

20229

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No: 2009-CP-23-10754

Brad Marett.....Respondent

vs.

Dallah Forrest and Summersett Golf, Inc.....Appellants

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2009-CP-23-10754

BRAD MARETT,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

DALLAH FOREST AND SUMMERSET
GOLF, INC.,
DEFENDANTS.

COPY

April 13, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

J. BRADLEY BENNETT, ESQ.
Attorney for the Plaintiff

H. MICHAEL SPIVEY, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

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I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: The first case is 2009-CP-23-10754,
Marett v. Forest.

MR. BENNETT: Your Honor, I apologize for
interrupting. Bradley Bennett --

THE COURT: Yes, sir, Mr. Bennett.

MR. BENNETT: -- on behalf of Mr. Brad Marett.

Your Honor, my client, Mr. Marett, was a little
nervous this morning, and walked out of the house without
his hearing aids.

THE COURT: Oh, okay.

MR. BENNETT: And I'm going to keep my voice up. And
I'm requesting that the Court and everybody else try to do
the same so that Mr. Marett can follow along with us.

THE COURT: All right. Well, Mr. Marett, can you
hear me, sir?

MR. BRAD MARETT: Yes.

THE COURT: If you can't hear anything, just raise
your hand. Okay.

MR. BRAD MARETT: Okay.

MR. BENNETT: Thank you, Your Honor.

THE COURT: And, Mr. Spivey, it's your client's
appeal; is that correct?

MR. SPIVEY: Yes, sir.

THE COURT: Okay. Go ahead.

1 MR. SPIVEY: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. SPIVEY: This is a case that we've tried twice up
4 in the northern part of Greenville County. The first time
5 it was tried by Judge Hubbard and -- back in 2007. And,
6 at that time, a verdict was entered against my client for
7 \$7,500. We appealed. And Judge Simmons reversed that
8 saying there were no damages, actually, proven.

9 And we -- then we tried it again in 2009. And we
10 appealed again. The position we take is that the damages
11 that were -- that came down again was \$7,500. And there
12 was no basis in the transcript or any of the testimony for
13 that. The only thing that could have led to that was an
14 argument made by Mr. Bennett several times.

15 I'm going to hand to the Court a copy of the
16 transcript -- not the transcript itself, but excerpts from
17 it where Judge Stokes, basically, says to
18 Mr. Bennett, I don't get how you're getting that. And the
19 way he arrived at that was -- he said -- Mr. Bennett --
20 Mr. Marett wanted to pay \$141,000 for a house. And, in
21 fact, he paid \$149,000. Therefore, the difference was
22 \$8,000.

23 And what happened here was Mr. Marett did buy a house
24 from Mr. Forest in Summerset. And they had some
25 negotiations. Originally, the price was \$159,000.

1 Mr. Forest lowered it to \$149,000, because he wanted to
2 sell it to Mr. Marett, who had been a friend of his from
3 years in the past. And, in fact, Mr. Marett then said,
4 Well, I want a lifetime membership to the golf course.
5 And Mr. Forest said, Oh, I can't give you a lifetime one,
6 but I'll give you one for five years. And Mr. Marett
7 said, basically, Well, that might be my life. So then, in
8 fact, that's what the contract became.

9 He sold the house for \$149,000, plus, a five-year
10 membership at the golf course. At some point in time,
11 right after the year expired on what would have been a
12 warrantee on the house, Mr. Marett kept coming to
13 Mr. Forest and complaining about problems with the house.
14 And somebody in the house next to him had an air
15 conditioner worked on. Mr. Forest said, Well, I'm not
16 going to work on yours any more, because the year is
17 expired on the warrantee.

18 And then what happened was Mr. Marett goes kind of,
19 you know, berserk and threatens Mr. Forest and says, I'm
20 going to waste you, if you don't do that. Mr. Forest
21 didn't know what to do. So he runs him out of the
22 building. They were in the office at the golf course.
23 And then he filed a no-trespass notice on the golf course.
24 So the lawsuit was over the fact that he lost his golf
25 course membership for the five years.

1 Judge Stokes, in his return, admits the damage was
2 somewhere around \$1,000. It's interesting, in the
3 transcript, the actual figure that he came up with was
4 \$1,008. And the way he figured that up was \$21 a round
5 three times a month -- based on Mr. Marett's testimony,
6 times 12 a year. So 12 months, it's \$252 a year. And
7 then four years left on the contract. So a total of
8 \$1,008. Judge Stokes, obviously, didn't remember that
9 when he did his return, so he just rounded it off at
10 \$1,000.

11 It was interesting because Mr. Forest and I had sat
12 there, and as we were listening to that testimony, we did
13 the same figuring and came up with the same figure,
14 \$1,008. If there was any damages, which we disagree
15 with -- but if there was any, it was \$1,008.

16 And then there was a lot of soliloquy in the
17 testimony by Judge Stokes about -- I mean, I made a motion
18 for a directed verdict. I made a motion every time I had
19 a chance to make a motion that no damages had been proven.
20 Mr. Bennett every time would argue again that same
21 scenario, the difference between \$141,000 and \$149,000,
22 which really wasn't in the testimony, except in his
23 argument. And, I mean, he had got Mr. Marett to say, in
24 fact, that he wanted to pay \$141,000 for it, but he paid
25 \$149,000. But \$141,000 was never part of the negotiation.

1 It was just what he wanted to pay for it.

2 And so, anyway, the damages came back. Again, the
3 verdict, the same thing, \$7,500. Mr. Marett had --
4 Mr. Bennett had argued that, in fact, the summary court
5 couldn't do \$8,000, so they did \$7,500.

6 And I'm going to pass up some cases about damages.
7 And all of them say that damages can't be speculative,
8 can't be something -- it doesn't have to be to a
9 mathematical certainty. But, in fact, it has to be
10 related to the evidence that's presented. We maintain
11 there was no evidence presented to come up with a \$7,500.
12 verdict. If there -- the only evidence was -- and that
13 wasn't the evidence, but it was Mr. Bennett's arguments.

14 So we would ask that this case be reversed again, and
15 that it be sent back for another trial. Or, if Your Honor
16 can do that, and I'm not sure whether you can or not, we
17 would be agreeable to a verdict of \$1,008, if you would --
18 because that's what Judge Stokes suggested, and that's
19 what we agreed on.

20 THE COURT: Thank you, Mr. Spivey.

21 Yes, sir, Mr. Bennett.

22 MR. BENNETT: May it please the Court.

23 Your Honor, marriages don't last as long as this case
24 sometimes. We are five days short of being five years
25 since we filed our original complaint. My client,

1 Mr. Marett, is going to be 80 years old next month. And
2 during the pendency of this five-year case, he has had two
3 heart attacks and a triple-bypass surgery.

4 Your Honor, it is the Plaintiff's belief that my
5 learned colleague and his client have taken this judicial
6 process and, with all due respect, have, basically, turned
7 it into a wait and see operation to see whether or not
8 Mr. Marett could pass away before Mr. Forester [sic] has
9 to ever pay him any money, because of the egos and the bad
10 blood that has developed between this one-time friendship.

11 I'd like to, specifically, address a couple of points
12 that Mr. Spivey brought up. Number one, the original
13 appeal, based upon Judge Simmons order to send the case
14 back for -- to be retried, was not based because Judge
15 Simmons did not find any damages because of the testimony.
16 It was because there was a problem with the transcription.
17 The tape recorder did not work in the magistrate's court.
18 There was no transcript of the trial. And, thus, Judge
19 Simmons said, I've got no record. I'll send it back,
20 unlike what Mr. Spivey is trying to portray that the
21 record was just silent on damages. It is true it was
22 silent on damages because the record was silent, period.

23 Secondly, Your Honor, and more, specifically, to the
24 issue of damages, I'd like to address -- or direct the
25 Court and counsel to Page 25, Lines 8 through 25 of the

1 transcript from the second trial.

2 In this section, Lines 8 through 25, Mr. Marett on
3 direct examination indicates that he figured he could buy
4 the house at issue for 140, meaning \$140,000, or something
5 like that. And that he would end up talking and talking
6 and trying to negotiate a price. And, in fact,
7 Plaintiff's Exhibit A is the contract for sale that on the
8 back page indicates included in that \$149 -- I'm sorry,
9 \$149,000 sales price was a five-year membership that is
10 part of the basis of the bargain. Mr. Marett was willing
11 to pay about \$140,000. He, instead, paid \$149,000.

12 He got something extra to move him off of \$140,000,
13 and that was, according to the jury, by their abilities to
14 determine the facts of the case and to weigh the evidence,
15 a five-year membership. And that was beneficial to
16 Mr. Marett for multiple reasons, not the least of which
17 he's bought a townhouse on a golf course. He's a widower.
18 He doesn't have any family that he hangs around with
19 necessarily, other than some children that he only sees
20 infrequently because of them residing out of state. His
21 entertainment is to live at a place where he can play
22 golf.

23 At 74, 75 years old when he entered into this deal,
24 he didn't drive that much. His entertainment needed to be
25 focused around his house. He was a lifelong golfer. He

1 had grown up playing golf at Hillandale with his father,
2 who worked at the golf course. And, in fact, this was a
3 coming home for my client to be able to spend the winter
4 of his life playing golf at his house. And, by his own
5 estimation, the five years wasn't that big of a deal,
6 because he'd probably die sometime in between that five
7 years, by his own accord.

8 As he sits here today, he can't play golf,
9 unfortunately, because of any health reasons -- I mean
10 because of health reasons. That five-year membership is
11 of no value to him. But Mr. Forester [sic] has been
12 unjustly enriched by the value of providing that, and then
13 turning that membership -- and then turning around and
14 kicking Mr. Marett off the course, and putting a trespass
15 notice upon him and not allowing him back on the course.

16 THE COURT: What were the causes of action?

17 MR. BENNETT: Your Honor, originally, the causes of
18 action were breach of contract, fraud, misrepresentation,
19 nuisance, and, basically, a clear title action to -- in
20 case there was any linkage between the contract not having
21 a specific document related to the membership. But, upon
22 further research, it was my belief that because the sales
23 agreement, Exhibit A, Plaintiff's Exhibit A, specifically,
24 identified the five-year membership that that was not
25 necessary.

1 THE COURT: Well, all those causes of action went to
2 the jury?

3 MR. BENNETT: Yes, sir.

4 Now, Your Honor --

5 THE COURT: And the jury was instructed, weren't
6 they, that damages couldn't be speculative, and they
7 didn't have to be to a mathematical certainty, but they
8 had to be proven so that a jury could have evidence of
9 reasonably certain damages? Didn't that happen?

10 MR. BENNETT: Yes, sir, Your Honor.

11 In addition, Your Honor, Page 28, Lines 9 through 13
12 of the transcript is a restatement of the contract terms,
13 thereby demonstrating, unlike what Mr. Spivey claims,
14 that, in fact, the jury did have multiple accounts of
15 testimony laying out the basis for the agreement, and the
16 fact that on Page 50 of the transcript on Lines 11 through
17 16, Mr. Marett testified he would not have paid \$149,000
18 for the house if no five-year membership had been
19 included. Thus, Your Honor, there is ample demonstration
20 within the document of the transcript and that the jury
21 had -- the second jury to agree that Mr. Marett is
22 entitled to \$7,500.

23 I -- as an officer of the Court, Your Honor, I am
24 fully convinced that both of those juries would have
25 provided Mr. Marett with \$8,000 had they been allowed to

1 jurisdictionally, that that's what they wanted to do, but
2 could not because of the cap and, therefore, applied a
3 \$7,500 figure. And, in fact, Your Honor, I realize we
4 don't have the transcript from the first trial. But, at
5 that trial, the jury came back in with a question prior to
6 reaching its verdict and asked the judge could they give
7 more money than \$7,500.

8 The evidence has --

9 THE COURT: They must have watched The Verdict.

10 MR. BENNETT: It's the only time I've felt like Paul
11 Newman. And my wife probably wishes I looked like him,
12 but that's never going to happen either.

13 But, Your Honor, Mr. Marett is not a man of many
14 means. He's a man who has a lot of pride, and had a lot
15 of joy about moving to this place, and was looking forward
16 to spending time with friends on the golf course. He has
17 been stripped of that. And he has not been able to live
18 out the remaining years of his life in the comfort and joy
19 as he had anticipated and paid, and negotiated, and agreed
20 to be able to do.

21 And, now, it seems as though this legal process that
22 we instigated almost five years ago to the day has been
23 abused by the opposing side in an effort to try to
24 forestall a man whose ego will not allow him to be wrong
25 or to pay money to my client, and that is unjust. And we

1 are here today, Your Honor, asking that that injustice be
2 remedied.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Bennett.

5 Mr. Spivey.

6 MR. SPIVEY: Yes, sir.

7 THE COURT: Anything else you want to say, sir?

8 MR. SPIVEY: Well, I just want to say that in the
9 transcript, also, on Page 81, I was asking Mr. Forest
10 about the purchase price of the house. And he talked
11 about there was five -- on Page 81, beginning at 14, there
12 was five units in that little cul-de-sac. And, he said --
13 I said, What was the price on some of the other houses?

14 He said, The first one I sold for 169. I sold the
15 others for 159. But I sold this one for 149.

16 Okay. How is this the lowest of the five -- was this
17 the lowest of the five?

18 And he says, As far as I know.

19 No discussion about \$141,000. There was no
20 involvement about \$141,000. It wasn't offered. And it
21 wouldn't have been accepted. So it wasn't part of the
22 terms of the contract.

23 THE COURT: Okay. I'm going to uphold the jury's
24 verdict. I think there's sufficient evidence in the
25 record. And I am affirming the verdict.

1 Thank you very much.

2 Do you want to do an order?

3 MR. BENNETT: Thank you, Your Honor.

4 I sure will.

5 THE COURT: Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

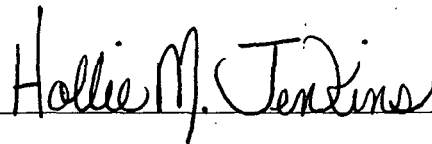
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 13th day of April, 2011.

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

October 31, 2011



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT

BRAD MARRETT, *
*
PLAINTIFF, *
*
VERSUS *
*
DALLAH FORREST AND *
SUMMERSETT GOLF, INC., *
*
DEFENDANTS. *

C.A. NO. 2006-CV-23-10900323

COPY

TRANSCRIPT OF MAGISTRATE HEARING

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1 **(BEGIN RECORDING 1A)**

2 **BY JUDGE STOKES:**

3 THIS IS CIVIL ACTION 2006-CV-23-10900323, BRAD
4 MARRETT, REPRESENTED BY MR. BENNETT, VERSUS DALLAH
5 FOREST AND SUMMERSETT GOLF COURSE, REPRESENTED BY
6 MR. SPIVEY. WE'RE HERE FOR A JURY TRIAL.
7 GENTLEMEN, DO YOU HAVE ANY PRE-TRIAL MOTIONS OR
8 MATTERS?

9 **BY MR. BENNETT:**

10 NONE FROM THE PLAINTIFF, YOUR HONOR.

11 **BY JUDGE STOKES:**

12 MR. SPIVEY, DO YOU HAVE ANY?

13 **BY MR. SPIVEY:**

14 NO, SIR, YOUR HONOR. THIS IS DALLAH FORREST.

15 **BY JUDGE STOKES:**

16 I'M SORRY. DALLAH FORREST. THAT BEING THE
17 CASE, I'LL SEND FOR THE JURY. OKAY. LET ME SEE
18 WHICH JURORS WE HAVE HERE. GARY BRIDWELL?

19 **BY MR. BRIDWELL:**

20 HERE.

21 **BY JUDGE STOKES:**

22 BENAI COX?

23 **BY MR. COX:**

24 YES, SIR.

25 **BY JUDGE STOKES:**

1 ABIGAIL WILSON?

2 BY MS. WILSON:

3 HERE.

4 BY JUDGE STOKES:

5 WILLIAM BAKER?

6 BY MR. BAKER:

7 HERE.

8 BY JUDGE STOKES:

9 JOAN CRAIG?

10 BY MS. CRAIG:

11 HERE.

12 BY JUDGE STOKES:

13 STEPHEN DIACHENKO? STEPHEN IS HERE. JAMES

14 JONES?

15 BY MR. JONES:

16 YES, SIR.

17 BY JUDGE STOKES:

18 AND CHERRY BOOTH. OKAY. IS THERE ANY

19 OBJECTION TO ME RELEASING THE ALTERNATES? WHEN YOU

20 SAY NO OBJECTION, YOU'RE CONSENTING TO GO WITH FIVE

21 IF SOMETHING HAPPENS. SO, I'LL MAKE THAT CLEAR WITH

22 YOU.

23 BY MR. BENNETT:

24 NO OBJECTION FROM THE PLAINTIFF, YOUR HONOR.

25 BY JUDGE STOKES:

1 MR. SPIVEY?

2 BY MR. SPIVEY:

3 NO OBJECTION.

4 BY JUDGE STOKES:

5 OKAY. MR. JONES, MS. BOOTH, THANK Y'ALL FOR
6 COMING, BUT I CAN RELEASE YOU. YOU WERE ALTERNATES
7 ON THIS ONE. MS. CRAIG, I BELIEVE YOU'VE BEEN ON A
8 COUPLE SO FAR THIS WEEK.

9 BY MS. CRAIG:

10 YES, SIR.

11 BY JUDGE STOKES:

12 WOULD YOU BE THE FORELADY FOR ME?

13 BY MS. CRAIG:

14 YES, SIR.

15 BY JUDGE STOKES:

16 IF Y'ALL WILL BE KIND ENOUGH TO RAISE YOUR
17 RIGHT HAND, I'LL SWEAR YOU IN. DO YOU SOLEMNLY
18 SWEAR OR AFFIRM THAT YOU WILL WELL AND TRULY TRY THE
19 CASE BEFORE YOU PURSUANT TO THE EVIDENCE OF THE LAW
20 SO HELP YOU GOD? SO SAY YOU ALL.

21 LET'S SEE. MR. BENNETT, YOU'RE THE PLAINTIFF.

22 BY MR. BENNETT:

23 THANK YOU, YOUR HONOR. MAY IT PLEASE THE
24 COURT. BRAD MARRETT LOVES TO PLAY GOLF. HE'S 79
25 YEARS OLD. SINCE THE TIME HE WAS FIVE YEARS OLD,

1 HE'S BEEN PLAYING GOLF. HIS FATHER WAS NAMED POP.
2 POP MARRETT. POP MARRETT WAS THE GREENS KEEPER AND
3 THE KIND OF GO-TO GUY AT HILLANDALE GOLF COURSE.
4 THAT'S WHERE BRAD FIRST STARTED LOVING THE GAME.
5 WHEN HE WAS FIVE, HE STARTED BEING A CADDY. HE'D GO
6 AROUND AND HE'D MAKE A LOOP, CARRY A BAG, MIGHT GET
7 A NICKEL, HE MIGHT GET A DIME.. AND HE FOUND HIS
8 LOVE OF THE GAME. IN FACT, HIS DAD PLAYED. IN
9 FACT, HE KEPT HANGING AROUND HIS DAD. HIS WHOLE
10 LIFE, HE JUST GREW UP LOVING THE GAME. IT'S A LOVE
11 HE CARRIED WITH HIM FOR THE REST OF HIS LIFE AS HE
12 SITS HERE TODAY AT 79 YEARS OF AGE. HE STILL LOVES
13 THE GAME. HE WENT TO WORK IN GREENWOOD AND DID
14 H.V.A.C. MOST OF HIS LIFE, CONSTRUCTION, BIG
15 H.V.A.C. UNITS AND SO FORTH. ENDED UP RETIRING
16 ABOUT 2004 AND DECIDED HE WANTED TO MOVE BACK TO
17 GREENVILLE, PRETTY MUCH RIGHT BACK TO WHERE HE HAD
18 GROWN UP. IT WAS KIND OF A DREAM OF HIS, TO HAVE
19 THAT KIND OF RETIREMENT AND TO COME BACK HOME. AND
20 SO HE DID. HIS DAD, POP, HAD BEEN OVER HILLANDALE
21 GOLF COURSE. THAT'S DOWN OFF OF POINSETT HIGHWAY.
22 BRAD ENDED UP BUYING A PLACE THERE AT SUMMERSETT
23 GOLF COURSE. IT'S JUST A COUPLE OF MILES FROM WHERE
24 HE GREW UP CARRYING THE BAGS.

25 SUMMERSETT GOLF COURSE IS OWNED BY MR. DALLAH

1 FORREST, WHO IS THE DEFENDANT IN THIS CASE. MR.
2 FORREST ALSO HAS A, OR DID AT ONE TIME, HAD A
3 BUILDING COMPANY WHERE HE BUILT HOUSES AND SOLD
4 HOUSES. HE KIND OF DEVELOPED SOME OF THE REAL
5 ESTATE AROUND THE COUNTRY CLUB THERE AT SUMMERSETT
6 GOLF COURSE. BRAD ENDED UP BUYING ONE OF THE
7 TOWNHOUSES THERE. HE AND DALLAH, MR. FORREST, ENDED
8 UP NEGOTIATING THE PRICE ON THAT TOWNHOUSE. SEE,
9 BRAD HAS GOT CHILDREN AND THEY LIVE OUT IN DENVER,
10 COLORADO, BUT HE'S NOT MARRIED AND HE IS REALIZING
11 THAT, YOU KNOW, HE'S, LIKE NONE OF US OR ALL OF US
12 WHO ARE NOT GETTING ANY YOUNGER AND SOMEONE WHO
13 LIVES ALONE, SOMEBODY WHO LOVES GOLF, SOMEBODY WHO
14 GREW UP IN THIS AREA. IT WAS LIKE THE PERFECT
15 COMBINATION. IT WAS THE KIND OF RETIREMENT THAT
16 BRAD MARRETT HAD DREAMED OF. HE WAS GOING TO BE
17 ABLE TO LIVE AND PLAY GOLF, BE IN CLOSE PROXIMITY.
18 HE COULD WALK OUT HIS BACK DOOR AND BE ON THE SECOND
19 GREEN. WOULDN'T EVEN HAVE TO DRIVE. IF HE EVER
20 LOST HIS ABILITY TO HAVE A DRIVER'S LICENSE, HE
21 WOULD STILL BE ABLE TO GO OUT AND PLAY GOLF AND STAY
22 ACTIVE. HE WOULD BE ABLE TO MEET HIS BUDDIES AND GO
23 GET A CUP OF COFFEE OR A SANDWICH THERE AT THE
24 CLUBHOUSE. HE WOULD BE ABLE TO TAKE PART IN WHAT
25 YOU'LL HEAR ABOUT, LADIES AND GENTLEMEN, WHICH IS

1 THE THURSDAY SENIOR'S DAY THERE AT THE GOLF COURSE,
2 WHERE EVERYBODY WOULD GET TOGETHER WHO WAS OVER A
3 CERTAIN AGE AND THEY WOULD PLAY IN A LITTLE
4 TOURNAMENT. IT WAS A DREAM COME TRUE. IT WAS THE
5 KIND OF RETIREMENT THAT HE WANTED.

6 NOW, UNFORTUNATELY, THAT DREAM, AS YOU'LL HEAR
7 TODAY, BECOMES A NIGHTMARE. AND THAT NIGHTMARE
8 ORIGINATES BASED UPON THE CONTRACT THAT MR. DALLAH
9 FORREST AND MR. MARRETT ENTERED INTO. THE TOWNHOUSE
10 ENDED UP NOT ONLY BEING THE ITEM, THE ONLY ITEM THAT
11 WAS LISTED AS IN THE CONTRACT FOR SALE. IN OTHER
12 WORDS, MR. FORREST AND MR. MARRETT, THEY KIND OF
13 DICKERED BACK AND FORTH ON THE PRICE, AS ANYBODY
14 WOULD FOR A HOUSE. BECAUSE MR. FORREST HAS THE
15 ABILITY AT THE COUNTRY CLUB, HE HAD A GOOD IDEA AND
16 DECIDED HE WOULD PUT PART OF THE NEGOTIATION FOR THE
17 COST OF THE HOUSE, MEMBERSHIP INTO THE COUNTRY CLUB.
18 MR. MARRETT HAD ONE IDEA OF THE PRICE HE WAS GOING
19 TO PAY FOR HIS TOWNHOUSE. NOT SURPRISINGLY, THE
20 SELLER HAD A DIFFERENT IDEA, A HIGHER PRICE. THEY
21 ENDED UP GOING BACK AND FORTH, BACK AND FORTH, AND
22 FINALLY AGREED TO TERMS. THE TERMS THEY AGREED TO
23 WAS \$149,000 AND A FIVE-YEAR MEMBERSHIP TO THE
24 COUNTRY CLUB. YOU'LL HEAR BRAD, HE'S KIND OF A
25 PLAIN FELLOW AND HE SAYS BASICALLY, AT MY AGE, I

1 THOUGHT A FIVE-YEAR MEMBERSHIP MIGHT BE A LIFETIME
2 MEMBERSHIP, BECAUSE THAT'S WHAT I WAS LOOKING FOR,
3 BUT MR. FORREST WOULDN'T AGREE TO A LIFETIME
4 MEMBERSHIP. BUT THROUGH THE BACK AND FORTH, THEY
5 ENDED UP AGREEING TO A FIVE-YEAR DEAL.

6 EVERYTHING WENT PRETTY WELL FOR A WHILE. BRAD
7 DID HAVE THAT KIND OF RETIREMENT THAT HE HAD HOPED
8 FOR. HE WAS PLAYING GOLF QUITE REGULARLY, THREE OR
9 FOUR TIMES A WEEK. HE WAS ACTIVE IN THE COMMUNITY.
10 HE WAS TAKING FRIENDS OUT TO THE COFFEE SHOP,
11 GRABBING A SANDWICH FOR LUNCH, PLAYING GOLF ANYTIME
12 THE WEATHER WAS SUITING.

13 UNFORTUNATELY, BECAUSE OF SOME PROBLEMS THAT
14 THEY HAD WITH THE HOUSE ITSELF, THE H.V.A.C. UNIT,
15 THE AIR CONDITIONING AND SO FORTH, MR. FORREST AND
16 BRAD MARRETT ENDED UP NOT REALLY SEEING EYE TO EYE
17 ON THE QUALITY OF THE HOUSE. THEY STARTED HAVING
18 SOME ARGUMENTS ABOUT THAT, SOME DISCUSSIONS ABOUT
19 ARE YOU GOING TO FIX THIS. AND THERE WAS A WARRANTY
20 ON THE HOUSE. AT A CERTAIN POINT IN TIME, BRAD
21 ASKED MR. FORREST IF HE WOULD TAKE CARE OF FIXING
22 THAT H.V.A.C. LIKE HE HAD DONE FOR SOME OTHER
23 TOWNHOUSES THAT MR. FORREST HAD SOLD. THROUGH THE
24 BACK AND FORTH AND THROUGH THE FACT THAT AT SOME
25 POINT IN TIME, MR. MARRETT ENDS UP PLAYING IN GOLF

1 TOURNAMENTS WITH MR. FORREST, THERE'S SOME
2 DISAGREEMENTS ABOUT SOME CHEATING AND WHETHER OR NOT
3 SOMEBODY PICKS THE TEAM OR DID THINGS THAT THEY
4 SHOULDN'T HAVE DONE, THE RELATIONSHIP BETWEEN MR.
5 FORREST AND MR. MARRETT DID BREAK DOWN. THEY ENDED
6 UP NOT GETTING ALONG. THEY ENDED UP HAVING A
7 BOILING OVER POINT ONE DAY, AND THAT WAS
8 UNFORTUNATE, BECAUSE AT THAT TIME, MR. FORREST, WHO
9 YOU'LL HEAR, IS A MAN WHO DOESN'T NECESSARILY TAKE
10 TOO WELL TO BEING STOOD UP TO AND DIDN'T LIKE THE
11 FACT THAT HE WAS KIND OF BEING CALLED TO THE CARPET
12 BY MR. MARRETT. DIDN'T LIKE THE FACT THAT MR.
13 MARRETT WAS, IN MR. FORREST'S MIND, HARASSING HIM.
14 UNFORTUNATELY FOR BRAD MARRETT, MR. FORREST HAD A
15 TOOL THAT HE COULD USE. YOU'LL HEAR WHAT HE DID.
16 MR. FORREST PUT A NO TRESPASSING NOTICE ON BRAD
17 MARRETT FROM EVER COMING ON FOOT THERE AT SUMMERSETT
18 COUNTRY CLUB EVER AGAIN. NOW, BRAD HAD ALREADY BEEN
19 PLAYING FOR ABOUT A YEAR OR YEAR AND A HALF. NOW,
20 ALL OF A SUDDEN, HE'S GOT THREE AND A HALF, FOUR
21 YEARS STILL LEFT ON HIS CONTRACT, WHICH IS FIVE
22 YEARS THERE AT THE COUNTRY CLUB. BUT HE CAN'T USE
23 IT. IT HAS ZERO VALUE. HE'S AT THE WINTER OF HIS
24 LIFE. HIS RETIREMENT PLANS, HIS GOALS, HIS DREAMS,
25 HIS JOY, THINGS HE ENJOYED DOING THE MOST WERE TAKEN

1 AWAY FROM HIM. DALLAH FORREST GETS RID OF THE THORN
2 IN HIS SIDE, DOESN'T HAVE TO HAVE SOMEBODY COMING TO
3 HIS COUNTRY CLUB AND CALLING HIM ON THE CARPET OR
4 REQUESTING THAT HE DO THINGS. THE PRICE HAS ALREADY
5 BEEN PAID FOR THE TOWNHOUSE. HE'S GOT HIS MONEY.
6 BRAD MARRETT IS LEFT OUT IN THE COLD. HE'S LIVING
7 ON THE SECOND HOLE OF A GOLF COURSE, NOT ONLY THAT
8 HE CAN'T PLAY, BUT HE CAN'T EVEN SET FOOT ON. HE
9 CAN'T TAKE ADVANTAGE OF THE WALKING TRAILS. HE
10 CAN'T TAKE ADVANTAGE OF THE AMENITIES. IF HE HAS
11 COMPANY THAT COMES OVER AND THEY WANT TO GO PLAY
12 GOLF OR THEY WANT TO GO DO SOMETHING AT THE COUNTRY
13 CLUB, HE HAS TO TELL THEM HE CAN'T DO THAT BECAUSE
14 HE'S NOT ALLOWED. HE WOULD BE TRESPASSING, THAT A
15 SWORN TRESPASS NOTICE HAS BEEN TAKEN OUT.

16 YOU'LL PROBABLY HEAR MR. FORREST COMPLAIN THAT
17 HE WAS IN FEAR FOR HIS SAFETY, THAT HE, MR. FORREST,
18 WAS IN FEAR FOR HIS LIFE BECAUSE HE SAYS THAT BRAD
19 MARRETT, CLAIMED THAT BRAD MARRETT WAS GOING TO,
20 QUOTE, WASTE HIM, CLOSE QUOTE. AND THAT'S WHY THIS
21 TRESPASS NOTICE WAS PUT ON HIM. ALL OTHER REMEDIES
22 THAT COULD HAVE BEEN TAKEN ADVANTAGE OF - A
23 RESTRAINING ORDER. YOU CAN COME ON THE COUNTRY
24 CLUB, BUT YOU HAVE TO STAY AWAY FROM DALLAH FORREST.
25 THAT WASN'T USED. HOW ABOUT SIT DOWN AND TALK

1 THINGS OUT? THAT WASN'T USED. HOW ABOUT REALIZE
2 THAT AN ELDERLY MAN WHO IS NOT IN THE GREATEST
3 PHYSICAL SHAPE REALLY ISN'T GOING TO WASTE YOU.
4 IT'S BETTER TO JUST BE ABLE TO TAKE A LITTLE GRIEF
5 SOMETIMES IF PEOPLE AREN'T HAPPY ABOUT A SITUATION
6 OR WORK IT OUT. THAT WASN'T DONE. AS HE SITS HERE
7 TODAY, BRAD MARRETT HAS NOT PLAYED GOLF AT HIS HOME
8 COURSE THAT HE NEGOTIATED AND RECEIVED A FIVE-YEAR
9 MEMBERSHIP FOR FOR THE PRICE OF HIS TOWNHOUSE. YOU,
10 LADIES AND GENTLEMEN OF THE JURY, Y'ALL HAVE THE
11 RIGHT OR THE ABILITY TO MAKE THAT RIGHT TODAY. WE
12 BELIEVE YOU WILL, AND WE APPRECIATE YOU BEING HERE.
13 THANK YOU.

14 BY JUDGE STOKES:

15 MR. SPIVEY?

16 BY MR. SPIVEY:

17 MAY IT PLEASE THE COURT. LADIES AND GENTLEMEN,
18 I'M MIKE SPIVEY AND I REPRESENT MR. DALLAH FORREST
19 IN REGARD TO THIS LAWSUIT. NOW, DALLAH IS NOT JUST
20 A CLIENT OF MINE. HE'S A GOOD FRIEND OF MINE. I'VE
21 KNOWN HIM FOR 35, 36 YEARS, AS LONG AS I'VE BEEN
22 PRACTICING LAW. AND IF YOU LISTEN TO WHAT MR.
23 BENNETT SAYS IN PLAYING THE VICTIM CARD. LET'S TALK
24 ABOUT —

25 BY MR. BENNETT:

1 OBJECTION. OBJECT TO THE DEROGATORY TERM OF
2 "VICTIM."

3 BY JUDGE STOKES:

4 SAY IT AGAIN.

5 BY MR. BENNETT:

6 I SAID OBJECTION. I OBJECT TO THE DEROGATORY
7 TERM AND USE OF THE WORD "VICTIM."

8 BY JUDGE STOKES:

9 OVERRULED.

10 BY MR. SPIVEY:

11 MR. MARRETT -

12 BY JUDGE STOKES:

13 THIS IS ARGUMENT, I MEAN, THIS IS OPENING
14 STATEMENTS.

15 BY MR. SPIVEY:

16 YEAH.

17 BY JUDGE STOKES:

18 I'M GOING TO LEAVE THE REINS A LITTLE BIT
19 LOOSER. GO AHEAD, MR. SPIVEY.

20 BY MR. SPIVEY:

21 OKAY. THANK YOU, YOUR HONOR. LADIES AND
22 GENTLEMEN, WHEN - I DO A LOT OF DOMESTIC CASES AND A
23 PSYCHOLOGIST WHO TESTIFIED IN ONE OF THEM TOLD ME
24 ONE TIME, AND HE TESTIFIED TO THIS, THAT THERE ARE
25 ACTUALLY TWO KINDS OF PEOPLE. (INAUDIBLE) TO

1 REALIZE THAT. THERE'S TAKERS AND THERE'S GIVERS.
2 THE GIST OF WHAT MR. BENNETT SAID IS THAT MR.
3 MARRETT'S A TAKER. HE CAME TO DALLAH AND HE WANTED
4 TO BUY A HOUSE. THE LIST PRICE WAS \$159,000. HE
5 DICKERED AND GOT IT FOR \$149,000. THEN, HE SAID HE
6 WANTED A LIFETIME MEMBERSHIP, TOO. DALLAH OFFERED
7 HIM FIVE YEARS AND HE DECIDED PROBABLY THAT WAS
8 GOING TO BE ABOUT THE LENGTH OF HIS LIFETIME. SO,
9 HE GOT WHAT HE WANTED, A MEMBERSHIP TO THE GOLF
10 COURSE. SO, HE'S A TAKER. AND YOU'RE GOING TO HEAR
11 SOME OTHER TESTIMONY TODAY ABOUT HOW HE IS A TAKER.

12 ALTERNATIVE TO THAT IS MR. FORREST, WHO IS A
13 GIVER. HE'S ACTIVE IN HIS CHURCH, OPEN ROAD
14 BAPTIST. HE'S A SUNDAY SCHOOL TEACHER, A SUNDAY
15 SCHOOL SUPERINTENDENT. HE DOES MISSIONS, HELPS WITH
16 MISSIONS IN ABOUT FIVE COUNTRIES. HE'S MADE 12
17 TRIPS TO HAITI, WHERE HE'S WORKED AND HELPED BUILD A
18 CHURCH. HE GIVES ALL THE TIME. SO, IT REALLY
19 DIDN'T BOTHER HIM WHEN HE HAD AN OLD FRIEND FROM 40
20 YEARS EARLIER, COME UP WANTING (INAUDIBLE). THEY
21 DICKERED. BUT HE GOT, MR. MARRETT GOT WHAT HE
22 WANTED. HE BOUGHT THIS HOUSE. IT CLOSED ON JUNE
23 21ST, 2004. I REMEMBER THAT DAY, BECAUSE THAT
24 HAPPENS TO BE MY BIRTHDAY. THE INCIDENT THAT
25 OCCURRED WAS AUGUST 25, 2005, 15 MONTHS, FOUR DAYS

1 LATER. NOW, ANYBODY WHO HAS EVER BOUGHT A HOUSE AND
2 BEEN INVOLVED IN CONSTRUCTION KNOWS THAT YOU'VE GOT
3 A ONE-YEAR WARRANTY ON A HOUSE WHEN YOU BUY IT, A
4 NEW HOUSE. AT BEST, THE WARRANTY IS THREE MONTHS
5 AND FOUR DAYS NO LONGER IN EFFECT. YOU'LL HEAR
6 TESTIMONY TODAY ABOUT THE TAKER COMING UP TO MR.
7 RICHARD LOLLIS SITTING BACK HERE, WHO WAS WORKING
8 FOR MR. FORREST AT THE TIME, ALMOST WEEKLY,
9 COMPLAINING ABOUT SOMETHING ABOUT THE HOUSE. DALLAH
10 WORKED WITH HIM, CONTINUED (INAUDIBLE), DO THINGS,
11 BUT THEN, HE CAME TO HIM ON AUGUST 25TH, ONCE AGAIN,
12 THREE MONTHS, FIVE DAYS AFTER THE WARRANTY EXPIRED,
13 AND DEMANDED SOME WORK JUST BECAUSE HE HAD SEEN IT
14 DONE ON OTHER HOUSES THAT WERE STILL UNDER WARRANTY.
15 MR. FORREST SAID NO, WE CAN'T DO THIS ANYMORE.
16 WE'VE DONE ENOUGH. NOW, ANYWAY, YOU DON'T NEED THE
17 WORK. HE HAD A GUY LOOK AT IT, DIDN'T NEED THE WORK
18 DONE. MR. FORREST WANTED TO WORK WITH HIM, BUT HE
19 COULDN'T WORK WITH HIM. HE WAS BEING HARASSED TO
20 DEATH. THE TAKER, MR. MARRETT, WAS DEMANDING
21 SOMETHING HE WASN'T ENTITLED TO LEGALLY, THAT HE
22 DIDN'T EVEN NEED PHYSICALLY. HE WAS JUST TRYING TO
23 SEE HOW FAR HE COULD PUSH MR. FORREST, KNOWING THAT
24 MR. FORREST WAS A GIVER.
25 SO, THEN, WHEN MR. FORREST TOLD HIM THAT THEY

1 WEREN'T GOING TO DO THE WORK, MR. MARRETT GOES
2 BERSERK, STARTS CURSING, CALLING HIM A LIAR. THEN,
3 HE SAID THE MAGIC WORDS. MR. BENNETT HOPED HE COULD
4 HEAD ME OFF, BUT I'M NOT GOING TO HEAD OFF ON IT.
5 HE SAID I'M GOING TO WASTE YOU. I LOOKED IT UP IN
6 THE DICTIONARY, SLANG FOR WASTE, AND ONE OF THE NINE
7 DEFINITIONS OF WASTE IS TO KILL OR DESTROY.

8 LADIES AND GENTLEMEN, IF SOMEBODY CAME UP TO
9 YOU AND SAID I'M GOING TO KILL OR DESTROY YOU,
10 WOULDN'T YOU BE CONCERNED? WOULDN'T YOU BE WORRIED?
11 IT WASN'T A JOKE. IT WAS SERIOUS. MR. NELSON BACK
12 HERE, MR. LOLLIS, THEY'RE GOING TO TELL YOU ABOUT
13 THAT FIGHT THAT DAY. IT WASN'T LONG. DIDN'T TAKE
14 LONG. MR. MARRETT STARTED - THE FIRST THING HE DID
15 WAS STARTED SAYING I'M GOING TO SUE YOU. WELL, I'LL
16 SAY ONE THING (INAUDIBLE). HE FILED A LAWSUIT. BUT
17 THE BOTTOM LINE WAS WHEN THAT DIDN'T SCARE MR.
18 FORREST, IT DIDN'T MAKE HIM CHANGE HIS MIND, THEN HE
19 THREATENED TO KILL HIM, TO WASTE HIM. THESE
20 GENTLEMEN OUT HERE HEARD THAT. MR. FORREST
21 CERTAINLY HEARD IT. SO, THEN HE CALLS MR. NELSON
22 ABOUT THAT, THE GENTLEMAN ON THE LEFT, TO CALL A
23 MEMBER OF THE GOLF COURSE WHO WAS A POLICEMAN AND
24 ASK HIM WHAT HE SHOULD DO. HE DIDN'T SAY ANYTHING
25 ABOUT A RESTRAINING ORDER. HE GAVE HIM TWO

1 ALTERNATIVES. ONE, THAT THE -

2 BY MR. BENNETT:

3 OBJECTION, YOUR HONOR. HEARSAY. I DON'T
4 BELIEVE THAT THE WITNESS IS HERE -

5 BY JUDGE STOKES:

6 I'M GOING TO INSTRUCT THE JURY NOT TO PAY ANY
7 ATTENTION TO Y'ALL'S ARGUMENTS, ANYWAY. OVERRULED,
8 STATEMENTS OF COUNSEL.

9 BY MR. SPIVEY:

10 THANK YOU, YOUR HONOR.

11 BY JUDGE STOKES:

12 I LET YOU TELL A STORY, MR. BENNETT. LET HIM
13 TELL HIS STORY.

14 BY MR. BENNETT:

15 IF I MAY, YOUR HONOR, QUESTION IN SIDEBAR?

16 BY JUDGE STOKES:

17 YES, SIR, COME ON UP.

18 BY MR. BENNETT:

19 THANK YOU. YOUR HONOR, (INAUDIBLE) IS THAT MR.
20 SPIVEY IS GOING TO MAKE A STATEMENT THAT IS HEARSAY,
21 THAT THERE IS NO WITNESS AVAILABLE TO MAKE THAT
22 STATEMENT, AND THEREFORE, IT WILL RENDER THE
23 OBJECTION, AT THAT TIME, OBSOLETE.

24 BY JUDGE STOKES:

25 I AGREE THAT HEARSAY IS NOT ADMITTED INTO

1 EVIDENCE. Y'ALL'S OPENING STATEMENTS AND CLOSING
2 ARGUMENTS, AS STATEMENTS OF COUNSEL, ARE NOT
3 EVIDENCE.

4 **BY MR. BENNETT:**

5 THAT'S CORRECT, YOUR HONOR. UNFORTUNATELY -

6 **BY MR. SPIVEY:**

7 BUT HE MADE A LOT OF HEARSAY, TOO.

8 **BY MR. BENNETT:**

9 THAT'S RIGHT, SIR. WHAT I'M ASKING IS THAT THE
10 FACT THAT THIS STATEMENT THAT'S GOING TO COME OUT,
11 AND I'M NOT EVEN SURE WHAT IT IS, BUT HE HAS
12 INDICATED THAT THERE IS A STATEMENT THAT HE'S
13 GETTING READY TO SPEAK ABOUT THAT THERE IS NO
14 WITNESS WHO'S GOING TO TESTIFY TO. AND BECAUSE OF
15 THAT, THEN, EVEN A -

16 **BY JUDGE STOKES:**

17 DO YOU HAVE A WITNESS TO BACK UP YOUR
18 STATEMENTS?

19 **BY MR. SPIVEY:**

20 WELL, MR. NELSON TALKED TO HIM AND HE'S -

21 **BY MR. BENNETT:**

22 THAT'S HEARSAY. THAT'S NOT HIS STATEMENT.

23 **BY MR. SPIVEY:**

24 WE HAD THE GENTLEMAN ANOTHER TIME. I MEAN, WE
25 CAN HIM HERE IF WE NEED TO.

1 BY MR. BENNETT:

2 (INAUDIBLE)

3 BY JUDGE STOKES:

4 (INAUDIBLE) TO SAY SOMETHING TO A JURY YOU

5 CAN'T BACK UP. HOWEVER, HOW YOU TRY THE CASE IS UP

6 TO YOU, MR. SPIVEY. ANYTHING Y'ALL SAY IS NOT IN

7 EVIDENCE. I WILL NOT LET HEARSAY INTO EVIDENCE.

8 BUT WHAT Y'ALL SAY IS NOT IN EVIDENCE. OVERRULED.

9 BY MR. SPIVEY:

10 BASICALLY, MR. FORREST FOUND OUT HE HAD TWO

11 ALTERNATIVES. ONE, TO SWEAR A WARRANT FOR HIS

12 ARREST AND THROW HIM IN JAIL, WHICH HE CHOSE NOT TO

13 DO BECAUSE HE DIDN'T WANT TO SEE A GENTLEMAN WHO WAS

14 74, I GUESS, AT THAT TIME, BEING ARRESTED. THE

15 OTHER THING HE WAS TOLD TO DO WAS SEND A NO TRESPASS

16 NOTICE. HE DID THAT, SERVED IT ON MR. MARRETT.

17 NOW, ONE OF THE THINGS THAT REALLY BOTHERS ME

18... ABOUT THIS CASE -

19 BY MR. BENNETT:

20 OBJECT TO PERSONALIZATION, YOUR HONOR.

21 BY JUDGE STOKES:

22 I'M GOING SUSTAIN THAT OBJECTION, BELIEVE IT OR

23 NOT.

24 BY MR. SPIVEY:

25 LADIES AND GENTLEMEN, AS I SAID EARLIER, THIS

1 IS A CASE OF A GIVER VERSUS A TAKER. MR. FORREST'S
2 PASTOR IS HERE. HE'S GOING TO TELL YOU ABOUT WHAT
3 KIND OF MAN HE IS. MR. MARRETT THREATENED HIM AND
4 HE REALLY FELT LIKE HE HAD NO ALTERNATIVE. IF
5 SOMEBODY CAME TO YOUR HOUSE AND THREATENED YOU,
6 WOULD YOU LET HIM BACK IN THE HOUSE? MR. FORREST
7 OWNS THIS GOLF COURSE. MR. BENNETT TOLD US HOW MR.
8 MARRETT LOVES TO PLAY GOLF. I'M SURE THAT'S TRUE,
9 BUT THERE'S PLENTY OF OTHER GOLF COURSES AROUND TOWN
10 WHERE HE HASN'T THREATENED SOMEBODY.

11 I WANT YOU TO REALLY CONSIDER THE EVIDENCE AS
12 YOU HEAR IT. AND AS YOU CONSIDER, THERE ARE GOING
13 TO BE A LOT OF OBJECTIONS (INAUDIBLE), BUT YOU KNOW,
14 I ALWAYS PRAY AS I'M COMING TO A TRIAL, I ALWAYS ASK
15 THE LORD TO DO (INAUDIBLE). AND WHEN I WAS AT A
16 STOPLIGHT OUT ON 291 AND THIS CAR PULLS UP BESIDE ME
17 AND IT HAD KNOW THE TRUTH ON IT. AND THAT'S YOUR
18 JOB, TO KNOW THE TRUTH. YOU HEAR THE TRUTH. YOU'RE
19 GOING TO ISSUE A VERDICT. THAT VERDICT IN LATIN
20 MEANS, THE WORD VERDICT IN LATIN MEANS TO TELL THE
21 TRUTH. AND THAT'S WHAT YOU'RE GOING TO DO. YOU'RE
22 GOING TO TELL THE TRUTH. YOU'RE GOING TO LISTEN TO
23 THE EVIDENCE AND THEN YOU'RE GOING TO TELL THE
24 TRUTH. IF ANYBODY WOULD BE DAMAGED HERE, IT'S MR.
25 FORREST BECAUSE HE WAS THREATENED WITH HIS LIFE.

1 BUT YOU KNOW, I HOPE THAT YOU WILL LISTEN TO THE
2 EVIDENCE, AND I'M SURE YOU WILL. I WAS REALLY
3 PLEASED WITH Y'ALL AS A JURY BECAUSE YOU LOOK LIKE
4 GOOD, REASONABLE, HONEST, SINCERE PEOPLE, AND THAT'S
5 ALL WE NEED ON A JURY. I'VE BEEN TRYING CASES FOR
6 35, FOR 36 YEARS IN JANUARY, AND I LOVE TRYING CASES
7 AND I KNOW THAT, JUST LIKE THE SCRIPTURES SAY, ONCE
8 YOU KNOW THE TRUTH. MR. FORREST WANTS THAT TRUTH ON
9 THIS CLAIM. THANK YOU VERY MUCH.

10 **BY JUDGE STOKES:**

11 MR. BENNETT?

12 **BY MR. BENNETT:**

13 THE PLAINTIFF CALLS MR. BRAD MARRETT.

14 **BY JUDGE STOKES:**

15 MR. MARRETT, PLEASE STEP FORWARD TO BE SWORN.
16 OVER HERE, PLEASE, SIR. PUT YOUR LEFT HAND ON THE
17 BIBLE AND RAISE YOUR RIGHT.

18 **BRAD MARRETT,**

19 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

20 **BY JUDGE STOKES:**

21 PLEASE HAVE A SEAT AND ANSWER MR. BENNETT'S
22 QUESTIONS, PLEASE, SIR.

23 **BY MR. BENNETT:**

24 MAY I APPROACH, YOUR HONOR?

25 **BY JUDGE STOKES:**

1 YES, SIR.

2 DIRECT EXAMINATION BY MR. BENNETT:

3 Q. BRAD, I'M GOING TO GIVE YOU SOME WATER. I KNOW YOU
4 SPEAK KIND OF SOFTLY, BUT I WANT YOU TO SPEAK UP A
5 LITTLE BIT BECAUSE WE'VE GOT TO MAKE SURE THE JURY
6 HEARS YOU AND WE'VE GOT TO MAKE SURE THAT THE COURT
7 REPORTER GETS TO HEAR YOU, OKAY?

8 A. OKAY.

9 Q. SO, I'M GOING TO MAKE SURE - I'M GOING TO STAND BACK
10 A LITTLE BIT SO I KIND OF MAKE YOU TALK UP A LITTLE
11 BIT, OKAY?

12 A. ALL RIGHT. YES, SIR. YOU'LL HAVE TO SPEAK UP. I
13 CAN'T HEAR EITHER.

14 Q. I UNDERSTAND. YOU LET ME KNOW IF YOU CAN'T HEAR ME,
15 OKAY?

16 A. ALL RIGHT.

17 Q. ALL RIGHT. HOW OLD ARE YOU?

18 A. WHAT?

19 Q. HOW OLD ARE YOU?

20 A. SEVENTY-NINE.

21 Q. OKAY. TELL THE JURY A LITTLE BIT ABOUT YOUR
22 BACKGROUND HERE IN GREENVILLE, IF YOU WILL, PLEASE.

23 A. WELL, I WAS - WASN'T BORN IN GREENVILLE, BUT MY
24 PARENTS MOVED TO GREENVILLE WHEN I WAS ABOUT SIX
25 YEARS OLD, AND MY DAD WORKED AT HILLANDALE GOLF

1 COURSE ALL THOSE YEARS. AND I CADDIED UP THERE AND
2 LEARNED TO PLAY GOLF. AND ALL MY FRIENDS, I WAS
3 RAISED AND WENT TO PARKER HIGH AND I WORKED FOR
4 DANIEL CONSTRUCTION. AND I ENDED UP, I WENT TO
5 GREENWOOD ON A JOB AND I ENDED UP STAYING DOWN
6 THERE. I LIVED IN GREENWOOD FOR ABOUT 30 YEARS, I
7 GUESS, AND SO I RETIRED AND WANTED TO COME BACK
8 HOME. AND I HAD RIDDEN BY THOSE PLACES, THE HOUSES
9 THERE AND IT WAS WHERE THE OLD PARIS MOUNTAIN
10 COUNTRY CLUB USED TO BE. I PLAYED GOLF THERE A LOT
11 WITH ALL MY FRIENDS AND I SAID WELL, THAT WOULD BE
12 IT. THAT WOULD BE MY DREAM. AND SO, WE TALKED
13 ABOUT THE HOUSES. AND THE PRICE HAD GONE - AND HE
14 SAID HE WAS ASKING \$159,000. AND HE HAD ALREADY CUT
15 IT TEN THOUSAND TO \$149,000 BEFORE I HAD EVEN
16 STARTED TALKING TO HIM. SO, I -

17 Q. LET ME STOP YOU FOR ONE SECOND, BRAD. YOU'RE DOING
18 FINE, BUT WHEN YOU SAY HE, YOU MEAN MR. DALLAH
19 FORREST?

20 A. MR. FORREST, YES, SIR.

21 Q. OKAY. THAT'S WHO YOU WERE NEGOTIATING WITH FOR THE
22 HOUSE?

23 A. YES.

24 Q. AND JUST FOR THE RECORD, WHAT'S THE ADDRESS OF THAT
25 HOUSE?

1 A. NUMBER ONE PATIO WAY.

2 Q. OKAY. I'M SORRY. YOU WERE SAYING THAT YOU AND MR.

3 FORREST HAD STARTED NEGOTIATING THE PRICE FOR ONE

4 PATIO WAY.

5 A. RIGHT.

6 Q. PLEASE GO AHEAD AND TELL US ABOUT THOSE

7 NEGOTIATIONS.

8 A. ALL RIGHT. THE HOUSES WERE PROBABLY A YEAR OLD AND

9 HE WAS - HE HAD - THERE ARE FIVE HOUSES ON THIS

10 ROAD, THE LITTLE PATIO DEAL. AND HE HAD ALREADY CUT

11 THE PRICE. HE WAS ASKING 159 TO START WITH. HE HAD

12 ALREADY CUT IT TO 149 BEFORE I EVEN STARTED

13 NEGOTIATING WITH HIM. AND SO, I FIGURE IF I COULD

14 BUY IT FOR 140 OR SOMETHING LIKE THAT, I WOULD BE

15 DOING ALL RIGHT. BUT WE KEPT TALKING AND TALKING,

16 AND I ENDED UP, I SAID ALL RIGHT. I SAID GIVE ME A

17 LIFETIME MEMBERSHIP TO THE COUNTRY CLUB. WELL, I

18 CAN'T DO THAT. WELL, I CAN'T DO THAT. I SAID WELL,

19 WE CAN'T DEAL, THEN, I DON'T GUESS. AND HE SAID I

20 TELL YOU WHAT. I'LL GIVE YOU FIVE YEARS, AND I SAID

21 WELL, YOU KNOW, OLD AS I AM, I SAID THAT'S ABOUT A

22 LIFETIME MEMBERSHIP ANYWAY. SO, WE MADE A DEAL FOR

23 149, PLUS THE FIVE YEARS. AND SO -

24 Q. LET ME STOP YOU RIGHT THERE FOR A SECOND, BRAD.

25 A. ALL RIGHT.

1 Q. DIRECTING THE COURT AND COUNSEL, LET THE RECORD
2 REFLECT THAT I AM PROVIDING A COPY TO OPPOSING
3 COUNSEL AND TO THE COURT. THE DOCUMENT, MAY I
4 APPROACH, YOUR HONOR?

5 **BY JUDGE STOKES:**

6 YES, SIR.

7 **DIRECT EXAMINATION RESUMED BY MR. BENNETT:**

8 Q. MR. MARRETT, WOULD YOU TAKE A LOOK AT BOTH SIDES OF
9 THAT DOCUMENT? IT'S A FRONT AND BACK PAGE, OKAY?

10 A. YEAH.

11 Q. DO YOU RECOGNIZE THAT DOCUMENT?

12 A. YEAH.

13 Q. WHAT DO YOU RECOGNIZE THAT DOCUMENT TO BE?

14 A. DO I RECOGNIZE WHAT?

15 Q. WHAT DO YOU RECOGNIZE THAT DOCUMENT TO BE? WHAT IS
16 THAT DOCUMENT?

17 A. THAT'S AGREEING, THAT'S AN AGREEMENT BETWEEN HE AND
18 I FOR THE SALE OF THE PROPERTY.

19 Q. BETWEEN YOU AND MR. FORREST? YOUR HONOR, I ASK THAT
20 THIS DOCUMENT BE ENTERED INTO EVIDENCE AS
21 PLAINTIFF'S EXHIBIT A.

22 **BY JUDGE STOKES:**

23 ANY OBJECTION?

24 **BY MR. SPIVEY:**

25 NO OBJECTION.

1 BY JUDGE STOKES:

2 SO ENTERED.

3 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

4 Q. ALL RIGHT. SO --

5 BY JUDGE STOKES:

6 DO YOU WANT TO MARK -- DO YOU WANT TO MARK THE
7 ORIGINAL?

8 BY MR. BENNETT:

9 I'LL BE GLAD TO. DO YOU DO A OR ONE?

10 BY JUDGE STOKES:

11 A.

12 BY MR. BENNETT:

13 IT'S GOING TO BE PLAINTIFF'S EXHIBIT A, THEN.

14 BY JUDGE STOKES:

15 OKAY.

16 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

17 Q. NOW, IS THIS AGREEMENT, THIS WAS SIGNED ON MAY 21,
18 2004. IS THAT CORRECT?

19 A. YEAH, AS FAR AS MY KNOWLEDGE GOES.

20 Q. AND IT'S FOR NUMBER ONE PATIO WAY, THAT'S YOUR HOUSE
21 THAT YOU CURRENTLY LIVE IN? IS THAT CORRECT?

22 A. CORRECT.

23 Q. THEN, IT SAYS THAT THERE IS A STANDARD ONE-YEAR
24 WARRANTY, CORRECT?

25 A. RIGHT.

- 1 Q. THEN, ON THE BACK PAGE, IT INDICATES FURNISH BUYER A
2 FIVE-YEAR MEMBERSHIP AT SUMMERSETT GOLF CLUB.
- 3 A. THAT'S RIGHT.
- 4 Q. AS PART OF THE BUY-SELL AGREEMENT? AND DID YOU SIGN
5 THIS DOCUMENT, MR. MARRETT?
- 6 A. YEAH.
- 7 Q. AND DID DALLAH FORREST SIGN THIS DOCUMENT?
- 8 A. YES, HE DID.
- 9 Q. OKAY. SO, JUST TO RECAP, Y'ALL ARE GOING BACK AND
10 FORTH ON THE PRICE, SOMEWHERE BETWEEN, LIKE, 159,000
11 TO SOMEWHERE AROUND 140,000, BUT YOU ENDED UP
12 SETTLING ON 149,000 AND A FIVE-YEAR MEMBERSHIP. IS
13 THAT CORRECT?
- 14 A. THAT'S CORRECT.
- 15 Q. OKAY. SO, YOU END UP MOVING INTO THE HOUSE AT SOME
16 POINT IN TIME, CORRECT?
- 17 A. RIGHT.
- 18 Q. PLEASE TELL THE LADIES AND GENTLEMEN OF THE JURY
19 ABOUT THAT FIVE-YEAR MEMBERSHIP AT THAT TIME. DID
20 YOU START PLAYING GOLF AGAIN OVER AT SUMMERSETT
21 THEN?
- 22 A. YEAH, I STARTED PLAYING AGAIN. YOU KNOW, WE'D PLAY
23 THERE, HAVE A LITTLE DEAL OUT THERE THEY CALL IT
24 SENIOR'S DAY WHERE ALL THE SENIOR FOLKS AND I'D GO
25 UP THERE AND PLAY AND THEY CHOOSE UP TEAMS AND EVER

1 WHO HAS THE BEST SCORE WINS THE MONEY, YOU KNOW.
2 IT'S LIKE YOU'RE DOING A LITTLE GAMBLING, I GUESS
3 YOU'D CALL THAT. AND SO, I DON'T KNOW IF ANY ---

4 BY MR. SPIVEY:

5 YOUR HONOR, I'M GOING TO OBJECT. IT'S NOT
6 GAMBLING. THEY'RE JUST - THE WINNERS GET THE PRIZE
7 FROM THE POT. I MEAN, THERE'S NO GAMBLING TO IT.

8 BY MR. BENNETT:

9 YOUR HONOR, MR. MARRETT HAS JUST TESTIFIED TO
10 WHAT HE KNEW. HE'S OPEN FOR CROSS-EXAMINATION.

11 BY JUDGE STOKES:

12 OVERRULED.

13 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

14 Q. LET'S GO AHEAD, MR. MARRETT. SO, YOU'RE PLAYING
15 GOLF PRETTY REGULARLY, THEN, AT THIS TIME?

16 A. YEAH.

17 Q. AND JUST FOR THE SAKE, BECAUSE WE'RE IN 2009 RIGHT
18 NOW, THIS WAS BACK IN 2004?

19 A. FIVE.

20 Q. OKAY. DID YOU EVER PLAY GOLF WITH DALLAH FORREST?

21 A. I THINK WE MIGHT HAVE PLAYED ONE TIME.

22 Q. DID HE EVER PLAY IN THAT SENIORS GROUP WITH YOU?

23 A. YEAH, THAT WAS THE ONLY TIME I PLAYED WITH HIM IN
24 THE SENIORS GROUP.

25 Q. DID YOU EVER HAVE ANY OCCASION TO HAVE ANY KIND OF

1 DISAGREEMENT WITH HIM ABOUT GOLF OR ANYTHING OF THAT
2 NATURE?

3 A. I DIDN'T HAVE A DISAGREEMENT WITH HIM. (INAUDIBLE)
4 IT WAS JUST - IT WAS JUST SORT OF FUNNY THAT HE
5 ALWAYS WAS PRETTY WELL ON THE WINNING TEAM. YOU -

6 **BY MR. SPIVEY:**

7 YOUR HONOR, I'M GOING TO OBJECT. HE JUST SAID
8 HE ONLY PLAYED WITH HIM ONE TIME. HOW CAN THAT BE
9 AND IT'S NOT RELEVANT?

10 **BY MR. BENNETT:**

11 YOUR HONOR, ONCE AGAIN, THIS IS DIRECT
12 EXAMINATION. HE'S ABLE TO CROSS-EXAMINE MR. MARRETT
13 AT A LATER MOMENT -

14 **BY JUDGE STOKES:**

15 HOW IS IT RELEVANT WHO WON THE LITTLE GOLF
16 TOURNAMENTS OUT THERE WITH A CONTRACT CASE BETWEEN
17 THESE GUYS?

18 **BY MR. BENNETT:**

19 WHAT THE THEORY OF THE PROSECUTION IS, THAT
20 BECAUSE OF A DISRUPTION IN THE RELATIONSHIP BETWEEN
21 MR. MARRETT AND MR. FORREST, MR. FORREST INITIATES A
22 STAY AWAY ORDER THROUGH A NO TRESPASS NOTICE. AND
23 THIS IS THE FOUNDATION AND GROUNDWORK TO DEMONSTRATE
24 THE SUM OF THAT DISAGREEMENT THAT LED TO MR. FORREST
25 TAKING THIS EXTREME MEASURE.

1 BY JUDGE STOKES:

2 I'M GOING TO ALLOW IT, BUT GET TO THE HEART OF
3 THE MATTER, PLEASE.

4 BY MR. BENNETT:

5 THANK YOU, YOUR HONOR.

6 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

7 Q. SO, EVEN THOUGH YOU MIGHT HAVE PLAYED WITH HIM, YOU
8 STILL WERE AROUND MR. FORREST, CORRECT?

9 A. RIGHT. EVERYBODY PLAYED - YOU START, YOU'RE GOING
10 TO START (INAUDIBLE). EVERYBODY GOES TO A DIFFERENT
11 HOLE AND STARTS PLAYING. SO, EVERYBODY FINISHES IT
12 AT THE SAME TIME. I MEAN, BASICALLY AT THE SAME
13 TIME.

14 Q. AND YOU ENDED UP, BASICALLY, AM I CORRECT, HAVING A
15 LITTLE BIT OF A DISAGREEMENT WITH MR. FORREST ABOUT
16 THE FACT THAT YOU CONTEND THAT HE WAS ALWAYS KIND OF
17 GETTING PUT ON THE WINNING TEAM -

18 BY MR. SPIVEY:

19 OBJECTION TO LEADING, YOUR HONOR.

20 BY JUDGE STOKES:

21 SUSTAINED.

22 BY MR. BENNETT:

23 I'M TRYING TO WRAP THIS UP QUICKLY, YOUR HONOR.

24 I ASK A LITTLE LEEWAY TO ASK A -

25 BY MR. SPIVEY:

1 BUT I THINK, YOUR HONOR, HE CAN'T -

2 BY JUDGE STOKES:

3 I HAVE - I HAVE RULED. PROCEED.

4 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

5 Q. MR. MARRETT, IF YOU WILL, GET TO THE POINT ABOUT
6 YOUR RELATIONSHIP WITH MR. FORREST AT THIS TIME
7 ABOUT GOLF.

8 BY MR. SPIVEY:

9 YOUR HONOR, THAT'S STILL LEADING.

10 BY MR. BENNETT:

11 THAT'S NOT A LEADING QUESTION, YOUR HONOR.

12 BY JUDGE STOKES:

13 THAT IS GETTING CLOSE, BUT I DON'T THINK HE WAS
14 LEADING.

15 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

16 Q. YOU CAN ANSWER THE QUESTION, MR. MARRETT. IF YOU
17 WILL, PLEASE GET TO THE POINT AS QUICKLY AS YOU CAN
18 ABOUT YOUR RELATIONSHIP WITH MR. FORREST IN REGARDS
19 TO GOLF AT THIS TIME.

20 A. WELL, I ALREADY HAVE. IT'S LIKE I SAY, IT SEEMS
21 LIKE HIS TEAM ALWAYS, NOT ALWAYS, BUT THE MAJORITY
22 OF THE TIME AND YOU CAN CHECK THE GREENVILLE NEWS.
23 THEY PUT THE DEAL IN THE SPORTS PAGE ABOUT WHO WON A
24 CERTAIN DAY.

25 BY MR. SPIVEY:

1 YOUR HONOR, I'M GOING TO OBJECT TO RELEVANCE
2 AGAIN.

3 BY JUDGE STOKES:

4 AND I'M GOING TO SUSTAIN.

5 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

6 Q. I'M ASKING A QUESTION ABOUT YOUR RELATIONSHIP, NOT
7 NECESSARILY JUST IN GOLF, BUT ANYTHING THAT YOU
8 WOULD HAVE OCCASION TO HAVE CONFRONTATION WITH MR.
9 FORREST.

10 A. NOTHING REALLY. HE SAID WE WERE GOOD FRIENDS ALL
11 THE YEARS BEFORE I EVEN LEFT GREENVILLE, BUT I KNEW
12 OF DALLAH AND TOMMY AND THE WHOLE CROWD AND I CAN'T
13 SAY WE WERE GOOD FRIENDS. I KNEW TOMMY PRETTY GOOD,
14 BUT I - IT'S FAIR TO SAY WHEN I WAS MOVING BACK
15 HERE, ALL MY FRIENDS SAID YOU KNOW WHO YOU'RE
16 DEALING WITH. YOU'RE DEALING WITH -

17 BY MR. SPIVEY:

18 YOUR HONOR, I'M GOING TO OBJECT.

19 BY JUDGE STOKES:

20 SUSTAINED. JURY, DISREGARD THAT.

21 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

22 Q. MR. MARRETT, WHAT I WANT YOU TO DO IS I WANT YOU TO
23 FOCUS IN ON MY QUESTION AND JUST ANSWER THAT
24 QUESTION, OKAY? ALL RIGHT? LET'S THINK ABOUT THE
25 HOUSE AND YOU HAD AN ISSUE, DID YOU NOT, ABOUT THE

1 AIR CONDITIONING IN THAT HOUSE, OKAY? AND IF YOU
2 WILL, IF YOU WILL TELL THE JURY IF YOU DID, IN FACT,
3 THEN, EVER CONFRONT MR. FORREST ABOUT THAT ISSUE.

4 DID YOU CONFRONT MR. FORREST ABOUT THAT ISSUE?

5 A. ALL RIGHT. I -

6 Q. MR. MARRETT, I'M SORRY. LET'S JUST GET AN ANSWER TO
7 THAT FIRST AND THEN WE'LL MOVE QUICKLY ALONG AND IT
8 WILL MAKE IT A WHOLE LOT SMOOTHER.

9 A. YEAH.

10 Q. DID YOU EVER HAVE A CONFRONTATION, AS FAR AS A
11 DISCUSSION, WITH MR. FORREST ABOUT YOUR TOWNHOUSE
12 AND THE AIR CONDITIONER?

13 A. YES, SIR.

14 Q. OKAY. WOULD YOU PLEASE NOW DESCRIBE THAT TO THE
15 JURY?

16 A. TWO OF THE HOUSES, HE TOLD ME, AND THEY ARE EXACTLY
17 ALIKE. THE HOUSES THAT WE NEGOTIATED ON, HE SAID
18 YOU CAN HAVE EITHER ONE OF THEM FOR THE SAME PRICE
19 BECAUSE THEY'RE EXACTLY THE SAME. OKAY. AND SO,
20 THE ONE I TOOK WAS NUMBER ONE DOWN THERE, AND SO
21 NUMBER THREE UP THERE, HE SOLD IT AFTER HE SOLD
22 MINE. WELL, THAT AIR CONDITIONING, THEY HAD A
23 PROBLEM WITH IT AND THEY WERE FIXING IT ON THE HOUSE
24 THAT I DIDN'T TAKE. THEY WERE DOING WORK ON THAT.
25 AND I DON'T KNOW IF YOU KNOW A LOT ABOUT AIR

1 CONDITIONING, BUT THE RETURN IS --

2 BY MR. SPIVEY:

3 YOUR HONOR, I OBJECT ON RELEVANCE ABOUT THE
4 OTHER HOUSE AND HOW IT RELATES TO THE HOUSE HE'S IN.

5 BY JUDGE STOKES:

6 I THINK HE'S LEADING UP TO HOW THEY HAD THEIR
7 DISPUTE OVER IT. I'M GOING TO ALLOW IT BRIEFLY, BUT
8 WE NEED TO GET ON POINT, GENTLEMEN.

9 BY MR. BENNETT:

10 THANK YOU, YOUR HONOR. YES, SIR.

11 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

12 Q. MR. MARRETT, YOU'RE DOING FINE, BUT I'M NOT OVERLY
13 CONCERNED ABOUT THE SPECIFICS ABOUT THE AIR
14 CONDITIONING. WHAT I'D LIKE YOU TO DO IS EXPLAIN TO
15 THE LADIES AND GENTLEMEN OF THE JURY AS TO WHETHER
16 OR NOT YOU'VE HAD ANY DISCUSSIONS WITH MR. FORREST
17 ABOUT THIS OVER THIS PERIOD OF TIME. DID YOU EVER
18 CONFRONT HIM ABOUT THESE PROBLEMS THAT YOU WERE
19 HAVING IN YOUR CONDOMINIUM OR YOUR TOWNHOUSE?

20 A. YEAH.

21 Q. AND WAS HE GLAD THAT YOU WERE CONFRONTING HIM ABOUT
22 THESE PROBLEMS?

23 BY MR. SPIVEY:

24 OBJECTION, LEADING, YOUR HONOR.

25 BY THE WITNESS:

1 WELL -

2 BY JUDGE STOKES:

3 SUSTAINED.

4 BY MR. BENNETT:

5 YOU HAVE TO WAIT, MR. MARRETT -

6 BY JUDGE STOKES:

7 SUSTAINED.

8 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

9 Q. WHAT WAS MR. FORREST'S DEMEANOR ABOUT YOU
10 CONFRONTING HIM ABOUT THESE QUESTIONS?

11 A. WELL, I DON'T THINK HE LIKED IT TOO MUCH. I MEAN,
12 HE -

13 Q. WHY DO YOU BELIEVE THAT?

14 A. WELL, YOU COULD TELL BY THE WAY (INAUDIBLE) WANTS TO
15 DISCUSS ANYTHING WITH YOU OR NOT AND HE DIDN'T HAVE
16 TIME TO MESS WITH ME BECAUSE HE HAD ALREADY CLOSED
17 THE DEAL WITH ME AND SO IT WAS ALL OVER, AS FAR AS
18 HE WAS CONCERNED.

19 Q. DID YOU, IN FACT, TRY TO GO TO HIM ON MULTIPLE
20 OCCASIONS, THEN?

21 A. YEAH, ANYTIME YOU'VE GOT A LOT OF PROBLEMS, I MEAN,
22 YOU GO CHECK WITH HIM OR HIS MAIN MAN THAT DID WORK
23 FOR HIM.

24 Q. WERE YOU UNDER THE BELIEF THAT HE WAS GOING TO FIX
25 THESE PROBLEMS?

1 A. YOU'VE GOT TO BELIEVE HE IS. I MEAN, BUT IT NEVER --
2 IT NEVER DID HAPPEN.

3 Q. WHEN YOU WOULD CONFRONT HIM ABOUT THESE PROBLEMS,
4 WOULD HE REASSURE YOU THAT HE WAS GOING TO TAKE CARE
5 OF THESE PROBLEMS?

6 A. NO, THAT'S WHEN HE RUN ME OUT OF THE CLUBHOUSE AND
7 OFF HIS PROPERTY AND EVERYTHING ELSE, WHEN I ASKED
8 HIM ABOUT WAS HE GOING TO TAKE CARE OF IT AND THAT'S
9 WHEN HE WENT BALLISTIC AND STARTED SCREAMING AND
10 HOLLERING AND GET OUT OF MY HOUSE AND GET OUT OF MY
11 CLUBHOUSE, GET OFF MY PROPERTY. AND I MEAN, HE JUST
12 - HE LOST IT. I DON'T KNOW.

13 Q. ALL RIGHT. SO, LET ME JUST STEP BACK. AT SOME
14 POINT IN TIME, THERE WAS KIND OF A BOILING OVER,
15 THEN, ABOUT THIS ISSUE?

16 A. YEAH.

17 Q. WHEN DID THAT - WHERE DID THAT TAKE PLACE?

18 A. IN THE CLUBHOUSE AT SUMMERSETT GOLF COURSE.

19 Q. OKAY. IF YOU WILL, DESCRIBE FOR THE JURY THAT
20 PROCESS. DID YOU GO UP TO HIS OFFICE OR DID YOU SEE
21 HIM OUT IN THE PARKING LOT OR WHAT?

22 **BY MR. SPIVEY:**

23 I OBJECT TO LEADING, YOUR HONOR.

24 **BY MR. BENNETT:**

25 YOUR HONOR, I'M JUST TRYING TO SET THE STAGE

1 AND MOVE THIS ALONG QUICKLY.

2 BY JUDGE STOKES:

3 WELL, SUSTAINED.

4 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

5 Q. IF YOU WILL, JUST DESCRIBE THE EVENTS THAT TOOK
6 PLACE.

7 A. I WENT UP TO HIS OFFICE AND HE WAS COMING OUT OF HIS
8 OFFICE AND I WENT UP THE STEPS. I SAID DALLAH, CAN
9 I ASSUME THAT YOUR PEOPLE ARE GOING TO COME DOWN TO
10 MY HOUSE AND FIX MY AIR CONDITIONING LIKE THEY DID
11 FOR THEIRS? AND THAT WAS THE END OF IT, AS FAR AS
12 HE WAS CONCERNED. THAT'S WHEN HE - HE JUST WENT
13 BALLISTIC AND STARTED SCREAMING AND HOLLERING AND
14 GET OUT OF HERE AND GET AWAY FROM HERE. AND I SAID,
15 YOU KNOW, WHAT'S THE MATTER? HIS OFFICE IS UPSTAIRS
16 AND I WENT ON DOWN THE STEPS AND HE CAME DOWN THE
17 STEPS, GET OUT OF HERE, GET OUT OF HERE. AND I SAID
18 DALLAH, I SAID LET'S JUST GO OUTSIDE AND TALK ABOUT
19 IT LIKE MEN OUGHT TO. YEAH, WE'LL GO OUTSIDE. AND
20 WE WENT OUT THE DOOR AND HE WAS IN HIS KARATE DEAL.
21 I GUESS HE THOUGHT I WANTED TO GO OUTSIDE AND FIGHT
22 OR SOMETHING, BUT I MEAN, YOU LOOK AT HIM AND LOOK
23 AT ME, AND I JUST (INAUDIBLE) I WASN'T GOING TO TRY
24 TO FIGHT HIM AND HE KNOWS ALL THAT KARATE STUFF,
25 TOO.

1 Q. WHAT DO YOU MEAN, DOING HIS KARATE DEAL?

2 A. WHAT?

3 Q. YOU SAID DOING HIS KARATE DEAL. I'M ASKING YOU WHAT
4 YOU MEANT BY DOING HIS KARATE DEAL.

5 A. WELL, HE WENT INTO A STANCE, EVER HOW THEY DO WHEN
6 THEY'RE FIXING TO ATTACK SOMEBODY OR GO ON THE
7 DEFENSE. I DON'T KNOW MUCH ABOUT THAT.

8 Q. AND AT THIS TIME, Y'ALL ARE - ARE Y'ALL ARGUING BACK
9 AND FORTH?

10 A. I JUST SAID -

11 BY MR. SPIVEY:

12 OBJECTION, LEADING.

13 BY THE WITNESS:

14 I SAID DALLAH -

15 BY JUDGE STOKES:

16 ANSWER THE QUESTION.

17 BY MR. BENNETT:

18 EXCUSE ME, SIR.

19 BY JUDGE STOKES:

20 ANSWER THE QUESTION. WERE YOU ARGUING?

21 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

22 Q. AT THIS TIME, WERE Y'ALL ARGUING BACK AND FORTH?

23 A. YEAH, YEAH.

24 Q. OKAY. GO AHEAD.

25 A. WELL, THAT'S - THAT'S ABOUT THE END OF IT. WHEN WE

1 WENT OUTSIDE THE DOOR AND SO I JUST WENT ON AND I
2 GOT IN MY TRUCK AND WENT ON BACK TO THE, TO THE - TO
3 MY HOUSE. ABOUT TWO DAYS LATER, I GET THIS DEAL
4 THAT NO TRESPASSING, I CAN'T GO ON THE PROPERTY DOWN
5 THERE.

6 Q. WAIT ONE SECOND. LET THE RECORD REFLECT THAT I AM
7 PROVIDING OPPOSING COUNSEL AND THE COURT A COPY OF A
8 DOCUMENT - MAY I APPROACH, YOUR HONOR?

9 BY JUDGE STOKES:

10 YES, SIR, GO AHEAD.

11 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

12 Q. MR. MARRETT, I'M GOING TO HAND YOU ANOTHER DOCUMENT.
13 I'LL TAKE THAT FIRST ONE BACK.

14 BY MR. BENNETT:

15 IS IT OKAY TO PUT THAT THERE?

16 BY JUDGE STOKES:

17 THAT'S FINE.

18 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

19 Q. MR. MARRETT, DO YOU RECOGNIZE THAT DOCUMENT?

20 A. YEAH.

21 Q. WHAT DO YOU RECOGNIZE THAT DOCUMENT TO BE?

22 A. IT'S A TRESPASSING NOTICE THAT I CAN'T GO ON ANY
23 PROPERTY -

24 Q. ONE SECOND, MR. MARRETT, SORRY. JUST - WE HAVE TO
25 DO THIS IN A LEGAL MANNER. THAT'S THE TRESPASSING

1 NOTICE, YOU SAID?

2 A. YEAH.

3 Q. IS THAT THE TRESPASS NOTICE YOU RECEIVED?

4 A. YES, IT'S THE SAME LIKE I'VE SEEN.

5 Q. OKAY.

6 **BY MR. BENNETT:**

7 OKAY. YOUR HONOR, AT THIS TIME, I ASK THAT
8 THIS BE MOVED INTO EVIDENCE AS PLAINTIFF'S B. I'M
9 SORRY. PLAINTIFF'S TWO.

10 **BY MR. SPIVEY:**

11 NO OBJECTION.

12 **BY JUDGE STOKES:**

13 WITHOUT OBJECTION, PLAINTIFF'S TWO.

14 **(BEGIN RECORDING 1B)**

15 **DIRECT EXAMINATION RESUMED BY MR. BENNETT:**

16 Q. NOW, WHERE WERE YOU WHEN YOU RECEIVED THIS —

17 A. IT CAME IN THE MAIL. I GOT IT OUT OF MY MAILBOX.

18 Q. TO YOUR HOUSE?

19 A. YES.

20 Q. WHAT DID YOU THINK WHEN YOU GOT IT?

21 A. I DIDN'T REALLY KNOW WHAT TO THINK. I MEAN, IN
22 FACT, I DIDN'T EVEN KNOW YOU COULD DO THIS, REALLY,
23 AND I — I READ IT AND I TALKED TO SOME OF MY FRIENDS
24 AND THEY SAID —

25 **BY MR. SPIVEY:**

1 OBJECTION, HEARSAY.

2 BY JUDGE STOKES:

3 HE HASN'T DONE ANY HEARSAY YET. MR. —

4 BY MR. BENNETT:

5 MARRETT.

6 BY JUDGE STOKES:

7 MR. MARRETT, YOU CAN'T SAY WHAT OTHER PEOPLE

8 SAID. THAT'S WHAT YOU WAS GETTING READY TO DO.

9 DON'T DO IT, OKAY?

10 BY THE WITNESS:

11 YEAH.

12 BY JUDGE STOKES:

13 ALL RIGHT. GO AHEAD.

14 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

15 Q. MR. MARRETT, WHAT I'M ASKING YOU IS NOT NECESSARILY

16 WHAT SOMEBODY SAID, BUT WHAT DID YOU DO BECAUSE OF

17 WHATEVER SOMEBODY SAID? THE EFFECT THAT IT HAD ON

18 YOU?

19 A. WELL, I CONTACTED A LAWYER, AND HE EXPLAINED TO ME —

20 BY MR. SPIVEY:

21 OBJECTION, YOUR HONOR.

22 BY MR. BENNETT:

23 I BELIEVE THERE'S AN OBJECTION, YOUR HONOR.

24 BY MR. SPIVEY:

25 HEARSAY.

1 BY MR. BENNETT:

2 YOUR HONOR --

3 BY MR. SPIVEY:

4 (INAUDIBLE)

5 BY MR. BENNETT:

6 YOUR HONOR, THIS IS NOT TO ELICIT THE TESTIMONY
7 ABOUT WHAT THE LAWYER SAID. THIS IS SPECIFICALLY
8 THE EXCEPTION TO THE HEARSAY, AS TO WHAT WAS THE
9 EFFECT.

10 BY JUDGE STOKES:

11 WELL, WE HAVE TO SEE WHETHER HE ACTUALLY DOES
12 ANYTHING. I MEAN, HE MADE THE STATEMENT HIS LAWYER
13 EXPLAINED TO HIM WHAT THE TRESPASS NOTICE WAS.
14 THAT'S NOT HEARSAY. PROCEED.

15 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

16 Q. PLEASE, GO AHEAD, MR. MARRETT.

17 A. WELL, I JUST CONTACTED A LAWYER AND ASKED HIS
18 ADVICE.

19 Q. WERE YOU ADVISED TO STAY AWAY?

20 BY MR. SPIVEY:

21 OBJECTION, LEADING, YOUR HONOR.

22 BY THE WITNESS:

23 WELL, YEAH.

24 BY JUDGE STOKES:

25 I DON'T THINK SO.

1 BY THE WITNESS:

2 WELL, YEAH.

3 BY MR. BENNETT:

4 YOU'VE GOT TO LET THE JUDGE FINISH FIRST. THE
5 JUDGE IS SPEAKING. I DON'T KNOW IF YOU COULD HEAR
6 HIM OR NOT.

7 BY JUDGE STOKES:

8 I DON'T THINK THAT'S LEADING.

9 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

10 Q. MR. MARRETT, GO AHEAD. DID YOU STAY AWAY BECAUSE OF
11 WHAT THE LAWYER TOLD YOU?

12 A. YEAH, FROM THIS DAY ON, I'VE NEVER SET FOOT ON
13 SUMMERSETT GOLF COURSE.

14 Q. (INAUDIBLE) BECAUSE IT'S KIND OF HARD TO HEAR

15 BY JUDGE STOKES:

16 MR. MARRETT? I MEAN, MR. BENNETT?

17 BY MR. BENNETT:

18 WELL, THEN, YOUR HONOR, IF YOU DON'T MIND,
19 COULD YOU ASK THAT THE OPPOSING COUNSEL AND HIS
20 CLIENT SPEAK A LITTLE QUIETER SO THAT I CAN HEAR MR.
21 MARRETT --

22 BY JUDGE STOKES:

23 Y'ALL BE REAL QUIET.

24 BY MR. BENNETT:

25 THANK YOU, YOUR HONOR.

1 BY JUDGE STOKES:

2 (INAUDIBLE)

3 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

4 Q. MR. MARRETT, HAS THIS TRESPASS NOTICE AFFECTED YOU
5 PERSONALLY?

6 A. YEAH. IT SURE HAS.

7 Q. OKAY. PLEASE EXPLAIN TO THE LADIES AND THE
8 GENTLEMEN OF THE JURY HOW THIS TRESPASS NOTICE HAS
9 AFFECTED YOU PERSONALLY.

10 A. WELL, TO START WITH, IT'S REALLY EMBARRASSING. YOUR
11 FRIENDS COME TO VISIT YOU RIGHT THERE ON THE GOLF
12 COURSE AND THEY SAY LET'S WALK OUT THERE ON THE GOLF
13 COURSE AND --

14 BY MR. SPIVEY:

15 OBJECTION, YOUR HONOR.

16 BY MR. BENNETT:

17 HOLD ON. THERE'S ANOTHER OBJECTION.

18 BY JUDGE STOKES:

19 WHAT OBJECTION IS THAT?

20 BY MR. SPIVEY:

21 HEARSAY. HE SAID THAT THEY SAID LET'S GO OUT
22 ON THE GOLF COURSE.

23 BY JUDGE STOKES:

24 OH, GOOD LORD, OVERRULED. EXCUSE US. WOULD
25 Y'ALL GO TO THE JURY ROOM?

1 BY MR. BENNETT:

2 JUST BE QUIET FOR ONE SECOND, MR. MARRETT.

3 (JURY EXITS)

4 BY JUDGE STOKES:

5 NOW, PLEASE, EVERYTHING HE SAYS AIN'T HEARSAY,
6 MR. SPIVEY. ME AND YOU BOTH KNOW THAT. AND LEADING
7 MEANS IT SUGGESTS AN ANSWER -

8 BY MR. SPIVEY:

9 (INAUDIBLE)

10 BY JUDGE STOKES:

11 YEAH. SO, GENTLEMEN, COME ON. THIS IS GETTING
12 TOO CONFRONTATIONAL AND IT'S ABOUT TO GET SILLY. IF
13 THERE'S A REAL OBJECTION, BY ALL MEANS, BUT LET'S
14 JUST NOT NITPICK THIS THING TO DEATH. THIS IS
15 SUMMARY COURT. I'VE GOT THE AUTHORITY TO LOWER THE
16 RULES OF EVIDENCE, AND Y'ALL (INAUDIBLE), AND I
17 DON'T WANT TO MUCH DO THAT BECAUSE THAT GETS TO A
18 SLOPPY CASE. BUT, YOU KNOW, I'VE GOT THE AUTHORITY
19 TO DROP THE HURDLES AND JUST LET THIS THING GO NUTS
20 AND ALLOW EVERYTHING IN. AND Y'ALL DON'T WANT THAT
21 AND I DON'T WANT THAT BECAUSE THAT USUALLY CREATES A
22 MESS. BEAR THAT IN MIND, THAT THIS IS SUMMARY
23 COURT. WE'RE NOT CIRCUIT COURT. JUST GET THE STORY
24 OUT. LET THEM TAKE IT TO THE JURY ROOM, GET THESE
25 FOLKS A VERDICT, AND BE DONE WITH IT. CAN WE DO

1 THAT?

2 BY MR. BENNETT:

3 WE CERTAINLY CAN, YOUR HONOR.

4 BY MR. SPIVEY:

5 WE CAN.

6 BY JUDGE STOKES:

7 OKAY.

8 BY MR. BENNETT:

9 IF I MAY, YOUR HONOR, JUST BRIEFLY, CONSIDERING
10 MR. MARRETT WAS HAVING A TOUGH TIME HEARING YOU, I
11 WANT TO MAKE SURE THAT I EXPLAIN TO HIM JUST BRIEFLY
12 WHAT YOU SAID SO HE'S NOT WORRIED OR DIDN'T DO
13 ANYTHING AND FIND OUT IF HE UNDERSTOOD EVERYTHING.
14 DO YOU UNDERSTAND WHAT THE JUDGE SAID?

15 BY THE WITNESS:

16 YEAH.

17 BY MR. BENNETT:

18 OKAY. SO, IF YOU WILL, TRY TO JUST ANSWER THE
19 QUESTION I ASK YOU.

20 BY THE WITNESS:

21 ALL RIGHT.

22 BY MR. BENNETT:

23 OKAY. THANK YOU. THANK YOU, YOUR HONOR.

24 BY JUDGE STOKES:

25 IT'S JUST I'VE BEEN WATCHING. IT'S GETTING TOO

6 BY JUDGE STOKES:

8 BY RM. BENNETT:

10 DIRECT EXAMINATION RESUMED BY MR. BENNETT:

17 A. WELL, IT AFFECTED ME BY LIVING ON A GOLF COURSE AND
18 NOT BEING ABLE TO EVEN WALK OUT ON THE COURSE. SO,
19 IF I WANT TO PLAY GOLF, I'VE GOT TO GO SOMEWHERE
20 ELSE AND PAY GREEN FEES AND (INAUDIBLE). I MEAN,
21 IT'S PRETTY AGGRAVATING TO LIVE ON ONE GOLF COURSE
22 AND NOT BE ABLE TO PLAY ON IT.

65

- 1 THE TRESPASS NOTICE, DID YOU DEVELOP FRIENDSHIPS
2 WITH OTHER GOLFERS DURING THAT PERIOD OF 15 MONTHS?
- 3 A. YES, SIR. I HAD REALLY MADE SOME FRIENDSHIPS THAT I
4 HAVEN'T SEEN IN YEARS AND YEARS WHILE I WAS
5 GREENWOOD AND WHEN I CAME BACK UP HERE, I STARTED
6 PLAYING WITH THEM.
- 7 Q. ARE THEY STILL PLAYING, EVEN AFTER YOU GOT THE
8 TRESPASS NOTICE? WERE THEY STILL PLAYING AT
9 SUMMERSETT?
- 10 A. YES, THEY ARE.
- 11 Q. WOULD YOU - WERE YOU ALLOWED TO GO PLAY WITH THEM?
- 12 A. NO, I'M NOT.
- 13 Q. WHAT ABOUT OTHER AREAS OF THE COUNTRY CLUB? DO THEY
14 HAVE, LIKE, A LITTLE COFFEE SHOP OR SOME FOOD AREA
15 THERE AT THE COUNTRY CLUB?
- 16 A. WELL, THEY HAVE A LITTLE SNACK BAR AND A LITTLE
17 PLACE YOU CAN SOCIALIZE.
- 18 Q. DID YOU USED TO EAT LUNCH THERE BEFORE YOU WERE ON
19 THE TRESPASS NOTICE?
- 20 A. NOT REALLY. I MIGHT PICK UP A SANDWICH OR A DRINK
21 OR A SNACK OR SOMETHING.
- 22 Q. WERE YOU EVER ABLE TO DO THAT AGAIN SINCE THE
23 TRESPASS NOTICE?
- 24 A. NOT AGAIN, NO.
- 25 Q. SINCE THAT TRESPASS NOTICE CAME TO YOU, WHAT IS THE

1 DATE ON THAT TRESPASS NOTICE?

2 A. 8-25-05.

3 Q. AUGUST 25TH OF '05. SINCE THAT DATE, HAVE YOU EVER
4 SET FOOT ON ANY OF THE PROPERTY?

5 A. NO, I HAVE NOT.

6 Q. ANY TIME THAT YOU'VE PLAYED GOLF SINCE THAT TIME,
7 YOU'VE HAD TO PAY FOR IT?

8 A. THAT'S RIGHT.

9 Q. I'M SORRY?

10 A. YES.

11 Q. IF YOU HAD KNOWN WHEN YOU SIGNED THAT BUY/SELL
12 AGREEMENT TO PURCHASE THAT HOUSE, IF YOU HAD KNOWN
13 AT THAT TIME YOU WEREN'T GOING TO GET A FULL FIVE
14 YEARS' WORTH OF THAT MEMBERSHIP, WOULD YOU HAVE
15 AGREED TO PAY THAT \$149,000?

16 A. NO, I WOULDN'T.

17 Q. DO YOU WISH YOU COULD STILL GO TO THE COUNTRY CLUB?

18 A. WELL, IT WOULD BE AWFULLY CONVENIENT, YEAH.

19 **BY MR. BENNETT:**

20 THANK YOU, YOUR HONOR. NO MORE QUESTIONS AT
21 THIS TIME.

22 **BY JUDGE STOKES:**

23 MR. SPIVEY?

24 **BY MR. SPIVEY:**

25 THANK YOU, YOUR HONOR.

1 BY JUDGE STOKES:

2 YES, SIR.

3 CROSS-EXAMINATION BY MR. SPIVEY:

4 Q. MR. MARRETT, I WANT YOU TO LOOK AT THIS EXHIBIT ONE
5 THAT YOUR LAWYER INTRODUCED. WHAT DOES THAT SAY
6 RIGHT THERE ON THAT LINE?

7 A. IT SAYS STANDARD ONE-YEAR WARRANTY.

8 Q. OKAY. DID YOU UNDERSTAND THAT YOU HAD A ONE-YEAR
9 WARRANTY ON THE HOUSE?

10 A. I CERTAINLY DID.

11 Q. OKAY. WHEN DID YOU CLOSE ON THIS TRANSACTION?

12 A. I REALLY DON'T KNOW.

13 Q. YOU DON'T REMEMBER WHEN YOU BOUGHT THE HOUSE?

14 A. (INAUDIBLE). IT WAS '04 WHEN I BOUGHT IT. I DON'T
15 REMEMBER THE DATE.

16 Q. I WANT YOU TO LOOK AT THIS. THIS IS A COPY OF THE
17 HUD SETTLEMENT STATEMENT FOR THE CLOSING. DO YOU
18 RECOGNIZE THAT?

19 A. YEAH, IT'S -

20 Q. IS THAT YOUR SIGNATURE?

21 A. IT'S A STATEMENT (INAUDIBLE)

22 Q. YES, SIR.

23 A. YEAH. ALL RIGHT.

24 Q. OKAY. WHAT'S THE DATE HERE, RIGHT THERE?

25 A. IT SAYS JUNE 21ST, 2004.

1 Q. OKAY. SO, YOU CLOSED IT IN MR. CASSIDY'S OFFICE ON
2 JUNE 21ST. IS THAT CORRECT?

3 A. THAT'S WHAT IT SAYS.

4 Q. OKAY.

5 BY MR. SPIVEY:

6 YOUR HONOR, I'D LIKE TO INTRODUCE THIS AS
7 DEFENDANT'S ONE.

8 BY JUDGE STOKES:

9 ANY OBJECTION?

10 BY MR. BENNETT:

11 WITHOUT OBJECTION.

12 BY JUDGE STOKES:

13 ALL RIGHT.

14 CROSS-EXAMINATION RESUMED BY MR. SPIVEY:

15 Q. NOW, SO, YOU CLOSED THIS TRANSACTION ON JUNE 21ST.
16 IS THAT CORRECT?

17 A. THAT'S WHAT IT SAYS, YES.

18 Q. OKAY. AND (INAUDIBLE) THAT WE WERE LOOKING AT ON
19 PLAINTIFF'S EXHIBIT ONE, YOU HAD A ONE-YEAR
20 WARRANTY, RIGHT?

21 A. YEAH.

22 Q. OKAY. SO, YOUR WARRANTY ON THE HOUSE RAN FROM JUNE
23 21ST, '04, TO JUNE 21ST, '05. IS THAT CORRECT?

24 A. THAT'S WHAT IT SAYS, YES, SIR.

25 Q. NOW, WHAT WAS THE DATE THAT Y'ALL HAD THE INCIDENT

1 AT THE CLUBHOUSE?

2 A. I HAVE NO IDEA.

3 Q. OKAY. IF I TELL YOU IT WAS AUGUST 25TH, WOULD YOU
4 DISAGREE WITH ME?

5 BY MR. BENNETT:

6 YOUR HONOR, I'M SORRY. IF I MAY, IT'S NOT
7 NECESSARILY AN OBJECTION, BUT IF MR. SPIVEY WOULD
8 TRY AND JUST FACE MR. MARRETT WHEN HE'S ASKING HIM A
9 QUESTION, BECAUSE MR. MARRETT KIND OF READS LIPS A
10 LITTLE BIT AND I'D LIKE TO MAKE SURE HE UNDERSTOOD
11 THE QUESTION.

12 BY JUDGE STOKES:

13 ALL RIGHT. GO AHEAD AND ASK THE QUESTION
14 AGAIN, MR. SPIVEY.

15 BY MR. BENNETT:

16 AND YOUR HONOR, TO SPEED THINGS UP, WE'LL
17 CONSENT THAT THAT WAS THE DATE OF THE INCIDENT, BUT
18 MR. MARRETT, I DON'T BELIEVE, REMEMBERS, BUT I WOULD
19 CONSENT TO THAT.

20 BY JUDGE STOKES:

21 ALL RIGHT. SO, YOU'LL STIPULATE?

22 BY MR. BENNETT:

23 YES, SIR.

24 CROSS-EXAMINATION RESUMED BY MR. SPIVEY:

25 Q. OKAY. SO, YOU STIPULATED THAT YOU DID IT ON AUGUST

1 25TH. IS THAT RIGHT?

2 A. THAT'S WHAT IT SAYS, YES.

3 Q. OKAY. AND ON THE DATE ON THE TRESPASS NOTICE, WHAT
4 IS THAT?

5 A. 8-25-05.

6 Q. OKAY. SO, HE SENT IT TO YOU THE DATE THAT THE
7 INCIDENT OCCURRED. IS THAT CORRECT?

8 A. YES, SIR.

9 BY JUDGE STOKES:

10 (INAUDIBLE)

11 CROSS-EXAMINATION RESUMED BY MR. SPIVEY:

12 Q. SO, THAT WAS A YEAR AND THREE MONTHS AND FOUR DAYS
13 SINCE YOU CLOSED, WASN'T IT?

14 A. (INAUDIBLE)

15 Q. OKAY. DO YOU DISAGREE WITH IT?

16 A. NO. I SAID THAT'S, THAT YOUR AMOUNT WAS RIGHT.

17 Q. OKAY. SO, IT HAPPENED AFTER THE WARRANTY HAD
18 EXPIRED, RIGHT?

19 A. NO, IT DIDN'T HAPPEN. I DIDN'T FIND OUT ABOUT IT
20 UNTIL AFTER -

21 Q. OKAY. BUT I'M TALKING ABOUT THE INCIDENT HAPPENED A
22 YEAR AND THREE MONTHS AFTER - I MEAN, THREE MONTHS
23 AND FOUR DAYS AFTER THE WARRANTY HAD EXPIRED -

24 A. IF YOU SAY SO, YEAH.

25 Q. OKAY. AND HAVE YOU EVER HAD YOUR H.V.A.C. REPAIRED?

1 A. YEAH.

2 Q. WHAT WAS WRONG WITH IT?

3 A. THE RETURN AIR WASN'T LARGE ENOUGH.

4 Q. SO, DID YOU FIX IT YOURSELF?

5 A. YES, I DID.

6 Q. OKAY. MR. MARRETT, HAVE YOU EVER BEEN INVOLVED IN A

7 LAWSUIT BEFORE?

8 A. NO, I DON'T THINK SO.

9 Q. YOU DON'T THINK SO? HAVE YOU EVER SUED ANYBODY?

10 A. NO.

11 Q. DO YOU REMEMBER THREATENING MR. FORREST THAT DAY

12 THAT YOU WERE GOING TO SUE HIM?

13 A. I COULD HAVE SAID THAT. I DON'T EVEN REMEMBER.

14 Q. OKAY.

15 A. BUT (INAUDIBLE) HE SAID, HE SAID HE DIDN'T CARE

16 (INAUDIBLE) ALL THE TIME. WHEN I FOUND OUT HOW MUCH

17 IT WAS GOING TO COST ME TO DO IT, I PROBABLY

18 (INAUDIBLE).

19 Q. OKAY. BUT YOU DID THREATEN HIM WITH A LAWSUIT,

20 RIGHT?

21 A. YES, SIR.

22 Q. OKAY. DO YOU REMEMBER TELLING HIM THAT YOU WERE

23 GOING TO WASTE HIM?

24 A. YOU KNOW, I PROBABLY DID, BUT I DON'T WATCH ANY

25 GODFATHER MOVIES. I DON'T KNOW WHAT IT MEANS.

1 Q. WHAT DID YOU THINK IT MEANT WHEN YOU SAID IT?

2 A. YOU SAID IT WAS IN THE DICTIONARY AND I CAN'T FIND
3 THAT.

4 Q. MR. MARRETT, THIS IS FROM DICTIONARY.COM. CAN YOU
5 READ NUMBER SIX, THERE?

6 **BY MR. BENNETT:**

7 YOUR HONOR, I WOULD OBJECT. IT'S HEARSAY.

8 HE'S ASKING THE WITNESS TO READ FROM A DOCUMENT

9 THAT'S NOT IN EVIDENCE --

10 **BY THE WITNESS:**

11 IT SAYS --

12 **BY MR. BENNETT:**

13 HOLD ON ONE SECOND. I'VE GOT AN OBJECTION, MR.

14 MARRETT.

15 **BY JUDGE STOKES:**

16 IT'S FROM A TREATISE TYPE THING. THAT'S

17 ALLOWED UNDER THE HEARSAY RULE. I'M GOING TO ALLOW

18 HIM TO READ THE DICTIONARY.

19 **CROSS-EXAMINATION RESUMED BY MR. SPIVEY:**

20 Q. OKAY. WHAT DOES IT SAY, NUMBER SIX, THERE?

21 A. NUMBER SIX, IT SAYS SLANG, IN OTHER WORDS, IT'S JUST
22 SOME PEOPLE USE. IT'S NOT IN THE DICTIONARY.

23 Q. OKAY. WHAT DOES IT SAY, THOUGH?

24 A. IT SAYS SLANG, TO KILL OR MURDER.

25 Q. OKAY.

1 A. BUT THERE'S NOTHING IN THE DICTIONARY RIGHT THERE, I
2 DON'T BELIEVE.

3 Q. WHERE IS THIS FROM?

4 A. I DON'T HAVE ANY -

5 Q. DOES IT SAY DICTIONARY.COM?

6 A. I SEE DICTIONARY, YEAH.

7 Q. OKAY.

8 **BY MR. SPIVEY:**

9 YOUR HONOR, I WANT TO INTRODUCE THIS AS
10 DEFENDANT'S TWO.

11 **BY MR. BENNETT:**

12 RENEW OUR OBJECTION.

13 **BY JUDGE STOKES:**

14 I'M GOING TO ADMIT THE DICTIONARY.

15 **CROSS-EXAMINATION RESUMED BY MR. SPIVEY:**

16 Q. SO, YOU DID - SO, YOU MIGHT HAVE SAID THAT OR YOU
17 DID SAY THAT?

18 A. I SAID I MIGHT HAVE, YEAH.

19 Q. OKAY. WHAT DID YOU MEAN BY THAT?

20 A. I COULDN'T HAVE MEANT TOO MUCH WITH ALL THE
21 WITNESSES THERE. IF I WAS GOING TO KILL SOMEBODY, I
22 SURE WOULDN'T HAVE ADVERTISED IT.

23 Q. HAVE YOU EVER THREATENED ANYBODY BEFORE?

24 A. PARDON?

25 Q. HAVE YOU EVER THREATENED ANYBODY BEFORE?

- 1 A. PROBABLY MY WIFE OR SOMETHING LIKE THAT, BUT —
- 2 Q. OKAY. IS YOUR WIFE STILL ALIVE?
- 3 A. ALL OF THEM.
- 4 Q. HOW MANY WIVES HAVE YOU HAD? HOW MANY HAVE YOU HAD?
- 5 A. MORE THAN I SHOULD HAVE. MORE THAN ONE.
- 6 Q. TWO?
- 7 A. YEAH.
- 8 Q. NOW, DO YOU AGREE THAT THE HOUSE WAS LISTED AT
- 9 159,000?
- 10 A. YES.
- 11 Q. SO, YOU GOT IT FOR TEN THOUSAND LESS?
- 12 A. THE HOUSE HAD ALREADY BEEN REDUCED BEFORE I STARTED
- 13 NEGOTIATING TO 149.
- 14 Q. AND WHAT DID YOU BASE THAT ON?
- 15 A. PARDON?
- 16 Q. WHAT DID YOU BASE THAT ON?
- 17 A. WHAT DID I BASE IT ON?
- 18 Q. YEAH. I MEAN, WHY DO YOU SAY IT WAS ALREADY
- 19 REDUCED?
- 20 A. WELL, THE HOUSES HAD BEEN BUILT AND FINISHED FOR
- 21 ABOUT A YEAR, AND THE STARTING PRICE THAT HE ASKED
- 22 WAS 159,000. HE HAD ALREADY REDUCED IT AND I GOT IT
- 23 FROM A REAL ESTATE FIGURE, HE HAD IT ON THE SIGN.
- 24 Q. DID THE HOUSE APPRAISE FOR MORE THAN 149,000?
- 25 A. DID THE HOUSE WHAT?

1 Q. HOW MUCH IS THE HOUSE APPRAISED FOR?

2 BY MR. BENNETT:

3 OBJECTION TO RELEVANCE.

4 BY THE WITNESS:

5 I'VE NEVER HAD IT APPRAISED.

6 BY MR. BENNETT:

7 ONE SECOND. I SAID OBJECTION, IRRELEVANT, YOUR
8 HONOR. THE CURRENT VALUE OF THE HOUSE IS IRRELEVANT
9 TO THE ISSUE OF THE BREACH OF CONTRACT.

10 BY MR. SPIVEY:

11 CROSS-EXAMINATION, YOUR HONOR.

12 BY JUDGE STOKES:

13 HOW WOULD IT BE RELEVANT, THOUGH?

14 BY MR. SPIVEY:

15 IT WOULD RELEVANT THAT HE GOT A GREAT DEAL ON
16 THE HOUSE.

17 BY MR. BENNETT:

18 IT'S IRRELEVANT, YOUR HONOR.

19 BY JUDGE STOKES:

20 THE ACTUAL DEAL HE GOT WOULD BE RELEVANT, BUT
21 I'M GOING TO SUSTAIN IT. YOU CAN ASK HIM WHAT HE
22 PAID FOR IT.

23 CROSS-EXAMINATION RESUMED BY MR. SPIVEY:

24 Q. OKAY. YOU PAID 149 FOR IT?

25 A. YES, SIR.

1 Q. OKAY. THEN, YOU GOT THAT WARRANTY FOR A YEAR,
2 RIGHT?
3 A. HAVE I GOTTEN IT?
4 Q. YEAH, WHAT YOU READ TO ME A WHILE AGO, STANDARD ONE-
5 YEAR WARRANTY. YOU HAD THAT, RIGHT?
6 A. YEAH, I GOT IT.
7 Q. OKAY. DID YOU HAVE AN ITEM REPAIRED DURING THE
8 YEAR?
9 A. DID I HAVE - I HAD SOME ITEMS REPAIRED DURING THE
10 YEAR.
11 Q. OKAY. DID YOU HAVE TO PAY ANY OUT OF POCKET
12 EXPENSES FOR THOSE, THINGS THAT WERE REPAIRED FOR
13 YOU?
14 A. YEAH, I GOT SOME BILLS.
15 Q. DO YOU HAVE THEM WITH YOU TODAY?
16 A. NO, I DON'T HAVE THEM TODAY.
17 Q. OKAY. TELL ME ABOUT THE DAY THAT YOU - YOU WENT UP
18 TO HIS OFFICE ON AUGUST 25TH, RIGHT?
19 A. RIGHT.
20 Q. AND WHO WAS IN THERE WHEN YOU WENT UP THERE?
21 A. NOBODY WAS IN THE OFFICE WITH HIM.
22 Q. OKAY. AND WHAT DID YOU SAY?
23 A. I SAID DALLAH, CAN I ASSUME THAT YOU'RE GOING TO
24 SEND THAT CREW DOWN TO MY HOUSE AS SOON AS THEY
25 FINISH BOBBY'S HOUSE? AND THAT'S NOT FAR FROM

1 (INAUDIBLE) DALLAH EXPLODED (INAUDIBLE).

2 Q. AND THEN, LATER, YOU THREATENED TO SUE HIM AND THEN

3 LATER YOU THREATENED TO WASTE HIM, RIGHT?

4 A. I DON'T THINK THE SUING DEAL CAME UP UNTIL AFTER I

5 GOT ALL OF THIS.

6 Q. OKAY. YOU DIDN'T SAY ANYTHING TO HIM OUT IN THE

7 YARD?

8 A. (INAUDIBLE).

9 Q. OUT IN THE PARKING LOT, DID YOU SAY IT THEN?

10 A. OUT IN THE PARKING LOT, NOTHING WAS SAID EXCEPT, YOU

11 KNOW, HE SAID GET ON OUT OF HERE AND MR. NELSON

12 THERE SAID THE BEST THING TO DO IS LEAVE. AND SO, I

13 LEFT.

14 Q. SO, HE ASKED YOU TO LEAVE AND YOU LEFT?

15 A. MR. NELSON ASKED ME TO LEAVE, YEAH.

16 Q. OKAY. WHAT DID MR. NELSON SAY TO YOU?

17 A. HE SAID BRAD, THE BEST THING TO DO IS GO AHEAD AND

18 LEAVE.

19 Q. WHEN WAS IT THAT YOU SAID YOU WOULD WASTE HIM?

20 A. I DON'T REMEMBER SAYING IT, AND SO I CAN'T TELL YOU

21 WHEN I SAID IT.

22 Q. NOW, ALL THESE OTHER GENTLEMEN ARE GOING TO SAY THEY

23 HEARD IT.

24 A. WELL, I DON'T THINK - I DON'T THINK ANY OF THE OTHER

25 GENTLEMEN WAS IN THERE BESIDES MR. NELSON.

1 Q. OKAY. DID YOU MEAN THAT YOU WERE GOING TO HAVE HIM
2 MURDERED?
3 A. DID I WHAT?
4 Q. DID YOU MEAN YOU WERE GOING TO MURDER HIM?
5 A. IF I WAS GOING TO MURDER HIM, I DON'T THINK I WOULD
6 HAVE MADE THAT STATEMENT RIGHT THERE IN FRONT OF
7 THOSE PEOPLE, WOULD I?
8 Q. HAVE YOU EVER BEEN ARRESTED FOR ANYTHING?
9 A. HAVE I EVER BEEN WHAT?
10 Q. HAVE YOU EVER BEEN ARRESTED BEFORE?
11 A. NOT EXCEPT FOR A TRAFFIC STOP, I (INAUDIBLE).
12 Q. OKAY. DID YOU CALL MR. FORREST A LIAR THAT DAY?
13 A. IF I CALLED HIM A LIAR, I'M SURE THAT I MEANT IT.
14 Q. OKAY. DID YOU REALLY EXPECT HE WAS GOING TO ALLOW
15 YOU BACK ON THE GOLF COURSE AFTER YOU THREATENED
16 HIM?
17 A. I NEVER GAVE IT A THOUGHT.
18 Q. NOW, YOU TALKED ABOUT A WHILE AGO WHEN YOU WERE
19 TALKING ABOUT THE SENIORS ON THURSDAY, YOU SAID THAT
20 YOU COULD READ ABOUT IT IN THE PAPER, RIGHT?
21 A. YEAH, YOU CAN - THEY HAVE A LITTLE DEAL IN THE PAPER
22 EVERY THURSDAY.
23 Q. OKAY.
24 A. IN THE *GREENVILLE NEWS*.
25 Q. IS IT YOUR TESTIMONY THAT MR. FORREST WON EVERY

1 TIME, OR HIS TEAM WON?

2 A. NO, SIR, THAT ISN'T MY TESTIMONY -

3 Q. OKAY. BUT YOU SAID YOU ONLY PLAYED WITH HIM ONE -

4 BY MR. BENNETT:

5 OBJECTION, YOUR HONOR. OBJECTION. LET THE

6 WITNESS FINISH HIS ANSWER.

7 BY MR. SPIVEY:

8 OKAY.

9 BY JUDGE STOKES:

10 GO AHEAD AND FINISH YOUR ANSWER, MR. MARRETT.

11 BY MR. BENNETT:

12 MR. MARRETT, GO AHEAD AND FINISH WHAT YOU WERE

13 SAYING.

14 BY THE WITNESS:

15 WHAT WERE WE SAYING? I LOST YOU.

16 BY JUDGE STOKES:

17 I THINK HE WAS FINISHED. GO AHEAD WITH THE

18 NEXT QUESTION.

19 CROSS-EXAMINATION RESUMED BY MR. SPIVEY:

20 Q. DID YOU KNOW THAT MR. FORREST HAD A REPUTATION AS A

21 GOOD CHRISTIAN MAN?

22 BY MR. BENNETT:

23 OBJECTION, IRRELEVANT.

24 BY JUDGE STOKES:

25 ACTUALLY, YOUR GUY OPENED THE DOOR ON CHARACTER

1 WHEN HE MADE THE STATEMENT ON THE WITNESS STAND THAT
2 OTHERS HE TOLD HIM THAT HE TALKED ABOUT. SO, HE
3 OPENED THE DOOR. I'VE GOT TO LET MR. SPIVEY DO IT
4 NOW. I WAS HOPING WE DIDN'T HAVE TO HAVE A
5 CHARACTER WITNESS, BUT Y'ALL OPENED THE DOOR. GO ON
6 THROUGH IT, MR. SPIVEY.

7 BY MR. SPIVEY:

8 OKAY.

9 BY THE WITNESS:

10 YOU WANT ME TO ANSWER IT?

11 CROSS-EXAMINATION RESUMED BY MR. SPIVEY:

12 Q. YES, SIR, GO AHEAD.

13 A. YEAH, I'VE HEARD HE'S A GOOD CHRISTIAN AND HE'S
14 BELONGED TO EVERY CHURCH IN GREENVILLE. WHEN HE
15 DOESN'T GET WHAT HE WANTS, HE GOES TO ANOTHER
16 CHURCH.

17 Q. OKAY. ARE YOU A MEMBER OF A CHURCH?

18 A. YES, SIR.

19 Q. WHERE DO YOU GO TO CHURCH AT?

20 A. REEDY RIVER BAPTIST CHURCH.

21 Q. OKAY. MR. MARRETT, I WANT YOU TO LOOK AT THESES BY-
22 LAWS AND POLICIES OF SUMMERSETT GOLF COURSE. CAN
23 YOU READ THAT, WHAT'S HIGHLIGHTED THERE?

24 A. YES, SIR.

25 Q. WHAT DOES IT SAY?

1 A. PROPER CONDUCT IS REQUIRED AT ALL TIMES.

2 Q. OKAY.

3 BY MR. SPIVEY:

4 I'D LIKE TO INTRODUCE THIS AS DEFENDANT'S
5 THREE.

6 BY JUDGE STOKES:

7 ANY OBJECTION?

8 BY MR. BENNETT:

9 NO OBJECTION.

10 CROSS-EXAMINATION RESUMED BY MR. SPIVEY:

11 Q. MR. MARRETT, DO YOU THINK YOUR CONDUCT THAT DAY WAS
12 PROPER, ON AUGUST 25TH?

13 A. YES, SIR.

14 Q. YOU THINK IT'S OKAY TO THREATEN PEOPLE?

15 A. NO.

16 Q. YOU THINK IT'S OKAY TO CALL PEOPLE A LIAR?

17 A. WELL, IF THEY LIE, I DO.

18 Q. OKAY. MR. MARRETT, HAVE YOU PLAYED GOLF AT OTHER
19 COURSES SINCE AUGUST 25TH?

20 A. YEAH.

21 Q. SO, YOU HAVEN'T BEEN DENIED THE RIGHT TO PLAY GOLF,
22 HAVE YOU?

23 A. NO.

24 Q. OKAY.

25 BY MR. SPIVEY:

1 THAT'S ALL.

2 BY JUDGE STOKES:

3 ANY RE-DIRECT?

4 BY MR. BENNETT:

5 JUST BRIEFLY.

6 RE-DIRECT EXAMINATION BY MR. BENNETT:

7 Q. WHEN YOU DID PLAY AT OTHER COURSES SINCE AUGUST
8 25TH, YOU HAVE TO PAY FOR IT, DON'T YOU?

9 A. DEFINITELY, YES.

10 BY MR. BENNETT:

11 THANK YOU, YOUR HONOR. WE'D ASK THAT MR.
12 MARRETT BE EXCUSED.

13 BY JUDGE STOKES:

14 ANY RE-CROSS?

15 BY MR. SPIVEY:

16 NO, SIR.

17 BY JUDGE STOKES:

18 STEP DOWN, MR. MARRETT.

19 BY MR. BENNETT:

20 COME BACK, MR. MARRETT. THANK YOU. YOUR
21 HONOR, THE PLAINTIFF RESTS.

22 BY JUDGE STOKES:

23 ALL RIGHT. ANY MOTIONS?

24 BY MR. SPIVEY:

25 YES, SIR, I'D LIKE TO MAKE A MOTION.

1 BY JUDGE STOKES:

2 FOLKS, IF Y'ALL WILL EXCUSE US, WE'VE GOT TO
3 TAKE CARE OF SOME MATTERS OF LAW, SOME MOTIONS AND
4 STUFF I HAVE TO MOVE ON OUTSIDE OF Y'ALL'S PRESENCE,
5 JUST STANDARD STUFF. IF Y'ALL WILL ACTUALLY JUST
6 TAKE A BREAK.

7 (JURY EXITS)

8 BY JUDGE STOKES:

9 ALL RIGHT. MR. SPIVEY?

10 BY MR. SPIVEY:

11 YOUR HONOR, I'D LIKE TO MAKE A MOTION FOR A
12 DIRECTED VERDICT. WE'RE BASICALLY AT THE SAME ISSUE
13 AS WE WERE LAST TIME AND I'VE BEEN AMAZED MR.
14 BENNETT AND I BOTH HAVEN'T MENTIONED THE OTHER TIMES
15 SO FAR, SO -

16 BY JUDGE STOKES:

17 Y'ALL HAVE DONE A GOOD JOB OF THAT.

18 BY MR. SPIVEY:

19 AND BUT THEY HAVE PROVED NO DAMAGES WHATSOEVER.
20 I DON'T, YOU KNOW, I JUST DON'T KNOW HOW WE CAN
21 PROCEED WHEN THEY HAVE NO DAMAGES. AND THERE'S
22 ACTUAL CASES THAT WERE USED IN THE APPEAL, AND THAT
23 ACTUALLY (INAUDIBLE) THAT TALKS ABOUT IF A
24 CONTRACT'S BREACHED, IT HAS TO BE EXTREME ACTUAL
25 DAMAGE SITUATION TO ALLOW IT. AND I CAN QUOTE SOME

1 CASES IF YOU WANT ME TO, BUT THE TRUTH OF THE MATTER
2 IS, HE HAD NO CHOICE BUT TO BREACH THAT CONTRACT AND
3 TO SEND HIM THE TRESPASS NOTICE BECAUSE HIS LIFE HAD
4 BEEN THREATENED. AND MR. MARRETT ADMITTED HE MIGHT
5 HAVE SAID THAT. IF SOMEBODY SAYS ON THE STAND, AS
6 YOUR HONOR KNOWS, THEY MIGHT, THEN THAT USUALLY
7 MEANS THEY DID. AND FIRST OF ALL, I DON'T THINK
8 THEY HAVE PROVED A BREACH OF CONTRACT. SECONDLY,
9 THERE WAS NEVER REALLY (INAUDIBLE) ABOUT THE
10 (INAUDIBLE) PROBLEM BECAUSE THERE HADN'T BEEN A
11 PROBLEM AND THEY HAD TAKEN CARE OF EVERYTHING. AND
12 SO, THEY DON'T REALLY HAVE A CASE AND WE'RE JUST
13 ASKING FOR A DIRECTED VERDICT.

14 **BY JUDGE STOKES:**

15 MR. BENNETT?

16 **BY MR. BENNETT:**

17 THANK YOU, YOUR HONOR. YOUR HONOR, THERE'S
18 BEEN TESTIMONY THAT THE CONDO WAS PURCHASED FOR
19 149,000, THAT THE CONDO WAS AN ASSET THAT MR.
20 MARRETT WAS WILLING TO PAY 141 TO 142,000 DOLLARS
21 FOR. BUT HE INSTEAD PAID THE 149,000 DUE TO THE
22 FACT THAT THE FIVE-YEAR MEMBERSHIP TO THE COUNTRY
23 CLUB WAS INCLUDED THEREIN. THEREIN LIES THE DAMAGES
24 AND THE QUANTIFIABLE AMOUNT THAT THIS JURY, DUE TO
25 BEING THE FACT FINDER OF EVIDENCE, CAN DETERMINE,

1 THAT THERE IS A LOSS OF ABOUT \$8,000, OR AS WE HAVE
2 PLED, TO THE MAXIMUM IN THE SUMMARY COURT OF \$7,500
3 IN THE ALTERNATIVE. THEREFORE, AS THE FACT FINDERS,
4 THIS JURY SHOULD BE ALLOWED TO TAKE THAT ISSUE BACK
5 AND FIND WHETHER OR NOT THEY FEEL THAT THE
6 PLAINTIFFS HAVE PROVEN THEIR CASE BEYOND THE
7 PREPONDERANCE OF THE EVIDENCE. THANK YOU.

8 **BY JUDGE STOKES:**

9 I DON'T HAVE A PROBLEM LETTING THE BREACH OF
10 CONTRACT QUESTION GO TO THE JURY. I THINK IT IS A
11 JURY QUESTION AS TO WHETHER IT'S REASONABLE TO THINK
12 THAT WAS A TRUE THREAT TO THE STATEMENTS TAKEN AND
13 WHETHER THE RESPONSE TO THE THREAT WAS REASONABLE.
14 I THINK THAT'S A JURY QUESTION.

15 THE JURY CANNOT BASE DAMAGES ON SPECULATION.
16 THERE HAS BEEN NO EVIDENCE TO WHAT A MEMBERSHIP
17 COSTS OUT THERE. I UNDERSTAND MR. BENNETT'S BACKING
18 INTO IT ARGUMENT. AND THIS CASE WENT TO THE JURY IN
19 THE EARLIER INSTANCE, BASICALLY ON THE SAME
20 TESTIMONY BY JUDGE HUBBARD, AND HE WAS REVERSED
21 BECAUSE THE CIRCUIT JUDGE, JUDGE SIMMONS, THE MASTER
22 SITTING SPECIAL CIRCUIT JUDGE, FOUND THAT THAT
23 TESTIMONY REQUIRED SPECULATION ON THE PART OF THE
24 JURY TO COME UP WITH A NUMBER.

25 **BY MR. BENNETT:**

1 YOUR HONOR, I APOLOGIZE FOR INTERRUPTING, BUT I
2 WANT TO CLARIFY SOMETHING FOR THE COURT.

3 BY JUDGE STOKES:

4 THAT'S FINE. I'M JUST SORT OF THINKING OUT
5 LOUD, SO Y'ALL HAVE THE BENEFIT OF MY THOUGHT
6 PROCESS. GO AHEAD, BY ALL MEANS.

7 BY MR. BENNETT:

8 I BELIEVE I CAN PROVIDE SOME INFORMATION THAT
9 MIGHT BE ILLUSTRATIVE TO THE COURT.

10 BY JUDGE STOKES:

11 GO AHEAD, BY ALL MEANS.

12 BY MR. BENNETT:

13 THANK YOU, YOUR HONOR.

14 BY JUDGE STOKES:

15 BUT I DON'T LIKE TO TAKE A CASE AWAY FROM THE
16 JURY.

17 BY MR. BENNETT:

18 YOUR HONOR, I BELIEVE THAT A CAREFUL READING OF
19 THE TRANSCRIPT IN THIS CASE WOULD INDICATE THAT THE
20 TESTIMONY WHICH THE PLAINTIFF BASES HIS ARGUMENT OF
21 THE QUANTIFIABLE AMOUNT OF DAMAGES WHICH WAS BROUGHT
22 OUT TODAY IN FRONT OF THIS JURY WHEN MR. MARRETT
23 TESTIFIED AS TO THE AMOUNT HE WAS WILLING TO PAY
24 VERSUS WHAT WAS BEING ASKED, THAT THAT TESTIMONY,
25 WHILE IT MAY HAVE BEEN BROUGHT ABOUT IN THE PREVIOUS

1 CASE, UNFORTUNATELY, IT WAS NOT RECORDED DUE TO SOME
2 MALFUNCTION IN THE TRANSCRIPT. AND AS SUCH, JUDGE
3 SIMMONS WAS UNABLE TO USE ANY OF THAT TESTIMONY IN
4 RENDERING HIS DECISION, AND THEREFORE, BECAUSE IT
5 WAS NOT PRESENT IN THE TRANSCRIPT DUE TO THE TAPE
6 BEING FLIPPED OVER AND NOT BEING PRESENT ON THE
7 OTHER SIDE. NOW, IF YOU'LL GIVE ME ONE MOMENT, I
8 WILL FIND THAT -

9 **BY JUDGE STOKES:**

10 I'LL BE HONEST WITH YOU, MR. BENNETT, THOUGH,
11 UNTIL YOU ARGUED IT -

12 **BY MR. BENNETT:**

13 YES, SIR.

14 **BY JUDGE STOKES:**

15 I HADN'T PICKED UP ON GETTING AT IT THAT WAY
16 MYSELF, AND I TRY A BUNCH OF CASES. AND YOU KNOW,
17 IT'S THAT HARD FOR THE JURY TO PULL THAT NUMBER OUT.
18 UNTIL YOU ARGUED IT, I WAS, IN MY HEAD, I SAID HE
19 AIN'T PUT UP ANY DAMAGES. I MEAN, I DIDN'T PICK UP
20 ON DOING IT THAT WAY, AND I'M NOT SURE THE JURY
21 WOULD, EITHER, BECAUSE I HEAR - I FIND FACTS - I
22 KNOW THIS IS A JURY TRIAL, BUT I'M THE FINDER OF
23 FACT A LOT MORE THAN THEY ARE, AND I DIDN'T CATCH
24 IT. DO YOU SEE WHAT I'M SAYING?

25 **BY MR. BENNETT:**

1 I DON'T, BUT I DON'T (INAUDIBLE), YOUR HONOR.

2 BUT I'M TRYING TO FIND THE POSITION -

3 BY JUDGE STOKES:

4 YES, PLEASE.

5 BY MR. BENNETT:

6 - IN THE TRANSCRIPT -

7 BY JUDGE STOKES:

8 OKAY. THANK YOU, GO AHEAD.

9 BY MR. SPIVEY:

10 YOUR HONOR, THE TRANSCRIPT FROM THE OTHER TRIAL

11 DOESN'T MATTER IN THIS CASE.

12 BY JUDGE STOKES:

13 WELL, I THINK HE'S LOOKING FOR IT BECAUSE I WAS

14 SAYING BASICALLY Y'ALL DID THE SAME CASE AGAIN, AND

15 WHY WOULD I RULE DIFFERENT THAN JUDGE SIMMONS?

16 BY MR. BENNETT:

17 DIRECTING COURT AND COUNSEL TO PAGE 46 OF THE

18 TRANSCRIPT, AND I HAVE THE UNOPENED TRANSCRIPT WITH

19 -

20 BY JUDGE STOKES:

21 Y'ALL ARE NOT GOING TO TAMPER WITH THAT. I

22 DON'T NEED THAT OPENED ONE.

23 BY MR. BENNETT:

24 OKAY.

25 BY JUDGE STOKES:

1 I TRUST YOU GENTLEMEN NOT TO TAMPER WITH THE
2 TRANSCRIPT.

3 BY MR. BENNETT:

4 WELL, JUST - OKAY, THAT'S FINE.

5 BY MR. SPIVEY:

6 I BELIEVE IT WAS ALREADY OPEN.

7 BY MR. BENNETT:

8 PAGE 46, QUESTION, LINE NUMBER SEVEN, MR.
9 MARRETT, WHAT, IF ANYTHING, OCCURRED AROUND AUGUST
10 8, 2005, IN REGARD TO YOU AND MR. FORREST'S
11 RELATIONSHIP. LINE 11, END OF SIDE ONE, TAPE ONE,
12 NOTHING ON SIDE TWO, TAPE ONE. BEGINNING OF A NEW
13 TAPE, PARAGRAPH, OR LINE NUMBER 14, THE COURT ALL
14 RIGHT, MR. BENNETT. LINE 16, MR. BENNETT, THANK
15 YOU, YOUR HONOR. MAY I APPROACH THE COURT? YES,
16 SIR. THEN, LINE 19 SAYS CROSS-EXAMINATION. THIS
17 WAS - THIS WAS -

18 BY JUDGE STOKES:

19 Y'ALL LOST A SIDE OF A TAPE?

20 BY MR. BENNETT:

21 WE LOST A SIDE OF THE TAPE. AND MR. -

22 BY JUDGE STOKES:

23 BUT STILL, ISN'T THAT REQUIRING SPECULATION ON
24 THE PART OF THE JURY FOR THEM TO - I MEAN, IT WASN'T
25 LAID OUT FOR THEM VERY WELL, MR. BENNETT.

1 BY MR. SPIVEY:

2 AND YOUR HONOR, THE FIRST TIME I EVER HEARD
3 ANYTHING ABOUT 149 AND 142 WAS WHEN MR. BENNETT GOT
4 HIM TO SAY IT TODAY, BECAUSE IT'S NEVER BEEN
5 TESTIFIED TO BEFORE, AND I DON'T THINK THAT WAS - I
6 MEAN, IT'S VERY SPECULATIVE.

7 BY MR. BENNETT:

8 BY HIS OWN ADMISSION, MR. SPIVEY MAKES MY CASE
9 FOR ME BY THAT (INAUDIBLE) -

10 BY MR. SPIVEY:

11 HE NEVER -

12 BY MR. BENNETT:

13 - (INAUDIBLE) THE CASE THAT HE HEARD. HE HEARD
14 IT. HE HEARD MR. MARRETT TESTIFY TO THAT.

15 BY MR. SPIVEY:

16 NO, I'M SAYING I DIDN'T HEAR IT.

17 BY MR. BENNETT:

18 WELL, YOU JUST SAID YOU DID HEAR IT. YOU JUST
19 SAID THE FIRST YOU HEARD OF IT WAS WHEN MR. MARRETT,
20 YOU SAID SOMETHING TO THE EFFECT OF WHEN MR. BENNETT
21 GOT MR. MARRETT ON (INAUDIBLE) TODAY -

22 BY JUDGE STOKES:

23 WELL, THAT DOESN'T MAKE A DISTINCTUAL AMOUNT OF
24 DIFFERENCE. WHAT DIFFERENCE DOES IT MAKE WHAT MR.
25 SPIVEY HEARD, OR - IT MATTERS WHAT THEY HEARD. AND

1 I'VE GOT TO DECIDE WHETHER THEM HAVING TO DO THAT
2 NOW AND BACKING INTO IT THAT WAY IS SPECULATIVE OR
3 NOT. THAT'S THE WHOLE QUESTION.

4 BY MR. SPIVEY:

5 WELL, IT IS SPECULATIVE, YOUR HONOR. THEY HAVE
6 NO TESTIMONY ABOUT NEGOTIATIONS AND THOSE FIGURES,
7 EVEN IF THEY'RE THERE, (INAUDIBLE) COULD BE
8 CONSIDERED BY THE JURY.

9 BY MR. BENNETT:

10 THAT'S NOT TRUE, YOUR HONOR. MR. MARRETT
11 TESTIFIED THAT -

12 BY JUDGE STOKES:

13 WELL, YOU'RE USING THE CONTRACT THAT'S - A
14 FURTHER WRINKLE IN THIS THING IS THAT THE DEAL
15 CLOSED. ALL TERMS OF THE CONTRACT MERGED INTO THE
16 DEED. WHAT THE DEED SAYS IS WHAT ACTUALLY CONTROLS
17 HERE, AND NOBODY'S PUT THAT INTO EVIDENCE.

18 BY MR. SPIVEY:

19 WELL, I CAN PUT IT INTO EVIDENCE.

20 BY JUDGE STOKES:

21 WHEN A DEAL CLOSES IN REAL ESTATE LAW, THE
22 TERMS OF THE CONTRACT MERGE INTO THE DEED AND WHAT
23 THE DEED SAYS. DOES THE DEED GIVE HIM A MEMBERSHIP
24 FOR FIVE YEARS?

25 BY MR. SPIVEY:

1 THERE'S NOTHING IN THE DEED ABOUT IT.

2 **BY MR. BENNETT:**

3 YOUR HONOR, THAT WOULD HAVE BEEN A MORE
4 APPROPRIATE ARGUMENT FOR A PRE-TRIAL MOTION HAD THE
5 DEFENSE DECIDED THAT THAT'S WHAT THEY WERE GOING TO
6 RELY ON.

7 **BY JUDGE STOKES:**

8 I'M NOT BRINGING IT IN. THAT'S JUST SOMETHING
9 THAT POPPED INTO MY HEAD.

10 **BY MR. BENNETT:**

11 YOUR HONOR, WHAT WE HAVE HERE IS WE HAVE THE
12 CONTRACT. THE CONTRACT HAS BEEN AUTHENTICATED.
13 IT'S IN EVIDENCE. THE BASIS OF THE CONTRACT WERE
14 NEGOTIATIONS THAT TOOK PLACE BETWEEN TWO INDIVIDUALS
15 WHO ARE BOTH HERE AND WILL BOTH RESPECTIVELY TESTIFY
16 BEFORE THIS JURY. THERE HAS BEEN TESTIMONY ALREADY
17 ABOUT THE AMOUNTS THAT WOULD ALLOW FOR THIS JURY TO,
18 AS FINDER OF FACT, FIND A \$7,500 DIFFERENCE AT THE
19 MINIMUM AND MAXIMUM OF AT LEAST \$8,000. THE
20 DIFFERENCE BEING THE AMOUNT OF DAMAGES, AND AS THE
21 PLAINTIFFS, WE DO NOT HAVE TO SHOW A MATHEMATICAL
22 EQUATION FOR (INAUDIBLE) DAMAGES --

23 **BY JUDGE STOKES:**

24 (INAUDIBLE) CERTAINTY.

25 **BY MR. BENNETT:**

1 EXACTLY.

2 BY MR. SPIVEY:

3 BUT IT HAS - IT CAN'T BE SPECULATIVE, EITHER.

4 BY MR. BENNETT:

5 AND IT IS NOT SPECULATIVE. SPECULATIVE WOULD
6 BE, YOUR HONOR -

7 BY JUDGE STOKES:

8 THEY'VE GOT TO DETERMINE WHAT THE MEMBERSHIP IS
9 WORTH.

10 BY MR. BENNETT:

11 YOUR HONOR, I -

12 BY JUDGE STOKES:

13 WHAT HE WAS WILLING TO PAY FOR THE HOUSE -

14 BY MR. BENNETT:

15 IF I MAY, YOUR HONOR, RESPECTFULLY -

16 BY JUDGE STOKES:

17 NO, I UNDERSTAND YOUR ARGUMENT, MR. BENNETT,
18 HOW YOU'RE DOING IT, BUT I DON'T KNOW WHETHER THAT'S
19 ENOUGH THAT IT REQUIRES SPECULATION OR NOT.

20 BY MR. BENNETT:

21 IF I MAY, RESPECTFULLY, YOUR HONOR, I DON'T
22 BELIEVE, I DISAGREE THAT THIS JURY HAS TO FIND OUT
23 WHAT A MEMBERSHIP IS WORTH. WHAT IS THE BASIS IS
24 WHAT WAS THE MEMBERSHIP WORTH BETWEEN THESE TWO
25 INDIVIDUALS AT THE TIME THAT THEY ENTERED INTO THIS

1 WRITTEN CONTRACT. THAT'S THE DIFFERENCE. AND THAT
2 DIFFERENCE SHOWS TO BE \$8,000.

3 BY JUDGE STOKES:

4 WELL, WHY DIDN'T YOU JUST PUT IN WHAT A
5 MEMBERSHIP WAS WORTH EACH YEAR? THAT WOULD HAVE
6 BEEN A SIMPLE THING TO DO, MR. BENNETT.

7 BY MR. BENNETT:

8 WELL, YOUR HONOR -

9 BY MR. SPIVEY:

10 BECAUSE THE MEMBERSHIP -

11 BY MR. BENNETT:

12 I WAS ASKED A QUESTION, MR. SPIVEY. THE
13 DEFENDANT CONTENDS THAT NO MEMBERSHIPS WERE EVER
14 SOLD, THAT THIS WAS THE FIRST ONE, AND THEREFORE,
15 THERE IS NO HISTORICAL DOCUMENTATION.

16 BY JUDGE STOKES:

17 WELL, HOW MANY TIMES HAS HE HAD TO GO PLAY GOLF
18 SOMEWHERE ELSE AND PAY FOR IT? AND IF IT COSTS \$50
19 TIMES 50 ROUNDS, THAT'S HIS DAMAGES. YOU KNOW, YOU
20 COULD COME AT IT THAT WAY AND IT WOULDN'T HAVE BEEN
21 SPECULATIVE.

22 BY MR. BENNETT:

23 BUT YOUR HONOR, WHAT WE HAVE IS WE HAVE A
24 DIFFERENCE BETWEEN WHAT HE WAS WILLING TO PAY FOR
25 THE TOWNHOUSE AT \$149,000 WITHOUT A MEMBERSHIP

1 VERSUS WHAT HE WOULD HAVE PAID WITH THE MEMBERSHIP,
2 AND THAT'S \$8,000. AND THAT ALLOWS THE JURY, AS
3 FINDER OF FACT, TO GO FORWARD.

4 BY JUDGE STOKES:

5 I GUESS IT'S BETTER TO ERR ON THE SIDE OF
6 LETTING IT GO TO THE JURY, BUT IT'S WEAK. I'M GOING
7 TO LET IT -

8 BY MR. SPIVEY:

9 YOUR HONOR, IT'S TOTALLY SPECULATIVE.

10 BY JUDGE STOKES:

11 I'M GOING TO LET IT - LET IT GO, BUT I'M NOT SO
12 SURE THAT THEY'LL SEE IT THE WAY MR. BENNETT SEES
13 IT. DIRECTED VERDICTS ARE TO BE GRANTED SPARINGLY,
14 SO - DO EITHER OF YOU GENTLEMEN NEED A BREAK?

15 BY MR. SPIVEY:

16 YES, SIR.

17 BY JUDGE STOKES:

18 OKAY. LET'S TAKE A FEW MINUTES.

19 (OFF THE RECORD)

20 BY JUDGE STOKES:

21 THE CASE IS YOURS, MR. SPIVEY.

22 BY MR. SPIVEY:

23 THANK YOU, YOUR HONOR. WE CALL MR. FORREST,
24 PLEASE.

25 BY JUDGE STOKES:

1 MR. FORREST, IF YOU WOULD COME FORWARD TO BE
2 SWORN, PLEASE. PUT YOUR LEFT HAND ON THE BIBLE AND
3 RAISE YOUR RIGHT, PLEASE.

4 **DALLAH FORREST,**
5 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:
6 **BY JUDGE STOKES:**

7 PLEASE HAVE A SEAT, SIR.

8 **DIRECT EXAMINATION BY MR. SPIVEY:**

9 Q. STATE YOUR NAME, PLEASE.

10 A. DALLAH A. FORREST.

11 Q. OKAY. MR. FORREST, YOU OWN THE SUMMERSETT GOLF
12 COURSE?

13 A. YES, SIR.

14 Q. OKAY. HOW LONG HAVE YOU OWNED SUMMERSETT?

15 A. SINCE 1979.

16 Q. SINCE 1979?

17 A. YES, SIR.

18 Q. OKAY. AND DID YOU SELL MR. MARRETT A HOUSE?

19 A. YES, SIR.

20 Q. OKAY. AND WHAT WAS THE LIST PRICE ON THAT HOUSE?

21 A. 159.

22 Q. AND WAS THERE ANY NEGOTIATIONS ABOUT THAT PRICE?

23 A. THERE ALWAYS IS.

24 Q. OKAY. AND WHAT DID YOU AGREE TO SELL IT TO HIM FOR?

25 A. 149.

- 1 Q. OKAY. AND WERE THERE ANY NEGOTIATIONS OF A LOWER
2 PRICE THAN 149?
- 3 A. USUALLY IN REAL ESTATE - I'M A LICENSED BUILDER.
4 USUALLY, IN REAL ESTATE, YOU CAN GET ANY KIND OF
5 OFFER AND THAT'S WHERE YOU USUALLY START, BUT THERE
6 WAS NO - HE PROBABLY MADE ME A LESSER OFFER, BUT I
7 TOLD HIM THAT WAS UNACCEPTABLE AND IF WE HAD
8 NEGOTIATIONS - I DON'T RECALL ANY NEGOTIATIONS, BUT
9 I DO RECALL TELLING HIM THAT MY FINAL OFFER WAS 149.
- 10 Q. WOULD YOU HAVE SOLD IT FOR LESS THAN 149?
- 11 A. NO, SIR.
- 12 Q. OKAY. AND HAVE YOU SOLD OTHER HOUSES IN THE GENERAL
13 NEIGHBORHOOD?
- 14 A. YES, SIR. I BUILT THAT LITTLE FIVE-UNIT
15 (INAUDIBLE).
- 16 Q. OKAY. AND WHAT WAS THE PRICES ON SOME OF THE OTHER
17 HOUSES?
- 18 A. THE FIRST ONE I SOLD WAS 169, BUT I HAVE SOLD FOR
19 159. I SOLD HIS FOR 149.
- 20 Q. OKAY. HIS WAS THE LOWEST OF THE FIVE?
- 21 A. AS FAR AS I KNOW (INAUDIBLE).
- 22 Q. AND WHEN WAS THE ISSUE ABOUT THE GOLF COURSE
23 MEMBERSHIP BROUGHT UP?
- 24 A. HE ASKED ME AFTER WE, AFTER WE FINISHED, AFTER WE
25 AGREED ON THE PRICE OF THE HOUSE, HE ASKED ME TO

1 GIVE HIM A LIFETIME MEMBERSHIP, AND I REFUSED. AND
2 THEN, HE ASKED ME FOR A FIVE-YEAR MEMBERSHIP. AND I
3 TALKED IT OVER WITH MY ASSOCIATE, MR. LOLLIS. WE
4 DIDN'T - YOU KNOW, I ASKED HIM HOW MANY TIMES HE
5 WOULD PLAY GOLF AND HE SAID TWO OR THREE TIMES A
6 MONTH AND NEVER IN COLD WEATHER. AND I (INAUDIBLE).
7 AND WE DID THE MATH ON IT, AND REALLY, HE WOULD HAVE
8 TO - ALL MEMBERS HAVE TO PAY FOR A CART FEE AND
9 (INAUDIBLE). SO, AT A SENIOR RATE, WHICH IS \$22 AND
10 THE CART WAS \$15, SO IT WOULD COST ME \$7 EVERY TIME
11 HE PLAYED. AND I DID THE MATH AND DECIDED TO GO
12 AHEAD AND GIVE IT TO HIM.

13 Q. SO, THE MEMBERSHIP WAS - EACH TIME HE PLAYED, IT
14 COST HIM \$7, BASICALLY.

15 A. IT WOULD - NO, IT WOULD COST HIM - IT WOULD COST HIM
16 A CART FEE OF \$15.

17 Q. OKAY. BUT ON -

18 (BEGIN RECORDING 2A)

19 Q. DO YOU REMEMBER ANY OTHER OFFERS YOU MADE, PRICE-
20 WISE?

21 A. NO, SIR.

22 Q. OKAY. AND 149 WAS IT FOR YOU?

23 A. IT WAS IT.

24 Q. OKAY. NOW, WHAT KIND OF RELATIONSHIP DID YOU HAVE
25 WITH MR. MARRETT AFTER HE BOUGHT THE HOUSE?

1 A. WE PLAYED GOLF TOGETHER ONE TIME. HE WAS
2 (INAUDIBLE) THE ONE TIME WHEN I - I PLAY IN SENIOR
3 TOURNAMENTS OCCASIONALLY AND WHERE WE - WHERE WE
4 CHARGE \$22 TO PLAY IN THE TOURNAMENT, INCLUDING THE
5 GOLF CART FEE AND INCLUDED THE FEE AND WE RETURNED
6 THE REST OF THE MONEY BACK TO THE WINNER. THEY GET
7 THE POT, IN OTHER WORDS. BUT THAT'S WHERE YOU'RE
8 GIVING THE MONEY BACK, IS WHAT IT IS. AND MY
9 RELATIONSHIP WITH HIM WAS DUE TO THE HOUSE AND NOT
10 REALLY GOLF.

11 Q. WHAT HAPPENED ON THE HOUSE?

12 A. WELL, WE GAVE HIM A ONE-YEAR WARRANTY AS STANDARD.
13 ANYTIME YOU HAVE SOMETHING WRONG WITH THE HOUSE, WE
14 FIX IT. WE DID THE REPAIRS.

15 Q. HOW OFTEN DID HE COMPLAIN TO YOU?

16 A. PRETTY REGULARLY. IT WAS UNUSUAL FOR HIM NOT TO BE
17 UPSTAIRS IN MY OFFICE AND LEAVING NOTES ON MY DESK
18 AND MR. LOLLIS'S DESK, WHICH WE HAVE THAT WE CAN
19 PRODUCE, TWO OR THREE TIMES A MONTH.

20 Q. NOW, TELL US WHAT HAPPENED ON AUGUST 25TH.

21 A. WELL, I WAS IN MY OFFICE AND HE CAME UP THE STAIRS
22 AND I SHOOK HIS HAND AND I DIDN'T KNOW WHAT HE WAS
23 THERE FOR, BUT HE STARTED IN ON I HAD FIXED ANOTHER
24 PERSON'S AIR CONDITIONING UNDER THEIR WARRANTY AND
25 HE ASKED ME WAS I GOING TO DO HIS. AND THAT WAS THE

1 FIRST TIME I HAD EVER HEARD OF HIM HAVING A PROBLEM
2 WITH AIR CONDITIONING. HE HAD NEVER SAID THAT
3 BEFORE. (INAUDIBLE) AND I SAID WELL, NUMBER ONE,
4 YOUR WARRANTY'S UP, AND NUMBER TWO, YOU DON'T HAVE A
5 PROBLEM. I'M NOT GOING TO DO THE SAME THING TO
6 YOURS THAT I DID TO HERS JUST BECAUSE SHE HAD A
7 PROBLEM. AND HE SAID WELL, I'LL JUST GET ME A
8 LAWYER AND SUE YOU. AND I - I DON'T TAKE KINDLY TO
9 THAT AND I THOUGHT THAT ENDED THE CONVERSATION. SO,
10 I STARTED WALKING DOWNSTAIRS WITH HIM, YOU KNOW.
11 THAT CONVERSATION WAS OVER. AND WELL, IT WASN'T
12 OVER WITH HIM. AND THEN, MR. NELSON JOINED US,
13 BECAUSE THERE WAS COMMOTION BACK AND FORTH AND
14 PEOPLE WERE THERE AND WE WERE CAUSING A COMMOTION
15 AND I HAD TO GET HIM TO LEAVE. AND WE GOT TO THE
16 FRONT PORCH AND HE CALLED ME A LIAR AND -

17 Q. WHEN DID HE CALL YOU A LIAR?

18 A. I WASN'T - I WASN'T SAYING ANYTHING. HE JUST SAID
19 YOU'RE A LIAR AND POINTED HIS FINGER IN MY FACE.
20 AND I TOOK THAT AS A THREAT BECAUSE SOMETIMES WHEN
21 YOU DO THAT, THAT'S (INAUDIBLE). AND I WAS GOING TO
22 (INAUDIBLE) MYSELF THERE. AND THEN, HE SAID I WILL
23 WASTE YOU. AND I TOOK THAT TO MEAN WHAT IT MEANT,
24 THAT IT COULD BE A GUN, IT COULD BE ANYTHING. I
25 DIDN'T KNOW. BUT MR. NELSON THEN USHERED HIM OFF OF

1 THE PREMISES THEN, NOT SO MUCH PHYSICALLY, BUT SAID
2 YOU BETTER LEAVE.

3 Q. OKAY. NOW, AFTER THAT, WHAT DID YOU DO?

4 A. I CALLED LAW ENFORCEMENT AND ASKED THEM FOR MY
5 OPTIONS, AND WE ARRIVED AT THE TWO OPTIONS THAT I
6 HAD TO EXERCISE.

7 Q. OKAY. AS A RESULT OF THAT DISCUSSION, WHAT DID YOU
8 DO?

9 A. I TOOK THE NO TRESPASSING NOTICE.

10 Q. OKAY. IS THIS THE NOTICE, THIS EXHIBIT TWO?

11 A. YES, SIR.

12 Q. OKAY. AND YOU MAILED IT TO HIM, CERTIFIED MAIL?

13 A. YES, I DID.

14 Q. OKAY. DID YOU WANT TO ARREST HIM?

15 A. NO, I CHOSE NOT TO DO THAT. I REALLY DIDN'T WANT TO
16 CAUSE HIM ANY PROBLEMS. I JUST DIDN'T WANT HIM
17 BOUNDING UP MY STEPS WITH A GUN OR ANYTHING. I JUST
18 WANTED TO KEEP HIM AWAY FROM MY PREMISES.

19 Q. OKAY. WERE YOU THREATENED BY HIM?

20 A. YES.

21 Q. WERE YOU IN FEAR OF YOUR LIFE?

22 A. YES.

23 Q. NOW, WE INTRODUCED THE RULES AND BY-LAWS AND
24 POLICIES AND DRESS CODE AND ALL THAT AS DEFENDANT'S
25 THREE. DO YOU CONSIDER HIS CONDUCT ON THAT DAY TO

1 BE PROPER CONDUCT?

2 A. ABSOLUTELY NOT.

3 Q. DOES THAT REQUIRE YOU - (INAUDIBLE) IN FACT, IS THIS

4 A CONTRACT?

5 A. WELL, THERE'S NO QUESTION ABOUT IT. I MEAN, IT - IF

6 A PERSON THREATENS YOU, WHY WOULD YOU ALLOW HIM BACK

7 ON THE PREMISES TO PLAY GOLF? YOU KNOW, I TOOK THE

8 THREAT SERIOUSLY, AND THAT'S CERTAINLY NOT PROPER

9 CONDUCT.

10 Q. PRIOR TO THAT DAY, DID YOU SAY THAT HE WOULD JUST

11 WALK UP TO YOUR DESK?

12 A. YES (INAUDIBLE)

13 Q. AND LEAVE YOU NOTES?

14 A. YES, SIR, MY OFFICE IS UPSTAIRS, MR. SPIVEY, AND HE

15 WOULD COME UP THE STAIRS UNANNOUNCED AND COME INTO

16 MY OFFICE OR LEAVE NOTES WHEN I WASN'T THERE FOR US

17 TO DO CERTAIN THINGS AND -

18 Q. PRIOR TO AUGUST 25TH, HAD YOU EVER HEARD ANYTHING

19 ABOUT HIS AIR CONDITIONING?

20 A. NOT ONE WORD.

21 Q. AND -

22 A. I HEARD A LOT OF OTHER STUFF ABOUT OTHER STUFF THAT

23 HE CLAIMED WAS WRONG THAT I TOOK CARE OF OR

24 ADDRESSED, YOU KNOW, EVERY TIME, BUT NOT ONE WORD

25 ABOUT THE AIR CONDITIONING.

1 Q. AND YOU SAID EARLIER YOU DIDN'T THINK HE HAD HAD AN
2 AIR CONDITIONING PROBLEM. WHY DO YOU THINK THAT?

3 A. HE NEVER MENTIONED IT. HE HAD BEEN LIVING THERE
4 OVER A YEAR AND NEVER MENTIONED ANY PROBLEM WITH THE
5 AIR CONDITIONING. IT WAS A HOT SUMMER, YOU KNOW,
6 HAD BEEN THROUGH A WHOLE HOT SUMMER AND NEVER
7 MENTIONED IT, SO WHY NOW?

8 Q. AND THIS WAS ON AUGUST 25TH?

9 A. YES, SIR. WELL, WAS IT THE 24TH OR 25TH? I'M NOT
10 SURE.

11 Q. OKAY. AND AS THE HUD STATEMENT SAYS, YOU CLOSED ON
12 JUNE 21ST. IS THAT RIGHT?

13 A. YEAH, THIS IS CORRECT, TO MY UNDERSTANDING.

14 Q. OKAY. DEFENDANT'S EXHIBIT ONE. SO, HIS WARRANTY
15 HAD EXPIRED?

16 A. YES.

17 Q. AND YOU TRIED TO EXPLAIN THAT TO HIM THAT DAY?

18 A. I TOLD HIM THAT THE WARRANTY WAS OVER, YES. TWO
19 REASONS. ONE, YOUR WARRANTY IS OVER WITH. THE
20 OTHER REASON WAS THERE'S NOTHING WRONG WITH YOUR AIR
21 CONDITIONER. IT DOESN'T WARRANT ME ADDRESSING THAT
22 JUST BECAUSE I HAD TO FIX ANOTHER ONE THAT WAS UNDER
23 WARRANTY. AND THAT'S WHEN HE THREATENED TO SUE ME.

24 Q. DID YOU DO SOMETHING TO TRY TO ALWAYS WIN ON THE
25 SENIOR DAY?

1 A. THAT'S REALLY LUDICROUS. I MEAN, WHAT DO YOU WIN?
2 YOU PAY \$23 TO PLAY IN A FELLOWSHIP TOURNAMENT
3 (INAUDIBLE) SENIORS. AND WE OFFER THEM A - I MEAN,
4 THE CART AND GREEN FEE IS MORE THAN \$23 (INAUDIBLE).
5 SO, YES, MY TEAM WON SOME. I ENJOYED IT. I ENJOYED
6 PLAYING, WIN OR LOSE.

7 Q. DID YOU ALWAYS WIN?

8 A. ABSOLUTELY NOT.

9 Q. HOW OFTEN -

10 A. I PLAYED WITH MR. MARRETT ONE DAY AND WE DIDN'T WIN.

11 Q. OKAY. HOW MANY TIMES DID YOU PLAY IN THE SENIORS
12 DURING THAT YEAR?

13 A. I'LL HAVE TO GUESS.

14 Q. JUST GIVE US AN IDEA.

15 A. I'LL TELL YOU THAT I HAD A KNEE REPLACEMENT THIS
16 YEAR IN JANUARY, AND I HAVEN'T PLAYED THIS ENTIRE
17 YEAR BECAUSE OF THAT. MR. NELSON, MY GOLF DIRECTOR,
18 HE'S THE ONE THAT HANDLES THE TOURNAMENTS. I HAD
19 NOTHING TO DO WITH THE TOURNAMENT.

20 Q. SO, YOU DON'T PICK THE TEAMS?

21 A. NO, ABSOLUTELY NOT. BUT I WOULD PLAY - TO ANSWER
22 YOUR QUESTION, I WOULD PLAY TWICE A MONTH, PROBABLY,
23 PROBABLY TWICE A MONTH.

24 Q. OKAY.

25 BY MR. SPIVEY:

1 THAT'S ALL, YOUR HONOR.

2 **BY JUDGE STOKES:**

3 MR. BENNETT?

4 **CROSS-EXAMINATION BY MR. BENNETT:**

5 Q. MR. FORREST, DO YOU CONSIDER YOURSELF AN OVERLY
6 SENSITIVE PERSON?

7 A. NO, SIR.

8 Q. YOU SAY YOU WERE IN FEAR FOR YOUR LIFE?

9 A. I TOOK HIS THREAT SERIOUSLY, YES, SIR.

10 Q. BUT WITH ALL DUE RESPECT, THERE'S A DIFFERENCE
11 BETWEEN TAKING SOMETHING SERIOUSLY AND BEING IN FEAR
12 FOR YOUR LIFE, ISN'T THERE?

13 A. I THINK THAT'S PICKING AT STRAWS. I THINK THAT'S A
14 FINE LINE THERE, BECAUSE I'M (INAUDIBLE), JUST LIKE
15 HE IS, AND I'VE READ ABOUT DISAGREEMENTS WHERE THEY
16 BOUND UP YOUR STAIRS AND SHOOT YOU AND THAT TYPE OF
17 (INAUDIBLE). THAT WAS A CONCERN OF MINE.

18 Q. YOU'VE KNOWN MR. MARRETT FOR A LOT OF YEARS BEFORE
19 AUGUST OF 2005, OR AUGUST 2004. ISN'T THAT CORRECT?

20 A. BEFORE HE MOVED TO GREENWOOD, YES.

21 Q. NOTHING IN HIS PAST WOULD EVER PUT YOU AT ANY KIND
22 OF FEAR IN THAT HISTORY, DID IT?

23 A. NO, THAT IS CORRECT.

24 Q. NOTHING WHATSOEVER HAS HE EVER DONE IN HIS HISTORY
25 WITH YOU THAT WOULD MAKE YOU FEEL LIKE HE WAS

1 CAPABLE OF SHOOTING YOU. ISN'T THAT CORRECT? BUT
2 YOU SAID I WAS IN FEAR OF MY LIFE. THAT'S YOUR
3 TESTIMONY TODAY.

4 A. I'VE ALREADY ANSWERED THAT, COUNSEL.

5 Q. I'M JUST (INAUDIBLE). THAT'S YOUR TESTIMONY,
6 CORRECT?

7 A. YES, SIR.

8 Q. NOW, YOU'RE A BLACK BELT IN TAE KWON DO, AREN'T YOU?

9 A. I WAS, YES.

10 Q. YOU SAY YOU WERE, LIKE IT'S PAST TENSE. DO THEY -

11 A. I HAVEN'T PRACTICED TAE KWON DO IN 25 YEARS. SO, I
12 WAS A BLACK BELT, BUT I DON'T DO THAT ANYMORE.

13 Q. YOU WERE, AT ONE TIME, AND THE LAST TIME YOU WERE
14 UNDER OATH AND YOU TESTIFIED ABOUT THIS, YOU
15 INDICATED IT WAS ABOUT -

16 **BY MR. SPIVEY:**

17 YOUR HONOR, I'M GOING TO OBJECT. HE'S NOT
18 PERMITTED TO TALK ABOUT THAT.

19 **BY JUDGE STOKES:**

20 Y'ALL EXCUSE US A MINUTE.

21 **(JURY EXITS)**

22 **BY MR. SPIVEY:**

23 YOUR HONOR, I DON'T THINK ANYTHING ABOUT THE
24 PRIOR TRIAL SHOULD BE MENTIONED.

25 **BY MR. BENNETT:**

1 I DIDN'T MENTION THE PRIOR TRIAL, YOUR HONOR.
2 THIS IS A CIVIL CASE. THERE IS AN OPPORTUNITY TO
3 TAKE DEPOSITIONS. THERE ARE OTHER WAYS THAT THIS
4 WITNESS COULD HAVE BEEN UNDER OATH AND MADE A
5 STATEMENT. I'M MERELY TRYING TO IMPEACH HIM WITH AN
6 INCONSISTENT STATEMENT, WHICH TODAY HE SAYS IT WAS
7 25 YEARS AGO, WAS THE LAST TIME HE HAD PRACTICED TAE
8 KWON DO, YET HIS TRANSCRIPT ON THE 27TH DAY OF MARCH
9 OF 2007, HE INDICATED IT WAS 15 YEARS AGO. HE HAS,
10 IN ESSENCE, ADDED ANOTHER TEN YEARS TO THE AMOUNT OF
11 TIME. IT IS A MINOR PART, I WILL ADMIT, YOUR HONOR.
12 HOWEVER, IT DOES SHOW AN INCONSISTENCY WITH SOME
13 SPECIFICS IN THE FACTS OF THE CASE. AND HE -

14 **BY MR. SPIVEY:**

15 YOUR HONOR, EVENTUALLY, HE'S GOT TO USE THAT
16 TRANSCRIPT, WHICH BRINGS UP THE OTHER TRIAL.

17 **BY JUDGE STOKES:**

18 CAN YOU GET AROUND THAT, MR. BENNETT?

19 **BY MR. BENNETT:**

20 IF I REFRESH THE WITNESS'S RECOLLECTION OUTSIDE
21 OF THE PRESENCE OF THE JURY AND ALLOW HIM THE
22 OPPORTUNITY TO AMEND HIS STATEMENT WHEN THE JURY
23 COMES BACK? OR IF HE (INAUDIBLE) TO IT AT THIS
24 POINT IN TIME -

25 **BY MR. SPIVEY:**

1 YOUR HONOR, HE COULD HAVE MADE A MISTAKE. I
2 DON'T KNOW WHAT THE RIGHT ANSWER IS, BUT HE COULD
3 HAVE MADE A MISTAKE THE OTHER TIME. HIS TESTIMONY
4 TODAY IS ALL WE HAVE TO GO ON, AND HE'S TRYING TO
5 IMPEACH HIM WITH PRIOR TESTIMONY.

6 BY JUDGE STOKES:

7 I'M GOING TO GIVE THE JURY THE INSTRUCTION TO
8 DISREGARD THE QUESTION AND THE ANSWER ENTIRELY, AND
9 I'M GOING TO LET MR. BENNETT ASK HIS QUESTION
10 ANOTHER TIME. THEN, HE - BUT IF THE JURY GETS A
11 CLUE THAT THIS THING HAS BEEN TRIED BEFORE, I'M
12 GOING TO MISTRY IT. DO YOU UNDERSTAND?

13 BY MR. BENNETT:

14 WE SURE DON'T WANT THAT, YOUR HONOR. YOUR
15 HONOR -

16 BY JUDGE STOKES:

17 BUT I THINK I'VE GOT TO. IF THEY FIGURE OUT
18 IT'S BEEN TRIED BEFORE, I'VE GOT TO MISTRY IT.

19 BY MR. BENNETT:

20 I AGREE, YOUR HONOR. IT'S NOT MY GOAL AND NOT
21 MY DESIRE TO ELICIT ANY TESTIMONY ON THAT MATTER.
22 WHAT MY GOAL WOULD BE, HOWEVER, THE WITNESS'S FEAR
23 FOR HIS PERSONAL SAFETY IS A DIRECT ISSUE IN THIS
24 CASE. THE FACT THAT THE WITNESS IS A BLACK BELT IN
25 TAE KWON DO, A VERY HIGHLY ACHIEVED DESIGNATION IN A

1 SELF-DEFENSE MARTIAL ART IS RELEVANT TO THIS ISSUE
2 AND I WOULD LIKE TO HAVE THE OPPORTUNITY TO BE ABLE
3 TO GET TESTIMONY, NOT NECESSARILY ABOUT THE TIME OR
4 WHATEVER, BUT I WOULD CONCEDE THAT WE CAN DO AWAY
5 WITH THOSE QUESTIONS, BUT INSTEAD, THE TESTIMONY
6 THAT, IN FACT, HE IS, INSTEAD OF WAS, A BLACK BELT
7 IN KARATE. BECAUSE IT'S NOT THE KIND OF THING THAT
8 IT'S LIKE A DRIVER'S LICENSE. IF YOU DON'T RENEW
9 IT, YOU LOSE IT. IT IS, IN FACT, SOMETHING THAT YOU
10 ATTAIN, AND YOU OBTAIN IT FOR LIFE. IT'S LIKE A
11 COLLEGE EDUCATION. IT'S LIKE, YOU KNOW, AN AWARD.
12 AND FOR HIM TO BE ABLE TO TAKE THE STAND AND
13 INDICATE THAT HE WAS, BUT NOT THAT HE IS, IS
14 MISLEADING TO THIS JURY.

15 **BY MR. SPIVEY:**

16 YOUR HONOR, IF I - I'VE PRACTICED LAW A LONG
17 TIME, BUT IF I RETIRE AND SOMEBODY ASKS ME WHAT DID
18 I DO, I WOULD SAY I WAS A LAWYER.

19 **BY MR. BENNETT:**

20 THAT'S A DIFFERENCE.

21 **BY MR. SPIVEY:**

22 NO, IT'S NOT A DIFFERENCE.

23 **BY MR. BENNETT:**

24 AGAIN, THIS IS AN ACCREDITATION, AN AWARD THAT
25 IS GIVEN AS OPPOSED TO A PROFESSION THAT IS

1 PRACTICED. I'M ASKING THIS WITNESS WHETHER OR NOT
2 HE IS A BLACK BELT IN TAE KWON DO. HE INDICATES HE
3 WAS, WHEN THAT IS NOT TRUTHFUL. HE IS A BLACK BELT
4 IN KARATE BECAUSE HE WAS AWARDED THAT. FOR THE
5 COURT'S INDULGENCE, I WAS THERE THAT DAY. MR.
6 FORREST AND I PRACTICED TAE KWON DO TOGETHER WITH
7 THE SAME INSTRUCTOR, MR. BILLY VAUGHN. WE TOOK THE
8 SAME CLASS. I WAS THERE WHEN HE WAS AWARDED WITH
9 RUSTY BURRIS, HIS BLACK BELT DESIGNATION. LIKE
10 MYSELF, A BLACK BELT, I WOULD HAVE A BLACK BELT IN
11 TAE KWON DO FOR THE REST OF MY LIFE EVEN THOUGH I
12 DON'T PRACTICE TO THIS DAY, UNFORTUNATELY, BECAUSE
13 I'M NOT SMART ENOUGH TO HAVE KEPT IT UP. BUT I AM A
14 BLACK BELT.

15 **BY MR. SPIVEY:**

16 YOUR HONOR, THIS IS A RIDICULOUS ARGUMENT. CAN
17 WE GET THIS CASE AND LET'S TRY IT.

18 **BY JUDGE STOKES:**

19 I'VE ABOUT - I TOLD YOU WHAT I WAS GOING TO DO,
20 AND I HAVEN'T CHANGED MY MIND.

21 **BY MR. BENNETT:**

22 IF I COULD JUST BE CLEAR, THEN, YOUR HONOR -

23 **BY JUDGE STOKES:**

24 I'M GOING TO INSTRUCT THE JURY TO DISREGARD THE
25 QUESTIONS ABOUT THE KARATE STUFF AND DISREGARD THE

1 ANSWERS. THEN, I'M GOING TO LET YOU RE-ASK THE
2 QUESTIONS, BUT IF YOU MAKE ANY ALLUSION TO PRIOR
3 TESTIMONY, I'M GOING TO MISTRY ON MY OWN MOTION,
4 JUST LIKE THAT. I'M NOT EVEN GOING TO SEND THE JURY
5 OUT. I'M JUST GOING TO SAY MISTRIAL, THANK Y'ALL
6 FOR YOUR SERVICE.

7 BY MR. BENNETT:

8 OKAY. AND BEFORE WE BRING THE JURY IN, YOUR
9 HONOR —

10 BY JUDGE STOKES:

11 YES, SIR.

12 BY MR. BENNETT:

13 ONE OTHER ISSUE THAT MIGHT MAKE THINGS A LITTLE
14 MORE EFFICIENT. IS IT MR. SPIVEY'S INTENTION TO
15 CALL MR. FORREST'S MINISTER OR PASTOR AS A CHARACTER
16 WITNESS?

17 BY JUDGE STOKES:

18 I THINK HE CAN NOW.

19 BY MR. BENNETT:

20 YOUR HONOR, IF I MAY, I'D LIKE TO RENEW MY
21 OBJECTION TO THAT BASED UPON THE FACT THAT THE
22 COURT'S CLAIM THAT THE DOOR WAS OPEN BASED UPON THE
23 QUESTIONS DURING MR. MARRETT'S DIRECT EXAMINATION,
24 THAT QUESTION SPECIFICALLY WAS OBJECTED TO AND WAS
25 SUSTAINED. SO, THERE WAS NO TESTIMONY DISCREDITING

1 THE CHARACTER OF THIS WITNESS.

2 BY JUDGE STOKES:

3 MR. MARRETT RESPONDED AND SAID DO YOU KNOW WHO
4 YOU'RE DEALING WITH, WHICH IS IMPUGNING THE
5 CHARACTER OF THE DEFENDANT.

6 BY MR. BENNETT:

7 THAT'S CORRECT, YOUR HONOR.

8 BY JUDGE STOKES:

9 AND I'M LETTING IT IN -

10 BY MR. BENNETT:

11 BUT YOUR HONOR -

12 BY JUDGE STOKES:

13 AND THE ROAD TO GREENVILLE IS ALWAYS OPEN.

14 BY MR. BENNETT:

15 THANK YOU.

16 (JURY ENTERS)

17 BY JUDGE STOKES:

18 LADIES AND GENTLEMEN, RIGHT BEFORE Y'ALL WENT
19 OUT, Y'ALL HEARD SOME TESTIMONY AS TO THE TAE KWON
20 DO QUALIFICATIONS. WHAT I'M GOING TO INSTRUCT YOU
21 TO DO NOW, IS I'M GOING TO ASK YOU TO TOTALLY
22 DISREGARD THE FACT THAT THE QUESTIONS WERE ASKED AND
23 TOTALLY DISREGARD THE ANSWERS. THERE WAS A
24 TECHNICAL GLITCH IN THERE THAT, GETTING US LAWYERS
25 OUT OF IT, IT WOULDN'T HAVE MEANT A LOT TO Y'ALL,

1 BUT IT MEANS A LOT UNDER THE RULES OF COURT. WHAT
2 WE'RE GOING TO DO, THOUGH, IS MR. BENNETT IS GOING
3 TO JUST SORT OF BACK UP AND REDO THAT AREA AND WE'LL
4 SOLVE THAT. SO, IF YOU'LL DISREGARD ANYTHING YOU'VE
5 HEARD PRIOR ABOUT THE TAE KWON DO TYPE
6 QUALIFICATIONS AND EXPERIENCE AND STUFF, THEN MR.
7 BENNETT WILL READDRESS IT AT THIS POINT. AND WE
8 HAVE TO DO THAT, OKAY? GO AHEAD, MR. BENNETT.

9 BY MR. BENNETT:

10 THANK YOU, YOUR HONOR.

11 CROSS-EXAMINATION RESUMED BY MR. BENNETT:

12 Q. MR. FORREST, YOU'RE A BLACK BELT IN TAE KWON DO,
13 AREN'T YOU?

14 A. I'M NOT A PRACTICING BLACK BELT. I WAS A BLACK BELT
15 AT THAT TIME. (INAUDIBLE)

16 Q. YOU WERE AWARDED THAT DISTINCTION?

17 A. YES, SIR.

18 Q. AND THAT'S AN AWARD THAT YOU CARRY WITH YOU FOR
19 LIFE, CORRECT?

20 A. RIGHT.

21 Q. SO, YOU'RE STILL A BLACK BELT IN KARATE?

22 A. I'M JUST NOT PRACTICING. I'M NOT PRACTICING
23 ANYMORE.

24 Q. I'M NOT ASKING YOU IF YOU CONTINUE TO PRACTICE. I'M
25 SAYING YOU ARE STILL A BLACK BELT IN TAE KWON DO, AS

- 1 YOU SIT HERE TODAY, ARE YOU NOT?
- 2 A. I REGARD THAT TO BE TRUE.
- 3 Q. NOW, YOU HAD THE CONDO OF ONE PATIO WAY ON THE
- 4 MARKET FOR 159,000 AT ONE TIME, CORRECT?
- 5 A. CORRECT.
- 6 Q. HAVE YOU EVER HAD IT PRICED ANY HIGHER THAN THAT, TO
- 7 YOUR RECOLLECTION?
- 8 A. NO.
- 9 Q. YOU HAD BEEN IN THE REAL ESTATE BUSINESS FOR HOW
- 10 LONG, AT THIS TIME, BACK IN 2004?
- 11 A. THAT WAS ABOUT THE TIME I STARTED. THOSE THAT I
- 12 SOLD TO HIM, THAT SECTION WAS MY FIRST ENDEAVOR IN
- 13 THE REAL ESTATE BUSINESS.
- 14 Q. AND WHEN YOU SAY YOUR FIRST ENDEAVOR, YOU WERE ALSO
- 15 THE CONTRACTOR OR THE BUILDER OF THOSE PROPERTIES,
- 16 CORRECT?
- 17 A. NO, SIR. THAT IS NOT CORRECT.
- 18 Q. HOW DID YOU COME ABOUT OWNING THOSE PROPERTIES,
- 19 THEN, SO THAT YOU COULD SELL THEM?
- 20 A. THE HOUSES?
- 21 Q. CORRECT.
- 22 A. I HIRED A CONTRACTOR, STEELE. STEELE, LLC, BUILT
- 23 THOSE HOUSES.
- 24 Q. I MUST HAVE MISUSED MY TERM INCORRECTLY. I
- 25 APOLOGIZE. YOU WERE THE DEVELOPER —

- 1 A. YEAH, I WAS THE DEVELOPER.
- 2 Q. NOT THE BUILDER, BUT THE DEVELOPER?
- 3 A. THAT'S CORRECT.
- 4 Q. THERE IS A DISTINCTION. THE BUILDER ACTUALLY
- 5 HAMMERS THE STUFF. THE DEVELOPER GETS IT ALL DONE,
- 6 CORRECT?
- 7 A. PARTIALLY. THE BUILDER'S RESPONSIBLE FOR THE
- 8 BUILDING ITSELF FOR A YEAR BECAUSE HIS NAME'S ON THE
- 9 PERMIT. ALL I DO IS FURNISH THE MONEY THE BUILD
- 10 (INAUDIBLE).
- 11 Q. AND SO, YOU HAD DEVELOPED IT. HAD YOU ALSO DECIDED
- 12 THAT YOU WERE GOING TO BE THE ONE TO SELL THESE
- 13 PROPERTIES?
- 14 A. I HAD A REALTOR. I HAD A REALTOR.
- 15 Q. WHO WAS THAT?
- 16 A. IF YOU'LL FORGIVE ME, BUT I'LL HAVE TO (INAUDIBLE)
- 17 Q. WELL, THAT'S FINE. WE WON'T HAVE THAT OPPORTUNITY,
- 18 BUT JUST SUFFICE TO SAY, YOU DON'T REMEMBER WHO YOUR
- 19 REALTOR WAS?
- 20 A. (INAUDIBLE).
- 21 Q. SO, NEVERTHELESS, THEN, YOU, AT SOME POINT IN TIME,
- 22 STARTED NEGOTIATING THE SALE OF THIS PROPERTY AT ONE
- 23 PATIO WAY WITH BRAD MARRETT. IS THAT RIGHT?
- 24 A. THAT'S CORRECT.
- 25 Q. INSTEAD OF THE REALTOR?

1 A. YEAH, I HAVE THAT - I HAVE THAT PRIVILEGE.

2 Q. OKAY. SO, THAT'S WHAT YOU DID IN THIS CASE?

3 A. YES, I DID.

4 Q. AND IN FACT, HAD YOU SOLD OTHER REAL ESTATE PRIOR TO

5 THAT WHICH YOU SOLD TO MR. MARRETT?

6 A. NO, ACTUALLY, THE REAL ESTATE - THE REALTOR SOLD THE

7 OTHER TWO HOUSES PRIOR TO HIS. SO, I HAD NOT SOLD

8 ONE.

9 Q. HAD YOU EVER IN YOUR ENTIRE HISTORY EVER SOLD A

10 PIECE OF REAL ESTATE PRIOR TO MR. BRAD MARRETT'S?

11 A. WELL, I JUST TOLD YOU I HAD NEVER BEEN - THAT WAS MY

12 FIRST ENDEAVOR TO BUILD AND SELL.

13 Q. I'M SORRY. I DIDN'T MEAN NECESSARILY AS A

14 DEVELOPER. I JUST MEANT IN YOUR HISTORY AS A HUMAN

15 BEING, HAD YOU EVER SOLD ANOTHER PIECE OF PROPERTY

16 PREVIOUSLY IN YOUR LIFE?

17 A. YES.

18 Q. SO, YOU'RE FAMILIAR WITH REAL ESTATE CONTRACTS

19 BECAUSE OF THAT?

20 A. (INAUDIBLE) THIS QUESTION BECAUSE, YOU KNOW, I'VE

21 SOLD MY PERSONAL HOUSE TWICE IN THE PAST 50 YEARS -

22 Q. DID YOU HAVE A WRITTEN CONTRACT FOR THAT?

23 A. I DON'T REALLY REMEMBER THAT I DID. I DON'T THINK

24 SO. I MEAN, I SOLD IT TO MY PASTOR AND WE SHOOK

25 HANDS AND HE WENT AND BORROWED THE MONEY AND PAID ME

1 AND I DIDN'T KNOW HOW TO WRITE A - I WASN'T THE - I
2 DIDN'T WRITE CONTRACTS, NO, SIR.

3 Q. LET'S TALK ABOUT THAT. YOU'RE NOT CLAIMING THAT YOU
4 DON'T HAVE EXPERIENCE IN WRITTEN CONTRACTS, ARE YOU?

5 A. I'M NOT CLAIMING THAT, NO.

6 Q. BECAUSE, IN FACT, YOU OWNED A CAR DEALERSHIP, AT ONE
7 TIME, DIDN'T YOU?

8 A. YES, I DID.

9 Q. WRITTEN CONTRACTS ARE IN CAR SALES, AREN'T THEY?

10 A. YES, SIR.

11 Q. YOU OWNED THE COUNTRY CLUB FOR, SINCE 1997 OR '79, I
12 BELIEVE?

13 A. '79.

14 Q. SINCE '79. YOU SOLD PROPERTY AROUND THAT COUNTRY
15 CLUB AT SOME POINT IN TIME, DIDN'T YOU?

16 A. I DIDN'T PERSONALLY.

17 Q. WELL, THERE WERE WRITTEN CONTRACTS FOR THOSE SALES,
18 THOUGH, WEREN'T THERE?

19 A. YES, SIR.

20 Q. AND IN FACT, IN THIS CASE TODAY, THERE'S THE WRITTEN
21 CONTRACT AND THAT IS PLAINTIFF'S EXHIBIT ONE.

22 A. YES.

23 Q. I'M GOING TO HAND THAT TO YOU, IF YOU WILL, PLEASE.
24 YOU'VE SEEN THAT BEFORE, I'M SURE. IT HAS YOUR NAME
25 ON THE BACK, CORRECT?

- 1 A. CORRECT.
- 2 Q. AND THAT'S, IN ESSENCE, THE MEMORIALIZATION OF THE
3 DEAL THAT YOU AND BRAD MARRETT STRUCK FOR THE SALE
4 OF THAT PROPERTY, CORRECT?
- 5 A. I BELIEVE SO, YES.
- 6 Q. AND ON THE BACK PAGE OF THIS, IT INDICATES THERE AT
7 THE TOP THAT A FIVE-YEAR MEMBERSHIP WILL BE
8 FURNISHED, CORRECT?
- 9 A. THAT IS CORRECT.
- 10 Q. SO, THAT FIVE-YEAR MEMBERSHIP WAS PART OF THE DEAL
11 FOR THE SALE OF THAT HOUSE AT ONE PATIO WAY, WASN'T
12 IT?
- 13 A. I WOULD SAY THAT IT ENTAILED PART OF THE AGREEMENT,
14 YES.
- 15 Q. BECAUSE IT'S MEMORIALIZED IN THE CONTRACT, RIGHT?
- 16 A. THAT'S RIGHT.
- 17 Q. BECAUSE IT'S PART OF WHAT WE CALL THE BASIS OF THE
18 COST, CORRECT?
- 19 A. NO, I DO NOT AGREE WITH THAT.
- 20 Q. WELL, LET'S CHECK ON THAT.
- 21 A. OKAY.
- 22 Q. THE COST IS LISTED HERE ON THE FRONT PAGE, 149,000,
23 ISN'T IT?
- 24 A. YES.
- 25 Q. IN FACT, THERE'S A THOUSAND DOLLAR AMOUNT THAT WAS

- 1 PUT INTO ESCROW. IS THAT CORRECT?
- 2 A. THAT'S CORRECT.
- 3 Q. IT'S GOT THE NAME OF THE ADDRESS FOR THE PROPERTY,
- 4 CORRECT?
- 5 A. CORRECT.
- 6 Q. IT'S EVEN GOT THE TAX MAP NUMBER, CORRECT?
- 7 A. YES.
- 8 Q. IT GOES ON AND TALKS ABOUT THE WARRANTY, CORRECT?
- 9 A. YES.
- 10 Q. ALL THOSE WERE PART OF THE BASIS OF THE CONTRACT,
- 11 AREN'T THEY?
- 12 A. YES.
- 13 Q. IT COMES OVER HERE ON THE BACK PAGE AND TALKS ABOUT
- 14 BUYING OR SELLING AND GOING INTO DEFAULT, CORRECT?
- 15 A. CORRECT.
- 16 Q. THOSE ARE REMEDIES, IN OTHER WORDS, WAYS TO HAVE THE
- 17 CONTRACT VOIDED, CORRECT?
- 18 A. CORRECT.
- 19 Q. THAT'S PART OF THE BASIS OF THE CONTRACT, ISN'T IT?
- 20 A. CORRECT.
- 21 Q. THERE'S A PART RIGHT UP HERE THAT SAYS FURNISHES A
- 22 FIVE-YEAR GOLF MEMBERSHIP TO SUMMERSETT GOLF CLUB.
- 23 YOU'RE TESTIFYING IS THAT EVEN THOUGH IT WAS ON THIS
- 24 DOCUMENT, IT'S NOT PART OF THE BASIS?
- 25 A. NO, SIR. IT WASN'T PART OF THE BASIS ON THE PRICE

1 OF THE HOUSE, NO.

2 Q. BUT EVERYTHING ELSE IN THE CONTRACT IS, BUT THAT ONE
3 ITEM THAT HAPPENS TO BE SPECIFIED - IN WHOSE
4 HANDWRITING?

5 A. MINE.

6 Q. IN YOUR OWN HANDWRITING, SPECIFIED WITHIN THAT
7 CONTRACT TODAY YOU CLAIM WAS NOT PART OF THAT DEAL?

8 A. WELL, IT BECAME PART OF THE DEAL.

9 Q. THAT CONTRACT WAS WRITTEN IN ONE DAY, WASN'T IT?

10 A. YES.

11 Q. IT WAS EXECUTED ON ONE DAY, WASN'T IT?

12 A. YES.

13 Q. THAT DAY WAS MAY 21ST, 2004, CORRECT?

14 A. CORRECT.

15 Q. YOUR HISTORY AS A BUSINESSMAN, DO YOU FIND IT A
16 PRACTICE TO NEGOTIATE AND MEMORIALIZE A CONTRACT IN
17 WRITING AND THEN ADD TERMS AT A LATER DATE? IS THAT
18 WHAT YOU DO?

19 A. I DID THAT. WE HAD ALREADY AGREED ON THE PRICE OF
20 THE HOUSE WHEN HE ASKED ME ABOUT THE LIFETIME
21 MEMBERSHIP. THAT WAS AFTER THE AGREEMENT ON THE
22 HOUSE AND I AGREED TO DO THAT AND MAKE IT A PART OF
23 THE CONTRACT, BUT IT WAS NOT PART OF THE SELLING
24 PRICE OF THE HOUSE AND NEVER WAS.

25 Q. EVEN THOUGH IT'S IN THE CONTRACT?

- 1 A. I'VE ALREADY MADE THAT (INAUDIBLE), COUNSEL.
- 2 Q. EVEN THOUGH IT'S IN THE CONTRACT?
- 3 A. I JUST AGREED WITH THAT AGAIN.
- 4 Q. AND SO, AS YOU SIT HERE TODAY, YOU HAVE NOT HAD BRAD
- 5 MARRETT COME TO YOUR COUNTRY CLUB IN THE LAST THREE
- 6 AND A HALF, FOUR YEARS, HAVE YOU?
- 7 A. NO, SIR.
- 8 Q. YOU HAVEN'T HAD TO DEAL WITH HIM LEAVING NOTES ON
- 9 YOUR DESK THREE OR FOUR TIMES A MONTH, HAVE YOU?
- 10 A. NO.
- 11 Q. YOU HAVEN'T HAD TO WORRY THAT YOU'RE GOING TO BE
- 12 ENTERTAINING SOMEBODY AT THE COUNTRY CLUB AND OLD
- 13 BRAD MARRETT'S GOING TO COME UP AND ASK YOU ABOUT
- 14 SOMETHING THAT YOU DON'T WANT HIM TO TALK ABOUT, DO
- 15 YOU?
- 16 A. THAT'S CORRECT.
- 17 Q. YOU DON'T HAVE TO WORRY THAT BRAD MARRETT IS GOING
- 18 TO INTERFERE WITH YOUR USE AND ENJOYMENT OF THE
- 19 COUNTRY CLUB, DO YOU?
- 20 A. I ALSO DON'T HAVE TO WORRY THAT HE'S GOING TO HAVE
- 21 ME MURDERED.
- 22 Q. I'M SORRY, SIR. MY QUESTION WAS YOU DON'T HAVE TO
- 23 WORRY —
- 24 A. CORRECT. YOU'RE CORRECT.
- 25 Q. BECAUSE YOU CAN CONTROL THE COUNTRY CLUB, CAN'T YOU?

- 1 A. I'M THE OWNER.
- 2 Q. AND YOU CONTROL IT, DON'T YOU?
- 3 A. I'M THE OWNER.
- 4 Q. YOU CONTROL IT, DON'T YOU?
- 5 A. SIR, I HAVE A GENERAL GOLF DIRECTOR THAT CONTROLS
- 6 THIS AREA. I HAVE A SUPERINTENDENT THAT CONTROLS
- 7 THIS AREA, AND THEY REPORT TO ME, BUT I DO NOT
- 8 CONTROL THESE PEOPLE. THEY HAVE A JOB TO DO AND
- 9 THAT'S PART OF THEIR JOB.
- 10 Q. IF YOU TOLD SOMEBODY WHO WORKS FOR YOU TO DO
- 11 SOMETHING, THEY'D DO IT, WOULDN'T THEY?
- 12 A. YES, SIR.
- 13 Q. IF THEY DIDN'T, THEY'D BE FIRED, WOULDN'T THEY?
- 14 A. YES, THEY WOULD.
- 15 Q. YOU'RE CONTROLLING THEM, DON'T YOU?
- 16 A. IF YOU SAY SO.
- 17 Q. NOW, LET'S TALK ABOUT THESE BY-LAWS. THERE'S ONE
- 18 PAGE. IS THAT RIGHT?
- 19 A. IT'S A ONE-PAGE AGREEMENT.
- 20 Q. WELL, NOW, BY-LAWS AREN'T REALLY AN AGREEMENT. IT'S
- 21 JUST THIS ONE PAGE AND THAT'S DEFENDANT'S EXHIBIT -
- 22 A. WELL, IT IS - IT IS -
- 23 Q. LET ME ASK MY QUESTION, IF YOU DON'T MIND.
- 24 A. OKAY.
- 25 Q. DEFENDANT'S EXHIBIT THREE, CORRECT?

- 1 A. (INAUDIBLE).
- 2 Q. DEFENDANT'S EXHIBIT THREE, CORRECT?
- 3 A. (INAUDIBLE).
- 4 Q. NOW, THAT'S NOT THE ORIGINAL. THAT'S ACTUALLY A
- 5 PHOTOCOPY THAT YOUR LAWYER HAS PROVIDED OF
- 6 SOMETHING. WE'VE WRITTEN DOWN SOMETHING. IS IT A
- 7 PAMPHLET OR WHAT?
- 8 A. IT'S JUST A - IT'S A FOLDER THAT WE HAVE EVERYBODY
- 9 THAT JOINS SIGN, YOU KNOW. IT IS AN AGREEMENT.
- 10 THEY AGREE TO THAT.
- 11 Q. AND THIS IS GOING TO BE BACK WITH THE LADIES AND
- 12 GENTLEMEN OF THE JURY BACK IN THEIR JURY
- 13 DELIBERATION ROOM. THAT SECTION WHERE YOU TESTIFIED
- 14 EARLIER ON DIRECT, AND IT'S BEEN HIGHLIGHTED BY YOUR
- 15 ATTORNEY IN YELLOW, YOU TESTIFIED ABOUT PROPER
- 16 CONDUCT IS REQUIRED AT ALL TIMES. THAT SENTENCE IS
- 17 WITHIN THE SECTION ENTITLED DRESS CODE, IS IT NOT?
- 18 A. IT'S ALL-INCLUSIVE, YES. IT'S ALL-INCLUSIVE.
- 19 (INAUDIBLE).
- 20 Q. I'M GOING TO GET THERE. I'M JUST TRYING TO - I'M
- 21 TRYING TO -
- 22 A. IT'S IN THE SAME SECTION.
- 23 Q. EXACTLY. SO, THERE'S A HEADING THAT SAYS DRESS
- 24 CODE, AND IT'S JUST RIGHT BELOW THERE IN ANOTHER
- 25 SECTION THAT'S NOT IDENTIFIED, BUT THAT OTHER

1 SECTION DEALS WITH ALCOHOL, CORRECT?

2 A. AND ALSO -

3 Q. DOES THAT DEAL WITH ALCOHOL, SIR?

4 A. YES.

5 Q. OKAY. SO, PROPER CONDUCT IS REQUIRED AT ALL TIMES

6 SPECIFIES ALCOHOL AND NON-ALCOHOL USAGE THERE AT THE

7 CLUB, CORRECT?

8 A. AMONG OTHER THINGS, YES.

9 Q. WELL, IT'S THE LAST SENTENCE IN A GROUP OF THREE

10 SENTENCES IN ONE PARAGRAPH. SO, WHAT IT REFERS TO

11 IS SUMMERSETT GOLF IS A NOT AN ALCOHOLIC FACILITY,

12 CORRECT?

13 A. CORRECT.

14 Q. WE DO NOT ALLOW ALCOHOL AT THE CLUBHOUSE, NOR THE

15 POOL COMPLEX, CORRECT?

16 A. CORRECT.

17 Q. PROPER CONDUCT IS REQUIRED AT ALL TIMES, CORRECT?

18 A. CORRECT.

19 Q. SO, THE THEORY BEHIND THIS STATEMENT IN THIS ONE-

20 PAGE LITTLE BY-LAW SECTION IS YOU DON'T WANT TO HAVE

21 ALCOHOL AT THE FACILITY, CORRECT?

22 A. THAT'S WHAT THAT -

23 Q. IS THAT CORRECT?

24 A. CAN I ANSWER THAT?

25 Q. YES, YOU MAY. IS THAT WHAT THIS SAYS?

1 A. NO, CAN I ANSWER IT MY WAY INSTEAD OF YOUR WAY?

2 Q. YOU HAVE TO FINISH WHAT I'M ASKING YOU FIRST, SIR.

3 A. THAT IS NOT CORRECT.

4 Q. OKAY. SO, YOU INSERTED PROPER CONDUCT IS REQUIRED

5 AT ALL TIMES IN A PARAGRAPH ABOUT ALCOHOL, BUT NOW

6 YOU'RE GOING TO CLAIM THAT THAT INTERFERES OR -

7 A. I MOST CERTAINLY -

8 Q. I'M GOING TO FINISH MY QUESTION, IF YOU DON'T MIND.

9 THAT SENTENCE, PROPER CONDUCT IS REQUIRED AT ALL

10 TIMES, NOW REFERS TO EVERYTHING, NOT JUST ALCOHOL?

11 A. I WOULD - I WOULD SWEAR TO THAT, YES.

12 Q. THAT'S WHAT YOUR TESTIMONY IS TODAY. YOU'RE SWORN

13 UNDER OATH.

14 A. THAT'S RIGHT.

15 Q. ARE YOU STILL IN FEAR FOR YOUR LIFE FROM BRAD

16 MARRETT?

17 A. (INAUDIBLE) THE THREAT HAS NOT BEEN RETALIATED.

18 SO, THAT WOULD MEAN - THAT WOULD MAKE IT

19 (INAUDIBLE).

20 Q. SO, YOUR ANSWER IS YES OR NO? ARE YOU STILL IN FEAR

21 FOR YOUR LIFE FROM BRAD MARRETT?

22 A. YES. YES.

23 Q. YOU ARE, OKAY. YOU COULD HAVE GOTTEN A RESTRAINING

24 ORDER THAT WOULD HAVE KEPT BRAD MARRETT AWAY FROM

25 YOU AND THAT WOULD HAVE ALLOWED BRAD MARRETT TO

1 STILL USE THE GOLF COURSE IF YOU WERE IN THE OFFICE
2 OR YOU WERE SOMEWHERE ELSE, OR MAYBE YOU WERE OUT OF
3 TOWN, COULDN'T YOU HAVE?

4 A. COULD HAVE.

5 Q. AND THAT RESTRAINING ORDER WOULD ACTUALLY, IF YOU'RE
6 TRULY IN FEAR FOR YOUR LIFE, IT WOULD HAVE PROTECTED
7 YOU MUCH MORE AGGRESSIVELY THAN A TRESPASSING
8 NOTICE. ISN'T THAT TRUE?

9 A. THAT'S NOT TRUE.

10 Q. WELL, LET'S THINK ABOUT IT. LET'S SAY YOU GO UP TO
11 THE HAYWOOD MALL, OKAY? BIG OPEN PUBLIC FACILITY.
12 IF BRAD MARRETT'S THERE AND YOU'RE IN FEAR FOR YOUR
13 LIFE AND SAFETY, AND YOU GO INTO MEYERS-ARNOLD, BRAD
14 MARRETT COULD FOLLOW YOU RIGHT INTO MEYERS-ARNOLD
15 AND STAND TWO FEET AWAY FROM YOU THE ENTIRE TIME YOU
16 SHOPPED LEGALLY, COULDN'T HE?

17 A. I DON'T KNOW THE LAW -

18 Q. WOULD YOU BE IN FEAR FOR YOUR SAFETY IF BRAD MARRETT
19 WAS STANDING TWO FEET AWAY FROM YOU?

20 A. IF HE HAD A GUN, I WOULD.

21 Q. THAT'S NOT MY QUESTION. MY QUESTION IS IF BRAD
22 MARRETT WAS STANDING TWO FEET AWAY FROM YOU, IF
23 YOU'RE IN FEAR FOR YOUR LIFE, I WOULD ASSUME YOU
24 WOULD SAY YES, YOU'RE IN FEAR FOR YOUR LIFE AT THAT
25 TIME.

1 A. OKAY.

2 Q. IS THAT CORRECT?

3 A. OKAY.

4 Q. IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND LEGALLY, YOU COULD DO THAT, BUT YOU HAVE NOT

7 DONE THAT.. WHAT YOU'VE DONE IS YOU'VE KEPT HIM AWAY

8 FROM A PREMISES THAT HE PAID FOR AND HE ENJOYED AND

9 HE DISRUPTED YOUR ENJOYMENT OF IT?

10 A. (INAUDIBLE).

11 Q. YOU'RE ONLY IN FEAR FOR YOUR LIFE AND YOUR SAFETY

12 FROM BRAD MARRETT AT THE COUNTRY CLUB, BUT NOT

13 ANYWHERE ELSE?

14 A. YOU SAID THAT HE PAID FOR IT, AND THAT'S WHAT

15 (INAUDIBLE). HE DIDN'T PAY FOR (INAUDIBLE).

16 Q. WELL, HE NEGOTIATED FROM 141,000 -

17 A. NO, SIR, THAT'S NOT -

18 Q. I'M SORRY, I HAVEN'T FINISHED MY QUESTION. HE

19 NEGOTIATED FROM 141,000, WHICH IS WHAT HE WANTED TO

20 PAY FOR ONE PATIO WAY, AND INSTEAD PAID 149,000 AND

21 GOT FIVE YEARS THROWN IN, AND THAT WAS THE PAYMENT,

22 THAT EIGHT THOUSAND DOLLARS. BUT SPECIFICALLY, WHAT

23 I'M ASKING YOU IS -

24 A. NO, THAT'S NOT CORRECT. (INAUDIBLE).

25 Q. WELL, I'M ASKING YOU ABOUT -

- 1 A. (INAUDIBLE).
- 2 Q. SIR, WHAT I'M ASKING YOU ABOUT RIGHT NOW IS THE FACT
- 3 THAT YOU PUT HIM ON TRESPASS NOTICE SO THAT HE
- 4 WOULDN'T BOTHER YOU WHERE YOU FEEL MOST IN CONTROL
- 5 AND AT HOME.
- 6 A. THAT'S NOT CORRECT.
- 7 Q. BUT YOU'RE NOT CARING AT ALL ABOUT BEING OUT IN
- 8 PUBLIC AND POSSIBLY HAVING THIS THREATENING MAN KILL
- 9 YOU BECAUSE YOU COULD HAVE DONE THAT AND YOU STILL
- 10 HAVEN'T DONE IT, BUT YET YOU STILL KEEP HIM AWAY
- 11 FROM THE COUNTRY CLUB, DON'T YOU?
- 12 A. THAT IS CORRECT.
- 13 **BY MR. BENNETT:**
- 14 NO MORE QUESTIONS, YOUR HONOR.
- 15 **BY JUDGE STOKES:**
- 16 RE-DIRECT?
- 17 **BY MR. SPIVEY:**
- 18 THANK YOU, YOUR HONOR.
- 19 **RE-DIRECT EXAMINATION BY MR. SPIVEY:**
- 20 Q. MR. FORREST, DID YOU EVER HEAR ANY PROPOSAL FOR LESS
- 21 THAN 149,000?
- 22 A. NOT ONE TIME.
- 23 Q. WOULD YOU HAVE ENTERTAINED AN OFFER --
- 24 A. NOT ONE TIME.
- 25 Q. WHERE HAD YOU HAD YOUR CONTACTS WITH MR. MARRETT?

1 A. AT THE GOLF COURSE, AT THE OLD PARIS MOUNTAIN GOLF
2 COURSE.

3 Q. OKAY. AND THAT'S WHAT YOU'RE REFERRING TO ABOUT HIM
4 COMING BACK TO THE GOLF COURSE?

5 A. ABSOLUTELY. AFTER HE THREATENED MY LIFE
6 (INAUDIBLE).

7 Q. AND YOU WROTE UP THESE BY-LAWS, POLICIES, DRESS
8 CODE, AND ALL THAT?

9 A. YES.

10 Q. DID YOU CONSIDER THAT TO BE PART OF THE CONTRACT
11 WHEN HE THREATENED YOU?

12 A. NO, SIR.

13 **BY MR. SPIVEY:**

14 THAT'S ALL.

15 **BY JUDGE STOKES:**

16 ANY RE-CROSS?

17 **BY MR. BENNETT:**

18 NO, SIR, YOUR HONOR.

19 **BY JUDGE STOKES:**

20 YOU CAN STEP DOWN.

21 **BY MR. SPIVEY:**

22 WE CALL MR. RICHARD LOLLIS.

23 **BY JUDGE STOKES:**

24 MR. LOLLIS, PUT YOUR LEFT HAND ON THE BIBLE AND
25 RAISE YOUR RIGHT, PLEASE, SIR.

1 RICHARD LOLLIS,

2 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

3 BY JUDGE STOKES:

4 IF YOU COULD, GIVE YOUR FULL ADDRESS, ALSO, MR.
5 LOLLIS.

6 BY THE WITNESS:

7 4019 OLD PORTMAN ROAD, ANDERSON.

8 BY JUDGE STOKES:

9 THANK YOU, SIR. ANSWER MR. SPIVEY'S QUESTIONS,
10 PLEASE.

11 BY THE WITNESS:

12 OKAY.

13 DIRECT EXAMINATION BY MR. SPIVEY:

14 Q. MR. LOLLIS, YOU WORK WITH MR. FORREST?

15 A. I DID.

16 Q. WHEN WAS THAT?

17 A. I THINK I CAME THERE IN THE SPRING OF 2000. I WAS
18 THERE FOR FIVE YEARS.

19 Q. OKAY. AND YOU WERE WORKING THERE ON AUGUST 25,
20 2005?

21 A. I WAS, BUT I WAS NOT THERE THAT DAY.

22 Q. OKAY.

23 A. BUT I WAS STILL THERE.

24 Q. OKAY. YOU WERE INVOLVED IN THE NEGOTIATION OF THE
25 CONTRACT WITH MR. MARRETT?

- 1 A. I WAS.
- 2 Q. DID YOU EVER HEAR OF ANY PRICE IN THE RANGE OF 141?
- 3 A. IT WAS NEVER ANYTHING UNDER 149,000. (INAUDIBLE).
- 4 Q. YOU KNOW MR. FORREST PRETTY WELL, RIGHT?
- 5 A. I DO.
- 6 Q. WOULD HE HAVE SOLD IT FOR A PRICE UNDER 149?
- 7 A. NO, SIR. HE WAS VERY FIRM. I COULD HAVE SOLD IT
- 8 SEVERAL TIMES FOR LESS THAN THAT, BUT HE WAS VERY
- 9 FIRM ON THAT PRICE.
- 10 Q. OKAY. NOW, WERE YOU INVOLVED WHEN THE GOLF COURSE
- 11 MEMBERSHIP WAS ADDED?
- 12 A. YES. WE WERE BUSY WITH THIS MATTER, AND WE SAT DOWN
- 13 AND TALKED ABOUT WHAT IT WAS GOING TO COST HIM. YOU
- 14 KNOW, I DIDN'T HAVE A WHOLE LOT TO DO WITH THE GOLF
- 15 COURSE. I WAS INVOLVED IN THE BUILDING, BUT WE DID
- 16 SIT DOWN AND DISCUSS WHAT THAT WOULD COST, BASED ON
- 17 HOW MANY TIMES WE THOUGHT HE WOULD PLAY. AND DALLAH
- 18 AGREED TO DO IT, WHICH IS UNUSUAL BECAUSE HE HASN'T
- 19 DONE IT FOR ANYBODY ELSE THAT WE SOLD TO.
- 20 Q. OKAY. SO, YOU'VE NEVER HEARD OF HIM DOING IT
- 21 BEFORE?
- 22 A. NOT THAT I - NOT THAT I REMEMBER.
- 23 Q. AND IT REALLY DIDN'T COST MUCH, DID IT?
- 24 A. NO.
- 25 Q. AND WAS THIS ADDED AFTER THE 149,000 WAS AGREED TO?

1 A. THAT'S CORRECT.

2 BY MR. SPIVEY:

3 THAT'S ALL I HAVE, YOUR HONOR.

4 BY JUDGE STOKES:

5 ANY CROSS?

6 BY MR. BENNETT:

7 THANK YOU.

8 CROSS-EXAMINATION BY MR. BENNETT:

9 Q. MR. LOLLIS, YOU WEREN'T PRESENT - YOU WERE NOT
10 PRESENT DURING ALL OF THE NEGOTIATIONS BETWEEN MR.
11 FORREST AND MR. MARRETT, WERE YOU?

12 A. NO, BASICALLY, IT -

13 Q. I'M SORRY?

14 A. NO.

15 Q. THANK YOU.

16 BY MR. BENNETT:

17 NO FURTHER QUESTIONS, YOUR HONOR.

18 BY JUDGE STOKES:

19 ANY RE-DIRECT?

20 BY MR. SPIVEY:

21 NO, SIR.

22 BY JUDGE STOKES:

23 YOU CAN STEP DOWN.

24 BY MR. SPIVEY:

25 WE CALL LLOYD NELSON NOW.

1 LLOYD NELSON,

2 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

3 BY JUDGE STOKES:

4 MR. NELSON, WOULD YOU GIVE YOUR ADDRESS,
5 PLEASE, SIR?

6 BY THE WITNESS:

7 IT'S 28 BALD ROCK DRIVE, GREENVILLE, SOUTH
8 CAROLINA, 29609.

9 BY JUDGE STOKES:

10 THANK YOU, SIR. ANSWER MR. SPIVEY'S QUESTIONS.

11 BY MR. SPIVEY:

12 THANK YOU.

13 DIRECT EXAMINATION BY MR. SPIVEY:

14 Q. MR. NELSON, ARE YOU - YOU WORK AT SUMMERSETT?

15 A. YES, SIR.

16 Q. AND WHAT'S YOUR JOB AT SUMMERSETT?

17 A. DIRECTOR OF GOLF.

18 Q. OKAY. AND WERE YOU DIRECTOR OF GOLF BACK IN 2005?

19 A. YES, SIR.

20 Q. HOW LONG HAVE YOU WORKED FOR MR. FORREST?

21 A. SINCE 1981.

22 Q. ALMOST AS LONG AS HE'S OWNED THE COURSE?

23 A. THAT'S CORRECT.

24 Q. AND WERE YOU AT THE COURSE ON AUGUST 25, 2005?

25 A. YES, SIR.

- 1 Q. DO YOU REMEMBER THAT INCIDENT?
- 2 A. YES, SIR.
- 3 Q. TELL ME WHAT YOU HEARD THAT DAY.
- 4 A. JUST A COMMOTION OUTSIDE WHEN WE WERE COMING INTO
- 5 THE CLUBHOUSE. I HAD OTHER MEMBERS AND STUFF IN THE
- 6 CLUB, SO I WENT TO SEE WHAT WAS GOING ON
- 7 (INAUDIBLE). I GOT THEM OUTSIDE AND IT JUST GOT,
- 8 YOU KNOW, REAL HEATED. AND MR. MARRETT TOLD MR.
- 9 FORREST, YOU KNOW, I'LL WASTE YOU.
- 10 Q. AND YOU HEARD HIM SAY THAT?
- 11 A. YEAH, SO WHEN HE MADE THAT COMMENT, YOU KNOW, THAT'S
- 12 WHEN I GOT IN BETWEEN THEM AND SAID, YOU KNOW, TOLD
- 13 MR. MARRETT, YOU KNOW, YOU JUST NEED TO LEAVE BEFORE
- 14 SOMETHING BAD HAPPENS BECAUSE I'VE GOT OTHER
- 15 EMPLOYEES AND OTHER MEMBERS THERE. YOU KNOW, YOU'RE
- 16 DEALING WITH THE PUBLIC AND YOU NEVER KNOW WHEN
- 17 SOMETHING MIGHT GO WRONG. SO, THE BEST THING TO DO
- 18 IS TRY TO, YOU KNOW, GET PEOPLE TO LEAVE AS QUICK AS
- 19 POSSIBLE. AND HE LEFT. SO, I WAS CONCERNED, YOU
- 20 KNOW, IF HE WAS COMING BACK.
- 21 Q. SO, DID MR. FORREST TELL YOU WHAT HE WANTED YOU TO
- 22 DO?
- 23 A. WELL, WE KIND OF REALLY DIDN'T KNOW WHAT TO DO, SO
- 24 WE HAVE A POLICE OFFICER WHO'S A MEMBER OF THE CLUB.
- 25 I CALLED HIM TO GET HIS ADVICE.

1 Q. OKAY. AS A RESULT OF THAT CALL, WHAT DID Y'ALL
2 DECIDE TO DO?
3 A. HE SAID HE RECOMMENDED PUTTING A NO TRESPASSING, YOU
4 KNOW, ON MR. MARRETT. AND I TOLD THAT TO MR.
5 FORREST AND MR. FORREST PROCEEDED TO DO THAT.
6 Q. OKAY. AND THAT'S WHAT Y'ALL DID?
7 A. CORRECT.
8 Q. OKAY. WERE YOU INVOLVED IN THE TRESPASS NOTICE?
9 A. NO, SIR, JUST AS FAR AS, YOU KNOW, MAKING THE PHONE
10 CALL.
11 Q. AND YOU KNOW THIS NOTICE WAS SENT?
12 A. YES, SIR.
13 Q. OKAY. SENT THE SAME DAY, WASN'T IT?
14 A. YES, SIR.
15 Q. OKAY. NOW, YOU'VE WORKED WITH MR. FORREST FOR 28
16 YEARS?
17 A. YES, I HAVE.
18 Q. (INAUDIBLE) HAD YOU EVER SEEN ANYBODY THREATEN HIM
19 UP THERE?
20 A. (INAUDIBLE) AND TO BE HONEST WITH YOU, THAT PROPER
21 CONDUCT IS IN THERE BECAUSE WE HAVE THROWN OTHER
22 PEOPLE, MEMBERS OFF THE COURSE BECAUSE OF THEIR
23 BEHAVIOR, AND NOWHERE NEAR HIS. I MEAN, THEY'LL
24 COME IN CUSSING AND STUFF LIKE THAT. WE'VE REVOKED
25 THEIR MEMBERSHIP. SO, I MEAN, WE'VE NEVER HAD

1 ANYBODY ACTUALLY MAKE A THREAT (INAUDIBLE).

2 Q. DID YOU HEAR HIM CALL DALLAH A LIAR?

3 A. I DID.

4 Q. WELL, YOU'RE A BIG GUY. DID YOU CONSIDER IT A
5 THREAT TO MR. FORREST?

6 A. YEAH, I SURE DID.

7 Q. DID MR. MARRETT ARGUE WITH YOU WHEN YOU TRIED TO
8 TAKE HIM, GET HIM TO LEAVE?

9 A. HE KIND OF - HE KIND OF HESITATED FOR A SECOND AND
10 THEN I JUST TOLD HIM, I SAID, YOU KNOW, JUST LEAVE.
11 YOU KNOW, EVERYBODY CALM DOWN AND HE FINALLY LEFT.

12 **BY MR. SPIVEY:**

13 THAT'S ALL, YOUR HONOR.

14 **CROSS-EXAMINATION BY MR. BENNETT:**

15 Q. MR. NELSON, YOU'RE STILL EMPLOYED AT SUMMERSETT GOLF
16 CLUB, CORRECT?

17 A. YES, SIR.

18 Q. MR. FORREST IS YOUR BOSS, IN OTHER WORDS?

19 A. YES, SIR.

20 Q. HE SIGNS YOUR PAYCHECKS?

21 A. YES, SIR.

22 Q. OKAY.

23 **BY MR. BENNETT:**

24 NO MORE QUESTIONS, YOUR HONOR.

25 **BY JUDGE STOKES:**

1 YOU CAN STEP DOWN.

2 BY MR. SPIVEY:

3 JUST A MINUTE, YOUR HONOR. YOUR HONOR, WE CALL
4 PASTOR BOB CRAWFORD, PLEASE.

5 BY MR. BENNETT:

6 YOUR HONOR, THE PLAINTIFF WOULD RENEW THEIR
7 OBJECTION.

8 BY JUDGE STOKES:

9 I'LL RULE IT THE SAME WAY I HAVE BEFORE.

10 BY MR. BENNETT:

11 THANK YOU, YOUR HONOR.

12 BOB CRAWFORD,

13 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

14 BY JUDGE STOKES:

15 COULD YOU GIVE YOUR ADDRESS, PLEASE?

16 BY THE WITNESS:

17 MY ADDRESS IS 504 LEYSWOOD DRIVE IN GREENVILLE,
18 SOUTH CAROLINA.

19 BY JUDGE STOKES:

20 THANK YOU. . . .

21 DIRECT EXAMINATION BY MR. SPIVEY:

22 Q. DR. CRAWFORD, WHERE ARE YOU A PASTOR AT?

23 A. I AM A MEMBER OF FAITH BAPTIST CHURCH, BUT I AM NO
24 LONGER PASTOR. BACK IN DECEMBER OF 2008, I RESIGNED
25 MY POSITION AT FAITH BAPTIST, HAVING SERVED THERE

1 FOR 13 YEARS.

2 Q. AND YOU KNEW MR. FORREST THERE. IS THAT CORRECT?

3 A. DALLAH JOINED OUR CHURCH BACK IN 2001, STARTED
4 ATTENDING IN 2000. I'VE KNOWN MR. FORREST FOR
5 ALMOST A DECADE.

6 Q. OKAY. AND -

7 (BEGIN RECORDING 2B)

8 A. DURING THAT TIME, WE HAD A GENTLEMAN IN OUR CHURCH
9 THAT DROVE A 1972 DODGE. HE WOULD COME INTO THE
10 CHURCH PARKING LOT -

11 BY JUDGE STOKES:

12 HOLD ON A SECOND. CAN I TALK TO YOU GENTLEMEN
13 UP FRONT? I'M GOING TO LET YOU (INAUDIBLE) GENERAL
14 REPUTATION AND GENERAL CHARACTER (INAUDIBLE)

15 BY MR. BENNETT:

16 WE RENEW OUR OBJECTION.

17 BY JUDGE STOKES:

18 (INAUDIBLE).

19 DIRECT EXAMINATION RESUMED BY MR. SPIVEY:

20 Q. JUST TELL ME WHAT YOU THINK HIS GENERAL REPUTATION
21 IN THE COMMUNITY IS.

22 A. HIS REPUTATION IS A MAN WHO HAS A HEART FOR GOD, WHO
23 WANTS TO BASICALLY USE THESE SENIOR YEARS OF HIS
24 LIFE, RECOGNIZING THAT HE'S GOT MORE YEARS BEHIND
25 HIM THAN HE DOES IN FRONT OF HIM, TO BE ABLE TO

1 REALLY COUNT AS A WITNESS AND AS A TESTIMONY FOR
2 CHRIST. AND THAT IS JUST VALIDATED OVER AND OVER
3 AGAIN. HE'S MADE TWO TRIPS DOWN TO HAITI THIS PAST
4 YEAR.

5 Q. OKAY. WE JUST REALLY WANT TO TALK ABOUT HIS GENERAL
6 REPUTATION. HAVE YOU EVER HEARD ANYTHING NEGATIVE
7 ABOUT MR. FORREST IN THE COMMUNITY, OTHER THAN THIS?

8 A. NO, I HAVE NOT.

9 BY MR. SPIVEY:

10 THAT'S ALL I HAVE.

11 CROSS-EXAMINATION BY MR. BENNETT:

12 Q. MR. CRAWFORD, YOU, IT'S SAFE TO SAY, WERE NOT PART
13 OF ANY OF THE NEGOTIATIONS TO THE BUY-SELL AGREEMENT
14 OF THIS PROPERTY, WERE YOU?

15 A. (INAUDIBLE).

16 Q. YOU - IN FACT, YOU WERE NOT PRESENT ON AUGUST 25,
17 2004, AT THE COUNTRY CLUB THE DAY OF THE INCIDENT,
18 WERE YOU?

19 A. NO, SIR, THAT'S CORRECT.

20 Q. YOU WERE NOT PARTY OR PRESENT DURING ANY OF THE
21 NEGOTIATIONS BETWEEN MR. FORREST AND MR. MARRETT IN
22 NEGOTIATING THE 141 OR \$149,000 PRICE FOR THE HOME,
23 WERE YOU?

24 A. NO. TRUE AGAIN.

25 Q. YOU NEVER WERE CONSULTED AS A MINISTER OR A FRIEND

1 BY MR. FORREST ABOUT THIS TRANSACTION IN ANY WAY,
2 WERE YOU?

3 A. (INAUDIBLE).

4 Q. YOU -

5 BY MR. SPIVEY:

6 YOUR HONOR, I DON'T SEE HOW THIS APPLIES TO HIS
7 TESTIMONY ABOUT MR. FORREST'S REPUTATION.

8 BY JUDGE STOKES:

9 I THINK IT'S IMPROPER.

10 CROSS-EXAMINATION RESUMED BY MR. BENNETT:

11 Q. AS FAR AS THE EVIDENCE THAT HAS COME IN, YOU'VE SAT
12 HERE THROUGH THE TRIAL TODAY. IS THAT CORRECT?

13 A. I HAVE.

14 Q. DO YOU HAVE ANY KNOWLEDGE WHATSOEVER OF ANY OF THE
15 EVIDENCE THAT HAS COME BEFORE THIS TRIAL?

16 A. NOT PERSONAL KNOWLEDGE.

17 Q. ASIDE FROM YOUR PERSONAL KNOWLEDGE OF MR. FORREST.
18 IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. THANK YOU.

21 BY MR. BENNETT:

22 NO FURTHER QUESTIONS, YOUR HONOR.

23 BY JUDGE STOKES:

24 RE-DIRECT?

25 BY MR. SPIVEY:

1 NOTHING FURTHER.

2 BY JUDGE STOKES:

3 THANK YOU. YOU CAN STEP DOWN.

4 BY MR. SPIVEY:

5 THAT'S ALL, YOUR HONOR.

6 BY JUDGE STOKES:

7 OKAY. WE'RE AT THE CLOSE OF THE DEFENDANT'S
8 CASE. IT'S TIME FOR MATTERS OF LAW. I'M GOING TO
9 ASK Y'ALL TO STEP BACK TO THE JURY ROOM.

10 (JURY EXITS)

11 BY MR. SPIVEY:

12 YOUR HONOR, MAY THESE GENTLEMEN BE EXCUSED?

13 BY JUDGE STOKES:

14 ANY OBJECTION?

15 BY MR. BENNETT:

16 NONE FROM THE PLAINTIFF.

17 BY MR. MARRETT:

18 CAN I USE THE REST ROOM?

19 BY MR. BENNETT:

20 JUST GIVE US ONE MINUTE AND THEN WE CAN.

21 BY JUDGE STOKES:

22 I'M GOING TO TAKE A BREAK.

23 BY MR. SPIVEY:

24 YOUR HONOR, I'D LIKE TO REITERATE MY MOTION FOR
25 A DIRECTED VERDICT. HE HAS NOT BEEN ABLE TO PROVE

1 ANY TESTIMONY THAT HAS SHOWN IN ANY WAY TO THIS JURY
2 TO ESTABLISH DAMAGES.

3 BY JUDGE STOKES:

4 DID I -

5 BY MR. BENNETT:

6 YOUR HONOR -

7 BY JUDGE STOKES:

8 NO, NO. NO, NO.

9 BY MR. BENNETT:

10 I'M SORRY.

11 BY JUDGE STOKES:

12 WE'VE GOT TWO WAYS. THEY CAN BACK INTO IT WITH
13 YOUR ARGUMENT THAT I'VE LET IN, AND ALSO, IT HAS
14 BEEN TESTIFIED TO BY THE DEFENSE THAT IT COST HIM
15 ABOUT \$7 A ROUND AND HE'D PROBABLY PAY ABOUT THREE
16 TIMES A MONTH. THAT'S \$21 A MONTH TIMES 12. THAT'S
17 \$42 A YEAR. THAT - EXCUSE ME. THAT'S \$42 AND THEN
18 ABOUT 252 PER YEAR. HE DIDN'T GET ABOUT FOUR YEARS.
19 \$1,008 FROM YOUR GUY, THEY CAN COME BACK WITH
20 DAMAGES. SO, THERE'S EVIDENCE IN THERE THEY CAN
21 COME UP WITH SOME NUMBERS. NEITHER ONE OF THEM ARE
22 REAL STRONG, BUT THAT'S JUST AS STRONG AS WHAT WE'VE
23 GOT, SO I'M GOING TO LET IT GO.

24 BY MR. SPIVEY:

25 YOUR HONOR, I DID WANT TO -

1 BY JUDGE STOKES:

2 NOW, HAVE YOU GOT SOMETHING ELSE THAT YOU NEED
3 TO ADDRESS ABOUT DIRECTED VERDICT, YES, SIR, LET'S -

4 BY MR. SPIVEY:

5 I DON'T THINK THEY PROVED THEIR CASE, THAT
6 THERE WAS ANY BREACH OF CONTRACT, BECAUSE IF A
7 CONTRACT IS BREACHED AS A RESULT OF THE BAD CONDUCT
8 OF THE DEFENDANT, THEN IT'S A JUSTIFIABLE BREACH.

9 BY JUDGE STOKES:

10 THEY MAY FIND THAT. I THINK THEY COULD FIND
11 THAT. THEY MAY NOT. I THINK IT'S A JURY QUESTION.
12 ANY OTHER MOTIONS?

13 BY MR. BENNETT:

14 I'D JUST RENEW THE MOTION ABOUT PASTOR CRAWFORD
15 BEING HERE, YOUR HONOR.

16 BY JUDGE STOKES:

17 OKAY.

18 BY MR. BENNETT:

19 IMPERMISSIBLE BOLSTERING OF THE DEFENDANT, AND
20 THEREFORE, HE SHOULD NOT HAVE BEEN ALLOWED TO
21 TESTIFY.

22 BY JUDGE STOKES:

23 OKAY. I'VE RULED ON THAT ABOUT FOUR TIMES.
24 OKAY. YOU NEED A BREAK. LET ME TALK TO YOU,
25 GENTLEMEN. IT'S COMING UP ON 12:00. I DON'T KNOW

1 WHAT Y'ALL'S THEORY IS ON HUNGRY JURORS IN THE JURY
2 ROOM. I'LL - THIS IS THE LAST TRIAL TODAY. IF YOU
3 GUYS WANT ME TO LET THEM GO TO EAT AND THEN COME
4 BACK, I'LL DO THAT. IF Y'ALL WANT THEM TO STAY
5 HERE, I'LL DO THAT, WHICHEVER -

6 BY MR. BENNETT:

7 YOUR HONOR, I THINK WE CAN PROBABLY - I DON'T
8 ANTICIPATE MORE THAN ABOUT TEN MINUTES, AT THE VERY
9 MOST, OF ANY KIND OF CLOSE, AND HOPEFULLY, WE CAN
10 GET THIS THING WRAPPED UP AND LET THEM GO HOME AND
11 EAT LUNCH AS LONG AS THEY WANT INSTEAD OF COMING
12 BACK.

13 BY JUDGE STOKES:

14 MIKE, YOUR FEELING?

15 BY MR. SPIVEY:

16 I DON'T HAVE ANY CONCERN, EITHER.

17 BY JUDGE STOKES:

18 OKAY. ALL RIGHT. I JUST WANTED TO GIVE Y'ALL
19 THE OPPORTUNITY -

20 BY MR. SPIVEY:

21 MIGHT WANT TO ASK THEM.

22 BY JUDGE STOKES:

23 WE'D GET SO MANY DIFFERENT ANSWERS THAT WAY,
24 I'D RATHER JUST LEAVE IT TO YOU TWO GENTLEMEN. WE
25 WILL TAKE A BREAK. MR. MARRETT SAID HE NEEDED A

1 BREAK, AND THAT WILL BE FINE.

2 (OFF THE RECORD)

3 BY JUDGE STOKES:

4 MR. SPIVEY, ON THE COUNTERCLAIM, ARE YOU
5 ACTUALLY STILL PURSUING THAT?

6 BY MR. SPIVEY:

7 NO.

8 BY JUDGE STOKES:

9 I DIDN'T THINK YOU WERE, OKAY. YOU DON'T WANT
10 ME TO CHARGE ON THAT?

11 BY MR. SPIVEY:

12 NO, SIR.

13 BY JUDGE STOKES:

14 ALL RIGHT. I DIDN'T - I DIDN'T THINK YOU WERE
15 PURSUING THAT, BUT I WANTED TO MAKE SURE.

16 (OFF THE RECORD)

17 (JURY ENTERS)

18 BY JUDGE STOKES:

19 OKAY, GENTLEMEN. CLOSING.

20 BY MR. BENNETT:

21 YOU WORK HARD YOUR WHOLE LIFE. YOU LOOK
22 FORWARD TO RETIRING, COMING BACK HOME AND DOING WHAT
23 YOU LOVE TO DO THE MOST, PLAY GOLF, HANG OUT WITH
24 YOUR FRIENDS. YOU'VE BEEN PLAYING GOLF SINCE YOU
25 WERE FIVE YEARS OLD, AND YOU'RE ALMOST 75 WHEN YOU

1 BUY A HOUSE ON THE GOLF COURSE. FIRST TIME IN YOUR
2 LIFE LIVING ON THE GOLF COURSE, SECOND HOLE, GOING
3 TO PLAY EVERY DAY THE SUN'S SHINING. WHAT HAPPENS?
4 YOU END UP BEING ALMOST A PRISONER WITH A GREAT
5 WINDOW. YOU CAN LOOK OUT AND YOU CAN SEE THINGS
6 THAT YOU WANT TO DO, BUT YOU CAN'T DO THEM. THAT'S
7 WHAT BRAD MARRETT LIVES WITH EVERY SINGLE DAY AT HIS
8 HOUSE, AND WHAT HE HAS LIVED WITH SINCE AUGUST 2005.
9 IT'S RIGHT THERE. HE IS LIVING IT. HE BOUGHT IT.
10 HE WORKED HARD TO EARN IT. HE NEGOTIATED IT. HE
11 DID EVERYTHING RIGHT TO PUT HIMSELF IN A POSITION TO
12 ENJOY THE LAST YEARS OF HIS LIFE DOING WHAT HE LOVES
13 THE MOST. NOW, HE CAN'T USE IT. HE CAN'T USE IT,
14 BECAUSE HE PISSED OFF THE WRONG GUY, THE OWNER OF
15 THE COUNTRY CLUB. SOMEBODY WHO'S GOT THE POWER,
16 SOMEBODY WHO'S GOT THE WHEREWITHAL TO NOT PUT UP
17 WITH SOMEBODY WHO'S A LITTLE HARASSING, WHO'S A
18 LITTLE ARGUMENTATIVE, WHO'S A LITTLE OLD, A LITTLE
19 BIT CANTANKEROUS, MAYBE. SOMEBODY WHO JUST WOULD BE
20 SO NICE IF HE WASN'T AROUND. CAN'T YOU JUST HEAR
21 MR. FORREST THINKING THAT OR SAYING THAT OUT LOUD
22 SOMETIMES? CAN'T YOU IMAGINE MR. FORREST IS THERE
23 IN HIS OWN COUNTRY CLUB THAT HE'S OWNED AND RULED
24 OVER SINCE 1979 WHERE EVERYTHING'S JUST BEEN CATERED
25 TO HIM, AND THEN, ALL OF A SUDDEN, HERE COMES BRAD

1 MARRETT. AND BRAD MARRETT DOESN'T SAY OKAY, I'LL
2 TAKE WELL ENOUGH ALONE. NO, BRAD MARRETT SEES
3 SOMETHING THAT HE DOESN'T LIKE. HE GOES AND
4 CONFRONTS HIM ABOUT IT. BRAD MARRETT'S GOT A
5 PROBLEM AT HIS HOUSE. HE GOES AND HE CONFRONTS HIM
6 ABOUT IT. BRAD MARRETT'S GOT A PROBLEM ABOUT THE
7 WAY THAT THE TOURNAMENT IS RUN OR AN ISSUE, HE GOES
8 AND HE CONFRONTS HIM ABOUT IT, LEAVES A NOTE ON HIS
9 DOOR, LEAVES A NOTE ON HIS DESK, WHATEVER HE HAS TO
10 DO. IRRITATING? YOU KNOW WHAT, IT PROBABLY IS.
11 PROBABLY IS. 149,000 DOLLARS' WORTH OF IRRITATION,
12 PROBABLY.

13 MR. FORREST SOLD A HOUSE FOR \$149,000 AND A
14 FIVE-YEAR MEMBERSHIP FOR FREE TO THE COUNTRY CLUB.
15 IN OTHER WORDS, YOU DON'T PAY FOR THIS MEMBERSHIP
16 AND YOU DON'T HAVE TO PAY THE OTHER STUFF WITH IT.
17 WE'RE GOING TO LET YOU HAVE THIS MEMBERSHIP FOR FIVE
18 YEARS. BRAD MARRETT WANTS TO BUY THE HOUSE FOR
19 \$141,000. INSTEAD, MR. FORREST WANTS TO SELL IT FOR
20 149. EIGHT THOUSAND DOLLARS' DIFFERENCE GOING BACK
21 AND FORTH. ONE, TWO, THREE, WHAT ARE WE GOING TO
22 DO? GUESS WHAT, THEY COME UP WITH THE IDEA, FIVE-
23 YEAR MEMBERSHIP. YOU HEARD HIM SAY IT HIMSELF.
24 BRAD MARRETT SAID HECK, THAT MIGHT BE A LIFETIME
25 MEMBERSHIP FOR ME. I MIGHT NOT LIVE MORE THAN FIVE

1 YEARS. I CAN LIVE WITH THAT. I'LL PAY THE 149
2 INSTEAD OF THE 141, BUT I'M GOING TO GET TO PLAY
3 GOLF FOR FREE AT MY HOME COURSE RIGHT OUTSIDE MY
4 DOOR.

5 I'M IN FEAR FOR MY LIFE IS WHAT MR. FORREST
6 WOULD HAVE YOU BELIEVE. I'M IN FEAR FOR MY LIFE.
7 NOW, LET'S REALLY THINK ABOUT THAT. I'M IN FEAR FOR
8 MY LIFE THAT SOMEBODY'S GOING TO KILL ME AND I DON'T
9 GO AND TRY TO GET A RESTRAINING ORDER IF THAT PERSON
10 COMES NEAR ME. INSTEAD, I THINK, YOU KNOW WHAT?
11 I'M IN FEAR FOR MY LIFE, SO I'M GOING TO KEEP THAT
12 PERSON AWAY FROM JUST THIS LITTLE PORTION OF THE
13 WORLD. THEY'LL GET IN TROUBLE IF THEY GO INTO THIS
14 PORTION OVER HERE, BUT YOU KNOW WHAT? IF I'M OUT AT
15 RYAN'S STEAKHOUSE AND BRAD MARRETT COMES UP AND SITS
16 AT THE TABLE RIGHT BESIDE ME, I CAN'T DO ANYTHING
17 ABOUT IT, BECAUSE I DIDN'T GET A RESTRAINING ORDER.
18 I GOT A NO TRESPASS ORDER. I'M STILL IN FEAR FOR MY
19 SAFETY. I'M IN FEAR OF MY LIFE. I'M IN FEAR OF MY
20 LIFE, BUT I DON'T WANT TO KEEP HIM AWAY FROM ME. I
21 JUST WANT TO KEEP HIM AWAY FROM MY COUNTRY CLUB
22 WHERE I RULE THE ROOST, WHERE I GET WHAT I WANT,
23 WHERE I DON'T HAVE PEOPLE STAND UP AGAINST ME AND MY
24 WORD. IS THAT CONSISTENT? DOES THAT MAKE SENSE?
25 IF SOMEBODY WAS TRULY IN FEAR FOR THEIR LIFE, THAT

1 THEY'RE GOING TO SAY DON'T COME HERE, BUT YOU COMME
2 AROUND ME ANYTIME YOU WANT TO ANYWHERE ELSE. I'M IN
3 FEAR FOR MY LIFE. THAT DOES NOT MAKE A LICK OF
4 SENSE. NOT A SINGLE BIT OF SENSE. IS HE TRULY IN
5 FEAR FOR HIS LIFE? IS HE TRULY IN FEAR FOR IT NOW?
6 THIS HAPPENED IN 2005. IT'S 2009, ALMOST 2010. HE
7 STILL HASN'T GOTTEN A RESTRAINING ORDER. BUT GUESS
8 WHAT. BRAD MARRETT STILL HASN'T GOTTEN TO SET FOOT
9 ON HIS HOME COURSE. HE'S GOT FRIENDS COMING OVER.
10 THEY WANT TO PLAY GOLF. SORRY, CAN'T DO IT. I'M
11 PROHIBITED BY LAW FROM GOING ONTO MY OWN COURSE THAT
12 I NEGOTIATED A FAIR CONTRACT FOR, WHICH YOU, LADIES
13 AND GENTLEMEN, WILL HAVE BACK IN THE JURY
14 DELIBERATION ROOM THAT SHOWS PLAIN AS DAY ON THE
15 SECOND PAGE OF THIS DOCUMENT, IN HIS OWN
16 HANDWRITING, MR. FORREST INDICATES, YEP, I WROTE
17 THAT. BUY-SELL AGREEMENT, PART OF THE DEAL.

18 THAT'S AN EIGHT THOUSAND DIFFERENCE. EIGHT
19 THOUSAND DOLLAR DIFFERENCE. IN THIS COURT, HOWEVER,
20 THERE IS NO AVAILABILITY TO SUE FOR THE FULL EIGHT
21 THOUSAND, BECAUSE THERE IS A LIMIT TO \$7,500.
22 THAT'S WHAT WE ASK YOU, LADIES AND GENTLEMEN OF THE
23 JURY, TO DO, TO GO BACK AND RETURN A VERDICT IN
24 FAVOR OF BRAD MARRETT FOR THE FULL AMOUNT THAT IS
25 ALLOWABLE BY LAW, \$7,500. IT'S STILL \$500 LESS THAN

1 WHAT BRAD MARRETT AND DALLAH FORREST AGREED TO.
2 YOU'LL SEE, \$141,000. 149 IS WHAT HE WANTED. I'M
3 SORRY. 149 IS WHAT'S RIGHT HERE. 141 IS WHAT HE
4 WANTED AND 149 IS WHAT HE WANTED. THEY WORKED THE
5 DEAL FOR 149 AND INCLUDED THE MEMBERSHIP. 149,000
6 MINUS 141,000 IS \$8,000. THAT'S THE DAMAGE TO BRAD
7 MARRETT, BUT WE CAN'T GET THE FULL EIGHT THOUSAND
8 BECAUSE THE LAW WON'T ALLOW IT. THE MAXIMUM AMOUNT
9 IN THIS COURT IS \$7,500.

10 WHAT'S FAIR IS FAIR. BRAD MARRETT IS 79 YEARS
11 OLD AS HE SITS HERE TODAY. HOW MANY MORE DAYS OF
12 GOLF DOES HE HAVE LEFT? I'M NOT BEING RUDE, MR.
13 MARRETT, AND I HOPE YOU REALIZE THAT. THIS MAN HAD
14 A DREAM OF WHAT RETIREMENT WAS GOING TO BE, AND HE
15 DID EVERY SINGLE THING HE COULD TO GET THAT DREAM TO
16 BECOME REALITY. HE WORKED HARD. HE EARNED MONEY.
17 HE CAME BACK HOME. HE CAME BACK HOME NOT JUST TO
18 THE TOWN WHERE HE GREW UP. HE IS LITERALLY A COUPLE
19 OF MILES FROM WHERE HE USED TO CARRY A GOLF BAG FOR
20 A NICKEL A ROUND WHILE HIS DAD WAS THE GOLF PRO AT
21 HILLANDALE. HE CAME BACK TO HIS ROOTS BECAUSE HE
22 WANTED TO, BECAUSE HE LIKED THE IDEA OF FINISHING UP
23 HIS LIFE THE WAY HE STARTED HIS LIFE, ON THE GOLF
24 COURSE WITH HIS FRIENDS, DOING THE THING THAT HE
25 LOVES THE MOST. HE HAS NOT PLAYED GOLF OR SET FOOT

1 ON ANY PART OF THAT COUNTRY CLUB THAT HE LIVES RIGHT
2 ON SINCE HE GOT A TRESPASS NOTICE THAT YOU'LL ALSO
3 HAVE BACK THERE, LADIES AND GENTLEMEN, IN THE JURY
4 DELIBERATION ROOM, TELLING HIM HE CAN'T GO THERE.
5 SO MANY OTHER THINGS COULD HAVE BEEN DONE IF MR.
6 FORREST TRULY FELT IN FEAR FOR HIS LIFE. BUT GUESS
7 WHAT. IF THOSE THINGS HAD BEEN DONE, MR. FORREST
8 WOULD NOT HAVE GOTTEN AWAY FROM BRAD MARRETT THE WAY
9 HE HAS NOW. HE WOULD NOT HAVE BEEN ABLE TO KEEP
10 BRAD MARRETT'S COMPLAINTS OFF HIS DESK, OUT OF HIS
11 OFFICE, OUT OF HIS COUNTRY CLUB.

12 PER THE TESTIMONY FROM OTHER FOLKS, NOT JUST
13 MR. FORREST AND MR. MARRETT, BUT YOU'VE HEARD
14 TESTIMONY FROM MR. NELSON AND MR. LOLLIS AND MR.
15 FORREST'S MINISTER, MR. CRAWFORD. WELL, BY THEIR
16 OWN ADMISSIONS, NONE OF THOSE THREE WERE INVOLVED IN
17 ALL ASPECTS OF THE NEGOTIATION. EVEN MR. LOLLIS OR
18 MR. NELSON - I'M NOT SURE, BUT I BELIEVE IT'S
19 LOLLIS, WHO WAS WORKING FOR MR. FORREST, HELPING TO
20 BUILD THE HOUSE AND SO FORTH, HE ADMITTED I WASN'T
21 PRESENT FOR ALL THE NEGOTIATIONS. THE MINISTER
22 WASN'T PRESENT FOR ANYTHING. MR. NELSON, HE WAS
23 JUST AT THE GOLF COURSE. HE WASN'T PRESENT DURING
24 THOSE NEGOTIATIONS. IT'S GOING TO COME DOWN TO WHO
25 DO YOU BELIEVE? DO YOU BELIEVE THAT MR. FORREST IS

1 IN SUCH FEAR FOR HIS OWN LIFE THAT HE WAS LEFT WITH
2 NO OTHER ALTERNATIVE THAN TO FILE A TRESPASS NOTICE
3 AND THAT, BY HIS OWN BELIEF, MR. MARRETT IS NOT
4 INJURED IN ANY WAY BECAUSE OF THIS. HASN'T LOST A
5 DIME. OR DO YOU BELIEVE MR. MARRETT? WE STRUCK A
6 DEAL, WE'VE MEMORIALIZED THE DEAL IN WRITING. THE
7 DEAL WAS BETWEEN US. LOOK AT OUR NAMES. AND I
8 CAN'T TAKE ADVANTAGE OF THE DEAL I AGREED TO AND I
9 FULFILLED BY PAYING \$149,000 BECAUSE HE'S NOT LIVING
10 UP TO THE DEAL THAT HE AGREED TO, BECAUSE HE HAS PUT
11 ME ON TRESPASS NOTICE, SPECIFICALLY TO KEEP ME AWAY,
12 NOT BECAUSE HE'S IN FEAR FOR HIS SAFETY, BECAUSE WE
13 ALL KNOW THAT HE COULD HAVE DONE SOMETHING MUCH MORE
14 EFFECTIVE AND SOMETHING MUCH BETTER THAN A TRESPASS
15 NOTICE. BUT WHAT HE REALLY SHOULD HAVE SAID, MR.
16 FORREST SHOULD HAVE GOTTEN IN HERE AND SAID, YOU
17 KNOW, THAT'S AN IRRITATING OLD MAN I AM TIRED OF
18 DEALING WITH, AND SO I PUT HIM ON TRESPASS NOTICE
19 BECAUSE I CANNOT STAND HAVING SOMEBODY COME AROUND
20 MY COUNTRY CLUB WHEN I'M THERE TELLING ME WHAT TO DO
21 AND ARGUING WITH ME.

22 LUCKILY, OUR SYSTEM OF LAW ALLOWS FOR IMPARTIAL
23 PEOPLE TO STEP IN AND RIGHT THE WRONG, RIGHT A WRONG
24 THAT HAS BEEN GOING ON SINCE 2005. ALLOW MR.
25 MARRETT WHATEVER TIME HE HAS LEFT THE ABILITY TO

1 FEEL AS THOUGH I DIDN'T REALLY GET TAKEN ADVANTAGE
2 OF. THAT JURY TOOK CARE OF ME AND GAVE ME BACK WHAT
3 I HAD LOST, BECAUSE DON'T GET ME WRONG, LADIES AND
4 GENTLEMEN. MR. MARRETT CAN'T GO BACK TO THE COUNTRY
5 CLUB. THAT TRESPASS NOTICE IS IN EFFECT, AND IT
6 STILL IS. THE WAY THAT MR. MARRETT CAN GET RELIEF
7 IS BY YOU, LADIES AND GENTLEMEN, GIVING HIM HIS
8 MONEY BACK FOR THAT MEMBERSHIP HE DIDN'T GET TO TAKE
9 ADVANTAGE OF. AND EVEN THOUGH IT'S \$8,000, Y'ALL
10 CAN ONLY GIVE HIM BACK \$7,500 BY LAW. BUT THAT'S
11 WHAT WE'RE ASKING THAT Y'ALL DO, IS TO GIVE HIM BACK
12 THE MONEY AND TAKE HIM BACK TO SQUARE ONE. THANK
13 YOU VERY MUCH.

14 **BY MR. SPIVEY:**

15 MAY IT PLEASE THE COURT. LADIES AND GENTLEMEN,
16 JUST LIKE I PREDICTED TO YOU, YOU HEARD A LOT OF
17 DIFFERENT STORIES. BUT REALLY, WHAT WE HAVE HERE
18 TODAY IS THE OLDEST STORY OF ALL TIME. SOMEBODY
19 PLAYING LIKE THEY'VE BEEN HURT, SOMEBODY ELSE
20 (INAUDIBLE) IN CONTROL, A BULLY, ALL THOSE KIND OF
21 THINGS BECAUSE HE'S OUT TO MAKE SOME MONEY IN HIS
22 LIFE. YOU KNOW, FROM WATCHING FOX AND THE INTERNET
23 AND ALL THOSE KIND OF THINGS, THERE'S AN ATTACK ON
24 CAPITALISM IN OUR SOCIETY TODAY, ACTUALLY, AND I
25 DON'T MIND ADMITTING THAT I'M A REPUBLICAN AND I

1 HATE TO HEAR WHAT'S GOING ON IN WASHINGTON TODAY.
2 YOUR GRANDCHILDREN ARE GOING TO BE PAYING TRILLIONS
3 OF DOLLARS IN DEBT BECAUSE OF WHAT, OUR GOVERNMENT
4 BECOMING A SOCIALIST GOVERNMENT. BUT THE TRUTH OF
5 THE MATTER IS IF MR. MARRETT'S BEEN DAMAGED LIKE MR.
6 BENNETT WANTS YOU TO BELIEVE, WHY DIDN'T HE BRING IN
7 SOME EVIDENCE, BRING SOMEBODY TO BACK UP HIS STORY?
8 KIND OF AS AN AFTERTHOUGHT, HE THREW OUT 141 OR 142.
9 NOW, MR. BENNETT'S JUMPED ON THAT, BUT IF YOU THINK
10 ABOUT IT, HE TALKED ABOUT IT WOULD BE EMBARRASSING
11 NOT TO BE ABLE TO GO ON THE GOLF COURSE. WHY DIDN'T
12 HE BRING ANY OF THOSE PEOPLE WITH HIM THAT COULDN'T
13 PLAY? BECAUSE THEY DON'T EXIST, FOLKS.
14 IF HE WANTED TO PREVENT WHAT HAPPENED ON AUGUST
15 25TH, HE SHOULDN'T HAVE THREATENED MR. FORREST. HE
16 WAS TOTALLY IN CONTROL OF WHAT HE SAID. MR. BENNETT
17 WANTS TO SAY THAT MR. FORREST WAS IN CONTROL. UH-
18 UH. HE WAS SCARED TO DEATH. NOW, YOU CAN PLAY
19 GAMES WITH WORDS ALL YOU WANT TO, BUT IF I ASK ANY
20 ONE OF Y'ALL TODAY IF SOMEBODY WALKED UP TO YOU AND
21 THREATENED TO WASTE YOU, WHAT WOULD YOU THINK? I
22 READ THE DICTIONARY DEFINITION FOR YOU. IT MEANS TO
23 KILL OR MURDER. THAT'S ONE DEFINITION OF WASTE. IT
24 CAN MEAN A LOT OF THINGS, BUT THAT'S WHAT HE MEANT,
25 BECAUSE HE WAS MAD. IT DIDN'T WORK WHEN HE

1 THREATENED TO SUE. IT DIDN'T WORK WHEN HE RANTED
2 AND RAVED, WHEN HE CALLED MR. FORREST A LIAR, SO HE
3 GOT DESPERATE AND HE THREATENED TO KILL HIM. DALLAH
4 FORREST WOULD BE ABSOLUTELY CRAZY IF HE HADN'T DONE
5 WHATEVER WAS NECESSARY TO STOP HIM FROM COMING ON
6 THAT GOLF COURSE. I DON'T THINK THERE'S ANY REASON
7 TO BELIEVE THAT DALLAH FORREST DID FOR ANY OTHER
8 REASON THAT HE WAS IN FEAR. IF YOU LISTEN TO THE
9 TESTIMONY, ALL HE LOST, ALL MR. MARRETT LOST WAS \$7
10 A ROUND, BASICALLY. THAT AIN'T A LOT OF MONEY THESE
11 DAYS. SO, IF HE LOST ANYTHING, WITHOUT REASON, IT
12 WASN'T MUCH MONEY. THE FIVE YEARS WOULD BE UP NOW.
13 IT WOULD HAVE BEEN UP IN JUNE OF THIS YEAR. MR.
14 BENNETT'S ARGUMENT THAT MR. FORREST SHOULD HAVE DONE
15 A RESTRAINING ORDER IS SUPERFLUOUS, BECAUSE WHAT HE
16 WANTED TO KEEP FROM HAPPENING WAS EXACTLY WHAT HAD
17 BEEN HAPPENING, HIM WALKING UP THOSE STEPS TO MR.
18 FORREST'S OFFICE, PUTTING THINGS ON HIS DESK,
19 THREATENING HIM, COMPLAINING AND ALL THAT KIND OF
20 STUFF. ONE THING, I'VE BEEN A LAWYER FOR A LONG
21 TIME, AND PEOPLE WHO COMPLAIN DON'T STOP COMPLAINING
22 JUST BECAUSE A WARRANTY RUNS OUT. THEY'RE GOING TO
23 COMPLAIN UNTIL THE DAY THEY DIE. THAT'S BECAUSE
24 THEY'RE TAKERS. THAT'S BECAUSE THEY ARE ALWAYS
25 WANTING TO GET SOMETHING FROM SOMEBODY WHO'S DONE

1 BETTER THAN THEY HAVE.

2 WE HEARD A LOT OF SILLY ARGUMENTS ABOUT THIS
3 WAS HIS DREAM TO RETIRE ON THE GOLF COURSE. WELL,
4 IF THAT WAS SUCH A BIG DEAL TO HIM, WHY DIDN'T HE DO
5 CONDUCT THAT WAS PROPER, AS THE RULES SAID? I CAN'T
6 BELIEVE ANY OF Y'ALL WOULD BELIEVE THREATENING
7 SOMEBODY WITH WASTING THEM IS PROPER CONDUCT. IT'S
8 JUST NOT. WE'RE A CIVILIZED SOCIETY BECAUSE WE
9 DON'T GO AROUND THREATENING PEOPLE, BECAUSE WE DON'T
10 GO AROUND SAYING WE'RE GOING TO KILL THEM. WE DON'T
11 GO AROUND SAYING WE'RE GOING TO WASTE THEM. BUT
12 WHEN WE LOSE OUR CIVILIZATION, AS THE BRAD MARRETTS
13 OF THE WORLD HAVE DONE, THEN WE BECOME A BAD PLACE
14 TO LIVE.

15 NOW, THERE'S A LOT OF THINGS THAT COULD HAVE
16 BEEN DONE DIFFERENTLY, BUT THE ONLY ONE THING THAT
17 REALLY MATTERS IS BRAD MARRETT SHOULDN'T HAVE
18 THREATENED HIM. MR. FORREST WANTED TO KEEP MR.
19 MARRETT OFF THE GOLF COURSE BECAUSE THAT'S WHERE HE
20 CAME TO THREATEN HIM. AND EVEN MR. BENNETT, IN HIS
21 ARGUMENT, ADMITTED HE WOULD HAVE PROBABLY STILL BEEN
22 COMPLAINING, BECAUSE HE WAS CANTANKEROUS AND ORNERY.
23 (INAUDIBLE) BUT THERE'S NOTHING WRONG WITH
24 COMPLAINING WHEN YOU'RE CONTRACTUALLY ALLOWED TO DO
25 IT, BUT WHEN YOUR CONTRACT EXPIRES, YOU NO LONGER

1 CAN DO THAT. MR. BENNETT ALSO USED THE TERM
2 IRRITATING FOR MR. MARRETT. THREATENING SOMEBODY IS
3 A LOT WORSE THAN IRRITATING THEM.

4 I DON'T KNOW HOW ANYBODY CAN USE THE FIGURES
5 THAT MR. BENNETT DID AND SAY THAT MEMBERSHIP FOR
6 FIVE YEARS, WHICH HE GOT A YEAR AND THREE MONTHS OF,
7 WAS WORTH EIGHT THOUSAND DOLLARS. NAH, THAT'S
8 TOTALLY SPECULATIVE. IF HE PLAYED THREE TIMES A
9 MONTH AT \$7 EACH TIME HE PLAYED, NO WAY YOU'D COME
10 UP ANYWHERE NEAR \$8,000. BUT MY POSITION IS HE'S
11 NOT ENTITLED TO ANYTHING. IF ANYBODY'S BEEN HURT
12 HERE, IT'S DALLAH FORREST. HE WAS THE ONE
13 THREATENED. MOST PEOPLE WHO GET THREATENED ARE THE
14 VICTIMS, NOT - NOT THE ONE CLAIMING THEY'RE ENTITLED
15 TO SOMETHING.

16 WE WOULD HAVE NEVER GOT TO THIS POINT EXCEPT
17 FOR THE FACT THAT THERE WAS A CONTRACT ENTERED INTO.
18 YOU HEARD MR. FORREST, MR. LOLLIS BOTH TESTIFY THAT
19 THERE WAS NEVER A FIGURE OF 149,000. SO, ANYTHING
20 MR. MARRETT IS THROWING OUT NOW IS IRRELEVANT. MR.
21 FORREST IS A GOOD BUSINESSMAN, AND HE HAD NEVER SOLD
22 A HOUSE IN THAT FIVE FOR LESS THAN THAT. HE
23 CERTAINLY WASN'T GOING TO DO IT. AND YOU HEARD THE
24 TESTIMONY, TOO, THAT THE MEMBERSHIP OF FIVE YEARS
25 WAS ADDED AFTER THEY AGREED ON THE \$149,000 SALES

1 PRICE. THEREFORE, IT WAS NOT CONSIDERATION FOR THE
2 SALES PRICE. IT WAS JUST AN ADD-ON. IT WAS
3 SOMETHING THAT WASN'T COSTING MR. FORREST MUCH AND
4 IT WAS GOING TO MAKE MR. MARRETT HAPPY. WELL, MR.
5 MARRETT IS NOT THE KIND OF GUY THAT CAN BE HAPPY.
6 HE'S GOING TO COMPLAIN. HE'S GOING TO HARASS. HE'S
7 GOING TO THREATEN. AND WHAT ARE YOU LEFT WITH?
8 CHAOS. AND THAT'S WHAT WE HAVE HERE.

9 BUT YOU, AS I SAID AT THE BEGINNING, YOU'RE THE
10 ONES IT'S ON TO ISSUE A VERDICT TODAY. I HOPE
11 YOU'LL CONSIDER THE TESTIMONY OF MR. MARRETT. HE
12 COMPLAINED ABOUT HIS EX-WIVES. HE COMPLAINED ABOUT
13 EVERYTHING. HE THINKS IT'S FUNNY. I DON'T THINK
14 IT'S TOO FUNNY. IF YOU'RE HARD TO GET ALONG WITH,
15 YOU'RE ALWAYS GOING TO BE HARD TO GET ALONG WITH.
16 MR. FORREST WAS SCARED OF HIM BECAUSE HE WAS
17 THREATENING. IT WASN'T SOME KIND OF THREAT
18 (INAUDIBLE). LLOYD NELSON HEARD IT, TOO. BUT IF
19 YOU LISTEN TO MR. MARRETT, HE PRETTY MUCH ADMITTED
20 IT. HE DIDN'T WANT TO, BUT HE PRETTY MUCH DID. AND
21 HE WANTED TO CRITICIZE MR. FORREST FOR BEING
22 SUCCESSFUL. MAYBE THAT'S WHAT'S GOING ON WITH THIS
23 COUNTRY. BUT THE TRUTH OF THE MATTER IS YOU'VE
24 HEARD THE TESTIMONY. YOU'VE HEARD OUR WITNESSES.
25 THE PREACHER, REVEREND CRAWFORD. IT DOESN'T IMPLY

1 SOMEBODY WHO'S TRYING TO CHEAT SOMEBODY. YOU HEARD
2 LLOYD NELSON SAY HE HEARD HIM BASICALLY AND HE WAS
3 SCARED. YOU HEARD WHAT RICHARD LOLLIS SAID THAT
4 THEY ONLY TALKED ABOUT 149,000, AND IN FACT, HE WAS
5 A COMPLAINER AND TROUBLE. AND THERE WAS NEVER ANY
6 CONSIDERATION FOR THAT FIVE YEARS ON THE GOLF
7 COURSE, BECAUSE IT WASN'T WORTH MUCH.

8 AND AS I SAID EARLIER, THAT'S ALREADY OVER
9 WITH. MR. BENNETT CONTINUES TO MAKE FUN OF THE FACT
10 THAT MR. FORREST WAS IN FEAR OF HIS LIFE. JUST
11 THINK THIS FEAR, PUTTING SOMEBODY IN FEAR OF THEIR
12 LIFE, THREATENING TO WASTE THEM PROPER CONDUCT.
13 FIRST OF ALL, AS MR. NELSON SAID, THEY KICKED OTHER
14 PEOPLE OFF THE GOLF COURSE FOR BAD CONDUCT. AND
15 NOTHING, WAS HIS TESTIMONY, WAS NEARLY AS BAD AS
16 THIS. THIS CONTRACT COULD NOT BE FULFILLED BECAUSE
17 MR. MARRETT TRIED TO KILL DALLAH FORREST, OR
18 THREATENED TO KILL DALLAH FORREST. AND DALLAH TOLD
19 YOU UNDER OATH THAT HE WAS IN FEAR OF HIS LIFE, EVEN
20 THOUGH MR. BENNETT TRIED TO MAKE FUN OF HIM. AND I
21 WANT Y'ALL TO JUST GO IN THE JURY ROOM AND CONSIDER
22 HOW WE GOT HERE TODAY, AND IT ALL COMES BACK TO A
23 THREAT BY MR. MARRETT AND THE FACT THAT HE DIDN'T
24 GET HIS WAY. HE COULDN'T TAKE IT ANYMORE AND SO HE
25 TRIED TO SCARE MR. FORREST. AND HE DID. HE

1 SUCCEEDED. BUT HE ALSO COST HIMSELF SOMETHING. MR.
2 FORREST WOULD HAVE BEEN CRAZY IF HE HAD ALLOWED HIM
3 COME BACK ON THAT GOLF COURSE AND HE COMPLAINED
4 EVERY DAY ABOUT SOMETHING. THAT'S WHERE WE ARE AND,
5 AS I SAID AT THE BEGINNING, YOU'VE GOT A GIVER AND
6 YOU'VE GOT A TAKER. PLEASE DO AS I HOPE YOU WILL
7 AND CONSIDER THAT THE LORD WOULD WANT YOU TO BLESS
8 THE ONE WHO'S THE GIVER. THANK YOU.

9 BY JUDGE STOKES:

10 ANYTHING ELSE?

11 BY MR. BENNETT:

12 NO, SIR, YOUR HONOR.

13 BY JUDGE STOKES:

14 LADIES AND GENTLEMEN, I'M GOING TO CHARGE YOU
15 NOW AS TO THE LAW. BEAR WITH ME. IT WILL TAKE A
16 FEW MINUTES.

17 UNDER OUR CONSTITUTIONAL LAWS, YOU AND I HAVE
18 SEPARATE AND DISTINCT DUTIES IN THIS CASE. ONLY YOU
19 THE JURY CAN MAKE FINDINGS OF FACT IN A JURY TRIAL.
20 I'M NOT PERMITTED TO INDICATE TO YOU HOW I MAY FEEL
21 ABOUT THE TESTIMONY AND EVIDENCE PRESENTED.
22 THROUGHOUT THE TRIAL, I'VE TRIED TO BE FAIR AND
23 IMPARTIAL TOWARD ALL THE PARTIES. TO DETERMINE THE
24 FACTS IN WHICH YOU WILL HAVE TO EVALUATE THE
25 CREDIBILITY, WHICH MEANS BELIEVABILITY, OF EACH

1 WITNESS AND CONSIDERING WHETHER TO BELIEVE A
2 WITNESS'S TESTIMONY ABOUT A PARTICULAR MATTER, YOU
3 CAN CONSIDER WHAT WAS THE MANNER AND APPEARANCE OF
4 THE WITNESS WHO TESTIFIED. WAS HE OR SHE
5 STRAIGHTFORWARD OR HESITANT IN ANSWERING. WAS THE
6 TESTIMONY OF THE WITNESS CONSISTENT OR INCONSISTENT.
7 HOW DID THE WITNESS COME TO KNOW THE FACTS THAT HE
8 OR SHE TESTIFIED TO, AND WHAT WAS HIS ABILITY TO
9 KNOW THESE FACTS. IS THERE SOME REASON A WITNESS
10 WOULD WANT TO GIVE TESTIMONY THAT WOULD HELP OR HURT
11 ONE SIDE OR THE OTHER. IN OTHER WORDS, WAS THE
12 WITNESS BIASED OR PREJUDICED. AND WAS THE TESTIMONY
13 OF THE WITNESS STRENGTHENED OR WEAKENED BY OTHER
14 TESTIMONY OR EVIDENCE. YOU MAY BELIEVE AS MUCH OR
15 AS LITTLE OF EACH WITNESS'S TESTIMONY AS YOU THINK
16 PROPER. YOU MAY BELIEVE THE TESTIMONY OF A SINGLE
17 WITNESS AGAINST THAT OF MANY WITNESSES OR JUST THE
18 OPPOSITE. OF COURSE, YOU DON'T DETERMINE TRUTH
19 MERELY BY COUNTING THE NUMBER OF WITNESSES PRESENTED
20 BY EACH SIDE.

21 THROUGHOUT THIS PROCESS, YOU HAVE BUT ONE
22 OBJECTIVE, TO SEEK THE TRUTH REGARDLESS OF THE
23 SOURCE. NOW, THE SAME CONSTITUTION AND LAWS THAT
24 DESIGNATE YOU THE FINDERS OF FACT ALSO MAKE ME THE
25 INSTRUCTOR OF THE LAW. YOU MUST ACCEPT THE LAW AS I

1 GIVE IT TO YOU. IF I'M WRONG, THERE'S ANOTHER PLACE
2 AND TIME FOR THAT ERROR TO BE CORRECTED. IN THIS
3 CASE, YOU MUST APPLY THE LAW AS I GIVE IT TO YOU.
4 THIS MEANS THAT YOU SHOULD NOT BE CONCERNED WITH
5 WHAT YOU THINK THE LAW SHOULD BE, ONLY WITH WHAT THE
6 LAW IS. NOW, THIS IS - AS YOU'VE DETERMINED, THIS
7 IS A CIVIL ACTION. THE PLAINTIFF IS SEEKING SOME
8 COMPENSATION FOR A BREACH OF CONTRACT. IN OTHER
9 WORDS, FOR THE PLAINTIFF TO RECEIVE THE COMPENSATION
10 SOUGHT, HE MUST PROVE HIS CLAIM BY THE GREATER
11 WEIGHT OR PREPONDERANCE OF THE EVIDENCE. WHAT WE
12 MEAN BY THE GREATER WEIGHT OF THE EVIDENCE CAN BE
13 BEST ILLUSTRATED BY IMAGINING THE TRADITIONAL SET OF
14 SCALES. WHEN THE TRIAL BEGINS, THE SCALES ARE EVEN.
15 WHEN ALL THE EVIDENCE HAS BEEN PRESENTED, IF THE
16 SCALE SHOULD REMAIN EVEN OR IF THEY SHOULD TIP EVEN
17 SLIGHTLY IN FAVOR OF THE DEFENDANT, THEN THE
18 PLAINTIFF WILL HAVE FAILED TO MEET HIS BURDEN OF
19 PROOF AND YOUR VERDICT WOULD BE FOR THE DEFENDANT.
20 IF, ON THE OTHER HAND, THE SCALES TIP EVEN SLIGHTLY
21 IN FAVOR OF THE PLAINTIFF, THEN HE WILL HAVE MET HIS
22 BURDEN OF PROOF AND YOUR VERDICT WOULD BE FOR THE
23 PLAINTIFF. OF COURSE, THERE IS NO GOOD WAY TO WEIGH
24 EVIDENCE EXCEPT THROUGH THE EXERCISE OF GOOD COMMON
25 SENSE AND JUDGMENT. IT'S ENTIRELY A MENTAL PROCESS

1 AND THE EVIDENCE TO WHICH YOU SHOULD GIVE THE MOST
2 WEIGHT IS THAT WHICH CONVINCES YOU OF ITS TRUTH,
3 REGARDLESS FROM WHOM OR WHAT SOURCE IT COMES.

4 LADIES AND GENTLEMEN, YOU MUST NOT CONSIDER AS
5 EVIDENCE ANY STATEMENT OF COUNSEL MADE AT ANY TIME
6 DURING THE TRIAL, COUNSEL MEANING THE ATTORNEYS.
7 HOWEVER, IF COUNSEL FOR THE PARTIES HAVE STIPULATED
8 TO ANY FACT OR ANY FACT HAS BEEN ADMITTED BY
9 COUNSEL, YOU WILL REGARD THAT FACT AS BEING
10 CONCLUSIVELY PROVED AS TO THE PARTY OR PARTIES
11 MAKING THE STIPULATION OR ADMISSION. I BELIEVE THE
12 ONLY STIPULATION IN THIS CASE WAS THAT THE
13 ALTERCATION OCCURRED ON THE 25TH OF AUGUST. I
14 BELIEVE THAT WAS THE ONLY STIPULATION THAT YOU HAD.
15 YOU WILL ASSUME THAT THAT'S A FACT.

16 AS TO ANY QUESTION TO WHICH AN OBJECTION WAS
17 SUSTAINED, YOU MUST NOT SPECULATE AS TO WHAT THE
18 ANSWER MIGHT HAVE BEEN OR AS TO THE REASON FOR THE
19 OBJECTION. YOU MUST NOT CONSIDER FOR ANY PURPOSE
20 ANY OFFER OF EVIDENCE THAT WAS REJECTED OR ANY
21 EVIDENCE THAT WAS STRICKEN BY THE COURT, AND WE HAD
22 THAT HERE, IF YOU WILL REMEMBER. I STRUCK SOME
23 TESTIMONY. SUCH MATTER IS TO BE TREATED AS THOUGH
24 YOU NEVER HEARD IT. YOU MUST NEVER SPECULATE TO BE
25 TRUE ANY INSINUATION SUGGESTED BY A QUESTION ASKED A

1 WITNESS. A QUESTION IS NOT EVIDENCE AND MAY BE
2 CONSIDERED ONLY AS IT APPLIES A MEANING TO THE
3 ANSWER.

4 LET'S TALK ABOUT CONTRACTS FOR A LITTLE BIT.
5 WHAT IS A CONTRACT? A CONTRACT IS AN AGREEMENT
6 BETWEEN TWO OR MORE PARTIES WHO EACH PROMISES TO
7 PERFORM CERTAIN ACTS. THIS PERFORMANCE OF AN ACT BY
8 A PARTY MUST BE PRESENT IN A CONTRACT AND IT'S
9 CALLED CONSIDERATION. A BREACH OCCURS WHERE A PARTY
10 TO A CONTRACT UNJUSTIFIABLY FAILS TO PERFORM THE
11 ACTS OR DUTIES WHICH HE AGREED TO PERFORM. FOR AN
12 AGREEMENT TO BE LEGALLY ENFORCEABLE, THE PARTIES
13 MUST MANIFEST BY WAY OF AN OFFER TO ENTER INTO AN
14 AGREEMENT BY ONE PARTY AND ACCEPTANCE OF THIS OFFER
15 BY THE OTHER. AN INTENTION TO ENTER A CONTRACT
16 UNDER TERMS WHICH ARE COMPLETELY UNDERSTOOD BY EACH
17 PARTY. THIS IS SOMETIMES REFERRED TO AS A MEETING
18 OF THE MINDS. AND IN SOUTH CAROLINA, OUR CONTRACTS
19 CAN BE ORAL, WRITTEN, OR BY CONDUCT. IN ALL
20 CONTRACTS, THE PARTIES MUST EXHIBIT A MUTUAL INTENT
21 TO BE BOUND. WITHOUT ACTUAL AGREEMENT OF THE
22 PARTIES, THERE IS NO CONTRACT.

23 LET'S TALK ABOUT WHAT A BREACH IS. THE WORD
24 BREACH, AS IT APPLIES TO CONTRACT, IS TO FIND AS A
25 FAILURE WITHOUT LEGAL EXCUSE TO PERFORM ANY PROMISE

1 THAT FORMS A WHOLE OR PART OF THE CONTRACT,
2 INCLUDING THE REFUSAL OF A PARTY TO RECOGNIZE THE
3 EXISTENCE OF A CONTRACT OR THE DOING OF SOMETHING
4 INCONSISTENT WITH ITS EXISTENCE. IN OTHER WORDS, A
5 PARTY BREACHES A CONTRACT WHEN HE DOES NOT PERFORM
6 AS HE AGREED TO PERFORM UNDER THE CONTRACT. A
7 BREACH OCCURS WHERE ONE PARTY TO A CONTRACT FAILS TO
8 CARRY OUT A TERM, PROMISE, OR CONDITION OF THE
9 CONTRACT. THE PLAINTIFF IS ENTITLED TO RECOVER ONLY
10 IF YOU FIND THAT HE HAS PROVED BY THE PREPONDERANCE
11 OF THE EVIDENCE, THAT THE DEFENDANT DID, IN FACT,
12 BREACH THE CONTRACT BETWEEN THE TWO PARTIES.

13 NOW, WHAT ARE DAMAGES? THE MEASURE OF ACTUAL
14 DAMAGES FOR THE BREACH OF A CONTRACT IS THE LOSS
15 ACTUALLY SUFFERED AS A RESULT OF THE BREACH. A
16 PARTY CANNOT RECOVER FOR LOSSES THAT ARE CONJECTURAL
17 OR SPECULATIVE. THE MEASURE OF DAMAGES FOR BREACH
18 OF CONTRACT SHOULD BE ACTUAL DAMAGES THAT THE
19 INJURED PARTY MAY REASONABLY HAVE INCURRED. THE ONE
20 INJURED BY THE BREACH OF CONTRACT IS ENTITLED TO BE
21 PLACED IN THE SAME POSITION INsofar AS CAN BE DONE
22 WITH MONEY, AS HE WOULD HAVE OCCUPIED IF THE
23 CONTRACT HAD BEEN PERFORMED. DAMAGES RECOVERABLE
24 FOR BREACH OF CONTRACT ARE SUCH AS MAY FAIRLY AND
25 REASONABLY BE CONSIDERED AS ARISING NATURALLY FROM

1 THE BREACH OF THE CONTRACT ITSELF, OR SUCH AS MAY
2 REASONABLY BE SUPPOSED TO HAVE BEEN IN THE MINDS OR
3 CONTEMPLATION OF THE PARTIES AT THE TIME THEY MADE
4 THE CONTRACT. IN CONSIDERING ANY ELEMENT OF
5 DAMAGES, YOU NEED NOT REQUIRE THE PARTY CLAIMING
6 DAMAGES TO PROVE THE AMOUNT OF HIS DAMAGES TO A
7 MATHEMATICAL CERTAINTY. ALTHOUGH DAMAGES NEED NOT
8 BE ESTABLISHED TO A MATHEMATICAL CERTAINTY, THEY
9 MUST BE REASONABLE. YOU ARE NOT TO AWARD
10 SPECULATIVE DAMAGES OR DAMAGES FOR ANY LOSS THAT WAS
11 NOT WITHIN THE CONTEMPLATION OF THE PARTIES AS
12 FORESEEABLE AT THE TIME THE AGREEMENT WAS ENTERED
13 INTO, NOR FOR DAMAGES THAT DOES NOT FLOW DIRECTLY
14 FROM THE ALLEGED WRONGDOING.

15 AS THIS IS A CIVIL CASE, LADIES AND GENTLEMEN,
16 YOU HAVE A TWO-STEP PROCESS TO GO THROUGH. YOU MUST
17 DECIDE, AND ALL SIX OF YOU MUST BE UNANIMOUS IN ALL
18 DECISIONS, DO YOU FIND FOR THE PLAINTIFF OR DO YOU
19 FIND FOR THE DEFENDANT? IF YOU FIND FOR THE
20 DEFENDANT, YOU WOULD BE COMPLETE. IF YOU FIND FOR
21 THE PLAINTIFF, YOU HAVE ANOTHER STEP. YOU WOULD
22 HAVE TO DECIDE HOW MUCH DAMAGES YOU CHOOSE TO AWARD,
23 AND THAT IS A NUMBER THAT YOU WOULD ARRIVE AT BASED
24 ON THE EVIDENCE AND ALL SIX OF YOU WOULD HAVE TO
25 AGREE TO IT, SO IT MUST BE UNANIMOUS AS TO WHO YOU

1 FIND FOR AND IF YOU'RE GOING TO MAKE AN AWARD, HOW
2 MUCH THE AWARD MUST BE. YOU MUST BE UNANIMOUS, AS I
3 STATED.

4 WHAT I'M GOING TO ASK YOU TO DO NOW IS STEP
5 BACK TO THE JURY ROOM, AND I WILL GATHER UP THE
6 EVIDENCE AND THE JURY FORM - THAT'S CORRECT. IT'S
7 SLIGHTLY DIFFERENT. I BELIEVE YOU SAT ON A CRIMINAL
8 TRIAL BEFORE. IT'S VERY SIMILAR, BUT IT WILL SAY WE
9 FIND FOR THE PLAINTIFF, BLANK AMOUNT, OR WE DO NOT
10 FIND FOR THE PLAINTIFF. IF YOU FIND FOR THE
11 PLAINTIFF, PLACE THE AMOUNT IN THE SPACE PROVIDED.
12 IF YOU DO NOT FIND FOR THE PLAINTIFF, CIRCLE THE
13 WORDS WE DO NOT FIND FOR THE PLAINTIFF AND IF YOU
14 WOULD, DATE IT AND SIGN IT. OKAY? I WILL BRING ALL
15 THIS TO YOU. I'M GOING TO DISCUSS ONE FINAL MATTER
16 WITH THE ATTORNEYS. I'M GOING TO ASK YOU TO GO TO
17 THE JURY ROOM. WHILE YOU'RE IN THE JURY ROOM, DON'T
18 DELIBERATE UNTIL I WALK BACK THERE AND TAP ON THE
19 DOOR AND SAY DELIBERATE AND I'LL BRING YOU THE
20 DOCUMENTS AT THAT TIME. SO, DON'T DISCUSS THE CASE
21 UNTIL THAT POINT. IF SOMEONE WOULD NEED TO STEP OUT
22 OF THE JURY ROOM FOR A MOMENT AND TAKE A QUICK
23 BREAK, THAT'S FINE. JUST DO NOT DISCUSS THE CASE
24 WHEN A PERSON IS GONE. ALL SIX OF YOU MUST BE
25 PRESENT WHEN YOU DISCUSS IT. SO, TALK ABOUT THE

1 WEATHER OR WHERE YOU'RE GOING FOR LUNCH OR WHATEVER
2 WHENEVER ANYONE HAS STEPPED OUT FOR A MINUTE. OKAY?
3 IF Y'ALL WOULD STEP BACK TO THE JURY ROOM, WE SHOULD
4 TURN IT OVER TO YOU IN JUST A FEW MINUTES. THANK
5 YOU AGAIN.

6 (JURY EXITS)

7 BY JUDGE STOKES:

8 ANYTHING AS RELATES TO THE CHARGE, GENTLEMEN?

9 BY MR. BENNETT:

10 NO EXCEPTION TO THE CHARGE FROM THE PLAINTIFF,
11 YOUR HONOR.

12 BY JUDGE STOKES:

13 MR. SPIVEY?

14 BY MR. SPIVEY:

15 NO, SIR.

16 BY JUDGE STOKES:

17 LET ME MAKE SURE I'VE GOT ALL THE PROPER
18 EVIDENCE. I'VE GOT THE CONTRACT AND THE TRESPASS
19 NOTICE FOR THE PLAINTIFF. IS THERE ANYTHING ELSE?

20 BY MR. BENNETT:

21 ONE AND TWO.

22 BY JUDGE STOKES:

23 YES, SIR. FROM THE DEFENDANT, WE HAVE THE HUD
24 STATEMENT, THE DICTIONARY, AND THE BY-LAWS AND
25 RULES. IS THAT EVERYTHING?

1 BY MR. SPIVEY:

2 . THAT'S ALL.

3 BY JUDGE STOKES:

4 OKAY.

5 BY MR. BENNETT:

6 AND I'M SORRY, YOUR HONOR, THE DEFENDANT IS
7 ONE, TWO, AND THREE, AS WELL, OR IS IT --

8 (BEGIN RECORDING 3A)

9 BY JUDGE STOKES:

10 (INAUDIBLE) ACCOMPANY ME, I HAVE NO OBJECTION.
11 YOU'RE MORE THAN WELCOME TO. I'M GOING TO TAP ON
12 THE DOOR, SAY HERE'S YOUR STUFF, DELIBERATE.

13 (OFF THE RECORD)

14 (JURY ENTERS)

15 BY JUDGE STOKES:

16 OKAY. WE'RE BACK ON THE RECORD. MADAME
17 FORELADY, HAS THE JURY REACHED A VERDICT?

18 BY MADAME FORELADY:

19 YES, WE HAVE.

20 BY JUDGE STOKES:

21 AND DO YOU FIND FOR THE PLAINTIFF OR THE
22 DEFENDANT?

23 BY MADAME FORELADY:

24 THE PLAINTIFF.

25 BY JUDGE STOKES:

1 DO YOU MAKE ANY MONETARY AWARD TO THE
2 PLAINTIFF?

3 BY MADAME FORELADY:

4 WE DID.

5 BY JUDGE STOKES:

6 AND WHAT IS THAT AMOUNT?

7 BY MADAME FORELADY:

8 \$7,500.

9 BY JUDGE STOKES:

10 OKAY. THANK YOU, LADIES AND GENTLEMEN. THAT
11 CONCLUDES YOUR JURY SERVICE FOR THE WEEKEND. THIS
12 IS THE LAST TRIAL. WE APPRECIATE Y'ALL ALL COMING
13 MULTIPLE TIMES AND Y'ALL HAVE A GOOD WEEKEND. THANK
14 YOU VERY MUCH.

15 (JURY EXITS)

16 BY JUDGE STOKES:

17 ANY POST-TRIAL MOTIONS?

18 BY MR. BENNETT:

19 NONE FROM THE PLAINTIFF, YOUR HONOR.

20 BY JUDGE STOKES:

21 MR. SPIVEY?

22 BY MR. SPIVEY:

23 YOUR HONOR, I'D LIKE TO MAKE A MOTION FOR
24 J.N.O.V. I JUST DON'T SEE HOW THEY COULD ARRIVE AT
25 THAT FIGURE. AT THE MOST, IT WOULD HAVE BEEN THAT

1 \$1,008 FIGURE YOUR HONOR CAME UP WITH, WHICH IS THE
2 SAME THING THAT I COME UP WITH, ACTUALLY.

3 BY JUDGE STOKES:

4 I AM ADMITTEDLY SOMEWHAT SURPRISED, BUT I DO
5 BELIEVE THERE WAS EVIDENCE IN THE RECORD THAT WOULD
6 ALLOW IT, SO I'M GOING TO HAVE TO LET IT STAND. SO,
7 I WILL DENY THE MOTION FOR J.N.O.V. ANYTHING ELSE,
8 GENTLEMEN?

9 BY MR. BENNETT:

10 NOTHING FROM THE PLAINTIFF, YOUR HONOR.

11 BY MR. SPIVEY:

12 WELL, THEN, I MAKE A MOTION FOR A NEW TRIAL,
13 THEN. I JUST TRULY DON'T FEEL LIKE THEY WERE
14 CORRECT, AND I'D LIKE TO BE ABLE TO TRY TO TRY IT
15 AGAIN.

16 BY JUDGE STOKES:

17 NO, I BELIEVE I'LL HAVE TO DENY THAT ONE. I
18 CAN'T THINK OF ANY SIGNIFICANT ENOUGH ERROR THAT
19 OCCURRED THAT WOULD JUSTIFY THAT, IF ANY. SO, I'M
20 GOING TO RESPECTFULLY DENY.

21 BY MR. SPIVEY:

22 OKAY.

23 BY MR. BENNETT:

24 THANK YOU, YOUR HONOR.

25 BY JUDGE STOKES:

1 THANK YOU, GENTLEMEN. IT WAS GOOD TO SEE ALL
2 OF Y'ALL.

3 **(THERE BEING NOTHING FURTHER, THE HEARING WAS CONCLUDED.)**
4
5

STATE OF SOUTH CAROLINA CERTIFICATE OF NOTARY PUBLIC

BRAD MARRETT, *

PLAINTIFF, *

VERSUS *

DALLAH FORREST AND *

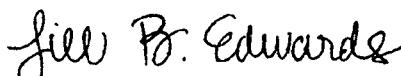
SUMMERSETT GOLF, INC., *

DEFENDANTS. *

C.A. NO. 2006-CV-23-10900323

I, JILL BISHOP EDWARDS, A NOTARY PUBLIC FOR THE
 STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED
 AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **156** PAGES
 REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE CD'S
 GIVEN TO DIXY TURNER AND ASSOCIATES, INC., BY MICHAEL
 SPIVEY'S OFFICE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL
 SEAL THIS 30TH DAY OF MARCH, 2010.



JILL BISHOP EDWARDS
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES: 7/10/2010

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
 MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE
 SPEAKER.

COUNTY OF GREENVILLE

Brad Marett,

Plaintiff(s)

vs.

Dallah Forrest and Summersett Golf, Inc.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009-CP - 23- 10754

(Please Print)

Submitted By: H. Michael Spivey

Address: P.O. Box 809, Mauldin, SC 29662

SC Bar #: 5288

Telephone #: (864) 288-6503

Fax #: (864) 288-0351

Other:

E-mail: hmichaelspivey@bellsouth.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

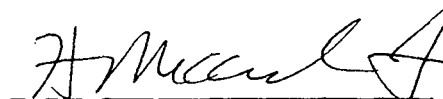
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Other (399) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstatement Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☒ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date: December 21, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

~~----- ADR COUNTIES ONLY -----~~
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Brad Marett,
1 Patio Way
Greenville, SC,

Plaintiff,

vs.

Dallah Forrest & Summersett Golf, Inc
301 Old Rock House Rd.
Greenville, SC 29609,

Defendants.

IN THE MAGISTRATE'S COURT
CIVIL CASE NO.: 2006-CV-23-
10900323

2009-CP-23- 10754

NOTICE OF CIVIL APPEAL

Defendants, Dallah Forrest and Summersett Golf, Inc., hereby gives Notice of Appeal from the Judgment of the Magistrate's Court in the above action to the Court of Common Pleas Circuit Court Division, 13TH Judicial Circuit in the County of Greenville, South Carolina.

THIS NOTICE OF APPEAL is made subsequent to personal notice which was received by the Defendants on the 14th day of December, 2009 after a jury verdict on December 10, 2007.

The Defendants'/Appellants' exception to judgment of the Magistrate's Court and set forth as follows:

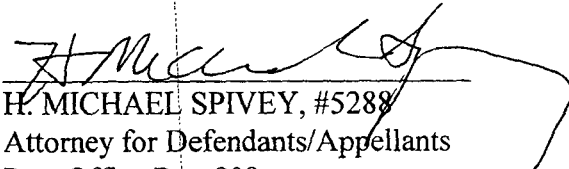
1. The Trial Court erred by denying the Motion of Defendants for a Directed Verdict at the end of the Plaintiff's case, since damages had not been presented in actuality or with specificity.
2. Damages were not ever proven or entered into the record and it was based solely on one comment made by Plaintiff/Respondent.
3. The above referenced damages were that the amount of \$141,00.00 was Plaintiff's initial offer on the house and it was purchased for \$149,000.00, somehow leading to a judgment of \$7,500.00. None of this evidence was corroborated and the Trial Court allowed this in as an off handed comment of Plaintiff based on leading questioning by Plaintiff's attorney, which undersigned counsel had objected to many times.
4. The Trial Court inhibited objections by stating that the Magistrate Court Rules were much more lenient and he would allow anything in.
5. The Trial Court erred by denying Defendants' Motion for a Directed Verdict at the end of the trial since damages had not been presented or alleged. The

Trial Judge said at this stage, damages were not specific and if any damages were proven, it was \$1,008.00 for the amount of golf Plaintiff was not allowed to play as per testimony.

6. The Trial Court erred by denying Defendants' Motion for Judgment N.O.V. since he (The Trial Judge) admitted he was surprised at the verdict.
7. The Trial Court erred by denying Defendants' Motion for a new trial since the Plaintiff never showed any actual damages that could have led to such a verdict.
8. No evidence was presented to show damages in the amount of \$7,500.00 and the only basis for such a verdict would have been from Plaintiff's attorney's closing argument.
9. The Trial Court erred by failing to properly advise the jury that damages could not be speculative.
10. The Trial Court allowed passion of rich man versus poor man to be the controlling factor in this case.
11. The Trial Court failed to control Plaintiff and Plaintiff's attorney's personal attacks on Defendants/Appellants. Comments were allowed in without merit or factual basis.
12. The Trial Court erred in not striking things in the opening and closing statements that were not proven from the testimony of Plaintiff.
13. The Plaintiff never showed any damages and as a result, the verdict should be overturned.

Greenville, South Carolina

Dated: December 21, 2009


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Fax: 864-895-6204

Michael Don Stokes
Greenville County
Summary Court Judge

Fax

To: H. Michael Spivey	From: Judge Michael Don Stokes/Jerrl Capps Administrative Assistant
Fax: 864-288-0351	Pages: 4
Phone: 864-288-6503	Date: 04/12/2011
Re: 2006CV2310900323 2009-CP-23-10754	CC:

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF
COMMON PLEAS

Magistrates Case No. 2009-CP-23-10754

Brad Marrett,)
Plaintiff(s))
Vs)
Dallah Forrest & Summersett Golf, Inc.,)
Defendant(s))

Magistrates Return

Procedural Background

This case was called for a jury trial before this Court for a new trial subsequent to the Court of Common Pleas reversing and remanding the prior trial in this case before the Honorable Matthew B. Hubbard, sitting with a jury. In that case the jury found for the Plaintiff and awarded damages of \$7,500.00 to the Plaintiff. Subsequent to that trial the Defendant successfully appealed and the Circuit Court reversed the verdict and remanded for a new trial. This Court presided over this second trial and the transcript of the proceedings are attached hereto and incorporated herein as is set forth in their entirety.

Answers to Exceptions

1. Exceptions 1, 2, 3, 5, 7, 8 and 13 are essentially the same and are addressed as a group. In regards to exceptions 1, 2, 3, 5, 7, 8 and 13. Page 25 of the transcript line 8-23, Plaintiff testified the Defendant wanted \$149,000.00 for the home and the deal included a 5 year golf membership. Later the Defendant stated this was not the agreement and the golf membership was added after the price was agreed upon. This is conflicting testimony for the jury to address. Also, Defendant testified to a formula of lost golf rounds that suggested damages to the Plaintiff of about \$1,000.00. This testimony was put in by witnesses under oath and this made the case unsuitable for directed verdict.
2. In regards to appellants exception #4. I point out Magistrate's Court Rule 13(a) which states "Trials should be conducted in an informal manner and the South Carolina rules of evidence shall apply but shall be relaxed in the interest of justice." This Court assumes this exception

arises from the fact that when the attorneys for the parties began to excessively wrangle over evidentiary matters, this Court reminded them that Magistrate Court can relax the evidence rules, that this was a Summary Court and that the confrontational nature of the attorneys was getting silly.

3. In regards to exception #6, This Court admits it was surprised by the verdict and will admit that if this had been a bench trial, this Court would not have ruled as the jury, but that does not make the jury wrong and this Court is unaware of any authority that would allow this Court to overturn a verdict of a jury simply because this Court would have weighed the testimony differently from the jury. There was, this Court believed evidence in the record to support the jury verdict and the jury was the finder of the fact in this case, not the Court. Therefore, this Court allowed a jury verdict to stand.

4. In regards to exception #9. This Court can not see the basis for this exception. The transcript page 149, lines 15 through 17 shows this Court charging, "A party cannot recover for losses that are conjectural or speculative." Again on page 150 of the transcript line 7 through 14 this Court charges, "although damages need not be established to a mathematical certainty, they must be reasonable. You are not to award speculative damages or damages for any loss that was not within the contemplation of the parties foreseeable at the time the agreement was entered into, nor for damages that does not flow directly from the alleged wrong doing."

This Court will attempt to address this exception more fully if the Circuit Court requires, but craves guidelines as to how to further answer.

5. In regards to exception #10 of the appellant, this Court is at a loss as to how to respond. The Plaintiff was pitching a theory of the case based on rich man versus poor man or big guy versus little guy. The appellant was pushing a theory of givers versus takers.

Again this Court will attempt to answer more fully, but craves guidelines from the Circuit Court on how to address the exception in more detail.

6. In regards to exception #11 this Court knows of no time that this Court lost control over the Plaintiff or the Plaintiff's counsel, or allowed attacks on the Defendant. In one instance the Plaintiff made a statement to the effect that people had told him he should have known who he

was dealing with, meaning the Defendant, but upon the defendant's objection, this was stricken and the jury told to disregard. Further, to balance this more the Court allowed the Defendant to call a character witness to testify to the Defendants general good nature.

7. In regards to exception # 12. During the opening statements by the Plaintiff, the Defendant made no objections whatsoever. As to the Court failing to strike things in the opening statements that were not proven by the testimony of the Plaintiff, this Court is at a loss as to how it is supposed to know what in the opening statements will or will not be proven by the testimony of the Plaintiff as all testimony follows the opening statements.

As to the closing arguments This Court is aware of no objections made by the Defendant regarding the Plaintiff's closing argument.

Respectfully submitted,

Michael Don Stokes
Greenville County Magistrate Judge

Dated: April 11, 2011
Tigerville, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

2012 MAR 30 PM 2:45

Brad Marrett,

Plaintiff,

vs.

Dallah Forrest & Summersett Golf, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
13TH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-23-10754

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Joseph Bradley Bennett, Bar No. _____

Address:

101 W. Park Avenue, Greenville, S.C. 29601

Phone: (864) 232-5800 Fax (864) 232-5888

E-mail: _____ Other: _____

Defendant's Attorney:

H. Michael Spivey, Bar No. 5288

Address:

P.O. Box 809, Mauldin, SC 29662

Phone: (864) 288-6503 Fax (864) 288-0351

E-mail: hmichaelspivey@bellsouth.net Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: (30) minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 30, 2012

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Brad Marrett,

Plaintiff,

vs.

Dallah Forrest & Summersett Golf,
Inc.,

Defendant.

IN THE FAMILY COURT
THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2009-CP-23-10754

MOTION TO RECONSIDER

TO: THE HONORABLE D. GARRISON HILL AND THE PLAINTIFF,
BRAD MARRETT, BY AND THROUGH HIS ATTORNEY OF
RECORD, MR. JOSEPH BRADLEY BENNETT:

NOTICE is hereby given that the undersigned as attorney for the Defendants does herewith move pursuant to Rule 59(a) and (e) for a new trial (hearing) and/or the Court to reconsider, alter or amend the Order entered in the within matter. Said Order was signed by D. Garrison Hill on March 15, 2012, clocked in on March 16, 2012 and received by the Defendant, on March 20, 2012. Grounds for said Motion includes but are not limited to the following:

1. The Court erred by allowing such a delinquent order to be entered in this case. This Appeal was before this Court on April 13, 2011. On May 16, 2011, more than a month after the Appeal was heard, the Court's law clerk sent an e-mail to opposing Counsel (Joseph Bradley Bennett) asking that the proposed Order be submitted to the Judge. On May 25, 2011, the undersigned (H. Michael Spivey) also wrote opposing counsel as to the Order, to no avail. On March 1, 2012, the Court's law clerk wrote opposing counsel (Joseph Bradley Bennett) in regard to the Order, yet again, reminding him that the previous law clerk had inquired as to the Order on May 16, 2011. On March 5, 2012, the undersigned (H. Michael Spivey) wrote opposing counsel informing that while the order was in accordance with what the Court ruled, that is was untimely, especially since it had been almost (1) one year since the Appeal was heard by the Court. Therefore, the undersigned expressed his opposition to opposing counsel as to such an untimely order being submitted to the Court.

Therefore, since the Order was not submitted until almost (1) one year after the Court ruled upon the matter, any relief granted to Plaintiff, Brad Marrett, should be set aside.

2. The Court erred in granting Plaintiff Brad Marrett \$7,500.00 in damages since the amount of damages was never proven by Plaintiff in actuality or with specificity during the Magistrate's Trial and/or at the Appeal. Since this amount was not proven at the Trial level nor at the Appeal, the Court erred in upholding the award of damages that was not actually proven. In the transcript, the Trial Judge actually was surprised at the jury's verdict of \$7,500.00 and actually stated that if any damages were proven, it was \$1,008.00 for the amount of golf, Plaintiff Marrett, was not allowed to play as per testimony. However, the Trial Court failed to grant Defendant's Motion for a Judgment NOV and/or Defendant's Motion for a New Trial.

It is important to note that this is the second Appeal to the Circuit Court in this matter, with the first Appeal being sent back by Judge Simmons the first time for a new trial since the damages were never proven during the first Magistrate Trial, as was the case in the Second Magistrate Trial.

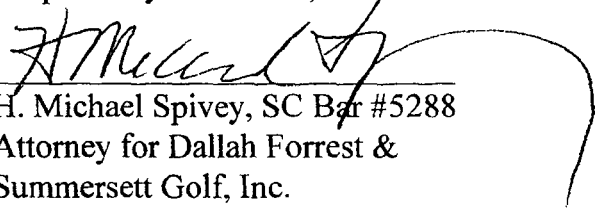
Since the damages were never proven, the Court erred in upholding same.

3. The Court erred in allowing in the Magistrate's Return and entertaining same since the Magistrate's Return was untimely and therefore in violation of Rule 18 and should not have been considered. The Notice of Appeal was timely filed by Defendants on December 21, 2009. Pursuant to Rule 18, the Magistrate's Return was due "within thirty (30) days of the date of filing of the notice of appeal with the Circuit Court, the magistrate shall file the return to the notice of appeal with the Clerk of the Circuit Court for the county wherein the judgment was rendered, together with the record, a statement of all proceedings in the case, and, if necessary, the testimony taken at trial." The Magistrate's Return was not received by the undersigned by E-mail on April 12, 2011 and filed around the same time. This was the day before the hearing on April 13, 2011, which was years after it should have been filed and thus in violation of the Rule. The Magistrate's excuse was that the undersigned did not prepare the Transcript. However, the Rule requires the Magistrate to do so and the undersigned had already had the transcript prepared since the Magistrate failed to comply with the Rule and never requested same. The Magistrate was contacted numerous times in regard to the Return but never filed same until this was brought to the Chief Administrative Judge's attention.

Since the Magistrate failed to comply with Rule 18, the Court erred in allowing in and entertaining the Magistrate's Return, which was no where close to being timely.

For the foregoing reasons, the Defendants respectfully request that the Order be set aside as well as any damages awarded to Plaintiff.

Respectfully Submitted,


H. Michael Spivey, SC Bar #5288
Attorney for Dallah Forrest &
Summersett Golf, Inc.
Post Office Box 809
Mauldin, SC 29662
Telephone: (864) 288-6503
Facsimile: (864) 288-0351
hmichaelspivey@bellsouth.net

Greenville, South Carolina.

Dated: March 30th, 2012

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP2310754

2012 APR 10 AM 8:51

Brad Marrett

Dallah Forrest

PLAINTIFF(S)

Summersett Golf, Inc.

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)

☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider is respectfully denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC 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		

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.**

Hamlin

Circuit Court Judge

2138

Judge Code

4/9/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on 4/12/12, and a copy mailed first class or placed in the appropriate attorney's box on 4/12/12, to attorneys of record or to parties (when appearing pro se) as follows:

Joseph Bradley Bennett Salvini & Bennett 101 W. Park Ave.
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

H. Michael Spivey P.O. Box 809 Mauldin, SC 29662

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Court Reporter

8:36am
ms

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

2012 MAR 16 P M CASE NO: 2009CP2310754

IN THE COURT OF COMMON PLEAS

Brad Marett vs. Dallah Forrest

FILED-CLERK OF COURT
GREENVILLE, SC

CHECK ONE:

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

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

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

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - _____

This judgment was entered on the 16th day of March, 2012, and a copy mailed first class this 16th day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Joseph Bradley Bennett Salvini & Bennett Llc 101
W Park Ave. Greenville, SC 29601

H. Michael Spivey P.O. Box 809 Mauldin, SC
29662

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Brad Maretz,

CASE NO.: 2009-CP-23-10754

Plaintiff/Appellee,

vs.

Dallah Forrest & Summersett Golf, Inc.,

Defendant/Appellant.

ORDER

This is an appeal from the judgment of the Magistrate's Court, requesting a reversal of the jury's verdict in the matter of *Brad Maretz vs. Dallah Forrest*, Case No. 2006-CV-23-10900323. A hearing was held on April 13, 2011. Plaintiff/Appellee was represented by J. Bradley Bennett, Esquire, and Defendant/Appellant was represented by H. Michael Spivey, Esquire. Based on all the evidence of record and the applicable law, the judgment of the Magistrate is affirmed for the reasons that follow.

PROCEDURAL HISTORY

On or about April 18, 2006, Plaintiff/Appellee filed a Summons and Complaint in Magistrate's court against Defendant/Appellant alleging causes of action for breach of contract, fraud and misrepresentation, and nuisance. Defendant/Appellant filed a timely Answer and Counterclaim against Plaintiff/Appellee generally denying the allegations of Plaintiff's Complaint and asserting counterclaims for assault and intentional infliction of emotional distress.

A jury trial was held on March 23, 2007. In a Judgment filed on March 26, 2007, the jury rendered a verdict in favor of the Plaintiff/Appellee and awarded him damages in the amount of \$7,500.00.

On April 25, 2007, Defendant/Appellant timely filed a Notice of Civil Appeal with the Court of Common Pleas (C/A No. 2007-CP-23-2708), requesting an Order reversing the jury's

verdict. On August 24, 2007, Plaintiff/Respondent filed a Memorandum in Opposition to Appellant's Appeal, asking the Court to affirm the jury's verdict. On September 24, 2007, the Circuit Court reversed the verdict and remanded the matter for a new trial on the merits.

A retrial was held on December 10, 2009. The jury rendered the same verdict in favor of the Plaintiff/Appellee and awarded him damages in the amount of \$7,500.00. On December 21, 2009, Defendant/Appellant timely filed a second Notice of Civil Appeal with the Court of Common Pleas, requesting an Order reversing the jury's verdict in the retrial of the matter. Oral arguments were held before this Court on April 13, 2011.

ORDER

SECTION 18-7-170 OF THE SOUTH CAROLINA CODE (1985) sets forth the standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment:

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

See also Hadfield v. Gilchrist, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000).

"Even if error was committed in the trial of the case, the appellant, in order to be entitled to reversal, must show that such error was prejudicial to its rights or influenced the magistrate in giving judgment for the plaintiff." *Stukes vs. Life Ins. Co. of Virginia*, 163 S.C. 216, 161 S.E. 478 (S.C. 1931). Defendant/Appellant bears the burden of proving error. *See id.*

On appeal, Appellant argued that the damage award by the jury was speculative and that there was insufficient evidence for the jury to award \$7,500.00 to Plaintiff. After a careful review of the entire record, including the Magistrate's Return, transcript testimony of all witnesses and exhibits from the trial, which is incorporated herein by reference, the Court finds

the Plaintiff/Appellee met his burden of providing sufficient evidence of the existence, causation and measure of damages. Further, this Court finds that no reversible error was committed by the trial judge nor were the Defendant/Appellant's rights prejudiced therein.

THEREFORE IT IS ORDERED that Defendant/Appellant's request for an Order of this Court reversing the jury's verdict in the matter of *Brad Marett vs. Dallah Forrest*, Case No. 2006-CV-23-10900323 is hereby denied and the judgment is affirmed.

AND IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

March 15, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Brad Maretz,

Plaintiff,

vs.

Dallah Forrest & Summersett Golf, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

ORDER

C.A. No. 2007-CP-23-2708

This is an Appeal from the Magistrate's Court jury verdict from a trial on March 23, 2007. As a result of that trial, the jury returned a verdict in the amount of \$7,500 against Defendants.

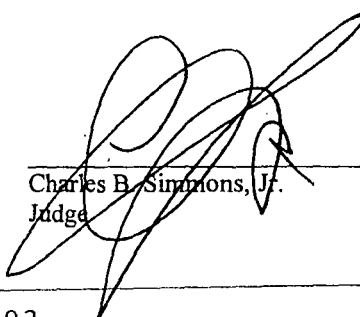
The substance of Defendants' Appeal is that no evidence was presented at trial so as to establish Plaintiff's claim for damages.

In order for damages to be recoverable there must be evidence sufficient to "enable the Court or jury to determine the amount thereof with reasonable certainty or accuracy." Whisenant v. James Island Corp., 281 S.E.2d 794 (S.C. 1981). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." Id.; Armstrong v. Collins, 621 S.E.2d 368 (S.C.2005).

The Court has carefully reviewed the entire record, including the MAGISTRATE'S RETURN and exhibits from the trial. While great deference is certainly given to the fine Trial Judge in this matter, the Court is simply unable to locate any evidence in the record sufficient to allow the jury to determine a basis for an award of \$7,500.

In light of the above, the Court is compelled to reverse and remand the matter for a full trial on the merits.

AND IT IS SO ORDERED.


Charles B. Simmons, Jr.
Judge

September 10, 2007
Greenville, South Carolina

Marett v. Forrest; 2009-CP-23-10754

Thursday, March 1, 2012 9:06 AM

From: "Hill, D. Garrison Law Clerk (Lindsey Overby)" <ghilllc@sccourts.org>
To: "jbradleybennett@yahoo.com" <jbradleybennett@yahoo.com>
Cc: "hmichaelspivey@bellsouth.net" <hmichaelspivey@bellsouth.net>, "Lopez, Stephen" <SLopez@greenvilleccunty.org>

Mr. Bennett:

Judge Hill heard this appeal in April 2011. Back on 5/16/11, Judge Hill's clerk sent the below e-mail following up on the formal order in this case. The Clerk's office and our office have no record of this order being submitted or filed. Do you recall if this was sent? And if not, could you please send?

Thank you,

Lindsey Overby

Lindsey Heger Overby

Law Clerk to the Honorable D. Garrison Hill
305 E. North Street, Suite 213
Greenville, SC 29601
Office: (864) 467-8490
Fax: (864) 467-8595

From: Hill, D. Garrison Law Clerk (Daniel Graham Buckner)
Sent: Monday, May 16, 2011 10:43 AM
To: 'jbradleybennett@yahoo.com'
Cc: 'hmichaelspivey@bellsouth.net'; Hill, D. Garrison
Subject: Marett v. Forrest; 2009-CP-23-10754

Mr. Bennett,

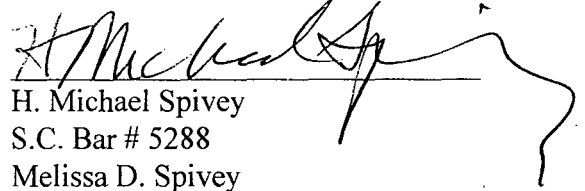
Judge Hill wanted me to remind you to submit a proposed order in the above referenced case in Word format to ghilllc@sccourts.org. Thank you and let me know if you have any questions or concerns.

Daniel Graham Buckner
Law Clerk to The Honorable D. Garrison Hill
Office: (864) 467-8490
Fax: (864) 467-8595
ghilllc@sccourts.org

Certificate of Counsel

The undersigned certifies that this Record On Appeal complies with Rule 210, SCACR.

Greenville, South Carolina
November 20, 2012



H. Michael Spivey

S.C. Bar # 5288

Melissa D. Spivey

S.C. Bar # 75407

Attorneys for Appellant

P.O. Box 809

Mauldin, SC 29662

(864) 288-6503

(864) 288-0351 facsimile

RECEIVED

NOV 28 2012

SC Court of Appeals

RECEIVED

MAR 05 2013

IN THE STATE OF SOUTH CAROLINA **SC** Court of Appeals
IN THE COURT OF APPEALS

APPEAL FROM THE GREENVILLE COUNTY COURT OF COMMON PLEAS

THE HONORABLE D. GARRISON HILL
CIRCUIT COURT JUDGE

C.A. NO.: 2009-CP-23-10754

Brad Marett.....Respondent,

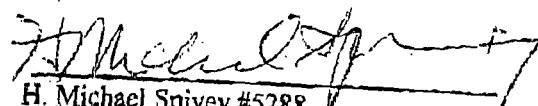
vs.

Dallah Forrest and Summersett Golf, Inc.....Appellants.

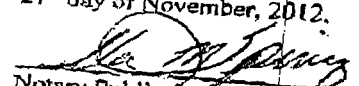
PROOF OF SERVICE

PERSONALLY appeared before me H. Michael Spivey who, being duly sworn deposes and states that he did serve one (1) copy of the bound Final Brief of Appellant and bound Record on Appeal, Proof of Service on Jenny Abbott Kitchings, South Carolina Clerk of Court of Appeals and a Proof of Service on the below individual on the 27th day of November, 2012, by first class mail, postage prepaid to the following address:

Mr. J. Bradley Bennett
Salvani & Bennett, LLC
101 W. Park Avenue
Greenville, SC 29601


H. Michael Spivey #5288
Melissa D. Spivey #75407
Attorney for Appellants
Post Office Box 809
Mauldin, S.C. 29662
Ph: 864-288-6523
Fax: 864-288-0351

Subscribed and sworn to before me this
27th day of November, 2012.


Notary Public for South Carolina

My Commission Expires: 7-25-2020