

**RECEIVED**

MAR 04 2013

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

---

CASE NO. 2010-CP-26-11570

---

Tim Wilkes .....Appellant

vs.

Horry County .....Respondent

---

**RECORD ON APPEAL**

---

Gene M. Connell, Jr. (S.C. Bar No. 1358)  
KELAHER, CONNELL & CONNOR, P.A.  
The Courtyard, Suite 209  
1500 U. S. Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, South Carolina 29587-4547  
(843) 238-5648 (phone)  
(843) 238-5050 (facsimile)  
[gconnell@classactlaw.net](mailto:gconnell@classactlaw.net)  
**Attorney for Appellant**

Walker H. Willcox #72608  
Willcox Buyck & Williams, PA  
P.O. Box 1909  
Florence, SC 29503-1909  
(843) 662-3258 (phone)  
(843) 662-1342 (facsimile)  
[wwillcox@willcoxlaw.com](mailto:wwillcox@willcoxlaw.com)  
**Attorney for Respondent**

## INDEX

Order of the Honorable Benjamin H. Culbertson Granting Defendants’ Motion for Summary Judgment (dated May 25, 2012).....	1
Order of the Honorable Benjamin H. Culbertson Denying Plaintiff’s Motion for Reconsideration (dated August 8, 2012).....	5
Summons and Complaint.....	7
Answer.....	11
Horry County’s Memorandum Supporting its Motion for Summary Judgment dated February 3, 2012 (with Exhibits): .....	15
Ex. 1 Notice dated August 20, 2010 .....	19
Ex. 2 Deposition Testimony of Herbert Maxwell Alford (August 24, 2011), p. 13 .....	20
Ex. 3 Assignment of Bid filed August 25, 2010.....	21
Ex. 4 Deed filed August 23, 2010.....	22
Ex. 5 Horry County Ordinances R104.6 .....	25
Ex. 6 Deposition Testimony of Michael D. Dixon (August 24, 2011), pp. 13-16.....	27
Plaintiff’s Motion for Reconsideration pursuant to SCRCP 59(3) filed June 18, 2012 (with Exhibits).....	29
Ex. 1 Picture of Plaintiff’s sign on property .....	33
Ex. 2 Master in Equity’s Report on Sales and Disbursements August 24, 2010 .....	34
Ex. 3 Notice of Sale June 25, 2010 .....	35
Ex. 4 Notice of Sale May 20, 2010.....	36
Ex. 5 Notice of Sale November 16, 2009 .....	37
Ex. 6 Form 4 Judgment March 17, 2010 showing Order of Foreclosure.....	38
Ex. 7 Compressed Transcript of Deposition of Tim Wilkes .....	39
Transcript of Record before the Honorable Benjamin H. Culbertson (April 9, 2012) .....	59
Deposition of Tim Wilkes with Exhibits (August 24, 2011).....	75
Certificate of Counsel.....	165

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
  
C/A NO. 2010-CP-26-11570

TIM WILKES, )  
 )  
Plaintiff, )

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

vs. )

HORRY COUNTY, )  
 )  
Defendant. )

2012 MAY 29 AM 10:51  
MELANIE HUGGINS-WARD  
CLERK OF COURT  
HORRY COUNTY

**FACTS<sup>1</sup> AND PROCEDURAL HISTORY**

On August 20, 2010, an Horry County ("County") Code Enforcement Inspector served a notice on Michael Dixon to correct a hazardous and dangerous condition caused by an unsecured pool at 1860 Arundal Drive (hereinafter referred to as the "property"). Defendant's Exhibit 1, Notice. Michael Dixon contracted with Land Services of South Carolina, LLC to fill the pool in. Defendant's Exhibit 2, Deposition of Herbert Maxwell Alford, p. 13, ll. 1-5 and Defendant's Exhibit 6, Deposition of Michael Dixon, p. 13, ll. 3-22.

When the notice was issued, the property was in foreclosure proceedings. An entity named MTM International had successfully bid on the property at a foreclosure sale held in the proceedings on August 5, 2010. Defendant's Exhibit 3, Assignment of Bid and Defendant's Exhibit 4, Deed. On August 23, 2010, MTM International assigned the bid to the Plaintiff, and on the same day the Horry County Master in Equity deeded the property to the Plaintiff. Ex. 3, Assignment of Bid and Ex. 4, Deed. The Plaintiff subsequently commenced this action against

<sup>1</sup> The Plaintiff did not present any evidence at the summary judgment hearing disputing the facts in this Order.

*1*  
*MHC*

Horry County claiming that it had damaged his pool.

On November 3, 2011, the Defendant moved, pursuant to Rule 56, SCRCPP, for summary judgment, and on February 3, 2012, the Defendant submitted a memorandum and exhibits supporting the motion. On April 9, 2012, the Court heard the motion.

### STANDARD

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule ” Rule 56(c), SCRCPP. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

### ANALYSIS

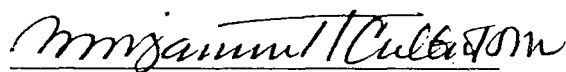
A successful purchaser at a foreclosure sale does not acquire legal title until the Master in Equity executes and delivers a deed to the purchaser. S.C. Code § 15-39-830. The undisputed fact is that the Master in Equity did not execute and file a deed conveying legal title of the property to the Plaintiff until August 23, 2010. Up to that date, the code enforcement officer was entitled to rely on Michael Dixon's record ownership in the property to serve the notice. Consequently, no genuine issue of material fact exists to dispute that the Defendant's inspection

-2- /MK

and service of the notice was proper.

Accordingly, the Court hereby grants the Defendant's motion for summary judgment and dismisses this action.

**AND IT IS SO ORDERED.**



Benjamin H. Culbertson  
Judge for the Fifteenth Judicial Circuit  
Court of Common Pleas

Georgetown, South Carolina

Date: May 25, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NO. 2010-CP-26-11570

Tim Wilkes  
PLAINTIFF(S)

Horry County  
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

*Plaintiff's Motion for Reconsideration is DENIED.*

\*This motion was decided without oral arguments.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

HORRY COUNTY  
12 AUG - 9 PM 2: 14  
MELANIE HUGHES-WARD  
CLERK OF COURT

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)
N/A	N/A	\$ N/A

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

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

Benjamin H. Culbertson  
Benjamin H. Culbertson, Circuit Court Judge

2148  
Judge Code

August 8, 2012  
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:

Gene M. Connell, Jr.

Edward A. Love

Walker Willcox

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter: None**

RECEIVED  
RC 8/25/12 D

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
C/A NO. 2010-CP-26- 11570

Tim Wilkes, )  
)  
Plaintiff, )  
)  
vs. )  
)  
Horry County, )  
)  
Defendant. )

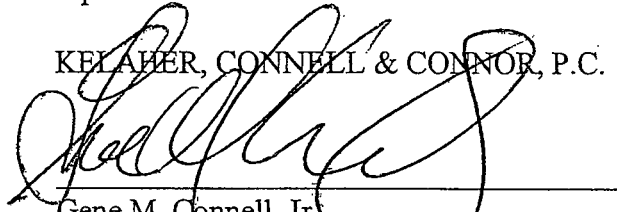
SUMMONS

FILED  
HORRY COUNTY  
2010 DEC 14 AM 11:33  
HELANIE HUGGINS-WARD  
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.  
The Courtyard, Suite 209  
1500 U. S. Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, South Carolina 29587-4547  
(843) 238-5648 (phone)  
(843) 238-5050 (facsimile)  
gconnell@classactlaw.net  
Attorney for Plaintiff

November 3, 2010  
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
C/A NO. 2010-CP-26- 11578

Tim Wilkes, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Horry County, )  
 )  
 Defendant. )

COMPLAINT  
(Negligence)  
  
JURY TRIAL

FILED  
HORRY COUNTY  
2010 DEC 14 AM 11:33  
CLERK OF COURT  
MELANIE HUGHES-WARD

The Plaintiff, complaining of the Defendant, would respectfully allege unto this Court as follows:

1. The Plaintiff is a citizen and resident of Georgetown County, South Carolina.
2. The Defendant, Horry County, is the political subdivision of the State of South Carolina and is a body politic which governs the citizens of this area.
3. That on or about August 30, 2009, the Plaintiff was the successful bidder at a tax sale of property identified as TMS# 173-03-03-011.
4. That the property, also known as 1860 Arundel Road, Myrtle Beach, SC 29577, was purchased on or about August 23, 2010 pursuant to the Settlement Statement between the Master-in-Equity and the Plaintiff.
5. That on or about August 30, 2010, the Horry County Code Enforcement did advise the previous owners, Michael and Pamela Dixon, that the pool on the property had to be filled in or secured by a 48" fence within five working days or they would be fined.
6. The Defendant's officers, agents and/or employees were unaware that the Plaintiff owned the property and issued an Order requiring the previous owners to fill in the pool or place a 48" fence around the pool.

7. That as a result of this Order of the Horry County Code Enforcement Office, the pool in question was filled in causing damage to the pool despite the fact that Horry County Code Enforcement had no authority to order the previous owners to fill the pool in when the Plaintiff was the owner of the property in question.

8. That the Defendant, through its officers, agents and/or employees was negligent, reckless and willful in one or more of the following particulars:

- a. in failing to check the records to see who was the owner of the property located at 1860 Arundel Road;
- b. in failing to make sure that they were communicating with the owner in question;
- c. in ordering the pool to be filled in;
- d. in failing to investigate and/or determine the owner of the property;
- e. in ordering a non-owner of the property to fill in the pool;
- f. in failing to properly supervise its employees such that damage was not done to Plaintiff's property;

9. That as a direct and proximate result, Plaintiff suffered severe damage in that the said pool on his property is now damaged and in such shape that it cannot be repaired; that said pool will likely have to be completely renovated; that Plaintiff has suffered damages in the amount of \$60,000.00 and has lost the ability to sell the property since the pool has been damaged.

10. That Plaintiff requests judgment for actual damages and the costs of the action.

FOR A SECOND CAUSE OF ACTION

11. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

12. The Plaintiff brings this cause of action for trespass in that the Defendant Horry County did trespass onto Plaintiff's property with unlawful entry.

13. That as a result of trespass by Defendant's officers, agents and/or employees, the Plaintiff was not advised that the pool was going to be filled in.

14. That Defendant did not have authority to go onto Plaintiff's property and did not check to make sure that they were on the appropriate property.

15. That as a result of the trespass, damages occurred in that Defendant caused to fill in the Plaintiff's pool without Plaintiff's knowledge.

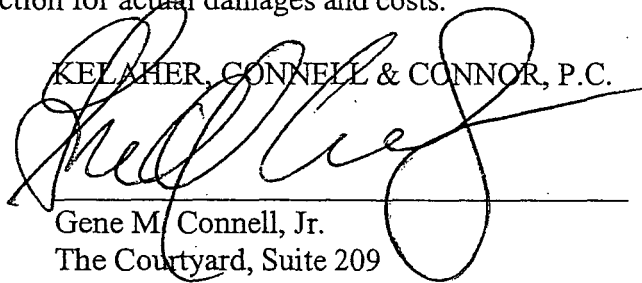
16. That the damages were caused as stated in the first cause of action from trespass by Defendant's officers, agents and/or employees on Plaintiff's property.

17. That Plaintiff asks for judgment as stated in the First Cause of Action for actual damages and for the costs of the action.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. On the First Cause of Action for actual damages and costs.
- B. On the Second Cause of action for actual damages and costs.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.  
The Courtyard, Suite 209  
1500 U. S. Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, South Carolina 29587-4547  
(843) 238-5648 (phone)  
(843) 238-5050 (facsimile)  
gconnell@classactlaw.net  
**Attorney for Plaintiff**

November 3, 2010  
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF Horry	)	C/A NO. 2010-CP-26-11570
TIM WILKES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	
Horry COUNTY,	)	
	)	(Jury Trial Demanded)
Defendant.	)	
	)	

---

The defendant Horry County, by and through the undersigned, respectfully answers the Plaintiff's Complaint as follows:

1. Admitted upon information and belief.
2. Denied as pled.
3. Denied as pled.
4. Denied as pled.
5. Denied.
6. Denied as pled.
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Defendant reasserts the foregoing defenses and responses as if fully set forth herein.
12. Denied.

13. Denied that the Defendant went onto any property to which Plaintiff was the record owner without authority to do so. The remaining allegations are denied for lack of information and knowledge as to what the Plaintiff knew or did not know.

14. Denied that the Defendant went onto any property to which Plaintiff was the record owner without authority to do so.

15. Denied.

16. Denied.

17. Denied.

**FOR A FIRST AFFIRMATIVE DEFENSE**

18. This Defendant is entitled to the immunities, limitations, and defenses set forth in the *South Carolina Tort Claims Act*, S.C. Code Ann. §15-78-10, *et. seq.*; including, but not limited to, S.C. Code Ann. § 15-78-60 (1), (2), (3), (4), (5), (9) and (13), S.C. Code Ann. § 15-78-70, and any other applicable provision.

**FOR A SECOND AFFIRMATIVE DEFENSE**

19. This Defendant is entitled to sovereign immunity from suit.

**FOR A THIRD AFFIRMATIVE DEFENSE**

20. Pursuant to S.C. Code Ann. § 15-78-120(a)(1), the Plaintiff's claims are subject to a statutory cap on damages, which cap is pled as a limitation on and defense to such claims.

**FOR A FOURTH AFFIRMATIVE DEFENSE**

21. Plaintiff's claims are barred by the doctrine of Caveat Emptor.

**FOR A FIFTH AFFIRMATIVE DEFENSE**

22. The Plaintiff is not entitled to any award of punitive damages, exemplary damages, or attorney's fees in this case pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq.

**FOR A SIXTH AFFIRMATIVE DEFENSE**

23. That the acts, conduct and/or omissions of these Defendants, if any, were legally justified.

**FOR A SEVENTH AFFIRMATIVE DEFENSE**

24. That these Defendants did not breach and/or owe any duty of due care to the Plaintiff in this case.

**FOR AN EIGHTH AFFIRMATIVE DEFENSE**

25. Plaintiff has failed to mitigate her damages in this matter.

**FOR A NINTH AFFIRMATIVE DEFENSE**

26. Plaintiff's claims are barred by the "unclean hands" doctrine.

**FOR A TENTH AFFIRMATIVE DEFENSE**

27. Plaintiff, by consummating the purchase of said property, condoned the actions and/or inactions of the Defendant.

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

28. By consummating the purchase of said property, Plaintiff is estopped from bringing the instant claims.

**FOR A TWELFTH AFFIRMATIVE DEFENSE**

29. By consummating the purchase of said property, Plaintiff has waived his claims as pled in the Complaint.

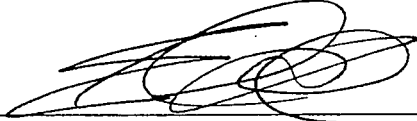
**DEMAND FOR JURY TRIAL**

30. The Defendant respectfully requests that all genuine issues of material fact, should any exist, be tried before a jury.

**WHEREFORE**, the defendant Florence County Sheriff's Office respectfully prays that this action be dismissed in its entirety, and that it be awarded all taxable costs and other such relief as this Honorable Court deems proper.

WILCOX, BUYCK & WILLIAMS, P.A.

By: \_\_\_\_\_

  
EDWARD A. LOVE  
I.D. No.: 75118  
PO Box 1909  
Florence, SC 29503-1909  
(843) 662-3258 - Tel  
(843) 662-1342 - Fax  
ATTORNEY FOR DEFENDANT

April 5, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF Horry	)	C/A NO. 2010-CP-26-11570
	)	
TIM WILKES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM SUPPORTING</b>
	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
Horry COUNTY,	)	
	)	
Defendant.	)	
_____	)	

The Defendant submits this memorandum supporting its Motion for Summary Judgment.

**FACTS AND PROCEDURAL HISTORY**

On August 20, 2010, an Horry County (“County”) Code Enforcement Inspector served a notice to Michael Dixon, who was the record owner at the time of 1860 Arundal Drive, to secure a swimming pool that was on the property and was not enclosed by a fence. Defendant’s Exhibit 1, Notice. Michael Dixon contracted with Land Services of South Carolina, LLC to fill the pool in, which was done approximately five days later. Defendant’s Exhibit 2, Deposition of Herbert Maxwell Alford, p. 13, ll. 1-5.

When the notice was issued, the house was in foreclosure proceedings. MTM International was the successful bidder on the property. Defendant’s Exhibit 3, Assignment of Bid. On August 23, 2010, the bid was assigned to the Plaintiff, and on the same day the Horry County Master in Equity deeded the property to Plaintiff. Ex. 3, Assignment of Bid and Exhibit 4, Deed. The Plaintiff subsequently commenced this action against Horry County claiming that it was responsible to restore the pool in working condition.

I. Horry County is entitled to immunity for any loss resulting from its enforcement of an

ordinance.

The South Carolina Tort Claims Act prohibits liability against a governmental entity for a loss resulting from either the enforcement or the failure to enforce an ordinance. S.C. Code §15-78-60(4). The loss alleged in the complaint results from Horry County's enforcement of an ordinance. Horry County is immune from such claims, and it must be dismissed from the action.

In addition, S.C. Code § 15-78-60(13) prohibits liability against a governmental entity for a loss resulting from:

[R]egulatory inspection powers or functions including failure to make an inspection or making an inadequate or negligent inspection of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety.

The basis of the Plaintiff's complaint is that Horry County negligently performed its inspection of the property which resulted in damage to the swimming pool. The clear and unambiguous terms of code section 15-78-60(13) prohibits a loss arising from an alleged negligent inspection of property. Consequently, Horry County is entitled to immunity from the Plaintiff's claims.

Finally, Horry County followed its ordinances. The Horry County code does not require an onerous and time consuming full title search before issuing an abatement notice and it does not even require that the inspector serve the actual owner; rather, the code requires an inspector only to make a reasonable effort to locate the owner or person in charge of the property.

Defendant's Exhibit 5, Horry County Code of Ordinances, Ordinance R104.6. The Horry County inspector served Michael Dixon with the notice. Michael Dixon was the legal owner of title, maintained the property, and was in charge of it when the inspector served him with the notice. Defendant's Exhibit 6, Deposition of Michael Dixon, p. 13, ll. 3-22. Michael Dixon believed at

that time that he was the owner of the property. Id. Michael Dixon was a proper person to receive notice under the ordinance to abate the hazard, which he did by contracting to fill the pool in.

II. Horry County owed no duty to the Plaintiff

A successful purchaser at a foreclosure sale does not acquire legal title until the Master in Equity executes and delivers a deed to the purchaser. S.C. Code § 15-39-830 and In re Graham, 35 B.R. 15, 18 (Bankr. D.S.C. 1983). The Master in Equity executed, delivered, and recorded a deed conveying the property to the Plaintiff on August 25, after Horry County issued the notice to Michael Dixon. Consequently, the Plaintiff was not the legal title holder when the notice was issued.

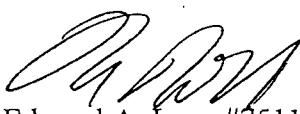
Moreover, the Plaintiff was not even the successful bidder until the bid was assigned to him on August 25. Michael Dixon was the only legal owner of record when Horry County served the notice on August 20. Horry County owed no duty to the Plaintiff to serve him with the abatement notice.

III. Horry County had the authority to enter and inspect the property and it is entitled to immunity from any alleged loss resulting from the inspection.

An inspector may enter property when necessary to enforce the provisions of the Horry County Code or when the inspector has reasonable cause to believe that a condition exists on property in violation of the code. Ex. 5, Horry County Ordinance R104.6. The subject property contained a swimming pool that was filled with water and not secured by a fence. The inspector was authorized to enter the property to inspect the swimming pool to determine if it violated the code of ordinances.

S.C. Code § 15-78-60(9) prohibits liability against a governmental entity for a loss resulting from the “entry of upon property where the entry is expressly or impliedly authorized by law.” Horry County is immune from any loss resulting from the authorized entry onto the property. Horry County’s entry and inspection of the property forms the basis of this lawsuit. Consequently, the Plaintiff’s claims must be dismissed.

WILCOX, BUYCK, & WILLIAMS, P.A.

By:   
Edward A. Love #75118  
Walker H. Willcox #72608  
PO Box 1909  
Florence, SC 29503-1909  
(843) 662-3258 - Tel.  
(843) 662-1342 - Fax  
Email: [wwillcox@willcoxlaw.com](mailto:wwillcox@willcoxlaw.com)  
Attorney for Defendant

February 3, 2012

**HORRY COUNTY CODE ENFORCEMENT DIVISION**

1301 2nd Ave • Suite 1D09 • Conway, SC 29526

(843) 915-5090 / (843) 205-5090

695393

PERMIT # 2010-1460

DATE 8/20/10

POWER PERMIT # \_\_\_\_\_

NAME Michael Dixon

LOCATION 1860 Arundel Dr 173-03-03-011

TIME ARRIVE 945 TIME DEPART 1000

SETBACKS: FR \_\_\_\_\_ LT \_\_\_\_\_ RT \_\_\_\_\_ RR \_\_\_\_\_

TYPE INSPECTION P I P I

TEMP SERVICE \_\_\_\_\_ FOUNDATION \_\_\_\_\_

PILASTER \_\_\_\_\_ SLAB / POLY WIRE \_\_\_\_\_

BOND BEAM \_\_\_\_\_ ROUGH PLUMBING \_\_\_\_\_

SLAB PLUMBING \_\_\_\_\_ ROUGH ELECTRICAL \_\_\_\_\_

NAILING \_\_\_\_\_ BRICK FLASHING \_\_\_\_\_

FRAMING \_\_\_\_\_ WINDOW FLASHING \_\_\_\_\_

ROUGH MECHANICAL \_\_\_\_\_ ROUGH FIRE \_\_\_\_\_

INSULATION \_\_\_\_\_ FINAL \_\_\_\_\_

FINAL FIRE \_\_\_\_\_ C/OCCUPANCY \_\_\_\_\_

MOBILE HOME \_\_\_\_\_ ZONING C/OCCUPANCY \_\_\_\_\_

MOBILE HOME UNDERPINNING \_\_\_\_\_ SWIMMING POOL \_\_\_\_\_

SIGN \_\_\_\_\_ POOL / DECK GROUNDING \_\_\_\_\_

C/O/S \_\_\_\_\_ METER SERVICE \_\_\_\_\_

OTHER \_\_\_\_\_ TILE SIZE \_\_\_\_\_

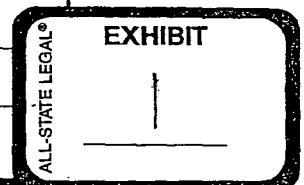
REMARKS Pool must be secured by 48" fence  
OR filled in within 5 working days  
to avoid legal action with magistrates  
office

Pictures taken

JAMES JOHNSON 915-6777

INSPECTOR Garrett (13) 915-6761

RECEIVED BY \_\_\_\_\_



1 EXAMINATION BY MR. CONNELL:

2 Q. What's the name of your company, Land Services of South  
3 Carolina?

4 A. Yes, sir.

5 Q. LLC?

6 A. Yes, sir.

7 Q. Are you the owner -- are you the principal of the  
8 company?

9 A. Yes, sir.

10 Q. Do you have a general contractor's license?

11 A. No, sir.

12 Q. Do you have a specialty contractor's license with the  
13 State of South Carolina?

14 A. No, sir. Those aren't required for what we do.

15 Q. Do you have any business permit, business license with  
16 Horry County?

17 A. Yes, sir.

18 Q. All right. And what name is that in?

19 A. Land Services of South Carolina.

20 Q. Do you have liability insurance coverage?

21 A. Yes.

22 Q. Who is your liability insurance carrier?

23 A. Harold W. Wells and Son out of Wilmington, North  
24 Carolina.

25 Q. Did you have them as your agent at the time?

1 A. Yes.

2 Q. Did Mr. Dixon inform you that the Horry County Building  
3 Department had advised him that he had five days to  
4 fill the pool or they were going to issue a warrant for  
5 him from the magistrate's office?

6 A. No, sir.

7 Q. Did he advise you that the Horry County Building  
8 Department was going to take some sort of action,  
9 either civil or criminal, against him?

10 A. No.

11 Q. Would that have made a difference if you had known  
12 that, to you?

13 A. Probably not.

14 Q. Did Mr. Dixon advise you that the property had been  
15 foreclosed and a new person had bought the property on  
16 August the 5th, approximately 15 days before he came to  
17 see you about filling the pool?

18 A. No.

19 Q. Were you advised by the County Building Department that  
20 someone else was the owner of the property?

21 A. No.

22 Q. Did you contact the County Building department and ask  
23 them if Mr. Dixon was still the owner of the property?

24 A. No.

25 Q. Did Mr. Dixon in any way inform you that you needed to

1 do this job right away?

2 A. No.

3 Q. Did he ask you whether or not you could do it within a  
4 day or two of him calling you?

5 A. No.

6 Q. Did you sense any urgency when he called you about you  
7 filling the pool with the dirt?

8 A. I just wanted to do a job and get paid. I mean,  
9 it's -- you know, get it done.

10 Q. And did he ask you how long it would take you to do the  
11 job?

12 A. No.

13 Q. Do you know now that Mr. Dixon was not the owner of the  
14 real property when you filled the pool?

15 A. I guess, now that y'all are telling me that.

16 MR. LOVE: Object to form.

17 BY MR. CONNELL:

18 Q. That's the first time you've heard that, today?

19 A. Yes.

20 Q. Did you have any conversations with the Horry County  
21 Building Department about the filling of this pool?

22 A. No. I really don't feel comfortable talking to you  
23 without Tommy Brittain, who's my attorney, being here,  
24 so I'd like to stop this.

25 Q. Okay. And you're going to answer questions at another

1 day; is that what you're --

2 A. Yeah, with him present.

3 Q. Okay. Are you related to the Alford's in Myrtle Beach?

4 A. Billy Alford is my dad.

5 Q. Okay. We'll stop the deposition until -- you want to  
6 contact him? What do you --

7 A. Either that -- I mean I just --

8 MR. LOVE: We can talk to Tommy.

9 MR. CONNELL: Okay.

10 A. I just -- you know, I'm being put on the hot seat for  
11 something that I was asked to do and --

12 BY MR. CONNELL:

13 Q. Not by us.

14 A. I know, but I'm just saying I don't -- without one of  
15 them being here, I'm not --

16 Q. I understand. All right.

17 A. Okay? Thank you.

18 MR. LOVE: All right.

19 (Deposition concluded at 3:00 p.m.)



STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Bank of New York as Trustee for the )  
benefit of the Certificateholders, )  
CWALT alternative Loan Trust )  
2007-14T2 Mortgage Pass-Through )  
Certificates, Series 2007-14T2 )

Plaintiff )

v. )

Michael D. Dixon, Pamela S. Dixon, )  
National City Bank, Plantation Point )  
Homeowners Association, Inc. )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

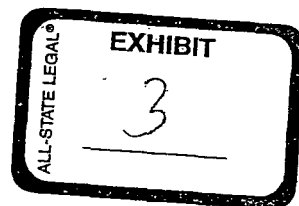
DOCKET NO: 2009-CP-26-1900

ASSIGNMENT OF BID

HORRY COUNTY  
10 AUG 25 PM 4:11  
CLERK OF COURT

FOR VALUABLE CONSIDERATION, receipt where is hereby acknowledged, MTM International, does hereby assign its successful bid in the foregoing foreclosure action for the property located at 1860 Arundel Road, Myrtle Beach, SC 29577 unto Tim Wilkes, and does hereby direct Cynthia Graham Howe, Master in Equity for Horry County, to execute her deed to the subject premises unto said assignee.

By: Tim Wilkes  
Tim Wilkes, President  
MTM International



Instrument#: 2010000086249, DEED BK: 3477 PG: 140 DOCTYPE: 125 08/23/2010 at 02:32:55 PM, 1 OF 3 COUNTY STAMPS: \$215.60 STATE STAMPS: \$509.60 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

TMS Number correct 173030311

STATE OF SOUTH CAROLINA )  
 ) DEED  
COUNTY OF HORRY ) (PUBLIC SALE)

C/A NO: 2009-CP-26-1900

To Whom These Presents shall concern:

I, Cynthia Graham Howe, as Master in Equity for Horry County, State of South Carolina, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Horry County between Bank of New York as Trustee for the benefit of the Certificateholders, CWALT, alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2, as Plaintiff, and Michael D. Dixon, Pamela S. Dixon, National City Bank and Plantation Point Homeowners Association, Inc., as Defendants, the Judge of said County by Order passed on March 17, 2010 did decree that the property described should be sold by the Master in Equity for Horry County on the terms and for the purposes mentioned in the order granted in the case; and WHEREAS, I the undersigned, as Master in Equity for Horry County, after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the matter of auction, and the said property on August 5, 2010 for the sum of One Hundred and Ninety Six Thousand Dollars and 00/100 (\$196,000.00) Dollars, said sum being the highest amount bid, paid by TIM WILKES, its successors and assigns.

NOW, KNOW ALL MEN, That I, the undersigned, as Master in Equity for Horry County, pursuant to the forgoing and also in consideration of the said bid paid as the aforesaid by the said herein below named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and by these presents do grant bargain and release the following described property unto the grantee, TIM WILKES.

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood neck Township, School District Eight, County of Horry, South Carolina, being shown and designated as Lot 11 of Block E in Plantation Point Subdivision on that certain Plat prepared for Myrtle Beach Farms Company by Robert L. Bellamy and Associates, dated 08/09/1976 and recorded in the Office of the Horry County Register of Deeds in Plat Book 60 at page 63, reference to which is carved for a more complete description of the metes and bounds.

DERIVATION 3138-1

Property Address: 1860 Arundel Road, Myrtle Beach, SC 29577

TMS: 173-03-03-011

Grantees Address: PO Box 326, Murrells Inlet, SC 29576.



TOGETHER, with all the singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also any estate, right, tide, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property- with its hereditaments, privileges, and appurtenances, unto the said grantee, his/its successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Horry County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 23<sup>rd</sup> day of August, in the year of our Lord Two Thousand Ten, and in the Two Hundred and Thirty Fifth year of Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED  
In the Presence of:

Sherril Wickinson

Jay P. Henderson

Cynthia Graham Howe (L.S.)  
Cynthia Graham Howe  
Master in Equity for Horry County

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF HORRY )

C/A NO: 2009-CP—26-1900

PERSONALLY APPEARED the undersigned witness and made oath that (s)he saw Cynthia Graham Howe, as Master in Equity for Horry County, sign, seal, and deliver the within Deed: and that deponent together with the other witness signed their names as witnesses thereto.

SWORN to before me this 23<sup>rd</sup> day  
of August, 2010

Sherril Wickinson

Jay P. Henderson (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 4/16/2017

This deed was prepared by Murray Law Offices, P.A., Attorney at Law, 4214 Mayfair Street, Suite A. Myrtle Beach, SC 29577

Index: Michael D. Dixon  
Master in Equity

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

STATE OF SOUTH CAROLINA )
COUNTY OF HORRY )

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and states:

- 1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at 1860 Arundel Road, Myrtle Beach, SC 29577, bearing Horry County Tax Map Number 173-03-03-011, and was transferred by Master In Equity to Tim Wilkes on August 23, 2010.
3. Check one of the following: The deed is
(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) exempt from the deed recording fee because (See Information section of affidavit):
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$196,000.00.
(b) The fee is computed on the fair market value of the realty which is \$
(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$
5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$
6. The deed recording fee is computed as follows:
(a) X Place the amount listed in item 4 above here: 196,000.00
(b) Place the amount listed in item 5 above here: 0.00
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: 196,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$725.20.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Purchaser.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than on year, or both.

Murray Law Offices, P.A.

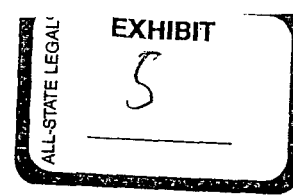
By:

Nancy M. Zojnic, Esq.

SUBSCRIBED and sworn to before me this August 23, 2010.

Notary Public for South Carolina
My Commission Expires: 4/30/19





have the effect of waiving requirements specifically provided for in this code.

**R104.2 Applications and permits.** The building official shall receive applications, review construction documents and issue permits for the erection and alteration of buildings and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

**R104.3 Notices and orders.** The building official shall issue all necessary notices or orders to ensure compliance with this code.

**R104.4 Inspections.** The building official is authorized to make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

**R104.5 Identification.** The building official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

**R104.6 Right of entry.** Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official or designee is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

**R104.7 Department records.** The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for the retention of public records.

**R104.8 Liability.** The building official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provi-

sions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

**R104.9 Approved materials and equipment.** Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

**R104.9.1 Used materials and equipment.** Used materials, equipment and devices shall not be reused unless approved by the building official.

**R104.10 Modifications.** Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements or structural. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

**R104.10.1 Areas prone to flooding.** The building official shall not grant modifications to any provision related to areas prone to flooding as established by Table R301.2(1) without the granting of a variance to such provisions by the board of appeals.

**R104.11 Alternative materials, design and methods of construction and equipment.** The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code. Compliance with the specific performance-based provisions of the *International Codes* in lieu of specific requirements of this code shall also be permitted as an alternate.

**R104.11.1 Tests.** Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

## SPECIAL CONSTRUCTION

noncombustible covers and shall be either fixed, retractable, folding or collapsible.

**3105.4 Canopy materials.** Canopies shall be constructed of a rigid framework with an approved covering that meets the fire propagation performance criteria of NFPA 701 or has a flame spread index not greater than 25 when tested in accordance with ASTM E 84.

### SECTION 3106 MARQUEES

**3106.1 General.** Marquees shall comply with this section and other applicable sections of this code.

**3106.2 Thickness.** The maximum height or thickness of a marquee measured vertically from its lowest to its highest point shall not exceed 3 feet (914 mm) where the marquee projects more than two-thirds of the distance from the property line to the curb line, and shall not exceed 9 feet (2743 mm) where the marquee is less than two-thirds of the distance from the property line to the curb line.

**3106.3 Roof construction.** Where the roof or any part thereof is a skylight, the skylight shall comply with the requirements of Chapter 24. Every roof and skylight of a marquee shall be sloped to downspouts that shall conduct any drainage from the marquee in such a manner so as not to spill over the sidewalk.

**3106.4 Location prohibited.** Every marquee shall be so located as not to interfere with the operation of any exterior standpipe, and such that the marquee does not obstruct the clear passage of stairways or exit discharge from the building or the installation or maintenance of street lighting.

**3106.5 Construction.** A marquee shall be supported entirely from the building and constructed of noncombustible materials. Marquees shall be designed as required in Chapter 16. Structural members shall be protected to prevent deterioration.

### SECTION 3107 SIGNS

**3107.1 General.** Signs shall be designed, constructed and maintained in accordance with this code.

### SECTION 3108 RADIO AND TELEVISION TOWERS

**3108.1 General.** Subject to the provisions of Chapter 16 and the requirements of Chapter 15 governing the fire-resistance ratings of buildings for the support of roof structures, radio and television towers shall be designed and constructed as herein provided.

**3108.2 Location and access.** Towers shall be located and equipped with step bolts and ladders so as to provide ready access for inspection purposes. Guy wires or other accessories shall not cross or encroach upon any street or other public space, or over above-ground electric utility lines, or encroach upon any privately owned property without written consent of the owner of the encroached-upon property, space or above-ground electric utility lines.

**3108.3 Construction.** Towers shall be constructed of approved corrosion-resistant noncombustible material. The minimum type of construction of isolated radio towers not more than 100 feet (30 480 mm) in height shall be Type IIB.

**3108.4 Loads.** Towers shall be designed to resist wind loads in accordance with TIA/EIA-222. Consideration shall be given to conditions involving wind load on ice-covered sections in localities subject to sustained freezing temperatures.

**3108.4.1 Dead load.** Towers shall be designed for the dead load plus the ice load in regions where ice formation occurs.

**3108.4.2 Wind load.** Adequate foundations and anchorage shall be provided to resist two times the calculated wind load.

**3108.5 Grounding.** Towers shall be permanently and effectively grounded.

### SECTION 3109 SWIMMING POOL ENCLOSURES AND SAFETY DEVICES

**3109.1 General.** Swimming pools shall comply with the requirements of this section and other applicable sections of this code.

**3109.2 Definition.** The following word and term shall, for the purposes of this section and as used elsewhere in this code, have the meaning shown herein.

**SWIMMING POOLS.** Any structure intended for swimming, recreational bathing or wading that contains water over 24 inches (610 mm) deep. This includes in-ground, above-ground and on-ground pools; hot tubs; spas and fixed-in-place wading pools.

**3109.3 Public swimming pools.** Public swimming pools shall be completely enclosed by a fence at least 4 feet (1290 mm) in height or a screen enclosure. Openings in the fence shall not permit the passage of a 4-inch-diameter (102 mm) sphere. The fence or screen enclosure shall be equipped with self-closing and self-latching gates.

**3109.4 Residential swimming pools.** Residential swimming pools shall comply with Sections 3109.4.1 through 3109.4.3.

**Exception:** A swimming pool with a power safety cover or a spa with a safety cover complying with ASTM F 1346.

**3109.4.1 Barrier height and clearances.** The top of the barrier shall be at least 48 inches (1219 mm) above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be 2 inches (51 mm) measured on the side of the barrier that faces away from the swimming pool. Where the top of the pool structure is above grade, the barrier is authorized to be at ground level or mounted on top of the pool structure, and the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be 4 inches (102 mm).

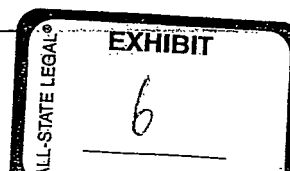
**3109.4.1.1 Openings.** Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.

1 Q. How about at the bottom on the blue sticker?  
 2 A. **Exhibit No. 9.**  
 3 Q. All right. So we've got Defendant's Exhibit No. 9.  
 4 Take a look at that and tell me what you see.  
 5 A. **Pool must be secured by 48-inch fence or filled in**  
 6 **within five working days to avoid legal action with**  
 7 **magistrate's office. Pictures taken.**  
 8 Q. All right. Do you think that's the document that  
 9 Jarrett gave you or do you know?  
 10 A. **It could be. It's blown up, and I think -- seemed like**  
 11 **it was yellow or pink but I think so, yeah.**  
 12 Q. Okay. All right. And so on August the 20th, 2010,  
 13 does that sound about the right date?  
 14 A. **I would say probably, yes, I'm sure. I mean I'm not**  
 15 **positive, but I'm relatively sure this is what I**  
 16 **received.**  
 17 Q. All right. When Jarrett came by and gave you the slip  
 18 of paper, no matter what day it was, if it was August  
 19 20th or some other day, when he gave it to you, were  
 20 you the owner of the property at the time?  
 21 A. **I assumed I was. I haven't been notified by anybody**  
 22 **that I wasn't.**  
 23 Q. Okay. All right. And did you feel that as the owner  
 24 of the property, you were to take action based on that?  
 25 A. **Yes.**

1 A. **During that time, every time, you know, she would get**  
 2 **involved, there would be a new person on the case and**  
 3 **it would have to start from scratch and it just had**  
 4 **drug on and on and on, and then I think -- I think that**  
 5 **company got bought out, that bank got bought out.**  
 6 Q. Okay.  
 7 A. **So it was really, really chaotic.**  
 8 Q. All right. Obviously, all that couldn't have occurred  
 9 in the five days that you had to make a decision fence  
 10 versus fill?  
 11 A. **Right.**  
 12 Q. All right. So what led you to the decision to fill the  
 13 pool rather than fence it?  
 14 A. **The time line.**  
 15 Q. Okay. All right. Let me see that form real quick.  
 16 You contacted Wells. As we know, it's Wells Alford who  
 17 was in here a minute ago?  
 18 A. **Right, right.**  
 19 Q. How did you know Wells?  
 20 A. **I've dealt with his dad for about 25 years with**  
 21 **cabinets. I sell them them their cabinets, A&I.**  
 22 Q. Did you ask the County what kind of fence they  
 23 required?  
 24 A. **I didn't.**  
 25 Q. Okay.

1 Q. All right. And what did you do in response to this  
 2 Defendant's Exhibit?  
 3 A. **Once I realized I only had a week to handle it, I**  
 4 **called Wells and told him my situation and I said --**  
 5 **you know, I knew if I put up a fence, it would look**  
 6 **tacky, and we actually had the property sold and I**  
 7 **just -- I didn't want to put up some kind of temporary**  
 8 **fence that would not -- that would look like crap.**  
 9 Q. Who did you have the property sold to?  
 10 A. **The neighbor, Stanley Allen. Well, we had actually had**  
 11 **a contract on that piece of property.**  
 12 Q. Why didn't that contract go through?  
 13 A. **It was a -- there was a second mortgage associated with**  
 14 **that and we were going back and forth with the first**  
 15 **mortgagor and second mortgagor, and then I think during**  
 16 **that transition and all the talks, I think another bank**  
 17 **gobbled up that bank and we had to deal with whole new**  
 18 **people, and once that happened, the communication just**  
 19 **stopped, and my wife was doing a lot of that, you know,**  
 20 **because she's a realtor and she was doing a lot of that**  
 21 **communicating back and forth with these people and**  
 22 **what --**  
 23 Q. Where does she work?  
 24 A. **She's just free-lance.**  
 25 Q. Okay.

1 A. **I didn't. I just seen the height and I -- you know, I**  
 2 **could have stuck something up there but I knew it would**  
 3 **look crappy. You know, in that time frame, I couldn't**  
 4 **get somebody to come out there and build something**  
 5 **tasteful.**  
 6 Q. All right. How quickly did Wells get out there after  
 7 you called him?  
 8 A. **Oh, me. I think -- I mean I think he was able to meet**  
 9 **the deadline but I think it was probably -- I'm**  
 10 **guessing at this -- probably maybe three days at least**  
 11 **before he could even do anything because he was busy**  
 12 **also.**  
 13 Q. All right. Let me ask you this. On August 20th, 2010,  
 14 assuming that's the date that Jarrett gave you this  
 15 piece of paper, do you remember there being a large  
 16 sign in the yard that said for sale by owner?  
 17 A. **No. I know the day I went to check, to check the -- to**  
 18 **see if Wells did it before that time frame, went there**  
 19 **and -- actually with my mower, and I mowed everything**  
 20 **and I saw that he filled the pool, and I was a little**  
 21 **concerned that he didn't fill it all the way and I was**  
 22 **a little concerned that that may be an issue, you know,**  
 23 **but that is the first time I saw the for sale sign in**  
 24 **there.**  
 25 Q. Okay. So on this date, August 20th, when Jarrett came



STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
C/A NO. 2010-CP-26-11570

Tim Wilkes, )  
)  
Plaintiff, )  
)  
vs. )  
)  
Horry County, )  
)  
Defendant. )  
)

PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR  
RECONSIDERATION  
PURSUANT TO SCRCP 59

HORRY COUNTY  
12 JUN 18 PM 3:58  
HEATHER HUGGINS-WARD  
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE, the Plaintiff moves the Court for an Order reconsidering its previous Order Granting Defendants' Motion for Summary Judgment dated May 25, 2012, filed May 29, 2012 and received by Plaintiff's counsel on June 7, 2012. The basis of Plaintiff's Motion for Reconsideration is that the Order indicates Plaintiff did not present any evidence at the summary judgment hearing disputing the facts in this Order. Plaintiff respectfully disagrees and attaches hereto the evidence presented at the hearing which would show that summary judgment was inappropriate. That evidence is as follows:

1. Plaintiff submitted the attached photograph (which was shown to the Court) indicating that Plaintiff had purchased the property and that it was for sale and had a sign on it. (Exhibit 1).
2. Plaintiff also presented the Master-in-Equity's Report on Sale and Disbursements dated August 24, 2010 which showed that Plaintiff had purchased the property on August 5, 2010. (Exhibit 2).
3. Plaintiff presented the deposition of Tim Wilkes taken August 24, 2011 which indicated as follows: the property was purchased at an auction (Depo. p. 12, lines 11-15); Plaintiff believed the County knew that he owned the property because there was a for sale sign on the property in huge block letters (Depo. p. 23, lines 1-25); that County Code Ordinance 104.0 required

that reasonable efforts be made to locate the owner and that a public sale occurred on August 5, 2010, pictures were taken and a sign set up on the property on August 20, 2010 with the Plaintiff's phone number. (Exhibit 7).

4. Plaintiff presented to the Court arguments regarding a similar case (*Steinke v. S.C. Dept. of Labor, Licensing and Regulation*, 336 S.C.373, 520 S.E. 2d 142 (S.C. Sup.Ct. 1999)). Plaintiff's argument pursuant to the *Steinke* case was that the County should have inspected the property and would have seen the for sale sign and thus known to contact Wilkes as he was the successful bidder.

Further, the inspector could have easily reviewed the Horry County property records and determined that the Master's Order of Sale was dated March 17, 2010, that the Notice of Sale was dated April 5, 2010 and that the Plaintiff had actually purchased the property at a public sale on August 5, 2010. A simple check of the records would have shown that Michael Dixon was not the owner, that the property was in litigation and that the Plaintiff had paid monies at the Horry County Courthouse at a public sale on August 5, 2010. Accordingly, Plaintiff requests that the Court supplement the record to include the documents which were discussed by Plaintiff during the argument including:

Exhibit 1: Picture of Plaintiff's sign on the property;

Exhibit 2: Master-in-Equity's Report on Sales and Disbursements August 24, 2010 (prior to the pool being filled in);

Exhibit 3: Notice of Sale and the Horry County records dated June 25, 2010;

Exhibit 4: Notice of Sale dated May 20, 2010 ;

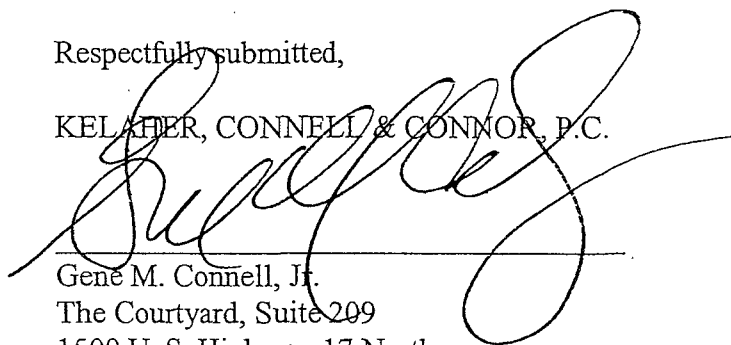
Exhibit 5: Notice of Sale by the Master dated November 16, 2009;

Exhibit 6: Form 4 Judgment in a Civil Case dated March 17, 2010 showing an Order of Foreclosure signed by The Honorable Cindy Howe dated March 17, 2010.

Plaintiff respectfully submits that all this evidence which was discussed at the hearing was not listed in the Order and that such evidence should be entered into the record, reconsidered by the Court, and summary judgment vacated since there are issues of material fact as to the damage to the pool by the County ordering it be filled in.

Respectfully submitted,

KELAHIER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.  
The Courtyard, Suite 209  
1500 U. S. Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, South Carolina 29587-4547  
(843) 238-5648 (phone)  
(843) 238-5050 (facsimile)  
gconnell@classactlaw.net  
**Attorney for Plaintiff**

June 15, 2012  
Surfside Beach, South Carolina

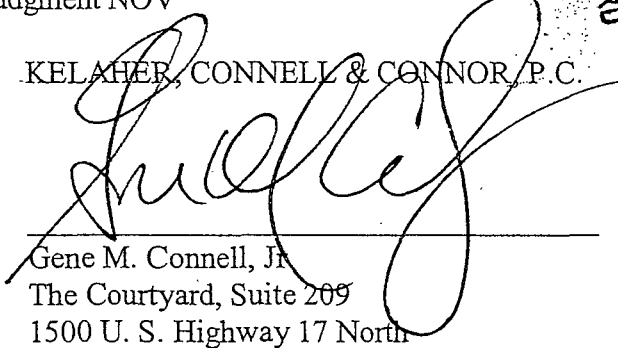
RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- B. Such consultation would serve no useful purpose, or could not be timely held; or
- C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
  - a. To Dismiss
  - b. For Summary Judgment
  - c. For New Trial
  - d. For Judgment NOV

HORRY COUNTY  
12 JUN 18 PM 3:58  
MELANIE HUGGINS-WARD  
CLERK OF COURT

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.  
The Courtyard, Suite 209  
1500 U. S. Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, South Carolina 29587-4547  
(843) 238-5648 (phone)  
(843) 238-5050 (facsimile)  
gconnell@classactlaw.net  
**Attorneys for Plaintiffs**

June 15, 2012  
Surfside Beach, South Carolina

**WATER FRONT**  
Double Size Lot  
**130 Ft.**

**\$449,000**

by OWNER  
**843-446-7075**

EXHIBIT 1

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 09-CP-26-1900

Bank of New York as Trustee for the benefit  
of the Certificateholders, CWALT, alternative  
Loan Trust 2007-14T2 Mortgage Pass-Through  
Certificates, Series 2007-14T2,

Plaintiff,

vs.

Michael D. Dixon, Pamela S. Dixon, National  
City Bank and Plantation Point  
Homeowners' Association, Inc.,

Defendants,

HORRY COUNTY  
10 AUG 25 PM 4:11  
MELANIE DESS-WARD  
CLERK OF COURT

MASTER IN EQUITY'S  
REPORT ON SALE AND  
DISBURSEMENTS

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the property, subject of this action, on sales day, August 5<sup>th</sup>, 2010, to Tim Wilkes, its successors and assigns, for the sum of One Hundred Ninety Six Thousand Dollars and No/100 (\$196,000.00). This was the highest bid made on sales day.
2. I have executed and delivered to Tim Wilkes, its successors and/or assigns, a good and sufficient deed of conveyance.
3. The following costs have been incurred and funds received and disbursed as set out in Exhibit A.
4. All the funds having been disbursed, I hereby order the file closed and the case ended.

*[Handwritten initials]*

*[Handwritten signature]*  
Cynthia Graham Howe  
Master in Equity

August 24<sup>th</sup>, 2010  
Conway, South Carolina

Notice of Sale  
C/A No: 2009-CP-26-1900

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County, South Carolina, heretofore issued in the case of The Bank of New York, as Trustee for the benefit of the Certificateholders, CWALT, Alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2 against, Michael D. Dixon, Pamela S. Dixon, National City Bank, and Plantation Point Homeowners Association, Inc., I the undersigned as Master in Equity for Horry County, will sell on July 6, 2010, at 11:00 a.m., at the Horry County Justice Center, 1301 2nd Ave., 3rd Floor in Conway, South Carolina, to the highest bidder:

**Legal Description and Property Address:**

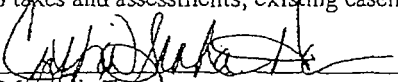
All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, School District Eight, Horry County, South Carolina, containing 0.557 acres or 24,271.00 square feet, more or less, ad being shown and designated as Lot 11 of Block E in the Plantation Point Subdivision on that certain Plat prepared for Myrtle Beach Farms Company by Robert L. Bellamy and Associates, dated 06/09/1976 and recorded in the Office of the Horry County Register of Deeds in Plat Book 60 at page 63, reference to which is craved for a more complete description of the metes and bounds.

This being the same property conveyed to Michael D. Dixon and Pamela S. Dixon as joint tenants with rights of survivorship, by deed of Pavilack Industries, Inc., dated August 3, 2006 and recorded on August 4, 2006 in the Register of Deeds Office for Horry County, South Carolina in Book 3138 at page 1.

1860 Arundel Road, Myrtle Beach, SC 29577  
TMS # 173-03-03-011

**TERMS OF SALE:** For cash. Interest at the rate of Six And 75/100 percent (6.750%) to be paid on balance of bid from date of sale to date of compliance. The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff therein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five percent (5%) of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court; and in the event the said purchaser or purchasers fail to comply with the terms of sale within Thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of Thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect. In such event, the sale will be rescheduled for the next available sales day. Plaintiff may waive any of its rights, including its right to a deficiency judgment, prior to sale. Sold subject to taxes and assessments, existing easements and restrictions of record.

  
Master in Equity  
For Horry County

Conway, South Carolina  
June 25, 2010.  
KORN LAW FIRM, P.A.  
Attorney for Plaintiff

Notice of Sale  
C/A No: 2009-CP-26-1900

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County, South Carolina, heretofore issued in the case of The Bank of New York, as Trustee for the benefit of the Certificateholders, CWAIT, Alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2 against, Michael D. Dixon, Pamela S. Dixon, National City Bank, and Plantation Point Homeowners Association, Inc., I the undersigned as Master in Equity for Horry County, will sell on June 7, 2010, at 11:00 a.m., at the Horry County Justice Center, 1301 2nd Ave., 3rd Floor in Conway, South Carolina, to the highest bidder:

Legal Description and Property Address:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, School District Eight, Horry County, South Carolina, containing 0.557 acres or 24,271.00 square feet, more or less, ad being shown and designated as Lot 11 of Block E in the Plantation Point Subdivision on that certain Plat prepared for Myrtle Beach Farms Company by Robert L. Bellamy and Associates, dated 06/09/1976 and recorded in the Office of the Horry County Register of Deeds in Plat Book 60 at page 63, reference to which is craved for a more complete description of the metes and bounds.

This being the same property conveyed to Michael D. Dixon and Pamela S. Dixon as joint tenants with rights of survivorship, by deed of Pavilack Industries, Inc., dated August 3, 2006 and recorded on August 4, 2006 in the Register of Deeds Office for Horry County, South Carolina in Book 3138 at page 1.

1860 Arundel Road, Myrtle Beach, SC 29577  
TMS # 173-03-03-011

TERMS OF SALE: For cash. Interest at the rate of Six And 75/100 percent (6.750%) to be paid on balance of bid from date of sale to date of compliance. The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff therein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five percent (5%) of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court; and in the event the said purchaser or purchasers fail to comply with the terms of sale within Thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of Thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect. In such event, the sale will be rescheduled for the next available sales day. Plaintiff may waive any of its rights, including its right to a deficiency judgment, prior to sale. Sold subject to taxes and assessments, existing easements and restrictions of record.

*[Handwritten Signature]*  
Master in Equity  
for Horry County

Conway, South Carolina  
*May 20*  
KORN LAW FIRM, P.A.  
Attorney for Plaintiff

\_\_\_\_\_, 2010.

FILED  
MAY 25 AM 10:50  
HORRY COUNTY

Notice of Sale  
C/A No: 2009-CP-26-1900

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County, South Carolina, heretofore issued in the case of The Bank of New York, as Trustee for the benefit of the Certificateholders, CWALT, Alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2 against, Michael D. Dixon, Pamela S. Dixon, National City Bank, and Plantation Point Homeowners Association, Inc., I the undersigned as Master in Equity for Horry County, will sell on December 7, 2009, at 11:00 a.m., at the Horry County Justice Center, 1301 2nd Ave., 3rd Floor in Conway, South Carolina, to the highest bidder:

Legal Description and Property Address:

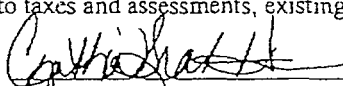
All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, School District Eight, Horry County, South Carolina, containing 0.557 acres or 24,271.00 square feet, more or less, ad being shown and designated as Lot 11 of Block E in the Plantation Point Subdivision on that certain Plat prepared for Myrtle Beach Farms Company by Robert L. Bellamy and Associates, dated 06/09/1976 and recorded in the Office of the Horry County Register of Deeds in Plat Book 60 at page 63, reference to which is craved for a more complete description of the metes and bounds.

This being the same property conveyed to Michael D. Dixon and Pamela S. Dixon as joint tenants with rights of survivorship, by deed of Pavilack Industries, Inc., dated August 3, 2006 and recorded on August 4, 2006 in the Register of Deeds Office for Horry County, South Carolina in Book 3138 at page 1.

1860 Arundel Road, Myrtle Beach, SC 29577  
TMS # 173-03-03-011

TERMS OF SALE: For cash. Interest at the rate of Six And 75/100 percent (6.750%) to be paid on balance of bid from date of sale to date of compliance. The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff therein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five percent (5%) of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court; and in the event the said purchaser or purchasers fail to comply with the terms of sale within Twenty (20) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of Thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect. In such event, the sale will be rescheduled for the next available sales day. Plaintiff may waive any of its rights, including its right to a deficiency judgment, prior to sale. Sold subject to taxes and assessments, existing easements and restrictions of record.

  
Master in Equity  
For Horry County

FILED  
CLERK OF COURT  
2009 NOV 30 AM 11:03  
LAURE HUGGINS-WARD

Conway, South Carolina  
Nov. 16, 2009.  
KORN LAW FIRM, P.A.  
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF HORRY

CASE NO:2009-CP-26-1900

The Bank of New York, as Trustee for the benefit of the certificateholders, CWALT, Alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2  
PLAINTIFF,

Michael D. Dixon, Pamela S. Dixon, National City Bank and Plantation Point Homeowners Association, Inc.,  
DEFENDANT(S).

F29-01507

CHECK ONE:

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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

ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other - \_\_\_\_\_

ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRCP;  Bankruptcy;  Other - \_\_\_\_\_

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

Dated at Conway, South Carolina, this 16<sup>th</sup> day of March, 2009

*[Signature]*  
PRESIDING JUDGE

This judgment was entered on the 17<sup>th</sup> day of March, 2009 and a copy mailed first class this \_\_\_\_\_ day of \_\_\_\_\_, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

PETER D. KORN/JOHN S. KAY/DEAN HAYES  
ALAN M. STEWART/H. GUYTON MURRELL  
ROY W. BOGGS/SUZANNAH HAYES  
JOHN B. KELCHNER  
Korn Law Firm, PA  
PO Box 11264 Columbia, SC 29211-1264

ATTORNEYS FOR PLAINTIFF

CT Lex Gardner  
403 N Kings Hwy  
Myrtle Beach, SC 29578

ATTORNEY(S) FOR DEFENDANT(S)

*Melanie Huggins*  
CLERK OF COURT

FILED  
HORRY COUNTY  
2010 MAR 17 AM 11:25  
MELANIE HUGGINS  
CLERK OF COURT

EXHIBIT 7

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
CASE NO. 2010-CP-26-11570

TIM WILKES, )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HORRY COUNTY, )  
 )  
 )  
 Defendant. )

COMPRESSED TRANSCRIPT

---

DEPOSITION OF TIM WILKES

---

DATE TAKEN: August 24, 2011  
TIME BEGAN: 1:10 p.m.  
TIME ENDED: 2:45 p.m.  
LOCATION: Kelaher, Connell & Connor, PC  
Suite 209, The Courtyard  
1500 Highway 17 North  
Surfside Beach, SC 29587  
REPORTED BY: Glenda K. McCormick  
Court Reporter  
Notary Public for South Carolina

---

ALDERMAN COURT REPORTING

500 Oak Pond Court  
Conway, SC 29526  
Telephone: 843.254.2675 Fax: 843.234.2309  
E-mail: RPA1277@AOL.COM

1

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
CASE NO. 2010-CP-26-11570

TIM WILKES, )  
)  
Plaintiff, )  
)  
vs. )  
)  
HORRY COUNTY, )  
)  
Defendant. )

DEPOSITION OF TIM WILKES

DATE TAKEN: August 24, 2011  
TIME BEGAN: 1:10 p.m.  
TIME ENDED: 2:45 p.m.  
LOCATION: Kelahe, Connell & Connor, PC  
Suite 209, The Courtyard  
1500 Highway 17 North  
Surfside Beach, SC 29587  
REPORTED BY: Glenda K. McCormick  
Court Reporter  
Notary Public for South Carolina

ALDERMAN COURT REPORTING  
500 Oak Pond Court  
Conway, SC 29526  
Telephone: 843.254.2675 Fax: 843.234.2309  
E-mail: RPA1277@AOL.COM

2

\*Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person.

APPEARANCES

Gene M. Connell, Jr., Esquire  
Kelahe, Connell & Connor, PC  
Suite 209, The Courtyard  
1500 Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, SC 29587

.....On behalf of the Plaintiff

Edward A. Love, Esquire  
Willcox, Buyck & Williams  
248 West Evans Street  
Florence, SC 29501

.....On behalf of the Defendant

ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived by the witness and by the parties.

3

INDEX

Page

Examination by Mr. Love..... 4  
Examination by Mr. Connell..... 63  
Reexamination by Mr. Love..... 65  
Reexamination by Mr. Connell..... 67  
Certificate..... 69

EXHIBITS

Defendant's Exhibit	Description	PAGE
1	Photograph of swimming pool	30
2	Photograph of swimming pool	30
3	Photograph of swimming pool	30
4	Photograph of swimming pool	30
5	Photograph of swimming pool	30
6	Horry County MIE report on sale of property, 8-24-10	34
7	Tax assessors sales file, 8-23-10	35
8	Deed from public sale conveying subject property to Mr. Wilkes, 8-23-10, eight pages	37
9	Notice from Horry County Code Enforcement Division to Mr. Dixon, 8-20-10	44
10	Assignment of bid on subject property to Mr. Wilkes, 8-25-10	41
11	Photograph of dirt-filled swimming pool	48
12	Estimate of pool repair from Custom Concrete Developers, 4-25-11, two pages	50
13	Notice from Horry County Code Enforcement Division, 4-22-10	59

4

Tim Wilkes, being duly sworn, testified as follows:

EXAMINATION BY MR. LOVE:

Q. Mr. Wilkes, we briefly met before. My name is Ed Love. I'm out of Florence with the Willcox Law Firm. We also have an office here in Surfside. That's all the advertising I'm going to do. I, of course, represent Horry County in a lawsuit that you've brought in Horry County based on allegations in a complaint that was filed by your attorney on your behalf. Okay?

A. Yes, sir.

Q. The purpose of today is for me to try and put some meat on the bones of that complaint. Basically, when you file a complaint, it has bare allegations of what was going on. My job today is to talk to you about exactly what was going on and the facts and circumstances surrounding that complaint. Okay?

A. Yes.

Q. A few ground rules. I'm sure Gene has gone over them with you, but just to be sure, any question I ask you, I would ask that you give a verbal response. You've done fine thus far. That way the court reporter can take it down. It's very difficult to take down head nods and head shakes, even more difficult sometimes to take down the uh-huhs and the uh-uhs, so yes or no and whatever you need to say. Okay?

5

1 A. **Yes, sir.**

2 Q. All right. If you need a break, let me know. I'm not  
3 here to punish you. I don't take too long on  
4 depositions. I don't see that as beneficial for you  
5 nor I, so if you need a break, let me know. If you  
6 need something to drink, bathroom, whatever, just let  
7 me know. Okay?

8 A. **Yes, sir.**

9 Q. All right. The rules do prohibit you from speaking  
10 with your attorney substantively about the case while  
11 you're on a break and I get to inquire as to what y'all  
12 discussed if that's the case. I'm not a stickler for  
13 the rules. I don't mind small talk, joking around,  
14 that kind of stuff. Just be aware of that rule.  
15 Basically, they get to talk to you any time they want  
16 to. This is about the one time I get to talk to you  
17 about the case. Okay?

18 A. **Yes, sir.**

19 Q. All right. Let's roll on. Your full name, Mr. Wilkes?

20 A. **Is Tim Wilkes.**

21 Q. Okay. And where do you currently reside?

22 A. .

23 Q. Where is Mill Pond Drive?

24 A. **In Murrells Inlet, South Carolina, 29576.**

25 Q. How long have you been at that address?

7

1 Q. Okay. And what does Mande do?

2 A. **Mande has a law degree and she does legal consulting  
3 and is a writer.**

4 Q. All right. Is she licensed to practice in South  
5 Carolina?

6 A. **No, sir.**

7 Q. Okay. All right. What kind of consulting work does  
8 she do?

9 A. **I am not familiar.**

10 Q. Okay. All right. And I judge by her last name she's  
11 not married?

12 A. **No, sir.**

13 Q. Okay. Does she have any children?

14 A. **No, sir.**

15 Q. Okay. Any other relatives by blood or marriage in  
16 Horry County?

17 A. **No.**

18 Q. Okay. No brothers, sisters, in-laws, aunts, uncles,  
19 cousins?

20 A. **No, sir.**

21 Q. All right. Where are you from, Mr. Wilkes?

22 A. **I'm from Horry County.**

23 Q. Okay. Did you grow up in Horry County?

24 A. **Around, yes.**

25 Q. Okay. Where did you go to school?

6

1 A. **Fifteen years.**

2 Q. Who lives there with you?

3 A. **My wife.**

4 Q. And her name?

5 A. **Is Anat.**

6 Q. A-N --

7 A. **I'm sorry. Anat, A-N-A-T.**

8 Q. Okay. How long have you been married to Miss Wilkes?

9 A. **Thirty-one years.**

10 Q. Anybody else living with you at that residence?

11 A. **I have my youngest child is in college, so she's a  
12 summer resident.**

13 Q. Okay. And what's her name?

14 A. **Malena.**

15 Q. M-E-L-I-N-A?

16 A. **M-A-L-E-N-A.**

17 Q. And is she married?

18 A. **I hope she don't read this deposition. No, sir. She's  
19 a student at the University of South Carolina.**

20 Q. All right. Do you have any other relatives, whether by  
21 blood or marriage, who reside in Horry County?

22 A. **Yes.**

23 Q. Okay. Who would that be?

24 A. **My oldest daughter, her name is Mande, M-A-N-D-E,  
25 Wilkes.**

8

1 A. **Well, I didn't go to school much.**

2 Q. All right.

3 A. **I went to school in Rock Hill.**

4 Q. Did you graduate high school?

5 A. **No, sir.**

6 Q. How far did you go?

7 A. **I went all the way to the GED. I got a GED in South  
8 Carolina.**

9 Q. Okay. Any other formal education or training after  
10 that point?

11 A. **No, sir.**

12 Q. Okay. Any other -- do you hold any licenses or any  
13 other credentials like a real estate license or  
14 anything like that?

15 A. **No, sir.**

16 Q. Okay. What do you do for work?

17 A. **I have several different businesses.**

18 Q. Okay. Talk to me a little bit about those businesses.

19 A. **I'm in the retail business.**

20 Q. All right. What kind of retail?

21 A. **Clothing.**

22 Q. All right. Do you have a particular store?

23 A. **Yes. I have ET Sportswear.**

24 Q. Okay.

25 A. **Kings Beachwear.**

9

1 Q. All right.

2 A. T Shirt Kings, Pacific Beachwear. I have some

3 miniature golf courses.

4 Q. Okay.

5 A. I own a wholesale company called Coastal Designs.

6 Q. It's a wholesale company?

7 A. Yes.

8 Q. Okay.

9 A. And I have multiple pieces of real estate.

10 Q. Is that enough to keep you busy or you got anything else

11 going on?

12 A. Just involved in various things like this.

13 Q. Okay. Pacific Beachwear, which one do you have, or do

14 you have multiple?

15 A. We have multiple stores. We have multiple locations on

16 Highway 17 and on Boulevard and --

17 Q. Do you have one up at the Garden City turnoff, right

18 there in front of Kroger? Is that your Pacific?

19 A. The Kroger, yes, I --

20 Q. It's got the whale on top?

21 A. Oh, I'm sorry. Garden City. I was thinking Surfside.

22 No. That belongs to not me.

23 Q. I bought a hermit crab from there for my seven-year-old.

24 That's why I was wondering. He's doing okay. I just

25 wanted to let you know.

11

1 to this, to the point, I suppose, at hand.

2 Q. Okay. How many pieces of real estate do you figure you

3 hold right now?

4 A. Nineteen.

5 Q. Okay. All right. Most of them residential or is it a

6 fair mix?

7 A. Mostly commercial.

8 Q. Mostly commercial?

9 A. (Witness nods affirmatively.)

10 Q. Do you tend to stay towards the south end with all of

11 these ventures or are they spread out across the beach?

12 A. They're spread out.

13 Q. Okay. So you're all the way in North Myrtle and

14 Myrtle?

15 A. Yes.

16 Q. Okay. Tell me when you moved to Horry County. I know

17 you said you went to a little bit of schooling in Rock

18 Hill. When did you get to Horry?

19 A. '70 -- I don't know exactly. I don't remember the

20 date. '70 --

21 Q. In the '70s?

22 A. Yeah, in the '70s.

23 Q. Early, middle, late?

24 A. Middle, '76, '78. I remember when I married, not when

25 I --

10

1 A. The people there have that actually -- actually have --

2 they've only been there a couple of years. They're

3 nice people.

4 Q. Okay. Let's talk about the putt-putt courses. Which

5 ones do you have?

6 A. Snake River, and the Pyramid. We also own the Dairy

7 Queen beside of it.

8 Q. All right.

9 MR. CONNELL: He didn't go to your putt-

10 putt course, though.

11 BY MR. LOVE:

12 Q. I didn't go to your putt-putt course. The day we were

13 going to go play putt-putt, it poured. I was here a

14 couple of weeks back, but I apologize for that and

15 maybe some time in the future.

16 Let's see here. Before getting into this --

17 this -- all these dealings, what did you do? Did you

18 ever have like a nine-to-five and just got sick of it

19 and started doing this stuff, or is this kind of what

20 you --

21 A. This is pretty much it. I've just been working.

22 Q. Okay.

23 A. The real estate end of it is -- the auctions, I was

24 just doing these since the implosion of real estate. I

25 didn't really do much before that. That's how we get

12

1 Q. That's the only one you have to. All right. Let's

2 talk about the property we're dealing with here. Tell

3 me -- tell me about the property. How did you come to

4 know about the property?

5 A. My 19 properties?

6 Q. No. I'm sorry. The property that has led us to here

7 today, the Arundel lot, or Arundel. How is that

8 pronounced?

9 A. Arundel.

10 Q. There we go.

11 A. It was purchased at an auction. I wasn't there. It

12 was purchased by an agent named Colby, C-O-L-B-Y, Rowe,

13 W-O -- R-O-W-E, with Sloan Realty.

14 Q. Okay.

15 A. He bid at the auction and then I went and paid for it

16 and we closed on the property. As soon as we closed on

17 it, actually, I put -- I had a sign. I put a big sign

18 myself up there, a huge sign, and -- the size of the

19 lot, it's a double lot, size of the lot, and I put my

20 number in huge big block letters and was trying to sell

21 it myself.

22 Q. Okay.

23 A. Would you like for me to go on? I know that I'm not

24 supposed to. In depositions, I'm supposed to wait and

25 answer your questions but --

13

1 Q. You can do whatever --

2 A. -- **it's a pretty simple thing.**

3 Q. You can do whatever you want, but we'll -- let's

4 start -- let's start talking about the pool. I mean I

5 understand the auction process. I understand that you

6 had someone there bidding for you and you paid for the

7 property and all that.

8 A. Yes.

9 Q. Now, in your allegation in the complaint, it basically

10 says -- and I'm paraphrasing -- that Horry County told

11 the wrong people about what options they had with the

12 pool, either to fill it or put up a fence. Is that my

13 understanding, that they should have been communicating

14 with you and not the Dixons?

15 A. I'm sorry. Repeat.

16 Q. Okay. Basically in the complaint, my understanding of

17 the complaint -- and again, this is paraphrasing -- is

18 that you allege that Horry County was communicating

19 with the Dixons about what to do with the pool rather

20 than with you.

21 A. **This is what Horry County told me.**

22 Q. Okay. Tell me what Horry County told you.

23 A. **And I'm -- I think I should -- we should get to -- from**

24 **the beginning to the end. I think if I tell you what**

25 **Horry County told me, we're going to be in the middle**

15

1 Q. Okay.

2 A. **And I thought she was calling about my -- I went to my**

3 **house to look at the pool.**

4 Q. Yes, sir.

5 A. **And maybe -- I don't know exactly the time when this**

6 **happened because I was upset. I didn't know what was**

7 **going on and I don't have a time limit, but this Colby**

8 **Rowe called me and said that -- or I called Colby about**

9 **something. They were doing a -- there was another**

10 **commercial auction and -- something was going on and I**

11 **spoke to him.**

12 **He calls me back and he said this woman called**

13 **him and cursed him out and was cursing him and said she**

14 **was telling him about the pool. Colby lived close to**

15 **there and he went to the home and he called me again,**

16 **and he said, I'm at the Plantation Point property. He**

17 **said, there's mountains of dirt here.**

18 **So as we got to the -- by the time I got there,**

19 **it was -- I called the police. We saw all the dirt.**

20 **We called the police, and the policeman from Horry**

21 **County, he called -- I gave him the number from my cell**

22 **phone and he called the -- I'm assuming her name is**

23 **Dixon. I didn't know, but I'm assuming by what you're**

24 **saying it's Dixon, and I -- I -- he spoke with her and**

25 **I don't know if he spoke with the husband. He never**

14

1 **somewhere, if I may.**

2 Q. All right. Let's do it.

3 A. **All right. I received a phone call in the afternoon,**

4 **on a Friday afternoon, from a lady, and she sounded**

5 **inebriated. And she told me, go jump in your pool, let**

6 **me -- she started -- she was ranting and raving and**

7 **cursing and telling me go get in the pool.**

8 **I wasn't yet in my home and I went -- I didn't**

9 **know what was going on and I went to my home and I'm --**

10 **she calls back again. And I'm looking at the pool.**

11 **She said, jump in. I said, I'm looking at it. I**

12 **thought she put poison or something. She said, I want**

13 **to see you jump in. She was just ranting and raving.**

14 **I didn't know what was going on and I -- I hung**

15 **up the phone on her. And I looked at everything. I**

16 **went around and was looking at the pool and all, and I**

17 **called her back. Her number was on my cell phone. You**

18 **can check the cell phone records.**

19 **And I called her back and I said, what are you**

20 **talking about? I didn't know what she was talking**

21 **about. Anyway, she cursed and went on and hung up**

22 **again.**

23 Q. Let me ask you this. Were you at your house at that

24 point in time? You were not at the lot?

25 A. **No. I was at my personal home.**

16

1 **mentioned about it. I know he spoke, I think, only**

2 **with the lady. And he filed a complaint. He made a**

3 **complaint and we left.**

4 Q. Who filed the complaint?

5 A. **The policeman. I mean he wrote up the --**

6 Q. Did you maintain a copy of that police report?

7 A. **I don't have it, actually. I may have it. I don't**

8 **have it with me.**

9 Q. Okay.

10 A. **At the office I have it.**

11 Q. When you said there was a mountain of dirt when you

12 showed up at the property, was the dirt in the pool at

13 that time?

14 A. **Some and some not.**

15 Q. Okay. Was the pool full?

16 A. **The pool, you could not see where the pool was. You**

17 **could not see the pool or the ring around the pool.**

18 **You could see nothing from it, and there were several**

19 **other big piles of dirt beside it, beside -- in the**

20 **back yard.**

21 Q. Okay.

22 (Whereupon, there was a pause in the proceedings.)

23 A. **You want me to fast-forward now perhaps to calling the**

24 **County?**

25 Q. Sure. This was on a Friday that all of this occurred

17

1 that you just spoke about; is that right?  
 2 A. Yes.  
 3 Q. All right. When are we moving to next?  
 4 A. The policeman said that they had told him on the phone  
 5 that they were told by the County to fill in the pool.  
 6 Q. Okay. They being the Dixons?  
 7 A. He asked them why they had permission, how they had  
 8 permission to be on the property, how they did it. He  
 9 said the County told them that if they didn't, they  
 10 were going to go to jail, if they didn't fill in the  
 11 pool. That's exactly what he told the policeman that  
 12 she told him.  
 13 Q. All right. Those are the Dixons we're talking about  
 14 that he's on the phone with that are saying we were  
 15 told to fill it in by the County?  
 16 A. The lady -- it was the lady who had called me on my  
 17 cell phone. He got her number from me. I can't say it  
 18 was the Dixons. I'm assuming so. He called them from  
 19 my number and she said that she did fill it in and she  
 20 was told by the police, by -- the County came to her  
 21 house, she said, and they told her you have five days  
 22 or you're going to -- to jail. Is exactly what he  
 23 related to me, the police officer.  
 24 Q. What's the police officer's name?  
 25 A. I have no idea.

19

1 A. I could -- it could have been three conversations  
 2 regarding this all in the same time frame, but no.  
 3 Q. Okay. Did you ever see anybody filling the pool or was  
 4 it already done when you arrived?  
 5 A. It was done when I arrived.  
 6 Q. Okay. Do you know when it was done?  
 7 A. First-hand knowledge? I wasn't there, so how can I  
 8 know?  
 9 Q. Well, I understand that. I guess it would be second-  
 10 hand knowledge. Do you have any way of knowing what  
 11 day that pool was filled?  
 12 A. I was told it was done that day.  
 13 Q. Okay. Who told you that?  
 14 A. The police officer. But it's not first-hand knowledge.  
 15 I think he --  
 16 Q. That's okay. All right. Tell me -- now let's go to  
 17 your complaint and let's try to figure this thing out.  
 18 Tell me what it is the County did wrong. Did the  
 19 County fill the pool?  
 20 A. I don't know. I told you I wasn't there.  
 21 Q. I understand that. Have you done any investigation on  
 22 your own to find out who filled the pool?  
 23 A. I was told by the police officer that A&I --  
 24 specifically he said when he finished the conversation  
 25 that A&I are the ones that filled the pool and that

18

1 Q. All right. What next?  
 2 A. I called the County. I don't know if it was the  
 3 following Monday, but I called the County and I spoke  
 4 to the people in the ordinance division, if they had  
 5 told someone to fill in the pool.  
 6 Q. All right. Do you remember who you spoke to?  
 7 A. I do not. And they told me that they didn't know  
 8 anything about it. And then I spoke with someone else  
 9 and got someone else on the phone. I called another --  
 10 I'm -- I'm fairly busy every day, and I make many,  
 11 many, many phone calls. And I spoke again. They gave  
 12 me someone else from -- from construction services, I  
 13 think.  
 14 Q. Okay.  
 15 A. And they said that they didn't know anything about it,  
 16 and if it -- they normally give -- they give the owners  
 17 of the property -- they give them 20 or 30 days to  
 18 comply if they would have wanted that.  
 19 Q. All right.  
 20 A. And I got information and I called the attorney, Gene  
 21 Connell, and --  
 22 Q. Did you have any other conversations with the County  
 23 about this?  
 24 A. I don't think so.  
 25 Q. Okay.

20

1 this is what the lady told him on the phone.  
 2 Q. Okay.  
 3 A. And that they had just -- that A&I had filled the pool.  
 4 Q. All right. And who hired A&I to come fill the pool?  
 5 A. The policeman told the lady and I think Colby Rowe was  
 6 also told that they -- but I don't know. I don't want  
 7 to speak specifically. Policeman said that they told  
 8 him that they had -- were told by the County they had  
 9 five days to fill the pool or to go to jail.  
 10 Q. Okay.  
 11 A. That's what the policeman told me that he was told.  
 12 Q. Okay. So let's assume that on the phone, the "they"  
 13 and the "them," that's the Dixons; okay?  
 14 A. Yes.  
 15 Q. The police officer is calling and talking to -- and  
 16 again, we're assuming -- Miss Dixon?  
 17 A. Yes.  
 18 Q. It's Miss Dixon who's saying that they were told you've  
 19 got five days to fill the pool or you're going to be  
 20 arrested?  
 21 A. Miss Dixon called me on my cell phone which was on the  
 22 sign of my property.  
 23 Q. Yes, sir.  
 24 A. She told me all these things about the pool and the  
 25 using -- you can't use it. She was ranting and raving.

21

1 We gave -- Colby Rowe, the real estate, spoke with her.  
 2 She called him and she told him things. I don't want  
 3 to speak what she told him. He went to the property.  
 4 He saw the dirt. He called me. We went there. We  
 5 called the police. The police officer, I showed him  
 6 the phone, my cell phone, and he called direct from  
 7 this lot.  
 8 Q. Okay.  
 9 A. And he spoke with the people that called. He said that  
 10 this is what they told him, they had five days to fill  
 11 it in, and I asked him would he press charges, and he  
 12 said, I don't know if I can. They're saying the County  
 13 told them to do it. He said, I don't know who to press  
 14 charges against. And this is exactly what the police  
 15 officer -- he called them and this is what they -- he  
 16 wasn't on speaker phone.  
 17 Q. Okay.  
 18 A. This is what he told me after his conversation with --  
 19 Q. All right. So --  
 20 A. -- the Dixons, supposedly.  
 21 Q. Back to my question. Do you know whether it was the  
 22 Dixons that hired A&I or do you not know who hired A&I  
 23 to come fill the pool?  
 24 A. **Phrase the question again, because it's interesting.**  
 25 Q. Okay. Do you know whether it was the Dixons who hired

23

1 Q. So in essence you have sued Horry County over this  
 2 filled pool?  
 3 A. **Yes, sir.**  
 4 Q. And my question to you is what did the County do wrong?  
 5 A. **The County -- the County forced someone to fill my**  
 6 **pool. Instead of calling me, they forced someone to**  
 7 **fill it and destroy the pool.**  
 8 Q. Okay. And you say forced someone to fill your pool?  
 9 A. **Yes, sir.**  
 10 Q. Do you think the County was wrong in contacting the  
 11 Dixons about this problem?  
 12 A. **Yes, sir.**  
 13 Q. Okay. Do you think the County should have been  
 14 contacting you?  
 15 A. **I think the County and I think A&I and I think the**  
 16 **Dixons had my telephone number in huge block letters on**  
 17 **the property. They could not -- and that's how this**  
 18 **lady called me. They could not have come to her --**  
 19 **they could not have come to the property and made a**  
 20 **position on the property or the pool or anything**  
 21 **without seeing my number, not anyone else's but mine.**  
 22 Q. Okay.  
 23 A. **That's what I do think.**  
 24 Q. All right. Was your name on this sign?  
 25 A. **No.**

22

1 A&I to fill the pool?  
 2 A. **I know that the police officers said that they hired**  
 3 **A&I.**  
 4 Q. Okay. All right. Now, when you asked the officer to  
 5 press charges, what were the charges you were wanting  
 6 pressed?  
 7 A. **I didn't ask him. I asked him would he be pressing. I**  
 8 **asked him would he be pressing.**  
 9 Q. Okay.  
 10 A. **I didn't ask him to. I asked him would he.**  
 11 Q. All right. All right. That's fair enough. What  
 12 charges are you referring to?  
 13 A. **Destruction of private property or vandalism or**  
 14 **trespassing. I -- there was a plethora of things to**  
 15 **think about. I was very upset.**  
 16 Q. All right. Let me ask you this.  
 17 A. **One of the reasons, sir, that I bought the property was**  
 18 **because it had that -- the swimming pool added a**  
 19 **tremendous value to the property. With the real estate**  
 20 **values, that was an amenity that I was hoping to use to**  
 21 **sell the property with.**  
 22 Q. All right. Well, let's talk about your complaint,  
 23 then. You filed your complaint against Horry County;  
 24 is that right?  
 25 A. **Yes, sir.**

24

1 Q. Okay. Would Horry County have been able to come to  
 2 that property and seen that number and known that it  
 3 was your number versus the Dixons' number?  
 4 A. **Yes.**  
 5 Q. Okay. How is that?  
 6 A. **It says by owner.**  
 7 Q. Okay. All right. And while the sign was up, your  
 8 claim is that you were the owner that was referenced on  
 9 that sign?  
 10 A. **Yes, sir.**  
 11 Q. Okay. When did you put that sign up?  
 12 A. **The day that we bought the property.**  
 13 Q. Okay. And what day did you buy the property?  
 14 A. **The date, I don't know exactly.**  
 15 Q. Okay. What -- if you don't know the date, what event  
 16 or what would have happened for you to own the  
 17 property, the filing of the deed?  
 18 A. **No, not the filing of the deed. When we finished the**  
 19 **transaction, when they took the money.**  
 20 Q. Okay.  
 21 A. **When I took the -- when we went to the judge and we**  
 22 **gave her the money.**  
 23 Q. Okay. So when the judge consummated the sale, that is  
 24 when you took ownership and put the sign up?  
 25 A. **I don't understand about the judge consummating the**

25

1 sale.

2 Q. All right.

3 A. **You'll have to be a little more --**

4 Q. All right. Let talk about the --

5 A. **The way there's a trickery in here somewhere, and I**

6 **have to figure it out. I'm a pretty smart guy.**

7 Q. I understand.

8 A. **And I didn't quite catch it, but I'm trying.**

9 Q. I understand. I understand that that's your position

10 and that's what you feel you need to do, but what I'm

11 asking you is this is a case that is dependent on time

12 line because you're claiming that you were the owner of

13 the property at the time that Horry County did whatever

14 they did. When they contacted the Dixons, they told

15 the Dixons you need to fill the property, you say they

16 should have contacted you; is that right?

17 A. **I -- I -- actually, I don't know if -- I'm trying to**

18 **think through your question. I don't know if they**

19 **should have contacted anyone. I don't know if the pool**

20 **should have been filled. I don't think it should have**

21 **ever been filled, so I have to take umbrage with the**

22 **thought as well as the question. It's not --**

23 Q. All right.

24 A. **It's my belief that the pool should never have been**

25 **filled. Let me make it -- maybe I'm not clear on that.**

27

1 A. Yes.

2 Q. Okay. The other two legs of the fence were a man-made

3 wooden fence or what was it?

4 A. **A brick on one side and then wood, and I think one side**

5 **is brick and one side is wood. They're adjoining**

6 **fences from adjacent properties.**

7 Q. Okay. And the side that was missing fence was where

8 the house was before it was destroyed; is that right?

9 A. **I don't know. I don't know if there was ever a fence**

10 **there. I know there was a house there. I don't know**

11 **if there was ever a fence there.**

12 Q. Okay.

13 A. **I'm assuming that it should have been a fence.**

14 Q. What was in this pool when you first looked at the

15 property before the dirt ever got there when you were

16 entertaining the notion of buying the property?

17 A. **Nothing.**

18 Q. Okay.

19 A. **It was perfect condition. The water was out of it. It**

20 **was in perfect condition.**

21 Q. Okay.

22 A. **There was not a drop of water in it, a drop of dirt in**

23 **it. It had -- the tile -- it was made in the shape of**

24 **a piano and the tile going across it is in black and**

25 **white to -- for semblance of a piano keys.**

26

1 Q. Fair enough.

2 A. **I don't think they should have been on the property to**

3 **begin with.**

4 Q. Fair enough. What else is on that property?

5 A. **Nothing.**

6 Q. What else was on that property in the time frame that

7 we're talking about right now?

8 A. **The attorney, Miss Golding, used to own a home there,**

9 **and she's the one that -- she used to have a residence**

10 **there and there was a fire subsequently. So at the**

11 **time when I purchased the property, there was a piano**

12 **pool is what it's called, and there was a dock and**

13 **there was the driveway and the landscaping was done and**

14 **there was a pool house, a pool facility for the motor**

15 **and filter and everything.**

16 Q. Okay. Was there a fence around the pool?

17 A. **No, sir. Oh, actually, there was a semi fence around**

18 **the pool. There was a fence on -- it was bordering**

19 **three sides.**

20 Q. All right. So there was a fence -- there was a fence

21 on three sides of this pool?

22 A. Yes.

23 Q. Two -- let me try and word this right. One of the

24 walls, one of the fences, I guess, was actually the

25 wall to the waterway; is that right?

28

1 Q. Okay. Let me ask you this. Do you think that that

2 pool, or I guess you still call it a pool if it doesn't

3 have water in it, but do you think that that pool was a

4 hazard without having that leg of the fence on it?

5 A. **No, sir.**

6 Q. You don't think that was any danger or safety issue

7 with any children around the neighborhood or anything?

8 A. **It could not have been because it was -- it had the**

9 **steps -- because it was a piano pool and made in the**

10 **shape of a piano, the keys were going down. It was the**

11 **same as saying a staircase would be a danger, or the**

12 **steps that were on the house that was burned down,**

13 **there was still -- there's a level of steps that would**

14 **have been much more dangerous than the pool.**

15 **The pool didn't have a drop of water, didn't have**

16 **access to water because there was no power to it, and**

17 **there was no -- impossible. The steps were down and**

18 **up. There was nothing you could cover like a**

19 **refrigerator, like a door. There was no way. There's**

20 **absolutely no more danger than walking up the steps of**

21 **a mall or a doctor's office.**

22 Q. Okay. How deep was the pool?

23 A. **I think six feet.**

24 Q. Six feet at the deepest end?

25 A. **I think. I'm not sure. In fact, I think the six --**

1 maybe five foot, five.  
 2 Q. All right. So just to make sure we're clear, a six-  
 3 foot hole to you is not a danger or a hazard?  
 4 A. I will not accept that, that question, and I will tell  
 5 you why because you're saying a six-foot hole like it  
 6 could have been a well hole, and it is not a well hole.  
 7 That is a -- actually, I will answer the question.  
 8 That is a 20-foot by 40-foot, about, hole. That is not  
 9 in essence a six-foot hole. That is a 20-foot by  
 10 40-foot hole, and yes, it would be the same as any --  
 11 it's out of the realm of reason to even question that  
 12 because it's no way it could be covered or come back  
 13 or -- it's beyond reasonable thought.  
 14 (Defendant's Exhibit Nos. 1 through 5 were marked.)  
 15 A. There would be no more danger than saying that a  
 16 stadium at the football field, and that is a huge hole  
 17 itself, a stadium, a -- you said you live in Florence  
 18 now. The Florence Speedway is nothing more than a big  
 19 hole and it gets 80,000 people in it, so I -- I -- I  
 20 don't like the question. I think it was pointed and I  
 21 don't like it.  
 22 Q. I understand that. Do you think that a six-foot hole  
 23 in the ground is a danger or a hazard?  
 24 A. I do not think that a hole of any kind that is 20 by 40  
 25 is unnatural to any -- many landscaped yards that has

1 terraces and things that go into it, no, sir. There is  
 2 no way to access complete in and out. It has steps  
 3 going all the way in and all the way out from one end  
 4 to the other. It is in no way a danger.  
 5 Q. Okay.  
 6 A. In my thoughts.  
 7 Q. All right. Let me show you what's been marked as  
 8 Defendant's Exhibit 1. Do you recognize that photo,  
 9 Mr. Wilkes?  
 10 A. Somewhat, yes.  
 11 Q. Okay. What is that?  
 12 A. It is the swimming pool that was on the property.  
 13 Q. Okay. And that is the swimming pool that we've been  
 14 talking about that you indicated was on this property?  
 15 A. I think so.  
 16 Q. Okay. Do you have any reason to believe that is not  
 17 the swimming pool?  
 18 A. I do not.  
 19 Q. All right. Take a look at Defendant's Exhibit 2. Is  
 20 that also a photograph of the swimming pool?  
 21 A. Yes.  
 22 Q. Okay. All right. Let me go ahead and show you 3, 4  
 23 and 5. Are those photographs of the swimming pool on  
 24 this property?  
 25 A. They are photographs of the property and the swimming

1 pool.  
 2 Q. Okay. First question, do you see the fence around the  
 3 pool in any of those photographs?  
 4 A. Yes.  
 5 Q. All right. Show me that.  
 6 A. This is one fence. Of course, the property is too  
 7 large to show the sides.  
 8 Q. Okay. So this fence that you've pointed out in  
 9 Defendant's Exhibit No. 5 is the fence that borders the  
 10 waterway?  
 11 A. Yes.  
 12 Q. Okay. All right. And you're saying that the photo  
 13 isn't wide -- none of these photos are wide enough to  
 14 show the side pieces to the fence?  
 15 A. They're not, but we can easily get county records to  
 16 find when they got permitting, the two neighbors, for  
 17 the two side --  
 18 Q. Okay.  
 19 A. -- fences. They're still there, by the way, and I'm  
 20 sure that both the residents will testify that they've  
 21 been there for many, many years.  
 22 Q. All right.  
 23 A. It's a double lot, Mr. Love. That's why someone would  
 24 have to step back or perhaps they were purposely trying  
 25 to -- to -- to somehow prejudice the pictures. I don't

1 know.  
 2 Q. Okay. So the fence that we're talking about -- we've  
 3 got the fence on the waterway. The other two legs of  
 4 the fence that are in place currently and both in  
 5 place -- excuse me -- both in place currently and at  
 6 the time of filling the pool, those legs of the fence  
 7 are adjoined to the neighbor's fences?  
 8 A. I'm sorry. Again?  
 9 Q. All right. One leg of the fence is the waterway;  
 10 correct?  
 11 A. Yes.  
 12 Q. Okay. The other two legs of the fence that were both  
 13 there at the time that the pool was built and are  
 14 currently still there are part of the neighbors'  
 15 fences?  
 16 A. They're owned and they -- they're on adjoining property  
 17 lines. I can't say whose was or wasn't, but they're  
 18 on -- they are adjoining property lines, yes.  
 19 Q. All right. All right. Trying to digress a little bit.  
 20 Let's go back.  
 21 A. Oh -- okay. Nothing.  
 22 Q. You good?  
 23 A. (Witness nods.)  
 24 Q. All right.  
 25 A. You look like Tom Cruise a little bit in the movie.

1 Q. Well, I appreciate that. Tom probably would not.

2 A. **I was going to tell you crystal clear.**

3 Q. Well, I'll ask you if you ordered the Code Red, but I

4 don't think we're quite there yet.

5 Let's see. The way this sale went down was you

6 sent -- and I forgot his name already.

7 A. **Colby.**

8 Q. You sent Colby to do the bidding and then I believe --

9 and you can correct me if I'm wrong -- the bidding was

10 left over for 30 days after you were the highest

11 bidder?

12 A. **No, I don't think so but --**

13 Q. You don't remember that?

14 A. **No, sir.**

15 Q. Okay.

16 A. **I never heard that before, ever.**

17 (Defendant's Exhibit No. 6 was marked.)

18 Q. Show you what's been marked as Defendant's Exhibit

19 No. 6, Mr. Wilkes. Let me know if you've ever seen

20 that document before.

21 A. **No, I never saw it before.**

22 Q. Okay. Is that when you -- earlier you spoke of going

23 before the judge and paying the money and getting the

24 property. Is that what's going on in that document?

25 A. **The judge doesn't take the money. She has a secretary**

1 (Defendant's Exhibit No. 7 was marked.)

2 Q. All right. Defendant's Exhibit 7 is what you were just

3 looking at. It's the tax assessor's sales file, and I

4 will represent to you that it is concerning the

5 property at issue in this litigation. It's got the tax

6 map number on there, if you care to verify that, and it

7 indicates that the seller is Michael Dixon, et al.,

8 and the purchaser's name is Tim Wilkes. Record -- date

9 of sale is 8-23, 2010. Recording date, 8-23, 2010.

10 Look at the top of that sheet and let me know if

11 I've misstated anything.

12 A. **I think you misstated the seller's name.**

13 Q. Okay. What's the seller's name?

14 A. **Dixon, Michael D, et al.**

15 Q. Okay. All right. What's the purchaser's name?

16 A. **Tim Wilkes.**

17 Q. All right. What's the date of sale?

18 A. **8-23.**

19 Q. 2010?

20 A. **Yes, 8-23, 2010.**

21 Q. Okay. And what was the --

22 A. **Recording date?**

23 Q. -- recording date?

24 A. **8-23, 2010.**

25 Q. Okay.

1 **that takes the check.**

2 Q. Okay. Well, I was paraphrasing what you said. Is that

3 the day that you became the owner of the property?

4 A. **I just told you I never saw the paper. How can I say**

5 **that it was the same day if I never saw the paper?**

6 Q. Okay. All right. We can go with that answer. That

7 works fine.

8 This is a tax record dated the same date when the

9 property was transferred out of the Dixons' name into

10 your name. Do you think that's the date that you owned

11 the property?

12 A. **You think it's the date. Actually, I spoke with the**

13 **attorney today and told him I'm not exactly sure the**

14 **date of the sale.**

15 Q. All right.

16 A. **I was working and I don't know.**

17 Q. Okay. Let me hold that for one second.

18 A. **I'll be happy to find out for you, though. Are you**

19 **asking me is this the date that I bought it or the date**

20 **that we -- we bid on the property and we gave the --**

21 **the check?**

22 Q. I'm asking you if that is the date that the property

23 transferred ownership from the Dixons to yourself?

24 A. **I'm not sure.**

25 Q. Okay.

1 A. **I have never heard of this Dixon, Michael D, et al., in**

2 **my lifetime and nor did I buy from him anything nor do**

3 **I think he was the owner of the property when I did buy**

4 **it. I think it was purchased directly from -- from the**

5 **distress sale at the Horry County Bank. I don't think**

6 **he was the owner of it.**

7 Q. Okay.

8 A. **I think he'll be happy that -- you asked me if I saw**

9 **something wrong. That's the only thing I see wrong.**

10 Q. All right. So in Defendant's 7 --

11 A. **Excuse me. I need to ask a question. Was this a short**

12 **sale or something that I didn't know anything about,**

13 **that the judge did not -- was he the owner of the**

14 **property? I mean I can't very well answer you unless I**

15 **know. Was he the owner of the property?**

16 Q. I don't know, and fortunately, in a deposition setting,

17 I don't have to. I get to ask the questions and that

18 is the beauty of the beast.

19 A. **I'm just trying more to -- as you can see, I'm very**

20 **frank and --**

21 Q. Sure.

22 A. **-- open about this. I really never saw that or heard**

23 **that before.**

24 Q. Okay. All right. In looking at Defendant's Exhibit 7,

25 as you've indicated, it says that the date of sale is

1 8-23, 2010. Do you have any information or  
 2 documentation that would dispute that fact?  
 3 **A. I would have a check that would be given to the -- to**  
 4 **the Master-in-Equity. That's the only thing. Should I**  
 5 **try to call and get that to you?**  
 6 **Q. Sure. That would be great. Not this second, though.**  
 7 **We'll work on that afterwards.**  
 8 **(Whereupon, Defendant's Exhibit No. 8 was marked.)**  
 9 **Q. I'm going to show you what's been marked as Defendant's**  
 10 **Exhibit 8. Let me know if that looks familiar to you.**  
 11 **A. I never saw this in my life.**  
 12 **Q. Okay.**  
 13 **MR. CONNELL: Does that say Harry**  
 14 **Pavilack?**  
 15 **A. Yes, that's Harry Pavilack. I've never seen any of**  
 16 **this in my lifetime.**  
 17 **BY MR. LOVE:**  
 18 **Q. All right. Let me ask you a few questions about this.**  
 19 **A. All right.**  
 20 **Q. Understanding that you are saying you have never seen**  
 21 **this, does this purport to be, as you look at it, a**  
 22 **deed from a public sale conveying the property at issue**  
 23 **from the Dixons to Tim Wilkes?**  
 24 **A. I don't know why a sale would be given from -- I've**  
 25 **purchased property. I've never had a Master-in-Equity**

1 **promise you that Mr. Pavilack was not there in any way,**  
 2 **shape or form --**  
 3 **Q. Okay.**  
 4 **A. -- whom I've known for 30 years.**  
 5 **Q. And as you sit here today, you can't tell me whether or**  
 6 **not that is a deed deeding the property at issue into**  
 7 **your name, Tim Wilkes?**  
 8 **A. Yes, it is. It is a property transfer from Cynthia**  
 9 **Howe, the Master-in-Equity, to Tim Wilkes.**  
 10 **Q. Okay. And what date was that filed?**  
 11 **A. I believe it was the 23rd, 8-23, 2010.**  
 12 **Q. August 23rd, 2010?**  
 13 **A. Yes.**  
 14 **Q. Okay.**  
 15 **A. That's the dating on the paper. I don't know when it**  
 16 **was filed.**  
 17 **Q. Sure. Do you have any reason to believe that that was**  
 18 **filed a different date than August 23, 2010?**  
 19 **A. Sure, I have reason to believe it. I have reason to**  
 20 **believe everything that goes on in that courthouse -- I**  
 21 **don't believe -- I have reason to believe the -- the**  
 22 **integrity of that Master-in-Equity's office.**  
 23 **Q. Okay.**  
 24 **A. Yes, I do.**  
 25 **Q. All right. So do you think that the Master-in-Equity**

1 **or State of South Carolina Master-in-Equity doing**  
 2 **something like this. No, I don't.**  
 3 **Q. Okay.**  
 4 **A. I don't understand the whole thing from it and I don't**  
 5 **understand your question because --**  
 6 **Q. Is that a deed?**  
 7 **A. -- if they did own it, why would they have -- I'm**  
 8 **confused, to be honest, and I want to be honest and I**  
 9 **want to finish with this, but I -- I never saw this**  
 10 **before and I don't know if it's a deed or not and I**  
 11 **don't know that -- though I know Harry Pavilack very**  
 12 **well, I have no idea what all of this is about nor**  
 13 **do -- I don't understand why if they owned the property**  
 14 **and they were selling it to me that it was done at the**  
 15 **courthouse, how we purchased it.**  
 16 **Q. All right. Is that a deed?**  
 17 **A. I don't know if it is or not, sir.**  
 18 **Q. Do you know what a deed is?**  
 19 **A. Yes, sir.**  
 20 **Q. Okay. And you've dealt with deeds before in your real**  
 21 **estate handling?**  
 22 **A. I have.**  
 23 **Q. Okay.**  
 24 **A. But I don't know -- I wasn't there, and normally when I**  
 25 **purchase a property, I'm there when it's done and I**

1 **has made up that date or made some change on there?**  
 2 **A. I don't know. I just told -- you asked me did I have**  
 3 **a reason to believe, and I said I don't -- I do not**  
 4 **believe in the integrity of that particular office in**  
 5 **any way, shape or form.**  
 6 **Q. Okay.**  
 7 **A. That's to answer your question about my beliefs or my**  
 8 **opinions of that paper or what may have happened in**  
 9 **that court or in that office. Yes, I doubt everything**  
 10 **that goes on there.**  
 11 **Q. Okay. All right.**  
 12 **A. Sir, I must also bring this to be recorded. If they**  
 13 **sold me this property, why I doubt it, why would they**  
 14 **call me and the real estate agent and curse so much**  
 15 **about the property if they themselves had willingly**  
 16 **set -- at the magistrate and sold me and deeded me over**  
 17 **the property, why would they have called me and cursed**  
 18 **me and called the real estate guy and cursed him if**  
 19 **they had did that? I'm a little confused from -- from**  
 20 **the whole thing.**  
 21 **Q. I understand that. I certainly can't answer that**  
 22 **question. I don't know why anyone -- I don't know why**  
 23 **they would do that.**  
 24 **A. Thanks.**  
 25 **Q. Probably because they were being foreclosed upon and**

41

1 they weren't happy about it, not that that should be  
 2 taken out on you as the buyer, but maybe that was the  
 3 situation.  
 4 **A. Oh, you think they were forced to sign that deed?**  
 5 **Q.** I think they were foreclosed upon. Usually people  
 6 aren't too happy when they go through the foreclosure  
 7 proceedings. Usually that's with the financial  
 8 institution, not the buyer.  
 9 **MR. LOVE:** Let me get you to mark this one  
 10 while it's quiet.  
 11 (Defendant's Exhibit Nos. 9 and 10 were marked.)  
 12 **BY MR. LOVE:**  
 13 **Q.** All right. Got a little bit out of order. Let's look  
 14 at this one, if you will, please, sir. Let me know if  
 15 you've ever seen that document.  
 16 **A. No, I never saw this.**  
 17 **Q.** Okay. All right. And remind me of the numbers. Is  
 18 that No. 10 down at the bottom?  
 19 **A. Yes.**  
 20 **Q.** All right. Defendant's Exhibit 10 you say you have  
 21 never seen. All right. Is that your signature on it?  
 22 **A. No, it's not.**  
 23 **Q.** Okay. Did you authorize anyone to sign this piece of  
 24 paper on your behalf?  
 25 **A. It could be it's been signed by Colby Rowe on my behalf**

42

1 **but I don't -- I didn't see it and I don't know, but**  
 2 **he -- it could have been signed by Colby. I don't**  
 3 **know.**  
 4 **Q.** All right. Are you okay with Colby signing this on  
 5 your behalf?  
 6 **A. I don't -- I'm not going to say yes or no right now**  
 7 **because I am -- I am shocked about it so --**  
 8 **Q.** Okay. Do you know what this is?  
 9 **A. An assignment of bid.**  
 10 **Q.** All right. And who was the assignment from and to?  
 11 **A. Assignment is from Bank of New York as Trustee for the**  
 12 **benefit of the Certificate Holders of CWALT --**  
 13 **Q.** Let me stop you there. I don't want you to have to  
 14 read the caption. You are reading the caption, and  
 15 what I'm asking you is down in the body of the text it  
 16 says that something is assigning its bid to someone,  
 17 and I think it's a company to you individually. Do you  
 18 see that?  
 19 **A. Yes.**  
 20 **Q.** Okay. And what is the company name?  
 21 **A. MTM International.**  
 22 **Q.-** All right. Is that one of your companies?  
 23 **A. It would have a bearing on me. I'm affiliated.**  
 24 **Actually, the MTM stands for Mande, Travis, and Malena,**  
 25 **my three children and -- but I don't know if it's**

43

1 **actually in my name or not. That would be something**  
 2 **for the accountant to tell me.**  
 3 **Q.** Okay. All right. Do you know if at the sale of this  
 4 property was Colby bidding on your behalf or was he  
 5 bidding on behalf of this business?  
 6 **A. That's a very good question. Just in the philosophy of**  
 7 **real estate, sir, probably on his behalf.**  
 8 **Q.** In Colby's behalf, you say?  
 9 **A. Sir?**  
 10 **Q.** In Colby's behalf, you say?  
 11 **A. I'm sure he wasn't there because he loves me. I'm sure**  
 12 **he was there because he loves himself.**  
 13 **Q.** Come on, now. Let's not sell yourself short.  
 14 **A. I'll be honest. I have to answer directly, and I would**  
 15 **say on his behalf to answer that question.**  
 16 **Q.** All right.  
 17 **A. The MTM, I wish I could -- I'm not sure, so I don't**  
 18 **want to give definitively.**  
 19 **Q.** Was the company -- is it NTM or M?  
 20 **A. M, MTM.**  
 21 **Q.** I'm sorry. MTM. Was the company the winning bidder or  
 22 was Tim Wilkes?  
 23 **A. I don't know. I haven't saw this before and I don't**  
 24 **know from -- from which name he would have given, so I**  
 25 **wasn't there.**

44

1 **Q.** All right. Let me ask you this. You see on there a  
 2 stamp where it was filed? Do you see that?  
 3 **A. Yes, it's clocked in at 10 August 25 p.m. 4:11.**  
 4 **Q.** All right. August 25th, 2010 --  
 5 **A. 4:11.**  
 6 **Q.** -- at 4:11 p.m.  
 7 **A. Yes, sir.**  
 8 **Q.** And where was that filed? Does it say down there on  
 9 the stamp?  
 10 **A. Horry County, Clerk of Court.**  
 11 **Q.** Okay. I think that's all I have on that document.  
 12 **Now, going back and picking up Defendant's --**  
 13 **A. By the way, Mr. Love, it's very interesting and I hope**  
 14 **you see my forthrightness on all of it. I'm not trying**  
 15 **to hide anything. I just -- some of this is really --**  
 16 **I don't know how to answer you. I don't want you to**  
 17 **think I'm being smart with you.**  
 18 **Q.** I can deal with it. We'll move forward.  
 19 **A. All right.**  
 20 **Q.** All right. I'm going to show you Defendant's Exhibit  
 21 9. Tell me if you've ever seen that document?  
 22 **A. No. No.**  
 23 **Q.** Okay. What does it say it is?  
 24 **A. It says Horry County Code Enforcement Division made out**  
 25 **to Michael Dixon.**

1 Q. Okay. You know that Horry County Code Enforcement?  
 2 You know those folks?  
 3 A. **Do I know them?**  
 4 Q. Yes, sir. You ever had any dealings with them, I  
 5 should say?  
 6 A. **Yes, I had dealings with one man named Jacobs on a**  
 7 **property two houses before that one.**  
 8 Q. Okay. All right. Now, what's the date on that  
 9 document?  
 10 A. **It's hard to see, but it's -- I'm going to give the**  
 11 **benefit of the doubt. It's 8-20-10 --**  
 12 Q. All right.  
 13 A. **-- 2010, but again, it's not legible, the month is not**  
 14 **legible, but I'm assuming because you brought it, it's**  
 15 **8-20, 2010.**  
 16 Q. Okay. And what is this? What is this document?  
 17 A. **This is Horry County Code Enforcement Division. It is**  
 18 **a permit for -- it's actually not a permit. Looks like**  
 19 **it's -- it's remarks, pool must be secured by 48-inch**  
 20 **fence or filled in within five working days --**  
 21 Q. Okay.  
 22 A. **-- which is what the lady said they told her.**  
 23 Q. Okay. If Horry County had given this document to the  
 24 Dixons on August the 20th, 2010, would that have been  
 25 proper or should it have come to you?

1 Q. All right. Were there --  
 2 A. **I'm sure, but we will find out. I can't wait to see if**  
 3 **Cynthia Howe did that. That would be interesting to me**  
 4 **as well.**  
 5 Q. Okay. Well -- and you've indicated a couple of times  
 6 that you're trying to be forthright and I do appreciate  
 7 that, but I feel like now we're not because the  
 8 question is very direct and clear, and that is do you  
 9 know as you sit here today of any documents that have  
 10 been filed of record prior to or on August 20th, 2010,  
 11 that showed you, Tim Wilkes, was the property owner of  
 12 the property in dispute here today?  
 13 A. **I truly don't know. I'm sure that I have some form of**  
 14 **paperwork or canceled check that shows that I purchased**  
 15 **the property, sir. I'm sure of it, but I don't have it**  
 16 **with me, nor did I -- no, I really don't know, but I**  
 17 **will do my best to get you everything you need --**  
 18 Q. Okay.  
 19 A. **-- and have it sent to you.**  
 20 Q. Do you know what I mean when I say a document of  
 21 record?  
 22 A. **Yes.**  
 23 Q. A document --  
 24 A. **I know exactly what you mean. I don't know if you and**  
 25 **I mean the same, but I know what I mean and it could be**

1 A. **I don't know. I've already told you I don't know the**  
 2 **exact date that the auction was, so I don't know.**  
 3 Q. Okay. Well, let me ask you this, and I know what the  
 4 answer is going to be but I'll ask it anyway. Who  
 5 owned the property at issue on August the 20th, 2010?  
 6 A. **I don't know. I don't have my dates when the auction**  
 7 **was and when I gave the money.**  
 8 Q. Okay.  
 9 A. **I really don't know, but I'll find out for you, Mr.**  
 10 **Love.**  
 11 Q. All right. Do you know -- as you sit here today, do  
 12 you know whether there were any documents filed of  
 13 record showing that you were the owner of the property  
 14 on August the 20th, 2010?  
 15 A. **On which date, August the 20th?**  
 16 Q. Yes, sir.  
 17 A. **I'm sure that there's documents. I'm positive there's**  
 18 **documents showing that I purchased the property.**  
 19 Q. Okay. Let me ask it again. Do you know as you sit  
 20 here today of any documents of record that were filed  
 21 prior to or even on August 20th, 2010, showing you, Tim  
 22 Wilkes, as the owner of the property at issue?  
 23 A. **I'm sure that I have a check that's dated somewhere.**  
 24 Q. Was that document filed with the courthouse?  
 25 A. **I'm sure it was cashed by the courthouse.**

1 **that there's -- there's something that you -- I don't**  
 2 **know exactly what you're looking for in this, nor do I**  
 3 **really care. I -- I know that I purchased the**  
 4 **property, I know that I paid for the property, and that**  
 5 **the property was paid for then. I am sure that I will**  
 6 **have documentation showing you that I had paid for the**  
 7 **property, sir, and that -- that's my answer to you.**  
 8 Q. Okay. If you locate any documents of record, meaning  
 9 documents that you filed with any clerk of court, with  
 10 the Master-in-Equity, or any other document of record,  
 11 with the tax office, anybody else, that shows that you  
 12 owned the property on August the 20th, 2010, I would  
 13 ask that you get those to your attorney and forward  
 14 them to me. Okay?  
 15 A. **Uh-huh.**  
 16 Q. Is that a yes?  
 17 A. **I'm sorry. I --**  
 18 Q. Is that a yes, you'll do that for me?  
 19 A. **Get you the documents, sir?**  
 20 Q. Yeah, any documents that have been filed of record.  
 21 A. **Sure. Sure.**  
 22 Q. Okay.  
 23 A. **Yes. May I speak to Mr. Connell, please?**  
 24 Q. Not substantively about the case, you cannot but --  
 25 (Defendant's Exhibit 11 was marked.)

49

1 Q. All right. Defendant's Exhibit 11, take a look at that  
 2 and tell me what you see, sir.  
 3 A. **I see what the -- I see the property at Plantation**  
 4 **Point. It shows a partial picture of the pool that has**  
 5 **been filled in.**  
 6 Q. Okay. I mean we're now allowed to testify, but that's  
 7 the piano pool full of dirt?  
 8 A. **Yes. Well, it's not what it looked like when I saw it,**  
 9 **but yes, that's after it settled.**  
 10 Q. All right. My understanding from your testimony is  
 11 when you saw it, there was dirt covering that sidewalk  
 12 around the pool?  
 13 A. **Could not see where the pool was.**  
 14 Q. Okay. You couldn't see the sidewalk?  
 15 A. **No, sir.**  
 16 Q. Couldn't see the pool; is that right?  
 17 A. **Yes, just knew where it was, yeah.**  
 18 Q. Okay. And --  
 19 A. **You could see the sidewalk right here, sir, but you**  
 20 **couldn't see the -- this is what's called -- around it,**  
 21 **it's called coping.**  
 22 Q. Okay.  
 23 A. **And you could not see the coping at all.**  
 24 Q. Okay. All right.  
 25 A. **This would be the six to 12-inch brick work that's done**

51

1 Q. All right. What is that?  
 2 A. **This is an estimate to have a pool -- about the pool,**  
 3 **the conditions of it and what was -- what was the long-**  
 4 **term effect of filling the pool, having the heavy**  
 5 **equipment around the pool did to the integrity of the**  
 6 **pool.**  
 7 Q. Okay. And who gave that estimate or opinion or however  
 8 you want to term it?  
 9 A. **Sergio Gonzalez.**  
 10 Q. All right. Do you know Mr. Gonzalez?  
 11 A. **I do.**  
 12 Q. All right. Has he done work for you in the past?  
 13 A. **Yes, he's doing work for me now, actually, but not in**  
 14 **the past at this point, I don't think. Yes, in the**  
 15 **past I've known him.**  
 16 Q. Okay. So you knew him prior to April 2011 when he gave  
 17 that opinion?  
 18 A. **Yes.**  
 19 Q. All right. But he hadn't done any work for you prior  
 20 to that; he's done work for you since that date?  
 21 A. **Yeah, I think he did work -- I'm trying to get my --**  
 22 **my -- in line. Yes, he did work for me before.**  
 23 Q. Okay. What all has he done for you? Has he worked on  
 24 the putt-putt course for you?  
 25 A. **Yes.**

50

1 **around all pools.**  
 2 Q. Right.  
 3 A. **It's called coping.**  
 4 Q. Got you.  
 5 A. **And the coping could not -- was not visible at all.**  
 6 Q. All right. So the coping and the pool, neither of  
 7 those were visible; the sidewalk was?  
 8 A. **This is not a sidewalk. This is a patio, what you're**  
 9 **looking at now. It was -- it was -- adjoined the home**  
 10 **property, the home foundation, so it's not like it was**  
 11 **a small patio.**  
 12 Q. Got you.  
 13 A. **It's a little bit -- the picture is a little deceiving.**  
 14 Q. Okay.  
 15 A. **Because this goes right into where there was a -- a**  
 16 **home.**  
 17 Q. Okay. Was the patio covered with dirt?  
 18 A. **No.**  
 19 Q. Okay.  
 20 A. **Beside the patio was big hills of dirt. It would be**  
 21 **the other side, to the south side of that, sir.**  
 22 (Defendant's Exhibit No. 12 was marked.)  
 23 Q. All right. Defendant's Exhibit 12, tell me if you've  
 24 seen that before?  
 25 A. **Yes.**

52

1 Q. All right. Has he worked on your personal residence?  
 2 A. **No.**  
 3 Q. Okay. What else has he done for you?  
 4 A. **That's it.**  
 5 (Whereupon, there was a pause in the proceedings.)  
 6 Q. All right. In this estimate, Defendant's Exhibit 12,  
 7 it looks like Mr. Gonzalez has characterized the pool  
 8 as 40 foot long and 20 foot wide; is that right?  
 9 A. **He estimated with the coping and all.**  
 10 Q. Okay. Did he measure it or did he estimate?  
 11 A. **No. I think it was a measure. I asked him to include**  
 12 **the coping and everything with it.**  
 13 Q. Okay. And he puts, it appears that large earth-moving  
 14 equipment was used to fill and grade the area. Now,  
 15 were you there when he did all this, when Mr.  
 16 Gonzalez --  
 17 A. **Went there?**  
 18 Q. -- went to the pool?  
 19 A. **Yes.**  
 20 Q. Okay. What did he use or what was he gathering, what  
 21 information did he use to say it appears that large  
 22 earth-moving equipment was used?  
 23 A. **His eyes.**  
 24 Q. He saw the equipment?  
 25 A. **No.**

53

1 Q. Okay. What did he see?

2 A. **Well, I'm assuming that he didn't think someone took a**

3 **bucket full of dirt. From, I'm just assuming, his**

4 **professional opinion --**

5 Q. Okay.

6 A. **-- brought him to believe that it was done -- that the**

7 **whole entire pool was not filled in using a shovel.**

8 Q. All right. So he's basing that statement on --

9 A. **I can't speak for his personal or professional opinion.**

10 Q. Okay. So in your view and to your knowledge, he's

11 basing that on an assumption?

12 A. **Uh-huh.**

13 Q. All right. Has he done any digging around the pool to

14 check out the piping and all the drain work?

15 A. **No, I don't think so.**

16 Q. Okay. All right. This estimate, he indicates to

17 replace the pool in its exact form and size would cost

18 \$68,000. Is that what you're claiming as damages in

19 this lawsuit?

20 A. **Up and until today.**

21 Q. Okay. Do you plan on amending your complaint to add

22 damages?

23 A. **It's possible. I'm not as happy now as I was.**

24 Q. Okay. Now, let me ask you this. Never mind. Scratch

25 that.

55

1 **just -- there is no way for anyone to dig around and**

2 **look at the wall and see if the integrity has been**

3 **jeopardized. There's no way to know the piping. It's**

4 **an impossibility.**

5 **I spoke to a contractor before I came, just in**

6 **general. He asked me to go look at a property and I**

7 **told him I have to go to deposition. He said why and I**

8 **explained. He said, oh, there is no way that you can**

9 **ever know. He said, it's an impossibility for you to**

10 **give anyone a -- a warranty. He said, there is no way**

11 **anyone can ever know the amount or the damages to you**

12 **and -- but I will be glad to get his professional**

13 **opinion if you want, and many, many more. From what I**

14 **have gathered from everyone, there is really -- it's**

15 **kind of an odd thing, Mr. Love. No one really knows --**

16 **you understand? It's no way anyone can really define**

17 **it.**

18 Q. I understand that. Did you ever see the pool in

19 working order prior to purchasing this house? I'm

20 sorry. This property?

21 A. **Yes.**

22 Q. You saw the pool in working order?

23 A. **Yes, I did actually see it.**

24 Q. Full of water?

25 A. **Not this time, but several years ago.**

54

1 A. **I'll finish my thought on that. What I really wanted**

2 **to do was finish amicably as possible, sell the**

3 **property, give someone a definitive answer that the**

4 **pool was -- was good or would be tore up or what was**

5 **going on, taking my losses or whatever, and that's what**

6 **I was wanting to do. I didn't know it would drag on so**

7 **long with the property not being able to -- you know,**

8 **so that you'll be clear on my answer, it wasn't meant**

9 **in any way to be facetious. It's just that I just**

10 **wanted to move on, to be honest with you. Property**

11 **values are going down, not up.**

12 Q. Understood. Let me ask you this. Have you conveyed

13 that to the County?

14 A. **I have not, no.**

15 Q. Okay.

16 A. **I don't know if my attorney has.**

17 Q. Did you get any other estimates on the pool?

18 A. **No, sir.**

19 Q. Okay. Any estimates on removing the dirt from the

20 pool?

21 A. **No, sir.**

22 Q. All right. Any estimates on making repairs to the pool

23 other than replacing the pool in its entirety?

24 A. **I've spoken to several people, sir, and they say**

25 **that -- basically what the letter says, that there's**

56

1 Q. Several years ago. Okay.

2 A. **I was at the house several years ago and I saw it full**

3 **of water.**

4 Q. And that means -- you mean several years prior to the

5 purchase?

6 A. **Yes, sir.**

7 Q. Okay.

8 A. **It was an attorney, sir, who owned it. The name was**

9 **Golding.**

10 Q. I'm familiar. What was your ambition with this

11 property when you purchased it? Were you going to

12 build a house or just turn the property?

13 A. **I -- I was wanting to -- to -- it's in my nature to try**

14 **to do business with it in some way. I -- I --**

15 Q. There's nothing wrong with that.

16 A. **Yeah, I would have probably intended and I'm sure that**

17 **I intend now to try to do some kind of business.**

18 **That's why I said I amicably just wanted to finish with**

19 **it and somehow move on and not let things --**

20 Q. Sure. Let me ask you this. I don't mean to delve into

21 your business affairs too far, but let me ask you this.

22 The property you purchased, I believe, was for one

23 ninety-six. Does that right?

24 A. **Yes, sir.**

25 Q. Okay. What did you hope to get out of it?

1 A. I put it for sale before this even happened. A sign  
 2 was on it for four forty-nine, sir.  
 3 Q. Okay. All right.  
 4 A. It's been on it. It was on it before this -- before it  
 5 was filled in, sir.  
 6 Q. Let me ask you this.  
 7 A. I do believe that Mr. Rowe told me that in the woman's  
 8 screams that she had told him that she didn't know how  
 9 it happened and, again, I don't know this, but he did  
 10 mention to me that the woman was cursing and all and  
 11 saying that she had offered the bank 350 or \$400  
 12 herself for it and that they turned it down.  
 13 Q. Okay. All right.  
 14 A. And of course, you can deposition Mr. Rowe.  
 15 Q. All right. Have you ever had any other issues with the  
 16 code enforcement -- I think you mentioned one with the  
 17 house two doors down.  
 18 A. Actually, I did, and actually that's why I'm not as  
 19 happy as I was because I see the man's name on the --  
 20 and I see Jarrett, and I'm assuming his name -- and I  
 21 told you only Jacobs because I didn't remember his  
 22 first name entirely, but now I know it's Jacobs,  
 23 Jarrett Jacobs, I do believe.  
 24 Q. Okay.  
 25 A. And they --

1 them. You don't need a permitting to do a floor. We  
 2 were doing the floor only and permitting is not  
 3 required for that, and I became very upset and very  
 4 annoyed about it, and he shut them down. He put a stop  
 5 workage on it and I had to go to the County and this  
 6 and this, and yes, it became a huge issue, and in the  
 7 end they -- they admitted that I did not need a permit  
 8 for to put a floor. Flooring is one thing that it's  
 9 not required. And yes, and he was involved in that and  
 10 he became extraordinarily hostile to me, and I  
 11 reciprocated when I went.  
 12 Q. All right. Let me show you this, and we'll get this  
 13 marked real quick. We're about to wind up, I promise  
 14 you.  
 15 (Defendant's Exhibit No. 13 was marked.)  
 16 Q. This is Defendant's Exhibit No. 13. Is that the  
 17 property we're talking about?  
 18 A. That's it.  
 19 Q. Okay. And it looks like the date of that slip is April  
 20 22nd, 2010?  
 21 A. Yes, sir.  
 22 Q. All right. Now, I think there's some note on there  
 23 that may indicate it was resolved in June of 2010,  
 24 right in the middle. I don't know. Do you recall when  
 25 that -- if that's when it was wound up and you were

1 Q. In fairness to Jarrett, there are two Jacobs. There's  
 2 a David Jacobs and Jarrett Jacobs, so go ahead, though.  
 3 A. Yeah, but I think that -- I think I had an issue on  
 4 another property with Jarrett, I believe.  
 5 Q. Okay.  
 6 A. The same one who did that. That's why it kind of  
 7 flashed on me when I saw it and I became suspicious.  
 8 Q. Okay. Any other -- I hate to call it run-ins, but I  
 9 don't know what other to use. Any other problems,  
 10 issues, or run-ins with the code enforcement office?  
 11 A. I don't think so.  
 12 Q. Okay.  
 13 A. Actually, not at all. Not to my recollection at all,  
 14 any.  
 15 Q. Okay.  
 16 A. I'm trying to think. If it was, it was a business  
 17 nature, perhaps something from signage from a store or  
 18 something, but it would be so far back. I'm just  
 19 trying to make sure I don't -- I don't mislead, but I  
 20 don't think so, Mr. Love.  
 21 Q. All right.  
 22 A. This was a pretty -- this was a hot issue with me and  
 23 him, though. He actually stopped the -- they were  
 24 putting a floor in a house and he stopped them and --  
 25 because there was no permitting, and you cannot stop

1 able to continue with the floor?  
 2 A. It was never really wound up, to be honest with you.  
 3 I -- they -- I don't know if I still have the paperwork  
 4 from this, but I have -- I was there for many, many  
 5 hours. I actually called the County councilman while I  
 6 was there, Mr. -- I'm trying to think of his name. I  
 7 actually spoke with him.  
 8 I was there for many, many hours and they tried  
 9 to get me to sign a \$30,000 permit or they said they  
 10 wasn't going to allow me, and I refused to do so and I  
 11 wrote on the -- in the end I said I would do it and I  
 12 wrote on the paper they are requiring me to do this, to  
 13 do a \$30,000 permit for a floor that they said I don't  
 14 need.  
 15 They refused to sign it. I went to the secretary  
 16 there. They refused to sign it and they were all  
 17 upset, and I don't think it was ever resolved. I never  
 18 got a permit. Do you have a permit? I don't think  
 19 there was ever a permit given and the house was sold  
 20 and there was nothing from it.  
 21 I'm missing a paper.  
 22 Q. Did you get the floor finished before selling the  
 23 house?  
 24 A. No. I sold it -- yeah, they finished up, I guess, what  
 25 was around the floor, but I don't know exactly, and we

61

1 sold the property as-is and they were told the property  
 2 was being sold as-is; that's why there was not a permit  
 3 on it.  
 4 Q. Okay.  
 5 A. And -- yes, and I -- I hopefully -- I don't know  
 6 because it was a really ugly time. I mean it was  
 7 something because I signed the paper, they made me fill  
 8 the permit, I filled it and I put on it under remarks,  
 9 and they told me they wouldn't allow me to put remarks,  
 10 and I told them, how can you tell me not to put  
 11 remarks? You're telling me to sign something for  
 12 \$30,000 that you know is not even \$200 and it's a  
 13 floor, you don't have to have it, and the councilman,  
 14 the county councilman himself was on speaker phone with  
 15 them.  
 16 Q. Was that Schulz?  
 17 A. Huh? No, it wasn't Schulz.  
 18 Q. No?  
 19 A. It was --  
 20 Q. That's all right. Don't worry about it.  
 21 A. No, no, no. I want to give you. I think it would be  
 22 very interesting, because now I'm really not happy.  
 23 Anyway, I'll get it for you.  
 24 Q. Okay.  
 25 A. We had everyone came in. I mean it was -- it was a --

62

1 a big discussion.  
 2 Q. Let me ask you this. Does Plantation Point have a HOA?  
 3 A. Not that I am aware of.  
 4 Q. Do they have covenants anywhere?  
 5 A. I'm -- I'm sure that there's -- there's some kind.  
 6 We've actually spoken about this because there's  
 7 people -- I live in a gated community, and I mean it's  
 8 really like the Mafia there. And over there, they  
 9 really don't have -- they're free to ride the golf  
 10 carts and the boats are parked in the yard and SUVs,  
 11 the four-wheelers everywhere. I mean it's -- and we've  
 12 spoken in detail how -- how there is not one. I never  
 13 paid an HOA fee nor have I ever got a letter or  
 14 anything from an HOA of any type.  
 15 Q. Do you know if Burroughs & Chapin may have a document  
 16 like that?  
 17 A. Don't know of it. Don't know of it.  
 18 Q. Okay. That's fair.  
 19 A. We've wondered about it. I can't wait to find out now.  
 20 Q. All right.  
 21 A. They have one in Grand Dunes.  
 22 Q. I would imagine so. What did I forget to ask you?  
 23 A. Well --  
 24 MR. CONNELL: Don't answer that.  
 25 A. You forgot to ask me exactly what I think was all this

63

1 between Jarrett Jacobs and the County and all this now.  
 2 BY MR. LOVE:  
 3 Q. What is it?  
 4 A. You tell me. You're the one who had the meeting with  
 5 them. I tried to blot it out of my memory until now  
 6 and -- but let's --  
 7 Q. You think they have it out for you? You think Jarrett  
 8 has it out for you?  
 9 A. It's always a pissing contest with all these -- any  
 10 time someone gives a rebuttal to someone's authority,  
 11 whether it be a student at the teacher or whatever,  
 12 there's always some kind of animosity. I'm sure you  
 13 agree, and yes, they were not happy.  
 14 Q. Okay.  
 15 A. But I've seen David Jacobs a few times in the County  
 16 building and he seems -- he seems pleasant.  
 17 MR. LOVE: Okay. All right. Well, I  
 18 think that's all I have for you, Mr. Wilkes.  
 19 I took more time than I usually do.  
 20 EXAMINATION BY MR. CONNELL:  
 21 Q. I got three questions.  
 22 A. Yes, sir.  
 23 Q. The order of sale says that you bought the property on  
 24 August 5th, 2010; is that right?  
 25 A. Yes.

64

1 Q. For \$196,000?  
 2 A. Yes, sir.  
 3 Q. You paid cash?  
 4 A. With a check, yes.  
 5 Q. All right. And you gave that to the Master-in-Equity's  
 6 office?  
 7 A. Yes, sir.  
 8 Q. The deed indicates that the property was sold at a  
 9 public sale to you on August 5th, 2010; is that  
 10 correct?  
 11 A. Yes, sir, the County, and what I know, the County sold  
 12 it to me.  
 13 Q. All right. The code enforcement letter that was sent  
 14 to Michael Dixon on August 20th, 2010 --  
 15 A. I don't know where -- I don't know how they would have  
 16 posted it if there was no home there and he didn't live  
 17 there. I don't even know how they would give that to  
 18 him.  
 19 Q. And you didn't get a copy of it?  
 20 A. No, sir.  
 21 Q. And you already had your for sale sign on the property?  
 22 A. Yes, sir, with my number on it, and this property --  
 23 they could not have given it. They could not have  
 24 served this. I don't know how they got service on it.  
 25 Q. Okay. And you were the high bidder on August 5th; is

65

1 that right?

2 A. Yes, sir.

3 Q. 2010?

4 A. Yes.

5 Q. And so the woman who called you on the phone was a

6 woman calling you to tell you that someone was putting

7 dirt in your pool on your land; is that right?

8 A. Actually, no. She tells me you can never use your pool

9 again. She was cursing and she said, you can't use

10 your pool again, I want to see you use your pool, and

11 that's when I went -- I didn't know -- I thought

12 someone had hurt the pool in my own personal residence.

13 Q. That was Miss Dixon who called you?

14 A. I -- she never gave me her formal name. I mean she

15 said it's -- she did -- it's her number. The police

16 called her. I --

17 Q. That was Miss Dixon's phone number?

18 A. That's what the police officer said, yes.

19 MR. CONNELL: All right. Okay.

20 REEXAMINATION BY MR. LOVE:

21 Q. A few follow-up questions for you. Your attorney just

22 asked you if that date, August 20th, 2010, whether you

23 had your sign put on the property or not, and you

24 indicated yes; is that correct?

25 A. Yes.

67

1 A. Okay.

2 Q. You told your attorney that you were the high bidder on

3 August 5th, 2010, on the sale of this property.

4 A. It's a matter of semantics.

5 Q. Do you know that for a fact? It's not about semantics.

6 A. I hired Colby Rowe to bid for me on the property. I --

7 not -- as a matter of fact, I was not present at the

8 auction.

9 Q. Okay.

10 A. That's what you're looking for, no?

11 Q. No, but you gave me enough. I don't have anything

12 else.

13 MR. CONNELL: Let me see the exhibits

14 again, please, sir.

15 MR. LOVE: Sure. I don't know what all

16 I've got here. Let me -- I think that's

17 right. You may have some of my notes in

18 there, too, somewhere.

19 REEXAMINATION BY MR. CONNELL:

20 Q. All right. MTM International, who is that?

21 A. MTM International is a company. It's an LLC and we

22 have several LLC's from -- set up, and I -- I -- MTM

23 bought a property, owns only one property. It's a

24 restaurant.

25 Q. Is MTM an LLC that you own?

66

1 Q. Okay. Earlier you told me you didn't know, you didn't

2 know dates, and you didn't know when you put your sign

3 on the property; you just know it was when you got the

4 property?

5 A. No. I told you that I did not know -- or I meant to

6 tell you I did not exactly when the property was -- you

7 had asked me about the property and the deeding and all

8 this. That's what's in reference to a question there,

9 and that was my answer is we know from about -- we

10 know -- it was on -- the sign was on the property much

11 before this one, but I didn't know what your question

12 was about the -- I don't know. You asked about the

13 transfer or something with the -- with the magistrate,

14 Cynthia Howe.

15 Q. Okay.

16 A. And that's really why I perhaps gave -- I didn't mean

17 to mislead if I did.

18 Q. All right. And you were asked by your attorney whether

19 you were the high bidder on August the 5th, and earlier

20 I'd asked you about this company that was bidding on

21 the property. Was it actually the company that was the

22 high bidder on that property or was it you?

23 A. That's a good question. I had asked Colby to -- Colby

24 was --

25 Q. Let me ask it this way.

68

1 A. I don't know. I really don't know.

2 Q. The Master-in-Equity's order indicates that on August

3 5th, 2010, you were the successful bidder; is that

4 right?

5 A. It says Tim Wilkes, yes. It does not say MTM.

6 Q. Does the deed say that on August 5th, 2010, you were

7 the successful bidder?

8 A. It says Tim Wilkes. It does not say MTM.

9 MR. CONNELL: Okay. Very good. Thank

10 you.

11 MR. LOVE: All right. That's all.

12 (Deposition concluded at 2:45 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, the undersigned, Glenda K. McCormick, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing statement under oath was taken on the aforementioned date;

That the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this statement under oath.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal on September 12, 2011.

\_\_\_\_\_  
Glenda K. McCormick  
Notary Public for South Carolina  
My Commission Expires: 09/18/2016

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY ) 2010-CP-26-11570

Tim Wilkes, )  
 )  
 Plaintiff, ) Transcript of Record  
 )  
 vs. ) Hearing  
 )  
 Horry County, ) April 9, 2012  
 )  
 Defendant. )

B E F O R E :

Honorable Benjamin H. Culbertson  
Horry County Courthouse  
Conway, South Carolina

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

Gene M. Connell, Jr., Esquire  
Attorney for Plaintiff

Walker H. Willcox, Esquire  
Attorney for Defendant

Grace L. Hurley, CVR-CM-M  
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (On the record, April 9, 2012.)

2 THE COURT: All right, let's take them in order. The  
3 first one I've got is 2010-CP-26-11570. This is the case of  
4 Tim Wilkes versus Horry County. According to my roster this  
5 is a motion for summary judgment; is that correct?

6 MR. WILLCOX: Yes, sir, it's our motion, Your Honor.

7 THE COURT: All right, please give the court reporter  
8 your name and who you represent.

9 MR. WILLCOX: I'm Walker Willcox representing Horry  
10 County. I'm here for Ed Love and we filed this motion for  
11 summary judgment. This case arises out of a house that burned  
12 down over on Ronald Drive in Myrtle Beach, I believe, and the  
13 house had a swimming pool and when the house burned down the  
14 swimming pool no longer had a barrier around the pool and  
15 Horry County on August the 20<sup>th</sup>, 2010, Your Honor, I submitted  
16 a brief a couple of months ago. I hope the Court has a copy  
17 of it and that's what I'll be referring to, but back on August  
18 20<sup>th</sup>, 2010, this is Exhibit One, Horry County went out,  
19 inspected, saw the pool had no, no fence around it, went and  
20 told the record owner at the time, Michael Dixon, he needed to  
21 either erect a fence or fill it in, and apparently at that  
22 point the house was in foreclosure and the house had been  
23 sold, a successful bidder had bid on the house on August the  
24 5<sup>th</sup>, 2010, and this is evidenced in Exhibit Three and Four, the  
25 deed and the assignment of bid, and on August the 25<sup>th</sup> the, the

1 - well, I'm sorry, MTM International was the successful bidder  
2 on August the 5<sup>th</sup>. On August the 25<sup>th</sup>, five days after Horry  
3 County inspected and issued a notice, MTM assigned this bid to  
4 Tim Wilkes and on the same day the Master-In-Equity conveyed  
5 the property to Tim Wilkes pursuant to the foreclosure, and  
6 subsequently Tim Wilkes brought this action against Horry  
7 County claiming that we served this notice on August the 20<sup>th</sup>  
8 on the wrong person, claims we negligently enforced the  
9 swimming pool ordinance and we move for summary judgment based  
10 on a couple of things, one that the 15-78-60(4) provides  
11 immunity for this type of action, four, actually four, nine  
12 and 13 provide immunity for this type of action, this type of  
13 negligence enforcement of an ordinance. Subsection four  
14 states a governmental entity is not liable for a loss  
15 resulting from the enforcement of an ordinance, and that's  
16 paraphrased, but that's essentially what it states, Your  
17 Honor, and similarly under 13, a governmental entity is not  
18 liable for a loss resulting from the inspection, inadequate or  
19 negligent inspection of property to determine whether the  
20 property complies with an ordinance, and that's what they're  
21 trying to do here. They're trying - they're claiming that we  
22 negligently inspected the property, we didn't find out who  
23 they claim the real owner was and that type of claim we have  
24 immunity from, Your Honor, and we're entitled to summary  
25 judgment on that ground.

1           Also, we didn't do anything wrong. When we inspected the  
2 property Michael Dixon was the legal property, legal record,  
3 legal owner of record. The deed wasn't issued until five  
4 days later. He would, he would have - Michael Dixon was the  
5 record, the owner on, on the legal tax records in Horry  
6 County and the - Tim Wilkes didn't even have the bid assigned  
7 to him until after we inspected it. So, even a property  
8 inspection, a title inspection would have revealed that  
9 Michael Dixon was the legal record, legal owner of record of  
10 the property.

11           THE COURT:       All right, so, when, when did you all  
12 issue your notice?

13           MR. WILLCOX:     August the 20<sup>th</sup>, 2010, Your Honor, that's  
14 Exhibit One to my brief.

15           THE COURT:       Okay, all right.

16           MR. WILLCOX:     And Your Honor, one, that the Tort Claims  
17 Act provides immunity to us, and two, we found out who the  
18 owner was, Michael Dixon was the legal owner. We gave him  
19 the notice. We didn't, we didn't order the thing to be filled  
20 in. He went out and paid somebody to do it. Land Services  
21 Contracting, LLC, went and filled the pool in on - at his  
22 request.

23           THE COURT:       At whose request?

24           MR. WILLCOX:     Michael Dixon, the owner.

25           THE COURT:       Okay.

1 MR. WILLCOX: He thought he was the owner when we served  
2 the notice on him and his deposition testimony is to that  
3 effect, Your Honor, is in, also attached to the brief.

4 THE COURT: All right.

5 MR. WILLCOX: And Your Honor, and briefly, to put  
6 context to 15-78-60(4), got the case of Adkins versus  
7 Greenville County and that's a case in which basically  
8 Greenville County knew about these vicious dogs that were  
9 going around the county terrorizing people apparently and  
10 animal control didn't do anything about it. Some kid got  
11 killed because of the dogs and somebody sued Greenville County  
12 for negligence saying, "You should have enforced your  
13 ordinance," and the Supreme Court held, "No, you can't do  
14 that, the subsection four clearly provides immunity for that  
15 type of claim," and that's reported 312 S.C. 188.

16 THE COURT: All right.

17 MR. WILLCOX: Thank you, sir.

18 THE COURT: Thank you.

19 All right, Mr. Connell.

20 MR. CONNELL: Your Honor, I represent Mr. Wilkes in  
21 regard to this action and he was the successful bidder on  
22 August the 5<sup>th</sup>, 2010, for this property. The sequence of  
23 events is kind of important for Your Honor to understand. In  
24 the, in the Defendant's answers to interrogatories they  
25 provided me with documentation that shows that they knew that

1 he was the successful bidder and when I say that I mean there  
2 was a deed and a public sale that was dated August 5<sup>th</sup> by -  
3 signed by Judge Howe that indicated that Mr. Wilkes had  
4 bought the property and had paid for it on that day for  
5 \$196,000.

6 THE COURT: He paid for it in full on that day?

7 MR. CONNELL: Yes, sir, he paid and gave a check to the  
8 Master-In-Equity. On August the - apparently this house had  
9 burned and there was an expensive pool there, but there was no  
10 fence on the front of the property. So, the county building  
11 department was concerned about that because some neighbors had  
12 been complaining. They did not say anything to Mr. Wilkes  
13 despite the fact that their own records show that Mr. Wilkes  
14 had his own sign on the property when they went out and his  
15 deposition shows that. He went to the, he went to the  
16 property the day he bought it and paid the money and put this  
17 sign on the property. That's in the records that shows that  
18 that was his phone number and he was selling the property by  
19 owner.

20 MR. WILLCOX: Can I see that, Gene?

21 MR. CONNELL: That's what you gave to me. It was in  
22 your records. The other records that they gave to me beside  
23 the deed of public sale was a gateway document that showed Mr.  
24 Wilkes was the owner, a Master-In-Equity's report on sale that  
25 show that he was the successful bidder on August the 5<sup>th</sup>, 2010,

1 a notice of sale from 2009, an assignment of bid and a notice  
2 of sale in 2010, along with a Master's Order and Judgment of  
3 Foreclosure Sale, all of which show that they had actual  
4 notice that Mr. Wilkes was the successful bidder on August the  
5 5<sup>th</sup>, 15 days before they went out there.

6 The other thing we don't, we don't deny their right to  
7 inspect the property but what we do say is is that they had to  
8 follow their own ordinance, and the ordinance that they had,  
9 section 104 of the, of the code provides that the owner,  
10 failure to take a reasonable, reasonable efforts to find the  
11 owner, find out who the owner was of the property, and in this  
12 case they had in their own records the Order of Foreclosure, a  
13 Notice of Public Sale, this sign and other records from the  
14 Master-In-Equity's Office which would have reasonably allowed  
15 them to find out who the owner was, and the key, Your Honor,  
16 is their own statute says reasonable efforts to find the owner  
17 of the property, and based on what they had they shouldn't  
18 have gone to Mr. Dixon, the property had already been  
19 foreclosed and an Order of Foreclosure had been issued in that  
20 regard. So, it's our position that based upon those - this  
21 evidence that summary judgment is not appropriate.

22 Would point out one other thing to Your Honor, they're  
23 going under the Tort Claims exception on inspections, there is  
24 actually a case from Horry County involving that called  
25 Steinke versus South Carolina Department of Labor, Licensing

1 and the question in that case was whether or not if you had an  
2 inspection issue what standard applied, and apparently, that  
3 was an amusement park ride, and apparently the standard did  
4 not discuss the issue of gross negligence and the Court said  
5 even though that was not in the exception, all the exceptions  
6 go to gross negligence. So, I point that out to Your Honor  
7 because the inspection statute is not a blanket immunity, it -  
8 the issue of gross negligence has got to apply in that and  
9 that of course is a factual issue if we're going on the  
10 inspection issue but our narrow focus in the case is really  
11 about did they negligently fail to notify the correct owner  
12 when they filled in, when they had this pool filled in because  
13 what they were doing was they wanted to have the pool filled  
14 in in such a way that there wouldn't be any health issues for  
15 somebody who lived nearby.

16 THE COURT: But still how do you get around the  
17 statute that grants a county immunity from the negligent  
18 enforcement, the negligent inspection and negligent  
19 enforcement of an ordinance?

20 MR. CONNELL: Because the Steinke case, Your Honor, says  
21 that - well, first it's not the negligent inspection as much  
22 as it's the county's own ordinance provided they had to use  
23 reasonable efforts to find the owner and they had in their own  
24 file records that showed that Mr. Wilkes was, in fact, the  
25 owner of the property, his sign was on the property when they

1 went out there. They shouldn't have done anything in that, in  
2 that regard and then the issue about the inspection, Your  
3 Honor, that, that brings up the issue of gross negligence and  
4 whether or not they were grossly negligent because they had  
5 their own, they had in their own records indications that Mr.  
6 Wilkes was the owner and had been the owner prior to the time  
7 that they went out there.

8 THE COURT: But I mean give me a situation in which  
9 the statute that grants immunity would apply. If it doesn't  
10 apply in this case under what theory would it ever apply?

11 MR. CONNELL: Well, in the Steinke case the court said  
12 that that was an issue for the jury to be decided. If you're  
13 going to - if you're looking at the issue of inspection, the  
14 issue for the jury was whether or not they were grossly  
15 negligent in failing to follow their own rules and  
16 regulations.

17 THE COURT: But you haven't alleged gross negligence  
18 in this case.

19 MR. CONNELL: I've alleged negligence and in any, in any  
20 tort claims case gross negligence would be part of it. In  
21 fact ---

22 THE COURT: So, you're saying that summary judgment  
23 can never be granted on the basis of that statute against a  
24 county for negligent enforcement of an ordinance ---

25 MR. CONNELL: Your Honor, I ---

1 THE COURT: --- if there's an, if there's an  
2 allegation of negligence then it's automatically a jury  
3 question.

4 MR. CONNELL: I'm saying that when they - I'm saying  
5 it's a jury question and when they fail to follow their own  
6 ordinances in locating the owner that there cannot be summary  
7 judgment in that case. And Your Honor, I have the case, a  
8 copy of it if you'd like to look at it.

9 THE COURT: The Steinke that's the one where the guy  
10 got killed on the bungee jump?

11 MR. CONNELL: It's the one where the guy got killed on  
12 the bungee jump and there was all sorts of testimony that  
13 people had gone - that the inspector had been by to quote,  
14 inspect it, and the question in the case was whether or not  
15 there was any gross negligence even though they had inspected  
16 it and the Court said that's an issue for the jury to decide.  
17 So, we would, we would offer that as a ---

18 THE COURT: Did they raise the statute that grants  
19 immunity?

20 MR. CONNELL: They raised this statute about inspections  
21 and the court for the first time decided that even though  
22 gross negligence was not in that exception it applied to every  
23 exception in the Tort Claims Act, not only this one but every,  
24 all the 42 exceptions.

25 THE COURT: All right.

1 MR. CONNELL: You want to, you want to see this?

2 THE COURT: No, I've read the case.

3 MR. CONNELL: Okay.

4 THE COURT: I know the case, yeah.

5 All right, sir.

6 MR. WILLCOX: Your Honor, as far as Steinke goes I'm not  
7 sure if I agree with that interpretation of it. I haven't  
8 read it in a while and I know there's been cases since Steinke  
9 interpreting that holding. I don't know if it imposes gross  
10 negligence on every immunity in the Tort Claims Act. To do so  
11 would essentially absolve the immunity exception, immunity  
12 from any force, I mean, the, the purpose of this immunity is  
13 to provide county code enforcers the ability to go out there  
14 and enforce an ordinance without worrying about getting sued  
15 every time they did something, and as far as the claim that we  
16 knew everything, Your Honor, I've attached the deed that was  
17 recorded on August, and I said 25<sup>th</sup>, I meant 23<sup>rd</sup>, 2010, from  
18 the Master-In-Equity to Tim Wilkes, I believe, and also the  
19 same day assignment of bid, August 25<sup>th</sup>, 2010, that's Exhibit  
20 Three, and that's what we've, we've presented to show there's  
21 no genuine issue of material fact that the County, there was  
22 any public record of Tim Wilkes owning the property when they  
23 made a notice, and Michael Dixon thought he owned it and that  
24 for sale by owner sign that doesn't say Tim Wilkes owns the  
25 property. That just says the sign, the property is for sale.

1 THE COURT: All right, and when, when was title  
2 actually transferred?

3 MR. WILLCOX: Your Honor, the deed I have says August  
4 the 23<sup>rd</sup>, filed August the 23<sup>rd</sup>, 2005, and the execution date  
5 on the second page is August 23<sup>rd</sup>, 2005 - 2010, Your Honor, I  
6 apologize.

7 MR. CONNELL: And Your Honor, the deed says that the  
8 public sale took place on August the 5<sup>th</sup> and that the payment  
9 was made of \$196,000 on that date.

10 THE COURT: Right, but title actually transferred on  
11 the day, I think, and South Carolina law is is when you record  
12 the deed that's the date of transfer.

13 MR. WILLCOX: Your Honor, I've got a statute to that  
14 effect.

15 THE COURT: And so, yeah, so, I'm going to go ahead  
16 and grant the motion for summary judgment based upon the  
17 undisputed facts, put in there the undisputed fact that he was  
18 the successful bidder. On the date he was the successful  
19 bidder that he paid his money on that date, that the notice  
20 was given on August the 20<sup>th</sup>, deed was not issued until August  
21 the 23<sup>rd</sup>, was not filed until - what was the filing date on the  
22 deed?

23 MR. WILLCOX: Your Honor, it's August 23<sup>rd</sup>.

24 MR. CONNELL: The 25<sup>th</sup> I think it says.

25 THE COURT: All right, so, put those dates. So, the

1 fact that, that, and that's the reason. I mean, it's, it's  
2 pretty cut-and-dried. If they have to go on the date he  
3 placed his bid then that'll be it, but my ruling is is that  
4 they can give notice as of August 20<sup>th</sup> when they gave notice  
5 that the record owner was still the prior owner; and so, there  
6 was a proper notice given in that situation. All right.

7 MR. CONNELL: Your Honor, can we attach to the order the  
8 depositions of the Plaintiffs and of the parties and of the -  
9 I mean there's an order of foreclosure from March 2010. We  
10 would need to have that in the record.

11 THE COURT: No, my ruling is simply that title did not  
12 transfer to your client until that deed was recorded on the  
13 25<sup>th</sup> or at least until it was issued to him on the 23<sup>rd</sup>.  
14 Therefore, had they sent out the notice on the 23<sup>rd</sup> or after,  
15 really the recording date is the public notice date, when you  
16 put notice on the public at large. So, as of the 25<sup>th</sup> or after  
17 they would have had to have notified your client. Until that  
18 deed is recorded it's the same as a bona fide purchaser  
19 without notice, that they're not, that the recording of the  
20 deed is what gives the public notice that title has been  
21 transferred to your person; and so, that's the reason I'm  
22 issuing, I'm granting the motion for summary judgment is until  
23 that deed's recorded they're entitled to go by whatever the  
24 records show as of the date they give the notice, regardless  
25 of who's bid what, how they're going to hold title and things

1 of that nature. They can go on whoever the record holder -  
2 record owner is as of the date they give the notice. All  
3 right?

4 MR. CONNELL: All right, Your Honor.

5 MR. WILLCOX: Thank you, sir.

6 MR. CONNELL: Thank you, sir.

7 THE COURT: Thank you.

8 (Adjourned.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

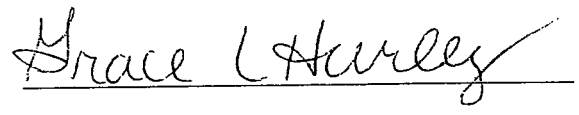
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Tim Wilkes versus Horry County, held in the Court of Common Plea for Horry County, Horry County Courthouse, Conway, South Carolina, on April 9, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM  
Official Reporter

September 21, 2012.

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
CASE NO. 2010-CP-26-11570

TIM WILKES, )  
)  
)  
Plaintiff, )  
)  
vs. )  
)  
HORRY COUNTY, )  
)  
)  
Defendant. )

COPY

---

DEPOSITION OF TIM WILKES

---

**DATE TAKEN:** August 24, 2011  
**TIME BEGAN:** 1:10 p.m.  
**TIME ENDED:** 2:45 p.m.  
**LOCATION:** Kelaher, Connell & Connor, PC  
Suite 209, The Courtyard  
1500 Highway 17 North  
Surfside Beach, SC 29587  
**REPORTED BY:** Glenda K. McCormick  
Court Reporter  
Notary Public for South Carolina

---

**ALDERMAN COURT REPORTING**  
500 Oak Pond Court  
Conway, SC 29526  
Telephone: 843.254.2675 Fax: 843.234.2309  
E-mail: RPA1277@AOL.COM

1  
2 \*Any court, party, or person who has purchased a  
3 transcript may, without paying a further fee to the  
4 reporter, reproduce a copy or portion thereof as an  
5 exhibit pursuant to court order or rule or for internal  
6 use, but shall NOT otherwise provide or sell a copy or  
7 copies to any other party or person.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**APPEARANCES**

Gene M. Connell, Jr., Esquire  
Kelaher, Connell & Connor, PC  
Suite 209, The Courtyard  
1500 Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, SC 29587

.....On behalf of the Plaintiff

Edward A. Love, Esquire  
Willcox, Buyck & Williams  
248 West Evans Street  
Florence, SC 29501

.....On behalf of the Defendant

**ALSO ATTENDING:** (None)

**STIPULATIONS:** The within deposition was taken pursuant  
to the South Carolina Rules of Civil Procedure.

**WAIVER:** Examination and reading of the deposition are  
waived by the witness and by the parties.

**INDEX**

		<b>Page</b>
1		
2		
3		
4	Examination by Mr. Love.....	4
5	Examination by Mr. Connell.....	63
6	Reexamination by Mr. Love.....	65
7	Reexamination by Mr. Connell.....	67
8	Certificate.....	69

**EXHIBITS**

	<b>Defendant's Exhibit</b>	<b>Description</b>	<b>PAGE</b>
9			
10	1	Photograph of swimming pool	30
11	2	Photograph of swimming pool	30
12	3	Photograph of swimming pool	30
13	4	Photograph of swimming pool	30
14	5	Photograph of swimming pool	30
15	6	Horry County MIE report on sale of property, 8-24-10	34
16	7	Tax assessors sales file, 8-23-10	35
17	8	Deed from public sale conveying subject property to Mr. Wilkes, 8-23-10, eight pages	37
18	9	Notice from Horry County Code Enforcement Division to Mr. Dixon, 8-20-10	44
19	10	Assignment of bid on subject property to Mr. Wilkes, 8-25-10	41
20	11	Photograph of dirt-filled swimming pool	48
21	12	Estimate of pool repair from Custom Concrete Developers, 4-25-11, two pages	50
22	13	Notice from Horry County Code Enforcement Division, 4-22-10	59
23			
24			
25			

1 Tim Wilkes, being duly sworn, testified as follows:

2 EXAMINATION BY MR. LOVE:

3 Q. Mr. Wilkes, we briefly met before. My name is Ed Love.  
4 I'm out of Florence with the Willcox Law Firm. We also  
5 have an office here in Surfside. That's all the  
6 advertising I'm going to do. I, of course, represent  
7 Horry County in a lawsuit that you've brought in Horry  
8 County based on allegations in a complaint that was  
9 filed by your attorney on your behalf. Okay?

10 A. Yes, sir.

11 Q. The purpose of today is for me to try and put some meat  
12 on the bones of that complaint. Basically, when you  
13 file a complaint, it has bare allegations of what was  
14 going on. My job today is to talk to you about exactly  
15 what was going on and the facts and circumstances  
16 surrounding that complaint. Okay?

17 A. Yes.

18 Q. A few ground rules. I'm sure Gene has gone over them  
19 with you, but just to be sure, any question I ask you,  
20 I would ask that you give a verbal response. You've  
21 done fine thus far. That way the court reporter can  
22 take it down. It's very difficult to take down head  
23 nods and head shakes, even more difficult sometimes to  
24 take down the uh-huhs and the uh-uhs, so yes or no and  
25 whatever you need to say. Okay?

1 A. Yes, sir.

2 Q. All right. If you need a break, let me know. I'm not  
3 here to punish you. I don't take too long on  
4 depositions. I don't see that as beneficial for you  
5 nor I, so if you need a break, let me know. If you  
6 need something to drink, bathroom, whatever, just let  
7 me know. Okay?

8 A. Yes, sir.

9 Q. All right. The rules do prohibit you from speaking  
10 with your attorney substantively about the case while  
11 you're on a break and I get to inquire as to what y'all  
12 discussed if that's the case. I'm not a stickler for  
13 the rules. I don't mind small talk, joking around,  
14 that kind of stuff. Just be aware of that rule.  
15 Basically, they get to talk to you any time they want  
16 to. This is about the one time I get to talk to you  
17 about the case. Okay?

18 A. Yes, sir.

19 Q. All right. Let's roll on. Your full name, Mr. Wilkes?

20 A. Is Tim Wilkes.

21 Q. Okay. And where do you currently reside?

22 A. [REDACTED]

23 Q. Where is [REDACTED]?

24 A. In Murrells Inlet, South Carolina, 29576.

25 Q. How long have you been at that address?

1 A. Fifteen years.

2 Q. Who lives there with you?

3 A. My wife.

4 Q. And her name?

5 A. Is Anat.

6 Q. A-N --

7 A. I'm sorry. Anat, A-N-A-T.

8 Q. Okay. How long have you been married to Miss Wilkes?

9 A. Thirty-one years.

10 Q. Anybody else living with you at that residence?

11 A. I have my youngest child is in college, so she's a  
12 summer resident.

13 Q. Okay. And what's her name?

14 A. Malena.

15 Q. M-E-L-I-N-A?

16 A. M-A-L-E-N-A.

17 Q. And is she married?

18 A. I hope she don't read this deposition. No, sir. She's  
19 a student at the University of South Carolina.

20 Q. All right. Do you have any other relatives, whether by  
21 blood or marriage, who reside in Horry County?

22 A. Yes.

23 Q. Okay. Who would that be?

24 A. My oldest daughter, her name is Mande, M-A-N-D-E,  
25 Wilkes.

1 Q. Okay. And what does Mande do?

2 A. Mande has a law degree and she does legal consulting  
3 and is a writer.

4 Q. All right. Is she licensed to practice in South  
5 Carolina?

6 A. No, sir.

7 Q. Okay. All right. What kind of consulting work does  
8 she do?

9 A. I am not familiar.

10 Q. Okay. All right. And I judge by her last name she's  
11 not married?

12 A. No, sir.

13 Q. Okay. Does she have any children?

14 A. No, sir.

15 Q. Okay. Any other relatives by blood or marriage in  
16 Horry County?

17 A. No.

18 Q. Okay. No brothers, sisters, in-laws, aunts, uncles,  
19 cousins?

20 A. No, sir.

21 Q. All right. Where are you from, Mr. Wilkes?

22 A. I'm from Horry County.

23 Q. Okay. Did you grow up in Horry County?

24 A. Around, yes.

25 Q. Okay. Where did you go to school?

- 1 A. Well, I didn't go to school much.
- 2 Q. All right.
- 3 A. I went to school in Rock Hill.
- 4 Q. Did you graduate high school?
- 5 A. No, sir.
- 6 Q. How far did you go?
- 7 A. I went all the way to the GED. I got a GED in South  
8 Carolina.
- 9 Q. Okay. Any other formal education or training after  
10 that point?
- 11 A. No, sir.
- 12 Q. Okay. Any other -- do you hold any licenses or any  
13 other credentials like a real estate license or  
14 anything like that?
- 15 A. No, sir.
- 16 Q. Okay. What do you do for work?
- 17 A. I have several different businesses.
- 18 Q. Okay. Talk to me a little bit about those businesses.
- 19 A. I'm in the retail business.
- 20 Q. All right. What kind of retail?
- 21 A. Clothing.
- 22 Q. All right. Do you have a particular store?
- 23 A. Yes. I have ET Sportswear.
- 24 Q. Okay.
- 25 A. Kings Beachwear.

1 Q. All right.

2 A. T Shirt Kings, Pacific Beachwear. I have some  
3 miniature golf courses.

4 Q. Okay.

5 A. I own a wholesale company called Coastal Designs.

6 Q. It's a wholesale company?

7 A. Yes.

8 Q. Okay.

9 A. And I have multiple pieces of real estate.

10 Q. Is that enough to keep you busy or you got anything else  
11 going on?

12 A. Just involved in various things like this.

13 Q. Okay. Pacific Beachwear, which one do you have, or do  
14 you have multiple?

15 A. We have multiple stores. We have multiple locations on  
16 Highway 17 and on Boulevard and --

17 Q. Do you have one up at the Garden City turnoff, right  
18 there in front of Kroger? Is that your Pacific?

19 A. The Kroger, yes, I --

20 Q. It's got the whale on top?

21 A. Oh, I'm sorry. Garden City. I was thinking Surfside.  
22 No. That belongs to not me.

23 Q. I bought a hermit crab from there for my seven-year-old.  
24 That's why I was wondering. He's doing okay. I just  
25 wanted to let you know.

1 A. The people there have that actually -- actually have --  
2 they've only been there a couple of years. They're  
3 nice people.

4 Q. Okay. Let's talk about the putt-putt courses. Which  
5 ones do you have?

6 A. Snake River, and the Pyramid. We also own the Dairy  
7 Queen beside of it.

8 Q. All right.

9 MR. CONNELL: He didn't go to your putt-  
10 putt course, though.

11 BY MR. LOVE:

12 Q. I didn't go to your putt-putt course. The day we were  
13 going to go play putt-putt, it poured. I was here a  
14 couple of weeks back, but I apologize for that and  
15 maybe some time in the future.

16 Let's see here. Before getting into this --  
17 this -- all these dealings, what did you do? Did you  
18 ever have like a nine-to-five and just got sick of it  
19 and started doing this stuff, or is this kind of what  
20 you --

21 A. This is pretty much it. I've just been working.

22 Q. Okay.

23 A. The real estate end of it is -- the auctions, I was  
24 just doing these since the implosion of real estate. I  
25 didn't really do much before that. That's how we get

1 to this, to the point, I suppose, at hand.

2 Q. Okay. How many pieces of real estate do you figure you  
3 hold right now?

4 A. Nineteen.

5 Q. Okay. All right. Most of them residential or is it a  
6 fair mix?

7 A. Mostly commercial.

8 Q. Mostly commercial?

9 A. (Witness nods affirmatively.)

10 Q. Do you tend to stay towards the south end with all of  
11 these ventures or are they spread out across the beach?

12 A. They're spread out.

13 Q. Okay. So you're all the way in North Myrtle and  
14 Myrtle?

15 A. Yes.

16 Q. Okay. Tell me when you moved to Horry County. I know  
17 you said you went to a little bit of schooling in Rock  
18 Hill. When did you get to Horry?

19 A. '70 -- I don't know exactly. I don't remember the  
20 date. '70 --

21 Q. In the '70s?

22 A. Yeah, in the '70s.

23 Q. Early, middle, late?

24 A. Middle, '76, '78. I remember when I married, not when  
25 I --

1 Q. That's the only one you have to. All right. Let's  
2 talk about the property we're dealing with here. Tell  
3 me -- tell me about the property. How did you come to  
4 know about the property?

5 A. My 19 properties?

6 Q. No. I'm sorry. The property that has led us to here  
7 today, the Arundel lot, or Arundel. How is that  
8 pronounced?

9 A. Arundel.

10 Q. There we go.

11 A. It was purchased at an auction. I wasn't there. It  
12 was purchased by an agent named Colby, C-O-L-B-Y, Rowe,  
13 W-O -- R-O-W-E, with Sloan Realty.

14 Q. Okay.

15 A. He bid at the auction and then I went and paid for it  
16 and we closed on the property. As soon as we closed on  
17 it, actually, I put -- I had a sign. I put a big sign  
18 myself up there, a huge sign, and -- the size of the  
19 lot, it's a double lot, size of the lot, and I put my  
20 number in huge big block letters and was trying to sell  
21 it myself.

22 Q. Okay.

23 A. Would you like for me to go on? I know that I'm not  
24 supposed to. In depositions, I'm supposed to wait and  
25 answer your questions but --

1 Q. You can do whatever --

2 A. -- it's a pretty simple thing.

3 Q. You can do whatever you want, but we'll -- let's  
4 start -- let's start talking about the pool. I mean I  
5 understand the auction process. I understand that you  
6 had someone there bidding for you and you paid for the  
7 property and all that.

8 A. Yes.

9 Q. Now, in your allegation in the complaint, it basically  
10 says -- and I'm paraphrasing -- that Horry County told  
11 the wrong people about what options they had with the  
12 pool, either to fill it or put up a fence. Is that my  
13 understanding, that they should have been communicating  
14 with you and not the Dixons?

15 A. I'm sorry. Repeat.

16 Q. Okay. Basically in the complaint, my understanding of  
17 the complaint -- and again, this is paraphrasing -- is  
18 that you allege that Horry County was communicating  
19 with the Dixons about what to do with the pool rather  
20 than with you.

21 A. This is what Horry County told me.

22 Q. Okay. Tell me what Horry County told you.

23 A. And I'm -- I think I should -- we should get to -- from  
24 the beginning to the end. I think if I tell you what  
25 Horry County told me, we're going to be in the middle

1            somewhere, if I may.

2            Q.    All right.    Let's do it.

3            A.    All right.    I received a phone call in the afternoon,  
4            on a Friday afternoon, from a lady, and she sounded  
5            inebriated.    And she told me, go jump in your pool, let  
6            me -- she started -- she was ranting and raving and  
7            cursing and telling me go get in the pool.

8                       I wasn't yet in my home and I went -- I didn't  
9            know what was going on and I went to my home and I'm --  
10          she calls back again.    And I'm looking at the pool.  
11          She said, jump in.    I said, I'm looking at it.    I  
12          thought she put poison or something.    She said, I want  
13          to see you jump in.    She was just ranting and raving.

14                     I didn't know what was going on and I -- I hung  
15          up the phone on her.    And I looked at everything.    I  
16          went around and was looking at the pool and all, and I  
17          called her back.    Her number was on my cell phone.    You  
18          can check the cell phone records.

19                     And I called her back and I said, what are you  
20          talking about?    I didn't know what she was talking  
21          about.    Anyway, she cursed and went on and hung up  
22          again.

23          Q.    Let me ask you this.    Were you at your house at that  
24          point in time?    You were not at the lot?

25          A.    No.    I was at my personal home.

1 Q. Okay.

2 A. And I thought she was calling about my -- I went to my  
3 house to look at the pool.

4 Q. Yes, sir.

5 A. And maybe -- I don't know exactly the time when this  
6 happened because I was upset. I didn't know what was  
7 going on and I don't have a time limit, but this Colby  
8 Rowe called me and said that -- or I called Colby about  
9 something. They were doing a -- there was another  
10 commercial auction and -- something was going on and I  
11 spoke to him.

12 He calls me back and he said this woman called  
13 him and cursed him out and was cursing him and said she  
14 was telling him about the pool. Colby lived close to  
15 there and he went to the home and he called me again,  
16 and he said, I'm at the Plantation Point property. He  
17 said, there's mountains of dirt here.

18 So as we got to the -- by the time I got there,  
19 it was -- I called the police. We saw all the dirt.  
20 We called the police, and the policeman from Horry  
21 County, he called -- I gave him the number from my cell  
22 phone and he called the -- I'm assuming her name is  
23 Dixon. I didn't know, but I'm assuming by what you're  
24 saying it's Dixon, and I -- I -- he spoke with her and  
25 I don't know if he spoke with the husband. He never

1 mentioned about it. I know he spoke, I think, only  
2 with the lady. And he filed a complaint. He made a  
3 complaint and we left.

4 Q. Who filed the complaint?

5 A. The policeman. I mean he wrote up the --

6 Q. Did you maintain a copy of that police report?

7 A. I don't have it, actually. I may have it. I don't  
8 have it with me.

9 Q. Okay.

10 A. At the office I have it.

11 Q. When you said there was a mountain of dirt when you  
12 showed up at the property, was the dirt in the pool at  
13 that time?

14 A. Some and some not.

15 Q. Okay. Was the pool full?

16 A. The pool, you could not see where the pool was. You  
17 could not see the pool or the ring around the pool.  
18 You could see nothing from it, and there were several  
19 other big piles of dirt beside it, beside -- in the  
20 back yard.

21 Q. Okay.

22 (Whereupon, there was a pause in the proceedings.)

23 A. You want me to fast-forward now perhaps to calling the  
24 County?

25 Q. Sure. This was on a Friday that all of this occurred

1           that you just spoke about; is that right?

2           A.    Yes.

3           Q.    All right.  When are we moving to next?

4           A.    The policeman said that they had told him on the phone  
5           that they were told by the County to fill in the pool.

6           Q.    Okay.  They being the Dixons?

7           A.    He asked them why they had permission, how they had  
8           permission to be on the property, how they did it.  He  
9           said the County told them that if they didn't, they  
10          were going to go to jail, if they didn't fill in the  
11          pool.  That's exactly what he told the policeman that  
12          she told him.

13          Q.    All right.  Those are the Dixons we're talking about  
14          that he's on the phone with that are saying we were  
15          told to fill it in by the County?

16          A.    The lady -- it was the lady who had called me on my  
17          cell phone.  He got her number from me.  I can't say it  
18          was the Dixons.  I'm assuming so.  He called them from  
19          my number and she said that she did fill it in and she  
20          was told by the police, by -- the County came to her  
21          house, she said, and they told her you have five days  
22          or you're going to -- to jail.  Is exactly what he  
23          related to me, the police officer.

24          Q.    What's the police officer's name?

25          A.    I have no idea.

1 Q. All right. What next?

2 A. I called the County. I don't know if it was the  
3 following Monday, but I called the County and I spoke  
4 to the people in the ordinance division, if they had  
5 told someone to fill in the pool.

6 Q. All right. Do you remember who you spoke to?

7 A. I do not. And they told me that they didn't know  
8 anything about it. And then I spoke with someone else  
9 and got someone else on the phone. I called another --  
10 I'm -- I'm fairly busy every day, and I make many,  
11 many, many phone calls. And I spoke again. They gave  
12 me someone else from -- from construction services, I  
13 think.

14 Q. Okay.

15 A. And they said that they didn't know anything about it,  
16 and if it -- they normally give -- they give the owners  
17 of the property -- they give them 20 or 30 days to  
18 comply if they would have wanted that.

19 Q. All right.

20 A. And I got information and I called the attorney, Gene  
21 Connell, and --

22 Q. Did you have any other conversations with the County  
23 about this?

24 A. I don't think so.

25 Q. Okay.

- 1 A. I could -- it could have been three conversations  
2 regarding this all in the same time frame, but no.
- 3 Q. Okay. Did you ever see anybody filling the pool or was  
4 it already done when you arrived?
- 5 A. It was done when I arrived.
- 6 Q. Okay. Do you know when it was done?
- 7 A. First-hand knowledge? I wasn't there, so how can I  
8 know?
- 9 Q. Well, I understand that. I guess it would be second-  
10 hand knowledge. Do you have any way of knowing what  
11 day that pool was filled?
- 12 A. I was told it was done that day.
- 13 Q. Okay. Who told you that?
- 14 A. The police officer. But it's not first-hand knowledge.  
15 I think he --
- 16 Q. That's okay. All right. Tell me -- now let's go to  
17 your complaint and let's try to figure this thing out.  
18 Tell me what it is the County did wrong. Did the  
19 County fill the pool?
- 20 A. I don't know. I told you I wasn't there.
- 21 Q. I understand that. Have you done any investigation on  
22 your own to find out who filled the pool?
- 23 A. I was told by the police officer that A&I --  
24 specifically he said when he finished the conversation  
25 that A&I are the ones that filled the pool and that

- 1           this is what the lady told him on the phone.
- 2       Q.    Okay.
- 3       A.    And that they had just -- that A&I had filled the pool.
- 4       Q.    All right.  And who hired A&I to come fill the pool?
- 5       A.    The policeman told the lady and I think Colby Rowe was  
6           also told that they -- but I don't know.  I don't want  
7           to speak specifically.  Policeman said that they told  
8           him that they had -- were told by the County they had  
9           five days to fill the pool or to go to jail.
- 10      Q.    Okay.
- 11      A.    That's what the policeman told me that he was told.
- 12      Q.    Okay.  So let's assume that on the phone, the "they"  
13           and the "them," that's the Dixons; okay?
- 14      A.    Yes.
- 15      Q.    The police officer is calling and talking to -- and  
16           again, we're assuming -- Miss Dixon?
- 17      A.    Yes.
- 18      Q.    It's Miss Dixon who's saying that they were told you've  
19           got five days to fill the pool or you're going to be  
20           arrested?
- 21      A.    Miss Dixon called me on my cell phone which was on the  
22           sign of my property.
- 23      Q.    Yes, sir.
- 24      A.    She told me all these things about the pool and the  
25           using -- you can't use it.  She was ranting and raving.

1 We gave -- Colby Rowe, the real estate, spoke with her.  
2 She called him and she told him things. I don't want  
3 to speak what she told him. He went to the property.  
4 He saw the dirt. He called me. We went there. We  
5 called the police. The police officer, I showed him  
6 the phone, my cell phone, and he called direct from  
7 this lot.

8 Q. Okay.

9 A. And he spoke with the people that called. He said that  
10 this is what they told him, they had five days to fill  
11 it in, and I asked him would he press charges, and he  
12 said, I don't know if I can. They're saying the County  
13 told them to do it. He said, I don't know who to press  
14 charges against. And this is exactly what the police  
15 officer -- he called them and this is what they -- he  
16 wasn't on speaker phone.

17 Q. Okay.

18 A. This is what he told me after his conversation with --

19 Q. All right. So --

20 A. -- the Dixons, supposedly.

21 Q. Back to my question. Do you know whether it was the  
22 Dixons that hired A&I or do you not know who hired A&I  
23 to come fill the pool?

24 A. Phrase the question again, because it's interesting.

25 Q. Okay. Do you know whether it was the Dixons who hired

1 A&I to fill the pool?

2 A. I know that the police officers said that they hired  
3 A&I.

4 Q. Okay. All right. Now, when you asked the officer to  
5 press charges, what were the charges you were wanting  
6 pressed?

7 A. I didn't ask him. I asked him would he be pressing. I  
8 asked him would he be pressing.

9 Q. Okay.

10 A. I didn't ask him to. I asked him would he.

11 Q. All right. All right. That's fair enough. What  
12 charges are you referring to?

13 A. Destruction of private property or vandalism or  
14 trespassing. I -- there was a plethora of things to  
15 think about. I was very upset.

16 Q. All right. Let me ask you this.

17 A. One of the reasons, sir, that I bought the property was  
18 because it had that -- the swimming pool added a  
19 tremendous value to the property. With the real estate  
20 values, that was an amenity that I was hoping to use to  
21 sell the property with.

22 Q. All right. Well, let's talk about your complaint,  
23 then. You filed your complaint against Horry County;  
24 is that right?

25 A. Yes, sir.

1 Q. So in essence you have sued Horry County over this  
2 filled pool?

3 A. Yes, sir.

4 Q. And my question to you is what did the County do wrong?

5 A. The County -- the County forced someone to fill my  
6 pool. Instead of calling me, they forced someone to  
7 fill it and destroy the pool.

8 Q. Okay. And you say forced someone to fill your pool?

9 A. Yes, sir.

10 Q. Do you think the County was wrong in contacting the  
11 Dixons about this problem?

12 A. Yes, sir.

13 Q. Okay. Do you think the County should have been  
14 contacting you?

15 A. I think the County and I think A&I and I think the  
16 Dixons had my telephone number in huge block letters on  
17 the property. They could not -- and that's how this  
18 lady called me. They could not have come to her --  
19 they could not have come to the property and made a  
20 position on the property or the pool or anything  
21 without seeing my number, not anyone else's but mine.

22 Q. Okay.

23 A. That's what I do think.

24 Q. All right. Was your name on this sign?

25 A. No.

1 Q. Okay. Would Horry County have been able to come to  
2 that property and seen that number and known that it  
3 was your number versus the Dixons' number?

4 A. Yes.

5 Q. Okay. How is that?

6 A. It says by owner.

7 Q. Okay. All right. And while the sign was up, your  
8 claim is that you were the owner that was referenced on  
9 that sign?

10 A. Yes, sir.

11 Q. Okay. When did you put that sign up?

12 A. The day that we bought the property.

13 Q. Okay. And what day did you buy the property?

14 A. The date, I don't know exactly.

15 Q. Okay. What -- if you don't know the date, what event  
16 or what would have happened for you to own the  
17 property, the filing of the deed?

18 A. No, not the filing of the deed. When we finished the  
19 transaction, when they took the money.

20 Q. Okay.

21 A. When I took the -- when we went to the judge and we  
22 gave her the money.

23 Q. Okay. So when the judge consummated the sale, that is  
24 when you took ownership and put the sign up?

25 A. I don't understand about the judge consummating the

1 sale.

2 Q. All right.

3 A. You'll have to be a little more --

4 Q. All right. Let talk about the --

5 A. The way there's a trickery in here somewhere, and I  
6 have to figure it out. I'm a pretty smart guy.

7 Q. I understand.

8 A. And I didn't quite catch it, but I'm trying.

9 Q. I understand. I understand that that's your position  
10 and that's what you feel you need to do, but what I'm  
11 asking you is this is a case that is dependent on time  
12 line because you're claiming that you were the owner of  
13 the property at the time that Horry County did whatever  
14 they did. When they contacted the Dixons, they told  
15 the Dixons you need to fill the property, you say they  
16 should have contacted you; is that right?

17 A. I -- I -- actually, I don't know if -- I'm trying to  
18 think through your question. I don't know if they  
19 should have contacted anyone. I don't know if the pool  
20 should have been filled. I don't think it should have  
21 ever been filled, so I have to take umbrage with the  
22 thought as well as the question. It's not --

23 Q. All right.

24 A. It's my belief that the pool should never have been  
25 filled. Let me make it -- maybe I'm not clear on that.

- 1 Q. Fair enough.
- 2 A. I don't think they should have been on the property to  
3 begin with.
- 4 Q. Fair enough. What else is on that property?
- 5 A. Nothing.
- 6 Q. What else was on that property in the time frame that  
7 we're talking about right now?
- 8 A. The attorney, Miss Golding, used to own a home there,  
9 and she's the one that -- she used to have a residence  
10 there and there was a fire subsequently. So at the  
11 time when I purchased the property, there was a piano  
12 pool is what it's called, and there was a dock and  
13 there was the driveway and the landscaping was done and  
14 there was a pool house, a pool facility for the motor  
15 and filter and everything.
- 16 Q. Okay. Was there a fence around the pool?
- 17 A. No, sir. Oh, actually, there was a semi fence around  
18 the pool. There was a fence on -- it was bordering  
19 three sides.
- 20 Q. All right. So there was a fence -- there was a fence  
21 on three sides of this pool?
- 22 A. Yes.
- 23 Q. Two -- let me try and word this right. One of the  
24 walls, one of the fences, I guess, was actually the  
25 wall to the waterway; is that right?

1 A. Yes.

2 Q. Okay. The other two legs of the fence were a man-made  
3 wooden fence or what was it?

4 A. A brick on one side and then wood, and I think one side  
5 is brick and one side is wood. They're adjoining  
6 fences from adjacent properties.

7 Q. Okay. And the side that was missing fence was where  
8 the house was before it was destroyed; is that right?

9 A. I don't know. I don't know if there was ever a fence  
10 there. I know there was a house there. I don't know  
11 if there was ever a fence there.

12 Q. Okay.

13 A. I'm assuming that it should have been a fence.

14 Q. What was in this pool when you first looked at the  
15 property before the dirt ever got there when you were  
16 entertaining the notion of buying the property?

17 A. Nothing.

18 Q. Okay.

19 A. It was perfect condition. The water was out of it. It  
20 was in perfect condition.

21 Q. Okay.

22 A. There was not a drop of water in it, a drop of dirt in  
23 it. It had -- the tile -- it was made in the shape of  
24 a piano and the tile going across it is in black and  
25 white to -- for semblance of a piano keys.

1 Q. Okay. Let me ask you this. Do you think that that  
2 pool, or I guess you still call it a pool if it doesn't  
3 have water in it, but do you think that that pool was a  
4 hazard without having that leg of the fence on it?

5 A. No, sir.

6 Q. You don't think that was any danger or safety issue  
7 with any children around the neighborhood or anything?

8 A. It could not have been because it was -- it had the  
9 steps -- because it was a piano pool and made in the  
10 shape of a piano, the keys were going down. It was the  
11 same as saying a staircase would be a danger, or the  
12 steps that were on the house that was burned down,  
13 there was still -- there's a level of steps that would  
14 have been much more dangerous than the pool.

15 The pool didn't have a drop of water, didn't have  
16 access to water because there was no power to it, and  
17 there was no -- impossible. The steps were down and  
18 up. There was nothing you could cover like a  
19 refrigerator, like a door. There was no way. There's  
20 absolutely no more danger than walking up the steps of  
21 a mall or a doctor's office.

22 Q. Okay. How deep was the pool?

23 A. I think six feet.

24 Q. Six feet at the deepest end?

25 A. I think. I'm not sure. In fact, I think the six --

1 maybe five foot, five.

2 Q. All right. So just to make sure we're clear, a six-  
3 foot hole to you is not a danger or a hazard?

4 A. I will not accept that, that question, and I will tell  
5 you why because you're saying a six-foot hole like it  
6 could have been a well hole, and it is not a well hole.  
7 That is a -- actually, I will answer the question.  
8 That is a 20-foot by 40-foot, about, hole. That is not  
9 in essence a six-foot hole. That is a 20-foot by  
10 40-foot hole, and yes, it would be the same as any --  
11 it's out of the realm of reason to even question that  
12 because it's no way it could be covered or come back  
13 or -- it's beyond reasonable thought.

14 (Defendant's Exhibit Nos. 1 through 5 were marked.)

15 A. There would be no more danger than saying that a  
16 stadium at the football field, and that is a huge hole  
17 itself, a stadium, a -- you said you live in Florence  
18 now. The Florence Speedway is nothing more than a big  
19 hole and it gets 80,000 people in it, so I -- I -- I  
20 don't like the question. I think it was pointed and I  
21 don't like it.

22 Q. I understand that. Do you think that a six-foot hole  
23 in the ground is a danger or a hazard?

24 A. I do not think that a hole of any kind that is 20 by 40  
25 is unnatural to any -- many landscaped yards that has

1 terraces and things that go into it, no, sir. There is  
2 no way to access complete in and out. It has steps  
3 going all the way in and all the way out from one end  
4 to the other. It is in no way a danger.

5 Q. Okay.

6 A. In my thoughts.

7 Q. All right. Let me show you what's been marked as  
8 Defendant's Exhibit 1. Do you recognize that photo,  
9 Mr. Wilkes?

10 A. Somewhat, yes.

11 Q. Okay. What is that?

12 A. It is the swimming pool that was on the property.

13 Q. Okay. And that is the swimming pool that we've been  
14 talking about that you indicated was on this property?

15 A. I think so.

16 Q. Okay. Do you have any reason to believe that is not  
17 the swimming pool?

18 A. I do not.

19 Q. All right. Take a look at Defendant's Exhibit 2. Is  
20 that also a photograph of the swimming pool?

21 A. Yes.

22 Q. Okay. All right. Let me go ahead and show you 3, 4  
23 and 5. Are those photographs of the swimming pool on  
24 this property?

25 A. They are photographs of the property and the swimming

1 pool.

2 Q. Okay. First question, do you see the fence around the  
3 pool in any of those photographs?

4 A. Yes.

5 Q. All right. Show me that.

6 A. This is one fence. Of course, the property is too  
7 large to show the sides.

8 Q. Okay. So this fence that you've pointed out in  
9 Defendant's Exhibit No. 5 is the fence that borders the  
10 waterway?

11 A. Yes.

12 Q. Okay. All right. And you're saying that the photo  
13 isn't wide -- none of these photos are wide enough to  
14 show the side pieces to the fence?

15 A. They're not, but we can easily get county records to  
16 find when they got permitting, the two neighbors, for  
17 the two side --

18 Q. Okay.

19 A. -- fences. They're still there, by the way, and I'm  
20 sure that both the residents will testify that they've  
21 been there for many, many years.

22 Q. All right.

23 A. It's a double lot, Mr. Love. That's why someone would  
24 have to step back or perhaps they were purposely trying  
25 to -- to -- to somehow prejudice the pictures. I don't

1 know.

2 Q. Okay. So the fence that we're talking about -- we've  
3 got the fence on the waterway. The other two legs of  
4 the fence that are in place currently and both in  
5 place -- excuse me -- both in place currently and at  
6 the time of filling the pool, those legs of the fence  
7 are adjoined to the neighbor's fences?

8 A. I'm sorry. Again?

9 Q. All right. One leg of the fence is the waterway;  
10 correct?

11 A. Yes.

12 Q. Okay. The other two legs of the fence that were both  
13 there at the time that the pool was built and are  
14 currently still there are part of the neighbors'  
15 fences?

16 A. They're owned and they -- they're on adjoining property  
17 lines. I can't say whose was or wasn't, but they're  
18 on -- they are adjoining property lines, yes.

19 Q. All right. All right. Trying to digress a little bit.  
20 Let's go back.

21 A. Oh -- okay. Nothing.

22 Q. You good?

23 A. (Witness nods.)

24 Q. All right.

25 A. You look like Tom Cruise a little bit in the movie.

1 Q. Well, I appreciate that. Tom probably would not.

2 A. I was going to tell you crystal clear.

3 Q. Well, I'll ask you if you ordered the Code Red, but I  
4 don't think we're quite there yet.

5 Let's see. The way this sale went down was you  
6 sent -- and I forgot his name already.

7 A. Colby.

8 Q. You sent Colby to do the bidding and then I believe --  
9 and you can correct me if I'm wrong -- the bidding was  
10 left over for 30 days after you were the highest  
11 bidder?

12 A. No, I don't think so but --

13 Q. You don't remember that?

14 A. No, sir.

15 Q. Okay.

16 A. I never heard that before, ever.

17 (Defendant's Exhibit No. 6 was marked.)

18 Q. Show you what's been marked as Defendant's Exhibit  
19 No. 6, Mr. Wilkes. Let me know if you've ever seen  
20 that document before.

21 A. No, I never saw it before.

22 Q. Okay. Is that when you -- earlier you spoke of going  
23 before the judge and paying the money and getting the  
24 property. Is that what's going on in that document?

25 A. The judge doesn't take the money. She has a secretary

1           that takes the check.

2           Q.    Okay. Well, I was paraphrasing what you said. Is that  
3           the day that you became the owner of the property?

4           A.    I just told you I never saw the paper. How can I say  
5           that it was the same day if I never saw the paper?

6           Q.    Okay. All right. We can go with that answer. That  
7           works fine.

8                         This is a tax record dated the same date when the  
9           property was transferred out of the Dixons' name into  
10          your name. Do you think that's the date that you owned  
11          the property?

12          A.    You think it's the date. Actually, I spoke with the  
13          attorney today and told him I'm not exactly sure the  
14          date of the sale.

15          Q.    All right.

16          A.    I was working and I don't know.

17          Q.    Okay. Let me hold that for one second.

18          A.    I'll be happy to find out for you, though. Are you  
19          asking me is this the date that I bought it or the date  
20          that we -- we bid on the property and we gave the --  
21          the check?

22          Q.    I'm asking you if that is the date that the property  
23          transferred ownership from the Dixons to yourself?

24          A.    I'm not sure.

25          Q.    Okay.

1 (Defendant's Exhibit No. 7 was marked.)

2 Q. All right. Defendant's Exhibit 7 is what you were just  
3 looking at. It's the tax assessor's sales file, and I  
4 will represent to you that it is concerning the  
5 property at issue in this litigation. It's got the tax  
6 map number on there, if you care to verify that, and it  
7 indicates that the seller is Michael Dixon, et al.,  
8 and the purchaser's name is Tim Wilkes. Record -- date  
9 of sale is 8-23, 2010. Recording date, 8-23, 2010.

10 Look at the top of that sheet and let me know if  
11 I've misstated anything.

12 A. I think you misstated the seller's name.

13 Q. Okay. What's the seller's name?

14 A. Dixon, Michael D, et al.

15 Q. Okay. All right. What's the purchaser's name?

16 A. Tim Wilkes.

17 Q. All right. What's the date of sale?

18 A. 8-23.

19 Q. 2010?

20 A. Yes, 8-23, 2010.

21 Q. Okay. And what was the --

22 A. Recording date?

23 Q. -- recording date?

24 A. 8-23, 2010.

25 Q. Okay.

1 A. I have never heard of this Dixon, Michael D, et al., in  
2 my lifetime and nor did I buy from him anything nor do  
3 I think he was the owner of the property when I did buy  
4 it. I think it was purchased directly from -- from the  
5 distress sale at the Horry County Bank. I don't think  
6 he was the owner of it.

7 Q. Okay.

8 A. I think he'll be happy that -- you asked me if I saw  
9 something wrong. That's the only thing I see wrong.

10 Q. All right. So in Defendant's 7 --

11 A. Excuse me. I need to ask a question. Was this a short  
12 sale or something that I didn't know anything about,  
13 that the judge did not -- was he the owner of the  
14 property? I mean I can't very well answer you unless I  
15 know. Was he the owner of the property?

16 Q. I don't know, and fortunately, in a deposition setting,  
17 I don't have to. I get to ask the questions and that  
18 is the beauty of the beast.

19 A. I'm just trying more to -- as you can see, I'm very  
20 frank and --

21 Q. Sure.

22 A. -- open about this. I really never saw that or heard  
23 that before.

24 Q. Okay. All right. In looking at Defendant's Exhibit 7,  
25 as you've indicated, it says that the date of sale is

1 8-23, 2010. Do you have any information or  
2 documentation that would dispute that fact?

3 A. I would have a check that would be given to the -- to  
4 the Master-in-Equity. That's the only thing. Should I  
5 try to call and get that to you?

6 Q. Sure. That would be great. Not this second, though.  
7 We'll work on that afterwards.

8 (Whereupon, Defendant's Exhibit No. 8 was marked.)

9 Q. I'm going to show you what's been marked as Defendant's  
10 Exhibit 8. Let me know if that looks familiar to you.

11 A. I never saw this in my life.

12 Q. Okay.

13 MR. CONNELL: Does that say Harry  
14 Pavilack?

15 A. Yes, that's Harry Pavilack. I've never seen any of  
16 this in my lifetime.

17 BY MR. LOVE:

18 Q. All right. Let me ask you a few questions about this.

19 A. All right.

20 Q. Understanding that you are saying you have never seen  
21 this, does this purport to be, as you look at it, a  
22 deed from a public sale conveying the property at issue  
23 from the Dixons to Tim Wilkes?

24 A. I don't know why a sale would be given from -- I've  
25 purchased property. I've never had a Master-in-Equity

1 or State of South Carolina Master-in-Equity doing  
2 something like this. No, I don't.

3 Q. Okay.

4 A. I don't understand the whole thing from it and I don't  
5 understand your question because --

6 Q. Is that a deed?

7 A. -- if they did own it, why would they have -- I'm  
8 confused, to be honest, and I want to be honest and I  
9 want to finish with this, but I -- I never saw this  
10 before and I don't know if it's a deed or not and I  
11 don't know that -- though I know Harry Pavilack very  
12 well, I have no idea what all of this is about nor  
13 do -- I don't understand why if they owned the property  
14 and they were selling it to me that it was done at the  
15 courthouse, how we purchased it.

16 Q. All right. Is that a deed?

17 A. I don't know if it is or not, sir.

18 Q. Do you know what a deed is?

19 A. Yes, sir.

20 Q. Okay. And you've dealt with deeds before in your real  
21 estate handling?

22 A. I have.

23 Q. Okay.

24 A. But I don't know -- I wasn't there, and normally when I  
25 purchase a property, I'm there when it's done and I

1 promise you that Mr. Pavilack was not there in any way,  
2 shape or form --

3 Q. Okay.

4 A. -- whom I've known for 30 years.

5 Q. And as you sit here today, you can't tell me whether or  
6 not that is a deed deeding the property at issue into  
7 your name, Tim Wilkes?

8 A. Yes, it is. It is a property transfer from Cynthia  
9 Howe, the Master-in-Equity, to Tim Wilkes.

10 Q. Okay. And what date was that filed?

11 A. I believe it was the 23rd, 8-23, 2010.

12 Q. August 23rd, 2010?

13 A. Yes.

14 Q. Okay.

15 A. That's the dating on the paper. I don't know when it  
16 was filed.

17 Q. Sure. Do you have any reason to believe that that was  
18 filed a different date than August 23, 2010?

19 A. Sure, I have reason to believe it. I have reason to  
20 believe everything that goes on in that courthouse -- I  
21 don't believe -- I have reason to believe the -- the  
22 integrity of that Master-in-Equity's office.

23 Q. Okay.

24 A. Yes, I do.

25 Q. All right. So do you think that the Master-in-Equity

1 has made up that date or made some change on there?

2 A. I don't know. I just told -- you asked me did I have  
3 a reason to believe, and I said I don't -- I do not  
4 believe in the integrity of that particular office in  
5 any way, shape or form.

6 Q. Okay.

7 A. That's to answer your question about my beliefs or my  
8 opinions of that paper or what may have happened in  
9 that court or in that office. Yes, I doubt everything  
10 that goes on there.

11 Q. Okay. All right.

12 A. Sir, I must also bring this to be recorded. If they  
13 sold me this property, why I doubt it, why would they  
14 call me and the real estate agent and curse so much  
15 about the property if they themselves had willingly  
16 set -- at the magistrate and sold me and deeded me over  
17 the property, why would they have called me and cursed  
18 me and called the real estate guy and cursed him if  
19 they had did that? I'm a little confused from -- from  
20 the whole thing.

21 Q. I understand that. I certainly can't answer that  
22 question. I don't know why anyone -- I don't know why  
23 they would do that.

24 A. Thanks.

25 Q. Probably because they were being foreclosed upon and

1           they weren't happy about it, not that that should be  
2           taken out on you as the buyer, but maybe that was the  
3           situation.

4       A.    Oh, you think they were forced to sign that deed?

5       Q.    I think they were foreclosed upon.  Usually people  
6           aren't too happy when they go through the foreclosure  
7           proceedings.  Usually that's with the financial  
8           institution, not the buyer.

9                       MR. LOVE:  Let me get you to mark this one  
10                      while it's quiet.

11                     (Defendant's Exhibit Nos. 9 and 10 were marked.)

12       BY MR. LOVE:

13       Q.    All right.  Got a little bit out of order.  Let's look  
14           at this one, if you will, please, sir.  Let me know if  
15           you've ever seen that document.

16       A.    No, I never saw this.

17       Q.    Okay.  All right.  And remind me of the numbers.  Is  
18           that No. 10 down at the bottom?

19       A.    Yes.

20       Q.    All right.  Defendant's Exhibit 10 you say you have  
21           never seen.  All right.  Is that your signature on it?

22       A.    No, it's not.

23       Q.    Okay.  Did you authorize anyone to sign this piece of  
24           paper on your behalf?

25       A.    It could be it's been signed by Colby Rowe on my behalf

1 but I don't -- I didn't see it and I don't know, but  
2 he -- it could have been signed by Colby. I don't  
3 know.

4 Q. All right. Are you okay with Colby signing this on  
5 your behalf?

6 A. I don't -- I'm not going to say yes or no right now  
7 because I am -- I am shocked about it so --

8 Q. Okay. Do you know what this is?

9 A. An assignment of bid.

10 Q. All right. And who was the assignment from and to?

11 A. Assignment is from Bank of New York as Trustee for the  
12 benefit of the Certificate Holders of CWALT --

13 Q. Let me stop you there. I don't want you to have to  
14 read the caption. You are reading the caption, and  
15 what I'm asking you is down in the body of the text it  
16 says that something is assigning its bid to someone,  
17 and I think it's a company to you individually. Do you  
18 see that?

19 A. Yes.

20 Q. Okay. And what is the company name?

21 A. MTM International.

22 Q. All right. Is that one of your companies?

23 A. It would have a bearing on me. I'm affiliated.

24 Actually, the MTM stands for Mande, Travis, and Malena,  
25 my three children and -- but I don't know if it's

1           actually in my name or not. That would be something  
2           for the accountant to tell me.

3       Q.    Okay. All right. Do you know if at the sale of this  
4           property was Colby bidding on your behalf or was he  
5           bidding on behalf of this business?

6       A.    That's a very good question. Just in the philosophy of  
7           real estate, sir, probably on his behalf.

8       Q.    In Colby's behalf, you say?

9       A.    Sir?

10      Q.    In Colby's behalf, you say?

11      A.    I'm sure he wasn't there because he loves me. I'm sure  
12           he was there because he loves himself.

13      Q.    Come on, now. Let's not sell yourself short.

14      A.    I'll be honest. I have to answer directly, and I would  
15           say on his behalf to answer that question.

16      Q.    All right.

17      A.    The MTM, I wish I could -- I'm not sure, so I don't  
18           want to give definitively.

19      Q.    Was the company -- is it NTM or M?

20      A.    M, MTM.

21      Q.    I'm sorry. MTM. Was the company the winning bidder or  
22           was Tim Wilkes?

23      A.    I don't know. I haven't saw this before and I don't  
24           know from -- from which name he would have given, so I  
25           wasn't there.

1 Q. All right. Let me ask you this. You see on there a  
2 stamp where it was filed? Do you see that?

3 A. Yes, it's clocked in at 10 August 25 p.m. 4:11.

4 Q. All right. August 25th, 2010 --

5 A. 4:11.

6 Q. -- at 4:11 p.m.

7 A. Yes, sir.

8 Q. And where was that filed? Does it say down there on  
9 the stamp?

10 A. Horry County, Clerk of Court.

11 Q. Okay. I think that's all I have on that document.

12 Now, going back and picking up Defendant's --

13 A. By the way, Mr. Love, it's very interesting and I hope  
14 you see my forthrightness on all of it. I'm not trying  
15 to hide anything. I just -- some of this is really --  
16 I don't know how to answer you. I don't want you to  
17 think I'm being smart with you.

18 Q. I can deal with it. We'll move forward.

19 A. All right.

20 Q. All right. I'm going to show you Defendant's Exhibit  
21 9. Tell me if you've ever seen that document?

22 A. No. No.

23 Q. Okay. What does it say it is?

24 A. It says Horry County Code Enforcement Division made out  
25 to Michael Dixon.

1 Q. Okay. You know that Horry County Code Enforcement?

2 You know those folks?

3 A. Do I know them?

4 Q. Yes, sir. You ever had any dealings with them, I  
5 should say?

6 A. Yes, I had dealings with one man named Jacobs on a  
7 property two houses before that one.

8 Q. Okay. All right. Now, what's the date on that  
9 document?

10 A. It's hard to see, but it's -- I'm going to give the  
11 benefit of the doubt. It's 8-20-10 --

12 Q. All right.

13 A. -- 2010, but again, it's not legible, the month is not  
14 legible, but I'm assuming because you brought it, it's  
15 8-20, 2010.

16 Q. Okay. And what is this? What is this document?

17 A. This is Horry County Code Enforcement Division. It is  
18 a permit for -- it's actually not a permit. Looks like  
19 it's -- it's remarks, pool must be secured by 48-inch  
20 fence or filled in within five working days --

21 Q. Okay.

22 A. -- which is what the lady said they told her.

23 Q. Okay. If Horry County had given this document to the  
24 Dixons on August the 20th, 2010, would that have been  
25 proper or should it have come to you?

1 A. I don't know. I've already told you I don't know the  
2 exact date that the auction was, so I don't know.

3 Q. Okay. Well, let me ask you this, and I know what the  
4 answer is going to be but I'll ask it anyway. Who  
5 owned the property at issue on August the 20th, 2010?

6 A. I don't know. I don't have my dates when the auction  
7 was and when I gave the money.

8 Q. Okay.

9 A. I really don't know, but I'll find out for you, Mr.  
10 Love.

11 Q. All right. Do you know -- as you sit here today, do  
12 you know whether there were any documents filed of  
13 record showing that you were the owner of the property  
14 on August the 20th, 2010?

15 A. On which date, August the 20th?

16 Q. Yes, sir.

17 A. I'm sure that there's documents. I'm positive there's  
18 documents showing that I purchased the property.

19 Q. Okay. Let me ask it again. Do you know as you sit  
20 here today of any documents of record that were filed  
21 prior to or even on August 20th, 2010, showing you, Tim  
22 Wilkes, as the owner of the property at issue?

23 A. I'm sure that I have a check that's dated somewhere.

24 Q. Was that document filed with the courthouse?

25 A. I'm sure it was cashed by the courthouse.

1 Q. All right. Were there --

2 A. I'm sure, but we will find out. I can't wait to see if  
3 Cynthia Howe did that. That would be interesting to me  
4 as well.

5 Q. Okay. Well -- and you've indicated a couple of times  
6 that you're trying to be forthright and I do appreciate  
7 that, but I feel like now we're not because the  
8 question is very direct and clear, and that is do you  
9 know as you sit here today of any documents that have  
10 been filed of record prior to or on August 20th, 2010,  
11 that showed you, Tim Wilkes, was the property owner of  
12 the property in dispute here today?

13 A. I truly don't know. I'm sure that I have some form of  
14 paperwork or canceled check that shows that I purchased  
15 the property, sir. I'm sure of it, but I don't have it  
16 with me, nor did I -- no, I really don't know, but I  
17 will do my best to get you everything you need --

18 Q. Okay.

19 A. -- and have it sent to you.

20 Q. Do you know what I mean when I say a document of  
21 record?

22 A. Yes.

23 Q. A document --

24 A. I know exactly what you mean. I don't know if you and  
25 I mean the same, but I know what I mean and it could be

1           that there's -- there's something that you -- I don't  
2           know exactly what you're looking for in this, nor do I  
3           really care. I -- I know that I purchased the  
4           property, I know that I paid for the property, and that  
5           the property was paid for then. I am sure that I will  
6           have documentation showing you that I had paid for the  
7           property, sir, and that -- that's my answer to you.

8           Q.    Okay. If you locate any documents of record, meaning  
9           documents that you filed with any clerk of court, with  
10          the Master-in-Equity, or any other document of record,  
11          with the tax office, anybody else, that shows that you  
12          owned the property on August the 20th, 2010, I would  
13          ask that you get those to your attorney and forward  
14          them to me. Okay?

15          A.    Uh-huh.

16          Q.    Is that a yes?

17          A.    I'm sorry. I --

18          Q.    Is that a yes, you'll do that for me?

19          A.    Get you the documents, sir?

20          Q.    Yeah, any documents that have been filed of record.

21          A.    Sure. Sure.

22          Q.    Okay.

23          A.    Yes. May I speak to Mr. Connell, please?

24          Q.    Not substantively about the case, you cannot but --

25                       (Defendant's Exhibit 11 was marked.)

- 1 Q. All right. Defendant's Exhibit 11, take a look at that  
2 and tell me what you see, sir.
- 3 A. I see what the -- I see the property at Plantation  
4 Point. It shows a partial picture of the pool that has  
5 been filled in.
- 6 Q. Okay. I mean we're now allowed to testify, but that's  
7 the piano pool full of dirt?
- 8 A. Yes. Well, it's not what it looked like when I saw it,  
9 but yes, that's after it settled.
- 10 Q. All right. My understanding from your testimony is  
11 when you saw it, there was dirt covering that sidewalk  
12 around the pool?
- 13 A. Could not see where the pool was.
- 14 Q. Okay. You couldn't see the sidewalk?
- 15 A. No, sir.
- 16 Q. Couldn't see the pool; is that right?
- 17 A. Yes, just knew where it was, yeah.
- 18 Q. Okay. And --
- 19 A. You could see the sidewalk right here, sir, but you  
20 couldn't see the -- this is what's called -- around it,  
21 it's called coping.
- 22 Q. Okay.
- 23 A. And you could not see the coping at all.
- 24 Q. Okay. All right.
- 25 A. This would be the six to 12-inch brick work that's done

1           around all pools.

2           Q.    Right.

3           A.    It's called coping.

4           Q.    Got you.

5           A.    And the coping could not -- was not visible at all.

6           Q.    All right.  So the coping and the pool, neither of  
7           those were visible; the sidewalk was?

8           A.    This is not a sidewalk.  This is a patio, what you're  
9           looking at now.  It was -- it was -- adjoined the home  
10          property, the home foundation, so it's not like it was  
11          a small patio.

12          Q.    Got you.

13          A.    It's a little bit -- the picture is a little deceiving.

14          Q.    Okay.

15          A.    Because this goes right into where there was a -- a  
16          home.

17          Q.    Okay.  Was the patio covered with dirt?

18          A.    No.

19          Q.    Okay.

20          A.    Beside the patio was big hills of dirt.  It would be  
21          the other side, to the south side of that, sir.

22                       (Defendant's Exhibit No. 12 was marked.)

23          Q.    All right.  Defendant's Exhibit 12, tell me if you've  
24          seen that before?

25          A.    Yes.

1 Q. All right. What is that?

2 A. This is an estimate to have a pool -- about the pool,  
3 the conditions of it and what was -- what was the long-  
4 term effect of filling the pool, having the heavy  
5 equipment around the pool did to the integrity of the  
6 pool.

7 Q. Okay. And who gave that estimate or opinion or however  
8 you want to term it?

9 A. Sergio Gonzalez.

10 Q. All right. Do you know Mr. Gonzalez?

11 A. I do.

12 Q. All right. Has he done work for you in the past?

13 A. Yes, he's doing work for me now, actually, but not in  
14 the past at this point, I don't think. Yes, in the  
15 past I've known him.

16 Q. Okay. So you knew him prior to April 2011 when he gave  
17 that opinion?

18 A. Yes.

19 Q. All right. But he hadn't done any work for you prior  
20 to that; he's done work for you since that date?

21 A. Yeah, I think he did work -- I'm trying to get my --  
22 my -- in line. Yes, he did work for me before.

23 Q. Okay. What all has he done for you? Has he worked on  
24 the putt-putt course for you?

25 A. Yes.

1 Q. All right. Has he worked on your personal residence?

2 A. No.

3 Q. Okay. What else has he done for you?

4 A. That's it.

5 (Whereupon, there was a pause in the proceedings.)

6 Q. All right. In this estimate, Defendant's Exhibit 12,  
7 it looks like Mr. Gonzalez has characterized the pool  
8 as 40 foot long and 20 foot wide; is that right?

9 A. He estimated with the coping and all.

10 Q. Okay. Did he measure it or did he estimate?

11 A. No. I think it was a measure. I asked him to include  
12 the coping and everything with it.

13 Q. Okay. And he puts, it appears that large earth-moving  
14 equipment was used to fill and grade the area. Now,  
15 were you there when he did all this, when Mr.  
16 Gonzalez --

17 A. Went there?

18 Q. -- went to the pool?

19 A. Yes.

20 Q. Okay. What did he use or what was he gathering, what  
21 information did he use to say it appears that large  
22 earth-moving equipment was used?

23 A. His eyes.

24 Q. He saw the equipment?

25 A. No.

1 Q. Okay. What did he see?

2 A. Well, I'm assuming that he didn't think someone took a  
3 bucket full of dirt. From, I'm just assuming, his  
4 professional opinion --

5 Q. Okay.

6 A. -- brought him to believe that it was done -- that the  
7 whole entire pool was not filled in using a shovel.

8 Q. All right. So he's basing that statement on --

9 A. I can't speak for his personal or professional opinion.

10 Q. Okay. So in your view and to your knowledge, he's  
11 basing that on an assumption?

12 A. Uh-huh.

13 Q. All right. Has he done any digging around the pool to  
14 check out the piping and all the drain work?

15 A. No, I don't think so.

16 Q. Okay. All right. This estimate, he indicates to  
17 replace the pool in its exact form and size would cost  
18 \$68,000. Is that what you're claiming as damages in  
19 this lawsuit?

20 A. Up and until today.

21 Q. Okay. Do you plan on amending your complaint to add  
22 damages?

23 A. It's possible. I'm not as happy now as I was.

24 Q. Okay. Now, let me ask you this. Never mind. Scratch  
25 that.

1 A. I'll finish my thought on that. What I really wanted  
2 to do was finish amicably as possible, sell the  
3 property, give someone a definitive answer that the  
4 pool was -- was good or would be tore up or what was  
5 going on, taking my losses or whatever, and that's what  
6 I was wanting to do. I didn't know it would drag on so  
7 long with the property not being able to -- you know,  
8 so that you'll be clear on my answer, it wasn't meant  
9 in any way to be facetious. It's just that I just  
10 wanted to move on, to be honest with you. Property  
11 values are going down, not up.

12 Q. Understood. Let me ask you this. Have you conveyed  
13 that to the County?

14 A. I have not, no.

15 Q. Okay..

16 A. I don't know if my attorney has.

17 Q. Did you get any other estimates on the pool?

18 A. No, sir.

19 Q. Okay. Any estimates on removing the dirt from the  
20 pool?

21 A. No, sir.

22 Q. All right. Any estimates on making repairs to the pool  
23 other than replacing the pool in its entirety?

24 A. I've spoken to several people, sir, and they say  
25 that -- basically what the letter says, that there's

1 just -- there is no way for anyone to dig around and  
2 look at the wall and see if the integrity has been  
3 jeopardized. There's no way to know the piping. It's  
4 an impossibility.

5 I spoke to a contractor before I came, just in  
6 general. He asked me to go look at a property and I  
7 told him I have to go to deposition. He said why and I  
8 explained. He said, oh, there is no way that you can  
9 ever know. He said, it's an impossibility for you to  
10 give anyone a -- a warranty. He said, there is no way  
11 anyone can ever know the amount or the damages to you  
12 and -- but I will be glad to get his professional  
13 opinion if you want, and many, many more. From what I  
14 have gathered from everyone, there is really -- it's  
15 kind of an odd thing, Mr. Love. No one really knows --  
16 you understand? It's no way anyone can really define  
17 it.

18 Q. I understand that. Did you ever see the pool in  
19 working order prior to purchasing this house? I'm  
20 sorry. This property?

21 A. Yes.

22 Q. You saw the pool in working order?

23 A. Yes, I did actually see it.

24 Q. Full of water?

25 A. Not this time, but several years ago.

1 Q. Several years ago. Okay.

2 A. I was at the house several years ago and I saw it full  
3 of water.

4 Q. And that means -- you mean several years prior to the  
5 purchase?

6 A. Yes, sir.

7 Q. Okay.

8 A. It was an attorney, sir, who owned it. The name was  
9 Golding.

10 Q. I'm familiar. What was your ambition with this  
11 property when you purchased it? Were you going to  
12 build a house or just turn the property?

13 A. I -- I was wanting to -- to -- it's in my nature to try  
14 to do business with it in some way. I -- I --

15 Q. There's nothing wrong with that.

16 A. Yeah, I would have probably intended and I'm sure that  
17 I intend now to try to do some kind of business.  
18 That's why I said I amicably just wanted to finish with  
19 it and somehow move on and not let things --

20 Q. Sure. Let me ask you this. I don't mean to delve into  
21 your business affairs too far, but let me ask you this.  
22 The property you purchased, I believe, was for one  
23 ninety-six. Does that right?

24 A. Yes, sir.

25 Q. Okay. What did you hope to get out of it?

1 A. I put it for sale before this even happened. A sign  
2 was on it for four forty-nine, sir.

3 Q. Okay. All right.

4 A. It's been on it. It was on it before this -- before it  
5 was filled in, sir.

6 Q. Let me ask you this.

7 A. I do believe that Mr. Rowe told me that in the woman's  
8 screams that she had told him that she didn't know how  
9 it happened and, again, I don't know this, but he did  
10 mention to me that the woman was cursing and all and  
11 saying that she had offered the bank 350 or \$400  
12 herself for it and that they turned it down.

13 Q. Okay. All right.

14 A. And of course, you can deposition Mr. Rowe.

15 Q. All right. Have you ever had any other issues with the  
16 code enforcement -- I think you mentioned one with the  
17 house two doors down.

18 A. Actually, I did, and actually that's why I'm not as  
19 happy as I was because I see the man's name on the --  
20 and I see Jarrett, and I'm assuming his name -- and I  
21 told you only Jacobs because I didn't remember his  
22 first name entirely, but now I know it's Jacobs,  
23 Jarrett Jacobs, I do believe.

24 Q. Okay.

25 A. And they --

1 Q. In fairness to Jarrett, there are two Jacobs. There's  
2 a David Jacobs and Jarrett Jacobs, so go ahead, though.

3 A. Yeah, but I think that -- I think I had an issue on  
4 another property with Jarrett, I believe.

5 Q. Okay.

6 A. The same one who did that. That's why it kind of  
7 flashed on me when I saw it and I became suspicious.

8 Q. Okay. Any other -- I hate to call it run-ins, but I  
9 don't know what other to use. Any other problems,  
10 issues, or run-ins with the code enforcement office?

11 A. I don't think so.

12 Q. Okay.

13 A. Actually, not at all. Not to my recollection at all,  
14 any.

15 Q. Okay.

16 A. I'm trying to think. If it was, it was a business  
17 nature, perhaps something from signage from a store or  
18 something, but it would be so far back. I'm just  
19 trying to make sure I don't -- I don't mislead, but I  
20 don't think so, Mr. Love.

21 Q. All right.

22 A. This was a pretty -- this was a hot issue with me and  
23 him, though. He actually stopped the -- they were  
24 putting a floor in a house and he stopped them and --  
25 because there was no permitting, and you cannot stop

1           them. You don't need a permitting to do a floor. We  
2           were doing the floor only and permitting is not  
3           required for that, and I became very upset and very  
4           annoyed about it, and he shut them down. He put a stop  
5           workage on it and I had to go to the County and this  
6           and this, and yes, it became a huge issue, and in the  
7           end they -- they admitted that I did not need a permit  
8           for to put a floor. Flooring is one thing that it's  
9           not required. And yes, and he was involved in that and  
10          he became extraordinarily hostile to me, and I  
11          reciprocated when I went.

12        Q. All right. Let me show you this, and we'll get this  
13          marked real quick. We're about to wind up, I promise  
14          you.

15                (Defendant's Exhibit No. 13 was marked.)

16        Q. This is Defendant's Exhibit No. 13. Is that the  
17          property we're talking about?

18        A. That's it.

19        Q. Okay. And it looks like the date of that slip is April  
20          22nd, 2010?

21        A. Yes, sir.

22        Q. All right. Now, I think there's some note on there  
23          that may indicate it was resolved in June of 2010,  
24          right in the middle. I don't know. Do you recall when  
25          that -- if that's when it was wound up and you were

1           able to continue with the floor?

2           A.    It was never really wound up, to be honest with you.

3           I -- they -- I don't know if I still have the paperwork  
4           from this, but I have -- I was there for many, many  
5           hours. I actually called the County councilman while I  
6           was there, Mr. -- I'm trying to think of his name. I  
7           actually spoke with him.

8                        I was there for many, many hours and they tried  
9           to get me to sign a \$30,000 permit or they said they  
10          wasn't going to allow me, and I refused to do so and I  
11          wrote on the -- in the end I said I would do it and I  
12          wrote on the paper they are requiring me to do this, to  
13          do a \$30,000 permit for a floor that they said I don't  
14          need.

15                      They refused to sign it. I went to the secretary  
16          there. They refused to sign it and they were all  
17          upset, and I don't think it was ever resolved. I never  
18          got a permit. Do you have a permit? I don't think  
19          there was ever a permit given and the house was sold  
20          and there was nothing from it.

21                      I'm missing a paper.

22          Q.    Did you get the floor finished before selling the  
23          house?

24          A.    No. I sold it -- yeah, they finished up, I guess, what  
25          was around the floor, but I don't know exactly, and we

1 sold the property as-is and they were told the property  
2 was being sold as-is; that's why there was not a permit  
3 on it.

4 Q. Okay.

5 A. And -- yes, and I -- I hopefully -- I don't know  
6 because it was a really ugly time. I mean it was  
7 something because I signed the paper, they made me fill  
8 the permit, I filled it and I put on it under remarks,  
9 and they told me they wouldn't allow me to put remarks,  
10 and I told them, how can you tell me not to put  
11 remarks? You're telling me to sign something for  
12 \$30,000 that you know is not even \$200 and it's a  
13 floor, you don't have to have it, and the councilman,  
14 the county councilman himself was on speaker phone with  
15 them.

16 Q. Was that Schulz?

17 A. Huh? No, it wasn't Schulz.

18 Q. No?

19 A. It was --

20 Q. That's all right. Don't worry about it.

21 A. No, no, no. I want to give you. I think it would be  
22 very interesting, because now I'm really not happy.  
23 Anyway, I'll get it for you.

24 Q. Okay.

25 A. We had everyone came in. I mean it was -- it was a --

1 a big discussion.

2 Q. Let me ask you this. Does Plantation Point have a HOA?

3 A. Not that I am aware of.

4 Q. Do they have covenants anywhere?

5 A. I'm -- I'm sure that there's -- there's some kind.

6 We've actually spoken about this because there's  
7 people -- I live in a gated community, and I mean it's  
8 really like the Mafia there. And over there, they  
9 really don't have -- they're free to ride the golf  
10 carts and the boats are parked in the yard and SUVs,  
11 the four-wheelers everywhere. I mean it's -- and we've  
12 spoken in detail how -- how there is not one. I never  
13 paid an HOA fee nor have I ever got a letter or  
14 anything from an HOA of any type.

15 Q. Do you know if Burroughs & Chapin may have a document  
16 like that?

17 A. Don't know of it. Don't know of it.

18 Q. Okay. That's fair.

19 A. We've wondered about it. I can't wait to find out now.

20 Q. All right.

21 A. They have one in Grand Dunes.

22 Q. I would imagine so. What did I forget to ask you?

23 A. Well --

24 MR. CONNELL: Don't answer that.

25 A. You forgot to ask me exactly what I think was all this

1           between Jarrett Jacobs and the County and all this now.

2 BY MR. LOVE:

3 Q.    What is it?

4 A.    You tell me.  You're the one who had the meeting with  
5       them.  I tried to blot it out of my memory until now  
6       and -- but let's --

7 Q.    You think they have it out for you?  You think Jarrett  
8       has it out for you?

9 A.    It's always a pissing contest with all these -- any  
10       time someone gives a rebuttal to someone's authority,  
11       whether it be a student at the teacher or whatever,  
12       there's always some kind of animosity.  I'm sure you  
13       agree, and yes, they were not happy.

14 Q.    Okay.

15 A.    But I've seen David Jacobs a few times in the County  
16       building and he seems -- he seems pleasant.

17                 MR. LOVE:  Okay.  All right.  Well, I  
18                 think that's all I have for you, Mr. Wilkes.

19                 I took more time than I usually do.

20 EXAMINATION BY MR. CONNELL:

21 Q.    I got three questions.

22 A.    Yes, sir.

23 Q.    The order of sale says that you bought the property on  
24       August 5th, 2010; is that right?

25 A.    Yes.

- 1 Q. For \$196,000?
- 2 A. Yes, sir.
- 3 Q. You paid cash?
- 4 A. With a check, yes.
- 5 Q. All right. And you gave that to the Master-in-Equity's  
6 office?
- 7 A. Yes, sir.
- 8 Q. The deed indicates that the property was sold at a  
9 public sale to you on August 5th, 2010; is that  
10 correct?
- 11 A. Yes, sir, the County, and what I know, the County sold  
12 it to me.
- 13 Q. All right. The code enforcement letter that was sent  
14 to Michael Dixon on August 20th, 2010 --
- 15 A. I don't know where -- I don't know how they would have  
16 posted it if there was no home there and he didn't live  
17 there. I don't even know how they would give that to  
18 him.
- 19 Q. And you didn't get a copy of it?
- 20 A. No, sir.
- 21 Q. And you already had your for sale sign on the property?
- 22 A. Yes, sir, with my number on it, and this property --  
23 they could not have given it. They could not have  
24 served this. I don't know how they got service on it.
- 25 Q. Okay. And you were the high bidder on August 5th; is

1           that right?

2       A.    Yes, sir.

3       Q.    2010?

4       A.    Yes.

5       Q.    And so the woman who called you on the phone was a  
6            woman calling you to tell you that someone was putting  
7            dirt in your pool on your land; is that right?

8       A.    Actually, no.  She tells me you can never use your pool  
9            again.  She was cursing and she said, you can't use  
10          your pool again, I want to see you use your pool, and  
11          that's when I went -- I didn't know -- I thought  
12          someone had hurt the pool in my own personal residence.

13      Q.    That was Miss Dixon who called you?

14      A.    I -- she never gave me her formal name.  I mean she  
15          said it's -- she did -- it's her number.  The police  
16          called her.  I --

17      Q.    That was Miss Dixon's phone number?

18      A.    That's what the police officer said, yes.

19                   MR. CONNELL:  All right.  Okay.

20                   REEEXAMINATION BY MR. LOVE:

21      Q.    A few follow-up questions for you.  Your attorney just  
22          asked you if that date, August 20th, 2010, whether you  
23          had your sign out on the property or not, and you  
24          indicated yes; is that correct?

25      A.    Yes.

1 Q. Okay. Earlier you told me you didn't know, you didn't  
2 know dates, and you didn't know when you put your sign  
3 on the property; you just know it was when you got the  
4 property?

5 A. No. I told you that I did not know -- or I meant to  
6 tell you I did not exactly when the property was -- you  
7 had asked me about the property and the deeding and all  
8 this. That's what's in reference to a question there,  
9 and that was my answer is we know from about -- we  
10 know -- it was on -- the sign was on the property much  
11 before this one, but I didn't know what your question  
12 was about the -- I don't know. You asked about the  
13 transfer or something with the -- with the magistrate,  
14 Cynthia Howe.

15 Q. Okay.

16 A. And that's really why I perhaps gave -- I didn't mean  
17 to mislead if I did.

18 Q. All right. And you were asked by your attorney whether  
19 you were the high bidder on August the 5th, and earlier  
20 I'd asked you about this company that was bidding on  
21 the property. Was it actually the company that was the  
22 high bidder on that property or was it you?

23 A. That's a good question. I had asked Colby to -- Colby  
24 was --

25 Q. Let me ask it this way.

1 A. Okay.

2 Q. You told your attorney that you were the high bidder on  
3 August 5th, 2010, on the sale of this property.

4 A. It's a matter of semantics.

5 Q. Do you know that for a fact? It's not about semantics.

6 A. I hired Colby Rowe to bid for me on the property. I --  
7 not -- as a matter of fact, I was not present at the  
8 auction.

9 Q. Okay.

10 A. That's what you're looking for, no?

11 Q. No, but you gave me enough. I don't have anything  
12 else.

13 MR. CONNELL: Let me see the exhibits  
14 again, please, sir.

15 MR. LOVE: Sure. I don't know what all  
16 I've got here. Let me -- I think that's  
17 right. You may have some of my notes in  
18 there, too, somewhere.

19 REEXAMINATION BY MR. CONNELL:

20 Q. All right. MTM International, who is that?

21 A. MTM International is a company. It's an LLC and we  
22 have several LLC's from -- set up, and I -- I -- MTM  
23 bought a property, owns only one property. It's a  
24 restaurant.

25 Q. Is MTM an LLC that you own?

1 A. I don't know. I really don't know.

2 Q. The Master-in-Equity's order indicates that on August  
3 5th, 2010, you were the successful bidder; is that  
4 right?

5 A. It says Tim Wilkes, yes. It does not say MTM.

6 Q. Does the deed say that on August 5th, 2010, you were  
7 the successful bidder?

8 A. It says Tim Wilkes. It does not say MTM.

9 MR. CONNELL: Okay. Very good. Thank  
10 you.

11 MR. LOVE: All right. That's all.

12 (Deposition concluded at 2:45 p.m.)  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE

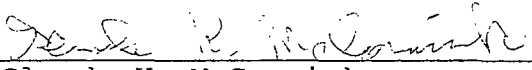
1  
2  
3 I, the undersigned, Glenda K. McCormick, Notary  
4 Public in and for the State of South Carolina, do hereby  
5 certify that the foregoing statement under oath was taken  
6 on the aforementioned date;

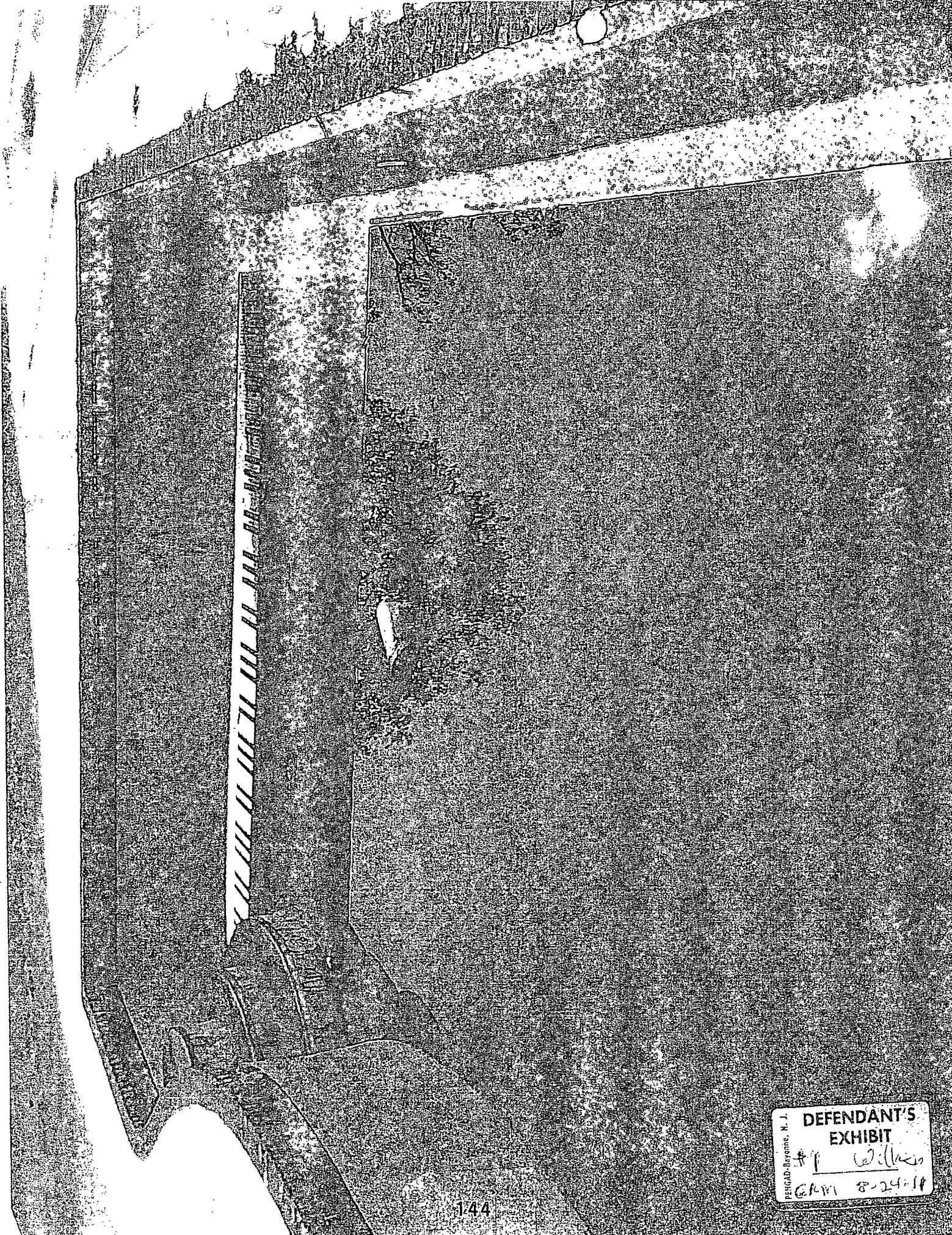
7 That the within deponent was sworn to tell the  
8 truth, and that the foregoing is an accurate  
9 transcription of the testimony taken under oath;

10 That all exhibits entered herein are attached  
11 hereto (if requested by counsel) and made a part of this  
12 statement under oath.

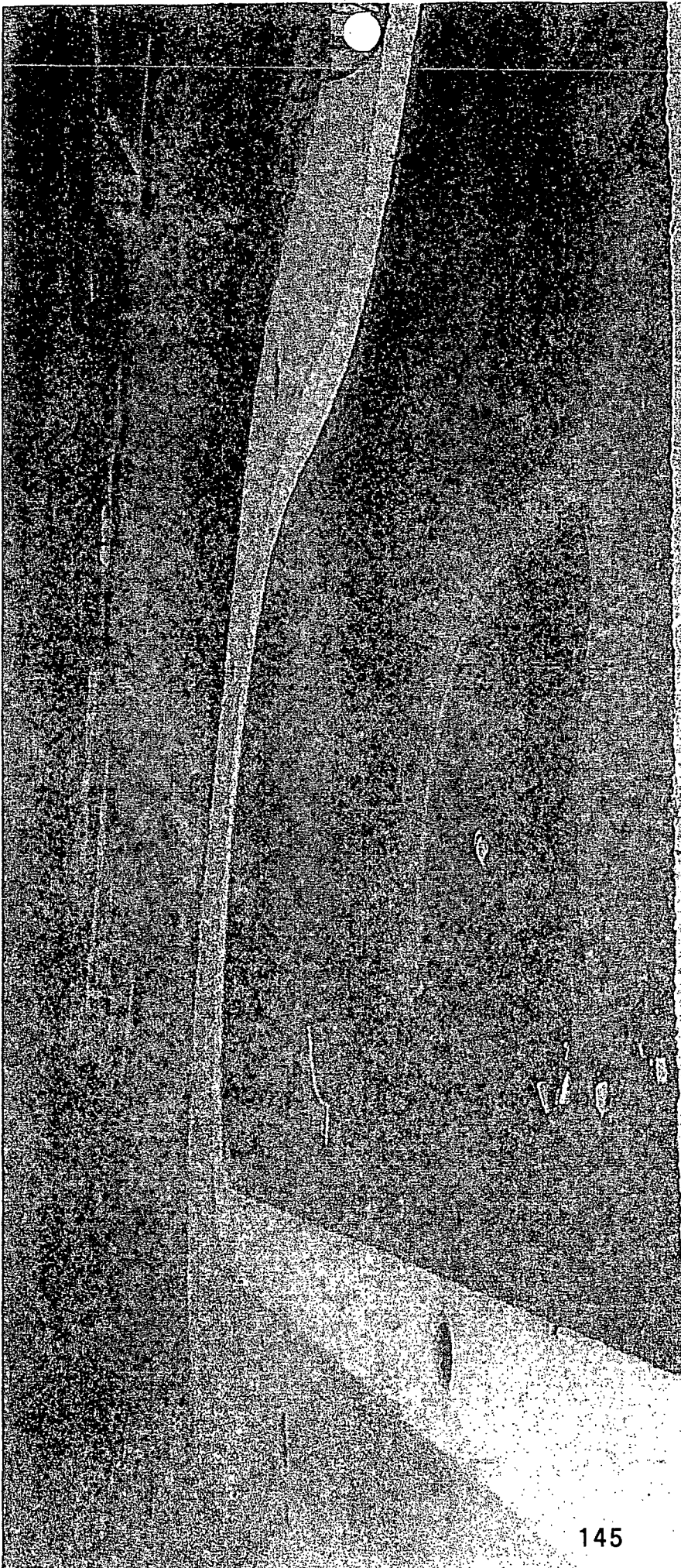
13 I further certify that I am neither counsel nor  
14 solicitor to any of the parties in said suit, nor  
15 interested in the event of the cause.

16 In witness whereof, I have hereunto set my hand and  
17 seal on September 12, 2011.

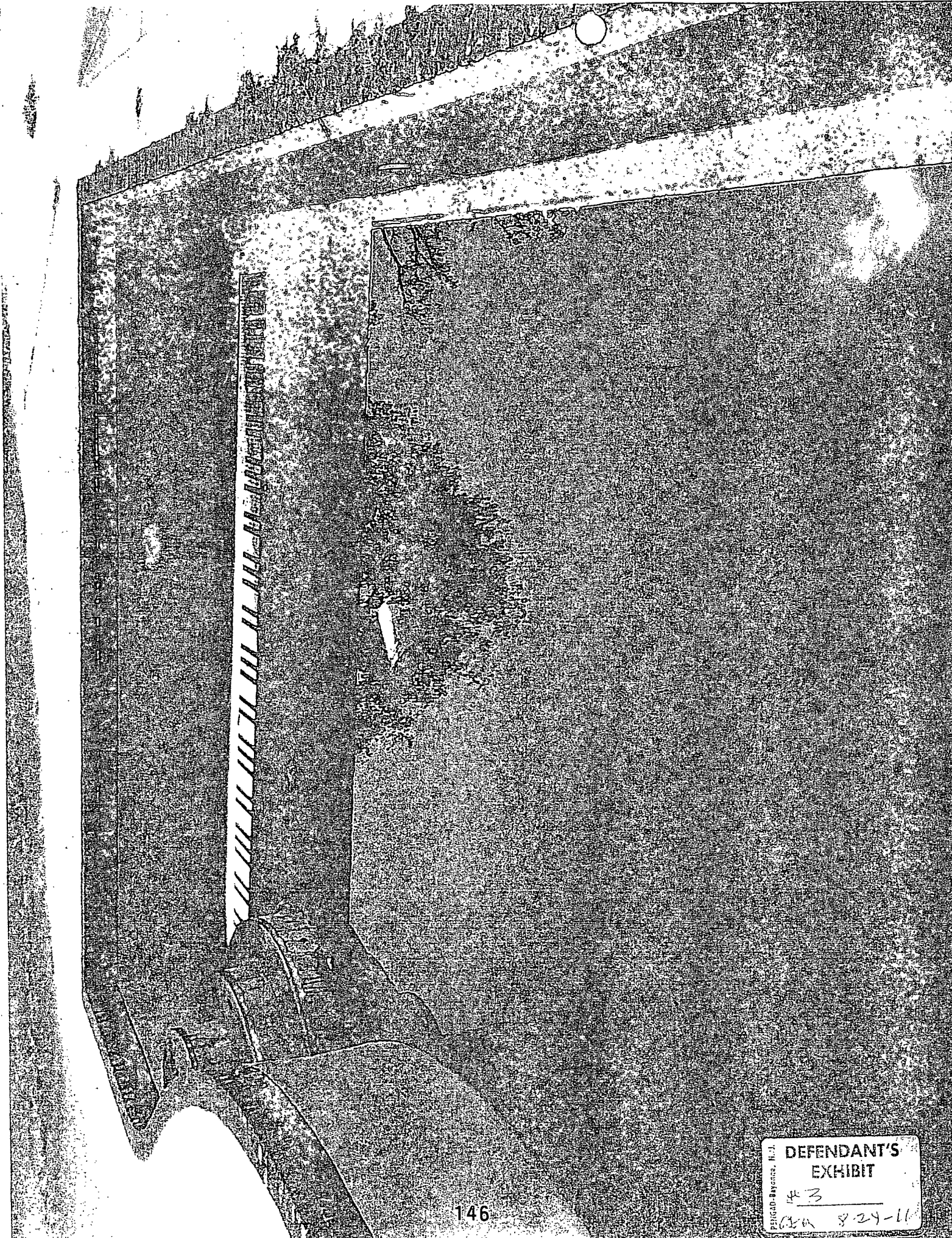
18  
19  
20   
21 Glenda K. McCormick  
22 Notary Public for South Carolina  
23 My Commission Expires: 09/18/2016  
24  
25



PENGAD. Bayonne, N. J.  
**DEFENDANT'S  
EXHIBIT**  
#1 *Willis*  
GAM 8-24-11



PERGAD-Byronic, H. J.  
**DEFENDANT'S  
EXHIBIT**  
112  
8-29-11



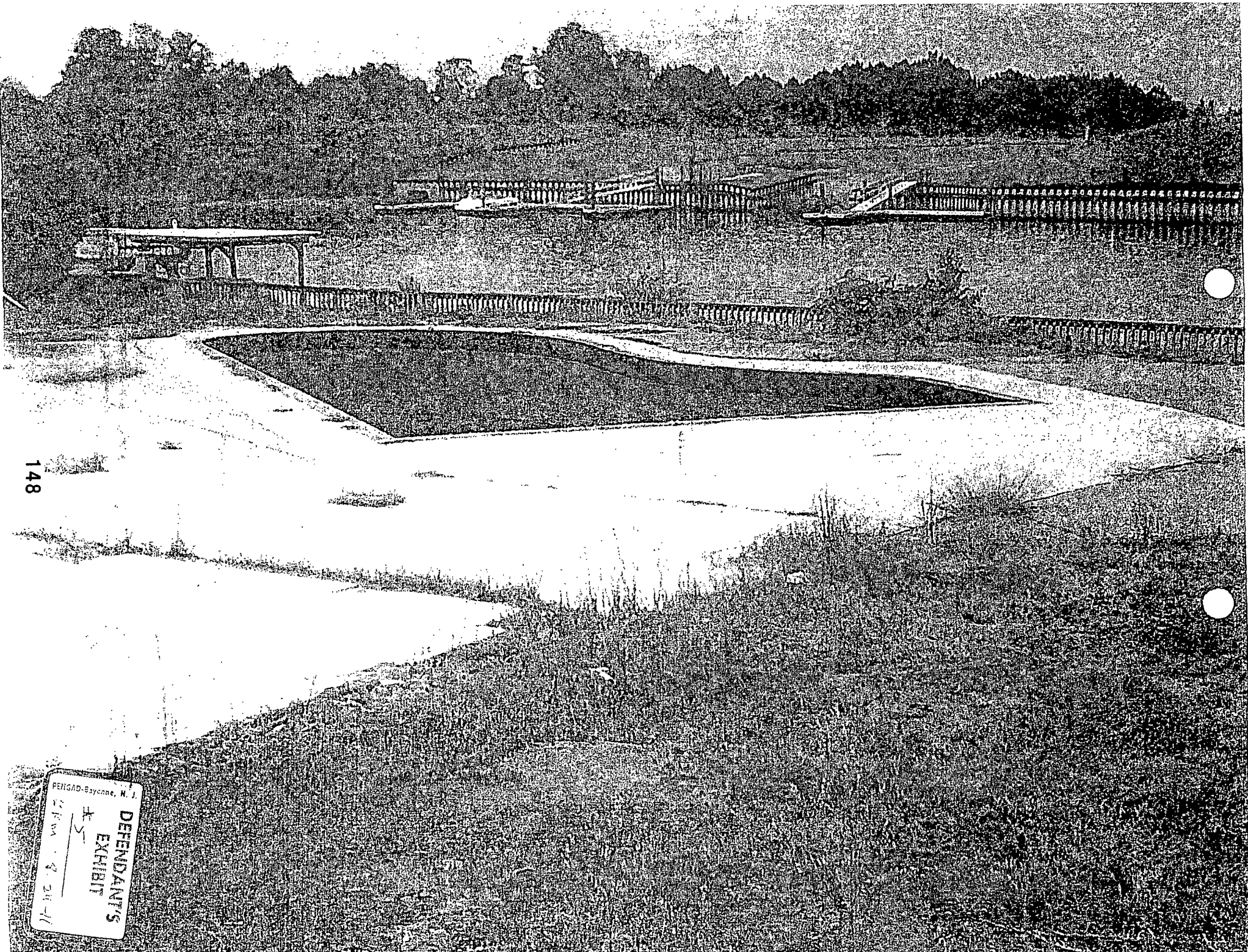
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08-24-11 BY 60322/UC/STP

DEFENDANT'S  
EXHIBIT  
# 3  
8-24-11

DEFENDANT'S  
EXHIBIT  
#4  
APM 8-21-11  
FENGAD-320000, H. J.

148

PERIAND-Bayonne, N. J.  
\* 5  
L.P.M. 8-24-11  
**DEFENDANT'S  
EXHIBIT**



STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 09-CP-26-1900

Bank of New York as Trustee for the benefit  
of the Certificateholders, CWALT, alternative  
Loan Trust 2007-14T2 Mortgage Pass-Through  
Certificates, Series 2007-14T2,

Plaintiff,

vs.

Michael D. Dixon, Pamela S. Dixon, National  
City Bank and Plantation Point  
Homeowners' Association, Inc.,

Defendants,

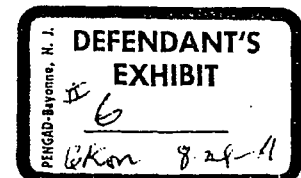
MASTER IN EQUITY'S  
REPORT ON SALE AND  
DISBURSEMENTS

HORRY COUNTY  
10 AUG 25 PM 4:11  
HELEN GIBBS-YARD  
CLERK OF COURT

- [Handwritten initials]*
1. Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the property, subject of this action, on sales day, August 5<sup>th</sup>, 2010, to **Tim Wilkes**, its successors and assigns, for the sum of **One Hundred Ninety Six Thousand Dollars and No/100 (\$196,000.00)**. This was the highest bid made on sales day.
  2. I have executed and delivered to **Tim Wilkes**, its successors and/or assigns, a good and sufficient deed of conveyance.
  3. The following costs have been incurred and funds received and disbursed as set out in Exhibit A.
  4. All the funds having been disbursed, I hereby order the file closed and the case ended.

*[Handwritten signature]*  
Cynthia Graham Howe  
Master in Equity

August 24<sup>th</sup>, 2010  
Conway, South Carolina



Tax Assessors Sales File

RE-PULL (R):

MBP 173 03 03 011

DATE OF SALE: 8/23/2010 RECORDING DATE: 8/23/2010  
 DEED AMOUNT: 000196000 SALE AMOUNT: 000196000  
 DEED BOOK: 3477 DEED PAGE: 140 PLAT BOOK: PLAT PAGE: DIST: 800  
 SELLER NAME: DIXON MICHAEL D ETAL PURCHASER NAME: WILKES TIM  
 PURCHASER ADDRESS: P O BOX 326 CITY/ST: MURRELLS INLT SC  
 PURCH. ZIP: 29576 0000 ACRES: 000000 LOTS: 00010 ACRES & LOTS 1 DECIMAL POS.  
 LAND MARKET VAL: 000526100 BLDG VALUE: 000031600 USE VALUE: 000000000  
 1-IMP 2- UNIMP: 1 LEGAL CLAS. 1-6: 3 SPLIT 0-1: 0 1- XEMPT OWNER: 0  
 1-TRUE SALE: 0 1-9 NOT TRUE SALE: 6 OVERRIDE ACRES/LOTS FIELD "X":

ZONING: USE CODE: 012 N/H CODE: 00000 TOPOGRAPHY: 0 UTILITIES: 0

LEGAL DESCRIPTION: LT 11 BL E

SALE DESCRIPTION:

PERSONAL PROPERTY: AMT: 000000000 \$: 000

PAVED ROAD (Y/N):

ROAD FRONT: 0000

CORNER (Y) :

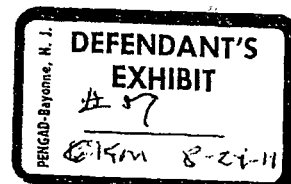
BUILDING Y:

ATI (Y,N,U): N

SALE VERIFIED (Y): Y VERIFIED WITH: 5 VERIFIED BY: 014 KEYPUNCHED BY: 014

TRUE SALE (Y/N): N WILL/JUDGMENT: D=DELETE:

Press Enter To Continue Cmd 7 To End Job



Instrument#: 2010000086249, DEED BK: 3477 PG: 140 DOCTYPE: 125 08/23/2010 at 02:32:55 PM, 1 OF 3 COUNTY STAMPS: \$215.60 STATE STAMPS: \$509.60 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

TMS Number correct 1730303011

STATE OF SOUTH CAROLINA )  
 ) DEED  
COUNTY OF HORRY ) (PUBLIC SALE)

C/A NO: 2009-CP-26-1900

To Whom These Presents shall concern:

I, Cynthia Graham Howe, as Master in Equity for Horry County, State of South Carolina, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Horry County between Bank of New York as Trustee for the benefit of the Certificateholders, CWALT, alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2, as Plaintiff, and Michael D. Dixon, Pamela S. Dixon, National City Bank and Plantation Point Homeowners Association, Inc., as Defendants, the Judge of said County by Order passed on March 17, 2010 did decree that the property described should be sold by the Master in Equity for Horry County on the terms and for the purposes mentioned in the order granted in the case; and WHEREAS, I the undersigned, as Master in Equity for Horry County, after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the matter of auction, and the said property on August 5, 2010 for the sum of One Hundred and Ninety Six Thousand Dollars and 00/100 (\$196,000.00) Dollars, said sum being the highest amount bid, paid by TIM WILKES, its successors and assigns.

NOW, KNOW ALL MEN, That I, the undersigned, as Master in Equity for Horry County, pursuant to the forgoing and also in consideration of the said bid paid as the aforesaid by the said herein below named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and by these presents do grant bargain and release the following described property unto the grantee, TIM WILKES.

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

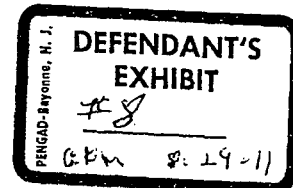
All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood neck Township, School District Eight, County of Horry, South Carolina, being shown and designated as Lot 11 of Block E in Plantation Point Subdivision on that certain Plat prepared for Myrtle Beach Farms Company by Robert L. Bellamy and Associates, dated 08/09/1976 and recorded in the Office of the Horry County Register of Deeds in Plat Book 60 at page 63, reference to which is carved for a more complete description of the metes and bounds.

DERIVATION  
3138-1

Property Address: 1860 Arundel Road, Myrtle Beach, SC 29577

TMS: 173-03-03-011

Grantees Address: PO Box 326, Murrells Inlet, SC 29576.



TOGETHER, with all the singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also any estate, right, tide, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property- with its hereditaments, privileges, and appurtenances, unto the said grantee, his/lits successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Horry County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 23<sup>rd</sup> day of August, in the year of our Lord Two Thousand Ten, and in the Two Hundred and Thirty Fifth year of Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED  
In the Presence of:

Shelli Wickham

Jay P. Henderson

Cynthia Graham Howe (L.S.)  
Cynthia Graham Howe  
Master in Equity for Horry County

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF HORRY )

C/A NO: 2009-CP-28-1800

PERSONALLY APPEARED the undersigned witness and made oath that (s)he saw Cynthia Graham Howe, as Master in Equity for Horry County, sign, seal, and deliver the within Deed: and that deponent together with the other witness signed their names as witnesses thereto.

SWORN to before me this 23<sup>rd</sup> day  
of August, 2010

Shelli Wickham

Jay P. Henderson (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 4/16/2017

This deed was prepared by Murray Law Offices, P.A., Attorney at Law, 4214 Mayfair Street, Suite A. Myrtle Beach, SC 29577

Index: Michael D. Dixon  
Master in Equity

Instrument#: 2010000086249, DEED BK: 3477 PG: 142 DOCTYPE: 125 08/23/2010 at 02:32:55 PM, 3 OF 3 COUNTY STAMPS: \$215.60 STATE STAMPS: \$509.60 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

**AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and states:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at 1860 Arundel Road, Myrtle Beach, SC 29577, bearing Horry County Tax Map Number 173-03-03-011, and was transferred by Master In Equity to Tim Wilkes on August 23, 2010.
3. Check one of the following: The deed is
  - (a)  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - (b)  subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c)  exempt from the deed recording fee because (See Information section of affidavit):  
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
  - (a)  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$196,000.00.
  - (b)  The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_.
  - (c)  The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The deed recording fee is computed as follows:
 

(a) <input checked="" type="checkbox"/> Place the amount listed in item 4 above here:	196,000.00 _____
(b) <input type="checkbox"/> Place the amount listed in item 5 above here:	0.00 _____
(If no amount is listed, place zero here.) _____	
(c) <input type="checkbox"/> Subtract Line 6(b) from Line 6(a) and place result here:	196,000.00 _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$725.20.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Purchaser.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than on year, or both.

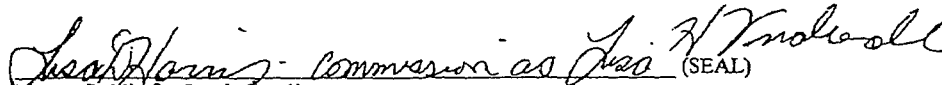
Murray Law Offices, P.A.

By:

  
Nancy M. Zojnic, Esquire

SUBSCRIBED and sworn to before me this August 23, 2010.



  
Notary Public for South Carolina (SEAL)  
My Commission Expires: 4/30/19

581201

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

DEED TO REAL ESTATE

FILED  
HORRY COUNTY, S.C.  
2006 AUG -4 AM 11:18

GALLEY V. SKIPPER  
REGISTRAR OF DEEDS

KNOW ALL MEN BY THESE PRESENTS, that Pavilack Industries, Inc. for and in consideration of One Million One Hundred Seventy Nine Thousand and 00/100 (\$1,179,000.00) - Dollars, in hand paid at and before the execution of these presents by Michael D. Dixon and Pamela S. Dixon, 1860 Arundel Road, Myrtle Beach, SC 29577 (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these presents does grant, bargain sell and release unto the said Michael D. Dixon and Pamela S. Dixon, as joint tenants with rights of survivorship and not as tenants in common, in fee simple, the following described property to wit.

All and singular, that certain piece, parcel or lot of land situate, lying and being in the Dogwood Neck Township, School District Eight, County and State aforesaid, and being more particularly described as Lot 11, Block "E", Plantation Point, as shown on map of Plantation Point made by Robert L. Bellamy & Associates, Engineers and Surveyors, dated June 9, 1976 and recorded in Plat Book 60, at page 63, Office of the Clerk of Court. Reference to which is craved as forming a part of these presents.

This being the identical property conveyed to the grantor herein by Deed from Linda Shaw McLean and Henrietta U. Golding, recoded September 14, 2004 in Deed Book 2793 Page 598, Office of the Register of Deeds for Horry County.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging to or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises and all privileges and appurtenances thereunto belonging unto the said Grantee(s), as joint tenants with rights of survivorship and not as tenants in common.

And the Grantor(s) does hereby bind itself/themselves/his/her heirs, successors and/or assigns, to warrant and forever defend all and singular, the said Premises unto the said

STATE 3065.40 COUNTY 1756.90

EXEMPT YES

(NO)

ASSESSOR 173.03 03.01

8-7-06 3138-1

DEED 3138 0001



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

I. Property located at 1860 Arundel Road, Myrtle Beach bearing Horry County Tax Map Number 173-03-03-011, was transferred by Pavilack Industries, Inc. to Michael D. Dixon and Pamela S. Dixon on August 3, 2006.

The transaction was (Check one):

X an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$1,179,000.00\*.


       not an arm's length real property transaction and the fair market value of the property is \$                                  \*.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in SC Code Ann. Section 12-24-10 et seq., because the deed is (See back of affidavit.):

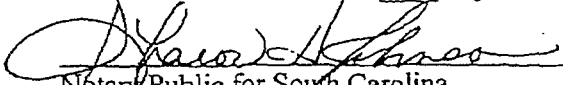
As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Pavilack Industries, Inc.

by:   
Harry Pavilack, President Seller

SWORN to before me this 3<sup>rd</sup> day of August, 2006

  
Notary Public for South Carolina

My commission expires: 3-18-09

\*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

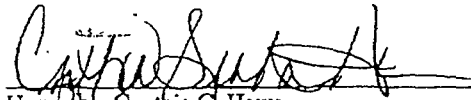
RELEASE OF LIEN  
MORTGAGE FORECLOSURE

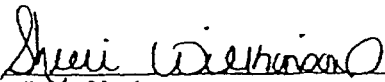
I, Honorable Cynthia G. Howe, as Master in Equity for Horry County, pursuant to Foreclosure proceedings in the Act entitled Bank of New York as Trustee for the benefit of the Certificateholders, CWAUT, alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2 vs. Michael D. Dixon, Pamela S. Dixon, National City Bank and Plantation Point Homeowners Association, Inc., as appears of record in the Office of the Clerk of Court, Horry County, Civil Action No. 2009-CP-26-1900, with authority to enter final judgment, and final judgment being entered March 17, 2010, do hereby declare that the mortgage lien listed below is hereby released, canceled, and satisfied by sale under foreclosure on August 5, 2010:

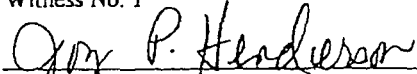
Mortgage held by WCS Lending LLC, given by Michael D. Dixon and Pamela S. Dixon, in the principal sum of \$999,999.00 dated March 29, 2007 and recorded on April 4, 2007, in Mortgage Book 4879 at Page 737, as assigned to WSC Lending as recorded in Mortgage Book 4910, Page 2548 as assigned to CWALT, Alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2 as recorded in Mortgage Book 4879, Page 737, of the public records of Horry County, South Carolina.

The Register of Mesne Conveyances/Register of Deeds for Horry County is hereby authorized and directed to release, cancel and satisfy same of record.

Dated this 23<sup>rd</sup> day of August, 2010.

  
\_\_\_\_\_  
Honorable Cynthia G. Howe  
Master in Equity, Horry County

  
\_\_\_\_\_  
Witness No. 1

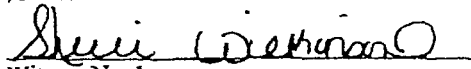
  
\_\_\_\_\_  
Notary Public/Witness No. 2

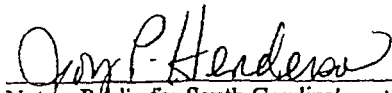
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw Honorable Cynthia G. Howe, as Master in Equity for Horry County, sign, seal and deliver the within Release of Lien; and that deponent, together with the other witness signed their names as witnesses thereto.

Witness my hand this 23<sup>rd</sup> day of August, 2010.

  
\_\_\_\_\_  
Witness No. 1

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My commission expires: 4/14/2017

Please return to:  
Murray Law Offices, P.A.  
4214 Mayfair Street, Ste A  
Myrtle Beach, SC 29577

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

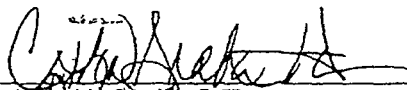
RELEASE OF LIEN  
MORTGAGE FORECLOSURE


I, Honorable Cynthia G. Howe, as Master in Equity for Horry County, pursuant to Foreclosure proceedings in the Act entitled Bank of New York as Trustee for the benefit of the Certificateholders, CWALT, alternative Loan Trust 2007-14T2 Mortgage Pass-Through Certificates, Series 2007-14T2 vs. Michael D. Dixon, Pamela S. Dixon, National City Bank and Plantation Point Homeowners Association, Inc., as appears of record in the Office of the Clerk of Court, Horry County, Civil Action No. 2009-CP-26-1900, with authority to enter final judgment, and final judgment being entered March 17, 2010, do hereby declare that the mortgage lien listed below is hereby released, canceled, and satisfied by sale under foreclosure on August 5, 2010:

Mortgage held by National City Bank, given by Michael D. Dixon and Pamela S. Dixon, in the principal sum of \$153,000.00 dated March 29, 2007 and recorded on April 4, 2007, in Mortgage Book 4879 at Page 753, as assigned to MERS as Nominee for RBS Citizens, N.A. and recorded in Mortgage Book 5208, Page 2772 of the public records of Horry County, South Carolina

The Register of Mesne Conveyances/Register of Deeds for Horry County is hereby authorized and directed to release, cancel and satisfy same of record.

Dated this 23<sup>rd</sup> day of August, 2010.

  
\_\_\_\_\_  
Honorable Cynthia G. Howe  
Master in Equity, Horry County

  
\_\_\_\_\_  
Witness No. 1

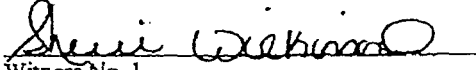
  
\_\_\_\_\_  
Notary Public/Witness No. 2


STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw Honorable Cynthia G. Howe, as Master in Equity for Horry County, sign, seal and deliver the within Release of Lien; and that deponent, together with the other witness signed their names as witnesses thereto.

Witness my hand this 23<sup>rd</sup> day of August, 2010.

  
\_\_\_\_\_  
Witness No. 1

  
\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires: 4/16/2017

Please return to:  
Murray Law Offices, P.A.  
4214 Mayfair Street, Ste A  
Myrtle Beach, SC 29577

# HORRY COUNTY CODE ENFORCEMENT DIVISION

1301 2nd Ave • Suite 1D09 • Conway, SC 29526

(843) 915-5090 / (843) 205-5090

695393

PERMIT # 2010-1460

DATE 8/20/10

POWER PERMIT # \_\_\_\_\_

NAME Michael Dixon

LOCATION 1860 Arundel Dr 173-03-03-011

TIME ARRIVE 945 TIME DEPART 1000

SETBACKS: FR \_\_\_\_\_ LT \_\_\_\_\_ RT \_\_\_\_\_ RR \_\_\_\_\_

TYPE INSPECTION P I P I

TEMP SERVICE	_____	_____	FOUNDATION	_____	_____
PILASTER	_____	_____	SLAB / POLY WIRE	_____	_____
BOND BEAM	_____	_____	ROUGH PLUMBING	_____	_____
SLAB PLUMBING	_____	_____	ROUGH ELECTRICAL	_____	_____
NAILING	_____	_____	BRICK FLASHING	_____	_____
FRAMING	_____	_____	WINDOW FLASHING	_____	_____
ROUGH MECHANICAL	_____	_____	ROUGH FIRE	_____	_____
INSULATION	_____	_____	FINAL	_____	_____
FINAL FIRE	_____	_____	C/OCCUPANCY	_____	_____
MOBILE HOME	_____	_____	ZONING C/OCCUPANCY	_____	_____
MOBILE HOME UNDERPINNING	_____	_____	SWIMMING POOL	_____	_____
SIGN	_____	_____	POOL / DECK GROUNDING	_____	_____
C/O/S	_____	_____	METER SERVICE	_____	_____
OTHER	_____	_____	TILE SIZE	_____	_____

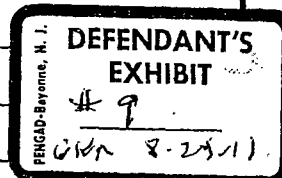
REMARKS Pool must be secured by 48" fence  
OR filled in within 5 working days  
to avoid legal action with Magistrates  
Office

Pictures Taken

JAMES JOHNSON 915-6777

INSPECTOR Jarrett (3) 915-6761

RECEIVED BY \_\_\_\_\_



STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Bank of New York as Trustee for the )  
benefit of the Certificateholders, )  
CWALT alternative Loan Trust )  
2007-14T2 Mortgage Pass-Through )  
Certificates, Series 2007-14T2 )

Plaintiff )

v. )

Michael D. Dixon, Pamela S. Dixon, )  
National City Bank, Plantation Point )  
Homeowners Association, Inc. )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

DOCKET NO: 2009-CP-26-1900

ASSIGNMENT OF BID

HORRY COUNTY  
10 AUG 25 PM 4:11  
CLERK OF COURT

FOR VALUABLE CONSIDERATION, receipt where is hereby acknowledged, MTM International, does hereby assign its successful bid in the foregoing foreclosure action for the property located at 1860 Arundel Road, Myrtle Beach, SC 29577 unto Tim Wilkes, and does hereby direct Cynthia Graham Howe, Master in Equity for Horry County, to execute her deed to the subject premises unto said assignee.

By: Tim Wilkes  
Tim Wilkes, President  
MTM International

DEFENDANT'S  
EXHIBIT  
10  
8-25-11

PERGAD-Bayonne, N.J.  
**DEFENDANT'S  
EXHIBIT**  
# 1/1  
CEM 8-24-41

161

Custom Concrete Developers  
5582 Rosewood Dr.  
Myrtle Beach, S.C. 29588

To: Tim Wilkes  
Re: damaged pool

April 25<sup>th</sup> 2011

Mr. Wilkes, the inspection was completed at the 1860 Arundel Drive property in Plantation Point.

The pool is 40 ft. long and 20 ft. wide. It has a unique shape like a grand piano. The pool and the surrounding area has had fill dirt dumped on and around it. It appears that large earth moving equipment was used to fill and grade the area.

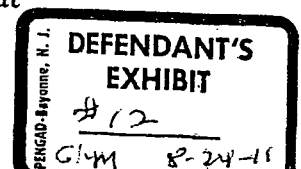
The equipment area is several yards from the pool and has had dirt moved around the area between that and the pool area.

The plumbing around the pool leading to the equipment is basically plastic or pvc pipe. The pressure from the weight would have had an adverse affect that could only get worse in time.

The pool itself is made up of concrete running both vertically and horizontally. The weight of the large earth moving equipment would have challenged the integrity of the form.

The extent of the damage will only get worse. The cracks no matter how small now will grow and grow. That is the nature of concrete. Therefore you will be unable to warranty the pool ever in its present form.

To replace the pool in its exact form and size will cost 68,000 thousand dollars. That will include lights and the piano tile that



you have stated is in the pool. It will also include all new plumbing to the equipment area. It will not include any motors or equipment. The removal of the entire damaged pool will be 4,000 dollars. That will include all dumpster fees. -

There is a lot of planning that goes into a pool and now is a good time to make any changes that you might like. I would like to sit down with you with more exact drawings and of course all of our work will be fully guaranteed .

Please feel free to call anytime at 843-241-1317

Thankfully yours

Sergio Gonzalez

**HORRY COUNTY CODE ENFORCEMENT DIVISION**

1301 2nd Ave • Suite A Conway, SC 29526

(843) 915-5090 / (843) 205-5090

684047

PERMIT # NO Permit

DATE 4/22/10

POWER PERMIT # \_\_\_\_\_

NAME Deutsche Bank Trust of America

LOCATION 1840 ARONOLD DR -173-03-03-009

TIME ARRIVE 1030 TIME DEPART 1045

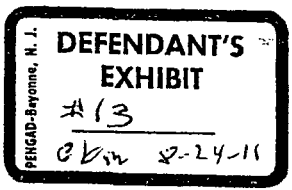
SETBACKS:	FR	LT	RT	RR
TYPE INSPECTION:	P	I	P	I
TEMP SERVICE	Remove		FOUNDATION	
PILASTER			SLAB POLY WIRE	
BOND BEAM			ROUGH PLUMBING	
SLAB PLUMBING			ROUGH ELECTRICAL	
NAILING	list		BRICK FLASHING	
FRAMING			WINDOW FLASHING	
ROUGH MECHANICAL		6-	ROUGH WIRE	
INSULATION			FINISH	
FINAL FIRE			C/OCCUPANCY	
MOBILE HOME			ZONING C/OCCUPANCY	
MOBILE HOME UNDERPINNING			SWIMMING POOL	
SIGN			POOL / DECK GROUNDING	
C/O/S			METER SERVICE	
OTHER			TILE SIZE	

REMARKS Need Building Permit for Interior Remodeling within 5 working days

Picture Taken, Stop work  
By owner - Tavia Wilkes

INSPECTOR Garrett (3)

RECEIVED BY \_\_\_\_\_



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2010-CP-26-11570

RECEIVED  
MAR 04 2013  
SC Court of Appeals

Tim Wilkes .....Appellant

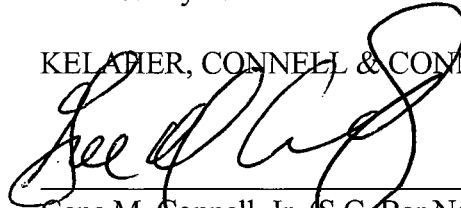
vs.

Horry County .....Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

KELAMER, CONNELL & CONNOR, P.A.



Gene M. Connell, Jr. (S.C. Bar No. 1358)  
The Courtyard, Suite 209  
1500 U. S. Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, South Carolina 29587-4547  
(843) 238-5648 (phone)  
(843) 238-5050 (facsimile)  
[gconnell@classactlaw.net](mailto:gconnell@classactlaw.net)  
**Attorney for Appellant**

February 21, 2013

RECEIVED

FEB 22 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM Horry COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED  
FEB 23 2013  
SC Court of Appeals

CASE NO. 2010-CP-26-11570

Tim Wilkes .....Appellant

vs.

Horry County .....Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Record on Appeal** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Walker H. Willcox, Esq.  
Willcox Buyck & Williams, PA  
P.O. Box 1909  
Florence, SC 29503-1909

DATE OF MAILING: February 21, 2013

*Shelia Y. McCumbee*  
Shelia Y. McCumbee

**SWORN AND SUBSCRIBED** before me,  
this 21<sup>st</sup> day of February, 2013

*Sharon M. Tylee*  
Notary Public for South Carolina  
My Commission Expires: 2-25-19