deal with that. You go over to the probate
9 court and you file a claim saying that you own a part of
10 that. Then the probate court disposes of it.

11 MR. TILLMAN: No. Well, no, I, I disagree, Your
12 Honor. If that statute applies, and I'm not sure it does
13 because it was effective after the, after the divorce, but
14 let's say it applies. That would have meant following his
15 death -- excuse me, at the time of divorce, their right in
16 that property was separated such that he owned half and she
17 owned half so that he -- when -- so ---

18 THE COURT: You've confused me.

19 MR. TILLMAN: All right, Your Honor, all ---

20 THE COURT: So, why -- if it -- if you're saying it
21 was passed after the divorce, then why is it applicable?
22 It's either applicable or it's not. If it's applicable
23 and I follow your logic, she should have gone to the
24 probate court and as a creditor filed a claim against his
25 estate.

1 MR. TILLMAN: No, no, because she would've had her own
2 claim to the note. In other words ---

3 THE COURT: Somebody has to declare that. She doesn't
4 just get to say ---

5 MR. TILLMAN: She ---

6 THE COURT: --- I own it.

7 MR. TILLMAN: She did declare her rights in the note
8 in their divorce documents.

9 THE COURT: Where? Tell me the paragraph.

10 MR. TILLMAN: I don't have it with me, Your Honor, but
11 in the listing of assets, she, she declared her own -- and
12 I can send it to Your Honor. She declared her ownership of
13 the note as a separate asset.

14 THE COURT: But the family court disposed of the
15 asset.

16 MR. TILLMAN: It did not dispose of the -- it did not
17 specifically dispose of this, and it -- so at best what we
18 have is an issue of fact of whether the marital settlement
19 -- settlement agreement dealt with this.

20 THE COURT: Well, that's a matter of law. That's not
21 a matter for a jury to decide. The court decides whether
22 the family court order is dispositive, whether it's
23 preclusive, whether there has been a release. Those are
24 legal issues; those are not factual issues. Y'all agree on
25 the facts. What you don't agree to is the applicability of

1 the law to the family court order and whether it has a
2 preclusive effect to her and whether it judicially estops
3 her. A jury doesn't sort that out.

4 Now, there are some factual issues a jury does sort
5 out. Arguably, the statute of limitations could be a jury
6 issue, and sometimes it is because conceivably it really
7 could be an issue of fact as to when her right arose after
8 exercising due diligence. And there could reasonably be an
9 argument, as I pointed out to Ms. Paylor, as the banks do
10 all the time, that every act of nonpayment starts the clock
11 again. In other words, I have the option of when I call
12 your note due. I can let you miss twenty payments and
13 right before the statute ends, I can sue you on your note
14 and call my, my -- the amount on my note due. Or, as banks
15 do sometimes, you catch up and they let the clock start
16 again, and then they sue you again when you miss three more
17 payments or four more payments.

18 I think that is conceivable that, and arguably, that
19 the statute of limitations could be a question of fact.
20 Because of the way the law is written, conceivably every
21 act of default -- every act of nonpayment is an act of
22 default, which then starts the statute of limitations
23 running again. And sometimes the bank will wait until the
24 very last moment and sue somebody in foreclosure and say,
25 you know, we tried to work with you. We tried to be

1 patient. You have still failed to make a payment, and
2 every time you failed to pay us was an act of default, and
3 it was optional to us as to whether we enforced that right.
4 So, I think that that's a different kind of an issue which
5 may well be factual.

6 MR. TILLMAN: Well.

7 THE COURT: But how the family court order applies to
8 whether -- these affirmative defenses, that's a legal
9 issue.

10 MR. TILLMAN: Well.

11 THE COURT: For the court to determine.

12 MR. TILLMAN: And that being the case, Your Honor.

13 THE COURT: Yeah.

14 MR. TILLMAN: I will say that the, the family court
15 order does not reference the note. At the time the family
16 court order was entered, Patricia and Warren Holliday were
17 joint holders of the note with rights of survivorship.
18 Then there's a statute, that probate code statute, that
19 deals with what happens to rights in a, in a -- rights held
20 jointly with a right of survivorship.

21 THE COURT: When was his estate opened?

22 MR. TILLMAN: I don't know. This is -- he died in
23 2016.

24 THE COURT: Did she ever file to share anything as a
25 creditor in his estate?

1 MR. TILLMAN: Not that I'm aware of.

2 THE COURT: Excuse me?

3 MR. TILLMAN: I don't think so, Your Honor, but she
4 wouldn't -- at that time, she wouldn't have a claim against
5 his estate because she, she was a holder ---

6 THE COURT: Anything ---

7 MR. TILLMAN: --- of the note.

8 THE COURT: Anything that he owned ---

9 MR. TILLMAN: She didn't have ---

10 THE COURT: --- and she's claiming ---

11 MR. TILLMAN: They were divorced at the time.

12 THE COURT: --- any ownership in, you are required to
13 file a claim against his estate. Otherwise, technically
14 the probate court could do whatever they wanted in
15 collecting that debt, apportioning any proceeds that came
16 in from that debt. When you die, all of your assets,
17 whether jointly held or not.

18 MR. TILLMAN: Right.

19 THE COURT: That's why people title bank accounts the
20 way they do: because they don't want it to go through an
21 estate.

22 MR. TILLMAN: Right, and that's actually my point.

23 THE COURT: They want to be able to go to the bank and
24 get the money and not have to deal with probate court.

25 MR. TILLMAN: That's actually my point. This note was

1 held as joint tenants with the right of survivorship. So,
2 if that statute I talked about applied, it severed their
3 interest so that she had her own interest in half the note.
4 If it didn't apply, then when he died, she became the
5 entire owner of the note and didn't need to file a claim
6 with the estate, just like if she was a joint tenant in a
7 -- with a right of survivorship in a piece of property so
8 that her -- his estate didn't matter as far as her claims
9 went. She either got it, got half of it, and then the
10 other half went to his estate and she had no claim to that,
11 or she got the whole thing, depending on whether that
12 statute applies. Does that make sense? Did I ---

13 THE COURT: Say it one more time.

14 MR. TILLMAN: Let me back up. So, this is what the
15 statute says. The statute says, and I'm sorry I'm
16 paraphrasing. I'm trying to find it.

17 THE COURT: That's okay. It's easier to paraphrase
18 sometimes and leave out the stuff that doesn't apply. I
19 understand.

20 MR. TILLMAN: The, the statute says that when --
21 divorce severs a joint interest unless the parties agree
22 otherwise. That's what it says, okay? And so if that
23 statute applies, when they got divorced, their interests,
24 their joint interest in the note was severed. Are you with
25 me on that? Okay.

1 So, in other words, he owns half. She owns half.
2 Okay, if that statute didn't apply because it was
3 effective, you know, several days after their divorce, the
4 prior law was if the divorce doesn't deal with the joint
5 tenancy issue, then the law in joint tenancy applies, which
6 means when he died, the property, the entire right to the
7 note went to her, which means she wouldn't have to file the
8 claim against his estate. So, that's actually a big issue
9 in this case that I think would have to be resolved by the
10 trial judge whether the -- whether that statute applies or
11 not. But either way, her claim is not ---

12 THE COURT: Well, if the ---

13 MR. TILLMAN: --- dependant on a claim against his
14 estate.

15 THE COURT: If the statute applies, then what -- if
16 the statute does apply, then what's the remedy?

17 MR. TILLMAN: If the -- here's what it is is we would
18 get -- I'm assuming the jury would bring back a verdict for
19 the total ---

20 THE COURT: Well, no, the jury is not going to decide
21 whether or not ---

22 MR. TILLMAN: Oh, I understand, Your Honor.

23 THE COURT: --- that applies.

24 MR. TILLMAN: But ---

25 THE COURT: Yeah.

1 MR. TILLMAN: Just give me a little rope here.

2 THE COURT: Yeah.

3 MR. TILLMAN: The jury would come back with a verdict
4 for the entire amount owed on the note, and then I believe
5 the court would make a determination whether that statute
6 applies. If the statute applies, it means she was only
7 entitled to half the amount on the note. So, they'd halve
8 the ---

9 THE COURT: How does the circuit court do that?
10 Apportionment of property is solely within the province of
11 the probate court sans death.

12 MR. TILLMAN: It wouldn't be a probate issue.

13 THE COURT: Unless you want a true trial on your
14 probate, on your estate.

15 MR. TILLMAN: No, no, it wouldn't be a probate issue
16 because if the statute applies, it means that their joint
17 tenancy was severed in half at the time of the divorce
18 before he died. So, Patricia only owns half the amount of
19 the note. You follow me?

20 THE COURT: Uh-huh.

21 MR. TILLMAN: Okay, and so what would happen is that
22 the trial court would issue a ruling. Let's say they come
23 back and say 2 million is owed on this note. The court
24 would determine when they were divorced, did this statute
25 apply to sever that claim such that Patricia owns half,

1 Warren owns half, and then they would cut the amount in
2 half. In other words, she'd be entitled to only half. If
3 they find that that statute does not apply and the prior
4 law applies -- which is essential to joint tenancy law --
5 then when he died in 2016, the entire amount owed on the
6 note went to her and the whole verdict stands. That's the
7 way that would work in my mind. I don't know how else it
8 would work.

9 But, you know, getting back to the point, the note
10 wasn't dealt with in the matter of settlement agreement.
11 She never intended to release her claim on the note, and
12 it's, it's certainly an issue, I think an issue of fact
13 whether she released a claim on the note in the marital
14 settlement agreement or not. And, and, frankly, if in --
15 every divorce decree has these implied terms, why would
16 there be a statute that says, you know, your joint claims
17 are severed as a matter of law upon divorce?

18 THE COURT: What statute? You're referring to the
19 probate court statute?

20 MR. TILLMAN: Yeah, the 62-2-5 -- yeah, 62-2-507.

21 MS. PAYLOR: And I don't want to interrupt Mr.
22 Tillman.

23 THE COURT: Sure. I'm going to give you a chance to
24 respond.

25 MS. PAYLOR: He's misstating ---

1 THE COURT: I'm going to give you a chance to respond.

2 MR. TILLMAN: And I'm not ---

3 THE COURT: And it's not implied. The statute is very
4 clear about equitable distribution. That's why you need to
5 be specific about what you're doing. That's why you have
6 all these lists of personal property that are attached to
7 things. It is intended to be preclusive, and it is
8 intended to be final. It is not intended to be
9 relitigated. That's why the statute gives family court
10 such broad discretion and authority regarding marital
11 assets.

12 MR. TILLMAN: Well, Your Honor, just remember we're
13 not relitigating a claim against Warren Holliday. We're
14 relitigating, we're -- no, we're litigating for the first
15 time Patricia's claims against Ross Holliday. Ross didn't
16 get divorced from Patricia. This is her claim against Ross
17 for the money, not her claim against Warren for the money.
18 Does that follow -- do you follow me?

19 THE COURT: I follow you, but it's not...

20 MR. TILLMAN: This is Patricia Warren ---

21 THE COURT: She is claiming interest in a note that
22 was a part of a marital estate.

23 MR. TILLMAN: And there's no question she ---

24 THE COURT: And they can raise all of the affirmative
25 -- they are bound to raise the affirmative defenses that

1 they raised, and raising them are reasonable under the
2 circumstances. And I understand what you're saying, but I
3 don't think that -- I don't know that their argument is
4 without merit.

5 MR. TILLMAN: Well, Your Honor, at best it's an issue
6 of fact. I mean, she, Patricia, was a joint holder in this
7 note; there's no question about that, a joint holder in
8 this note. She was entitled to repayment. The note wasn't
9 dealt with in the marital settlement agreement. She did
10 not intend in her affidavit that I filed -- states that she
11 did not intend to release any claim at any time on this
12 note.

13 And then, then -- and they're arguing, well, we're --
14 essentially they're arguing we're a third-party beneficiary
15 of this -- of the marital settlement agreement. In other
16 words, Ross is a third-party beneficiary as a released
17 party under the marital settlement agreement. As Your
18 Honor knows, the law on third-party beneficiary
19 relationships has the primary parties to the agreement have
20 to intend that the third-party benefit. In my affidavit,
21 in Patricia's affidavit that I filed with the court and
22 with my memorandum in opposition, she states: I did not
23 intend to release any claim that I had on Ross Holliday.

24 So, it would be -- so, the intent's not there.
25 There's no statute that precludes her claim. The marital

1 settlement agreement does not release her claim against
2 Ross. It does release any claim she has against Warren, I
3 understand that, and she never sued Warren. She never
4 asked Warren for any money related to this. But this is a
5 claim against Ross, and there's no clear release of any
6 claim against Ross in any document, nor did she intend it,
7 and that's what her affidavit says.

8 THE COURT: Thank you very much.

9 Anything further, Ms. Paylor?

10 MS. PAYLOR: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MS. PAYLOR: South Carolina Code Section
13 62-2-507(C)(2) states, and I will read it to you:

14 Except as provided by the express terms of a
15 governing instrument, a court order, or a
16 contract relating to the division of the marital
17 estate made between, between the divorced
18 individuals -- that sub -- that is except as
19 provided.

20 And we have an agreement that specifically, expressly
21 provides that it takes care of all personal property and
22 that he gets the business assets and the personal assets
23 that are not stated therein.

24 You know, he says this wasn't brought up at the
25 divorce. She never brought it up. Do you know when she

1 filed her financial declaration that he says he wants to
2 send to you? Two days after the court order. She knew
3 about this, and she was hoping to hide it and thinking she
4 could slip by and still go after her son after her husband
5 died, and he was a very ill man. So, it -- that's what
6 that is.

7 Your Honor, I believe you're a hundred percent
8 correct, and I think that the marital settlement agreement
9 bars this action. And in addition, he said she didn't
10 release Ross. She did. She says:

11 The parties do hereby waive, release, and forever
12 acquit and do hereby discharge each other, their
13 administrators, successors, heirs, and assigns
14 from any and all action.

15 Ross was his administrator, successor, heir, and
16 assign, and this was a marital asset. It says:

17 Including but not limited to all claims resulting
18 from or arising out of the marital relationship
19 between Warren and Patricia.

20 And that's how this arose, with -- out of the marital
21 relationship. Thank you, Your Honor.

22 THE COURT: Thank you.

23 I'll take the matter under advisement. I need to read
24 and research a little bit. However, I am inclined to agree
25 with Ms. Paylor, and I'm going to ask her to submit --

1 which doesn't mean I might not change my mind after I
2 research it. I haven't made a final decision.

3 But, Ms. Paylor, if you could provide me with a
4 proposed order making any findings of fact and conclusions
5 of law consistent with this record. I think the stronger
6 arguments are the waiver of the release, the satisfaction
7 and accord, and the revocation by divorce, as well as the
8 admission. I'm iffy on the statute of limitations. I
9 think that really may be a factual issue, but you can
10 include that in the order.

11 And once I've made a decision, I'll let you all know.

12 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA,
ON THE 27TH DAY OF SEPTEMBER, 2019.

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

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 5TH, 2019

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No.: 2018-CP-10-0872

Patricia B. Holliday.....Appellant,

v.

Ross S. Holliday.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Respectfully submitted,

Charleston, South Carolina
April 6, 2020

RECEIVED
APR 07 2020
SC Court of Appeals

WOMBLE BOND DICKINSON (US) LLP

s/Matthew Tillman
Matthew Tillman, SC Bar No. 70338
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
Telephone (843) 722-3400
Facsimile (843) 723-7398
Attorneys for the Appellant