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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2019-001488

MB Hutson/MB Hudson, ... Appellant,

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq., J.R. Murphy, Esq.,
John Doe #1, John Doe #2, ... Respondents.

RESPONDENTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR INJUNCTIVE RELIEF

Respondents Penn America Insurance Company and Global Indemnity Group, Inc. ("PAIC"), Timothy J. Newton ("Newton"), and J.R. Murphy ("Murphy") (collectively "Respondents") submit the following Reply Memorandum in support of their Motion for Injunctive Relief.

Respondents requested that the Court direct Appellant Morris Beach Hutson a/k/a MB Hutson/MB Hudson ("Hutson") to refrain from using court filings and correspondence to slander Respondents. Hutson did not cite any relevant legal authority in opposing Respondents' Motion.

Instead, he once again misrepresented easily ascertainable facts and used his response as a vehicle for defamation. Respondents' Motion should therefore be granted.

I. Hutson's representations of the applicable facts are false and improper.

Respondents requested an injunction to prevent Hutson from continuing to make false statements in the public record against them. Hutson's response underscores the need for Respondent's requested relief, as this filing appears to be a compilation of Hutson's repeated histrionics and insults. [1]

As an initial matter, Huston misapprehends the nature and purpose of Respondent's motion. Contrary to Hutson's assertion, a grant of the requested relief would not prevent Hutson from pursuing this appeal. Hutson's initial brief and initial reply brief have been filed, and he is entitled to convert them to final briefs in accordance with Rule 211, SCACR, following the filing of the Record on Appeal. What Hutson is not entitled to do is to continue to argue the merits of his appeal [2] and to attack Respondents and their counsel in his extraneous filings or in the Index to the Record on Appeal.

Furthermore, Hutson's false allegations in his filings can be refuted by the public record. Hutson continues to allege that Respondents knew about fraud committed by a third party, TLC Holdings, LLC (hereinafter "TLC"), and its attorneys, and yet failed to report it to a court. He alleged that Respondents concealed evidence and engaged in a conspiracy with TLC to prevent

[1] Hutson sent a letter to the Commission on Lawyer Conduct dated January 20, 2021 and copied it to the filing clerk for the Court of Appeals (attached as Exh. 7). The letter contains the same false and defamatory allegations Hutson has made in motions in this appeal. On January 21, 2021, Hutson filed another document entitled "to All" which reads, "Just letting all parties know that I intend to immediately solicit the public in order to obtain an attorney for assisting Appellant with [this appeal]." (Attached as Exh. 8.) Respondents have objected to that filing.

[2] Hutson's filing repeatedly asks this Court to remand this case for a jury trial despite the fact that the motion before the Court is one for injunctive relief.

Hutson's case from being heard. As set forth in detail below (and in numerous prior court filings responsive to Hutson's unceasing barrage of false statements), Hutson lost his ability to pursue claims against TLC **due to a release** in a settlement he entered into with TLC. Furthermore, **none of the Respondents were involved in the legal action in which the alleged fraud occurred**.

Hutson does spin quite a tale, alleging that an insurance company and attorneys from at least four law firms have all conspired to protect a group of landowners who most of these attorneys have never known personally and never represented, in an effort to destroy Hutson's life. Indeed, Hutson spent nearly a decade alleging that a conspiracy against him began with fraud and deception committed by the members of TLC with respect to a 2010 land deal related to Big Water Resort. (See **Exhibit 1, attached hereto**: Answer, Counterclaim, and Third-Party Complaint, Case No. 2011-CP-14-602 (the Ejectment Action), filed Dec. 29, 2011.) As has been repeatedly ruled in the federal and state courts, Hutson's claims against TLC were waived by a release in Hutson's Settlement Agreement and Consent Order with TLC, which is why Huston was unable to pursue TLC again in the subsequent actions. (See **Exhibit 2, attached hereto**: Order of Hon. George C. James, Jr., Case No. 2011-CP-14-602 (the Ejectment Action), filed Mar. 21, 2014.) [3]

Hutson attempted, unsuccessfully, to raise his claims of fraud against TLC again by way of *pro se* counterclaims in two separate lawsuits that preceded the Bad Faith Action from which the instant appeal arises. (**Exhibit 3, attached hereto**: Order of Hon. David C. Norton, C/A: 2:14-1583-DCN-MGB (the Class Action), filed May 20, 2016, pp. 9-17; **Exhibit 4, attached hereto**:

[3] Order, TLC Holdings, LLC v. M.B. Hudson a/k/a M.B. Hutson, Civ. Action No. 2011-CP-14-00602 (Clarendon County Comm. Pl. filed Mar. 21, 2014); Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-1583-DCN-MGB, 2016 WL 7435620 (D.S.C. signed Apr. 5, 2016), report and recommendation adopted, 2016 WL 2935891 (D.S.C. signed May 20, 2016); Order, TLC Holdings, LLC, et al. v. M.B. Hutson a/k/a M.B. Hudson, Civ. Action No. 2015-CP-14-00615 (Clarendon County Comm. Pl. filed Mar. 2, 2017).

Order of Hon. R. Ferrell Cothran, Jr., Case No. 2015-CP-14-00615 (the Defamation Action), filed Mar. 2, 2017.) It is one iteration of these *pro se* counterclaims, the one filed in the Defamation Action, that Hutson refers to in his Return as "Laura Paton, Esq.s' authored brief" and "report." (Hutson Return to Mot. for Inj., pp. 4, 14-33.) Thus, what Hutson presents to this Court as evidence of fraud are in fact mere allegations. Moreover, these are the same allegations that were raised by Hutson in the Ejectment Action and that were subsequently rejected by the courts in the Class Action and the Defamation Action based upon *res judicata*.

In addition to granting summary judgment in favor of TLC Holdings in the Class Action, the federal court subsequently awarded sanctions against Hutson. (**Exhibit 5, attached hereto**: Order of Hon. David C. Norton, C/A: 2:14-1583-DCN-MGB, filed October 6, 2017.) In its Order, the Court wrote:

> Hutson has established a pattern of making misrepresentations to the court, of making unsupported allegations of unethical and criminal conduct by third-party plaintiffs, and of using the judicial process as a mechanism of harassment. His meritless filings have wasted untold hours of the court's time. He lacks any evidence to support his counterclaims and other allegations against third-party plaintiffs. Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the court. Accordingly, the court finds that sanctions are appropriate under the court's inherent power.

(Id.)

Even after losing his counterclaims (and being sanctioned by the federal court), Hutson testified at the January 22-25, 2018 trial in the Defamation Action regarding alleged fraud in the underlying land deal and that the 2012 settlement agreement was fraudulent. (**Exhibit 6, attached hereto**: Defamation Trial Tr. p. 652, lines 12-17; p. 690, lines 19-25; p. 694, line 10 – p. 698, line 18.) The jury responded with a verdict against Hutson in the amount of $3,500,000. Nonetheless, Hutson acts as though Newton's August 13, 2018 e-mail referencing the mere *possibility* of

extrinsic fraud (based upon certain new allegations Hutson made at the time that appeared to be corroborated by evidence presented at trial) was the first time the concept of fraud in the settlement agreement had ever been mentioned.

Hutson criticizes Respondents and their counsel for citing his repeated and failed attempts to raise the same claims of fraud against TLC. However, this history is essential to understanding why Hutson's claims against Respondents are baseless. **Because Hutson released TLC, he can only prosecute litigation against TLC if he can persuade a court to set aside his release and the judicial orders enforcing it.** [4] Hutson clearly believes he has grounds to do so. However, he has never filed an action to set aside the release. Instead, he has vented his frustration upon Respondents, who lack standing to enforce Hutson's rights.

Huston contends that by not assisting him in the pursuit of his released claims or, even further, assisting him with setting aside the release of these claims, Respondents and their counsel are part of a fraudulent conspiracy with TLC against him. [5] Hutson asserts that Respondents (and PAIC's counsel in this matter, Christian Stegmaier) had a duty to report to some court the fraud Hutson alleges was committed by TLC and its attorneys in the Ejectment Action.

Importantly, **none of the Respondents were involved in any of Hutson's cases until after Hutson's release of TLC was enforced in Judge James' 2014 Order.** [6] Stegmaier was

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[4] Hutson admitted at trial in the Defamation Action that he released his rights to sue TLC in the Settlement Agreement in the Ejectment Action. (Exh. 6: Trial Tr., p. 652, ll.18-20.)

[5] Hutson also avers that the conspiracy has been aimed at allowing Penn America to drop Hutson's insurance. This allegation is exceptionally confusing in light of the fact that the policy PAIC issued to BWR, Inc. was cancelled for non-payment effective April 7, 2014 after Hutson vacated the Big Water Resort property (see Exh. 6: Trial Tr., p. 693) and BWR, Inc. was administratively dissolved, and of Penn America's prior satisfaction of the judgments and sanctions award against Hutson. (See Exh. 10: Policy declarations and cancellation pages.)

[6] See Exh. 2, p. 10 (filed in the 2011 Ejectment Action). TLC notified PAIC of the Big Water Resort litigation by letter dated December 17, 2015. (Exh. 9: Letter, attached.)

not retained to defend PAIC until Hutson filed the (instant) Bad Faith Action in December 2018. Hutson filed the Bad Faith Action after Hutson's litigation with TLC was resolved.

The individual Respondents (Newton and Murphy) have never represented Hutson in any matter. They represented PAIC in its declaratory judgment as to its liability coverage. [7] Murphy had no involvement other than to sign PAIC's Complaint in the Coverage Action. Newton served as coverage counsel for PAIC in the Coverage Action, which included fielding Hutson's frequent threats of litigation against PAIC.

PAIC, as a liability carrier, has no duty to file legal action to enforce Hutson's rights against third parties—particularly actions that would require setting aside prior judgments. Though involved with the Class Action and Defamation Action as the insurer, PAIC (and Newton only indirectly as coverage counsel), have no actual or personal knowledge of any extrinsic fraud that would support the setting aside of Hutson's release in the Ejectment Action. Such a claim would require knowledge of Hutson's dealings with TLC in the procurement of the 2012 Settlement Agreement. None of the Respondents were involved in the Ejectment Action in which the alleged fraud occurred; nor were any of them even notified of the existence of that action until December 2015, well after it concluded. This is apparent from a review of the court filings in that action and the attached tender letter to PAIC from TLC after the Defamation Action was filed. (Exh. 9: Letter.) The policy PAIC issued to BWR, Inc., which incepted October 16, 2013, did not even exist until after Hutson entered into the 2012 Settlement Agreement and Consent Order in the Ejectment Action. (Compare Exh. 10: Policy declarations page with Exh. 2: James Order, p. 3.)

[7] PAIC retained Murphy and Newton as coverage counsel in early 2016 for the Coverage Action, a separate action PAIC filed in federal court. See Penn-America Ins. Co. v. BWR, Inc., Civ. Action No. 2:16-cv-01943-DCN (D.S.C. filed June 14, 2016).

As non-parties to the Ejectment Action, Respondents had no duty, or even ability, to report alleged fraud to that court. Hutson was represented in the Ejectment Action by another attorney with whom he is in litigation.[8] Respondents have no idea what TLC or its attorneys may have represented to the court or to Hutson in that action. Moreover, despite repeated opportunities to explain the nature of the fraud in the settlement agreement, Hutson has failed to do so and instead focused upon fruitless allegations of fraud in the original land deal. Furthermore, Newton's August 13, 2018 e-mail, which appears to be the sole basis for the Bad Faith Action, reflects that Newton and PAIC did not conceal evidence. They disclosed to Hutson everything they knew that might lead to a claim to set aside the release and encouraged him to retain counsel. (See Hutson Resp. filed Jan. 19, 2021, pp. 10-14.)

At this time, the initial briefs in the instant appeal have been filed. Respondents respectfully request that this Court order Hutson to refrain from continuing to mischaracterize the facts and to disparage Respondents in court filings with allegations that have no factual basis.

II. Hutson shows no signs of ceasing his barrage of insults.

Hutson's response not only relies upon false allegations, it continues his pattern of slander and harassment that led to Respondents' request for relief. Hutson accused Respondents of committing fraud, crimes, and ethical violations. He maligns Respondents as thieves and conspirators. He alleged that Respondents intend to harm him. He smears them as a disgrace to the legal system. Hutson caricatures this pending motion to be "like a rapist . . . asking the court not to allow any mention of the actual rape into the records at trial."

[8] MB Hutson a/k/a MB Hudson v. Paul Weissenstein, Appellate Case No. 2019-000873 (order of dismissal filed but motion to reinstate pending). See also Exh. 6: Trial Tr., pp. 690-91.

Hutson's allegations of lying to courts are baseless. Hutson provided no support for his claim against Newton. Hutson's allegation against Stegmaier do not reflect any dishonest statement made to the Court by Stegmaier. The e-mails provided by Hutson do nothing to further his allegations. Rather, the e-mails evidence Hutson's impermissible *ex parte* communications with the clerk.

Once again, Hutson impugned this Court's impartiality. He argued that on page 44 that if this Court does not deny his motion, the court "will themselves co-conspire with the Respondents." He brazenly emphasizes this allegation in bold type.

Respondents merely asked Hutson to stop the mischaracterizations and name-calling. Hutson could have taken the opportunity to withdraw his smears and to demonstrate respect for this court and his opponents, but he did not. Hutson thereby demonstrated that it is he who is abusing the judicial process.

Respondents provided ample authority for their requested relief. Litigants are not allowed to prolong frivolous litigation for purposes of harassment and slander. Sassower v. Signorelli, 99 A.D. 2d 358, 358-59, 472 N.Y.S.2d 702 (N.Y. App. Div. 1984); Spremo v. Babchik, 155 Misc. 2d 796, 803, 589 N.Y.S. 2d 1019, 1024 (N.Y. Sup. Ct. 1992); Martin-Trigona v. Capital Cities/ABC, Inc., 145 Misc. 2d 405, 410, 546 N.Y.S.2d 910, 913 (N.Y. Sup. Ct. 1989); McAllister v. McAllister, 95 N.J. Super. 426, 430, 231 A.2d 394, 396 (N.J. Super. 1967).

Therefore, Respondents reiterate their request that this Court order Hutson to refrain from disparagement, mischaracterization, and personal attacks against Respondents and their counsel, and from impugning the impartiality of this Court. Respondents again request that this Court warn Hutson that future misconduct will not be tolerated and that continuation of it may subject him to

sanctions, up to and including dismissal of his appeal and imposition of an award of Respondents' attorney's fees and costs in defending this litigation.

Respectfully submitted,

s/Christian Stegmaier (with permission)
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RESPONDENTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR INJUNCTIVE RELIEF

Columbia, South Carolina
January 25, 2021

A. Paul Weissenstein, Jr.

Weissenstein Law Firm, LLC
Attorney at Law
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Sumter, South Carolina 29151-2446
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December 29, 2011

Honorable Beulah G. Roberts
Clerk of Courts, Clarendon County
PO Box 136
Manning, SC 29102

Re: TLC Holdings, LLC
Vs: M.B. Hudson a/k/a M.B. Hutson
2011-CP-14-602

Dear Ms. Roberts,

There is enclosed and presented to you for filing Motion to Dismiss, Answer, Counterclaim, Affirmative Defense and Third Party Complaint together with Verification, Summons and Motion Coversheet and a check in the amount of $25.00. Please file the motion and return clocked copies to me.

Yours very truly,

A. Paul Weissenstein, Jr.

APWjr/lle
Enclosures
Cc: Thomas L. Harper, Jr., Esquire

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)

TLC Holdings, LLC
Plaintiff
v.
MB Hudson aka MB Hutson
Defendant
v.
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,
Third Party Defendants

CASE NO.
2011-CP-14-602

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Thomas L. Harper, Jr., Bar No. Address: phone: fax: e-mail: other:	A. Paul Weissenstein, Jr., Bar No. 6013 Address: PO Box 2446, Sumter, SC 29151 phone: 803-418-5700 fax: 803-934-1505 e-mail: pwlaw@ftc-i.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:
Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — December 29, 2011 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ 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, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other: Rule 55 and 60, SCRCP

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	CASE NUMBER: 2011-CP-14-602
TLC Holdings, LLC,)	
)	
Plaintiff(s),)	SUMMONS
)	TO
M. B. Hudson aka M. B. Hutson,)	THIRD PARTY COMPLAINT
)	(Jury Trial Demanded)
Defendant and Third Party Plaintiff,)	
)	
Vs.)	
)	
Richard U. Clark, Jimmy S. Lovell and)	
James C. Thigpen,)	
)	
Third Party Defendants.)	

TO: THE PLAINTIFF AND THIRD PARTY DEFENDANTS ABOVE NAMED;

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber, A. Paul Weissenstein, Jr., at his office at 106 Broad Street (Post Office Box 2446), Sumter, South Carolina 29151-2446, within thirty (30) days after the service hereof exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Sumter, SC
December 29, 2011

A. Paul Weissenstein, Jr.
Attorney for MB Hudson
PO Box 2446
Sumter, SC 29151
(803) 418-5700

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON TLC Holdings, LLC, Plaintiff(s), Vs. M. B. Hudson aka M. B. Hutson, Defendant and Third Party Plaintiff, Vs. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NUMBER: 2011-CP-14-602 ANSWER AND COUNTERCLAIM AND AFFIRMATIVE DEFENSE AND MOTION TO DISMISS AND THIRD PARTY COMPLAINT (Jury Trial Demanded)

MOTION TO DISMISS

PLEASE take notice that at 10:00 AM on the tenth (10th) day after service hereof, or as soon as counsel may be heard, the Defendant will move to dismiss the Summons and Complaint of the Plaintiff herein pursuant to Rule 12(b)(4) and 12(b)(5), SCRCP as follows:

a) The Plaintiff previously served a Rule to Show on the Defendant, without copy of any Petition, Application, or other pleading.

b) Within ten (10) days of that service, on December 8, 2011, Defendant filed and served his Motion to Dismiss, which motion is still pending.

c) Plaintiff has now filed and served a Summons and Verified Complaint, but without the Rule to Show Cause, and still without the Petition, Application, or other pleading that resulted in issuance of the Rule to Show Cause.

d) The Defendant is informed and believes that the Plaintiff has failed to properly serve the Defendant in this matter, and the Plaintiff's case should be dismissed.

Without waiving his rights under this motion, or the motion filed December 8, 2011, the Defendant, M. B. Hudson aka M. B. Hutson, does hereby answer the Complaint of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. Each allegation of the Complaint is denied unless specifically admitted or explained.

2. The Defendant admits the allegations of Paragraph 1 of the Complaint on information and belief.

3. As to Paragraph 2, the Defendant admits that he resides and does business in Clarendon County, South Carolina but would show that he is a Purchaser pursuant to the Lease Purchase Agreement.

4. The Defendant admits the allegations of Paragraph 3.

5. The Defendant does not believe that Paragraph 4 requires an answer but if one is required then the Defendant denies same.

6. As to the allegations of Paragraph 5, Defendant admits that on about December 16, 2010, a Lease Purchase Agreement was entered into for property at 5215 Dingle Pond Road, Summerton, S.C., generally known as The Big Water Resort and would admit that the Lease Purchase Agreement is attached as Exhibit A to the Plaintiff's Complaint. However, the Defendant is throughout that document referred to as a Purchaser and not as a Tenant.

7. The Defendant admits so much of the allegations of Paragraph 6 as alleged that portions of the Lease Purchase Agreement call for the payment of monthly rent, payment of

annual rent to the South Carolina Public Service Authority, and insurance premiums, but denies any remaining allegations of said Paragraph 6.

8. The Defendant denies so much of the allegations of Paragraph 7 of the Complaint as alleges complete performance by the Plaintiff of its obligations, and also as alleges that there has been a breach of the terms of the Lease Purchase Agreement by the Defendant but would show that all the payments called for in the Lease Purchase Agreement have not been paid by the Defendant due to the lack of disclosures by the Plaintiff.

9. As to the allegations of Paragraph 8, the Defendant admits that there are amounts which the Lease Purchase Agreement called for Defendant to pay to Plaintiff which are unpaid to the Plaintiff but is uncertain as to any balance due and demands strict proof thereof.

10. As to the allegations of Paragraph 9, the Defendant admits that the Lease Purchase Agreement provided that the Purchaser would be responsible for costs and expenses (including, but not limited to, reasonable attorney's fees and expenses), but only if Plaintiff can prove that it is entitled to recover same as a result of any legal actions.

11. The Defendant denies the allegations of Paragraph 10 of the Complaint.

12. The Defendant is informed and believes that Paragraph 11 does not require a response but if a response is required, the Defendant denies same and demands strict proof thereof.

13. The Defendant denies the allegations of Paragraphs 12, 13, and 14 of the Complaint.

14. As to the allegations of Paragraph 15, the Defendant admits that the Plaintiff sent a letter dated October 15, 2011 but is informed and believes that the language of the letter should speak for itself. Further, the Defendant denies that the Lease Purchase Agreement

and/or South Carolina law will allow the Plaintiff to cancel on its own a contract under which a Defendant has made expenditures toward the purchase of a piece of real property.

15. The Defendant denies the allegations of Paragraphs 16 and 17 of the Complaint.

16. Throughout the Complaint, the Plaintiff has attempted to label the Defendant as a Tenant. The Lease Purchase Agreement entered into between the parties referred to the Defendant only as a Purchaser and that relationship was the intent of the parties. In preparing this responsive pleading, the Defendant assumes that any references by the Plaintiff to "tenant" is merely scrivener's error and is intended to refer to the Defendant, M.B. Hudson aka M.B. Hutson. The Defendant has responded to the Complaint as though the Plaintiff has so intended.

FOR A SECOND DEFENSE

17. Each matter set forth above is re-alleged as fully as if set forth herein.

18. As to the allegation that a landlord / tenant relationship existed between the Plaintiff and Defendant, the Defendant denies that allegation and would respectfully show the Court that the Defendant is in fact a Purchaser under the Lease Purchase Agreement, which was prepared by the Sellers, attached as Exhibit A of the Complaint and incorporated herein by reference. Throughout that document, Defendant is referred to only as a Purchaser, and not as a Lessee or tenant.

19. While the Defendant has not paid all of the rent payments that have become due, the Defendant denies that grounds for ejectment exist, and thus the relief sought by the Plaintiff should be denied.

20. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

21. For the Court to grant the Plaintiff the relief sought would cause the Plaintiff to receive an unjust enrichment.

22. Thus the relief sought by the Plaintiff should be denied.

FOR A THIRD DEFENSE

23. Each matter set forth above is re-alleged as fully as if set forth herein.

24. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

25. For the Court to grant the Plaintiff the relief sought would cause the Defendant to suffer irreparable harm.

26. Thus the relief sought by the Plaintiff should be denied.

FOR A FOURTH DEFENSE

27. Each matter set forth above is re-alleged as fully as if set forth herein.

28. The Plaintiff, Third Party Defendants and Defendant entered into a Lease Purchase Agreement by which Defendant would acquire from the Plaintiff and Third Party Defendants the property that is the subject of this action.

29. Pursuant to that Lease Purchase Agreement, Defendant has made large expenditures of sums to maintain and develop the property.

30. Defendant has an equity of redemption in the property and thus cannot be evicted from the property without protection of his equity of redemption and/or investments into the maintenance and development of the property.

31. Thus the relief sought by the Plaintiff should be denied.

FOR A THIRD PARTY COMPLAINT

32. Each matter set forth above is re-alleged as fully as set forth herein.

33. Defendant/Third Party Plaintiff, hereinafter referred to as Defendant, would show unto the Court as follows:

34. The Defendant is a citizen and resident of Clarendon County, South Carolina.

35. The Defendant is informed and believes that the Plaintiff is an LLC organized under the laws of the State of South Carolina.

36. The Third Party Defendants are owners or members of TLC Holdings, LLC and, with TLC Holdings, LLC, are Sellers of the premises described in the Complaint as shown and described in the Lease Purchase Agreement.

37. On information and belief, the Defendant Thigpen is a citizen and resident of Clarendon County, South Carolina, the Defendant Clark is a citizen and resident of Knoxville, Tennessee, and the Defendant Lovell is a citizen and resident of Burr Ridge, Illinois.

38. The Defendant is informed and believes that all three of the Third Party Defendants, as owners of the property that is the subject of this action, are subject to the jurisdiction of this Court.

39. On or about December 15, 2010, Plaintiff, TLC Holdings, LLC, and Third Party Defendants, Clark, Lovell, and Thigpen, individually and as members of TLC Holdings, LLC, entered into a Lease Purchase Agreement to sell to M. B. Hudson as Purchaser the property hereinafter described. The Lease Purchase Agreement is attached to the Complaint as Exhibit A, and is also attached hereto and made a part hereof as Exhibit A.

FOR A CLAIM, COUNTERCLAIM, AND FIFTH DEFENSE

40. Each matter set forth above is re-alleged as fully as if set forth herein.

41. The property that is the subject of this action was owned by one or more of the Sellers being, according to the Lease Purchase Agreement, the Plaintiff and Third Party Defendants since at least May 19, 2008. Defendant is informed and believes that Plaintiff and/or the Third Party Defendants may have had some interest in the property prior to that time. The Sellers did enter into the Lease Purchase Agreement with Hudson on or about the 15th day of December 2010 to sell to Hudson said property. Section 1 of the Lease Purchase

Agreement consisting of more than five (5) pages was titled a Purchase Agreement and dealt with the terms and conditions of the Purchase by Hudson of the premises from the Sellers and anticipated the construction of improvements on the property by the Purchaser.

42. However, Sellers knew that defects existed in regard to the premises in that the South Carolina Public Health and Environmental Control had imposed a moratorium on the property that prevented the property from tying into public water and sewer services.

43. In fact the Lease Purchase Agreement in Section 11.1 called for the installation of sewer and water lines and other improvements.

44. However, the Sellers did not disclose the existence of this moratorium to the Purchaser. However, the Sellers knew of the existence of this moratorium as shown by the letter of The Town of Summerton dated April 23, 2003, attached hereto as Exhibit B.

45. The Agreement provided in Paragraph 11.1 that Purchaser, without prior written approval of Sellers, could install new sewer and water lines, but Sellers knew or should have known at the time of the preparation of this contract that new sewer and water lines would have no purpose because the project was operating at capacity and, because of the moratorium placed on the property, that the capacity could not be presently increased. This problem was material and was not disclosed by the Sellers to Hudson.

46. The Sellers in the Agreement require the Defendant to repave the existing roads, but it would make no sense to pave such roads prior to the installation of underground utilities that would require the roads to be damaged or otherwise destroyed and requiring repair or re-pavement because of the anticipated installation of additional water and sewer lines. Further, Progress Energy has for many months, subsequent to entering into the Agreement by Hudson, driven large vehicles onto the property in order to work on transmission lines extending across Lake Marion. Such large vehicles would have caused damage to the roads. Hudson has been

asked by Progress Energy to delay resurfacing of the roads until it had finished its work. Hudson had provided this information to the Sellers.

47. The contract, prepared by the Sellers, provides in part that "the parties acknowledge that Purchaser plans to develop and construct condominiums or other residential dwelling structures on certain portions of the unimproved premises."

48. However, the Sellers did not make any disclosure to Purchaser that there was no sewer capacity at that time that the Agreement was being negotiated for any such further development on the property as then existed.

49. Pursuant to the contract, Hudson caused a title examination to be made of the premises and found that the Plaintiff was involved in litigation affecting the premises. The Sellers in the contract disclosed the existence of that litigation, but set forth a Covenant, Consent and Agreement that included language that said "Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before closing of the entire premises, so that said pending legal actions shall in no way encumber the property or hinder such closing." To date, those actions are still pending and Hudson has been unable to proceed to purchase the property.

50. The Agreement provides that Hudson could purchase the property on or before September 1, 2011 for the sum of Six Million and 00/100 ($6,000,000.00) Dollars, but that after that date the price would increase to Seven Million and 00/100 ($7,000,000.00) Dollars. Because Seller has not caused the two actions referred to in the Agreement to be dismissed or otherwise addressed, Purchaser is informed and believes that the deadline to purchase the property for Six Million and 00/100 ($6,000,000.00) Dollars should be extended until those actions are resolved. Pursuant to the provision regarding the extension of time to close beyond September 1, 2011, if that provision is not granted, Hudson will suffer damage in the amount of

One Million and 00/100 ($1,000,000.00) Dollars. Therefore the Complaint should be dismissed and the Agreement should be modified to extend the payment due date and the ultimate closing date.

FOR A SIXTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

51. Each matter set forth above is re-alleged as fully as if set forth herein.

52. The Lease Purchase Agreement was prepared by the Seller and was executed by the parties thereto. That Agreement anticipated the purchase of the property that is the subject of this action by Hudson. The sale of the property was for the benefit of both parties, and Purchaser is informed and believes that the Sellers consider this Agreement as imposing an obligation on the part of the Purchaser to complete the purchase of the property. Pursuant to and in reliance on that Agreement, Hudson has caused certain improvements to be made to the property and has incurred expense in making said improvements, including expense in hiring attorneys, architects, electricians and engineers in trying to develop and maintain the property pursuant to the Lease Purchase Agreement. Hudson has incurred expenses in excess of Thirty Eight Thousand and 00/100 ($38,000.00) Dollars in hiring and retaining these professionals.

53. If Hudson is ejected from the property, he will have lost those funds and have been damaged by that loss. Hudson should be entitled to be reimbursed by the Plaintiff and /or Third Party Defendants in the amount in excess of Thirty Eight Thousand and 00/100 ($38,000.00) Dollars.

FOR A SEVENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

54. Each matter set forth above is realleged as fully as if set forth herein.

55. The Lease Purchase Agreement provided terms and conditions for the purchase of the premises by Hudson as Purchaser from the Plaintiff and Third Party Defendants as Sellers. Pursuant to that Lease Purchase Agreement, Hudson has taken possession of the

property and taken steps to develop the property pursuant to the Agreement and prior to closing on that Purchase Agreement. Hudson therefore asserts an ownership interest in the property and thus the issue of title to the real property shall come into question.

56. Thus the parties have proceeded as though this Lease Purchase Agreement is a Purchase Contract, and Hudson is entitled to an equity of redemption, and cannot be subject to eviction as though the Agreement was merely a lease.

FOR AN EIGHTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

57. Each matter as set forth above is re-alleged as fully as if set forth herein.

58. The Seller and the Purchaser entered into a Lease Purchase Agreement and anticipated the development of the property by the Purchaser. However, because the sewer and water capacity had previously been reached for the project, and because a moratorium existed that did not allow the property to tie onto public water and sewer service, the Purchaser was unable to develop the property as anticipated in the contract. A condition for lifting the moratorium would be to construct a pump station at an estimated cost of about Two Hundred Eighty Thousand and 00/100 ($280,000.00) Dollars. Those matters were or should have been known to the Sellers at the time that the contract was negotiated, but not disclosed to the Purchaser. The value of the property to the Purchaser was based in a large part on the ability of the Purchaser to immediately begin development of the property.

59. Had the Seller disclosed these problems to the Purchaser, Purchaser would not have agreed to pay such large rent prices, nor would Purchaser have agreed to pay such a large sales price, nor would Purchaser have agreed to such early price increases and closing deadlines.

60. Purchaser has been damaged by the actions of the Seller in not disclosing these matters. As a result of the damage suffered by Purchaser, the amount of rental payment should

be adjusted downward, and the sales price should also be adjusted downward by amounts to be determined.

FOR A NINTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

61. Each matter set forth above is re-alleged as fully as if set forth herein.

62. In the negotiation of the Lease Purchase Agreement, the Sellers made certain representations to Hudson that improvements could be made to the property but failed to disclose either that the property was at maximum sewer capacity or that additional water and sewer from public utilities was presently unavailable. This made the representations by the Sellers regarding future development of the property false, and those representations were material. The Sellers knew of the false representations but intended that the Purchaser act upon the representations. Hudson had no knowledge of the falsity of the representations but relied on the truth of those representations and entered into the contract. Hudson had the right to rely on those representations and has suffered a consequent and proximate injury. As a result of the fraud and misrepresentations of the Sellers, the Defendant has suffered actual damages including but not limited to the following:

a. Rental payments paid to the Plaintiff by the Defendant in the amount of about Sixty Thousand and 00/100 ($60,000.00) Dollars,

b. Additional development costs incurred to date, including hiring attorneys, architects and engineers in the amount of about Thirty Eight Thousand and 00/100 ($38,000.00) Dollars, plus insurance premiums, employee salaries, and other payments.

c. Almost a year of Purchaser's own time spent on the project during which time Purchaser was unable to attempt to earn funds on any other project or from any other source.

d. In addition, Hudson should be entitled to recover punitive damages from the Sellers.

FOR A TENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

63. Each matter set forth above is re-alleged as fully as if set forth herein.

64. The property that is the subject of this action is commonly known as the Big Water Resort. It is a resort property with about six hundred (600) members who are members of the general public, and who bring guests to the property. The development and use of the property affects the public interest. Hudson has been damaged by the acts or practices of the Sellers, and those acts or practices have affected the public interest in that the conduct by the Sellers are capable of repetition.

65. Hudson and the Sellers entered into a Lease Purchase Agreement and Hudson relied on representations made by the Sellers regarding the condition of the property at the time the agreement was negotiated and prior to and subsequent to its execution. Sellers made misrepresentations to the Purchaser or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property. The concealment of those facts constitute unfair or deceptive acts or practices in the conduct of trade or commerce.

66. Hudson has suffered damages as set forth above, and is entitled to recover for those damages as well as recover treble damages and attorney's fees, and the case should be dismissed.

FOR AN ELEVENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

67. Each matter set forth above is re-alleged as fully as if set forth herein.

68. Hudson and Plaintiff and third party Defendants entered into a Lease Purchase Agreement on December15, 2010 as set forth above.

69. That Agreement required Hudson to pay utility bills on the property.

70. Prior to entering into the Agreement with Hudson, Sellers had undertaken the installation of underground electrical utilities with Black River Electric Cooperative. The Defendant is informed and believes that Black River had advised the Plaintiff and Third Party Defendants that there would be a substantial charge for installing underground utilities instead of above ground utilities, but the Defendant is informed that the Plaintiff and Third Party Defendants never paid for that installation.

71. Defendant is informed that the cost of that installation has been added to the monthly electric bill by Black River, and has resulted in the Defendant having to pay electrical utilities charges in excess of $110,000.00 in less than one year since signing the Lease Purchase Agreement.

72. The Defendant is informed and believes that at least $50,000.00 to $60,000.00 of those utility payments were to pay for the underground utility installation that was the responsibility of the Plaintiff and Third Party Defendants. The Plaintiff and Third Party Defendants knew or should have known of that charge, and failed to disclose said charges to the Defendant prior to or at any time subsequent to the entry into the Lease Purchase Agreement.

73. That failure to disclose the liability of Sellers and their assigns (the Defendant), and the resulting charges billed to and paid by the Defendant in keeping utility power on at the premises was material and the failure to disclose those underground utility charges constituted a false representation to the Defendant that the electrical utilities would be for ordinary electrical power usage. Sellers knew of the false representations of their nondisclosure but intended that the Purchaser act upon the representations. Hudson had no knowledge of the falsity of the representations but relied on the truth of those representations and entered into the

Lease Purchase Agreement. Hudson had the right to rely on those representations and has suffered a consequent and proximate injury.

74. Defendant is informed and believes that the Plaintiff and/or Third Party Defendants contacted Black River and cancelled use of its tax identification number, without notice to Defendant, resulting in termination of electric utility service in late November 2011.

75. The Defendant then had to refund deposits and rental fees for customers who had made reservations.

76. As a result of the fraud and misrepresentations of the Sellers, the Defendant has suffered actual damages including but not limited to:

a. Payment of excess utility bills in an amount estimated at this time at approximately $60,000.00,

b. Suffering from power outage at the property because of his inability to pay the excessive utility charges, which affected the membership of the resort and the general public,

c. Loss of profits suffered by Defendant due to not having electrical service on the property due to the excessive utility charges.

d. Loss of goodwill of customers as a result of the cancellation of utility services.

e. Financial losses incurred by the Defendant in trying to raise funds in order to pay the utility charges,

f. Attorney's fees and other expenses incurred in trying to ascertain the reason for the excess cost of the utility services and in trying to negotiate extensions to allow payment of the excess utility charges,

g. Diversion of funds to pay excessive utility bills, the excess portions of which could have been used to pay any the contractual obligations alleged to be due to the Sellers pursuant to the Lease Purchase Agreement.

FOR A TWELTH DEFENSE, COUNTERCLAIM, AFFIRMATIVE DEFENSE AND THIRD PARTY CLAIM

77. Each matter set forth above is re-alleged as fully as if set forth herein.

78. The Plaintiff has alleged that the Defendant is past due to the Plaintiff the sum of Seventy Eight Thousand One Hundred Eighty Six and 44/100 ($78,186.44) Dollars.

79. The Defendant has made payments in the form of excess utility payments, and development costs incurred due to the nondisclosure by Sellers of the matters set forth above.

80. Defendant is informed and believes that those payments constitute payment of any debt alleged by Plaintiff to be past due, and Defendant should be entitled to credit on his account with the Sellers.

FOR A THIRTEENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

81. Each matter set forth above is re-alleged as fully as if set forth herein.

82. Pursuant to the Lease Purchase Agreement, Hudson had incurred large sums of money and time in preparing an application to Clarendon County Council in order to try to further develop the property as anticipated in that Lease Purchase Agreement.

83. The County Council meeting was held December 20, 2011, at which time Defendant anticipated receiving conceptual approval which would allow him to commence construction.

84. However, after executive session, approval was denied based on pending litigation involving the property.

85. Defendant is informed and believes that such notification of pending litigation involving the property was made by the Plaintiff or Third Party Defendant and was designed to delay and hinder the Defendant from further performance pursuant to the Lease Purchase Agreement.

86. As a result, the Defendant has suffered damages, including but not limited to all of the costs and expenses incurred in his efforts to perform under the Agreement, and expenses arising from the delay of such development.

FOR A FOURTEENTH DEFENSE, COUNTERCLAIM AND THIRD PARTY CLAIM

87. Each matter set forth above is re-alleged as fully as if set forth herein.

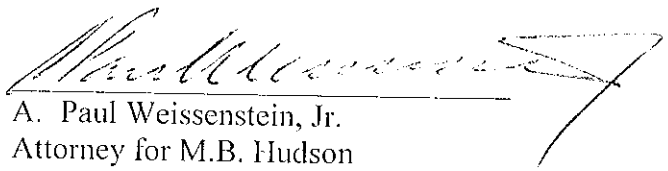
88. The Plaintiff, Defendant and Third Party Defendant entered into a Lease Purchase Agreement on about December 15, 2010, and pursuant to that Agreement, Defendant has performed by making payments and trying to proceed with the anticipated development of the property.

89. Defendant is informed and believes that the Plaintiff and Third Party Defendant have deliberately and maliciously taken steps to try to cause Defendant to fail at this project in order for them to try to recover same with the value of the project enhanced through Defendant's efforts.

90. These actions by the Plaintiff and Third Party Defendant show bad faith on their part.

91. Defendant has been damaged by the efforts of Plaintiff and Third Party Defendants and should be entitled to recover actual damages, punitive damages, and costs and expenses.

WHEREFORE having answered the Complaint in this matter, Hudson prays that the Court dismiss the Complaint and grant to the Defendant judgment against the Plaintiff and Third Party Defendants for actual damages for the amounts set forth herein, for treble damages, attorney's fees, and punitive damages, and grant to the Defendant such other and further relief as may be just and proper.



A. Paul Weissenstein, Jr.
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Sumter, SC
December 29, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	THIRD JUDICIAL CIRCUIT
	)	CASE NUMBER: 2011-CP-14-602
TLC Holdings, LLC,	)	
	)	
Plaintiff(s),	)	VERIFICATION
	)	
Vs.	)	
	)	
M. B. Hudson aka M. B. Hutson,	)	
	)	
Defendant and Third Party Plaintiff,	)	
	)	
Vs.	)	
	)	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,	)	
	)	
Third Party Defendants.	)	

Personally appeared before me, M. B. Hudson who being sworn, deposes and says as follows:

1) I am M.B. Hudson aka M.B. Hutson, the Defendant in this action.

2) I am personally familiar with the matters set forth in this Answer, Counterclaim, and Third Party Complaint, and know that the facts stated therein are true of my own knowledge except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

M.B. Hudson

SWORN to before me this 29 day of December, 2011.

(L.S.)

Notary Public for South Carolina
My Commission Expires: August 31, 2011

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 11 CP- 14 - 602

TLC Holdings, LLC

PLAINTIFF(S)

J.B. Hudson

DEFENDANT(S)

Submitted by: The Court	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ~~ends~~ ☐ does not end the case.
Additional information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

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.**

Circuit Court Judge

2143
Judge Code

3/20/14
Date

,r Clerk of Court Office Use Only

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

T. Mills, Esq.
J. Wayne Byrd, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

H. Everett Bolton, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
M.B. Hudson a/k/a M.B. Hutson,)	**ORDER**
)	
Defendant.)	
)	
M.B. Hudson a/k/a M.B. Hutson,)	
)	
Defendant and Third Party Plaintiff,)	
)	
v.)	
)	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,)	
)	
Third Party Defendants.)	
)	

Before the Court is the Motion to Set Aside Affidavit of Default (the "Affidavit of Default Motion") and Motion for Temporary Restraining Order ("TRO Motion" and, together with the Affidavit of Default Motion, the "Motions") filed in the above-captioned action on December 30, 2013 by Defendant and Third Party Plaintiff, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hutson" or the "Debtor"). On January 8, 2014 (the "Petition Date"), during this Court's previous hearing on the Motions, Defendant filed a bankruptcy petition under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* (the "Bankruptcy Code"), which is pending in the United States Bankruptcy Court for the District of South Carolina (the "Bankruptcy Court"), Case Number 14-00165-jw (the "Bankruptcy Case"). By Order Granting Limited Relief from the Automatic Stay filed on February 21, 2014 (the "Stay Relief Order"), the Bankruptcy Court granted relief from the automatic bankruptcy stay to Plaintiff, TLC Holdings, LLC ("Plaintiff" or "TLC"), for the limited purpose of allowing this Court to determine "whether the Debtor had any property interest in the Property[1] as of the bankruptcy

[1] The term "Property", as used in the Stay Relief Order, means the property located generally at 5277 Dingle Pond Road, Summerton, Clarendon County, South Carolina, along Lake Marion, upon which the Defendant has been operating a business known as the "Big Water Resort". The Consent Order and Settlement Agreement, as defined below, use a similar definition for the term "Property", and this Court will adopt the same definition of that term for purposes of this Order.

petition date, January 8, 2014, and, if so, whether the Debtor presently has any remaining property interest in the Property". Stay Relief Order at 4.

This Court conducted a hearing on March 6, 2014 (the "March Hearing"), attended by Plaintiff and its attorneys, R. Wayne Byrd and Thomas L. Harper, Jr., and by Defendant and his attorney, H. Freeman Belser, to consider the Motions and the issues presented to this Court through the Stay Relief Order.

This Court has given careful consideration to the Stay Relief Order, and to the scope of the issues properly before this Court for ruling in light of the procedural posture of this case as of the Petition Date. As set forth more fully below, this Court has concluded that, pursuant to the Stay Relief Order, this Court is authorized by the Bankruptcy Court to decide the Motions that were pending in this action on the Petition Date. To the extent that the Stay Relief Order could be interpreted as requesting or directing that this Court decide issues or matters beyond the scope of the Motions, this Court has concluded that such issues are beyond what has been presented to this Court, and declines to do so. As to the Motions before the Court, for the reasons set forth below, the Court concludes that the Motions should be denied.

The court notes that after advising counsel of the ruling set forth herein, the court, by email, inquired of the parties as to their positions on the issue of whether the court had the authority to rule on the issues set forth in this order. The potential predicament is that the Bankruptcy Court issued the fourteen day stay so this court could rule on the issue of whether the Defendant had any interest in the Property; however, the court is not addressing that specific question in this order. The Defendant maintains that the granting of the stay was to address only that narrow issue and that since this court is not addressing that narrow issue, this court is precluded from addressing any other issues. The Plaintiff maintains the court has the authority to address the issues set forth in this order. The court concludes the stay does not prohibit it from issuing the ruling set forth herein.

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On December 14, 2011, Plaintiff filed its Summons and Complaint in this action (the "Complaint"), seeking to eject Defendant from the Property and recover money damages from Defendant for Defendant's alleged breach of a Lease Purchase Agreement related to the Property, which was dated on or about December 15, 2010, and entered among Plaintiff, Defendant and the Third Party Defendants named above (the "Lease Purchase Agreement").

2. By Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action on January 3, 2012 (the "Answer and Counterclaims"), Defendant, through counsel, asserted various affirmative defenses, counterclaims and third party complaints against Plaintiff and the members of Plaintiff relating to the Lease Purchase Agreement and the circumstances surrounding the parties' execution of the same and the Defendant's prospective lease and purchase of the Property from Plaintiff. In the Answer and Counterclaims, Defendant asserted, *inter alia*, that he had obtained an equitable interest in the Property and was entitled to a right of redemption therefor, and that Plaintiff had made various misrepresentations or material omissions regarding facts related to the Property, and had interfered with Defendant's development and/or operation of the Property.

3. Plaintiff and Defendant settled all claims brought in Plaintiff's Complaint and in Defendant's Answer and Counterclaims by virtue of a Settlement Agreement dated as of March 30, 2012, among Plaintiff, Defendant, and the Third Party Defendants (the "Settlement Agreement"). The parties sought this Court's approval of the Settlement Agreement, and its adoption as the Order of this Court, which was effected by virtue of a Consent Order entered in this action on April 13, 2012 (the "Consent Order"). The Consent Order expressly incorporates the Settlement Agreement by reference, and approves the terms thereof.

4. The Settlement Agreement, as approved by the Consent Order, amended the Lease Purchase Agreement in several respects, including the following:

a. It extended the term of the lease contained in the Lease Purchase Agreement, whereby Hutson was obligated to pay base rent each month to TLC, as well as the property taxes owing on the Property and the rent owing to the South Carolina Public Service Authority (the "Santee Cooper Rent").

b. It imposed an "Approval Deadline" by which Hutson must obtain the "Approvals", which was defined as all necessary governmental approvals for the development and subdivision of the Property, so that Hutson's subdivision plat of the Property could be recorded. The Approval Deadline was July 31, 2012, with three thirty (30) day extension rights which, if exercised, could extend the Approval Deadline to approximately November 1, 2012.

c. It required Hutson to close on the purchase of a portion of the Property within 15 days after he received his Approvals, which thus would have to occur prior to the end of November, 2012.

d. It contained a provision whereby Hutson acknowledged that he owed an "Arrearage" under the Lease Purchase Agreement of $199,969.19 as of March 31, 2012, and it expressly obligated Hutson to repay the Arrearage not later than December 31, 2012. Settlement Agreement ¶ 4.

e. It obligated TLC to review any "Qualified Plat" provided to it by Hutson, and either approve or provide comments thereto. It defined a "Qualified Plat" as "a proposed subdivision plat of a portion of the [Property], which is prepared by a registered South Carolina land surveyor, and which meets the minimum standards for the practice of land surveying under South Carolina law". Settlement Agreement ¶ 5. If TLC approved a Qualified Plat presented to it, then it was obligated to write a letter to the Clarendon County Planning Commission (the "Planning Commission") requesting that the Planning Commission approve that Qualified Plat.

f. Except for a letter due from TLC to the Planning Commission by April 3, 2012, as to which there is no dispute that TLC delivered, TLC was not obligated to deliver other letters to the Planning Commission unless and until it was presented with a Qualified Plat.

g. It expressly and conspicuously provided, in all capital letters, that Hutson's obligations under the Settlement Agreement were not conditioned upon his receipt of the Approvals. Settlement Agreement ¶ 8.

5. In addition, Section 3 of the Settlement Agreement provides that in the event that Defendant fails to comply with the terms of the Settlement Agreement, "unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement", then the Plaintiff was entitled to "the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the [Lease Purchase] Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective".

6. Section 23 of the Settlement Agreement contains an automatic release by Defendant, as of the date of termination of the Lease Purchase Agreement, whereby Defendant is deemed to have released, forever discharged and promised never to sue TLC, the Third Party Defendants, and parties related thereto (defined more fully therein as the "TLC Parties") from all claims, known or unknown, and arising at law or in equity, relating to the Lease Purchase Agreement or the relationship between the parties (herein, the "TLC Release").

7. By December 31, 2012, Defendant had breached several provisions of the Settlement Agreement, including:

a. failing to obtain the Approvals by the Approval Deadline;

b. failing to close upon the purchase of at least eight acres of the Property by the closing deadline imposed therein (which was approximately November 15, 2012); and

c. failing to pay the Arrearage prior to December 31, 2012.

8. It is undisputed by the parties that each of the foregoing breaches remains uncured at present. Defendant acknowledges that he has not received his Approvals, nor purchased any portion of the Property, nor repaid the Arrearage.[2]

9. By letter from Plaintiff's counsel to Defendant dated February 7, 2013, Plaintiff notified Hutson that he was in default of the Settlement Agreement and Lease Purchase Agreement for, among other things, failing to pay the Arrearage, failing to pay rent owing thereunder, permitting a mechanics' lien to be filed against the Property by Blue Line Consulting, LLC, and failing to pay the 2012 property taxes for the Property prior to their delinquency on or before January 15, 2013.

[2] Plaintiff alleges that other defaults by Hutson exist under the Lease Purchase Agreement, including failing to pay the 2012 property taxes for the Property prior to their delinquency, failing to pay the Santee Cooper Rent arising after the date of the Settlement Agreement, permitting a mechanic's lien to be filed against the Property, failing to construct certain road improvements to the Property, and failing to comply with certain covenants governing insurance as required under the Settlement Agreement.

10. Defendant did not cure the defaults outlined in the February 7, 2013 letter.

11. By letter dated December 10, 2013, Hutson was advised by Plaintiff's counsel that Plaintiff had exercised its right under the Settlement Agreement to terminate the Lease Purchase Agreement (the "LPA Termination Letter").

12. On December 11, 2013, in accordance with the Consent Order, Plaintiff filed an Affidavit of Default in this action (the "Affidavit of Default"). Plaintiff enclosed a copy of the Affidavit of Default in the LPA Termination Letter.

13. On December 30, 2013, prior to being ejected from the Property, Hutson filed the Motions, along with a supporting affidavit by Hutson (the "Hutson Affidavit"). In the Motions, Hutson alleged that TLC failed to perform an action expressly required of it in the Settlement Agreement, and that it was that failure by TLC which caused Hutson to be unable to perform his obligations under the Settlement Agreement. Hutson Affidavit ¶ 4.a. Specifically, Hutson alleges the following:

a. that Plaintiff approved the proposed subdivision plat, but failed to provide a letter to the Planning Commission that requested that the Planning Commission approve the subdivision. See TRO Motion ¶ 7.a.

b. that Plaintiff made "verbal assurances" to Hutson that were incorrect, and/or that Plaintiff failed to make "important disclosures" to him regarding the Property. See TRO Motion ¶ 7.b.; Hutson Affidavit ¶ 4.b.

c. that Plaintiff failed to provide notice to Defendant regarding the filing of liens against the Property, or of Defendant's failure to pay property taxes with regard to the Property. TRO Motion ¶ 7.c.; Hutson Affidavit ¶ 4.c.

14. This Court issued a Temporary Restraining Order (the "TRO") on December 30, 2013, enjoining Plaintiff from pursuing further proceedings arising from its issuance of an Affidavit of Default. The TRO was to be in effect through January 9, 2014, pursuant to Rule 65, SCRCP.

15. The sole relief requested in the Motions was for this Court to set aside the Plaintiff's Affidavit of Default due to the alleged failure of the Plaintiff to perform actions required of it in the Settlement Agreement and Consent Order. The pertinent issues before this Court in the Motions were whether the Plaintiff had failed or refused to perform certain obligations owing by it under the Settlement Agreement and Consent Order, and whether any such failure had been the "direct and proximate" cause of the Defendant's failure to perform his obligations. The Motions and the Hutson Affidavit did not assert any claim by Defendant to a right of redemption or other equitable interest in the Property.

16. The Court scheduled a hearing on the Motions for January 8, 2014 (the "January Hearing"). The sole purpose of the January Hearing was for this Court to determine whether the TRO should be extended. At no time prior to March 6, 2014 was this Court presented with the issue of whether the Defendant had an equitable interest in the Property that

survived the entry of the Settlement Agreement and Consent Order, and the filing of the Affidavit of Default.

17. During the course of the January Hearing, the Court was advised by the Defendant's attorney that the Defendant had just filed a Chapter 11 petition in the Bankruptcy Court. Therefore, this Court adjourned the hearing, as the Chapter 11 filing automatically stayed further proceedings.

18. On January 24, 2014, Plaintiff filed a Motion for Relief from Automatic Stay or, in the Alternative, for an Order Determining that the Automatic Stay is Inapplicable (the "Stay Relief Motion") in the Bankruptcy Court. It appears that, in the Stay Relief Motion, Plaintiff argued, *inter alia*, that the Property should not be considered property of the Debtor's bankruptcy estate because the Lease Purchase Agreement had been terminated prior to the Petition Date, thereby extinguishing any property interest the Defendant had in the Property. It also appears that Defendant argued in defense of the Stay Relief Motion that he had an equitable interest in the Property, which Plaintiff claimed was asserted previously in Defendant's Answer and Counterclaims, and resolved with finality by the Consent Order and Settlement Agreement.

19. On February 21, 2014, the Bankruptcy Court entered the Stay Relief Order in which it determined that the issue of whether the Defendant has any interest in the Property is a matter of state law, and that considerations of judicial economy, and this Court's familiarity with the dispute, supported its conclusion that this Court is the more appropriate forum to consider the arguments of the parties and to determine what interest, if any, the Defendant has in the Property. The Stay Relief Order granted relief from the automatic bankruptcy stay to Plaintiff for the limited purpose of allowing either Plaintiff or Defendant to seek a determination by this Court of "whether the Debtor had any property interest in the Property as of the bankruptcy petition date, January 8, 2014, and, if so, whether the Debtor presently has any remaining property interest in the Property". Stay Relief Order at 4.

20. On or about February 28, 2014, counsel for the Plaintiff contacted this Court for the purpose of scheduling a hearing. The March Hearing was held in Florence County on March 6, 2014.[3] At the March Hearing, counsel for Defendant submitted a supporting memorandum of law in which Defendant argued that it was a "vendee in possession" of the Property as of the Petition Date, and that, accordingly, Defendant was entitled to claim an equitable interest, and right of redemption, in the Property.

CONCLUSIONS OF LAW

1. In the Stay Relief Order, the Bankruptcy Court determined that this Court was better situated to determine (a) whether the Debtor had any property interest in the Property as of the Petition Date, and (b) if so, whether he has any property interest in the Property at present. At the March Hearing, this Court repeatedly inquired of the parties whether they believed this Court had the authority, based on the matters pending before it, to issue a final decision on the

[3] This Court notes that, with the consent of the parties, the March Hearing was conducted within fourteen days of the entry of the Stay Relief Order, and that this Order is being entered more than fourteen days following the entry of the Stay Relief Order. This Court makes no determination of whether any stay under Fed. R. Bankr. P. 4001(a)(3) has now expired, nor any determination of the legal effect of the existence or expiration thereof.

merits on these two issues. The parties, through their counsel, insist that this Court does. This Court concludes it does not. All that was presented to this Court prior to the Petition Date was the issue raised in the two Motions. While the issue of whether the Lease Purchase Agreement was properly terminated was before the Court on the Petition Date, the question of whether that termination, if it stands, thereby extinguished any property interest the Defendant had in the Property was not. Again, the issue presented by the Motions is whether the Defendant's failure to perform under the Settlement Agreement and Consent Order was directly and proximately caused by the Plaintiff's failure to perform, not whether the Defendant has retained some sort of equitable or legal interest in the Property by virtue of improvements or other value he has added to the Property. Any notation in the Defendant's Motions, or in the Plaintiff's Stay Relief Motion, that the movant was also seeking "such other and further relief as may be just and proper", does not expand the matters presented to this Court, or this Court's jurisdiction, into the one now urged by the parties.

2. As to the TRO Motion, the Court will now address the issue of whether the TRO should be extended. In so doing, the Court will address the relevant issues raised at the March Hearing as if they had been raised at the January Hearing, when the TRO was still in effect.[4] The law is well-settled in South Carolina that an injunction is a drastic remedy and may only be granted when the party seeking the relief demonstrates (1) he will suffer irreparable harm if the injunction is not granted, (2) he will likely succeed on the merits of the litigation, and (3) there is an inadequate remedy at law. *See AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). The remedy of an injunction is drastic and should only be applied when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected. *LeFurgy v. Long Cove Club Owners Assoc., Inc.*, 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994). The party seeking an injunction is not required to prove an absolute legal right, but must present a reasonable question as to the existence of such a right. The court may consider the merits of a case to the extent necessary to determine whether a temporary injunction is warranted. "Once a *prima facie* showing has been made entitling the [moving party] to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *AJG Holdings, LLC*, 382 S.C. at 50-51.

3. Having considered the arguments of Defendant and the evidence presented by the parties, this Court concludes that the Defendant has not demonstrated that his failure to perform his obligations under the Settlement Agreement is a direct and proximate result of Plaintiff's failure to perform an action expressly required of it under the Settlement Agreement. The evidence presented at the March Hearing was convincing that the Defendant breached several provisions of the Settlement Agreement approved by the Court, and made part of the Order of this Court in the Consent Order filed on April 13, 2012. For example, Defendant admits that he has not repaid the Arrearage, nor did he obtain the Approvals by the Approval Deadline, nor has he purchased any portion of the Property. Evidence of other defaults by Defendant was presented at the March Hearing, including his failure to pay rent and property

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[4] Pursuant to S.C.R.Civ.P. 65, the TRO was scheduled to expire ten days after its issuance, on January 9, 2014. See TRO. This Court knows of no authority, and none was presented by the parties, addressing whether the Chapter 11 automatic stay also stayed the expiration of the TRO, and, if so, whether the expiration of the fourteen day 4001(a)(3) Stay has now caused the TRO to expire.

taxes required under the Lease Purchase Agreement as modified by the Settlement Agreement, and permitting a mechanic's lien to be filed against the Property.

4. Defendant contends in the Hutson Affidavit that TLC approved a subdivision plat of the Property but failed to submit a requisite letter to the Planning Commission. See TRO Motion ¶ 7.a. The Settlement Agreement does require TLC to consider a proposed Qualified Plat submitted by Hutson and, if approved, submit a letter in support thereof to the Planning Commission. But in his sworn examination taken in the Bankruptcy Case pursuant to F. R. Bankr. P. 2004 (the "2004 Examination"), Hutson admitted that he had not provided a "Qualified Plat" to TLC for consideration prior to January, 2014, well past the Approval Deadline in November, 2012. 2004 Examination p. 460 lns.16-18.

5. With respect to Defendant's allegations in Paragraph 7.b. of the TRO Motion that Plaintiff made "verbal assurances" to Hutson that were incorrect, or that Plaintiff failed to make "important disclosures" to him, Hutson made those same allegations in his Answer and Counterclaims filed in this action on January 3, 2012, and those allegations were included in the settlement of this action pursuant to the Settlement Agreement, which was approved by the Consent Order. Hutson admitted in his 2004 Examination that these all arose prior to the Settlement Agreement. 2004 Examination p. 515, ln.4 – p. 516, ln. 21. Thus, those alleged misstatements or omissions, even if true, were known to Defendant prior to the entry of the Consent Order, and were the basis of the settlement of this action pursuant to the Settlement Agreement which was approved by the Consent Order.

6. With respect to Defendant's allegations in Paragraph 7.c. of the TRO Motion that no notice was provided by Plaintiff to Defendant regarding liens placed on the Property, or any nonpayment of real property taxes, those allegations are likewise unfounded. In the letter from Plaintiff's counsel to Defendant dated February 7, 2013, Plaintiff expressly advised Hutson that he was in default for, among other things, "permitting a lien to be filed against the Property by Blue Line Consulting, LLC" and "failing to pay the 2012 property taxes for the Property prior to their delinquency on or before January 15, 2013". While the mechanic's lien may have subsequently lapsed by statute, the 2012 property taxes were never paid by Defendant.

7. Accordingly, there has been no *prima facie* showing by the Defendant that the injunction should be extended. The allegations contained in the Hutson Affidavit are refuted by his own testimony in the 2004 Examination, and by the documentary evidence presented by Plaintiff. Defendant has failed to establish that he would be likely to succeed on the merits of his claim that his breaches of the Settlement Agreement were caused by the Plaintiff. The assertions set forth in the Hutson Affidavit must have a reasonable factual basis, and this Court concludes that they do not.

8. Because the Defendant has not established that he is likely to prevail on the merits of his claim, there is no need for this Court to examine whether the Defendant will suffer irreparable harm if the relief is not granted, nor whether the Defendant has an adequate remedy at law. This Court declines to extend the TRO or otherwise to grant an injunction in Defendant's favor against the enforcement of the Consent Order and Settlement Agreement according to their terms.

9. As to the Affidavit of Default Motion, because this Court concludes that Defendant defaulted under the terms of the Consent Order and Settlement Agreement, and that those defaults were not the "direct and proximate result of TLC's failure to perform an action expressly required of it" under the Settlement Agreement, the Defendant's Motion to Set Aside Affidavit of Default is likewise denied.

10. Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the Lease Purchase Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective". Consent Order at ¶ 2.

11. Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the Property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

12. In the TRO Motion, Defendant acknowledges receiving a copy of the Affidavit of Default on December 18, 2013. TRO Motion ¶ 4. Even if this Court were inclined to commence the fifteen (15) day period for vacating his residence from the date Defendant says he received the Affidavit of Default on December 18, 2013, Defendant was still required to vacate that residence by January 2, 2014. Defendant's rights to possession of the remainder of the Property, other than his residence, expired no later than December 18, 2013, and his right to remain in his residence would have lapsed not later than January 2, 2014.

ORDER

NOW, THEREFORE, it is hereby:

ORDERED, that this Court declines to extend the TRO or otherwise grant an injunction against Plaintiff's enforcement of the Consent Order and Settlement Agreement.

FURTHER ORDERED, that the Motion to Set Aside Affidavit of Default is denied.

FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.

FURTHER ORDERED, that, in conjunction with enforcing the Consent Order according to its terms, pursuant to Paragraph 2 of the Consent Order, upon the filing of the Affidavit of Default on December 11, 2013, Plaintiff was and is entitled to, and is hereby awarded, the following immediate relief, without the need for further Order of this Court:

(a) The Lease Purchase Agreement was deemed automatically terminated and of no further force or effect;

(b) The lis pendens filed by Defendant against the Property was deemed automatically cancelled, terminated of record, and of no further force or effect; and

(c) Defendant was required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he was obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs.

FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC Parties, as set forth more fully in Section 23 of the Settlement Agreement.

IT IS SO ORDERED.

George C. James, Jr., Circuit Judge

March 20, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

WILLIAM REED, DONNA REED, BONNIE YOUMANS, JANE YATES, PHILLIP CAULDER, *all individually and for the benefit and on behalf of all others similarly situated*, Plaintiffs, vs. BIG WATER RESORT, LLC; TLC HOLDINGS, LLC; RICHARD CLARK; JAMES THIGPEN; JIMMY "STEVE" LOVELL; and OCOEE, LLC, Defendants.	No. 2:14-cv-01583-DCN **ORDER**
BIG WATER RESORT, LLC; TLC HOLDINGS, LLC; RICHARD CLARK; JAMES THIGPEN; JIMMY "STEVE" LOVELL; OCOEE, LLC, Third-Party Plaintiffs, vs. M.B. HUTSON, a/k/a M.B. HUDSON, Third-Party Defendant.	

This matter is before the court on the following three motions: (1) a motion for sanctions filed by third-party plaintiffs Big Water Resort LLC, Richard Clark, Jimmy Lovell, James Thigpen, Ocoee LLC, and TLC Holdings LLC ("third-party plaintiffs") (ECF No. 179); (2) a motion for summary judgment filed by third-party plaintiffs (ECF No. 183); and (3) a motion for summary judgment filed by third-party defendant M.B. Hutson a/k/a M.B. Hudson ("Hutson") (ECF No. 228). Pursuant to the provisions of

Title 28 U.S.C. § 636(b)(1) and Local Rule 73.02(B)(2)(e), the court referred all pretrial matters in this case, involving a pro se litigant, to United States Magistrate Judge Mary Gordon Baker. The magistrate judge conducted a hearing on the aforementioned motions on March 16, 2016 and submitted a report and recommendation ("R&R") to this court recommending that the court deny third-party plaintiffs' motion for sanctions, grant third-party plaintiffs' motion for summary judgment, and deny Hutson's motion for summary judgment. For the reasons set forth below, the court adopts the R&R, denies third-party plaintiffs' motion for sanctions, grants third-party plaintiffs' motion for summary judgment, and denies Hutson's motion for summary judgment.

I. BACKGROUND

The plaintiffs are members of a putative class of over 1,000 individuals who purchased memberships in defendant Big Water Resort, LLC. Am. Compl. ¶¶ 40, 41. The Big Water Resort, LLC membership agreements ("membership agreements") grant plaintiffs "a right to use all . . . campground facilities and services" at Big Water Resort ("BWR"), a recreational campground and an accommodation located in Clarendon County, South Carolina and owned by TLC Holdings LLC. Id. ¶¶ 14, 79. Third-party plaintiffs Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark ("Clark"), James Thigpen ("Thigpen"), and Jimmy "Steve" Lovell ("Lovell") allegedly had an interest in BWR in various capacities, fully set forth in the court's order on plaintiffs' motion to certify class. Id. ¶¶ 17, 19; see also ECF No. 193. Big Water Resort, LLC sold memberships from BWR's opening in 2003 until the it was transferred to third-party defendant Hutson in December 2010 through a lease-purchase agreement. Am. Compl. ¶¶ 70–72; Hutson Answer and Countercl. ¶ 5.

Plaintiffs make various allegations regarding this transfer. They allege that: (1) Big Water Resort, LLC was insolvent at the time of the transfer; (2) Hutson did not have the financial ability to continue its operations; and (3) there was no long term contract between defendant TLC Holdings, LLC—the owner of the property on which BWR is located—and Big Water Resort, LLC to ensure that members would have continued access to BWR. Am. Compl. ¶¶ 36, 38, 82. Following this transaction, the BWR became a public facility and Big Water Resort, LLC ceased operations. Id. ¶¶ 28, 82.

Plaintiffs, taking issue with this conversion, filed suit in this court on April 22, 2014. The disputes between plaintiffs and third-party defendants have been settled. The court entered an order granting preliminary approval of the class settlement. ECF No. 248. The final fairness hearing, during which the court considered whether to finally approve the class action settlement, was held on May 16, 2016. The issues now before the court involve ancillary disputes between third-party plaintiffs and Hutson.

In December 2011, TLC Holdings, LLC instituted an action against Hutson in the Court of Common Pleas for Clarendon County for "breach of the lease-purchase agreement, seeking damages and ejectment." Third-Party Pls.' Mot. Ex. 4. Hutson filed a third-party complaint against Clark, Lovell, and Thigpen. Id. at Ex. 5. The parties entered into a settlement agreement resolving the dispute on March 30, 2012. In this action, third-party plaintiffs allege that:

> In March 2012, the parties to the lease-purchase agreement entered into a Settlement Agreement. The terms of the Settlement Agreement imposed many duties on [Hutson], including the duty to make certain improvements to the campground property and the duty to make certain payments to [TLC Holdings, LLC]. The Settlement Agreement was approved by consent order in April 2012.

Third-Party Defs.' Answer ¶ 138; see also Ex. 6. Judge James approved the Settlement Agreement and incorporated it into a Consent Order in April 2012. Third-Party Pls.' Mot. Ex. 7. Hutson defaulted on the March 2012 Settlement Agreement, and despite third-party plaintiffs notifying him of such default on numerous occasions, he did not cure the default. Third-Party Defs.' Answer ¶¶ 139–40; see also Ex. 9. Third-party plaintiffs filed an affidavit of default in December 2013, and Hutson filed a "motion to set aside the affidavit of default and a motion for a temporary restraining order" in response. Id. ¶ 141; see also Third-Party Pls.' Mot. Exs. 11–13. On March 23, 2013, Judge James declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. Id. ¶ 144; see also Ex. 8. Judge James deemed the lease-purchase agreement terminated and ordered Hutson to vacate the property pursuant to the terms of the settlement agreement. Id. In April 2014, Hutson vacated the property, at which time Clark, Lovell, and Thigpen resumed operation of BWR. Id. ¶ 145.

After plaintiffs filed suit in this court, third-party plaintiffs filed a third-party complaint against Hutson alleging that Hutson failed to operate BWR in a manner beneficial to the members. Defs.' Answer, ECF No. 72, ¶ 133. Third-party plaintiffs allege that in December 2010, they sold their membership interests in Big Water Resort, LLC to Hutson pursuant to a lease-purchase agreement, making Hutson the sole member of the LLC. Id. ¶ 134. According to third-party plaintiffs' complaint, the sale price was $500,000.00, $499,990.00 of which was payable under a promissory note executed by Hutson in favor of Clark, Lovell, and Thigpen. Id.; see also Defs.' Mot. Summ. J., Ex. 2. They further allege that they "entered into a lease-purchase agreement with . . . Hutson,"

under which third-party plaintiffs agreed to sell certain property to Hutson, including the land on which BWR was located. Id. ¶ 135; see also Ex. 3. Third-party plaintiffs contend that Hutson defaulted on both the promissory note and the lease-purchase agreement. Id. ¶ 136. Third-party plaintiffs bring a cause of action for equitable indemnity, alleging that Hutson's actions during his control of the BWR exposed them to potential liability. Id. ¶¶ 146–50. Third-party plaintiffs further allege that they "have incurred, and may continue to incur, expenses necessary to protect their interest in defending the claims brought by the members of the [BWR] campground." Id. ¶¶ 147, 150. According to the allegations in the complaint, "an obligation in equity exists on . . . Hutson to indemnify [third-party plaintiffs]." Id. ¶ 148.

Hutson answered the third-party complaint and filed counterclaims against third-party plaintiffs. ECF No. 75. In his pleadings, Hutson explains how BWR came to be open to the public. He alleges that in early 2011, he contacted Clark "asking permission to convert the beautiful recreational building, known as the Clubhouse, into a public restaurant." Hutson Answer ¶ 8. As a result of this conversion, members "would no longer have open, free access to that former recreational building as presented in their membership agreement. The restaurant was to be open to the public and all incoming business was required to pay for their meals." Id.

Hutson alleges that after learning about the property from a real estate agent, he met with Clark and Lovell, who told Hutson that if he purchased three tracts of land, he "would also be required to purchase the rights to approximately 700 existing club memberships." Id. ¶¶ 51–54. Hutson alleges that when he asked Clark and Lovell how much the campground lost and profited, "[t]heir response was that it was not making a

profit yet but had much potential." Id. ¶ 55. Hutson further alleges that prior to purchasing the rights to club memberships and the option to purchase the real property, he told third-party plaintiffs that he intended to develop the property for sale to the public. Id. ¶ 56. Hutson alleges that third-party plaintiffs understood his desire to develop the property and never indicated that he would be prohibited from doing so by the terms of the membership agreements or otherwise. Id. Hutson alleges that after he moved onto the property, he discovered that there was only approximately $5,000.00 in the club's existing checking account. Id. ¶ 57. According to Hutson, he soon realized that there was not enough income to properly operate and maintain the campground. Id. Hutson alleges that he had no choice but to let go approximately 90% of the employees, cut back on the telephone lines, change insurance companies, and use part-time employees. Id. ¶ 58. Clark suggested that Hutson raise the membership fees drastically, which would encourage members to drop their memberships and allow Hutson to seek business from the general public. Id. ¶¶ 60–65. Thereafter, Hutson raised member fees, and members began to drop their memberships and threatened to file a class-action lawsuit. Id. ¶ 66.

Hutson alleges that prior to his involvement with BWR, third-party plaintiffs allowed the public to access the campground. Id. ¶ 70. Hutson alleges that he eventually realized that third-party plaintiffs intended to use him as a scapegoat after collecting millions of dollars from lifetime club members. Id. ¶ 71. Hutson claims that third-party plaintiffs intentionally misled him and failed to disclose pertinent information, putting him in an impossible situation that prevented him from developing the property. Id. ¶ 72. Hutson alleges that third-party plaintiffs failed to disclose the exclusive nature of the

memberships, BWR's yearly losses of $250,000.00, the lack of sufficient reserves or income for proper maintenance of the resort club, the fact that local authorities imposed a sewer moratorium on the property, and the fact that BWR was subject to large charges by the utility company. Id. ¶ 73. Hutson claims that third-party plaintiffs' actions caused him to become financially destitute and forced him to file for bankruptcy. Id. ¶ 76. Hutson also alleges that third-party plaintiffs defamed him and caused him duress and mental anguish. Id. ¶ 76–77. Hutson brings the following counterclaims: (1) breach of contract; (2) breach of contract accompanied by fraud; (3) fraud and fraud in the inducement; (4) negligent misrepresentation; (5) constructive fraud; (6) breach of the covenant of good faith and fair dealing; (7) negligence, recklessness, willfulness, and wantonness; and (8) defamation.

On September 3, 2015, third-party plaintiffs filed a motion for sanctions against Hutson. On September 9, 2015, third-party plaintiffs filed a motion for summary judgment. Hutson filed a response in opposition to the motion for sanctions on September 11, 2015, and an amended response that same day. On September 14, 2015, Hutson filed another response in opposition to the motion for sanctions and a response in opposition to the motion for summary judgment. Hutson filed an additional response to both motions on September 29, 2015. Third-party plaintiffs replied on October 8, 2015, and Hutson filed a sur-reply on October 13, 2015. Hutson filed a motion for summary judgment on third-party plaintiffs' equitable indemnity claim on January 6, 2016. Third-party plaintiffs filed a response in opposition on January 25, 2016, and Hutson replied on February 5, 2016. Hutson filed a second reply on February 10, 2016. The magistrate judge held a hearing on all pending motions on March 16, 2015. On April 5, 2016, the

magistrate judge issued an R&R, recommending that the court deny third-party plaintiffs' motion for sanctions, grant third-party plaintiffs' motion for summary judgment, and deny Hutson's motion for summary judgment. Hutson and his counsel—representing him on the equitable indemnity claim only—filed objections to the R&R. Third-party plaintiffs did not file objections to the R&R, but they filed a reply to Hutson's objections on May 9, 2016. The motions have been fully briefed and are ripe for the court's review.[1]

II. STANDARD

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which specific, written objections are made, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). The magistrate judge's recommendation does not carry presumptive weight, and it is the responsibility of this court to make a final determination. Mathews v. Weber, 423 U.S. 261, 270–71 (1976). A party's failure to object may be treated as agreement with the conclusions of the magistrate judge. See Thomas v. Arn, 474 U.S. 140, 150 (1985).

Summary judgment shall be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "By its very terms, this standard provides that the mere existence of some

[1] Hutson did not object to the magistrate judge's recommendation that the court grant third-party plaintiffs' motion as it pertains to the defamation claim. Further, third-party plaintiffs did not file objections. After reviewing the record de novo, the court adopts the R&R as it pertains to third-party plaintiffs' motion for sanctions and motion for summary judgment as to Hutson's defamation claim. Accordingly, the court denies the motion for sanctions and dismisses Hutson's defamation claim.

alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id. at 248. "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 249. When the party moving for summary judgment does not bear the ultimate burden of persuasion at trial, it may discharge its burden by demonstrating to the court that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The non-movant must then "make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322. The court should view the evidence in the light most favorable to the non-moving party and draw all inferences in its favor. Anderson, 477 U.S. at 255.

III. DISCUSSION

A. Third-Party Plaintiffs' Motion for Summary Judgment

Third-party plaintiffs argue that the court should grant their motion for summary judgment because Hutson's counterclaims are barred by the doctrine of res judicata in light of the Settlement Agreement incorporated into Judge James's 2012 Consent Order

in the state court action. Third-Party Pls.' Mot. 7. The R&R recommends that the court grant third-party plaintiffs' motion and hold that Hutson's claims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness are barred by the release Hutson executed in settling the state court action. R&R 14–15. Hutson objects to the magistrate judge's recommendation, arguing that an exception to the doctrine of res judicata applies because the release was procured by fraud. Third-Party Def.'s Obj. 17–20.

"'The doctrine of res adjudicata (or res judicata) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action.'" S.C. Dep't of Soc. Servs. v. Basnight, 551 S.E.2d 274, 278 (S.C. Ct. App. 2001) (quoting First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co., 35 S.E.2d 47, 56 (S.C. 1945)). Res judicata, or claim preclusion, bars litigation of claims that were litigated or could have been litigated in an earlier suit. Nevada v. United States, 463 U.S. 110, 130 (1983); Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C., 362 S.E.2d 176, 177 (S.C. 1987). To determine the preclusive effect of a state court judgment, federal courts look to state law. Allen v. McCurry, 449 U.S. 90, 95–96 (1980); Laurel Sand & Gravel, Inc. v. Wilson, 519 F.3d 156, 161–62 (4th Cir. 2008). In South Carolina, res judicata requires proof of three elements: (1) "a final, valid judgment was entered on the merits of the first suit"; (2) "the parties to both suits are the same"; and (3) "the

subsequent action involves matters properly included in the first action." Judy v. Judy, 677 S.E.2d 213, 217 (S.C. Ct. App. 2009).

As stated above, in December 2011, third-party plaintiffs instituted an action against Hutson in the Court of Common Pleas for Clarendon County for "breach of the lease-purchase agreement, seeking damages and ejectment." Third-Party Pls.' Mot. Ex. 4; TLC Holdings, LLC v. M.B. Hudson, a/k/a M.B. Hutson, Civ. A. 2011-co-14-602 (hereafter "state court case"). Hutson filed counterclaims against TLC Holdings, LLC and a third-party complaint against Clark, Lovell, and Thigpen. Third-Party Pls.' Mot. Ex. 5, Hutson Answer. Hutson alleged that third-party plaintiffs "knew that defects existed in regard to the premises," including that a moratorium was imposed on the property for sewer installation and of the large utility bills. Id. Ex. 5 at 7, 14. Hutson further alleged that third-party plaintiffs "made misrepresentations to [Hutson] or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property." Id. at 12. According to Hutson's third-party complaint, third-party plaintiffs interfered with his development of the property by notifying Clarendon County of the pending litigation in an attempt to hinder and delay Hutson's performance under the lease-purchase agreement. Id. ¶ 85. Hutson further alleged that he should be given an equitable interest in the property because of the improvements made thereon. Id.

On March 30, 2012, Hutson and TLC Holdings, LLC signed a settlement agreement ("Settlement Agreement") resolving the dispute. Third-Party Pls.' Mot. Ex. 6. Although the other third-party plaintiffs did not sign the Settlement Agreement, its provisions provide:

> This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with the pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

Id. The Settlement Agreement further provides:

> Pursuant to the Consent Order, in the event that Mr. Hudson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further notice of the court or notice to Defendant or his attorney: (a) termination of the [Lease Purchase] Agreement, (b) cancelation [sic] of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County Sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hutson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

Id. at 2 (emphasis added).

> Section 23 of the Settlement Agreement, titled "Release," provides as follows:
>
> As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease Purchase] Agreement pursuant to Section 4 above as a result of Hudson['s] breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from

> any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

Id. at 6–7 (emphasis added).

Judge James entered a Consent Order on April 12, 2012 approving the Settlement Agreement and incorporating it into the Consent Order by reference. Third-Party Pls.' Mot. Ex. 7. By December 31, 2012, Hutson was in default of the provisions of the Settlement Agreement. Id. at Ex. 8, 4. After sending numerous default letters to Hutson, TLC Holdings, LLC filed an affidavit of default, signed by Clark. Id. at Ex. 11. In response, Hutson filed a motion to set aside the affidavit of default and a motion for a restraining order against TLC Holdings, LLC. Id. at Exs. 12, 13. Judge James held a hearing on these motions on January 8, 2014.

On March 20, 2014, Judge James entered an order in which he found that Hutson had breached several provisions of the Settlement Agreement. Id. at Ex. 8, at 6. Judge James's order further stated that pursuant to the express terms of the Consent Order, Hutson defaulted as of the filing date of the affidavit of default on December 11, 2013, resulting in a termination of the lease-purchase agreement and his immediate vacation of the property, except his personal residence thereon, which he was required to vacate within fifteen days. Id. at 9. In light of Hutson's default and the terms of the Settlement Agreement, Judge James's order deemed Hutson to have granted "the TLC Release to the

TLC Parties, as set forth more fully in Section 23 of the Settlement Agreement." Id. at 11–12.

Judge James's order is plainly a final judgment on the merits of the state court case. Further, it is clear that Hutson's counterclaims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness fall within the broad, express language of the Settlement Agreement and its Release provision. The state court action involved the same parties currently before the court, although not named in the caption, and the Settlement Agreement was binding on all of the parties. Lastly, the state court action involves matters that are now before the court that were, or could have been, brought by Hutson.

Hutson's objections, construed broadly, do not appear to object to the magistrate judge's finding that the Settlement Agreement and the Release, incorporated into the state court order, encompass his present counterclaims against third-party plaintiffs. Nor does Hutson object to the magistrate judge's finding that the principles of res judicata apply. Rather, Hutson argues that the Release is unenforceable. Specifically, Hutson argues that he could not have pursued a claim for fraud in the state court action because he did not have knowledge upon which to raise the claim until after he signed the Settlement Agreement. Third-Party Def.'s Obj. 20–21. Hutson specifically points to Lovell's deposition and meeting minutes from a January 2009 meeting to support his claims that he did not have knowledge of the alleged fraudulent conduct. Id. Hutson additionally

argues that the Release and Settlement Agreement should be set aside for public policy reasons. Id. at 21–30.

Although Hutson contends that the alleged fraud was ongoing, he does not point to any alleged fraudulent conduct that took place after December 11, 2013.[2] There is no dispute that Hutson knew about the "life time" membership agreements when he purchased BWR. See Third-Party Def.'s Obj. 20; see also Third-Party Pls.' Reply, Ex. 3 (email from Hutson's real estate agent expressing his concerns about the effect of the life time membership agreements).[3] The Release clearly releases all claims against third-party plaintiffs that arose on or prior to December 11, 2013, the date on which third-party plaintiffs filed the Affidavit of Default.

Further, all of Hutson's claims of fraud relate to the original transaction and not the procurement of the Release. Hutson was represented by an attorney in the underlying state court action and was therefore presumably advised of the application and effect of

[2] Section 23 of the Settlement Agreement provides that in the event of Hutson's default, as of the date of the termination of the lease-purchase agreement, "Hutson shall be deemed to have released, forever discharged, and promised never to sue" third-party plaintiffs. Third-Party Pls.' Mot. Ex. 6, at 7. Judge James's order provided that, effective upon the filing of the Affidavit of Default on December 11, 2013, third-party plaintiffs remained entitled to the relief set forth in the Settlement Agreement. See Judge James's Order, Third-Party Pls.' Mot. Ex. 8, at 9; see also Consent Order, Ex. 7, at 2–3. The order also states that Hutson is deemed to have granted the Release as set forth in the Settlement Agreement. Id. at 10. Therefore, the court uses the date of the filing of the Affidavit of Default as the date of termination to trigger the Release provision.

[3] The R&R extensively outlines Hutson's allegations as set forth in his many filings with this court. See R&R 22–25. The R&R also provides the lengthy basis of Hutson's knowledge of the underlying allegations of fraud prior to signing the Release, as set forth in his own filings and representations made to the court during various hearings. Id. The court has reviewed the magistrate judge's representations of the allegations and Hutson's respective knowledge thereof and finds no error. Because the R&R provides a comprehensive outline of Hutson's allegations and his knowledge of the alleged fraud, the court does not find it necessary to regurgitate that information in this order and will refer the parties to the R&R for further discussion thereof.

the Release. See House v. Aiken Cty. Nat. Bank, 956 F. Supp. 1284, 1291 (D.S.C.) ("[T]hey have failed to produce an affidavit or statement from the attorney who represented them in the former litigation, any documents to show they were not fully informed or advised as to the content of the settlement of that previous litigation, or any other evidence sufficient to raise a genuine factual dispute as to this issue. Plaintiff's conclusory allegations, without more, are insufficient to provide evidence of fraud or to defeat a properly supported motion for summary judgment."). Hutson has failed to provide any evidence whatsoever of fraud in the procurement of the Release. Therefore, there is no basis to set aside the Release. See House, 956 F. Supp. at 1292 ("Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation.").

Hutson also makes various public policy arguments for his assertion that the Release should be set aside, including that public policy disfavors releases procured by fraudulent conduct, there was a disparity in bargaining power, and there was no meeting of the minds between the parties. Third-Party Def.'s Obj. 21–28. Again, all of Hutson's allegations of fraud relate to the original transaction and not the procurement of the Release. Further, as stated above, Hutson was represented by counsel in the state court action. The Settlement Agreement and Release were reviewed by an impartial judge and incorporated into his order. There is absolutely no indication that Hutson held an unfair bargaining position. Further, although Hutson continues to argue that he did not have sufficient knowledge to form a binding contract, all of the evidence on the record points to the contrary. Hutson made the same allegations of third-party plaintiffs' fraudulent misrepresentations in the state court action that were thereafter released by the Settlement

Agreement. See Third-Party Pls.' Mot. Ex. 8 at 2. Therefore, Hutson's public policy arguments also fail.

Thus, the court grants third-party plaintiffs' motion for summary judgment as to Hutson's claims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness.[4]

B. Third-Party Defendant's Motion for Summary Judgment

Hutson seeks summary judgment as to third-party plaintiffs' equitable indemnity claim. ECF No. 228. The magistrate judge recommends that the court deny Hutson's motion for summary judgment because the third-party plaintiffs' alleged failure to record the membership agreements did not cause the damage of which plaintiffs complain. R&R 30–35. Hutson objects to the magistrate judge's recommendation, arguing that the magistrate judge defines plaintiffs' damages too narrowly.[5] Third-Party Def.'s Obj. 7.

[4] The magistrate judge did not find that the Settlement Agreement and Release applied to Hutson's defamation claim because his allegations of defamation occurred after December 11, 2013. R&R 27. However, the R&R recommends that the court grant third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim because "the undisputed evidence reveals that the statements of which Hutson complains were, in fact, true . . . ." R&R 30. In his objections, Hutson states that he "would not object to a dismissal without prejudice on the defamation claim as he will pursue it in state court." Third-Party Def.'s Obj. 30. After reviewing the R&R de novo, the court agrees with the magistrate judge that third-party plaintiffs are entitled to summary judgment as to Hutson's defamation claim because the alleged defamatory statements are true. Therefore, the court also grants third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim.

[5] Hutson has an attorney who represents him only on the equitable indemnification claim. His attorney submitted objections on his behalf that relate only to the magistrate judge's recommendation as to the equitable indemnity claim. However, Hutson's objections to the magistrate judge's other recommendations were filed pro se.

"The law of equitable indemnification allows recovery of expenses when the act of the wrongdoer involves the innocent defendant in litigation or places him in such relation with others as makes it necessary to incur expenses to protect his interest." Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 518 S.E.2d 301, 305 (S.C. Ct. App. 1999). Third-party plaintiffs must prove the following three things to recover against Hutson for equitable indemnification: (1) Hutson was liable for causing plaintiffs' damages; (2) third-party plaintiffs were exonerated from any liability for those damages; and (3) third-party plaintiffs suffered damages as a result of the plaintiffs' claims against it which were eventually proven to be Hutson's fault. Id. at 307.

Hutson argues that third-party plaintiffs' "failure to record the membership agreements and the alleged lease between TLC and BWR is negligence per se which is fault and, as a matter of law, TLC cannot prevail on its claim for equitable indemnity." Third-Party Def.'s Obj. 6. Hutson argues that the plaintiffs' damages all arise out of third-party plaintiffs' failure to record the membership agreements. However, not all of plaintiffs' alleged damages relate to third-party plaintiffs' failure to record the membership agreements. Most notably, plaintiffs allege that the public was allowed to access BWR in violation of the membership agreements. There is evidence on the record the BWR was opened to the public prior to Hutson's involvement. See Youmans Dep. 14:11–15:11, ECF No. 91, Ex. 9. On the other hand, there is also evidence that Hutson opened the resort to the public. See Mot. to Certify Class, Ex. 23 Hutson letter to members; see also Hutson Dep. 320:18–32:25, ECF No. 126 ("QUESTION: And about six months later, sometime in 2012, because of the financial condition that – that you inherited this – this club in, you opened it up to the general public as an at-large; isn't that

right? ANSWER: We always took the members. But we would take every person that we could coming in from the public. We didn't have no [sic] choice.").

Third-party plaintiffs cannot recover for equitable indemnity if they had any fault in causing plaintiffs' damages. See Walterboro Cmty. Hosp. v. Meacher, 709 S.E.2d 71, 74 (S.C. Ct. App. 2011) ("The most important requirement for . . . equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." (citation omitted)); Vermeer, 518 S.E.2d at 307 ("[T]here can be no [equitable] indemnity among mere joint tortfeasors."). The court cannot say as a matter of law who is at fault, and there is evidence in the record—when viewed in the light most favorable to the third-party plaintiffs as the nonmoving parties—from which a jury could determine that Hutson caused the plaintiffs' damages. There is a genuine issue of material fact as to who opened BWR to the public, thereby causing plaintiffs' alleged damages. The court agrees with the magistrate judge that this dispute cannot be resolved at the summary judgment stage. Because there is conflicting evidence of who is at fault in causing plaintiffs' damage, Hutson's motion for summary judgment is denied. See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 776 S.E.2d 426, 432 (S.C. Ct. App. 2015) ("[W]e find the evidence is conflicting, and viewing the evidence in the light most favorable to [the nonmoving party], the record contains evidence a factfinder could reasonably find supports the conclusion [the nonmoving party] was not at fault. Because of this conflicting evidence, the equitable indemnity cause of action must be remanded for a trial.").

IV. CONCLUSION

For the foregoing reasons, the court **ADOPTS** the R&R, **DENIES** third-party plaintiffs' motion for sanctions, **GRANTS** third-party plaintiffs' motion for summary judgment, and **DENIES** third-party defendant's motion for summary judgment.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

May 20, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	Civil Action No. 2015-CP-14-0615

TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell,

Plaintiffs,

vs.

M. B. Hutson a/k/a M. B. Hudson,

Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS

This matter is before the Court upon the motion of Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell for summary judgment as to Defendant M. B. Hutson a/k/a M. B. Hudson's counterclaims. For the reasons set forth below, the Court grants Plaintiffs' motion.

BACKGROUND

This case arises from events related to the Big Water Resort campground ("Big Water"), which is located on the shores of Lake Marion in Clarendon County, South Carolina. Big Water provides campsites, cabins, pools, clubhouse, beach access, boat launch/storage, etc. Big Water began operation in 2003 and memberships were sold from 2003 until sales activities ended in 2010.

Prior to December 31, 2010, the three members of Big Water Resort, LLC,[1] were Richard Clark, Steve Lovell, and James Thigpen. Thigpen served as managing member until June 2008, at which time Steve Lovell became the managing member. In December 2010, Plaintiffs Clark and Lovell, along with Thigpen, sold their membership interests in Big Water Resort, LLC to

[1] Big Water Resort, LLC was the entity that operated the campground.

Defendant M. B. Hutson a/k/a M. B. Hudson, making Hutson the sole member of that LLC. The sales price was $500,000, of which $499,990 was payable under a promissory note ("Note") executed by Hutson in favor of Clark, Lovell, and Thigpen. (Ex. A to Plaintiffs' Memorandum in Support of their Motion for Summary Judgment.) At the same time, TLC Holdings, LLC, Clark, Lovell, and Thigpen entered into a lease–purchase agreement ("Lease–Purchase Agreement") with Hutson, under which TLC Holdings, Clark, Lovell, and Thigpen agreed to sell certain property to Hutson. (Ex. B to Plaintiffs' Memorandum.) This property included the land on which the Big Water Resort campground was located. Hutson also executed a pledge agreement in favor of Clark, Lovell, and Thigpen as security for the transaction. (Ex. C to Plaintiffs' Memorandum, Pledge Agreement.) Hutson ultimately defaulted on both the Note and the Lease–Purchase Agreement.

In December 2011, TLC Holdings, LLC instituted an action in Clarendon County Court of Common Pleas against Hutson for breach of contract, seeking damages and ejectment. (Ex. D to Plaintiffs' Memorandum, State Court Summons and Complaint.) Hutson answered and asserted several counterclaims against TLC Holdings and also filed a third-party complaint against Clark, Lovell, and Thigpen. (Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint.) On March 30, 2012, the parties to the Lease–Purchase Agreement (TLC Holdings, LLC, Clark, Lovell, Thigpen, and Hutson) entered into a Settlement Agreement. (Ex. F to Plaintiffs' Memorandum, Settlement Agreement.) The terms of the Settlement Agreement imposed many duties on Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Plaintiff TLC Holdings, LLC. The Settlement Agreement provided, in part, that a breach by Hutson would terminate the Lease–Purchase Agreement, would require Hutson to vacate the property, and would operate as a

release by Hutson of any and all claims he had against Plaintiffs, whether or not alleged in that lawsuit. *Id.* Hutson was represented by counsel in connection with the negotiation of the settlement agreement. The Settlement Agreement was approved by, and incorporated into, a consent order signed by the Honorable George C. James, Jr. in April 2012 (Ex. G to Plaintiffs' Memorandum, Consent Order).[2]

By December 31, 2012, Hutson had breached the Settlement Agreement in numerous respects. (Ex. H to Plaintiffs' Memorandum, Judge James' Order, p. 4.) Counsel for Clark, Lovell, and TLC Holdings notified Hutson in February 2013 that he was in default of the Lease–Purchase Agreement and Settlement Agreement. (Ex. I to Plaintiffs' Memorandum, Feb. 2013 Default Letter.) Hutson did not cure the defaults. (Ex. H to Plaintiffs' Memorandum, p. 5.)

TLC Holdings, LLC sent Hutson another default letter in December 2013, notifying him that he had failed to cure the defaults outlined in the February 2013 default letter and that they would proceed with filing an affidavit of default. (Ex. J to Plaintiffs' Memorandum, Dec. 2013 Default Letter.) TLC Holdings subsequently filed the affidavit of default, which was signed by Clark. (Ex. K to Plaintiffs' Memorandum, Affidavit of Default.) In response, Hutson filed a motion in Clarendon County Court of Common Pleas to set aside the affidavit of default and a motion for a temporary restraining order against TLC Holdings, LLC. (Ex. L to Plaintiffs' Memorandum, Motion to Set Aside Affidavit; Ex. M to Plaintiffs' Memorandum, Motion for TRO.) The court granted the temporary restraining order, which prevented TLC Holdings from pursuing further proceedings arising from its issuance of an affidavit of default.

[2] Because Clark, Lovell, and Thigpen were not made parties to that action due to Hutson's failure to serve them in that action, the Consent Order was between only TLC Holdings, LLC and Hutson. (Ex. G to Plaintiffs' Memorandum, p. 2.) Clark, Lovell, and Thigpen were parties to the Settlement Agreement, however.

A hearing on these motions was held on January 8, 2014 before Judge James. During or immediately prior to this hearing, which Hutson did not attend, Hutson filed a Chapter 11 bankruptcy petition, which automatically stayed the state court proceedings. (Ex. H to Plaintiffs' Memorandum, p. 6.) In February 2014, the Bankruptcy Court granted relief to TLC Holdings, LLC from the automatic stay so that Judge James could determine whether Hutson had any interest in the property that is the subject of the Lease–Purchase Agreement, as of the date of filing the bankruptcy petition. (Ex. H to Plaintiffs' Memorandum, p. 6.)

After a hearing on March 6, 2014, regarding these issues, Judge James issued an order on March 20, 2014, in which he declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. (Ex. H to Plaintiffs' Memorandum, pp. 8-9.) Specifically, he ordered that the Lease–Purchase Agreement was terminated and that Hutson was required to vacate the property. (Ex. H to Plaintiffs' Memorandum, pp. 9-10.) Hutson vacated the property in late March 2014.

In the midst of TLC Holdings' efforts to evict Hutson from the property, he made numerous statements about Plaintiffs, which statements Plaintiffs allege are defamatory, including mailing a postcard to hundreds of current and former campground members asserting that they, along with him, were victims of a scam perpetrated by Plaintiffs. These allegedly defamatory statements led to the initiation of the instant case.

Following Hutson's allegedly defamatory statements, a group of campground members filed a putative class action in federal court against TLC Holdings, Richard Clark, Jimmy Lovell, and other parties,[3] alleging a variety of claims.[4] Those defendants then filed a third-party

[3] William Reed, et al. v. Big Water Resort, LLC, et al. (D.S.C. 2:14-cv-01583).

complaint against Hutson, alleging a claim for equitable indemnity. In response, Hutson asserted a variety of counterclaims, including breach of contract, fraud, misrepresentation, negligence, and defamation. *See* **Ex. 1**, Hutson Answer & Counterclaims, *Reed* Case. TLC, Clark, Lovell, and the other third-party plaintiffs moved for summary judgment as to Hutson's counterclaims on the basis that they were barred by the doctrine of *res judicata*. Magistrate Judge Mary Gordon Baker agreed, finding that Hutson had released his claims against the third-party plaintiffs and that Hutson's claims were precluded by Judge James' Order. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge David C. Norton then issued an Order adopting Judge Baker's R&R and granting third-party plaintiffs' motion. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Returning focus to the instant case, Hutson, acting pro se, asserted counterclaims against Plaintiffs. These counterclaims consist of the following:

- Fraud / Negligent Misrepresentation
- Defamation / Libel Per Se
- Breach of Contract / Breach of Contract Accompanied by a Fraudulent Act
- Violation of the South Carolina Unfair Trade Practices Act
- Amalgamation / Alter Ego / Piercing the Corporate Veil

Plaintiffs then filed the motion at hand, asking this Court to grant their motion for summary judgment on these claims.

LEGAL STANDARD

A trial court may properly grant summary judgment when "the pleadings, depositions,

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[4] TLC Holdings, Clark, Lovell, and the other defendants in that matter ultimately defeated the plaintiffs' attempts to certify a class and also succeeded in getting certain causes of action dismissed. The parties then reached a settlement agreement, which was approved by the district court.

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000).

Once the party moving for summary judgment meets its initial burden of showing a lack of genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is a genuine issue for trial. *Id.*

DISCUSSION

The doctrine of *res judicata* "bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2012) (citation and internal quotation marks omitted). "Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Catawba Indian Nation v. South Carolina*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (citation and internal quotation marks omitted).

As stated above, in December 2011, Plaintiff TLC Holdings, LLC instituted an action against Hutson in this Court for breach of the Lease–Purchase Agreement and ejectment. Hutson counterclaimed and filed a third-party complaint against Plaintiffs Clark and Lovell. Hutson alleged that Plaintiffs "knew that defects existed in regard to the premises," including that a moratorium was imposed on the property for sewer installation and that there were large utility bills outstanding. Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint, pp. 7, 13, 14.) Defendant Hutson further alleged that Plaintiffs "made misrepresentations . . . or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property." *Id.* at 12. The parties in that case ultimately entered into the Settlement Agreement, discussed *supra*, which includes the following provisions:

> This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease–Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.
>
> . . . .
>
> Pursuant to the Consent Order, in the event that Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: "(a) termination of the [Lease–Purchase] Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective.

. . . .

> [Section 23.] As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease–Purchase Agreement] pursuant to Section 4 above as a result of Hudson breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the [Lease–Purchase Agreement] or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the [Lease–Purchase Agreement], including any and all claims alleged, or which could have been alleged, in the Litigation.

(Ex. F to Plaintiffs' Memorandum, Settlement Agreement) (emphasis added). Judge James issued his consent order in April 2012 approving the Settlement Agreement and incorporating it by reference. (Ex. G to Plaintiffs' Memorandum, Consent Order.) Subsequently, in early 2014, Judge James found that Hutson was in breach of the Settlement Agreement. Judge James issued his second order in March 2014, which found as follows:

> Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to have the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the [Lease–Purchase Agreement], (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated with fifteen (15) days; and (d) the provisions of Section 23 shall be effective. Consent Order at ¶2.
>
> Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

. . . .

[I]t is hereby:

. . . .

FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.

. . . .

FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC parties, as set forth more fully in Section 23 of the Settlement Agreement.

(Ex. H to Plaintiffs' Memorandum, Judge James' March 2014 Order.)

The terms of the Settlement Agreement are clear and unambiguous: Hutson has released Plaintiffs from liability for any actions, whether known or unknown, that they took (or failed to take) prior to December 11, 2013. This fact was confirmed in the two orders of Judge James.

Furthermore, in the federal class action case, Hutson filed counterclaims against Plaintiffs, in which he alleged the same wrongs as in the state court case. *See* Ex. 1. Upon the motion of Plaintiffs, Magistrate Judge Baker issued a Report and Recommendation in which she recommended that summary judgment be granted as to Hutson's counterclaims, as he had previously released all of his claims against Plaintiffs by way of the Settlement Agreement. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge Norton then issued an Order adopting Judge Baker's R&R and finding that the Settlement Agreement was binding on all parties, that Hutson had previously released his claims against Plaintiffs, and that Judge James' order was a final judgment on the merits. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Judge James' order is plainly a final judgment on the merits of the prior state court case. In the case at bar, Hutson's counterclaims against Plaintiffs, and all of the allegations in his

pleading, relate to conduct by Plaintiffs that allegedly occurred in or around December 2010 and were all part of the same transaction or occurrence that was litigated in the prior state court case.[5] His claims here, in other words, either were or could have been brought by Hutson in the prior state court case, and they fall within the broad, express language in the Settlement Agreement. The prior state court case involved the same parties currently before the Court and the Settlement Agreement was expressly binding on all parties. As Judge James, Judge Baker, and Judge Norton have found, Hutson has released Plaintiffs from any claims he had against them during this time period. The principles of *res judicata*—identity parties, identity of claims, and a final adjudication—are all present here.

Indeed, Hutson does not dispute that the Settlement Agreement, incorporated into Judge James' order, encompasses his claims in the instant case. Nor does Hutson dispute that the elements of *res judicata* are satisfied here. Rather, he asserts that the Settlement Agreement is unenforceable because of fraud. Hutson, however, has failed to demonstrate or even allege any fraud that would bar the application of the Settlement Agreement. A review of the allegations in Hutson's pleading shows that he never alleges that Plaintiffs perpetrated any sort of fraud, or otherwise committed wrongful conduct, in relation to the parties' execution of the Settlement

[5] The sole exception is his counterclaim for defamation. In this claim, Hutson complains of a letter that TLC Holdings sent to the campground members on April 3, 2014, shortly after evicting Hutson from the campground. The letter discussed the facts that Hutson filed for bankruptcy and had failed to pay rents and taxes that he owed. Hutson, however, alleged this same claim in the federal court action. In recommending that summary judgment be granted on this claim in favor of Plaintiffs, Magistrate Judge Baker found in her R&R this claim fails because none of the statements in the letter were false. *See* Ex. N to Plaintiffs' Memorandum, pp. 27-30. Similarly, Judge Norton found that summary judgment was proper for this claim because the undisputed evidence shows that all the statements in the letter were true. *See* Ex. O to Plaintiffs' Memorandum, p. 17, footnote 4. Thus, in addition to summary judgment being proper on this claim because the statements were not defamatory, summary judgment is proper because Judge Norton's Order is a final order on this claim that precludes it from being raised in this action. Hutson neither moved for a reconsideration of Judge Norton's Order nor appealed it.

Agreement. Rather, the only fraud he pleads is fraud in connection with the parties' transactions related to the sale of the campground in December 2010. In other words, the fraud that Hutson here complains of is fraud related to the *original transaction*, not the *release*.

Any claim of fraud that Hutson had in connection with the December 2010 transactions is unquestionably barred. Defendant had the opportunity to litigate those claims in the prior state court litigation, and that case culminated in the March 2012 Settlement Agreement in which Hutson agreed to release all such claims. Hutson also agreed for the release to be incorporated into Judge James' consent order. He cannot now re-litigate those issues.

With regard to his counterclaims in the case at hand, Hutson contends that he needs time to perform additional discovery in this case, including the opportunity to depose Plaintiffs on matters related to his counterclaims. However, in light of the clear, express, and broad terms of the Settlement Agreement and the orders of Judge James, Hutson's counterclaims here are barred. No additional discovery, including depositions of Plaintiffs, would change that fact. Hutson was represented by counsel in the prior state court case and had a full opportunity to conduct discovery in that matter; that same counsel represented him in connection with the execution of the Settlement Agreement; and he further had the opportunity to conduct full discovery, and in fact took the depositions of Plaintiffs with regard to these very same issues, in the federal court case.[6] Throughout that entire process, he has identified no allegedly fraudulent conduct by Plaintiffs except that which he has alleged in connection with the December 2010 transactions, which claims he voluntarily released in the Settlement Agreement. Hutson has identified no instance of fraud in connection with the execution of the Settlement Agreement,

[6] In that case, Hutson took the deposition of TLC Holdings, LLC on May 20, 2015; the deposition of Richard Clark on September 26, 2014; and the deposition of Jimmy S. Lovell on September 25, 2014. *See* **Ex. 2**. He also participated in written discovery in that case and received service of all documents Plaintiffs produced in that matter.

either in his pleading or in his arguments in this Court; indeed, he has not even alleged such fraud.[7] At the hearing on Plaintiffs' summary judgment motion in this Court on January 5, 2017, when asked by the Court what fraud he was complaining of, Hutson complained only about fraud in connection with his purchase of the campground. Additional discovery by Hutson on his counterclaims would be fruitless, and he has failed to show why the binding, preclusive effect of *res judicata* principles does not bar his claims here.

In sum, the elements of *res judicata* are satisfied, and they operate to bar Defendant Hutson's counterclaims. Hutson's counterclaims either were or could have been raised in the prior state court litigation, and he released all such claims by virtue of the Settlement Agreement. The Court finds that summary judgment is proper.

CONCLUSION

For the reasons discussed above, this Court GRANTS Plaintiffs' motion for summary judgment as to Defendant Hutson's counterclaims.

AND IT IS SO ORDERED.

By: 

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge, Third Judicial Circuit

March 2, 2017

Manning, S.C.

[7] Even if Hutson had alleged such fraud, summary judgment would still be proper, as he has produced no evidence of such. *See House v. Aiken Cnty. Nat'l Bank*, 956 F. Supp. 1284, 1291-92 (D.S.C. 1996) (granting motion to dismiss (treated as motion for summary judgment) where "[t]he only issue before [the] Court is whether the release signed as a result of that previous settlement is invalid because of fraud, misrepresentation or like circumstances. Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation."); *see also Hopkins v. Fidelity Ins. Co.*, 240 S.C. 230, 125 S.E.2d 468 (1962).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated, Plaintiffs, vs. Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC, Defendants.	**ORDER**
TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC, Third-Party Plaintiffs, vs. M. B. Hutson a/k/a M. B. Hudson, Third-Party Defendant.	

This matter is before the court on the motion for sanctions filed by third-party plaintiffs TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC ("third-party plaintiffs"), ECF No. 302. For the reasons set forth below, the court grants the motion for sanctions.

BACKGROUND

Third-party plaintiffs previously moved for sanctions against third-party defendant Hutson, ECF No. 179, and also moved for summary judgment on Hutson's

counterclaims, ECF No. 183. In the previous sanctions motion, third-party plaintiffs pointed to a course of conduct by Hutson which they argued was tantamount to harassment and abuse of the judicial system. The conduct cited by third-party plaintiffs included Hutson's repeated filing of motions lacking factual and legal support, his accusations of criminal conduct and threats to contact law enforcement, and his accusations of unethical conduct by third-party plaintiffs' counsel. See ECF No. 179-1.

Magistrate Judge Mary Gordon Baker issued a report and recommendation acknowledging several improper actions by Hutson, including his continued filing of trial-related motions despite being told that such motions were premature and his refiling of a motion previously denied by Magistrate Judge Bristow Marchant. Magistrate Judge Baker recommended that third-party plaintiffs' previous motion be denied in light of the facts that Hutson was pro se, that he had not been previously warned that his conduct may merit sanctions, that he withdrew some of his offending filings, and that he would no longer be proceeding pro se if this court were to adopt her recommendations to dismiss his pro se counterclaims. ECF No. 270 at 13–14. In an order dated May 20, 2016, this court adopted Magistrate Judge Baker's report and recommendation, declining to impose sanctions on Hutson and granting summary judgment in favor of the third-party plaintiffs on Hutson's counterclaims. ECF No. 280 at 8, n.1.

On April 21, 2017, Hutson filed a motion to reconsider this court's order dismissing his counterclaims. ECF No. 298. Third-party plaintiffs filed a response to the motion, asserting that it failed to identify any new evidence, despite Hutson's claims to the contrary; failed to demonstrate any of the requirements for amending a judgment under FRCP 59(e), and was untimely under that rule; failed to satisfy the requirements of

FRCP 60; and improperly asked the court to review a state court judgment in a separate proceeding. See ECF No. 300. This court denied Hutson's motion. ECF No. 306.

After Hutson filed his motion to reconsider, third-party plaintiffs then filed the instant motion for sanctions. They argue that Hutson's bad faith intent is evidenced by his motion to reconsider, which lacks legal support, falsely purports to offer new evidence, and repeats the same allegations he has made in numerous filings throughout the course of this litigation. Third-party plaintiffs further assert that no inference can be drawn from Hutson's conduct except that he desires to harass them and increase their legal expense. They incorporate by reference their prior motion for sanctions and supporting memorandum, which sets forth the history of Hutson's conduct. Third-party plaintiffs request both monetary and non-monetary sanctions, the latter in the form of an order barring Hutson from submitting further pro se filings to the court.

STANDARD

The court has the inherent power to impose sanctions on litigants when merited by their conduct:

> Rule 11 has not robbed the district courts of their inherent power to impose sanctions for abuse of the judicial system. In Chambers v. NASCO, Inc., 501 U.S. 32, 49 111 S.Ct. 2123, 115 L.Ed 2d 27 (1991), the Court was quite clear that "the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct." The Court stated that there was "no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanction for . . . bad-faith conduct . . . ."

Drake v. Ham, 2007 U.S. Dist. LEXIS 58060, at *4 (D.S.C. 2007) (quoting Methode Elecs. v. Adam Techs., 371 F.3d 923, 927 (7th Cir. 2004)). "Due to the very nature of the court as an institution, it must and does have an inherent power to impose order, respect, decorum, silence, and compliance with lawful mandates. This power is organic,

without need of a statute or rule for its definition, and it is necessary to the exercise of all other powers." United States v. Shaffer Equip. Co., 11 F.3d 450, 461 (4th Cir. 1993). "Sanctions authorized under the court's inherent powers include the striking of frivolous pleadings or defenses, disciplining lawyers, punishing for contempt, assessment of attorney's fees, and outright dismissal of a lawsuit." Drake, 2007 U.S. Dist. LEXIS 58060 at *4-5. Sanctions imposed under the court's inherent power serve the purpose of penalizing and deterring violations of the judicial process. In re Howe, 800 F.2d 1251, 1252 (4th Cir. 1986). The court's inherent power to sanction includes penalties up to and including outright dismissal of the offending party's claims. Chambers v. Nasco, 501 U.S. 32, 44–45 (1991). "[A]n assessment of attorney's fees is undoubtedly within a court's inherent power." Id. at 45. "A court may assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Id. at 45–46. Unlike the statutory and rule-based sanctioning schemes, which reach only certain conduct, "the inherent power extends to a full range of litigation abuses." Id. at 46.

Further, pro se parties are not exempt from the Rules of Civil Procedure or from the requirements of respect and decorum before the court. District courts must "not allow liberal pleading rules and pro se practice to be a vehicle for abusive conduct." Spears v. Warden FCI Williamsburg, 2016 WL 2935894 (D.S.C. Apr. 20, 2016), at *1.

DISCUSSION

Hutson's status as a pro se party in this matter ended when this court granted summary judgment on his counterclaims in favor of third-party plaintiffs. Since that time, his capacity as a party to this case has been limited to his status as a third-party

defendant defending the equity indemnity claim. Hutson, however, has continued to make pro se filings in this court.

In his motion to reconsider, Hutson claimed to present new evidence but instead repeated the same arguments he made in his prior filings and failed to identify any new documents or evidence, despite representing to the court that he had the latter.[1] He also asked the court for relief that it lacks jurisdiction to grant.[2] He failed to provide evidentiary support for the factual allegations in his motion. No inference can be drawn that the motion was filed in good faith. Hutson appears to have continued his pattern of frivolous filings and conduct designed to harass or burden third-party plaintiffs, and there is no indication that he intends to cease.

Hutson's response, ECF No. 310, to the pending sanctions motion again makes reference to the alleged fraud by third-party plaintiffs in obtaining the settlement agreement and the order signed by Judge James in the prior state court litigation. Hutson has made these allegations throughout the course of this litigation. He has never, however, specified what the fraud is or submitted evidence of it.

Third-party plaintiffs Clark, Lovell, and TLC have a pending action for defamation against Hutson in the Clarendon County Court of Common Pleas, which they filed in December 2015. While his counterclaims were still pending in this court, Hutson

[1] Specifically, Hutson cites the Big Water Resort, LLC meeting minutes of January 16, 2009 as the Rule 60(b) evidence which entitles him to relief from the Order. He asserts that he did not see or obtain this document until 2015. However, he was privy to this document at Steve Lovell's deposition in September 2014, at the latest. He has filed it with the court on at least ten separate occasions. (*See, e.g.*, ECF Nos. 191, 192, 200, 202-1, 216, 228, 233, 237, 251, and 252.) Hutson also relied on this document in opposing third-party plaintiffs' motion for summary judgment.

[2] Hutson asked this court to review a final order in a state court proceeding.

filed counterclaims in the defamation case that were identical to those he filed in this matter. ECF No. 302-1, at 5–6. After this court ruled that Hutson's counterclaims were barred by res judicata, ECF No. 280, Hutson still refused to dismiss them in the Clarendon County action. Third-party plaintiffs in the state court matter then moved for summary judgment, which was granted in March of this year, in light of the fact that Hutson had previously released those claims in a settlement agreement and that two previous judges had ruled that the claims were barred. ECF No. 302-1, at 5–6.

The reasons that Magistrate Judge Baker gave for recommending the denial of the previous sanctions motion—the facts that Hutson now has counsel and has been warned of his conduct—have failed to alter his behavior.[3] Hutson's recent filing with the court makes repeated reference to his *pro se* status. Hutson has established a pattern of making misrepresentations to the court, of making unsupported allegations of unethical and criminal conduct by third-party plaintiffs, and of using the judicial process as a mechanism of harassment. His meritless filings have wasted untold hours of the court's time. He lacks any evidence to support his counterclaims and other allegations against third-party plaintiffs. Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the court. Accordingly, the court finds that sanctions are appropriate under the court's inherent power.

Third-party plaintiffs request monetary sanctions in the amount of $14,908.50. Third-party plaintiffs' counsel submitted an affidavit of their qualifications and

[3] Recently, in the state court defamation matter, Hutson sent the liability insurance carrier an email after learning of the carrier's offer of settlement to TLC Holdings, Clark, and Lovell. Hutson directed the carrier to withdraw the offer and threatened suit should the carrier settle the suit. ECF No. 312-1.

experience, along with a fee detail breakdown showing that this was the amount of legal fees they incurred in responding to Hutson's motion for reconsideration and in preparing their sanctions motion. ECF No. 302-2. They also submitted an affidavit from attorney L. Morgan Martin asserting that third-party plaintiffs' counsel are qualified, well-regarded attorneys and that their rates and fees were reasonable and customary for the nature of the work done. ECF No. 302-3. The court finds that monetary sanctions against Hutson in the amount of $14,908.50 are appropriate. The court finds that the hourly rates of third-party plaintiffs' counsel and support staff are reasonable for the nature of the work done and the community in which it was done. The court further finds that the total hours expended by counsel are reasonable and expected in light of the circumstances and complexity of this case.

Third-Party Plaintiffs also ask the court to impose certain nonmonetary sanctions on Hutson. Specifically, they ask that Hutson be barred from submitting any more pro se filings with the court. The court declines to grant this non-monetary sanction.

CONCLUSION

For the reasons set forth above, the court **GRANTS** third-party plaintiffs' motion for sanctions. **IT IS FURTHER ORDERED** that third-party defendant Hutson make payment to third-party plaintiffs' counsel in the amount of Fourteen Thousand Nine Hundred Eight and 50/100 ($14,908.50) within thirty days of the entry of this Order.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

October 4, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF CLARENDON)

TLC HOLDINGS)
PLAINTIFF,)
v.) TRANSCRIPT OF RECORD
15-CP-14-615
M.B. HUTSON,)
DEFENDANT.)

January 22-25, 2018
Manning, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE;
AND JURY

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

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in please.

(WHEREUPON, the jury was returned to the courtroom at approximately 11:00, and the following proceedings commenced in open court.)

THE COURT: Mr. Gordon.

MR. GORDON: Thank you, Your Honor. At this time the defendant calls Mr. M.B. Hutson to the stand.

THE CLERK OF COURT: Place your left hand on the Bible, raise your right hand. Repeat your name please.

THE WITNESS: M.B. Hutson.

WHEREUPON,

M.B. HUTSON,

having been duly sworn by the Clerk, testified as follows:

THE WITNESS: Good morning, Judge. Good morning, ladies and gentlemen of the jury.

DIRECT EXAMINATION

BY MR. GORDON:

Q Please state your name for the record, please, sir.

A M.B. Hutson.

Q Mr. Hutson, you spell your last name H-U-T-S-O-N?

Q And you also were running the campground practically by yourself by then; is that true, sir?
A It was a headache. I mean, the whole thing turned into a nightmare.
Q Okay. And eventually your relationship with Mr. Clark, Mr. Lovell, and TLC broke down; is that right?
A Well, when I didn't pave the road it broke down.
Q And there was a lawsuit filed and you all settled the lawsuit in 2012 I believe; is that right?
A Ask that question again.
Q You all had -- they filed a lawsuit and y'all settled it in 2012, right?
A Yeah.
Q And you entered into a consent order in which you released your rights to sue them?
A Yeah, settlement agreement was fraudulent.
Q Well, the fact is you released your rights to sue them, right?
A That's correct.
Q And you, part of the agreement was that you still are going to continue to try to develop the campground, true?
A Well, at that time, just try to understand the predicament I was in. I was obligated to hundreds

membership. But I sold, I got, I got the dues but the dues did not fray the campground.
Q The 8400-dollars per member that was paid either upfront prior to you got there, prior to you getting there, or over time, did you ever receive any of that finance money from the sale of the memberships?
A Mr. Clark asked me if I would collect moneys coming -- what he did, he apparently, he sold these to everybody for 8400-dollars, whatever amount of money, and anybody that didn't have the full amount of money he arranged financing and I think finally went to one particular finance company -- I forget the name of it. And so what would happen is he would get each month about a 4500-dollar check from the very members that he was trying to sell out.
Q My question is simple. Did you receive any of the financed purchase money from membership sales?
A No, sir.
Q Okay. All right, eventually ---
A No.
Q ---by the end of 2013 had you been able to develop any condominiums on this property, Mr. Hutson?
A No, sir.
Q You, by the end of that year on December 18th,

2013, you sent out this postcard which is the subject of this lawsuit, right?
A I sent out a postcard.
Q Okay. Let's look at Defendant's Exhibit 58 if we could. If we can pull that one up. And in the postcard, it's very hard for the folks on the jury to read that but, in the postcard, Mr. Hutson, you — you sent this postcard to all of the Big Water Resort members or former members, right?
A That's correct.
Q You had a list of them, some kind of mailing list?
A That's correct.
Q And those would be the campground campers who signed the double lifetime or shorter contracts, right?
A That's right.
Q And you told them, "I purchased the Big Water Resort business in 2010. I have since come to realize that members were scammed by paying thousands of dollars to Big Water Resort who were formerly owned by TLC Holdings. Those moneys total about five million dollars paid by members when they signed their individual contracts to the TLC Holdings owned Big Water Resort." You also say in

there that you're gonna seek to demand a refund by way of class action lawsuit. You ask the members to join the lawsuit. You tell them that you'll be able to put them in touch with an attorney, and you tell them that you're worried that the statute of limitations run from the discovery of the scam, let's join together now and get our money back. You sent out that postcard, right?

A Right. I knew that the members were getting ready to either come sue me or lose everything that -- even with the settlement they still lost five million dollars.

Q Let me ask you ---

A TLC has no remorse for that.

Q Let me ask you about ---

THE COURT: Hold on, hold on, hold on, hold on.

Mr. Bailiff, would you please take the jury to the jury room please.

(WHEREUPON, the jury was removed from the courtroom at 12:08 p.m.)

THE COURT: Mr. Hutson, I'm going to instruct you, henceforth, I want you to answer any question asked of you directly, answer the question first. If you need to explain an answer you may

certainly do that, but we're not gonna have anymore of those extraneous, unnecessary comments made about who's scamming who. The jury is going to decide all that. I don't want anymore answers aimed at sympathy from anyone or denigrated or negative comments about anyone. I would not have that plaintiff's attorney do it or witnesses do that and I can't allow you to do that, sir.

THE WITNESS: I understand.

THE COURT: My goal here today is, this whole week -- I cannot guarantee a perfect trial, but I can work very hard to make it a fair trial for everybody so let's don't do that anymore, Mr. Hutson.

THE WITNESS: All right, sir, I'm trying to be truthful, Your Honor.

THE COURT: No, sir, that sounded ---

THE WITNESS: I'm trying to be ---

THE COURT: I didn't need that comment either. That's what I'm talking about. Now I'm gonna ask you to please follow my instructions here.

THE WITNESS: Okay.

THE COURT: Please, sir.

THE WITNESS: Thank you.

THE COURT: You may bring them back in,

Q And that was a payment from TLC, Mr. Clark, and Mr. Lovell, not from you; is that right, sir?
A That's correct.
MR. GORDON: Your Honor, those are all my questions.
Thank you, Mr. Hutson.
(Portion omitted.)
THE COURT: Okay. Mr. Gordon, they're all here.
MR. GORDON: Yes, sir. I believe Mr. Hutson was on the stand.
THE COURT: Yes, sir.
MR. GORDON: Mr. Hutson, if you will return to the stand. And I had completed my examination, Your Honor.
THE COURT: Yes, sir.
MR. WILKERSON: May it please the Court.
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WILKERSON:
Q Mr. Hutson, I'm a little bit confused with your direct examination. You said this morning that when you met with Richard Clark and Steve Lovell in Suzie's Restaurant in December of 2010 that you already knew all about the lifetime memberships and

that your plan was to shrink the campground. Is that right?
A I don't think that's exactly correct.
Q Well, you did say that you knew all about the lifetime memberships.
A I knew about a lifetime membership because of what Susan Stroman and I talked about.
Q Okay.
A But I did not know that I had to buy the campground. I was interested in developing the waterfront property.
Q Yes, sir. Mr. Hutson, you will agree with me that you've been, you've given sworn testimony in depositions in this case and several other related cases on numerous occasions; haven't you?
A I have.
Q Okay. And you would agree with me that in each, each time you've ever been asked about lifetime memberships you adamantly denied that you knew anything about lifetime memberships when you went in there; haven't you?
A I don't know in what deposition I denied that.
Q Okay. Well, let's just go back and look. Let's talk just a minute about the fact that you were represented by a lawyer, right, Mr. Tucker?

Q The -- within ten months of your moving in they, in fact, began legal proceedings to, in fact, take it back; didn't they, Mr. Hutson?
A For a reason.
Q You hadn't been paying the rent.
A That's not really the reason, but that's what they used.
Q Okay, well -- okay. So they began legal proceedings to evict you; is that right?
A That's correct.
Q And you then fought the eviction?
A I did.
Q You hired a lawyer to fight the eviction?
A Yes, as I felt what they were doing was a wrongful eviction.
Q Okay. Because you didn't want to give up that revenue that you were getting from that campground?
A It had nothing to do with that.
Q Okay, I'm sure it didn't. Now you, so then you fought that eviction. Y'all ended up negotiating. You ended up entering into some sort of settlement agreement that was reduced to an order of the Court; is that right?
A I entered into, unfortunately, a fraudulent settlement agreement.

Q Okay, well, you agreed to it, right?
A I agreed to it.
Q Okay. And now you were represented by counsel at that time, right?
A I did.
Q Okay. And you then breached that settlement agreement; didn't you?
A I did.
Q Okay. And all that was required to be done under the settlement agreement and the consent order to get you to leave the property at that point was for TLC to file a affidavit of default with the Court, tell the court you're in default and, poof, you got to leave; is that right?
A That was the basis of the settlement agreement, that's correct.
Q Okay. So you went down to the court and got, tried to get a temporary restraining order to stop them from kicking you off?
A I did indeed because, because, I recognized the fact that the 2009 minutes that they themselves prepared stated that they wanted to shut down the business or they wanted to sell the business to somebody and they were losing 300,000-dollars. They even wanted to give it away. So I ask you, why

would they want to give away a business and turn around and charge me 600,000-dollars, allow me to pay only 10-dollars down. What they failed to do is a full disclosure. I wouldn't have bought the business, period, ---

Q Yes, sir.

A ---had they been truthful with me.

Q And you were continuing to fight the eviction efforts by getting a temporary restraining order, right?

A Right.

Q Had a hearing on that temporary restraining order ---

A Right.

Q ---and you didn't show up for that hearing. You went down and filed bankruptcy, right?

A I filed for reorganization in hopes, in hopes of getting the federal judge to agree to work out something with TLC because I was stuck with all those 24 million dollars worth of memberships.

Q Yes, sir, and that you were fighting so hard to hang on to.

A I didn't want them.

Q You sure fought hard to hang on to them, sir.

A No, no, that's worded opposite.

Q Now then you, after you filed bankruptcy, then the bankruptcy court sent it back to the State court and Judge James issued an order saying that you're in breach of the agreement, that TLC is not in violation of the agreement, and you've got to leave the property; is that right?
A That's right.
Q And you finally left in March of 2014?
A And I still had the obligation of all of those memberships. And Mr. Wilkerson, I don't believe that you can show me any deposition or any document whereby TLC offers to take back those 470 70-year memberships. They wouldn't take them back; they refused to take them back.
Q Yes, sir. You saw that letter that TLC wrote in April of 2014 to all the members saying TLC is stepping back up to the plate, we're taking back over the campground, we're running it, and we're in charge. Remember that?
A I remember, I remember this. I remember what they did. They wrote a letter and then they formed another limited liability company and they stick those members over in that.
Q In fact, they never did, did they, Mr. Hutson? They never transferred those memberships. They

still own them. They still own the property at TLC; isn't that correct?
A Are you say--- let me be sure I understand you. Are you saying that TLC took the responsibility of those memberships?
Q That's what that letter said; isn't it? We read it yesterday.
A I don't remember. That was five years ago when I got that letter.
Q Well, we read it yesterday. It's in the record. The jury will have that before them. All right, sir. Now this postcard, you called TLC a fraud, scammer, and a racketeer.
A I did.
Q And you said earlier today that you reasonably believed that to be true.
A No, sir, I don't reasonably believe that to be true.
Q You do not?
A I know it's true.
Q And you still think it's true; do you not?
A Based on SLED'S investigation and report to me, based on ---
MR. WILKERSON: Your Honor, please, this is absolutely out of the question. I know nothing

about a SLED report. I move to strike that testimony, Your Honor.

THE COURT: We will.

MR. WILKERSON: Thank you.

BY MR. WILKERSON:

Q The answer is yes, you still believe that; don't you?

A Ask the question.

Q You still believe that they're racketeers; don't you?

A I do. I believe they're crooks.

Q Okay. Now ---

A And thieves.

Q All right, sir. Now let's ---

A They're rich thieves.

Q Let's talk about the claims that you have made. You, when TLC moved to have you evicted from the property you filed a counterclaim in that case, right?

A As pro se.

Q Yes, sir. And when Judge James issued his order telling you you had to be evicted he also ruled that your counterclaim had no merit, right, he dismissed it?

A Simply because I was pro se. I had no education

in being an attorney.
Q All right, sir.
A I'm not a seasoned lawyer.
Q All right, sir. And then when the class action was filed, I believe it's already been established that TLC filed a third party complaint against you for indemnification, right?
A They blame me for causing the class action.
Q Yes, sir. And in that, and in response to that third party complaint you filed another counterclaim, right?
A I don't remember.
Q Okay. And isn't it true that the United States district judge Judge Norton dismissed that counterclaim as having no merit; didn't he?
A He did, based on a technicality.
Q And in this case, in this case, you filed a counterclaim making the same allegations, the exact same ones that you did in federal court, correct?
A In this ---
Q This lawsuit we're here for today.
A --defamation case?
Q Yes, sir. You filed a counterclaim in this case.
A I did, because it's ridiculous. It's a frivolous lawsuit.

Q Okay. And Judge Ferrell Cothran also dismissed that case as well, right?
A Due to technicalities.
Q Okay.
A And my lack of understanding how to present a case as pro se.
Q Now after your case had been dismissed in federal court you continued to make frivolous filings in the federal court; did you not?
A I made a response to what Turner Padget filed, which was misleading.
Q Okay. Well, as a result of the multiple filings that you made in federal court our clients filed a motion for sanctions in federal court; did they not?
A They did.
Q All right, sir.

MR. WILKERSON: Your Honor, Plaintiff's Exhibit No. 36, I can't remember whether it's objected to or not. No objection? In evidence, Your Honor, Plaintiff's 36.

(WHEREUPON, Plaintiff Exhibit No. 36 was admitted into evidence.)

BY MR. WILKERSON:
Q I would like to read to you from that order, if I could, sir.

A Please do.
Q And this is the Honorable Judge David Norton, United States district judge for the district of South Carolina. "Hutson has established a pattern of making misrepresentations to the Court, of making unsupported allegations of unethical and criminal conduct by third party plaintiffs, and of using the judicial process as a mechanism of harassment. His meritless filings have wasted untold hours of the Court's time. He lacks any evidence to support his counterclaims and other allegations against third party plaintiffs. Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the Court. Accordingly, the Court finds that sanctions are appropriate under the Court's inherent power." And he goes on to order you to pay the sum of $14,908.50 cents. Am I correct on that?
A That is correct.
MR. WILKERSON: I have no further questions.
MR. GORDON: Nothing further, Your Honor.
THE COURT: All right, sir.
Mr. Hutson, you may step down, sir.
MR. GORDON: Yes, sir. The Defense rests. Thank you, Your Honor.

M B Hutson
Post Office Box 2755
Orangeburg, SC 29116

(803) 308 – 2714
hutson4444@gmail.com

January 20, 2021

Commission on Lawyer Conduct
1220 Senate Street
Suite 309
Columbia, South Carolina 29201

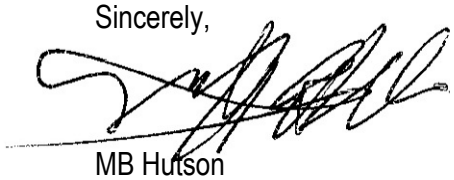
Dear Commission,

I am filing this complaint / notice of complaint against the following attorneys and law firms for conducting fraud, misrepresentation, extrinsic fraud in the Common Pleas and Appellate Courts of South Carolina. Parties have lied in open court directly to a state judge (Honorable Judge Robert Hood), and committed fraud, conspiracy, theft by deception, and obstruction of justice.

Their actions have caused me, as Defendant/Appellant the loss of years of life and millions of dollars. Forthcoming are: 1) related attachments to prove their gross abuse which I have suffered via lawyer conduct, 2) these attorneys' twenty-five (25) violations of the South Carolina Rules of Professional Conduct (2016 Edition.)

Additional paperwork will be presented on or before the 27th day of January, 2021. Copies of this letter are simultaneously being sent electronically to: **1)** Attorneys T. J. Newton, J.R. Murphy, and John Grantland of Murphy Grantland, P.A.; **2)** Attorneys Christian Stegmaier, Laura Baer, Joel W. Collins, Jr., and Stanford E. Lacy, of Collins & Lacy, P.C.; **3)** The Honorable Robert Hood; **4)** jkiehl@global-indemnity.com; and **5)** the S.C. Appellate and Richland Co. Common Pleas Courts.

Sincerely,



MB Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-400-6344

Appellate Case # 2019-001488

MB Hutson/ MB Hudson — Appellant.

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq. and J.R. Murphy, Esq., John Doe #1 and John Doe #2 — Respondents.

APPELLATE'S "To All"

Just letting all parties know that I intend to immediately solicit the public in order to obtain an attorney for assisting Appellant with case # 2019-001488.

January 21, 2021

M B Hutson, Pro Se
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308-2714

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED
Jan 21 2021
SC Court of Appeals

Case No. 2018-CP-400-6344

Appellate Case # 2019-001488

[MB Hutson/ MB Hudson — Appellant.

v.

Penn America Insurance Co., Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1 — Respondents,

PROOF OF SERVICE

I certify that I have electronically served the Appellant's **"To All"** to the Appellate Court to meet the guidelines for filing during the coronavirus pandemic and also electronically to all parties listed on the Notice of Appeal or requested by parties thereof:

(1) Collins and Lacy's: Joel W. Collins, Jr., Stanford E. Lacy, Christian Stegmaier, & Laura Baer;
(2) Murphy Grantland's: John Grantland, JR Murphy & Timothy J. Newton;
(3) Honorable Robert Hood; and
(4) Jim Kiehl, Esq., as requested by Doreen Nielsen of American Ins. Adjustment Agency, Inc.:

cstegmaier@collinsandlacy.com; lbaer@collinsandlacy.com; slacy@collinsandlacy.com; jcollins@collinsandlacy.com; jgrantland@murphygrantland.com; tnewton@murphygrantland.com; jrmurphy@murphygrantland.com; Rhoodlc@sccourts.org; jkiehl@global-indemnity.com ;

January 21, 2021

M B Hutson, Pro Se
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308-2714
hutson4444@gmail.com

Turner | Padget

REPLY TO:

Carlyle R. Cromer

E-Mail: Ccromer@TurnerPadget.com
Writer's Direct Dial: (843) 213-5540
Writer's Direct Fax: (843) 213-5624

December 17, 2015

Via E-mail and U.S. Mail

Claims Department
Global Indemnity Group
P.O. Box 532
Willow Grove, PA 19090
claims@global-indemnity.com

Re: TLC Holdings, et al. v. M. B. Hutson a/k/a M. B. Hudson
CA No. 2015-CP-14-615, Court of Common Pleas, Clarendon County, SC
Penn-America Policy No. PAC7045167
Our File No. 12916.00102

To Whom It May Concern:

Please see the attached Summons, Complaint, and Proof of Service in the above-referenced matter. We believe that there is coverage with regard to this claim under the above-referenced policy number.

Sincerely,

Carlyle R. Cromer

Enclosures

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)

TLC HOLDINGS, LLC, et al.) CIVIL ACTION COVERSHEET
Plaintiff(s))
vs.) 2015-CP - 14- 604
)
M. B. HUTSON a/k/a M. B. HUDSON)
Defendant(s))

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 12/7/15
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2015 DEC 27 P 3:54

Submitted By: R. Wayne Byrd, Esq. SC Bar #: 001068
Address: Turner Padget Graham & Laney P.A. Telephone #: (843) 213-5500
P.O. Box 2116, Myrtle Beach, South Carolina 29578 Fax #: (843) 213-5555
Other:
E-mail: wbyrd@turnerpadget.com

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

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☒ Sander/Libel (380)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** December 7, 2015

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.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	Civil Action No. 2015-CP-14-_____

TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**SUMMONS**
	)	
M. B. Hutson a/k/a M. B. Hudson,	)	
	)	
Defendant.	)	

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2015 DEC 17 P 12: 54

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon its subscribers, at the address shown below, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

{Signature Page Follows}

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 12/17/15
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

TURNER PADGET GRAHAM & LANEY P.A.

By: 

R. Wayne Byrd
Carlyle R. Cromer
Turner Padget Graham & Laney P.A.
P.O. Box 2116
Myrtle Beach, South Carolina 29578
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John S. Wilkerson, III
Richard S. Dukes, Jr.
Turner Padget Graham & Laney P.A.
P.O. Box 22129
Charleston, South Carolina 29413
Telephone: (843) 576-2801
Facsimile: (843) 577-1649
E-mail: jwilkerson@turnerpadget.com
rdukes@turnerpadget.com

ATTORNEYS FOR PLAINTIFFS

December 7, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	Civil Action No. 2015-CP-14-_____

TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell,

Plaintiffs,

vs.

M. B. Hutson a/k/a M. B. Hudson,

Defendant.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 12/7/15
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

COMPLAINT
(JURY TRIAL DEMANDED)

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2015 DEC 7 P 12:41

The Plaintiffs, upon information and belief, would respectfully show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff TLC Holdings, LLC is a limited liability company organized and existing pursuant to the laws of the State of South Carolina.

2. Plaintiff Richard Clark is a resident of the state of Tennessee.

3. Plaintiff Jimmy "Steve" Lovell is a resident of the state of Florida.

4. Defendant M. B. Hutson a/k/a M. B. Hudson is a resident of Orangeburg County, South Carolina.

5. Venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30(C) because Defendant resided in Clarendon County at the time the cause of action arose, and the most substantial part of the alleged act giving rise to the cause of action occurred in Clarendon County.

6. This Court has jurisdiction over the parties and the subject matter of this action.

FACTUAL ALLEGATIONS

7. Plaintiffs Clark and Lovell are two of the three former members of Big Water Resort, LLC. James Thigpen is the third former member. Big Water Resort, LLC operated the Big Water Resort campground on the shores of Lake Marion. Big Water Resort, LLC began selling memberships in the campground in 2003 and eventually sold over 1,000 memberships.

8. Plaintiff TLC Holdings, LLC owns the land on which the Big Water Resort campground is located. Plaintiffs Clark and Lovell, along with James Thigpen, are the three members of TLC Holdings, LLC.

9. In December 2010, Plaintiffs Clark and Lovell, along with James Thigpen, sold their membership interests in Big Water Resort, LLC to Defendant Hutson, making Hutson the sole member of that LLC. Clark, Lovell, and Thigpen financed Hutson's purchase of the LLC under a promissory note payable to the three of them by Hutson.

10. Also in December 2010, Plaintiffs TLC Holdings, LLC, Clark, and Lovell, along with Thigpen, entered into a lease–purchase agreement with Defendant Hutson, under which TLC Holdings LLC, Clark, Lovell, and Thigpen agreed to sell certain property to Hutson. This property included the land on which the Big Water Resort campground was located.

11. Subsequent to these transactions, Defendant Hutson operated the Big Water Resort campground until early 2014.

12. In December 2011, Plaintiff TLC Holdings, LLC instituted an action in Clarendon County Court of Common Pleas against Defendant Hutson for breach of the lease–purchase agreement, seeking damages and ejectment.

13. In March 2012, the parties to the lease–purchase agreement entered into a Settlement Agreement. The terms of the Settlement Agreement imposed many duties on

Defendant Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Plaintiff TLC Holdings, LLC. The Settlement Agreement was approved by, and incorporated into, a consent order signed by the Honorable George C. James, Jr. in April 2012.

14. In February 2013, counsel for Plaintiffs Clark, Lovell, and TLC Holdings, LLC notified Defendant Hutson that he was in default of the lease–purchase agreement and Settlement Agreement.

15. Counsel for Plaintiffs Clark, Lovell, and TLC Holdings, LLC sent Hutson another default letter on December 10, 2013, notifying him that he had failed to cure the defaults outlined in the February 2013 default letter and that they would proceed with filing an affidavit of default.

16. In a postcard dated December 18, 2013 and addressed to current and former members of the Big Water Resort campground, Defendant Hutson stated the following:

> I purchased the Big Water Resort business in 2010. I have since come to realize that members were scammed by paying thousands of dollars to Big Water Resort when formerly owned by TLC, Holdings [sic]. Those monies totaled about 5 million dollars paid by members when they signed their individual contracts to TLC, Holdings [sic] owned Big Water Resort. There was no feasible way that Big Water Resort could furnish the contractual benefits and the spirit as outlined in the contract, nor did TLC, Holdings [sic] have any desire to fulfill their end of the contract in actuality, nor in spirit.
>
> I, and others, will seek to demand a refund from TLC Holdings, by way of a class action lawsuit, charging TLC, Holdings [sic] with fraud and possible racketeering for the five million plus triple damages. Any existing or former member wanting to join this lawsuit may do so by contacting me at Big Water Resort as soon as possible or dialing [redacted]. I, too, have been scammed by TLC, Holdings [sic] as a member and purchaser of Big Water Resort. I will be able to put any member in touch with the attorney. The suit will be filed in the next ten days. Anyone who joins stands a good chance of recovering their money. I know that hundreds of members are convinced they were scammed. It appears that hundreds will join this effort. I am told that the statute runs from time of discovery of the scam. Let's join together now and get our money back.

17. In March 2014, the Honorable George C. James, Jr. issued an order ruling that the Settlement Agreement and consent order should be enforced. Specifically, he ordered that the lease–purchase agreement was terminated and that Defendant Hutson was required to vacate the property. Hutson vacated the property later that month.

18. In April 2014, a group of campground members brought a putative class action in federal court against Plaintiff TLC Holdings, LLC; Plaintiff Clark; Plaintiff Lovell; James Thigpen; and Big Water Resort, LLC ("class action defendants"). The campground members alleged that, among other things, the class action defendants breached the members' membership contracts; that Clark and Lovell defrauded the campground members; and that Clark and Lovell siphoned funds from the resort.

FOR A FIRST CAUSE OF ACTION
(LIBEL)

19. The foregoing allegations are incorporated by reference as if fully repeated verbatim herein.

20. Defendant Hutson made false and defamatory statements about Plaintiffs in the December 2013 postcard.

21. Defendant Hutson distributed this postcard to hundreds of campground members and was the party at fault for the publication of the false and defamatory statements, which publication was not privileged.

22. The false statements made by Defendant Hutson about Plaintiffs in the postcard were defamatory in that they tended to degrade and disgrace Plaintiffs, reduce the reputation and character of Plaintiffs in the estimation of their friends, acquaintances, business associates, and/or the public, and accuse Plaintiffs of impropriety and criminal activity.

23. In publishing the statements, Defendant Hutson acted with recklessness and/or wantonness toward Plaintiffs' rights.

24. The false and defamatory statements made by Defendant Hutson about Plaintiffs have caused Plaintiffs to suffer damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs are entitled to and pray for the following relief:

a) Entry of judgment in favor of Plaintiffs on all causes of action against Defendant;

b) An award to Plaintiffs of actual damages from Defendant in an amount to be determined at trial;

c) An award to Plaintiffs of punitive damages from Defendant in an amount to be determined at trial;

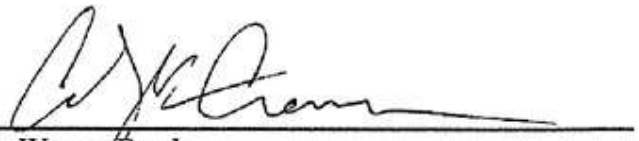
d) An award to Plaintiffs of costs, pre-judgment interest, and fees from Defendant;

e) A jury trial on all issues so triable; and

f) For such other relief as this Honorable Court may deem just and proper.

{Signature Page Follows}

TURNER PADGET GRAHAM & LANEY P.A.

By: 

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rdukes@turnerpadget.com

ATTORNEYS FOR PLAINTIFFS

December 7, 2015

Turner | Padget

REPLY TO:

R. Wayne Byrd

E-Mail: WByrd@TurnerPadget.com
Writer's Direct Dial: (843) 213-5504
Writer's Direct Fax: (843)213-5604

December 14, 2015

Hon. Beulah Roberts
Clerk of Court for Clarendon County
P.O. Box 136 (29102
3 Keitt St.
Manning, South Carolina 29102

Re: TLC Holdings, LLC, et al. v. M. B. Hutson a/k/a M. B. Hudson
Court of Common Pleas for Clarendon County, South Carolina
Civil Action No.: 2015-CP-14-615
Our C/M#: 12916.00102

Dear Ms. Roberts:

Enclosed, for filing with the Court, please find an Original and one copy of an Affidavit of Service, evidencing service on the Defendant on December 8, 2015 with a filed copy of the Summons and Complaint, in the above referenced matter. After filing has been completed, please return the filed and stamped copy to me in the enclosed self-addressed envelope.

Thanks for your assistance in this matter.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Wayne Byrd/bk

R. Wayne Byrd

RWB:bk

Enc.

State of South Carolina **County of Clarendon** **In the Court of Common Pleas**

PLAINTIFF: (S) TLC Holdings, LLC et al.
V,

DEFENDANT: (S) M.B. Hutson a/k/a M.B. Hudson

Personal Service	X	**CORPORATE SERVICE**		**GOVERNMENT SERVICE**	

Turner Padget Graham & Laney P.A. Attorney at Law - **Case Number:** 2015-CP-14-615

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me one, Clarence Portee, who first being duly sworn, deposes and says that. On the 8th day of December 2015 at 5:50 pm, deponent served on the defendant: **M.B. Hutson a/k/a M.B. Hudson** with a: **Civil Cover Sheet, Summons and Complaint**

(2) Service of the defendant was affected at the address: 1545 Biltmore Street, Orangeburg, South Carolina 29115

(3) The general physical description of the person is as follows:

Race	White	**Sex**	Male	**Age**	58-64	**HGT**	5-7	**WGT**	165-175

(3) The person to whom the process has been delivered has retained the original/certified copy thereof; and the deponent is at least 18 years of age and is not a party to the action.

SWORN to before me this
8th Day of December, 2015
Eleanor Lenette
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: October 26, 2019

Server:
Clarence Portee
Clarence Portee Process & Investigation Services
P.O. Box 50872
Columbia, South Carolina 29250-0872

COMMERCIAL LINES COMMON POLICY DECLARATIONS

INSURANCE IS PROVIDED BY THE COMPANY DESIGNATED BY AN "X": Stock Company

[X] PENN-AMERICA INSURANCE COMPANY

[ ] PENN-STAR INSURANCE COMPANY

[ ] PENN-PATRIOT INSURANCE COMPANY

Bala Cynwyd, Pennsylvania 19004

State Control Number

Renewal of Number

POLICY NUMBER: PAC7045167

APPROVED
By mhowerton at 3:53 pm, 11/20/13

1. NAMED INSURED: BWR, INC

DBA: Big Water Resort

MAILING ADDRESS: 6215 Dingle Pond Road

Summerton SC 29148

2. POLICY PERIOD: From 10/16/2013 To 10/16/2014 at 12:01 A.M.
Standard Time at your mailing address shown above.

3. FORM OF BUSINESS: CORPORATION OTHER DESC:

4. BUSINESS DESCRIPTION: 164 - DVUA LEAVITT CAMPGROUNDS

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

5. THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIUM
Commercial General Liability Coverage Part	$ 2,700.00
Commercial Property Coverage Part	$ 8,502.00
Commercial Crime Coverage Part	$ NOT COVERED
Commercial Inland Marine Coverage Part	$ 3,612.00
Professional Liability Coverage Part	$ NOT COVERED
Liquor Liability Coverage Part	$ NOT COVERED
Commercial Umbrella Coverage Part	$ NOT COVERED
Owners Contractors Protective Coverage Part	$ NOT COVERED
TRIA	$ NOT COVERED

THIS COMPANY HAS BEEN APPROVED BY THE DIRECTOR OR HIS DESIGNEE OF THE SOUTH CAROLINA DEPARTMENT OF INSURANCE TO WRITE BUSINESS IN THIS STATE AS AN ELIGIBLE SURPLUS LINES INSURER, BUT IT IS NOT AFFORDED GUARANTY FUND PROTECTION.

6. TOTAL PREMIUM PAYABLE AT INCEPTION	$	14,814.00
Inspection Fee	$	150.00
Surplus Lines Tax	$	897.84
	$	
	$	
	$	
	$	
Other:	$	
TOTAL	$	15,861.84

NO FLAT CANCELLATION

25% Minimum Earned Premium

7. FORM(S) AND ENDORSEMENT(S) MADE A PART OF THIS POLICY AT THE TIME OF ISSUE:*

AS PER FORM COMSCHD(10/00) ATTACHED

*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Agency Code: 02503
HULL, West Virginia
Hurricane, WV

MH/ks 11/20/13

By George F. Ellis, III
Authorized Representative

EXHIBIT A

S1100(04-07) INSURE

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this date served the foregoing

RESPONDENTS' MOTION FOR INJUNCTIVE RELIEF

by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, and via electronic mail, addressed to the following:

MB Hutson/MB Hudson
Post Office Box 2755
Orangeburg, SC 29116
hutson4444@gmail.com
Pro Se Appellant

s/Timothy J. Newton
TIMOTHY J. NEWTON, ESQUIRE
S.C. Bar No. 71640
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, SC 29260
(803) 782-4100
PRO SE RESPONDENT

Dated: January 21, 2021