

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

RECEIVED

MAR 08 2021

SC Court of Appeals

Appellant Case No.: 2020-G000720

Marvin Gipson.....Respondent

v.

Coffey & McKenzie, P.A.....Appellant

RECORD ON APPEAL

Steven S. McKenzie
Coffey & McKenzie, P.A.
2 North Brooks Street
P.O. Box 1292
Manning, SC 29102
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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1400311

Marvin Gipson
PLAINTIFF(S)

Clyde Williamson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion for a New Trial and to Alter or Amend the Judgment Pursuant to Rule 59 is hereby denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/18/2020 .

Scott Lamar Robinson for Clyde Williamson, Betsy Williamson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

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

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Clarendon Common Pleas

Case Caption: Marvin Gipson VS Clyde Williamson , defendant, et al

Case Number: 2017CP1400311

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2020-03-18 13:30:53 page 3 of 3

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
MARVIN GIPSON,)
Plaintiff,)
vs.)
CLYDE WILLIAMSON, BESTY)
WILLIAMSON AND COFFEY)
& MCKENZIE, PA,)
Defendant.)

IN THE FAMILY COURT OF THE
3RD JUDICIAL CIRCUIT
DOCKET NO.: 2018-DR-14

**NEW TRIAL, ALTER OR AMEND
THE JUDGMENT PURSUANT TO
RULE 59 OF THE SOUTH
CAROLINA RULES OF CIVIL
PROCEDURE.**

YOU will please take notice that the Defendant, Coffey and McKenzie, P.A. will move before this Honorable Court for an Order pursuant the SCRPC Rule 59 for a new trial, or in the alternative to alter of amend the judgment entered against the Defendant, Coffey & McKenzie, P.A. in the amount of \$10,306.00 based on the following:

1. The Plaintiff failed to establish the applicable standard of care for legal malpractice. Coffey & McKenzie, P.A. would show that a plaintiff alleging legal malpractice arising out of a real estate closing must establish the standard of care for the particular situation and prove the attorney breached the standard of care (*See Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742,745 (2010)). A plaintiff alleging legal malpractice must establish this standard of care through expert testimony. On September 23, 2009, Chief Justice Jean Hoefer Toal issued a memorandum to members of the South Carolina Bar regarding "Guidelines for Attorneys Conducting Residential Real Estate Closings". Roman numeral II, subparagraph 4 of the Guidelines established by Chief Justice Toal states : "disburse all of the closing funds in accordance with the settlement statement". The South Carolina Constitution Article V, Section 4 gives the South Carolina Supreme Court the Authority to define the practice of law in South Carolina. The Plaintiff presented no expert testimony regarding the applicable standard of care for an attorney for a residential real estate closing.

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2. The Defendant, Coffey & McKenzie, P.A. is entitled to a setoff of the monies it recovered for the Plaintiff. The Plaintiff testified that the net monies he was to receive at closing \$10,306.00. The Plaintiff also testified that he did receive \$1,516.89 through the efforts of the Defendant, Coffey & McKenzie, P.A. (The closing attorney for Coffey & McKenzie, P.A. likewise testified that he was able to recover \$1,516.89. The Defendant is informed and believes that the judgment should be reduced by the amount of monies the Plaintiff actually failed to recover from the closing to \$8,789.11. In other result, would see the Plaintiff's recovery total recovery being \$11,822.89.

3. The Defendant, Coffey & McKenzie, P.A. established through expert testimony that the monies that were not recovered by the Plaintiff were intercepted by the criminal acts of a third party. The Defendant, Coffey & McKenzie, P.A. would show that the superseding criminal acts of a third party. The Defendant, Coffey & McKenzie, P.A. would show that this criminal superseding act of a third party is the ultimate cause of the Plaintiff's damages.

The Defendant, Coffey & McKenzie, P.A. would ask this Honorable Court for an Order pursuant the SCRCP Rule 59 for a new trial, or in the alternative to alter of amend the judgment entered against the Defendant, Coffey & McKenzie, P.A.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

February 14, 2020

BY: _____

Steven S. McKenzie
Attorneys for the Plaintiff
2 N. Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (Telephone)
(803) 435-8915 (Facsimile)

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STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Marvin Gipson,

Plaintiffs,

vs.

Clyde Williamson, Betsy Williamson, and
Coffey & McKenzie, PA,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
) C.A. No.: 2017-CP-14- 00311

SUMMONS
(JURY TRIAL DEMANDED)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and serve a copy of your Answer to said Complaint upon the subscriber, at his office at 301 Stoneridge Drive, Columbia, South Carolina, 29210, within thirty (30) days after service hereof, thirty-five (35) days if service is by certified mail, exclusive of the day of said service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for default judgment and the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED

ORMOND | DUNN



Benjamin A. Dunn, II
301 Stoneridge Drive
Columbia, South Carolina 29210
ph: 803.933.9000
fax: 803.828.7404
SC Bar No.: 12036
Attorney for Plaintiff

Columbia, South Carolina
August 10, 2017

ELECTRONICALLY FILED - 2017 Aug 30 1:39 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400311

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	C.A. No.: 2017-CP-14- <u>00311</u>
Marvin Gipson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(JURY TRIAL DEMANDED)
Clyde Williamson, Betsy Williamson, and	)	
Coffey & McKenzie, P.A.,	)	
	)	
Defendants.	)	
	)	

Plaintiff, Marvin Gipson, complaining of Defendants, Clyde Williamson, Betsy Williamson, and Coffey & McKenzie, PA, would respectfully show that:

PARTIES AND JURISDICTION

1. Plaintiff, Marvin Gipson (hereinafter "Plaintiff") is a resident of Fort Bend County, Texas.
2. Defendants Clyde Williamson and Betsy Williamson, (hereinafter "Defendant Williamsons") are, upon information and belief, residents of Clarendon County, South Carolina.
3. Defendant Coffey & McKenzie, P.A., (hereinafter "Defendant Coffey & McKenzie") is, upon information and belief, a South Carolina Professional Corporation and law firm headquartered in Clarendon County, South Carolina
4. As residents of the State of South Carolina, Defendants are subject to the jurisdiction of the Court. Venue is proper pursuant to Section 15-7-10 *et seq.*, of the Code of Laws for South Carolina.

FACTS

5. Prior to mid-June 2016, Plaintiff owned property in Clarendon County located at 3766 Rowe Drive, Summerton, South Carolina 29148, the same being described as:
All that certain piece, parcel or lot of land, together with any improvements thereon, lying, being, and situate in the County of Clarendon, State of South Carolina, being more

particularly shown and delineated on that certain plat prepared by H.F. Oliver, Surveyor, dated November 8, 1972, and recorded in the Office of the Register of Deeds for Clarendon County in Plat Book 25 at Page 7. Aforesaid plat is incorporated herein by reference pursuant to § 30-5-250 of the Code of Laws of South Carolina (1976), as amended.

Clarendon County TMS No. 103-11-01-006-00

(hereinafter the "Property"). Plaintiff inherited ownership of the Property from his parents.

6. Sometime in 2016, Plaintiff determined to sell the Property. He therefore listed the Property with a local real estate broker, RE/MAX by the Lake, which marketed the property. At some point thereafter, Defendant Williamsons became interested in the Property and ultimately entered in to a contract to purchase the Property from Plaintiff for Twelve Thousand and 00/100 (\$12,000.00) Dollars.
7. Shortly thereafter, and upon information and belief, Defendant Williamsons selected Defendant Coffey & McKenzie, a South Carolina Professional Corporation engaged in the practice of law, to close their purchase of the Property from Plaintiff at its offices located in Manning, South Carolina.
8. During this same period of time, Plaintiff moved from Yonkers, New York to Missouri City, Texas. In order avoid the time and expense of traveling to South Carolina, Plaintiff's portion of the transaction was conducted as a "mail-away" closing, such that his communications with Defendant Coffey & McKenzie were conducted via the U.S. Postal Service/commercial courier service, email, telephone, and facsimile. In this way, various documents, including a settlement statement dated June 13, 2016, Warranty Deed, and Attorney Representation Disclosure, were sent to Plaintiff for his review and signature. Copies of the settlement statement and Warranty Deed are attached as Exhibit A hereto while a copy of the Attorney Representation Disclosure is attached as Exhibit B hereto. An examination of this Disclosure reveals that Defendant Coffey & McKenzie purported to act as the attorney for both Plaintiff, as seller, and Defendant Williamsons, as purchasers.

9. A review of the settlement statement indicates that after paying the closing costs, tax proration, and real estate commission, Plaintiff was to receive proceeds in the amount of Ten Thousand, Three Hundred Six and 00/100 (\$10,306.00) Dollars.
10. Upon information and belief, during the days preceding the closing, Plaintiff informed Monica S. Bruce, a paralegal employed by Defendant Coffey & McKenzie that he wanted his proceeds delivered in the form a check to his address in Missouri City, Texas. Plaintiff also communicated with Ms. Bruce on several occasions during this period by email, always using his personal email address "mail4marvin@gmail.com."
11. Upon information and belief, on, or about, June 16, 2016, Ms. Bruce received an email from "mail4rmarvin@gmail.com", in which the letter "m" after the numeral "4" was replaced by the letters "r" and "n". This email, apparently from an individual or group that had hacked into the email account(s) of one or more of the parties herein, contained wiring instructions for an account with East West Bank located in Pasadena, California and stated the name on the account as "W.M International Enterprise Inc."
12. Upon information and belief, no one at Defendant Coffey & McKenzie noticed that these wiring instructions had been sent from an email address similar to, but distinct from, Plaintiff's. Further, no one at Defendant Coffey & McKenzie called Plaintiff to verify the authenticity of the wiring instructions or the change from his original instruction to mail him a check for the proceeds.
13. On or about June 27, 2016, Plaintiff became concerned because his proceeds check from Defendant Coffey & McKenzie hadn't arrived. So, Plaintiff called Ms. Bruce and asked about the status of the closing. Ms. Bruce then informed Plaintiff that his proceeds had been wired out to the account identified in the June 16th email. Plaintiff explained to Ms. Bruce, and then Steven McKenzie, upon information and belief, one of the attorney-owners of Defendant Coffey & McKenzie, that he never sent wiring instructions.
14. Over the following weeks both Plaintiff and Defendant Coffey & McKenzie contacted various law enforcement agencies, East West Bank, and other financial institutions to determine the whereabouts of Plaintiff's proceeds. Ultimately, these efforts were unsuccessful and Plaintiff has never received any of the proceeds due from the sale of the

Property.

FOR A FIRST CAUSE OF ACTION as to DEFENDANT COFFEY & MCKENZIE
Negligence

15. Plaintiff incorporates and re-alleges the allegations contained in Paragraphs 1 through 14 as if fully set forth herein.
16. Defendant Coffey & McKenzie, acting as the closing attorneys for Plaintiff's sale of the Property to Defendant Williamsons, had a duty to exercise due care in handling all monies involved in the transaction, including those proceeds due to Plaintiff.
17. Defendant Coffey & McKenzie breached its duty of care by ignoring Plaintiff's instructions to send his proceeds in the form of a check, and instead wired his proceeds to an account not in Plaintiff's name based on wiring instructions received in an email from an email address Plaintiff had (and has) never used, referenced, or authorized in any way.
18. Defendant Coffey & McKenzie's breach of its duty directly and proximately caused actual damages to Plaintiff; specifically, the loss of his proceeds from the sale of the Property.

FOR A SECOND CAUSE OF ACTION as to DEFENDANT WILLIAMSONS
Unjust Enrichment

19. Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 18 as if fully set forth herein.
20. Defendant Williamsons agreed to purchase the Property from Plaintiff at a price of Twelve Thousand and 00/100 (\$12,000.00) Dollars as evidenced by the settlement statement and Warranty Deed attached hereto as Exhibit A. After paying the closing costs, tax proration, and real estate commission, Plaintiff was to receive proceeds in the amount of Ten Thousand, Three Hundred Six and 00/100 (\$10,306.00) Dollars from this transaction.
21. By virtue of the Warranty Deed executed by Plaintiff, Defendant Williamsons now hold title to the Property while Plaintiff has received no proceeds or other monies whatsoever

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from the sale of the property.

22. Defendant Williamsons have thereby been unjustly enriched at Plaintiff's expense.
23. Equity therefore demands the Defendant Williamsons either convey all their right, title, and interest in the Property back to Plaintiff or compensate Plaintiff in the amount of his missing proceeds, Ten Thousand, Three Hundred Six and 00/100 (\$10,306.00) Dollars.

FOR A THIRD CAUSE OF ACTION as to DEFENDANT WILLIAMSONS

Action to Set Aside Deed

24. Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 23 as if fully set forth herein.
25. The Warranty Deed executed by Plaintiff states that he agrees to transfer title in and to the Property to Defendant Williamsons for the stated consideration of Twelve Thousand and 00/100 (\$12,000.00) Dollars.
26. Plaintiff has never received any portion of the stated consideration.
27. For this reason, the Warranty Deed fails for want of consideration and must be set aside and declared a nullity by this Court.

FOR A FOURTH CAUSE OF ACTION as to DEFENDANT WILLIAMSONS

Breach of Contract

28. Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 27 as if fully set forth herein.
29. Plaintiff and Defendant Williamsons entered into a mutually binding contract in which Plaintiff agreed to sell, and Defendant Williamsons agreed to buy, the Property for the purchase price of Twelve Thousand and 00/100 (\$12,000.00) Dollars.
30. Plaintiff fully performed his portion of said contract by executing a Warranty Deed conveying title in and to the Property to Defendant Williamsons.
31. Defendant Williamsons breached said contract by failing to pay Plaintiff the agreed upon purchase price, minus closing costs. Specifically, Defendant Coffey & McKenzie, acting as agents of Defendant Williamsons, failed to pay the closing proceeds to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests and prays for the following relief:

1. Judgment against Defendants for the loss of the proceeds Plaintiff was due at the closing of the sale of the Property;
2. Actual, consequential, and punitive damages resulting from the Defendants' conduct;
3. The costs of this action and reasonable attorney's fees; and,
4. For such other and further relief as this Court may deem just and proper.

ORMOND | DUNN



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301 Stoneridge Drive
Columbia, South Carolina 29210
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Ben@OrmondDunn.com
SC Bar No.: 12036
Attorney for Plaintiff

Columbia, South Carolina
August 10, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) FOR THE THIRD JUDICIAL CIRCUIT
C.A. No.: 2017-CP-14-_____

Marvin Gipson,

Plaintiffs,

vs.

EXHIBIT A

Clyde Williamson, Betsy Williamson, and
Coffey & McKenzie, PA,

Defendants.

Settlement Statement & Warranty Deed

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OMB NO. 2502-0265

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN				
	1. ☐ FHA	2. ☐ FmHA	3. ☐ CONV. UNINS.	4. ☐ VA	5. ☐ CONV. INS.
	6. FILE NUMBER 160273JR-WILLIAMSON		7. LOAN NUMBER N/A		
	8. MORTGAGE INS CASE NUMBER N/A				

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BUYERS Clyde Williamson and Betsy Williamson 1328 Jovner Drive, Lot 3 Summerton, SC 29148	E. NAME AND ADDRESS OF SELLER Marvin Gipson 495 Odell Avenue Apt 3L Yonkers, NY 10703	F. NAME AND ADDRESS OF LENDER Cash Transaction
G. PROPERTY LOCATION 3766 Rowe Drive Summerton, SC 29148 Clarendon County, South Carolina TM# 103-11-01-006-00	H. SETTLEMENT AGENT Colley & McKenzie, PA PLACE OF SETTLEMENT 2 North Brooks Street Manning, SC 29102	I. SETTLEMENT DATE June 13, 2016

J. SUMMARY OF BUYER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BUYERS:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price	12,000.00	401. Contract Sales Price	12,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Buyers (Line 1400)	725.00	403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller in advance		Adjustments For Items Paid By Seller in advance	
106. City/Town Taxes	to	406. City/Town Taxes	to
107. County Taxes	to	407. County Taxes	to
108. Assessments	to	408. Assessments	to
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BUYERS	12,725.00	420. GROSS AMOUNT DUE TO SELLER	12,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BUYERS:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)		502. Settlement Charges to Seller (Line 1400)	1,484.40
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
210. City/Town Taxes	to	510. City/Town Taxes	to
211. County Taxes	01/01/16 to 06/13/16	511. County Taxes	01/01/16 to 06/13/16
212. Assessments	to	512. Assessments	to
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BUYERS	209.60	520. TOTAL REDUCT. AMT DUE SELLER	1,694.00
300. CASH AT SETTLEMENT FROM/TO BUYERS:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Buyers (Line 120)	12,725.00	601. Gross Amount Due To Seller (Line 420)	12,000.00
302. Less Amount Paid By/FOR Buyers (Line 220)	(209.60)	602. Less Reductions Due Seller (Line 520)	(1,694.00)
303. CASH (X FROM) (TO) BUYERS	12,515.40	603. CASH (X TO) (FROM) SELLER	10,306.00

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

Buyers

Clyde Williamson

Betsy Williamson

Seller

Marvin Gipson

L. SETTLEMENT CHARGES				PAID FROM BUYER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price \$ 12,000.00 @ 10.0000 % 1,200.00					
Division of Commission (line 700) as follows:					
701. \$1,200.00	to	ReMax by the Lake			
702. \$	to	ReMax by the Lake			
703. Commission Paid at Settlement					
704.	to				1,200.00
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	%	to			
802. Loan Discount	%	to			
803. Appraisal Fee		to			
804. Credit Report		to			
805. Lender's Inspection Fee		to			
806. Mortgage Ins. App. Fee		to			
807. Assumption Fee		to			
808.					
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From	to	@ \$	per day (days %)		
902. MIP Tollns. for LifeOfLoan	months				
903. Hazard Insurance Premium	1.0 years				
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. City/Town Taxes	months @ \$	per month			
1004. County Taxes	months @ \$	per month			
1005. Assessments	months @ \$	per month			
1006.	months @ \$	per month			
1007.	months @ \$	per month			
1008.	months @ \$	per month			
1100. TITLE CHARGES					
1101. Settlement or Closing Fee	to				
1102. Abstract or Title Search	to	Colley & McKenzie Expense		75.00	
1103. Title Examination	to				
1104. Title Insurance Binder	to				
1105. Document Preparation	to	Colley & McKenzie, PA			200.00
1106. Notary Fees	to				
1107. Attorney's Fees	to	Colley & McKenzie, PA		500.00	
(includes above item numbers:)					
1108. Title Insurance	to	First American Title Insurance Company		100.00	
(includes above item numbers:)					
1109. Lender's Coverage	\$				
1110. Owner's Coverage	\$	12,000.00	100.00		
1111. Misc/LD/Copy/Fax/PLT	to	Colley & McKenzie Expense		40.00	40.00
1112. Overnight/Wire/Courier					
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording Fees: Due to \$ 10.00; Mortgage \$; Releases \$				10.00	
1202. City/County Tax/Stamp Due to Mortgage					
1203. State Tax/Stamp: Revenue Stamp 44.40; Mortgage					44.40
1204. Satisfaction of Mortgage					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to				
1302. Pest Inspection	to				
1303.					
1304.					
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)				725.00	1,484.40

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Colley & McKenzie, PA
Settlement Agent

Certified to be a true copy.

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Prepared By and Return to:
Coffey & McKenzie, PA
Post Office Box 1292
2 North Brooks Street
Manning, SC 29102

File No.: 160273JR

(Please do not write above this line - Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That **Marvin Gipson**, the Grantor, in the State aforesaid, for and in consideration of the sum of Twelve Thousand and 00/100 (\$12,000.00) Dollars to the Grantor paid by **Clyde Williamson and Betsy Williamson**, the Grantees, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said, **Clyde Williamson and Betsy Williamson**, as joint tenants, with the right of survivorship, upon the death of either of them to the survivor of them, and not as tenants in common, their heirs and assigns forever, the following described property to wit:

All that certain piece, parcel or lot of land, together with any improvements thereon, lying, being and situate in the County of Clarendon, State of South Carolina, being more particularly shown and delineated on that certain plat prepared by H. F. Oliver, Surveyor, dated November 8, 1972, and recorded in the Office of the Register of Deeds for Clarendon County in Plat Book 25, Page 7. Aforesaid plat is incorporated herein by reference pursuant to §30-5-250 of The Code of Laws of South Carolina (1976), as amended.

Being the same property conveyed to Marvin Gipson by Partition Deed of Johnny A. Gibson aka Johnny A. Gipson, Jr. and Clara Bell McKnight, Trustees dated November 17, 2006 and recorded December 14, 2006 in the Office of the Register of Deeds for Clarendon County in Deed Book A-641 at Page 204.

Clarendon County Tax Map Number 103-11-01-006-00.

Property Address: 3766 Rowe Drive, Summerton, SC 29148

Grantees' Address: 3766 Rowe Drive, Summerton, SC 29148

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Clyde Williamson and Betsy Williamson, as joint tenants, with the right of survivorship, upon the death of either of them to the survivor of them, and not as tenants in common, their heirs and assigns forever.

And the Grantor does hereby bind himself and his Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said, Clyde Williamson and Betsy Williamson, their Heirs and Assigns, against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the execution hereof by Grantor this ____ day of June, 2016.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness #1 Signature

Marvin Gipson

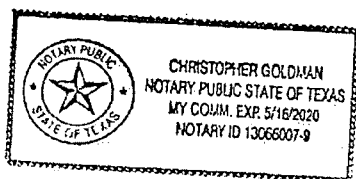
Witness #2/Notary Signature

STATE OF Texas

COUNTY OF Hill

ACKNOWLEDGMENT

I, Christopher Goldman (name of official), Notary Public in and for the State of Texas, do hereby certify that the within named Grantor personally appeared before me this 15 day of June, 2016 and acknowledged the due execution of the foregoing instrument.



SIGNATURE OF OFFICIAL OR NOTARY PUBLIC
My Commission Expires: 05/16/2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	C.A. No.: 2017-CP-14-_____
Marvin Gipson,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	EXHIBIT B
	)	
Clyde Williamson, Betsy Williamson, and	)	
Coffey & McKenzie, PA,	)	
	)	
Defendants.	)	
_____	)	

Attorney Representation Disclosure

210000020
100000

Prepared by:
Coffey & McKenzie, P.A.
Post Office Box 1292, 2 North Brooks Street
Manning, SC 29102
Parcel ID No. 103-11-01-006-00

ATTORNEY REPRESENTATION DISCLOSURE

PROPERTY ADDRESS: 3766 Rowe Drive, Summerton, SC 29148

The undersigned Seller and Purchasers of the above-captioned property acknowledge that **Joseph K. Coffey and Coffey & McKenzie, P.A.**, is acting as the attorney for both parties and as agent for the title insurer (if applicable) in the above-referenced real estate transaction. The Seller and Purchasers consent to the said law firm representing both parties and the title insurer in this matter. The undersigned understand that they have the right to seek independent counsel in this transaction, and that said attorney will withdraw from representing either the Seller or the Purchasers if any actual conflict arises between the parties. The parties acknowledge that at the time of closing there is no conflict, and agree to inform the attorney should any conflict arise.

Purchasers:

Clyde Williamson

Betsy Williamson

Seller:

Marvin Gipson

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STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Marvin Gipson,)

Plaintiff,)

vs.)

Clyde Williamson, Betsy Williamson)
and Coffey & McKenzie, P.A.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2017-CP-14-00311

ANSWER
AND
CROSS COMPLAINT

TO: BENJAMIN A. DUNN, II, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant, Clyde Williamson and Betsy Williamson, hereby answering the Complaint of Plaintiff, would respectfully show:

1. Defendant denies each and every allegation not hereinafter specifically admitted, qualified or explained.

FOR A FIRST DEFENSE

2. Paragraphs One, Two and Three are admitted.
3. Paragraph Four is admitted as venue and jurisdiction is proper in Clarendon County.
4. Paragraphs Five, Six and Seven are admitted.
5. Responding to Paragraph Eight, Defendants are uncertain as to when the Plaintiff relocated his residence and regarding his choice to attend the real estate closing. The remaining portion of Paragraph Eight is admitted.
6. Responding to Paragraph Nine, Defendant would admit that the HUD-1 reflects Plaintiff's proceeds from the transaction were in the amount of Ten Thousand Three Hundred Six (\$10,306.00) Dollars.

7. Responding to Paragraphs Ten, Eleven, Twelve, Thirteen and Fourteen, Defendant is without any information regarding these allegations and thus denies same.
8. Paragraphs Fifteen, Sixteen, Seventeen and Eighteen do not pertain to this Defendant, but are denied in their entirety.
9. Responding to Paragraph Nineteen, the Defendant reiterates the responses to Plaintiff's Paragraphs One through Eighteen as if fully set forth herein.
10. Paragraph Twenty is admitted.
11. Responding to Paragraph Twenty-One, Defendant would admit that they hold title to the property and deny that the Plaintiff did not receive any proceeds from the sale.
12. Defendant would deny the allegations of Paragraphs Twenty Two and Twenty Three, the Defendant remitted all cost required of them and were in no way responsible for the criminal activity which resulted in Plaintiff's proceeds being taken, they are the rightful owners of the property.
13. Responding to Paragraph Twenty Four, the Defendant reiterates the responses to Plaintiff's Paragraphs One through Twenty-Three as if fully set forth herein.
14. Responding to Paragraph Twenty-Five, Defendant would admit that the Warranty Deed conveyed title to the Defendant for consideration.
15. Responding to Paragraph Twenty Six, Defendant denies the Plaintiff did not receive any portion of the stated consideration. The Plaintiff received One Thousand Five Hundred Sixteen and 89/100ths (\$1,516.89) Dollars.
16. Responding to Paragraph Twenty Seven, Defendant denies the deed should be set aside as the Defendants were bona fide innocent purchasers for value and they would be prejudiced by reformation of the deed.

17. Responding to Paragraph Twenty Eight, the Defendant reiterates the responses to Plaintiff's Paragraphs One through Twenty-Seven as if fully set forth herein.
18. Responding to Paragraph Twenty Nine, Defendant admits these were terms of the contract of sale.
19. Responding to Paragraph Thirty, Defendant admits Plaintiff executed a warranty deed and conveyed title in fulfilling his performance per the contract.
20. Responding to Paragraph Thirty One, Defendant denies they breached their contract by failing to pay the agreed price further denying that some proceeds were not paid to the Plaintiff. Defendant admits the Plaintiff was not paid full consideration due to the compromise of Plaintiff's email account and criminal activity of a third party.
21. As to Plaintiff's Prayer for Relief in Paragraphs One, Two, Three and Four, Defendant denies that the Plaintiff is entitled to any relief.
The Plaintiff was better situated to recognize a difference in email addresses.

FOR A SECOND DEFENSE

BY WAY OF CROSS-COMPLAINT

22. Defendant Williamson would show that they fulfilled all obligations regarding this transaction and that any liability to them regarding this matter would be the responsibility of the Defendant Coffey & McKenzie, P.A.

WHEREFORE, having fully answered the Complaint, the Defendant prays the claims of the Plaintiff be dismissed, for the cost of defending this action, for cost and attorney's fees as allowed by statute, and for such other and further relief as this Honorable Court deems just and proper.

Respectfully Submitted,

s/Scott S. Robinson
Scott S. Robinson, Esquire
P.O. Box 339
Manning, SC 29102
803-460-7552

October 18, 2017
Manning, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Marvin Gipson,

Plaintiff,

vs.

Clyde Williamson, Betsy Williamson
and Coffey & McKenzie, P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2017-CP-14-00311

ANSWER

TO: BENJAMIN A. DUNN, II, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant, Coffey & McKenzie, P.A., hereby answering the Complaint of Plaintiff,
would respectfully show:

1. Defendant denies each and every allegation not hereinafter specifically admitted, qualified or explained.

FOR A FIRST DEFENSE

2. Paragraphs One, Two and Three, upon information and belief, are admitted.
3. Paragraph Four is admitted as venue and jurisdiction is proper in Clarendon County.
4. Paragraph Five is admitted.
5. Paragraph Six is admitted upon information and belief.
6. Paragraph Seven is admitted.
7. Responding to Paragraph Eight, Defendants are uncertain as to when the Plaintiff relocated his residence and regarding his choice to attend the real estate closing. The remaining portion of Paragraph Eight is admitted.
8. Responding to Paragraph Nine, Defendant would admit that the HUD-1 reflects

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Plaintiff's proceeds from the transaction were in the amount of Ten Thousand Three Hundred Six (\$10,306.00) Dollars.

9. Defendant would deny Paragraph Ten. The Plaintiff maintains that he unequivocally requested distribution in the form of a check, the evidence does not support this request occurring prior to the closing and wiring of the funds.
10. The Plaintiff had produced telephone records with highlighted outgoing and incoming calls on July 5, 2016 with Coffey & McKenzie, P.A., however, the closing occurred on June 13, 2016, three weeks before Plaintiff's communications requesting distribution in the form of a check. At that point, the funds had already been wired. A Police Report (attached as Defendant's Exhibit 1) created as a result of Plaintiff's Complaint states "[Gipson] states that on June 16, 2016 they did close on the property and that the proceeds were to be wired to [Gipson's] account." Further, "[Gibson] states that the total amount of the funds to be wired to him was Ten Thousand Three Hundred Six (\$10,306.00) Dollars." Further, Plaintiff's own email dated June 16, 2016 indicates that he did not know what the form of payment would be to the Defendant's. Exhibit 2 ("If sending check...").
11. The Defendant would show that Plaintiff's email account was compromised which allowed the hacker to obtain the Plaintiff's closing proceeds. The hacker's fake email address appears virtually identical to the Plaintiff's real email address:

Mail4marvin@gmail.com

Mail4rnarvin@gmail.com

12. The Plaintiff alleges that he had no affiliation with the fraudulent account or the account holder, W.M. International Enterprises, Inc. Yet, there was no reasonably

45T000027

discernible indication that Coffey & McKenzie, P.A. we're not fully and rightfully authorized to wire the monies to the account provided. Moreover, the Defendant had no reason to suspect that a fraudster was at work given that the context of the fake email included the signed documents (which were only in the Plaintiff's possession at that time) as well as transaction specific information known only to the parties.

13. The Defendant would deny the allegations of Paragraph Twelve. The funds were wired only after the Defendant received transaction specific information, including the signed closing documents, by emails from the Plaintiff that were only later discovered to be sent by the hacker.

14. The closing occurred on June 13, 2016, but distribution of the proceeds could not occur until the Defendant received the signed closing documents from the Plaintiff. After the closing, on June 15, having not received the documents from the Plaintiff, the Defendant requested the FedEx tracking information. Late that night (early morning June 16) the Defendant received an email from (ostensibly) Plaintiff not only providing the signed and scanned closing documents, but also the correct FedEx tracking information and wiring information which was consistent with information previously provided. Therefore, the Defendant had two authenticating factors tied to the same communication providing the wiring instructions:

(1) A signature on documents known to have been physically mailed to Gipson, and

(2) FedEx tracking information which correctly tied to the physical mailing of those documents.

15. Responding to Paragraph Thirteen, the Defendant would admit that Plaintiff did not

contact them for two weeks after the closing. Defendant would re-allege Paragraph Nine of the Answer herein as regards the Plaintiff's awareness of the process being transmitted via wire.

16. Responding to Paragraph Fourteen, the Defendant would show that upon it becoming apparent that there was a problem with the wire transfer, the Defendant took immediate action to remedy the situation. The Defendant immediately initiated contact with their bank (NBSC) and East West Bank (the beneficiary bank), and the Defendant continued to diligently pursue remedies available to them to assist the Plaintiff.
17. The Defendant was successful in recovering over Fifteen Hundred Dollars for the Plaintiff's benefit. The Defendant returned One Thousand Five Hundred Sixteen and 89/100ths (\$1,516.89) Dollars by check dated August 8, 2016.
18. Responding to Paragraph Fifteen, the Defendant reiterates the responses to Plaintiff's Paragraphs One through Fourteen as if fully set forth herein.
19. The Defendant admits the allegations of Paragraph Sixteen. The Defendant at all times conducted themselves well within the bounds of a reasonable, professional fiduciary. However, due to a criminal act committed by an unknown hacker against Plaintiff, Plaintiff incurred a loss.
20. Paragraphs Seventeen and Eighteen under Plaintiff's First Cause of Action are denied and strict proof is demanded thereof.
21. Responding to Paragraph Nineteen, the Defendant reiterates the responses to Plaintiff's Paragraphs One through Eighteen as if fully set forth herein.
22. Paragraph Twenty is admitted.

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23. Responding to Paragraph Twenty-One, Defendant would admit the Defendant Williamson's hold title to the property and deny that the Plaintiff did not receive any proceeds from the sale.
24. Defendant would deny the allegations of Paragraphs Twenty Two and Twenty Three, the Williamson's remitted all cost required of them and were in no way responsible for the criminal activity which resulted in Plaintiff's proceeds being taken.
25. Responding to Paragraph Twenty Four, the Defendant reiterates the responses to Plaintiff's Paragraphs One through Twenty-Three as if fully set forth herein.
26. Responding to Paragraph Twenty-Five, Defendant would admit that the Warranty Deed conveyed title to the Defendant Williamson's for consideration.
27. Responding to Paragraph Twenty Six, Defendant denies the Plaintiff did not receive any portion of the stated consideration. The Defendant assisted in recovering One Thousand Five Hundred Sixteen and 89/100ths (\$1,516.89) Dollars which was sent to the Plaintiff on August 8, 2016.
28. Responding to Paragraph Twenty Seven, Defendant denies the deed should be set aside as consideration was paid to the Plaintiff.
29. Responding to Paragraph Twenty Eight, the Defendant reiterates the responses to Plaintiff's Paragraphs One through Twenty-Seven as if fully set forth herein.
30. Responding to Paragraph Twenty Nine, Defendant, upon information and belief admits these were terms of the contract of sale.
31. Responding to Paragraph Thirty, Defendant admits Plaintiff executed a warranty deed and conveyed title in fulfilling his performance per the contract.
32. Responding to Paragraph Thirty One, Defendant denies that the Williamson's

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breached their contract by failing to pay the agreed price further denying that some proceeds were not paid to the Plaintiff. Defendant admits the Plaintiff was not paid full consideration due to the compromise of Plaintiff's email account and criminal activity of a third party.

33. As to Plaintiff's Prayer for Relief in Paragraphs One, Two, Three and Four, Defendant denies that the Plaintiff is entitled to any relief.

FOR A SECOND DEFENSE

34. Defendant asserts Rule 1.15 of the South Carolina Rules of Professional Conduct concerning attorney possession of client and third-party money and property. Comment 1 thereto states "a lawyer should hold property of others with the care required of a professional fiduciary." The Rules of Professional Conduct do not make attorneys an insurer against fraud committed against a client or third party. At all times the Defendant conducted themselves well within the bounds of a reasonable professional fiduciary. Due to a criminal act committed by an unknown hacker against Gipson, Gipson suffered a loss.

FOR A THIRD DEFENSE

35. Defendant asserts Rule 1.15(d), SCACR 407, when the Defendant received signed documents from the Plaintiff by both mail and e-mail, and the Plaintiff appeared to have provided wiring instructions, the Defendant was obligated to forward the proceeds to the Plaintiff. Under these circumstances, the Rules of Professional Conduct would demand nothing less than promptly forwarding the money to the Plaintiff as directed.

FOR A FOURTH DEFENSE

36. Defendant would assert that Plaintiff was more negligent than the Defendant in failing to recognize compromised emails. The Plaintiff alleges the Defendant was negligent in not recognizing the difference in:

Mail4marvin@gmail.com

Mail4rmarvin@gmail.com

However, the Plaintiff received emails from the Defendant at:

mbruce@ccmlawsc.com;

Subsequently from the compromised email of:

monica.ccmlawsc@gmail.com

Further, the Plaintiff was made aware that the Defendant could be reached by phone, fax or at:

jcoffey@ccmlawsc.com

The Plaintiff was better situated to recognize a difference in email addresses.

37. The Plaintiff failed to join an indispensable party and therefore the Complaint should be dismissed. Rule 12(b)(7), SCRCP. The wiring instructions received by the Defendant identified the account name as W. M. International Enterprises, Inc. Upon this occurrence taking place the Defendant identified through internet search and by contacting the New York Secretary of State, the filed information about this entity. W. M. International Enterprises, Inc. has an incorporating and service of process address of 265 W. 37th Street, 14th Floor, New York, New York 10018. The incorporator was Samuel C. K. Yeung shown as Defendant's Exhibit 3. This entity was the recipient of the Plaintiff's proceeds and thus an indispensable party to this suit.

WHEREFORE, having fully answered the Complaint, the Defendant prays the claims of the Plaintiff be dismissed, for the cost of defending this action, for cost and attorney's fees as allowed by statute, and for such other and further relief as this Honorable Court deems just and proper.

Respectfully Submitted,

Coffey & McKenzie, P.A.

/ Steven S. McKenzie

Steven S. McKenzie
2 North Brooks Street
P.O. Box 1292
Manning, SC 29102
803-435-8847
smckenzie@ccmlawsc.com

September 25, 2017
Manning, South Carolina

1,6-4277

IND. ENTD.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. 26A - FRAUD / CONFIDENCE GAME / BREACH OF TRUST		☒ YES ☐ NO	☐ YES ☐ NO	05		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. / Public ☐ Other ☐ Unknown ☐ Police Off.	
2.		☐ YES ☐ NO	☐ YES ☐ NO				
3.		☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE		
2 NORTH BROOKS STREET @ COFFEY AND MCKENZIE LAW FIRM, MANNING SC				29102			
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK		LOCATION NO.
06/16/2016	1200		06/26/2016	1200	DISP. DATE	DISP. TIME	03
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
GIPSON, NEMARK MARVIN		AQ		J S O U	B	M	61
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
3510 PALM GROVE DRIVE		MISSOURI CITY		TX	77459	03	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
GIPSON, NEMARK MARVIN				J S O U	B	M	61
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
3510 PALM GROVE DRIVE		MISSOURI CITY		TX	77459	03	
VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -							
VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK		DRUGS: ☐ YES ☒ NO ☐ UNK					
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED		J - This Jurisdiction S - State O - Out of State U - Unknown					
SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT
COFFEY, JOSEPH KING		W	M	46	N		5-11
FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
2 NORTH BROOKS STREET		MANNING	SC	29102	03		
SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST	
DRUGS: ☐ YES ☒ NO ☐ UNK TYPE:		TOTAL # ARRESTED 0		06/16/2016 1200			
Offenses:							
FRAUD / CONFIDENCE GAME / BREACH OF TRUST							
On 07/02/2016 I, Det. Elms, spoke with the victim via telephone in reference to this incident. Victim states that the subject was representing him (victim) in the selling of some property here in Clarendon County. Victim states that on June 16, 2016 they did close on the property, and that the proceeds were to be wired to the victim's account. Victim states that on June 26, 2016 the funds from the sell of the property somehow was wired to a different unapproved account. Victim states the total amount of the funds to be wired to him was \$10,306.00. I advised the victim that I would do a report, and check into the matter from here in South Carolina but did advise with that amount of money He (victim) would have to meet with me in person for criminal charges if any is warranted and he would have to be here to testify. I also advised the victim that this matter may be a civil issue.							

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY SC0140100		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY SC0140100	
P	TYPE (GROUP)	20-Money	TOTAL VALUE
R	Burned		
O	Count/Forged		
P	Destroyed/Damaged		
E	Recovered	1500.00	1500.00
R	Seized		
T	Stolen	10000.00	10000.00
Y	Unknown		
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO	
☒ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18	
☐ UNFOUNDED		☐ ARRESTED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY			
REPORTING OFFICER(S)		DATE	UNIT NUMBER
DETECTIVE BILLY RICK ELMS JR		07/01/2016	06
APPROVING OFFICER		DATE	UNIT NUMBER
FOLLOW-UP INVESTIGATION OFFICER			
☐ YES ☐ NO			

AGENCY I.D.
SC0140100

MANNING POLICE DEPARTMENT
PROPERTY LISTING

CASE NUMBER
16-4277-000031

NCIC
INQ. ENTD.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1

5 RECOVERED

MONEY

-1,500.00

TOTAL GROUP

-1,500.00

7 STOLEN

MONEY

10,000.00

TOTAL GROUP

10,000.00

TOTAL PROPERTY

8,500.00

A D M I N I S T	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
	DETECTIVE BILLY RICK ELMS JR		07/01/2016		06					
							FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☐ NO			

000035

EXHIBIT 2

Monica Bruce

From: Marvin <mail4marvin@gmail.com>
Sent: Thursday, June 16, 2016 12:03 AM
To: Monica Bruce
Cc: Brown, Betsy (Betsybrown@sc.rr.com)
Subject: Gipson-Williamson closing

Sorry, while rushing to complete documents today I omitted my SS number (097-46-3149 and the drivers license which will follow. Also, if sending check please add Nemark to name correct for banking.

Regards,
Nemark Marvin Gipson

ELECTRONICALLY FILED - 2017 Sep 25 11:01 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400311

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on June 30, 2016.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

000037

CERTIFICATE OF INCORPORATION
OF
W.M. INTERNATIONAL ENTERPRISE INC
Under Section 402 of the Business Corporation Law

FIRST: The name of the corporation is:

W.M. INTERNATIONAL ENTERPRISE INC

SECOND: This corporation is formed to engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

THIRD: The county, within this state, in which the office of the corporation is to be located is
NEW YORK.

FOURTH: The total number and value of shares of common stock which the corporation shall have authority to issue is: 200 SHARES WITH NO PAR VALUE.

FIFTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the corporation served upon him or her is:

W.M. INTERNATIONAL ENTERPRISE INC
265 W 37TH ST 14FL
NEW YORK, NY 10018

I certify that I have read the above statements, I am authorized to sign this Certificate of Incorporation, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

SAMUEL C K YEUNG (signature)

SAMUEL C K YEUNG, INCORPORATOR
265 W 37TH ST 14FL
NEW YORK, NY 10018

000038

Filed by:
SAMUEL C K YEUNG & WO PING YIP
265 W 37TH ST 14FL
NEW YORK, NY 10018

FILED WITH THE NYS DEPARTMENT OF STATE ON: 05/01/2015
FILE NUMBER: 150501010152; DOS ID: 4751964

State of South Carolina)
)
 County of Clarendon)

In The Court of Common Pleas
 Third Judicial Circuit
 2017-CP-14-0311

Marvin Gipson,)
)
 Plaintiff,)

vs.)

Transcript of Record

Clyde Williamson, Betsy)
 Williamson, and Coffey &)
 McKenzie, P.A.,)

Defendants.)
)
)

February 3, 2020
 Manning, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge, and a jury

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

Benjamin A. Dunn, II, Esquire
 Attorney for the Plaintiff

Steven A. McKenzie, Esquire
 Attorney for Defendant Coffey & McKenzie, P.A.

Scott L. Robinson, Esquire
 Attorney for the Defendants Williamson

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
----------------------------	-----------------

MONDAY, FEBRUARY 3, 2020

Jury Voir Dire.	3
Jury Selection.	10
Motions	14
Certificate Page.	24

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
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No exhibits introduced.

1 MONDAY, FEBRUARY 3, 2020

2 VOIR DIRE

3 THE COURT: This is a civil case that we'll be trying
4 this week: *Marvin Gipson vs. Clyde Williamson, Betsy*
5 *Williamson, and Coffey and McKenzie, P.A.* Mr. Gipson is
6 represented by attorney Benjamin Dunn.

7 Mr. Dunn, if you'd please introduce yourself to the
8 jury panel?

9 MR. DUNN: My name is Benjamin Dunn. I represent the
10 plaintiff, Marvin Gipson.

11 THE COURT: Thank you.

12 The defendants Clyde Williamson and Betsy Williamson
13 are represented by attorney Scott Robinson.

14 Mr. Robinson, would you also introduce yourself?

15 MR. ROBINSON: Good morning. I'm Scott Robinson. I
16 practice here in Manning, and I represent the Williamsons.

17 THE COURT: Okay, and attorney Steve McKenzie is here
18 today on behalf of Coffey & McKenzie law firm.

19 MR. MCKENZIE: Good morning. My name is Steven
20 McKenzie. I practice here in Manning and my partners are
21 Billy Coffey and Joe Coffey. Joe Coffey is seated here
22 with us. Thank you.

23 THE COURT: Thank you.

24 Ladies and gentlemen, let me first ask you. Is there
25 anyone who's related by blood or marriage or with a close

1 personal or business relationship with Marvin Gipson or
2 Clyde and Betsy Williamson?

3 (NO ONE STANDS.)

4 THE COURT: Is there anyone related by blood or
5 marriage or of a close personal or business relationship
6 with attorneys Joe Coffey, Billy Coffey, or Steve McKenzie?

7 I'm going to start with you, ma'am. If you'll tell me
8 your name.

9 JUROR: Margaret Ridgeway, 166.

10 THE COURT: And you have some affiliation?

11 JUROR: Yes, ma'am. I know both Mr. Robinson and Mr.
12 McKenzie my whole life. I have worked for them both, and
13 I'm also friends with Mr. McKenzie's wife.

14 THE COURT: Okay and, ma'am, would that prevent you
15 from being a fair and impartial juror in this particular
16 case?

17 JUROR: Very good chance it would.

18 THE COURT: Okay. I'm going to excuse you from this
19 particular trial. Since that's the only case we've got
20 this week, Ms. Ridgeway, I'm going to go ahead and excuse
21 you for the day.

22 JUROR: Thank you, ma'am.

23 THE COURT: Yes, ma'am.

24 JUROR: I'm juror number 10, Charleen Baxley, and
25 Steve McKenzie is my attorney, and I do feel that it would

1 be partial for them.

2 THE COURT: Ms. Baxley, I'm going to excuse you as
3 well. Thank you, ma'am.

4 Yes, in the back.

5 JUROR: I'm Harley Hamm. I'm juror number 80, and I
6 know all of the attorneys, as well as the Coffeys. Close
7 friends.

8 THE COURT: Okay, Ms. Hamm, I'm going to excuse you
9 from this particular trial. Thank you so much.

10 Is there any member the jury panel with a close
11 personal or business relationship or related by blood or
12 marriage to attorney Benjamin Dunn or attorney Scott
13 Robinson?

14 Yes, sir.

15 JUROR: Juror 134, Michael Barnes. I'm related to
16 Scott Robinson.

17 THE COURT: You're related to Mr. Robinson? Yeah, I'm
18 going to go ahead and excuse you, sir. Thank you so much.
19 We don't want you to have an uncomfortable Thanksgiving.

20 Yes, sir.

21 JUROR: Yes, ma'am. Mr. Robinson coached baseball in
22 our youth program for probably about eight to ten years,
23 and his kids have grown up in our program.

24 THE COURT: And tell me your name, sir.

25 JUROR: Leon Joy, 107.

1 THE COURT: Mr. Joy, would that prevent you from being
2 a fair and impartial juror in a case where he is
3 representing one of the parties?

4 JUROR: No, ma'am.

5 THE COURT: Thank you so much for bringing that to our
6 attention.

7 Yes, sir.

8 JUROR: Yes, ma'am. I'm number -- juror number 201.
9 I'm also friends with Robinson, McKenzie, and Mr. Coffey; I
10 just wanted to bring that to your attention.

11 THE COURT: You're Mr. Williamson?

12 JUROR: Yes, ma'am.

13 THE COURT: Sir, would that prevent you from being a
14 fair and impartial juror in a case where they're not just
15 attorneys, but they're actually parties to this proceeding?

16 JUROR: No, ma'am, it wouldn't.

17 THE COURT: Okay. Thank you, sir, for bringing that
18 to our attention.

19 JUROR: 118, Kelly Lombard. I know Mr. McKenzie.

20 THE COURT: And, Mr. Lombard, would that prevent you
21 from being a fair and impartial juror where he is a party
22 to this proceeding?

23 JUROR: No.

24 THE COURT: You believe you can give both sides a fair
25 trial?

1 JUROR: Yes, ma'am.

2 THE COURT: Thank you for giving us that information.

3 Is there any member of the jury panel who is a current
4 or former client of Mr. Dunn, Mr. Robinson, or Joe Coffey,
5 Steve McKenzie, or Billy Coffey?

6 Yes, sir.

7 JUROR: Represented by Mr. McKenzie in my divorce.

8 THE COURT: And tell me your name.

9 JUROR: Matt Allday, juror number 2.

10 THE COURT: And how long ago was that, sir?

11 JUROR: In the last year, August last year.

12 THE COURT: Okay, I'm going to go ahead and excuse
13 you, Mr. Allday. Thank you so much for being here, sir.

14 Yes, ma'am.

15 JUROR: I consulted with Mr. McKenzie once on a
16 personal matter; he didn't actually represent me, but I did
17 go speak with him in his office.

18 THE COURT: And tell me your name, ma'am.

19 JUROR: Brandy Timmons.

20 THE COURT: Ms. Timmons, would that prevent you from
21 being a fair and impartial juror, ma'am, in a case where he
22 is a party to the action?

23 JUROR: I'm not sure. It would depend on the -- I can
24 try.

25 THE COURT: I'm going to go ahead and excuse you,

1 ma'am. Thank you.

2 Is there any member the jury panel that you, yourself,
3 or a member of your immediate family is a current or former
4 employee of Mr. Dunn, Mr. Robinson, or the law firm of
5 Coffey & McKenzie?

6 (NO ONE STANDS.)

7 THE COURT: A couple of other potential witnesses in
8 this case are Patty Wood and Betsy Brown with Re/Max by the
9 Lake. Is there anyone related by blood or marriage or with
10 a close personal or business relationship with those
11 individuals?

12 (NO ONE STANDS.)

13 THE COURT: Ladies and gentlemen, this involves a
14 dispute over a real estate closing that took place in June
15 of 2016 between Marvin Gipson and Clyde and Betsy
16 Williamson, so let me ask. Is there any juror who has any
17 personal knowledge of the facts of this case?

18 (NO ONE STANDS.)

19 THE COURT: Thank you.

20 Okay, we're ready for a strike sheet. Any further
21 voir dire from either the plaintiff or the defense?

22 MR. DUNN: None from plaintiff, Your Honor.

23 MR. MCKENZIE: Nothing from the defendant, Your Honor.

24 THE COURT: Ladies and gentlemen, this is going to
25 take just a few minutes while the clerk's office, they are

1 generating a random list of jurors. We're going to give
2 that list to the attorneys and give them a few minutes to
3 look over the list and come up with their strikes, that
4 each attorney gets a certain number of strikes in the case.

5 I am going to let y'all take a break. If you'll
6 please just be back in your seats at 11:15. If anyone
7 needs to use the facilities or just wants to walk around
8 for a minute, again we'll be ready to reconvene at 11:15.

9 (OFF THE RECORD.)

10 (THE FOLLOWING CONFERENCE WITH JUROR NUMBER 117 IS
11 HELD AT THE BENCH IN THE PRESENCE OF COUNSEL.)

12 THE COURT: Yes.

13 JUROR: I didn't know if it would pertain to any of
14 it, but three years ago when me and my husband moved here,
15 we bought a trailer through McCoffey & Kenzie [sic], so ---

16 THE COURT: They did the closing?

17 JUROR: Yes.

18 THE COURT: For it?

19 JUROR: So.

20 THE COURT: Sure, and would that prevent you from
21 being a fair and impartial juror in this case?

22 JUROR: No.

23 THE COURT: Okay. Thank you for bringing that to our
24 attention.

25 JUROR: Okay.

1 THE COURT: Appreciate that.

2 (END OF BENCH CONFERENCE.)

3 (OFF THE RECORD.)

4 THE COURT: Okay, Ms. Roberts, I think we're ready for
5 the strikes.

6 JURY SELECTION

7 CLERK OF COURT: Okay, and striking the numbers from
8 the far left. Plaintiff?

9 MR. McKENZIE: Ready.

10 MR. DUNN: Plaintiff strikes number 9.

11 CLERK OF COURT: Defendants?

12 MR. McKENZIE: Defendant strikes number 5.

13 CLERK OF COURT: Plaintiff?

14 MR. DUNN: Strikes number 1.

15 CLERK OF COURT: Defendant?

16 MR. McKENZIE: Defendant strikes number 7.

17 CLERK OF COURT: Plaintiff?

18 MR. DUNN: Plaintiff strikes number 4.

19 CLERK OF COURT: Defendant?

20 MR. McKENZIE: Defendant strikes number 11.

21 CLERK OF COURT: Plaintiff?

22 MR. DUNN: Plaintiff strikes number 8.

23 CLERK OF COURT: And defendant?

24 MR. McKENZIE: Defendant strikes number 12.

25 CLERK OF COURT: Okay, and on the alternate, the

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1 plaintiff?

2 MR. DUNN: Plaintiff strikes 21.

3 CLERK OF COURT: And defendant?

4 MR. McKENZIE: Number 22.

5 CLERK OF COURT: Okay, on the jury, plaintiff struck
6 number 1, number 4, number 8, and number 9. Defendant
7 struck number 5, number 7, number 11, and number 12.

8 MR. McKENZIE: That's correct.

9 CLERK OF COURT: Okay, and the alternate, plaintiff
10 struck number 21 and defendant number 22.

11 MR. McKENZIE: That's correct.

12 CLERK OF COURT: Okay.

13 If I call your name, please come to the center aisle
14 and come over and have a seat in the jury box here, and if
15 you have any belongings, please bring them with you.

16 Christopher L. Dymond. Just go over to the bailiff
17 and he'll seat you. Riley L. Detreville, Sheryl A. Coker,
18 Latonya T. Calvin, George L. Stone, Esther S. Jackson,
19 Ashley R. Strickland, Shelby L. Graham, Jennifer E.
20 Gambell, Cheryl West, Melissa H. Nettles, Eddie Canty, and
21 the alternate, Dorothy M. Ballard.

22 THE COURT: Any motions regarding the impaneling of
23 the jury?

24 MR. DUNN: None from plaintiff.

25 MR. McKENZIE: None from the defendants, Your Honor.

1 THE COURT: Okay, ladies and gentlemen, if you were
2 not selected on this particular case, your jury service for
3 the week is complete.

4 Is that -- am I correct, Ms. Roberts?

5 CLERK OF COURT: Yes, ma'am, that's correct. Thank
6 you.

7 THE COURT: Okay. We want to thank you very much for
8 being here today and being part of our justice system. I
9 think we have the greatest justice system in the world, but
10 it can't function without citizens being willing to arrange
11 their schedules so that they can be here to serve their
12 community. So, we do thank you very much and you are
13 excused.

14 (WHEREUPON, THE JURY PANEL EXITS..)

15 THE COURT: Okay, ladies and gentlemen, you've been
16 selected on this particular trial. This case is going to
17 start on Wednesday morning at 9:30. So in just a minute,
18 I'm going to excuse you and ask you to report back
19 Wednesday at 9:30. We anticipate it'll take maybe a day
20 and a half is what -- I can't swear by that, but that's
21 what we're estimating at this point is about a day and a
22 half.

23 Couple of things to tell you. When you come back, we
24 would prefer that you not bring your cell phone, but we do
25 recognize in this day and age, it's sometimes very

1 difficult to part with if you have a particular family
2 circumstance or, I don't know, you've got kids at home. If
3 you do bring your cell phone back, we're going to ask that
4 you just turn it on silent during the course of the trial.
5 Certainly while you're deliberating and while you're
6 hearing this case, don't use your phone to access internet
7 to do any kind of independent research about the case
8 either before the trial, during the trial. What you'll be
9 considering in the jury room and during your deliberations
10 is what you've heard within this courtroom.

11 So, it's also important for me to tell you that you
12 may have friends and family who know that you've got jury
13 duty this week, and they may be understandably curious
14 about what kind of case you're serving on, who the parties
15 are, what kind of case it is. I'm going to instruct you:
16 do not have any discussion with anyone about this case,
17 even to tell them that little bit of information. Once the
18 case is over, you can discuss it with whoever you want to,
19 or you can decide not to discuss it. That would be
20 entirely up to you, but both sides believe at this point
21 that you can be fair and impartial jurors, and we want to
22 protect your status as fair and impartial jurors.

23 Sometimes just by telling people a little bit about
24 the case, you may now unintentionally elicit back from them
25 a response that compromises your ability to be a fair and

1 impartial juror. So, on your oath as jurors, I'm going to
2 instruct you not to have any discussions.

3 I don't anticipate there's going to be any media
4 coverage of this case, but of course your duty as jurors is
5 to not read anything, not to listen to any news reports.
6 Don't look at anything on Facebook, and certainly don't do
7 any independent research regarding the case, and we'll see
8 you Wednesday morning at 9:30. Thank you.

9 (THE JURY EXITS AT 11:36 A.M.)

10 THE COURT: Okay, anything we need to address before
11 we adjourn til Wednesday?

12 MR. DUNN: Nothing for the plaintiff, Your Honor.

13 MR. McKENZIE: Your Honor, we, we do have a motion
14 based on a 12(b)(7), but we could argue it right before.
15 It's a failure to join necessary party, we believe failure
16 to join necessary party.

17 THE COURT: Well, let's hear it now while we have --
18 I'm all ears. We've got time, and I hate to wait until the
19 jury is here and impaneled before -- in other words, I
20 don't want to keep the jury waiting if we've got the time
21 to do it now.

22 MR. McKENZIE: Thank you, Your Honor. Your Honor,
23 the, the, the crux of this case, I believe, is a
24 interception that we believe occurred by fraudulent wire
25 transfer, meaning that the, the plaintiff's monies were

1 sent via wire but by email to us, and we believe that the
2 defendants -- or the plaintiff's emails were hacked by a
3 third party. And when -- in fact, we actually were able to
4 source these people down who actually received the money,
5 and they live in New York City, their address.

6 We know the incorporator is a, is a W.M. International
7 Enterprises, Inc., who received the money, who intercepted
8 the wire transfer, and they are an entity -- and we sent
9 all of this information. I believe all of it's part and
10 parcel of our answer, Your Honor, in regards to paragraph
11 number 37. But we believe that they're -- if they're the
12 people who actually have the money in this case, then they
13 should be a necessary party that should be involved in the
14 lawsuit.

15 Otherwise, you know, every -- the money came out of
16 our trust account, went to these people pursuant to an
17 email instruction that we got based on an email intercept
18 that we believe happened with the people at W.M.
19 International Enterprises, Inc. And so we were able to
20 trace that and where the money went all the way to New
21 York City and to these people. And, Your Honor, we believe
22 that without suing them as an indispensable party, we can't
23 get the people here who actually received the missing
24 funds.

25 THE COURT: Mr. Dunn.

1 MR. DUNN: Your Honor, our position is that the cause
2 of action against the Coffey McKenzie law firm is
3 negligence. And what we are alleging there is that they
4 received an email from an email address that did not
5 belong to my client, and they then sent, wired funds to an
6 account in the name of W.M. International Enterprises,
7 Inc., which has no apparent connection to my client
8 whatsoever. That there was no -- as a fiduciary, they
9 failed to follow up to, to, to try to see if there was any
10 linkage as to why they were wiring money to this completely
11 random business located in New York. Plus the fact, again,
12 that the wire instruction did not come from my client's
13 email.

14 Somebody's email was hacked. I don't -- I, I've seen
15 no evidence prove whose that was, but the bottom line is,
16 is that, that the negligence case has to do with breach of
17 fiduciary duty by the, the law firm.

18 MR. McKENZIE: Your Honor, the -- it's our -- and
19 we've pled this in our pleadings, and I think you'll see
20 the extensive answer that we filed. Been a police
21 investigation of this case. There's been a bar
22 investigation of this case and the -- and whenever -- the
23 email that came to our firm was a very close, similar
24 email.

25 But the only way that the email could have been hacked

1 -- or only way it could have come because we got the
2 closing documents from -- and, I mean, the close -- the
3 signed documents, signed deeds, all that via email from the
4 email account that is associated with the hack. So, Mr. --
5 the only, the only explanation is Mr. Gipson's email had
6 been hacked because the email or the email that was sent to
7 us had the attachments that we needed for closing. So,
8 even though the emails were very similar, the only email
9 that could have been hacked was Mr. Gipson's email.

10 We're going to be able to, I think we're going to be
11 able to establish that with expert testimony. We have IT
12 guy coming to testify about that. Our system after we --
13 after all this happened -- and maybe this motion may be
14 more appropriate at that time.

15 But we believe that, again, without having -- sorry,
16 Your Honor -- W.M. International Enterprises, who actually
17 received the money -- and I don't think that's in dispute.
18 I think everybody agrees that the money was wired to, to
19 New York and these people received it. It's not a question
20 that we converted the funds to our own use. It's not a
21 question ---

22 THE COURT: Yeah, I don't think anybody is disputing
23 that. I mean, some random person got, got this man's
24 money.

25 MR. MCKENZIE: Right.

1 THE COURT: But I'm not going to dismiss the action
2 based on that grounds.

3 MR. McKENZIE: I understand.

4 THE COURT: If we could find them to serve them and
5 bring them into this party -- in this lawsuit, probably
6 wouldn't have this problem to start with. They're, I'm
7 sure, in the wind. I'm sure that's a dummy corporation
8 set up ---

9 MR. McKENZIE: Sure. No doubt.

10 THE COURT: --- for the purpose of doing exactly what
11 they did, which is intercepting and scamming money.

12 MR. McKENZIE: That right.

13 THE COURT: So, I don't think that's fatal to this
14 lawsuit. I think they can still bring a negligence action
15 against the law firm. So, I'm going to respectfully deny
16 your motion at this point.

17 MR. McKENZIE: Thank you, Your Honor, and, Your Honor,
18 I will respectfully renew that motion once we have some
19 expert testimony to establish where I believe the money
20 went to. I'll renew it, but I wanted to go ahead and bring
21 that up to you that we were -- and we -- because we pled
22 that as part of our, part of our package.

23 THE COURT: Sure.

24 MR. McKENZIE: So, I wanted to preserve that for the
25 record. Thank you, Your Honor.

1 THE COURT: All right. Thank you. Anything further
2 for ---

3 MR. DUNN: No, ma'am.

4 THE COURT: --- today? I mean, I've got all day left.
5 Whatever you need me to do.

6 MR. ROBINSON: Your Honor, if you'll give me a moment,
7 I may have something.

8 THE COURT: Sure.

9 (A PAUSE.)

10 MR. ROBINSON: I, I do have a motion, Your Honor, and
11 it's -- I need to make this obviously for the protection of
12 the record. I will make a motion to dismiss the breach of
13 contract cause of action against the Williamsons on the
14 pleadings. It's a motion to dismiss on the pleadings.

15 Specifically, Your Honor, paragraph 31 of the
16 plaintiff's complaint contends that:

17 The defendant Williamsons breached said contract
18 by failing to pay plaintiff the agreed-upon
19 purchase price. Specifically, defendant Coffey &
20 McKenzie, acting as agents of defendant
21 Williamsons, failed to pay the closing proceeds
22 to plaintiffs.

23 Your Honor, in paragraph 8 of the plaintiff's
24 complaint, the plaintiff admits that he signed a disclosure
25 and that Coffey & McKenzie were acting as agents for both

1 parties. There is no specific plea in there, and based on
2 the information that the plaintiff's attorney has provided
3 that the witness will be Mr. Gipson, I think it is
4 absolutely impossible -- and they have the burden of
5 establishing -- at what point who was being whose agent.
6 The alleged breach of my client basically is through their
7 agent.

8 There is no contest or no question that my clients
9 paid the entire purchase price. As a matter of fact, they
10 paid the entire purchase price as an earnest money deposit,
11 which I think is another basis for this. The contract that
12 the plaintiff has marked in his pretrial brief, which
13 obviously will come in as evidence in some form in this
14 case, provides that this earnest money will be a credit to
15 the buyer at closing. The buyer lost control of that
16 barring some other -- it says:

17 Will be a credit to the buyer at closing or
18 disbursed in accordance with some other
19 instructions consistent with the contract.

20 The buyers -- and again, this is uncontested -- didn't
21 tell anybody to do anything. They paid the purchase price
22 to the realtor the day they signed the contract. So, they
23 -- there is no way that there could be an allegation that
24 they are in breach of anything because, according to the
25 contract that they're alleged to have breached, at that

1 point it became a credit. That contract does not require
2 them to control Coffey & McKenzie to do anything. They
3 fully fulfilled the contract at that point in time, and
4 there is no other allegation anywhere in the pleadings of
5 any breach on their part. Simply that the breach occurred
6 because at the time the money was to be disbursed or mailed
7 out, Coffey & McKenzie were acting as the buyer's agent
8 when there's already an admission by the plaintiff that
9 they were acting as a dual agent for both parties.

10 And the signed contract, which, as I point out, is
11 referenced in the plaintiff's pretrial brief as evidence
12 that they intend to put in at trial, they paid the entire
13 purchase price as an earnest money deposit. And there is
14 no writings, instructions, or anything else that they ever
15 asked for it --- anything to be done other than given to Mr.
16 Gipson. So.

17 THE COURT: And my recollection is your cross-claim
18 against Coffey McKenzie, they acknowledge that your clients
19 are without ---

20 MR. ROBINSON: Right.

21 THE COURT: --- fault in this.

22 MR. ROBINSON: That we didn't, literally did not do
23 any anything wrong other than through their agent,
24 allegedly.

25 THE COURT: I understand.

1 Mr. Dunn:

2 MR. DUNN: Mr. Robinson set, set -- excuse me -- set
3 it forth, I think, pretty fairly. It is an agency argument
4 that, that the plaintiffs are making, and the breach
5 certainly isn't by the Williamsons personally. There's no
6 allegation they did not, in fact, pay the money. They did.
7 It's just a matter of where it ended up, and so it is
8 strictly an agency argument for the plaintiff.

9 THE COURT: So, let me ask you this. Because Coffey
10 McKenzie was agent for both parties, I mean, do you really
11 need the Williamsons at this point? I know that the
12 cross-claim in the pleadings, Coffey & McKenzie
13 acknowledges that there's no negligence on the part of the
14 Williamsons. So, are the Williamsons vital to your claim
15 at this point, are necessary for your claim? I know you
16 have to sue the principal if you're suing their -- the
17 principal's agent, but you've got dual agency here.

18 MR. DUNN: On the, on the breach of contract, Your
19 Honor, I understand what you're saying, Your Honor, but we
20 do have the unjust enrichment and the action to set aside
21 deed in which I think they are necessary parties.

22 THE COURT: Gotcha.

23 MR. DUNN: For those actions.

24 THE COURT: Well, I'm going to grant your motion, Mr.
25 Robinson, with respect to the breach of contract action.

1 MR. ROBINSON: Thank you, Your Honor.

2 THE COURT: Okay. I guess I will see you all
3 Wednesday morning.

4 MR. DUNN: Thank you, Your Honor.

5 MR. ROBINSON: Thank you, Your Honor.

6 MR. McKENZIE: Thank you, Your Honor.

7 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON
THE 3RD DAY OF FEBRUARY, 2020.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 15TH, 2020

0000063

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Clarendon	)	Case No. 2017-CP-14-00311
	)	
Marvin Gipson,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	(Day 2 of 2)
	)	
Clyde Williamson, Betsy	)	
Williamson, and Coffey &	)	
McKenzie, P.A.,	)	
	)	
Defendants.	)	
	)	

February 5, 2020
Manning, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge; and a jury

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

Benjamin Allen Dunn II, Esquire
Attorney for the Plaintiff

Steven Smith McKenzie, Esquire
Scott Lamar Robinson, Esquire
Attorneys for the Defendants

Krystal J. Smith
Circuit Court Reporter

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COURT REPORTER LEGEND

21	dashes --	intentional or purposeful interruption
22		or change in thought
23	ellipses . . .	trailing off
24	[ph]	phonetically written
25	[sic]	written as said

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PLAINTIFF'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1-A	Emails		34
1-B	Emails		40
1-C	Emails		45
1-D	Emails	46	
1-E	Emails		146
2	Deed		22
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COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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FEBRUARY 5, 2020

2 (WHEREUPON, the proceedings began at 9:40 a.m.)

3 THE COURT: Okay. Are we ready for the jury?

4 MR. DUNN: Yes.

5 (WHEREUPON, the jury entered the courtroom at 9:41 a.m.)

6 THE COURT: Good morning.

7 THE CLERK: Good morning. Will you please stand and
8 raise your right hand?

9 (WHEREUPON, the jury complied.)

10 THE CLERK: You shall well and truly try the issues
11 joined in this case of Marvin Gipson, plaintiff, against
12 Clyde Williamson, Betsy Williamson, and Coffey & McKenzie,
13 P.A., defendants, and a true verdict give according to the
14 evidence, so help you God. Please say I will.

15 THE JURORS: I will.

16 THE CLERK: You may be seated. Thank you.

17 THE COURT: Good morning, ladies and gentlemen. I want
18 to thank you first of all for being here and being so prompt
19 this morning. We're going to move right into the trial of
20 this case. The case we're going to try this morning is
21 Marvin Gipson versus Clyde and Betsy Williamson and Coffey &
22 McKenzie, P.A.

23 I do want to introduce you first to some of the people
24 that you see in the courtroom. You've met some of our
25 bailiffs who are at the doors. They'll be assisting you

1 during this trial. If there's anything that you need, if
2 you'll please bring it to their attention and they will help
3 you or they'll bring a message to me.

4 We have Krystal Smith here that you see with the kind of
5 cone of silence here that she's speaking into. She's our
6 court reporter and she is taking down everything that
7 everybody says during the course of the trial so that we have
8 a record of everything that occurred today.

9 And then we also have Ms. Marilyn Wilson, who is with
10 the Clerk of Court's Office. So she -- the Clerk of Court's
11 Office makes sure the court is running smoothly. They are
12 responsible for all the criminal and civil dockets here in
13 Manning. And then, of course, you'll meet the attorneys
14 during the course of the opening statements and during the
15 course of the trial.

16 Before we begin the trial, let me tell you that it might
17 be very different from what you would expect if you've not
18 served on jury duty before. Sometimes a real trial is very
19 different from what you've seen on television or in the
20 movies. There is rarely a lot of riveting action or dramatic
21 circumstances during the course of a trial.

22 But, of course, this trial is not for entertainment. It
23 is a fundamental part of our judicial system. It cannot
24 function without citizens being willing to come and serve as
25 jurors. So we do greatly appreciate your presence this

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morning.

2 The courtroom is a place of honor that's dedicated to
3 the preservation and protection of citizens' rights through
4 what many have called the greatest justice system ever
5 created. The attorneys appearing before you are advocates
6 for the parties that they represent, but first and foremost
7 they are officers of the Court. So they're sworn to uphold
8 the integrity and the fairness of our judicial system. So
9 you should expect them to be fair, ethical, courteous, and
10 competent in the representation of their clients' interest.

11 And remember that you've taken an oath to try this case
12 and reach a fair and just verdict, and you are also expected
13 to be professional, reasonable, and ethical. So again, I
14 thank you for accepting this responsibility.

15 The first thing that will occur is that the attorney for
16 the plaintiff, Mr. Dunn -- and the plaintiff is the person
17 who has brought this action or suit. They'll make an opening
18 statement, which will be followed by a similar statement by
19 the attorney for the defendant.

20 These opening statements are not evidence. The evidence
21 that you will consider during your deliberations is the sworn
22 testimony from this witness stand and then any exhibits that
23 are admitted into evidence during the course of the trial.
24 Of course, you should pay careful attention to the opening
25 statements, but just a reminder that the opening statements

1 are not evidence in the case.

2 Following the opening statements, each side will present
3 its evidence, with the plaintiff once again going first.

4 Evidence may take many forms. It may be testimony,
5 documents, models, photographs or anything of that nature.
6 You should pay close attention to all of the evidence which
7 is presented by each party because you, the jury, are the
8 sole finders of the facts of the case. No one else is
9 permitted to weigh the evidence and render a verdict based on
10 the facts.

11 After all of the evidence has been presented, the
12 attorneys will make their closing arguments and, unlike the
13 opening statements, the final remarks will be true arguments.
14 So each side will emphasize certain portions of the evidence
15 and try to persuade you to agree with their version of the
16 facts. Keep in mind again the opening statements, as well as
17 the closing arguments of the attorneys, do not represent
18 evidence in this case, but, of course, give the attorneys
19 your undivided attention.

20 After the arguments are finished, I will explain to you
21 the law that applies to the case and you'll then return to
22 the jury room to consider the facts and the law. Once you've
23 done so, you'll return a verdict in favor of one side or the
24 other.

25 During the course of the trial, the plaintiff has the

1 burden of proving his claims and the plaintiff must meet this
2 burden by proving his claims by what we call the greater
3 weight or preponderance of the evidence.

4 What we mean by greater weight of the evidence can be
5 illustrated by imagining a traditional set of scales. When
6 the case begins, the scales are even. After all of the
7 evidence has been presented, if the scales should remain
8 evenly balanced or if they should tip even slightly in favor
9 of the defendant, then the plaintiff would have failed to
10 meet his burden of proof and your verdict would be for the
11 defendant. If, on the other hand, the scales should tip even
12 slightly in favor of the plaintiff, then he will have met his
13 burden of proof and your verdict would be for the plaintiff.

14 As I mentioned earlier, although I am the only person
15 who can tell you what the law is, you are the only ones who
16 can determine what the facts are. I don't have the right to
17 indicate how I may feel about the evidence presented and
18 throughout this trial my intention will be to act impartially
19 toward each of the parties.

20 From time to time, you may hear an attorney object to
21 some bit of testimony or evidence which the other side is
22 seeking to present, and there are certain rules that each
23 side must obey in presenting evidence and these rules ensure
24 that the information you receive is the most trustworthy and
25 reliable evidence available.

1 An objection is the procedure that is used for an
2 attorney to call a possible violation of the rules to my
3 attention as judge of this court. And so for this reason,
4 you should not hold an attorney's objection against his
5 client, nor should you conclude from my ruling on the
6 objection that I favor one side or the other.

7 Finally, I would ask that you pay close attention to all
8 of the evidence presented. It's you, the jury, who will
9 determine the facts of this case and, as a result, you will
10 have to evaluate the credibility or believability of each of
11 the witnesses who testifies in this matter.

12 You're participating in a time-tested system and it's
13 extremely important for each of you to listen carefully to
14 all of the evidence presented so that at the end of the case
15 you'll be in a position to determine what the facts are,
16 apply the law to those facts, and render a verdict.

17 Now, I'm going to turn it over to the plaintiff's
18 attorney for opening statement. Mr. Dunn?

19 MR. DUNN: Yes, ma'am. May it please the Court.

20 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

21 MR. DUNN: Ladies and gentlemen of the jury, my name is
22 Benjamin Dunn and the first thing I'd like to do today is to
23 thank you very much for your service. I realize this is not
24 convenient. It's frankly probably not going to be a lot of
25 fun, but it's an absolutely necessary part of our -- of our

1 system.

2 If you think about it, we have a civil justice system
3 where we allow citizens, our fellows, to decide cases. If we
4 didn't use that system, then we'd be stuck with something
5 where we either had a government official do it and, of
6 course, sooner or later that would break down to, you know,
7 which side has the most money, who's the most popular, who
8 has the most political pull or you'd just end up in a
9 situation where folks just took things into their own hands
10 and you'd end up with violence in order to solve problems.

11 Thankfully, we don't have that here in the United
12 States. We have a civil jury system. That's a great thing,
13 but it does, of course, require participation. So the time
14 is the most valuable commodity any of us have. You are
15 giving your time and your wisdom also here today and we very,
16 very much appreciate it, all the parties do.

17 Now, the case we're bringing before you today is pretty
18 simple. The facts are straightforward. What you're
19 basically going to hear is the story of a real estate
20 transaction. And any of you that have perhaps bought or sold
21 a house or some land in the past, most of what you hear will
22 sound very familiar to you.

23 I represent Marvin Gipson. He's the plaintiff, the
24 person who bought -- excuse me -- who brought this action.
25 He is the -- you'll hear he's the seller of a piece of

1 property that's located on Rowe Drive down in Summerton. The
2 defendants in this action are the buyers of that property,
3 Betsy and Clyde Williamson, and the Coffey & McKenzie Law
4 Firm, which is the law firm that closed the real estate
5 transaction that we're here to talk about today.

6 What you're going to hear is that Mr. -- Mr. Gipson
7 inherited some land down in Summerton, decided to sell it,
8 contracted with the Williamsons to purchase it, engaged the
9 law -- the Law Firm of Coffey & McKenzie was engaged to
10 actually do the closing transaction. All of that went fine,
11 but at some point there was -- there was a hack of some sort
12 of one or more the parties' emails.

13 As a result of that, some fraudulent wiring instructions
14 were sent to the Coffey & McKenzie Law Firm. As a result of
15 that, the proceeds that were supposed to go to Mr. Gipson as
16 the seller of the property were actually sent to a third
17 party, who no one has been able to -- we know the name of the
18 company they were using, but exactly who these people are it
19 doesn't seem that any of the parties or law enforcement has
20 been able to track down.

21 So the question then becomes who's responsible for this.
22 The case that we are going to present to you here today is
23 that the Law Firm of Coffey & McKenzie was negligent, that
24 they did not abide to the standard of care that they should
25 have in holding and transferring money that belonged to

1 someone else, in this case Mr. Gipson. Obviously, the Coffey
2 & McKenzie Law Firm has a different view of that and you'll
3 hear certainly their side of the story.

4 When both sides have had their chance to make their
5 case, then it will be up to you as the jury to fulfill that
6 kind of a sacred duty that we have in America of applying
7 your wisdom and your life experience to what you've heard and
8 making a decision about who is responsible for what happened
9 in this particular situation.

10 Again, we really do appreciate your time. We appreciate
11 your attention and we thank you for your willingness to be
12 here and serve with us today.

13 THE COURT: Thank you.

14 Mr. McKenzie?

15 MR. MCKENZIE: Thank you, Your Honor.

16 OPENING STATEMENT ON BEHALF OF THE DEFENDANTS

17 MR. MCKENZIE: Good morning. My name is Steve McKenzie.
18 I introduced myself the other day when we were picking you on
19 Monday, and Joe Coffey and Scott Robinson. Scott Robinson
20 represents the Williamsons, who were the sellers [sic] of the
21 property. Mr. Joe Coffey is accused by Mr. Gipson of being
22 negligent in the way he handled the closing of this case.
23 Now, again, you guys were chosen because we felt like you
24 could be fair and impartial.

25 You know, one thing that struck me during Mr. Dunn's

1 opening to you was he said that who is responsible for a
2 hack. Well, the hacker is responsible and that's what
3 happened in this case. And we believe the evidence is going
4 to show you that Mr. Gipson's email was hacked and a
5 fraudulent wire transfer was made to the hacker's account
6 based upon Mr. Gipson's email being hacked.

7 So the problem that we have here today and why -- why
8 we're here today is because Mr. Gipson again, we believe, got
9 hacked. And the people that were the hackers, we know who
10 they are. Mr. Gipson knows who they are. They are not
11 seated at any of these tables.

12 Now, in South Carolina and in every jurisdiction in the
13 United States, a lawsuit is started with a complaint, and Mr.
14 Gipson filed a complaint through his attorney, Mr. Dunn, and
15 a complaint is nothing more than a statement about the facts
16 of what happened and complaining of what somebody allegedly
17 did.

18 And you'll see in that complaint he says somebody hacked
19 the account and they got the money. Now they want Joe Coffey
20 and they want the Williamsons to be responsible for something
21 that happened, we believe, to Mr. Gipson's account or his
22 account when the money went out of the account and went into
23 the hacker's account because of the actions of Mr. Gipson.

24 Now, we are -- everybody is sorry this happened, no
25 doubt about that. You'll see from the testimony that Joe

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1 Coffey -- Joe did everything that he could to try to get Mr.
2 Gipson's money back to him and, in fact, got some of it back
3 from the bank that the wire or wiring instructions were sent
4 to or the wiring number was sent to.

5 We live in a different age now and that age is
6 computers. When I grew up, we didn't know what a computer
7 was. I didn't know what a smart phone was. These things are
8 all new to me, but this is how business is transacted in this
9 day and age and, as a result of that, wire transfers are very
10 common things, especially for people who live out of state.

11 Mr. Gipson lived in New York, moved to Texas sometime
12 during this closing. Listen to this. The hacker lives 19
13 miles from Mr. Gipson's home in New York. That's what we
14 believe the evidence is going to show.

15 Now, Mr. Dunn told you he appreciated your service here
16 today. We do too. This is our day in court to tell you what
17 happened and this is why we are here today. He filed a
18 complaint against us, but you're going to see that he also
19 filed a complaint with law enforcement. He filed a complaint
20 with the South Carolina Bar, which is the governing body for
21 attorneys to have a license. He filed a complaint with the
22 Supreme Court of South Carolina through the Office of
23 Disciplinary Counsel, which is how we are disciplined.

24 And you're going to hear -- and, oh, one more place, the
25 South Carolina Department of Consumer Affairs. He filed a

1 complaint with them. You're going to hear all of those
2 departments found that Joe did nothing wrong in the handling
3 of this real estate closing.

4 The judge told you earlier the burden is on the
5 plaintiff. That is so true. We have nothing to prove, but
6 we're going to show you that Mr. Coffey has been exonerated
7 by every agency that could have been, and Mr. Gipson has
8 complained to everybody.

9 Mr. Gipson didn't go to the FBI, which is how these
10 interstate wire transfers are handled when people steal money
11 through fraudulent wire transfers. He didn't go to them. He
12 complained to local law enforcement. He complained to the
13 South Carolina Bar. He complained to the South Carolina
14 Department of Consumer Affairs. Everybody but the right
15 people, and that's in his control.

16 We can't call the FBI and say, hey, Mr. Gipson's funds
17 were stolen. Mr. Gipson has to do that and Mr. Gipson knows
18 the people's names and you're going to hear that or the
19 entity or the company that stole the money and that's what
20 this is about. This is about somebody else stealing money
21 and it wasn't Joe Coffey, it wasn't Coffey & McKenzie, and it
22 wasn't the Williamsons.

23 As Mr. Dunn said and I was saying earlier, we appreciate
24 your service. This is the only day we get to tell our side
25 of the story. And our reputation, Joe's reputation, is put

1 on the line here and we're going to show you through the
2 evidence and through the testimony that we did nothing wrong
3 and everything we did was in accordance with how attorneys
4 close cases in South Carolina. That's what we're going to
5 show you.

6 Thank you again for your service. We appreciate it. We
7 know it's a burden upon you. The judge talked about a
8 burden, a burden we know today is really upon you being here,
9 but this is our day in court. This is not a criminal case.
10 This is a Common Pleas case. That simply means it's a civil
11 matter where we're -- somebody is trying to determine whether
12 someone owes somebody money, and it's our position that no
13 money is owed from anybody sitting at that table. Thank you.

14 THE COURT: Mr. Dunn?

15 MR. DUNN: Your Honor, may we approach briefly?

16 THE COURT: Sure.

17 (WHEREUPON, a bench conference was held in the presence
18 of the jury but out of the hearing of the jury off the
19 record, after which the proceedings resumed as follows.)

20 MR. DUNN: Your Honor, the plaintiff calls Marvin
21 Gipson.

22 THE COURT: Yes, sir. Come on up.

23 THE CLERK: Please raise your right hand and place your
24 left hand on the Bible. Repeat your name, please.

25 THE PLAINTIFF: Nemark Marvin Gipson.

1 THE CLERK: Do you solemnly swear or affirm to tell the
2 truth and nothing but the truth, so help you God?

3 THE PLAINTIFF: Yes, I do.

4 THE CLERK: Watch your step for me, please, and adjust
5 that mic.

6 MR. DUNN: Excuse me just one second, Your Honor.

7 THE COURT: Sure.

8 MARVIN GIPSON, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DUNN:

12 Q: Good morning, Mr. Gipson. How are you doing today?

13 A: I'm fine. Thank you. Good morning, everybody.

14 THE JURORS: Good morning.

15 Q: Would you mind stating your name for the record?

16 A: Nemark Marvin Gipson.

17 Q: And you are identified, Mr. Gipson, in the pleadings as
18 Marvin Gipson. Is that how you normally go?

19 A: Yeah. That's my -- my family name. My siblings use
20 Marvin.

21 Q: Mr. Gipson, where -- where do you live?

22 A: Currently, I live in Fort Bend County in Texas in -- in
23 Fresno.

24 Q: And how long have you been there?

25 A: I've been in Fresno now about, like, four years. Prior

MARVIN GIPSON - DIRECT BY MR. DUNN

1 to that, I resided a transitional period when I first arrived
2 in Texas in Missouri City for about a year and a half.

3 Q: Okay. And so you live in Texas now. Do you have any
4 connection to Clarendon County?

5 A: I was born in Manning Hospital here in Manning and I
6 grew up in Summerton, South Carolina, where my parents were
7 farmers until I was about six years old when my -- my father
8 and mom moved to New York.

9 Q: And did you also live in New York for a period of time?

10 A: From that period on until I moved here, I guess, around
11 2014.

12 Q: I'm sorry. When you say here, do you mean Clarendon
13 County or Texas?

14 A: In Texas. When I moved to Texas.

15 Q: Okay. Okay. Mr. Gipson, let me show you what we have
16 marked -- we'd like it marked as Plaintiff's Exhibit 2. Take
17 just a second to -- to look that over for me. Do you
18 recognize that document, Mr. Gipson?

19 A: Yes. This is the document for the -- the deed to the
20 family trust that the property was held in from my -- my dad.

21 Q: And who was your dad?

22 A: Johnny Gipson.

23 Q: And he was the grantor on that deed?

24 A: He's -- yes.

25 Q: Okay. And the property that's described on -- on that

1 deed, where is it located?

2 A: That's on Rowe Drive in Summerton.

3 Q: Now, you mentioned living in Clarendon County when you
4 were a child. Is that the property that you actually grew up
5 on?

6 A: That was a property that my parents bought when they
7 returned here after they retired in New York to reside there.
8 They didn't stay on the farm that -- the farm property that
9 they had. They bought a separate property to put a trailer
10 on for their retirement years.

11 Q: Okay. So -- but the property at 3766 Rowe Drive, that's
12 the property we're talking about in this case?

13 A: Yes, it is.

14 Q: And the -- could you describe that property for the
15 jury? I mean are we -- is it a building? Is it a house?
16 Kind of tell us about it.

17 A: I think it's, like, an acre or two and it had a trailer
18 on it. And at the time that I decided to sell it, my parents
19 were deceased and it had sat there for a number of years and
20 I decided to sell it so I can get the proceeds so I can buy a
21 home in Texas.

22 Q: Okay. And now, when did you receive title to the
23 property through that deed?

24 A: It looks like on here -- I can't really recall it, but
25 on here it looks like it's -- like, in the '80s.

MARVIN GIPSON - DIRECT BY MR. DUNN

1 Q: The date may be on -- the date may be on the second
2 page.

3 A: Okay.

4 MR. ROBINSON: Judge, if it will help things along,
5 we're prepared to stipulate that the date on there is
6 November 2006.

7 BY MR. DUNN:

8 A: Yes, it is. Right. Correct.

9 Q: Is that consistent with your recollection of when you
10 were --

11 A: Yes.

12 Q: -- when your dad conveyed the property to you? Very
13 good. Okay. So at some point in time, you decided you
14 wanted to sell the property?

15 A: That's correct. Yes.

16 Q: And did you do that on your own? Did you seek help?
17 Tell me about that.

18 A: I called a couple of realtors in the area and I found
19 Ms. Betty Brown and discussed it with her and inquired about
20 ways of doing it and determined that we can do it without me
21 being here and do it, you know, through the mail or email.

22 MR DUNN: Mr. Gipson, forgive me. I need to do one
23 particular organizational matter.

24 Your Honor, we would move to enter Plaintiff's Exhibit
25 Number 2 into evidence.

MARVIN GIPSON - DIRECT BY MR. DUNN

1 MR. MCKENZIE: And that is the deed, Your Honor?

2 THE COURT: It is.

3 MR. MCKENZIE: No objection.

4 THE COURT: Plaintiff's Number 2 is admitted.

5 MR. DUNN: Thank you.

6 (WHEREUPON, Plaintiff's Exhibit Number 2, deed, was
7 admitted into evidence.)

8 BY MR. DUNN:

9 Q: Okay. Mr. Gipson, you mentioned Betty Brown. What was
10 her role?

11 A: She was the realtor that I acquired for the transaction.

12 Q: And I guess she marketed the property. Was -- did you
13 eventually find a buyer for the property?

14 A: Yes. The buyers ended up being the McKenzies -- I mean
15 the Williamsons.

16 Q: Mr. Gipson, I'm going to show you what I'm marking as
17 Plaintiff's Exhibit Number 3. If you could, take a moment
18 and look this over.

19 A: This is the sales agreement.

20 Q: Okay. And at the top it says buyer is Clyde and Betsy
21 Williamson and the seller is Nemark Marvin Gipson?

22 A: That's correct.

23 Q: And is this -- and is this the sales contract for the
24 Rowe Drive property you were mentioning?

25 A: Yes, this is.

MARVIN GIPSON - DIRECT BY MR. DUNN

1 Q: The property we've been discussing?

2 A: Yes, it is.

3 Q: Okay. And what was the sales price on it?

4 A: \$12,000.

5 Q: Okay. So you, Mr. Gipson, and the Williamsons have

6 entered now into this contract?

7 MR. DUNN: Which by the way, Judge, we would -- we would

8 move to enter Plaintiff's Exhibit 3 into evidence?

9 THE COURT: Any objection?

10 MR. ROBINSON: No objection from the Williamsons.

11 MR. MCKENZIE: None -- none from Coffey & McKenzie, Your

12 Honor.

13 THE COURT: Plaintiff's Exhibit 3 is admitted.

14 MR. DUNN: Thank you.

15 (WHEREUPON, Plaintiff's Exhibit Number 3, sales

16 agreement, was admitted into evidence.)

17 BY MR. DUNN:

18 Q: Now, did you and the Williamsons close the property

19 amongst yourselves or did you find or did you engage an

20 individual or business to help you?

21 A: Well, Ms. Brown knew of the need for the closing and she

22 said Coffey & McKenzie could be used because she'd worked

23 with them in the past.

24 Q: And now, you were -- were you in Texas this whole time

25 or did you come here to Manning for this transaction?

MARVIN GIPSON - DIRECT BY MR. DUNN

- 1 A: No. I was in Texas at that time.
- 2 Q: All right.
- 3 A: I never came here.
- 4 Q: And did -- how did you work with the Law Firm of Coffey
- 5 & McKenzie during this closing?
- 6 A: It was phone and email.
- 7 Q: And do you remember who you actually communicated with
- 8 at the Law Firm of Coffey & McKenzie?
- 9 A: Primarily, Monica Bruce, and on occasion initially maybe
- 10 Mr. Coffey or McKenzie. I'm not sure which one, but
- 11 initially them and then Ms. Bruce kind of took over after
- 12 that as far as any conversations.
- 13 Q: Do you know what Ms. Bruce's role was at the firm? Was
- 14 she an attorney? Staff member? Do you know what her role
- 15 was?
- 16 A: I think she was an admin person, an assistant.
- 17 Q: Did you receive closing documents from the Law Firm of
- 18 Coffey & McKenzie?
- 19 A: Yes. They were emailed to me.
- 20 Q: And let me show you what we're going to mark Plaintiff's
- 21 Exhibit Number 4. If you would, take just a second, Mr.
- 22 Gipson, and look over that for me.
- 23 A: Okay. This is the settlement statement.
- 24 Q: Okay. And -- excuse me. Up at the top of the
- 25 settlement statement, does it show the sales price of the

1 property?

2 A: \$12,000.

3 Q: And that's what we talked about from the contract that's
4 Plaintiff's Exhibit 3?

5 A: That's correct, sir.

6 Q: And then at the bottom of that document, does it show
7 what your bottom-line proceeds that you're supposed to
8 receive from the transaction are?

9 A: Yes. Less the reductions, it should have been \$10,306.

10 Q: So out of the 12,000, you were to receive how much
11 again?

12 A: 10,306.

13 Q: Okay.

14 MR. DUNN: Your Honor, we would move to enter
15 Plaintiff's Exhibit 4 into evidence.

16 THE COURT: Any objection?

17 MR. MCKENZIE: No objection from the defendant, Coffey &
18 McKenzie.

19 MR. ROBINSON: No objection, Your Honor.

20 THE COURT: Plaintiff's 4 is admitted.

21 (WHEREUPON, Plaintiff's Exhibit Number 4, settlement
22 statement, was admitted into evidence.)

23 BY MR. DUNN:

24 Q: Mr. Gipson, I'm going to show you we have marked as
25 Plaintiff's Exhibit Number 5. If you could take a second and

MARVIN GIPSON - DIRECT BY MR. DUNN

1 just look at that for me? Do you recognize -- do you
2 recognize this document, Mr. Gipson?

3 A: This is the deed that says to transfer the property.

4 Q: Okay. And the deed -- who signed this deed? Who
5 executed it?

6 A: I signed it.

7 Q: And did you -- and did you sign it here in Clarendon
8 County or did you sign it in Texas?

9 A: No. I signed it. This was in Missouri City, Texas.

10 Q: And is the -- was the document also witnessed and
11 notarized there in Texas?

12 A: Yes, it is -- was.

13 MR. DUNN: Your Honor, we would move to enter
14 Plaintiff's Exhibit 5 into evidence.

15 THE COURT: Any objection?

16 MR. MCKENZIE: No objection, Your Honor.

17 MR. ROBINSON: No objection.

18 THE COURT: Number 5 is admitted.

19 (WHEREUPON, Plaintiff's Exhibit Number 5, deed, was
20 admitted into evidence.)

21 BY MR. DUNN:

22 Q: Okay. Mr. Gipson, you've got Plaintiff's Exhibit Number
23 4, the settlement statement, and Plaintiff's Exhibit Number
24 5, the deed. You signed both of those documents?

25 A: That's correct.

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MARVIN GIPSON - DIRECT BY MR. DUNN

1 Q: All right. How did you get those signed documents or,
2 if you did, how did you get them back to the Law Firm of
3 Coffey & McKenzie?

4 A: Okay. When I got them, I signed them. Then I scanned
5 them and then I sent them back to an email that I had
6 received from -- from Monica Bruce at Coffey & McKenzie.

7 Q: And how did you get the originals back?

8 A: The originals I FedEx'd the next day to the firm.

9 Q: So during this entire closing process, you never came to
10 Clarendon County?

11 A: No, I did not.

12 Q: You just did it all remotely in where? In Fort Bend
13 County, Texas?

14 A: Yes. It was all by -- all of the messaging was via
15 email and the originals were FedEx'd.

16 Q: Thank you. Okay. So you mentioned that you were to
17 receive proceeds in the amount of -- was it \$10,306?

18 A: That's correct.

19 Q: Okay. Did you have any discussions with the Coffey &
20 McKenzie Law Firm as to how those funds were supposed to be
21 received?

22 A: In the original sales agreement with -- with Betty
23 Brown, it was stipulated that I was going to receive a check
24 for the proceeds.

25 Q: And did you ever have any discussions with anyone at the

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1 Coffey & McKenzie Law Firm about those proceeds?

2 A: Prior to the closing, Monica Bruce called me and she was
3 reading through a checklist of, I guess, what they do at
4 every closing, and I remember she did state that -- that she
5 had banking information that I had supplied for a wire
6 transfer and I told her, no, I never sent any wiring
7 instructions and I expect to get payment by check.

8 Q: And -- and forgive me, Mr. Gipson. I probably should've
9 asked this before, but I believe the date on Plaintiff's
10 Exhibit Number 4, the settlement statement -- I believe
11 that's June 13th, 2016. Could you verify that for me?
12 Plaintiff's Exhibit 4, the settlement statement?

13 A: I'm not sure where to find the date that is on it.

14 Q: It should be on the top.

15 A: June 13th, 2016.

16 Q: And if you look at your deed, Plaintiff's Exhibit Number
17 5, I believe that it was signed on June 15th, 2016. Could you
18 verify that for me? That'll be on the second --

19 A: That is correct. Yes.

20 Q: And so -- so just in terms of timeframe, all this is
21 occurring in mid-June of 2016?

22 A: That's correct.

23 Q: Okay. Okay. So you were telling me about closing
24 documents. You were telling me about some conversations you
25 had with the -- Ms. Bruce at the Coffey & McKenzie. You sent

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1 signed documents. I believe you sent by FedEx back to the
2 law firm. What happened next?

3 A: Nothing happened after that.

4 Q: Well, I mean did -- were you -- were you waiting to
5 receive anything further or what was your -- what was your
6 understanding of what the next step was going to be?

7 A: I assumed that I would get a call after the closing from
8 them telling me that the closing was completed and that my
9 funds would be on their way to me, but I never got that call.

10 Q: Well, did you ever get the funds?

11 A: No, I did not. I never received any funds in the mail,
12 nothing.

13 Q: So you were waiting on the \$10,306 that we discussed a
14 minute ago?

15 A: Correct. Yes. I waited.

16 Q: Did you wait forever or what did you --

17 A: I guess I waited -- it was about a week and then I
18 didn't get anything. So then I started calling and I called
19 Ms. Betty Brown and I called the firm. And I spoke with
20 Monica Bruce and she said that she had sent me an email
21 stating those facts and I never got an email.

22 And while we were on the phone, she sent another email
23 that I never got and then she tried again sending another
24 one, and then I questioned her about, well, where are you
25 sending these emails, what's the address that you're using.

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1 And that's when we discovered that it was a fictitious email
2 address that looks like mine that was scripted in a way that
3 just casually looking at it you can't tell that it was
4 different.

5 Q: Okay. Mr. Gipson, I'm going to give you -- I'll let you
6 look at some email copies. This is going to be --

7 MR. DUNN: If I could, Madam Court Reporter, could I
8 mark this as 1-A?

9 BY MR. DUNN:

10 Q: Mr. Gipson, this is pages 9, 10, and 11 of Plaintiff's
11 Exhibit 1 that we're marking as Plaintiff's Exhibit 1-A or 1-
12 alpha. Mr. Gipson, do you recognize this email exchange?

13 A: I do not recognize this document. I mean -- I mean the
14 cover letter I recognize, but not this -- the bank wiring
15 instructions.

16 Q: Right. Let's just look at -- let's start off by looking
17 at page 9, the first page of the exhibit. Who is the -- who
18 is the email from? If you look, it looks like in the middle
19 of the page, who does the email say it's from?

20 A: From Monica Bruce.

21 Q: And who is that?

22 A: That's the admin for Coffey & McKenzie.

23 Q: Okay. And who is it to?

24 A: It's to me.

25 Q: And there's an email address there. How does -- could

1 you tell them that email address?

2 A: Mail4marvin@gmail.com.

3 Q: All right. Mail4marvin@gmail.com. And is there -- is
4 the four spelled out in letters or is it a numeral?

5 A: It's a number.

6 Q: And the Marvin part, how is that spelled?

7 A: M-a-r-v-i-n.

8 Q: Just like your name?

9 A: Correct.

10 Q: Okay. And what does Ms. Bruce say in this email to you?

11 A: It reads: Below is the email received from you with the
12 wiring instructions, along with the attached signed document
13 and FedEx tracking number. And it says I am also attaching
14 the wire confirmation that the proceeds were sent to the
15 requested account.

16 Q: So then, Mr. Gipson, if you continue down to 10 and 11,
17 it looks like there's some wiring instructions here. Do you
18 recognize these wiring instructions?

19 A: No, I do not.

20 Q: At the bottom, it says the account is in the name of WM
21 International Enterprise, Inc. Do you recognize that name?

22 A: I do not recognize that name.

23 Q: Do you have any relationship with WM International
24 Enterprise Corporation or Company?

25 A: I have no association with any company of that name or

MARVIN GIPSON - DIRECT BY MR. DUNN

1 that bank.

2 Q: It says the bank name it's going to is East West Bank.

3 Do you have any accounts with that bank?

4 A: No, I do not. I did not know of that bank's existence.

5 Q: Ever had any accounts with that bank?

6 A: I never have.

7 Q: Okay. Now, page 10, not quite halfway down, there's a

8 -- there's an email. Who does that email say it's from?

9 Again, this is page 10.

10 A: Okay. It's from -- it has my name and --

11 Q: And when you say your name, because the jury can't look

12 at the document --

13 A: It says Marvin Gipson.

14 Q: I'm sorry. Say it again, sir?

15 A: Marvin Gipson.

16 Q: I apologize. I spoke over you.

17 A: Yeah.

18 Q: Please continue?

19 A: And the email address is a fictitious one.

20 Q: All right. And what is it? How is it -- how is it

21 different?

22 A: The email address is mail as m-a-i-l, the number four,

23 and then there's an R and an N and then an A-R-V-I-N

24 @gmailcom. So if you look at it, the R and the N looks like

25 an M to the casual observer.

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1 Q: And again, the R and the N are uppercase or lowercase?

2 A: Lowercase.

3 Q: And the M in your -- in your actual email address,

4 Mail4marvin@gmail.com, is that uppercase or lowercase?

5 A: It's a lowercase M.

6 Q: And who -- this email on page 10 from this

7 Mail4rmarvin@gmail.com, who was it sent to?

8 A: That was sent to Monica Bruce.

9 Q: So she -- and again, that's Ms. Bruce at the Coffey &

10 McKenzie Law Firm?

11 A: That's correct.

12 Q: Okay. But again, Mr. Gipson, did you send these wiring

13 instructions?

14 A: No, I did not send these wiring instructions.

15 Q: Did you have any knowledge of any wiring instructions

16 whatsoever being sent to the Law Firm of Coffey & McKenzie?

17 A: I had no knowledge of any wiring instructions being

18 sent.

19 MR. DUNN: Your Honor, we would move to admit

20 Plaintiff's Exhibit 1-A into evidence.

21 THE COURT: And those are the documents that are Bates

22 stamped what?

23 MR. DUNN: It's -- and I apologize, Your Honor. The full

24 Exhibit 1 is Bates stamped, I think page 1 to 48.

25 THE COURT: Okay.

1 MR. DUNN: 1-A is simply pages 9 through 11.

2 THE COURT: Any objection?

3 MR. MCKENZIE: None from the defendant, Your Honor.

4 MR. ROBINSON: No objection.

5 THE COURT: Okay. 1-A is admitted.

6 (WHEREUPON, Plaintiff's Exhibit Number 1-A, email pages
7 9 through 11, was admitted into evidence.)

8 BY MR. DUNN:

9 Q: Mr. Gipson, I believe you testified a moment ago that
10 despite the emails we're looking at, the very first you heard
11 of your proceeds being wired somewhere, that was in a phone
12 conversation?

13 A: Correct. That was in the phone conversation.

14 Q: And who was that conversation with again?

15 A: That conversation was with Monica Bruce.

16 Q: Mr. Gipson, let me show you what we have marked -- or
17 we're going to mark -- excuse me -- as Plaintiff's Exhibit
18 Number 7 -- Number 6. It's been marked as Plaintiff's
19 Exhibit Number 6. Could you take a look at this for me,
20 please, sir?

21 A: This is the letter that I sent to Mr. McKenzie at Coffey
22 & McKenzie after the discussion with Monica Bruce.

23 Q: And what's the date on this letter?

24 A: This is June 27th, 2016.

25 Q: And who is it addressed to?

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1 A: It's addressed to Mr. McKenzie.

2 Q: And again, what -- if you could, just tell me exactly
3 what it is that you're stating in this letter?

4 A: Okay. The letter reads:

5 This letter is my follow-up to my conversation with Joe
6 Coffey on June 27th, 2016, at 3:51 p.m. Earlier in the day, I
7 called his paralegal, Monica Bruce, at 11:25 to inquire about
8 my proceeds of 10,306 due for the sale of my property at 3766
9 Rowe Drive, Summerton, South Carolina, and at which time she
10 informed me that she had sent the funds to an account which I
11 did not authorize. On the date of the wire transaction, I
12 informed her that I did not receive the confirmation email,
13 at which time she told me she would resend it. While we were
14 on the phone, again I informed her that I did not receive the
15 confirmation sent. She then said she would call me back.

16 Q: Okay. Hold up there for just a second. Okay. So is
17 that -- what you just read to me, does that fairly describe
18 the sequence of events after you found out about this -- this
19 wire transaction?

20 A: Yes. This describes the event.

21 Q: All right. Now, was this your -- was this your only
22 interaction with the Law Firm of Coffey & McKenzie or did you
23 have other discussions with them?

24 A: After this, there were -- there were others after this
25 to try to resolve what had happened and to figure out what

1 had happened.

2 Q: Did you -- did you reach out to anybody else, whether
3 it's law enforcement or banks or any other entities, to try
4 to figure this situation out?

5 A: At this moment I realized what was happening and my --
6 it looked like my funds weren't going to get to me. I just
7 wanted to scream as loud as I could to everybody on the
8 planet. So I called the Consumer Affairs, I called the
9 police here, I called the State Bar, I called the Attorney
10 General's Office, I called the Texas State Attorney's Office,
11 and I actually did go down to the FBI office in Texas also to
12 discuss the matter.

13 Q: So you touched base with a lot of different folks over
14 this matter?

15 A: Any and everybody I could think of.

16 Q: Now, you mentioned several different law enforcement
17 type agencies. Any results from that? Did you get any --
18 any feedback or did you get any money certainly?

19 A: No, I did not. They told me that there was really
20 nothing they can do, that this is a dispute that you'd have
21 to settle through litigation. There was nobody to
22 investigate or there was no agency to handle this.

23 Q: So the bottom line is, even though you talked to a bunch
24 of people, you never received money as a result of reaching
25 out to any of these various law enforcement or consumer

1 protection type entities?

2 A: No. No, I never received anything.

3 Q: All right.

4 MR. DUNN: Before I forget about it. Judge, we would
5 move to admit Plaintiff's Exhibit Number 6 into evidence.

6 THE COURT: Mine is marked as 7.

7 MR. DUNN: Yours is marked as 7.

8 THE COURT: But it's actually 6?

9 MR. DUNN: It is now going to be 6.

10 THE COURT: Okay.

11 MR. DUNN: My apologies.

12 THE COURT: Any objection? No problem.

13 MR. ROBINSON: No, ma'am.

14 MR. MCKENZIE: I'm sorry, Your Honor. That was Number 7
15 is now Number 6? Is that --

16 THE COURT: Well, mine was marked 7. Number 6 is the
17 letter to Steve McKenzie dated June 27th, 2016.

18 MR. MCKENZIE: Email or is that --

19 THE COURT: That's the letter.

20 MR. MCKENZIE: Okay. A letter?

21 THE COURT: Yes, sir.

22 MR. MCKENZIE: No objection, Your Honor. I'm sorry.

23 THE COURT: Number 6 is admitted.

24 (WHEREUPON, Plaintiff's Exhibit Number 6, letter, was
25 admitted into evidence.)

1 MR. DUNN: Okay. Mr. Gipson, I'm going to show you what
2 we're going to mark as Plaintiff's Exhibit 1-B or 1-bravo.

3 Judge, this is page 26, Bates stamped 26, of Plaintiff's
4 Exhibit Number 1.

5 BY MR. DUNN:

6 Q: If you could take a look at that for me, Mr. Gipson?
7 Okay. Mr. Gipson, do you recognize this email?

8 A: Yes, I recognize the email.

9 Q: And who is this email from?

10 A: This is from Joe Coffey.

11 Q: Is that Mr. Coffey of Coffey & McKenzie?

12 A: Of Coffey & McKenzie, yes.

13 Q: And who is it to?

14 A: It's to me.

15 Q: All right. And if you could, read me what the email
16 says?

17 A: It says: Marvin, I still need clarification as to how
18 the FedEx tracking number for the return of the closing
19 documents and the wiring instructions were sent from the
20 incorrect email address.

21 Q: Okay. And what's the date of this email?

22 A: This is July 5th, 2016.

23 Q: Okay. Now, you were -- you were talking a minute ago
24 about FedEx. You -- I believe you said you sent the signed
25 documents back to Coffey & McKenzie via FedEx; is that

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correct?

A: Right. The signed originals were packaged and sent by FedEx.

Q: All right. Okay. So in this email, Mr. Coffey is asking about how the FedEx tracking number -- how it came from the incorrect email address. What explanation do you have for that, Mr. Gipson?

A: I don't have an explanation for that. I don't -- I don't know. I can only surmise what happened is that the email that was sent to me from Monica that I responded to had a fake email address that looked -- that comes from them. That was the Monica at gmail.com that we determined later that I replied to that. And that's where that -- those instructions would've gotten inserted and then sent on to them.

Q: Okay. Now, help me out, Mr. Gipson. Explain that to me a little more. Did you receive emails from different addresses from Ms. Bruce or how? Explain that to me?

A: Yes. We determined later that they were coming from her. All of their -- their firm's letterhead, everything exactly the same, but an email from her was not from the Coffey & McKenzie, it was from gmail.com.

Q: So it was your understanding that you were receiving email from -- that looked like it was from Monica Bruce, but it wasn't? Is that what your understanding was?

MARVIN GIPSON - DIRECT BY MR. DUNN

1 A: Apparently, that was the case, yes. They sent it to
2 look just like Coffey & McKenzie correspondence.

3 MR. DUNN: Your Honor, we would move to admit
4 Plaintiff's Exhibit 1-B into evidence.

5 THE COURT: And that's the Bates stamped page number 26?

6 MR. DUNN: Bates stamped page number 26. Yes, ma'am.

7 THE COURT: Any objection?

8 MR. MCKENZIE: Not from the defendant, Your Honor.

9 MR. ROBINSON: No objection.

10 THE COURT: 1-B is admitted.

11 (WHEREUPON, Plaintiff's Exhibit Number 1-B, email page
12 26, was admitted into evidence.)

13 BY MR. DUNN:

14 Q: Okay. Mr. Gipson, we looked at Plaintiff's Exhibit
15 Number 6 a minute ago. That, I believe, was dated June 27th.
16 We just looked at this email, Plaintiff's Exhibit 1-B. It's
17 dated July 5th. Again, all in 2016. Did you -- as you
18 continued to sort out the situation, did you ever receive any
19 of your -- your -- your \$10,306 in closing proceeds?

20 A: Mr. Coffey, through his work and through the bank, there
21 was some residual left in the account that they had sent it
22 to and they returned that to Coffey & McKenzie, who then
23 forwarded it to me. And that was -- I don't remember the
24 exact figure, but it was 1,000 and a couple of hundred
25 dollars.

MARVIN GIPSON - DIRECT BY MR. DUNN

1 Q: Mr. Gipson, I'm going to show you -- we're going to
2 consolidate this.

3 MR. DUNN: Your Honor and the defendants, this is what I
4 -- what I -- what I have in your copies marked as Number 8
5 and Number 9. I'm just going to put these two pages
6 together. These are the letter and the check from East West
7 Bank, and so it will be Number 8 and Number 9 on your copies.

8 And could I mark this as Plaintiff's Number 7?

9 BY MR. DUNN:

10 Q: Take a look at what we've marked as Plaintiff's Number
11 -- Exhibit Number 7 for me, Mr. Gipson. And, Mr. Gipson, if
12 you look at the first page of Number 7, it looks like a
13 letter from East West Bank dated July 19th, 2016?

14 A: Yes. Right.

15 Q: Is this what you were referring to a moment ago?

16 A: Yes.

17 Q: In terms of the fraction of the proceeds you did
18 receive?

19 A: Correct. Yes.

20 Q: And who is this letter addressed to?

21 A: It's -- it says dear Ms. Trapp.

22 Q: Okay. No, at the top. Who is the address line to? It
23 first starts NBSC.

24 A: Oh. Synovus Financial, attention Donna Trapp.

25 Q: Okay. Was this -- was NBSC and Synovus Bank Financial

1 -- was that your bank?

2 A: No. That's not my bank.

3 Q: Okay. And then this reference is Coffey & McKenzie,
4 P.A.?

5 A: Correct. Yes.

6 Q: All right. And then it talks about wire amount 10,306.
7 Is that the proceeds amount you were discussing earlier?

8 A: That was what I should have received, yes.

9 Q: And then if I read down, it says:

10 Enclosed is a cashier's check -- and it gives a very
11 long check number -- in the amount of \$1,516.89 for
12 reimbursement. We consider this matter satisfied and closed.
13 That \$1,516.89, is that the money that you were talking about
14 earlier that you did finally receive?

15 A: Yes. That was what was forwarded to me.

16 Q: And if you look at the second page of Plaintiff's,
17 Exhibit 7, the copy quality doesn't look the best, but this
18 -- this looks like a copy of the check. Is that the -- is
19 that the \$1,516.89 that you were referring to?

20 A: Yes.

21 Q: And you ultimately did receive that \$1,516?

22 A: That's correct. Yes.

23 Q: All right. So if you subtract that out from the 10,306,
24 you end up, I believe, with about \$8,789 and some change.

25 Did you ever receive any of that money?

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- 1 A: No, sir, I have not.
- 2 Q: So after this \$1,516, that's all the money you received?
- 3 A: That is correct.
- 4 Q: Let me -- Mr. Gipson, I'm going to show you an email.
- 5 This -- we're going to mark this as Plaintiff's 1-C, as in
- 6 Charlie.
- 7 MR. DUNN: Your Honor, this is Bates stamped page number
- 8 42 of Plaintiff's Exhibit 1, 042.
- 9 THE COURT: Mr. Dunn, have you offered Plaintiff's
- 10 Exhibit 7 into evidence? I know we discussed it. I don't
- 11 think it's been offered into evidence.
- 12 MR. DUNN: No, ma'am, but I appreciate it. We would
- 13 move to offer it into evidence at this time, Your Honor.
- 14 THE COURT: Any objection?
- 15 MR. ROBINSON: No, ma'am.
- 16 MR. MCKENZIE: No, ma'am.
- 17 THE COURT: Okay. Number 7 is admitted.
- 18 (WHEREUPON, Plaintiff's Exhibit Number 7, letter and
- 19 check, was admitted into evidence.)
- 20 BY MR. DUNN:
- 21 Q: Okay. Mr. Gipson, if you'd take a second and look at
- 22 this email we've marked as Plaintiff's Exhibit 1-C?
- 23 THE COURT: And I'm sorry. Would you repeat those
- 24 numbers for me?
- 25 MR. DUNN: Yes, ma'am. This is Bates stamped page

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1 number 42 in Exhibit 1.

2 THE COURT: Thank you.

3 BY MR. DUNN:

4 Q: And, Mr. Gipson, this appears to be an email dated
5 August 11th of 2016. Do you recall this email?

6 A: Yes, I recall this email.

7 Q: And who is it from?

8 A: This is from Mr. Coffey.

9 Q: Excuse me. And if you could, tell me what this email
10 says?

11 A: It says:

12 Marvin, there isn't anything I can do further regarding
13 your wire fraud matter. It is regrettable your email was
14 compromised and the bank wasn't notified until much later
15 after the closing. East West Bank made it clear that they
16 would not provide any further information unless required by
17 subpoena. The FBI and FTC should be able to obtain more
18 information about the account holder at East West Bank. I
19 will provide any information requested by the authorities.
20 Please inform them of such. Joe Coffey.

21 Q: Now, Mr. Gipson, in this email, Mr. Coffey mentions a
22 subpoena. Do you know -- to your knowledge, was East West
23 Bank ever subpoenaed by anybody about this matter?

24 A: I have no idea. That's way above my head.

25 Q: Did anybody at Coffey & McKenzie ever offer to file any

1 sort of action so that they could issue a subpoena to the
2 bank?

3 A: No. That pretty much summarizes the end of the process.
4 I mean I had -- I had made calls to the bank myself trying to
5 get information, but they couldn't speak to me. They
6 wouldn't talk to me about it for whatever reason. It was --
7 you know, I just -- I had no other recourse. I had nothing
8 else I could do. I was stopped in my tracks. I was -- there
9 was nobody else I could call. I screamed as loud as I could
10 and that's how it ended up.

11 Q: Okay. Mr. Gipson, did --

12 MR. DUNN: First off, Your Honor, we would offer
13 Plaintiff's Exhibit 1-C into evidence.

14 THE COURT: Any objection?

15 MR. MCKENZIE: No objection.

16 MR. ROBINSON: No, ma'am. No objection.

17 THE COURT: 1-C is admitted.

18 (WHEREUPON, Plaintiff's Exhibit Number 1-C, email page
19 42, was admitted into evidence.)

20 BY MR. DUNN:

21 Q: Mr. Gipson, did -- to your knowledge, did anybody at the
22 Coffey & McKenzie Law Firm do anything further to -- to try
23 to get you any of the \$8,700 that you were still owed?

24 A: No. I mean there was a lot of work on their part and my
25 part to get what funds we did have. I mean I asked them if

1 they could make me whole. I wrote letters about the
2 situation and they felt that it was out of their hands and
3 that they were, like, done with the process.

4 MR. DUNN: Your Honor, I'm going to -- this is page 45
5 of Plaintiff's Exhibit 1, Bates stamped 45. I'm going to
6 mark this is Plaintiff's 1-D. I don't think I'm going to
7 move this into evidence, but just for testimony purposes.

8 BY MR. DUNN:

9 Q: Take a look at that email if you could, Mr. Gipson?

10 A: Okay.

11 Q: Now, Mr. Gipson, this -- this email at the top anyway,
12 it says it's dated September 13th, 2016, from you. Now, this
13 email address, nemarkgipson, this is a different email
14 address; is that correct?

15 A: That's correct. I sent it from another Gmail account
16 that I had. It was my work more or less. Things to do with
17 work and employment was based on this email address.

18 Q: All right. And who -- who did you send this email to?

19 A: This is to Joe and Steve.

20 Q: Is that Joe Coffey and Steve McKenzie?

21 A: Yes.

22 Q: And if you could, read for me what you said there where
23 you said, Joe, this is not correct, sir. Read from there
24 what you said in this email?

25 A: Yeah. It said:

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1 Not correct, sir. I have no evidence of that. It may
2 as well have been yours.

3 Q: And stop right there. What were you talking about when
4 you said it may as well -- it may as well have been yours?
5 What were your thoughts?

6 A: They were implying that my email was hacked and I had no
7 evidence of that. I had no warnings from Google about
8 anybody tampering with -- to get into my email. The thing is
9 a message was sent to me via email. Nothing was hacked. I
10 got a message sent to me, like someone on the inside sent me
11 an email, and I had just said businesses are targeted all the
12 time. I said one fact of this event is that your assistant
13 Monica called me prior to the closing and mentioned she had
14 wiring instructions and I had -- I told her at that time I
15 didn't send any wiring instructions and I would -- and it
16 would be by check. And then I asked him to please
17 reconsider, and I think that was my cue to -- you know, to
18 them making me whole.

19 Q: And when you say Monica, who are you referring to again?

20 A: Monica Bruce.

21 Q: Okay. And you mentioned that -- telling her you didn't
22 send any wiring instructions. Is that what you were
23 testifying to a few minutes ago?

24 A: I'm sorry. Repeat?

25 Q: In this email when you -- when you say that -- when

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1 you're describing a conversation with Ms. Bruce, you say that
2 you never sent any wiring instructions. Is that the same
3 testimony you were giving a few minutes ago about your
4 discussions with her?

5 A: That's what I've been telling them all along. That I
6 never sent any wiring instructions.

7 Q: All right. Did you ever receive a phone call from or
8 any sort of communication from anybody at Coffey & McKenzie
9 telling you that they were initiating a wire to send you the
10 \$10,306 in proceeds?

11 A: No, sir. I got no call. I -- they did not call me
12 after the closing.

13 Q: Did you receive any email or phone call after closing to
14 verify that you had received the \$10,306 in proceeds?

15 A: No call, no email.

16 Q: Did you ever receive any email or phone call from Coffey
17 & McKenzie asking you if you were -- if you had any relation
18 to WM International Enterprise, Inc.?

19 A: I really don't recall. I'm sure he might've asked me if
20 I knew of this company and I didn't know of that company.

21 Q: I mean prior to the wire, did you ever receive any phone
22 call from them?

23 A: Not that I remember, no.

24 Q: And as we stand here today, you received the \$1,516 and
25 some change, but you still have yet to see any of the \$8,789

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MARVIN GIPSON - DIRECT BY MR. DUNN

1 and some change that you're still owed for this transaction?

2 A: That is correct.

3 MR. DUNN: I beg the Court's indulgence for just one
4 moment, Your Honor. By the way, we are -- we are not moving
5 Plaintiff's 1-D -- we are not moving to put that into
6 evidence. That was for demonstration purposes only.

7 Mr. Gipson, thank you. That's all I have. If you
8 would, please answer any questions from the defendants.

9 THE COURT: Yes, sir. Mr. McKenzie is going to ask you
10 some questions, sir.

11 THE WITNESS: Okay. Thank you.

12 CROSS-EXAMINATION

13 BY MR. MCKENZIE:

14 Q: Mr. Gipson, how are you today?

15 A: I'm fine. Thank you.

16 Q: Okay. All right. You signed an affidavit that you
17 understood that Joe Coffey was representing yourself and the
18 sellers of these properties. DO you recall that?

19 A: Yes.

20 Q: Okay. So who was your lawyer in this transaction. Who
21 was your lawyer in this closing?

22 A: Mr. Coffey.

23 Q: Okay. That was an affidavit that said that you
24 understood that you had -- you and he are -- you and he had
25 an attorney-client relationship; is that correct?

1 A: That's correct.

2 Q: And then you signed an attorney representation
3 disclosure acknowledging Joseph Coffey was your attorney; is
4 that correct?

5 A: I believe that would be the case, yes.

6 Q: Two different documents you signed that said that Mr.
7 Coffey was your attorney?

8 A: Sir, it's all part of your closing. I sent the
9 documents that I signed.

10 Q: All that was part of the closing?

11 A: I guess.

12 Q: Along with the disbursement of the funds; is that
13 correct?

14 A: Yes. A lot of documents. Yes, sir.

15 Q: But my question to you is all of that is part of the
16 closing along with the disbursing of the funds as a part of
17 the closing?

18 A: Yes, sir.

19 Q: Okay.

20 A: Yes.

21 Q: All right. At the time that this occurred or at the
22 time that, I guess, you hired Mr. Coffey to represent you,
23 you were living in Yonkers, New York?

24 A: No, sir, I was not. I was living in Texas.

25 Q: Okay. Well, there's an email from you that says you are

MARVIN GIPSON - CROSS BY MR. MCKENZIE

1 in the process of moving to Texas; is that correct?

2 A: Right. We were moving during.

3 Q: Right. During this timeframe?

4 A: Right. But I was in Texas at that time by the time --

5 Q: Right. Because you were going to use the proceeds from
6 this sale to help you buy this place in Texas that you were
7 moving to?

8 A: Right. Because all of the documents were notarized in
9 Missouri City, Texas.

10 Q: So you were in --

11 A: I was there.

12 Q: -- the process of -- you said, obviously, you needed the
13 proceeds to buy the place in Texas. You had not received the
14 proceeds from the closing that was part and parcel of the
15 closing; right?

16 A: That's correct.

17 Q: Okay. So you were in the process of moving; is that
18 correct?

19 A: I was there, sir.

20 Q: Okay.

21 A: Physically, I was there. I was -- we drove a minivan, a
22 U-Haul truck, and everything else to Texas. It took 30-some
23 hours. We were there.

24 Q: Understood. I've been to Texas. It's a long drive.

25 Now, let me ask you this question. The people that

1 intercepted the money, Mr. Coffey helped you to track those
2 people down, did he not?

3 A: We -- we deciphered all of the emails and we kind of
4 came up with an idea or at least a way that it happened, you
5 know, and that was work on both our parts.

6 Q: Well, and that -- the people that ultimately -- and this
7 is according to your complaint. That it was determined that
8 it was WM International Enterprises, Inc. Do you recognize
9 that name?

10 A: Well, that was the name that came up on some document, I
11 guess, associated with the bank and --

12 Q: Right.

13 A: -- the wiring.

14 Q: Right. And Mr. Coffey provided you with that
15 information?

16 A: I believe, yes, he did send that information.

17 Q: So once -- once it was determined that the account had
18 been hacked -- right? Everybody -- Mr. Coffey got really
19 busy trying to find out where your money went to; is that
20 correct?

21 A: When you say the account was hacked?

22 Q: Right. The email account was hacked?

23 A: We don't know if my email account -- I got an email from
24 Monica that I responded to. I don't -- I don't know about
25 being hacked.

MARVIN GIPSON - CROSS BY MR. MCKENZIE

1 Q: All right. And when you had this -- you had the --

2 A: I mean you refer to that as being hacked when I get an
3 email from her?

4 Q: And let me ask you this question. Where is the place of
5 business for WM Enterprises, Inc., that you were provided?
6 Where -- where do they have a business location?

7 A: It was in -- was it New York?

8 Q: It was in New York, and do you know how far it was from
9 Yonkers? They were in downtown New York. Do you know how
10 far it is from Yonkers to downtown New York? You lived
11 there. How far is it?

12 A: I have no idea how far it is other than what you're
13 referencing.

14 Q: So you never went to New York City?

15 A: I never went to New York.

16 Q: When you lived in New York state, did you ever go to New
17 York City?

18 A: Of course, I've been --

19 Q: Did you ever --

20 A: -- to New York.

21 Q: Did you ever drive there from your home in Yonkers?

22 A: I've been in Manhattan, yes.

23 Q: Okay. How far is the distance from those two locations?

24 A: There's what? Ten miles, 15 miles.

25 Q: And when you were living in New York, your email address

MARVIN GIPSON - CROSS BY MR. MCKENZIE

1 was Mail4marvin; is that correct?

2 A: That's correct.

3 Q: Okay. At Gmail; right?

4 A: That's correct.

5 Q: Okay. So -- and the people that hacked into this

6 account, whether they hacked into -- whatever account they

7 hacked into, they were also a New York resident?

8 A: I don't know about that, sir. That's --

9 Q: The business is located in New York?

10 A: That's what we found out.

11 Q: Okay. All right. Now, once it was determined that the

12 money was not transferred pursuant to what you believed to be

13 the instructions -- right? Mr. Coffey got on the phone and

14 was able to recover a portion of this money before the

15 hackers got the rest of it out of the bank; is that correct?

16 A: That appears to be what happened.

17 Q: So Mr. Coffey, Joe, did everything he could to try to

18 get the money back for you; is that correct?

19 A: Once he realized what happened, I think the onus is on

20 him to try to -- to resolve what happened.

21 Q: Well, Mr. Gipson, you brought a complaint and prior to

22 bringing that complaint -- and I have your complaint right

23 here and it says that in the complaint that WN -- WM

24 International Enterprises, Inc., this money -- the monies

25 from the proceeds of the sale went into their account. Why

1 didn't you sue WM International Proceeds [sic], Inc.? They
2 had your money; right?

3 A: Well, I don't know about suing them. To me it's all
4 about the process of how it got to them.

5 Q: Well -- and so --

6 A: And that was through your -- the way you guys transacted
7 the closing.

8 Q: Okay. The way we transacted the closing? Okay. You
9 said that part of the closing was the disbursement of the
10 funds to you; is that correct?

11 A: That's correct.

12 Q: Okay. And you contacted the South Carolina Department
13 of Consumer Affairs and reported Joe, did you not?

14 A: That's correct.

15 Q: Okay. You contacted I think -- did you contact SLED,
16 the South Carolina Law Enforcement Division?

17 A: Everybody I could get to.

18 Q: Right on down the line; right?

19 A: Everybody I could get to, whoever I could.

20 Q: And they all said there was nothing we can do?

21 A: Because of the -- I guess because of the nature of the
22 crime, it's not in their jurisdiction.

23 Q: And it was a crime, was it not? Your money was stolen?

24 A: I guess on this -- on the statutes, I guess that would
25 be a crime, but I'm not an expert in the field. But I feel

1 like I was -- it was a crime.

2 Q: I understand you're not an expert, Mr. Gipson, but when
3 you don't get your money and it was supposed to come to you
4 and WM Enterprises, Inc., has your money and we all know
5 that, they stole your money, did they not?

6 A: The money is gone, sir.

7 Q: I'm sorry?

8 A: I said, yes, the money is gone.

9 Q: The money is gone and WM International Enterprises has
10 your money?

11 A: Because of the flawed process of the closing.

12 Q: The flawed process of the closing?

13 A: Yes.

14 Q: And that's your testimony today that the process of the
15 closing was flawed and that's part of the real estate
16 transaction; is that correct?

17 A: The closing is part of the process, yes.

18 Q: During all of this, you had authorized documents to be
19 sent by email, did you not?

20 A: Yes, we agreed.

21 Q: During the closing?

22 A: Right. We all agreed that that would be a way we could
23 conduct the business.

24 Q: Right. And in fact, prior to the closing, Ms. Bruce,
25 who worked -- Monica, who works for Joe, sent you the closing

1 documents for you to sign, scan them back in, and send back
2 to her; right?

3 A: That is correct.

4 Q: And she did -- and you did those things; right?

5 A: That's what I did.

6 Q: And then later on you got the original documents in the
7 mail, FedEx; right?

8 A: That's right. I sent you guys the original documents.

9 Q: I'm sorry. Let me back up. The documents that you had
10 signed and scanned in, you actually sent those FedEx to Joe
11 Coffey?

12 A: That is correct, yes.

13 Q: Okay. And so come to find out that that's when the
14 hacking occurred; is that correct?

15 A: The hacking occurred in the email. The documents I sent
16 did not have any wiring instructions in there.

17 Q: I understand that, but the hacker was so sophisticated
18 that they actually got in there, and you said earlier that
19 that difference in the email account was an R and an N, which
20 looked like the same email address as Mail4marvin@gmail.com;
21 is that correct?

22 A: They were pretty slick, yeah.

23 Q: And that's the way the hackers got into the account; is
24 that correct?

25 A: That's how they got involved in our correspondence.

MARVIN GIPSON - CROSS BY MR. MCKENZIE

- 1 Q: Right. And they actually created another email for
2 Monica Bruce, did they not?
- 3 A: That's correct. They had it on both ends.
- 4 Q: Okay. And so these hackers were so sophisticated they
5 created a false email for you, a false email for Monica
6 Bruce. They were corresponding with you with Monica Bruce's
7 false email; is that correct?
- 8 A: That's correct.
- 9 Q: And they were kind of corresponding with Monica Bruce
10 with your false email?
- 11 A: That's correct.
- 12 Q: Okay. Did you report this to the FBI?
- 13 A: Yes, I did.
- 14 Q: And what was their response to this?
- 15 A: They don't really have any actions for this. I -- I
16 didn't get any kind of feedback. There's, like, nothing --
- 17 Q: Well, did they --
- 18 A: -- that they can do.
- 19 Q: Did you get -- did they call you back and say we can't
20 do anything about it? Did you follow up on it?
- 21 A: I was to -- I went to the office in Austin and that's
22 where I spoke with them and I discussed it with them. I'm
23 trying to remember if I did some paperwork or whatever, but
24 nothing came of it.
- 25 Q: You called law enforcement on Joe Coffey and law

1 enforcement said this wasn't a crime that Mr. Coffey
2 committed; right?

3 A: I was directed to do that. I'm not sure who told me to
4 do it, but to create the paper trail I had to do that. That
5 was following the judgment of someone. I was directed to do
6 that.

7 Q: Who did you contact in New York in law enforcement about
8 WM Enterprises, Inc.?

9 A: Well, I don't -- I don't recall anything about New York.

10 Q: All right. Because you didn't contact anybody in New
11 York; is that correct?

12 A: I would think maybe not.

13 Q: Okay.

14 A: I don't know.

15 Q: So you contacted all these people in South Carolina, but
16 the people from New York stole your money; is that correct?

17 A: Well, some entity in New York, yes, got the money.

18 Q: Okay. So wouldn't it have been prudent, Mr. Gipson, for
19 you to then contact the state of New York, the prosecutor
20 maybe in New York City where these people are located, the
21 DA, the New York City Police Department, and let them
22 investigate this and help you get your money back through the
23 criminal process? Wouldn't that have been a prudent thing to
24 do? You knew who they were.

25 A: I'm sensing here you're trying to absolve yourself of

MARVIN GIPSON - CROSS BY MR. MCKENZIE

1 the role you played in this by my statements of I did not
2 send any wiring instructions, but now I'm supposed to go way
3 up here, way outside of my scope of knowledge, and open up
4 all of these files and claims and you guys are just going to
5 sit there in your office now and say you're done with it.

6 Q: Well, Mr. Gipson, you've stated that we don't have your
7 money; is that correct? This -- Joe Coffey does not have
8 Marvin Gipson's money?

9 A: Okay. We know that, but your process.

10 Q: All right. But we don't know that you don't have it, do
11 we?

12 A: Well, you know, why am I here if I have it?

13 Q: Well, Mr. Gipson, the name of the company is WN -- WM
14 Enterprises. Well, could the M be Marvin?

15 A: It could be Michael.

16 MR. DUNN: Your Honor, I'm going to object to this.

17 A: It could be --

18 MR. DUNN: This is --

19 THE COURT: That's sustained.

20 MR. DUNN: -- speculation.

21 THE COURT: That's sustained.

22 MR. MCKENZIE: Thank you, Your Honor.

23 BY MR. MCKENZIE:

24 Q: Mr. Gipson, you said earlier that you were -- you know,
25 how are you supposed to know to contact New York; is that

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MARVIN GIPSON - CROSS BY MR. MCKENZIE

- 1 correct? Or why were you -- why were you supposed to contact
2 New York; is that correct?
- 3 A: Right. At this point, I'm just trying to find my way
4 through this. I'm dealing with the situation.
- 5 Q: But you didn't have any problem contacting everybody in
6 South Carolina?
- 7 A: This is where it occurred.
- 8 Q: From Texas?
- 9 A: I was directed that I have to work through South
10 Carolina. Even in Texas, they told me they have no
11 jurisdiction over this. They can't handle it. I have to
12 work through the state of South Carolina.
- 13 Q: But New York state has jurisdiction over WM Enterprises?
14 That's where they were?
- 15 A: That's beyond my pay scale, sir. I don't -- I'm not --
- 16 Q: Okay.
- 17 A: That's not my -- I don't know anything about that.
- 18 Q: But you contacted nobody in New York about this?
- 19 A: I don't recall doing it. I don't have any recollection
20 of that.
- 21 Q: And, Mr. Gipson, even though at the time you started
22 making these complaints about Joe and this law firm, you knew
23 that WM Enterprises actually received this money or
24 intercepted this money, did you not?
- 25 A: Through you guys telling me, but I mean you guys

MARVIN GIPSON - CROSS BY MR. MCKENZIE

1 could've made action too I mean with them.

2 Q: Well --

3 A: You were involved in this too. Like you wanted -- just
4 unless I do something, you're not doing anything, you're not
5 having any role in this?

6 Q: Well, I asked you earlier did Mr. Coffey go to work and
7 diligently try to get your money back?

8 A: He didn't do anything in New York.

9 Q: Well, Mr. Gipson, you didn't either, did you? And it
10 was your money? It's not Mr. Coffey's money, it's your
11 money?

12 A: It's your process.

13 Q: Okay. So it's our process during the real estate
14 closing to disburse the funds?

15 A: That created the whole situation by not calling me. If
16 you had called me right after the closing, we might've been
17 able to intercept it earlier, but there was, like, a week or
18 more gone by before we even discovered this had happened.

19 Q: Mr. Gipson, actually, it was 11 days that went by before
20 you called the office and said, hey, where's the money?

21 A: That's correct because nobody --

22 Q: And we didn't --

23 A: -- called me.

24 Q: Well, Mr. Gipson, we got the email, the fake email from
25 you. We thought you knew about it.

MARVIN GIPSON - CROSS BY MR. MCKENZIE

000125 1 A: What fake email from me?

2 Q: From the ones that the people from WM Enterprises that
3 we have been talking about. Remember, we talked about
4 earlier that the people created a fake email account for you?

5 A: They confirmed that they were in receipt of the funds or
6 something?

7 Q: Well --

8 A: I mean I have no information on that. You didn't send
9 me any information about that. You sent me the email about
10 you wipe your hands of it and you're done with the process at
11 this point. You guys left me hanging.

12 Q: So we left you hanging; is that correct?

13 A: After the bank wiped their hands of it, you guys wiped
14 your hands of it right after.

15 MR. MCKENZIE: Court's indulgence, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. MCKENZIE:

18 Q: Now, Mr. Gipson, you state that this -- that Joe should
19 have -- should have in your complaint noticed that the
20 hackers had created a false email account for you; is that
21 correct?

22 A: I didn't say -- I mean it's what we came up with. We
23 decided -- after we started reviewing the emails, we saw what
24 happened. I mean he didn't notice, I didn't notice.

25 Q: Okay. And --

MARVIN GIPSON - CROSS BY MR. MCKENZIE

- 1 A: But the thing is if we had communicated better, if you
2 guys had called me, this could've been avoided.
- 3 Q: So if we had called you? But you didn't call us either?
- 4 A: I did call you.
- 5 A: You didn't call us for 11 days. You just said that.
- 6 A: Because the check never came in the mail.
- 7 Q: Right. And, Mr. -- and, Mr. Gipson, the email
8 instructions we had was to wire the mail -- the proceeds to
9 an account actually in California to WM Enterprises, Inc.; is
10 that correct?
- 11 A: And as you know, that's not a document that I created.
- 12 Q: Okay. We know that now, Mr. Gipson, but you also
13 admitted earlier that you understood that they -- the people
14 who hacked into this account and stole your money also
15 created a fake email account for Monica Bruce, Joe's
16 paralegal, did they not?
- 17 A: I think we determined that, sir.
- 18 Q: Okay. And we have determined that. And they were
19 communicating with you and sending you false information; is
20 that correct?
- 21 A: Well, they just sent me whatever documents. I don't
22 know. I mean --
- 23 Q: They did and --
- 24 A: I don't know what they sent. All I know is the stuff I
25 got from her. I think they intercepted the stuff going back.

1 Q: The question I asked you was that they also created
2 email accounts going both ways; is that correct?

3 A: That's correct.

4 Q: And you didn't find anything wrong with the email
5 account that was created for Monica Bruce, even though it was
6 clearly wrong?

7 A: Until I did not get the check and I called and we
8 realized from her trying to send me the email confirming the
9 -- the wire transfer that I wasn't getting any -- any emails,
10 that it was going to some bogus thing, and I'm the one who
11 brought this attention to you guys. I'm the one who started
12 sounding the whistle about, hey, we've got fake emails going
13 here.

14 Q: And, Mr. Gipson, you acknowledged earlier that Mr.
15 Coffey was your attorney; is that correct?

16 A: That is correct.

17 Q: And you -- and you also acknowledged earlier that the
18 disbursement of the funds was part and parcel of the entire
19 real estate closing; is that correct?

20 A: Yes. That's -- that's the final part of the process.

21 MR. MCKENZIE: Court's indulgence. Let me confer with
22 co-counsel.

23 No questions from defendant, Joe.

24 THE COURT: Any redirect? Well, Mr. Robinson, first of
25 all, any questions, Mr. Robinson?

1 MR. ROBINSON: No, ma'am.

2 THE COURT: Okay.

3 MR. DUNN: Nothing further, Your Honor.

4 THE COURT: Thank you, sir. You can step down.

5 THE PLAINTIFF: Thank you, Your Honor.

6 THE COURT: Okay. Ladies and gentlemen, we've had you
7 in here for quite a little stretch. We're going to take
8 about a 10-minute break and let you guys stretch your legs
9 and use the facilities. Please don't begin discussing the
10 case yet. You've only heard a small portion of the
11 testimony.

12 If you would, please choose a foreperson from among the
13 twelve of you. Our alternate is not -- Ms. Ballard is not
14 eligible to be the foreperson, but out of the other twelve,
15 if you all will please put your heads together and select a
16 foreperson.

17 You don't need any particular skills or experience.
18 Your common sense is all you need to be the foreperson. When
19 you get to the time of deliberation, basically you precede
20 over the deliberations, keep things moving, and you will sign
21 -- once the jury has reached a verdict, you'll sign the
22 verdict form on behalf of the jury panel.

23 So let's take a break for about 10 minutes or so.

24 (WHEREUPON, the jury exited the courtroom at 11:15 a.m.)

25 (WHEREUPON, there was a break in the proceedings from

1 11:15 a.m. until 11:30 a.m., after which the proceedings
2 resumed as follows.)

3 THE COURT: Okay. Mr. Dunn, are you ready for us to
4 bring the jury in as well?

5 MR. DUNN: Yes, ma'am. Thank you.

6 THE COURT: You can bring them on in, if they're ready.

7 (WHEREUPON, the jury entered the courtroom at 11:31
8 a.m.)

9 THE COURT: Okay, ladies and gentlemen. I understand,
10 Mr. Stone, that you are the foreperson?

11 THE FOREPERSON: Yes, ma'am.

12 THE COURT: And you're Mr. Stone?

13 THE FOREPERSON: I am.

14 THE COURT: I want to make sure I got your name right.

15 All right. Thank you so much.

16 Mr. Dunn?

17 MR. DUNN: Your Honor, that's the plaintiff's case.

18 THE COURT: Thank you.

19 MR. MCKENZIE: Your Honor, we do have some motions.

20 THE COURT: Okay.

21 MR. MCKENZIE: Sorry about that.

22 THE COURT: That's all right.

23 Ladies and gentlemen, I need -- I have a number of legal
24 issues that I need to take up outside of your presence. So
25 if I can ask you to step back in the jury room while we take

1 those matters up and then we'll be right with you. Again,
2 please don't begin discussing the case.

3 (WHEREUPON, the jury exited the courtroom at 11:33 a.m.)

4 THE COURT: Yes, sir, Mr. McKenzie.

5 MR. MCKENZIE: Thank you, Your Honor.

6 Your Honor, first of all, in regards to the -- we have
7 some motions to strike some of the damages portion of the
8 plaintiff's complaint that we don't think proper. First of
9 all, punitive damages. There's been no testimony of willful
10 or wanton type conduct. We'd move to strike the punitive
11 damages portion.

12 We'd actually -- we don't think there are any
13 consequential damages proven either. So we'd move to strike
14 that, meaning that if there's any damages, they are actual
15 damages and out-of-pocket money. So there was no
16 consequential damages, meaning that anything that Mr. Gipson
17 incurred was as a result of getting up to this point. We'd
18 move to strike that.

19 And we also move to strike attorney's fees. I'm sorry.
20 This is a negligence action against Coffey & McKenzie and
21 attorney's fees wouldn't be appropriate unless there was a
22 contractual obligation to pay that and so we'd move to strike
23 those portions. If there's any damages that should go to the
24 jury in this issue, it should be actual only.

25 THE COURT: Mr. Dunn?

1 MR. DUNN: Your Honor, we think that based on the
2 evidence that's been presented that there is enough that the
3 jury could find special and/or punitive damages, if they so
4 chose.

5 THE COURT: And what would the conduct be that would
6 give rise to a punitive damages claim?

7 MR. DUNN: I think that the Law Firm of Coffey &
8 McKenzie ignored the clear evidence that they were receiving
9 instructions from a source that wasn't Mr. Gipson.

10 THE COURT: I'm going to grant the motion with respect
11 to striking the punitive damages claim. The plaintiff's
12 testimony seems to indicate this was accidental. It wasn't
13 certainly anything -- no intentional conduct on the part of
14 the law firm. It does not rise to the level of reckless,
15 willful, and wanton that's required for it to go to the jury
16 on punitive damages.

17 MR. DUNN: Okay. Thank you.

18 THE COURT: What is your position with respect to the
19 consequential or special damages and attorney's fees?

20 MR. DUNN: We have the same -- same position, Your
21 Honor. I think that the plaintiff's testimony about what he
22 had to go through and after the fact that it was discovered
23 that the money had gone to the wrong account, I think that's
24 enough to base it on and just so based on his testimony and
25 what he's described as to how the whole process evolved and

1 everything that he had to do, we would -- we would argue that
2 that's enough. But if the jury so chose, they could base
3 that on consequential or special damages.

4 THE COURT: Generally, in a negligence action, those are
5 not recoverable damages, in other words the costs of
6 instituting the lawsuit.

7 MR. DUNN: And I understand, Your Honor. I do not have
8 any law to argue with that.

9 THE COURT: And of course, attorney's fees are not --
10 that doesn't go in front of the jury unless there's a statute
11 or specific contractual provision that allows for attorney's
12 fees, and we don't have any testimony to that. So that
13 motion to strike is granted with respect to consequential
14 damages and attorney's fees as well.

15 MR. MCKENZIE: Your Honor, our next motion would be
16 dismiss the cause of action of negligence in regards to
17 Coffey & McKenzie based on the failure of the plaintiff to
18 present evidence of the standard of care in regards to a real
19 estate closing in South Carolina. We believe that that has
20 to be done through expert testimony.

21 In fact, we have several cases and also a memorandum
22 from Justice -- Chief Justice Toal back on September 23rd,
23 2009, that was to members of the Bar regarding the best
24 practices of -- and I have attached the pertinent pages of
25 that, but you'll see that the first -- the first page is

2 actually the memorandum to the members of the Bar. This is
3 how you close real estate loans and the best practices for
4 doing so because, I guess, there was some confusion at that
5 point in time.

6 But if you'll -- and I'll hand this up to Your Honor.

7 THE COURT: Sure.

8 MR. MCKENZIE: Justice Toal went through great lengths
9 in this memorandum to establish this, Your Honor, and if
10 you'll look on the third page under closings, it's II,
11 subparagraph 4. Disburse all the closing funds in accordance
12 with the settlement statement. That's one of the -- that's
13 part of the closing.

14 Your Honor, if you look on the last page, it says in
15 relation to residential estate -- and all this is residential
16 real estate from the first part, but she -- and number 7 says
17 disburse all funds related to the transaction except payoffs
18 and fees that can be held by the lender that will be paid to
19 the lender and not to third parties. So again, the Chief
20 Justice said the best practices of an attorney is that part
21 and parcel of the closing is disbursement of the funds.

22 Your Honor, in South Carolina in order to establish
23 professional misconduct, which I think is what we have to
24 have here, you have to show that there was a standard of care
25 and you have to establish that by expert testimony. We have
several cases that certainly will highlight that point.

1 There's one, and I'll hand this up.

2 This is *Johnson v. Alexander*. This is a 2014 case from
3 the Court of Appeals. This had to deal with a title search,
4 Your Honor, but if you'll look on page 3 under III under
5 analysis, the -- that paragraph under analysis, the first
6 paragraph, if you'll look at the last sentence in that and
7 the Court of Appeals has said rather a plaintiff alleging
8 legal malpractice arising out of a real estate closing must
9 establish the standard of care for the particular situation
10 and prove the attorney breached the standard. Okay?

11 Your Honor, it's clear that in a professional negligence
12 action such as this that they had to establish the standard
13 of care by testimony from that stand. They have rested their
14 case.

15 Your Honor, the defendant will -- or the plaintiff will
16 argue *Moore v. Weinberg*, which was Rusty Weinberg from Sumter
17 and Joseph Moore from -- actually from Manning, Your Honor,
18 and we think that case is very distinguishable. That's what
19 he's cited in his pretrial brief.

20 This had to do with the fact that Mr. Weinberg was
21 supposed to hold monies in a -- in a -- in his trust account
22 pursuant to an assignment on a personal injury case or a
23 contract case that Clarence Wheeler was involved in for
24 payment to Joey Moore. And in that case, the Supreme Court
25 stated -- if you look to page 3, the question or the -- the

issue -- the Court granted a writ of cert to review the following issue. Did the Court of Appeals error -- in error holding that an attorney may be liable to a third party for disbursement of funds to attorney's client with the -- to the attorney's client where the attorney was aware that the funds were assigned to a third party?

This is not a third party. I asked Mr. Gipson on the stand who was your attorney for this closing. Joe Coffey. I asked him that several times, numerous times.

I asked him also did you consider disbursement a part of the closing. He's testified that he did, several times. I went over that with him.

If you'll look on the following page, the Supreme Court -- this is page 4 of 5, Your Honor. At the top of the page, it says:

Therefore, it makes no difference -- and this is the first paragraph at the top. I guess it's bleeding over from the second from the page before that.

Therefore, it makes no difference that Weinberg was Wheeler's lawyer and represented him in other matters. In this case, Joe Coffey was Mr. Gipson's lawyer. He was also the Williamsons' lawyer, dual representation. He signed that waiver. That's why I asked him about those questions.

And then the Supreme Court said:

Under the facts of this case, the duty arises from an

1 attorney's role as an escrow agent.

2 No -- no testimony that we were an escrow agent for
3 anybody. We were a disbursing agent pursuant to an attorney-
4 client relationship, and that's what Mr. Gipson testified to
5 and that was part and parcel of the closing. I asked him
6 just like that. Was that part and parcel of the closing? He
7 said yes.

8 Under the -- under the facts of this case, a duty arises
9 from the attorney's role as an escrow agent and is
10 independent of the attorney's status as a lawyer and distinct
11 from the duties that arise out of the attorney-client
12 relationship. Then the Supreme Court went on further.
13 Furthermore, we hold that Moore presented evidence that
14 Weinberg's performance fell below the standard of care.
15 There's been no evidence of what the standard of care here
16 is, none.

17 Then, in addition to submitting the affidavit from an
18 attorney stating that Weinberg breached the standard of care,
19 Weinberg essentially admitted that he was negligent in
20 failing to disburse the funds in accordance with the
21 agreement by testifying that he simply overlooked the terms
22 of the agreement. Totally different set of facts. Rusty
23 Weinberg testified in that case, Your Honor. He basically
24 fell on the sword and admitted it. Also, they had an
25 affidavit from an attorney saying it was attorney

1 malpractice.

2 So we believe that Moore is definitely distinguishable,
3 Your Honor, from this case and, Your Honor, clearly in South
4 Carolina in order to prove legal malpractice, you have to
5 have an expert to come in here and say that Mr. Coffey's
6 actions in this closing fell well below the standard or below
7 the standard of care for a practicing attorney in this -- in
8 a real estate closing.

9 That has not been established. So right now we don't
10 know what the standard of care is and the plaintiff has that
11 burden. So we would ask the Court to dismiss the negligence
12 cause of action against Coffey & McKenzie and direct a
13 verdict against the -- or for the defendant in regards to
14 that negligence claim.

15 THE COURT: Mr. Dunn?

16 MR. DUNN: Yes, ma'am. Your Honor, under the law, the
17 defense argument makes no sense. If -- I'd just ask the
18 Court to read the *Moore v. Weinberg* opinion.

19 Yes, the money being held was under slightly different
20 circumstances, but it's still pursuant to legal work that was
21 being done by the attorney. As the Court said, under the
22 facts of this case, the duty arises from an attorney's role
23 as an escrow agent and is independent of an attorney's status
24 as a lawyer and distinct from duties that arise out of the
25 attorney-client relationship.

1 And, Your Honor, more generally, if you think about it,
2 this -- and the -- and also the defendant was talking about
3 that Weinberg breached the standard of care. Well, yeah, he
4 did. He breached the standard of care as a fiduciary, which
5 is exactly what Coffey & McKenzie was in this case and that's
6 exactly the standard that they failed -- failed to meet.

7 More generally, Your Honor, if you go to the doctor to
8 have your appendix taken out and you wake up and your liver
9 is gone, then you have a professional malpractice or
10 negligence claim against a surgeon. You take a case to an
11 attorney because you've been in some horrible car wreck and
12 you have all of these damages and the attorneys sits on it
13 until the statute of limitations expires, then you have a
14 professional malpractice claim against that attorney.

15 This particular cause of action, the breach of fiduciary
16 duty of not sending money where it's supposed to go, in this
17 case against Coffey & McKenzie, but there's a -- there's an
18 innumerable number of parties you can bring the exact same
19 cause of action against.

20 Yesterday at lunch, I was at a lunch meeting with a
21 friend of mine named Craig Caldwell, who is a partner at
22 Caldwell Trust Company in Columbia. They do trust services,
23 estate services, insurance services. We could've brought
24 this exact same claim against them because they handle money
25 for clients and send it places all the time. We could've

1 brought this exact same case against a real estate company.
2 We could've brought this exact same case against an
3 accountant, against a bank, against a financing company, even
4 against an individual.

5 There's no legal professional judgment that was -- that
6 was exercised in this case. There was, however, the
7 fiduciary role that the law firm happened to be playing here,
8 but it could have been played by a dozen different other
9 parties who are not attorneys and are not law firm -- and are
10 not a law firm. Therefore, based on that fact and under the
11 clear case law that we have in the *Moore* opinion, Your Honor,
12 this simply is not a case where there was any need to
13 establish some sort of professional standard of care.

14 Even if you did want to -- even if the defendants wanted
15 to say that it should be judged under the statute, we would
16 argue that, under the common knowledge exception, this case
17 clearly falls in it because I think it's common knowledge of
18 anyone that if money goes -- is supposed to go to party A,
19 don't send it to party B.

20 So, Your Honor, our argument is that under the law that
21 -- from the Supreme Court that the defendants -- the
22 defendants' attempt to escape liability in this is just
23 completely unfounded.

24 THE COURT: Do you want to respond at all?

25 MR. MCKENZIE: Your Honor, the plaintiff testified that

1 the -- that the -- what he believed the breach to be was that
2 we didn't make a phone call to verify the email that we got.
3 The question would be to an expert --

4 THE COURT: Or I mean, Mr. McKenzie, to catch that the
5 email was not the same --

6 MR. MCKENZIE: Right.

7 THE COURT: -- email that you had previously received.

8 MR. MCKENZIE: Right. So the standard --

9 THE COURT: There was a transposing.

10 MR. MCKENZIE: Yeah. I guess so the standard of care
11 would have to be established that, hey, this is what you need
12 to do in this situation if you've got a disbursement of funds
13 via -- that you got an email communication from, then you
14 need to pick up the phone and call. That would be the
15 standard of care.

16 That's not what anybody's testified to and the jury
17 would have to speculate as to what the breach of the duty is
18 here. Otherwise, how do we know that that's -- I mean what's
19 the standard of care? What would an expert say is the
20 standard of care? The expert might say that's perfectly
21 legitimate to rely on an email with all the wiring
22 instructions in it, which happens a lot of times, Your Honor.
23 I mean probably 90 percent of the real estate closings now we
24 wire. That's what happens.

25 And so the question is -- the plaintiff has the burden

1 of proof. So how do you get from what the plaintiff
2 testified to to where we are now without someone coming in
3 here and saying that Joe Coffey fell below the standard of
4 care in South Carolina for an attorney closing a real estate
5 loan that Mr. Gipson said was -- the disbursement of proceeds
6 was part and parcel of closing the loan? The Supreme Court
7 has said that. The case law has said that.

8 The only case that even comes close that Mr. Dunn would
9 have you believe was a case out of Sumter over an issue of an
10 assignment of personal injury claims by an attorney who
11 forgot that the -- that he was supposed to hold proceeds for
12 a third party. We're not a third party. Mr. Coffey is not a
13 third party. Mr. Gipson is not a third party.

14 Mr. Coffey represented Mr. Gipson per his testimony.
15 That case is completely distinguishable and if that's all
16 they have, Your Honor, then an attorney-client relationship
17 was here. It was admitted to and the only way that we can
18 prove -- just like in a medical malpractice case, Your Honor,
19 the only way we can prove it is with expert testimony and
20 there has been none.

21 THE COURT: Thank you.

22 MR. MCKENZIE: Thank you.

23 THE COURT: I'm going to deny the motion for directed
24 verdict at this point. I think that the -- the statute for
25 professional negligence acknowledges that when there is

1 subject matter that lies within the ambit of common knowledge
2 and experience so that no special learning is needed to
3 evaluate the conduct of the defendant that you do not have to
4 have a contemporaneous filing of an expert opinion, and I
5 find that this falls squarely within that exception to
6 requiring an expert to testify as to the standard of care.
7 So that motion is denied.

8 MR. ROBINSON: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. ROBINSON: I have a similar motion on different
11 grounds. I would move -- my understanding -- and I think I'm
12 correct. Monday, you dismissed the jury cause of action as
13 to the Williamsons, which was the breach of contract, and now
14 I'm going to ask you to dismiss the two equitable causes of
15 action, and I'll do this in two phases.

16 Number one, I'll do it very simply. I don't think
17 there's been any evidence from the witness stand about either
18 one of these causes of action, quite frankly. That's why I
19 did not ask any questions on cross-examination.

20 If the Court takes a different view, then I would
21 certainly like to be heard to the sufficiency of that
22 evidence, but at this point I won't waste your time arguing
23 that unless you disagree. I don't think there's any evidence
24 that, Your Honor, is not a jury question from which Your
25 Honor could base a determination on either one of these

1 arguments, either the failure to set aside the deed for want
2 of consideration or the unjust enrichment quantum meruit
3 theory.

4 There's just simply been no evidence about that
5 presented and the plaintiff has rested. So I believe I'm
6 entitled to a directed verdict on both of those counts.

7 THE COURT: Mr. Dunn?

8 MR. DUNN: Your Honor, particularly as to the unjust
9 enrichment claim, the evidence that's before the Court
10 clearly shows that Mr. Gipson upheld his end of the bargain.
11 He deeded the property on Rowe Drive to the defendant
12 Williamsons; so they received the benefit of the bargain.

13 The evidence is also clear that Mr. Gipson did not
14 receive the benefit of the deal. Therefore, in equity, if
15 you look at -- at between the plaintiff Mr. Gipson and the
16 defendant Williamsons, they retained a benefit unjustly when
17 Mr. Gipson is still out all of this money.

18 And so under equitable theories, we would contend that
19 there is sufficient evidence if the Court were to so choose
20 to find that they have been unjustly enriched at the expense
21 of Mr. Gipson.

22 MR. ROBINSON: And, Your Honor, if you -- if you need
23 it, I have substantive reply to that, if necessary.

24 THE COURT: I don't think so. I don't think there's any
25 testimony that the Williamsons have been unjustly enriched.

1 They paid the money. I don't think this is any different
2 than if they handed the money to the attorney's office and
3 then someone busted in the window and stole the money or, you
4 know, hit somebody over the head and stole the money.

5 So they did everything. I mean there's been no
6 testimony that they did anything wrong. They tendered the
7 funds. So that motion is granted with respect to both the
8 unjust enrichment and the action to set aside the deed for
9 lack of consideration.

10 MR. ROBINSON: Thank you, Your Honor.

11 THE COURT: Let's just talk about the timing. I know
12 it's a few minutes 'til noon. I'm glad to do whatever y'all
13 want to do. If we want to start and, you know, have a
14 witness that would be done maybe by 12:30 or 12:45 and then
15 break for lunch for the jury. Tell me what your thoughts
16 are.

17 MR. DUNN: Whatever is fine.

18 MR. MCKENZIE: Your Honor, our first witness will be Mr.
19 Coffey and I think he would be a lengthy witness. So I have,
20 you know, quite a few questions obviously to ask him on
21 direct and then I'm sure Mr. Dunn has quite a few under cross
22 and then redirect, but I think -- I don't have any problem
23 taking a lunch break right now.

24 THE COURT: Can we have them back by 1:30?

25 MR. MCKENZIE: Yes, ma'am.

1 THE COURT: I brought my lunch. So I mean I need about
2 20 minutes, but I guess we need to give these folks time to
3 be able to get somewhere and get some lunch and get back.

4 Okay. If you'll bring the jury in.

5 MR. MCKENZIE: Thank you, Your Honor.

6 (WHEREUPON, the jury entered the courtroom at 11:56
7 a.m.)

8 THE COURT: Okay. Ladies and gentlemen, our next
9 witness is going to be a little bit lengthy. So we're going
10 to go ahead and send you to lunch so we don't end up with
11 anybody hangry, most definitely not me hangry.

12 So if you will please be back at 1:30 and we'll go
13 immediately into the next witness. Again, please don't begin
14 discussing the case during the lunch break. Have a good
15 lunch and we'll see you at 1:30.

16 (WHEREUPON, the jury exited the courtroom at 11:57 a.m.)

17 THE COURT: We'll be at recess.

18 MR. DUNN: Thank you.

19 (WHEREUPON, there was a break in the proceedings from
20 11:58 a.m. until 1:35 p.m., after which the proceedings
21 resumed as follows.)

22 MR. MCKENZIE: Your Honor, prior to bringing the jury
23 back in, the next witness we intend to call is Joe Pedalino.
24 He's seated behind me.

25 THE COURT: Uh-huh.

1 MR. MCKENZIE: We're going to offer him as an expert in
2 cybersecurity.

3 THE COURT: Uh-huh.

4 MR. MCKENZIE: And I did not know if you wanted to maybe
5 us voir dire him and if there's any question outside the
6 presence of the jury and then I can go back over that with
7 him in case there's an objection to his qualifications.

8 MR. DUNN: That's fine, Your Honor.

9 THE COURT: Okay.

10 MR. MCKENZIE: We can call him before the jury comes in.
11 That's fine.

12 THE COURT: That would be fine.

13 MR. MCKENZIE: Thank you.

14 THE COURT: And I'm ready when you are.

15 MR. MCKENZIE: Thank you. Your Honor, we'd call Joe
16 Pedalino to the stand for purposes of establishing his
17 credentials.

18 THE CLERK: Raise your right hand and place your left
19 hand on the Bible. Repeat your name and please spell your
20 least name for the court reporter.

21 THE WITNESS: Joseph. Last name is Pedalino, P-e-d-a-l-
22 i-n-o.

23 THE CLERK: Do you solemnly swear the testimony you are
24 about to give will be the truth and nothing but the truth, so
25 help you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. Watch your step getting on the
3 stand and you can adjust that mic.

4 THE WITNESS: Okay. No problem. All right.

5 JOE PEDALINO, being first duly
6 sworn, testified as follows:

7 PROFFERED DIRECT EXAMINATION

8 BY MR. MCKENZIE:

9 Q: Mr. Pedalino, how are you doing today?

10 A: I'm doing well.

11 Q: All right. We have -- we have called you and what we're
12 doing right now is to try to establish the fact of your
13 expertise in cybersecurity. Tell the Court what do you do
14 for a living?

15 A: I am the information technology director at Colonial
16 Family Practice. I also own a company called Southeastern
17 Technology Specialists.

18 Q: Tell us about Colonial Family Practice, about how large
19 that system is?

20 A: We have over 400 employees in 13 locations throughout
21 South Carolina.

22 Q: Okay. And tell us what you do in regards to
23 cybersecurity for them?

24 A: Pretty much I'm the -- every -- the buck stops with me.
25 I am the IT director. I make all decisions related to

1 cybersecurity from that avenue to local computer type of
2 issues.

3 Q: You have the expertise to testify in regards to what is
4 involved in cybersecurity?

5 A: I do.

6 Q: Can you tell us about that briefly?

7 A: So my certification is through the Criminal Justice
8 Academy of South Carolina. I also -- as part of my
9 Southeastern Technology Specialists, LLC, we service police
10 departments. A big part of that is providing security. So
11 we have to go through a process with SLED to prove
12 proficiency, and I've passed that process.

13 Q: And you're certified with SLED in cybersecurity?

14 A: With the criminal justice information, level 4.

15 Q: Let me hand you a copy of your certificate. Do you
16 recognize that?

17 A: Yes. This is mine.

18 Q: And that certificate was issued to you by the South
19 Carolina Criminal Justice Academy?

20 A: It was.

21 Q: Okay. And that shows you are current through August 4th
22 of this year?

23 A: That is true. August 24th.

24 Q: 24th. I'm sorry. I left the two off. But your
25 certification ends this year, but you're still currently

1 certified?

2 A: Yes.

3 Q: Through the Criminal Justice Academy and you are
4 licensed with SLED?

5 A: Actively work on law enforcement systems and security,
6 yes.

7 Q: Tell us about cybersecurity. How does cybersecurity
8 work? What do you do to install cybersecurity in a computer
9 system?

10 A: That's a very large question, but pretty much we manage
11 firewalls, put in a policy in place to protect.

12 Q: Do you have any expertise in people hacking systems, in
13 computer systems in, for example, not only law firms, but
14 even medical facilities and other places?

15 A: Yes. So there's different industry standards, PCI
16 compliance, HIPAA compliance, CJIS compliance.

17 Q: Okay.

18 A: That we have to maintain national, like, industry type
19 of standards.

20 Q: How long have you worked in the field of cybersecurity
21 or computer technology?

22 A: 2004 sometime. Since 2004.

23 Q: Okay. You had training in regards to computer training
24 and computer security training?

25 A: Industry certifications. As far as a formal education,

1 everything is technical, but that's standard for this type of
2 job.

3 Q: All right. So you went -- did you graduate from
4 technical college?

5 A: I did. Certification programs. Computer electronics,
6 level 3.

7 Q: Level 3?

8 A: Yes, sir.

9 Q: Where was that at?

10 A: That's Trident Technical College in North Charleston.

11 Q: Okay. And then when did you graduate from there?

12 A: That was 2004.

13 Q: And so in 2004 at that time you -- you went out and
14 started?

15 A: And then got some industry certifications. As I grow in
16 our business though, I'm more of more management. So a lot
17 of those certifications expired, but --

18 Q: So currently you have -- 2004 -- 16 years of experience
19 in cybersecurity?

20 A: That's correct.

21 Q: Okay. You have certification through the South Carolina
22 Criminal Justice Academy and you're licensed with SLED?

23 A: That's -- well, it's not a license, but yes, I've met
24 their requirements to work on their systems.

25 Q: All right. And that's -- and you've worked with

1 different police agencies?

2 A: Different police agencies around the state of South
3 Carolina?

4 Q: Can you tell us some of the police agencies?

5 A: Locally, Summerton Police Department. Also the North
6 Police Department, and we manage from their local computers
7 to their security.

8 MR. MCKENZIE: And, Your Honor, that's all the questions
9 I have. I'll defer to counsel in regards if he has any
10 questions, but that is how we would offer him as an expert in
11 cybersecurity.

12 THE COURT: Mr. Dunn?

13 MR. DUNN: No questions, Your Honor.

14 THE COURT: Okay. Thank you. You can step down.

15 THE WITNESS: Thank you very much.

16 MR. MCKENZIE: Your Honor, I probably need to enter this
17 as Defendant's 1, but I can do that during the course of the
18 -- when I attempt to certify him on direct. So when I go
19 through his credentials on the stand in front of the jury,
20 but at this time we'd move to have Mr. Pedalino qualified as
21 an expert in the field of cybersecurity.

22 MR. DUNN: No objection and no objection to his
23 certification.

24 THE COURT: Okay. I find he is so qualified and can
25 give opinion testimony in that area.

JOE PEDALINO - DIRECT BY MR. MCKENZIE

1 MR. MCKENZIE: Thank you, Your Honor.

2 THE COURT: Anything further before we bring the jury
3 in?

4 MR. MCKENZIE: Nothing from the defendant, Your Honor.

5 MR. DUNN: No, ma'am.

6 THE COURT: Yes, sir.

7 (WHEREUPON, the jury entered the courtroom at 1:42 p.m.)

8 THE COURT: Okay. Ladies and gentlemen, thank you once
9 again for being here and being prompt. We will move right
10 into the defendants' case.

11 Mr. McKenzie?

12 MR. MCKENZIE: Thank you, Your Honor. Your Honor, we'd
13 call Joseph Pedalino to the stand.

14 THE CLERK: Raise your right hand and place your left
15 hand on the Bible. State your name, please.

16 THE WITNESS: Joseph Pedalino.

17 THE CLERK: Do you solemnly swear the testimony you're
18 about to give will be the truth and nothing but the truth, so
19 help you God?

20 THE WITNESS: I do.

21 JOE PEDALINO, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MCKENZIE:

25 Q: Mr. Pedalino, I'm going to stand up here so I can see

1 you and you can see me. Okay?

2 A: Okay.

3 Q: Can you tell the ladies and gentlemen of the jury what

4 you do for a living?

5 A: Sure. I am the IT director at Colonial Family Practice.

6 I also own Southeastern Technology Specialists, LLC.

7 Q: Okay. Can you tell me about Colonial Family Practice?

8 You're the IT director. What's your duties there?

9 A: So Colonial Family Practice has 13 locations spread out

10 throughout South Carolina. I oversee the management of the

11 network security -- network security and computers at

12 Colonial Family Practice. I'm the IT director.

13 Q: Tell us about network security. What does that mean?

14 A: So network security is -- it's a big question. It has

15 to do with the involvement of hardware, firewall, and policy

16 practices with the intent of securing a system or a network.

17 Q: All right. Does that include hacking of the system?

18 A: That would include hacking.

19 Q: Tell us what hacking in terms of what that means?

20 A: Again, it's kind of a vague term, but hacking usually

21 refers to the breach of a network by an outside intrusion,

22 somebody that does not have permission.

23 Q: All right. So somebody breaking into someone's system;

24 is that correct?

25 A: Essentially. That would be like somebody breaking into

1 somebody's house, but through a computer system.

2 Q: So you -- I think you graduated from -- what is it?

3 A: Trident Technical College. I have certifications in
4 computer electronics and then I also have a certification,
5 CJIS certification, that allows me to work on law enforcement
6 systems in the state of South Carolina and manage their
7 cybersecurity.

8 Q: And are you -- do you have a license through the South
9 Carolina Criminal Justice Academy?

10 A: I have a certification through them.

11 Q: And is that -- does SLED recognize that as also that you
12 are a -- that you can work on different computers for
13 government agencies?

14 A: This is the process that allows me to be -- that it's
15 essentially through SLED to work on the systems and, yes,
16 that's what this is.

17 Q: Now, as part of your business activities with
18 Southeastern --

19 A: Yes.

20 Q: Do you install firewalls, provide security systems for
21 different companies?

22 A: We do. We manage the cybersecurity for multiple
23 agencies across South Carolina, contract and hourly.

24 Q: Are some of those agencies police agencies?

25 A: Locally, yes. One of them would be the Summerton Police

Department. Another one would be the North Police

Department. We've done things for Manning and other agencies as they needed.

MR. MCKENZIE: Your Honor, we'd enter his certification in as Defendant's Number 1.

MR. DUNN: Without objection.

THE COURT: Number 1 is admitted.

(WHEREUPON, Defendants' Exhibit Number 1, certification, was admitted into evidence.)

MR. MCKENZIE: Your Honor, at this time, we would offer to move Mr. Pedalino as an expert in the field of cybersecurity.

MR. DUNN: No objection.

THE COURT: Ladies and gentlemen, normally a witness can only testify as to facts that he or she have personal knowledge of, but an exception to that is a person who by either education, training or experience has been qualified as an expert. That person is allowed to give opinion testimony.

I am finding that Mr. Pedalino is qualified to give expert testimony in the area of cybersecurity. You can give his testimony whatever weight you feel that it deserves. Thank you.

BY MR. MCKENZIE:

Q: Now, Mr. Pedalino, you have -- did you install the

1 security system at Coffey & McKenzie?

2 A: I did.

3 Q: Okay. Can you tell us what kind of security system
4 Coffey & McKenzie has in regards to their network?

5 A: Okay. So obviously, they are a smaller law firm. So we
6 talked about a list of expectations within reason and making
7 sure that they do everything that's possible to provide the
8 proper security and safeguard their clients' information, and
9 that starts with the firewall.

10 Typically, in a network setup you have the modem, which
11 is the ISP, which is the Internet service provider. In their
12 case, that is Farmers Telephone. From there, it's like a
13 wide open door. Anybody can get in, anybody can get out.
14 They employed me to put a pretty much locked door in place to
15 monitor what traffic goes in and outside of their networks.
16 That is the firewall.

17 On top of our management practices, they also have a
18 subscription to SonicWall, which they pay annually.
19 Essentially what that does is in real time if there's any
20 hacks or breaches around the world and they discover it, it
21 will automatically push out all these updates to their
22 firewalls.

23 So it's up-to-date live to the minute. If you hear
24 about a big breach in China and it was because of some
25 exploit, they are passionate in pushing it out. Because they

1 pay for the subscription service, their firewall is always
2 up-to-date and valid, and that helps out tremendously.

3 Q: All right. Is that -- and for the size of the law firm
4 that Coffey & McKenzie has, is that a better security than
5 most?

6 A: So I worked on several law firms in this area and around
7 the state and I would say you guys are equivalent or more
8 than most law firms of your size as far as your practices and
9 the hardware and equipment and the money that you guys spend
10 in your security.

11 Q: You were called to the office in regards to a -- well,
12 Mr. Joe Coffey called you in regards to --

13 A: Yes, sir.

14 Q: -- a situation in regards to Mr. Gipson. Do you recall
15 that?

16 A: I do recall that and through documentation also I have
17 picked out.

18 Q: That was quite a -- I think that was in 2016, but do you
19 recall the incident?

20 A: I do. Yes, sir.

21 Q: And what was Mr. Coffey calling you about? Was he
22 concerned about a breach of our system?

23 A: Yeah. So Mr. Coffey called me and he expressed concern.
24 He said he didn't know how this had happened and they were
25 worried about their client too at the time. I guess it was

JOE PEDALINO - DIRECT BY MR. MCKENZIE

- 1 some type of real estate closing. So they wanted to make
2 sure everybody was safeguarded in this event; so they asked
3 us to come investigate.
- 4 Q: All right. So your investigation into the firewall and
5 the breach of Coffey & McKenzie, you -- did you -- did you --
- 6 A: There was no breach to y'all's firewall. It was not an
7 internal network type of attack. Actually, what we found was
8 it was what we call a phishing attack. Most of you guys,
9 jurors, probably have had emails that come and say that you
10 owe an invoice or try to intimidate you, and this is what
11 they experienced.
- 12 Q: All right. So your investigation of Coffey & McKenzie's
13 server and email found no breach?
- 14 A: Right. And with your email server, that's hosted
15 through Microsoft, and Microsoft spends millions and millions
16 if not billions of dollars on security. Your breach was not
17 through your email server. It was not through your firewall.
18 It was not through your computers. There was no breach or
19 hack at Coffey & McKenzie.
- 20 Q: Okay. So you have an opinion based on a reasonable
21 degree of certainty in the field of cybersecurity that Coffey
22 & McKenzie was not the origination of the breach?
- 23 A: That's right.
- 24 Q: Okay. And that's your opinion?
- 25 A: Yes, that's my opinion.

JOE PEDALINO - DIRECT BY MR. MCKENZIE

1 Q: Okay. Now, you also investigated -- you didn't
2 investigate Mr. Gipson because you didn't have access to his
3 computers?
4 A: Right. That's correct.
5 Q: All right.
6 A: But we would have if we were given access.
7 Q: If that would have, you could have?
8 A: Yes.
9 Q: Now, let me ask you something about proximity.
10 A: Okay.
11 Q: Does proximity matter in regards to be able to breach
12 somebody's computer?
13 A: So there is a proximity principle, we call it, with this
14 type of attack. I called it a phishing attack. This is --
15 more specifically, it's called a man in the middle attack.
16 These people that committed this crime or scam were privy to
17 information, and I can't tell you where it originated from,
18 but I can tell you it was not due to any type of breach of
19 the systems at Coffey & McKenzie.
20 With the man in the middle attack, I -- it's my personal
21 opinion that it either came from the plaintiff or it came
22 from the real estate agent because they don't have as
23 sophisticated or -- I don't know. Again, I'm assuming, but I
24 would assume a home user's sophistication of security was not
25 equivalent to what you would find at a law firm or a

1 government agency.

2 Q: And so when we talk about proximity, say two people live
3 within 20 miles of each other -- and this is a hypothetical.

4 A: Right.

5 Q: Twenty miles of each other in another state, New York
6 for example. Would it be more likely than not that that
7 person was breached than somebody from New York breaching
8 somebody's computer in South Carolina?

9 A: So in our final conclusion to you guys in our report, we
10 all felt that it was necessary to mention pretty much as an
11 additional note information also may be solicited by
12 telephone or person-to-person, which obviously would tie into
13 your proximity principle through conversations.

14 A lot of times how the bigger industry you are, the more
15 likely you are to be susceptible to a phishing attack.

16 Essentially, if you had a business, you -- I could call in
17 and say, you know, hey, this is the IT department. There's
18 400 computers. Not everybody realizes that I'm the IT guy.

19 If you had one user that grants access to your system,
20 essentially that would make you vulnerable and it doesn't
21 have to be a hack or attack. It's just the passing of
22 information. So it could be person-to-person. It could've
23 been they could have found out about this closing that was
24 about to happen through a telephone conversation. There's no
25 telling. Or one of their emails could've been breached also.

1 Q: Okay. And did you find any evidence of any type of
2 outside source coming into the Coffey & McKenzie server or
3 email system?

4 A: So the only thing that we could find was the email
5 address that was in question that was not the correct email
6 address, but it was made to look like the plaintiff's email
7 address. That is the only thing and that -- again, that's
8 not a breach. That's not a hack. That's just -- anybody can
9 create an email and send it to you. If I know -- like, for
10 example, my email is JPedalino@blah.com. I could leave off
11 the O and it would be -- it would look legitimate but it
12 wasn't. But again, that is not a breach, that's a scam.
13 It's not a breach.

14 Q: So in this situation, do you -- do you have an opinion
15 based on a reasonable degree of certainty in the field of
16 cybersecurity as to what you want to call this? Was it a
17 scam or a breach?

18 A: Yeah. It was definitely not a breach. It was -- it was
19 a phishing scam.

20 Q: Okay. And do you have a reasonable degree of certainty
21 in regards to cybersecurity as to who was most likely the
22 victim of this phishing scam?

23 A: Well, I think everybody ultimately was the victim of
24 this, but I do have to say we did do a thorough investigation
25 of the systems at Coffey & McKenzie and they did everything

1 within reason to protect their systems. There's no evidence
2 of a hack. There's no evidence of a breach. Again, it was
3 the incorrect email address used on both ends. They were
4 playing each other and there's no way that you can -- there's
5 no systems currently that could protect from anything like
6 that.

7 Q: And Coffey & McKenzie had the most updated system in
8 regards to security?

9 A: One hundred percent you guys are fully updated and doing
10 everything within your power and within reason in regards to
11 that, yeah.

12 Q: All right. You also -- I think that you -- like you
13 said, you did not have access to Mr. Gipson's computer, but I
14 was giving you that hypothetical earlier about being in very
15 close proximity and we're talking about proximity principle?

16 A: Right.

17 Q: With this phishing or scam, do you think that's -- is it
18 --

19 A: Sometimes it comes from a relative. Sometimes it's a
20 friend. I don't know the plaintiff, but sometimes if he was
21 a malicious man, this could have been something that he did.
22 I can't -- that's something I can't tell you.

23 Q: Okay. But the first email that was sent would have been
24 sent from the plaintiff; is that correct?

25 A: The initial email that was sent was sent from what was

1 -- well, originally, the original communications was from the
2 plaintiff's real email address and then at some point that
3 got switched to somebody else from the outside emailing and
4 claiming to be the plaintiff.

5 Q: Right. And do you have a reasonable degree or an
6 opinion based upon a reasonable degree of certainty in the
7 field of cybersecurity that the phishing or the breach
8 occurred with the plaintiff?

9 A: Repeat your question one more time? I just want to make
10 sure I understand.

11 Q: Do you have an opinion based upon a reasonable degree of
12 certainty in the field of cybersecurity as to this breach
13 occurring with the plaintiff?

14 A: I would think it would be the plaintiff or the real
15 estate agent.

16 Q: Okay. Tell us about the real estate agent? You
17 mentioned that in your note here.

18 A: So I guess because of the working relationship they have
19 with probably most of the real estate agencies, she agreed to
20 let us examine her computer. What we found -- this was done
21 -- so we were notified on July 8th. We did our examination on
22 July -- I'm sorry. Yeah. So we were notified on July 8th.
23 The real estate agent made her laptop available to us on June
24 [sic] 11th. So we found that she did have a valid antivirus
25 subscription, which --

1 Q: Who was the real estate agent? I'm sorry.

2 A: I'm sorry. Betsy Brown.

3 Q: Okay.

4 A: That's who I have listed as that. She did have a valid
5 antivirus on there. We did a malware examination and we did
6 find some malware, more like the annoying pop-ups that you
7 get on your computer if you click on something accidentally.
8 Nothing to indicate that she was breached.

9 But what we did find, which was unusual, was there was
10 no email records on her laptop prior to the week of June 27th
11 of 2016. And when we questioned her about that, she let us
12 know that the explanation was that she deleted all emails
13 upon completion with any client, which I would say is an
14 unusual practice for any real estate agent. Usually these
15 real estate agents have years of emails.

16 Q: Okay. That's unusual, but that doesn't mean that's
17 where the breach came from?

18 A: Absolutely. Just unusual.

19 Q: So your opinion based upon a reasonable degree of
20 certainty in the field of cyber -- cybersecurity is that the
21 breach or the phishing expedition or whatever it was called
22 came from either the plaintiff's computer or Betsy Brown's
23 computer?

24 A: Those are the only two sources that it could possibly be
25 from, in my opinion, yes.

MR. MCKENZIE: Court's indulgence, Your Honor.

2 BY MR. MCKENZIE:

3 Q: Mr. Pedalino, you were contacted, I think, around June
4 30th to do this investigation?

5 A: I think we have July 8th, but on -- let's see. We were
6 contacted -- July 8th is when we actually wrote the report.
7 June 13th, 2016, was --

8 Q: The date you were contacted?

9 A: Yes. As soon as it happened it looks like in our notes.

10 Q: As soon as you were contacted?

11 A: As soon as it was made aware that it happened, yes.

12 Q: So you would've had access almost in real time in
13 regards to this breach?

14 A: And we did, yeah. But again, it wasn't a breach though,
15 but we were able to look at the emails and trace them through
16 the servers just to make sure that there was no breach on
17 y'all's end.

18 Q: Okay. And again, that is based upon a reasonable degree
19 of certainty in the field of cybersecurity?

20 A: No. That's absolute, yes, sir.

21 MR. MCKENZIE: No other questions.

22 THE COURT: Mr. Dunn?

23 MR. DUNN: Yes, ma'am. Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. DUNN:

JOE PEDALINO - CROSS BY MR. DUNN

1 Q: Mr. Pedalino, just a few things. You talked with Mr.
2 McKenzie about this idea of proximity and I think I
3 understand what you're saying, but how does your proximity
4 argument work when -- if I've got the plaintiff sitting at
5 his computer in Texas and the Law Firm of Coffey & McKenzie
6 is here in South Carolina and we're talking about some fraud
7 that may be taking place in New York, is Texas somehow closer
8 to New York than South Carolina?

9 A: I'm not sure what you're referencing. I don't -- I
10 don't know the logistics of the shell companies or whatever
11 was in there. I can only speak to what I know, but I can
12 tell you with the Internet it doesn't matter if you're in
13 China. I mean communication today is instant and location
14 does not matter when it comes to cybersecurity.

15 Q: Yeah. But you specifically talked about this proximity
16 argument as --

17 A: That was in regards to the person-to-person element of
18 it, yes.

19 Q: Doesn't that proximity argument break down a bit if the
20 plaintiff is in Texas rather than New York?

21 A: I don't know how to answer that. I mean, in my opinion,
22 I would say that location doesn't matter if he has relatives
23 in New York, if that's what you're trying to get at. He
24 could easily make a phone call or if he has associations, if
25 that's what you're talking about either.

JOE PEDALINO - CROSS BY MR. DUNN

1 Q: So location doesn't matter. So it could be New York, it
2 could be Manning, South Carolina?

3 A: That's -- yeah, that is correct. Really proximity again
4 was just based on the telephone or person-to-person, which
5 again is all speculation.

6 Q: Tell me again -- okay. You -- you looked at the real
7 estate agent's laptop?

8 A: We were able to look at it. Yes, sir.

9 Q: And tell me that you didn't find any email records prior
10 to what date?

11 A: Yeah. So in our report, we listed that -- well, we were
12 able to look at her laptop on June 11th [sic] and again for
13 some reason on June 13th [sic], both in the presence of Ms.
14 Betsy Brown, and it says that there were no email records on
15 user laptop prior to the week of June 27th, 2016.

16 Q: All right. You -- this investigation or inquiry that
17 you did on behalf of Coffey & McKenzie, is this the first
18 type of fraud or phishing or whatever type of event you want
19 to characterize it -- is the first time you've done an
20 inquiry of this nature?

21 A: No, sir. This happens daily. Believe it or not, we
22 have a storefront also. It happens more on the residential
23 side than the commercial, but this is a common practice.
24 Whenever there's a suspected breach, usually we'll do a
25 report.

1 Q: When you go in and you -- you're -- I guess maybe you
2 call it -- I don't know -- forensic analysis or something
3 like that. You're looking at networks, you're looking at
4 computers. I mean is it -- is it normal to see that emails
5 have been deleted from the period of time in question?

6 A: No. Actually, we kind of joked about certain other
7 high-profile cases of emails disappearing, but that is --
8 that is not normal.

9 Q: But none of -- none of what you're talking about, the
10 email deletion, none of that had anything to do, to your
11 knowledge, with the plaintiff or any computer that belongs to
12 the plaintiff; right?

13 A: No. The only knowledge I have is they were all in --
14 all communicating through emails, some of it the correct
15 addresses and some of them the fraudulent addresses, yes.

16 Q: But I believe you said that you never had the
17 opportunity to look at any of the plaintiff's system?

18 A: No. I believe he was in New York at the time or
19 whatever.

20 Q: All right. The -- did you do -- as part of your
21 investigation, did you do any look into any Gmail accounts or
22 Google servers, anything like that?

23 A: All right. So we can only investigate the servers that
24 we have administrative access to. We did offer Ms. Brown to
25 pursue further through the -- we would need certain logs and

JOE PEDALINO - CROSS BY MR. DUNN

1 evidence I guess from Gmail or Yahoo or whatever party that's
2 in question, but I can only tell you the servers and stuff
3 that we had access to. I don't have access to Gmail or
4 Yahoo, just within the email address, but that doesn't give
5 us our trace routes and logs and stuff that we -- we need.

6 Q: So were you able to do any sort of analysis or
7 investigation of the email address MonicaBruce@gmail.com?

8 A: That is not an email address under our control or one
9 from the law firm.

10 Q: Did you look into any computer or other smart phone or
11 device that belongs to Monica Bruce as part of your
12 investigation?

13 A: We had access to her main email account. That is
14 through the law firm. She does not use a personal email
15 address for business and nor do we support or have any kind
16 of control of any type of personal email addresses.

17 Q: Do you -- but you didn't -- did you look at any laptop
18 that's the personal property of Monica Bruce or any other
19 computer or tablet or smart phone?

20 A: No. Not -- not personal property and there's policies
21 in place that control that at the law firm.

22 Q: I certainly understand, Mr. Pedalino, that you're an
23 expert in cybersecurity matters. Do you know anything about
24 fiduciary duties when it comes to handling the money that
25 belongs to other people. Are you any sort of expert in that?

1 A: No, sir. I have no expertise in that.

2 Q: Your -- and I understand -- or if I understand, let's
3 put it that way, your testimony correctly, you installed the
4 various firewalls and security measures not only on Coffey &
5 McKenzie's system but on systems for a number of different
6 organizations of various types?

7 A: Yes, sir.

8 Q: Now, the -- the security of systems and such that you've
9 installed, what efficacy do they have to stop someone from
10 replying to an email that they shouldn't be replying to?

11 A: There is no internal controls for that and if we can
12 invent that, we would probably be really rich. So there's
13 just nothing out there that could do that.

14 MR. DUNN: I beg the Court's indulgence just one moment.

15 THE COURT: Sure.

16 BY MR. DUNN:

17 Q: So, Mr. Pedalino, just to sum up, you -- you've opined
18 based on your investigation that you don't see any evidence
19 that there was any sort of breach into the system of the
20 Coffey & McKenzie Law Firm?

21 A: Right. And the breach and all that suspicion, actually
22 they were alarmed and they wanted to just verify and make
23 sure that that was nothing under their internal controls. So
24 there -- there was absolutely no breach.

25 Q: Certainly.

1 A: It was a scam essentially.

2 Q: But you -- but I believe you've also testified though
3 that we have these various emails coming from Gmail accounts
4 and you don't really have any ability to look into who those
5 -- who -- who's sending those or where those are coming from
6 and that sort of thing; is that correct?

7 A: The only emails that I could actually do a more or less
8 forensic examination on were the emails under our control,
9 which would be anything ending in the Coffey & McKenzie
10 domain.

11 Q: So tell me if I'm understanding this correctly. Based
12 on what you're testifying in terms of the nature of the scam
13 that allowed this crime I think it's fair to say to happen,
14 is it possible that no one was really breached at all, but
15 instead it was a matter of somebody at some point responding
16 to an email perhaps they shouldn't have?

17 A: I don't know if I'm an expert in that, but I would say
18 that as far as the computer side of it, I think in my whole
19 role at Coffey & McKenzie and then trying to help out Ms.
20 Brown was just to make sure that there was no hacks or
21 breaches of any sort. As far as the people to people and
22 personnel issues, I don't have anything to do with that type
23 of stuff. I don't know really -- I don't really know Ms.
24 Brown and I don't know the plaintiff.

25 Q: Sure.

1 A: I can't say.

2 MR. DUNN: Thank you, Mr. Pedalino.

3 THE WITNESS: Thank you.

4 THE COURT: Any redirect, Mr. McKenzie?

5 MR. MCKENZIE: Just a couple questions on follow-up.

6 REDIRECT EXAMINATION

7 BY MR. MCKENZIE:

8 Q: Mr. Pedalino, you testified this wasn't a hack, it was
9 some type of phishing, maybe phishing expedition?

10 A: It's a phish. It's called a phishing scam essentially.

11 Q: And then you also called it a man in the middle attack?

12 A: That's -- so under the phishing attack realm, there's
13 several different categories of it, and this is what commonly
14 we refer to as man in the middle.

15 Q: Okay. So the man in the middle somehow or another got
16 into the system?

17 A: The man in the middle is a mysterious person that we
18 don't know.

19 Q: Okay. And -- but the man in the middle -- the first
20 email that was sent out was one purporting to be from Mr. --
21 and when I say purporting, supposedly came from Mr. Gipson?

22 A: Yes, sir. That's correct.

23 Q: And there was talk about a Monica Bruce Gmail account?

24 A: Right.

25 Q: But did you find any evidence that Monica Bruce --

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JOE PEDALINO - REDIRECT BY MR. MCKENZIE

A: Most like --

Q: -- had a Gmail account?

A: I'm sorry. No, Monica Bruce -- well, when we interviewed her, does not have a Gmail account. It would not be set up that way also, but I can also tell you that as far as the email address, we didn't see this fake Coffey & McKenzie email address until after the initial contact was made, if that makes any sense at all.

Q: Did you find any evidence that Mr. Gipson at his regular email address was responding to the man in the middle Monica Gmail account?

A: Yeah. At the end, I think everybody was responding to the man in the middle.

Q: Right. And so Mr. Gipson was responding to it and Ms. Bruce was responding to it because, again, she thought it was from Mr. Gipson?

A: Right. That's correct.

Q: And I guess Mr. Gipson would've thought that the email was coming from Ms. Bruce?

A: Yes. That's correct.

Q: So this absolutely is the fault of this third party that the money is missing?

A: The mysterious third party, yes.

MR. MCKENZIE: Okay. No other questions.

MR. DUNN: Very briefly, Your Honor.

RECROSS-EXAMINATION

1 BY MR. DUNN:

2 Q: Mr. Pedalino, Mr. McKenzie was asking you where the
3 first, I guess, fraudulent email came from?

4 A: That's correct.

5 Q: And I believe you said that it came from the mail4 --
6 instead of Marvin, it was R-N?

7 A: That -- yes. That's right.

8 Q: All right. If you -- if you weren't able to examine Mr.
9 Gipson's computers and his email system, how do you know that
10 was the first fraudulent email that was replied to?

11 A: Because everything is in the Coffey & McKenzie email
12 servers. That was --

13 Q: Sure. All the -- all the Coffey & McKenzie?

14 A: All the IP addresses, traffic, everything has to run
15 through their mail server for Microsoft.

16 Q: But what I'm saying is if this man in the middle sent an
17 email to Mr. Gipson that, as you said --

18 A: That was probably through his personal email address.

19 Q: Right. But what I'm getting at is you told us there was
20 no breach of the Coffey & McKenzie system?

21 A: That's correct.

22 Q: So if this man in the middle sent an email to Mr.

23 Gipson, it wouldn't be coming from the Coffey & McKenzie

24 server, would it? It would be coming from somewhere else?

1 A: I'm confused. I think you're kind of confused. No
2 offense, but --

3 Q: No. I get it and I probably am.

4 A: I'm trying to follow you, yeah.

5 Q: And I apologize for that, but what I'm getting at is how
6 can you say for certain that the first fraudulent email that
7 was received was received by Coffey & McKenzie from somebody
8 purporting to be the plaintiff? For all you know, the
9 plaintiff could have been the first one to receive a
10 fraudulent email from, say, MonicaBruce@gmail.com because the
11 server that it would come from would have had nothing to do
12 with Coffey & McKenzie or any other server's network that you
13 would have access to?

14 A: All right. So to answer your question to the best of my
15 ability and try to make everybody understand, at the end when
16 everybody was talking to this man in the middle, they were
17 hitting a button called reply all. So everything was still
18 going through legitimate servers and if you looked at the
19 email threads, you could see where each individual, the
20 plaintiff, the defendant, everybody involved, the real estate
21 agent, they were all talking to this man in the middle.

22 Q: So if it ended up running through a Coffey & McKenzie
23 server, you would have seen it, but if it hadn't have, if
24 there wasn't a thread there, you wouldn't know about it,
25 would you?

1 A: Right. Yeah. As far as local email accounts, Gmail,
2 Hotmail, that I don't have access to. I never had access to
3 the plaintiff's email account. The only accounts I had was
4 any type of communication inbound to the Coffey & McKenzie
5 email servers.

6 Q: And again, you said -- I believe you also said that you
7 didn't believe there was a MonicaBruce@gmail.com account, and
8 why was that?

9 A: Well, there was a MonicaBruce@gmail, but it was not set
10 up by her. It was set up by the man in the middle. And I
11 know there's evidence of that because that was in the
12 communications logs of the emails.

13 Q: Right.

14 A: If that makes any sense.

15 Q: Right. Yes. Thank you.

16 A: Yes. No problem.

17 THE COURT: Thank you, sir.

18 THE WITNESS: Thank you.

19 THE COURT: You can step down.

20 THE WITNESS: Okay.

21 MR. MCKENZIE: May Mr. Pedalino be excused, Your Honor?

22 THE COURT: Any objection?

23 MR. DUNN: No, ma'am.

24 THE WITNESS: Thank you, guys. Thank you very much.

25 THE COURT: Yes, sir. You are excused.

JOSEPH COFFEY - DIRECT BY MR. MCKENZIE

1 Yes, sir.

2 MR. MCKENZIE: Thank you, Your Honor. Your Honor, we'd
3 call Joseph K. Coffey to the stand.

4 THE CLERK: Raise your right hand and place your left
5 hand on the Bible and repeat your name.

6 THE WITNESS: Joseph K. Coffey.

7 THE CLERK: Do you solemnly swear that the testimony
8 you're about to give will be the truth and nothing but the
9 truth, so help you God?

10 THE WITNESS: I do.

11 THE COURT: Watch your step and adjust that mic.

12 THE WITNESS: Yes, ma'am.

13 JOSEPH COFFEY, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCKENZIE:

17 Q: Joe, how are you this afternoon?

18 A: Doing fine. Thank you.

19 Q: Joe, tell the ladies and gentlemen of the jury how long
20 you've been practicing law?

21 A: November of 2000. So just shy of 20 years.

22 Q: Okay. And you have -- obviously have a South Carolina
23 license from -- from the South Carolina Bar; is that correct?

24 A: Yes, that's correct.

25 Q: Okay. And your father has been engaged in the practice

1 of law in Clarendon County now for 50 years; is that correct?

2 A: That's about accurate, yes.

3 Q: It was 1970 I think when the firm opened?

4 A: Correct.

5 Q: You and I have been partners various times during the
6 course of our careers, but we have been partners since at
7 least 2014; is that correct?

8 A: That's correct. We purchased the firm in '14.

9 Q: Okay. Joe, you -- do you remember -- I know you do, but
10 do you remember the situation with Mr. Gipson?

11 A: I do.

12 Q: All right. Tell the ladies and gentlemen of the jury
13 about real estate closings and how these things occur. You
14 know, you're a real estate attorney. That's what you
15 primarily do. Tell us about how these -- how these things
16 occur?

17 A: Well, I can't -- I couldn't put an accurate percentage
18 to it, but more often than not you have the buyers and the
19 sellers present at a closing. Oftentimes, just due to
20 logistics -- and it's primarily the sellers -- they will opt
21 not to attend the closing and we are authorized to conduct
22 closings via mail and email simply for the -- for the
23 logistics ease of that.

24 And when we have everyone, buyer, seller, all present,
25 then, you know, all of the documents that are necessary to

1 complete a transfer from the seller to the buyer are right
2 there readily available, but in the case of mail-aways, we
3 have to email the documents. We email them to the seller.
4 We have to get verifications. They have to have the
5 documents notarized and then they are returned to us and,
6 upon receipt of those, that is when we release funds. We do
7 a right fair number of mail-aways are what they're called.

8 Q: So it's not unusual to conduct business by email?

9 A: Very common.

10 Q: Very common? Okay. And it's not unusual to have the
11 documents, the closing documents, signed by a seller who is
12 not present, maybe in another state like Texas or New York,
13 for him to email those or scan those documents and then
14 they're signed and then email them to the firm and you
15 conduct the closing with just the buyers; is that correct?

16 A: That's correct. Sometimes the -- the person
17 representing the seller, if they are a real estate agent,
18 they will sometimes attend, but yes, you're correct in the
19 procedure in that they are emailed the documents, they are
20 printed then. They are printed out and notarized there and
21 then when those hardcopies are returned to us via FedEx,
22 that's when we disburse the funds.

23 Q: All right. Tell the ladies and gentlemen of the jury
24 about Mr. Gipson's closing to your -- to the best of your
25 recollection. This occurred in 2016. It was a, I think,

1 \$12,000 contract price?

2 A: That's correct.

3 Q: And Mr. Gipson was selling property that he owned in
4 Clarendon County?

5 A: It was in Summerton on Rowe Drive, yes.

6 Q: On Rowe Drive. And had you ever met Mr. Gipson?

7 A: No, I haven't. No, I had not.

8 Q: But you -- the buyers were at the closing?

9 A: Yes.

10 Q: Okay. You guys actually -- tell us about the fact that
11 the emailed documents with the original signature of Mr.
12 Gipson came from what email address?

13 A: Clarify which?

14 Q: I'm sorry. Maybe I didn't do a good job asking that
15 question. Whenever Ms. Bruce or yourself emailed the closing
16 documents that Mr. Gipson was required to sign, they were
17 sent back to our law firm from what address?

18 A: The mail-4-r-n-arvin.

19 Q: All right. Is that the address -- the email address
20 that we later found was not the correct address?

21 A: That's correct.

22 Q: Okay. So we actually -- and those were his documents;
23 right?

24 A: That's correct.

25 Q: So Mr. Gipson signed the documents and the -- he emailed

1 them to us and the email came from the email address used by
2 the hackers or the phishers or whoever they were?

3 A: We had the seller-signed documents and we had a FedEx
4 tracking number to correspond to it.

5 Q: Right. And so you had a -- you had the original or you
6 had the scanned-in documents that came back to us on the
7 fraudulent email address and then you had a tracking number
8 from FedEx that came in from the same document; is that
9 correct?

10 A: That's correct, yeah.

11 Q: So did you have any reason to suspect that that was the
12 incorrect address in that you got the signed documents back
13 from Mr. Gipson?

14 A: No. Given the two-pronged authentication of it.

15 Q: So you --

16 A: You know, there was no reason to suspect otherwise.

17 Q: Because you got the -- the signed documents back from
18 him via email, number one?

19 A: Yes, sir.

20 Q: Number two, you had a -- you had a FedEx tracking code
21 for the original documents with the original signature that
22 was contained in this supposedly fraudulent email; right?

23 A: Yes.

24 Q: Okay. So you had -- you authenticated in two different
25 ways that this was the correct email address?

1 A: Yes.

2 Q: Okay. And so at that point in time, you get the
3 documents back in and you get the original documents from Mr.
4 Gipson via email; is that correct?

5 A: It was the 16th of June that we received them back, yeah.

6 Q: All right. So --

7 A: The closing occurred on June 13th. We were in receipt on
8 the 16th.

9 Q: So that occurred after you got the emailed documents
10 back; is that correct?

11 A: Yes.

12 Q: So you had to have some documents back with the -- with
13 the signature on it, but he had informed you from via email,
14 the wrong email address, that the documents were coming by
15 FedEx?

16 A: That's right.

17 Q: And here's the tracking number?

18 A: Yes.

19 Q: Okay. And so you went forward with the closing and then
20 at some point in time you did a disbursement; is that
21 correct? Tell the ladies and gentlemen of the jury what a
22 disbursement is?

23 A: Disbursements are simply -- in a real estate
24 transaction, the buyer pays the funds in to the -- to the
25 attorney and everything comes in to the attorney and all the

1 expenses that are associated with the transaction -- you have
2 a title abstract and title insurance and so forth and some
3 other expenses. They are all disbursed out of the attorney's
4 account and that is called disbursement. So ultimately after
5 those expenses are paid, then you provide the seller with
6 their proceeds minus whatever expenses they may have incurred
7 in the transaction.

8 Q: So you did the disbursement. What information did you
9 receive about the disbursement from what you thought was Mr.
10 Gipson?

11 A: We were notified and I did rely on some of the
12 information that had been provided. I think Mr. Gipson
13 initially contacted Ms. Brown, his real estate agent, and
14 this was the 27th of June that, you know, questioning about
15 where the funds were.

16 Q: Right.

17 A: And Ms. Bruce came in and said we had already sent them
18 out and I became suspicious, rightfully so. We had all of
19 the documentation. It was in order. It was right there and
20 so I -- I don't mean to cast dispersions, but I came -- I
21 became suspicious there might've been some issue with that
22 and that's when I followed up on the 27th.

23 Q: But nothing unusual about this real estate closing until
24 you found out that Mr. Gipson is alleging that he did not
25 receive the funds?

JOSEPH COFFEY - DIRECT BY MR. MCKENZIE

1 A: That's right. That's correct.

2 Q: Do you know whether Mr. Gipson received the funds?

3 A: I do not.

4 Q: Okay. He -- the -- all right. So tell us about --

5 A: We had the wiring instructions.

6 Q: Right.

7 A: We had sent them out pursuant to the wiring

8 instructions.

9 Q: Tell everybody what a wire is because most people may
10 not understand that if they don't do this for a living, but
11 tell us what a wire is?

12 A: In this particular situation, we have a -- we use
13 locally Synovus, formerly NBSC, and they will wire out. When
14 a -- when we receive funds into our account and, say, the
15 seller is away and they've elected to receive their funds via
16 wire, then Synovus -- we instruct them to wire out the
17 appropriate funds from our account to them. The other
18 alternative is to issue a check to someone. So it's either
19 wiring or issuing a check.

20 Q: All right. But the same email address which we later
21 found out to be a fraudulent email address that sent the
22 correct documents that we used for the closing and also the
23 tracking number for the FedEx for the original documents that
24 were needed for the closing also sent a message that said,
25 hey, I want to send -- I want you to send the funds from the

1 closing that I am due to a particular bank in a particular
2 account with the routing number?
3 A: Uh-huh.
4 Q: Is that correct?
5 A: We received the wiring instructions for the bank, the
6 East West Bank. That's correct.
7 Q: And is that unusual?
8 A: No.
9 Q: Not at all? So that wouldn't raise any red flags?
10 A: No, it wouldn't have raised any red flags.
11 Q: Now, the email that purportedly -- that's a big word.
12 How about the email that allegedly came from Mr. Gipson,
13 again the same one that was used for the tracking number, the
14 same one used for the UPS -- I mean for the documents that
15 were scanned back in that Mr. Gipson signed, the wiring
16 instructions said we want you to send it to a bank in
17 California?
18 A: That's --
19 Q: Is that correct?
20 A: That's where the routing took -- took the proceeds, yes.
21 Q: You handle a lot of closings for people who live in the
22 Wyboo area?
23 A: Yes.
24 Q: Okay. And they bank out of state?
25 A: Frequently.

1 Q: Okay. So is it unusual to wire proceeds to a bank out
2 of state?

3 A: It's very common.

4 Q: Very common?

5 A: Yes.

6 Q: Okay. So that didn't raise any red flags?

7 A: No.

8 Q: Okay. And also it said that it wanted to go to a
9 business entity, WM Enterprises, Inc.; is that correct?

10 A: That's correct.

11 Q: Okay. Did that raise any red flags to you?

12 A: It was -- actually, it was MW International Enterprises,
13 Inc., yes.

14 Q: I'm sorry. Let me get -- let me get the name exactly
15 correct. I was trying to do that by memory and you know how
16 my memory is sometimes, Joe. All right.

17 MR. MCKENZIE: Court's indulgence, Your Honor. I'm
18 looking for that name just to be -- have it right for the
19 record.

20 THE COURT: It's Exhibit 1-A.

21 BY MR. MCKENZIE:

22 Q: According to the plaintiff's complaint, paragraph 11, it
23 says the monies were in the name of the account of WM
24 International Enterprises, Inc. Does that sound familiar to
25 you?

- 1 A: Yes. I think I said MW, but WM sounds correct, yeah.
- 2 Q: Okay. Now, did that name raise any red flags to you?
- 3 A: No, it did not.
- 4 Q: Why is that?
- 5 A: Upon looking at it, I mean the M could have conceivably
- 6 been the initial of Mr. Gipson.
- 7 Q: Marvin, his first name?
- 8 A: That's right.
- 9 Q: Okay. So none of this really raised any red flags to
- 10 you? Now, after you did the closing, when's the first time
- 11 that Mr. Gipson contacted the law firm regarding the fact
- 12 that he says he didn't get the proceeds from this case?
- 13 A: It was the 27th of June, as I recollect.
- 14 Q: So the 27th of June, you get a phone call and it says,
- 15 hey, I didn't get my money; is that correct?
- 16 A: Ms. Bruce came into the office and said this person is
- 17 saying we didn't -- he didn't receive the funds and that's
- 18 always very alarming and so that began the --
- 19 Q: Okay. Now --
- 20 A: -- conferencing.
- 21 Q: Now, begin with what you did first. Now, let me back up
- 22 a minute. Prior to this, we were getting emails from Mr.
- 23 Gipson's -- what he alleges to be his correct email address;
- 24 is that correct?
- 25 A: That's right.

- 1 Q: And I think he -- you actually had him sign a statement
2 that said that communication could be through email and he
3 agreed to that; is that correct?
- 4 A: Whenever --
- 5 Q: Let me hand this to you first.
- 6 A: Yes.
- 7 Q: And then you can answer that question. Did you have him
8 sign a statement regarding email and the use of emails for
9 communication?
- 10 A: This and making myself available if there are any
11 questions regarding or relating to the transaction. That's
12 one of our requirements in a mail-away is that we provide all
13 accessible information, phone, fax, email.
- 14 Q: Everything? And that's contained in that document that
15 Mr. Givens signed?
- 16 A: That's --
- 17 Q: Gipson signed?
- 18 A: That's standard operating procedure is to have that
19 signed, yes.
- 20 MR. MCKENZIE: Your Honor, we'd like to enter this in as
21 Defendant's Number 2. I'm sorry, Your Honor.
- 22 MR. DUNN: No objection.
- 23 THE COURT: Can I see what it is? Okay. Number 2 is
24 admitted.
- 25 MR. MCKENZIE: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, Defendant's Exhibit Number 2, signed statement re: email, was admitted into evidence.)

BY MR. MCKENZIE:

Q: Joe, after you were contacted by Mr. Gipson 11 days after the wire and the money was sent out, tell the ladies and gentlemen of the jury what you did in response to that?

A: I tried to think of anything and everything I could do. The first call went to the bank to try to lock down to make sure that there were -- to see if there was -- we could stop any further funds.

Q: What bank did you go to?

A: Synovus was ours and that Ms. Trapp was referenced. First of all, Nelson Walker is our local branch manager. So I contacted Nelson and then his next move was to contact someone with Synovus.

Q: All right. And I don't want you to tell me what Nelson said, but after you contacted Nelson, I think that somebody got in touch with the bank in California that these funds were wired to?

A: That's correct.

Q: And were you able to save any of the money?

A: Yes.

Q: How much were you able to retrieve for Mr. Gipson?

A: A little over 1,500.

1 Q: A little over \$1,500?

2 A: I sent -- I sent East West Bank several letters,
3 attempted to call, until finally the person I was dealing
4 with out there just told me she's not talking to me anymore.

5 Q: Now, why were you able to recover a little over \$1,500?

6 A: The person responsible for the hack had not drawn it
7 out.

8 Q: So the thief had not gotten all the money out of the
9 account?

10 A: Yeah.

11 Q: Okay. Now, had Mr. Gipson contacted you earlier, could
12 you have gotten more money out?

13 A: How much I don't know, but I'm pretty confident it
14 would've been a significantly more -- significantly larger
15 amount.

16 Q: And again, he did not contact the firm for 11 days after
17 closing and said, hey, I didn't get my money?

18 A: It was the 27th of June, yeah.

19 Q: All right. Now, you had numerous conversations with Mr.
20 Gipson?

21 A: We had a number of conversations after the evidence that
22 there was a hacker involved and, yes, we were trying to
23 remedy it.

24 Q: Did you give him advice on what law enforcement agencies
25 he needed to contact?

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1 A: Yes. I -- yes.

2 Q: What law enforcement agencies did you tell him he needed

3 to contact because this was wire fraud?

4 A: This is FBI and FTC, the Federal Trade Commission and

5 FBI.

6 Q: You said the FCC?

7 A: Yes. Excuse me.

8 Q: Federal?

9 A: Yes.

10 Q: Federal Communications?

11 A: Yeah.

12 Q: I'm not sure what that means, but the FCC is a federal

13 agency; is that correct?

14 A: That's right. Which would have dealt with wire fraud,

15 which this is.

16 Q: Okay. So to your knowledge, did Mr. Gipson contact

17 either one of those agencies?

18 A: I don't know the extent of what contact.

19 Q: He had with law enforcement?

20 A: He had with law enforcement.

21 Q: Now, you do know what extent he had with South Carolina,

22 don't you?

23 A: Yes, I do.

24 Q: Okay. I think he even reported the law firm to the

25 South Carolina Department of Consumer Affairs?

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- 1 A: That's correct.
- 2 Q: Okay. He reported the law firm to the South Carolina
- 3 Bar?
- 4 A: I was -- Detective Rick Elms received a report that I --
- 5 that was essentially asserting that I absconded with that
- 6 money and --
- 7 Q: So he --
- 8 A: He came to investigate me.
- 9 Q: All right. So the City of Manning police officer who
- 10 was an investigator at that time, Rick Elms, got a report?
- 11 A: Yeah.
- 12 Q: And did you see that report?
- 13 A: Ultimately, when Detective Elms, you know, completed his
- 14 report and his investigation.
- 15 Q: Okay. You were being accused by Mr. Gipson yourself for
- 16 stealing the money?
- 17 A: Of misappropriating.
- 18 Q: Okay. So the City of Manning did not charge you with a
- 19 crime; is that correct?
- 20 A: That's correct.
- 21 Q: This was ultimately -- explain to the ladies and
- 22 gentlemen of the jury about the fact that lawyers are
- 23 disciplined by the South Carolina Supreme Court?
- 24 A: Well, then the South Carolina -- he contacted the South
- 25 Carolina Bar and reported me to them. This was after the

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- 1 Manning Police Department. Then I received -- this took
2 place in June and, again, a lot of efforts were tried and
3 made to recoup this money. I received in October a letter
4 from the Office of Disciplinary Counsel.
5 Q: Now, that's the -- that's the people that discipline
6 lawyers --
7 A: That's --
8 Q: -- in South Carolina?
9 A: That's through the Judicial Department and they oversee
10 lawyer misconduct.
11 Q: Okay. You had to respond to a -- what we call an ODC
12 complaint, Office of Disciplinary Counsel complaint; is that
13 correct?
14 A: Yes, I did.
15 Q: Okay. You actually had to go to Columbia?
16 A: Well, it prolonged quite a bit and though, you know, I
17 felt that everything had been clearly explained to them and
18 all the information that was necessary to adjudicate it
19 through them had been provided, they didn't feel that way.
20 So it was essentially going to the next level, which is --
21 for an attorney is very worrisome when you're in this
22 situation where I knew I had done everything that I could
23 have done. We retained a firm out of Columbia to assist with
24 this.
25 Q: So you had to hire an attorney to represent you in the

1 Office of Disciplinary Counsel complaint?

2 A: That's right.

3 Q: And you ultimately were found to be not at fault for any
4 type of professional misconduct; is that correct?

5 A: I was absolved of all through their --

6 Q: Okay.

7 A: -- through them.

8 Q: So the Office of Disciplinary Counsel chose after
9 hearing all of the facts that you were not at fault and did
10 not sanction you or punish you in any way whatsoever?

11 A: Yes. That's correct.

12 Q: Dismissed the complaint; is that correct?

13 A: After -- after expending quite a bit of an expense in
14 that.

15 Q: Okay. And so was anybody from the -- I think the
16 Attorney General's Office was called about this. The South
17 Carolina Attorney General's Office was also contacted?

18 A: I think Alan Wilson's office was copied on some of this,
19 but I don't -- I was not contacted by them. It was primarily
20 those, the Manning Police Department, the South Carolina Bar,
21 and the ODC, and then also the Department of Consumer Affairs
22 was on the front end.

23 Q: Okay. I think on one of the correspondences it said
24 Henry McMaster, the governor?

25 A: I -- I think you're right, yes.

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JOSEPH COFFEY - DIRECT BY MR. MCKENZIE

1 Q: Okay. To this date, has anybody found you to be at
2 fault in anything that you did in this real estate closing?

3 A: No.

4 MR. MCKENZIE: Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 BY MR. MCKENZIE:

7 Q: Now, tell us about the fact that you disbursed the funds
8 when you did. Do you have to -- are you under a legal
9 obligation pursuant to professional rules of professional
10 conduct to get the client the money as quickly as possible?

11 A: Based on what I had received, that being the documents,
12 all that I had received back, I am obligated by the
13 professional rules to disburse money.

14 Q: All right.

15 A: Because my withholding of that would be in violation of
16 the duty owed to him. So I was duty-bound to release that
17 funds based on what I had.

18 Q: Right. And again, we had email confirmation of this
19 address that we later found out was fraudulent, but that Mr.
20 -- that documents came in that were signed by Mr. Gipson,
21 original FedEx tracking number was in this email. All these
22 things were done to, basically like you said, double verify
23 that this was the correct way to do it?

24 A: Uh-huh.

25 Q: Is that correct?

1 A: That's right.

2 Q: Okay. And then you get wiring instructions from the
3 same email account and the person signed it Marvin Gipson,
4 didn't they? The email?

5 A: Yeah.

6 Q: Is that a yes?

7 A: Yes.

8 Q: Okay. And so did you have any reason to doubt that this
9 was the authentic way that Mr. Gipson wanted to receive his
10 money?

11 A: No, I did not.

12 Q: Okay. And you're bound by the rules of professional
13 conduct to get the person who is to receive -- the buyer --
14 I'm sorry -- the seller's money to him as quickly and
15 expeditiously as possible?

16 A: Yeah.

17 Q: Okay. And, Mr. Coffey, we talked about all that you
18 did, but you basically did everything you could to try to get
19 Mr. Gipson his money back and were successful in retrieving
20 some of it?

21 A: Yes.

22 Q: Okay.

23 A: And the first thing when it became apparent, I wanted to
24 know because if we were responsible, I intended to make that
25 right and that's when we contacted Mr. Pedalino's office.

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JOSEPH COFFEY - DIRECT BY MR. MCKENZIE

- 1 Q: Okay.
- 2 A: Immediately.
- 3 Q: So you contacted Mr. Pedalino just to make sure
- 4 something wasn't -- we weren't breached?
- 5 A: That's right. I wanted to make certain of -- of that
- 6 circumstance.
- 7 Q: And he's testified to that, obviously. And so you did
- 8 that and then you contacted the bank, I believe, in
- 9 California through Synovus; is that correct?
- 10 A: It was going wherever I could. I knew -- I knew where
- 11 the -- I knew what the account holder's name was, this --
- 12 this corporation. So I then did some further checking and
- 13 established that that was a New York corporation and
- 14 contacted the New York Secretary of State's Office to
- 15 establish who the registered agent was and it provided that
- 16 information. So I was aware of --
- 17 Q: And the corporation, WM Enterprises, Inc., did I get
- 18 that right; is that correct?
- 19 A: WM International Enterprises, Inc.
- 20 Q: International Enterprises. They are a New York
- 21 corporation? You researched that, did you not?
- 22 A: It was a Samuel, middle initial C, middle initial K, Y-
- 23 e-u-n-g, Yeung.
- 24 Q: And Mr. Gipson during this real estate transaction was
- 25 moving from New York -- Yonkers, New York, to Texas; is that

1 correct?

2 A: I don't recall all of the logistics --

3 Q: Okay.

4 A: -- of his relocation of that.

5 Q: Okay. But he was relocating from somewhere?

6 A: Yeah.

7 Q: Is that correct?

8 A: Yeah.

9 Q: Okay. And -- but this was a New York corporation and if
10 I was to tell you that and you said through testimony that
11 Mr. Gipson had been previously a resident of New York and was
12 moving to Texas, would you doubt that?

13 A: No, I would not.

14 Q: Okay.

15 A: No.

16 Q: And again, your research discovered that it was a New
17 York corporation. So all that kind of made perfect sense,
18 did it not, to disburse the funds to the corporation?

19 A: There was no reason for me not to, yes.

20 MR. MCKENZIE: No other questions, Your Honor.

21 THE COURT: Mr. Dunn?

22 MR. DUNN: Yes, ma'am. May I please get this marked as
23 Plaintiff's 1-delta or D? Already did? Let's go 1-echo,
24 1-E. Thank you.

25 Court's indulgence just one moment.

1 THE COURT: Sure.

2 MR. DUNN: Let me get this together.

3 CROSS-EXAMINATION

4 BY MR. DUNN:

5 Q: Mr. Coffey, a few things. Mr. McKenzie was talking to
6 you about Mr. Gipson moving from New York to Texas. Mr.
7 Gipson testified this morning that he was living in Texas
8 from 2014. What -- how on earth is he moving from New York
9 to Texas in June of 2016?

10 A: There was -- there was some evidence of his having
11 resided in New York and I don't recall the specifics of that.
12 I do know that the license he provided, as I recall, that may
13 have been a Missouri City, Texas, but I don't -- I don't
14 recall the timeframe of when -- when he may have relocated.

15 Q: And certainly he did testify that he did live in New
16 York for a period of time, but there's -- can you give me any
17 basis for this notion that he was somehow moving from New
18 York to Texas when he said he was living in Texas for two-
19 and-a-half years or for two years, let's say, prior to this
20 event?

21 A: I don't -- I don't know the logistics of the -- of the
22 relocation.

23 Q: What was the name of the -- of the -- this company that
24 -- that your firm wired Mr. Gipson's money to?

25 A: MW Enterprises -- International Enterprises, Inc. I

JOSEPH COFFEY - CROSS BY MR. DUNN

- 1 don't know why I'm having difficulty with MW or WM. It's one
2 or the other.
- 3 Q: That's not quite right though, is it? I'm going to show
4 you this. This is Plaintiff's Exhibit 1-alpha, 1-A. If
5 you'll look at the second page of this -- let me back up a
6 moment. You testified in talking to Mr. McKenzie that there
7 was a name associated with this company, Samuel something.
8 What was that name again?
- 9 A: He was just the registered agent.
- 10 Q: And what was that name?
- 11 A: Yeung was the last name, Y-e-u-n-g.
- 12 Q: How do you spell it?
- 13 A: Y-e-u-n-g.
- 14 Q: Any other names associated with it?
- 15 A: Well, the registered agent is just the registered agent
16 for -- for service of process.
- 17 Q: Correct. The -- if you look at page 10 of Exhibit 1-A,
18 this is -- I believe this is the wiring instructions that you
19 received; is that correct?
- 20 A: Yes. Yes.
- 21 Q: And what is -- what is the name of the business that you
22 sent this money to?
- 23 A: Well, the bank's name is East West and then there at the
24 bottom is the WM International Enterprise, Inc.
- 25 Q: So it's not WM International Enterprises, Inc., is it?

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JOSEPH COFFEY - CROSS BY MR. DUNN

- 1 It's WM International Enterprise, Inc.?
- 2 A: Enterprise. Excuse me.
- 3 Q: Someone who speaks English as a first language, you kind
- 4 of -- enterprises sounds more natural than enterprise,
- 5 doesn't it in that context?
- 6 A: Repeat the question, please?
- 7 Q: Well, you've -- you said -- you said the name of this
- 8 business, the account to which you wired, which is WM
- 9 International Enterprises, Inc., and I think that sounds more
- 10 normal to folks like you and I. I believe that you're a
- 11 native English speaker. I know I am, but this is WM
- 12 International Enterprise, Inc.?
- 13 A: Enterprise, yes.
- 14 Q: Isn't that a little odd?
- 15 A: They do sound very similar, yes.
- 16 Q: Now, let me -- let me ask you this. The WM, there is W,
- 17 period. Is there a period after M?
- 18 A: Not on -- not on these -- not on this instruction sheet.
- 19 Q: So you get these wiring instructions. It's W, period,
- 20 M, no period, International Enterprise, no comma, and then
- 21 Inc., and that's where you wire the money to?
- 22 A: This was the account information we received, yes.
- 23 Q: Now, did you -- prior to -- to wiring this money, did --
- 24 did you call Mr. Gipson to verify these wiring instructions?
- 25 A: Did we call him? No, we did not. We had received back

- 1 the documents and the FedEx tracking number. So it was
2 authenticated and we had the document where we could be
3 reached. Often we do not call to do that.
- 4 Q: Did you call him to tell that the wire had been
5 initiated?
- 6 A: No.
- 7 Q: Did you call him to verify that he had received the
8 wire?
- 9 A: We had verification that it had been sent and received
10 by this account holder, yes, but we received that from our
11 bank.
- 12 Q: Now, you -- if you look at this Exhibit 1-A I've been
13 showing you, look at page 10. It says from Marvin Gipson and
14 then is this the fraudulent email we're talking about, this
15 mail4 -- mail, m-a-i-l, then the numeral 4, and then r-n-a-r-
16 v-i-n?
- 17 A: That's correct. This is the r-n.
- 18 Q: And so the wiring instructions came from this mailing
19 address with the r-n substituting for the first letter of Mr.
20 -- Mr. Marvin Gipson's name; is that correct?
- 21 A: That's correct.
- 22 Q: All right. Now, you keep talking about the -- the
23 tracking number and such. What email address did that come
24 from?
- 25 Q: This is the PDF signed documents are attached and the

JOSEPH COFFEY - CROSS BY MR. DUNN

1 FedEx tracking number is attached. It's right there.

2 Q: And that's on Exhibit 1-A?

3 A: That's right there on page 10.

4 Q: All right. Let's look at this. This is exhibit --
5 we've marked as Exhibit 1-E or 1-echo. It's page 6, Bates
6 stamped 6 of Plaintiff's Exhibit 1. Now, this says at the
7 top:

8 Hello, Monica. The PDF signed documents are attached.
9 The FedEx tracking number -- and it gives the number 783 and
10 some more digits. You should have it by noon. Regards, name
11 Nemark Marvin Gipson. Up at the top, what email address did
12 this come from?

13 A: This came from the Marvin.

14 Q: So this came from mail4marvin with an M at Gmail.com
15 that Mr. Gipson has admitted is his email address?

16 A: That's right.

17 Q: And you received this email? What's the date on it?

18 A: That was the -- Monica Bruce sent an email on Tuesday,
19 June 14th. The closing occurred on the 13th and then this was
20 Wednesday at 5:37 on the 15th of June.

21 Q: So --

22 A: So the 16th of June is when we -- we would have received
23 everything the following morning.

24 Q: So this email seems to indicate that you received the
25 signed closing package and the FedEx tracking number not from

1 this fraudulent email address, but from Mr. Gipson, mail4marvin@gmail.com? Is that not correct?

2

3 A: We got it on this, the 15th, and then we got the

4 information on the wiring instruction on the 16th, yes.

5 Q: But the one on the 16th, that came from the fraudulent

6 email address?

7 A: That's right.

8 Q: Correct?

9 A: Uh-huh.

10 Q: I believe you testified when Mr. McKenzie was asking

11 that you could have gotten more money back from East West

12 Bank for Mr. Gipson if he had alerted you to the situation

13 prior to June 27th?

14 A: I -- given what I was relayed from the bank, it would've

15 been beneficial to have been able to contact them sooner than

16 when we did.

17 Q: Well, when -- when was the other money withdrawn?

18 A: I don't know that.

19 Q: So you have no idea if --

20 A: I don't know the bulk. I don't know over what period.

21 I don't know. That was a reliance on what -- on those -- on

22 those individuals.

23 Q: Now, this isn't the only real estate closing --

24 residential real estate transaction that you've closed, I

25 believe you testified; is that correct?

1 A: The only residential real estate closing?

2 Q: Correct.

3 A: No.

4 Q: This isn't the only one you've ever done?

5 A: Oh, no. This is primarily what I do.

6 Q: So isn't it routine when you're doing a residential real

7 estate transaction that you have money that you're sending to

8 an insurance company for homeowners insurance premiums, money

9 to an exterminator for a termite letter, money to a bank for

10 a seller's payoff, money to a contractor for repairs that

11 have been done to a property? Don't you routinely send out

12 those kind of checks?

13 A: There is, yes. Those are the expenses I was referring

14 to earlier when disbursing, yes.

15 Q: Now, when you're sending out a check to Allstate

16 Insurance Company or to a contractor for repairs that were

17 made to a house, is Allstate Insurance Company your client or

18 is that contractor your client in that transaction?

19 A: No.

20 Q: Do you though have a fiduciary duty to that insurance

21 company or to that contractor for that money of theirs that

22 you're holding in your trust account?

23 A: I don't feel like that I have any kind of duty to them.

24 I am -- I am a conduit to get them -- you know, get them --

25 that's part of the process is, you know, expenses associated

JOSEPH COFFEY - CROSS BY MR. DUNN

1 with the closing, but I don't know that it rises to any
2 fiduciary duty to a contractor for whatever repairs or an
3 insurance company, no.

4 Q: So if you're supposed to be sending \$1,000 to an
5 insurance company and \$500 to a contractor, you don't have a
6 duty to make sure that money goes to the place it's supposed
7 to be and gets to the party whose money that belongs to?

8 A: I'm a conduit for it, but I don't know that I have any
9 -- I have an obligation. I don't know that I owe them any
10 duty above and beyond -- beyond that.

11 Q: Don't they call that account where that money is kept a
12 trust account?

13 Q: Excuse me?

14 Q: Don't they call the money where you keep that --

15 A: That's a trust account.

16 Q: -- a trust account?

17 A: Yes. It comes through the real estate trust account.
18 That's correct.

19 Q: In his question, Mr. McKenzie mentioned contacts were
20 made to law enforcement, to the Office of Disciplinary
21 Counsel, and such. I mean are -- Mr. Coffey, are you blaming
22 Mr. Gipson for following up and trying to figure out what
23 happened to his missing money?

24 A: No. It was very -- no, I'm not. I'm not faulting him
25 for that. It was very frustrating because I made a number of

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1 calls to the local Synovus office. I contacted East West
2 Bank to the point where I received we're not answering you or
3 talking to you anymore unless you subpoena these records. I
4 contacted -- I did my own search into this entity.

5 I really made a great deal of effort in trying to recoup
6 this and I felt like I had exhausted all avenues, but I was
7 not in the position where he was. I mean it was -- Mr.
8 Gipson -- I was trying to encourage him to contact the
9 appropriate authorities to pursue this and I thought they
10 would be in the best position to assist. So it was
11 frustrating, given my efforts, that I was then reported to
12 these various entities.

13 Q: Do you think the situation was also frustrating for Mr.
14 Gipson?

15 A: I would think, yes, it would be very frustrating for Mr.
16 Gipson.

17 Q: So you were frustrated, he was frustrated, but who was
18 out the \$8,700?

19 A: Mr. Gipson is out of the \$8,700.

20 MR. DUNN: Before I forget about it, Your Honor, we
21 would move to admit Plaintiff's 1-E, echo, into evidence.-

22 THE COURT: Any objection?

23 MR. MCKENZIE: I don't know what Plaintiff's 1-E, echo,
24 is.

25 THE COURT: Page 6.

1 MR. DUNN: Page 6.

2 THE COURT: It's Bates stamped page 6.

3 MR. DUNN: Page 6 of Plaintiff's Exhibit 1. It's that
4 email we were talking about.

5 MR. MCKENZIE: Do you have it?

6 MR. DUNN: It's up there.

7 THE COURT: I've got a copy right here.

8 MR. MCKENZIE: Can I take a look at it? No objection,
9 Your Honor.

10 THE COURT: 1-E is admitted.

11 (WHEREUPON, Plaintiff's Exhibit Number 1-E, page 6 of
12 emails, was admitted into evidence.)

13 BY MR. DUNN:

14 Q: Mr. Coffey, Mr. McKenzie asked Mr. Gipson about various
15 law enforcement agencies he contacted. What law enforcement
16 agencies in New York State or any political subdivisions of
17 New York State did you contact?

18 A: None. I was -- I didn't have the money out to -- to be
19 making that -- that contact.

20 Q: So just so I understand, Mr. Coffey, you received wiring
21 instructions to send the money to East West Bank for the
22 benefit of WM International Enterprise, Inc., and that raised
23 no red flags or suspicion on your part?

24 A: Not after we received the other documents back, and it
25 was WM Enterprises -- WM International Enterprise.

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Q: Yeah. But didn't we just show --

A: You left out -- the M was omitted when you just asked that question.

Q: Right, right, right, but you received the documents back from Mr. Gipson's correct email address. That's -- that's what we just looked at on that June 15th email that's marked as Plaintiff's 1-echo?

A: That's right.

Q: All right. But the fact that you were sending money that you knew belonged to Marvin Gipson to something called WM -- I'll get it right -- International Enterprise, Inc., that raised no suspicion or red flag in your mind? You didn't feel like you needed to follow up for that?

A: Not on what we had received, no.

MR. DUNN: I beg the Court's indulgence for just one moment.

THE COURT: Sure.

MR. DUNN: Nothing further, Your Honor.

THE COURT: Mr. McKenzie?

MR. MCKENZIE: Just a couple of follow-up, Your Honor.

REDIRECT EXAMINATION

BY MR. MCKENZIE:

Q: Mr. Dunn asked you why didn't you contact New York law enforcement and the money wasn't stolen from you, was it?

A: That's correct.

1 Q: And you weren't the victim?

2 A: That's correct.

3 Q: Okay. And this money was clearly stolen; is that
4 correct?

5 A: That's correct.

6 Q: Okay. And you didn't steal it, did you, Mr. Coffey?

7 A: No, I did not.

8 MR. MCKENZIE: No other questions, Your Honor.

9 THE COURT: Any recross, Mr. Dunn?

10 MR. DUNN: Nothing further. Thank you.

11 THE COURT: Thank you, sir. You can step down.

12 MR. MCKENZIE: That's the defendants' case, Your Honor.

13 THE COURT: Okay. Ladies and gentlemen, we've had you
14 in here for a little while. We're going to take about a 10-
15 minute break. Please don't begin discussing the case yet.

16 (WHEREUPON, the jury exited the courtroom at 3:01 p.m.)

17 THE COURT: Okay. Anything we need to address before we
18 take a break?

19 MR. DUNN: Nothing from the plaintiff.

20 MR. MCKENZIE: Your Honor, I would go ahead and renew my
21 motions in regards to the resting of our case, but again, the
22 breach of standard of care, I believe that, again, the
23 plaintiff has not established legal malpractice and I think
24 that's the standard.

25 I understand Your Honor's ruling. I would just ask to

1 protect the record on that.

2 I will also make that motion again once the jury renders
3 a verdict, but my motion will be based upon the fact that
4 it's my opinion that the plaintiff has the burden of proof.
5 The burden of proof clearly stated -- or the plaintiff
6 clearly stated in his testimony that this was part and parcel
7 of a real estate closing.

8 I think the memorandum from Chief Justice Toal from 2009
9 clearly states that a disbursement is part and parcel of a
10 real estate closing. I think I presented the case law that
11 states that a real estate closing -- only an attorney can
12 handle a real estate closing.

13 And, Your Honor, I would also ask the Court to look at
14 the case of -- Court's indulgence, Your Honor. I had it.
15 *State v. Buyers Service Company*. I think this is a similar
16 case in South Carolina regarding real estate attorneys are
17 the only ones that can close loans in South Carolina. That's
18 just another one for Your Honor to look at.

19 Also, Your Honor, South Carolina Code Section 40-5-310
20 makes it a felony for an individual to participate in the
21 unauthorized practice of law. That's what *Buyers Corporation*
22 or the *Buyers* case -- *Buyers Service* case deals with, Your
23 Honor.

24 And then 40-5-320 makes it a misdemeanor for a
25 corporation or any other entity to participate in the

1 unauthorized practice of law.

2 South Carolina Code 37-10-102 gives the borrower the
3 absolute right to choose a closing attorney in a residential
4 loan closing, and the statute provides a \$7,500 penalty if
5 disclosure is not given.

6 Also, the South Carolina Constitution gives the South
7 Carolina Supreme Court exclusive right to define the practice
8 of law within South Carolina, which Justice -- Chief Justice
9 Toal did in the documentation I handed up to you in regards
10 to the best practices standard for real estate closings.

11 Also, Your Honor, there's some other cases that I'd ask
12 that you take judicial notice of. Those would be *Doe v.*
13 *Condon*. In that case, the South Carolina Supreme Court
14 reiterated and confirmed that the four protected areas set
15 out in the *Buyers Services* case would also apply to
16 residential refinances. So again, we have -- that's a 2002
17 case from the Supreme Court, and in 2003 we have *Doe v.*
18 *McMaster*, and basically the Supreme Court again reiterated
19 the holding in *Buyers Services* and also in *Doe v. Condon*.

20 So, Your Honor, again, I think that the Supreme Court
21 has stated that -- that real estate closings -- and I handed
22 you cases right on point that says that a real estate closing
23 has to be handled by an attorney.

24 And then the burden for professional negligence has to
25 be by expert testimony and so again, Your Honor, I would

1 reiterate the fact that I think the plaintiff has failed to
2 meet the burden of proof and would ask the Court to grant
3 judgment on the pleadings and on the facts in regards to the
4 negligence cause of action for the -- for the defendant,
5 Coffey & McKenzie.

6 THE COURT: Thank you, sir. Your motion again is
7 respectfully denied. Again, I do think that this is -- well,
8 two things. That there is a fiduciary duty separate and
9 apart from the legal malpractice. There is case law
10 indicating that these are two different things, that they are
11 two different causes of action that can arise, but I also
12 believe that this does not require expert testimony. That
13 it's within common experience that the layperson can discern
14 without regard to expert testimony.

15 MR. MCKENZIE: Thank you, Your Honor. I was just
16 protecting the record on that.

17 THE COURT: Yes, sir.

18 MR. DUNN: Nothing from the plaintiff.

19 THE COURT: Okay. Let's discuss charges. Ms. Roberts,
20 can I email you the verdict form and the draft of the charges
21 that I have thus far?

22 THE CLERK: Yes, ma'am. Do you have it in your system?

23 THE COURT: I'm sorry?

24 THE CLERK: Do you have my email address in your system?
25 Clerk of Court?

1 THE COURT: I probably do. Let me search this real quick.
2 quick.
3 (WHEREUPON, there was a pause in the proceedings, after
4 which the proceedings resumed as follows.)
5 THE COURT: Do you have any proposed instructions that
6 you want to hand up to me?
7 MR. DUNN: Your Honor, for the plaintiff, we did not.
8 We were just going to ask for the standard Circuit Court
9 handbook charges. Of course, in our trial brief, we asked
10 for several. A number of those have been knocked out, but
11 just negligence, actual damage, and fiduciary duty. That's
12 all we would have.
13 MR. MCKENZIE: Your Honor, intervening acts of third
14 parties. I think that we had -- everybody, even Mr. Gipson,
15 admitted even in his complaint that this was a third party
16 intervening here and took the money. So I would ask the
17 Court to charge the jury with intervening act of a third
18 party. So I think that's without question, but I think the
19 jury needs to hear that instruction.
20 THE COURT: Bear with me. I had made a verdict form and
21 now I can't find where I saved it. Okay. I see it.
22 Okay. I've just emailed you those, Ms. Roberts.
23 THE CLERK: Yes, I got it.
24 THE COURT: Okay. What I'm showing for the jury charge
25 for intervening negligence of a third party states the chain

1 of causation between the defendant's negligence and the
2 injury may be broken by the independent intervening acts or
3 omissions of another person over whom the defendant has no
4 control. In order to decide whether an intervening act
5 breaks the chain of causation, you must determine whether the
6 intervening act or omission was reasonably foreseeable by the
7 defendant.

8 If the intervening act or omission was a probable
9 consequence of the defendant's negligence, the defendant is
10 responsible for the plaintiff's injury. If, however, you
11 find that the intervening act or omission was not
12 foreseeable, the defendant is not liable unless his actions
13 alone would have caused the plaintiff's injury even without
14 the intervening act or omission.

15 That seems reasonable to me.

16 MR. MCKENZIE: That's fine with us, Your Honor. It's
17 something about intervening.

18 MR. DUNN: Your Honor, we would argue that the
19 intervening act charge is not appropriate in this case
20 because we're talking about negligence after this fraudulent
21 email came in. There's no intervening act after the
22 negligence. In our theory of the case, there's no
23 intervening act after the negligence of the defendant that
24 would perhaps shift liability onto some other party. So our
25 view would be that an intervening act charge just based on

1 the peculiar facts of the situation would be inappropriate.)))

2 MR. MCKENZIE: Your Honor, we would --

3 THE COURT: Well, I think -- if you'll hang on just a
4 minute. I think that you are certainly free to argue that to
5 the jury, that that's an appropriate jury argument, but I
6 think that this is an appropriate charge to go to the jury on
7 the law.

8 MR. DUNN: Thank you, Your Honor.

9 (WHEREUPON, there was a pause in the proceedings to
10 print and review the verdict form and charges, after
11 which the proceedings resumed as follows.)

12 MR. DUNN: No objection, Your Honor.

13 MR. MCKENZIE: None from the defendants, Your Honor.

14 THE COURT: To the verdict form?

15 MR. MCKENZIE: Yes, ma'am.

16 THE COURT: Okay. I guess that's the only thing you
17 have in front of you at this point.

18 I'm going to step out and let's just be at ease for a
19 few minutes to give you a chance to look over those proposed
20 jury charges. It's not going to have in it the intervening
21 act of a third party, but I've inserted that in.

22 So when we bring the jury back in, of course, we'll go
23 forward with closing arguments. Mr. Dunn, if you will, give
24 your complete open in full and limit your reply to responding
25 to anything that Mr. McKenzie has raised.

1 MR. DUNN: Yes, ma'am.

2 THE COURT: Anything else we need to talk about? I want
3 to make sure -- I mean let's be at ease so if y'all need to
4 have a break as well, do that. All right.

5 (WHEREUPON, there was a break in the proceedings from
6 3:18 p.m. until 3:29 p.m., after which the proceedings
7 resumed as follows.)

8 THE COURT: Okay. Have you all had enough time to look
9 at the jury charges?

10 MR. DUNN: Yes, ma'am.

11 THE COURT: Any additions, exceptions, et cetera?

12 MR. MCKENZIE: None from the defendants, Your Honor.

13 MR. DUNN: None from the plaintiff, Your Honor.

14 THE COURT: Okay. Let's bring in the jury.

15 (WHEREUPON, the jury entered the courtroom at 3:30 p.m.)

16 THE COURT: Okay. Ladies and gentlemen, you've now
17 heard all of the testimony and the evidence. We're going to
18 move into the closing arguments of the attorneys.

19 Mr. Dunn?

20 MR. DUNN: Thank you, Your Honor. May it -- may it
21 please the Court.

22 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

23 MR. DUNN: Ladies and gentlemen of the jury, like we
24 said this morning, it's a short case. The facts of this
25 matter are pretty straightforward.

1 Again, I tremendously appreciate your time, your wisdom,
2 and your attention. I know y'all have better things to do
3 today. I know that it's at least crossed your mind one time
4 today that, dadgummit, when I go back to work in the morning,
5 I'm going to have to make up for all of the stuff I missed
6 today. So we -- I truly do understand that and appreciate
7 it.

8 And regardless of what you decide, the parties
9 appreciate it because, again, our justice system, both on the
10 criminal side and here in the civil side, while it's far from
11 perfect, it is the envy of the world and it's the envy of the
12 world not so much because of the attorneys or judges, but
13 because of our jury system and that we allow individual
14 citizens to make the hard calls and to make tough choices.
15 So thank you so much for your time. Thank you for your
16 attention.

17 Again, as you've heard, we had a real estate closing.
18 Things did not go right. I want to make sure that you
19 understand what we're -- what Mr. Gipson is not claiming or
20 saying. We -- we in no way think that the Law Firm of
21 Coffey & McKenzie or Mr. Coffey did anything -- excuse me --
22 did any kind of theft or any taking of Mr. Gipson's money.
23 That's not our case at all. That has never been our
24 allegation.

25 Our allegation instead is that the Law Firm of Coffey &

1 McKenzie had a fiduciary duty to handle the money that
2 belonged to Mr. Gipson in this case with due and appropriate
3 care and to make sure that that money got where it needed to
4 be, in this case into Mr. Gipson's hand. Our contention is
5 that that is not what happened in this case.

6 That instead, this fraudulent hacker, no one seems to be
7 able to identify exactly who it is, but that person came in
8 and, you know, by various, you know, technological
9 manipulations -- I think as we say in our office technology
10 is great when it works right, but it can also work against
11 you and that's what happened in this case. But through
12 those, this person was able to -- to abscond with that money
13 and, you know, whether they are in some other state or some
14 other country, who knows, but the bottom line is is that
15 money is gone.

16 We're not claiming that that in any way ended up in the
17 pocket of anyone here. We are, however, saying that the due
18 and appropriate care that should have been taken on Mr.
19 Gipson's behalf was not taken by the Coffey & McKenzie Law
20 Firm and that is why he has suffered the losses that he has.

21 What we would ask you to do this afternoon, ladies and
22 gentlemen, is put yourselves in Mr. Gipson's position. If
23 you had a couple acres out in Summerton, it's not a million-
24 dollar property, but it's still a property that has value and
25 it's a property he received from his family and he wanted to

1 convert that into funds for his new life that he's -- that
2 he's been making over the last five or six years in Texas.
3 Excuse me.

4 If it were your closing that happened and wiring
5 instructions had come in saying the money that was supposed
6 to go to your name is now supposed to go to some company,
7 what would you expect the defendant to do to ensure that the
8 money ended up where it was supposed to be, in your hand
9 and/or in your bank account? Ask yourselves what you would
10 expect. Ask yourselves if that is what was done in this --
11 in this case.

12 We contend that is -- that is -- that the Law Firm of
13 Coffey & McKenzie did not meet that standard and instead they
14 breached that fiduciary standard and, as a result of that,
15 Mr. Gipson was damaged.

16 As Mr. Coffey testified to you just do a moment ago, the
17 money that we as attorneys hold for others we hold in a trust
18 account. It's called a trust account for a reason and folks
19 trust us to make sure that we do with those funds what is
20 supposed to happen with them. We don't stick them in our own
21 pocket, which once again we're not saying happened here.

22 But just as importantly, we don't by, you know, moving
23 fast and trying to get through this and get to the next
24 closing, send this money somewhere where it doesn't belong.
25 Instead, we take that extra moment to verify that, hey, these

1 wiring instructions don't say anything about Marvin Gipson.
2 Who is WM International Enterprise, Inc.? Perhaps I should
3 pick up the phone and just verify this. That's the kind of
4 care that we contend should have been taken for Mr. Gipson's
5 benefit and was not in this case.

6 Because of that, we would ask you to come back with an
7 award in Mr. Gipson's favor that will compensate him for the
8 damages that he has sustained as a result of the negligence
9 of the defendant. Thank you very much.

10 THE COURT: Mr. McKenzie?

11 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANTS

12 MR. MCKENZIE: I said good morning to you this morning.
13 Now, it's afternoon. Good afternoon. It's been a long day,
14 a long day, and I appreciate and Mr. Coffey and I both
15 appreciate your attention to this case. I've watched. You
16 all were very much engaged in listening to every -- everybody
17 that got on the stand.

18 And we appreciate that because it is our day in court
19 also, our day to defend ourselves and defend our reputation.
20 We are here today to do that. This is a difficult situation.
21 One of the things that I will tell you is that Mr. Gipson
22 comes in here and we don't know. All we know is he says he
23 didn't get this money.

24 We're not accusing him of lying to you that he didn't
25 get it. I don't know. But there is something called a

1 burden of proof in South Carolina. He has the burden of
2 proving that he didn't receive this money. I don't know who
3 this business is in New York and when Mr. Gipson moved from
4 New York to Texas. I don't know anything about any of that.

5 But who's in the better position to know that? Not us
6 living down here in South Carolina. Mr. Gipson used to live
7 in Yonkers, New York, 19 miles away from this company that
8 supposedly got this money. Well, we know they got the money.
9 The question is does he have any affiliation with it. I
10 don't know the answer to that. I don't know the answer to
11 any of that because that's their burden to prove that.

12 Now, we -- at the law firm, we got wiring instructions
13 that said send the money to this location, send it to this
14 bank, signed Marvin Gipson. We get that all the time and
15 that's what we do. We do that. We are required by the rules
16 of ethics and the rules of professional conduct to disburse
17 funds as soon as we can because it's the client's money.

18 Mr. Gipson waited 11 days to say I didn't get my money.
19 Mr. Coffey testified he was able to retrieve over \$1,500 of
20 it, but had he called him sooner and said, hey, I didn't get
21 this money, we could have probably gotten more of the money
22 back.

23 Again, they have the burden of proof, not us. They are
24 asking you to require us to pay them money, and we did what
25 we were supposed to do according to what the information that

1 we had.

2 Every law enforcement agency in South Carolina was
3 called on Mr. Coffey. Everybody declined to do anything with
4 it because it wasn't -- it wasn't a criminal act, but I can
5 tell you who committed a criminal act was this corporation up
6 in New York. They stole the money.

7 The judge is going to tell you something called an
8 intervening third party. That means that if someone comes
9 into this case -- now, this is my interpretation of the law.
10 The judge is the person who will tell you the law, but this
11 is what I think -- think it means though.

12 If a third party comes in and we didn't have anything to
13 do with that third party -- which we didn't and I think we
14 proved that. We don't know who they are, but if a third
15 party comes in and intervenes in the case and takes the
16 money, for example, then how are we responsible for that?

17 You heard testimony from one witness on the plaintiff's
18 side, and that's Mr. Gipson, who said I didn't get the money
19 and these emails and he, quite candidly, hey, somebody got
20 hacked. That's what his complaint says. Somebody got
21 hacked, somebody got whatever, phishing or whatever you want
22 to call it, but somebody's email system got taken advantage
23 of and, as a result of that, this calamity happened.

24 But the person who is in the best position to get this
25 money back is seated right there, and he contacted South

1 Carolina Consumer Affairs on Mr. Coffey, the South Carolina
2 Bar, the Office of Disciplinary Counsel, the Manning PD, the
3 governor's office, everybody but anybody in the state of New
4 York, which is where this money was stolen.

5 Why? Why not do that? Why not contact New York?

6 Contact the Attorney General's Office in New York. Contact
7 the prosecutors in New York. Contact the sheriff's
8 department in Yonkers, New York. Contact somebody in New
9 York and say, hey, I was robbed. He didn't do that.

10 Instead, he wanted to blame Mr. Coffey, and it's clear
11 that Mr. Coffey had nothing to do with taking the money from
12 Mr. Gipson. It's clear that Mr. Coffey did what all
13 attorneys do in this kind of situation. As soon as we get
14 the money in, we send it back out.

15 Now, let me tell you why I believe we're not responsible
16 for the email situation and it's because of this. Mr. Gipson
17 sent us back the emailed documents from the fraudulent email
18 case. Remember that came up in the testimony where he signed
19 the documents and scanned them back in? We got that not from
20 the email that he claimed was legitimate, but from the fake
21 email. How did that happen? Explain to me how the fake
22 email account got the documents that Mr. Gipson signed with
23 original signatures on it and scanned it back to our firm
24 with that email address? How did that happen? How did that
25 happen?

1 This is what -- if we were in a criminal case, that
2 would be beyond a reasonable doubt, but the burden here is a
3 preponderance of the evidence. Is it more likely than not?
4 That's the -- that's the standard. Is it more likely than
5 not?

6 So you have to ask yourself if there are things in
7 regards to the plaintiff's case that just don't make a whole
8 lot of sense, like how would these original signatures get
9 scanned back in with the FedEx tracking number on the
10 fraudulent email? How did that happen? I don't know how
11 that happened. I don't know how it happened, but it
12 happened.

13 And were we supposed to say at that point in time you
14 sent us a document, all that was -- Mr. Coffey has testified
15 that was double verification. We had a tracking number and
16 the scanned documents in the supposedly fraudulent email
17 account that came back to us and then we get wiring
18 instructions from the fraudulent email account, supposed
19 fraudulent email account, and what are we supposed to do? We
20 had double authentication on that email and this is a regular
21 practice now.

22 Unfortunately, this is the year -- this is 2020 and
23 email is what we live by and this is how this stuff works.
24 Scanned documents, all that, that's how it works nowadays.
25 Twenty years ago, that wasn't the case. FedEx tracking

1 number, scanned original signatures come from -- came from
2 the fraudulent email account.

3 Now, we put Mr. Pedalino on the stand, the only expert
4 to testify in this case, the only expert who testified in
5 this case, and the judge is going to tell you about expert
6 testimony again in her remarks, but you heard what he said.
7 He handles security for -- cybersecurity for a lot of big
8 agencies around here, police departments. He's licensed by
9 the South Carolina Criminal Justice Academy, certified by
10 SLED. He is -- you know, he knows what he's doing.

11 Almost immediately, he checked our system. We had not
12 been hacked. We had not been -- nothing unusual is in our
13 system and we have great security. I mean so tell me how
14 those scanned documents get in that fraudulent email account
15 with the FedEx tracking number for the original documents
16 with the original signatures that show up in our office with
17 that tracking number.

18 It just doesn't make any sense and if it doesn't make
19 any sense, then they have not met their burden of proof by a
20 preponderance of evidence. That's what they have to do.

21 And so I would ask you, ladies and gentlemen, today that
22 -- the judge is also going to talk to you about the
23 intervening third party, a crook. Somebody comes and steals
24 the money. We're not responsible for that third party
25 stealing the money.

1 Who's in the best position to find that out and bring
2 those people to justice? We're not the victims in the stolen
3 money. Mr. Gipson is. And I told you earlier he could have
4 been in New York all day long asking these same questions.
5 He hasn't done it. Why?

6 Is that a question that you need to ask yourself before
7 you render a verdict? I think so. These are the -- these
8 are the questions that are left unanswered. These are the
9 things that need to be discussed by you.

10 When you go back in that jury room, you're going to
11 render a verdict. A verdict simply means what you guys come
12 to a conclusion. The twelve of you have to get together.
13 The alternate won't be allowed to go back and deliberate.
14 The twelve of you get to deliberate and decide what is going
15 on here, and you have to come to a consensus about that. And
16 we chose you at the beginning of this case and told you,
17 yeah, we thought you'd be fair and impartial, and we still
18 have that opinion of you. We do.

19 I know that this has been a long day for you. It's
20 almost a quarter to four. Again, I appreciate what you're
21 doing here today. I appreciate everything that you have done
22 and I appreciate it and I know that you don't want to be here
23 anymore than I do, anymore than I do. I don't want to be
24 here having to defend my law firm, my partner, my friend, in
25 accusations that he stole money.

1 As I told you, the judge is going to tell you about the
2 acts of a third party. If they intervene and you find that a
3 third party's people got this money, then Mr. Gipson is in a
4 better position to go after that person than we are. They
5 weren't named in this lawsuit. Why not? Why not name this
6 corporation in New York who everybody admits got the money in
7 the lawsuit? Another question you need to ask yourself. Is
8 that suspicious?

9 Don't award money based on the fact that you feel sorry
10 that Mr. Gipson didn't get his money. I am sorry he didn't
11 get it and I know you are too. You award money based on the
12 fact that if we do something that was negligent, and the
13 judge is going to tell you about negligence. Negligence is
14 simply this. That we had some duty to do something to Mr.
15 Gipson and we failed to do it. We didn't fail to do it.

16 Again, think about those documents that were sent to us
17 in an email. Why would we have any suspicion at that point
18 in time to suspect that somebody else had intercepted that
19 email? Mr. Gipson sent us the documents back, the FedEx
20 tracking number included in the same email with the same
21 fraudulent email address before you today. How did it
22 happen? There's no other logical explanation than it
23 couldn't happen that way.

24 I thank you for your service. Thank you for being here.
25 I won't keep you any longer. I hope I've given you some

1 things to think about and discuss, and I hope when you come
2 back that you will render a verdict for the defendants. I
3 think that's what this means. I think that's what's been
4 proven today and I figure you remember testimony that came
5 from the witnesses and that's the testimony. What you heard
6 today is what is the testimony in this case.

7 You'll notice another thing too. The Williamsons are
8 not here anymore. Mr. Robinson, who was trying that case,
9 they got dismissed from this lawsuit. I want you to dismiss
10 Coffey & McKenzie from this lawsuit because we're not
11 responsible for something that happened to Mr. Gipson that
12 originated on his end. Thank you.

13 THE COURT: Mr. Dunn?

14 REPLY CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

15 MR. DUNN: Ladies and gentlemen of the jury, I am
16 somewhat perplexed by the defendant's argument in this case.
17 When you get back in the jury room, you're going to have
18 these trial exhibits with you. I ask you to simply take a
19 look at Exhibit 1-A, 1-alpha, and Exhibit 1-E, 1-echo.

20 Mr. McKenzie must've said a dozen different times that,
21 hey, we got the -- we got the documents, we got the signed
22 documents from this fraudulent email. How did that happen?
23 With the clear implication that obviously Mr. Gipson must be
24 pulling some kind of stunt or be in on this in some way.
25 Don't take my word for it. Don't listen to Mr. McKenzie.

1 Look at the Coffey & McKenzie emails in this Exhibit 1-A and
2 Exhibit 1-E.

3 1-A, you will see on the second page that the email with
4 the fraudulent wiring instructions came from the
5 mail4rnarvin.com. Okay? It's a mail from Marvin.com, an R
6 and an N were interposed or -- excuse me -- were substituted
7 for the M in Marvin. You can clearly see it. This is not
8 Mr. Gipson's -- excuse me. This is not some invention from
9 Mr. Gipson. This is a Coffey & McKenzie email with their
10 logo and letterhead all over it.

11 Then look at Exhibit 1-E, 1-echo. This is the exhibit
12 where Mr. Gipson is sending the PDF and the signed documents
13 and sending the FedEx tracking number that he's delivering
14 back to them. This comes from Mr. Gipson's mail4marvin, his
15 legitimate email address.

16 So again, please don't take my word for it. Please
17 don't take Mr. McKenzie's word for it. Look at the documents
18 that have been admitted into evidence without objection from
19 either side, 1-A, 1-E. And after that, you decide whether
20 the PDF documents that he keeps telling you came from some
21 fraudulent email address. You tell me whether they did or
22 not. Look at the email. Look at the actual evidence.

23 Ladies and gentlemen, we've never accused Mr. Coffey of
24 stealing a penny from Mr. Gipson. That's not the point of
25 this case. If Tom Johnson goes to -- has an account at a

1 bank and a guy named Tom Johnston shows up and withdraws all
2 his money from the bank, yes, that Mr. Johnston is the thief
3 who took Mr. Johnson's money, but -- but the bank can still
4 be at fault for giving the money to the wrong person.

5 That's the whole point of our case is that the Coffey &
6 McKenzie Law Firm -- that they had a duty with the funds that
7 were in their trust account to make sure those funds ended up
8 with who they were supposed to be with. That is the duty
9 they breached.

10 And again, ladies and gentlemen of the jury, thank you
11 so much for your time. Please put yourself in Mr. Gipson's
12 position. If it were your money that got sent to somebody
13 else because they just happened to send in wiring
14 instructions, wiring instructions that never mentioned the
15 name Marvin Gipson by the way, if they just happened to send
16 that to you, would you feel like the law firm that did that
17 that they had met their fiduciary obligation to you, that
18 they had held your money in trust as they are supposed to?
19 That's the question you need to ask yourself. Thank you.

20 CHARGE ON THE LAW

21 THE COURT: Okay. Ladies and gentlemen, you've heard
22 the testimony and the evidence in this case, as well as the
23 closing arguments, and it's now my duty to instruct you on
24 the law that applies.

25 I remind you that during this trial you and I have

1 separate duties to perform. As the trial judge, it's my
2 responsibility to preside over the trial of this case and I
3 also have the duty to rule on the admissibility of the
4 evidence offered during the trial. You are to consider only
5 the evidence before you. You are to consider only the
6 testimony which has been presented from this witness stand
7 and the exhibits which have been made a part of the record in
8 this case.

9 I have the additional duty to charge you the law that
10 applies. It's your duty as jurors to accept and apply the
11 law as I now state it to you. If you think you have any idea
12 as to what the law is or what the law ought to be and it does
13 not agree with what I tell you the law is now, you must
14 forget that previous idea because you are sworn to accept the
15 law and apply it as I give it to you now.

16 In every case tried in this court before a jury, the
17 jury becomes the sole and exclusive judges of the facts of
18 the case. A trial judge cannot comment on or make any
19 statement about the facts. Since you are the sole judges of
20 the facts, please don't think by anything I have said during
21 the trial or during my jury instructions now that I have any
22 opinion about the facts. The law does not allow me to have
23 an opinion about the facts.

24 The burden of proof in this case is by a preponderance
25 of the evidence. A preponderance of the evidence simply

1 means the greater weight of the evidence. It is evidence
2 which as a whole shows that the fact sought to be proved is
3 more likely true than not true.

4 This can be illustrated by imagining a set of scales.
5 When the case begins, of course, the scales are even. After
6 all of the evidence has been presented, if the scales remain
7 even or if they tip even slightly in favor of the defendant,
8 then the plaintiff has failed to meet the burden of proof and
9 would not be entitled to recover in this case. If, on the
10 other hand, the scales tip even slightly in favor of the
11 plaintiff, the plaintiff will have met the burden of proof
12 and you should return a verdict for the plaintiff.

13 The preponderance of the evidence is not determined by
14 the number of witnesses. Instead, it must be determined by
15 the greater weight of all of the evidence.

16 There are two types of evidence generally presented
17 during a trial. There is direct evidence and then there is
18 circumstantial evidence.

19 Direct evidence is the testimony of a person who claims
20 to have actual knowledge of a fact, such as an eyewitness.
21 It is evidence which immediately establishes the main fact to
22 be proved.

23 Circumstantial evidence is proof of a chain of facts and
24 circumstances indicating the existence of a fact. It is
25 evidence which immediately establishes collateral facts from

1 which the main fact may be inferred. Circumstantial evidence
2 is based on inference and not on personal knowledge or
3 observation.

4 For circumstantial evidence to be sufficient to warrant
5 the finding of a fact, the circumstances must lead to that
6 fact with reasonable certainty. The facts and circumstances
7 should be considered in light of ordinary experience and
8 common sense. The existence of a fact cannot be based on
9 speculation, surmise or conjecture.

10 The law makes absolutely no distinction between the
11 weight or value to be given to either direct or
12 circumstantial evidence, nor is a greater degree of certainty
13 required of circumstantial evidence than of direct evidence.
14 You should weigh all of the evidence in the case.

15 Now, necessarily, you must determine the credibility of
16 the witnesses who have testified in this case and, of course,
17 credibility simply means believability. It's your duty as
18 jurors to evaluate the evidence and determine which evidence
19 convinces you of its truth.

20 In determining the believability of witnesses who have
21 testified, you can believe one witness over several or
22 several witnesses over one. You can believe a part of the
23 testimony of a witness and reject the remaining part of the
24 testimony of that same witness. You may believe the
25 testimony of a witness in its entirety or you may reject the

1 testimony of a witness in its entirety.

2 You can consider whether the witness has an interest in
3 the result of the trial, whether the witness is prejudiced
4 towards either the plaintiff or the defendant, the
5 opportunity the witness had to see or hear the things that
6 the witness is testifying about, and the way the witness acts
7 on the witness stand. What's their demeanor?

8 Now, the rules of evidence ordinarily do not permit
9 witnesses to testify to opinions or conclusions, but an
10 exception to this rule exists for what we call expert
11 witnesses. This is a witness who by education or -- and/or
12 experience has become an expert in some art, science or
13 profession, and that person may give an opinion as to the
14 subject the witness claims to be an expert in and may also
15 give the reasons for the opinion.

16 You should consider any expert opinion given by a
17 witness and, like any other evidence, give it the weight you
18 think it deserves. If you decide that an expert witness's
19 opinion is not based on sufficient education and experience
20 or if you decide that the reasons given in support of the
21 opinion are not sound or that the opinion is outweighed by
22 other evidence, you may disregard the opinion entirely. An
23 expert witness's testimony is to be given no greater weight
24 than that of other witnesses simply because the expert
25 witness is an expert, and you do not have to accept an

1 expert's opinion, even though it may be uncontradicted.

2 The plaintiff claims that the defendant was negligent
3 and should compensate the plaintiff for the damages the
4 plaintiff suffered as a result of the defendant's negligence.
5 In order to prove that the defendant was negligent, the
6 plaintiff must prove by a preponderance or greater weight of
7 the evidence the following things.

8 First, the plaintiff must prove by a preponderance or
9 greater weight of the evidence that the defendant owed the
10 plaintiff a duty of care. A confidential or fiduciary
11 relationship exists when one imposes a special confidence in
12 another so that the latter in equity and good conscience is
13 bound to act in good faith and with due regard to the
14 interest of the one imposing the confidence.

15 If the plaintiff has proven by a preponderance of the
16 evidence that the defendants Coffey & McKenzie owed him a
17 duty of care, plaintiff must next prove that the defendants
18 breached that duty by some negligent act or omission.
19 Negligence means that a person has done something that a
20 reasonable person would not have done or has failed to do
21 something that a reasonable person would have done in the
22 same situation.

23 The defendants have alleged that there is an intervening
24 negligence by a third party. The chain of causation between
25 the defendant's negligence and the injury may be broken by

1 the independent intervening acts or omissions of another
2 person over whom the defendant has no control.

3 In order to decide whether an intervening act breaks the
4 chain of causation, you must determine whether the
5 intervening act or omission was reasonably foreseeable by the
6 defendant. If the intervening act or omission was a probable
7 consequence of the defendant's negligence, the defendant is
8 responsible for the plaintiff's injury. If, however, you
9 find that the intervening act or omission was not
10 foreseeable, the defendant is not liable unless his actions
11 alone would have caused the plaintiff's injuries even without
12 the intervening act or omission.

13 The plaintiff must also prove by a greater weight or
14 preponderance of the evidence that he suffered damages as a
15 result of the negligence or the breach of duty.

16 And finally, the plaintiff must prove by a preponderance
17 or greater weight of the evidence that the damages were
18 proximately caused by the defendants' breach of duty.
19 Proximate cause is something that produces a natural chain of
20 events which in the end brings about the injury. It is a
21 direct cause of the injury or damage to the plaintiff.

22 To prove that the defendant's negligence proximately
23 caused the plaintiff's damages, the plaintiff must prove
24 causation in fact. This is proven by showing that the
25 damages would not have occurred but for the defendant's

1 negligence.

2 The plaintiff must also prove legal cause. Legal cause
3 is proven by showing that the damage was foreseeable. This
4 means that the damage occurred as a natural and probable
5 consequence of the defendant's negligence.

6 Proximate cause does not mean the only cause. The
7 defendant's acts can be a proximate cause of the plaintiff's
8 injury if it was at least one of the direct concurring causes
9 of the injury.

10 If you decide that the plaintiff is entitled to a
11 verdict, your next step would be to decide how much money the
12 defendant should be required to pay.

13 Actual damages are to compensate the plaintiff for the
14 plaintiff's injury or loss and to put the plaintiff as near
15 as possible in the same position that the plaintiff was in
16 before the incident occurred. In other words, actual damages
17 would be the actual losses and expenses which the plaintiff
18 has suffered because of the defendant's negligence.

19 I'm going to send you back in the jury room with the
20 exhibits that have been entered into evidence and then also
21 with the verdict form. And you'll see the caption at the top
22 here with the case number and it states:

23 As to the cause of action for negligence against the
24 defendant, Coffey & McKenzie, P.A., we, the jury, unanimously
25 find as follows.

1 And you have two choices. Please don't read anything
2 into which one came first and which one comes second. One of
3 them has got to come first and one has got to come second.

4 So your first option is we find for the plaintiff and
5 award damages in the amount of blank. If you find for the
6 plaintiff, of course, you'll put a checkmark in this box and
7 you'll fill in an award of damages. If you find that the
8 plaintiff has failed to prove their case by a preponderance
9 of the evidence, then you'll check the second box, which
10 states we find for the defendant.

11 Your verdict must be unanimous. Once you've reached a
12 unanimous verdict, then, Mr. Stone, you will sign the verdict
13 form on behalf of the jury panel. If you'll just knock on
14 the door and let the bailiffs know that you've reached a
15 verdict, they will come in and let us know so we can assemble
16 back in the courtroom and then we'll bring you in. I will
17 read the verdict. We don't make you stand and read the
18 verdict like they do on television sometimes.

19 Before we dismiss the jury, any exceptions or additions
20 to the jury charges?

21 MR. DUNN: None from the plaintiff.

22 MR. MCKENZIE: None from the defendant, Your Honor.

23 THE COURT: Okay. Then, ladies and gentlemen, you can
24 begin your deliberations.

25 (WHEREUPON, the jury exited the courtroom at 4:04 p.m.)

1 THE COURT: And if I could ask the attorneys to come up
2 and make sure we've got all of the exhibits to go back to the
3 jurors.

4 (WHEREUPON, there was a pause in the proceedings to
5 check the exhibits, after which the proceedings resumed
6 as follows.)

7 THE COURT: No, ma'am. I'm sorry, Ms. -- let me find
8 your name here.

9 THE CLERK: Ms. Ballard.

10 THE COURT: Ms. Ballard, I want to thank you so much for
11 your service. Since it looks like we still have all twelve
12 and they see to all be of sound mind and body and can
13 continue with deliberations, I'm going to go ahead and excuse
14 you. You're welcome to stay if you want to stay and see what
15 becomes of the case, but your duties as a juror have
16 concluded.

17 This is the only case that we're trying this week; so
18 this concludes your jury service for the week. So this acts
19 as an exemption for you for three years. So if you were to
20 get a juror summons from Circuit Court, you know, in six
21 months or a year and six months from now, if you'll just let
22 them know that you've already served. This is a three-year
23 exemption.

24 All right. Ms. Ballard, thank you so much.

25 (WHEREUPON, the alternate juror was released at 4:05

1 p.m.)

2 THE COURT: Thank you, ma'am. Okay. Do they have all
3 of the exhibits now? All right. So we'll just be at ease.

4 (WHEREUPON, the jury deliberations began at 4:05 p.m.)

5 (WHEREUPON, there was a break in the proceedings from
6 4:06 p.m. until 4:38 p.m., after which the proceedings
7 resumed as follows.)

8 THE COURT: Okay. We have a question from the jury that
9 I'll let you take a look at because it looks like they wrote
10 a question and then struck through it and then they wrote a
11 question underneath it. So the question that they're asking:

12 What are the costs of court, lawyer, and travel.

13 And if we can have this marked as Court's Exhibit 1 and
14 I'll let y'all take a look at it so you can see how it's
15 written.

16 (WHEREUPON, the jury note was marked as Court's Exhibit
17 Number 1.)

18 THE COURT: My feeling is that I can't make a lot of
19 comment to them without commenting on the facts and,
20 basically, that they need to base their decision on the
21 evidence that's come before them.

22 MR. DUNN: No objection from the plaintiff.

23 THE COURT: Mr. McKenzie?

24 MR. MCKENZIE: That's fine.

25 THE COURT: Okay. If you'll bring the jury out.

1 (WHEREUPON, the jury entered the courtroom at 4:40 p.m.)

2 THE COURT: Okay. Ladies and gentlemen, I have your
3 question. It states:

4 What are the costs of court, lawyer, and travel?

5 All I can tell you is that I can't make any comment to
6 you about the facts of the case. You are to render your
7 decision based on the evidence that's been presented to you.

8 So that -- I'm guessing that's not the answer you were
9 looking for, but that's the only answer that I can give you.

10 And I know you're all getting your steps today, but I'm
11 going to excuse you to go ahead and continue your
12 deliberations.

13 THE FOREPERSON: Thank you.

14 THE COURT: Thank you.

15 (WHEREUPON, the jury exited the courtroom at 4:41 p.m.)

16 THE COURT: Okay. Madam Court Reporter, I'm going to
17 hand this back to you and we'll just be at ease.

18 (WHEREUPON, there was a break in the proceedings from
19 4:42 p.m. until 4:46 p.m., after which the proceedings
20 resumed as follows.)

21 THE COURT: Okay. I understand we have a verdict. All
22 right. Let's bring the jury on in.

23 (WHEREUPON, the jury entered the courtroom at 4:46 p.m.)

24 THE CLERK: Have you reached a verdict?

25 THE FOREPERSON: Yes, ma'am.

1 THE CLERK: A unanimous verdict?

2 THE FOREPERSON: Yes, ma'am.

3 THE COURT: Thank you.

4 VERDICT

5 THE COURT: Okay. Ladies and gentlemen, I have your
6 verdict form and it states as to the 'cause of action for
7 negligence against the defendant, Coffey & McKenzie, P.A.,
8 we, the jury, unanimously find as follows. We find for the
9 plaintiff and award damages in the amount of \$10,306, and
10 it's signed by Mr. Stone as the foreperson.

11 So, ladies and gentlemen, let me ask is this your
12 verdict?

13 (WHEREUPON, the jurors replied in the affirmative.)

14 THE COURT: Okay. I want to thank you so much for your
15 service to the community. I know we've thanked you about ten
16 times during the course of this, but we really are
17 appreciative.

18 When the juror summons go out -- and Ms. Roberts can
19 tell you they send out hundreds of juror summonses during the
20 course of the year -- she immediately starts getting phone
21 calls and emails. The administrative judge starts to get
22 phone calls and emails of people trying to figure out how
23 they can get out of jury service and some for very legitimate
24 reasons, don't get me wrong, and then we have a pool of
25 people who just show up, rearrange their entire lives to be

1 here, and that's the category that you guys have fallen into.
2 So we do recognize and appreciate what you've done for your
3 community.

4 This does serve as an exemption for three years. So if
5 you get a juror summons in the next three years, you can call
6 Ms. Roberts and let her know that you have already done your
7 duty. Thank you so much and you're free to go.

8 (WHEREUPON, the jury was released and exited the
9 courtroom at 4:48 p.m.)

10 THE COURT: Anything further from either party before we
11 adjourn?

12 MR. DUNN: No, ma'am.

13 MR. MCKENZIE: Your Honor, a couple of things. One is I
14 move for judgment notwithstanding the verdict for the issues
15 that we have discussed earlier in regard to the fact that I
16 don't believe that the plaintiff proved this case by the
17 applicable standard of professional care, based on my prior
18 arguments of that plaintiff has a duty to present -- a burden
19 to prove by expert testimony regarding the standard of care
20 for professional malpractice and attorney-client
21 relationship, and I don't believe that the -- I know there
22 was no expert testimony as to the plaintiff.

23 We renew that motion again, Your Honor, and ask the
24 Court to -- to provide a judgment notwithstanding the verdict
25 and rule in favor of the defendants.

1 THE COURT: Thank you. Your motion is respectfully
2 denied for the same reasons that we addressed earlier.

3 MR. MCKENZIE: The other thing, Your Honor, the
4 testimony was that Mr. Coffey was able to -- the \$10,306
5 would've been the full amount of what was -- what was
6 initially taken. If you'll recall that Mr. Coffey was able
7 to retrieve over \$1,500 back to Mr. Gipson. That's
8 undisputed.

9 So the jury, I guess, all they had was 10,306, but Mr.
10 Coffey testified that he was able to recover 15. So over
11 1,500 and that went to Mr. Gipson and so the -- we would ask
12 that the verdict be reduced by the amount that at least Mr.
13 Coffey was able to obtain.

14 THE COURT: Mr. Dunn?

15 MR. DUNN: The jury had -- I think it was Plaintiff's
16 Exhibit Number 7, which was the letter from East West Bank
17 and the -- and the copy of the check for \$1,500. So they
18 heard the testimony about it. They also had an exhibit back
19 there showing that amount. So it's our argument that the
20 verdict they gave is the actual damages that the jury felt
21 was appropriate given the evidence they had.

22 THE COURT: Mr. McKenzie, I'm going to deny your motion,
23 sir. I think the facts came in front of the jury and they've
24 rendered their verdict and there was evidence to support it.
25 So your motion is respectfully denied.

1 MR. MCKENZIE: Thank you.

2 THE COURT: All right. Thank you, all, for -- you went
3 easy on me.

4 Mr. Gipson, I'm sorry this happened to you, sir.

5 THE PLAINTIFF: Thank you, Your Honor.

6 (WHEREUPON, the proceedings ended at 4:52 p.m.)

7

8 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 184, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Clarendon County, South Carolina, on the 5th day of February, 2020.

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

Kristal J. Smith

Court Reporter

Florence, South Carolina

April 20, 2020

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From: Monica Bruce

Sent: Tuesday, June 28, 2016 11:45 AM

To: mail4marvin@gmail.com

Cc: Steve McKenzie <smckenzie@ccmlawsc.com>; Joe Coffey <jcoffey@ccmlawsc.com>; Brown, Betsy
(Betsybrown@sc.rr.com) <Betsybrown@sc.rr.com>

Subject: FW: 3766 Rowe Drive to Williamson

Mr. Marvin,

Below is the email we received from you with the wiring instructions, along with the attached signed documents and FedEx tracking number.

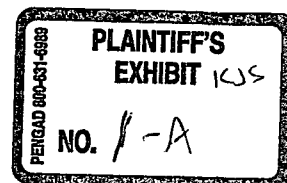
I am also attaching the wire confirmation that the proceeds were sent to the requested account.

Thank you,

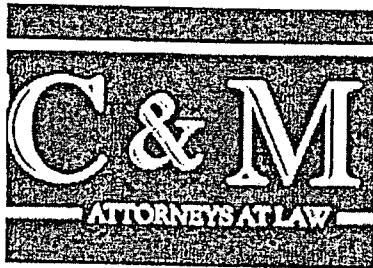
Monica S. Bruce

Real Estate Paralegal

Coffey & McKenzie, P.A.



Office: 803-435-8847



From: Marvin Gipson [<mailto:mail4rnarvin@gmail.com>]
Sent: Thursday, June 16, 2016 5:41 AM
To: Monica Bruce
Subject: Re: 3766 Rowe Drive to Williamson

Good Morning Monica,

The PDF signed documents are attached. The FedEx tracking number 783368744616.

You should have it by noon.

Below is the escrow account information and get back to me with wire receipt as soon as possible.

BANK NAME : EAST WEST BANK

BANK ADDRESS : 135 N. LOS ROBLES AV., SUITE 600, PASADENA, CA . 91101

ACCOUNT NAME : W.M INTERNATIONAL ENTERPRISE INC.

105000
000250

ACCOUNT NO: 8651009493

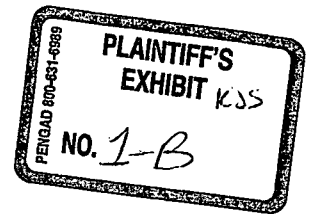
ROUTING NUMBER : 322070381

Regards,

Nemark Marvin Gipson

000251

000000



From: Joe Coffey <jcoffey@ccmlawsc.com>
Date: Tue, Jul 5, 2016 at 6:44 AM
Subject: RE: Closing
To: Marvin Gipson <mail4marvin@gmail.com>

Marvin:

I still need clarification as to how the Fed Ex Tracking Number for the return of the closing documents and the wiring instructions were sent from the incorrect email address.

Joe

Joseph K. Coffey



Coffey & McKenzie, P.A.

2 North Brooks Street

P.O. Box 1292

Manning, SC 29102

803-435-8847 Office

803-435-8915 Fax

CONFIDENTIALITY NOTICE:

The information contained in this transmission is intended for the exclusive use of the addressee(s) and may contain information that is privileged, confidential, and/or protected from disclosure. If you are not the intended recipient, do not disseminate, distribute or copy this communication. If you have received

From: Joe Coffey <jcoffey@ccmlawsc.com>
Date: Thu, Aug 11, 2016 at 8:17 AM
Subject: East West Bank
To: ngipson747@gmail.com <ngipson747@gmail.com>

Marvin:

There isn't anything I can do further regarding your wire fraud matter. It is regrettable your email was compromised and the bank wasn't notified until much later after the closing.

East West Bank made it clear they would not provide any further information unless required by subpoena. The FBI and FTC should be able to obtain more information about the account holder at East West Bank.

I will provide any information requested by the authorities, please inform them of such.

Joe Coffey

Joseph K. Coffey



Coffey & McKenzie, P.A.

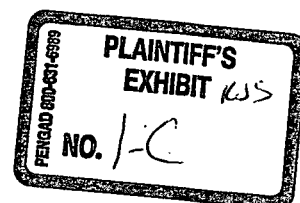
2 North Brooks Street

P.O. Box 1292

Manning, SC 29102

803-435-8847 Office

803-435-8915 Fax



000253,

The information contained in this transmission is intended for the exclusive use of the addressee(s) and may contain information that is privileged, confidential, and/or protected from disclosure. If you are not the intended recipient, do not disseminate, distribute or copy this communication. If you have received this transmission in error, please immediately reply to the sender and then delete it. Thank you for your compliance.

From: Nemark Gipson [mailto:ngipson747@gmail.com]

Sent: Tuesday, September 13, 2016 12:03 PM

To: Joe Coffey <jcoffey@ccmlawsc.com>; Steve Mckenzie <smckenzie@ccmlawsc.com>

Subject: Re: Partial Proceeds

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4649/13009 - Release Date: 09/13/16

Nemark Gipson <ngipson747@gmail.com>

Sep
16

to Joe, Steve

Joe,

Not correct Sir, I have no evidence of that. It may as well have been yours. Business are targeted all the time. One fact of this event is that your assistant, Monica called me prior to the closing and mentioned she had wiring instructions. I told her at that time I didn't send any wiring instructions and it would be by check. You must acknowledge her calling, because my records show she did.
Please reconsider.

Nemark Gipson

On Sep 13, 2016, at 11:37 AM, Joe Coffey <jcoffey@ccmlawsc.com> wrote:

Marvin:

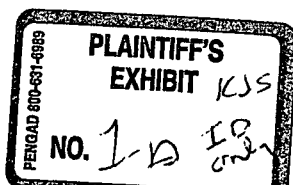
We would be required to pay the deductible and the future increased premiums under those circumstances.

I regret this occurred, far more than you can appreciate however, were it not for your compromised email it would not have taken place.

Because of this, it is not fair to expect us to make you whole. I went to lengths trying to obtain information from the bank and about the account holder on your behalf. In return, I was contacted by the Bar and law enforcement on two occasions. I did not mind this and remain intent on providing whatever information could assist either the FBI or FTC. I'll discuss this further with you if you would like.

Joe Coffey

Joseph K. Coffey



From: Marvin Gipson <mail4marvin@gmail.com>
Date: Wed, Jun 15, 2016 at 5:37 PM
Subject: Re: 3766 Rowe Drive to Williamson
To: Monica Bruce <monica.ccmlawsc@gmail.com>

Hello Monica,

The PDF signed documents are attached. The FedEx tracking number 783368744616.
You should have it by noon.

Regards,

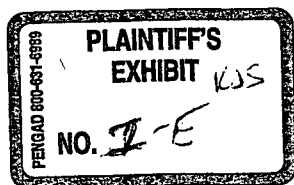
Nemark Marvin Gipson

On Tue, Jun 14, 2016 at 12:18 PM, Monica Bruce <monica.ccmlawsc@gmail.com> wrote:
Mr. Gipson,

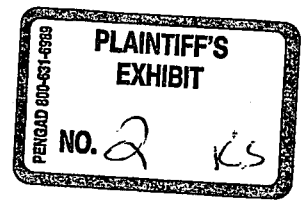
I haven't received the original documents yet. Can you please let me know what the tracking number is?

Thank you.

Monica S. Bruce
Real Estate Paralegal
Coffey & McKenzie, P.A.
Office: 803-435-8847



000255



*This title has not been examined or certified by Johnson, McKenzie & Robinson, LLC
Return to: William H. Johnson/bk
JOHNSON, MCKENZIE & ROBINSON, LLC
16 N BROOKS STREET
Manning, SC 29102.*

STATE OF SOUTH CAROLINA)

PARTITION DEED

COUNTY OF CLARENDON)

KNOW ALL MEN BY THESE PRESENTS, That Johnny A. Gibson aka Johnny A. Gipson, Jr. and Clara Bell McKnight, Trustees pursuant to authority granted in that certain Order of the Honorable W. C. Coffey, Jr., Master-In-Equity dated March 3, 2005 as found in File Number: 2004-CP-14-487 of the Records of the Clerk of Court for Clarendon County, (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of Five and no/100ths (\$5.00) Dollars love and affection, and the partition of property to the Grantors paid by Marvin Gipson, (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, her heirs and assigns, the following described property:

All that certain piece, parcel or lot of land, lying, being and situate in School District 1, County of Clarendon, State of South Carolina, said lot bounding and measuring as follows: on the Northeast by South Carolina Highway S-14-802, and measuring thereon 106.6 feet; on the Southeast of the South Carolina Public Service Authority and measuring thereon 473 feet; on the Southwest by lands of Celestine Gregory, et al and measuring thereon 170.4 feet; on the Northwest by lands of James Green and measuring thereon 354.0 feet.

For a more particular description of said lot, reference may be had to a plat by H. F. Oliver, Surveyor dated November 8, 1972 and recorded in the office of the Clerk of Court for Clarendon County in Plat Book 25 at Page 7.

This being a portion of the property conveyed to Johnny A. Gibson and Clara Bell McKnight as Trustees by Deed dated May 28, 1986 and recorded in Deed Book A137 at Page 212, and by Corrective Deed dated August 25, 1987 and recorded in Deed Book A-146 at Page 227.

Brenda/2004/partition/04-102wr /deed to M Gipson

1

000120755 B:A0641 P:00204

Clarendon County Tax Map Parcel Number; 103-11-01-006

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND HOLD, all and singular the premises before mentioned unto the said Marvin Gipson, his Heirs and Assigns forever.

And the Grantors do hereby bind themselves and their Heirs, and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantees and the Grantees' Heirs and Assigns, against the Grantors and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantors this 17th day of November in the year of our Lord two thousand six and in the thirtieth year of the Sovereignty and Independence of the United States of America.

Grantee's Address:
127 Shepherd Ave
Brooklyn, NY 11208

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness 1

Witness 2/Notary

JOHNNIE A. GIBSON A/K/A
JOHNNIE A, GIPSON, JR., TRUSTEE

(Seal)

000257

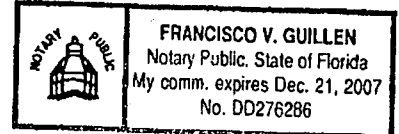
Florida
STATE OF ~~SOUTH CAROLINA~~)
lake
COUNTY OF ~~CLARENDON~~)

PROBATE FOR JOHNNIE A. GIBSON
AKA JOHNNIE A. GIBSON, JR.

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that s/he saw the within named **JOHNNIE A. GIBSON AKA JOHNNIE A. GIBSON, JR., TRUSTEE** sign, seal and, as the Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN TO BEFORE ME this
17 day of *November*, 2006

Francisco Guillen (L.S.)
Notary Public for *SC FL*
My Commission Expires:



Brenda H Keel

[Signature]
Brenda H Keel

[Signature]
Witness 1
Hannayie Lidd
Witness 2/Notary

Clara Bell McKnight (Seal)
CLARA BELL MCKNIGHT, TRUSTEE

New York
STATE OF ~~SOUTH CAROLINA~~)
MASSAIL
COUNTY OF ~~CLARENDON~~)

PROBATE FOR CLARA BELL
MCKNIGHT

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that s/he saw the within named **CLARA BELL MCKNIGHT, TRUSTEE** sign, seal and, as the Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN TO BEFORE ME this
08 day of *DECEMBER*, 2006

Hannayie Lidd (L.S.)
Notary Public for *S.C. NEW YORK*
My Commission Expires: *05/15/2010*

[Signature]
Witness 1
Brenda H Keel

Brenda/2004/partition/04-102wr /deed to M Gipson 3

000120755
FILED, RECORDED, INDEXED
12/14/2006 03:53:34PM
Bk:A0641 Pg:00204
RecFee:10.00 St Fee:0.00
Co Conv Fee:0.00 Pages:4
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

000120755 B:A0641 P:00206

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

)
)
)AFFIDAVIT FOR EXEMPT
TRANSFERS

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

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is Clarendon County property on plat by H. F. Oliver, Surveyor dated November 8, 1972 having TMS 103-11-01-006 was transferred from Johnny A. Gibson aka Johnny A. Gipson, Jr., et al to **Marvin Gipson** on November 17, 2006.
3. The deed is exempt from the deed recording fee because (See information section on affidavit: Transfer among family.
4. As required by Code 12-24-70, I state that I am a responsible person who was connected with the transaction as: attorney

I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before this 17th
day of November, 2006

Brenda H. Kead
Notary Public for South Carolina

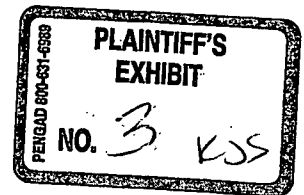
My Commission Expires: 4/27/15

[Signature]
Responsible Person Connected
with the Transaction

000259



**AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(GENERAL USE AND LOTS/ACREAGE)**



1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into as of the Effective Date between:

Buyer(s), Clyde Williamson, Betsy Williamson ("Buyer"), and

Seller(s), Nemark Marvin Gipson ("Seller").

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller
 (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
 (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.
 (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to cause this Contract to be binding on all Parties.
 (E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
 (F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
 (G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods

2. **PURCHASE PRICE:** \$ 12,000.00 (USD)

Payable by ☐ a combination of financing and cash or ☒ cash. Payment shall be good funds.

The sale of Buyer's real property ☐ is ☒ is not required for Purchase and this contingency terms ☐ are ☒ are not attached.

3. **PROPERTY:** Seller will sell and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in working order, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear. Buyer is solely responsible for inquiring about lease issues prior to signing Contract. Leasing issues: (see Adjustments). Leased items on Property can include fuel tanks, alarm systems, satellite equipment, roll carts etc. and contain fuel, etc.

Address 3766 Rowe Dr Unit # _____

City Summerton State of South Carolina

Zip 29148-7751 County of Clarendon

Lot _____ Block _____ Section/Phase _____ Subdivision _____

Other _____ TMS 103-11-01-006-00

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before June 10, 2016 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in ownership type and name(s): Clyde and Betsy Williamson or as stipulated by Buyer. The deed shall be delivered to the Closing Attorney's

☐ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (ex. manuals, equipment warranties, service info, etc.) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** \$ 12,000.00 (USD) Earnest Money is paid as follows: \$ 12,000.00 accompanies this offer and \$ n/a will be paid within 0 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (wire, etc.) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize RE/MAX By The Lake as Escrow Agent to deposit and hold and disburse earnest money according to the terms of this Contract, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT: UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT OR AS OTHERWISE AGREED UPON IN THIS CONTRACT OR FIVE YEARS AFTER CLOSING DATE, ESCROW AGENT MAY DISBURSE EARNEST MONEY TO SC TREASURER. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR, NONPREVAILING PARTY AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER OR MEDIATION IS TO BE UTILIZED, PARTIES AGREE THAT \$ n/a OF EARNEST MONEY SHALL BE RELEASED AND/OR PAID TO THE ESCROW AGENT PRIOR TO FILING INTERPLEADER OR MEDIATION AS COMPENSATION. ESCROW AGENT ACKNOWLEDGES DUTIES.

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs unless otherwise agreed:
Buyer and Seller will pay their own closing cost.

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association, etc.) are the ☐ Seller's or ☒ Buyer's transaction costs.

☐ At Closing, Seller will pay Buyer's transaction costs not to exceed \$ n/a OR true % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

BUYER ☐ ☐ DATE _____, TIME _____
 SELLER ☐ ☐ DATE _____, TIME _____

7. **FINANCE:** Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 15 year or ☐ 30 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum _____ % and maximum _____ % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize their Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). If a Lender declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. Buyer shall apply for financing within 0 Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval that contains no unreasonable

☐ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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000261

credit, income, or asset conditions within n/a Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice and Earnest Money shall be returned to the Buyer.

Proposed Lender: n/a ☐ FHA ☐ VA ☐ Conventional ☐ Seller
☐ Other _____

An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms ☐ are ☒ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and qualified/certified inspectors ("Inspectors") can reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (electricians, plumbers, etc.) to safely connect and operate the utilities during the Inspections

☒ Other ~~Buyer request permission to put a storage shed on property closing~~ ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. Otherwise, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, and appropriate insurance (including owner's title) effective at Closing. Seller to cancel existing insurance and Buyer to obtain new insurance policies by Closing unless otherwise agreed upon in writing by Parties. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing and requirements of insurance for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD ends no later than 5 Business Days after the original Effective Date unless the Parties agree in writing to extend the DUE DILIGENCE PERIOD.

During the Due Diligence Period, Seller agrees Buyer may choose any of the following:

- (1) Conduct/obtain Inspections
- (2) Deliver Repairs Request(s) Notice to Seller
- (3) Proceed under amended Contract
- (4) Proceed under As Is Contract
- (5) Terminate Contract by Delivering "Notice of Termination" and "Termination Fee" to Seller

☐ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ n/a USD Good Funds. Termination Fee paid to Seller by payment or, by release to Seller an appropriate amount of Earnest Money or, by a combination of payment to Seller and an appropriate amount of Earnest Money (Escrow Agent shall timely disburse upon Buyer timely signing any required Earnest Money disbursement agreement for payment of the Termination Fee). If Seller receives the Delivered Notice of Termination and the full Delivered Termination Fee during the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination and all of the Termination Fee to Seller prior to the end of the Due Diligence Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

SHOULD BUYER FAIL TO REACH A NEW/AMENDED CONTRACT OR TERMINATE THE CONTRACT: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Buyer will have the right for 6 Business Days after Notice of damage to Deliver Notice of Termination to the Seller. If Buyer proceeds according to the Contract, Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than 0 Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than 0 Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☐ is ☒ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than 5 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ n/a, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☒ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☒ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____.

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17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy by delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing. Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70.

☒ Buyer and Seller agree that Seller will NOT complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13).

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms and give copies to Brokers.

20. MEGAN'S LAW: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, clandestine laboratory, and crime information from appropriate law enforcement officials or information sources.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this Contract. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the SC Code 12-8-580 (as amended) regarding state income tax withholding requirements if the Seller is not a resident or has not filed SC state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☒ Seller or ☐ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by _____ n/a and paid for by _____ n/a

All of these reports or certifications shall be completed no later than 0 Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

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Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available. This section survives Closing. Buyer is solely responsible for minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel.

27. DEFAULT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer prevails in any action against Seller.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller prevails in any action against Buyer.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION CLAUSE: Mediation is an alternative dispute resolution system and may help avoid potentially expensive and lengthy litigation. The mediation participants voluntarily decide their settlement with the mediator facilitating their decisions and documentation of the settlement. Mediation is not binding arbitration. The mediator does not decide the outcome. The mediation participants make their own decisions include reaching or not reaching a settlement. Any dispute, claim, breach, or services issues relating to this Contract shall be submitted to mediation in accordance with the Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® (info@SCREALTORS.org 1-800-233-6381). Disputes include representations made by any Party, Broker, person or entity in connection with the sale, purchase, financing, condition or any other aspect of the Property, including without limitation allegations of concealment, misrepresentation, negligence or fraud. Any agreement signed by the Parties pursuant to mediation is binding. This mediation clause shall survive the Closing Date. The following matters are excluded from mediation herein: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

29. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to

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easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means: and use or disclose information not made confidential by written instruction of Parties.

31. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a SC law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

32. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. (Land issues may include: restrictions and easements that may affect desired use, drainage issues, hazardous wastes, environmental issues, water rights, availability of water, sewer or septic waste water issues, soil tests, wetlands surveys and studies, subordination, lot releases, and other issues.) If any documents are attached as addenda; amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here:
~~Buyers are requesting to have a storage building placed on the property as soon as possible before closing. Buyer is requesting a free and clear deed.~~

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the Agency Disclosure, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

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36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on May 25, 2016 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties.
If signer is not a Party, appropriate legal documents (Power of Attorney, Corporate Authorization, etc.) are ☐ attached or ☐ to be Delivered within _____ Business Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: <u>Clyde Williamson</u>	Date: <u>05/24/2016</u>	Time: <u>1:15 pm</u>
BUYER: <u>Betsy Williamson</u>	Date: <u>05/24/2016</u>	Time: <u>1:15 pm</u>
_____	Date: _____	Time: _____
_____	Date: _____	Time: _____
SELLER: <u>Nemark Marvin Gipson</u>	Date: <u>5/25/2016</u>	Time: <u>12:30 pm</u>
SELLER: _____	Date: _____	Time: _____
_____	Date: _____	Time: _____
_____	Date: _____	Time: _____

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ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME: _____ RE/MAX By The Lake

ESCROW AGENT'S LAW FIRM/COMPANY/BROKERAGE: _____ Real Estate Brokerage

ESCROW AGENT CONTACT INFO: Patricia B Wood, BIC _____ Manning SC

29102 (803) 433-7355 pattylu2@msn.com

INVOLVED AS: ☐ BUYER AGENT ☐ SELLER SUBAGENT ☒ DUAL AGENT ☐ BUYER DESIGNATED AGENT*

LICENSEE: _____ Betsy Brown SC LICENSE # 42795 EXPIRES 06/30/2017

BROKER IN CHARGE: _____ Patty B Wood SC LICENSE # 3872 EXPIRES 06/30/2016

BROKERAGE COMPANY NAME: _____ RE/MAX By The Lake

MEMBERS OF: _____ Sumter ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____ 326 South Mill Street, Manning, SC 29102

NOTICE EMAIL/FAX: _____ betsybrown@sc.rr.com

MOBILE PHONE: (803) 840-1206 OFFICE PHONE: (803) 433-7355 OTHER: _____

INVOLVED AS: ☐ SELLER AGENT ☐ SELLER SUBAGENT ☒ DUAL AGENT ☐ SELLER DESIGNATED AGENT*

LICENSEE: _____ Betsy Brown SC LICENSE # 42795 EXPIRES 06/30/2017

BROKER IN CHARGE: _____ Patty B Wood SC LICENSE # 3872 EXPIRES 06/30/2016

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NOTICE ADDRESS: _____ 326 South Mill Street, Manning, SC 29102

NOTICE EMAIL/FAX: _____ betsybrown@sc.rr.com

MOBILE PHONE: _____ OFFICE PHONE: (803) 433-7355 OTHER: _____

*DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND OTHER ASSOCIATED LICENSEES ARE DUAL AGENTS.

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Untitled

000268

OMB NO. 2502-0265

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN				
	1. ☐ FHA 2. ☐ FmHA 3. ☐ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.				
	6. FILE NUMBER 160273JR-WILLIAMSON		7. LOAN NUMBER N/A		
	8. MORTGAGE INS CASE NUMBER N/A				

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BUYERS Clyde Williamson and Betsy Williamson 1328 Joyner Drive, Lot 3 Summerton, SC 29148	E. NAME AND ADDRESS OF SELLER Marvin Gipson 495 Odell Avenue Apt 3L Yonkers, NY 10703	F. NAME AND ADDRESS OF LENDER Cash Transaction
G. PROPERTY LOCATION 3766 Rowe Drive Summerton, SC 29148 Clarendon County, South Carolina TM# 103-11-01-006-00	H. SETTLEMENT AGENT Colley & McKenzie, PA PLACE OF SETTLEMENT 2 North Brooks Street Manning, SC 29102	I. SETTLEMENT DATE June 13, 2016

J. SUMMARY OF BUYERS'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BUYERS:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price	12,000.00	401. Contract Sales Price	12,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Buyers (Line 1400)	725.00	403.	
104.		404.	
105.		405.	
<i>Adjustments For Items Paid By Seller in advance</i>		<i>Adjustments For Items Paid By Seller in advance</i>	
106. City/Town Taxes	to	406. City/Town Taxes	to
107. County Taxes	to	407. County Taxes	to
108. Assessments	to	408. Assessments	to
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BUYERS	12,725.00	420. GROSS AMOUNT DUE TO SELLER	12,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BUYERS:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)		502. Settlement Charges to Seller (Line 1400)	1,484.40
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
<i>Adjustments For Items Unpaid By Seller</i>		<i>Adjustments For Items Unpaid By Seller</i>	
210. City/Town Taxes	to	510. City/Town Taxes	to
211. County Taxes	01/01/16 to 06/13/16	511. County Taxes	01/01/16 to 06/13/16
212. Assessments	to	512. Assessments	to
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BUYERS	209.60	520. TOTAL REDUCT. AMT DUE SELLER	1,694.00
300. CASH AT SETTLEMENT FROM/TO BUYERS:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Buyers (Line 120)	12,725.00	601. Gross Amount Due To Seller (Line 420)	12,000.00
302. Less Amount Paid By/For Buyers (Line 220)	(209.60)	602. Less Reductions Due Seller (Line 520)	(1,694.00)
303. CASH (X FROM) (TO) BUYERS	12,515.40	603. CASH (X TO) (FROM) SELLER	10,306.00

The undersigned hereby acknowledge receipt of a completed copy of pages 182 of this statement & any attachments referred to herein.

Buyers

Clyde Williamson

Betsy Williamson

Seller

Marvin Gipson

PLAINTIFF'S
EXHIBIT

NO. 4

5 000269

L. SETTLEMENT CHARGES

700. TOTAL COMMISSION Based on Price \$ 12,000.00 @ 10.0000 % 1,200.00				PAID FROM BUYER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
Division of Commission (line 700) as Follows:					
701.	\$1,200.00	to	ReMax by the Lake		
702.	\$	to	ReMax by the Lake		
703.	Commission Paid at Settlement				1,200.00
704.		to			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801.	Loan Origination Fee	%	to		
802.	Loan Discount	%	to		
803.	Appraisal Fee		to		
804.	Credit Report		to		
805.	Lender's Inspection Fee		to		
806.	Mortgage Ins. App. Fee		to		
807.	Assumption Fee		to		
808.					
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901.	Interest From	to	@ \$ /day (days %)		
902.	MIP Tollns. for LifeOfLoan		months		
903.	Hazard Insurance Premium		1.0 years		
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001.	Hazard Insurance	months @ \$	per month		
1002.	Mortgage Insurance	months @ \$	per month		
1003.	City/Town Taxes	months @ \$	per month		
1004.	County Taxes	months @ \$	per month		
1005.	Assessments	months @ \$	per month		
1006.		months @ \$	per month		
1007.		months @ \$	per month		
1008.		months @ \$	per month		
1100. TITLE CHARGES					
1101.	Settlement or Closing Fee		to		
1102.	Abstract or Title Search		to Colley & McKenzie Expense	75.00	
1103.	Title Examination		to		
1104.	Title Insurance Binder		to		
1105.	Document Preparation		to Colley & McKenzie, PA		200.00
1106.	Notary Fees		to		
1107.	Attorney's Fees		to Colley & McKenzie, PA	500.00	
	(includes above item numbers:)				
1108.	Title Insurance		to First American Title Insurance Company	100.00	
	(includes above item numbers:)				
1109.	Lender's Coverage	\$			
1110.	Owner's Coverage	\$ 12,000.00	100.00		
1111.	Misc/LD/Copy/Fax/PLT		to Colley & McKenzie Expense	40.00	40.00
1112.	Overnight/Wire/Courier				
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201.	Recording Fees: Deed \$ 10.00; Mortgage \$; Releases \$			10.00	
1202.	City/County Tax/Stamps: Deed ; Mortgage				
1203.	State Tax/Stamps: Revenue Stamps 44.40; Mortgage				44.40
1204.	Satisfaction of Mortgage				
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301.	Survey		to		
1302.	Pest Inspection		to		
1303.					
1304.					
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)				725.00	1,484.40

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Colley & McKenzie, PA
Settlement Agent

Certified to be a true copy.



A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN				
	1. ☐ FHA 2. ☐ FmHA 3. ☐ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.				
	6. FILE NUMBER 160273JR-WILLIAMSON-			7. LOAN NUMBER N/A	
	8. MORTGAGE INS CASE NUMBER N/A				

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

1.0 3/98 (160273JR-WILLIAMSON-GIPS.PFD/160273JR-WILLIAMSON-

D. NAME AND ADDRESS OF BUYERS	E. NAME AND ADDRESS OF SELLER	F. NAME AND ADDRESS OF LENDER
Clyde Williamson and Betsy Williamson 1328 Joyner Drive, Lot 3 Summerton, SC 29148	Marvin Gipson 495 Odell Avenue Apt 3L Yonkers, NY 10703	Cash Transaction
G. PROPERTY LOCATION 3766 Rowe Drive Summerton, SC 29148 Clarendon County, South Carolina TM# 103-11-01-006-00	H. SETTLEMENT AGENT Coffey & McKenzie, PA PLACE OF SETTLEMENT 2 North Brooks Street Manning, SC 29102	I. SETTLEMENT DATE June 13, 2016

J. SUMMARY OF BUYERS'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BUYERS:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price	12,000.00	401. Contract Sales Price	12,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Buyers (Line 1400)	725.00	403.	
104.		404.	
105.		405.	
<i>Adjustments For Items Paid By Seller in advance</i>		<i>Adjustments For Items Paid By Seller in advance</i>	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BUYERS	12,725.00	420. GROSS AMOUNT DUE TO SELLER	12,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BUYERS:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)		502. Settlement Charges to Seller (Line 1400)	1,484.40
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
<i>Adjustments For Items Unpaid By Seller</i>		<i>Adjustments For Items Unpaid By Seller</i>	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes 01/01/16 to 06/13/16	209.60	511. County Taxes 01/01/16 to 06/13/16	209.60
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BUYERS	209.60	520. TOTAL REDUCT. AMT DUE SELLER	1,694.00
300. CASH AT SETTLEMENT FROM/TO BUYERS:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Buyers (Line 120)	12,725.00	601. Gross Amount Due To Seller (Line 420)	12,000.00
302. Less Amount Paid By/For Buyers (Line 220)	(209.60)	602. Less Reductions Due Seller (Line 520)	(1,694.00)
303. CASH (X FROM) (TO) BUYERS	12,515.40	603. CASH (X TO) (FROM) SELLER	10,306.00

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

Buyers

Clyde Williamson

Betsy Williamson

Seller

Marvin Gipson

L. SETTLEMENT CHARGES

700. TOTAL COMMISSION Based on Price		\$ 12,000.00 @ 10.0000 %	1,200.00		
Division of Commission (line 700) as Follows:					
701. \$1,200.00	to	ReMax by the Lake			
702. \$	to	ReMax by the Lake			
703. Commission Paid at Settlement					1,200.00
704.	to				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	%	to			
802. Loan Discount	%	to			
803. Appraisal Fee		to			
804. Credit Report		to			
805. Lender's Inspection Fee		to			
806. Mortgage Ins. App. Fee		to			
807. Assumption Fee		to			
808.					
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From	to	@ \$ /day (days %)			
902. MIP Totl Ins. for Life Of Loan		months			
903. Hazard Insurance Premium		1.0 years			
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. City/Town Taxes	months @ \$	per month			
1004. County Taxes	months @ \$	per month			
1005. Assessments	months @ \$	per month			
1006.	months @ \$	per month			
1007.	months @ \$	per month			
1008.	months @ \$	per month			
1100. TITLE CHARGES					
1101. Settlement or Closing Fee	to				
1102. Abstract or Title Search	to	Colley & McKenzie Expense	75.00		
1103. Title Examination	to				
1104. Title Insurance Binder	to				
1105. Document Preparation	to	Colley & McKenzie, PA			200.00
1106. Notary Fees	to				
1107. Attorney's Fees	to	Colley & McKenzie, PA	500.00		
(includes above item numbers:)					
1108. Title Insurance	to	First American Title Insurance Company	100.00		
(includes above item numbers:)					
1109. Lender's Coverage	\$				
1110. Owner's Coverage	\$	12,000.00 100.00			
1111. Misc/LD/Copy/Fax/PLT	to	Colley & McKenzie Expense	40.00		40.00
1112. Overnight/Wire/Courier					
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording Fees: Deed \$ 10.00; Mortgage \$		Releases \$	10.00		
1202. City/County Tax/Stamps Deed		Mortgage			
1203. State Tax/Stamps: Revenue Stamps 44.40; Mortgage					44.40
1204. Satisfaction of Mortgage					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to				
1302. Pest Inspection	to				
1303.					
1304.					
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			725.00		1,484.40

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Colley & McKenzie, PA
Settlement Agent

Certified to be a true copy.

000272

Prepared By and Return to:
Coffey & McKenzie, PA
Post Office Box 1292
2 North Brooks Street
Manning, SC 29102

File No.: 160273JR

(Please do not write above this line - Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Marvin Gipson, the Grantor, in the State aforesaid, for and in consideration of the sum of Twelve Thousand and 00/100 (\$12,000.00) Dollars to the Grantor paid by Clyde Williamson and Betsy Williamson, the Grantees, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said, Clyde Williamson and Betsy Williamson, as joint tenants, with the right of survivorship, upon the death of either of them to the survivor of them, and not as tenants in common, their heirs and assigns forever, the following described property to wit:

All that certain piece, parcel or lot of land, together with any improvements thereon, lying, being and situate in the County of Clarendon, State of South Carolina, being more particularly shown and delineated on that certain plat prepared by H. F. Oliver, Surveyor, dated November 8, 1972, and recorded in the Office of the Register of Deeds for Clarendon County in Plat Book 25, Page 7. Aforesaid plat is incorporated herein by reference pursuant to §30-5-250 of The Code of Laws of South Carolina (1976), as amended.

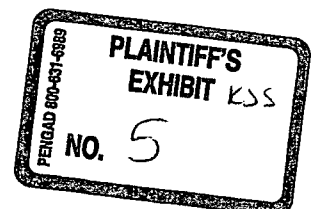
Being the same property conveyed to Marvin Gipson by Partition Deed of Johnny A. Gibson aka Johnny A. Gipson, Jr. and Clara Bell McKnight, Trustees dated November 17, 2006 and recorded December 14, 2006 in the Office of the Register of Deeds for Clarendon County in Deed Book A-641 at Page 204.

Clarendon County Tax Map Number 103-11-01-006-00.

Property Address: 3766 Rowe Drive, Summerton, SC 29148

Grantees' Address: 3766 Rowe Drive, Summerton, SC 29148

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.



000273

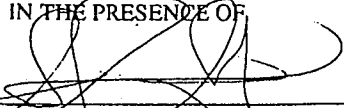
Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

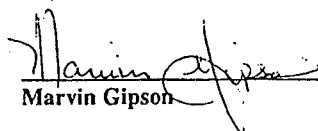
TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Clyde Williamson and Betsy Williamson, as joint tenants, with the right of survivorship, upon the death of either of them to the survivor of them, and not as tenants in common, their heirs and assigns forever.

And the Grantor does hereby bind himself and his Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said, Clyde Williamson and Betsy Williamson, their Heirs and Assigns, against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the execution hereof by Grantor this 15th day of June, 2016.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


Witness #1 Signature

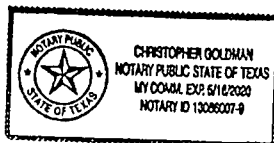

Marvin Gipson

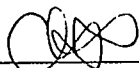

Witness #2/Notary Signature

STATE OF Texas
COUNTY OF H. Buel

)
) ACKNOWLEDGMENT
)

I, Christopher Goldman (name of official), Notary Public in and for the State of Texas, do hereby certify that the within named Grantor personally appeared before me this 15 day of June, 2016 and acknowledged the due execution of the foregoing instrument.




SIGNATURE OF OFFICIAL OR NOTARY PUBLIC
My Commission Expires: 05/16/2020

000274

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 3766 Rowe Drive, Summerton, bearing Clarendon County Tax Map Number 103-11-01-006-00, was transferred by Marvin Gipson to Clyde Williamson and Betsy Williamson on June 15, 2016.
3. Check one of the following: The deed is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit);

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$12,000.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lienholder and the buyer existing before the transfer). If Yes, the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$12,000.00
- (b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
- (c) Subtract line 6(b) from Line 6(a) and place result here: \$12,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$44.40.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 15th
day of June year of 2016.Monica S. BruceNotary (printed name): Monica S. Bruce

Notary Public for South Carolina

My Commission Expires: 1/12/2019Joseph K. Coffey
Responsible Person Connected with the TransactionJoseph K. Coffey, Esquire

Print or type the above name here

000275

3510 Palm Grove Drive
Missouri City, TX 77459

Steven McKenzie
Coffey & McKenzie, PA
2 North Brooks Street
Manning, SC 29102

June 27, 2016

Dear Mr. Mckenzie,

This letter is my follow-up to my conversation with Joe Coffy on June 27, 2016 at 3:51pm. Earlier in the day, I called his paralegal, Monica Bruce at 11:25am to inquire about my proceeds of \$10,306.00 due for the sale of my property at: 3766 Rowe Drive, Summerton, SC 29148, Clarendon County, South Carolina TM# 103-11-01-006-00. At which time she informed me that she had sent the funds to an account which I did not authorize. On the date of the wire, I was not telephoned or advised of the transaction, nor received any notification of the transaction. I informed her that I did not receive the confirmation email at which time she told me she would resend it while we were on the phone. Again, I informed her that I did not receive the confirmation sent. She then she said she would call me back.

While waiting for Monica to call me back, I called my real estate broker Betsy Brown at 12:16pm, who informed me that she received a copy of the confirmation. As of right now, your office still has not provided me with the confirmation on where my funds were wired. Therefore, I am requesting the following information:

- Name and address of the bank
- Routing and Account number
- Name of the account in which funds were wired

This is to confirm that I did not receive the funds stated and I am requesting that you put an immediate hold on those funds transferred and retrieve them and mail them to me at the address below:

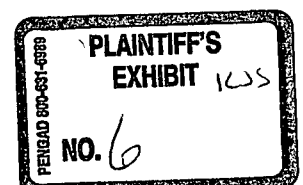
Nemark Marvin Gipson
3510 Palm Grove Dr.
Missouri City, Texas 77459

Please respond to my request within the next 48 hours. Your prompt attention to this matter is greatly appreciated.

Thank you,

Nemark Marvin Gipson

CC: South Carolina Attorney: General Alan Wilson
Texas Attorney General: Ken Paxton
South Carolina Real Estate Commission
Realtor: Becky Brown



000276



July 19, 2016

NBSC Synovus Financial
Attn: Donna Trapp
217 Forum Drive
Columbia, SC 29229

Re: Coffey & McKenzie PA
Our Ref. # FR-16-651-181

Dear Ms. Trapp:

Please refer to your collection letter dated June 30, 2016 requesting a payment on the following wire transfer:

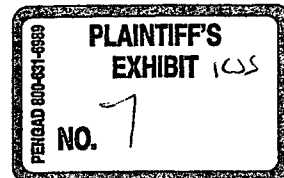
Wire date: 06/16/2016
Wire amount: \$10,306.00
Payee: W M International Enterprise Inc.
Reason: Unauthorized

Enclosed is a cashier's check # 101020363 in the amount of \$1,516.89 for reimbursement. We considered this matter satisfied and closed.

Should you have any questions regarding this matter, please feel free to contact me at (626) 371-8526 Monday through Friday between 8:00 - 5:00 PM PST.

Sincerely,

Jenny Mooc
AVP Assistant Risk Manager
Risk & Operations Department



000277

CUSTOMER CREDIT

NBSC

DATE 07 26 16

ACCOUNT NAME

DESCRIPTION

PREPARED BY:

APPROVED BY:

Recovery of part of fraudulent wire sent 06-16-2016

\$10,300.00

ACCOUNT NUMBER

TC (OPTIONAL)

CREDIT AMOUNT

253606001

\$

1316.89

5531000000

EAST WEST BANK

Member FDIC

135 N. LOS ROBLES AVE., PASADENA, CA 91101

CASHIER'S CHECK

NOTICE TO CUSTOMERS: The purchase of an indemnity bond will be required before any cashier's check issued by this bank will be replaced or refunded in the event it is lost, stolen or destroyed for a period of 90 days from issuance date.

July 19, 2016

16-7038/3220

PAY TO THE ORDER OF

REVENUE MANAGEMENT
217 COLUMBIA DRIVE, COLUMBIA, SC 29229

ONE THOUSAND FIVE HUNDRED FORTY EIGHT DOLLARS AND EIGHTY NINE CENTS

F-14-011-101

East West Bank

CASHIER'S CHECK

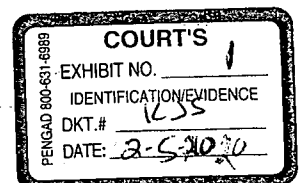
EAST WEST BANK
VOID AFTER 90 DAYS

OVER \$25,000 REQUIRES TWO SIGNATURES

1010203630 3220703810 45934000250

000278

- ~~- Do they have the wire transfer document?~~
- What are the costs of:
 - court
 - lawyer
 - travel



Criminal Justice Information System Security & Awareness Training



This is to certify that
JOSEPH PEDALINO
has successfully completed the
Level 4 CJIS Security Training

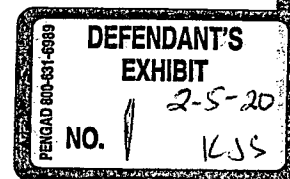
08/24/2018

Certification Date

*This certification expires two
years from the date of issuance.*

08/24/2020

Expiration Date



000279

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

**AFFIDAVIT AND CONSENT
FOR REAL ESTATE CLOSING**

RE: Sale of 3766 Rowe Drive, Summerton, SC to Williamson

Due to the distance existing from the attorney's office, I have elected to execute the necessary closing documents in Missouri City, Texas [city/state]. I am advised that my attorney, Joseph K. Coffey of Coffey & McKenzie, P.A., shall be accessible to me during the closing by telephone at 803-435-8847, by facsimile at 803-435-8915, and by email at jcoffey@ccmlawsc.com. Further, my attorney shall review the closing documents at the conclusion of my execution of them and shall undertake any remedial measures to correct them should this be necessary.

Witness #1

Marvin Gipson

Witness #2/Notary Public

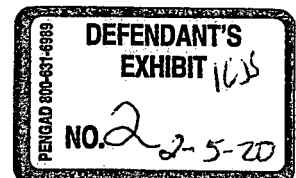
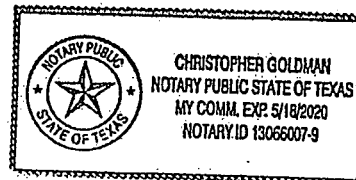
STATE OF Texas)
)
COUNTY OF Ft. Bend)

ACKNOWLEDGMENT

I, Christopher Goldman {name of official}, Notary Public in and for the State of Texas, do hereby certify that the within named Grantor personally appeared before me this 15 day of June, 2016 and acknowledged the due execution of the foregoing instrument.

SIGNATURE OF OFFICIAL OR NOTARY PUBLIC
My Commission Expires: 05/16/2020

File No.: 160273JR



Exhibits

2017-CR 14 - 00311

Marvin Gipson

-DS-

Clyde William, Betty

William & Coffey & McKenzie, LLC.

Reporters:
Zabeta Harris - 2/3/2020
Crystal Smith - 2/3/2020

Receipt for Exhibits

Case No. 2017-CP-14-00311 Judge: Chris
 Plaintiff: Marnie Gibson PLTF's Atty. Dunn
 Defendant: Chloe Williamson et al Def's Atty. McKenzie / Robinson
 Date Trial Started: 2/3/2020 Date Trial Ended: 2/5/2020

000282

Received of Kristal J. Smith, Court Reporter for the above case, these exhibits:

Plaintiff's		This Space for Clerk of Court's use
1-A	email (9,10,11)	
1-B	email (20)	
1-C	email (41)	
1-D	email - ID only (45)	
2	deed	
3	sales agreement	
4	settlement statement	
5	deed	
6	letter	
7	letter + copy of check	
8		
9	affidavits	
10	1 certificate	
11	2 email statement	
12		
13	Court's	
14	1 jury note	
15		
16		
17		
18		
19		
20		

This 5 day of February, 2020.

Page 1 of 1.

CLARENDON COUNTY CLERK OF COURT

By: Brenda B. Roberts
Clerk of Court

THE CLERK OF COURT WILL RETAIN THE WHITE COPY OF THIS RECEIPT IN CIVIL CASES.

THE CLERK OF COURT WILL RETAIN THE PINK COPY OF THIS RECEIPT IN CRIMINAL CASES.

000283

Receipt for Exhibits

Case No. 2017-CP-14-00311Judge: ClarkPlaintiff: Marnie GipsonPLTF's Atty. DunnDefendant: Ayle Williamson et alDef's Atty. McKenzie / RobinsonDate Trial Started: 2/3/2020Date Trial Ended: 2/5/2020

Received of Kristal J. Smith, Court Reporter for the above case,
these exhibits:

Plaintiff's

1-A email (9,10,11)

1-B email (26)

1-C email (42)

1-E (6)

1 1-D email - ID only (45)

2 deed

3 sales agreement

4 settlement statement

5 deed

6 letter

7 letter + copy of check

8

9 defendants

10 1 certificate

11 2 email statement

12

This Space
for Clerk of
Court's use

RECEIVED

THE STATE OF SOUTH CAROLINA

MAR 08 2021

In the Court of Appeals

SC Court of Appeals

APPEAL FROM CLARENDON COUNTY

In the Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No.: 2016-GS-14-0098

Marvin Gipson.....Respondent

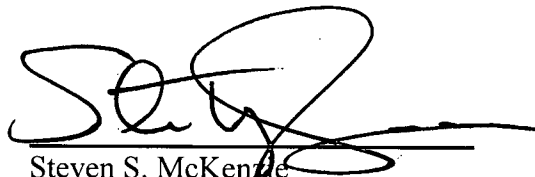
v.

Coffey & McKenzie, P.A.....Appellant

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal complies with Rule 208, SCAR, and the Record on Appeal contains nothing that is irrelevant to the Appeal.

February 26, 2021



Steven S. McKenzie
Coffey & McKenzie, P.A.
2 North Brooks Street
P.O. Box 1292
Manning, SC 29102
803-435-8847(Telephone)
803-435-8915(Facsimile)
smckenzie@ccmlawsc.com
Attorney for the Appellant