

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Marvin H. Dukes, III, Master-In-Equity and Special Circuit Court Judge

Case No. 2016-CP-07-02274

Stephanie M. McDew a/k/a Stephanie McDew
Schoumacher, ...

Appellant,

v.

Frieda P. McDew a/k/a Frieda McDew Shorter, ...

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Stephanie M. McDew, et al.,)
Plaintiff(s),)
vs.)
Frieda P. McDew, et al.,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS

CASE NO: 2016-CP-07-02274

**ORDER DENYING MOTION FOR
NEW TRIAL, RECONSIDERATION
AND MOTION TO STAY**

This came before me November 18th, 2019 on Plaintiffs' Motion for New Trial, Reconsideration and Motion to Stay, filed September 26th, 2019.

After hearing from parties, I hereby deny the motions for a new trial/reconsideration and also deny the motion to stay.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

November ____, 2019
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Stephanie M McDew , plaintiff, et al VS Frieda P McDew , defendant,
et al
Case Number: 2016CP0702274
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-11-25 15:19:24 page 2 of 2

RECORD 000004

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.:16-CP-07-02274
COUNTY OF BEAUFORT	)	
	)	
STEPHANIE M. MCDEW a/k/a	)	
STEPHANIE MCDEW	)	
SCHOUMACHER,	)	
	)	
Plaintiff,	)	
	)	ORDER
vs.	)	
	)	
	)	
FRIEDA P. MCDEW a/k/a FRIEDA,	)	
MCDEW SHORTER,	)	
	)	
Defendant,	)	
	)	
	)	

This matter came before me for trial on the merits on March 18, 2019. The Plaintiff, Stephanie M. McDew a/k/a Stephanie McDew Schoumacher, hereinafter referred to as "Mrs. Schoumacher" filed an action against the Defendant Frieda P. McDew a/k/a Frieda McDew Shorter, hereinafter referred to as "Mrs. Shorter".

This matter arises out of a dispute over property deeded to the parties from their parents by deed dated May 14, 1979. The subject property consists of Lots 16, 18 and 20 of the Bradley Beach Subdivision on Hilton Head Island. (A legal description of the property is set forth in Plaintiff's Complaint). A family vacation home is located on Lot 18.

The Plaintiff's Complaint was filed as a non jury action and alleged as a first cause of action "Declaratory Judgment – Ownership Under Deed". Plaintiff sought damages in the form of costs of this action under this cause of action. The Plaintiff's second cause of action sought Injunctive Relief - seeking an order restraining and

enjoining Defendant from preventing the Plaintiff from having access to the subject property. Plaintiff's third cause of action set forth a claim for nuisance alleging the Defendant has unreasonably interfered with Plaintiff's use and enjoyment of the House and property and such interference creates an unlawful nuisance. Plaintiff claimed actual, nominal, compensatory and punitive damages under this cause of action. Plaintiff's fourth cause of action sought a Declaratory Judgment that defendant's actions over the years estops Defendant from claiming ownership of the subject property and further seeks a declaratory judgment that Plaintiff is an owner of the subject property, that her heirs and assigns have an interest in the subject property and sought judgment for the costs of this action. Plaintiff amended her Complaint to allege a fifth cause of action for Ouster Damages / Trespass. Plaintiff sought damages constituting a portion of the reasonable rental value of the House and Property as well as actual and punitive damages.

Defendant filed an Answer and Counterclaim denying allegations set forth in the Complaint and alleged a cause of action for Adverse Possession and also sought recovery of monies expended to preserve the property by way of a claim for Quantum Meruit. Defendant subsequently filed an Answer to the Amended Complaint denying all allegations set forth in the Amended Complaint. Plaintiff filed a Reply to Defendants Counterclaim denying allegations set forth therein.

During the course of the litigation the parties entered into a Consent Order stating in part:

The Parties agree that Ms. Stephanie M. McDew shall have exclusive use of the property for the month of October 2017 and that Frieda P. McDew shall have exclusive use of the property for the month of November 2017. Thereafter, each party's exclusive monthly use of the property shall rotate until this matter is resolved, however, by written agreement signed by the parties they may exchange months.

This Order shall remain in effect until such time as the parties enter into a shared use agreement or a subsequent Order of this Court is issued with respect to use of the subject property.

The trial of this matter took place on March 18, 2019. The Court heard testimony from the Plaintiff Stephanie McDew Schoumacher and the Plaintiff's witnesses Henri Kirsten and Edgar "Ned" Gay. The Defendant, Frieda McDew Shorter testified and submitted deposition testimony of Carla Nettles and Donald Brashear.

FINDINGS OF FACT

After hearing the testimony in court reviewing the exhibits and reading deposition testimony submitted by Defendant, I hereby make the following findings of fact. The Plaintiff alleged that Defendants actions with regard to the property constituted ouster. I hereby find that Defendant's actions did not constitute ouster. The Plaintiff alleged that the defendant would not provide her with a set of keys and told her she was going to change the locks. The testimony revealed that both sisters had been given a set of keys by their mother. The Plaintiff testified that she in fact had a set of keys and attempted to use them one time over the course of many years to enter the house and the key would not open the lock. The Defendant testified that she never changed the locks on the home. Carla Nettles, was hired by the Defendant to clean the home and testified that the lock was stuck requiring her to spray a lubricant into the lock to get the key to work, She further testified that she has cleaned many near ocean homes and due to the salt air conditions a sticking lock is a common occurrence. The Defendant further testified that the security code had also never been changed since her mother was alive and presented

evidence to that effect. Based upon the testimony I conclude that the defendant never changed the locks on the residence. The Plaintiff testified that she has lived in the Washington, DC area for the past twenty years.

The Defendant testified that she has lived in Savannah, Georgia since retiring in 1996. The Defendant further testified that she would drive to Hilton Head to inspect the residence approximately once a month and perhaps stay for a weekend. She also testified that she usually spent one week in the summer with family at the subject residence. As such, the Plaintiff was free to use or enter the house whenever she saw fit. The Defendant never occupied the house for any substantial length of time and, in fact, never barred the Plaintiff from entering the residence. Other than the one occasion when the Plaintiff attempted to use her key to gain access to the house, the Plaintiff never tried to enter the residence. The Plaintiff presented no evidence that the Defendant acted in a way that would obstruct the Plaintiff from accessing the residence.

LEGAL CONCLUSIONS

Regarding the Plaintiff's first cause of action to determine Ownership under the deed. I find that the parties are Tenants in Common with equal rights and responsibilities with respect to the subject property.

The Plaintiff's second cause of action sought injunctive providing her access to the subject residence. As the parties entered into Consent Order regarding the use of the residence, and that Consent Order is still in effect. As such, both parties are allowed equal access and control of the property.

Plaintiff's third cause of action set forth a claim for nuisance alleging the Defendant has unreasonably interfered with Plaintiff's use and enjoyment of the House

and property and such interference creates an unlawful nuisance. I conclude that the Plaintiff did not present sufficient evidence to constitute nuisance and, therefore Plaintiff's claim for nuisance is denied.

Plaintiff's fourth cause of action sought a Declaratory Judgment that defendant's actions over the years estops Defendant from claiming ownership of the subject property and further seeks a declaratory judgment that Plaintiff is an owner of the subject property, that her heirs and assigns have an interest in the subject property and sought judgment for the costs of this action. I find that the parties are Tenants in Common with equal rights and responsibilities with respect to the subject property. I deny Plaintiff's claims seeking costs of this action under this cause of action by way of this claim.

The Plaintiff's fifth cause of action was for ouster claiming that defendants actions restricted Plaintiff's access and use of the subject property. I hereby conclude that insufficient evidence was presented by the Plaintiff to conclude that the Defendant's actions constituted ouster. Plaintiff's claim of ouster is, therefore, denied.

The Defendant filed a Counterclaim for Adverse Possession. The Defendant did not present sufficient evidence to support a finding of adverse possession and, therefore, Defendant's claim for adverse possession is denied.

I further find for the Defendant and award Plaintiff to pay one half of the carrying costs / expenses on the subject property. The parties stipulated that the total expenses paid by Frieda McDew Shorter between 2007 through 2018 were \$134,770.45. This amount does not include expenses paid by Frieda McDew Shorter in 2019. The parties also stipulated that Frieda McDew Shorter was in the 15% tax bracket for the tax years 2009 through 2017. The only year Frieda McDew Shorter claimed a deduction for the

subject property was 2017, when she paid property taxes in the amount of \$4,315.39. The net tax benefit to Mrs. Shorter was roughly 15% of \$4,315.39, or \$647.30. Had Plaintiff paid one half of the 2017 taxes Mrs. McDew's tax benefit would be reduced by half the benefit, or \$323.65. As this Order requires the Plaintiff to pay to the Defendant one half of the 2017 property taxes and arguably the Plaintiff is entitled to a credit for one half of the tax benefit taken by Defendant. As such, the judgment will be reduced by one half of the total deduction taken by Mrs. Shorter on her 2017 tax return, that being \$323.65. Frieda McDew Shorter did not claim a deduction in any year other than 2017, therefore, no other reductions to the judgment are necessary.

I hereby award a judgment in the amount of \$67,385.22 in favor of the Defendant. Judgment amount shall be a lien in favor of the Defendant on Plaintiff's one half interest of the property. Plaintiff shall have 180 days to pay the total judgment amount due and thereafter, her one half of the house shall be advertised and sold at Master's auction, with the Defendant allowed to credit bid the total amount due. Assuming no sale, the parties shall hereafter divide all costs equally and shall enter a shared use agreement. In the event the parties cannot agree to a shared use agreement, a mediator shall be hired, with costs divided, to assist in that matter. If the Mediator is unsuccessful, this Court retains jurisdiction to create said shared use arrangement. Both parties shall bear their own costs of litigation in this matter.

IT IS SO ORDERED

Marvin H. Dukes, III
Master In Equity, Beaufort County

This ____ day of August, 2019
Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-02274

Stephanie M. McDew a/k/a Stephanie McDew
Schoumacher

PLAINTIFF(S)

Frieda P. McDew a/k/a Frieda McDew Shorter

DEFENDANT(S)

Submitted by: Thomas J. Finn

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : none

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Frieda McDew a/k/a Frieda McDew Shorter	Stephanie M. McDew a/k/a Stephanie McDew Schoumacher	\$67,385.22

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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



Beaufort Common Pleas

Case Caption: Stephanie M McDew , plaintiff, et al VS Frieda P McDew , defendant,
et al
Case Number: 2016CP0702274
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-09-13 11:48:01 page 9 of 9

RECORD 000013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2016-CP-07-02274
COUNTY OF BEAUFORT	)	
	)	
STEPHANIE M. MCDEW a/k/a	)	
STEPHANIE MCDEW	)	
SCHOUMACHER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CONSENT ORDER
	)	
FRIEDA P. MCDEW a/k/a FRIEDA	)	
MCDEW SHORTER,	)	
	)	
Defendant.	)	
	)	
	)	

The parties seek to enter into a Consent Order which sets forth terms and conditions under which both parties will use the property which is the subject of this lawsuit. The property is located at Lot 16, lot 18 and lot 20 of the Bradley Beach Subdivision on Hilton Head Island. Lot 18 has a home constructed on the property while the other two lots remain undeveloped. Georgia.

The parties desire to establish a temporary working agreement which would afford both parties use of the property while protecting and preserving the subject premises and the contents of the residence.

The parties hereby agree to the following:

1. The Parties agree that Ms. Stephanie M. McDew shall have exclusive use of the property for the month of October 2017 and that Mrs. Frieda P. McDew shall have exclusive use of the property for the month of November 2017. Thereafter, each party's exclusive monthly use of the property shall rotate until this matter is resolved. However, by written agreement signed by the parties they may exchange months.

2. During each party's exclusive use of the property the other party nor anyone on the other party's behalf shall interfere, hinder, block or otherwise affect the party's private use and enjoyment of the property.
3. Mrs. Frieda P. McDew shall provide a copy of the house keys and security code to Mrs. Stephanie M. Shoumacher's attorney on or before October 1, 2017.
4. The parties agree that the home contains many items of personal property such as household items, art, furniture, appliances and other personal property. The parties agree that all reasonable measures will be taken to preserve and protect the personal property of each party and that no items of either party will be removed from the residence or damaged in any way beyond normal wear and tear.
5. The parties agree that after all visits the residence will be left in good condition and that any damaged items in the home will be brought to the attention of the other party.
6. The parties agree that they will enter a Consent Scheduling Order which will set a mediation to take place on or before January 15, 2018. The Scheduling Order will also require the matter be tried on or before March 30, 2018.
7. This agreement is entered into for the use of the property pending the outcome of the present litigation. Nothing in this agreement will be deemed as an admission of any kind or a waiver of any rights or claims regarding the underlying litigation.

Honorable Marvin H. Dukes, III
Beaufort County Master in Equity

I Consent:

s/Thomas J. Finn
Thomas J. Finn, Esq. for
Frieda McDew Shorter

Sept. 26, 2017

I Consent:

s/Kelvin M. Huger
Kelvin M. Huger, Esq. for
Stephanie McDew Schoumacher

Sept. 26, 2017



Beaufort Common Pleas

Case Caption: Stephanie M McDew , plaintiff, et al VS Frieda P McDew , defendant,
et al
Case Number: 2016CP0702274
Type: Order/Consent Order

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-10-16 16:17:24 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STEPHANIE M. MCDEW a/k/a
STEPHANIE MCDEW
SCHOUMACHER,

Plaintiff,

vs.

FRIEDA P. MCDEW a/k/a FRIEDA
MCDEW SHORTER,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07- 02274

COMPLAINT

(Non-Jury)

2016 OCT 21 PM 3:31
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Plaintiff, by and through undersigned counsel, would show unto this Honorable Court:

1. Plaintiff Stephanie M. McDew a/k/a Stephanie McDew Schoumacher ("Plaintiff") is a citizen of the Washington, District of Columbia.
2. Upon information and belief Defendant Frieda P. McDew a/k/a Frieda McDew Shorter ("Defendant") is a citizen and resident of the Chatham County, State of Georgia.
3. On or about May 14, 1979, Plaintiff and Defendant acquired title to real property located in the County of Beaufort, State of South Carolina, such property being described as follows:

ALL that certain piece, parcel or lot of land situate lying and being on Hilton Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #16, as shown on a map or plat of said subdivision made by Fred C. Hack, Registered land surveyor, in September, 1954, and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 19 at Page 57. Said lot is bounded on the North by land of Christopher, on the East by lot #18, conveyed below to the grantee herein, on the South by a road leading to the Atlantic Ocean, and on the West by Lot #14, belonging to Frank Tharpe, and measures sixty (60) feet, on its Northern and Southern boundaries, and eighty (80) feet on its Eastern and Western boundaries. This lot is a part of the

same tract of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81 at Page 272.

ALSO

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #18, as shown on a map or plat of said subdivision made by Fred C. Hack, in September, 1954, and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 10 at Page 57. Said Lot is bounded on the North by land of Christopher, on the East by Lot #20, conveyed below, on the South by a road leading to the Atlantic Ocean, and on the West by the lot conveyed above, and measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80) of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81, at Page 272.

ALSO

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #20, as shown on a map or plat of said subdivision made by Fred C. Hack, in September, 1954, and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 10 at Page 57. Said Lot is bounded on the North by land of Christopher, on the East by Lot #22, on the South by a road leading to the Atlantic Ocean, on the West by Lot #18, conveyed above, and measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80) feet on its Eastern and Western boundaries. This lot is a part of the same tract of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81, at Page 272.

BEING the same property conveyed to Plaintiff and Defendant by Deed of S. M. Mc Dew and Mary Mc Dew by deed dated May 14, 1979 and recorded in the R.M.C. or Clerk of Court Office for Beaufort County in Deed Book 281 at Page 1064. Hereinafter the "Property". See Exhibit A, attached hereto and incorporated by reference.

4. The house whose current address is 17 Bradley Beach Road, Hilton Head Island, South Carolina, 29928 (hereinafter the "House") sits on the Property.

5. Plaintiff and Defendant are sisters and have owned the House and the Property as tenants in common since it was deeded to them in 1979.

6. Plaintiff is informed believes and alleges that Defendant has denied Plaintiff the current set of keys and the security code to the aforementioned House and refuses to give keys and the security code to the Plaintiff.

7. Plaintiff is informed believes and alleges that Defendant did not include Plaintiff on the contract with the security company for the House and thus Plaintiff is unable to independently contact the security company to obtain the information needed to arm and disarm the security system for the House.

8. Upon information and belief Plaintiff is informed and believes that this Court has jurisdiction in this matter.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Ownership under Deed)

9. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

10. Plaintiff is informed and believes that she has a legal interest in the House and the Property pursuant to the Deed filed in the Office of the Clerk of Court for Beaufort County in Deed Book 81 at Page 272.

11. Plaintiff is informed and believes that Defendant is interfering with Plaintiff's ownership interest in the House and the Property by illegally restricting or preventing Plaintiff from accessing the House and the Property.

12. Plaintiff is informed and believes that she is entitled to a declaratory judgment, pursuant to S.C. Code Ann. § 15-53-10, et seq., declaring her ownership interest in the House and the Property, determining Plaintiff and Defendant's respective use of the House and the Property, and awarding Plaintiff's judgment for the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

13. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

14. Plaintiff is informed and believes that a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary to prevent irreparable harm because it is necessary for Plaintiff to be able to access and upkeep the House and the Property.

15. Plaintiff is informed and believes that the issuance of a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary for the protection of Plaintiff's rights during the course of this litigation, and that Plaintiff is likely to prevail on both the Complaint for Permanent Injunction and Restraining Order and the merits of the trial of this action.

16. Plaintiff is informed and believes she has a legal right to the House and the Property.

17. Plaintiff has no adequate remedy at law.

18. Plaintiff is informed and believes that Defendant should be restrained and enjoined from preventing access to the House and the Property.

19. Due to the immediate and severe hardship imposed by Defendant upon Plaintiff, Plaintiff respectfully requests that this Court, within its discretion, impose a bond in connection with the Temporary and Permanent Restraining Order and Temporary and Permanent Injunction in the least amount possible.

FOR A THIRD CAUSE OF ACTION
(Nuisance)

20. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

21. Defendant has unreasonably interfered with Plaintiff's use and enjoyment of the House and the Property, and such interference creates an unlawful nuisance.

22. As a direct and proximate result of Defendant's nuisance, Plaintiff is entitled to actual, nominal, compensatory, and punitive damages.

FOR A FORTH CAUSE OF ACTION
(Declaratory Judgment – Equitable Estoppel)

23. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

24. In the alternative, if Defendant owned the House and the Property and would normally be entitled to deny Plaintiff access to the House and the Property, Defendant's words and actions over the course of many years, equitably estops her from now claiming said ownership and from otherwise claiming that Plaintiff has no right to access the House and the Property. Moreover, any action by Defendant not rising to the statutory period of continuous, open, adverse, hostile position with notice is insufficient to overcome the interest of Plaintiff in the House and the Property.

25. Plaintiff is informed and believes that she is entitled to a declaratory judgment, pursuant to S.C. Code Ann. § 15-53-10, et seq., declaring that she, is an owner of the House and the Property, and her heirs and assigns, possess an interest in the House and the Property and awarding Plaintiff judgment for the costs of this action.

WHEREFORE, Plaintiff prays as follows:

- a) For judgment against Defendant for actual, nominal, compensatory, punitive, and special damages, for prejudgment interest, and for the attorney's fees and the costs of this action, in an amount to be determined at trial;
- b) For an Order declaring Plaintiff and Defendant's rights regarding the House and the Property described above and finding that Plaintiff, as owner of the House and the Property, and her heirs and assigns, possess a lawful right of access to the House and the Property;
- c) For an Order determining the time schedule for Plaintiff and Defendant's use of the House and the Property and also determining the division of cost associated with their ownership of the House and the Property;
- d) For an Order temporarily and permanently restraining and enjoining Defendant from blocking access to the House and the Property or otherwise interfering with Plaintiff's ownership of the House and the Property; and
- e) For such other and further relief as this Court deems just and proper.

Respectfully Submitted

Counts & Huger, LLC


George E. Counts, Esq.
Kelvin M. Huger, Esq.
Counts & Huger, LLC
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Attorneys for Stephanie M. McDew

Dated October 17, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
STEPHANIE M. MCDEW a/k/a)
STEPHANIE MCDEW)
SCHOUMACHER,)
Plaintiff,)
vs.)
FRIEDA P. MCDEW a/k/a FRIEDA)
MCDEW SHORTER,)
Defendant,)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.:16-CP-07-02274

ANSWER
AND COUNTERCLAIM
(Non Jury)

The Defendant, by and through her undersigned counsel, hereby answers the
Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

1. To the extent that paragraphs 9, 13, 20 and 23 require an answer,
Defendant denies all the allegations set forth therein and demands strict proof
thereof.
2. Defendant admits the allegations set forth in paragraphs 1, 2, 3, 4, 6, 8,
3. Defendant admits so much of paragraph five as alleges that the parties are
sisters and the subject property was deeded to them both as tenants in common but denies
the remaining allegations set forth in paragraph five and demands strict proof thereof.
4. Answering paragraph seven defendant states that she has a contract with a
security company and pays the security company for services on a monthly basis.
Plaintiff has not paid for the cost of the security contract, or any other expenses related to
the subject property and is, therefore, not on the contract.

5. Defendant denies the allegations set forth in paragraphs 10, 11, 12, 14, 15, 16, 17, 18, 19 21, 24 and 25 and demands strict proof thereof.

FOR A SECOND DEFENSE

6. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

7. That the Defendant would show that the allegations of the Complaint fails to state facts sufficient to constitute a cause of action and /or causes of action against the Plaintiff.

**FOR A THIRD DEFENSE
(Doctrine of Estoppel)**

8. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

9. That the Defendant would show that the Plaintiff is barred by the doctrine of estoppel from asserting claims against this Defendant.

**FOR A FOURTH DEFENSE
(Doctrine of Waiver)**

10. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

9. That the Defendant would show that the claims of the Plaintiff are barred by the doctrine of waiver.

**FOR A FIFTH CAUSE OF ACTION
(Reservation and Non-Waiver)**

10. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

11. The Defendant does not waive, and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by this Defendant or its counsel during the course of discovery or otherwise.

**FOR A SIXTH DEFENSE
AND BY WAY OF COUNTERCLAIM
(Adverse Possession)**

12. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

13. The Defendant is a citizen and resident of Chatham County, Georgia.

14. The Plaintiff, upon information and belief, is a citizen and resident of the District of Columbia.

15. The property which is the subject of this dispute is located in Beaufort, County, South Carolina.

16. All parties and the subject matter of this litigation is properly subject to the jurisdiction of this Court

17. The Defendant Frieda McDew Shorter inherited the disputed property along with two adjacent parcels on May 14, 1979. Since that time Defendant Frieda McDew Shorter has exercised exclusive control over the subject property, maintained the property, and paid all property taxes on the property in a manner that is continuous, open, notorious, adverse and hostile.

18. As a result of Defendant's continuous, open, notorious, adverse and

Hostile exercise and control over the subject property for the statutory period, without exception, Defendant has acquired all subject property by adverse possession pursuant to S.C. Code of Laws § 15-67-10 et seq. 1976 as amended.

19. Defendant prays that this honorable court grant judgment against Plaintiff on all causes of action and grants judgment in favor of Defendant on her counterclaims and awards Defendant deed to all subject property.

WHEREFORE, having fully answered the Complaint of the Plaintiff this defendant prays as follows:

- a. That the Plaintiffs claims be dismissed, as to the defendant with costs to this Defendant.
- b. That this Defendant be granted judgment against this Plaintiff and such other and further relief as is deemed just and proper.

FINN LAW FIRM, PC

By: s/Thomas J. Finn
SC Bar # 66534
Attorney for the Defendant
Finn Law Firm, PC
38D New Orleans Road (physical address)
Hilton Head Island, S.C. 29928
P.O. Box 6003
Hilton Head Island, Sc 29938
(843)682-3555
finlaw@hargray.com

This 5th day of January, 2017
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2016-CP-07-02274

STEPHANIE M. MCDEW a/k/a)
STEPHANIE MCDEW)
SCHOUMACHER,)
Plaintiff,) PLAINTIFF'S AMENDED REPLY TO
DEFENDANT'S COUNTERCLAIM(S)

vs.

FRIEDA P. MCDEW a/k/a FRIEDA)
MCDEW SHORTER,)
Defendant.)

Plaintiff, by and through her undersigned counsel, responds to the Defendant's Counterclaim(s) as follows:

1. To the extent Paragraph 12 requires a response, Plaintiff denies the allegations therein.
2. Plaintiff admits the allegations in Paragraph 13 of Defendant's Answer and Counterclaim.
3. Plaintiff admits the allegations in Paragraph 14 of Defendant's Answer and Counterclaim.
4. Plaintiff admits the allegations in Paragraph 15 of Defendant's Answer and Counterclaim.
5. Plaintiff admits the allegations in Paragraph 16 of Defendant's Answer and Counterclaim.

6. Responding to Paragraph 17, Plaintiff admits that both Frieda McDew Shorter and the Plaintiff were deeded the disputed property along with two adjacent parcels on May 14, 1979. Plaintiff denies the remaining allegations in Paragraph 17.

7. Plaintiff denies the allegations of Paragraph 18.

8. Responding to Paragraph 19, Plaintiff denies that Defendant is entitled to any of the relief requested.

9. Responding to the paragraph beginning with "WHEREFORE", Plaintiff denies that Defendant is entitled to any of the relief requested.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

10. Defendant's Counterclaim(s) fails to state facts sufficient to constitute a cause of action and, therefore, must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

11. Defendant's Counterclaim(s) are barred by the applicable statute(s) of limitations and repose.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

12. Defendant's Counterclaim(s) may be barred by the equitable doctrine(s) of estoppel, waiver, release, laches, and/or unclean hands.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

13. Plaintiff is entitled to a setoff, or other credit for all amounts paid to the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

14. Plaintiff reserves the right to amend its Reply to supplement any additional defenses that may be revealed during the course of discovery or otherwise.

WHEREFORE, having fully responded to Defendant's Counterclaim(s), Plaintiff prays that the Counterclaim(s) be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Andrew M. Connor

Andrew M. Connor
SC Bar No. 100050
E-Mail: andrew.connor@nelsonmullins.com
Matthew W. Orville
SC Bar No. 102339
E-mail: matt.orville@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Plaintiff

Charleston, South Carolina

November 20, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2016-CP-07-02274

STEPHANIE M. MCDEW a/k/a)
STEPHANIE MCDEW)
SCHOUMACHER,)

Plaintiff,)

vs.)

FRIEDA P. MCDEW a/k/a FRIEDA)
MCDEW SHORTER,)

Defendant.)

PLAINTIFF'S AMENDED
COMPLAINT

(Non-Jury)

Plaintiff, by and through undersigned counsel, submits this Amended Complaint with written consent of the Defendant (*see* Exhibit B) and would show unto this Honorable Court:

1. Plaintiff Stephanie M. McDew a/k/a Stephanie McDew Shoumacher ("Plaintiff") is a citizen of the Washington, District of Columbia.

2. Upon information and belief Defendant Frieda P. McDew a/k/a Frieda McDew Shorter ("Defendant") is a citizen and resident of the Chatham County, State of Georgia.

3. On or about May 14, 1979, Plaintiff and Defendant acquired title to real property located in the County of Beaufort, State of South Carolina, such property being described as follows:

ALL that certain piece, parcel or lot of land situate lying and being on Hilton Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #16, as shown on a map or plat of said subdivision made by Fred C. Hack, Registered land surveyor, in September, 1954, and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 10, page 57. Said lot is bounded on the North by land of Christopher, on the East by lot #18, conveyed below to the

grantee herein, on the South by a road leading to the Atlantic Ocean, and on the West by Lot #14, belonging to Frank Tharpe, and measures sixty (60) feet, on its Northern and Southern boundaries, and eighty (80) feet on its Eastern and Western boundaries. This lot is a part of the same tract of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81, page 272.

ALSO

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort, County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #18, as shown on a map of plat of said subdivision made by Fred C. Hack in September, 1954, and recorded in the Office of the Clerk of court for Beaufort County in Plat Book 10 at page 57. Sid Lot is bounded on the North by land of Christopher, on the East by Lot #20, conveyed below, on the South by a road leading to the Atlantic Ocean, and on the West by the lot conveyed above, and measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80) feet on its Eastern and Western boundaries. This lot is a part of the same tract of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81, at page 272.

ALSO

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #20, as shown on a map or plat of said subdivision made by Fred C. Hack in September, 1954, and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 10, at page 57. Said lot is bounded on the North by land of Christopher, on the East by Lot #22, on the South by a road leading to the Atlantic Ocean, on the West by lot #18, conveyed above, and measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80) feet on its Eastern and Western boundaries. This lot is a part of the same tract of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81, at page 272.

BEING the same property conveyed to Plaintiff and Defendant by Deed of S. M. McDew and Mary McDew by deed dated May 14, 1979 and recorded in the R.M.C. or Clerk of Court Office for

Beaufort County in Deed Book 281 at Page 1064. Hereinafter the "Property". See Exhibit A, attached hereto and incorporated by reference.

4. The house whose current address is 17 Bradley Beach Road, Hilton Head Island, South Carolina, 29928 (hereinafter the "House") sits on the Property.

5. Plaintiff and Defendant are sisters and have owned the House and the Property as tenants in common since it was deeded to them in 1979.

6. Plaintiff is informed believes and alleges that Defendant has denied Plaintiff the current set of keys and the security code to the aforementioned House and refuses to give keys and the security code to the Plaintiff.

7. Plaintiff is informed believes and alleges that Defendant did not include Plaintiff on the contract with the security company for the House and thus Plaintiff is unable to independently contact the security company to obtain the information needed to arm and disarm the security system for the House.

8. Upon information and belief Plaintiff is informed and believes that this Court has jurisdiction in this matter.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Ownership under Deed)

9. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

10. Plaintiff is informed and believes that she has a legal interest in the House and the Property pursuant to the Deed filed in the Office of the Clerk of Court for Beaufort County in Deed Book 281 at Page 1064.

11. Plaintiff is informed and believes that Defendant is interfering with Plaintiff's ownership interest in the House and the Property by illegally restricting or preventing Plaintiff from accessing the House and Property.

12. Plaintiff is informed and believes that she is entitled to a declaratory judgment, pursuant to S.C. Code Ann. § 15-53-10, et seq., declaring her ownership interest in the House and the Property, determining Plaintiff and Defendant's respective use of the House and the Property, and awarding Plaintiff judgment for the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

13. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

14. Plaintiff is informed and believes that a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary to prevent irreparable harm because it is necessary for Plaintiff to be able to access and upkeep the House and the Property.

15. Plaintiff is informed and believes that the issuance of a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary for the protection of Plaintiff's rights during the course of this litigation, and that Plaintiff is likely to prevail on both the Complaint for Permanent Injunction and Restraining Order and the merits of the trial of this action.

16. Plaintiff is informed and believes she has a legal right to the House and the Property.

17. Plaintiff has no adequate remedy at law.

18. Plaintiff is informed and believes that Defendant should be restrained and enjoined from preventing access to the House and the Property.

19. Due to the immediate and severe hardship imposed by Defendant upon Plaintiff, Plaintiff respectfully requests that this Court, within its discretion, impose a bond in connection with the Temporary and Permanent Restraining Order and Temporary and Permanent Injunction in the least amount possible.

FOR A THIRD CAUSE OF ACTION
(Nuisance)

20. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

21. Defendant has unreasonably interfered with Plaintiff's use and enjoyment of the House and Property, and such interference creates an unlawful nuisance.

22. As a direct and proximate result of Defendant's nuisance, Plaintiff is entitled to actual, nominal, compensatory, and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment – Equitable Estoppel)

23. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

24. In the alternative, if Defendant owned the House and Property and would normally be entitled to deny Plaintiff access to the House and the Property, Defendant's words and actions over the course of many years, equitably estops her from now claiming said ownership and from otherwise claiming that Plaintiff has no right to access the House and the Property. Moreover, any action by Defendant not rising to the statutory period of continuous,

open, adverse, hostile position with notice is insufficient to overcome the interest of Plaintiff in the House and the Property.

25. Plaintiff is informed and believes that she is entitled to a declaratory judgment pursuant to S.C. Code Ann. § 15-53-10, et seq., declaring that she, is an owner of the House and the Property, and her heirs and assigns, possess an interest in the House and the Property and awarding Plaintiff judgment for the costs of this action.

FOR A FIFTH CAUSE OF ACTION
(Ouster Damages/Trespass)

26. All prior allegations not inconsistent with this cause of action are re-alleged and incorporated by reference herein.

27. Plaintiff, as cotenant of the House and Property, has the right, in common with Defendant, to the possession of the House and the Property.

28. Defendant, in contravention of Plaintiff's rights, unlawfully excluded Plaintiff from the House and the Property by denying Plaintiff the current set of keys and the security code to the aforementioned House and refusing to give the keys and the security code to the Plaintiff.

29. Defendant unlawfully excluded Plaintiff from the House and Property beginning in June 2009 through November 2017 when Plaintiff was granted access to the House and Property via this Court's Order filed October 16, 2017.

30. Upon information and belief, such actions by Defendant constitute unlawful ouster of the Plaintiff.

31. As a result, Plaintiff is legally and equitably entitled to recover from Defendant ouster damages constituting a portion of the reasonable rental value of the House and Property

consistent with Plaintiff's ownership share of the House and Property as well as other actual and punitive damages.

WHEREFORE, Plaintiff prays as follows:

- a) For judgment against Defendant for actual, nominal, compensatory, punitive, special, and equitable damages, for prejudgment interest, and for the attorneys' fees and the costs of this action, in an amount to be determined at trial.;
- b) For an Order declaring Plaintiff and Defendant's rights regarding the House and the Property described above and finding that Plaintiff, as owner of the House and the Property, and her heirs and assigns, possess a lawful right of access to the House and the Property;
- c) For an Order determining the time schedule for Plaintiff and Defendant's use of the House and the Property and also determining the division of cost associated with their ownership of the House and the Property;
- d) For an Order temporarily and permanently restraining and enjoining Defendant from blocking access to the House and the Property or otherwise interfering with Plaintiff's ownership of the House and the Property; and
- e) For such other and further relief as this Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Andrew M. Connor

Andrew M. Connor
 SC Bar No. 100050
 E-Mail: andrew.connor@nelsonmullins.com
 Matthew W. Orville
 SC Bar No. 102339
 E-mail: matt.orville@nelsonmullins.com
 151 Meeting Street / Sixth Floor
 Post Office Box 1806 (29402-1806)
 Charleston, SC 29401-2239
 (843) 853-5200

Attorneys for Plaintiff

Charleston, South Carolina

March 13, 2018

EXHIBIT A

KNOW ALL MEN BY THESE PRESENTS, THAT

S. M. MC DEW, JR., and MARY MC DEW

In the State aforesaid FOR and in consideration of the sum of
Ten (\$10.00) DOLLARS,
 and love and affection
 to us in hand paid at and before the sealing of these presents by FRIDA P. MC DEW and
STEPHANIE M. MC DEW, 700 West 45th Street, Savannah, Georgia
 In the State aforesaid _____ the receipt whereof is hereby
 acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and
 release unto the said FRIDA P. MC DEW and STEPHANIE M. MC DEW

ALL that certain piece, parcel or lot of land situate lying and being on Hilton
 Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH
 SUBDIVISION, being Lot #16, as shown on a map or plat of said subdivision made by
 Fred C. Mack, Registered Land Surveyor, in September, 1954, and recorded in the
 Office of the Clerk of Court for Beaufort County in Plat Book 10, page 57. Said
 lot is bounded on the North by land of Christopher, on the East by lot #18, con-
 veyed below to the grantee herein, on the South by a road leading to the Atlantic
 Ocean, and on the West by Lot #14, belonging to Frank Tharpe, and measures sixty
 (60) feet, on its Northern and Southern boundaries, and eighty (80) feet on its
 Eastern and Western boundaries. This lot is a part of the same tract of land con-
 veyed to the Grantor by deed recorded in the Office of the Clerk of Court for
 Beaufort County at Deed Book 81, page 272.

Also:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton
 Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH
 SUBDIVISION, being Lot #18, as shown on a map or plat of said subdivision made by
 Fred C. Mack in September, 1954, and recorded in the Office of the Clerk of Court
 for Beaufort County in Plat Book 10 at page 57. Said Lot is bounded on the North
 by land of Christopher, on the East by Lot #20, conveyed below, on the South by a
 road leading to the Atlantic Ocean, and on the West by the lot conveyed above, and
 measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80)
 feet on its Eastern and Western boundaries. This lot is a part of the same tract
 of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court
 for Beaufort County at Deed Book 81, at page 272.

Also:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton

Beaufort County Tax Map Reference
 Map of Parcel 47 Elk Dist. 038

Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #20, as shown on a map or plat of said subdivision made by Fred C. Hack in September, 1934, and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 10, at page 57. Said lot is bounded on the North by land of Christopher, on the East by Lot #22, on the South by a road leading to the Atlantic Ocean, on the West by Lot #18, conveyed above, and measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80) feet on its Eastern and Western boundaries. This lot is a part of the same tract of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81, at page 272.

This Deed was prepared in the law offices of Bowen, Cooper, Board & Smoot, Forty Pope Avenue, Hilton Head Island, SC 29928 by Attorney A. R. Grant Murrehouse, without benefit of Title examination.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said

FRIDON P. MC DEN and STEPHENIE M. MC DEN, their Heirs and Assigns forever.

SUBJECT, HOWEVER, to those certain RESTRICTIONS, RESERVATIONS AND COVENANTS, duly executed by BRADLEY MEMORIAL BEACH, INC., and recorded in the Office of the Clerk of Court for Beaufort County in Book 85, page 95, which RESTRICTIONS, RESERVATIONS AND COVENANTS are hereby incorporated into and made a part of this deed as fully as if the same had been written out herein.

AND SUBJECT FURTHER, to a Life Estate in each of the Grants, S. M. MC DEN, JR., and MARY MC DEN, reserving such property heretofore described, to their use for any purpose whatsoever, without reservations or restrictions, for their lives and for the life of the survivor of them.

WCH

ELECTRONICALLY FILED - 2019 Mar 13 3:13 PM - BEAUFORT - COMMON PLAS

AND we do hereby bind our Heirs, 1066
Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said
FRIEDA P. MC DEW and STEPHANIE M. MC DEW, their
Heirs and Assigns, against OURSELVES and our Heirs, and all persons whomsoever,
lawfully claiming, or to claim the same or any part thereof.
WITNESS our Hand and Seal at, this 14th day of May
in the year of our Lord one thousand nine hundred and seventy-nine, and in the two hundred and
third year of the Sovereignty and Independence of the United States of America.
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF
(1) Ruby E. Mann (2) B. M. McDew, Jr. (L. S.)
(3) Edwina W. Ford (4) Mary McDew (L. S.)
Mary McDew

Georgia
The State of South Carolina,

Chatham County.

PERSONALLY appeared before me (1) Ruby E. Mann
and made oath that I saw the within named B. M. McDew, Jr. and
Mary McDew sign, seal, and as their act and deed, deliver the within written Deed,
and that she with (3) Edwina W. Ford
witnessed the execution thereof.

SWORN to before me, this fourteenth
day of May A.D. 1979
(2) Edwina W. Ford (SEAL)
Notary Public of South Carolina Georgia
My Commission Expires EDWINA W. FORD
Notary Public, Chatham County, Ga.
My Commission Expires Dec. 23, 1980

(1) Ruby E. Mann

RENUNCIATION OF DOWER

Georgia
The State of South Carolina,

Chatham County.

I, (1) Edwina W. Ford, a Notary Public for South Carolina
do hereby certify unto all whom it may concern, that Mrs. Mary McDew
the wife of the within named (2) B. M. McDew, Jr.
did this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, re-
lease and forever relinquish unto the within named Frieda P. McDew and Stephanie M. McDew, their

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular
the premises within mentioned and released.

Given under my Hand and Seal, this 14th day of May Anno Domini 1979
(1) Edwina W. Ford (SEAL) (2) Mary McDew
Notary Public of South Carolina Georgia
My Commission Expires EDWINA W. FORD
Notary Public, Chatham County, Ga.
My Commission Expires Dec. 23, 1980

A. R. GRANT MOREHOUSE

State of South Carolina,

1067

S. M. McDow & Mary McDow

Savannah, Georgia

TO

Frieda P. McDow & Stephanie H. McDow
700 West 45th Street, Savannah, GA

TITLE TO REAL ESTATE

Filed 17th day

of May A.D. 1979

at 8:00 o'clock A.M.

and recorded in Book 281

Page 1064 Fee \$6.00

Savannah, W. Beaufort

R. M. C. or Clerk Court C.P. & G.S.

Beaufort County, S.C.

Recorded this 22nd day

of May 1979

in Book K Page 53

Fee \$

Mary Ann Grayson

Auditor *Beaufort* County, S. C.

EXHIBIT B

Andrew Connor

From: Tom Finn <thomas@finnlawfirmmpc.com>
Sent: Wednesday, March 13, 2019 12:45 PM
To: Andrew Connor
Subject: Schoumacher vs. McDew Shorter
Attachments: Scanned from a Xerox Multifunction Printer.pdf

◀External Email▶ - Use appropriate security judgment when clicking links, opening attachments or responding.

Andrew:

As we discussed I will consent to your Amended Complaint and I will file the attached Answer and Counterclaim.

As we also discussed my witnesses Carla Nettles can be deposed on Thursday around 12:30 and I can get you a call in number. Don Brashiers of Atlantic Realty is my witness concerning the long term rental issues. Mr. Brashiers can be deposed either Thursday or Friday. Again I can get you a call in number if you prefer or you can attend at my office if you like. I don't anticipate either deposition going more than 30 minutes. Let me know your preference. Thanks.

Tom

Thomas J. Finn, Esquire
Finn Law Firm, PC
38D New Orleans Road
Hilton Head Island, SC 29928
P.O. Box 6003
Hilton Head Island, SC 29938
843-682-3555 / Fax: 843-682-3558
thomas@finnlawfirmmpc.com

From: acsf0117@gmail.com <acsf0117@gmail.com>
Sent: Tuesday, March 12, 2019 6:27 PM
To: Tom Finn
Subject: Scanned from a Xerox Multifunction Printer

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location:
Device Name: XRX9C934E1EF3E4

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
STEPHANIE M. MCDEW a/k/a)
STEPHANIE MCDEW)
SCHOUMACHER,)
Plaintiff,)
vs.)
FRIEDA P. MCDEW a/k/a FRIEDA,)
MCDEW SHORTER,)
Defendant,)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.:16-CP-07-02274

AMENDED ANSWER
AND COUNTERCLAIM
(Non Jury)

The Defendant, by and through her undersigned counsel, hereby answers the
Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

1. To the extent that paragraphs 9, 13, 20, 23 and 26 require an answer, Defendant denies all the allegations set forth therein and demands strict proof thereof.
2. Defendant admit the allegations set forth in paragraphs 1, 2, 3, 4, 8.
3. Defendant admits so much of paragraph five as alleges that the parties are sisters and the subject property was deeded to them both as tenants in common but denies the remaining allegations set forth in paragraph five and demands strict proof thereof.
4. Answering paragraph seven defendant states that she has a contract with a security company and pays the security company for services on a monthly basis. Plaintiff has not paid for the cost of the security contract, or any other expenses related to the subject property and is, therefore, not on the contract.

5. Defendant denies the allegations set forth in paragraphs 6, 7, 10, 11, 12, 14, 15, 16, 17, 18, 19 21, 22, 24, 25, 27, 28, 29, 30. 31 and demands strict proof thereof.

FOR A SECOND DEFENSE
(Fails to State a Cause of Action)

6. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

7. That the Defendant would show that the allegations of the Complaint fails to state facts sufficient to constitute a cause of action and /or causes of action against the Plaintiff.

FOR A THIRD DEFENSE
(Doctrine of Estoppel)

8. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

9. That the Defendant would show that the Plaintiff is barred by the doctrine of estoppel from asserting claims against this Defendant.

FOR A FOURTH DEFENSE
(Doctrine of Waiver)

10. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

9. That the Defendant would show that the claims of the Plaintiff are barred by the doctrine of waiver.

FOR A FIFTH CAUSE OF ACTION
(Reservation and Non-Waiver)

10. That each and every allegation set forth in the preceding paragraphs hereof

is hereby re alleged and reiterated as fully as if set forth herein.

11. The Defendant does not waive , and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by this Defendant or its counsel during the course of discovery or otherwise.

**FOR A SIXTH DEFENSE
(Statute of Limitations)**

12. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

13. The Defendant would show by the claims of the Plaintiff are barred by the applicable Statute of Limitations.

**AND BY WAY OF COUNTERCLAIM
(Adverse Possession)**

14. That each and every allegation set forth in the preceding paragraphs hereof is hereby re alleged and reiterated as fully as if set forth herein.

15. The Defendant is a citizen and resident of Chatham County, Georgia.

16. The Plaintiff, upon information and belief, is a citizen and resident of the District of Columbia.

17. The property which is the subject of this dispute in located in Beaufort, County, South Carolina.

18. All parties and the subject matter of this litigation is properly subject to the jurisdiction of this Court

19. The Defendant Frieda McDew Shorter inherited the disputed property

along with two adjacent parcels on May 14, 1979. Since that time Defendant Frieda McDew Shorter has exercised exclusive control over the subject property, maintained the property, and paid all property taxes on the property in a manner that is continuous, open, notorious, adverse and hostile.

20. As a result of Defendant's continuous, open, notorious, adverse and Hostile exercise and control over the subject property for the statutory period, without exception, Defendant has acquired all subject property by adverse possession pursuant to S.C. Code of Laws § 15-67-10 et seq. 1976 as amended.

21. Defendant prays that this honorable court grant judgment against Plaintiff on all causes of action and grants judgment in favor of Defendant on her counterclaims and awards Defendant deed to all subject property.

**FOR A SECOND CAUSE OF ACTION
Unjust Enrichment / Quantum Meruit**

22. The Plaintiff re alleges each and every allegation in Paragraphs 1 through 20 of this Complaint as if stated verbatim herein.

23. The Defendant Frieda McDew Shorter has made all payments relating to the maintenance and upkeep of the subject property since Mary McDew passed away in 2007 despite the fact that the Plaintiff Stephanie McDew Shoumacher and Frieda McDew Shorter inherited the property as joint tenants. The financial expenditures include but are not limited to all payments for the maintenance, upkeep, utilities, property taxes, insurance and storm damage repairs.

24. By virtue of making all payments necessary payments to insure that the property remained in the parties' possession and remained a viable asset the defendant

Frieda McDew Shorter bestowed a benefit upon the Plaintiff Stephanie McDew Shoumacher. The Plaintiff, Stephanie McDew Shoumacher, was aware that all necessary payments were being paid by Frieda McDew Shorter and despite numerous demands for contribution, Stephanie McDew Shoumacher has refused and continues to refuse to pay any expenses related to the subject property.

25.. The payments made to maintain the subject property and the benefits which flow there from have been received, accepted and realized by Stephanie McDew Shoumacher and continue to realize, the benefit of said payments and, under the circumstances herein, it is inequitable for said Plaintiff to retain the benefits thereof without paying the reasonable value thereof. The Defendant Frieda McDew Shorter seeks reimbursement of one half all expenses she has paid to maintain the subject property as well as prejudgment, interest, attorneys fees and costs of this action.

WHEREFORE, having fully answered the Complaint of the Plaintiff this defendant prays as follows:

- a. That the Plaintiffs claims be dismissed, as to the defendant with costs to this Defendant.
- b. That this Defendant be granted judgment against this Plaintiff and such other and further relief as is deemed just and proper.

FINN LAW FIRM, PC

By: S/ Thomas J. Finn
Thomas J. Finn
P.O. Box 6003
Hilton Head Island, S.C. 29938

(843)682-3555
Attorney for the Plaintiff

This 12th day of March, 2019
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2016-CP-07-02274

STEPHANIE M. MCDEW a/k/a)
STEPHANIE MCDEW)
SCHOUMACHER,)

Plaintiff,)

vs.)

FRIEDA P. MCDEW a/k/a FRIEDA)
MCDEW SHORTER,)

Defendant.)

PLAINTIFF'S REPLY TO
DEFENDANT'S AMENDED
COUNTERCLAIM(S)

Plaintiff, by and through her undersigned counsel, responds to the Defendant's Counterclaim(s) as follows:

1. To the extent Paragraph 14 requires a response, Plaintiff denies the allegations therein.
2. Plaintiff admits the allegations in Paragraph 15 of Defendant's Answer and Counterclaim.
3. Plaintiff admits the allegations in Paragraph 16 of Defendant's Answer and Counterclaim.
4. Plaintiff admits the allegations in Paragraph 17 of Defendant's Answer and Counterclaim.
5. Plaintiff admits the allegations in Paragraph 18 of Defendant's Answer and Counterclaim.

6. Responding to Paragraph 19, Plaintiff admits that both Frieda McDew Shorter and the Plaintiff were deeded the disputed property along with two adjacent parcels on May 14, 1979. Plaintiff also admits that Defendant Frieda McDew Shorter exercised exclusive control over the subject property in a manner that was continuous, open, notorious, adverse, and hostile from June 2009 until October 2017. Plaintiff denies the remaining allegations in Paragraph 19.

7. Plaintiff denies the allegations of Paragraph 20.

8. Responding to Paragraph 21, Plaintiff denies that Defendant is entitled to any of the relief requested.

9. To the extent Paragraph 22 requires a response, Plaintiff denies the allegations therein.

10. Responding to Paragraph 23, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of Defendant's allegations concerning payments and maintenance of the Property since 2007 and, therefore, denies the same. Plaintiff specifically denies that the parties inherited the property as joint tenants. Plaintiff denies the remaining allegations of Paragraph 23.

11. Plaintiff denies the allegations of Paragraph 24.

12. Plaintiff denies the allegations of Paragraph 25.

13. Responding to the paragraph beginning with "WHEREFORE", Plaintiff denies that Defendant is entitled to any of the relief requested.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

14. Defendant's Counterclaim(s) fails to state facts sufficient to constitute a cause of action and, therefore, must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

15. Defendant's Counterclaim(s) are barred by the applicable statute(s) of limitations and repose.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

16. Defendant's Counterclaim(s) may be barred by the equitable doctrine(s) of estoppel, waiver, release, laches, and/or unclean hands.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

17. Plaintiff is entitled to a setoff, or other credit for all amounts paid to the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

18. Plaintiff reserves the right to amend its Reply to supplement any additional defenses that may be revealed during the course of discovery or otherwise.

WHEREFORE, having fully responded to Defendant's Counterclaim(s), Plaintiff prays that the Counterclaim(s) be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

[SIGNATURE PAGE TO FOLLOW]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Andrew M. Connor

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Attorneys for Plaintiff

Charleston, South Carolina

March 15, 2018

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

HEARING BEFORE THE HONORABLE MARVIN H. DUKES III

STEPHANIE M. MCDEW, A/K/A
STEPHANIE MCDEW SCHOUMACHER,

Plaintiff,

vs.

CASE NO. 2016-CP-07-2274

FRIEDA P. MCDEW, A/K/A FRIEDA
MCDEW SHORTER,

Defendant.

HEARING: MASTER IN EQUITY

DATE: MARCH 18, 2019

TIME: 10:00 AM

LOCATION: BEAUFORT COUNTY COURTHOUSE
BEAUFORT, SOUTH CAROLINA

REPORTED BY: CHERIE J. ANDERSON, RMR, RPR, CRR
NCRA REGISTERED MERIT REPORTER
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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF

NELSON MULLINS RILEY & SCARBOROUGH, LLP
BY: ANDREW M. CONNOR
BY: MATTHEW W. ORVILLE
151 Meeting Street, 6th Floor
Charleston, SC 29401

ON BEHALF OF DEFENDANT

FINN LAW FIRM, P.C.
BY: THOMAS J. FINN
38 New Orleans Road, Suite D4
Hilton Head Island, SC 29928

ALSO PRESENT: Stephanie McDew Schoumacher
Frieda McDew-Shorter
James Hackney
Edgar L. T. Gay
Henri Kirsten

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I N D E X

- - -

STEPHANIE McDEW SCHOUMACHER

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EDGAR L. T. GAY

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FRIEDA McDEW-SHORTER

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PLAINTIFF'S EXHIBITS

EXHIBIT NO.	IDENTIFIED/ADMITTED

Exhibit No. 01	5/14/17 Deed 15/17

(Plaintiff's Exhibit No. 01 was pre-marked by
Mr. Connor.)

DEFENDANT'S EXHIBITS

EXHIBIT NO.	PAGE

Exhibit No. 01	ADT Information Sheet 146
Exhibit No. 02	Expenses by Year 157
Exhibit No. 03	Detailed Expense List 157
Exhibit No. 04	Brashears Depo Transcript 206
Exhibit No. 05	Carla Nettles Depo Transcript 206

(All exhibits were filed with the Clerk of
Court on 3/18/19.)

1 questions your attorney may have.

2 STEPHANIE McDEW SCHOUMACHER

3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CONNOR:

7 Q Ms. Schoumacher, why don't you tell me a
8 little bit about why you're wearing sunglasses today.

9 A Because I had a neurological condition that
10 put me in the hospital about a year ago, in critical
11 condition, affected my eyesight, and so I've been
12 told to wear glasses that are tinted green for that
13 reason and also to keep air from coming into my eyes.
14 I actually lost my sight for a period of time: about
15 a year.

16 Q Okay. And we're certainly happy to make that
17 accommodation for you.

18 When were you born?

19 A March 5th, 1951.

20 Q Where?

21 A In Savannah, Georgia.

22 Q And who were your parents?

23 A Dr. Stephen and Mary McDew.

24 Q And are they still living?

25 A No.

1 Q When did your parents die?

2 A My dad died in 1981; my mom died in 2007.

3 Q Do you remember the calendar dates when your
4 parents died?

5 A My dad died October 31st, 1981; my mom died
6 March 17th, 2007.

7 Q So just 12 years ago yesterday then?

8 A Yes.

9 Q Do you have any siblings?

10 A My sister is my only sibling.

11 Q And what is her name?

12 A Frieda.

13 Q And she's the defendant?

14 A Yes.

15 Q Where did you go to high school?

16 A Beach High School.

17 Q And where is that?

18 A In Savannah, Georgia.

19 Q And what year did you graduate?

20 A 1969.

21 Q Did you get any special honors or anything
22 like that when you were in high school?

23 A I was valedictorian of my class.

24 Q Congratulations.

25 A Thank you.

1 largest in the country. Ruder & Finn was the name of
2 the firm. I started as an account executive and was
3 promoted up through the ranks to become vice
4 president.

5 I left the firm. I was hired away by a client
6 and worked with that client -- it was a computer
7 company -- for a number of years, and then I went to
8 work as director of public affairs for an economic
9 think tank in Washington, D.C. called the Council on
10 Competitiveness.

11 And from there, I received a presidential
12 appointment with the Clinton Administration assigned
13 to the Department of Commerce, and I worked there for
14 a period of time.

15 And following that job, I started my own
16 public relations firm.

17 Q And where do you live now?

18 A In Washington, D.C.

19 Q We're here today because of a case you brought
20 against your sister involving a piece of property.
21 What piece of property are we talking about today?

22 A 17 Bradley Beach Road.

23 Q And tell me a little bit about that property.
24 What does it look like? What does it involve?

25 A There are three lots with the house in the

1 center lot.

2 Q Who owns that house?

3 A My sister and I do.

4 Q How did you come to own that house?

5 A My mom and dad deeded it to us in 1979.

6 Q All right, Ms. Schoumacher. I've handed you
7 what we've marked as Plaintiff's Exhibit 1. Do you
8 recognize this document?

9 A I do. I can't read it, though.

10 Q What is this document?

11 A This is the deed.

12 Q Okay. And is this the deed by which your
13 parents deeded you and your sister the property that
14 we're talking about here today?

15 A Yes.

16 Q And you said you're having a hard time reading
17 it?

18 A I'm sorry.

19 Q That's okay. If it is dated May 14th of
20 1979, does that jive with your memory?

21 A Yes.

22 Q And on the second page, I know you might not
23 be able to read it now, but it says, deeded to Frieda
24 P. McDew and Stephanie M. McDew, their heirs and
25 assigns, forever.

1 So that's deeded to your sister and you,
2 right?

3 A Yes.

4 Q Is there any other qualifying language there
5 about percentage of ownership or form of ownership or
6 anything like that that you know of?

7 A No.

8 Q And going further, that last paragraph on the
9 second page, the last paragraph says, and subject
10 further to a life estate and each of the grantors,
11 S.M. McDew, Jr. -- is that your father?

12 A Yes.

13 Q -- and Mary McDew -- that's your mother?

14 A Yes.

15 Q -- reserving such property heretofore
16 described to their use for any purpose whatsoever
17 without reservations or restrictions for their lives
18 and for the life of the survivor of them.

19 Is that your memory of what this deed says?

20 A Yes.

21 MR. CONNOR: Okay. Your Honor, at this time
22 I'd ask that the Court admit Plaintiff's Exhibit 1.

23 THE COURT: All right. That would be
24 1 without objection; is that correct?

25 MR. FINN: No objection.

1 THE COURT: Okay.

2 Q Now, since 1979, who first took care of the
3 expenses for this beach house?

4 A My mom and dad.

5 Q Okay. So your mom and dad took care of the
6 expenses until they passed away?

7 A Yes.

8 Q Is that right? So your dad until '81, and
9 then your mom took care of the expenses until
10 March 17th of 2007?

11 A Yes. I helped my mom after my dad died in
12 1981 for a number of years.

13 Q And who took care of the expenses after your
14 mother passed away?

15 A Frieda did.

16 Q Did Frieda ever ask you for help with the
17 bills?

18 A Yes. She sent me copies of bills between 2007
19 and 2009.

20 Q And did you ever pay them?

21 A No.

22 Q Why not?

23 A Because during the time that she was sending
24 me those bills, I discovered two 25,000-dollar
25 withdrawals from the trust fund that my dad had set

1 which -- most of which, except for the taxes, I
2 think, would have been covered by the distributions
3 from the trust.

4 Q Did you raise that issue with Frieda at the
5 time?

6 A I did.

7 Q Did you -- were you able to resolve that
8 issue, or what happened there?

9 A We did resolve that issue. The distributions
10 were ultimately put back into the trust, but it took
11 some effort.

12 Q Okay.

13 A And again, the accounting for the \$50,000 was
14 never provided. I don't have an accounting, to this
15 day, of that money.

16 Q Is that what -- your main reason for not
17 paying the expenses at the time?

18 A That was my main reason, because that money
19 was still outstanding, and I felt that that money
20 would have covered what she was billing me for and
21 beyond.

22 Q Okay. Besides these financial issues you
23 talked about, have you had any issues with Frieda
24 involving the property?

25 A Any -- oh, with regard to access, yes.

1 Q Tell me about that.

2 A In 2009, I came to Savannah for my -- went to
3 Savannah for my 40th class reunion, which was in
4 June. I called Frieda in the spring of that year to
5 tell her that I intended to stay on the island to
6 save money, and Frieda told me that I could not stay
7 at the house. And when I asked her why, she said
8 that she had changed the code and the locks on the
9 house, I would not be able to get in, and I would not
10 be able to get into the house until she was paid what
11 she claimed I owed her.

12 So she barred me from using the house. I
13 wasn't entirely sure that she would have done that to
14 me. I was surprised. So when I was in Savannah, I
15 went over to the island to see if the keys that I had
16 had from my mom, which had always worked, worked in
17 the door. And they did not. So she actually had
18 changed the locks on the door and, I assume, the
19 security code, because I couldn't get in.

20 So we had multiple conversations over the
21 years related to me being able to get into the house,
22 and she remained adamant in her position that she was
23 not going to allow me in until she was paid what she
24 felt she was due.

25 Q Okay. Did you make any attempts to resolve

1 these issues between you and your sister?

2 A The issue of access? All of the issues?

3 Q The financial issues, the issue of access.

4 A Yeah. You know, well, yes, we had
5 conversations about it. I reminded her of wanting to
6 be able to use the house in 2016. We had a huge
7 argument in 2009. We had discussions, that I can
8 recall -- we may have had more, but I can recall
9 discussions in 2010 and 2014. And then in 2016, I
10 wanted to come down with my daughter and
11 granddaughter. It was actually my daughter who
12 wanted to come specifically to be on Hilton Head
13 because of some challenges she was going through in
14 her life.

15 My grandchildren had never seen the home. And
16 I thought that, because the children were involved,
17 that Frieda might relent and allow us into the house.
18 And she did not. We had a huge argument, and she
19 told me it wasn't my house. And that surprised me
20 that her thinking had gone that far to think that it
21 was not our family home anymore; it was her house
22 exclusively.

23 Q Did you ever go through a mediator or a third
24 person to try to get these disputes resolved?

25 A We had mediation as a part of this case.

1 Q Prior to the case.

2 A No.

3 Q Who is Edgar Gay?

4 A Oh. Oh. Okay. When you said that, I thought
5 an official kind of person. That is a financial
6 adviser for our family for many years.

7 Q Is he familiar with this property, to your
8 knowledge?

9 A Yes.

10 Q Did he help go between you and Frieda for some
11 time to try to resolve some of these disputes?

12 A Yes, he did.

13 Q All right. So take me back through this. So
14 it was 2009, and you graduated in '69, so that was
15 your 40th high school reunion?

16 A Yes.

17 Q Was that reunion important to you?

18 A Very important.

19 Q Tell me why.

20 A Well, it was our 40th reunion, so we were
21 all getting older. People were beginning to, you
22 know, move on, pass on. I had special
23 responsibilities at the reunion as valedictorian of
24 my class. And so there was a lot that we had planned
25 to celebrate our class and also to, in a way,

1 memorialize the people we had lost.

2 Q So how did you notify your sister that you
3 were going to come down and planned to use the house
4 on Hilton Head?

5 A I called her.

6 Q How did that conversation go?

7 A Not well.

8 Q Do you remember anything else that she said
9 that we haven't covered yet or it pretty much was
10 what you just related to us?

11 A She was angry about the money that she felt
12 was outstanding. She had sent me bills from 2007 to
13 2009. She and I had not come to terms with the
14 \$50,000 that was taken out of the trust, and she
15 refused to provide an accounting for that, even in
16 2009. My feeling was that the money taken out of the
17 trust -- I was open to whatever was fair, but I
18 wanted to see whether those funds had actually
19 covered some of the bills that I had received from
20 her. And she was not willing to provide that
21 accounting.

22 Q Now, you said Frieda said she had changed the
23 locks and the security code. Did you already have a
24 key to 17 Bradley Beach?

25 A Yes. My mother had given us keys. We all had

1 keys for years.

2 Q Do you remember when she had given you the set
3 that you had at the time?

4 A We had -- my parents started giving us keys
5 after we became adults, you know, over 18. And I
6 don't recall the keys being changed more than maybe
7 once during our adult lives. So there was not sort
8 of a rotation of the keys. We had one set of keys,
9 pretty much, the entire time that worked, maybe two
10 sets at the most.

11 But the set that I had in 2009, I had had for
12 at least ten years, if not longer.

13 Q Okay. And do you remember what the security
14 code was --

15 A Yes.

16 Q -- at the time?

17 A Yes.

18 Q What was the security code?

19 A It was 1031, and I am absolutely certain about
20 that, because my father died in 1981; the anniversary
21 of his death was October 31st, so the first
22 security code on the house was October 31st. I had
23 a conversation with my mom about it. Frieda was in
24 Germany. She didn't come back from Germany until the
25 mid-1990s. And I asked Mom, I said, why did you make

1 the security code the date of Daddy's death? And she
2 said that, first of all, it was a date that we would
3 all remember, which was true; and secondly, it was
4 part of her mourning process.

5 So that is very indelibly etched in my memory
6 because of that conversation.

7 Q And then on that same conversation, Frieda
8 told you that she was not going to give you new keys
9 or the new security code to the property?

10 A Yes. That's correct. I asked her -- after I
11 tried my keys and they didn't work, I asked for a new
12 set of keys and the code, and she told me no.

13 Q So she didn't give you the code over the
14 phone?

15 A No.

16 Q She didn't mail you a set of new keys or
17 anything like that?

18 A No.

19 Q And pursuant to that conversation, she knew
20 that your current keys would not work?

21 A She had to have known, because she changed the
22 locks.

23 Q And then you came down for your reunion?

24 A I did.

25 Q And I guess your reunion was in Savannah,

1 right?

2 A Yes.

3 Q Where did you stay when you came down?

4 A At the Westin Hotel.

5 Q In Savannah?

6 A In Savannah.

7 Q So you drove over to Hilton Head?

8 A (The witness motions.)

9 Q Tell me about that visit.

10 A We had a break, and you know, it doesn't take
11 that long to drive from Savannah to Hilton Head, so I
12 just took some time to run over to the island.
13 Specifically, that was the only reason why I went
14 over there, to try my keys, to see if my keys, you
15 know, worked or not.

16 Q And did you try them?

17 A I did.

18 Q And did they work?

19 A No.

20 Q How long did you sit there and try to get them
21 to work?

22 A A good while, because I was kind of in a state
23 of disbelief about being locked out. So I maneuvered
24 the lock, and I tried, you know, pretty much
25 everything that I tried with my own home in

1 Washington, D.C., and they just simply did not work.
2 It became clear that my key was not the right key.

3 Q Now, do you have -- have you ever had any
4 experience with locks that are difficult?

5 A Yeah, I have a house in Washington that was
6 built in 1939, and I -- when I moved into the
7 house -- I lived there for about 30 years -- I didn't
8 change the original lock on the door, but I put new
9 locks on, deadbolt locks. So I have two locks on my
10 door in Washington. And the older lock is the tricky
11 lock, so you have to -- with that particular lock,
12 you have to put the key in, pull the door up a little
13 bit, and toward you, in order to turn the key and
14 open the door. So I do that every single time I go
15 into my house in D.C.

16 So I did, you know, that kind of maneuver -- I
17 did everything I could think of with the lock on
18 Hilton Head.

19 Q Okay. So did you try the lock long enough to
20 think it wasn't just a difficult lock?

21 A Yes.

22 Q Had you ever had an issue with that lock
23 before?

24 A Never.

25 Q Okay. Do you remember a time when you had

1 seen that lock used before?

2 A Yes.

3 Q Tell me about that.

4 A The last time that I saw the house -- the lock
5 used on the house was in 2006, when I took my mom to
6 Hilton Head to -- for vacation. Frieda said she
7 needed a break, and my mother had had a stroke and
8 needed some care. So we took her to a vacation
9 home -- not our home, but a vacation home, on
10 Hilton Head, and my mom wanted to stop by the house
11 for a minute to pick something up on the way to the
12 vacation home.

13 Q Okay. And so you stopped by the house. Did
14 you operate the lock, or who operated the lock?

15 A Mom did.

16 Q Okay. And did she have any trouble opening
17 it?

18 A No.

19 Q Were her keys the same as your keys that you
20 had in 2009?

21 A Yes.

22 Q How old was your mother at the time?

23 A About 82. It was within months of her
24 passing.

25 Q And describe your -- the physical stature of

1 your mother at the time.

2 A She was kind of frail and small. She was
3 thin, and I would say maybe 5'5 and just a little
4 frail from, you know, health challenges.

5 Q So how long did it take your 80-year-old
6 mother to open that lock in 2006?

7 A Not long at all.

8 Q All right. You said there were -- since 2009,
9 were there any other times when you asked Frieda if
10 you could use the house?

11 A Yes.

12 Q Do you remember when those were?

13 A Well, I don't remember all of the
14 conversations. I imagine -- we didn't have a lot of
15 communication after 2009 because of what had happened
16 in 2009. But I do remember two conversations that we
17 had. We could have had more. The two that I recall
18 were in 2010 and 2014, and actually in 2014, we had a
19 series of communications via email as well as phone.

20 And in 2010, I reminded her that I continued
21 to have a desire to use the house, and her position
22 remained the same: that she was not going to allow
23 me in the house until she was paid what she felt she
24 was due.

25 And the same thing occurred in 2014, which I

1 was surprised about, because in 2014, she had asked
2 me to put the wind, hail, and flood insurance on my
3 insurance policy, and I agreed to do that. And we
4 had a number of discussions around that. And even
5 with that kind of cooperation on my part, she still
6 had not changed her mind.

7 So -- and then in 2016, when I wanted to bring
8 my kids down, we had multiple conversations. I wrote
9 her letters as well. And I also -- because she and I
10 reached an impasse, I ultimately hired an attorney to
11 write her two letters saying that she and I were
12 co-owners of the property and that she was not
13 legally entitled to bar me from the property. And
14 she ignored the letters from that attorney.

15 Q What was the significance of that 2016 trip to
16 you? Why did that trigger the hiring of an attorney?

17 A Well, there are a couple of reasons, but the
18 primary reason -- well, the two major reasons were,
19 my children were involved. It was one thing for her
20 to bar me from the house for many years, but then to
21 bar her niece and her two grandnieces -- who she's
22 never met -- from the home -- and that's our family
23 home -- really affected me greatly. I was dismayed
24 by that.

25 I've forgotten the other reason. I apologize.

1 There --

2 Q That's okay.

3 A There -- but no. The other reason is
4 important, too. I can't -- and I'm sorry. So she
5 blocked Carrie -- I'll think of it. My -- I'm tired.
6 My brain is not working.

7 Q When did you finally get access to the
8 property?

9 A In 2017, with the consent order from the
10 Court.

11 Q Okay. And at that time, did you get a set of
12 keys to the property?

13 A Yes.

14 Q And the security code?

15 A Yes.

16 Q Do you remember what the new security code is?

17 A I remember the code that I was given was 1223.

18 Q And is there any significance to that -- those
19 numbers?

20 A Well, the significance that I read into it
21 when I received it was that's my mom and dad's
22 anniversary. They got married on December 23rd.
23 That was -- that was my interpretation of the
24 security code.

25 Q Okay. So you said 1223?

1 THE COURT REPORTER: I'm sorry. It's hard to
2 hear.

3 THE COURT: Mr. Finn, if you-all could.

4 Go ahead, ma'am. Answer the question, if you
5 remember what the question was.

6 Q I'll reask. So the new code is 1223; is that
7 right?

8 A That's the code I was given.

9 Q And you said the significance of that is it's
10 your parents' anniversary?

11 A My parents got married on December 23rd,
12 1940-something. Yeah.

13 Q And that's different than the old code, which
14 you said was 1031?

15 A The old code was 1031, the anniversary of my
16 father's death.

17 Q Now, we talked a little bit about the
18 financial reasons and the questions you had which led
19 to you not reimbursing your sister for some of the
20 expenses back in 2007, '8, and '9. What was the
21 reason for continuing to not pay her the expenses
22 since then?

23 A Well, there were two reasons. One is Frieda
24 was getting distributions from our trust without my
25 knowledge while she was sending me expenses early on

1 until I discovered that she was still receiving those
2 distributions, and as I may have said -- I can't
3 remember -- I thought that those distributions would
4 have covered some of those expenses. Then, after at
5 least -- at least some of them. Most of them, I
6 believe.

7 But after 2009, she blocked me from the house,
8 and I didn't think it was fair of her to ask me to
9 pay for her cable and her telephone and her
10 air-conditioning and her exclusive use of the house
11 when I couldn't use the house. I didn't think it was
12 fair for her to ask me to pay half of those things
13 when she was keeping me from using the home.

14 Q Okay. So during that time, from June of 2009
15 until October of 2017, when you got keys through the
16 consent order, were you able to go to the property?

17 A I could, you know, see it from the outside. I
18 couldn't go in.

19 Q So you were not able to go into the property?

20 A No.

21 Q You didn't use any of the electricity at the
22 property?

23 A No.

24 Q Didn't use any of the water in the property?

25 A No.

1 Q You didn't watch any TV in the property?

2 A No.

3 Q Now, if this is -- if this was your house or
4 at least partly your house, why didn't you just call
5 a locksmith or break in?

6 A I didn't want to cause a scene. There were a
7 couple of reasons. Well, and that's the big one. I
8 didn't want to cause a scene; I didn't have the
9 security code; my name was not on the contract; and I
10 felt that if I had hired -- because I threatened
11 to -- I threatened Frieda at one point to break into
12 the house. So I actually did think about that, and I
13 said that to her, thinking that I wouldn't get
14 arrested for breaking into my own home.

15 But I didn't want to cause a scene; I didn't
16 want the police to come when I could not take the
17 alarm off of the house; I didn't want to have to
18 explain all of that to ADT. And I felt Frieda would
19 come over and there might be a confrontation. I
20 wasn't entirely certain, you know, I couldn't be
21 cited for disturbing the peace or something.

22 So I thought it would have been a very
23 complicated matter for me to just break into the
24 house with the use of a locksmith.

25 Q Okay. So then I guess that raises the next

1 question is, why did you wait until 2016 to bring
2 this case?

3 A That's, you know, the other part that I
4 just -- that I had forgotten earlier. It was my
5 daughter, and Frieda told me that it wasn't my house;
6 and in 2016, the fact that she barred my family, you
7 know, and as well as myself, and she said to me in a
8 conversation -- and I wrote her about that that very
9 same day. She has a copy of that letter that I've
10 shared with each of you. I said, when you told me it
11 wasn't my house, I was shocked and dismayed by the
12 statement that you made, and I just felt -- it's --
13 it alarmed me, and I felt I needed to do something
14 about the situation, because she had gone so far as
15 to think that I no longer was an owner of the home.

16 So it was no longer that she was just barring
17 me from the home; she was trying to take the home
18 away from me, and that's why I brought the case.

19 However, I did try to work with her before I
20 brought this case. You know, I called her multiple
21 times; I wrote letters; I hired that attorney to
22 write two letters; I did everything that I knew how
23 to do to try to resolve matters between the two of us
24 before bringing the case. And I said to her, in a
25 letter, you -- if you and I can't work this out, I

1 have no choice but to bring a case, because I can't
2 use the house, and now my family can't use the house,
3 and now you're saying it's not even my house.

4 Q Now, tell me a little bit about these
5 expenses. I guess, have you paid any expenses since
6 your mother died regarding this house?

7 A No.

8 Q Tell me a little bit -- do you owe the
9 expenses? Do you have an opinion on that?

10 A I think, you know, I owe my fair share of the
11 taxes. Again, you know, forgive me. You know, these
12 neurological issues can come into play when I'm under
13 a lot of stress. I don't think it's fair for me to
14 pay the expenses of the things that she does in her
15 use of the home. I didn't think that after 2009. I
16 still have a concern about what happened with the
17 50,000. It may seem -- I don't know -- crazy, but
18 the fact that \$50,000 was taken out of our trust, and
19 no one said anything to me about it, that still
20 bothers me.

21 And the fact that I still haven't received an
22 accounting from Frieda for that, that still bothers
23 me. And I think that that should be accounted for.
24 I think, to this day, that should be accounted for.
25 It never was.

1 me bills for for 2000 and 2004, at the same time that
2 those withdrawals are made.

3 Q You are justifying not paying any of the bills
4 between 2007 and 2009 based upon two 25,000-dollar
5 withdrawals from the trust account to your mother?

6 A There were a lot of things that were going on
7 during the time. What I was looking for was openness
8 and transparency regarding our financial situation.
9 I mentioned to you in my deposition that one of the
10 things that concerned me had to do with my mom's will
11 and the fact that my daughter and I were excluded
12 from my mother's will within months of her passing.
13 My mother had had the same will that included her two
14 daughters and her two granddaughters -- she only had
15 the four of us as direct heirs -- for 25 years; and
16 then suddenly, within months of her passing, her will
17 is changed to exclude me and my daughter, and her
18 name is written, Mary, M-C-D-O, not M-C-D-E-W, and
19 that didn't make any sense to me, either.

20 So there were a lot of things that were going
21 on that I had questions about, and I just wanted to
22 talk. I just wanted to talk and figure out what was
23 fair, because I felt that what was being done was not
24 fair to me.

25 Q Okay. And that's certainly what we're trying

1 if you got in, if the key worked that time?

2 A I mean, if she hadn't made any changes, I
3 always had access to the code and the key, so I
4 wasn't worried about that. If she hadn't made any
5 changes, it wouldn't have been an issue.

6 Q So you went in 2009, you tried the key,
7 couldn't get in, and that was the end of that.

8 And then the next instance was 2010. You had
9 a conversation with your sister?

10 A Yes.

11 Q And then another one in 2012 or '14?

12 A '14.

13 Q And on both those occasions, you -- your
14 testimony is you got the same response from your
15 sister: that you can't use the home until you pay
16 the expenses?

17 A Until I pay her what she claimed I owed her,
18 yeah.

19 Q So up until 2014, you've never paid any of the
20 expenses on the home since your mother died. Is that
21 correct?

22 A That's correct.

23 Q Okay. Not anything? You're not claiming that
24 you paid anything relating to that house since 2007?

25 A Correct.

1 the house?

2 A I didn't want to cause a scene by breaking
3 into the house. I didn't want the cops to get
4 involved because I didn't have the alarm, the code to
5 the alarm system. I knew -- I have ADT at my house
6 in Washington, and I know that ADT calls the cops,
7 and I didn't want to cause that kind of scene. I
8 didn't want Frieda -- Frieda would have been notified
9 as the person on the contract. I didn't want her to
10 come over and confront me about breaking into the
11 house. I didn't want the neighbors to know. I
12 didn't know if I might get cited for disturbing the
13 peace, doing that year after year, if I chose to
14 break into the house year after year.

15 It would have been a very complicated
16 situation, and I didn't want to embarrass my family,
17 frankly, that way. So there were multiple reasons
18 why I didn't do that.

19 Q But you don't think it would have been
20 reasonable as an intelligent lady to maybe have a
21 copy of the deed and maybe to notify the sheriff and
22 to say, look, I have -- this is my house; here's the
23 deed?

24 A I understand what you're saying.

25 Q I want to get into my house.

1 A Yeah, I thought about that, but ADT was a big
2 part of that. You know, not having the code and
3 having the cops called, there was nothing I could
4 have done about that. That would have -- we would
5 have had to go through all of that commotion, and
6 then the locks would have to be changed because
7 Frieda and I were at odds with one another. I'm sure
8 she would have changed the locks again. If I had
9 changed them -- if I had come down and broken into
10 the house and changed the locks, she would have
11 changed them again; I would have to break in again.
12 It would have become a vicious cycle.

13 And I think I said to you in my deposition, I
14 only have seven days of vacation, so to start a
15 vacation -- which is supposed to be relaxing and
16 rejuvenating -- that way and to have to go through
17 all of that on vacation and embarrass my family and
18 risk getting cited for disturbing the peace and who
19 knows what -- I'm not a law enforcement official of
20 any sort, so I don't know what you can be cited for
21 in doing something like that. It did not make sense
22 to me to do that.

23 Q But the only time you tried to physically get
24 into the house was in 2009. You tried to use the
25 key; it didn't work. That's accurate?

1 A Correct -- well, yes. I mean, you can do it
2 with cell phones now. You can have an ADT system via
3 a cell phone.

4 Q You were -- really, the first and only
5 instance where you were physically barred from the
6 house, according to your testimony, was 2009,
7 correct?

8 A I wouldn't say it was the only. I would say
9 it was the first; I would say it was the beginning of
10 me being barred from the house.

11 Q But it's the only time you actually tried to
12 get into the house that you had difficulty?

13 A Yes.

14 Q Okay.

15 A Well, yeah.

16 Q Right. Because other than that, you never
17 tried again?

18 A Correct.

19 Q Okay. And that was in 2009, and you filed an
20 action claiming that you were ousted in 2016,
21 correct?

22 A I don't think I claimed that I was ousted in
23 2016. I mean, you're asking me a legal question now,
24 but --

25 Q But you filed this action, this lawsuit, when

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1 aren't you?

2 A The issues of the 50,000-dollar --

3 Q Yes.

4 A No. I brought -- I'm not trying to solve
5 those issues. I'm saying that that's the reason why
6 I didn't give Frieda the money that she was asking me
7 for between 2007 and 2009..

8 MR. FINN: Okay. I don't have any further
9 questions, Your Honor.

10 THE COURT: Any redirect?

11 MR. CONNOR: Just a few minutes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. CONNOR:

14 Q Ms. Schoumacher, we spent a lot of time on
15 this \$25,000, the \$50,000. Are you claiming any of
16 that money in this case?

17 A No.

18 Q Okay. Are you using that solely to explain
19 why you didn't trust your sister?

20 A No.

21 Q I'm sorry. What?

22 A I mean, that's not the only reason why I
23 didn't trust her. I didn't trust her also because
24 she continued to take the distributions from our
25 trust fund for at least a year after Mama died. She

1 A That's right.

2 Q Okay. You live in -- where do you live?

3 A In Washington, D.C.

4 Q Okay. Were you going to make a special trip
5 to the property just to try a key?

6 A No. And especially not when Frieda was
7 continuing to tell me that I could not get into the
8 house. It would have been a fool's errand.

9 Q So she told you one time that you weren't
10 going to get into the house, the first time in 2009?

11 A Right.

12 Q And you went, and you weren't -- you couldn't
13 get into the house?

14 A Correct.

15 Q So you weren't going to repeat that over and
16 over again, were you?

17 A Correct.

18 MR. CONNOR: Okay. That's it.

19 THE COURT: All right. I don't have any
20 questions of this witness. Thank you so much. You
21 can go back to your seat over there, if you'd like.

22 This might not be a bad time for -- let's
23 call it a 15-minute break.

24 MR. CONNOR: That's good, Your Honor. I was
25 going to ask for a break.

1 (A recess was taken.)

2 THE COURT: Back on the record. Call your
3 next witness, please.

4 MR. CONNOR: Your Honor, we call Edgar Gay to
5 the stand -- or the chair.

6 THE COURT: Yes. That's right.

7 (Edgar Gay was sworn in by Judge Dukes.)

8 THE COURT: Please state your whole name for
9 the record, please.

10 THE WITNESS: Edgar Lackland,
11 L-A-C-K-L-A-N-D, Taylor, T-A-Y-L-O-R, Gay, G-A-Y.

12 THE COURT: Thank you so much. Please
13 proceed.

14 EDGAR L. T. GAY
15 having been first duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CONNOR:

19 Q Mr. Gay, when were you born?

20 A April the 7th, 1947.

21 Q Where?

22 A Savannah, Georgia.

23 Q Do you still live in Savannah?

24 A Yes.

25 Q Have you lived there your whole life?

1 A Yes.

2 Q Where did you go to school in Savannah?

3 A Charles Ellis Elementary School, Savannah
4 Country Day for high school.

5 Q Did you go to college?

6 A Yes.

7 Q Where did you go?

8 A Emory University in Atlanta.

9 Q What degree did you get?

10 A A degree -- bachelor's degree in economics.

11 Q Do you remember what year you graduated?

12 A I think '67, might have been '68. My father
13 died somewhere in there. I had to drop out for a
14 quarter or so. But it was '67 or '68, one of the
15 two.

16 Q What did you do after you graduated from
17 Emory?

18 A Went to work for the Citizens National Bank in
19 Savannah.

20 Q And how long did you work there?

21 A I worked there about two years.

22 Q What did you do after that?

23 A Then I joined my former boss at CNS Bank to
24 form an investment advisory firm, which we did. And
25 I worked with him for six years and then stopped --

1 him full-time, but upon his death, Ms. McDew, Mary
2 McDew, engaged our firm to first help settle his
3 estate and then to administer that trust and to
4 manage her personal investments.

5 Q Okay. And in addition to financial
6 investments, were you also privy to Dr. McDew's
7 property investments?

8 A Yes.

9 Q And are you familiar with the property at
10 17 Bradley Beach Road?

11 A Yes.

12 Q Tell me a little bit about how you came to
13 learn of that property.

14 A Well, he just -- he -- Dr. McDew told me that
15 he had -- you know, he purchased that a number of
16 years, you know, before, and they were one of the
17 first families to be over at Hilton Head. And that
18 was really about all he really told me about it, you
19 know.

20 Q Okay. And we're here today with a dispute
21 between Stephanie and Frieda. Do you handle any of
22 their investments?

23 A Yes, I handle investments for both of them.

24 Q And are you aware that they own this property
25 now at 17 Bradley Beach?

1 A Yes.

2 Q Okay. And obviously we're here because
3 there's a dispute between them. Are you aware of
4 that dispute?

5 A Yes.

6 Q When did you first start to learn about that
7 dispute?

8 A I guess shortly after Mrs. McDew passed away.

9 Q And what was your involvement? Did you have
10 any involvement?

11 A I attempted for a while to try to mediate and
12 get them to come to some, you know, amicable
13 arrangement, but was not successful.

14 Q Okay. So when you did that, would you talk to
15 one, talk to the other one, talk to both, try to get
16 them to talk to each other? What would you do?

17 A Yeah, mostly would talk to one and then talk
18 to the other and suggest they try to, you know, work
19 it out amongst -- family matters are, you know, hard
20 for someone on the outside to really be able to give
21 you a lot of good advice.

22 Q And through the course of those dealings, did
23 you learn the ins and outs of their dispute with one
24 another?

25 A Pretty much, yes.

1 Q Tell me, from your perspective, what's the
2 dispute about?

3 A The dispute about Frieda paying all the bills
4 and Stephanie not paying any of the bills for the
5 house.

6 Q Okay. Is there any issue with access to the
7 property?

8 A I was made aware that Stephanie had tried to
9 come to the house for a reunion for her high school
10 and couldn't get in the house; the locks had been
11 changed, and the security code was changed.

12 Q And going back and forth between the two
13 sisters, what did Frieda have to say about that
14 portion of the dispute?

15 A Well, that she just felt like since she was
16 not the full owner of the property that Stephanie
17 ought to be paying some of the bills and/or
18 reimbursing for some of the bills and that she hadn't
19 done that so far.

20 Q Okay. Did Frieda ever make any comment to you
21 about whether or not Stephanie could get into the
22 house?

23 A I don't believe she told me that, that
24 Stephanie couldn't.

25 Q Okay. Did Frieda ever mention to you that she

1 told Stephanie that if she paid the expenses, she
2 would let her into the house; but if she didn't, she
3 would not grant her access to the house?

4 A That's my understanding of what happened,
5 yeah.

6 Q Did Frieda tell you that?

7 A She may have said something like that. It
8 sort of became known.

9 Q Do you know whether or not Frieda ever told
10 you, speaking about Stephanie, I told her if she
11 reimbursed me for the expenses that I have incurred,
12 she can use it. If she doesn't, I am not going to
13 allow her to do it?

14 A That's my understanding of what has
15 transpired.

16 Q So that's what Frieda told you?

17 A Yeah.

18 Q And she would have told you that sometime
19 shortly after Mrs. McDew's death?

20 A It was later on, after -- I think it had been
21 quite a while that she had not been paid or
22 reimbursed for the expenses she had paid.

23 Q Do you know how long? Maybe a couple years?

24 A Yeah, something like that.

25 Q So 2009 would sound about right?

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1 A Probably. Probably.

2 Q Did you have any involvement -- well, were you
3 able to help them resolve the dispute?

4 A Unfortunately not.

5 Q Okay. And did your involvement in-between the
6 sisters, at least regarding this dispute, kind of
7 wane over time?

8 A Kind of what?

9 Q Wane. Did you stop helping them out on this
10 issue?

11 A Well, yeah. I saw that I wasn't making any
12 progress and just encouraged them to work something
13 out amongst themselves, and it became less and less a
14 subject that ever came up, you know. And I doubt if
15 I -- I'm trying to think, but I don't think I've
16 really talked to anybody about it other than the two
17 of them in the last -- well, nobody other than the
18 two of them in the last couple of years. It just
19 didn't come up.

20 MR. CONNOR: All right. That's all the
21 questions I have.

22 THE COURT: Thank you.

23 CROSS-EXAMINATION

24 BY MR. FINN:

25 Q Good afternoon, Mr. Gay. My name is Tom Finn,

1 and as you know, I represent Frieda McDew-Shorter.

2 Sir, you don't have any specific knowledge
3 that the lock on the subject residence at 17 Bradley
4 Beach has ever been changed?

5 A No.

6 Q Is that correct?

7 A No. I've just been told that.

8 Q And you've been told that by Mrs. Schoumacher?

9 A And by Frieda.

10 Q What exactly did Frieda tell you with respect
11 to the actual -- whether the lock was changed or not,
12 and when was that conversation?

13 A It would have been sometime in 2009, I guess,
14 late 2009. And she would have said, you know, I'm
15 going to change the locks if Stephanie doesn't pay --
16 you know, reimburse me for the expenses.

17 Q Okay. So she said in 2009, I'm going to
18 change the locks if she doesn't get reimbursed for
19 the expenses?

20 A I'm not sure if she told me that before or
21 whether she told me afterwards, but it was
22 contemporaneously, anyway.

23 Q Okay. So sometime either before or after
24 2009, Frieda told you that she was going to change
25 the locks if she doesn't get reimbursed?

1 A I would say, yeah.

2 Q That's accurate --

3 A That's accurate.

4 Q -- to your recollection?

5 Okay. You don't know whether that was ever
6 performed, though? Whether the locks were changed or
7 not?

8 A Well, I don't know that they were changed, but
9 when Stephanie couldn't get in, they must have been.

10 Q Right. Well, that's an assumption, sir.

11 A Right.

12 Q We can't deal in those. So you know that
13 Frieda said, if she doesn't pay me, I'm going to
14 change the locks?

15 A Uh-huh.

16 Q Correct?

17 And then you heard from Stephanie that she
18 couldn't get in when she tried to get into the house?

19 A Yes.

20 Q Is that a fair assessment of what you know
21 about the lock situation?

22 A Correct.

23 Q Okay. You don't have anything else to add?

24 A No.

25 Q Okay. So again, you don't know if the lock

1 in this case and to rule that the defendant is
2 judicially bound by paragraph 19 to her
3 counterclaim.

4 THE COURT: All right. Let's see. Amended
5 answer and counterclaim filed March 15th. Is
6 that right? This is Mr. Finn's counterclaim,
7 paragraph 19. I don't know if there's any issue
8 with the paragraph other than it exists, of course.

9 MR. FINN: Your Honor, we're talking about
10 our answer and counterclaim?

11 THE COURT: I believe so, yes, sir.

12 MR. FINN: Paragraph 19?

13 THE COURT: That's correct.

14 MR. FINN: Judge, for the record,
15 paragraph 19 says, Defendant prays this Honorable
16 Court grant judgment against the plaintiff on all
17 causes of action and grants judgment in favor of
18 the defendant on her counterclaims and awards
19 Defendant deed to all subject property.

20 MR. CONNOR: I'm looking at the amended
21 answer and counterclaim filed in March. It starts,
22 the defendant, Frieda McDew-Shorter.

23 And all we're asking, Your Honor, is that the
24 defendant be barred from introducing any testimony
25 that is -- or evidence that is contradictory to

1 that paragraph, especially the last sentence, which
2 says, since that time -- speaking about 1979 --
3 Defendant, Frieda McDew-Shorter, has exercised
4 exclusive control over the subject property,
5 maintained the property, and paid all property
6 taxes on the property in a manner that is
7 continuous, open, notorious, adverse, and hostile.

8 THE COURT: I tell you what, rather than have
9 a ruling on that, why don't we do this? If her
10 testimony is contrary to that, you're certainly
11 welcome to chime in with an objection or certainly
12 on cross.

13 MR. CONNOR: Yes, Your Honor.

14 THE COURT: So anything else from the
15 plaintiff then?

16 MR. CONNOR: No, Your Honor.

17 THE COURT: Anything from the defendant
18 before we move to the defendant's case?

19 MR. FINN: No, Your Honor.

20 THE COURT: All right, then. Mr. Finn,
21 please call your first witness.

22 MR. FINN: I call Frieda McDew-Shorter.

23 THE COURT: You know where to sit by now from
24 watching everybody else. And please just speak up
25 and try to keep the question and answer separated

1 help them, those children who were having problems,
2 dropping below grade levels, in reading and math, and
3 I would help them. . I had a small staff, and we tried
4 to bring them up to level.

5 Q Okay.

6 A So that's -- that was the position I really
7 retired from.

8 Q And are you married?

9 A I -- I'm a widow, a recent widow, so it's kind
10 of tough, but I'm not married anymore.

11 Q And how about children?

12 A I have three girls, three daughters.

13 Q And where do they live?

14 A My oldest is in Florida, Windermere, Florida.
15 She works for Disney. My middle child is in
16 Baltimore, Baltimore, Maryland. And my youngest is
17 in Portland, Oregon.

18 Q Now, you mentioned that you spent time
19 overseas teaching. At some point, did you retire
20 from teaching?

21 A Yes.

22 Q And what year was that?

23 A 1996. In fact, July 1st, 1996.

24 Q And what did you -- were you married at that
25 time?

1 A Yes.

2 Q That was going to be my question, because
3 Collier Beach makes sense if Collier owned it.

4 A See, mother's maiden name was Bradley. She
5 was Mary Bradley McDew. So --

6 Q So now when your mom lived with you before she
7 passed -- and she passed in 2007?

8 A Yes.

9 Q March 17th of 2007?

10 A March 17th of 2007.

11 Q Did she enjoy the use of the property?

12 A Oh, yes. Oh, yes, she did. And we would go
13 over more frequently. We had to -- you know, it
14 was -- we had to carry all of her paraphernalia, but
15 she loved it. And she'd go in there, and she was
16 happy as a little camper.

17 Q During that time that your mom lived with you
18 up until her passing, who paid the bills on the
19 property?

20 A Well, Mom taught me. She wanted me to know
21 how to handle Hilton Head, so I paid -- I literally
22 paid the bills, but she -- it was not my money.

23 Q Right.

24 A It was her money. But she was teaching me so
25 that I would get to know what Hargray would come in

1 Q When your mom passed away, who took over
2 paying the bills?

3 A I did.

4 Q And what funds did you use to pay those bills?

5 A At this point in time, it was money that was
6 my husband's and mine.

7 Q Okay. And at that time did you request of
8 your sister that she assist with paying the bills?

9 A I did.

10 Q You heard your sister's testimony?

11 A I did.

12 Q Your mom apparently had changed her will and
13 left her estate to you alone. Is that correct?

14 A Yes.

15 Q And was this something you were aware of?

16 A No. I was just as surprised as she was when
17 we went to probate court.

18 Q You had not known that change -- anything
19 about that?

20 A I didn't know.

21 Q You also heard testimony about the two
22 25,000-dollar checks that Mr. Gay and your sister
23 also testified about. Did you have any knowledge of
24 that?

25 A Honestly, I didn't. I honestly didn't. I did

1 husband ever changed the lock on that door?

2 A No. No.

3 Q You have not?

4 A No, we have not. And I think I can speak for
5 him, too.

6 Q Do you know if your mother had ever changed
7 the key -- or the lock on the house while -- during
8 any time that you were familiar with her actions?

9 A Not -- no. I can't speak to before I
10 returned, but when I -- I can say, after I returned,
11 no.

12 Q So that key has been on there since --

13 A Uh-huh.

14 Q -- 1996?

15 A Uh-huh.

16 THE COURT REPORTER: Is that yes? I'm sorry.

17 A Oh, I'm sorry. I'm so sorry.

18 Q I'll try to remind you.

19 A Okay. Yes.

20 Q Now, you've never changed the doorknob
21 physically yourself?

22 A No.

23 Q You never hired a locksmith to change the --

24 A No.

25 Q To your knowledge, your husband never did

1 THE WITNESS: Okay. I did that again?

2 THE COURT REPORTER: You did.

3 THE COURT: If I want to reask the question.

4 Q 12/23 -- was my last question -- was the date
5 of your parents' anniversary?

6 A Yes.

7 Q Has that code -- have you ever changed that
8 security code?

9 A No.

10 Q You have never called ADT and said, I want to
11 change that code?

12 A No, I have never called ADT and said I wanted
13 to change a code.

14 Q So that security pass code has been the same
15 since your mom was alive?

16 A Yes, it has. It's been the same.

17 Q Now, I wanted to draw your attention back to a
18 conversation that was -- there was testimony
19 regarding between your sister and you in spring of
20 2009. Do you recall your sister calling you on the
21 telephone?

22 A Uh-huh. Yes, I do.

23 Q Did your sister inform you that she wanted to
24 stay at the house?

25 A Yes, she did.

1 Q And what did you -- what was that
2 conversation, if you can --

3 A I can't remember the conversation exactly. I
4 know that I was upset; she was upset. I said to her
5 that, you haven't paid anything; what do you mean
6 you're coming? And that was the general gist. And
7 then she was yelling back at me, and I was yelling at
8 her.

9 And I have been really thinking about this,
10 about the changing of the lock. I think I -- and if
11 somebody held a gun to my head, I wouldn't be
12 certain, but I might have said to her, I'm going to
13 change that lock. But I never did, but I think I was
14 the culprit in saying that I would possibly change
15 that lock, you know. And that was sheerly out of
16 anger. I mean out of -- I was upset. I was
17 terribly, terribly upset.

18 Q Did you change the lock?

19 A No, I did not.

20 Q Did you know your sister attempted to get into
21 the house?

22 A No.

23 Q Do you know that now?

24 A I know that now.

25 Q In your experience, has the lock at that

1 particular residence ever given you problems?

2 A Yes, it has given me problems. The salt
3 air -- I don't know if anybody is aware, but the salt
4 air tends to rust. Right now, we have three outside
5 fans on the front porch, and the salt air has ruined
6 the -- what would you call it -- the string or the
7 piece that you pull down to start your fan. So we've
8 had trouble. And Obey would keep a little --

9 Q Who is Obey?

10 A Obey is my husband. My husband. He keep a
11 little W-2 -- WD-40, little -- with the little
12 cylindrical shape so he could pump it into the lock
13 so we could get in, because we had problems from time
14 to time. And mostly when we wouldn't go as often,
15 you know, were times where, you know, we had
16 difficulty. If we went, say, on a Friday and stayed
17 till Wednesday, the lock was fine, you know, because
18 we were using it; but if we went away and didn't come
19 back for weeks, then we had problems.

20 Q So you may have told your sister that you
21 would change the locks?

22 A Yes. I may have told her, yeah.

23 Q Or you were going to change the lock, correct?

24 A Yeah. Yes. Correct.

25 Q In a moment of anger?

1 A Sheerly, yes. Correct.

2 Q But you never did change the lock?

3 A Never.

4 Q And you never did change the security code?

5 A Never.

6 Q Has your sister contributed anything to the
7 maintenance, upkeep, insurance, any of the bills
8 related to taxes, keeping the house or the property
9 at 17 Bradley Memorial Beach going since 2007?

10 A No.

11 Q After the 2009 argument on the phone, are you
12 aware if your sister ever attempted to use the
13 property after that point?

14 A I'm not aware.

15 Q Did she ever ask you about using the property?

16 A Now, I heard today -- she says she asked, and
17 I was trying to recall, after hearing her testimony
18 about her wanting to bring her grandchildren. I
19 simply don't recall that. I don't recall that. We
20 might have had that -- I'm not saying we didn't. We
21 might have had that conversation, but I cannot recall
22 that conversation.

23 Q Would you have known if your sister came down
24 and used the house at any time after 2009?

25 A No, not unless one of the neighbors saw me and

1 summary of what's in that three-ring binder that
2 the appeals court that I'm talking to now can't
3 see, but is really, really big. Is that agreed?

4 MR. CONNOR: Yes, Your Honor.

5 THE COURT: Okay. All right. Well, that's
6 you-all's choice, but it seems like the more
7 detailed summary might make a better exhibit. Up
8 to you-all.

9 MR. FINN: I'm fine with that, Your Honor.
10 It's just backup.

11 THE COURT: Okay. So we've got then
12 Defendant's 2 will be the less detailed, and then
13 3 will be the more detailed summary; is that
14 accurate?

15 MR. FINN: Yes, Your Honor.

16 THE COURT: And everybody is good with that?

17 MR. CONNOR: Yes, Your Honor.

18 THE COURT: No objections. Okay. All right.
19 Great.

20 (Defendant's Exhibit No. 02 and Defendant's
21 Exhibit No. 03 were marked for identification.)

22 MR. CONNOR: And before we move on, Your
23 Honor, at the same time we're doing some
24 stipulations, I believe Mr. Finn and I have agreed
25 to stipulate that during the relevant time period

1 in this case, so from 2009 forward, Ms. Shorter
2 has -- her income has been in the 15 percent tax
3 bracket and either has taken the deduction or could
4 have taken the deduction at that 15 percent benefit
5 level.

6 THE COURT: Does that do me any good without
7 the balance of her tax returns then?

8 MR. CONNOR: Well, Your Honor, if she takes
9 the property tax deduction, she gets a
10 corresponding benefit to her income tax. That's
11 why knowing her tax bracket is helpful. She gets a
12 15 percent deduction benefit through her tax
13 deduction.

14 THE COURT: This is why I have someone else
15 do my taxes, but I'll be happy maybe to get
16 post-trial memos from both parties, if necessary,
17 on that particular issue and maybe others.

18 All right. So that's a stipulation as well;
19 is that correct, Mr. Finn?

20 MR. FINN: Yes, Your Honor.

21 THE COURT: All right. Any other questions
22 of this witness?

23 MR. FINN: I think, Your Honor -- let me --

24 BY MR. FINN:

25 Q Mrs. Shorter, do you know if you have taken a

1 tax deduction on the Hilton Head property at any
2 time?

3 A I'm glad you asked that.

4 Q So am I.

5 A Prior to my -- prior to last year, 2018 -- no.
6 Last year, I filed taxes for the first time by
7 myself. My husband took care of all of the tax
8 situation. That's why he never thought about
9 Hilton Head. Never did. So when I -- after his
10 death, I had to take over that part, too.

11 And I have a good CPA, and I went out and
12 talked to him, and we were just talking, because I
13 was feeling my way through this. And we talked about
14 Hilton Head, and he asked me about Hilton Head, and I
15 gave him the information.

16 And that's why it only shows up in the 2017,
17 because I took over. Obey had nothing -- my husband
18 had -- he didn't deal with -- he didn't deal with
19 Hilton Head at all in the tax picture. So that's why
20 we never -- I guess we never took any write-off for
21 that.

22 Q So just the one year --

23 A Yeah, just the year that I took over, which
24 would have been 2017. I don't -- I don't know if I'm
25 going to do it this year. I don't know. I have to

1 Q Has your husband's death from a financial
2 standpoint changed your ability to carry this
3 property?

4 A Yes, it really has. I've had to just
5 downscale completely.

6 Q Do you think you can continue to carry --

7 A No, I cannot. I cannot continue to carry the
8 load.

9 Q Can you recall a time when you ever physically
10 barred your sister from using or accessing the home
11 at Bradley Beach?

12 A When you say physically, you mean like --

13 Q Yes. "Get out."

14 A No, there has never been that time. We had
15 the discussion on the phone, but physically, no,
16 there's never -- not ever.

17 Q Would it be fair to say that, on the phone,
18 you may have threatened --

19 A I may have threatened it. That would be very
20 fair to say.

21 Q Was that in an effort to try to get her to pay
22 some of the expenses?

23 A Try to get her attention. You know, I mean,
24 it was just very hard. Very difficult.

25 Q Are you aware of what would happen had you not

1 CROSS-EXAMINATION

2 BY MR. CONNOR:

3 Q So you and Stephanie are sisters?

4 A Yes.

5 Q Okay. And your parents' names were Stephen
6 and Mary McDew?

7 A Stephen Maxwell and Mary Leona.

8 Q And they deeded this property at 17 Bradley
9 Beach Road to you and Stephanie?

10 A Yes.

11 Q Have you seen a copy of the deed before today?

12 A No.

13 Q I'll hand you Exhibit 1, if you want to take a
14 look at that. If you have any trouble reading it,
15 just let me know.

16 A You want me to read this whole thing?

17 Q No, absolutely not. Just --

18 THE COURT: Please don't.

19 Q I just want to make sure that you can
20 physically make out the words.

21 A Okay.

22 Q Is that deed dated May 14th, 1979? It may
23 be on the second page. If you pass it back, I can
24 point it out to you.

25 A Yeah, I see it. It's here, the third page.

1 alive, they paid the bills for this property; is that
2 right?

3 A Yes, they did.

4 Q And then your father died October 31st,
5 1981; is that right?

6 A Yes.

7 Q And your mother died March --

8 A March 17th, 19 -- I mean 2007 on
9 St. Patrick's Day. Go ahead.

10 Q Your mother paid the bills up until the time
11 she died?

12 A Yes, she did.

13 Q And after your mother died, you testified you
14 took over paying the expenses for the property?

15 A Yes, I did.

16 Q And at some point, you asked Stephanie to
17 reimburse you for half the expenses?

18 A I did.

19 Q And she didn't pay?

20 A No, she didn't.

21 Q Do you know why she didn't pay?

22 A No. I was privy to her testimony and finding
23 out today why she didn't pay.

24 Q All right. And we have stipulated to these
25 expenses on Defendant's Exhibit 3. Have you had a

1 A She wanted me to come over, I believe. It's
2 been so long ago. I'm calling on what I can
3 remember. And I knew at that point in time -- my
4 husband was sick, and I wasn't going to drop
5 everything and come over there and see to her getting
6 in and settled. I -- and that's about as much as I
7 can recall. I honestly -- I think I'm doing pretty
8 good for my age and going back this far and keeping
9 copious notes, but I can't -- that's to the best of
10 my recollection.

11 Q So during this telephone call, did she want
12 you to come over and let her in and give her the
13 code?

14 A I'm not going to answer that, because I can't
15 give you a definite. I don't recall. That's about
16 all I can say. And this is a courtroom, and I have
17 sworn to tell the truth, so I can't give you a
18 definite on that. I just can't.

19 Q Do you know whether or not you had been able
20 to give me a definite at your deposition?

21 A I probably -- maybe I said that in my
22 deposition. I don't know.

23 Q So if you said that in your deposition, would
24 you --

25 A I'd stick by it. I'd stick by it.

1 Q Okay. So if you said in your deposition, "and
2 she wanted me to, you know, drop everything and come
3 let her in" --

4 A Yeah.

5 Q -- "and give her the code" --

6 A She did. That, I remember. And I wasn't,
7 because my husband was sick.

8 Q And the code she was asking for was this ADT
9 code, right?

10 A Yes.

11 Q And the ADT code you testified to is 12 --

12 A 12231.

13 Q Okay. And the 1 is a command portion?

14 A Off. The last 1 is an off.

15 Q So if you want to arm it, you have to do
16 1223 -- 3, I think, would be arm. Is that your
17 recollection of how it works?

18 THE COURT: That's stay. 2 is away. I've
19 been dealing with ADT for years, so I'm following
20 some of this, but -- I know a lot of it, but --

21 MR. CONNOR: And I have one, and I don't know
22 how to use it, so --

23 A I'm trying to think. When I leave the house,
24 I arm it with 1223 away, and away is -- at night, I'm
25 stay. Away is 3. I think away -- 2 is stay.

1 THE COURT: I might be wrong.

2 Q So it's four digits and then a command,
3 whatever you want it to do?

4 A Yeah. Something like that. You'd think I
5 would remember, having done it over and over again.

6 THE COURT: For purposes of this trial, it's
7 the first four digits that we're really talking
8 about, right? So --

9 Q Do you know if you have to call ADT to change
10 the code?

11 A I've never changed it, so I don't know. I
12 don't know what steps --

13 Q You don't know whether you can change it just
14 on --

15 A I don't know what the steps are. I have no
16 idea.

17 Q Back to this telephone call, you don't
18 remember when this call occurred, do you?

19 A In 2009?

20 Q Is that -- do you --

21 A I'm asking you now. I don't know, no. You
22 ask me again, and I'll just flat-out say --

23 Q Is it possible this telephone call occurred in
24 2009?

25 A Yes, it is possible.

1 Q But you don't exactly recall?

2 A (The witness motions.)

3 THE COURT REPORTER: I'm sorry. Can you
4 answer out loud?

5 A Oh, no. No, I do not exactly recall.

6 Q And when Stephanie called and asked for the
7 keys and the code, you didn't give them to her, did
8 you?

9 A I don't recall a call.

10 Q We said -- we just talked about this telephone
11 call you had --

12 A Uh-huh.

13 Q -- where she asked for you to come let her in?

14 A So you're referring to this -- that call?

15 Q That call. And you said that call could have
16 taken place in 2009?

17 A It could have, yes.

18 Q When that call occurred, you didn't give the
19 keys --

20 A Huh-uh.

21 Q -- to Stephanie?

22 A I didn't go over there.

23 Q So you didn't give her the keys at that time?

24 A I didn't go over there. I did not give her
25 the keys. I stayed with my husband, who was ill.

1 Q You didn't give her the code, either?

2 A I don't remember. I mean, I -- you know, it
3 keeps -- I would assume I didn't. If I didn't give
4 her the keys, I didn't give her the code.

5 Q And you didn't tell her over the telephone
6 what the code was or that it was still the same as
7 all those years?

8 A It's been the same. Why would I -- okay. I
9 don't --

10 Q But you didn't tell her?

11 A No.

12 Q You didn't follow up with her and mail her the
13 keys or send her a letter with the code?

14 A No.

15 Q You never followed up with her, let her know
16 what the security code was, or anything like that,
17 did you?

18 A We didn't communicate, so no.

19 Q And it's your testimony that all of these
20 other dates that have been thrown out, you don't
21 recall those other conversations about the house?

22 A It was -- no, I do not recall them. I learned
23 more today from her testimony than I've ever known
24 before.

25 Q And your sister Stephanie has brought this

1 lawsuit seeking access to the house; is that your
2 understanding?

3 A Yes.

4 Q And after she brought this lawsuit, there was
5 a consent order issued by the Court whereby you gave
6 your attorney the keys to the house and the security
7 code, which he then saw to it that Stephanie got. Is
8 that right?

9 A Yes. It was all in my attorney's hands at
10 that point. When I -- that knock came at my door, I
11 didn't even realize what was happening until I talked
12 to Tom Finn. And he said, yes, you are being sued.
13 I mean, I didn't even know that.

14 Q And your testimony is that you have not
15 changed the locks on this house?

16 A That is my testimony.

17 Q But your mother had the lock changed a couple
18 of times; isn't that right?

19 A I am not going to sit here and say that,
20 because I don't know.

21 Q So if you said in your deposition, Mom did --
22 question: Have you ever had the locks changed on the
23 house?

24 Answer: Mom did a couple of times, but no, I
25 haven't had it done.

1 A Well, I can't even recall that, but I have
2 not. Mom may have. And I don't even recall saying
3 that when I was deposed, but if I said it, I'll go
4 with it.

5 Q And we heard --

6 A That had to have taken place before I came
7 home.

8 Q We heard testimony today from Mr. Gay -- and
9 he's your financial adviser, right?

10 A Yes, he is.

11 Q And he was your -- the financial adviser to
12 your parents, right?

13 A Yes, he was.

14 Q And he has followed along with this property
15 from your parents and then to you and Stephanie,
16 right?

17 A Yes, he has.

18 Q And so he's got some background knowledge
19 about this property?

20 A Yes, he does.

21 Q And generally, he knows what's been going on
22 between you and Stephanie regarding the property?

23 A I can't speak about what he knows, but from
24 the sounds of it, yes.

25 Q And he has no reason to make anything up,

1 question I'll ask Will Curry.

2 Q If it does, would you agree that the amount
3 you're claiming for the property taxes ought to be
4 reduced by whatever amount of benefit you got from
5 writing it off?

6 A Well, let's hope -- I'll agree to that. But
7 let's hope I don't have to continue paying these
8 taxes by myself.

9 MR. CONNOR: One moment.

10 THE COURT: Take your time.

11 Q I'm trying to think here. Slow wheels
12 turning.

13 A I understand.

14 Q I think I've got my mind working again. Sorry
15 for that. It's been a long day and no lunch.

16 A Amen.

17 Q So you testified a little bit about the lock
18 at Hilton Head Island, and you said that it had a
19 history of being difficult to work with?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes, that is a yes. And I promise not to do
23 that again.

24 Q And so much so that from time to time you said
25 your husband Obey had a bottle of WD-40 with him?

1 A Yes. Well, he -- you had to know my husband,
2 but he kept things like that in his trunk. You know,
3 he kept all kinds of things.

4 Q He sounds like my grandfather. But he had
5 WD-40 on hand?

6 A Yes.

7 Q And from time to time you-all would use it on
8 the lock?

9 A Squirt it in the lock.

10 Q And this was a habitual occurrence prior to
11 2007, or do you know a time frame, or just generally,
12 that was how it happened?

13 A Generally. I can't tell you -- I don't -- you
14 know, I'll say generally. I would say it was from
15 time to time problematic. I tried to explain, when
16 we would go over more often, it would be less
17 problematic; but when the time started being greater
18 between our going, then the problem -- you know, it
19 was more of a problem.

20 Q And the time --

21 A Are you following me?

22 Q I think so. So the times started to get
23 greater after your mother passed away and you stopped
24 using the house as often?

25 A Yes. My mother passed away in March 17th.

1 My husband's first surgery was April 10th. That's
2 when he -- his condition -- I think you -- I talked
3 to you about this in the deposition -- kicked in
4 right after that, because I wasn't given the
5 opportunity to really mourn my mother because I
6 was -- I had to move from that quickly into caring
7 for my husband. Remember, I talked about the
8 nephrectomy?

9 Q I do remember that.

10 A Yeah, because you asked, you said, what is
11 that? Is it a kidney removal?

12 Yes, he had kidney cancer. So you know, a lot
13 of things back there, I try to recall, but you want
14 me to be a little too specific sometimes, and I can't
15 recall.

16 Q Okay. But generally, after your mother
17 passed, you used the house less often?

18 A Yes.

19 Q So at some point in that using the house less
20 often, the lock started to become difficult?

21 A Yes.

22 Q And you knew that it was difficult to use
23 sometimes, and so when your husband accompanied you,
24 you-all had WD-40 to use on the lock?

25 A Yes. And I can't say we had it every time,

1 because sometimes he was banging, but we got in.

2 Q So during this telephone call, maybe in 2009,
3 when Stephanie asked for the keys and the code, did
4 you let her know that the lock was difficult?

5 A No, I did not. I mean, she had been -- okay.
6 I did not. I did not say the lock was difficult.

7 Q And you may or may not have said, "I'm going
8 to change the lock" in your anger to her on that
9 telephone call?

10 THE COURT: You need to answer.

11 A Yes. Yes. I may have said that, but that --
12 that was said out of anger.

13 Q So you testified your mother taught you about
14 paying the bills for this property?

15 A She taught me what to expect and how to go
16 about paying it and what account to take it out of.

17 Q And you were paying it from a designated
18 account that she had for this property?

19 A Yes. We had -- we had a designated -- a
20 SunTrust account, and that account was fed by Mom for
21 Hilton Head. You must remember, I was carrying my
22 own bills, mine and my husband's bills. I was taking
23 care of that. So she -- to make things easier, she
24 said, well, you take this out of this account; you
25 know, you pay these bills out of this account.

1 did he require additional care?

2 A Yes.

3 Q Was he on dialysis at that time?

4 A At that time, no. But we were -- we had our
5 doctor who would keep testing and testing, you know,
6 to see when the proper time was that he needed to go
7 on dialysis. And it was -- he lasted -- oh, several
8 months -- and then finally, he had to go on dialysis.

9 Q And you were dealing with all this in the
10 spring of 2009?

11 A Uh-huh. Yes.

12 Q So it's about the same time frame that
13 apparently your sister requested that you drive over
14 to Hilton Head and give her keys to the rental house
15 or to the house on Hilton Head?

16 A Oh, yeah.

17 Q But you had other things on your mind?

18 A Oh, plenty. Yeah.

19 Q And on your plate?

20 A Yeah.

21 MR. FINN: Okay. I don't have any further
22 questions.

23 THE COURT: Anything else?

24 MR. CONNOR: No follow-up, Your Honor.

25 THE COURT: Thank you so much. You can --

1 to send the whole transcript.

2 THE COURT: Can you identify, for the record,
3 who those depositions are of?

4 MR. FINN: Yes, Your Honor.

5 (Defendant's Exhibit No. 04 was marked for
6 identification.)

7 MR. FINN: Your Honor, I'll mark the
8 deposition of Donald A. Brashears as Defendant's
9 Exhibit 4 for --

10 (Defendant's Exhibit No. 05 was marked for
11 identification.)

12 MR. FINN: And Defendant's Exhibit 5 is the
13 deposition of Carla Nettles.

14 And we would request just to submit these in
15 their entirety, Your Honor.

16 THE COURT: All right. And that's by
17 consent?

18 MR. CONNOR: Yes, Your Honor.

19 THE COURT: Let's do that. That will be --
20 what did you say -- 5 and 6?

21 MR. FINN: 5 and 6, Your Honor.

22 THE COURT REPORTER: 4 and 5.

23 MR. FINN: I'm sorry. It's getting late.
24 4 and 5.

25 THE COURT: And nobody's had lunch except out

1 of the machine downstairs.

2 Anything else then?

3 MR. FINN: I have no more witnesses, Your
4 Honor.

5 THE COURT: Is that the defendant's case?

6 MR. FINN: Yes, Your Honor.

7 THE COURT: All right. Well, let me ask this
8 then: I'm going to try to put my notes together
9 with those documents and the exhibits and take a
10 look at those things at some point in the near
11 future.

12 Is there anything else from -- both parties
13 rest; we're done for today. Is there anything --
14 there was no leaving the record open for anything,
15 as I recall, right? This is all the evidence?

16 So I would appreciate the parties
17 continuing -- I know that you spent some time today
18 talking about how to resolve this. Everybody
19 certainly understands each other's positions a
20 little bit better now after the day has gone by.

21 I didn't hear any talk about other siblings.
22 The two of you are just the only two siblings, I
23 guess. Is that right? No brothers? No other
24 sisters?

25 FRIEDA McDEW-SHORTER: Huh-uh.

KNOW ALL MEN BY THESE PRESENTS, THAT

S. H. MC DEW, JR., and MARY MC DEW

In the State aforesaid For and in consideration of the sum of
Two (\$20.00) DOLLARS,
and love and affection
to us in hand paid at and before the sealing of these presents by FREIDA P. MC DEW and
STEPHANIE M. MC DEW, 700 West 45th Street, Savannah, Georgia
In the State aforesaid the receipt whereof is hereby
acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and
release unto the said FREIDA P. MC DEW and STEPHANIE M. MC DEW

ALL that certain piece, parcel or lot of land situate lying and being on Hilton
Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH
SUBDIVISION, being Lot #16, as shown on a map or plat of said subdivision made by
Fred C. Hook, Registered Land Surveyor, in September, 1954, and recorded in the
Office of the Clerk of Court for Beaufort County in Plat Book 10, page 57. Said
lot is bounded on the North by land of Christopher, on the East by lot #18, con-
veyed below to the grantee herein, on the South by a road leading to the Atlantic
Ocean, and on the West by Lot #14, belonging to Frank Tarpe, and measures sixty
(60) feet, on its Northern and Southern boundaries, and eighty (80) feet on its
Eastern and Western boundaries. This lot is a part of the same tract of land con-
veyed to the Grantor by deed recorded in the Office of the Clerk of Court for
Beaufort County at Deed Book 81, page 272.

Also:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton
Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH
SUBDIVISION, being Lot #18, as shown on a map or plat of said subdivision made by
Fred C. Hook in September, 1954, and recorded in the Office of the Clerk of Court
for Beaufort County in Plat Book 10 at page 57. Said Lot is bounded on the North
by land of Christopher, on the East by Lot #20, conveyed below, on the South by a
road leading to the Atlantic Ocean, and on the West by the lot conveyed above, and
measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80)
feet on its Eastern and Western boundaries. This lot is a part of the same tract
of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court
for Beaufort County at Deed Book 81, at page 272.

Also:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton

Beaufort County Tax Map Reference
Map of Parcel 48 Site 058

PLAINTIFF'S
EXHIBIT

2

Head Island, Beaufort County, South Carolina, being in the BRADLEY MEMORIAL BEACH SUBDIVISION, being Lot #20, as shown on a map or plat of said subdivision made by Fred C. Back in September, 1954, and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 10, at page 57. Said lot is bounded on the North by land of Christopher, on the East by Lot #22, on the South by a road leading to the Atlantic Ocean, on the West by lot #18, conveyed above, and measures sixty (60) feet on its Northern and Southern boundaries, and eighty (80) feet on its Eastern and Western boundaries. This lot is a part of the same tract of land conveyed to the Grantor by deed recorded in the Office of the Clerk of Court for Beaufort County at Deed Book 81, at page 272.

This Deed was prepared in the law offices of Bowen, Cooper, Beard & Smeot, Forty Pope Avenue, Hilton Head Island, SC 29928 by Attorney A. R. Grant Morehouse, without benefit of Title examination.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said

FREDERICK P. MC DEN and STEPHANIE M. MC DEN, their Heirs and Assigns forever.

SUBJECT: HOWEVER, to those certain RESTRICTIONS, RESERVATIONS AND COVENANTS, duly executed by BRADLEY MEMORIAL BEACH, INC., and recorded in the Office of the Clerk of Court for Beaufort County in Book 85, page 95, which RESTRICTIONS, RESERVATIONS AND COVENANTS are hereby incorporated into and made a part of this Deed as fully as if the same had been written out herein.

AND SUBJECT FURTHER, to a Life Estate in each of the Grants, S. M. MC DEN, JR., and MARY MC DEN, reserving such property heretofore described, to their use for any purpose whatsoever, without reservations or restrictions, for their lives and for the life of the survivor of them.

7/1/54

AND we do hereby bind our Heirs, 1066
Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said
FRIEDA P. MC DEW and STEPHANIE M. MC DEW, their

Heirs and Assigns, against OURSELVES and our Heirs, and all persons whomsoever,
lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hand and Seal and, this 14th day of May
in the year of our Lord one thousand nine hundred and seventy-nine and in the two hundred and
third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

(1) Ruby E. Mann (1) S. M. McDew, Jr. (L. S.)
S. M. McDew, Jr.
(2) Edwina W. Ford (2) Mary McDew (L. S.)
Mary McDew

Georgia
The State of Georgia

Chatham County.

PERSONALLY appeared before me (1) Ruby E. Mann
and made oath that I saw the within named S. M. McDew, Jr. and
Mary McDew sign, seal, and as their act and deed, deliver the within written Deed,
and that she with (2) Edwina W. Ford
witnessed the execution thereof.

SWORN to before me, this fourteenth
day of May A.D. 1979

(1) Edwina W. Ford (SEAL)
Notary Public of Georgia
My Commission Expires EDWINA W. FORD
Notary Public, Chatham County, Ga.
My Commission Expires Dec. 23, 1980

(2) Ruby E. Mann
RENUNCIATION OF DOWER

Georgia
The State of Georgia

Chatham County.

(1) Edwina W. Ford, a Notary Public for Georgia
do hereby certify unto all whom it may concern, that Mrs. Mary McDew
the wife of the within named (2) S. M. McDew, Jr.

did this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, re-
lease and forever relinquish unto the within named Frieda P. McDew and Stephanie M. McDew, their

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular
the premises within mentioned and released.

Given under my Hand and Seal, this 14th day of May Anno Domini 1979
(1) Edwina W. Ford (SEAL) (2) Mary McDew
Notary Public of Georgia
My Commission Expires EDWINA W. FORD
Notary Public, Chatham County, Ga.
My Commission Expires Dec. 23, 1980

A. R. GRANT MOREHOUSE

State of South Carolina,

1067

S. M. McDow & Mary McDow

Savannah, Georgia

TO
Frieda P. McDow & Stephanie H. McDow
700 West 45th Street, Savannah, GA

TITLE TO REAL ESTATE

Filed 17th day

of May A.D. 1979

at 8:00 o'clock A.M.

and recorded in Book 281

Page 1064, Fee \$5.00

POWELL & COY. BEAUFORT
R. M. C. or Clerk Court C.P. & G.C.
Beaufort County, S.C.

Recorded this 22nd day

of May 1979

in Book K Page 53

Fee \$

Mary Ann Grayson
Auditor Beaufort County, S.C.

McDEW

MAStxMnd Business - Version 6.192713 (Server: MM3PROD)

Function Command Report Help

MCDEW, FRIEDA 103 N SHEFTALL CIR SAVANNAH, GA 31410-2634 Level	Branch 692-ADT: GA SAVANNAH Status Active Type MMD-Residential Customer# 69235767 1 Site	MCDEW, FRED A 17 BRADLEY BEACH RD HILTON HEAD, SC 29928-5318 843 785-3428	Branch 692-ADT: GA SAVANNAH CS# 24039235 (1) Profile Type RESI - Residential Time 4:15pm 1 Customer

Customer Site - Customer# 69235767, Site# 10786119

Customer Type RES MMD-Residential	Site Type R RESI - Residential	Contacts
Name MCDEW, FRIEDA	Name MCDEW, FRED A	Tax Exemptions
Address 1 103 N SHEFTALL CIR	Address 1 17 BRADLEY BEACH RD	Customer
Address 2	Address 2	Site History
City SAVANNAH	City HILTON HEAD	Cust Affiliations
State GA Zip 31410-2634	State SC Zip 29928-5318	Customer Note
Phone 1 843 785-3428 Ext	Phone 1 843 785-3428 Ext home	Cust Mail Addr's
Phone 2 Ext	Phone 2 912 663-8418 Ext cell	Site
Branch# 692 ADT: GA SAVANNAH	Branch# 692 ADT: GA SAVANNAH	Site Owner
MyADT	Cross Street	Customer History
Business ID	Map Book Map Page	Site Affiliations
Old Billing System A Admin/CARMS	Map Coord Owner Occupied? N	General Dispatch
Bill Conv Date 12/01/2013 12:12:00	Pets	Agencies/Permits
FRED A MCDEW PASSWORD Customer Service	Old Site #	Site Note
		Site Mail Addr's

View Only

Cust Site	Contracts	Monitoring	Job Hist	Incidents	A/R History	Event Hist	Action Hist	Cust Hist	Dispatch	Archive
22014681								MM3PROD (138742)	1/9/2018 2:18 pm	



CONFIDENTIAL, PROPRIETARY AND/OR TRADE SECRET
FOR INTERNAL USE ONLY

ADT - 000003

RECORD 000133

Expenses by year

2007	\$11,851.45
2008	\$10,917.57
2009	\$9,982.27
2010	\$11,851.45
2011	\$13,569.68
2012	\$13,184.41
2013	\$9,051.63
2014	\$12,946.62
2015	\$12,812.23
2016	\$10,500.41
2017	\$12,698.59
2018	TBD

\$129,366.31



RECORD 000134

2006

Tavelers Insurance Flood	
June 20 2006	ck# 1019
	523
Travelers Insurance Homoeowners	
6/20/06	1249.00
Beaufort County Taxes	
Nov 1, 2006	4676.72
TOTAL	\$6448.72



RECORD 000135

2007

PSD		
May 5, 2007	12.00	
June 5, 2007	13.00	
July 6, 2007	13.00	
Sept 7, 2018	12.00	
Oct 2, 2007	12.00	
Nov 10, 2007	10.00	
Dec 4, 2007	12.00	84
Palmetto Electric		
May 10, 2007	64.13	
June 1, 2007	39.00	
June 29, 2007	81.00	
July 29, 2007	107.00	
August 29, 2007	104.00	
September 28, 2007	103.00	
November 28, 2007	36.00	534.13
Ronald Miller Lawn Care		
June 26, 2007	100.00	
July 29, 2007	100.00	
August 23, 2007	100.00	
Sept 29, 2007	100.00	
Nov 8 2007	50.00	450
Septic Tank		
Collins Septic Tank Service		
May 11, 2007	2,800.00	2800.00
Bluffton Exterminating		
June 7, 2007	175.00	175.00
South Carolina Wind and Hail		
July 30, 2007	989.00	989.00
Travelers Insurance Homeowners		
6/6/07	1314.00	1314.00
Travelers Flood Insurance		
6/26/07	895.00	895.00
Suburban Propane		
August 22, 2007	25.68	25.68
Beaufort County Taxes		
Oct 24, 2007	5,140.38	5140.38
At&T		
Oct 15, 2007	34.15	
Dec 11, 2007	17.11	51.26

RECORD 000136

HARGRAY		
June 5, 2007	82.00	
May 6, 2007	31.00	
July 6, 2007	30.00	
August 14, 2007	29.00	
Sept 7, 2007	29.00	
Oct 16, 2007	29.00	
Nov 10, 2007	29.00	
Dec 10, 2007	29.00	288
TOTAL		\$12,743.45

2008

Beaufort County Taxes		
1/1/2009	\$5,383.41	5383.41
PSD		
1/8/08	12.00	
2/7/08	10.00	
3/10/08	26.00	
4/5/08	22.00	
5/6/08	26.00	
06/06/08	32.00	
7/7/08	26.00	
8/6/08	32.00	
9/3/08	29.00	
10/6/08	32.00	
12/3/08	26.00	273.00
Palmetto Electric		
1/2/08	83.00	
3/3/08	102.00	
4/29/08	102.00	
5/28/08	47.00	
6/27/08	68.00	
8/1/08	70.00	
9/3/08	119.00	
11/24/08	60.00	
12/30/08	111.00	762.00
Ronal Miller Lawn Care		
1/2/08	75.00	
2/14/08	50.00	
3/15/08	50.00	
4/8/08	100.00	
5/7/08	100.00	
6/26/08	100.00	
8/1/08	100.00	
8/1/08	35.00	
8/27/08	135.00	
9/29/08	100.00	
11/25/08	50.00	
12/30/08	100.00	995.00
Bluffton Exterminating		
May 7, 2008	175.00	175.00
Wind and Hail		
	1015.00	1015.00
Travelers Flood Ins.		
6/24/08	959.00	959.00

RECORD 000138

Travelers Home Owners		
6/6/08	1315.00	1315.00
Suburban Propane		
9/3/08	53.60	53.60
Epperson Heating and Air		
10/6/08	179.00	179.00
AT&T		
7/12/08	21.74	
8/12/08	33.44	
11/13/08	22.87	
12/13/08	16.51	94.56
HARGRAY		
1/8/08	29.00	
2/5/08	35.00	
3/10/08	32.00	
4/8/08	32.00	
6/10/08	32.00	
7/7/08	32.00	
8/6/08	32.00	
9/8/08	32.00	
10/9/08	32.00	
11/13/08	32.00	
12/8/08	32.00	205
TOTAL		\$11,409.57

2009

Beaufort County Taxes		
12/16/09	5550.28	5550.28
PSD		
1/12/09	26.00	
2/6/09	22.00	
3/9/09	23.72	
4/7/09	32.00	
5/9/09	26.00	
6/9/09	26.00	155.72
Palmetto Electric		
2/2/09	71.00	
2/26/09	114.00	
3/29/09	67.00	
4/27/09	60.00	
6/1/09	46.00	358.00
Ronald Miller Lawn Care		
4/11/09	50.00	
5/2/09	50.00	
5/26/09	100.00	
6/30/09	100.00	300.00
SC Wind and Hail		
7/21/09	1027.00	1027.00
Travelers Ins Flood		
6/24/09	959.00	959.00
Travelers Ins. Homeowners		
6/24/2009	1426.00	1426.00
AT&T		
3/13/09	7.17	
6/12/09	9.10	16.27
HARGRAY		
1/8/09	32.00	
2/7/09	32.00	
3/9/09	32.00	
4/7/09	32.00	
5/9/09	32.00	
6/9/09	35.00	195.00
TOTALS		\$9,987.27

RECORD 000140

2010

Beaufort County Taxes		
12/16/10	5701.93	5701.93
PSD		
6/3/10	22.00	
7/10/10	26.00	
8/7/10	40.00	
9/9/10	56.00	
10/8/10	53.00	
11/5/10	56.00	
12/8/10	33.00	286.00
Palmetto Electric		
6/3/10	71.00	
7/26/10	114.00	
8/25/10	67.00	
9/24/10	60.00	
10/25/10	46.00	
11/26/10	55.00	
12/22/10	93.00	506.00
ADT		
12/1/10	107.34	
6/3/10	107.34	
9/1/10	107.34	
12/5/10	107.34*	429.36
Ronald Miller Lawn Care		
6/26/10	100.00	
7/31/10	100.00	
9/9/10	100.00	
10/2/10	100.00	
11/1/10	50.00	
12/4/10	50.00	500.00
SC Wind and Hail		
9/22/10	1544.00	1544.00
Travelers Ins Flood		
7/23/10	995.00	995.00
Travelers Ins. Homeowners		
6/15/10	1628.00	1628.00
EPPERSON HEATING & AIR		
10/27/2010	179.00	179.00
SUBURBAN PROPANE		
8/25/10	53.00	53.00

RECORD 000141

TOTALS

\$11,822.29

2011

Beaufort County Taxes		
12/16/10	5,774.82	5774.82
PSD		
1/10/11	22.00	
2/7/11	22.00	
3/5/11	26.00	
4/5/11	22.00	
5/16/11	26.00	
6/7/11	25.00	
7/11/11	25.00	
8/6/11	29.00	
9/7/11	29.00	
10/13/11	32.00	
11/13/11	36.00	
12/13/11	36.00	301.00
Palmetto Electric		
2/2011	206.00	
3/4/11	195.00	
4/22/11	62.00	
5/23/11	46.00	
6/22/11	70.00	
7/22/11	99.00	
8/25/11	103.00	
9/22/11	88.00	
10/25/11	53.00	
11/26/11	56.00	
12/22/11	93.00	1071.00
ADT		
9/7/11	112.71	
12/6/11	112.71	
3/1/11	107.34	
6/1/11	107.34	440.10
Ronald Miller Lawn Care		
Jan/Feb 2011	50.00	
3/2011	100.00	
5/16/11	100.00	
7/6/11	100.00	
July 2011	100.00	
8/30/11	100.00	
10/4/11	100.00	
11/13/11	50.00	
12/6/11	75.00	775.00
SC Wind and Hail		
9/14/2011	1,727	1727.00

RECORD 000143

Travelers Ins Flood	959.00	959.00
Travelers Ins. Homeowners 6/18/11	1872.00	1872.00
PILGRIM ELECTRIC 6/22/11	75.00	
9/20/11	70.00	145.00
SUBURBAN PROPANE 8/23/11	53.00	53.00
HOME TEAM PEST DEFENSE 5/16/11	175.00	175.00
SERVICE EXPERTS HEATING AND AIR 11/13/11	179.00	179.00
TOTALS		\$13,471.92

2012

Beaufort County Taxes		
12/11/12	5830.47	5830.47
PSD		
1/5/12	36.00	
2/7/12	46.00	
3/6/12	46.00	
4/7/12	59.00	
5/7/12	59.00	
6/6/12	65.00	
7/11/12	77.00	
8/6/12	59.00	
9/7/12	25.00	
10/10/12	25.00	
11/6/12	29.00	
12/7/12	25.00	498.00
Palmetto Electric		
1/31/12	94.00	
2/27/12	96.00	
3/31/12	78.00	
4/22/12	47.00	
5/28/12	44.00	
6/21/12	56.00	
7/30/12	97.00	
8/23/12	118.00	
9/20/12	74.00	
10/29/12	79.00	
11/23/12	68.00	
12/29/12	82.00	933.00
ADT		
12/2/12	118.08	
3/31/12	112.71	230.79
Ronald Miller Lawn Care		
4/7/12	50.00	
6/6/12	100.00	
7/5/12	100.00	
8/30/12	100.00	
9/22/12	100.00	
10/29/12	50.00	
12/2/12	50.00	550.00
SC Wind and Hail		
9/7/2012	2,100	2100.00
Travelers Ins Flood		
7/15/2012	985.00	985.00

RECORD 000145

Travelers Ins. Homeowners 6/19/2012	2060.00	2060.00
AT&T 8/15/12	16.06	16.06
SUBURBAN PROPANE 8/21/12	53.50	53.50
HOME TEAM PEST 5/15/12	189.00	189.00
EPPERSON HEATING AND AIR 9/2012	148.00	148.00
TOTALS		\$13,593.82

2013

Beaufort County Taxes

11/21/13	3873.64	3873.64

PSD

1/2/13	25.00	
2/6/13	27.00	
3/11/13	31.00	
4/8/13	27.00	
5/6/13	27.00	
6/5/13	27.00	
7/6/13	31.00	
8/6/13	27.00	
9/11/13	31.00	
10/9/13	27.00	
11/6/13	31.00	
12/3/13	27.00	338.00

Palmetto Electric

1/29/13	112.00	
2/24/13	127.00	
3/23/13	110.00	
4/30/13	66.00	
5/23/13	64.00	
7/2/13	48.00	
7/20/13	90.00	
8/21/13	109.00	
9/24/13	94.00	
10/31/13	60.00	
11/23/13	49.00	
12/27/13	130.00	1059.00

ADT

6/5/13	118.08	
9/4/13	126.45	
12/3/13	126.45	
3/1/13	118.08	489.06

Ronald Miller Lawn Care

7/2013	100.00	
7/2013	100.00	
9/11/13	100.00	
10/7/13	100.00	
11/21/13	50.00	450.00
SC Wind and Hail		
9/9/13	2,122	2122.00

Travelers Ins Flood

7/15/2012	985.00	985.00

RECORD 000147

Travelers Ins. Homeowners		
6/30/13	1881.00	1881.00
HARGRAY		
5/6/13	36.00	
6/5/13	36.00	
7/12/13	37.00	
8/6/13	37.00	
9/13/13	37.00	
10/9/13	37.00	
11/6/13	37.00	
12/13/13	37.00	294.00
EARL'S ELECTRICAL REPAIR		
11/29/13	190.00	190.00
SUBURBAN PROPANE		
8/24/13	53.00	53.00
HOME TEAM PEST		
5/13/13	204.00	204.00
EPPERSON HEATING AND AIR		
9/17/13	144.00	144.00
TOTALS		\$12,082.70

2014

Beaufort County Taxes

12/31/14	4012.08	4012.08

PSD

1/14/14	31.00	
2/10/14	27.00	
3/10/14	31.00	
4/10/14	27.00	
5/8/14	27.00	
6/9/14	27.00	
7/14/14	27.00	
8/7/14	31.00	
9/8/14	27.00	
10/6/14	27.00	
11/8/14	27.00	
12/8/14	27.00	336.00

Palmetto Electric

1/25/14	141.00	
2/24/14	225.00	
3/26/14	116.00	
4/30/14	79.00	
5/28/14	52.00	
6/30/14	48.00	
7/28/14	101.00	
8/25/14	66.00	
9/27/14	75.00	
10/24/14	49.00	
12/3/14	48.00	
12/23/14	116.00	1016.00

ADT

3/10/14	126.45	
6/5/14	126.45	
9/5/14	126.45	
12/5/14	134.82	514.17

Ronald Miller Lawn Care

6/9/14	100.00	
7/5/14	100.00	
8/7/14	100.00	
9/7/14	100.00	
10/10/14	100.00	
11/29/14	100.00	600.00

SC Wind and Hail

9/9/14	2,122	2122.00

Travelers Ins Flood

5/29/14	1506.00	1506.00

RECORD 000149

Travelers Ins. Homeowners		
6/23/14	2070.00	2070.00
 HARGRAY		
1/14/14	37.00	
2/5/14	37.00	
3/13/14	37.00	
4/10/14	37.00	
5/8/14	37.00	
6/9/14	37.00	
7/15/14	38.00	
8/7/14	38.00	
9/12/14	38.00	
10/10/14	38.00	
11/8/14	38.00	
12/9/14	38.00	450.00
 HOME TEAM PEST		
5/13/13	220.40	220.40
 TOTALS		\$12,846.65

2015

Beaufort County Taxes

12/28/15	4070.58	4070.58

PSD

1/5/15	31.00	
2/10/15	29.00	
3/10/15	29.00	
4/13/15	31.00	
5/13/15	30.00	
6/8/15	31.00	
7/7/15	29.00	
8/13/15	30.00	
9/4/15	29.00	
10/12/15	32.00	
11/13/15	30.00	
12/12/15	29.00	340.00

Palmetto Electric

1/28/15	91.00	
2/28/15	117.00	
3/31/15	136.00	
4/30/15	129.00	
5/28/15	85.00	
7/1/15	47.00	
7/13/15	50.00	
8/29/15	49.00	
9/28/15	73.00	
10/26/15	53.00	
11/30/15	47.00	
12/31/15	57.00	934.00

ADT

3/6/15	134.82	
6/12/15	134.82	
9/14/15	134.82	
12/7/15	146.19	550.65

Ronald Miller Lawn Care

5/7/15	100.00	
6/2/15	100.00	
7/12/15	100.00	
8/2/15	100.00	
9/14/15	100.00	500.00

SC Wind and Hail

8/31/15	2,122.00	2122.00

Travelers Ins. Homeowners

6/22/15	2224.00	224.00

RECORD 000151

HARGRAY

1/9/15	38.00	
2/19/15	38.00	
3/10/15	38.00	
4/13/15	38.00	
5/13/15	38.00	
6/5/15	38.00	
7/12/15	39.00	
8/6/15	39.00	
9/13/15	39.00	
10/9/15	39.00	
11/6/15	39.00	
12/13/15	39.00	462.00

SUBURBAN PROPANE

8/24/15	53.00	53.00

HOME TOWN PEST

6/2/15	238.00	238.00

TOTALS

\$9510.29

2016

Beaufort County Taxes

12/14/16	4131.90	4131.90

PSD

1/8/16	31.00	
2/9/16	30.00	
3/7/16	29.00	
4/7/16	30.00	
5/9/16	29.00	
6/8/16	30.00	
7/16/16	34.00	
8/10/16	35.00	
9/16/16	31.00	
10/12/16	31.00	
11/7/16	33.00	
12/6/16	32.00	344.00

Palmetto Electric

1/25/16	73.00	
4/1/16	183.00	
5/24/16	47.00	
6/1/16	47.00	
7/4/15	72.00	
8/1/16	120.00	
8/25/16	67.00	
9/28/16	56.00	
10/26/16	64.00	
11/27/16	47.00	
12/29/16	81.00	857.00

ADT

3/7/16	146.19	
6/6/16	146.19	
9/5/16	146.19	
12/12/16	157.56	596.13

Ronald Miller Lawn Care

2/9/16	100.00	
6/8/16	100.00	
7/23/16	100.00	
9/11/16	100.00	
10/3/16	100.00	
12/2/16	250.00	750.00

SC Wind and Hail

8/7/16	2122.00	2122.00

Travelers Ins. Homeowners

7/4/16	2190.00	2190.00

RECORD 000153

HARGRAY		
1/12/16	39.00	
2/9/16	39.00	
3/14/16	38.00	
4/12/16	39.00	
5/12/16	39.00	
6/13/16	39.00	
7/16/16	39.00	
8/8/16	39.00	
9/12/16	40.00	
10/12/16	40.00	
11/12/16	40.00	
12/6/16	40.00	471.00
SUBURBAN PROPANE		
8/24/16	53.00*	53.00
HOME TOWN PEST		
6/2/15	257.00	257.00
JONES BROTHERS		
Storm Damage Clean up 10/1/16	450.00	
Hurricane Matthew – Down Trees 10/25/16	3000.00	3450.00
OCEANSIDE PRESSURE CLEANING		
5/24/16	250.00	
9/30/16	71.00	321.00
PADGETT PLUMBING SERVICES		
9/31/16	171.00	171.00
HVAC NEW SYSTEM		
7/11/2016 DOWNPAYMENT	2,000.00	
8/19/16	100.00	
9/16/16	99.92	
10/17/16	99.92	
11/16/16	99.92	
12/16/16	99.92	2498.96
TOTALS		\$14,759.62

2017

Beaufort County Taxes

2/8/17	707.79	
4/3/17	707.79	
6/1/17	707.79	
8/2/17	707.79	
9/20/17	707.79	
12/1/17	932.89	4471.84

PSD

1/8/17	32.00	
2/6/17	31.00	
2/28/17	33.00	
3/5/17	33.00	
4/9/17	32.00	
5/8/17	31.00	
6/9/17	31.00	
7/12/17	31.00	
8/7/17	34.00	
9/17/17	31.00	
10/7/17	31.00	
11/7/17	32.00	
12/11/17	32.00	385.00

Palmetto Electric

1/17/17	489.00	
2/22/17	611.00	
3/22/17	72.00	
5/2/17	56.00	
5/23/17	47.00	
6/26/17	48.00	
7/25/17	94.00	
8/28/17	62.00	
9/28/17	62.00	
10/26/17	55.00	
11/22/17	54.00	1594.00

ADT

3/5/17	157.56	
6/6/17	157.56	
9/4/17	157.56	
12/7/17	157.56*	630.24

SC Wind and Hail

9/22/17	2122.00	2122.00

Travelers Ins. Homeowners

6/15/17	2125.00	2125.00

HARGRAY

1/8/17	40.00	

RECORD 000155

2/8/17	40.00	
3/13/17	40.00	
4/9/17	42.00	
5/11/17	42.00	
6/9/17	42.00	
7/12/17	43.00	
8/8/17	43.00	
9/6/17	43.00	
10/11/17	43.00	
11/7/17	43.00	
12/7/17	42.00	503.00
HOME TOWN PEST		
5/23/17	277.60	277.60
EPPERSON HEATING AND AIR		
9/6/17 Maintenance	288.00	288.00
HVAC NEW SYSTEM		
1/17/17	100.00	
2/21/17	99.92	
3/15/17	99.92	
5/15/17	99.92	
6/15/17	99.92	
7/18/17	99.92	
8/15/17	99.92	
9/21/17	99.92	
10/17/17	99.92	
12/16/17	99.92	999.28
TOTALS		\$13,395.96

2018

Beaufort County Taxes

2/8/18	745.31	
4/3/18	745.31	
6/1/18	745.31	
8/2/18	745.31	
9/20/18	745.31	
12/1/18	745.31	4471.86

PSD

1/7/18	31.00	
2/6/18	31.00*	
3/10/18	32.00*	
4/7/18	32.00*	
5/7/18	32.00*	
6/9/18	32.00*	
7/10/18	32.00*	
8/7/18	35.00	
9/17/18	34.00	
10/7/18	33.00	
11/7/18	33.00	
12/10/18	34.00	244.00

Palmetto Electric

1/3/18	62.00	
1/25/18	227.00	
2/23/18	182.00*	
3/28/18	68.00*	
4/25/18	67.00*	
5/23/18	50.00*	
6/27/18	64.00*	
7/23/18	86.00	
8/28/18	62.00*	
10/27/18	130.00	
11/21/18	57.00	
12/26/18	74.00	1139.00

RONALD MILLER YARD SERVICE

9/5/18	100.00	
11/9/18	100.00	200.00

ADT

3/5/18	157.56*	
6/5/18	157.56	
9/10/18	157.56	
12/5/18	157.56	630.24

SC Wind and Hail

9/22/17	1687.00*	1687.00

Travelers Ins. Homeowners

RECORD 000157

7/8/18	2078.00	2078.00
HARGRAY		
1/10/18	43.00	
2/8/18	40.00	
3/13/18	40.00	
4/9/18	42.00	
5/11/18	42.00	
6/9/18	42.00	
7/12/18	43.00	
8/13/18	44.00	
9/10/18	44.00	
10/15/18	44.00	
11/12/18	44.00	
12/17/18	44.00	512.00
HOME TEAM PEST		
6/5/18	310.90*	310.90
EPPERSON HEATING AND AIR		
6/21/18	164.00*	164.00
HVAC NEW SYSTEM		
1/19/18	99.92	
2/21/18	99.92	
3/20/18	100.00	
4/22/18	99.92	
5/26/18	99.92	
6/15/18	99.92	
7/27/18	99.92	
8/15/18	99.92	
9/21/18	99.92	
10/22/18	99.92	
11/21/18	99.92	
12/19/18	99.92	1199.12
LOWES		
Fence replacement from hurricane		
4/19/18 downpayment	500.00	
5/9/18 payment	1200.00	
6/12/18 final payment	1700.00	3400.00
TOTALS		\$16,036.08

STEPHANIE M. McDEW vs FRIEDA P. McDEW
2016-CP-07-02274 - DONALD BRASHEARS

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

STEPHANIE M. McDEW a/k/a
STEPHANIE McDEW SCHOUMACHER,

Plaintiff,

VS. CIVIL ACTION NUMBER
2016-CP-07-02274

FRIEDA P. McDEW, a/k/a
FRIEDA McDEW SHORTER

Defendants.

-----/

The deposition of DONALD A. BRASHEARS,
a Witness in the above-entitled cause, taken
pursuant to Notice and Agreement, before Naomi
McCracken, Stenographic Reporter and Notary
Public, at the Finn Law Firm, 38 New Orleans
Road, Unit D-4, Hilton Head Island, South
Carolina, on the 14th day of March 2019,
commencing at or about the hour of 4:03 p.m.



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RECORD 000159

1 APPEARANCES OF COUNSEL:

2

FOR THE PLAINTIFF:

3

VIA TELEPHONE

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ALSO PRESENT:

15 Matthew Orville (VIA TELEPHONE)

16

- - -

17

I N D E X

18

19

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22 CROSS-EXAMINATION:

By Mr. Connor ----- 23

23

24 CERTIFICATE ----- 73

25 (NO EXHIBITS)



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1 DONALD A. BRASHEARS,
2 having been produced and first duly sworn as a
3 witness, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FINN:

6 Q Good afternoon, Mr. Brashears. As you
7 know, my name is Tom Finn and I represent Frieda
8 McDew Shorter in the case of Stephanie
9 Schoumacher versus Frieda McDew Shorter.

10 Can you please state your full name for
11 the record, sir?

12 A My full name is Donald Alan Brashears.

13 Q And where do you live, Mr. Brashears?

14 A I live 293 Seabrook Drive here in
15 Hilton Head Plantation on the island, Hilton
16 Head.

17 Q Okay. Where are you employed?

18 A I'm self-employed. I own -- I'm an
19 owner-partner in Atlantic Real Estate and I have
20 -- I am the owner of a tax business as well. I
21 have a franchise office in Bluffton, and I have
22 an office under me in Augusta, Georgia and part
23 of South Carolina and in downtown Boston.

24 Q Okay. And can you tell me a little bit
25 about your educational background?



1 A I have an associate degree in business.
2 I have a bachelor of science degree in commerce,
3 and I have an MBA in international economics.

4 Q Okay. Tell me about Atlantic Realty.
5 What type of business is that?

6 A Atlantic Real Estate -- we have a real
7 estate and sales business. We started out first
8 with rentals and then expanded into sales. And
9 that happened in 19 -- August of '97.

10 And we've been up and down with the
11 market in total amount of rentals. We've
12 upwards of 450 properties.

13 Right now, actually, our owner's
14 retiring. It's kind of ironic. They're --
15 they're retiring. They want to get their cash
16 out of the properties and we're down a little
17 more than about 100 properties right now. But
18 for years and years we had over 300, 400
19 properties.

20 Q Okay. And are those long-term and
21 short-term rentals, or how are they divided?

22 A Yeah. I'd say that 80 percent of the
23 time in the last 20-plus years it's been long
24 term rentals. We've done some short-term.
25 We've had some intern things that we've handled.



1 But, for the most part and right now, it's 100
2 percent long-term.

3 Q Okay. Do you have a title or a
4 position at Atlantic Real Estate?

5 A Owner-agent.

6 Q Okay.

7 A I do sales along with rentals, so --

8 Q Okay. Are you in charge of the rental
9 operation?

10 A Yeah. My partner shares that with me.

11 Q Okay. How were you contacted in this
12 particular matter?

13 A You called me and said that you needed
14 somebody to take a look at a property and tell
15 you what the value of it as a rental would be.

16 Q And do you and I meet at the property?

17 A We did.

18 Q And was that at 17 Bradley Beach Road?

19 A It was.

20 Q Okay. And we did get into the
21 property.

22 And what did you do? Tell me about
23 what we did when we went there.

24 A Well, we met at the property at 8:00 in
25 the morning and took a look around the outside



1 of the property. I wanted to see the whole
2 picture of what it looked like on the outside,
3 what the conditions were.

4 We went up on front patio to go in. We
5 had a little rough time with the door getting
6 the key to work in the lock, but we eventually
7 got in.

8 Do you want me to tell about you the
9 property.

10 Q Yeah, if you would. What did you do
11 from an assessment standpoint or an evaluation?
12 Tell me, again.

13 A Well, when I first walked in, I just
14 wanted to take a look for a minute to see
15 exactly what the first impression was of the
16 property. And then, you know, we walked into
17 the living room area, walked around toward the
18 back into what they call the kitchen area and
19 then went upstairs and into the bedroom area and
20 look at the property as an overall from the top
21 down. It's a big open-air living room and
22 you've got a walkway around on the second floor.
23 So that's pretty much it.

24 Q Okay. What was your general
25 observation of the property as -- just what was



1 that?

2 A That property is extremely old for
3 Hilton Head.

4 I'm guessing it's in the '50s it was
5 built. The property as it's sitting -- you
6 know, I told you I really didn't know all of
7 your interests and whether you were trying to
8 figure out what to rent or what to do with the
9 rent. So, you know, I was looking at it from a
10 rental standpoint.

11 And, as it sits right now, I'm not sure
12 it's really rentable. There's an odor to the
13 property and it's -- it's -- it didn't take me
14 back, but there is definitely a mildewy smell to
15 the property.

16 And, as you walk around, I noticed that
17 the carpet is extremely old. In fact, most
18 carpets in rentals today are not a deep nap like
19 that is. That's got to be an old carpet.

20 The furniture's old. The furniture
21 looks extremely dirty. Like I said, just rent
22 to it, you'd have to gut the place in terms of
23 all the furniture and everything in there.

24 The kitchen is not really adequate for
25 anything.



1 You'd want to put cabinets in there.
2 There were a couple cabinets that looks like
3 somebody just threw on the floor to be there and
4 maybe started the work to refinish it or
5 refurbish it. But there's no -- no cabinet
6 space. There's no -- there's a pantry there but
7 it's loaded with food. It would have to be
8 gutted and repainted.

9 The -- there was a stronger smell near
10 the kitchen maybe from a leak or something that
11 occurred there. I'd be concerned about that
12 because sometimes you just can't clean that out
13 with normal cleaning of the vinyl and carpet.
14 Sometimes it's in the walls; it's in the studs.
15 You've got to seal that and remove the dry wall
16 to do that. There's just a lot of work to do in
17 the unit.

18 The thing that -- the mildew is a real
19 issue, especially with families today when you
20 rent it, if they have kids -- I mean every
21 family with three kids, one of them has allergy
22 problems or whatever. So they're reluctant to
23 rent places like that.

24 The other thing I noticed, which I
25 though was a very big liability for renting it



1 would be the stairwell. Because of the age of
2 the house, it may have been code then, but it's
3 certainly not -- I doubt whether it would be
4 code now. The banister and the railing around
5 the top walkway is very low and two teenagers
6 rough-housing could fall very, very easily. I
7 mean I didn't have a tape measure with me and I
8 didn't measure them, but I'm guessing they were
9 30 inches or lower in height. And it's very
10 scary for, you know, to put a family in there
11 and not worry about somebody falling over that
12 banister.

13 What I noticed upstairs, there was one
14 tiny, very-old style bathroom, which would --
15 you know, I doubt whether it would be
16 acceptable. It's one bathroom for three
17 extremely small bedrooms. Again, I didn't have
18 a tape measure. I didn't measure the bedrooms,
19 but they are much smaller than normal size, even
20 10 by 10. It felt very cramped in there. I
21 don't know if the bed was oversized or not, but
22 I did feel cramped in that bedroom. And it
23 didn't seem like there was room for the normal
24 set-up of a bureau or a chest of drawers and a
25 normal -- you know, today if you have teenagers,



1 you want to put TVs in there and you want people
2 to put their stuff somewhere.

3 It's just old. And the -- the thing
4 that worried me about, which is a big complaint
5 -- has been a big complaint with older
6 properties we've rented, is, you know, the first
7 thing they want to know, "What's the electric
8 bill on this place?" And there is no insulation
9 in the walls. I don't know if you noticed that
10 or not. But if you look at the walls, they're
11 wood. It almost looks like a mountain house of
12 knotty pine. It's -- it's probably a pine
13 product on the walls. But there is no
14 insulation.

15 I know last year in my own building, I
16 had to re-insulate the bottom because the bills
17 were over \$1,000, the electric bills. So this
18 place -- with the open-air, high ceiling in the
19 living room -- you know, I saw they did -- it
20 looked like they had a flat roof at one time and
21 maybe put a little peak to it. Maybe they put
22 insulation in there. I don't know. But I know
23 the walls were not insulation. And that place
24 would be a bear to heat and cool in the summer
25 and winter.



1 And, you know, from a rental
2 standpoint, that's -- tenants look at that kind
3 of stuff. They are pretty detailed now
4 especially on a house like that, a single house.
5 They want to know all the facts. And the
6 electric -- the electric bill goes right into
7 the price and I am sure a potential tenant would
8 be asking about the electric.

9 Q Did you -- describe the bathroom on the
10 second floor, if you would. Did you have a
11 chance to look at that?

12 A Just small, old fixtures, you know,
13 nothing really up-dated. The shower didn't --
14 you know, to somebody that's middle class in a
15 middle-class house going in there, they wouldn't
16 rent it. It would be kind of repulsive as it is
17 right now.

18 You would need to spend enough money to
19 make it a -- even if you kept the size of the
20 bathroom and the size of the shower, you would
21 have a lot of upgrades. You have to put a tile
22 wall in there and you'd have to put in a new
23 tile wall. You'd have to do something with the
24 shower.

25 It's just got an old curtain up there



1 now. You'd have to redo all the fixtures and
2 plumbing.

3 Q Okay. Was there a bedroom downstairs,
4 to your recollection?

5 A Yeah, there was a bedroom downstairs.
6 That was --

7 Q So overall this is a four-bedroom house
8 with a big open area in the downstairs space?

9 A And a -- the back area is a -- I guess,
10 you could put a little -- there's a little
11 dining room table there in the kitchen area.

12 Q Okay.

13 A But even that's very small.

14 Q So in its present state as you saw it,
15 would the house be a viable option on the rental
16 market in Hilton Head?

17 A I can't see anybody going in as it sits
18 right now and renting that property without some
19 major work. If you did all the minor stuff, you
20 still wouldn't get anywhere what -- a box with
21 square footage, is what you're renting.

22 I don't think -- you know, the first
23 thing you have to do is throw all that furniture
24 out. The furniture is just -- it's old. It's
25 probably mildewy. I didn't sit in it. I



1 wouldn't sit in it. I don't think anybody
2 would.

3 And it's not cleanable. It's too far
4 gone for that. I would get everything -- even
5 the chairs that have no cushions on them. And
6 the front porch chairs -- I'd have to get rid of
7 everything in there and really thoroughly clean.

8 And then do something about the odor,
9 if it was still there after a good -- you'd have
10 to change the carpet out, for sure. And the
11 flooring would have to be changed out. I'm
12 guessing the vinyl -- if there was a leak back
13 there, the vinyl got water underneath and it
14 mildewed whatever's underneath there. And that
15 would have to be all changed out and cleaned.

16 Q Okay. So you'd recommend or you'd
17 require the carpet be replaced?

18 A Oh, yeah. Definitely.

19 Q And perhaps the vinyl flooring in the
20 kitchen needs --

21 A Yes.

22 Q -- to be replaced?

23 A Definitely. It's, you know, nothing
24 near suitable for anybody.

25 Q Okay. You'd mentioned the handrail and



1 banister would not be something you'd feel
2 comfortable with?

3 A I would not be -- I would not be
4 comfortable about it. And they would surely
5 have to have a rental contract with me -- a
6 management contract with me as an additional
7 insured no matter what the contract said because
8 I -- I can -- I could even see an adult going
9 over that banister. It's low. It's fairly low.

10 Q Okay. And then the kitchen, could you
11 estimate the age of the appliances and things in
12 the kitchen?

13 A No. I wouldn't even take a guess. But
14 I'm guessing the kitchen's anywhere from a
15 \$10-\$15,000 bill to get that --

16 Q Okay.

17 A -- because you have to have some space.
18 You have to have counter space. And right now,
19 that's pushing the envelope with the kitchen, so
20 -- and you want it updated.

21 So you're talking \$10-12,000 maybe,
22 10-15,000 for an upgrade there.

23 Q And then the upstairs bathroom, you
24 think, would be --

25 A Definitely needs some work, yes.



1 Q And then we had talked about this: Did
2 you see a bathroom downstairs, or were you
3 unsure about it?

4 A I'm not sure if we walked in that or
5 not because we were anxious to see what was
6 upstairs in the other bedrooms.

7 Q So overall would you -- could you put
8 an estimate on what it would cost to get that
9 place into a rental condition, you know, for a
10 run-of-the-mill, long-term rental on Hilton
11 Head?

12 A That's a good question. I'm looking at
13 -- you know, let's say you can get the kitchen
14 done for 12, the bathroom for 5 upstairs,
15 cleaned up and redone. Maybe in the living
16 room, you've got to put in all new carpet or
17 flooring, whatever that is -- probably vinyl
18 flooring today. You've got painting on some of
19 the surfaces of the walls. You have to paint --
20 repaint.

21 Even if you skip the insulation -- I
22 mean, if I was flipping that property and I
23 owned it, I would put -- I would definitely put
24 insulation in there and wallboard everything.
25 But leaving that out, you have 12, 5, another 5,



1 4. So you are 12, 17, 23 -- probably another 5
2 in things around the place; \$28,000.

3 And that doesn't include the banister.
4 Maybe you could get a prefab banister. I don't
5 know. But you'd have to get one that's a little
6 bit higher so somebody's not falling over the
7 banister.

8 Q Okay. Now, assuming all those items
9 were taken care of, can you -- were you able to
10 put or can you give us your opinion as to
11 whether that property -- what it would rent for
12 in the present market, if all that was done?

13 A Yeah. My estimate would be 2300 bucks
14 for that property, \$2300. And that may sound
15 low, but when you consider the fact that there's
16 -- the rooms -- the bedrooms are really small,
17 and I mean inordinately small.

18 And I would be -- there would be -- it
19 would be a problem renting for a family, first
20 of all. But if you could get it rented, I think
21 \$2300 would get somebody in that property if it
22 was already done.

23 Q Okay. And I also talked to you about
24 going -- going backwards from present day. Did
25 you do an evaluation on what the property may



1 have been worth from a rental standpoint over
2 the past, let's say, 10 years?

3 A As is?

4 Q Well, as-is, your testimony is that
5 it's not rentable.

6 A As is, it's not rentable. You know, if
7 you cleaned everything out, cleaned it up --
8 let's say you put in \$5,000. You would put more
9 than \$8,000 into the property, you get it
10 minimally cleaned, you know, get all the
11 furniture out, get it hauled all away, you would
12 have to put the appliances in. You have to put
13 decent appliances in there and a counter top
14 that was suitable for at least cooking
15 something.

16 You -- if you didn't furnish it and
17 left it bare and get -- took a look at all the
18 other items with it, you know -- I don't know.
19 I mean I'd have to work backwards at it from --
20 if it's \$2300 all fixed up, and let's say --
21 yeah, \$2300 all fixed up, maybe you work
22 backwards from a -- if it's a minimal
23 fixer-upper/cleaner-upper, maybe it works
24 backwards from \$2,000. And then maybe three
25 years ago it was -- it would be \$1,700, and then



1 maybe \$1,500 three years before that.

2 Because it's a -- the market jumps in
3 stages. You know, we've just had -- the last
4 three years has been a -- we've raised our rents
5 considerably in the business. And prior to
6 that, they had settled down for three or four
7 years, you know, at a pretty sufficient drop
8 from what it is today. Things that were renting
9 for \$800 are now renting for 1,000, 1050, 1100.
10 So there's been drops over -- and it seems like
11 the cycle runs every three to four years.

12 Q Okay. Is the -- would you -- is it
13 fair to say that this property is not sort of a
14 traditional house on Hilton Head or it's not,
15 you know, a house that's --

16 A No. I mean -- that's the funny thing.
17 It may have been traditional in '52 or '53,
18 whenever it was built.

19 It's just a very old-style beach house,
20 basically. It doesn't fit any -- any -- when
21 you walk in, you know it's a whole different
22 floor plan from anything that's being built
23 today.

24 Even though, you know, you walk into a
25 model home, you know, they have the raised



1 ceilings and the high ceilings. And there's no
2 -- the lighting would have to be changed in
3 there as well. It doesn't -- all the lights are
4 old and it's dark. I mean you have to lighten
5 it up somehow.

6 And, no, it is not -- doesn't fit any
7 transition here that I'm used to.

8 Q Okay. So if all the work that you
9 suggested that you think needs to be done just
10 to rent it, the place -- this 17 Bradley Beach
11 could rent at a monthly rent of \$2300 a month;
12 is that correct?

13 A Yeah.

14 Q Now, would that include utilities or
15 not?

16 A No.

17 Q Okay. And we -- we have no idea what
18 the utilities bills would be. But you'd
19 mentioned -- the building is concrete block
20 wall?

21 A Um-hmm.

22 Q And then the inside has wood paneling
23 on it?

24 A Yeah.

25 Q Okay. So the insulation is a concern



1 for you?

2 A Yeah. Definitely a concern. I
3 wouldn't even take -- I mean I'd never imagine
4 being in here in my office building, you know,
5 which is -- you know, it's a full floor. It's
6 one floor, and having a \$1,100 bill, but I did.
7 And then once I insulated underneath and put
8 some plastic under there, I lowered the bill to
9 a third of that. So I'd be concerned about the
10 electric bill.

11 But, you know, on top of that, you have
12 your electric, you have your water and sewer.
13 You've got pest control, which this is The
14 South: You have bugs; you've got to have pest
15 control here.

16 And because of all the wood, I would
17 definitely -- in the contract, probably mandate
18 a termite bond for -- you know, they do these in
19 three and five-year increments in case something
20 happens and termites get in there. And for
21 most, they could eat that house up in a week.

22 Q What is a -- do you have any idea what
23 a pest control -- that's spraying for bugs on
24 the inside of the house --

25 A Uh-huh.



1 Q -- so we're clear what we're talking
2 about. Do you know what that would run with
3 your experience on other properties per month?

4 A It's not a big cost. Probably --
5 probably, I'd guess, \$50 a month.

6 Q Okay. And what about a termite bond?
7 Do you have any idea what that --

8 A That, I don't because sometimes they're
9 long-term contracts and when you sign them, you
10 don't pay again for the next, whatever, five
11 years and it's \$5,000 or something.

12 Q Okay. Did you have -- do you think you
13 had a good opportunity to see everything you
14 wanted to see at the house? Did you have enough
15 time?

16 A Yeah. I'm looking for rentability.
17 That's what you said you were looking for, the
18 worth of it. You know, that's my appraisal --
19 that's what I do -- if you gave me the property
20 to manage today.

21 Q Okay. Now, what type of properties are
22 currently on the market in your experience for
23 rental if you had -- what are most of your
24 properties? What are they?

25 A Most of our properties are condos. We



1 -- we -- right now we just happen to be in a
2 spot where we don't have many homes. We don't
3 have any homes. We have all condos.

4 Q Okay.

5 A But we've had -- at one time we were
6 top-heavy with homes and problems renting them.
7 Now -- now it's different.

8 Q Okay. So if you were top-heavy in
9 homes, what was the most homes Atlantic Real
10 Estate ever had managed from -- just as
11 single-family homes? Would you estimate that?

12 A Well, I would say I don't recall. I'm
13 guessing dozens, anyway.

14 Q Okay.

15 A A couple dozen, maybe.

16 Q Out of -- and that's at any one time;
17 correct?

18 A Yes. And we had a variety of rental
19 rates on them that were from Sea Pines, really
20 nice, big homes.

21 Q Um-hmm.

22 A Spanish Wells, we had a home. And in
23 places in the plantations, different places.

24 Q Out of every home that you've been
25 involved in renting on Hilton Head, would you



1 say this is the oldest house that you've --
2 you've seen?

3 A Ooh. Yes. Definitely.

4 Q Okay.

5 A We had -- we had one house that was --
6 one property that was probably the same, and it
7 was down near Bradley Circle. I think that was
8 old. And we had that for -- I don't know --
9 three or four years. And it was block -- cinder
10 block, and it was very old construction.

11 Q Was that home -- did that home have any
12 upgrades?

13 A The upstairs did. The downstairs
14 didn't.

15 MR. FINN: Okay. All right. I
16 think those are all the questions that
17 I have for you. I'll ask you to answer
18 any questions Mr. Connor may have.

19 MR. CONNOR: Excuse me a second.
20 I'm still writing some notes.

21 CROSS-EXAMINATION

22 BY MR. CONNOR:

23 Q All right, Mr. Brashears.

24 A Yes.

25 Q How are you today?



1 My name is Andrew Connor. I apologize
2 for not being able to meet you in person, but
3 over the phone will do, I suppose.

4 A Yeah. That's fine.

5 Q How are you today?

6 A Yeah. That's fine.

7 I'm fine. Thank you.

8 Q All right. I'm going to try to cover
9 some of the -- what'd you -- I got about
10 half-way through your address. You said 293
11 Seaboard [sic] -- what?

12 A S-E-A-B-R-O-O-K -- Seabrook Drive.

13 Q And that's on Hilton Head Island?

14 A Is it.

15 Q And what county is that?

16 A Beaufort County.

17 Q Okay. All right. And let's see.
18 Where did you -- well, let me ask you this:
19 What's your date of birth?

20 A 8/22/48.

21 Q All right. Where were you born?

22 A Philadelphia, Pennsylvania.

23 Q All right. When did you make it down
24 to Hilton Head?

25 A 1997.



1 Q All right. And you've been in Hilton
2 Head since then?

3 A Correct.

4 Q Okay. What brought you to Hilton Head?

5 A We -- in the Philadelphia area -- we
6 were just outside Philadelphia. I had
7 accumulated rental property there and somebody
8 -- my wife's a teacher and a teacher came over
9 one night and said, "Why don't you buy rental
10 property in a vacation -- in a vacation area and
11 use it for vacation and rent it out when you're
12 not there."

13 And so she told us about Hilton Head
14 and that her brother owned a place here. She
15 brought over all the numbers and it worked. So
16 we came down here for a visit and bought our
17 first property in 1993.

18 And then started to accumulate
19 properties that were ours. They weren't -- they
20 were our properties and we would assign them to
21 -- because they were different, one went to one
22 management company and the others went to
23 another management company, depending on where
24 they were in the market in terms of quality.

25 The condos went to one guy. We had a



1 home here, a brand new home that we gave to rent
2 to another company, which was in that
3 plantation, so it made sense to give it to them.

4 And so then we came down. And, you
5 know, I had -- I worked in the steel industry
6 for 30 years and I had an opportunity at 48 to
7 get out and have a retirement and did that and
8 moved down here and started -- sold the
9 properties up north and moved the money down
10 here and bought rental properties down here.

11 And I got to a point over the years to
12 where I had -- at one point, I think I had 41
13 properties here and in other areas of the
14 country.

15 And -- but within -- we got here in
16 March of '97. And by August I had kind of honed
17 in on some interviews with people about buying a
18 business or starting a business.

19 And there was a guy that had just
20 started a business and wanted a partner -- two
21 guys, and they wanted a partner. So we started.

22 And neither one of them -- they bought
23 a rental company that was already up and running
24 and neither one of them had ever done any rental
25 management. And so I told them I would run the



1 company for them and bring them in as the
2 company built. And that's what we did.

3 And like I --

4 Q Okay. Let me -- let me stop you right
5 here. So you said you were in the steel
6 industry in Pennsylvania?

7 A Correct.

8 Q Okay. What were you doing in the steel
9 industry?

10 A It was a -- I worked in a steel plant
11 from the time -- from the day I turned 18. It
12 was a plant that had 10,000 employees. I
13 started at the bottom as a laborer, worked my
14 way up as a steel worker and then worked into
15 management. And when I left, I was second in
16 command.

17 Q Okay. So second in command would have
18 been --

19 A I was -- I was --

20 Q -- what was your job title?

21 A I was an area manager of sheet and tin
22 products, which, after down-sizing, there were
23 2200 employees left after down-sizing. And I
24 was in charge of -- there were, I think, two
25 other area managers. And then there was a plant



1 manager.

2 Q Okay. And what was the name of that
3 plant?

4 A It was U.S. Steel Fairless Works,
5 F-A-I-R-L-E-S-S Works in Fairless, Pennsylvania.

6 Q Okay. All right. So you said you got
7 up to 41 properties at one time. How many
8 properties do you own, currently?

9 A Seven plus my home.

10 Q Why the down-size?

11 A Because in 2007 I built a real estate
12 business and rental business up to 450
13 properties. I had a dozen agents. And I saw --
14 you know, I was in the steel industry. I knew
15 what a recession looked like. And I had a
16 meeting with everybody and told them to start
17 selling, and I wasn't about to not follow my own
18 advice.

19 I started selling my properties. And
20 probably by 2009, I had cleared out all but
21 these -- the seven that I have right now.

22 Q Okay. Well, good for you.

23 Have you any thoughts about buying more
24 now that maybe the recession is paused or over
25 or something?



1 A Yeah. I'm always looking. We just --
2 I had a condo in Orlando six miles from Disney
3 in a resort that I was actually the board
4 president for from 2001 until about -- until
5 last November when I sold it.

6 And so, you know, would we buy another
7 property. Yeah, we probably would. But it
8 wouldn't be five and-a-half hours away.

9 Q Where -- of the seven in addition to
10 your personal home, are those located in Hilton
11 Head or are they all over? Where are they at?

12 A Yeah. One's in Reno, Nevada and one's
13 in Myrtle Beach.

14 Q All right.

15 A And the rest are here.

16 Q Okay. All right. So at some point you
17 moved here in '97. When did you end up buying
18 or starting that real estate business?

19 A August -- actually, it was August the
20 11th '97.

21 Q Okay. And is that Atlantic Real Estate
22 -- is that the company you bought, or is this --

23 A That's correct.

24 Q Okay. And what -- you said you're an
25 owner of that. Who are the other owners?



1 A Glenn Walters (phonetic) is the other
2 owner.

3 Q All right. You'd mentioned another
4 person. Did y'all buy that other third person
5 out at some point?

6 A We did.

7 Q Okay. When was that?

8 A I think it was like a -- within a year
9 of the August 11th date. It was within a year,
10 I'm sure.

11 Q Okay. So he didn't last very long?

12 A Didn't last very long, no.

13 Q What was his name?

14 A Joe Ryan.

15 Q All right. So tell me -- that business
16 started solely as a rental business and then you
17 branched out into sales; is that what you said?

18 A It's a little more complicated in terms
19 of -- those -- those two guys bought a company
20 here, a rental company. And when they brought
21 me in and we talked about joining, the three of
22 us, I didn't want to be part of their company
23 that they already had bought because -- it was a
24 long story. Within 24 hours they lost half
25 their properties.



1 They fired the person that was their
2 property manager, and that night she went home
3 and faxed all the owners and half of them went
4 with her and the other half stayed and they
5 ended up, those two, suing -- suing the guy that
6 sold them the property. And so --

7 Q Um-hmm.

8 A -- so in order to keep myself apart
9 from that, I said, "Look, I will start this, get
10 this company up and running for you. You run
11 your properties. I'll run mine, and if I can
12 help you with other ones, I will. But for the
13 most part, I don't want to be a part of your
14 legal issues."

15 Q So you started your -- basically, you
16 started your own company and eventually brought
17 Glenn Walters in?

18 A No. They -- they had already had a
19 shell company, Atlantic Real Estate, so --

20 Q Okay.

21 A -- we didn't have to do all the
22 paperwork. And the other one was called -- that
23 they bought and kept -- the name was Atlantic
24 Properties and Rentals or something.

25 Q Okay. And I guess eventually over



1 time, did Atlantic properties and Rentals come
2 under the Atlantic Real Estate name?

3 A It -- no. They kept it -- they
4 actually kept it separate. The commission
5 generated by that went to those two and the ones
6 generated by the company I started would be
7 split three ways. And eventually they --

8 Q Okay.

9 A Eventually, because of sales and
10 foreclosures and that, all those property pretty
11 much dissipated.

12 Q Okay. So does that other company still
13 exist --

14 A No.

15 Q -- today?

16 A No. Hmm-mm.

17 Q Okay. When did it cease operating the
18 business?

19 A Boy, that's a really good question.
20 Ten years ago, I guess.

21 Q Okay. But you weren't involved in that
22 other business?

23 A Not at all, no.

24 Q Okay. All right. So you got Atlantic
25 Real Estate. What -- what kind of licensing do



1 you have in real estate?

2 A I have a salesman's license. My
3 partner is the broker-in-charge.

4 Q All right. So your partner has the
5 broker's license?

6 A Correct.

7 Q So you've never sat for the broker's
8 exam?

9 A No. Hmm-mm.

10 Q Okay. Have you ever taken the broker's
11 exam course?

12 A No.

13 Q All right. Is that your only license?

14 A In real estate it is, yes.

15 Q Okay.

16 A I have other licenses. Yeah.

17 Q All right. So you haven't done a
18 property manager's license or anything like
19 that?

20 A No. Because the property manager
21 license -- I don't know if it's still the same.
22 But when I got my license, and for at least the
23 last 15 years that I know of, if you were a real
24 estate agent, you could be a property manager.
25 That came with the license.



1 Q Okay. I take it you haven't taken the
2 property manager --

3 A I've taken it as a matter of continuing
4 ed. Yes, I have, several times.

5 Q Okay. And when did you get your real
6 estate sales license?

7 A The week after I moved down.

8 Q So 1997?

9 A We went to school as soon as I found
10 out. Me and my wife both did in '97; correct.

11 Q And you've held it since then?

12 A Yes. Um-hmm.

13 Q Has the -- have you ever had any -- I
14 don't know what they call them at the LLR, but
15 any disciplinary hearings or complaints?

16 A No. Hmm-mm. Not that I can recall.
17 Let me think about that for a minute. No. The
18 only time -- we had a complaint from some woman
19 about the management of her property, but it had
20 to do with the tenant doing some damage to her
21 property, I believe. That's the only thing I
22 can recall. The only other time that the LLR
23 sent somebody down was when we bought properties
24 from somebody here who was a property manager
25 and he was -- he had to give the properties up



1 because he was losing his license and they
2 wanted to make sure that we would insure that
3 the -- all the trust monies would be made whole
4 and that the transfer of the properties was done
5 properly because this guy was in trouble.

6 Q Okay. So like a succession plan?

7 A Exactly.

8 Q All right. Who -- who handles sales
9 for your company? Do you do sales as well, or
10 is that somebody else? Do you have sales
11 people?

12 A No. Right now we're down to -- it's
13 me. I do sales and I do the rentals. We kind
14 of share the rental issue, I usually talk to the
15 owners because, for whatever reason they get in
16 touch with me first or someone's referred them
17 to me through a sale. So I usually contact them
18 first and tell them what our program is about.

19 And Glenn pretty much does inspections,
20 cuts the checks to owners, handles some
21 bookkeeping issues and handles the emergency
22 calls and that kind of thing.

23 Q Okay. So you're kind of the
24 client-facing person and then Glenn does a lot
25 of the, you know, the inspections you said and



1 some of the other stuff?

2 A Yes. Correct.

3 Q Okay. You'd mentioned that Glenn does
4 the inspections. Do you ever do inspections, or
5 is that mostly Glenn's purview?

6 A No. That's -- well, let me think about
7 this. I just -- that's pretty well split. He
8 -- you know I'm normally -- when I'm doing it,
9 when I'm out there inspecting properties for one
10 reason or another -- it could be a leak; it
11 could be anything.

12 He -- he, for the most part, is the
13 person to contract. If I come back and I tell
14 him we need carpet in there or we need painting,
15 he's -- for the most part, he's the interface
16 with the contractors, in most cases.

17 Q Okay.

18 A But the inspections, I'd say, were
19 split pretty even.

20 Q All right. So when you're saying
21 "inspections," you mean -- are you talking about
22 all inspections? So if you already have a
23 client and there's a tenant issue, you go and
24 inspect as well as front-end inspections before
25 you take on a client; all that is included in



1 what you've included -- what you're calling
2 inspections?

3 A Yes.

4 Q Who does the front-end inspection when
5 you're going in to set the rent and evaluate the
6 property as being a candidate for your program?

7 A I'm usually the first person in
8 because, like I said, most of the -- the
9 properties that we get to rent are usually
10 referred to me by another real estate agent or
11 real estate company. You do long-term? Do you
12 do this? Will you handle properties in this
13 complex? And I'm usually the guy that gets that
14 call that goes out to see it first to make sure
15 everything's okay.

16 Q Okay. And so you got -- you say you
17 currently have 100 properties on your rental
18 property?

19 A Or thereabouts, yes.

20 Q And 80 percent of them are long-term
21 rental?

22 A No. 100 percent of them are long-term.

23 Q Oh. Okay. So you have no short-term
24 rentals anymore?

25 A Not anymore, no.



1 Q Okay. What -- what are the -- you
2 know, do you have a typical property? Or you
3 said, I think -- did you say you have all condos
4 right now?

5 A Right now? Yeah, we have all condos.

6 Q All right. What about -- tell me about
7 the sales side of your company. What's -- you
8 know, what's your typical, I guess, sales volume
9 for a year?

10 A That's a -- that's a tough question. I
11 don't know. We do --

12 Q Let me back up. Is it -- is it a main
13 part of your business, or is it just kind of a
14 side thing and rentals is the main bread and
15 butter for the business?

16 A Rentals are the main thing; correct.

17 Q Okay. So you just take sales? Are you
18 mostly a buyer's agent or a seller's agent?

19 A A seller's agent.

20 Q So you take listings as they come, but
21 you don't -- do you advertise for listings or is
22 it, you know -- do you pool people from your
23 rental program and when they're tired of renting
24 and they want to get out, they might turn to you
25 as a seller's agent?



1 A No. And the reason we've gone down in
2 properties in the last two years is that these
3 are -- I'd say we were -- I'm about probably
4 80/20 listings to sales. So the 80 is -- in
5 most cases, they are owners who are retiring and
6 want to cash out of their property.

7 Q Um-hmm. So you said 80/20 listings to
8 sales.

9 A Yeah. I get people once in a while for
10 whatever reason, or friends of friends and they
11 come in here. They call me to show them the
12 area and here's their price range and we'll go
13 and take a look at some properties and sell.

14 Q Oh, okay. Okay. Okay. So 80 percent
15 listing business and 20 percent buyer's agent
16 business?

17 A Correct. I think that's about right.

18 Q Is -- let's see. And I think you may
19 have mentioned this or answered this already.
20 But the rental side of your company, I guess,
21 that produces -- what's the breakdown in income
22 between the rental side of the company and the
23 sales side of the company?

24 A 65/35; 65 percent rental or 70 percent
25 rental maybe, and 30 percent sales, if that.



1 Maybe it's not even that much. Maybe it's --

2 Q Um-hmm.

3 A Maybe it's 70 to 75 and -- about 30
4 percent, yeah. 30 percent is a good number.

5 Q Okay.

6 A I have -- let me -- let me --

7 Q Go ahead.

8 A -- say this, so I don't misstate this
9 in the record. I do have two other agents but
10 they're very -- they do very little business,
11 very little. One of them, basically, you know,
12 in five years has done maybe two sales and he
13 just has -- he has his license with me for
14 whatever reason.

15 And the other guy, he does have a lot
16 of listings, but it's property that is
17 commercial. He does mostly commercial. He does
18 almost all commercial. And the sales are rare
19 -- rarely sales. And they take anywhere from 18
20 months to 3 years to resolve because it's heir's
21 property.

22 Q Um-hmm. Okay. Do those agents pay you
23 a monthly desk fee and split commissions with
24 you, or how does that work?

25 (Phone interruption.)



1 THE WITNESS: Hang on. Let me get
2 rid of this call. Okay.

3 No. They're -- they're
4 commissions, so they're commission
5 sales people.

6 BY MR. CONNOR:

7 Q Okay.

8 A Yeah. They get no salary. The
9 commercial guy, I pay his MLS fees; the other
10 guy pays his own.

11 Q Okay. Are there -- when you're taking
12 on a new client, if you will, for a rental, are
13 there different considerations that you have
14 between if that person has a condo for rent or a
15 house?

16 A How do you mean, "different
17 considerations"?

18 Q Well, is there anything different in
19 your process or what you offer those people or,
20 you know, what you're looking for when you're
21 setting the rent or anything like that?

22 A No. I pretty much evaluate both
23 properties the same.

24 Q All right. All right. And you'd
25 mentioned your tax business. Tell me about your



1 tax business.

2 A It's a Liberty Tax franchise business.
3 They have about 4,000 stores across the country
4 and in Canada. And we got involved in 2007
5 because when I was working in the steel
6 industry, I did taxes part time for H&R Block
7 for eight years.

8 And it was 2007, which was the start of
9 the recession when I had told my agents to get
10 rid of all their property and I wanted a
11 recession-proof business. Taxes seems to fit
12 that bill.

13 So I, you know, went to the company on
14 one of their Discovery Days. And the CEO pulled
15 my wife and I aside and told us that we should
16 -- we should become area developers and buy a
17 big territory and invest our money in that and
18 help coach people to start the business, get it
19 up and running and coach them through and mentor
20 them in later years as their franchise would
21 evolve.

22 So that's what we did. And then within
23 a year we realized that the question that would
24 come to us would be hands-on tax questions from
25 an operating office. And we started a second



1 level. So we went and bought a franchise here
2 in Bluffton and opened our own office kind of as
3 a learning lab for us.

4 And we're in our 12th tax year over
5 there and in our 12 year as an area developer
6 and we partnered with somebody at one of the
7 other Discovery Days. The CEO sent somebody to
8 see me who had no money but a great idea for a
9 territory in Boston and he asked to partner in
10 that and asked if we would partner in that so
11 he'd have a financial backer to do that. So we
12 did that.

13 So we have 6 stores that we're partners
14 with in Boston and ten stores that we do --
15 well, right now we have 3, 4, 7 -- we have 8
16 stores in Augusta, Georgia.

17 Q Okay. When you say "area developer,"
18 do you have, you know -- I'm trying to
19 understand. Do you own the rights to Liberty
20 Tax franchises in that area and then you sub or
21 sell them to people, or how does that work?

22 A Yeah. Exactly. We own the territory
23 that has a capability of putting 28 offices in
24 there, 28 territories. And we sell the
25 territory and get the guy up and running, do the



1 -- you know, the approval of the location. I
2 help him with things that he needs to get this
3 thing. We make sure he attends the proper
4 training and that he knows what he's doing and
5 approve financial financing for him off-season
6 and during the season. We follow them,
7 basically. And then we get a percentage of all
8 their net profits.

9 Q Okay. So you're kind of like an
10 intermediary between head corporate and the
11 office owners, and then you're like their
12 mentor/supervisor. And then you get a -- I
13 guess, a piece of -- you said their profit. Is
14 there an additional franchise fee? Do you get
15 any of that?

16 A I do. We split that with corporate
17 50/50 of the franchise fee. I don't always do
18 that. If I have somebody that wants to grow, I
19 give them that, I waive that fee for me to give
20 them an opportunity if they have no money.

21 Q Okay. And you'd mentioned you'd done
22 taxes before. Do you -- do you do your own
23 taxes or do you give that to the people in your
24 office now?

25 A Yeah. Actually, I don't because I have



1 other things I'm involved in. So I give the --
2 my tax business goes to a CPA here --

3 Q Okay.

4 A -- so --- because I have the properties
5 and the holding company that holds them single
6 properties. And I have the taxes business. And
7 then I have the partnership with the guy in
8 Boston that I have a partnership here and our
9 Atlantic Real Estate divided into the company
10 Atlantic Properties, which actually owns the
11 building that we work in, and one other property
12 in Myrtle Beach. And so that's a separate
13 company. It's just -- it's pretty convoluted.

14 Q Your taxes are complicated.

15 A Yeah. Yeah. Correct. I mean I know
16 -- know the tax front.

17 Q Okay.

18 A I can tell you that the only thing I
19 preach is that real estate is the only
20 legitimate way to get rid of taxes --

21 Q Right.

22 A -- if you do it properly.

23 Q So in your experience in doing taxes,
24 are property taxes for a second home tax
25 deductible?



1 A Are properties for the -- for a second
2 home? The mortgage interest and taxes.

3 Q Okay.

4 A There's limits on that, though.

5 Q Right. Yeah. So you can't have a
6 mortgage above -- you can't get the --

7 A A million dollars.

8 Q -- write off on a mortgage above
9 \$750,00; right?

10 A 750 now. Yes.

11 Q And I guess there's a limit on tax
12 deductions.

13 It's like -- what -- \$10,000 per year?

14 A That, I can't tell you on second homes
15 because I rent all mine out.

16 Q Okay.

17 A Yeah.

18 Q I think it's a -- there's a cap on
19 local and state taxes now under this new thing.

20 A There is.

21 Q Do you know anything about that?

22 A Yeah. Just because of the increase in
23 the standard deduction, they wiped out a lot of
24 deductions on that kind of thing.

25 Q Yeah. Assuming you don't hit that cap.



1 Are, as far as property taxes for your second
2 home, tax deductible?

3 A Interest and taxes only --

4 Q Okay.

5 A -- up to the limits.

6 Q Up to the limits, whatever the limits
7 are?

8 A Correct.

9 Q Do you -- if someone's in the 15
10 percent bracket, how much of a tax benefit would
11 they get on their property tax write-off? Would
12 it be a 15-percent benefit, roughly?

13 A Yeah. But there's also -- there's also
14 -- and I don't know how -- I really don't know
15 the details of how it would affect it. But
16 there are also caps where -- on income that you
17 start to decrease the benefit of that.

18 Q Okay.

19 A And you have to -- you have to accrue
20 that money.

21 Q But you don't know where those limits
22 are?

23 A No.

24 Q Okay. Would you assume that they'd
25 probably be over \$75,000 in taxable income a



1 year?

2 A I don't. I think the breakpoint is
3 100. But that 100,000. That's my memory. I
4 don't do any taxes myself.

5 Q Okay. All right. Let move on a little
6 bit. You got your associate's in business.
7 Where did you get that degree?

8 A All three degrees were from Rider
9 University.

10 Q Roger [sic] University?

11 A Rider, R-I-D-E-R, in Lawrenceville, New
12 Jersey.

13 Q Okay. And let's see. When did you get
14 your associate's degree?

15 A I got my associate's degree in '75. I
16 got my bachelor's in '76 and I got my MBA in
17 '82. And -- I mean if you do a correlation with
18 my age, it's because I went to night school the
19 whole time. I went 12 years --

20 Q Now, was that a benefit through the
21 steel company or just on your own?

22 A That was on my own but they did pay a
23 small percentage of it. It maxed out at \$500 a
24 year. That's all they'd do.

25 Q Okay. All right. Let's move on up to



1 -- you'd mentioned your inspection of this
2 property, 17 Bradley Beach Road. Do you
3 remember when you went to go look at the
4 property, what day it was?

5 A Tuesday, Tuesday morning.

6 Q Tuesday of this week?

7 A Yes.

8 Q Okay. So March the 12th.

9 Sorry. I'm just writing it down, here?

10 A That's fine.

11 Q When were you first contacted about
12 this case?

13 A Sometime last week.

14 Q All right. How long did you spend at
15 the property? You said you arrived around 8:00
16 in the morning. When did you leave?

17 A I probably left a little bit before
18 9:00.

19 Q Okay. How long -- is that a typical
20 scale for how long you'd spend at a property
21 when you're doing an inspection for a client?

22 A Yeah. Yeah. I'd say it is, yeah.

23 Q All right. You've mentioned a whole
24 laundry list of issues with the property. I
25 won't repeat all those.



1 But then you went to -- you started to
2 estimate the cost to up-fit it and do to some
3 renovations. I was trying to keep up with your
4 numbers and I think you left off at \$28,000;
5 does that sound about right?

6 A To get it back into a good condition?
7 Is that --

8 Q Yeah.

9 A Yes.

10 Q Okay. And where did you -- where did
11 you get those statements or those numbers to
12 come up with the \$28,000?

13 A Just from experience off the top of my
14 head, really. I didn't do any kind of analysis
15 of that, put that together, you know, number by
16 number. A guesstimate of, you know, what I
17 think the kitchen would cost and the put
18 flooring in and whatever else that I mentioned
19 there.

20 Q Okay. You said "from your experience."
21 What kind of experience do you have in
22 estimating repairs?

23 A Just with the owners, especially when
24 -- a lot of times when they're selling, you
25 know, what's the -- they'll ask me, "What's the



1 difference if I sell it as-is or if I fix it up
2 and sell it?"

3 Q Um-hmm.

4 A They will ask to give me -- and I'll,
5 "Geez. I can't tell you sitting here. I'd have
6 to go to the place. I'll go to the place and
7 tell you and just kind of rough out an estimate.
8 Or I'll take a contractor or somebody
9 with me to assist in working up an estimate.
10 But I think I'm pretty good on the prices.

11 Q Okay. Have any of those owners come
12 back to you and complained that your estimates
13 were off or anything like that?

14 A Never. Hmm-mm.

15 Q Okay. Do you have a -- your
16 contractor's license or anything like that?

17 A No.

18 Q Okay.

19 A You know, in the experience of 41
20 properties, we've bought, you know, what they
21 call fixer-uppers over that period of time, an
22 accumulation of those properties. And we would
23 go in, and, of course, we would have a budget on
24 what we wanted to spend. You know, if a sale
25 came right away after it was looking good, that



1 was great and we'd flipped the property. But,
2 for the most part, we would do our -- we
3 wouldn't do -- we would do some of the work and
4 some of the work we -- the heavy stuff we
5 contracted out.

6 Q Okay. All right. But, according to
7 you, \$28,000 would put this -- well, describe
8 the condition of the property with these \$28,000
9 worth of improvements. Would this be a pretty
10 decent property, or, you know --

11 A Yes. Yeah.

12 Q Okay. And is that \$28,000 in
13 accordance with, I guess, your understanding or
14 experience with today's construction costs?

15 A Yeah. Pretty -- unless I ran into a
16 tough town with code enforcement. But unless I
17 could -- I would -- that \$28,000 doesn't get
18 you, you know, a showcase. That just gets you a
19 -- what I call -- what I'd say is a minimal
20 high-appealing place that somebody would say,
21 you know, "This is fine. I can rent this."

22 So instead of putting in a big,
23 double-door refrigerator, you might put in a
24 regular and spend money on the cabinets and
25 counter tops to make them look up to date.



1 And try to --

2 Q So you're saying this isn't a
3 million-dollar upgrade; this is --

4 A Yeah.

5 Q Let's put this in front of some
6 middle-class families and --

7 A Put it -- make it rentable. Correct.

8 Q All right. And then you said if you
9 did those, you'd be able to get \$2300 in rent on
10 the -- in the market --

11 A Roughly, yeah. Um-hmm.

12 Q -- per month? Okay.

13 A I would hope so.

14 Q Is that like a low-end number? A
15 middle number?

16 A high-end number, or is that just
17 pretty much what you would put the number on for
18 a client?

19 A Yeah. That's the number I'd put on for
20 the client.

21 Q All right. And then I -- sorry. I
22 wasn't able to write fast enough when you were
23 going back and doing past-estimated values.

24 Let's assume for minute that these
25 upgrades that you suggest for the \$28,000 --



1 let's say they had been done in 2007 or so. Can
2 you walk me back from today back to 2007, what
3 you think the rental value would've been in the
4 past?

5 A In 2007 --

6 Q Well, I mean let's start from today.
7 So today in early 2019, you've got \$2300 a
8 month, if you do the upgrade. Would it have
9 been the same last year in 2018?

10 A The money for the upgrades?

11 Q Well, let's assume the upgrades are
12 done.

13 Let's -- I'm talking about the rent?

14 A Yeah. If you went back to 2007, that
15 place would rent probably at a \$1,500 a month
16 rent.

17 Q With the upgrades?

18 A Rentable --

19 Q Yeah.

20 A -- with that money spent, yeah.

21 Q Okay. So then to --

22 A Now, on historical terms, that money
23 might be less, too. So I don't know.

24 Q Oh. You're talking about --

25 A The upgrade money --



1 Q -- the present value kind of --

2 A Instead of \$28,000.

3 Q So that \$1,500 is really kind of in
4 today's dollars?

5 A No. That 15 -- if you'll look back --
6 if we had a rental history on that property and
7 we went back and looked, I would expect that in
8 2007, the rent -- and I looked at the chart. I
9 would say 2007, and I would go across and say
10 \$1,500 a month plus utilities.

11 Q Okay. And then in 2019 it would stay
12 at \$2300 --

13 A Correct. Correct.

14 Q -- plus utilities. And then for the
15 year in between, would it be a steady increase
16 from 2007 to '19? Would be there jumps? What
17 would you expect?

18 A Yeah. I would expect there would be
19 jumps.

20 Q Okay. Do you know when those jumps
21 would occur?

22 A No. But I mean just off the top of my
23 head, I would say from 15 to 1750 to 2000 to
24 2250 and then to 23.

25 Q All right. So 1750, 2000, and --



1 what'd you say? Twenty --

2 A Then to 23.

3 Q Okay. So from \$2000 to 23?

4 You know, when would you expect those
5 jumps to occur? Just kind of --

6 A Every couple -- yeah. Every two -- it
7 seems like they sit there. If you rent a place
8 for a \$1,000 a month, it'll sit there every two
9 or three years, about every three years; and
10 then it'll jump up.

11 Q All right. So 2007 from 2019, that's
12 12 years.

13 So I'm just -- \$1,750 it'll be maybe
14 2011? Does that sound about right?

15 A Yes.

16 Q Maybe \$2,000 a month at, I guess, 2015
17 perhaps?

18 A Yeah. That's a good number.

19 Q Okay. All right. Let's talk a little
20 -- so these long-term rentals, what does the
21 owner typically pay for and what does the tenant
22 typically pay for?

23 A The tenant typically pays for the
24 utilities: The water and sewer, the electric
25 and any damages that they do to the structure.



1 Q Okay. Would they pay for, I guess,
2 their cable bill, their phone bill, all that,
3 too?

4 A Yeah. Um-hmm. Part of the utilities.
5 Yep.

6 Q Okay. When you have a house like this
7 with a yard, who typically takes care of the
8 yard?

9 A In -- yeah. In every case we had
10 except one, it was the owner.

11 Q Okay. So the owner took care of the
12 landscaping?

13 A Correct.

14 Q And I guess the owner pays the taxes
15 and -- what kinds of insurance do you require
16 your owners to keep?

17 A Homeowner's insurance and inside
18 insurance, if it's exterior insurance; so full
19 property insurance and liability.

20 Q So full property insurance would
21 typically be homeowner's, flood, wind and hail?

22 A Yes.

23 Q Okay.

24 A And then liability.

25 Q Liability?



1 A Like a blanket policy of liability.

2 Q Okay. And a liability policy. All
3 right.

4 And then they would take care of the
5 landscaping?

6 And you'd mentioned like bugs and
7 termites, the owner would pay for that?

8 A Yes. Pest control is one of the things
9 you learn.

10 The owners got to take care of it
11 because if the tenant does, he'll discontinue
12 the service just to save the money.

13 Q Okay.

14 A And it's not -- that doesn't do
15 anything for the owner's property values.

16 Q Is there anything else that the owner
17 pays for? I guess they would pay for regular
18 maintenance?

19 A Yes.

20 Q And then I assume you require your
21 owners to provide appliances, so if an appliance
22 goes out, they've got to fix it or replace it?

23 A Yes.

24 Q Anything else that the owners are
25 responsible for paying for?



1 A No. Hmm-mm. Not that I can think of

2 --

3 Q Okay.

4 A -- off the top of my head.

5 Q And that's -- that's typical for your
6 long-term rentals; right?

7 A Correct.

8 Q For short-term rentals, what -- is
9 there anything additional that the owner would
10 pay for? I guess would they also take care of
11 the utilities at that point?

12 A The owner would take care of the
13 utilities, exactly. Yes.

14 Q All right. Anything else or does that
15 pretty much cover everything after you add the
16 utilities; huh?

17 A Yeah, I think that does cover
18 everything. Because they -- you know, they --
19 yeah. They cover everything, cable TV or Direct
20 TV, whatever you have, any amenities you have,
21 they have to pay for.

22 Q Okay. As a property management
23 company, what kind of services do you provide to
24 your clients? I know you'd mentioned late-night
25 calls and stuff. But do you take care of all



1 the hassle of taking over the maintenance issues
2 and the dealing with tenants and all that from
3 the owners?

4 A Yes.

5 Q Okay. So if an owner were to do it on
6 their own, you know, they could get the \$2300 a
7 month, but they'd have all the headache of
8 dealing with the tenants; is that kind of the
9 deal?

10 A Exactly.

11 Q Okay. And if they go with you, what do
12 you charge for your services to deal with all
13 the tenant headaches?

14 A In our company, we charge 10 percent of
15 gross monthly rental, whatever that is. If
16 it's, you know, if there's -- if, for whatever
17 reason, if it's rented on a basis where we have
18 to pay the electric, even if it's reimbursed by
19 the tenant, whatever the situation is, it's the
20 gross amount of money that the tenant is paying
21 us.

22 And it's -- and we've -- we do have
23 properties that are at 12 percent. But most of
24 the properties are at 10 percent right now.

25 Q Okay. And is that --



1 A Which is -- which I can tell you --

2 Q Because you've gone down from 12
3 percent or you're trying to move to 12?

4 A No. Because we've acquired properties
5 that were at 12, and we've kept them there.

6 Q Oh, okay. Okay. So your typical is 10
7 percent?

8 A Yeah. And I would -- I would -- I
9 would stress if you wanted a good picture of
10 things, you'd have to find out because I don't
11 think there's many -- I don't think there's any,
12 other than us, that charges a flat 10 percent.
13 Most of them are 15 or higher.

14 Q Yeah. All right. To keep this
15 property -- you know, assume that that up-fit of
16 \$28,000 was spent to get this property where it
17 needed to be, how much money do you think the
18 tenant [sic] would have to put in it every year
19 to keep it at that level?

20 A The tenant would have, or the owner?

21 Q Oh. Sorry. The owner would have the
22 put in to keep it at that level.

23 A I don't know because you -- you know,
24 you've got to keep in mind, you've got to -- I
25 mean I have to do it like a spreadsheet. You



1 know, painting is every five years. The carpet
2 might be every five years. You've got an air
3 conditioner to replace, an air handler to
4 replace, appliance go. You know, I've never --
5 off the top of my head, I don't know. I'd have
6 to do a spreadsheet on that, really, to give you
7 a good picture of that.

8 Q Yeah. Do you have any number you
9 typically advise your clients to have on hand
10 for contingencies like that? You know, do you
11 say, you know, put aside \$2,000 a year just to
12 handle these issues because the big stuff will
13 come up eventually, or do you tell them anything
14 like that?

15 A No, we don't. We do tell them they
16 should have emergency funds or an air
17 conditioner replacement, which runs \$4-6,000.
18 And that's about it. Just, you know, they need
19 to have some money available for repairs.

20 Q Okay. When you -- so without that
21 \$28,000 in repairs -- I believe I've got
22 quotation marks around my note here that you
23 said, quote, "The property was not rentable
24 without doing some of these upgrades."

25 What -- what was your -- what rental



1 market -- like, who was your -- did you have a
2 certain kind of tenant in mind, you know, that
3 this would not be rentable to?

4 A As-is? I don't know that any -- I
5 honestly don't know that walking in that place
6 as it sits right now, which was the question, I
7 don't -- I can't imagine somebody saying, "Yeah,
8 I'll take it." Even for \$1,500, it's just --
9 this furniture and everything is just in
10 horrendous condition.

11 Q I guess that raises another issue.
12 When you're doing long-term rentals, is there
13 furniture in the rental or does the tenant bring
14 their own furniture?

15 A Yeah. In the last couple of years
16 we've rented the place -- all the places
17 unfurnished. I've furnished places in the past.
18 But now what we tell the owners is, we rent
19 their place unfurnished and, for the most part,
20 donate the furniture -- .if there is furniture
21 in there, it's usually old and we tell them
22 we'll get some charity in there to take the
23 furniture.

24 Q Did you -- I didn't quite get the
25 breakdown of your \$28,000 in upgrades. Did that



1 include new furniture or no?

2 A No.

3 Q Okay. So that was just kitchen,
4 bathrooms, insulation, finding a new banister --

5 A Yes.

6 Q And painting and new flooring?

7 A Yeah. I didn't really -- I wasn't
8 thinking about the banister and I wasn't putting
9 insulation in there. But it was the kitchen,
10 the floors, some painting and redoing the
11 bathroom.

12 Q Okay. Who is your typical tenant in
13 your business?

14 A A small business owner or a -- or a
15 worker on the island, an employee on the island.

16 Q Okay. And I guess those people would
17 have their families with them?

18 A Yes.

19 Q Have you ever rented to large groups of
20 unrelated people like, for instance, seasonal
21 workers who just bunk up together and don't have
22 their families with them?

23 A We did. We did interns.

24 Q Okay. Who are they? Do you know?

25 A I'm trying to think of the company.



1 There was a company that leaves Harbor Town.
2 It's a dinner cruise down to Savannah and back,
3 and we handled their -- I don't know -- 20
4 employees or something.

5 Q What accommodations did those tenants
6 end up getting?

7 A They were in condo units in Hilton Head
8 Resort.

9 Q Okay. How many people were in each
10 condo?

11 A Four, in most case, three or four.

12 Q And were those three or four-bedroom
13 condos?

14 A They were actually two bedrooms with
15 two twins in each room.

16 Q Okay. So they doubled up on the rooms?

17 A Yeah.

18 Q Okay. Did the company they were
19 working for cover their rent, or did those
20 people pay you directly?

21 A Let me think. I think they paid us
22 directly. No. I think they paid through the
23 company. The company wrote the check.

24 Q Okay. Do you remember how much that
25 company was paying for rent?



1 A I don't. Honestly, I don't know.

2 Q Okay. Do you --

3 A We stopped doing it because it was
4 problematic from a -- you know, when you do
5 interns, you're only renting from May to
6 October. So you got the program open -- you
7 have the property open again in October to rent
8 it, and then you're renting it the balance of
9 the year.

10 And then you have to kick somebody out
11 in April to have the place ready in May. And it
12 just didn't make any sense after a couple of
13 years.

14 Q Okay. Are you licensed in code
15 enforcement or building inspection?

16 A No.

17 Q Okay. Do you have any specialized
18 knowledge about applicable building codes in
19 Hilton head island?

20 A Just acquired knowledge from changes.
21 You know, changes that the town has made to go
22 to some Dade County standards for hurricanes and
23 that kind of thing. So you need thicker glass.
24 You need better sliders. You need things for
25 renovations that are stronger.



1 Q Um-hmm. But no --

2 A No kind of license. It's just --

3 Q -- general knowledge or specialized
4 knowledge other than --

5 MADAM COURT REPORTER: We need to
6 restart because the witness wasn't
7 finished answering the question and
8 talking over each other.

9 THE WITNESS: Just acquired
10 knowledge.

11 BY MR. CONNOR:

12 Q Okay. When you -- just a few more and
13 I think I'm close to getting done.
14 What -- do your owners, your owner/clients -- I'm
15 guessing, you know, -- how long do they
16 typically rent with you? Do you have people for
17 multiple years on your program for a long time?

18 A We do.

19 Q Okay. Do those -- over time, you know,
20 I guess paint and interior design and paint
21 colors change. Do those owners have to upgrade
22 the interiors of their units or houses from time
23 to time to make sure that they're in line with
24 tastes of new tenants?

25 A No. That's not really something that



1 happens. It doesn't happen by tenant request.

2 Q Okay. But I guess maybe I misspoke a
3 bad question.

4 I guess not at the tenant's request,
5 but to insure that they keep getting tenants.
6 You know, if one tenant moves out, do the owners
7 go in and maybe --

8 A We upgrade the property, yeah. In most
9 cases, we'll change the carpet out and paint, if
10 nothing else.

11 Q Okay. You said you paint every five
12 years and do the carpet. How often do you do
13 the carpet?

14 A I think this is a five to seven-year
15 cycle. But if the tenant moves out, and it's
16 rough, we ask the owner to paint it so it will
17 be rented in decent shape.

18 Q And do you have any estimate about how
19 much painting and changing the -- I guess you
20 did it. It's in the \$28,000, you said, for this
21 property. But how much of that \$28,000 would be
22 new carpeting and new paint, for instance, at 17
23 Bradley Beach?

24 A \$5-7,000, I think.

25 Q And that's just an expense that the



1 owner just needs to take into account when
2 they're renting out their property?

3 A Yeah. Because we try -- what we try to
4 do is increase the longevity of whatever we put
5 in. So carpet -- we try to pretty much
6 abandoned that in most cases. If the owner
7 wants longevity, we want to put ceramic tile or
8 porcelain tile floors in.

9 Like in that living room there, that's
10 what I would be doing, which is going to be a
11 lot more expensive than carpet. But it'll look
12 nicer.

13 Q And you wouldn't have to change it out
14 --

15 A Correct.

16 Q -- as often?

17 A Correct.

18 MR. CONNOR: Okay. All right.
19 Let me -- let's take a -- we've been
20 going for a long time now. Sorry. We
21 should have let you take a break
22 sooner. I'm going to take about a
23 five-minute break and look over my
24 notes, and then I think I may be done.
25 Okay?



1 THE WITNESS: Very good.

2 (Whereupon, a short break was
3 taken.)

4 BY MR. CONNOR:

5 Q Mr. Brashears, is the -- when you went
6 to the property on Tuesday, March 12th of 2019,
7 is that the only time you've been to 17 Bradley
8 Beach Road?

9 A Yes, sir.

10 Q All right. So you've never been there
11 before then?

12 A No. Huh-uh.

13 Q So you have no knowledge of the
14 condition of the property prior to March 12th,
15 2019?

16 A No.

17 Q Okay. Are you charging a fee for your
18 testimony?

19 A Am I charging for it? I think there's
20 a -- there's a fee involved somewhere; right?
21 But I -- no, I didn't. I didn't say I -- I
22 don't solicit this kind of business, no.

23 Q Okay. Are you getting paid for your
24 time today, is what I'm asking?

25 A Yes. I understand I am getting paid



1 for my time.

2 Q Okay. Do you know how much you're
3 getting paid?

4 A I believe it's \$150 an hour.

5 Q Okay. Do you get any -- have you ever
6 gotten any referrals for clients or business
7 from Mr. Finn?

8 A No.

9 Q Have you ever gotten any clients or
10 referrals from Frieda McDew Shorter?

11 A No.

12 Q Have you gotten any clients or
13 referrals from Stephanie Schoumacher?

14 A No.

15 Q Are you planning or do you have current
16 plans to attend the trial in this case on
17 Monday?

18 A I don't have plans to do that. It's --
19 I mean if someone told me it was required for
20 this suit or whatever's involved, yeah, I would.
21 I would do my best to make it, yes.

22 Q Okay. So you're not leaving the
23 country or going out of town to vacation between
24 now and Monday?

25 A No.



1 MR. CONNOR: Okay. That's all the
2 question questions I had.

3 THE WITNESS: Thank you.

4 MR. FINN: I don't have any
5 further.

6 MR. CONNOR: I'm getting the same
7 thing. We'll hopefully get these
8 transcripts tomorrow.

9 (WAIVED SIGNATURE.)

10 (Whereupon, the deposition of
11 Donald A. Brashears was concluded
12 at approximately 5:37 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

DORCHESTER COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Naomi McCracken

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina



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STEPHANIE M. McDEW vs FRIEDA P. McDEW
2016-CP-07-02274 - CARLA NETTLES

1 IN THE COURT OF COMMON PLEAS
2 STATE OF SOUTH CAROLINA
3 COUNTY OF BEAUFORT

4 STEPHANIE M. McDEW a/k/a
5 STEPHANIE McDEW SCHOUMACHER,
6 Plaintiff,

7
8
9 CIVIL ACTION NUMBER
10 VS. 2016-CP-07-02274

11
12
13
14 FRIEDA P. McDEW, a/k/a
15 FRIEDA McDEW SHORTER
16 Defendants.

17 -----/

18 The deposition of CARLA NETTLES, a
19 Witness in the above-entitled cause, taken
20 pursuant to Notice and Agreement, before Naomi
21 McCracken, Stenographic Reporter and Notary
22 Public, at the offices of the Akins Law Firm, 6
23 Johnston Way, Bluffton, South Carolina, on the
24 14th day of March 2019, commencing at or about
25 the hour of 11:33 a.m.



1 MR. CONNOR: Yes.

2 BY MR. FINN:

3 Q And, Mrs. Nettles, where do you live?

4 A Walterboro, South Carolina.

5 Q Okay. And what do you do for a living?

6 A I clean.

7 Q Clean what?

8 A I clean houses, condos, offices,
9 anything that needs to be cleaned. I'm a
10 cleaner.

11 Q Okay.

12 A A housekeeper.

13 Q Do you have properties on Hilton Head
14 that you clean?

15 A Yes, sir.

16 Q Okay. And have you ever been to 17
17 Bradley Beach Road?

18 A Yes, sir.

19 Q And do you know approximately when you
20 were there?

21 A Miss Anne Finn called me and asked me
22 could I go clean it in -- I think it was in
23 September of 2017 -- because it needed to be
24 clean. I went. She gave me a key. I met her
25 somewheres the day before. She gave me the key,



1 gave me the code. I went to clean but I called
2 her and told her I couldn't get in the door.

3 So she said, "Carla, I'll be right
4 there."

5 So I played and played with the door,
6 but I remembered sometimes the doors get hung
7 from up the salt water. So I usually use WD-40
8 but I didn't have none. But I had furniture
9 polish, Pledge. And I squirted that into the
10 door lock and on the key and kept working with
11 it. And it took me about ten minutes and got in
12 and turned the alarm off. Then I cleaned.

13 Q So let me break that down a little bit.
14 You were contacted by Anne Finn; correct?

15 A Miss Anne Finn.

16 Q And you know that Anne Finn is my wife;
17 correct?

18 A Yes, sir.

19 Q And you know that she works for my law
20 firm; correct?

21 A Yes, sir.

22 Q Okay. And Mrs. Finn contacted you to
23 -- what did she ask to you to do, just in short?

24 A To go clean because the place needed to
25 be cleaned and I cleaned. She know-ed I cleaned



1 because I cleaned a rental for her before. And
2 I went and I cleaned it.

3 Q Okay.

4 A But I just had trouble getting in the
5 door, so I called her. But by the time she got
6 there, I got in.

7 Q Okay. So she provided you a key to 17
8 Bradley Beach Road?

9 A Yes, sir. And the code.

10 Q Okay. And you went over there to do
11 the cleaning and you tried to enter the house?

12 A Yes, sir. But I couldn't get in
13 because the key -- the key would go in but it
14 wouldn't turn because it was the salt -- I've
15 had this problem before with the rentals. And
16 the cleaning company I used to work for, that's
17 what they taught us to do, either use WD-40 or
18 furniture polish, spray it in the locks, spray
19 it on the key, keep working it and it opens --
20 finally opens up. And I got it open.

21 Q Okay. You had to do that on this
22 particular lock?

23 A Yes, sir. I had to work with it about
24 ten minutes before I got the door open.

25 Q Okay. What time frame -- when was



1 this?

2 A It was 2017 in September. I think it
3 was at the beginning just before Labor Day, like
4 a couple days before Labor Day.

5 Q Okay. And you said you were also
6 provide with the security code?

7 A Yes, sir.

8 Q Okay. And did the security code you
9 were given disarm the alarm?

10 A Yes, sir.

11 Q Okay.

12 A Yes, sir. It worked.

13 Q And ultimately you were able to get in
14 using the using the key provided and disarmed
15 the alarm using the code provided?

16 A Yes, sir.

17 Q Okay. And did you clean the premises?

18 A Yes, sir.

19 Q And is that the last time you were at
20 the premises?

21 A Yes, sir.

22 Q Okay.

23 MR. FINN: Please answer any
24 questions Mr. Connor might have.

25 THE WITNESS: Yes, sir.



1 washer.

2 Q How would -- would you characterize the
3 condition of the house as being in good
4 condition? Fair condition? Poor condition?

5 A It was in good condition. Well-kept
6 up.

7 Q Sorry for my pause here. I'm trying to
8 write some notes.

9 A Yes, sir.

10 Q All right. So you were called by Miss
11 Anne Finn about this house; is that right?

12 A Yes, sir.

13 Q All right. And it's your understanding
14 that she is Mr. Tom Finn's wife?

15 A Yes, sir. And she worked for him.

16 Q Okay. Have you -- how did she get your
17 name? Do you do other work for them?

18 A When they needed me, I do. I clean the
19 office sometimes. Whenever they need me, they
20 call me.

21 Q Okay. How often do you clean their
22 office?

23 A About once every two months.

24 Q And how much do you charge when you do
25 that?



1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
3 No. 2016-CP-07-02274

4 Stephanie M. McDew aka)
5 Stephanie McDew)
6 Schoumacher,)

7 Plaintiff,)

8 vs.)

9 Frieda P. McDew aka)
10 Frieda McDew Shorter,)

11 Defendant,)
12

HEARING

November 18, 2019

13 Hearing reported by Deborah S. Thomas,
14 Certified Verbatim Reporter and Notary Public in and
15 for the State of South Carolina; said hearing held
16 before Honorable Marvin H. Dukes, III, Beaufort
17 County Master in Equity and Special Circuit Court
18 Judge in accordance with the South Carolina Rules of
19 Civil Procedure, at the Beaufort County Courthouse,
20 102 Ribaut Road, Room 212, Beaufort, South Carolina
21 on November 18, 2019, at the hour of 11:07 a.m.

22

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23 80 Plymouth Lane
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24 (803) 206-7390
25

COPY

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6 * * * * *

7 EXHIBIT INDEX

8 Exhibits: Marked at Page
9 (Exhibits retained by Clerk of Court.)
10
11

12 None proffered.

13 * * * * *

1 This hearing is conducted in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 JUDGE DUKES: Good morning. We're
5 here in 2016-CP-07-02274. This is McDew versus
6 McDew. And this is a motion for a new trial or to
7 reconsider. And, Mr. Connor, happy to hear from
8 you, sir.

9 MR. CONNOR: Yes, Your Honor. Thank
10 you. If Your Honor will remember, this case was
11 tried back in March of this year. Involves a
12 dispute between two sisters over a beach house on
13 Hilton Head Island. My client is the Plaintiff, Ms.
14 Schoumacher, and the Defendant is Ms. Shorter.

15 My client brought this case for possession
16 of the property as well as asserting a claim for
17 ouster damages. And the Defendant, Ms. Shorter,
18 counterclaimed for adverse possession and for some
19 various rents and expenses she had to pay for the
20 property.

21 The trial was held in this court. Granted
22 my client's claim for possession, but denied her
23 ouster claim and at the same time denied the adverse
24 possession claim by the Defendant. And it's that
25 portion of the ruling, Your Honor, that we would

1 wish the court to reconsider.

2 Our motion has a couple issues in it, but
3 -- I'll take them a little bit out of order. The
4 first issue, Your Honor, is we would posit that the
5 court should have granted the outer claim as a
6 matter of law. And that conclusion takes an
7 understanding of the juxtaposition and relationship
8 between an adverse possession claim and an ouster
9 claim.

10 South Carolina case law is pretty clear
11 that ouster is a prerequisite for an adverse
12 possession claim. In other words, ouster with --
13 for the statutory time period will result in a prima
14 facie case for adverse possession. The opposite is
15 true that if you take away the statutory time from
16 the adverse possession claim, you are only left with
17 ouster.

18 And so it becomes a continuum between when
19 the claimant is first ousted from the property until
20 a time period ten years later at which point that
21 claim of ouster then ripens into an adverse
22 possession claim. In a sense, it's two sides of the
23 same coin, Your Honor, divided only by that
24 statutory period.

25 With that understanding, it makes sense

1 that this Youman's case from 1924, the South
2 Carolina Supreme Court noted that when an adverse
3 possession claim is pled but ends up being
4 unsuccessful, that claimant is on notice that they
5 are on the hook for these ouster damages. That
6 being the reasonable rental value of the property
7 during the time of ouster.

8 And that is exactly what has happened in
9 this case, Your Honor. The defendant Ms. Shorter
10 counterclaimed for adverse possession. And in doing
11 so affirmatively alleged and admitted in Paragraph
12 17 of the original counterclaim and Paragraph 19 of
13 her amended counterclaim the follow. That since
14 that time, that time being a reference to the May
15 14th, 1979, deed date to the parties -- since May
16 14th, 1979, Defendant Frieda McDew Shorter has
17 exercised exclusive control over the subject
18 property. And then skipping ahead, in a manner that
19 is continuous, open, notorious, adverse and hostile.

20 Your Honor, that is a prima facie claim
21 for adverse possession. It's got the six elements.
22 It also has that statutory time period, in this
23 case, dating all the way back to 1979. Under South
24 Carolina Supreme Court precedent, Johnson versus
25 Alexander and other cases, those allegations are

1 binding on Ms. Shorter as admissions.

2 And as explained in our post-trial briefs
3 and I believe to some extent in our current motion
4 filings, Your Honor, the reason we believe that this
5 court denied that adverse possession claim in which
6 case the adverse possession claim is actually
7 legally impossible is that the Defendant could not
8 make out that statutory time period as a matter of
9 law. The reason for that is there's an intervening
10 life estate in the parties' parents which did not
11 end until 2007 with the death of the parties'
12 mother, Ms. McDew. And since this case was brought
13 2016, that is less than the ten-year time
14 requirement for the adverse possession claim.

15 So if you take away the statutory time
16 requirement from the Defendant's admitted adverse
17 possession claim, you are left with an admission of
18 ouster, Your Honor. And for that reason, our claim
19 for ouster should have been granted as a matter of
20 law based on the legal admissions of the Defendant.

21 But it's not just the legal reasons that
22 the ouster claim should have been granted, Your
23 Honor. It's also based on the facts that were
24 presented at the trial and in the pleadings which
25 were dispute.

1 Both in the pleadings and at trial,
2 Ms. Shorter admitted -- well, first of all, she
3 admitted Paragraph 6 of our original complaint which
4 read, Defendant has denied Plaintiff the current set
5 of keys and the security code to the aforementioned
6 house and refuses to give keys and the security code
7 to the Plaintiff.

8 She then, in response to the amended
9 complaint, changed that presumably because in the
10 intervening time period, she had actually given the
11 keys pursuant to this court's consent order of 2017.
12 Nonetheless at trial, Ms. Shorter testified that she
13 actually refused to give Ms. Schoumacher, my client,
14 the keys and the security code to the house in a
15 conversation dating back to as early as 2009, and
16 that she thereafter continued to refuse to give
17 those keys and the security code to my client until
18 the entry of this court's order in 2017.

19 So for the time being, the undisputed
20 facts show from trial and in the pleadings that,
21 from at least as early as 2009 until the entry of
22 this court's order, my client was excluded from the
23 property because she had been refused the keys and
24 the access code to the house by the Defendant. Your
25 Honor, that is prima facie case of ouster which is

1 undisputed from the Defendant's testimony.

2 One hiccup in this, Your Honor, it sounds
3 like in reading this court's order and in some of
4 the arguments from opposing counsel that a lot of
5 the court's decision hinged on whether or not the
6 Defendant actually changed the locks to the
7 property. And, Your Honor, we respectfully submit
8 that the emphasis on that particular finding of fact
9 is misplaced as whether or not the Defendant
10 actually change the locks has no bearing on whether
11 or not my client was actually excluded.

12 The -- her -- my client's request for the
13 keys in 2009 belies the obvious fact that she did
14 not have a working set of keys whether that's
15 because she misplaced them or never had them to
16 begin with doesn't matter. She did not have the
17 means of access to this property. The person having
18 that means of access, the Defendant, denied her that
19 means of access and continued to do so until 2017
20 when ordered by this court.

21 Your Honor, for those reasons, ouster
22 should be granted and the -- whether or not -- the
23 finding of fact of whether or not the locks had
24 actually been changed should not affect that
25 analysis. What changing the locks may show and what

1 the Parker cases show that it can represent is an
2 intention to exclude somebody's co-tenant. But we
3 have that intention here, Your Honor.

4 In this case, there is undisputed
5 testimony from three witnesses, my client, Mr. Gay
6 and the Defendant, herself, that she went around
7 telling people, including my client and Mr. Gay,
8 their shared financial adviser, that she intended to
9 exclude my client from the property because she
10 hadn't paid certain expenses and that she intended
11 to go ahead and change those locks. Whether or not
12 she actually did change those locks is ultimately
13 immaterial because it may have been that she found
14 out, well, Ms. Schoumacher doesn't have the keys.
15 She's asking me for the keys, anyway. I don't need
16 to change those locks now to keep her out.

17 And finally, Your Honor, on this issue,
18 it's not just the law and the facts that were
19 presented in this case. It's also common sense
20 would dictate finding of ouster for my client. And
21 that's the fact that this case even exists at all.
22 This case was brought for possession of the property
23 back in 2016. It would not have been necessary to
24 bring this case at all if my client had that access
25 to the property in 2016. So the very existence of

1 this lawsuit points toward a finding of ouster.

2 Not only that, but the existence of the
3 Defendants adverse possession claim, the fact that
4 they even pled it should be common sense evidence
5 that there was ouster in this case because if the
6 Defendant steps up today and says there are no facts
7 in the record at all to show ouster even taking into
8 account our pleadings then that would make their
9 adverse possession frivolous, Your Honor, and in
10 violation of Rule 11.

11 But we should not read into this situation
12 an absurd result like that. Instead we should look
13 for reason and an -- ultimately, a reasonable
14 interpretation of these facts, Your Honor. And that
15 is that ouster did occur under the law, under the
16 facts, under common sense. And that's the portion
17 we ask the court to reconsider and instead grant my
18 client's claim of ouster for those reasons.

19 The other issues, Your Honor, that we
20 raise in this case in our motion -- I'll move
21 through them quickly. It's only one page of notes,
22 so it shouldn't take that much longer.

23 The other portion of the judgment we'd ask
24 the court to reconsider is the apportionment of this
25 property tax benefit set off that the court awarded

1 in this case. There was a stipulation at trial that
2 the Defendant could have taken a tax write off. And
3 there -- and there -- because -- had gotten a tax
4 benefit of about 15 percent by paying these property
5 taxes and could have done that for all the years in
6 question.

7 Granted she only took -- she claims she
8 only took that deduction to 2017. And the court
9 only granted us a set off for those tax benefits in
10 2017.

11 The fact is, Your Honor, she could've
12 taken them in the other years and should have given
13 her duty to mitigate damages. And those should not
14 be awarded against my client. Rather, we should get
15 the benefit of the setoffs for those other years.
16 So we'd ask the court to just expand those tax
17 credits for the other years in question.

18 Very quickly, Your Honor, if the court is
19 disinclined to reconsider its judgment in this case,
20 we'd ask that the court grant a new trial and reopen
21 the record.

22 On a certain number of instances, Your
23 Honor, we submitted an affidavit from my client
24 stating basically to the effect of when she went to
25 this property in June of this summer after the

1 trial, she discovered that her keys to the property
2 obtained from the Defendant no longer worked. One
3 key worked in one of the locks and her other key --
4 well, neither keys worked in the other lock.
5 There's two locks which it takes to open the door;
6 one a deadbolt and one a -- just a door handle lock,
7 Your Honor.

8 Upon contacting defense counsel, we were
9 provided another set of keys. And on looking at the
10 keys, one of the keys is the same and one of the
11 keys is different. The different key being the one
12 which then on the second try opened the other lock,
13 Your Honor.

14 Based on these facts, it appears to us
15 that the locks had been changed at least at some
16 point whether before, whether after the trial, hard
17 to tell from our perspective, Your Honor. But it at
18 least calls into question the veracity and the
19 reliability of the Defendant's testimony that she
20 did in fact not change the locks. And it's that
21 sort of veracity, that sort of problem, Your Honor,
22 that we would ask the court to reopened the record
23 and reconsider should it not reconsider the rest of
24 its order.

25 And finally, Your Honor, pending the

1 resolution of this motion, we would ask that the
2 court stay execution of the judgment under Rule 62.
3 There -- the court has discretion to do so. There
4 would be no prejudice to any of the parties if a
5 stay is granted because any judgment which is
6 entered in this case would be fully secured by the
7 parties' respective interest in the property versus
8 the prejudice to my client if she's forced to pay a
9 judgment early before either disposition of this
10 motion or disposition of any appeal. For that
11 reason, Your Honor, we would ask that the court stay
12 execution of a judgment pending the resolution of
13 this motion.

14 And one final point, Your Honor, late
15 yesterday I received an e-mail and a notification of
16 a filing of an affidavit by Mr. Finn in opposition
17 to our motion for a new trial in this case, Your
18 Honor. And that submission clearly violates the
19 timing requirements of Rule 59(c) which requires
20 that any affidavit submitted in opposition for a
21 motion for new trial be submitted within ten days of
22 service of the original motion. And even if the
23 court grants an extension, no later than 20 days
24 after the service of the original motion, and since
25 this motion was served electronically in --

1 September 16th, that would make his late filed
2 affidavit of yesterday untimely by over a month,
3 Your Honor. And we'd ask the court disregard it.

4 JUDGE DUKES: Thank you so much, sir.

5 Mr. Finn, happy to hear from you.

6 MR. FINN: That you, Your Honor.

7 Your Honor, are we standing now or --

8 JUDGE DUKES: Oh, no. You can sit or
9 stand or do whatever. A lot people are more
10 comfortable standing. But I prefer to stand, but
11 you all are welcome to sit or stand.

12 MR. FINN: All right. Good morning,
13 Your Honor. Tom Finn representing Fried McDew
14 Shorter.

15 Judge, the -- I'd like to remind the court
16 a little bit about the facts of this case. As the
17 court probably recalls, the Plaintiff lives in the
18 Washington DC area and has lived there, I think the
19 testimony was, in excess of 20 years. The property
20 is located on Hilton Head. My client, Fried McDew
21 Shorter lives in Savannah.

22 The testimony that the court heard at
23 trial was that Ms. Schoumacher has never ever paid
24 one cent to do anything for the upkeep of the
25 property, not the taxes, not the upkeep, not the

1 insurance, nothing, Your Honor, even though both
2 sisters inherited the property when their mother
3 passed.

4 They -- they -- my client living in
5 Savannah with closer proximity to the house and from
6 the testimony it would seem more ties to the actual
7 property actually used the property with her husband
8 and family in the summertime. But she exclusively
9 took care of the property. That's where -- that was
10 the origin of the adverse possession claim, Your
11 Honor, which as I recall I thought we had at trial
12 told the court we weren't pursuing that. But it
13 doesn't really matter.

14 Adverse possession and ouster, Your Honor,
15 are two different things. If they were the same
16 thing, they would -- they would not have a need for
17 the other.

18 The testimony in this case with respect
19 to -- so with respect to taking care of the
20 property, all my client, hundred present, no
21 contradictory evidence.

22 With respect to Ms. Schoumacher's ability
23 or intention or effort to get into the property, the
24 court might recall that. Ms. Schoumacher testified
25 that at one point in 2009 she attempted while on her

1 -- you might remember, Your Honor, she was at her
2 class reunion in Savannah. She drove over -- she
3 requested the key. At that time, Your Honor, my
4 client's husband was in the hospital with kidney
5 failure. And to have the sister request the key,
6 you have to drop everything, give me the keys
7 because I'm here now. I want to go to the house.
8 She said, no. That was the testimony, Judge. She
9 was in the hospital with her husband and wasn't
10 going to take time to get the keys to her sister,
11 nor would any reasonable person.

12 That, Your Honor, was the only time -- and
13 she apparently tried to get in using keys that she
14 had from her mother. I think that it's also worth
15 noting, Your Honor, that the sisters had equal
16 access to the house. The mother, while she was
17 alive, pretty much took care of things. But after
18 the mother passed, both sisters could go to the
19 house, use the house.

20 Ms. Schoumacher testified that she in fact
21 had keys that her mother gave her. It was on the
22 same ring. She always had them. There was no one
23 standing guard, Your Honor, at the house. And no
24 effort to keep Ms. Schoumacher out of the house.
25 Did -- my client admitted that she had said, I'm

1 going to change the locks if you don't pay. I think
2 that's kind of natural. That's not ouster, Your
3 Honor.

4 I asked Ms. Schoumacher why she didn't go
5 and open the door. Get a lock -- it's your house.
6 Judge, if you got locked out of your house and there
7 was no way to get in, you'd do something. It's your
8 house. It -- just like it's her house. There was
9 no testimony that my 70-something-year-old client
10 kept his client out of the house. She wouldn't even
11 be there if Ms. Schoumacher was to come down.

12 Judge, the court heard the evidence in
13 this case, and the evidence is clear that there was
14 no ouster. There was no changing of the locks. My
15 client testified she never changed the locks. She
16 threatened it in a heated phone call, but she never
17 changed the locks.

18 This is really as most motions to
19 reconsider, and I've probably been there myself, is
20 a Hail Mary pass to try to overturn the evidence
21 that the court sat here for a day and heard and
22 weighed the credibility of the witnesses. And, Your
23 Honor, the court made a finding appropriately so
24 that there was no ouster. There was no overt acts.
25 I would put on the record that ouster and adverse

1 possession are not the same; although, the court
2 found that there was no adverse possession in this
3 case.

4 Your Honor, moving to the second issue,
5 the issue of -- to -- was the tax issue, Your Honor.
6 We had stipulated, Your Honor, that (A) Ms. McDew
7 Shorter was in the 15 percent tax bracket. And (B)
8 that she could have taken a tax benefit because she
9 had paid all the taxes the entire time. There was
10 no question about that.

11 However, Your Honor, I don't -- there was
12 no other testimony as to whether her accountants
13 felt that that was the only way to treat the
14 property from an accounting standpoint. I simply
15 don't know, Your Honor. All I know is we did
16 stipulate to those two. And if the court was to
17 make a finding based on the stipulation that she
18 could have taken the 15 percent but didn't, that's
19 one way to go.

20 But, Your Honor, I don't know enough about
21 accounting and there was no testimony that --
22 perhaps she could've deferred it. Perhaps she
23 could've treated it some other way from an
24 accounting methodology that is not simply, oh, we're
25 in the 15 percent. We get the 15 percent deduction.

1 And then the third thing that counsel
2 wanted to do was have the court say, oh, his client,
3 who hadn't done anything, paid anything gets a
4 direct dollar for dollar tax credit for what my
5 client did. His client didn't pay anything, but he
6 wants on the back end after never paying anything,
7 he wants a full amount of the tax -- of my client's
8 so-called tax credit to apply to his client which I
9 -- that doesn't seem fair, Your Honor, because there
10 is the cost of money that my client put out.

11 But I don't think the facts are
12 overwhelmingly in disputed, at lease with respect to
13 -- I would say she could've taken that had her
14 accountants advised her that that's the best way for
15 her to go.

16 As it turns out, and Mr. Connor pointed
17 out, the only time that my client took that tax
18 credit or deduction was in 2017. So that's the one
19 that was in -- contained in the order. And that's
20 the one that the court addressed.

21 That final issue, Your Honor, it's hard to
22 -- was the issue of stay -- a request to stay
23 execution of the judgment pending, you know,
24 additional rulings.

25 Your Honor, Mr. Connor said that no one is

1 prejudiced by it. Your Honor, my client is an
2 elderly lady living on a fixed income, a government
3 retirement, with her husband's passing last year her
4 income was further reduced. She's carrying, Your
5 Honor -- if Your Honor will recall, there's a house
6 on one lot and then two adjacent lots. She's
7 carrying the entire burden of this by herself and
8 has been for the past ten years.

9 There is a prejudice. She doesn't have
10 the money to pay for this. So she's not going to be
11 able to. And this rather historic property will
12 probably be sold at a tax sale or have to be sold
13 anyway. So there is a great deal of prejudice. And
14 baring any order from the court, we are going to
15 pursue all available remedies to collect of this
16 judgment as soon as we are able which the court had
17 put in place 120-day time period, I believe, under
18 the order that the court issued.

19 Your Honor, this is -- as with most
20 instances of a motion to reconsider, Your Honor,
21 heard the evidence. There's no new evidence. All
22 the parties had an opportunity to present evidence,
23 to hear witnesses. The judge got to weigh the
24 testimony and the credibility of the witnesses.

25 Your Honor, this was a family dispute that

1 doesn't seem to be going away, but it's not worthy
2 of granting a -- for the court to grant this motion
3 to reconsider or stay execution of the judgment or
4 any other relief that is sought here, Your Honor.

5 JUDGE DUKES: Thank you, sir.

6 Anything else?

7 MR. CONNOR: Just quickly, Your
8 Honor, to address a few points made by Mr. Finn.

9 As to whether or not we're asking the
10 court to look at new testimony or whatnot on this
11 motion for reconsider, Your Honor, we're not. We're
12 looking at the Defendant's admitted pleadings, Your
13 Honor, black-and-white in the pleadings itself that
14 say she maintained exclusive, continuous, notorious,
15 adverse and hostile possession of the property since
16 1979. There's nothing more clear than that.

17 We're just asking that the court
18 reconsider its ruling in light of bringing these
19 admissions back to the court's attention.

20 We're also not saying anything else about
21 any of the testimony that there was any new
22 testimony that she excluded my client by failing to
23 give her the keys for -- since 2009 to 2017. That
24 was in the testimony. We're just asking the court
25 weigh that testimony, reconsider it in the light of

1 these -- in light of the law on the issue.

2 Now, whether or not adverse possession and
3 ouster are two different things, I said nothing to
4 the contrary, Your Honor. There are two different
5 sides of the spectrum. When you have ouster and you
6 have ouster continuously for the ten-year time
7 requirement, it ripens into adverse possession.
8 That's two different things demarcated by a very
9 bright line in the sand which is very rare in the
10 legal world, but a very bright line in the sand that
11 it says at ten years it's no longer an ouster claim
12 and you no longer have a claim for possession. It
13 is now adverse possession and it belongs to the
14 other co-tenant. That's all we're saying.

15 And it draws the courts mind to the fact
16 that when you fail to make that ten-year time
17 period, adverse possession falls back to ouster and
18 it entitles the other party to ouster damages.

19 As far as this juxtaposition position
20 between where my client lives and where the
21 Defendant lives and this dearth of attempts to get
22 into the house, Your Honor, there's an underlying
23 hint that Mr. Finn is advocating for self-help in
24 that he says my client should've just gone there,
25 gotten a locksmith, change the locks, broken into

1 the house, et cetera.

2 The law prohibits that, Your Honor. It
3 prohibits self-help. In fact, in dicta in the
4 Parker case, the South Carolina Supreme Court said
5 that the ousting co-tenant's efforts in doing the
6 property were actually illegal because it was
7 self-help.

8 There is no case in South Carolina that
9 says that you should self-help and break into your
10 house instead of going through the court system
11 which is what my client did. She sued for
12 possession and ouster damages which is what is
13 required of her. Anything to the contrary is just
14 crazy speculation, Your Honor, and actually against
15 the better weight of the law in this case.

16 As far as the tax issue, Mr. Finn
17 indicated that he didn't think that there was any
18 testimony in the record about what tax preparer or
19 an accountant would do or treat this property. And
20 I would point the court to Page 11 of our motion
21 which sites Mr. Brasiers submitted position
22 testimony. That from his experience in the tax
23 preparation business that if someone had income in
24 the 15 percent tax bracket, they would receive a tax
25 benefit of 15 percent of any property tax deduction

1 claimed. And that was from his submitted deposition
2 testimony, Your Honor, by the Defendants.

3 As far as staying the judgment and this
4 idea of prejudice, Your Honor, that the Defendant
5 lacks the funds to carry the property, Your Honor,
6 since the time of trial, we have received no notice
7 of any expenses dealing with this property. I have
8 advised my client that going forward, at least, she
9 should split the cost of the property with her
10 sister. And she is ready, willing and able to do
11 that, but we have yet to see any request for such
12 expenses. And so any prejudice from the remaining
13 portion of the expenses of the Defendant would be on
14 the hook for would be just the normal detriment of
15 owning property in Beaufort County, Your Honor,
16 which would be the obligation of all to pay the
17 property taxes and such.

18 And for that, we would respectfully
19 disagree with Mr. Finn's arguments and again urge
20 the court to reconsider its order and grant my
21 client's claim for ouster.

22 JUDGE DUKES: Help out for a second
23 because I know we had a phone conference after the
24 fact on the property tax issue which seems fairly
25 confusing. So there's no dispute but that the

1 Plaintiff paid no property taxes during this time;
2 is that -- is that accurate?

3 MR. CONNOR: That's correct, Your
4 Honor.

5 JUDGE DUKES: Okay. So the Defendant
6 paid the property tax the entire time. And so the
7 order granted her -- what it reduced from the amount
8 she paid the deduction that she took. Right? That
9 was --

10 MR. FINN: Yes, Your Honor, the
11 one -- the one time.

12 JUDGE DUKES: Just the one time?

13 MR. FINN: Yes, sir.

14 JUDGE DUKES: Okay.

15 MR. FINN: So I guess the issue, Your
16 Honor, I think you're on the edge of it is whether
17 that deduction should apply to the other years that
18 my client paid the taxes but did not take a
19 deduction because Andrew -- I'm sorry -- counsel
20 indicates that she could've taken it; therefore, his
21 client should get a credit.

22 JUDGE DUKES: Okay. That's right. I
23 remember now. All right. I think I understand the
24 issue. All right. Okay. Anything else from the
25 parties then from counsel.

1 MR. CONNOR: That's all.

2 JUDGE DUKES: Well, I will try to --
3 as you can tell I've got a crazy, busy day. And it
4 is doubtful that I will be back in touch in the next
5 couple days. But if you all don't hear from me in
6 about ten days, please shoot Heather an e-mail.
7 Remind her that I have this under advisement and
8 I'll try to get it back to you as quickly as
9 possible.

10 (Whereupon, the hearing was concluded
11 at 11:37 a.m.)
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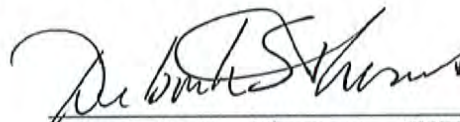
Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Stephanie M. McDew, et al v. Frieda P. McDew, et al, on the 18th day of November, 2019, and that the foregoing pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Matthew W. Orville, Esquire, Nelson Mullins Riley & Scarborough, LLP, 151 Meeting Street, Suite 600, Charleston, South Carolina 29401.

In witness whereof, I set my hand and sealed this 17th day of January 2020.



Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

My Commission
expires 2/7/28



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO.: 2016-CP-07-02274

STEPHANIE M. MCDEW a/k/a)
 STEPHANIE MCDEW)
 SCHOUMACHER,)

Plaintiff,)

vs.)

FRIEDA P. MCDEW a/k/a FRIEDA)
 MCDEW SHORTER,)

Defendant.)

PLAINTIFF'S POST-TRIAL BRIEF

Plaintiff Stephanie McDew Schoumacher ("Ms. Schoumacher" or "Plaintiff") submits her post-trial brief¹ pursuant to the Court's request at the hearing of this matter on March 18, 2019 and states as follows:

INTRODUCTION

This case is about ownership, access, ouster damages, and expenses. It involves a property dispute between two sisters—Ms. Schoumacher and Frieda McDew Shorter ("Ms. Shorter" or "Defendant")—concerning commonly-owned real property, including a beach house (the "House"), located at 17 Bradley Beach Road, Hilton Head Island, Beaufort County, South Carolina (the "Property"). Plaintiff brought this action after Defendant denied Plaintiff access to the Property by refusing to provide the keys and security code to the beach house. In her Amended Complaint, Plaintiff is seeking a declaration of her ownership interest in the Property, injunctive relief granting her access to the Property, and damages from Defendant for her

¹ Plaintiff reserves the right to submit an additional brief in rebuttal.

nuisance and ouster. In response, Defendant has counterclaimed for adverse possession and quantum meruit seeking full ownership of the property and reimbursement for the past expenses related to the Property.

SUMMARY OF THE EVIDENCE

A. Summary of undisputed facts

This case involves a dispute over real property (the "Property") and improvements (the "House") located at 17 Bradley Beach Road on Hilton Head Island, South Carolina.² The Property consists of three lots with the House located on the middle lot.³ Plaintiff and Defendant are sisters⁴ who were deeded⁵ the House and Property as tenants in common in 1979⁶ by their parents Dr. Stephen and Mrs. Mary McDew.⁷ The Deed granted the Property to Plaintiff and Defendant subject to "a Life Estate" in each of the Parties' parents.⁸ Dr. McDew, the Parties' father, died on October 31, 1981⁹ and the Parties' mother, Mrs. Mary McDew, died on March 17, 2007.¹⁰ The Parties' parents took care of the House and paid the expenses of the Property until their respective deaths.¹¹

After the death of Mrs. McDew, the Defendant took over the care of the House and the payment for the expenses of the Property.¹² Although Defendant has requested reimbursement from Plaintiff for half of the expenses for the Property, Plaintiff has not contributed to the

² Trial Tr. 14:1-22, 169:8-10.

³ Trial Tr. 14:23-15:1.

⁴ Trial Tr. 12:9-14, 169:3-4.

⁵ Trial Tr. 15:4-5, 138:12-14.

⁶ Cf. Plaintiff's Amended Complaint ¶¶ 3-5; Amended Answer ¶¶ 2-3.

⁷ Trial Tr. 11:22-23, 169:5-7; Plaintiff's Exhibit 1 (the "Deed").

⁸ Plaintiff's Exhibit 1.

⁹ Trial Tr. 12:1-6, 171:4-6.

¹⁰ Trial Tr. 12:1-6, 137:6-10.

¹¹ Trial Tr. 17:2-12, 170:25-171:3.

¹² Trial Tr. 17:13-15, 139:1-3.

expenses of the Property since her mother's death.¹³ Because Plaintiff has not used the Property, she has also not used any of the utilities for the House for which Defendant is claiming reimbursement.¹⁴

B. Plaintiff's Testimony

The Plaintiff readily admits that she has not contributed to the expenses of the Property¹⁵ and that she owes the Defendant reimbursement and/or a set off for her fair share of the expenses.¹⁶ As for why she did not pay for the expenses Defendant was claiming between 2007 and 2009, Plaintiff explained that she could not trust the accuracy of the expenses the Defendant was claiming and, as such, requested supporting documentation.¹⁷ This distrust originated from the Defendant's refusal to account for two \$25,000 withdrawals from the Parties' trust without Plaintiff's required consent and the Defendant's improper receipt of Mrs. McDew's dividend distributions from the trust after Mrs. McDew's death.¹⁸ Although the issue of dividend distributions was eventually rectified, Plaintiff's questions concerning the withdrawals remained unanswered and her distrust of Defendant continued.¹⁹

In the spring of 2009, Plaintiff—intending to visit the area in June for her 40th high school reunion and to stay at the House—telephoned Defendant to inform her of her plans.²⁰ On that call, Defendant told Plaintiff that she “could not stay at the house” because Defendant “had changed the code and the locks on the house” and Plaintiff “would not be able to get into the

¹³ Trial Tr. 17:16-21, 171:16-20.

¹⁴ Trial Tr. 34:21-35:2, 186:9-187:2.

¹⁵ Trial Tr. 17:16-21.

¹⁶ Trial Tr. 37:8-39:13.

¹⁷ Trial Tr. 74:14-75:16.

¹⁸ Trial Tr. 17:22-20:11, 74:14-75:16.

¹⁹ Trial Tr. 18:23-20:21.

²⁰ Trial Tr. 20:22-21:11.

house until [Defendant] was paid what she claimed [Plaintiff] owed her.”²¹ Thereafter, in June 2009, while Plaintiff was in Savannah for her reunion, Plaintiff went to the Property to see if her keys to the House, which she had received from her mother prior to her mother’s death, worked—but, the keys did not work.²² Plaintiff, having experience with difficult locks, tried her keys for a period of time long enough to conclude that Defendant had indeed changed the locks.²³ This conclusion was bolstered by the fact that Plaintiff had never had an issue with the locks before and, in fact, had witnessed her frail, 82-year-old mother open the lock without issue in 2006.²⁴ After she tried the keys and discovered they did not work, Plaintiff asked Defendant for a new set of keys and the code but Defendant refused.²⁵ Thus, despite having knowledge that Plaintiff’s keys did not work, Defendant refused to provide working keys.²⁶ As a result, Defendant “barred” Plaintiff from using the House.²⁷

After Defendant blocked Plaintiff from using the Property, the issues which initially led Plaintiff to refuse Defendant’s requests for help with the Property’s expenses were exacerbated as Plaintiff questioned the fairness of paying the expenses of the Property she could not use.²⁸

After 2009, Plaintiff recalls “multiple conversations over the years” where she continually informed Defendant of her desire to use the House and Property but the Defendant “remained adamant in her position that she was not going to allow [Plaintiff] in until [Defendant] was paid what she felt she was due.”²⁹ Specifically, Plaintiff recalls telephone conversations

²¹ Trial Tr. 21:2-11.

²² Trial Tr. 21:12-19.

²³ Trial Tr. 27:7-12.

²⁴ Trial Tr. 28:22-30:7

²⁵ Trial Tr. 26:7-12.

²⁶ Trial Tr. 26:19-22.

²⁷ Trial Tr. 21:12.

²⁸ Trial Tr. 34:7-13.

²⁹ Trial Tr. 21:20-24.

which occurred in 2010, 2014, and 2016 where she sought access to the House from Defendant and was denied.³⁰ The 2016 request to use the House was particularly important to Plaintiff because she planned to come to the Property with her daughter but Defendant, again, refused and told Plaintiff that it was no longer Plaintiff's house.³¹ On October 21, 2016, Plaintiff filed the present lawsuit seeking a declaration of ownership, access to the Property, and damages.³²

Even after filing a lawsuit, Plaintiff did not gain access to the House until the entry of this Court's Consent Order on October 16, 2017³³—nearly a year after filing the lawsuit. Pursuant to the Consent Order, Plaintiff was finally provided with a working set of keys and the security code to the Property.³⁴ Prior to the Consent Order, Defendant knew the security code for the House to be 1031—the date of her father's death.³⁵ However, the security code she was provided pursuant to the Consent Order was 1223—the date of her parents' wedding anniversary.³⁶

In sum, Plaintiff asks that this Court confirm the ownership of the Property, grant Plaintiff access to the Property, award her damages for Ouster, and make a determination as to the fair and equitable expenses for the Property.³⁷

C. Testimony of Edgar Gay

Mr. Gay previously served as a financial advisor to the Parties' parents³⁸ and now serves as a financial advisor to both Plaintiff and Defendant.³⁹ Through his course of dealings with the

³⁰ Trial Tr. 22:7-22.

³¹ Trial Tr. 22:9-22.

³² Plaintiff's Complaint, filed Oct. 21, 2016.

³³ Trial Tr. 32:7-10; Consent Order, filed Oct. 16, 2017.

³⁴ Trial Tr. 32:7-15.

³⁵ Trial Tr. 25:13-26:6.

³⁶ Trial Tr. 32:16-17.

³⁷ Trial Tr. 39:14-24.

³⁸ Trial Tr. 79:16-80:8.

³⁹ Trial Tr. 80:20-23.

Parties' family, he is familiar with the Property⁴⁰ and acted as a go-between for the Parties in an attempt to help them resolve the current dispute.⁴¹ In that role, Mr. Gay confirmed that, in 2009, Defendant told him "I told [Plaintiff] if she reimbursed me for the expenses that I have incurred, she can use [the House]. If [Plaintiff] doesn't, I am not going to allow her to do it."⁴² Mr. Gay further explained that Defendant also stated, in 2009, "I'm going to change the locks if Stephanie doesn't pay - you know, reimburse me for the expenses."⁴³

D. Expert Testimony of Henri Kirsten

This Court qualified Mr. Kirsten as an expert witness in assessing the current and past reasonable long-term rental values of properties.⁴⁴ Before entering the long-term rental business, Mr. Kirsten served as a divisional CFO of a \$1.5 billion international paper company.⁴⁵ Now, Mr. Kirsten is the owner of Miller Long Term Rentals on Hilton Head Island.⁴⁶ As part of his business, Mr. Kirsten inspects potential rental properties, notes their condition, and estimates each property's reasonable rental value.⁴⁷ His firm also maintains information on past rental rates for properties which his firm currently manages.⁴⁸ Mr. Kirsten noted that for long-term rentals the tenant is responsible for paying the utilities for a property.⁴⁹

For this case, Mr. Kirsten inspected the Property at 17 Bradley Beach Road and rendered his opinion of the past and present long term rental value of the Property.⁵⁰ In its current

⁴⁰ Trial Tr. 80:9-11.

⁴¹ Trial Tr. 81:9-25.

⁴² Trial Tr. 83:9-84:1.

⁴³ Trial Tr. 85:10-16.

⁴⁴ Trial Tr. 101:4-18.

⁴⁵ Trial Tr. 95:15-96:3.

⁴⁶ Trial Tr. 96:14-23.

⁴⁷ Trial Tr. 100:22-101:3.

⁴⁸ Trial Tr. 100:14-17.

⁴⁹ Trial Tr. 122:3-23.

⁵⁰ Trial Tr. 101:20-24.

condition, Mr. Kirsten opined that the Property was rentable with less than \$5,000 in cleaning and repairs.⁵¹ Much of that estimated cost is tied to the standard deep clean of the Property that Mr. Kirsten requires of all the Properties he manages.⁵² After such minimal work is performed, Mr. Kirsten estimated that the House would have a reasonable long-term rental value between \$1,750 and \$2,000 per month if marketed to a young couple with children.⁵³ However, Mr. Kirsten noted that the Property would command a higher rent of \$2,500 per month if marketed and rented to a group of young hospitality workers.⁵⁴ Based on an average rent escalation between 1.5% and 2.5% each year since 2009, Mr. Kirsten estimated that the rent a family would have paid for the Property—assuming cleaning and minimal repairs—would have been between \$1,500 and \$1,750 per month in 2009.⁵⁵ Mr. Kirsten noted that the rise in rental rates between 2009 and the present would not have been constant but would have jumped every few years.⁵⁶ The following table summarizes Mr. Kirsten's opinions of the reasonable long-term rental value of the Property assuming cleaning and minimal repairs:

Year:	Monthly Rental Rate (Family):	Monthly Rental Rate (Workers):
2009	\$1,500 - \$1,750	\$2,000
2010	\$1,500 - \$1,750	\$2,000
2011	\$1,550 - \$1,800	\$2,100
2012	\$1,550 - \$1,800	\$2,100
2013	\$1,600 - \$1,850	\$2,200
2014	\$1,600 - \$1,850	\$2,200
2015	\$1,650 - \$1,900	\$2,300
2016	\$1,650 - \$1,900	\$2,300
2017	\$1,700 - \$1,950	\$2,400
2018	\$1,700 - \$1,950	\$2,400
2019	\$1,750 - \$2,000	\$2,500

⁵¹ Trial Tr. 104:21-105:12.

⁵² Trial Tr. 126:5-127:7.

⁵³ Trial Tr. 105:13-19, 110:18-24.

⁵⁴ Trial Tr. 110:2-17.

⁵⁵ Trial Tr. 106:14-107:15.

⁵⁶ Trial Tr. 106:17-107:15.

Mr. Kirsten also opined that with \$10,000 to \$30,000 in upgrades to the Property, the current reasonable long-term rental value of the Property for a family would increase to between \$2,500 and \$2,750 per month.⁵⁷ In 2009, assuming similar upgrades to the Property, Mr. Kirsten stated the rental value would have been between \$2,000 and \$2,250 per month.⁵⁸ From a business perspective (i.e., maximizing rent and minimizing expenses), Mr. Kirsten opined that, with \$20,000 in upgrades, it would be reasonable for the Parties to expect the Property to rent for at least \$2,500 per month.⁵⁹ The following table summarizes Mr. Kirsten's opinions of the reasonable long-term rental value of the Property assuming between \$10,000 and \$30,000 in upgrades:

Year:	Monthly Rental Rate:
2009	\$2,000 - \$2,250
2010	\$2,000 - \$2,250
2011	\$2,100 - \$2,350
2012	\$2,100 - \$2,350
2013	\$2,200 - \$2,450
2014	\$2,200 - \$2,450
2015	\$2,300 - \$2,550
2016	\$2,300 - \$2,550
2017	\$2,400 - \$2,650
2018	\$2,400 - \$2,650
2019	\$2,500 - \$2,750

E. Defendant's Testimony

During her testimony, Defendant remembered the telephone call in which Plaintiff informed Defendant that she intended to stay at the House⁶⁰ and testified that it was "possible" that the telephone call occurred in 2009.⁶¹ Defendant testified that, during such call, Plaintiff

⁵⁷ Trial Tr. 107:16-108:3.

⁵⁸ Trial Tr. 108:4-21.

⁵⁹ Trial Tr. 111:15-112:7.

⁶⁰ Trial Tr. 149:17-25.

⁶¹ Trial Tr. 177:23-25.

requested that Defendant let her into the House and give her the security code.⁶² However, Defendant confirmed she did not give Plaintiff a working set of keys or the security code as requested by Plaintiff on that telephone call in 2009.⁶³ In fact, Defendant stated that during the call “I said to [Plaintiff] that, you haven’t paid anything; what do you mean you’re coming?”⁶⁴ Moreover, Defendant admitted that “I might have said to [Plaintiff], I’m going to change that lock.”⁶⁵

Now, facing the possibility of owing Plaintiff damages for ouster, Defendant claims that she did not make good on her promise to Plaintiff that she would change the locks.⁶⁶ Defendant further claims that she did not change the security code to the house.⁶⁷ Instead, Defendant attempts to explain Plaintiff’s difficulties with the lock on the House by offering testimony that, because of the salt air, the lock rusted and had a history of being difficult to open such that Defendant’s husband had to routinely spray WD-40 into the lock to get it to open.⁶⁸ Defendant further testified that the lock became more difficult after the Parties’ mother passed away in 2007 because they used the House less often.⁶⁹ Despite this knowledge, Defendant did not inform Plaintiff that the lock was difficult during the 2009 telephone call⁷⁰ and never followed up with the Plaintiff to mail her a working set of keys or send her the security code.⁷¹

⁶² Trial Tr. 175:23-176:10.

⁶³ Trial Tr. 178:15-179:11.

⁶⁴ Trial Tr. 150:1-8.

⁶⁵ Trial Tr. 150:12-13.

⁶⁶ Trial Tr. 143:25-144:5.

⁶⁷ Trial Tr. 149:7-9.

⁶⁸ Trial Tr. 150:25-151:19, 189:17-190:9.

⁶⁹ Trial Tr. 191:16-21.

⁷⁰ Trial Tr. 192:2-6.

⁷¹ Trial Tr. 179:12-18.

Defendant testified that she understood Plaintiff brought this lawsuit in an effort to gain access to the House.⁷² Nevertheless, Defendant admitted she did not provide Plaintiff with the keys and security code to the House until the entry of this Court's Consent Order.⁷³

As for her management of the Property, Defendant has not kept up the Property based on the idea of making it rentable.⁷⁴ As for the \$151,918.54⁷⁵ Defendant claims she paid in expenses for the Property, Defendant admitted that at least some of her claimed expenses were actually paid out of her mother's estate and not by the Defendant herself.⁷⁶ Moreover, although disputed by Defendant at trial, Defendant testified in her deposition that she wrote almost all the checks for the expenses of the Property from her mother's estate until late 2018 when the money ran out.⁷⁷ In any case, Defendant agreed that the amounts she is claiming for payment of property taxes should be reduced by the amount of her corresponding tax benefit from claiming the taxes as a deduction.⁷⁸

F. Deposition of Carla Nettles

At trial, Defendant submitted the deposition transcript of Carla Nettles as Defendant's Exhibit 5.⁷⁹ Ms. Nettles cleans houses for a living⁸⁰ and regularly cleans the office of Defendant's counsel.⁸¹ She testified that in September 2017—more than eight years after Plaintiff's attempt to open the locks to the House in June 2009, Ms. Nettles went to the Property at 17 Bradley Beach Road to clean the House and that she had difficulty with the lock when she arrived but

⁷² Trial Tr. 179:25-180:3.

⁷³ Trial Tr. 180:4-13.

⁷⁴ Trial Tr. 182:18-22, 185:12-19.

⁷⁵ Trial Tr. 154:16-155:3, Defendant's Exhibits 2 and 3.

⁷⁶ Trial Tr. 202:23-203:2.

⁷⁷ Trial Tr. 196:5-197:6, 198:20-199:9.

⁷⁸ Trial Tr. 188:22-189:8.

⁷⁹ Trial Tr. 206:2-18.

⁸⁰ Defendant's Exhibit 5, 4:5-15.

⁸¹ Defendant's Exhibit 5, 14:13-20.

was able to enter the house using the working set of keys provided to her.⁸² However, upon entering the House in 2017, she testified that the House was in a rentable condition comparable to other rental properties that she cleans.⁸³

G. Deposition of Donald Brashears

At trial, Defendant also submitted the deposition transcript of Donald Brashears as Defendant's Exhibit 4.⁸⁴ Mr. Brashears owns a real estate sales and rentals business on Hilton Head Island as well as an interest in a tax preparation business.⁸⁵ Although Defendant's counsel never moved to have Mr. Brashears qualified as an expert witness, Mr. Brashears offered opinion testimony regarding the past and present long-term rental value of the House and Property.⁸⁶ He explained that in a long-term rental, the tenants pay for the utilities.⁸⁷

Mr. Brashears, apparently, inspected the Property at 17 Bradley Beach Road on March 12, 2019.⁸⁸ According to Mr. Brashears, the house, in its current condition, is not rentable.⁸⁹ However, Mr. Brashears testified that, with \$28,000 in upgrades⁹⁰, the House had a current long-term rental value of \$2,300 per month.⁹¹ Assuming his suggested upgrades had been performed in the past, Mr. Brashears estimated that the rental value of the Property would have been \$1,500 per month in 2007⁹², \$1,750 per month in 2011⁹³, and \$2,000 per month in 2015⁹⁴. Mr. Brashears

⁸² Defendant's Exhibit 5, 4:16-5:12.

⁸³ Defendant's Exhibit 5, 23:15-19, 24:6-9, 25:12-16.

⁸⁴ Trial Tr. 206:2-18.

⁸⁵ Defendant's Exhibit 4, 3:17-5:10.

⁸⁶ See Trial Tr.; Defendant's Exhibit 4.

⁸⁷ Defendant's Exhibit 4, 56:19-57:5.

⁸⁸ Defendant's Exhibit 4, 5:11-6:7, 70:5-9.

⁸⁹ Defendant's Exhibit 4, 7:11-12.

⁹⁰ Defendant's Exhibit 4, 15:7-16:2, 50:1-9.

⁹¹ Defendant's Exhibit 4, 16:8-22.

⁹² Defendant's Exhibit 4, 54:6-16.

⁹³ Defendant's Exhibit 4, 56:11-15.

⁹⁴ Defendant's Exhibit 4, 56:16-18.

did explain that the cost of the suggested upgrades would have been less if performed in 2007.⁹⁵

The following table summarizes Mr. Brashears' opinion regarding the reasonable rental value of the Property from 2009 to the present with \$28,000 in upgrades:

Year:	Monthly Rental Rate:
2009	\$1,500
2010	\$1,500
2011	\$1,750
2012	\$1,750
2013	\$1,750
2014	\$1,750
2015	\$2,000
2016	\$2,000
2017	\$2,000
2018	\$2,000
2019	\$2,300

Apart from his opinions concerning rental value, Mr. Brashears also testified—from his experience in the tax preparation business—that property taxes on second homes are deductible on individual income tax returns.⁹⁶ He also explained that if someone had income in the 15% tax bracket, they would receive a tax benefit of 15% of any property tax deductions claimed.⁹⁷

STIPULATIONS

The Parties have stipulated to the amount and breakdown of the expenses claimed to have been paid by Defendant which total \$151,918.54 from March 18, 2007 until the time of trial.⁹⁸

The Parties have also stipulated that Defendant's income fell within the 15% federal income tax bracket for the same relevant time frame and that Defendant either has claimed—or

⁹⁵ Defendant's Exhibit 4, 54:21-55:2.

⁹⁶ Defendant's Exhibit 4, 47:23-48:2.

⁹⁷ Defendant's Exhibit 4, 47:9-17.

⁹⁸ Trial Tr. 154:16-157:21; Defendant's Exhibits 2 and 3.

could have claimed—the sums paid for taxes on the Property as deductions on her federal income taxes.⁹⁹

ARGUMENT

I. Ownership.

A. Plaintiff and Defendant were deeded the Property as tenants in common subject to life estates in each of their parents.

When interpreting the form of shared property ownership conveyed by a document, courts in South Carolina favor tenancies in common absent express language to the contrary. *Smith v. Cutler*, 366 S.C. 546, 549, 623 S.E.2d 644, 646 (2005); *Davis v. Davis*, 223 S.C. 182, 200, 75 S.E.2d 46, 54 (1953). Here, the Deed conveyed the Property to “Frieda P. McDew and Stephanie M. McDew” subject to life estates reserved by Dr. and Mary McDew.¹⁰⁰ The Deed, however, did not contain any express language creating a joint tenancy, a right of survivorship, or another form of ownership.¹⁰¹ Consequently, the Deed created a life estate in the Parties’ parents with remainder to the Parties as tenants in common¹⁰² in equal shares. *See Campbell v. Williams*, 171 S.C. 279, 172 S.E. 142, 145 (1933) (holding deed created life estate in parent with remainder to children as tenants in common absent express language to the contrary). The life estate ended with the death of the Parties’ last surviving parent—Mary McDew—on March 17, 2007 at which time title vested in Plaintiff and Defendant as tenants in common. *Belue v. Fetner*, 251 S.C. 600, 606, 164 S.E.2d 753, 756 (1968) (holding life estate terminates on death of last surviving life tenant at which point title vests in remaindermen).

⁹⁹ Trial Tr. 157:22-158:20.

¹⁰⁰ Plaintiff’s Exhibit 1.

¹⁰¹ Plaintiff’s Exhibit 1.

¹⁰² In her Answer to Amended Complaint, Defendant admitted that the Parties were deeded the Property as tenants in common. *Cf.* Plaintiff’s Amended Complaint ¶¶ 3-5; Amended Answer ¶¶ 2-3.

B. Defendant's adverse possession claim is legally impossible.

In South Carolina, “adverse possession, whether for ten (10) years or twenty (20) years or even under the forty (40) year statute, cannot run against remaindermen until the death of the life tenant.” *Phipps v. Hardwick*, 273 S.C. 17, 25, 253 S.E.2d 506, 510 (1979); *Curtis v. DesChamps*, 290 S.C. 315, 325, 350 S.E.2d 201, 207 (Ct. App. 1986) (“In the case before us, the last life tenant, Sue DesChamps McLeod, died in 1980. Therefore, it was not until her death that adverse possession could commence against her remaindermen or against any of their co-tenants.”).

In this case, despite Defendant’s allegations to the contrary¹⁰³, the period of adverse possession by Defendant against Plaintiff could not have commenced until after the death of the last life tenant of the Property—Mary McDew—on March 17, 2007. *Phipps*, 273 S.C. at 25, 253 S.E.2d at 510; *Curtis*, 290 S.C. at 325, 350 S.E.2d at 207. Because Plaintiff instituted her case for possession on October 21, 2016—less than ten years after Mary McDew’s death—Defendant’s adverse possession claim must fail. *See* S.C. Code § 15-67-210 (prescribing ten year period of exclusive possession for asserting adverse possession claim). Consequently, Plaintiff and Defendant remain equal co-owners of the Property as tenants in common.

¹⁰³ *See* Answer to Amended Complaint and Counterclaim, filed Mar. 15, 2019, at ¶ 19 (“The Defendant Frieda McDew Shorter inherited the disputed property along with two adjacent parcels on May 14, 1979. Since that time Defendant Frieda McDew Shorter has exercised exclusive control over the subject property, maintained the property, and paid all property taxes on the property in a manner that is continuous, open, notorious, adverse and hostile.”).

II. Access.

As a cotenant of the Property, Plaintiff has the right, in common with Defendant, to the possession of the Property.

A cotenant has the right, in common with his cotenants, to the possession of the property owned in common. *Watson v. Little*, 224 S.C. 359, 364, 79 S.E.2d 384, 387 (1953). Thus, Plaintiff, as cotenant, has the right to possession of, and access to, the Property. As set out below, Defendant has unlawfully interfered with Plaintiff's right of access and possession and is liable to Plaintiff for damages.

III. Ouster Damages.

A. Defendant ousted Plaintiff from the Property for which Plaintiff is entitled to damages.

"Ouster" is the actual turning out or keeping excluded a party entitled to possession of any real property. *Parker v. Shecut*, 349 S.C. 226, 230, 562 S.E.2d 620, 622 (2002) (hereinafter "*Parker I*"). "By actual ouster is not meant a physical eviction, but a possession attended with such circumstances as to evince a claim of exclusive right and title and a denial of the right of the other tenants to participate in the profits." *Id.* The acts relied upon to establish an ouster must be of an unequivocal nature, and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable. *Id.* Where one co-tenant has ousted the other co-tenant, and kept them out by force, he is liable as a trespasser for the rental value of the property beyond his ownership share. *Id.*, 349 S.C. at 230, 562 S.E.2d at 622-23. (citing *Jones v. Massey*, 14 S.C. 292, 307-08 (1880)). Moreover, when a cotenant's claim for adverse possession is not sustained, they are chargeable with the knowledge that they will be accountable

to the other alleged cotenants for their proportionate share of the rental value of the property. *Youmans v. Youmans*, 128 S.C. 31, 121 S.E. 674 (1924).

Here, Defendant—a cotenant of the Property—brought a counterclaim for adverse possession alleging that, since 1979, she “has exercised exclusive control over the subject property... in a manner that is continuous, open, notorious, adverse and hostile.”¹⁰⁴ Defendant is judicially bound by such allegations. *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (“The allegations, statements or admissions contained in a pleading are conclusive as against the pleader.”). Moreover, Defendant’s assertion of exclusive title in the Property is the quintessential definition of ouster. *See Parker I*, 349 S.C. at 230, 562 S.E.2d at 622 (describing “ouster” as “a claim of exclusive right and title” which is “hostile to the rights of the other cotenants”); *Fender v. Heirs at Law of Smashum*, 354 S.C. 504, 513, 581 S.E.2d 853, 858 (Ct. App. 2003) (“ouster is a prerequisite to a cotenant claiming title by adverse possession”). However, as shown above, Defendant’s adverse possession claim fails as a matter of law and, thus, Defendant is chargeable with notice that she is liable to Plaintiff for Plaintiff’s proportionate share of the rental value of the property. *Youmans*, 128 S.C. 31, 121 S.E. at 676.

The facts presented at the trial of this case also dictate a finding of ouster. The undisputed evidence shows that the Plaintiff called Defendant and explained that she intended to stay at the House in June 2009 for her 40th high school reunion and that Defendant refused to give Plaintiff a set of working keys or the security code to the House until the entry of this Court’s Consent Order on October 16, 2017.¹⁰⁵ Regardless of whether Defendant actually changed the locks at

¹⁰⁴ Answer to Amended Complaint and Counterclaim, filed Mar. 15, 2019, at ¶ 19.

¹⁰⁵ Trial Tr. 20:22-21:11, 149:17-25, 175:23-176:10, 177:23-25, 178:15-179:18, and 180:4-13.

the House, Defendant knew Plaintiff did not have a working key or the security code and willfully withheld those items—required for accessing the House—from Plaintiff from June 2009 until October 2017. Moreover, even if the locks were simply difficult as Defendant now claims, Defendant knew the locks were difficult but did not inform Plaintiff when Plaintiff requested a key or anytime thereafter.¹⁰⁶ Instead, Defendant admits she threatened to change the locks.¹⁰⁷ Thus, by her own admitted representations and omissions, Defendant wrongfully induced Plaintiff to believe the locks had been changed and she had been blocked from the House. In any case, whether Defendant changed the locks or the locks simply became rusty and difficult over time, the effect was the same—Defendant wrongfully blocked Plaintiff from using the House and Property. Indeed, it was Defendant’s stated intention, as expressed to Plaintiff¹⁰⁸ and Mr. Gay¹⁰⁹, to block Plaintiff from using the House and Property until Defendant received payment for the claimed expenses. Defendant’s own testimony supports this conclusion as she admittedly asked Plaintiff “you haven’t paid anything; what do you mean you’re coming?”¹¹⁰ and told Plaintiff, “I’m going to change that lock.”¹¹¹

At the core of this case is the fact that Defendant withheld from Plaintiff the information and means necessary to gain access to the House and Property in derogation of Plaintiff’s right of access to the Property as a cotenant. This is the definition of ouster.

The South Carolina Supreme Court’s holding in *Parker I* is directly on point. In that case, plaintiff and defendant—sister and brother—owned a short-term rental beach house on Edisto Island as tenants in common. *Id.* Eventually, the defendant brother made the beach house his

¹⁰⁶ Trial Tr. 150:25-151:19, 179:12-18, 189:17-190:9, 191:16-21, and 192:2-6.

¹⁰⁷ Trial Tr. 150:12-13.

¹⁰⁸ Trial Tr. 21:2-11, 20-24.

¹⁰⁹ Trial Tr. 83:9-84:1, 85:10-16.

¹¹⁰ Trial Tr. 150:1-8.

¹¹¹ Trial Tr. 150:12-13.

primary residence and ceased renting the house. *Id.*, 349 S.C. at 229, 562 S.E.2d at 622. The plaintiff sister testified that, at some point, she went to the beach house and discovered that her keys no longer worked because the locks had been changed. *Id.* The defendant brother admitted knowing that plaintiff sister no longer had a working key but refused to furnish another key. *Id.* The Supreme Court held that the evidence established that the defendant brother, knowing plaintiff sister did not have a working key to the parties' beach house, had refused to give plaintiff sister a working key to the property until ordered by the court. *Id.*, 349 S.C. 226, 230-31, 562 S.E.2d 620, 622-23. The Court held that such actions evinced the defendant's claim of exclusive right and a denial of plaintiff's right to use the property, thus, constituting ouster. *Id.* Accordingly, the Supreme Court remanded the case to the trial court for a determination of ouster damages, constituting the rental value of the property beyond defendant's ownership share. *Id.*

The facts of the present case are nearly identical to *Parker I*. Here, Plaintiff and Defendant—sisters—own a beach house on Hilton Head Island as tenants in common.¹¹² As discussed above, Defendant has admitted that, despite Plaintiff's 2009 request for the current set of keys and security code to the House, Defendant did not provide a working set of keys or the security code to Plaintiff until the entry of this Court's Consent Order in October 2017.¹¹³ Defendant has also alleged in her amended counterclaim for adverse possession that she "has exercised exclusive control over the subject property ... in a manner that is continuous, open, notorious, adverse and hostile" since 1979.¹¹⁴ These admitted and alleged actions—to which

¹¹² Plaintiff's Exhibit 1.

¹¹³ Trial Tr. 149:17-25, 175:23-176:10, 177:23-25, 178:15-179:18, and 180:4-13.

¹¹⁴ See Am. Ans. and Countercl. ¶ 19.

Defendant is bound by her pleadings¹¹⁵—are the very actions which the South Carolina Supreme Court held, in *Parker I*, evinced a defendant's claim of exclusive right and a denial of a plaintiff's right to use the property and, thus, constituted ouster. *See Parker I*, 349 S.C. at 230-31, 562 S.E.2d at 622-23. Consequently, Defendant ousted Plaintiff from the Property from June 2009 until October 16, 2017 and Plaintiff is entitled to ouster damages constituting the rental value of the Property beyond defendant's ownership share for the period of ouster. *Id.*

B. Calculation of ouster damages.

In a follow-up decision to *Parker I*, the South Carolina Supreme Court set forth the proper method to calculate ouster damages. *See Parker v. Shecut*, 359 S.C. 143, 597 S.E.2d 793 (2004) (hereinafter "*Parker II*"). In *Parker II*, the Supreme Court held that the proper method for calculating ouster damages was to start with the gross rental value of the property during the ouster, subtract the "allowable, out-of-pocket expenses", and divide the remaining proceeds according to the parties respective ownership shares. *Id.*, 359 S.C. at 150, 597 S.E.2d at 797. The Supreme Court explained in a footnote that "allowable, out-of-pocket expenses" for the parties' short-term rental beach house included "rental commissions, utilities, cleaning services, owner repairs, agency repairs, and taxes." *Id.*, at fn.1. Because there was no current rental income for the beach house due to defendant brother's exclusive occupancy, the Supreme Court upheld the master's use of the highest, most recent year's rental proceeds and expenses in calculating damages for the five years of ouster.

¹¹⁵ Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions. *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) ("[T]he general rule[is] that the parties to an action are judicially concluded and bound by such unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible.").

Here, in accordance with *Parker II*, the Court should calculate the amount of ouster damages owed by Defendant to Plaintiff by taking the gross rental value of the Property during the ouster, subtracting any “allowable” expenses, and dividing the remaining proceeds according to the parties’ respective ownership shares. *Id.*, 359 S.C. at 150, 597 S.E.2d at 797.

I. Gross Rental Value

In *Parker II*, the Supreme Court upheld the use of the property’s past rental income in determining the gross rental value of the property in calculating ouster damages. However, unlike the beach house in *Parker II*, the beach house in the present case has never been rented and, thus, has never had actual rental income.¹¹⁶ However, the case law regarding ouster damages does not require actual rental history or income. *See Williams v. Bruton*, 133 S.C. 395, 131 S.E. 18, 21 (1925) (the ousting cotenant “cannot justly complain if he is charged with such profits as ... could have been made by a man of ordinary business sense and capacity in the exercise of due diligence”). Rather, the cases call for an award of the reasonable “rental value” of the property. *See Id.*; *Parker I*, 349 S.C. at 230, 562 S.E.2d at 623 (citing *Jones v. Massey*, 14 S.C. 292, 307-08 (1880)); 6 S.C. Jur. Cotenancies § 53 (“To prove receipts in an action for an accounting for rents and profits, the cotenant in possession may show the actual receipts or the plaintiff may show the fair rental value of the property during the relevant time.”). Thus, the gross rental value to be used for the calculation of ouster damages is the amount of “such profits as ... could have been made by a man of ordinary business sense and capacity in the exercise of due diligence” during the relevant time. *Williams*, 133 S.C. 395, 131 S.E. at 21.

At trial, Mr. Henri Kirsten offered his expert opinion that with \$10,000 to \$30,000 in upgrades to the Property, the current reasonable long-term rental value of the Property would

¹¹⁶ Trial Tr. 182:5-6.

be between \$2,500 and \$2,750 per month—with more upgrades translating into higher rental values.¹¹⁷ Assuming similar upgrades to the Property were performed, Mr. Kirsten stated the rental value in 2009 would have been between \$2,000 and \$2,250 per month.¹¹⁸ Mr. Kirsten further opined that, with \$20,000 in upgrades, it would be reasonable from a business perspective for the Parties to expect the Property to rent for at least \$2,500 per month.¹¹⁹

In this case, the relevant time period of ouster is from June 2009—when Plaintiff was first blocked from the House—until October 2017—when the Court entered its Consent Order granting Plaintiff access to the House. The following table applies Mr. Kirsten’s rental values to the relevant time period¹²⁰:

Year/Period:	Gross Rental Value with \$20,000 in upgrades:	Gross Rental Value with \$30,000 in upgrades:
June 2009 – Dec. 2009	\$14,000	\$15,750
2010	\$24,000	\$27,000
2011	\$25,200	\$28,200
2012	\$25,200	\$28,200
2013	\$26,400	\$29,400
2014	\$26,400	\$29,400
2015	\$27,600	\$30,600
2016	\$27,600	\$30,600
Jan. 2017 – Sept. 2017	\$21,600	\$23,850
Gross Rental Value:	\$218,000	\$243,000
Assumed Upgrades:	\$20,000	\$30,000

¹¹⁷ Trial Tr. 107:16-108:3.

¹¹⁸ Trial Tr. 108:4-21.

¹¹⁹ Trial Tr. 111:15-112:7.

¹²⁰ Mr. Kirsten also opined that in its current condition, the House could rent to a young family for between \$1,750 and \$2,000 per month with minimal cleaning and repairs of less than \$5,000. (*see* Trial Tr. 105:13-19, 110:18-24.) When his estimates for corresponding rental values for past years are added, this results in an adjusted gross rental value for the ouster period between \$154,000 and \$179,000. Mr. Kirsten also testified that the House could be rented to a group of young hospitality workers for \$2,500 per month in its current condition with less than \$5,000 in cleaning and repairs. (*See* Trial Tr. 110:2-17.) When accounting for corresponding past rental values, this results in an adjusted gross rental value for the ouster period of \$213,000. By contrast, Mr. Brashears’ rental values for the relevant ouster period result in an adjusted gross rental value of \$150,500 assuming approximately \$28,000 in repairs. These values are not included in table form given Mr. Kirsten’s undisputed expert opinion of the rental rates achievable by a reasonable business person.

Adjusted Rental Value:	Gross	\$198,000	\$213,000

Thus, the gross rental value of the Property achievable by “a man of ordinary business sense and capacity in the exercise of due diligence” would be at least \$198,000 and as much as \$213,000 during the relevant time period of ouster. *Williams*, 133 S.C. 395, 131 S.E. at 21.

2. Allowable Expenses

In *Parker II*, the South Carolina Supreme Court defined the “allowable, out-of-pocket expenses” for a short term rental property as “rental commissions¹²¹, utilities, cleaning services, owner repairs, agency repairs, and taxes.” *Parker II*, at fn.1. In other words, the allowable expenses are those which would normally be borne by the landlord of the property, if rented. In this case, the Property has actually never been rented either as a short term or long term rental.¹²² Both Parties, however, presented evidence concerning the Property’s value as a long term rental. In a long term rental, the landlord is responsible for many of the same expenses as in a short term rental situation except that in a long term rental the tenant typically pays for the utilities.¹²³ Thus, Defendant’s claim for expenses should be reduced by the amounts paid for the Property’s utilities and other bills typically paid by a tenant during the period of ouster.

In this case, Defendant’s Exhibits 2 and 3 set out detailed summaries of the expenses claimed by Defendant which total \$151,918.54. As Defendant’s Exhibit 3 demonstrates, however, Defendant’s claimed expenses include expenses for utilities such as electricity, water,

¹²¹ At trial, Mr. Kirsten testified that he charges a management fee of 15% of the gross rental income. (See Trial Tr. 98:24-99:1.) For the rental values quoted, those fees would range between fees of \$23,850 for a gross rental value of \$159,000, fees of \$32,700 for a gross rental value of \$218,000, and fees of \$36,450 for a gross rental value of \$243,000. By contrast, for the rental value quoted by Mr. Brashears, the management fees would be \$17,850 on a gross rental value of \$178,500. However, the rental values quoted by Mr. Kirsten and Mr. Brashears are the market values obtainable by the Parties with or without his management of the Property and, thus, his management fees should not be included in the allowable expenses for the Property in this case.

¹²² Trial Tr. 182:5-6.

¹²³ Trial Tr. 122:3-23; Defendant’s Exhibit 4, 56:19-57:5.

telephone, security alarm monitoring, and propane. Because utilities are normally an expense borne by the tenant and not the landlord, utilities claimed by the Defendant during the relevant period of ouster should be excluded from the allowable expenses in the calculation of ouster damages.¹²⁴

Moreover, Defendant's claim of entitlement to reimbursement for the expenses is based solely on a cause of action for quantum meruit. The required elements of a cause of action for quantum meruit are (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust to retain it without paying its value. *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000). Here, it is undisputed that Plaintiff has not used the House since 2007 and, thus, has not benefitted from or unjustly retained the benefit of the use of the House's utilities.¹²⁵ Consequently, none of the expenses claimed by Defendant related to utilities should be included in the calculation of ouster damages or in any recovery or set off awarded to Defendant. The following table summarizes, by year, the total amount of utilities claimed by Defendant:

Year/Period:	Amount of Utilities Claimed:
2007	\$983.07
2008	\$1,388.16
2009	\$724.99
2010	\$1,274.36
2011	\$1,865.10
2012	\$1,731.35
2013	\$2,233.06
2014	\$2,316.17
2015	\$2,339.65
2016	\$2,321.13
2017	\$3,112.24

¹²⁴ The utilities claimed by Defendant during the period of ouster total \$16,819.60.

¹²⁵ Trial Tr. 34:21-35:2, 185:24-187:2.

2018	\$2,525.24
Total Utilities Claimed:	\$22,814.52

Furthermore, as stipulated by the Defendant, Defendant's income fell within the 15% federal income tax bracket for the same relevant time frame and Defendant either has claimed—or could have claimed—the sums paid for taxes on the Property as deductions on her federal income taxes.¹²⁶ Defendant's witness, Mr. Brashears, also testified—from his experience in the tax preparation business—that property taxes on second homes are deductible on individual income tax returns.¹²⁷ He explained that if someone had income in the 15% tax bracket, they would receive a tax benefit of 15% of any property tax deductions claimed.¹²⁸ Thus, Defendant either did receive or could have received a reduction in her yearly income tax in the amount of 15% of the property taxes paid for the Property each year. Defendant agreed that the amounts she is claiming for payment of property taxes should be reduced by the amount of her corresponding tax benefit from claiming the taxes as a deduction.¹²⁹ While she claims she only claimed the tax deductions for the Property for tax year 2017, she has stipulated that she could have claimed the deduction in current and prior years. Indeed, she had a duty to take the deduction to mitigate her damages. *See Du Bose v. Bultman*, 215 S.C. 468, 56 S.E.2d 95 (1949) (holding that a party suffering damages has a duty to exercise reasonable care and diligence to minimize its damages). Thus, the amounts claimed by Defendant for payment of taxes for the Property should be reduced by 15%. The following table summarizes the application of this 15% reduction:

¹²⁶ Trial Tr. 157:22-158:20.

¹²⁷ Defendant's Exhibit 4, 47:23-48:2.

¹²⁸ Defendant's Exhibit 4, 47:9-17.

¹²⁹ Trial Tr. 188:22-189:8.

Year:	Amount of Property Tax Claimed:	15% Tax Benefit:
2007	\$5,140.38	\$771
2008	\$5,383.41	\$808
2009	\$5,550.28	\$833
2010	\$5,701.93	\$855
2011	\$5,774.82	\$866
2012	\$5,830.47	\$875
2013	\$3,873.64	\$581
2014	\$4,012.08	\$602
2015	\$4,070.58	\$611
2016	\$4,131.90	\$620
2017	\$4,471.84	\$671
2018	\$4,471.86	\$671
Total:	\$58,413.19	\$8,764

Taking both of these reductions into account, Defendant's claim for expenses should be reduced from by the amount of the utilities—\$22,814.52—and the amount of the tax benefit Defendant received or could have received from claiming a deduction for the Property's taxes—\$8,764—resulting in a new total of \$120,340.02 of allowable expenses for the Property.

3. Division by Ownership Shares

Subtracting Defendant's allowable expenses of \$120,340.02 from the range of the Property's reasonable gross rental value for the relevant time period of \$198,000 to \$213,000 results in net profits achievable by "a man of ordinary business sense and capacity" of between \$77,659.98 and \$92,659.98.¹³⁰ *Williams*, 133 S.C. 395, 131 S.E. at 21. Because the Parties own the Property in equal shares, each Party's proportionate share of the reasonably achievable net profits of the Property is between \$38,829.99 and \$46,329.99. Consequently, according to the

¹³⁰ If Mr. Kirsten's management fees are included as an allowable expense, the net profit for the Property drops to \$44,959.98 and \$56,209.98 respectively. Using Mr. Kirsten's lower gross rental number of \$159,000 for the Property in its present condition, the net profit for the Property when factoring in a management fee would be \$9,809.98. Using Mr. Kirsten's higher gross rental number of \$218,000 for the Property in its present condition, the net profit for the Property when factoring in a management fee would be \$59,959.98. When factoring in a management fee for Mr. Brashears' rental numbers, the net profit for the Property is \$12,309.98. Thus, under all possible damages calculations, Plaintiff is entitled to recover ouster damages from Defendant in a positive amount.

formula prescribed by *Parker II*, Defendant is liable to Plaintiff for ouster damages of at least \$38,829.99 and up to \$46,329.99.

IV. Defendant's Expenses (and Defenses)

A. Defendant's sole remedy for expenses is a set off against Plaintiff's ouster damages.

As calculated above, Defendant's allowable expenses for the Property have already been accounted for and set off against Plaintiff's claim for ouster damages. This set off against ouster damages is Defendant's sole remedy. *See Parker II*, 359 S.C. at 150, 597 S.E.2d at 797; *see also* 6 S.C. Jur. Cotenancies § 27 (“[W]here one cotenant is in sole possession of the property and receives all the profits from the property...the cotenant in possession is deemed to have undertaken the obligation to pay all the expenses relating to the property to the extent of the rents and profits he receives.”).

B. If there was no ouster, the types of expenses Defendant can seek are limited to those enforceable as liens against the Property.

Payment of property expenses by a cotenant entitles her to proportionate contributions from the other cotenant or cotenants. *Watson v. Little*, 224 S.C. 359, 79 S.E.2d 384 (1953). However, to be compensable when there is no ouster, “a debt or lien paid by a cotenant must have been a common obligation, the payment of which is a common benefit to the property.” 6 S.C. Jur. Cotenancies § 27. Thus, “[i]f the payment by the cotenant was not a debt or obligation enforceable against the common property, there can be no contribution since there was no common benefit.” *Id.* As a result, when there is no ouster, a cotenant is only entitled to contribution for debts enforceable against the property as liens (e.g., property taxes, mortgages, homeowners' association dues, and mechanic's liens) and is not entitled to contribution for other

types of expenses (e.g., utilities and insurance). *See id.* Here, there is no evidence in the record that Defendant paid any sums against a mortgage, association dues, or mechanic's liens on the Property. The only sums claimed to be paid by Defendant which could have been enforceable against the Property were the taxes for the Property. Thus, if the Court finds that there was no ouster, the amount of expenses awarded to the Defendant should include only the amount of the Property taxes reduced by Defendant's claimable tax benefit.

C. Lack of Property rental history does not preclude award of ouster damages.

While Defendant may argue that the lack of rental history for the Property, lack of actual rental income, or the Property's "not rentable" condition¹³¹ render an award of ouster damages impossible, South Carolina Supreme Court precedent explicitly calls for an award of the "rental value" and not actual rental income. *Jones*, 14 S.C. at 307-08 (an ousting co-tenant is "liable as a trespasser for the rental value beyond his share"). Moreover, a finding that rental history or actual rental income is necessary for ouster damages would perversely allow an ousting cotenant—who, by definition, maintains exclusive control over the property and can, thus, unilaterally decide whether to rent the property—to unlawfully exclude her fellow cotenants with impunity. The Supreme Court's decisions in *Parker I & II* also militate against such a finding. As explained above, the ousting defendant brother ceased renting the property after asserting exclusive possession and, thus, unilaterally eliminated the actual rental income of the property. Nevertheless, the Court found an award of ouster damages to be appropriate. Moreover, even without a rental history, the reasonable rental value of a property is the best—and, perhaps, only—method of valuing the transgressed rights of an ousted cotenant sharing in the ownership and possession of a property. *See Williams*, 133 S.C. 395, 131 S.E. at 21. While the *Parker*

¹³¹ Defendant's Exhibit 4, 17:4-6.

Court used the property's rental history to determine a reasonable rental value for the property, there is no indication that a lack of rental history would make such a determination impossible. Finally, any argument that the property is "not rentable" fails to account for the basic laws of economics which would dictate at least some value to the Property's owners in sharing in the ownership and possession of the Property.

D. Plaintiff's claim for ouster damages is not affected by the statute of limitations.

While Defendant may also argue that Plaintiff's claim for ouster damages is reduced or barred by the statute of limitations; however, a claim for ouster damages is a claim for rents founded upon a title to real property and is, thus, governed by a ten-year statute of limitations. *See* S.C. Code § 15-3-350. Because Plaintiff brought this action within ten years of the termination of Mrs. McDew's life estate, the statute of limitations has no effect on Plaintiff's claim for ouster damages.

CONCLUSION

As stated at the beginning of this post-trial brief, this case is about ownership, access, ouster damages, and expenses. Plaintiff is an owner of the Property pursuant to the Deed and is entitled to access to the House and Property. Defendant wrongfully ousted Plaintiff from the Property as shown by both the allegations of adverse possession in her counterclaim and the admissions in her testimony that she denied Plaintiff's request for a working key and security code to the Property and failed to provide the same until the entry of this Court's Consent Order. Thus, Defendant is liable to Plaintiff for ouster damages. While Defendant is certainly entitled to contribution for a portion of the expenses associated with the Property, Defendant's allowable expenses under the law are limited and fully subsumed by Plaintiff's ouster damages. Ownership, access, ouster damages, and expenses. Based on both the law and the facts, the Plaintiff should

prevail on all these issues. For all the foregoing reasons, Plaintiff respectfully requests that this Court declare Plaintiff a cotenant owner of a one-half share of the Property, declare Plaintiff is entitled to access to the Property, award Plaintiff judgement against Defendant for ouster damages in the amount of \$46,329.99 which includes a set off for all allowable expenses claimed by Defendant, and find against Defendant on all her claims and defenses.

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April 2, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2016-CP-07-02274

STEPHANIE M. MCDEW a/k/a)
STEPHANIE MCDEW)
SCHOUMACHER,)

Plaintiff,)

vs.)

FRIEDA P. MCDEW a/k/a FRIEDA)
MCDEW SHORTER,)

Defendant.)

PLAINTIFF'S POST-TRIAL BRIEF
IN REBUTTAL

Plaintiff Stephanie McDew Schoumacher ("Ms. Schoumacher" or "Plaintiff") submits her post-trial brief in rebuttal pursuant to Rule 43(j) of the South Carolina Rules of Civil Procedure and states as follows:

REBUTTAL ARGUMENT

I. Defendant ousted Plaintiff and is liable for ouster damages as a matter of law.

Defendant's argument wholly ignores that Defendant's own allegations support a finding of ouster as a matter of law.

In her Amended Answer and Counterclaim filed the Friday before trial, Defendant asserted a counterclaim for adverse possession and alleged that since 1979, she "has exercised exclusive control over the subject property... in a manner that is continuous, open, notorious, adverse and hostile."¹ Such allegations are the very definition of ouster. *See Fender v. Heirs at Law of Smashum*, 354 S.C. 504, 513, 581 S.E.2d 853, 858 (Ct. App. 2003) ("ouster is a

¹ Answer to Amended Complaint and Counterclaim, filed Mar. 15, 2019, at ¶ 19.

prerequisite to a cotenant claiming title by adverse possession”). Because Defendant is judicially bound by the allegations in her pleadings, she cannot argue—as she attempts to do in her post-trial brief—against a finding that she ousted Plaintiff from the Property. *See Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (“The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible.”). Instead, Defendant’s allegations—conclusive against Defendant as admissions—establish that she ousted Plaintiff as a matter of law.

Moreover, as explained in Plaintiff’s post-trial brief, the life estate in the Property held by the Parties’ mother renders Defendant’s claim for adverse possession legally impossible. Thus, as a matter of law, Defendant is accountable to Plaintiff for her proportionate share of the rental value of the Property during the period of ouster. *Youmans v. Youmans*, 128 S.C. 31, 121 S.E. 674 (1924) (when a cotenant’s claim for adverse possession is not sustained, they are chargeable with the knowledge that they will be accountable to the other alleged cotenants for their proportionate share of the rental value of the property).

II. Defendant denied Plaintiff a working set of keys and the security code, thus, ousting Plaintiff from the Property.

The facts of the case also dictate that Defendant ousted Plaintiff from the Property. Defendant testified that, during a telephone call with her sister in 2009², Plaintiff requested that Defendant let her into the House and give her the security code.³ However, Defendant confirmed

² Trial Tr. 177:23-25.

³ Trial Tr. 175:23-176:10.

she did not give Plaintiff a working set of keys or the security code as requested by Plaintiff on that telephone call in 2009.⁴ Defendant further admitted she did not provide Plaintiff with the keys and security code to the House until the entry of this Court's Consent Order.⁵ This testimony is consistent with Defendant's admission in her original pleadings⁶ that she "denied Plaintiff the current set of keys and the security code to the aforementioned House".⁷

Defendant attempts to argue her way around these admissions by claiming that the lock was never changed and, thus, it was somehow unnecessary to provide a working set of keys and security code to her cotenant sister upon request. However, the holding in *Parker I* is not so narrow. While the defendant, in *Parker I*, admitted to changing the locks, such a finding is in no way necessary to prove ouster. Rather, as the Supreme Court recognized, it was the defendant's subsequent "refusing to provide Anne with a key" which accomplished the ouster. *Id.*, 349 S.C. 226, 231, 562 S.E.2d 620, 623. Even if the defendant had not changed the locks, his refusal to provide the plaintiff with a working key to the property would still have resulted in her exclusion and ouster from the property. The situation at hand is the same. Regardless of whether Defendant changed the locks, her refusal of Plaintiff's request for the keys and security code to the House after having represented that the locks would be changed resulted in Plaintiff's exclusion and ouster from the Property.

Even assuming Defendant did not actually change the locks or the code⁸, Defendant's argument that ouster did not occur because the locks were not changed contravenes both reason

⁴ Trial Tr. 178:15-179:11.

⁵ Trial Tr. 180:4-13.

⁶ In her Amended Answer, Defendant now denies the identical allegation in Paragraph 6 of the Amended Complaint presumably because Defendant provided the keys and security code to Plaintiff after the entry of the Court's Consent Order of October 17, 2017 directing Defendant to do so.

⁷ Cf. Plaintiff's Complaint ¶ 6; Defendant's Answer and Counterclaim ¶ 2.

⁸ Defendant makes the incredible argument that there is no evidence that the locks or the code were changed. In doing so, Defendant conveniently neglects her own testimony that she told Plaintiff that she would change the locks

and equity because Defendant's words and actions led Plaintiff to believe that the locks and code had been changed and Defendant never took any steps to correct that assumption. Testimony from Plaintiff, Defendant, and Edgar Gay indicates that Defendant did, in fact, tell Plaintiff that the locks and code either had been changed or would be changed unless Plaintiff reimbursed Defendant for claimed expenses.⁹ Additionally, Defendant testified that she knew that the locks were difficult¹⁰ but did not inform Plaintiff that the lock was difficult during their 2009 telephone call.¹¹ Moreover, Defendant did not inform Plaintiff that the locks and security code had not actually been changed.¹² Thus, in 2009, when Plaintiff attempted unsuccessfully to use her set of keys to open the House, it was perfectly reasonable for her to believe that her sister had followed through on her stated intention of changing the locks and security code.

No matter the spin Defendant now seeks to present, Defendant's failure to correct this supposedly mistaken belief and Defendant's subsequent refusal to give Plaintiff a working set of keys or send her the security code accomplished Defendant's stated intention of blocking Plaintiff's use of the Property.¹³ Defendant cannot undo the effects of her admitted actions and inactions at this late stage when a simple communication—any communication—to Plaintiff in 2009 that the locks and code had not been changed and the lock was merely difficult might have avoided the entire issue of ouster.

and the testimony of both Plaintiff and Mr. Gay confirming the same. She also fails to consider Plaintiff's testimony that the security code prior to the death of the Parties' mother was 1031 and that the code has since been changed to 1223. Nevertheless, as explained herein, neither fact is determinative of this action.

⁹ Trial Tr. 21:2-11, 85:10-16, 150:12-13.

¹⁰ Trial Tr. 191:22-192:1.

¹¹ Trial Tr. 192:2-6.

¹² Trial Tr. 179:5-11.

¹³ Trial Tr. 21:2-11, 83:9-84:1, 85:10-16, 150:1-8, 150:12-13.

III. Plaintiff's claim for ouster damages is subject to the ten-year statute of limitations in S.C. Code § 15-3-350.

As predicted, Defendant incorrectly argues for the application of the three-year statute of limitations found in S.C. Code § 15-3-530. However, as S.C. Code § 15-3-510 indicates, Defendant's argued-for limitations period only applies to "actions other than for the recovery of real property". S.C. Code § 15-3-510. Plaintiff brought the present case seeking a declaration of ownership and access to—i.e., "recovery of"—real property and, thus, S.C. Code § 15-3-530 is inapplicable. Instead, actions—such as this one—for recovery of real property and for rent based upon title to real property are governed under the ten-year limitations periods prescribed in S.C. Code §§ 15-3-340 and 15-3-350, respectively.

Such a conclusion is only logical. A claim for adverse possession against a cotenant by ouster does not accrue until after ten years' possession by ouster. *Watson v. Little*, 224 S.C. 359, 364, 79 S.E.2d 384, 387 (1953). A cotenant who makes an unsuccessful adverse possession claim—e.g., where the claimant fails to establish the requisite ten years' possession by ouster—is liable to the other cotenants for ouster damages. *Youmans*, 128 S.C. 31, 121 S.E. 674. Application of the ten-year statute of limitations in S.C. Code § 15-3-350 to a claim for ouster damages logically allows ousted cotenants to seek damages up until the time when title to a property is transferred through adverse possession. Theoretically, this also maximizes the deterrent effect of ouster damages on would-be ousting cotenants. By contrast, application of a three-year statute of limitations is not logically or legally sound because it would inexplicably allow for a potential six-year, three hundred sixty-four day period gap between the accrual of an adverse possession claim and the period of recoverable ouster damages—contravening legal precedent and severely limiting the deterrent value of ouster damages.

CONCLUSION

Defendant, having excluded her sister from their shared Property for more than eight years and attempting, unsuccessfully, to wrest ownership of the Property away from Plaintiff via adverse possession, now seeks to shirk responsibility for her refusal to provide Plaintiff with the keys and code to the House. She claims she never changed the locks—despite admitting she said she would. She claims the lock is just difficult—yet, never mentioned that fact to Plaintiff in 2009. She admits Plaintiff requested a set of keys and the code to the House in 2009—but, acknowledges she failed to provide them until ordered to do so by this Court. Defendant appears to have an explanation for everything. But, based on the law, the facts, and Defendant's own allegations and testimony, there is but one conclusion—Defendant ousted Plaintiff and is liable for damages in the amount of \$46,329.99.

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April 5, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
Stephanie M. McDew a/k/a Stephanie McDew Schoumacher,	)	Civil Action No. 2016-CP-07-02274
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>MOTION FOR NEW TRIAL AND</u>
	)	<u>RECONSIDERATION;</u>
	)	<u>MOTION TO STAY</u>
Frieda P. McDew a/k/a Frieda McDew Shorter,	)	
	)	
	)	
Defendant.	)	

Stephanie Schoumacher seeks relief from the Court's judgment for several reasons:

- I. Since the time of trial, Plaintiff has uncovered evidence that the Defendant did, in fact, change the locks on the beach house. Not only does this evidence call the veracity of Defendant's trial testimony into question, but it also supports Ms. Schoumacher's claim of ouster. Thus, considering this newly discovered evidence, Ms. Shoumacher respectfully requests that this Court open the judgment, consider her additional testimony, and amend the judgment to find in Plaintiff's favor on her ouster claim, under Rule 60, SCRCP.

- II. Recent events aside, the Court should reconsider its order because it is legally inconsistent and unsupportable under South Carolina case law. The Court's decision allowed Defendant to simultaneously *admit and deny* ousting Ms. Schoumacher from the Property. Thus, apart from any new evidence, the Court should reconsider its ruling and find in Plaintiff's favor on her ouster claim.

For the above two reasons, the Court's order should be amended to find in Ms. Schoumacher's favor. However, regardless of the disposition of the first two issues, the Court should further amend its Order to include the full tax benefit Defendant could have received from claiming a property tax exemption on her income taxes. The Court should also, in its discretion, stay the execution of the judgment and all related deadlines pending the resolution of this Motion.

LEGAL STANDARD

A Rule 59(e), SCRCP, motion to alter or amend a judgment "involves *reconsideration* of matters properly encompassed in a decision on the merits." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) (quoting *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989)). "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 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." *Id.*, 361 S.C. at 24, 602 S.E.2d at 780.

Rule 60(b)(2), SCRCP, empowers a trial court to grant a new trial for newly discovered evidence if a party establishes the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. *Morin v. Innegrity, LLC*, 424 S.C. 559, 578, 819 S.E.2d 131, 141 (Ct. App. 2018), *reh'g denied* (Oct. 18, 2018).

Rule 62(b), SCRCP, allows a trial court to stay the execution of a judgment pending the disposition of motions made pursuant to Rules 59 and 60, SCRCP. Rule 62, SCRCP.

ARGUMENT

- I. This Court should enter a new judgment granting Ms. Schoumacher's ouster claim based on newly-discovered evidence that Defendant changed the locks to the beach house.**

On June 23, 2019, Ms. Schoumacher went to the beach house at issue and attempted to enter the house using keys previously provided to her by the Defendant pursuant to this Court's Consent Order. *See* Affidavit of S. Schoumacher, dated August 19, 2019, attached hereto as Exhibit A. Upon arrival, however, she discovered that neither of the keys would open the bottom lock on the beach house door. *Id.* Subsequently, Defendant's attorney provided another set of keys to the property. *Id.* Upon inspection, one key in each set matches identically, but, the two remaining keys are materially different. *Id.* As expected, the subsequent set of keys opened both locks on the beach house door without issue. *Id.*

This is *prima facie* evidence that the Defendant changed the locks to the beach house. This evidence, which was not and could not be discovered until after trial, directly contradicts her testimony at trial that she never changed the locks. *See* Trial Tr. 143:25-144:5. Moreover, it reveals that the Court's finding of fact that "defendant never changed the locks on the residence" was erroneous. More importantly, the Court's denial of Plaintiff's claim for ouster materially relied on the assumption (which we now know is incorrect) that Defendant did not change the locks to the beach house.¹ Thus, this new evidence that Defendant did, in fact, change the locks would probably change the result of the trial. As a result, the Court should open the

¹ Plaintiff does not concede that changing the locks is necessary for a showing of ouster; however, changing the locks is evidence of an intent to accomplish ouster.

judgment, consider this newly-discovered evidence, and enter a new final order granting Ms. Schoumacher's ouster claim.

II. The facts and evidence in this case establish Ms. Schoumacher's ouster claim as a matter of law and, thus, the Court should, on reconsideration, grant Ms. Schoumacher's ouster claim.

Ouster and adverse possession are merely two sides of the same coin. The only difference is that an adverse possession claim requires continuous ouster of cotenants for the statutorily prescribed period. Indeed, South Carolina case law indicates, quite clearly, that "ouster is a prerequisite to a cotenant claiming title by adverse possession". *Fender v. Heirs at Law of Smashum*, 354 S.C. 504, 513, 581 S.E.2d 853, 858 (Ct. App. 2003). On the other hand, ouster which fails to ripen into adverse possession renders the ousting cotenant "liable as a trespasser for the rental value of the property beyond his ownership share." *Parker v. Shecut*, 349 S.C. 226, 230, 562 S.E.2d 620, 623 (2002) (hereinafter "*Parker I*") (citing *Jones v. Massey*, 14 S.C. 292, 307-08 (1880)). Thus, it necessarily follows that a cotenant claiming title by adverse possession is "chargeable with knowledge that, if their claim to exclusive title [is] not sustained, they [will] be accountable to their cotenants for their proportionate shares of the rents and profits." *Youmans v. Youmans*, 128 S.C. 31, 121 S.E. 674, 676 (1924). In other words, if an ousting cotenant's adverse possession claim is unsuccessful, the other cotenant's claim for ouster damages should be granted as a matter of law. This is *precisely* the situation presented in this case.

Throughout this litigation, Defendant has maintained a counterclaim for adverse possession affirmatively alleging that:

Since [May 14, 1979] Defendant Frieda McDew Shorter has exercised exclusive control over the subject property...in a manner that is continuous, open, notorious, adverse and hostile.

See Def.'s Answer and Counterclaim, filed Jan. 5, 2017, ¶ 17; Def.'s Amended Answer and Counterclaim, filed Mar. 15, 2019, ¶ 19.² In furtherance of her adverse possession claim, Defendant admitted in her pleadings that:

Defendant has denied Plaintiff the current set of keys and the security code to the aforementioned House and refuses to give keys and the security code to the Plaintiff.

Cf. Complaint, filed Oct. 21, 2016, ¶ 6; Def.'s Answer and Counterclaim, filed Jan. 5, 2017, ¶

2. In fact, Defendant admitted at trial that she did not provide keys and the security code to the Property to Ms. Schoumacher until after the entry of the Consent Order:

Q: And after she brought this lawsuit, there was a consent order issued by the Court whereby you gave your attorney the keys to the house and the security code, which he then saw to it that Stephanie got. Is that right?

A: Yes.

Trial Tr. 180:4-9. These admissions and allegations in furtherance of her adverse possession claim are judicially binding and conclusive against the Defendant. *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) ("The allegations, statements or admissions contained in a pleading are conclusive as against the pleader."). Defendant's allegations—that she maintained exclusive, continuous, open, notorious, adverse, and hostile possession of the Property—are the very definition of ouster and are prerequisites to a cotenant claiming title by adverse possession. *Fender*, 354 S.C. at 513,

² To the extent necessary, Plaintiff asks this Court to take judicial notice of the cited pleadings in this Motion.

581 S.E.2d at 858. Consequently, Defendant has conclusively admitted to ousting Ms. Schoumacher from the Property since May 14, 1979.

However, because the 1979 Deed³ created a life estate for the Parties' parents in the Property, the statutory period for Defendant's adverse possession claim did not commence until after the death of the last life tenant of the Property—Mary McDew—on March 17, 2007. *Phipps v. Hardwick*, 273 S.C. 17, 25, 253 S.E.2d 506, 510 (1979); *Curtis v. DesChamps*, 290 S.C. 315, 325, 350 S.E.2d 201, 207 (Ct. App. 1986). Ms. Schoumacher instituted her case for possession on October 21, 2016 and, thus, Defendant did not satisfy the statutory period for her adverse possession claim. *See* S.C. Code § 15-67-210 (prescribing ten-year period of exclusive possession for asserting adverse possession claim). Consequently, as a matter of law, Defendant has conclusively admitted she ousted Ms. Schoumacher from the Property since 1979 but has not met the time requirement for adverse possession. Because of this, Defendant's adverse possession claim fails. However, because Defendant conclusively admitted ouster in asserting her adverse possession claim, Defendant *must be* liable to Ms. Schoumacher for ouster damages as a matter of law. *Youmans*, 128 S.C. 31, 121 S.E. at 676 (holding ousting cotenants "chargeable with knowledge that, if their claim to exclusive title was not sustained, they would be accountable to their cotenants for their proportionate shares of the rents and profits").

Consequently, on reconsideration, this Court should enter a new order granting Ms. Schoumacher's claim for ouster and awarding her damages as a matter of law.

In addition to Defendant's binding admissions and allegations, the facts introduced at trial also indicate that Ms. Schoumacher's ouster claim should be granted as a matter of law.

³ Entered into evidence at trial as Plaintiff's Exhibit 1.

In its Order, the Court concluded as a matter of fact that “the defendant never changed the locks on the residence.” Order, filed Sept. 16, 2019, p. 4. Based on the Court’s Order, it appears the Court considered this single fact determinative of the issue of ouster. Newly discovered evidence aside, the weight afforded to whether the defendant changed the locks by the Court is disproportionate to both its logical and legal significance. While it is correct that changing the locks can evince an intention to accomplish ouster, *see Parker I*, 349 S.C. at 230-31, 562 S.E.2d at 622, changing the locks is not *necessary* to show ouster. Indeed, a “physical eviction” from the premises is not necessary and there are many other circumstances which can “evince a claim of exclusive right and title” and a denial of the rights of one’s cotenants. *See id.* All that is necessary to show ouster is “an exclusion of the other tenants from possession”. *Wells v. Coursey*, 197 S.C. 483, 15 S.E.2d 752, 755 (1941).

Here, even assuming the Defendant did not change the locks, plenty of other evidence at trial indicates that Defendant—by her own admission—excluded Ms. Schoumacher from the Property. When Ms. Schoumacher called Defendant in 2009 asking to be let into the Property, Defendant testified that she did not let Ms. Schoumacher in or give Plaintiff the keys or security code:

- Q: So you didn’t give her the keys at that time?
 A: I didn’t go over there. I did not give her the keys.
 ...
 Q: You didn’t give her the code, either?
 A: ... If I didn’t give her the keys, I didn’t give her the code.
 Q: And you didn’t tell her over the telephone what the code was or that it was still the same as all those years?
 ...
 A: No.
 Q: You didn’t follow up with her and mail her the keys or send her a letter with the code?
 A: No.

Trial Tr. 178:23-179:14. Furthermore, Defendant admitted at trial that she did not provide keys or the security code to the Property to Ms. Schoumacher until after the entry of the Consent Order:

Q: And after she brought this lawsuit, there was a consent order issued by the Court whereby you gave your attorney the keys to the house and the security code, which he then saw to it that Stephanie got. Is that right?

A: Yes.

Trial Tr. 180:4-9.

At the risk of stating the obvious, Ms. Schoumacher's request to be let into the Property evinces the fact that, regardless of the reason, she did not have working keys or access to the Property. The Defendant admitted as much when she testified that she understood Ms. Schoumacher brought this case to gain access to the Property:

Q: And your sister Stephanie has brought this lawsuit seeking access to the house; is that your understanding?

A: Yes.

Trial Tr. 179:25-180:3. Whether her lack of access is attributable to the Defendant changing the locks, the Parties' mother changing the locks prior to her death, the locks being difficult because of salt-air corrosion, or some other reason, is immaterial because the effect is the same: Ms. Schoumacher realized that she no longer had access to the Property as early as 2009 and Defendant's refusal to provide a set of keys and the security code maintained Ms. Schoumacher's exclusion from the Property until the entry of the Consent Order.⁴

⁴ Defense counsel's suggestion at trial that Ms. Schoumacher should have broken into the Property or resorted to some other means of gaining access to the Property other than through this lawsuit are unavailing as the Supreme Court in *Parker I* condemned the use of self-help by a cotenant to protect property rights. *Parker I*, 349 S.C. at 231, 562 S.E.2d at 623, n. 3 (noting that cotenants should seek redress through the courts instead of resorting to self-help and taking the law into their own hands).

Given Defendant's admissions at trial, proof that Defendant changed the locks to the Property is not necessary to prove Ms. Schoumacher's ouster claim. Regardless of the reason for Ms. Schoumacher's lack of a working key to the Property in 2009, Defendant's admitted refusal to provide working keys to Ms. Schoumacher when requested caused Ms. Schoumacher's exclusion from the Property. For example, Ms. Schoumacher would not have been excluded if Defendant changed the locks but also provided a set of working keys to the Plaintiff. Conversely, Defendant's refusal to provide a working set of keys would have worked to exclude Ms. Schoumacher if Plaintiff had simply misplaced her keys or never had working keys from the start. Consequently, whether Defendant changed the locks has no causal connection to Ms. Schoumacher's exclusion from the Property. Rather, the sole cause of her exclusion was Defendant's refusal, when requested, to provide working keys to the Property or, under Defendant's theory, an explanation of how to successfully operate the corroded and difficult lock.

The South Carolina Supreme Court's decision in *Parker I* presents a nearly identical scenario. In *Parker I*, just as in this case, it was the defendant sibling's refusal to give the plaintiff a working key until ordered to do so by the master—and not the changing of the locks—that was necessary to bring about the ouster. This case only differs from *Parker I* in that Defendant has testified that she did not change the locks whereas the defendant in *Parker I* had admitted he changed the locks. As explained above, however, this difference is not determinative. Rather, just as in *Parker I*, this Defendant admitted that she refused to provide her cotenant sibling—Ms. Schoumacher—working keys and the security code to the property until ordered to do so by this Court. Thus, this Court, just like the South Carolina Supreme Court in *Parker I*, should find that

Defendant excluded Ms. Schoumacher by refusing to provide Plaintiff with working keys and the security code to the Property and that this exclusion constitutes ouster as a matter of law.

Finally, if Defendant did not exclude Ms. Schoumacher from the property—as this Court’s Order concludes—neither this lawsuit nor the ensuing Consent Order would have been necessary to protect Plaintiff’s property rights. Following the same logic, Defendant’s counterclaim for adverse possession—based on affirmative allegations by the Defendant that she had excluded Plaintiff from the property—would be frivolous. The absurdity of these conclusions—that Plaintiff would bring an unnecessary lawsuit and that Defendant would knowingly bring a frivolous counterclaim for adverse possession—demonstrates that the most reasonable and logically consistent interpretation of the evidence presented at trial is that Defendant excluded and, thus, ousted the Plaintiff from the property. Consequently, Plaintiff requests that this Court enter a revised order granting her ouster claim and awarding damages against Defendant for the same.

III. The Court’s Order incorrectly calculates her tax benefit from the possible property tax deduction.

This Court’s Order awards Ms. Schoumacher a set-off for a portion of the tax-benefit realized by Defendant’s claiming the taxes for the Property as an itemized exemption on her income tax return. However, the Court should amend its Order to recalculate the amount of tax benefit set-off awarded to Ms. Schoumacher following the language of the Parties’ stipulation on this issue and related trial testimony.

Regarding the property tax deduction, the Parties stipulated as follows at trial:

MR. CONNOR: ...Mr. Finn and I have agreed to stipulate that during the relevant time period in this case...Ms. Shorter has—her income has been in the 15 percent tax bracket and either has taken

the deduction or could have taken the deduction at that 15 percent benefit level.

...
...Your Honor, if she takes the property tax deduction, she gets a corresponding benefit to her income tax. ...She gets a 15 percent deduction benefit through her tax deduction.

...
THE COURT: ...All right. So that's a stipulation as well; is that correct, Mr. Finn?

MR. FINN: Yes, Your Honor.

Trial Tr. 157:22-158:20. This stipulation is consistent with Mr. Brashears' submitted deposition testimony—from his experience in the tax preparation business—that if someone had income in the 15% tax bracket, they would receive a tax benefit of 15% of any property tax deductions claimed. Defendant's Exhibit 4, 47:9-17.

At trial, Defendant agreed that the amounts she is claiming for payment of property taxes should be reduced by the amount of her corresponding tax benefit from claiming the taxes as a deduction. Trial Tr. 188:22-189:8. Even if Defendant only claimed the tax deductions for the Property for tax year 2017, she stipulated that she *could have* claimed the deduction in current and prior years. Indeed, she had a duty to take the deduction to mitigate her damages. *See Du Bose v. Bultman*, 215 S.C. 468, 56 S.E.2d 95 (1949) (holding that a party suffering damages has a duty to exercise reasonable care and diligence to minimize its damages). Thus, Defendant could have—and should have—taken advantage of her available 15% tax benefit by claiming the property tax deduction as summarized in the following table:

Year:	Amount of Property Tax Claimed:	15% Tax Benefit:
2007	\$5,140.38	\$771
2008	\$5,383.41	\$808
2009	\$5,550.28	\$833
2010	\$5,701.93	\$855
2011	\$5,774.82	\$866

2012	\$5,830.47	\$875
2013	\$3,873.64	\$581
2014	\$4,012.08	\$602
2015	\$4,070.58	\$611
2016	\$4,131.90	\$620
2017	\$4,471.84	\$671
2018	\$4,471.86	\$671
Total:	\$58,413.19	\$8,764

As a result, Defendant could have—and should have—taken a tax benefit of \$8,764. The Court's Order miscalculates this tax deduction benefit by only considering tax year 2017—contrary to the stipulations and testimony at trial.

In order to split the burden and benefit of the property taxes equitably, the total tax benefit of \$8,764 should be split equally between the Parties resulting in a total set-off amount awardable to Ms. Schoumacher of \$4,382. Thus, following the stipulations and testimony at trial, the Court's Order should list a judgment amount of \$63,003.22; representing Defendant's claimed carrying costs amount of \$134,770.45, divided in half, and subtracting the half the amount of Defendant's possible stipulated tax benefit. However, for reasons cited above and in Plaintiff's post-trial briefing, Plaintiff believes a finding of Ouster is proper which would render the \$63,003.22 judgement amount merely a set-off for Defendant against any ouster damages awardable to Plaintiff.

IV. The Court should stay execution of the judgment pending the disposition of this Motion.

The Court has the discretion to grant the Motion to Stay. *See Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007) ("Whether to grant such a stay rests in the court's discretion 'on such conditions for the security of the [creditor] as are proper...'") (citing Rule 62(b)). Here, the Court's Order allows Ms. Schoumacher 180 days to

pay the judgment amount before her interest in the Property is subject to sale. Granting the requested stay would protect Ms. Schoumacher from prematurely having to pay a judgment which, upon reconsideration by the Court, could be reduced or reversed. Moreover, granting the stay will not result in any prejudice to the Defendant as any judgment recoverable by Defendant after the resolution of this Motion is secured by Ms. Schoumacher's interest in the Property. As a result, Ms. Schoumacher respectfully requests this Court stay the execution of the ordered judgment and delay the start of the 180 day clock for payment of the judgment until after the entry of a subsequent order disposing of this Motion.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court enter a new order granting Plaintiff's claim of ouster, awarding ouster damages, calculating Defendant's set-off amount using the full amount of Defendant's stipulated tax benefit, staying execution of the judgment pending the resolution of this Motion, and awarding such other and further relief as the Court may deem just and proper.

[SIGNATURE PAGE TO FOLLOW]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Andrew M. Connor

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*Attorneys for Stephanie M. McDew a/k/a Stephanie McDew
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Charleston, South Carolina

September 26, 2019

EXHIBIT A

*Affidavit of Stephanie McDew
Schoumacher
Dated August 19, 2019*

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
Stephanie M. McDew a/k/a Stephanie McDew Schoumacher,	)	Civil Action No. 2016-CP-07-02274
	)	
Plaintiff,	)	
	)	
vs.	)	<u>AFFIDAVIT OF</u>
	)	<u>STEPHANIE MCDEW</u>
	)	<u>SCHOUMACHER</u>
Frieda P. McDew a/k/a Frieda McDew Shorter,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, Stephanie McDew Schoumacher, who first being duly sworn, deposes and states under penalty of perjury that:

1. I am over the age of twenty-one and competent to testify to the facts stated herein of my own personal knowledge.
2. On Sunday, June 23, 2019, I went to the beach house and property (the "Property") which is the subject of the above-captioned action located at 17 Bradley Beach Road on Hilton Head Island, South Carolina.
3. According to the Consent Order entered by the Court on October 16, 2017, June is among the months allotted for me to use the subject Property.
4. Upon arriving at the Property, I attempted to unlock the front door to the beach house using the keys previously provided to me by the Defendant pursuant to the Consent Order. Photocopies of the keys are designated as "C" and "D" in Exhibit 1 to this Affidavit.

5. While the key designated as "C" in Exhibit 1 opened the top deadbolt lock, neither key "C" nor key "D" would open the bottom lock on the door handle. I was, thus, unable to enter the beach house.

6. After contacting my attorney regarding the problem, Mr. Thomas Finn provided me with another set of keys which I asked Mr. Henri Kirsten to pick up from Mr. Finn's office. These subsequent keys are designated as "A" and "B" in Exhibit 1.

7. Comparing the two sets of keys, the patterns for keys "B" and "C" are identical, but, the patterns for keys "A" and "D" do not line up.

8. After receiving the new set of keys, I returned to the Property and used the subsequent set of keys ("A" and "B") to unlock and open the front door to the beach house. As expected, key "B" unlocked the top deadbolt lock and key "A" unlocked the bottom lock in the door handle without issue. I tried keys "C" and "D" in the bottom lock again and, again, neither key worked in the bottom lock.

FURTHER AFFIANT SAITH NOT.


Stephanie McDew Schoumacher, Plaintiff

Personally appeared before me this
19 day of August, 2019.


Notary Public for Maryland
My Commission Expires: 02-09-2022
[NOTARY SEAL]

SWAIZ KHAN
NOTARY PUBLIC STATE OF MARYLAND
Commission Expires February 9, 2022

EXHIBIT 1

Photocopies of Keys



RECEIVED

May 06 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-In-Equity and Special Circuit Court Judge

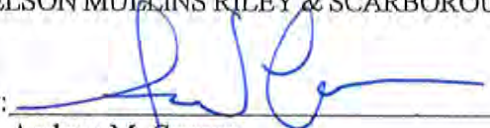
Case No. 2016-CP-07-02274

Stephanie M. McDew a/k/a Stephanie McDew
Schoumacher, ... Appellant,
v.
Frieda P. McDew a/k/a Frieda McDew Shorter, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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April 28, 2020

RECORD 000331